

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

Complaint no.	:	1352 of 2024
Date of complaint	:	09.04.2024
Date of order	:	12.12.2025

Amit Kumar

R/o: - Flat no. 601, Tower-11, Puri Pratham,
Sector-84, Kheri Kalan, Faridabad – 121002, Haryana**Complainant****Versus**

M/s DSS Buildtech Pvt. Ltd.

Regd. Office at: - 506, 5th Floor, Time Square Building,
B-Block, Sushant Lok- I, Gurugram 122002**Respondent****CORAM:**

Shri Arun Kumar

Chairman**APPEARANCE:**Sh. Vijay Pal Chauhan (Advocate)
Sh. Harshit Batra (Advocate)Complainant
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	The Melia,	
2.	Nature of the project	Group Housing Colony	
3.	RERA Registered/ not registered	288 of 2017 dated 10.10.2017 [Page 48 of complaint]	
4.	License no. and validity	77 of 2013 dated 09.08.2013, valid upto 04.08.2017 [Page 48 of complaint]	Renewed on 04.10.2017 valid upto 09.08.2019
5.	Unit no.	G-1105, 11 th floor, tower G [Page 48 of complaint]	
6.	Unit area admeasuring	916 sq. ft. [Page 48 of complaint]	
7.	Date of booking	25.06.2019 [Page 48 of complaint & 27 of reply]	
8.	Date of allotment	25.06.2019 [Page 41 of complaint]	
9.	Date of Agreement for Sale	06.07.2019 [Page 46 of complaint]	
10.	Tripartite Agreement between HDFC Bank, and respondent	29.07.2019 [Page 35-39 of reply]	

	complainant	
11.	Payment Plan	Construction linked plan [page 73 of complaint]
12.	Possession clause	7.1. Schedule for possession of said Apartment - The promoter agrees and understands that timely delivery of possession of the Apartment to the Allottee(s) and the Common Areas to the Association or the Competent Authority, as the case may be, as provided under Rule 2(l) (f) of Rules, is the essence of the Agreement. The promoter assures to handover possession of the Apartment on or before 25.10.2021 unless there is delay due to "force majeure", court orders, government policy/guidelines, decisions affecting the regular development of the real estate project. [Page 55 of complaint]
13.	Due date of possession	25.10.2021 [Page 55 of complaint]
14.	Total sale consideration	Rs.87,50,290/- (including GST) [Page 50 & 74 of complaint]
15.	Amount paid by the complainant	Rs.73,46,914/- [Page 28 of complaint & 11 & 40 of reply] [Rs.13,50,000/- paid by complainant and Rs.59,96,914/- paid by bank against the loan availed by the complainant against the said unit]
16.	Occupation certificate /Completion certificate	Not received
17.	Intimation for surrender/cancellation by complainant	18.07.2023 [Page 83 of complaint]
18.	Unit cancelled by respondent on instructions	04.07.2024 [Page 44 of reply]

of Bank for non-repayment of bank loan by complainant

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- I. That the complainant believing in the assurances of the respondent that the said project shall be completed in a time bound manner with excellent amenities and infrastructure applied for booking of a residential apartment bearing unit no. G-1105, on 11th Floor, having its carpet area of 916 s q. f t . in the above said project vide application dated 25.06.2019. The respondent/ promoter had allotted the above said apartment vide allotment letter dated 25.06.2019. The total saleconsideration as agreed price of said unit was Rs. 87,50,290/-
- II. That the complainant and respondent executed buyer agreement for said unit on 06.07.2019. As per the agreement the respondent was to deliver the possession of the said commercial unit to the complainant on or before 25.10.2021.
- III. That as and when any amount w as demanded in terms of allotment letter and buyer agreement by the respondent, the complainant had paid the same to the respondent without any delay. Till now the complainant has paid Rs. 13,50,000/- and Rs. 59,96,914/- through bank loan to the respondent, the complainant had paid a total sum of Rs.73,46,914/- to respondent against allotment of said unit.
- IV. That since the day of sanctioning of loan, the complainant is regularly paying the EMIs of the said loan to the bank.

- V. That delay on account of delay in handing over possession of said allotted unit to the complainant did not raised further demand. Since there is delay beyond the reasonable and explainable time, the complainant has a legal right to cancel the said allotment unit no. G-1105 and seek refund of his entire deposited amount of Rs.73,46,914/- along with interest which charged by the bank on loan amount from the Respondent as per the provision of Real Estate Regulation Act, 2016.
- VI. That complainant has visited the respondent and requested for refund of the entire amount along with interest but the officials of the respondent tried to linger on the matter on one pretext of the other and fill date they failed to do the same.
- VII. That on assurance of respondent's staff complainant waited for long time but now even the staff of respondent is avoiding to meet the complainant as well as they are not responding on phone. In last so many months, the respondent has removed majority of its concerned staff and every time some new staff comes there. It is well known that due to mismanagement by senior management and by misappropriation of funds and hard earned money of the complainant and other allottees/investors by the respondent.
- VIII. That the respondent has completely failed to honour their promises and have not provided the services as promised and agreed through the brochure, buyer's agreement and the different advertisements released from time to time. Further, such acts of the respondent is also illegal and against the spirit of RERA Act, 2016 and HRERA Rules, 2017.

IX. There is a delay on the part of the respondent to hand over the possession of the said unit to the complainant. As such, complainant is entitled for refund of entire paid along with interest delayed possession charges as per the provisions of section 18 and 19 of the Real Estate (Regulation and Development) Act, 2016 at the prescribed rate of interest i.e. 9.30% per annum till the entire amount is paid to the complainant.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):

I. Refund of Rs.73,46,914/- in terms of Section 18 (1)(a) of the RERA Act 2016 read with Rule 15 of the Haryana Real Estate (Regulation and Development) Rules 2017.

II. To pay litigation charges of Rs. 1,00,000/- to the complainant.

5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent/builder.

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

i. That the complainant after conducting his own due diligence and after being fully satisfied with the details of the project approached the respondent and submitted an application dated 25.06.2019 for booking of a 2 BHK apartment tentatively admeasuring 916 sq. ft. for the total sale consideration of Rs. 87,50,290/- (inclusive of GST at prevailing rates). The complainant willingly agreed and signed the

payment plan for payment of instalments dues as per specified payment plan.

- ii. That pursuant to the submission of the application form dated 25.06.2019, the respondent allotted the complainant a flat bearing no. G-1105 on eleventh floor of tower-G in the project vide allotment letter dated 25.06.2019.
- iii. That the complainant was well aware and acutely understood his obligation to make timely payment of demands as per the payment plan opted by the complainant and hence, the complainant herein applied for a home loan facility from HDFC Limited for the purchase of the unit in question, upon mortgaging the same with the bank.
- iv. Thereafter, on 06.07.2019 the complainant entered into agreement for sale for the said unit bearing no. G-1105 tentatively having carpet area admeasuring 916 sq. ft. with the respondent. The said agreement was executed by the complainant out of his own free will without any coercion or undue influence and therefore the same is binding upon the parties hereto.
- v. That it is comprehensively established that a period of 303 days was consumed on account of circumstances beyond the power and control of the respondent, owing to the passing of Orders by the statutory authorities and the covid-19 pandemic. That the Hon'ble Haryana Real Estate Regulatory Authority, Gurugram granted 6 months extension for all ongoing projects vide Order/Direction dated 26th of May, 2020 on account of 1st wave of COVID-19 Pandemic. The Hon'ble Haryana Real Estate Regulatory Authority, Panchkula had decided to grant extension of 3 months in addition to waiver granted during first wave of COVID Pandemic from 1st of April 2021 to 30th

of June 2021 considering the 2nd wave of COVID-19 as a force majeure event.

- vi. That post Covid period there was labour shortage which delayed the construction on the project site, until the respondent was completely operational and could proceed at full speed. That respondent has been prevented by circumstances beyond its power and control from undertaking the implementation of the project during the time period indicated above and therefore the same is not to be taken into reckoning while computing the timeline for handover of possession. That vide application dated 17.08.2023 before DCP the respondent herein has already applied for occupation certificate for towers A, D, E & F of the said project and will possibly apply for the remaining towers of the said project.
- vii. That the complainant requested the respondent to issue NOC towards the grant of loan to the complainant by HDFC Bank and permission to mortgage of the unit.
- viii. That the respondent being a customer-oriented company abided by the request of the complainant and granted NOC to HDFC Bank vide letter dated 27.07.2019 granting permission to mortgage the unit in favour of the Bank by way of security for repayment of the said loan.
- ix. That tri-partite agreement dated 29.07.2019 was executed between the complainant, respondent and HDFC Bank. As per clause 8 of the tripartite agreement the complainant was well aware that in the event of default in the repayment of loan the respondent at the request of bank shall cancel the booking and shall pay all the amounts received by the respondent on behalf of complainant i.e. the borrower to HDFC Bank.

- x. That as on date, payment of Rs. 73,46,914/- has been received to the Respondent towards the total sale consideration out of which Rs. 13,50,000/- is paid by the complainant & Rs. 59,96,914/- is disbursed by the bank against the loan availed by the complainant against the said unit.
- xi. That since the complainant availed housing loan against the said unit therefore, the complainant was liable to pay the required EMIs to the bank but the complainant deliberately failed to pay the required EMIs pursuant to which HDFC Bank vide letter dated 24.06.2024 sought the revocation of tri-partite agreement dated 29.07.2019 entered amongst the HDFC Bank, the complainant and the respondent herein.
- xii. That since the complainant failed to clear/pay the required EMIs against the loan despite various reminders sent by bank via telephonic calls, legal notices, emails etc., therefore the respondent was called upon to cancel the allotment of the unit as per the terms of clause 1.1 of the agreement for sale and clause 8 of the tripartite agreement dated 29.07.2019.
- xiii. Therefore, the unit allotted in favour of the complainant stands cancelled.
- xiv. That the respondent is not liable to refund any amount whatsoever, to the complainant on the other hand the respondent is entitled to forfeit Earnest Money being 10% of the total sale consideration value plus other charges as per the provisions of RERA Act, and HRERA Rules, 2017.
- xv. That the respondent has duly complied with all applicable provisions of the Real Estate (Regulation and Development) Act, 2016 and Rules made thereunder and agreement for sale qua the complainant as well

as other allottees. That since the beginning of the development/construction of the project, the respondent has been regularly sending updates about the progress of the project from time to time to all the buyers including the complainant.

- xvi. That the respondent cannot be saddled with responsibility to grant refund to such unscrupulous allottees with dishonest intentions, which are clearly outside the scope of the stipulated terms and conditions of the agreement to sale. The payment received against the Unit has duly been disbursed by the bank against the loan availed by the complainant. The respondent is bound by the terms of the tri-partite agreement and thus has cancelled the allotment of the unit on account of breach of agreement by the complainant. The respondent was constrained to terminate the allotment of the unit as per the terms of the agreement for sale and tri-partite agreement.
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

The respondent raised a preliminary submission/objection that the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.1 Territorial jurisdiction

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11.....(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

10. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.
11. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in **Newtech Promoters**

and Developers Private Limited Vs State of U.P. and Ors. 2020-2021

(1) RCR (c) 357 and reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022 wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act, if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

12. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the relief sought by the complainant.

- I. Refund of Rs.73,46,914/- in terms of Section 18 (1)(a) of the RERA Act 2016 read with Rule 15 of the Haryana Real Estate (Regulation and Development) Rules 2017.**

14. The complainant booked a unit in the project of the respondent namely, The Melia, situated at Sector-35, Sohna, Gurugram and was allotted a unit bearing no. G-1105 on 11th floor, admeasuring super area of 916 sq. ft. vide allotment letter dated 25.06.2019. The total sale

consideration of the unit was Rs.87,50,290/- and the complainant has paid a total sum of Rs. 73,46,914/- (Rs. 13,50,000/- paid by the complainant and Rs. 59,96,914/- paid by the bank against the loan availed by the complainant). The buyer's agreement was executed between the parties on 06.07.2019. The tripartite agreement between HDFC bank, respondent and the complainant was executed on 29.07.2019.

15. The complainant in the present matter has sought full refund of the amount paid by him i.e., Rs. 73,46,914/- (Rs. 13,50,000/- paid by the complainant and Rs. 59,96,914/- paid by the bank against the loan availed by the complainant). The complainant states that there was a delay on the part of the respondent to hand over the possession of the said unit to the complainant therefore on 18.07.2023 the complainant surrendered the said unit.
16. The plea of the respondent is otherwise and has stated that the complainant availed a loan of Rs. 70,00,000/- against the said unit out of which an amount of Rs. 59,96,914/- was disbursed and the complainant was liable to pay the required EMIs to the bank but the complainant deliberately failed to pay the required EMIs. The respondent further states that an amount of Rs. 75,23,195/- (Rs. 58,91,554/- Authorized principal and Rs. 16,31,641/- EMI outstanding) was an outstanding amount of the bank which was paid by the respondent. The respondent states that they have already paid the amount to the bank therefore, not liable to refund any amount to the complainant. The NOC has already been received from the bank.
17. After considering the facts and documents placed on record, the Authority observes that the buyer's agreement was executed between

the parties on 06.07.2019. The tripartite agreement between HDFC bank, respondent and the complainant was executed on 29.07.2019. the clause 3 of the tripartite agreement dated 29.07.2019 is relevant and reproduced hereunder for ready reference:

3. The Loan Advanced to the Borrower by HDFC shall be repayable by the Borrower by way of Equated Monthly Installments (EMI). The date of commencement of EMI shall be the first day of the month following the month in which the disbursement of the loan will have been completed and consequently the due date of payment of first EMI shall in such case be the last day of the said following month.

18. As per clause 3 of the tripartite agreement dated 29.07.2019, it was the responsibility of the complainant to pay the EMIs towards the loan availed for the said unit. The complainant admittedly did not pay the EMIs and vide letter dated 18.07.2023 the complainant informed the respondent to surrender the unit.
19. The respondent has stated that out of the sanctioned loan amount of Rs. 70,00,000/-, a sum of Rs. 59,96,914/- had already been disbursed to the respondent and due to the complainant failure to pay the EMIs, an outstanding amount of Rs. 75,23,195/- (Rs. 58,91,554/- authorized principal and Rs. 16,31,641/- EMI outstanding) became payable to the bank. The respondent has further placed on record that the said outstanding amount has already been paid by them to the bank, and the No Objection Certificate has also been received.
20. In these circumstances, once the complainant himself defaulted in payment of EMIs and subsequently surrendered the unit and the respondent has cleared the entire outstanding amount to the bank, the respondent cannot be held liable to refund any amount to the

complainant. The relief of refund sought by the complainant is therefore not tenable.

II. To pay litigation charges of Rs. 1,00,000/- to the complainant.

21. The complainant in the aforesaid relief is seeking 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.** (Decided on 11.11.2021), has held that an allottee is entitled to claim compensation 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 compensation 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. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation.
22. Complaint stands disposed of.
23. File be consigned to the registry.


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 12.12.2025