

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

Complaint no.:	2197 of 2023
Date of filing of complaint:	11.05.2023
First date of hearing:	05.10.2023
Date of order:	15.05.2025

1. Narender G Sahu

2. Varsha Sahu

R/o: 581, Afno Enclave, Sector-7, Plot No.
11, Dwarka, New Delhi-110075

Complainants

Versus

Landmark Apartments Private Limited.

Regd. Office at: Landmark House, plot no.
65, sector-44, Gurugram, Haryana-
122003

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Sh. Sanjeev Kumar Sharma(Advocate)

Complainants

Sh. Amarjeet Kumar (Advocate)

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 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. Unit and project related details:

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name of the project	"Landmark the residency", Sector 103, Gurugram
2.	Nature of the project	Affordable group housing
3.	Unit no.	C-83, 8 th floor (As per page no. 19 of the complaint)
4.	Unit area admeasuring	3092 sq. ft. (As per page no. 19 of the complaint)
5.	Provisional allotment letter	12.02.2013 (As per page no. 19 of the complaint)
6.	Date of execution of apartment buyer agreement	N.A
7.	Possession clause	N.A
8.	Due date of possession	Not specified
9.	Total sale consideration	Rs.97,70,720/- (As per page no. 9 of the complaint)
10.	Amount paid by the complainants	Rs.54,72,840/- (As per letter of request for cancellation on page no. 26 of the complaint)
11.	Occupation certificate /Completion certificate	Not received
12.	Offer of possession	Not offered
13.	Request for cancellation and refund of the paid-up amount	15.04.2021 (As per page no. 26 of the complaint)
14.	Amount of Rs.1,00,000/- refunded by the respondent on request of cancellation	15.04.2021 (As per page no. 19 of the reply)

B. Facts of the complaint:

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

- I. That the respondent company advertised for construction of world class residential space/unit to be known as "*Landmark the Residency*" in Sector 103 Gurgaon, Haryana.
- II. That the complainants booked/purchased a residential apartment vide application form dated 09.01.2011 bearing unit no. C-83, 8th floor admeasuring carpet area of 3092 sq. ft. along with one parking for a total consideration of Rs.97,70,720 /-, however the agreement for sale since the same has not been executed by the respondent till date but the provisional allotment letter was issued by the respondent on 12.02.2013.
- III. That the complainants have made a total payment of Rs.54,72,840/- from January 2011 to August 2013 and despite wait for more than 12 years, the possession has not been offered to the complainants because Tower-C is never constructed by the respondent where unit has been allotted to the complainants.
- IV. That the complainants have approached the Hon'ble Authority seeking refund of their monies along with interest as all the requests made by the complainants have gone to the deaf ears of the respondent.
- V. That the complainants have through this complaint invoked the jurisdiction of the Hon'ble Authority.
- VI. That the complainants reserve their right to file a separate complaint seeking compensation before the appropriate Authorities.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
- i. Direct the respondent to refund the entire amount paid by the complainants amounting to Rs.54,72,840/-.

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- ii. Direct the respondent to pay interest upon the amount paid by the complainants from the date of the payments made by the complainants to the respondent.
- iii. Direct the respondent to pay the EMIs for the loan along with arrears arisen due to default on the part of the respondent

D. Reply by the respondent:

5. The respondent has contested the complaint on the following grounds:

- I. That in the year 2010 - 2011, the respondent after availing all necessary approvals from the competent authority had launched one of its projects known as "Landmark The Residency" located at Sector-103, Gurgaon, Haryana.
- II. That as the complainants intend to purchase an apartment in the project, the respondent vide its letter dated 09.06.2012 allotted a 4 BHK residential unit measuring 3092 sq. ft., bearing unit no. C -133 on 13th floor in the project.
- III. That the complainants since inception defaulted in making payments and thus the respondent was constrained to issue several demand letters and reminder letters to the complainants in order to demand the due amount.
- IV. That thereafter the complainants in the year 2013 requested for change in unit vide letter dated 12.02.2013, demanding any unit below 10th floor. Thus on request of the complainants, the respondent allotted 4 BHK residential unit measuring 3092 sq. ft., bearing unit no. C -83 on 8th floor.
- V. That the complainants never deposited the amount due on time, suddenly due to some reasons best known to the complainants cancelled the subsequent unit allotted vide its cancellation letter dated 15.04.2021. It is pertinent to mention here that as the

complainants were cancelling the unit of the respondent paid the complainants a sum of Rs.1,00,000/-. It is further noteworthy to mention here that the complainants at the time cancelling the unit and receipt of Rs.1,00,000/- assured the respondent that the complainants will enter into an agreement for said cancellation and that the respondent will pay the remaining amount received from the complainants once the complainants will enter into an agreement. However to the utter shock of the respondent, the complainants never came forward to sign an agreement for surrender and on the contrary filed the complaint.

- VI. That the present complaint is liable to be dismissed as the complainants have no locus to file the present complaint as the complainants have cancelled the said unit allotted to the complainants. And have also received a sum of Rs.1,00,000/- as an acceptance of the said from the respondent.
- VII. That since the preliminary objections are of a jurisdictional nature which goes to the root of the matter, and as per the settled law, the same should be decided in the first instance. It is only after deciding the question relating to maintainability of the complaint, the matter should be proceeded further. It is submitted that the complaint filed by the complainants is baseless, vexatious and is not tenable in the eyes of law therefore the complaint deserves to be dismissed at the initial stage only.
- VIII. That in the present case, the complainants have suppressed many material facts, which are extremely relevant in order for a proper adjudication of the present dispute. For the reason the complainants have malafidely suppressed material facts including the demands letter and reminders to take possession of the unit from the Hon'ble

Authority, which tantamount to playing fraud upon the Hon'ble Authority, the complainants does not deserve any relief and the present complaint merits dismissal on this count itself.

- IX. That the complainants have not approached this Hon'ble Authority with clean hands. It is submitted that at the belated stage, the complainants are attempting to seek a modification of the agreement entered into between the parties in order to acquire benefits for which the complainants are not entitled in the least.
- X. That as the complainants have already cancelled the unit allotted to the complainants, the present complainant is in the nature of recovery of the amount paid by the complainants. However, the Hon'ble Authority is not an appropriate forum to adjudicate recovery proceedings. It is further submitted any remedy available with the complainants is a suit for recovery which is can only entertained by the Civil Court and not a complaint before this Authority. Moreover this Authority doesn't have competence to decide matter of recovery as the same requires leading of oral evidence and cross examinations of witness.
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 submissions made by the parties.

E. Jurisdiction of the authority:

7. The respondent has raised a preliminary submission/objection 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

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

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)(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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.

8. 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.
9. 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.*** SCC Online SC 1044 decided on 11.11.2021 and followed in ***M/s Sana Realtors Private Limited & others V/s 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."

10. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the amount paid by the complainants.

F. Findings on relief sought by the complainants:

- F.I Direct the respondent to refund the entire amount paid by the complainants amounting to Rs.54,72,840/-.**
- F.II Direct the respondent to pay interest upon the amount paid by the complainants from the date of the payments made by the complainants to the respondent.**
- F.III Direct the respondent to pay the EMIs for the loan along with arrears arisen due to default on the part of the respondent.**
11. The above-sought relief(s) by the complainants are taken together being inter-connected.
12. In the present complaint, the complainants intend to withdraw from the project and are seeking return of the amount paid by them in respect of

subject unit along with interest as per section 18(1) of the Act and the same is reproduced below for ready reference:

"Section 18: - Return of amount and compensation

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

- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or
- (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,
he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

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

(Emphasis supplied)

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

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

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

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

14. 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.

15. 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., 15.05.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
16. The definition of term 'interest' as defined under section 2(z a) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

 - (i) *the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
 - (ii) *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*
17. The authority after considering the facts stated by the parties and the documents placed on record is of the view that the complainants are well within their right for seeking refund under section 18(1)(b) of the Act, 2016.
18. In the instant matter, even after lapse of 12 years from the date of issuance of provisional allotment till the filling of complaint, no buyer's agreement has been executed inter- se parties. The respondent fails or surrender his claim w.r.t. the alleged date, the authority in a rightful manner can proceed in the light of judicial precedents established by higher courts. When the terms and conditions exchanging (agreement) between parties omits to specify the due date of possession the

reasonable period should be allowed for possession of the unit or completion of the project.

19. That the authority is of the considered view that the Act, 2016 ensures the allottee's right to information about the project and the unit. That knowledge about the timelines of the delivery of possession forms an inseparable part of the agreement as the respondent is not communicating the same to the complainant/allottee. Hence, it is violation of the Act, and shows his unlawful conduct.
20. The Hon'ble Supreme Court in the case of **Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU /SC /0253 /2018** observed that *"a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract."*
21. In view of the above-mentioned reasoning, the due date of possession is to be calculated from date of provisional allotment letter. Therefore, the due date of handing over of the possession of the unit comes out to be 12.02.2016.
22. After waiting for 5 years since the due date has lapsed, on 15.04.2021 the complainants have made a request to the respondent for cancellation of the unit and refund of the paid-up amount. And the respondent has duly acknowledged the request of the complainants and refunded an amount of Rs.1,00,000/- on 15.06.2021 itself.

23. The counsel for the respondent vide proceedings of the day dated 15.05.2025 brought to the notice of the Authority that there was a dispute with landowners due to which the unit could not be completed and occupation certificate of the unit is not yet obtained and thus, the respondent is ready to refund the amount paid by the complainants.
24. Further in the judgement of the Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra)*** 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 observed as under:
25. *The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.*
25. 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 allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of provisional allotment letter or duly completed by the either date mentioned as above. Accordingly, the promoter is liable to the allottee, as he wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.


26. The respondent was directed firstly to clear the loan amount, if any disbursed by the bank and pay the remaining amount to the complainants while refunding the paid-up amount of Rs.54,72,840/-.
27. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1)(b) of the Act on the part of the respondent is established. As such, the complainants are entitled to refund of the entire amount i.e., Rs.54,72,840/- paid by them at the prescribed rate of interest i.e., @ 11.10% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.
28. Out of the total amount so assessed, the respondent may deduct an amount of Rs.1,00,000/- which has already been refunded to the complainants.

G. Directions of the Authority:

29. 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 /promoter is directed to refund the amount i.e., **Rs.54,72,840/-** received by him respectively from the complainants along with interest at the rate of 11.10% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount. The respondent may deduct an amount of Rs.1,00,000/- already refunded to the complainants.

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- ii. Out of total amount so assessed, the amount paid by the bank/payee be refunded first in the account of bank and the balance amount along with interest if any will be refunded to the complainants.
 - iii. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.
 - iv. 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 complainants, and even if, any transfer is initiated with respect to subject unit, the receivable shall be first utilized for clearing dues of allottee-complainants.
30. Complaint stands disposed of.
31. File be consigned to the registry.


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 15.05.2025