



**HARERA**  
**GURUGRAM**

Complaint No. 1903 of 2021

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

**Complaint no.:** 1903 of 2021  
**Date of filing :** 07.04.2021  
**Date of order :** 06.05.2025

M/s Stellar & Unimax India Ltd.  
R/o: - N-57, Greater Kailash-1, New Delhi.

**Complainant**

**Versus**

M/s Lotus Realtech Private Limited.  
**Regd. Office at:** BU-5, SFS Flat, Outer Ring Road,  
Pitampura, Delhi-110034.  
**Also at:** 501, Nirvana Courtyard,  
Nirvana Country, Sector-50, Gurugram- 122018.

**Respondent**

**CORAM:**

Shri Arun Kumar  
Shri Vijay Kumar Goyal  
Shri Ashok Sangwan

**Chairman**  
**Member**  
**Member**

**APPEARANCE:**

Sh. Geetansh Nagpal (Advocate)  
Sh. J.S Dahiya (Advocate)

**Complainant**  
**Respondent**

**ORDER**

1. The present complaint dated 07.04.2021 has been filed by the complainant/allottee 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 provisions 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 unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.No	Particulars	Details
1.	Name of the project	"Lotus Elice", Sector- 99, Gurugram
2.	Nature of project	Group Housing Colony
3.	<b>RERA registered/not registered</b>	GGM/377/109/2019/71
4.	<b>DTPC License no.</b>	70 of 2011 dated 22.07.2011
	Validity status	21.07.2024
	Name of licensee	Shivnandan Buildtech Pvt Ltd
	Licensed area	12.03 acres
5.	Unit no.	F 901, Tower F, 3BHK [As per allotment letter on page 123 of complaint]
6.	Unit measuring	1875 sq. ft. [As per allotment letter on page 123 of complaint]
7.	Allotment Letter	25.06.2013 (page 123 of complaint)
8.	Date of execution of Apartment buyer's agreement	Not duly executed (only signed by the complainant)
9.	Possession clause	<b>3.1 That the Developer shall, under normal condition, subject to force majeure, complete construction of Tower/ Building in which the said Flat is to be Located with 4 years of the start of construction or execution of this Agreement whichever is later, as per the said plans and specifications seen and accepted by the Flat Allottee .</b>
10.	Due date of possession	24.12.2017 (the due date is calculated from the date of receipt of environment clearance)



11.	Environment clearance	24.12.2013
12.	Total Sale Consideration	Rs.1,38,38,201/- (as alleged by respondent on page 9 of reply)
13.	Total amount paid by the complainant	Rs.3672442/- (as alleged by respondent on page 9 of reply)
14.	Occupation certificate dated	13.12.2022 (page 10 of reply)
15.	Offer of possession	N/A
16.	Demand Letter	30.06.2012, 10.09.2012, 22.02.2013, 27.08.2013, 09.10.2013 & 24.05.2014 (page 130-134 & 125 of complaint)
17.	Final Reminder/ Cancellation Notice	10.11.2013 (page 128 of complaint)
18.	Termination/Cancellation Notice	26.12.2013 (page 127 of complaint)

### B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That the complainant booked a unit in the project of the respondent by paying a booking amount of Rs. 7,50,000.00 vide Cheque no. 890000 dated 14.05.2012 drawn on HDFC Bank towards the booking of the said unit bearing F-901 at "LOTUS ELISE" in Dwarka expressway, Sector 99, Gurgaon having super area measuring 1875.00 sq. ft. to the respondent. The receipt of the payment was acknowledged by the respondent and issued payment receipt.
- II. That the complainant made a payment of Rs. 8,54,338/- to the respondent on 14.07.2012 vide Cheque No. 927383 drawn on HDFC Bank Ltd. The receipt of the payment was acknowledged by the respondent and issued payment receipt.
- III. That the complainant made a payment of Rs. 11,81,583/-to the respondent





on 29.09.2012 vide Cheque No. 991111 drawn on HDFC Bank and a payment of Rs.10,00,000/- to the respondent on 14.02.2014 vide. The receipts of the payment were acknowledged by the respondent and issued payment receipt.

- IV. That the complainant received allotment letter dated 25.06.2013 for the unit F-901 admeasuring 1875 sq.ft. of super area.
- V. That the respondent executed apartment buyer's agreement with the complainant on 15.02.2014.
- VI. That the complainant made a payment of Rs. 10,00,000/- to the respondent on 25.02.2014 and Rs. 10,62,500/- on 15.03.2014 vide cash.
- VII. The complainant made a payment of approximately 80% of the total consideration towards the total basic sale price (hereinafter referred to as the BSP), car parking, external development charges (hereinafter referred to as the EDC)/Infrastructure Development Charges (hereinafter referred to as the IDC), Club House Charges, IBMS/IFMS, Power Backup, PLC, of the Unit from 2012 onwards. The complainant opted for construction linked payment plan according to Annexure- II of the buyer's agreement and made payments promptly and in a timely manner as and when the demand letters were raised by the respondent.
- VIII. That it would be noticed from the copy of apartment buyer's agreement handed over by the respondent to the complainant, wherein at clause 3.1 at of the apartment buyer's agreement, it has been specifically mentioned that the developer shall, under normal condition, subject to force majeure, complete construction of tower/ building in which the said flat is to be located with 4 years of the start of construction or execution of this agreement whichever is later, further, 6 months of grace period have been provided in Clause 5.1 of BBA.
- IX. That when the complainant attempted to visit the Unit, he was shocked to



see that the Respondent's project was lying abandoned, there were only a few towers erected which were incomplete and there was no construction work going on, the complainant was found very few number of labour at work at the construction site.

- X. That the complainant even after making all payments as per the demand letters sent by the respondent, did not get the possession as per the time specified in the apartment buyer's agreement which is 15.08.2018 after including grace period of 6 months as mentioned under clause 5.1 of the apartment buyer's agreement.
- XI. The complainant confronted respondent and asked them about legal sanctions of the project granted to it by the authorities, and progress of its construction on many occasions, but the respondents denied every time and threatened to terminate the complainant's allotment when he asked for his refund.
- XII. After making the payment of each and every demand letter, the complainant were in the hope that they will get possession of their unit soon, but the dreams of the complainant were shattered and scattered at t respondent left no stone unturned to cheat the complainant and extract money from the complainant, when all the while, the development on the site was not in line with the construction linked plan based on which the payment was being collected.

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

4. The complainant has sought following relief(s).
- To restrain the respondent from raising any fresh demand with respect to the project
  - To direct the respondent-builder to refund the entire amount paid by the complainant along with prescribed rate of interest.





- iii. Direct the respondent to pay delay compensation to recompense for the loss or injury as there has been deficiency in service which has resulted in loss and injury of Rs. 15,00,000/-
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 the respondent.**

6. The respondent has raised certain preliminary objections and has contested the present complaint on the following grounds: -
- i. That allotment letter dated 25/06/2012 was issued in favour of the complainant.
  - ii. That no representation was ever made to the complainant that if Rs 20 lac is paid in cash in that situation the base rate shall be reduced to Rs 3050/- from Rs 4150/- as alleged. The respondent never received any cash payment of Rs 10 lac from the complainant on 25/02/2014 as alleged.
  - iii. That the construction work in the project /towers was going on smoothly with fast speed in phases as promised in BBA.
  - iv. That the respondent is having all the required sanctions for construction and development of the project, which is well within the knowledge of the complainant ever since he had booked the flat in the project otherwise, he would not have booked the flat in the project.
  - v. That the complainant is a defaulter, who is habitual in not paying the due instalments well on time and even now when the offer of possession letters had already been issued to all the allottees, a sum of Rs. 1,01,65,759 only is outstanding which is payable by the complainant, but he had not paid this amount despite repeated demand letters/emails etc.



vi. That he complainant had only paid a sum of Rs 36,72,442/- only till date as per the statement of account out of the total demand of Rs 1,38,38,201/- and now a sum of Rs 1,38,38,201/-—36,72,442/- = 1,01,65,759/- only is outstanding which is payable by the complainant to take the possession of the allotted flat

7. All other averments made in the complaint were denied in toto.

8. 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**

9. 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**

10. 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**

11. 11(5) of the Act provides that the promoter may cancel the allotment only in terms of the agreement for sale. Section 11(5) of the Act is reproduced as hereunder:

##### **Section 11(5)**

*The Promoter may cancel the allotment only in terms of the agreement for sale:*

*Provided that the allottee may approach the authority for relief, if he is aggrieved by such cancellation and such cancellation is not in*



*accordance with the terms of the agreement for sale, unilateral and without any sufficient cause.*

**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.*

12. 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 leaving aside the compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

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

**F.I To restrain the respondent from raising any fresh demand with respect to the project**

**F.II To direct the respondent-builder to refund the entire amount paid by the complainant along with prescribed rate of interest.**

13. The complainant had booked a unit bearing no. F 901, Tower F, 3BHK in Group Housing Colony named as "Lotus Elice" Sector 99 vide allotment letter dated 25.05.2013 for a total sale consideration of Rs.1,38,38,201/-. Out of the said consideration, the complainant has paid a sum of Rs. 58,48,421/- (including cash) till date. The respondent-builder issue multiple reminders/demand letters to the complainant to clear the outstanding dues, but complainant did not pay any heed to the respondent.
14. The complainant has been seeking refund due to delay in project but the amount is not yet refunded. An amount of Rs.50,48,421/- out of which Rs.37,85,921/- has been admitted by the respondent in the reply and remaining amount was paid in cash for which receipts have been placed at page 90 and 91 of the complaint. But the said receipt is neither on any letter head nor bears any stamp on behalf of the company. The counsel for the complainant further states that after alleged cancellation of the unit on 26.12.2013, various demand notices were issued and BBA was also





signed but the same does not bear any date and the said BBA mentioned receipt of Rs.47,85,921/- at page 98 and thus all the amounts received are in variance.

15. The respondent promoter states at bar that the respondent is willing to refund the amount i.e. 36,72,442/- deposited by the complainant alongwith interest at the prescribed rate from the date of cancellation of the unit i.e. 14.05.2024. The cancellation is held to be valid as the same has been made after obtaining OC in the year 2022 and issuance of multiple reminders.
16. After considering all facts and circumstances, the Authority is of the view that out of Rs 50,48,421/- claimed to have been paid, Rs36,72,442/- has been admitted by the respondent, and the remaining amount allegedly paid in cash is not supported by valid documentary evidence, as the receipts lack company letterhead and stamp. Since the cancellation has been found to be valid and the respondent is willing to refund the admitted amount, the Authority directs the respondent to refund the sum of Rs. 36,72,442/- to the complainant along with interest at the prescribed rate of 11.10% per annum, calculated from the date of cancellation of the unit, i.e., 14.05.2024, until its realization.

**F.III Direct the respondent to pay delay compensation to recompense for the loss or injury as there has been deficiency in service which has resulted in loss and injury of Rs. 15,00,000/-.**

17. The complainant in the aforesaid relief is seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal titled as ***M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.*** (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021), has held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation.





**G. Directions of the authority**

18. 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):

- i. The respondent is directed to refund the sum of Rs. 36,72,442/- to the complainant along with interest at the prescribed rate of 11.10% per annum, calculated from the date of cancellation of the unit, i.e., 14.05.2024, until its realization.
- ii. A period of 90 days is given to the respondent/builder to comply with the directions given in this order and failing which legal consequences would follow.

17. Complaint stands disposed of.

18. File be consigned to registry.

(Ashok Sangwan)  
Member

(Vijay Kumar Goyal)  
Member

(Arun Kumar)  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 06.05.2025**