

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

Complaint no.: 2451 of 2023
Date of filing: 01.06.2023
Order pronounced on: 08.07.2025

Ranjit Kumar

R/o:- Plot no. 13, Sector 23, Dwarka, New Delhi-
110077

Complainant

Versus

1. M/s ABW Infrastructure Limited

Regd. Office at: - 208-210, 2nd floor, rectangle-1,
D-4, Saket District Centre Saket, New Delhi-
110017

2. Buniyaad Properties

Regd. Office at: - JMD Regent Square, GF-11, MG
Road, Gurugram-122001

Respondents

CORAM:

Shri Arun Kumar
Shri Ashok Sangwan

**Chairperson
Member**

APPEARANCE:

Shri Rajan Gupta (Advocate)
None

Complainant
Respondents

ORDER

1. This complaint has been filed by the complainant/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 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	
1.	Project name and location	'ABW Aditya Niketan', Sector-M1, M1A & M1C, Manesar Gurugram.
2.	Nature of the project	Residential
3.	a) DTCP license no	67 of 2009 dated 19.11.2009
	b) License valid up to	18.11.2015
4.	a) RERA registered/not registered	Not registered
5.	Unit no.	NA
6.	Unit admeasuring	NA
7.	Date of execution of the flat buyer's agreement	Not Executed
8.	Possession Clause	NA
9.	Total sale consideration	NA
10.	Total amount paid by the complainants	Rs. 7,62,862/- (As per complaint)
11.	Occupation certificate	NA
12.	Offer of possession	NA

B. Facts of the complaint.

3. The complainant has made the following submissions in the complaint:
- a. That complainant firstly paid an amount of ₹1,00,000/- on 16.11.2010 to respondent no.2 towards booking in the above-mentioned project and thereafter paid an amount of ₹6,62,862/- to respondent no.1 vide Cheque no. 190661 dated 30.12.2010 & Cheque No. 075370 dated

05.01.2011. That till date total amount of ₹7,62,862/- has been paid by the complainant.

- b. That respondent no.1 assured the complainant that Floor Buyer Agreement will be entered between the parties, which will contain the price of the unit, payment structure and other terms and conditions but very surprisingly respondent no.1 kept on lingering on the matter on one pretext or other.
- c. That complainant many times visited the office of respondents to enter into the floor buyer agreement but respondent kept on delaying the same. That thereafter complainant received an email from the respondent no.1 company regarding the status of the project informing that there is one injunction on the project in civil writ petition bearing no. 23769 of 2011 tiled as Om Prakash & Others Vs State of Haryana & Ors and the same is pending before Hon'ble Punjab & Haryana High Court, Chandigarh and the same will be vacated very soon.
- d. That till date complainant is moving from pillar to post but of no use, hence came before the Hon'ble Authority to direct the respondents to refund the money paid by the complainant along with prescribed rate of interest from the date of payment till realization.

C. Relief sought by the complainant:

- 4. The complainant has sought following relief(s):
 - a. Respondents be directed to return/refund the money paid by the complainant/petitioner i.e. ₹7,62,862/- along with interest @ 24 % per annum from the date of payment till realization.
- 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 present complaint was filed on 01.06.2023 in the Authority. That the Respondents have failed to file its written statement/reply despite being granted sufficient opportunities. None appeared on behalf of respondents. In compliance of the orders dated 24.09.2024 the respondent no. 1 was served by way of substituted service that is by way of publication in two newspapers. The same was done and one last opportunity was given to file the reply till date the respondent neither filed the reply nor appeared in the present matter. On 01.04.2025 the defence of the respondents was struck off and the respondent was proceeded ex parte.
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 these undisputed documents and submissions made by the parties.

E. Jurisdiction of the Authority:

8. The authority observes that it 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, 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)(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 complainants at a later stage.

F. Findings on the relief sought by the complainants.

F.I. Respondents be directed to return/refund the money paid by the complainant/petitioner i.e. ₹7,62,862/- along with interest @ 24 % per annum from the date of payment till realization.

12. On consideration of documents available on record and submissions made, the authority observes that the complainant has issued cheques in the year 2010 & 2011 amounting to ₹6,62,862/- in favour of respondent no. 1 for allotment of a unit in the project ABW Aditya Niketan. However, no specific unit was allotted to the complainant by the respondent no. 1. Furthermore, the complainant has also paid an amount of ₹1,00,000/- to the respondent no. 2 i.e., the real estate agent. Now, the complainant has filed the present complaint on 01.06.2023 seeking refund of the paid-up amount as per proviso to section 18 (1) of the Act.

"Section 18: - Return of amount and compensation

"If the promoter fails to complete or is unable to give possession of an apartment, plot or building, -

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”.

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., 08.07.2025 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) 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 observes that no agreement has been executed between the parties therefore there is no time promised by the respondent to deliver the unit of the complainant. However, the respondent no. 1 has mailed to the complainant on 19.06.2012 seeking time to construct the unit. But still the complainant cannot be asked to wait for the unit allotted till infinite time. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act for not handing over the possession of the said unit even after the lapse of more than 10 years from the date of accepting the payment.
18. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit which is allotted to him and for which he has paid booking amount towards the sale consideration. In view of the above-mentioned facts, the allottee intends to withdraw from the project and are well within the right to do the same in view of section 18(1) of the Act, 2016.
19. Moreover, the occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondents

/promoter. The authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021.***

".... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."

20. Further, 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"

21. 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). The promoter has failed to complete or is unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. 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.

22. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondents is established. As such, the complainant is entitled to refund of the entire amount 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*.

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):
- The respondents are directed to refund the amount of ₹7,62,862/- paid by the complainants along with prescribed rate of interest @ 11.10% p.a. as prescribed under rule 15 of the rules from the date of each payment till the date of refund of the deposited amount.
 - 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.

- c. The respondent no. 1 is further directed not to create any third-party rights against the subject unit before the 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.

24. Complaint stands disposed of.

25. File be consigned to registry.

(Ashok Sangwan)
Member

(Arun Kumar)
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Date: 08.07.2025