

**BEFORE THE HARYANA REAL ESTATE REGULATORY  
AUTHORITY, GURUGRAM**

**Filing of complaint:** 15.04.2024  
**Date of order:** 09.04.2025

1. Mohit Chawla  
2. Nisha Chawla  
**Both R/o-** 186-B, New Colony,  
Gurugram-122001.

**Complainants**

Versus

Capital Heights Pvt. Ltd.  
**Address:** - Ground Floor, The Cityspace,  
Village- Maidawas, Golf Course Ext. Road, Sector-  
66, Gurugram

**Respondent**

**CORAM:**

Shri Ashok Sangwan

**Member**

**APPEARANCE:**

Shri Subhash Grover (Advocate)  
None

Complainants  
Respondent

**EX-PARTE ORDER**

1. The present complaint dated 15.04.2024 has been filed by the complainants under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

**A. Project and unit related details**



2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	Residences 360, Sector-70A
2.	Total area of the project	27.7163 acres
3.	Nature of the project	Group housing
4.	DTCP license no.	16 of 2009 dated 29.05.2009
	Validity of license	28.05.2024
	Name of licensee	Vibhore Home Developers Pvt. Ltd. And 6 others
5.	HRERA registered/ not registered	Registered
6.	Unit no.	CR-02/11-02, Tower-CR-02, 11 <sup>th</sup> floor
7.	Unit measuring	1900 sq. ft.
8.	Provisional Allotment letter dated	06.05.2013 (Page 15 of reply)
9.	Date of execution of buyer's agreement	15.03.2017 (As on page no. 52 of complaint)
10.	Possession clause	Clause 6. Possession (a) <i>The Excavation work has</i>



*begun on the project Land much before the date of execution of this Agreement and the same must not be misunderstood with or shall not be considered as the date of commencement of construction of the Project. The Company endeavors to offer the possession of the Unit in the Group Housing to the Allottee(s) **within a period of 42(forty two) months from the date of commencement of construction of the Project** hereof, i.e. the date on which the raft of the tower as intimated to the Allottee(S) must be casted (The "Commencement of Construction") and this date shall be duly communicated to the Allottee(s) , subject to Force Majeure (defined hereinafter in clause 25) or any other reason beyond the control of the Company , subject to the Allottee(s) having strictly complied with all the terms and conditions of this Agreement and not being in default under any provisions herein, and all amounts due and payable by*

		<p><i>the Allottee(s) under this Agreement having been paid in time to the Company. The Company shall offer in writing to the Allottee(s) possession of the Unit (The "Notice of Possession") upon furnishing necessary documents and possession to be taken within 30(thirty) days from the date of issuance of Notice of possession.</i></p> <p><b>(Emphasis supplied)</b></p>
11.	Date of start of construction	07.08.2014 (As per demand letter dated 15.07.2014 on page no. 106 of complaint)
12.	Due date of possession	07.02.2018 [Calculated 42 months from the date of start of construction]
13.	Basic Sale consideration	Rs.87,82,200/- (As per payment plan annexed with the buyer's agreement on page no. 90 of complaint)
14.	Total amount paid by the complainants	Rs.41,11,240/-
15.	Occupation certificate	26.10.2021 (As per the details available on the



		website of TCP, Haryana)
16.	Offer of possession	Not offered
17.	Cancellation letter	01.06.2022 (As on page no. 102 of complaint)

**B. Facts of the complaint**

3. The complainants made the following submissions in the complaint:
- I. That in the year 2012, the complainant from the reliable sources, came to know that the respondent is going to launch the project namely "Residences 360" in Sector 70-A in revenue estate of Village Palra, Tehsil & Distt. Gurgaon, Haryana. The respondent represented that the respondent along with AIPL Builder is going to develop the land.
  - II. That a Joint Community Building for club, swimming pool shall also be provided over the land/tower of AIPL to the allottees and the allottees of Capital Heights shall have right to use the said common area i.e. community building and no such boundary wall will be erected/constructed between the land of AIPL and the respondent. Subsequently, the respondent also supplied the said site plan to complainant alongwith the Flat Buyer Agreement.
  - III. That on 27.6.2012 the complainants along with their brother, booked two units in the project and remitted, in total, registration amount of Rs.18,00,000/- (i.e. Rs.9,00,000/- for each unit under the name of complainants and Mr. Deepak Chawla).
  - IV. That the respondent issued the receipt vide acknowledgement dated 05.02.2013 regarding receiving the cheque 817923 of



- Rs.9,00,000/. That on 25.01.2013, the complainant filed the application form in this regard whereby apartment no. CR-02/11-03 was booked and further an amount of Rs.9,55,620/- vide cheque no. 817938 dated 25.01.2013 drawn on Corporation Bank was remitted with the respondent along with application form.
- V. That a total amount of Rs.40,11,340/- has been received by the respondent from the complainants and his brother regarding apartment no. CR-02/11-03 and CR-02/15-03 upto 15.04.2013.
- VI. That on 06.05.2013, the complainant was allotted apartment unit no.- CR-02/11-03 in the project. In the year 2015, the complainant and his brother visited the project site and found that there was no progress about the construction of the work over the said project. So the complainant and his brother requested them to refund their hard money/ deposit amount, but the respondent was not ready to refund the amount. Rather, the respondent offered the complainant and his brother to retain one unit and they agreed to adjust the amount of one unit qua in another unit. Ultimately, the complainant decided to retain the present apartment no. CR-02/11-03 and agreed to adjust the amount paid by the complainant's unit of Rs.20,11,340/-.
- VII. Thereafter, the respondent stated that they have transferred the amount of Rs.20,11,340/- in the account of complainant's apartment and the complainant's brother's unit was cancelled.
- VIII. That on 15.03.2017, a Builder-Buyer Agreement was executed between the complainant and the respondent for a sale consideration of Rs.95,10,200/- and club membership charge (CMC) of Rs.3,40,00/-, has been reflected in BBA therefore total sale





consideration amounting to Rs.98,50,200/- as reflected in Annexure II of BBA. Detail of apartment is as under:-

<b>Tower/ Building</b>	<i>CR02</i>
<b>Unit no.</b>	<i>1103</i>
<b>Floor</b>	<i>11<sup>th</sup></i>
<b>Super Area (sq.ft.)</b>	<i>1400 (130.063 Sq. Meters)</i>
<b>Total Sale consideration</b>	<i>98,50,200/-</i>
<b>Payment Plan</b>	<i>Construction linked payment plan</i>

- IX. That according to builder buyer agreement dated 15.03.2017 and payment plan, the complainants had to pay an estimated amount of Rs.40,03,145/- upto the completion of the top floor slab work. Rather the complainant had already paid the amount of Rs.41,11,340/- upto April 2013.
- X. That the respondent made the assurance to the complainant that the complainant does not require to pay further amount till handing over the possession of the said unit and the balance amount was to be paid at the time of handing over the possession of the said unit.
- XI. That the said unit was booked on 25.06.2012 and the huge amount has been already deposited/remitted by the complainant but the respondent did not complete the construction over the said project within stipulated period and complainant has been waiting for his own unit since 12 years.
- XII. That at the time of booking of the flat as well as the execution of the Builder Buyer Agreement, the respondent represented and reflected in site plan Annexure-III of BBA, that it has an alliance with AIPL builder (who is sister concern of the respondent ) the areas

whatever left by AIPL as shown in white colour in site plan in annexure III, the respondent undertook to construct the said building for club house/ community building and the allottees of Capital Tower 1 & 2 (CR-01 & CR-02) shall have right to use the amenity of the said club for which the respondent charged an amount of Rs.3,40,000/- each from the complainant and his brother.

XIII. In the year 2022, the respondent stated that a dispute between AIPL and the respondent is ongoing and they are going to provide the club house in the basement of project CR-02. Rather at the time of booking as well as the execution of Builder Buyer Agreement, represented and reflected in site plan Annexure-III of BBA, that they have alliance with AIPL builder and also made the assurance to the allottee of CR-01 & CR-02 that the respondent will provide the entry to the said capital project CR-01 & CR-02 which will be started from main 60meter road leading through community building of AIPL as shown in white colour in the site plan Annexure-III of BBA and the allottee of the Tower CR-01 and CR-02 shall have right to use the rasta of AIPL and they will have right to exit on 24-meter wide road, after crossing circumflexing the property of AIPL. But now, a wall has been erected between these entry points and both the project has been separated. Meaning-thereby the allottees cannot use road/amenity and club house whatever reflected in site plan.

XIV. That in the year 2022, when the complainant took an objection for the same and requested the respondent to provide the amenities as reflected in the site plan and provide the entry from property AIPL as reflected in site plan Annexure-III of the BBA, then the respondent issued a cancellation letter dated 01.06.2022 and





subsequently sent the email dated 31.05.2023, whereby the respondent stated that the unit has been cancelled and the amount of Rs.31,21,927/- (out of total payment of Rs.41,11,240/-) is going to be refunded to the complainant. The alleged cancellation letter and the alleged calculation-sheet qua refund of amount of Rs.31,21,927/- is illegal and void.

- XV. That the complainant has remained very punctual with the payment of amount as when issued through demand notices issued by the respondent. The complainants have remitted a heavy amount of Rs.41,11,240/- to the respondent against the total sale consideration of Rs. 87,50,200/-.
- XVI. That as per clause 6 of the Builder Buyer Agreement, the respondent was required to hand over the possession of the said unit within 42 months from the date of *commencement of construction of the project*.
- XVII. That as per clause 6 of the Builder Buyer Agreement, the date of handing over the possession is determined as 15.01.2018 as the *construction work over of the project commenced on 15.07.2014*, according to the demand letter dated 15.07.2014 whereby the respondent stated that the excavation work has been completed and casting of raft has commenced in full pace.
- XVIII. That on several occasions, the complainants have approached the respondent to complete the project and hand over the physical possession of the apartment and also requested to withdraw the alleged cancellation letter and pay the interest (@10.45% per annum of deposit amount till handing over the possession of the apartment) and also requested the respondent either to refund the



amount of Rs.41,11,240/ along with interest @ 10.45% per annum since the date of deposit amount i.e. 25.06.2012 till realization of the amount.

XIX. That the respondent has not complied by the terms and conditions of the Builder Buyer agreement and has caused a delay in delivery of possession, which does not seem to be fulfilled in near future as well. That the complainant has invested Rs.41,11,240/-which had been lying with the respondent since 2012 because of the delay in the delivery of possession of apartment caused by the respondent. Therefore, the complainant prays for refund the deposit amount of Rs.41,11,240/- along with the interest @10.45% per annum since 25.06.2012 till the realization of amount. If the Authority came to conclusion that the cancellation letter is illegal, and complainant is entitled to possession of the unit in terms of buyer agreement and found delay in handing over the possession of the unit, then the complainant be granted physical possession of the unit along with interest @10.45% since the date 08.01.2018 till handing over the physical possession on account of delay in handing over the said apartment to the complainant although complainants are ready to pay the balance sale consideration to the respondent against apartment no. CR-02/11-03.

**C. The complainants are seeking the following relief:**

4. The complainants have sought the relief(s):

- (i) Direct the respondent to refund the amount of Rs.41,11,240/- along with interest Rs.49,19,979/- calculated @ 10.45% per annum on the principal amount by the complainant, from the date of deposit the amount till realization of amount.



5. The present complaint has been filed on 15.04.2024 and the reply of the respondent has not been received. Despite several opportunities, neither the respondent appeared before the Authority nor filed reply in the present complaint. Vide proceedings dated 29.01.2025, the Authority directed the complainants to serve the respondent through publication in the local newspaper at their own cost, within a period of one month. Vide proceedings dated 26.03.2025, the complainants apprised the Authority with the fact that the respondent has been served by the way of publication via Times of India dated 24.02.2025 and Nav Bharat Times dated 24.02.2025. Despite the publication, none appeared on behalf of the respondent. Thus, the respondent was proceeded ex-parte.
6. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

**D. Jurisdiction of the authority**

7. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

**D.I Territorial jurisdiction**

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning

area of Gurugram District, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

## D.II Subject-matter jurisdiction

9. Section 11(4)(a) of the Act provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

### **Section 11**

.....

(4) The promoter shall-

- (a) *be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

10. So, in view of the provisions of the Act quoted above, the Authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.
11. Further, the Authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.*** 2021-2022(1) RCR(Civil), 357 and reiterated in case of ***M/s Sana Realtors Pvt. Ltd. and other Vs. Union of India and other SLP(Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:



*"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."*

12. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above the Authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

**E. Findings on the relief sought by the complainants/allottees.**

- E. I Direct the respondent to refund the amount of Rs.41,11,240/- along with interest Rs.49,19,979/- calculated @ 10.45% per annum on the principal amount by the complainants, from the date of deposit the amount till realization of amount.**

13. The complainants were allotted unit no. CR-02/11-03, Tower-CR-02, 11<sup>th</sup> floor in the project "Residences 360, Sector-70A" by the respondent-builder for a sale consideration of Rs. 83,62,200/- and they paid a sum of Rs. 41,11,240/- which is approx. 49% of the sale consideration. The builder buyer's agreement has been executed between parties with regard to the allotted unit on 15.03.2017. The





due date of possession is calculated from the date of start of construction i.e., 07.08.2014, and handover possession of the same comes out to 07.02.2018. The complainants failed to pay the amount due against the allotted unit.

14. As per the documents available on record, the respondent issued multiple reminders and subsequently proceeded to cancel the allotment of the complainants' unit vide cancellation letter dated 01.06.2022. It is further noted that the Occupation Certificate for the project, in which the subject unit is situated, was granted on 26.10.2021. As per the available documents, the complainants have paid a total sum of Rs. 41,11,240/- against the total sale consideration of Rs. 87,82,200/- for the allotted unit.
15. Out of the aforesaid amount, Rs. 20,55,620/- was transferred from the balance account of Mr. Deepak Chawla, the brother of the complainant. It is evident from the payment records (annexed at page no. 105 of the complaint) that Mr. Deepak Chawla's unit was cancelled, and the amount paid by him was subsequently transferred to the complainants' unit in accordance with the Cancellation and Transfer Agreement dated 13.07.2016. The respondent's own documentation confirms that a total of Rs. 41,11,240/- has been deposited towards the complainants' unit, inclusive of the amount transferred from Mr. Deepak Chawla's account. The complainants' unit was cancelled by the respondent on 01.06.2022, and the complainants have challenged the said cancellation through the present complaint, albeit after a delay of nearly two years.



16. The complainants have submitted that, at the time of booking of the unit as well as at the time of execution of the Builder Buyer Agreement (BBA), the respondent made specific representations regarding certain project amenities and access rights. It was reflected in the site plan annexed as Annexure-III to the BBA that the respondent had an alliance with AIPL, a sister concern of the respondent. As per the said site plan, the areas depicted in white colour—left unconstructed by AIPL—were to be developed by the respondent for the purpose of a clubhouse/community building. The respondent further assured that allottees of Capital Towers 1 and 2 (CR-01 and CR-02) would have the right to use the facilities of the proposed clubhouse, for which an amount of Rs. 3,40,000/- each was charged from the complainant and his brother. However, in the year 2022, the respondent informed the complainants that a dispute had arisen between the respondent and AIPL, and that as a result, the clubhouse would now be constructed in the basement of Tower CR-02, in deviation from the original representation.
17. Additionally, the complainants submitted that at the time of booking and execution of the BBA, the respondent had assured that the allottees of CR-01 and CR-02 would be granted access to the project through a 60-meter-wide main road leading via the community building of AIPL, as depicted in Annexure-III. This access route was to allow ingress and egress from the Capital project onto a 24-meter-wide road, via a path passing through the AIPL property. However, it is now alleged that a wall has been erected between the respective entry points, thereby physically separating the projects and denying the allottees access to the road, clubhouse, and other amenities as



originally promised and shown in the sanctioned site plan. This, , constitutes a deviation from the agreed terms and representations, adversely affecting their rights and entitlements under the Builder Buyer Agreement."

18. That in the year 2022, upon raising objections and requesting the respondent to provide the amenities and access as depicted in the site plan—specifically, the entry through the AIPL property as shown in Annexure-III of the Builder Buyer Agreement—the complainants were served with a cancellation letter dated 01.06.2022. Thereafter, the respondent issued an email dated 31.05.2023, informing the complainants that the allotment of the unit stood cancelled and that a sum of Rs. 31,21,927/- would be refunded to them out of the total amount of Rs. 41,11,240/- paid.
19. The complainants have challenged the validity of both the cancellation letter and the refund calculation sheet, contending that the same are arbitrary, illegal, and void ab initio."
20. The complainants have impugned the cancellation letter dated 01.06.2022 on the ground that the respondent failed to provide the promised facilities within the project, and therefore, the cancellation is arbitrary and legally unsustainable. However, upon perusal of the material available on record, the Authority finds no evidence to show that the complainants raised any grievance or objection regarding the non-availability of the promised facilities with the respondent at any point prior to the filing of the present complaint.
21. Furthermore, there is no record to indicate that the complainants challenged the cancellation of the unit dated 01.06.2022 through any

formal representation or legal recourse until the institution of this complaint. In view of the above, the Authority is of the considered opinion that the objection raised by the complainants against the cancellation appears to be an afterthought, as no prudent person is expected to remain silent for a period of nearly two years before challenging such cancellation."

22. The Authority observes that the respondent has provided a calculation sheet to the complainants via email dated 31.05.2023, wherein a detailed/elaborated details regarding the payments, the forfeiture, and the net refund are detailed. The complainants have failed to mention if any refund has already been credited by the respondent to them. As the cancellation is valid, being done after duly serving reminders to the complainants, the refund is liable to be granted after deductions of the earnest money.
23. Further, the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, states that-

**"5. AMOUNT OF EARNEST MONEY**

*Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."*



24. Keeping in view, the aforesaid legal provision, the respondent/promotor directed to refund the paid-up amount after deducting 10% of the sale consideration and shall return the amount along with interest at the rate of 11.10% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of cancellation i.e., 01.06.2022 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid, after deducting any amount already refunded to the complainants, if any.

**G. Directions of the Authority**

25. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- The respondent is directed to refund the paid-up amount of Rs. 41,11,2409/- after deducting 10% of the sale consideration of Rs. 87,82,200/- with interest at the prescribed rate i.e., 11.10% on such balance amount, from the date of cancellation i.e., 01.06.2022 till the actual date of refund.
  - A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.




**HARERA**  
**GURUGRAM**

Complaint no. 1303 of 2024

26. Complaint stands disposed of.

27. File be consigned to registry.

  
Ashok Sangwan  
**Member**

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 09.04.2025



**HARERA**  
**GURUGRAM**