

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

Complaint no.	:	2507 of 2023
Date of complaint	:	30.05.2023
Date of order	:	02.07.2025

Kavita Kumar and Rajeev Kumar, <b>R/o:</b> CW-31, 2 <sup>nd</sup> Floor, Personal Floors, Malibu Town, Gurugram.	<b>Complainants</b>
Versus	
M/s Landmark Apartments Private Limited <b>Regd. Office at:</b> 65, Sector-44, Gurugram, Haryana.	<b>Respondent</b>

<b>CORAM:</b>	
Ashok Sangwan	<b>Member</b>
<b>APPEARANCE:</b>	
Sushil Yadav (Advocate)	Complainants
Amarjeet Kumar (Advocate)	Respondent

**ORDER**

1. The present complaint has been filed by the complainants/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 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 allottees as per the agreement for sale executed inter se.

**A. Unit and project 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 and delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	Landmark - The Residency, Sector-103, Gurugram
2.	Project area	10.868 acres
3.	Nature of the project	Residential
4.	DTCP license no. and validity status	33 of 2011 dated 19.04.2011 valid up to 15.04.2021
5.	Name of licensee	Basic Developers Pvt. Ltd. and others
6.	RERA Registered/ not registered	Not registered
7.	Provisional allotment letter	11.01.2013 (Page no. 15 of complaint)
8.	Date of execution of apartment agreement buyer	Not executed
9.	Unit no.	C-81, 8 <sup>th</sup> floor (Page no. 15 of the complaint)
10.	Unit area admeasuring	2143 sq. ft. (super area) (Page no. 15 of the complaint)
11.	Possession clause	Not provided
12.	Due date of possession	11.01.2016 <b>[Calculated as per Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018]</b>
13.	Total sale consideration	Rs.72,64,750/- (Page no. 8 of complaint)
14.	Amount paid by the complainant	Rs.31,51,268/- (Page no. 21 of reply)
15.	Occupation certificate	25.09.2020 (Tower-A & EWS Block) (Page 23 of reply) <b>OC of tower in question i.e. Tower-C not yet obtained</b>
16.	Offer of possession	Not offered
17.	Surrender request	29.09.2022 (page 14 of reply)

18.	Amount refunded	Rs.1,51,268/- (Page 3 of reply)
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**B. Facts of the complaint:**

3. The complainants vide complaint and written submissions dated 22.05.2025 has made the following submissions: -

- I. That the complainants booked a flat admeasuring super area 2143 sq. ft in the project of the respondent named "Landmark- The Residency" at Sector 103, Gurgaon for total sale consideration of Rs.72,64,750/- which includes BSP, car parking, IFMS, Club Membership, PLC etc. including taxes. Out of the total sale consideration amount, the complainants made payment of Rs.31,51,468/- to the respondent vide different cheques on different dates.
- II. That as per provisional allotment letter dated 11.01.2013, the respondent had allotted a unit bearing no. C-81, 8<sup>th</sup> Floor, admeasuring 2143 sq. ft. to the complainants and respondent have never executed flat buyer agreement with complainant even after repeated requests.
- III. That the complainant regularly visited the site but was surprised to see that construction was very slow. It appears that respondent has played fraud upon the complainants. Even the respondent itself was not aware that by what time possession would be granted. Also, the respondent constructed the basic structure which was linked to the payments and majority of payments were made too early. The only intention of the respondent was to take payments for the flat without completing the work. The structure was being erected at great speed since the structure alone was related to the vast majority of the payments in the construction linked plan. Since the respondent has received the payments linked to the floor rise. This shows that respondents mala-fide and dishonest motives and intention to cheat and defraud the complainants.

- IV. That despite receiving of all payment of all the demands raised by the respondent for the said flat and despite repeated requests and reminders over phone calls and personal visits of the complainants, the respondents have failed to deliver the possession of the allotted floor to the complainants within stipulated period.
- V. That it could be seen that the construction of the project in which the complainants flat was booked with a promise by the respondents to deliver the floor by 09.01.2015 but was not completed within time for the reasons best known to the respondents, which clearly shows that ulterior motive of the respondents to extract money from the innocent people fraudulently.
- VI. That the complainant has requested the respondent several times on making telephonic calls and also personally visiting the offices of the respondent to deliver possession of the flat in question along with prescribed interest on the amount deposited by the complainants, but respondents has flatly refused to do so. Thus, the respondent in a pre-planned manner defrauded the complainants with his hard-earned huge amount of money and wrongfully gains himself and caused wrongful loss to the complainants.
- VII. That the occupancy certificate has not been issued till now for C-Block, and the OC annexed by the respondent does not pertain to C Block which clearly indicating misleading and fraudulent behaviour.
- VIII. That the respondent has falsely claimed that the complainant applied for cancellation on 29.09.2022 and that a settlement took place, wherein a refund of Rs.1,51,268/- was allegedly made. It is submitted that no such cancellation or settlement was signed or agreed upon by the complainant. In fact, no such agreement is signed either by the

complainant or the respondent, and the same is concocted to defeat the rightful claims of the complainant.

**C. Relief sought by the complainants:**

4. The complainants have sought following relief(s):
  - a) Direct the respondent to refund the paid-up amount along with interest at prescribed rate.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.

**D. Reply by respondent:**

6. The respondent vide its reply dated 29.05.2024 has contested the complaint on the following grounds:
  - i. That the complainants, on 09.01.2011 approached the respondent in order to book a residential unit with the respondent in one of its projects namely "Landmark the Residency" located at Sector 103, Gurgaon, Haryana.
  - ii. That against their booking as well as payment of booking amount, the respondent on 11.01.2013 provisionally allotted a 3 BHK residential unit admeasuring 2143 sq. ft (super area) bearing unit no. C -81 on 8th Floor in the said project to the complainants.
  - iii. That thereafter in the year 2022, due to some personal difficulties, the complainants vide request letter dated 29.09.2022 addressing to the CRM Manager of the respondent cancelled the said unit allotted to the complainant out of their free own will and sought refund of the principal amount paid by them i.e. Rs. 31,51,268/-.
  - iv. That in addition to the letter dated 29.09.2022, the complainants also wrote a letter dated 29.09.2022 addressing to the General manager of the respondent stating that due to some unavoidable circumstances, the



complainants can't continue further with the booking and requested to cancel the booking and refund my payment.

- v. That therefore in light of the aforesaid letters written by the complainants, the complainant no.2 i.e. Rajeev Kumar signed a settlement agreement dated 01.05.2023 for cancellation of the said unit and also received a sum of Rs. 1,51,268/- out of Rs. 31,51,268/-.
- vi. That despite force majeure conditions, the respondent has completed the construction of the project and occupancy permission from the competent Authority was duly applied for on 23.04.2019 and the OC was received on 25.09.2020.
- vii. That it is imperative to mention here that the complainants in the para 5 of the complaint under the head "Relief Sought", itself admits, that the complainants have received the said amount. However, in order to illegally enrich themselves the complainant never disclosed the fact that they have themselves cancelled the unit and have also received a sum of Rs.1,51,268/-.
- viii. That it is further asserted that in order to execute a memorandum of settlement the remedy available with the complainant is a suit for recovery which is can only entertained by the hon'ble civil court and not a complaint before this authority.
- 7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions made by the parties.

**E. Jurisdiction of the authority:**

- 8. The respondent raised a preliminary submission/objection that the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of

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

**E. I Territorial jurisdiction**

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, 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.

**E. II Subject matter jurisdiction**

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee's as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

**Section 11(4)(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;*

**Section 34-Functions of the Authority:**

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

11. 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.

**F. Findings on the relief sought by the complainants.**

**F.I Direct the respondent to refund the paid-up amount along with interest at prescribed rate.**

12. In the present complaint, the complainants intend to withdraw from the project and are seeking return of the amount paid by them in respect of subject unit along with interest at prescribed rate as provided under Section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference:

**"Section 18: - Return of amount and compensation**

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building.-

- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or  
(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

**he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:**

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

*(Emphasis supplied)*

13. **Due date of handing over possession:** The Hon'ble Supreme Court in the case of *Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors.* (12.03.2018 - SC); MANU /SC /0253 /2018 observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that **when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract.**
14. In view of the above-mentioned reasoning, the date of provisional allotment i.e. 11.01.2013 is ought to be taken as the date for calculating due date of



possession. Therefore, the due date of possession comes out to be 11.01.2016.

15. **Admissibility of refund along with prescribed rate of interest:** The complainants/allottee intend to withdraw from the project and are seeking refund of the amount paid by them in respect of the subject unit with interest at prescribed rate as provided under Rule 15 of the Rules. Rule 15 has been reproduced as under:

***Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***

*(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.*

*Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*

16. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
17. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 02.07.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
18. The respondent has submitted that in the year 2022, due to some personal difficulties, the complainants vide request letter dated 29.09.2022, cancelled the unit allotted to the complainant out of their free own will and sought refund of the principal amount paid by them i.e. Rs.31,51,268/-. In light of the above, the complainant no.2 i.e. Rajeev Kumar signed a settlement agreement dated 01.05.2023 for cancellation of the said unit and

also received a sum of Rs.1,51,268/- out of Rs.31,51,268/- and the complainants in the para 5 of the complaint under the head "Relief Sought", themselves admits that they have received the said amount. The complainants vide written submissions dated 22.05.2025, have submitted that the respondent has falsely claimed that the complainants applied for cancellation on 29.09.2022 and that a settlement took place, wherein a refund of Rs.1,51,268/- was allegedly made as no such cancellation or settlement was signed or agreed upon by the complainant. In fact, no such agreement is signed either by the complainant or the respondent, and the same is concocted to defeat the rightful claims of the complainants. After considering the documents available on record as well as submission made by the parties, it is determined that before filing of the instant complaint, the respondent/promoter has refunded an amount of Rs.1,51,268/- to the complainant on 12.10.2022 (page 3 of complaint as well as ledger account dated 31.03.2023 (Annexure R-4) at page 21 of reply), but the balance amount along with interest has not been refunded to the complainants till date.

19. On consideration of the documents available on record as well as submissions made by the parties, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. The Authority observes that the possession of the apartment in question was to be delivered by 11.01.2016. However, till date neither the construction is complete nor the offer of possession of the allotted unit has been made to the allottee by the respondent/promoter. The Authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit which is allotted to him and for which he has paid a considerable amount of money towards the sale consideration. Further, the Authority observes that there is no document place on record from which it can be

ascertained that whether the respondent has applied for occupation certificate or what is the status of construction of the project. In view of the above-mentioned fact, the allottees intend to withdraw from the project and are well within the right to do the same in view of Section 18(1) of the Act, 2016.

20. Moreover, the occupation certificate of the tower i.e. Tower-C, where the unit of the complainants is situated has still not been obtained by the respondent /promoter. The authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the allotted unit and for which they have paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021***

*".... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."*

21. Further in the judgement of the Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022(1) RCR (C), 357*** reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020*** decided on 12.05.2022. it was observed:

25. *The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."*

22. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottees as per agreement for sale under Section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottees, as the allottees wish to withdraw from the project, without prejudice to any other remedy available, to return the amount received by it in respect of the unit with interest at such rate as may be prescribed.
23. Accordingly, the non-compliance of the mandate contained in Section 11(4)(a) read with Section 18(1) of the Act on the part of the respondent is established. As such, the complainants are entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @11.10% p.a. (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 each payment till the actual date of refund of the amount within the timelines provided in Rule 16 of the Haryana Rules 2017.
24. Out of the amount so assessed, the amount already credited by the respondent vide RTGS/NEFT dated 12.10.2022 shall be adjusted from the refundable amount.

**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 functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i. The respondent/promoter is directed to refund the entire amount received by it from the complainants along with interest at the rate of 11.10% p.a. as prescribed under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount.
- ii. Out of the amount so assessed, the amount already credited by the respondent vide RTGS/NEFT dated 12.10.2022 shall be adjusted from the refundable amount.
- iii. 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.
- iv. The respondent is further directed to not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainants, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of complainant/allotees.

26. Complaint stands disposed of.

27. File be consigned to the registry.

(Ashok Sangwan)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 02.07.2025