

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

Complaint no. : 162 of 2024
Date of decision : 31.10.2025

1. **Manav Batra**
2. **Deepti Prabha**

Address:- Both R/o 80/413, Near Patel Nagar, Mansarovar, Jaipur, Rajasthan-302020

Also at : K-3/33, DLF Phase-2, Gurgaon-122002, Haryana.

Complainants

Versus

1. **Royal Blue City Developers Pvt. Ltd.**
Address:- Unit No.314, 3rd Floor, ILD Trade Centre, Sohna Road, Sector-47, Gurugram-122001, Haryana.
Also at : Plot No.264, Islampur Main Sohna Road, Gurugram-122001, Haryana.
2. **Royal Infra Buildtech Pvt. Ltd.**
Address:- 412, 4th Floor, ILD Trade Centre, Sohna Road, Gurugram-122001.

Respondents

CORAM:

Shri Arun Kumar

APPEARANCE:

Ms. Kanika Goel

None

Chairman

Counsel for Complainants
Counsel for Respondents

ORDER

1. The present complaint dated 18.01.2024 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 there under 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.	Particulars	Details
1.	Name and location of the project	“Royal Homes” at sector-39, Gurugram
2.	Nature of the project	Residential
3.	RERA Registered/ not registered	Not - Registered
4.	Unit no.	102, 1 st floor (As per page no. 15 of the complaint)
5	Unit area admeasuring	800 sq. ft. (As per page no. 15 of the complaint)
6	Date of apartment buyer's agreement	04.10.2019 (as alleged by complainant)
8	Due date of possession	04.10.2022
9	Total sale consideration	Rs. 51,51,000/-

10	Amount paid by the complainant	Rs. 20,31,000/- (As stated by the complainant)
11	Occupation certificate	Not obtained
12	Offer of possession	Not offered

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:

- That the Complainants are law-abiding citizens and homebuyers, who were induced by the Respondents to purchase a residential unit in their under-construction project namely "Royal Homes", situated at Village Jharsa, Sector-39, Gurugram, Haryana.
- That the Respondents advertised and represented that the said project was being developed in a lawful manner and would be completed within the stipulated time. That relying upon the representations and assurances of the Respondents, the Complainants entered into an Agreement to Sell (ATS) dated 04.10.2019 with Respondent No.1 in respect of Flat No. 102, First Floor, admeasuring 800 sq. ft., forming part of a plot measuring 325 sq. yards, out of Khewat No. 952, Khata No. 1233, Khasra No. 337 (5-5), situated at Village Jharsa, Tehsil Wazirabad, District Gurugram, Haryana.
- That the total sale consideration of the said flat was fixed at Rs. 51,51,000/-. That in furtherance of the said Agreement, the Complainants paid a total sum of Rs. 20,31,000/- to the Respondents. The details of payments along with dates are duly recorded in Clause

1 of the ATS and are also reflected in the bank statements of the Complainants.

IV. That the Respondents demanded payments in the name of Respondent No.1 as well as Respondent No.2, and the Complainants made payments accordingly, strictly as per the demands raised by the Respondents. That as per Clause 1 of the ATS, the Respondents categorically undertook to complete the construction of the unit and execute the sale deed/registry on or before 01.08.2020.

V. That contrary to their assurances, the Respondents failed to maintain any reasonable pace of construction. The Complainants repeatedly raised concerns regarding the slow and negligent construction, however, the Respondents failed to take any corrective steps. That as per Clause 2 of the ATS, the Respondents were contractually bound to refund the entire amount paid by the Complainants in the event construction was stopped or possession could not be delivered.

VI. That the Respondents miserably failed to hand over possession of the said unit by the committed date i.e. 01.08.2020, and even thereafter, the construction remained almost completely stalled for several months. That left with no alternative, the Complainants formally sought refund of their hard-earned money along with interest on 01.03.2022, on account of inordinate delay and failure on part of the Respondents.

VII. That after repeated follow-ups, the Respondents refunded only a sum of Rs. 6,00,000/- in installments between 21.03.2022 to 30.09.2022.

That thereafter, the Respondents issued a cheque bearing No. 934328 dated 18.01.2023 for an amount of Rs. 2,00,000/-, which upon presentation was dishonoured due to "Insufficient Funds".

VIII. That the Complainants were constrained to initiate criminal proceedings under the Negotiable Instruments Act for the dishonoured cheque. During the pendency of those proceedings, the Respondents refunded Rs. 2,00,000/-, and issued another cheque of Rs. 2,00,000/-, which the Complainants did not encash upon learning that the Respondents were not maintaining sufficient balance in their bank account.

IX. That till date, the Respondents have refunded only Rs. 8,00,000/-, and the remaining amount of Rs. 12,31,000/- is still unlawfully retained by them. That despite repeated requests and follow-ups, the Respondents have become completely non-responsive and have failed to refund the balance amount.

X. That the Respondents have clearly violated Section 11(4)(a) of the Real Estate (Regulation and Development) Act, 2016 by failing to complete the project and deliver possession as per the agreement.

XI. That the Complainants are legally entitled to withdraw from the project under Sections 18 and 19(4) of the Act and seek refund of the entire remaining amount along with interest. That the Complainants have further learnt that the Respondents may have illegally allotted or sold the said unit to a third party, thereby acting fraudulently and in gross violation of law. That the cause of action is continuous and subsists till

date, and this Hon'ble Authority has jurisdiction to entertain and adjudicate the present complaint

C. Relief sought by the complainants:

4. The complainants have sought following relief(s).
 - i. Direct the respondent to refund the payment made by the complainant along with interest at the prescribed rate from the date of such payments.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The respondent no. 1 has contested the complaint on the following grounds.
 - i. The present complaint is neither maintainable nor tenable by both law and facts. It is submitted that the present complaint is not maintainable before this Authority. The Complainants have filed the present complaint seeking refund.
 - ii. That, as far as Agreement to Sell dated 04.10.2019 is concerned, it is submitted that as the provisions of The Real Estate (Regulation and Development) Act, 2016 and The Haryana Real Estate (Regulations and Development) Rules, 2016, framed thereunder, provides that every Agreement for Sell must be registered with the concerned Sub-Registrar, but in the instant case, neither the so called Agreement to Sell is registered with any authority nor the same was ever executed by the answering Respondent No.1 at any point of time.

- iii. Even otherwise, the Complainant has alleged that he has paid an amount of Rs.20,31,000/- to the respondent No.1, and in reply to this context, it is submitted that none of the so called amount has been received by the Respondent No. 1, as per the bank statement(s) of the annexed by the Complainant. The so called amount has been transferred or paid to Respondent No.2 only.
- iv. That, even otherwise, the Complainant has no locus-standi and cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act, as shall be evident from the submissions made in the following paragraphs of the present reply.
- v. The relief sought in the complaint by the Complainant is based on false and frivolous grounds and he is not entitled to any discretionary relief from this Authority, as the person not comes with clean hands may be thrown out without going into the merits of the case.
- vi. That, it is further submitted that despite there being a number of defaulters in the project, the Respondent No. 1 itself infused funds into the project and has diligently developed the project in question. It is also submitted that the construction work of the project is swing on full mode.
- vii. That, without prejudice to the aforesaid and rights of the Respondent No. 1, it is submitted that the Respondent No. 1 would have handed over the possession of the property to the buyer within time had there been no force majeure circumstances beyond the control of Respondent No. 1, there had been several circumstances which were absolutely beyond and out of control of the Respondent No. 1 such as orders dated

16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble Punjab & Haryana High Court at Chandigarh duly passed in Civil Writ Petition No. 20032 of 2008 through which the shucking/extraction of water was banned which is the backbone of Construction Process; simultaneously, orders at different dates passed by the Hon'ble National Green Tribunal restraining thereby the excavation work causing Air Quality Index being worse, may be harmful to the public at large without admitting any liability. Apart from these, the demonetisation is also one of the main factors to delay in giving possession to the home buyers as demonetisation caused abrupt stoppage of work in many projects. The payments especially to workers to only Buy Liquid Cash. The sudden restriction on withdrawals led the Respondent No. 1 unable to cope with the labour pressure. However, the Respondent No. 1 is carrying its business in letter and spirit and in compliance of other local bodies and autonomous bodies of Haryana Government.

viii. That, it is submitted that the complaint is not maintainable or tenable under the eyes of law as the Complainant has not approached this Authority with clean hands and has not disclosed the true and material facts relates to this case of complaint. The Complainant thus, has approached the Hon'ble Authority with unclean hands and has suppressed and concealed the material facts and proceedings which have direct bearing on the very maintainability of purported complaint and if there had been disclosure of these material facts and proceedings the question of entertaining the present complaint would have not arising in view of the case law titled as S.P. Chengalvaraya Naidu Vs. Jagan Nath reported in 1994(1) SCC Page-1 in which the Hon'ble Apex Court of the land opined that non-disclosure of material facts and documents amounts to a fraud not only on the opposite party but also

upon the Hon'ble Authority and subsequently the same view was taken by even Hon'ble National Commission in case titled as Tata Motors Vs. Baba Huzoor Maharaj bearing RP No.2562 of 2012 decided on 25.09.2013.

- ix. Without admitting or acknowledging the truth or legality of the allegations advanced by the Complainant and without prejudice to the contentions of the Respondent No. 1, it is respectfully submitted that the provisions of the Act are not retrospective in nature. The provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act. It is further submitted that merely because the Act applies to ongoing projects which registered with the Authority, the Act cannot be said to be operating retrospectively. The provisions of the Act relied upon by the Complainant seeking refund and compensation cannot be called in to aid in derogation and ignorance of the provisions of the RERA Act.
- x. That, it is also worthwhile to mention here that the allegations having been levelled in this complaint are with regard to cheating and alluring which only can be decided by the Hon'ble Civil Court and in this scenario the Authority also lacks jurisdiction.

7. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

8. The present complaint was filed before the Authority on 18.01.2024. Pursuant thereto, notice was duly issued to both the Respondents. In

compliance with the said notice, Respondent No. 1 filed its reply on 19.06.2024.

9. However, despite due service of notice and grant of sufficient opportunities, Respondent No. 2 has failed to file any reply to the present complaint till date. The conduct of Respondent No. 2 clearly reflects deliberate negligence and lack of interest in contesting the proceedings before the Authority. Accordingly, in view of the continued non-appearance and failure of Respondent No. 2 to file its reply, and in order to prevent unnecessary delay in the adjudication of the present complaint, the defence of Respondent No. 2 is hereby struck off.

E. Jurisdiction of the authority:

10. The authority has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

11. 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

12. 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.

13. 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. Finding on objections raised by the respondent.

F.I Objection regarding force majeure conditions:

14. The respondent-promoter alleged that the construction of the project was delayed due to force majeure conditions such as orders of Hon'ble Supreme Court of India to curb pollution in NCR, various orders passed by NGT, EPCA and non-payment of instalment by different allottees of the project but all the pleas advanced in this regard are devoid of merit. The events such as Hon'ble Supreme Court of India to curb pollution in NCR, various orders passed by NGT, EPCA were for a shorter duration of time and were not

continuous. Thus, the promoter-respondent cannot be given any leniency on based of aforesaid reasons and plea taken by respondent is devoid of merits.

G Findings on the relief sought by the complainants.

G. I Direct the respondent to refund the paid-up amount along with interest at prescribed rate.

15. In the present complaint, the complainants intend to withdraw from the project and are seeking return of the amount paid by it in respect of subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act 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."

16. The Complainants were allotted Unit No. 102, First Floor, admeasuring 800 square feet in the project titled "Royal Homes", situated at Sector-39, Gurugram, by the Respondent/Builder for a basic sale consideration of Rs. 51,51,000/-. Against the said consideration, the Complainants have paid a total sum of Rs. 20,31,000/-, which constitutes approximately 39% of the total sale consideration.

17. A Buyer's Agreement dated 04.10.2019 was executed between the parties in respect of the said allotted unit. As per the terms of the agreement, the stipulated due date for completion of construction and offer of possession was 04.10.2022. However, the Respondent has failed to obtain the Occupation Certificate (OC) from the concerned competent authority till date and has also failed to offer possession of the said unit to the Complainant till date.
18. Aggrieved by the inordinate delay and failure on the part of the Respondent to deliver possession, the Complainant has filed the present complaint seeking appropriate directions to the Respondent to refund the balance amount of Rs. 12,31,000/-, which remains pending to be refunded. It is an admitted position that out of the total amount of Rs. 20,31,000/- paid by the Complainants, the Respondent has refunded only a sum of Rs. 8,00,000/- till date. It is further submitted that, as per Clause 2 of the Buyer's Builder Agreement, the Respondent had undertaken to refund the entire amount paid by the Complainants in the event that the construction of the building was stopped prior to handing over possession, as specifically mentioned at page 17 of the complaint.
19. However, in the present case, no Buyer's Builder Agreement was executed or registered between the parties before the concerned Sub-Registrar. It is further evident from the record that on 05.03.2020 and 28.12.2020, certain amounts were transferred to the Respondent's account, which are duly reflected as debits in the Complainant's bank account statements.
20. **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.

21. 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.
22. 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., 31.10.2025 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
23. The definition of term 'interest' as defined under section 2(za) 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;"*

24. It is pertinent to mention over here that even after a passage of more than 6 years (i.e., from the date of BBA till date) neither the construction is complete nor the offer of possession of the allotted unit has been made to the allottee by the respondent/promoter. 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 a considerable amount of money towards the sale consideration. It is also to mention that complainant has paid almost 39% of total 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.

25. 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....."

26. 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."

27. 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.
28. Accordingly, the Authority hereby directs the respondent/promoter to refund the amount of ₹12,31,000/- received by them, along with applicable interest at the rate of 10.85% 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 its actual realization within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

H. 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 casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:

- i. The respondent/promoter is directed to refund the amount of Rs.12,31,000/- received by them, along with applicable interest at the rate of 10.85% as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017, from the date of each payment till its actual realization within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.
- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
- iii. The respondent 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.

30. Complaint stands disposed of.

31. File be consigned to registry.

Dated: 31.10.2025



Arun Kumar

Chairman

Haryana Real Estate Regulatory
Authority, Gurugram