

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

Complaint no. : 2305 of 2022
Complaint filed on : 07.06.2022
Date of Decision: 12.12.2025

Raman Aggarwal & Sons (HUF)

Address: D-15, Ground Floor, Greater Kailash Enclave
II, Near Savitri Cinema, Greater Kailash, South Delhi,
Delhi-110048

Complainant

Versus

M/s Kashish Developers Limited

Office at: - Manor One, Sector-111, Dwarka
Expressway, Gurugram, Haryana

Respondent

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Ms. Priti Yadav (Advocate)

None

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 to the allottee as per the agreement for sale executed *inter se* them.

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	"Manor One" situated at Sector-111 Gurgaon.
2.	Nature of the project	Group Housing Colony
3.	Project area	14.843 acres
4.	DTCP license no. and validity status	110 of 2011 dated 16.12.2011 valid upto 13.12.2019
5.	Name of licensee	M/s Vinman Construction Pvt. Ltd. and 4 others
6.	RERA Registered/ not registered	Registered Vide 58 of 2019 dated 24.09.2019 Valid Upto 31.12.2021
7.	Allotment Letter	18.09.2012 (page 30 of the complaint)
8.	Date of apartment buyers' agreement	Not executed
9.	Unit no.	C2-12A, Twelfth floor, Block C2 (page no. 30 of complaint)
10.	Unit area admeasuring	2325 sq. ft. (page no. 30 of complaint)
11.	Possession clause	Not Mentioned

12.	Due date of possession	18.09.2015 <i>(Calculated as per Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018)</i>
13.	Total sale consideration	Rs. 1,37,91,994/- <i>(as per payment plan on page no. 31 of complaint)</i>
14.	Amount paid by the complainant	Rs. 45,12,441/- <i>(as per receipts on page no. 28-29 and 33 in complaint)</i>
15.	Occupation certificate	14.11.2025 <i>(as per TCP website)</i>
16.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That believing on the assurances, allurements and inducements of the respondent the complainant booked a flat on 6th August, 2012 in the said project and paid the amount of Rs. 10,00,000/- on 11.04.2012 & Rs. 11,42,188/- on 05.07.2012 towards booking of the flat.
- II. That the complainant was issued the letter of allotment on 18.09.2012 for unit no. C-2-12A on the twelfth floor, block-C2, tentatively admeasuring 2325 sq. ft. at the rate of Rs. 5379.03/- per sq. ft. in the project "MANOR ONE" at Sector-111, Gurugram, Haryana. The complainant was assured that the builder buyer's agreement would be forwarded in due course.

- III. Furthermore, as per the letter of allotment and schedule of payment the total sale consideration of the said unit is Rs. 1,37,91,995/- which is inclusive of PLC, IFMS, EDC & IDC, Club Membership Charges and Right to use of one Car Parking.
- IV. That the respondent through demand letter dated 24.09.2012, demanded the amount for 1st & 2nd installment and for start of excavation. The complainant cleared the due amount of Rs 23,70,253/- on 01.11.2012.
- V. That until the filing of this complaint, the complainant in total has paid an amount Rs. 45,12,441/- in accordance with the payment schedule, to the respondent. However, the possession is still not forthcoming despite the passing of almost 10 years since the launch of the project.
- VI. That even after a delay of 10 years the respondent has failed to execute the buyer's agreement. The complainant has requested and reminded the respondent several times to execute the buyer's agreement but the respondent clearly failed to do so till date. The respondent has violated the provisions of Real Estate (Regulation and Development) Act, 2016.
- VII. That the complainant had requested the officials of the respondent multiple times to disclose the exact status of the completion of the construction of the said project but to no avail. The officials of the respondent kept on evading the queries raised by the complainant on one pretext or the other.
- VIII. That the complainant visited the site of the said project in order to ascertain the status of construction of the same. However, the complainant was completely shocked and bewildered at the state of affairs prevailing at the site.

- IX. That the respondent were under obligation to deliver the possession of the unit with a reasonable period but the respondent have failed to do so and have caused inordinate delay in completing the said project, let alone the handing over the possession of the same.
- X. That as the respondent failed to discharge their duty to complete and handover the possession of the allotted unit to the complainant within the stipulated time thus they have cheated the complainant by inducing to invest the hard-earned money on believing upon their false assurances.
- XI. That due to illegal acts and conducts of the respondent the complainant had been suffered to great mental agony, physical harassment, financial loss, humiliation, hence the complainant is entitled to get refund of the amount Rs. 45,12,441/- paid by the complainant towards sale consideration of the said unit to the Respondent.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- I. Direct the respondent to refund Rs. 45,12,441/- paid by the complainant till date towards the sale consideration for residential unit in the project Manor One, situated at Sector-111, Gurugram.

D. Reply by the respondent

5. The respondent has contested the complaint on the following grounds:
- I. That the complainant approached the respondent to book a residential apartment and was subsequently allotted unit no. C2-12A, on 12th floor, area admeasuring 2325 sq. ft. in the project "MANOR ONE", Sector 111, Gurugram by way of endorsement/transfer from the previous allottee. Promoter received the environment clearance in 2013 and registered the

project in RERA on dated 24.09.2019. That the respondent was doing its best to complete the project on time and the construction was also going on in full swing, however, the bank loan of the respondent was cancelled, which was the major source of funding for the project. This hampered the construction work to a great extent as the major source of funding was lost creating circumstances beyond the reasonable control of the respondent. Further, the complainant was diligently trying to arrange for the fundings when the whole world was struck with the outbreak of Covid-19 pandemic and the Hon'ble Authority granted the grace period of 6 months by invoking 'force majeure' clause vide Order No.9/3-2020 HARERA/GGM(Admn.) dated 26.05.2020). In the Matter of Sanjay Lakra v/s SS Group (Complaint no.4359 of 2021), the Hon'ble Authority had given the 6 months grace period for Covid-19 outbreak. Thereafter, the project was financial stress project but the respondent secured funding from the SWAMIH INVESTMENT FUNDS, vide sanction Letter dated 29.01.2022 to complete the construction work. The funds have been realised and construction of project has been going on in full swing and new committed date for possession is on or before 30th June, 2024 after obtaining occupancy certificate.

- II. That the projected timelines for possession under affordable Housing policy are based on date of Statuary Approvals. It was not in the contemplation of the respondent that the force majeure would occur and the construction was also affected on account of the loss of major source of funding further NGT order prohibiting construction (structural) activity of any kind in the entire NCR by any person, private or government authority. That vide its order NGT placed sudden ban on the entry of diesel trucks which were older than ten years and said that no

- vehicle from outside or within Delhi will be permitted to transport any construction material. Since the construction activity was suddenly stopped, after the lifting of the ban it took some time for mobilization of the work by various agencies employed with the respondent.
- III. Furthermore, the Environment Pollution (Prevention and Control) Authority, EPCA, expressing alarm on severe air pollution level in Delhi-NCR issued press note vide which the construction activities were banned within the Delhi-NCR region. The ban commenced from 31/10/2018 and was initially subsisted till 10/11/2018 whereas the same was further extended till 12/11/2018.
- IV. Thereafter, the Hon'ble Supreme Court of India on 04/11/2019, while deciding the matter of "M.C. Mehta v. Union of India" banned all the construction activities. The said ban was partially lifted by the Hon'ble Supreme Court on 09/12/2019 whereby relaxation was accorded to the builders for continuing the construction activities from 6:00 am to 6:00 pm. Thereafter, the complete ban was lifted by the Hon'ble Apex Court on 14/02/2020.
- V. That the construction of the project was going on in full swing, however, the changed norms for water usage, not permitting construction after sunset, not allowing sand quarrying, shortage of labour and construction material, liquidity etc., were the reasons for delay in construction. Furthermore, the construction of the unit was going on in full swing and the respondent was confident to hand over the possession of unit before due date. However, it be noted that due to the sudden outbreak of the coronavirus (COVID 19), from past 2 years construction came to a halt and it took some time to get the labour mobilized at the site.

- VI. That the respondent had diligently applied for registration of the project in question, i.e., "MANOR ONE" located at Sector-111, Gurugram, before Hon'ble RERA Authority and accordingly, Registration Certificate dated 24.09.2019 was issued by Hon'ble RERA Authority, Gurugram.
- VII. That the construction of the project was going on in full swing, however, the changed norms for water usage, not permitting construction after sunset, not allowing sand quarrying in Faridabad area, shortage of labour and construction material, liquidity etc., were the reasons for delay in construction and after that Government took long time in granting necessary permissions owing to its cumbersome process. Furthermore, the construction of the unit was going on in full swing and the respondent was confident to hand over the possession of unit before due date. However, it be noted that due to the sudden outbreak of the coronavirus (COVID 19) since the past 2 years, construction came to a halt and it took some time to get the labour mobilized at the site.
6. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

7. The contention 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

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

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

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 objections raised by respondent.

F.I Objection regarding force majeure conditions:

13. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by Hon'ble High Court of Punjab and Haryana at

Chandigarh in CWP No. 20032 of 2008, dated 16.07.2012, 31.07.2012, 21.08.2012, lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour. In the present complaint the allotment letter was issued on 18.09.2012 and the buyer's agreement was not executed between the parties. A considerate view has already been taken by the Hon'ble Supreme Court in the cases where due date of possession cannot be ascertained then a reasonable time period of 3 years has to be taken into consideration. So, the due date is calculated from the date of allotment letter which comes out to be 18.09.2015.

14. The events such as various orders by Punjab and Haryana High Court were for a shorter duration of time and were not continuous as there is a delay of more than ten years. Therefore, said plea of the respondent is null and void. As far as delay in construction due to outbreak of Covid-19 is concerned, the lockdown came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period is not excluded while calculating the delay in handing over possession.

G. Findings on the relief sought by the complainant

- I. Direct the respondent to refund Rs. 45,12,441/- paid by the complainant till date towards the sale consideration for residential unit in the project Manor One, situated at Sector-111, Gurugram.
15. The complainant intends to withdraw from the project and is seeking return of the amount paid by him 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)

16. However, in the present matter no BBA has been executed between the parties therefore the due date of possession cannot be ascertained. A considerate view has already been taken by the Hon'ble Supreme Court in the cases where due date of possession cannot be ascertained then a reasonable time period of 3 years has to be taken into consideration. It was held in matter ***Fortune Infrastructure v. Trevor d' lima (2018) 5 SCC 442 : (2018) 3 SCC (civ) 1*** and then was reiterated in ***Pioneer Urban land & Infrastructure Ltd. V. Govindan Raghavan (2019) SC 725 :-***

"Moreover, 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 i.e., the possession was required to be given by last quarter of 2014.

Further there is no dispute as to the fact that until now there is no redevelopment of the property. Hence, in view of the above discussion, which draw us to an irresistible conclusion that there is deficiency of service on the part of the appellants and accordingly the issue is answered."

17. Accordingly, the due date of possession is calculated as 3 years from the date of allotment letter i.e., 18.09.2012. Therefore, the due date of possession comes out to be 18.09.2015.
18. The occupation certificate /part occupation certificate of the buildings/towers where allotted unit of the complainant is situated is received after filing of application by the complainant for return of the amount received by the promoter on failure of promoter to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein. The complainant-allottee has already wished to withdraw from the project and the allottee has become entitled his right under section 19(4) to claim the refund of amount paid along with interest at prescribed rate from the promoter as the promoter fails to comply or unable to give possession of the unit in accordance with the terms of agreement for sale. Accordingly, the promoter is liable to return the amount received by him from the allottee in respect of that unit with interest at the prescribed rate. This is without prejudice to any other remedy available to the allottee including compensation for which allottee may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.
19. 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. 2021-2022(1) RCR (c), 357 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, it was 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."

20. 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) of the Act. The promoter has failed to complete or 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 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 the unit with interest at such rate as may be prescribed.
21. This is without prejudice to any other remedy available to the allottee including compensation for which allottee may file an application for

adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.

22. **Admissibility of refund along with prescribed rate of interest:** The section 18 of the Act read with rule 15 of the rules provide that in case the allottee intends to withdraw from the project, the respondent shall refund of the amount paid by the allottee 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.”

23. 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.
24. 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., 12.12.2025 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
25. The authority hereby directs the promoter to return the amount received by it i.e., Rs. 45,12,441/- with interest at the rate of 10.85% (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 Rules *ibid*.

H. Directions of the authority

26. 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):

- i. The respondent/promoter is directed to refund the amount i.e., Rs. 45,12,441/- received by it from the complainant along with interest at the rate of 10.85% 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 deposited amount.
- 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.

27. Complaint stands disposed of.

28. File be consigned to registry.

Dated: 12.12.2025



(Arun Kumar)

Chairman

Haryana Real Estate Regulatory
Authority, Gurugram