

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

Complaint no.: 4093 of 2023  
Date of filing: 31.08.2023  
Date of decision: 02.05.2025

Suresh Prasad Singh  
Regd. Address at: H-806, Tower 10, Emaar  
Palm Gardens, Sector 83, Gurugram-122004

**Complainant****Versus**

M/s Splendor Landbase Ltd.  
Regd. office: Unit no. 501-502, 5<sup>th</sup> floor,  
splendor forum, 03, Jasola, New Delhi

**Respondent****CORAM:**

Shri Arun Kumar

**Chairman****APPEARANCE:**

Mr. Gaurav Rawat (Advocate)  
Ms. Shriya Takkar (Advocate)

**Counsel for complainant**  
**Counsel for respondent**

**ORDER**

1. The present complaint 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 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

| S.N. | Particulars                                      | Details  |
|------|--|--|
| 1.   | Name of the project                              | "Splendor Epitome", at Sector-62, Gurugram, Haryana  |
| 2.   | Nature of the project                            | Commercial Colony  |
| 3.   | Project area                                     | 3.35 acres   |
| 4.   | DTCP License no. and validity status             | 51 of 2009 dated 27.08.2009<br>Valid up to 26.08.2019<br>58 of 2012 dated 05.06.2012<br>Valid up to 04.06.2020   |
| 5.   | Building plans approved on                       | 15.07.2013<br>[As mentioned by the promoter in BBA at page 44 of complaint]  |
| 6.   | Rera Registered or not                           | Registered<br>22 of 2019 dated 26.03.2019<br>Valid up to 31.12.2023  |
| 7.   | Allotment letter                                 | 24.07.2012<br>[Page 20 of complaint]   |
| 8.   | Date of execution of Apartment buyer's agreement | 19.08.2014<br>[Page 42 of complaint]   |
| 9.   | Unit no.   | 154, 1 <sup>st</sup> floor<br>[page no. 44 of complaint]   |
| 10.  | Unit area admeasuring                            | 565 sq. ft. (super area)<br>282.5 sq. ft. (covered area)<br>[Page 44 of complaint]   |
| 11.  | Possession clause                                | <b>9. CONSTRUCTION &amp; POSSESSION</b><br><i>9.2 That the Company shall, under normal circumstances, complete the construction of Said Complex in</i> |



|     |                                       |  |
|-----|---------------------------------------|--|
|     |                                       | <p><i>which the Said Unit is located within a period of <b>42 (forty-two) months, with the grace period of 6 months, and subject to force majeure circumstances as defined herein, from the date of execution of this Agreement</b> in accordance with the said approved plans and specifications seen and accepted by the Allottee...</i></p> <p>[Page 49 of complaint]</p> |
| 12. | Due date of possession                | <p>19.08.2018</p> <p><b>Note:</b> Calculated from the date of agreement and grace period is included.</p>  |
| 13. | Total basic sale consideration        | <p>₹45,20,000/-</p> <p>[As per BBA on page 45 of complaint]</p>  |
| 14. | Total amount paid by the complainant  | <p>₹13,90,918/-</p> <p>[As per allotment letter, page 20 of complaint]</p>   |
| 15. | Demand letter                         | <p>22.05.2019</p> <p>(Page 32 of complaint and page 170 of reply)</p>  |
| 16. | Reminder for payment                  | <p>11.06.2019</p> <p>[Page 34 of complaint and page 173 of reply]</p>  |
| 17. | Final reminder for payment            | <p>06.07.2019</p> <p>[Page 36 of complaint and page 175 of reply]</p>  |
| 18. | Cancellation Letter                   | <p>02.08.2019</p> <p>(Page 176 of reply)</p>   |
| 19. | Amount already refunded by respondent | <p>₹4,35,239/- on 02.08.2019</p> <p>[Page 177 of reply]</p>  |



|     |                              |                      |
|-----|------------------------------|----------------------|
|     | which the complainant denies |                      |
| 20. | Occupation certificate       | Not placed on record |

**B. Facts of the complaint**

3. The complainant has made the following submissions in the complaint:
- Relying on various representations and assurances given by the respondent company and on belief of such assurances, complainant, booked a unit in the project bearing no. 154, 1<sup>st</sup> Floor, in Sector 62, having super area measuring 565 sq. ft. by paying an amount of ₹13,90,918/- dated 30.09.2011, and the same was acknowledged by the respondent.
  - That the respondent sent an allotment letter dated 24.07.2012 to complainant, confirming the booking of the unit and allotting a unit no. 154, 1<sup>st</sup> Floor, in Sector 62, (hereinafter referred to as 'unit') measuring 565 Sq. Ft. (super built-up area) in the aforesaid project of the developer for a total sale consideration of the unit i.e. ₹49,29,625.00, which includes basic price, plus EDC and IDC, and other Specifications of the allotted unit and providing the time frame within which the next instalment was to be paid. Thereafter, a buyer's agreement was executed between complainant and respondent on 19.08.2014.
  - As per clause 9.2 of the buyer's agreement dated 19.08.2014, the respondent had to deliver the possession within a period of 42 months + 6 months' grace period from the date of execution of agreement. Hence, the due date of possession comes out to be 19.08.2018. As per the demands raised by the respondent, based on the payment plan, the complainant has already paid a total sum



of ₹13,90,918/- towards the said unit against the total sale consideration of ₹49,29,625/-.

- d. That the complainant went to the office of respondent several times and requested them to allow him to visit the site, but it was never allowed saying that they do not permit any buyer to visit the site during construction period. Once the complainant visited the site but was not allowed to enter the site and even there was no proper approach road. The complainant even after paying amounts still received nothing in return but only loss of the time and money invested by him.
- e. The complainant contacted the respondent on several occasions and was regularly in touch with the respondent. The respondent was never able to give any satisfactory response regarding the status of the construction and was never definite about the delivery of the possession.
- f. That the complainant requested the respondent to show/inspect the unit before complainant pay any further amount and requested to provide the car parking space no, but respondent failed to reply. The complainant sent various emails to the respondent raising various issues in relation to the said unit and asked the reason for delay in completing the construction of the project and timeline within which the possession will be handed over to the complainant but respondent till date has failed to provide any satisfactory response to the complainant.
- g. That the complainant continuously asked the respondent company about the status of the project, time by which the project is expected to be completed, and the penalty amount that the



respondent is liable to pay but the respondent was never able to give any satisfactory response to the complainant.

- h. That the respondent is guilty of deficiency in service within the purview of provisions of the Act and the Rules. The complainant has suffered on account of deficiency in service by the respondent and as such the respondent is fully liable to cure the deficiency as per the provisions of the Act and the Rules.
- i. That the clauses of MOU are totally unjust, arbitrary and amounts to unfair trade practice as held by the Hon'ble NCDRC in the case titled as Shri Satish Kumar Pandey & Anr. Vs. M/s Unitech Ltd. (14.07.2015) as also in the judgment of Hon'ble Supreme Court in Neelkamal Realtors Suburban Pvt Ltd Vs. UOI and ors. (W.P 2737 of 2017).
- j. That the complainant being an aggrieved person has filed the present complaint under section 31 of the Act for violation of provisions of this Act. As per section 18 of the Act, the promoter is liable to refund the entire paid by the allottees along with prescribed rate of interest for a delay or failure in handing over of such possession as per the terms and agreement of the sale.

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

4. The complainant has sought following relief(s).
  - a. Direct the respondent to refund the paid amount of ₹13,90,918/- along with interest at the rate prescribed by the Act.
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 contested the complaint on the following grounds.
  - a. That the cause of action if any, against the respondent arose on or when the allotment of the complainant was cancelled on 02.08.2019 on account of his breaches and repeated defaults and the amounts forfeited and to be refunded were informed. The complainant has approached this Hon'ble Authority after a lapse of more than four years since the cause of action and is now seeing to reap benefits of his own defaults. The present complaint is barred by the law of Limitation as the alleged cause of action arose in August 2019.
  - b. That the complainant after conducting his own due diligence and market research approached the respondent company for provisional allotment of unit admeasuring 565 sq. ft. super area in the commercial colony namely 'Splendor Epitome' on land admeasuring 3.351 acres at Sector 62, in the revenue estate of Village Ullawas, Tehsil Sohna, District Gurgaon, Haryana and paid an amount of Rs. 13,90,918/- in various instalments which was duly acknowledged by the Respondent Company.
  - c. That in due consideration of the commitments by the complainant to comply with the terms of the booking and make timely payments of demands, the respondent allotted a unit bearing no. 154, 1<sup>st</sup> floor in the project admeasuring 565 sq. ft. super area for a total sales consideration of Rs. 45,20,000/- plus other charges vide allotment letter dated 24.07.2012. The basic sale price of the unit was Rs. 45,20,000/- however, the respondent was liable to pay other charges including but not limited to EDC, IDC, IFMS,



External electrification charges, FFC, maintenance charges and other charges etc. as mentioned in the said allotment letter. That the complainant had opted for a Construction Linked Payment Plan on his own free will and volition.

- d. The respondent company vide letter dated 10.12.2013 raised the demand due on start of excavation and requested the Complainant to remit a sum of Rs. 5,81,761/- towards the dues. Since, the complainant failed to remit the payment of the above-mentioned demand, the respondent company sent reminder letter dated 25.04.2014 requesting the complainant to make the payment of the outstanding dues of Rs. 5,81,761/- as per the payment plan. That thereafter Space Buyer's Agreement was executed between the parties on 19.08.2014 setting out the rights and liabilities of both the parties.
- e. While the respondent company was undertaking the construction of the said project, the respondent company had to revise the elevation with more efficient and effective drawing due to unforeseen technical reasons and market conditions. The revision in the building plan has attributed to some delay in construction of the project. That the respondent company had conveyed about the aforesaid situation vide letter dated 17.12.2015.
- f. Thereafter the following situations resulted in delay in completing the project:
  - In the year, 2012 on the directions of the Hon'ble Supreme Court of India, the mining activities of minor minerals (which includes sand) were regulated.





- That on 19.02.2013, the office of the executive engineer, HUDA Division No. II, Gurgaon vide Memo No. 3008-3181 had issued instruction to all Developers to lift tertiary treated effluent for construction purpose for Sewerage Treatment plant Behrampur.
  - Orders passed by Hon'ble High Court of Punjab and Haryana wherein the Hon'ble Court has restricted use of groundwater in construction activity and directed use of only treated water from available sewerage treatment plants.
  - That due to the above-mentioned factors stoppage of construction work done by the Judicial/Quasi-Judicial Authorities played havoc with the pace of construction as once the construction in a large-scale project is stalled it takes months after it is permitted to start for mobilizing the materials, machinery and labour.
  - That in addition to above, all the projects in Delhi NCR region are also affected by the Blanket stay on construction every year during winters on account of AIR pollution which leads to further delay the projects.
  - That the construction of the project came to standstill due to sudden outbreak of COVID-19 pandemic due to which entire industry including the respondent faced unprecedented threats from the Novel Coronavirus Disease prevailing across the globe, which the World Health Organisation declared COVID-19 as a 'Pandemic'.
- g. Though the construction of the said project was going on constantly except delay caused by various hindrances / force



majeure preventions and non-payment of outstanding dues by the Allottee(s)/Intending Allottee(s), the Respondent deferred the demands and raised them at a later stage to accommodate the complainant. The respondent after registration of the said Project with the Hon'ble Authority on 26.03.2019 which was though applied on 31.07.2017 with the Interim Authority, Panchkula and even though the construction of the 1<sup>st</sup> Basement Roof Slab, Ground Floor Roof Slab and 2<sup>nd</sup> Floor Roof Slab had been completed earlier but as a goodwill gesture the demands were raised belatedly only vide letter dated 22.05.2019 after registration of the said Project with this Hon'ble Authority. It is submitted vide demand letter dated 22.05.2019, the complainant was informed that the construction had reached the 4<sup>th</sup> Floor Roof Slab. Accordingly, the complainant was requested to remit pending dues to the tune of Rs. 19,90,361/-.

- h. Since, the complainant failed to clear his dues and further failed to execute and register the Agreement for sale, the respondent company issued reminder letter dated 11.06.2019 requesting the complainant to clear his pending dues of Rs. 19,90,361/-, but to no avail. Vide the aforementioned letter, the complainant was again requested to execute the Buyers Agreement and get the same registered.
- i. Thereafter, the respondent issued final reminder letter dated 06.07.2019 requesting the complainant to clear his outstanding dues, giving the complainant one last and final opportunity to make payment of the outstanding amount of Rs. 19,90,361/- within a period of 15 days from the receipt of the said letter falling



which it was informed that the respondent shall be constrained to take consequential action in terms of provisional allotment letter.

- j. Despite issuance of the said reminder letters, the complainant continued with his default and again failed to make payment of the outstanding amount of Rs. 19,90,361/- even after receipt of final reminder letter, therefore the Respondent Company was constrained to cancel the booking of the said unit vide cancellation letter dated 02.08.2019 in accordance with clause 5.4, 5.5 and 5.6 of the Agreement duly executed between the parties. The Respondent along with the cancellation letter had also sent cheque dated 02.08.2019 for an amount of Rs. 4,35,239/- after deduction of earnest money and service tax in terms of the Agreement. Thus, the unit being cancelled, and third party created on the same, there is no privity of contract between the parties and the complainant has no right, title or interest in the property in question and neither the allottee of the same and therefore the present complaint is liable to be dismissed on this ground alone.

7. The complainant & the respondent have filed the written submissions which are taken on record. The authority has considered the same while deliberating upon the relief sought by the complainant. 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.

**E. Jurisdiction of the authority**

8. The authority has complete territorial and 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, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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 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.*

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. (Supra)* 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. So, in view of the provisions of the Act quoted above and authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned 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 complainant at a later stage.

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

**F.I. Direct the respondent to refund the paid amount of ₹13,90,918/- along with interest at the rate prescribed by the Act.**

13. The complainant booked a unit in the said project of the respondent known as "Splendor Epitome" situated at Sector 62, Gurugram, Haryana and was allotted a unit bearing no. 154 on 1<sup>st</sup> floor in the project vide allotment letter dated 24.07.2012. Thereafter, a Space Buyer





Agreement was executed inter-se parties on 19.08.2014 for a sale consideration of ₹45,20,000/- out of which the complainant had paid an amount of ₹13,90,918/-. As per the possession clause 9 of the BBA, the possession of the unit was to be offered within 42 months, with a grace period of 6 months from the date of signing of the agreement. The due date of possession is calculated from the date of agreement i.e., 19.08.2014. The period of 42 months ends on 19.02.2018. As far as grace period of 6 months is concerned the same is allowed being unqualified. Accordingly, the due date of possession comes out to be 19.08.2018.

14. The respondent, in its reply, submitted that the respondent company had issued a demand letter dated 22.05.2019 seeking payment of outstanding dues, followed by a reminder letter dated 11.06.2019. Subsequently, a final reminder letter dated 06.07.2019 was issued. Thereafter, the respondent issued a cancellation letter dated 02.08.2019 and effected a refund of ₹4,35,239/- through cheque no. 000286. However, on 07.02.2025, the complainant, during submissions before the Authority, contended that he had not received either the letter dated 06.07.2019 or the cancellation letter dated 02.08.2019, as the said communications had been delivered to a different address. In response, the respondent, on the same date, submitted that it was the complainant himself who had requested for change of address through a handwritten note, and accordingly sought leave of the court to place the said document on record.
15. In view of the foregoing, the Authority is of the considered opinion that the document submitted by the respondent on 11.04.2025, which contains handwritten remarks reflecting the name of the complainant,





a new address, and a mobile number, does not constitute a valid request for change of address. Also, there is no express communication from the complainant requesting such a change, nor has the authorship of the handwriting been substantiated as that of the complainant. Hence, the said document cannot be relied upon by the Authority. Accordingly, the reminder letter and the subsequent cancellation letter were not duly served upon the complainant by the respondent. Additionally, Clause 9.3 of the Model Agreement for Sale, annexed as *Annexure A*, specifically provides for cancellation by the Promoter in the event of a default by the Complainant. Clause 9.3 is produced herein below for the ready reference:

*"In case of Default by Allottee under the condition listed above continues for a period beyond ninety days after notice from the Promoter in this regard, the Promoter may cancel the allotment of the Plot/Unit/Apartment for Residential/Commercial/Industrial/IT/any other usage along with parking (if applicable) in favour of the Allottee and refund the money paid to him by the allottee by forfeiting the booking amount paid for the allotment and interest component on delayed payment (payable by the customer for breach of agreement and non-payment of any due payable to the promoter). The rate of interest payable by the allottee to the promoter shall be the State Bank of India highest marginal cost of lending rate plus two percent. The balance amount of money paid by the allottee shall be returned by the promoter to the allottee within ninety days of such cancellation, on such default, the Agreement and any liability of the promoter arising out of the same shall thereupon, stand terminated. Provided that, the promoter shall intimate the allottee about such termination at least thirty days prior to such termination."*

16. The Authority finds that the respondent company has failed to adhere to the proper procedure as mandated under the aforementioned provisions. Also, the final reminder letter as well as the cancellation letter were not duly served upon to the complainant. Accordingly, the cancellation letter dated 02.08.2019 is hereby set aside by the



Authority, having been found to be legally unsustainable and void in the eyes of law.

17. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by him in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act.
18. 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) of the Act. The promoter has failed to complete or unable to give possession of the unit till date. 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.
19. **Admissibility of refund along with prescribed rate of interest:** The complainant intends to withdraw from the project and is 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]***

*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."*



20. 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.
21. 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., 02.05.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
22. In view of the above, the respondent/promoter is directed to refund the amount received by it from the complainant i.e., ₹13,90,918/- along with interest at the rate of 11.10% as prescribed under rule 15 of the 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 Rules.

**G. Directions of the authority**

23. 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):
- a. The respondent is directed to refund the amount received by it from the complainant i.e., ₹13,90,918/- along with interest at the rate of 11.10% as prescribed under rule 15 of the 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 Rules.
  - b. 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.



- c. The respondent is further directed not to create any third-party rights against the subject unit before full realization of paid-up amount along with interest thereon to the complainant, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainant.
24. Complaint stands disposed of.
25. File be consigned to registry.

**Dated: 02.05.2025**



*(Signature)*

**(Arun Kumar)**

Chairman

Haryana Real Estate Regulatory  
Authority, Gurugram

**HARERA**  
**GURUGRAM**