

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

Complaint no. :	2812 of 2024
Date of complaint :	26.06.2024
Date of order :	21.03.2025

1. Anurag Sharma
2. Seema Sharma
Both R/o: - 2/501, Sagvi CGHS, GH-85,
Sector-55, Gurugram

Complainants

Versus

M/s DSS Buildtech Pvt. Ltd.
Regd. Office at: - 506, 5th Floor, Time Square Building,
B- Block, Sushant Lok- I, Gurugram 122002

Respondent

CORAM:
Shri Ashok Sangwan

Member

APPEARANCE:
Sh. K.K Kohli (Advocate)
Sh. Harshit Batra (Advocate)

Complainants
Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees 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 thereunder 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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Heads	Information
1.	Name and location of the project	"The Melia", Sector 35, Sohna, Gurugram
2.	Nature of the project	Group housing colony
3.	Project area	17.418754 acres
4.	DTCP License	77 of 2013 dated 09.08.2013 valid till 09.08.2024
5.	HRERA registered/ not registered	Registered vide no. 288 of 2017 dated 10.10.2017 valid up to 26.04.2025
6.	Date of execution of buyer's agreement	31.05.2017 (page no. 56 of the complaint)
7.	Unit no.	F-802, 8 th floor (page no. 69 of the complaint)
8.	Super Area	1350 sq. ft. (page no. 69 of the complaint)
9.	Possession clause	14: Completion and Possession of the Apartment <i>Subject to the terms hereof and to the Buyer having complied with all the terms and conditions of this Agreement, the Company proposes to hand over possession of the Apartment within a period of 48 (forty eight months) from the date of receiving the last of Approvals required for commencement of construction of the Project from the</i>

		<p>Competent Authority and or the date of signing the agreement whichever is later and to this period to be added for the time taken in getting Fire Approvals and Occupation Certificates and other Approvals required before handing over the possession of the Apartment or for requirements/conditions as may be and other dues, charges, interest, duties & expenses payable to the Company in terms hereof or as otherwise applicable under Applicable Laws.</p> <p>(page 61 of complaint)</p>
10.	Due date of delivery of possession	<p>31.11.2021</p> <p>[Calculated from the date of agreement as date of last approval is not available on records including grace period of 6 months on account of covid-19]</p>
11.	Surrender request made by complainants	<p>27.05.2017(before execution of BBA)</p> <p>25.09.2017, 01.04.2018, 27.04.2018, 24.09.2019</p>
12.	Total consideration	<p>Rs. 63,45,000/- BSP</p> <p>Rs. 75,97,350/-</p> <p>(As per payment plan on page no. 62 of reply)</p>
13.	Total amount paid by the complainants	<p>Rs. 22,68,861/-</p> <p>(as per SOA at page 97 of reply)</p>
14.	Demand letter issued by respondent for making outstanding payment	<p>15.12.2017</p> <p>(page no. 74 of complaint)</p>
15.	Reminders issued by respondent	<p>04.05.2017, 25.05.2017, 20.03.2018, 24.04.2018, 08.06.2018, 01.10.2018, 19.11.2018, 01.05.2019, 20.08.2019, 26.03.2024(final)</p>



16.	Occupation Certificate	Not obtained
17.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainants have made the following submissions: -

- I. That the respondent issued an advertisement for a group housing complex "The Melia" and relying on various representations and assurances given by the respondent the complainants booked a unit in the project and was allotted unit bearing no. F-802, having super area measuring 1350.00 sq. ft.
- II. That after repeated request the respondent sent an allotment letter dated 30.03.2015 to the complainants confirming the booking of the unit no, F 802, on the eighth floor, which was a tentative allotment, having an approx. super area of 1350 sq. ft.
- III. That till 26.02.2016 the complainants had paid a sum of more than 30% but unfortunately the agreement for sale or the apartment buyer's agreement was nowhere in existence and the complainants were never provided a copy of the same.
- IV. That the complainants visited the office of the respondent many a times and were always assured that the apartment buyer's agreement would be sent but it was never sent to the complainants.
- V. That having started the construction and then subsequently delaying the signing of the apartment buyer's agreement, speaks volumes of the intention of the respondent in delaying the delivery of the project as invariably it is seen that the delivery period in

most of the cases is from the date of signing the builder buyer agreement.

- VI. That the complainants approached the respondent and asked about the status of construction and also raised objections towards non-completion of the project.
- VII. That in the first week of January, 2017 the respondent handed over a blank sample apartment buyer's agreement to the complainants when they visited the office of the respondent, basically for the complainants to understand the proposed terms and conditions of the apartment buyer's agreement.
- VIII. That the signed agreement was never ever sent to the complainants nor was the same ever registered with the office of the Tehsildar, Sohna.
- IX. That the complainants never ever wanted to make any payment unless they had the signed apartment buyer's agreement.
- X. That the complainants then requested the respondent for the refund of the entire amount in 27th May 2017 itself. The said request was followed by few reminders.
- XI. That again on 25.09.2017 the complainants reminded the respondent on their request for refund of the amount as they were not interested in pursuing any further with the project because of the respondent not signing and registering the apartment buyer's agreement.
- XII. That the complainants were requesting for withdrawal from the project because of the reluctance of the respondent in handing over the apartment buyer's agreement and the respondent was

insisting on the complainants staying with the project as is evident from the mails dated 25.09.2017 and 27.04.2018.

- XIII. That the respondent not giving the buyer's agreement which was signed by the complainants in the second week of April 2017.
- XIV. That the complainants once again on 1st April 2018 sent another e mail requesting for withdrawal from the project and asked for the refund.
- XV. That the complainants once again on 27th April 2018 sent another e-mail requesting for withdrawal from the project and asked for the refund.
- XVI. That on 16th April 2019, the respondent sends the apartment buyer's agreement through a letter stating "Please find enclosed the following original documents: apartment buyer's agreement dated 31.05.2017".
- XVII. That the complainants once again through their letter dated 24th September 2019 asked for the refund of the entire amount with interest.
- XVIII. That the respondent repeatedly kept on asking for the payment and the complainants having lost interest in the project and for the reason that the apartment buyer's agreement was not being returned to the complainants kept on asking for the refund of the entire amount.
- XIX. That the respondent had collected a sum of Rs. 22,68,821/- by February 2016. The respondent was not interested in returning the amount of Rs. 22,68,861/- collected from the complainants together with the interest and kept on insisting on payments and

finally on 26.04.2024 sent a final notice. Through which the booking was cancelled.

C. Relief sought by the complainants:

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

- I. Direct the respondent to refund the entire amount together with interest from each date of payment, the entire amount paid by the complainants.
- II. Direct the respondent not to create third party rights in said property till the time the entire amount along with interest is refunded.
- III. Direct the respondent not to cancel the allotment till the time the entire amount paid by the complainants is refunded with interest.
- IV. Direct the respondent not to deduct any amount towards EDC/IDC/GST/VAT another government due.

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/builder.

6. The respondent contested the complaint by filing reply dated 11.11.2024 on the following grounds: -

- i. That the respondent is developing a residential group housing complex approximately over 17.418754 Acres of land situated in village Mohamadpur Gujjar, Sector 35, Sohna, Gurugram (Haryana), privately named as "The Melia". The respondent has obtained license from Director General, Town and Country Planning Department, Government of Haryana ("DTCP") for development of the project vide license no. 77 of 2013.

- ii. That the complainants after conducting their own due diligence and after being fully satisfied with the details of the project approached the respondent and submitted an application dated 22.11.2013 for booking in 2013, the complainants have approached the respondent for booking of a 3 BHK unit tentatively admeasuring 1350 sq. ft. unit in the said project for total sale consideration of Rs. 74,62,350/- plus other statutory charges and taxes, as applicable and paid a booking amount of Rs. 6,00,000/- as booking amount.
- iii. That pursuant to the submission of the application form dated 22.11.2013, the respondent tentatively allotted the complainants a unit bearing No. F-802 on eight floor of tower-F in the project vide allotment letter dated 24.04.2015.
- iv. That on 25.08.2015, the respondent sent a letter along with 2 copies of the buyer's agreement to the complainants for signing and asked to return the signed copies within 30 days from the receipt of the letter. It is very clear from the acknowledgment of the complainants that they have duly received the copies of the buyer's agreement.
- v. Thereafter, the respondent herein issued demand letter dated 01.02.2016 requesting the complainants herein for a payment of Rs. 3,47,785/- on stage in accordance with the payment plan willingly opted by the complainants.
- vi. That despite of constant follow-ups and requests the complainants did not come forward to execute the buyer's agreement. Thus, on 20.04.2017, the respondent again sent a letter to the complainants requesting them to send the signed and executed copies of the buyer's agreement to the respondent. Pursuant to which the complainants after an inordinate delay of more than 2 years sent the

signed copies and the buyers agreement was then executed inter-se the parties dated 31.05.2017. The respondent has duly honoured its contractual obligations and sent the agreement for signing to the complainants way back in August 2015, however, the complainants have failed to honour their contractual obligations and knowingly delayed the signing/execution of the buyers agreement for almost more than 2 years for the reasons best known to them.

- vii. That as per clause 14.1 of the builder buyer's agreement, possession of the said unit was to be handed over to the complainants within a period of 48 months from the date of receiving the last of approvals required for commencement of construction of the project from the competent Authority and or the date of signing the agreement whichever is later. The last approval required for commencement of construction of project which is the consent to establish was obtained from Haryana State Pollution Control Board on 12.11.2016. Therefore, the period of 48 months and grace period should be calculated from 12.11.2016.
- viii. That the respondent faced various force majeure circumstances which were beyond the control of the respondent including but not limited to court orders, government policy/guidelines, decisions affecting regular development of the real estate project.
- ix. That furthermore, in accordance with clause 14.1 of the buyer's agreement in event of delay due to above stated conditions, the respondent shall be entitled to extension of time for delivery of possession of the unit.
- x. That a period of 303 days was consumed on account of circumstances beyond the power and control of the respondent, owing to the

passing of Orders by the statutory authorities and the covid-19 pandemic. That the Hon'ble Haryana Real Estate Regulatory Authority, Gurugram granted 6 months extension for all ongoing projects vide Order/Direction dated 26th of May, 2020 on account of 1st wave of COVID-19 Pandemic. The Hon'ble Haryana Real Estate Regulatory Authority, Panchkula had decided to grant extension of 3 months in addition to waiver granted during first wave of COVID pandemic from 1st of April 2021 to 30th of June 2021 considering the 2nd wave of COVID-19 as a force majeure event.

- xi. That vide application dated 17.08.2023 before DTCP the respondent herein has already applied for occupation certificate for towers A, D, E & F of the said project and will possibly apply for the remaining towers of the said project.
- xii. That the respondent on 15.12.2017, as a goodwill gesture offered interest waiver letter to the complainants to waive off the interest charges amounting to Rs. 1,20,138/-, however the complainants did not paid any heed to the same and failed to clear the outstanding dues according to the payment plan.
- xiii. That the respondent on 13.10.2021 sent a letter to the complainants and requested them to come forward for the registration of the buyer's agreement with the concerned tehsildar but till the date of cancellation of the said unit the complainants failed to come forward for registration of the agreement to the reasons best known to them.
- xiv. That the complainants while executing the application form as well as buyers agreement agreed to pay further installments and other dues as stipulated in the payment plan. However, the complainants have defaulted in making timely payments to the respondent. The

complainants failed to clear the instalments due despite repeated reminders being served by the respondent from time to time. The complainants herein had only made a payment of Rs. 22,68,861/- and thereafter stopped making the payments despite of the repeated reminders being served by the respondent.

- xv. That the respondent sent repeated reminders to the complainants to clear the outstanding dues but the complainants knowingly defaulted in making payments and failed to clear the outstanding dues. The details of the demand and reminders are as follows:

Particulars	Due date	
Demand Letter dated 04.05.2017 "On Casting of Ground Floor Slab"	01.05.2017	Not Paid by Complainants
Demand Letter	04.05.2017	Not paid
Reminder	25.05.2017	Not paid
Reminder	20.03.2018	Not paid
Payment Request Letter	24.04.2018	Not paid
Reminder	08.06.2018	Not paid
Payment Request Letter	01.10.2018	Not paid
Reminder	19.11.2018	Not paid
Payment Request Letter	19.05.2023	Not paid
Final notice	26.03.2024	Not paid

- xvi. That the respondent on 26.03.2024, sent a final notice to the complainants and granted one last opportunity to the complainants to clear their outstanding dues failing which the respondent would be left with no other option but to cancel the said unit. Despite granting the final opportunity the complainants did not paid any heed to the requests of the respondent and failed to clear their outstanding dues

pursuant to which the respondent vide letter dated 26.04.2024 cancelled the unit allotted in favour of the complainants.

- xvii. That as per clause 2 of the "Undertaking" and clause 5 and 8 of the payment plans attached with the application form & clause 8.1 of the agreement, timely payment is the essence of the allotment and the respondent is entitled to forfeit 10% of the total sale consideration along with the due interest in the event of default committed by the buyer and subsequently terminate the application form and the allotment of the said unit.
- xviii. That in view of the aforesaid clauses and after giving ample opportunities to the complainants for clearing pending instalments the respondent herein lawfully cancelled the unit in favour of the complainants vide cancellation letter dated 26.04.2024 and forfeited the entire amount of Rs. 22,68,861/-.
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

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

8. 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

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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;

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.

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 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. 2020-2021 (1) RCR (c) 357 and 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 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.

F. Findings on the relief sought by the complainants.

- I. Direct the respondent to refund the entire amount together with interest from each date of payment, the entire amount paid by the complainants.
- II. Direct the respondent not to create third party rights in said property till the time the entire amount along with interest is refunded.
- III. Direct the respondent not to cancel the allotment till the time the entire amount paid by the complainants is refunded with interest.

- IV. Direct the respondent not to deduct any amount towards EDC/IDC/GST/VAT another government due.
14. The above mentioned relief no. F I, F II, FIII and F IV are interrelated to each other. Accordingly, the same are being taken up together for adjudication.
15. The complainants booked a unit bearing no. F-802 on 8th floor, admeasuring super area of 1350 sq. ft. in the project of the respondent namely, The Melia, situated at Sector-35, Sohna, Gurugram. The total sale consideration of the unit was Rs.75,97,350/- and the complainants has paid a sum of Rs. 22,68,861/- against the same. The buyer's agreement was executed between the parties on 31.05.2017. The complainants in the present matter on 27.05.2017 i.e., before execution of builder buyer agreement requested the respondent for withdrawal from the project. Further on 25.09.2017 complainants again requested the respondent for withdrawal from the project. Thereafter, the respondent issued a demand letter for making outstanding payments along with several reminder letters however, the complainants did not pay the same and due to non-payment respondent cancelled the unit of the complainants on 26.04.2024. The complainants in the present matter is seeking refund of the amount paid by them along with interest.
13. **Admissibility of grace period:** The promoter has proposed to handover the possession of the said unit within a period of 48 months from the date of receiving the last approvals required for commencement of construction or the date of signing the agreement whichever is later. The date of last approval is not available on records therefore the due date is calculated from the date of

execution of buyer's agreement. The buyer's agreement was executed on 31.05.2017 therefore, the due date comes out to be 31.05.2021. Further as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion/due date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainants is after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. So, in such case the due date for handing over of possession comes out to 31.11.2021.

16. Section 18(1) is applicable only in the eventuality where the promoter fails to complete or unable to give possession of the unit in accordance with terms of agreement for sale or duly completed by the date specified therein. The due date of possession as per buyer's agreement was 31.11.2021. The complainants in this case made a withdrawal request vide email dated 27.05.2017 i.e., before execution of buyer's agreement. Thereafter, on 31.05.2017 buyer's agreement was executed between the parties which supersedes the letter dated 27.05.2017 and again on 25.09.2017 the complainants again requested for refund of the amount paid i.e., before the due date of possession.
17. So, in such a situation, the plea of the complainants that they are entitled to full refund of the paid-up amount is untenable. However, after withdrawal from the project by the complainants the respondent neither the respondent accepted the same nor returned any amount after statutory deductions as per buyer's agreement. Though, it is

contended on behalf of respondent that it cancelled the allotment of the unit on the ground of non-payment vide letter dated 26.04.2024 but the respondent has not refunded any amount after deduction. The complainants had already withdrawn from the project by writing letter dated 25.09.2017. So, any cancellation of the allotted unit on the basis of non-payment of amount due on the basis of letter dated 26.04.2024 does not hold any ground. Thus, after withdrawal from the project the respondent could not have retained more than 10% of the sale consideration and was bound to return the remaining. Even the Hon'ble Apex court of the land in cases of *Maula Bux Vs. Union of India (1973) 1 SCR 928*, *Sirdar K.B Ram Chandra Raj Urs Vs. Sarah C. Urs, (2015) 4 SCC 136*, and followed by the National Consumer Dispute Redressal Commission, New Delhi in consumer case no. 2766/2017 titled as *Jayant Singhal and Anr. Vs. M/s M3M India Ltd.* decided on 26.07.2022 took a view that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in nature of penalty, then provisions of Section 74 of Contract Act, 1872 are attracted and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder and as such, there is hardly any actual damage. So, it was held that 10% of the sale price is reasonable amount to be forfeited in the name of earnest money. Thus, keeping in view the principles laid down by the Hon'ble Apex court in the above mentioned two cases, the rules with regard to forfeiture of earnest money were framed by the authority known as Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018, providing as under: -

"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."*

18. So, keeping in view the aforesaid factual and legal provisions, the respondent cannot retain the amount paid by the complainants against the allotted unit and is directed to refund the paid-up amount of Rs.22,68,861/- after deducting 10% of the sale consideration of being earnest money along with an interest @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 on the refundable amount from the date of surrender i.e., 25.09.2017 till actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

H. Directions of the authority

19. 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/builder is directed to refund the paid-up amount of Rs.22,68,861/- after deducting 10% of the sale consideration being earnest money along with an interest

@11.10% p.a. on the refundable amount from the date of surrender i.e., 25.09.2017 till date of actual refund.

- ii. 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.

20. Complaint stands disposed of.

21. File be consigned to the registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 21.03.2025