

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

Complaint no. : 640 of 2024
Date of filing of complaint: 15.02.2024
First date of hearing: 04.04.2024
Date of Order: 22.05.2025

Sunil Kumar

Complainant

R/o: J.B.M Limited, Plot-06, Sector-36,
Mohamadpur, Jharsa, Gurgaon -122001.

Versus

1. MRG Infrabuild Private Limited

Regd. Office at: Unit No. 110, 1st floor, Best Sky
Tower, NSP, Delhi-110034

2. M/s Maxworth Infrastructure Private
Limited

Regd. Office at: 1/303, Jaypee CGHS Ltd., Plot No.
02, Sector-22, Dwarka, New Delhi-110075.

Respondents

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Sh. Anju Jamdagni (Advocate)

Complainant

Sh. Satyender Kumar Goyal (Advocate)

Respondent no. 1

Sh. Sanya Arora (Advocate)

Respondent no. 2

ORDER

1. The present complaint has been filed on 15.02.2024 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 provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Project and unit related details

2. The particulars of the project, the details of sale consideration, the amount paid by the 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. | Project name and location | "Aashray" at Village Hayatpur , Sector 89 , Gurugram. |
| 2. | Nature of the project | Affordable group housing colony |
| 3. | DTCP License no. and validity | 23 of 2016 dated 22.11.2016 valid up to 21.11.2021 |
| 4. | Name of licensee | Sh. Hans Raj and another |
| 5. | HRERA registered/ not registered | Registered vide no. 245 of 2017 dated 26.09.2017 valid up to 24.03.2022 |
| 6. | Extension of RERA registration | i. 10 of 2022 dated 26.12.2022 valid up to 24.03.2023 ii. RC/REP/HARERA/GGM/245 of 2017/7(3)/36/2023/13) dated 24.07.2023 valid up to 24.03.2025 |
| 7. | Allotment letter | 02.04.2018 (As per page no. 19 of the complaint) |
| 8. | Unit no. | T-803, 8 th floor & Tower/Block-T4 (As per page no. 26 of the complaint) |
| 9. | Unit measuring | 593.10 sq. ft.(Carpet area) & 100 sq. ft. (balcony area) (As per page no. 26 of the complaint) |
| 10. | Date of execution of agreement to sale | 18.07.2018 (As per page no. 25 of the complaint) |
| 11. | Possession clause | 5. POSSESSION <i>5.1 Within 60 (sixty) days from the date of issuance of occupancy certificate, the developer shall offer</i> |

| | | |
|-----|------------------------------------|---|
| | | <p>the possession of the said flat to the allottee(s). Subject to force majeure circumstances, receipt of occupancy certificate and allottee(s) having timely complied with all its obligations, formalities or documentation, as prescribed by developer in terms of the agreement and not being in default under any part hereof including but not limited to the timely payment of installations as per the payment plan, stamp duty and registration charges, the developer shall offer possession of the said flat to the allottee(s) within a period of 4 (four) years from the date of approval of building plans or grant of environment clearance (hereinafter referred to as the "commencement date"), whichever is later.</p> <p>[Emphasis supplied] (As per page no. 34 of the complaint)</p> |
| 12. | Date of approval of building plans | 20.05.2017 (As per page no. 26 of the complaint) |
| 13. | Date of tri-partite agreement | 31.07.2018 (As per page no. 55 of the complaint) |
| 14. | Date of environmental clearance | 30.08.2019 (Taken from another complaint of the same project) |
| 15. | Due date of possession | 28.02.2024 (Note: Due date to be calculated 4 years from the date of environmental clearance i.e., 30.08.2019 being later plus grace period of 6 months in lieu of covid-19.) |
| 16. | Total sale consideration | Rs.24,22,400/- (As per page no. 31 of the complaint) |

| | | |
|-----|---|--|
| 17. | Total amount paid by the complainant | Rs.6,54,048/- (As per acknowledgement receipt on page no. 20-21 of the complainant) (Note: Rs.1,21,120/- paid by the complainant and Rs.5,32,928/- is paid by bank in terms of tri-partite agreement dated 31.07.2018) |
| 18. | Date of occupation certificate | Not Obtained |
| 19. | Date of offer of possession | Not offered |
| 20. | Affidavit with regard to settlement between the parties | 15.09.2018 (As per page no. 11 of the reply by the respondent no. 1) |
| 21. | Request for cancellation of unit by the complainant and refund of the amount paid | 03.05.2019 (As per page no. 10 of the reply by the respondent no. 1) |
| 22. | Receipt of amount of Rs.6,80,100/- refunded to the complainant | 03.05.2019 (As per page no. 12 of the reply the respondent no. 1) |

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:

- i. That, somewhere in the year 2017, the respondent through marketing executives had advertisement done through various mediums approached the complainant with an offer to invest and buy a residential unit in their proposed Affordable Project of the respondent, which respondent was going to launch under the name of "Aashray" situated Sector-89, Hayatpur, Gurugram. The respondents had represented to the complainant that the respondents are very ethical business house in the field of construction of residential, commercial and IT projects and in case, the complainant invests in the project of the respondents then they would deliver the possession of proposed unit on the assured delivery date as per the best quality assured by the respondents. The respondents

had further assured the complainant that the respondents have already secured all the necessary sanctions and approvals from the appropriate and concerned authorities for the development and completion of said project on time with the promised quality and specification. The respondents had also shown the brochures and advertisement material of the said project to complainant given by the respondents and assured that the allotment letter and builder buyer's agreement for the said project would be issued to the complainant within one week of booking to be made by the complainant. The complainant while relying on the representations and warranties of the respondents and believing those to be true had agreed to the proposal of the respondents to book a residential unit in the project.

- ii. That relying upon those assurances and believing those to be true, the complainant booked unit bearing no. T4-803, in Block/Tower- T4, having a carpet area of 593.10 sq. ft. and balcony area of 100 sq. ft. situated on 8th floor together with the two-wheeler open parking site and the pro-rata share in the common areas in the project against total cost Rs.23,72,400/- for the said flat and costs of Rs.50,000/- for balcony amounts to total sale consideration of Rs.24,22,400/-. The complainant as on today has paid an amount of Rs.1,21,120/-. At the time of approaching the complainant, it was represented, assured and promised by the respondents that it would issue allotment letter in the name of complainant within a maximum period of one week and thereafter, shall also execute the builder buyer's agreement as a confirmation of the allotment of the unit.
- iii. That in order to buy and satisfy all the payments of the said unit, the complainant sought from respondents the permission to mortgages etc., which was granted by the respondents on 31.07.2018 in favor of

Indiabulls Housing Finance Limited, Gurugram, Haryana. It is further submitted that in this letter also, the respondents categorically admitted that the respondents have obtained necessary permission/approval/sanctions for the construction of the said Affordable Group Housing Colony from all concerned authorities. Further the construction of the Affordable Group Housing Colony as well as of the unit being done in accordance with the approved plans and the unit is meant to be used for residential purpose only as per the sanctioned plan. However, the complainant has incurred an amount of Rs.47,340/- on account for availing the facility of loan from Indiabulls Housing Finance Limited.

- iv. That from the date of booking and till today, the respondents had raised various demands for the payment of installments on complainant towards the sale consideration of the said unit and the complainant has duly paid and satisfied all those demands without any default or delay on his part.
- v. That the respondents as a confirmation of the allotment of the said unit executed an agreement to sale duly registered at the office of Sub-Registrar, Harsaru, Gurugram vide vasika No.1602 dated 18.07.2018.
- vi. That the respondents have not provided the exact date, month and year of the handing over the possession of the said unit, which itself proves that the respondents had never intention to deliver the said unit to the complainant.
- vii. That the complainant has undergone severe mental harassment due to the negligence on the part of the respondents and the complainant had faced all these financial burdens and hardship from his limited income resources, only because of respondents' failure to fulfill their promises and commitments. Failure of commitment on the part of respondents

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has made the life of Complainant miserable socially as well financially as all his personal financial plans and strategies were based on the said unit. Therefore, the respondents have forced the complainant to suffer grave, severe and immense mental and financial harassment with no fault on his part. The complainant being common person just made the mistake of relying on respondents' false and fake promises, which lured him to buy a unit in the aforesaid residential project. The respondents trapped the complainant in a vicious circle of mental, physical and financial agony, trauma and harassment in the name of delivering his dream home within deadline representing themselves a multinational real estate giant.

- viii. The respondents even have not replied the correspondence including but not limited to telephonic conversation etc. whenever, complainant tried to reach at the desk of respondents, the respondents and their staff and officials always evaded the complainant on lame excuses.
- ix. That the respondents committed grave deficiency in service by not delivering the booked unit to the complainant and the complainant still continues to suffer at the hands of respondents as being deprived off his money for a number of years without being delivered any possession of the unit or without being paid any interest on the huge amount.
- x. That the complainant suffered a great mental, physical and financial harassment just because of unwarranted and illegal act of the respondents, for which respondents rendered themselves liable to be prosecuted under the relevant laws. Due to above-stated acts of the respondents, the complainant had to undergo huge financial loss, mental pain and agony as well which has made complainant to incur a huge cost and the respondents solely and exclusively are liable to indemnify the just and legal claim of the complainant.

- xi. That the respondents work against natural principle by not refunding the amount of Rs.1,21,120/- along-with interest to complainant, reasons best known to the respondents. It is established proposition of law that where any service provider works against rule, it tantamount to deficiency in services; thus, there is grave deficiency in service on the part of respondents.
- xii. That the cause of action accrued in favour of the complainant and against respondents, when complainant had booked the said unit, it further arose when respondents failed/neglected to deliver the possession of the dwelling unit. The cause of action further accrued to the complainant, when complainant through various modes requested the respondents to refund the amount, already paid by complainant. The cause of action is continuing and is still subsisting on day-to-day basis.

C. Relief sought by the complainant:

- 4. The complainants have sought following relief(s):
 - i. Direct the respondents to refund the amount of Rs.1,21,120/- along with interest to the complainant
 - ii. Direct the respondent to pay the interest on the aforesaid amount at the rate of 18% per annum to the complainant
 - iii. Direct the respondents to make the goods of losses suffered by complainant to the tune of Rs.47,340/- towards processing charges for bank loan.
- 5. The authority issued a notice dated 16.02.2024 of the complaint to the respondents by speed post and also on the given email address at sureshkumar155@gmail.com, ashok@mrgworld.com, sushilkaudinya@gmail.com and jamdagnianju999@gmail.com for filing reply within 4 weeks from the date of issuance of notice. The delivery

reports have been placed on the file. Though counsel for the respondent no. 2 put in appearance on 10.10.2024, 13.02.2025 and 22.05.2025 but failed to file the reply to the complaint within the stipulated period despite given ample opportunities. It shows that the respondent no. 2 was intentionally delaying the proceedings by avoiding filing of written reply. Therefore, in view of above, the Authority is hereby left with no option but to struck off the defence of the respondent no. 2.

6. 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 these undisputed documents and submission made by the parties.

D. Reply by respondent no. 1:

7. The respondents have contested the complaint on the following grounds:
 - I. That the complaint filed by the complainant before the Authority being misconceived and erroneous, is untenable in the eyes of law.
 - II. That without prejudice to the aforementioned submissions, it is submitted that even otherwise the complainant cannot invoke the jurisdiction of the Authority in respect of the unit allotted to the complainant, especially when there is an arbitration clause no. 31 provided in the agreement to sale dated 18.07.2018, whereby all or any disputes arising out of or touching upon or in relation to the terms of the said agreement or its termination and respective rights and obligations, is to be settled amicable failing which the same is to be settled through arbitration. Once the parties have agreed to have adjudication carried out by an Alternative Dispute Redressal Forum, invoking the jurisdiction of the Authority, is misconceived, erroneous and misplaced.

III. That the complainant has not approached the Authority with clean hands, he is guilty of concealing the true and material facts. The complainant prior to coming into picture of the respondent no.1 already settled his claim of refund of the amount with the respondent no.2 by moving an application dated 03.05.2019 under his signatures and he received a total sum of Rs.6,80,100/- vide DD No.648527 as full and final settlement against the surrender of the unit/flat no.T4-803. The complainant submitted a duly sworn affidavit dated 03.05.2019 with the respondent no.2 in this behalf and also signed an acknowledgement receipt dated 03.05.2019. The duly signed copy of pan card and aadhaar card were also submitted. The receipt of original demand draft was also given on the photocopy of the draft by the complainant on 03.5.2019 itself and thereafter the complainant had been left with no right, title or any claim whatsoever in any manner against his booking of unit no.T4-803 and the complaint is liable to be dismissed with heavy costs.

E. Jurisdiction of the authority:

8. 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 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. 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 complainant at a later stage.
12. 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."

13. 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 objections raised by the respondent no. 1:

F.I Objection regarding complainant is in breach of agreement for non-invocation of arbitration.

14. The respondent no. 1 has raised an objection that the complainants has not invoked arbitration proceedings as per the provisions of agreement to sale dated 18.07.2018 which contains provisions regarding initiation of arbitration proceedings in case of breach of agreement. The following clause has been incorporated w.r.t arbitration in the agreement to sale:

"Clause 31. Dispute Resolution:

All or any disputes arising out or in connection with this agreement including its existence, interpretation and validity of the terms thereof and the respective rights and obligations of the parties, shall be settled amicably by mutual discussion, failing which, the same shall be referred to and finally resolved by arbitration pursuant to the provisions of the (Indian) Arbitration and Conciliation act, 1996. The parties further agree as follows:

- i. the seat and venue of the arbitration shall be New Delhi, India.*
- ii. the arbitral tribunal shall consist of 3 (three) arbitrators. The developer and the Allottee(s) shall appoint 1 (one) arbitrator each, these 2 (two) arbitrators shall in turn appoint the 3rd (third) arbitrator.*
- iii. the language of the arbitration shall be English.*
- iv. the award of the arbitration panel shall be final and conclusive and binding upon the parties and non-appealable to the extent permitted by Applicable Law.*
- v. the parties further agree that the arbitration panel shall also have the power to decide on the costs and reasonable expenses (including reasonable fees of its counsel) incurred in the arbitration and award interest up to the date of the payment of the award.*
- vi. during the arbitration proceedings, the responsibilities and obligations of the parties set out in this agreement shall subsist and the parties shall perform their*

respective obligations continuously except for that part which is the concerned matter of dispute in the arbitration.

15. The respondent no. 1 contended that as per the terms & conditions of the agreement to sell duly executed between the parties, it was specifically agreed that in the eventuality of any dispute, if any, with respect to the provisional booked unit by the complainant, the same shall be adjudicated through arbitration mechanism.
16. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the agreement to sell as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.
17. Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in *National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506*, *M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017* decided on 10.12.2018 and wherein it was held that the remedies provided under the Consumer Protection Act, 1986 and in addition to and not in derogation of other laws in force. Thus, the Authority has no hesitation in holding that jurisdiction to entertain the complaint and the dispute does not require to be referred to arbitration necessarily.

G. Findings on the relief sought by the complainant:

- G.I Direct the respondents to refund the amount of Rs.1,21,120/- along with interest to the complainant
- G.II Direct the respondent to pay the interest on the aforesaid amount at the rate of 18% per annum to the complainant

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18. The above-sought relief(s) by the complainant are taken together being inter-connected.
19. The complainant was allotted a unit in the project of respondent no. 2 "Aashray", in Sector 89, Gurugram vide allotment letter dated 02.04.2018 for a total sum of Rs.24,22,400/-. A buyer's agreement was executed between the parties on 18.07.2018 between the complainant and the respondent and the complainant started paying the amount due against the allotted unit and paid a total sum of Rs.1,21,120/-. The promoter-builder started raising various demands against the allotted unit and the complainant paid more amount than initial booking amount. He was also sanctioned a loan of Rs.23,69,655/- by India Bulls Housing Finance Limited on the basis of tri-partite agreement dated 31.07.2018 entered into between the parties and the financier. But an amount of Rs.5,32,928/- is disbursed by the bank, thus the total amount paid to the respondent-promoter comes to Rs.6,54,048/-.
20. As per clause 5 of the agreement dated 18.07.2018, the respondent-promoter was supposed to handover the possession of the unit within 4 years from the date of approval of building plans or grant of Environment Clearance, whichever is later. The date of approval of building plans is 20.05.2017 and Environment Clearance was granted on 30.08.2019. There, due date of possession is to be calculated 4 years from the date of grant of environment clearance i.e., 30.08.2019 being later. Thus, the due date of possession comes to 30.08.2023. ***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.*** In the present complaint, the completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 30.08.2023 i.e., after

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25.03.2020. Therefore, an extension of 6 months is to be given and the due date of handing over of possession comes out to **28.02.2024**.

21. The complainant has filed the present complaint on 15.02.2024 seeking refund of the paid-up amount along with interest @ 18% per annum as he does not want to continue with project.
22. The respondent no. 1 in its reply dated 22.02.2024 mentioned that all the disputes between the parties and the financier came to an end vide settlement agreement dated 03.05.2019. The complainant moved an application in this regard to respondent no. 2 on that day accompanied by a duly attested affidavit dated 15.09.2018 settling the dispute with regard to the payment and finally accepting a sum of Rs.6,80,100/- vide acknowledgement receipt annexed at R5 page no. 12 of the reply. The above-mentioned facts are confirmed by the counsel for the respondent no. 1 during the proceedings of the day dated 22.05.2025.
23. On consideration of all the documents and submissions made by the parties, the Authority observes that total paid-up amount claimed by the complainant in its complaint is Rs.6,54,048/- however, an amount of Rs.6,80,100/- has already been refunded by the respondent in terms of settlement dated 03.05.2019. Thus, the relief sought by the complainant is not maintainable anymore. Thus, no direction to this effect.

G.III Direct the respondents to make the goods of losses suffered by complainant to the tune of Rs.47,340/- towards processing charges for bank loan.

24. The complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation & litigation charges 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

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compensation & litigation expense 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 & legal expenses.

H. Directions of the authority:

25. Hence, in view of the findings recorded by the authority on the aforesaid issues, no case of refund of the paid-up amount with interest is made out. Hence, the complaint is liable to be dismissed and as such is rejected.
26. The complaint stand disposed of.
27. File be consigned to registry.

Dated: 22.05.2025




(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM