

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

Complaint no. : 3222 of 2024
Date of complaint : 15.07.2024
Date of order : 27.01.2026

Ranjit Singh Saini and Sushant Saini through
SPA Holder Ranjit Singh Saini,
R/o: C-140, 3rd Floor, Sushant Lok-1,
Gurugram, Haryana.

Complainant

Versus

M/s Bestech India Private Limited
Regd. Office at: P NO. 51P, Urban Institutional
Area, Sector 44, Gurugram, Haryana-

Respondent

CORAM:

Arun Kumar
Phool Singh Saini

APPEARANCE:

Shri Sukhbir Yadav (Advocate)
Shri Ishaan Dang (Advocate)

Chairman
Member

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 allottee 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	"Park View Sanskruti"
2.	Project location	Sector 92, Gurugram, Haryana
3.	Project type	Group Housing Complex
4.	DTCP License no. & validity status	13 of 2009 dated 21.05.2009 43 of 2011 dated 16.05.2011
5.	HRERA registration	Not registered
6.	Special power of Attorney	16.08.2022 (page 140 of complaint)
7.	Allotment Letter	10.05.2013 [Page 50 of complaint]
8.	Unit no.	1002, 10 th Floor, Tower-D [Page 51 of complaint]
9.	Unit area admeasuring	2325 sq. ft. super area [As per page no. 51 of complaint]
10.	Builder-Buyer Agreement	09.08.2013 [Page 55 of complaint]
11.	Possession clause	3. Possession <i>a) That subject to terms of this clause and subject to the APARTMENT ALLOTTEE(S) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and further subject to compliance with all provisions, formalities, registration of sale deed, documentation, payment of all</i>

		<p><i>amount due and payable to the Developer by the APARTMENT ALLOTTEE(S) under this agreement etc., as prescribed by the Developer, the Developer proposes to offer the possession of the APARTMENT within a period of Thirty Six (36) months from the date of signing of this Agreement or from the date of approval of Building Plans by Town and Country Planning Department, whichever is later. It is clearly understood and agreed by the APARTMENT ALLOTTEE(S) that the Developer shall be entitled for grace period (beyond a period of 36 months) of Six (6) months. It is however understood between the parties that the possession of various Towers comprised in the Complex as also the various common facilities planned therein shall be ready & completed in phases and will be handed over to the APARTMENT ALLOTTEE(S) of different Towers as and when completed and in a phased manner.</i></p> <p>[Page 49 of complaint]</p>
12.	Date of Building Plan	04.05.2013
13.	Due date of possession	09.02.2017 (grace period is allowed)
14.	Total sale consideration	Rs. 1,53,26,425/- [Page no. 91 of complaint]
15.	Amount paid by the complainant	Rs. 45,00,000/- [Page no. 101 of complaint]
16.	Occupation certificate	19.06.2018 [Page 157 of reply]
17.	Reminders	01.08.2014, 16.08.2014, 01.09.2014, 04.11.2014, 06.01.2015, 21.01.2015,

		05.02.2015,07.04.2015, 23.04.2015, 19.08.2015,
18.	Cancellation:	26.06,2014 & 31.08.2015 (page 92 of complaint and page 128 of reply)

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- I. That the respondent through several vigorous advertisements & agents, and promotion of the aforesaid project assuring, time-bound allotment, construction, possession as well as easy payment plans solicited innocent buyers to book residential apartments in the project.
- II. That the authorized dealer/representative of the respondent had approached the complainants in the year 2012 and apprised the complainants about the respondent's group housing complex under the name and style of "PARK VIEW SANSKRUTI" situated at Sector-92, Village Wazirpur, Tehsil & District Gurgaon, Haryana, and represented that the said project would be completed by August 2016 as the construction of the project is in full swing. On these assurances, The complainant Ranjit Singh Saini along with co-allottee Sushant Saini booked apartment no. 1002 Tower No. D on 10th Floor type 4BHK+3T+SQ having a super area of 216 sq. mtrs (2325 Sq. Ft.) with two covered car parking spaces in the project "PARK VIEW SANSKRUTI" at Sector - 92, Gurgaon, Haryana, vide application dated 10.05.2013. The basic sale consideration of the unit was Rs. 1,31,24,625/- and the total sale consideration of the unit was Rs. 1,53,26,425/-.
- III. That along with the application form the complainants made a payment of Rs. 20,00,000/- in favour of the respondent through 7 Cheques dated

22.11.2012, 29.11.2012, 18.04.2013, 16.04.2013, 16.04.2013 & 10.05.2013 respectively. The respondent issued payment receipts against said payment.

- IV. That on 10.05.2013, the respondent issued an allotment letter in favour of the complainants by allotting a flat No. 1002, Tower – D, in the project Park View Sanskruti, situated in Sector – 92, Gurgaon.
- V. That it is pertinent to mention here that at the time of booking of the apartment in question, the respondent was not the owner of the land in question upon which the aforesaid project was proposed to be developed. The respondent has been declared to be lawful and absolute owner of the said land in question vide court decrees dated 28.05.2013 & 27.05.2013 passed by the court of Shri Joginder Singh, Civil Judge, Gurgaon in Civil Suit No. 383/2012 and 384/2012 in cases titled "M/s Spring Water Properties Pvt. Ltd. Versus M/s Bestech India Pvt" respectively. From the aforesaid, it is crystal clear that on the date of booking the apartment in question, the respondent was not the owner of the land in question and he was legally not competent to receive any amount from the Complainants for the purchase of the apartment in question. The respondent's intention was only to cheat the innocent buyers including the Complainants from the very beginning so that the complainants could run from pillar to post to receive any amount from the complainants for the purchase of the apartment in question. The complainants reserves his legal right to file a criminal complaint against the respondent for cheating, criminal breach of trust, etc. in a competent court of law.
- VI. That after issuance of the allotment letter the complainants made another payment of Rs. 4,00,000/- on 23.05.2013 to the respondent and the respondent issued a payment receipt on 03.08.2013. After receipt of a huge amount i.e. Rs. 24,00,000/-, an ex-facio, arbitrary and one-sided

Apartment buyer's agreement was executed on 09.08.2013 between the respondent and the complainants. It is pertinent to mention here that as per clause 3 (a) of said apartment buyer agreement, the respondent has to give the possession of the said flat within a period of Thirty-Six (36) months from the date of signing of the agreement or from the date of approval of building plans whichever is later. It is pertinent to mention here that the building plans for the project were approved by the concerned department on 03.01.2013 and BBA was executed on 09.08.2013, therefore the due date of possession was 09.08.2016.

VII. That after a gap of 10 months approximately, the complainants were shocked and surprised to see that the respondent cancelled the flat in question by way of sending a cancellation letter dated 26.06.2014 to the Complainants by taking a false plea that the complainants had not deposited the payment of installments towards balance sale consideration despite repeated requests and reminders. It is relevant to mention here that till 26.06.2014 the construction of the project has not been started and the complainants have not received any single notice whatsoever for payment of any installments. The complainants approached the respondent various times to know about the fate of the construction but every time the respondent made a false assurance that the construction of tower No. D would start in full swing. The respondent also told the complainants that when the basement floor roof slab was cast then they called the complainants to make further payment as per the construction-linked plan of the project.

VIII. That after receiving the aforesaid cancellation letter, the complainants went to the respondent's office and asked about the reason for the cancellation of the flat in question without informing the complainants and without raising any construction of the Tower - d in the project. The

respondent told the complainants that if the complainants will deposit the due amount, then they can withdraw the same and if the complainants will not deposit the due amount, then they will forfeit the entire money deposited by the complainants. The complainants have been left with no option, but to make the payment as demanded by the respondent, the respondent assured the complainants that the said cancellation notice is to be automatically withdrawn. The complainants with all bonafide intentions made the payments as demanded by the respondent with the hope that the possession would be given as per BBA. The complainants paid Rs. 10,00,000/- on 11.07.2014 and the respondent issued payment receipts against the said payment and TDS.

- IX. That on 01.10.2014 the complainants paid Rs. 6,95,000/- through two cheques and the respondent issued the payment receipts on same date. Further on 16.10.2014, the complainants made another payment of Rs. 3,94,000/- and the respondent issued the payment receipt against the said payment.
- X. That the respondent at the time of receiving the aforesaid booking amount besides other representations and assurances reaffirmed and reassured about the timely delivery of the possession of the said apartment within the period of 36 months from the date of receiving the booking amount i.e. up to 08.08.2016.
- XI. That despite making payments to the respondent as demanded by them from time to time, the complainants were never given satisfactory replies to the queries raised by the complainants regarding the status of construction. The respondent instead gave evasive replies and further threatened the complainants despite facing such a callous attitude on the part of the respondent, made timely payments to the respondent as demanded by them. The last payment/installment was made on

01.11.2014. Thereafter, the Complainants approached the respondent and enquired about the status of construction but no satisfactory reply was given by the respondent to the complainants and they kept lingering the matter on one pretext or the other. It is pertinent to mention here that as per the statement of account dated 19.03.2015, the complainants have paid Rs. 45,00,000/- to the respondent.

- XII. That after more than two months, the complainants received a frivolous demand notice dated 21.01.2015 from the respondent by which they demanded the due amount of Rs. 45,62,580/- (including principal amount of Rs. 38,29,717/- and interest Rs. 6,84,197/- plus service tax @3.708% i.e., Rs. 48,666/-). In the said notice, they have not stated about the status of construction and demanding illegally the due amount.
- XIII. That after receiving the aforesaid notice, the complainants approached the respondent company immediately to know about the status of construction. However, at this time, respondent told the complainants that due to some technicalities raised by the Government, the construction will not start and it will take some more days to start. The respondent also told the complainants not to make a payment and ignore the said notice received by him.
- XIV. That again on 20.02.2015, respondent sent a frivolous demand notice to the complainants and again raised the demand of Rs. 51,03,076/- by stating therein that "on casting of 10th-floor roof slab". At this time the complainants were shocked and surprised to see that the respondent was interested only in taking money without raising any construction of the project. In the said notice, the respondent disclosed falsely about the status of construction so they will raise the illegal demand from the buyer where as per the site, no such roof slab was constructed there. This fact clearly shows the act and conduct of the respondent became malafide in

order to cheat the innocent buyers including the complainants.

- XV. Thereafter the complainants visited the office of the respondent several times to know about the status of construction but no satisfactory reply was given. At this time the complainants requested the respondent to refund their money with interest at 18% per annum from the date of deposit but the respondent had straightaway refused to refund the money with interest to the complainants and threatened to cancel of apartment.
- XVI. That thereafter on 18.06.2015, respondent sent a frivolous demand notice to the complainants and again raised the demand of Rs. 63,50,101/- by stating therein that "on casting of 14th floor roof slab". At this time the respondent again mentioned the false status of the construction in the said notice so that they would raise the illegal demand from the buyers where as per the site, no such roof slab was constructed there. This fact clearly shows the act and conduct of the respondent become malafide.
- XVII. That as per clause 3(a) of the Apartment Buyer's Agreement dated 09.08.2013, the respondent promised to deliver the possession within 36 months from the date of execution of the above-said agreement i.e., 08.08.2016. It is pertinent to mention here that since February 2015 the complainants have been asking for a refund of the paid amount along with interest.
- XVIII. That the complainants were assured by the respondent that the possession of the above-mentioned unit would be given within 36 months even the respondent assured the complainants that the construction of the project was in full swing with double shift but it was all in vain. Despite promising several times and despite the written commitments made in the independent buyer's agreement, the respondent failed to deliver the possession as promised and a new date for delivery of the unit was informed to the complainants whenever the complainants visited their

office.

- XIX. That on account of not raising construction as per construction linked payment plan, the complainants immediately stopped making any payment to the respondent and asked the respondent to give in writing as to when the construction will be complete in all respects. The respondent refused to give anything in writing and demanded the due amount from the complainants.
- XX. That it is pertinent to mention here that in the month of April, 2022, the complainants came to know that the respondent illegally transferred the flat in question to Mr. Nitish Mishra & Ankita Mishra and executed a sale deed dated 19.11.2019 in their favour for a total consideration of Rs. 76,72,500/-. In the said sale deed, there was a date mentioned on which the occupation certificate was issued to the respondent. It is pertinent to mention here that the respondent sold the flat in question to the complainants for a total consideration of Rs. 1,53,26,425/- and the same flat was sold to the new purchaser for Rs. 76,72,500/- after a period of six years in almost half of the price. The respondent cheated the complainants in all respects by taking the money double from the complainants as compared to latest sale deed in which they took half the amount from the subsequent purchaser. The complainants applied the certified copy of the sale deed dated 19.11.2019 which was received by them on 22.04.2022.
- XXI. It is pertinent to mention here that in the aforesaid sale deed dated 19.11.2019, the occupation certificate with regard to the project in question has been granted by the director, Town and Country Planning, Haryana vide memo no. ZP-557/SD(BS)/2018/18105 dated 19.06.2018. This fact alone clearly shows that the construction of the project was not complete as per the buyer agreement and therefore the complainants are entitled to a full refund of the amount with interest, compensation, etc.

Needless to mention the said act and conduct of the respondent amounts to cheating which invites prosecution of the respondent under provisions of I.P.C. The complainants reserve their right to take appropriate action in this respect as the respondent is acting in the aforesaid illegal manner just to illegally withhold the money which is required to be paid to the complainants. In this way, the respondent cheated the innocent buyers including the complainants by taking the money illegally.

- XXII. That it is relevant to mention here that the complainants also came know to come that the respondent applied for an occupation certificate for the various towers including Tower-D on 04.02.2021 in which the flat in question was there. The Director, Town and Country Planning, Haryana vide memo no. ZP-557/SD(DK)/2021/32363 dated 21.12.2021 issued an occupation certificate to the project in question which shows that the possession of the flat in question was not delivered up to 21.12.2021 i.e. after almost 8 years from the date of execution of the apartment buyer's agreement. This fact alone shows that the sale deed as above was executed illegally without an occupation certificate without informing the complainants and therefore the respondent has to refund the money with interest to the complainants.
- XXIII. That it is pertinent to mention here that the respondent has illegally withheld the amount of Rs. 45,00,000/- without raising any construction till the specified time as promised and therefore, he is liable to pay future interest @ 18% per annum on the amount deposited with them till the date of its refund. The respondent has committed fraud upon the complainants and has misappropriated the amount deposited by the complainants for almost a period of nine years.
- XXIV. However, the respondent despite all requests and reminders from the complainants has failed to refund the amount with interest and has been

making wrongful gains at the cost causing huge monetary losses to the complainants as the complainants had invested their hard-earned savings in the said apartment. It is pertinent to mention here that the complainant Ranjit Singh Saini visited several times to the office of the respondent to get a refund of the paid amount, but all went in vain.

- XXV. That the complainants on account of failure on the part of the respondent to commence the construction as well as timely payment of the refund has suffered huge monetary loss/damages for which the respondent is liable to compensate the complainants. The complainants had made the payments as and when demanded by the respondent out of bonafide intentions being totally unaware of the wrongful and malafide intentions being totally unaware of the wrongful and malafide intentions of the respondent. The respondent has been practicing such unlawful and unfair trade practices besides being fraudulent and dishonest.
- XXVI. That the complainants further declare that the matter regarding which the present complainants has been made is not pending before any court of law and any other authority or any other tribunal on the subject matter. The complainants filed Consumer Complaint No. 38 of 2022 before the Hon'ble State Consumer Dispute Redressal Commission at Panchkula which was withdrawn by order dated 08.07.2022 with liberty to file the fresh one on the same cause of action before the appropriate authority.
- XXVII. That on 12.09.2022, the complainant Ranjit Singh Saini filed a complaint before this Hon'ble Authority vide CRN 6295 of 2022 and the same was dismissed vide order 15.03.2024 on account of non-joinder.

C. Relief sought by the complainant:

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

- i. To pass an order in his favor by directing the respondent party to refund the paid amount along with interest from the date of each payment till the realization of the money.

D. Reply by respondent:

5. The respondent vide reply and written submissions dated 07.11.2024 contested the complaint on the following grounds:

- i. That the present complaint raises issues of such a nature which cannot be decided by way of summary proceedings contemplated under the Act. The said issues require extensive evidence to be led by both the parties and examination and cross-examination of witnesses for proper adjudication. Therefore, the disputes raised in the present complaint are beyond the purview of the Act and can only be adjudicated by the Civil Courts. The present complaint deserves to be dismissed on this ground alone.
- ii. That the complainants are investors and defaulters and not "aggrieved person" under the Act and as such the present complaint is not maintainable at his behest. The complainants never intended to reside in the apartment in question but have invested in the same for taking benefits after resale of the apartment. Complainant no. 2 does not even reside in India. However, due to recession in the real estate market, the complainants could not get desired benefits and defaulted in the payments towards respondent. This is evident from the fact that complainants had made total payment of Rs.45 lacs out of which payment of Rs.42,83,996/- was made towards two time linked instalments. Thereafter, partial payment of Rs.2,16,004/- was paid towards the first construction linked demand of Rs.13,61,129/and that too not on time but very late. The last payment was made on 01.11.2014 much before the so-called due date of possession according to the complainant.

- iii. That the respondent is a reputed and renowned real estate developer, enjoying an impeccable reputation in the real estate industry for the disciplined and time bound execution of projects undertaken by it. The projects implemented by the respondent are considered to be architectural landmarks. The respondent has successfully developed residential, commercial and IT projects in Gurgaon after obtaining necessary permissions and approvals from the competent authorities in accordance with law. The associate companies of the respondent have also constructed and made operational Radisson Hotels in Gurgaon, Indore (Madhya Pradesh), Mohali and at Nagpur. The respondent has promoted and developed "Bestech City" a duly approved residential colony in Dharuhera, District Rewari.
- iv. That the complainants, had approached respondent and evinced an interest in purchasing a residential unit in the duly licensed residential project promoted and developed by the respondent known as "Park View Sanskruti" located in Sector 92, Gurgaon, Haryana. Prior to making the booking, the complainants had made elaborate and detailed enquiries with regard to the nature of sanctions/permissions obtained by the respondent for the purpose of undertaking the development/implementation of the residential project referred to above. The complainants took an independent and informed decision, uninfluenced in any manner by the Respondent to book the apartment in question.
- v. That the complainants had approached the respondent through property broker/dealer, Planet Landbase Pvt. Ltd., after making independent enquiries and duly satisfying themselves regarding the viability and suitability of the aforesaid project as per their needs and requirements as well as the capability of the respondent to undertake the project.

- vi. That the complainants were provided with the application form containing the terms and conditions of provisional allotment and the complainants were given the opportunity to familiarize themselves with the same. Clause 11 of the terms and conditions of booking was specifically brought to the complainants notice which provided that timely payment of instalments/balance sale consideration/security deposits/charges, shall be the essence of the contract. it was specifically emphasized by the officials of the respondent that interest @ 18% per annum, compounded annually shall be levied on delayed payments and that in the event of delay in payment of outstanding amount along with interest, the allotment was liable to be cancelled and earnest money, interest accrued and brokerage was liable to be forfeited.
- vii. That the attention of the complainants was also drawn to Clause 12 of the terms and conditions of booking that specifically provides that possession of the apartment was proposed to be offered by the respondent, within 42 months (including grace period of 6 months) from the date of approval of building plans or date of execution of the Buyer's Agreement, *whichever is later*, subject to timely payment of the sale price and other charges as per the Payment Plan. The terms and conditions as set out in the application form were accepted by the complainants and, the complainants agreed and undertook to scrupulously comply with the same.
- viii. That after fully satisfying themselves with regard to all aspects of the project including but not confined to the capacity/capability of the respondent to successfully undertake the construction, promotion, implementation of the residential project, the complainants had proceeded to book the property in question.
- ix. That the respondent had provisionally allotted apartment bearing no.D-1002, admeasuring 2325 sq. ft. of super area (approx.), situated on the

- 10thFloor in Tower D in Park View Sanskruti, Sector 92, Gurgaon on receipt of the booking amount and on submission of the application form.
- x. That the complainants had opted for a payment plan that was partly construction linked and had agreed and undertaken to pay the instalments as and when demanded by the respondent. The complainants duly understood and accepted the terms and conditions of booking which were incorporated in the application form and undertook to be bound by the same.
 - xi. That buyer's agreement in respect of the apartment was dispatched to the complainants for execution under cover of letter dated 01.08.2013. The buyer's agreement was willingly and consciously executed by the complainants on 09.08.2013.
 - xii. That right from the very beginning, the complainants were extremely irregular as far as payment of instalments was concerned. The respondent was compelled to issue demand notices, reminders etc, calling upon the complainants to make payment of outstanding amounts payable by the complainants under the payment plan opted by the complainants. The respondent issued various payment demands and reminder letters to the complainants. The Demand notices clearly mentioned the milestone of construction achieved hence status of construction was duly informed to the complainants vide demand notices and otherwise.
 - xiii. That it is pertinent to mention herein that the complainants were specifically called upon to make complete payment of outstanding dues and that part payment would attract delayed payment interest on the unpaid amount. However, the complainants ignored the reminders issued by the respondent. Thus, on account of the willful and persistent defaults by the complainants in refusing to make the payment as per the applicable

payment plan, the allotment in favour of the complainants was cancelled on 26.06.2014.

- xiv. That the complainants approached the respondent and requested the respondent to reinstate the allotment in their favour. The complainants pleaded financial difficulty and assured the respondent that they would clear their outstanding dues and that they would make future payments in a timely manner, in accordance with the payment plan. However, despite the assurances and representations made by the complainants, only part payment of Rs9,90,000/- was made against the then outstanding amount.
- xv. That the respondent issued further demands for payment as well as reminders to the complainants but the same were wilfully ignored by the complainants.
- xvi. That on account of willful and persistent defaults by the complainants despite repeated opportunities to rectify their defaults, the respondent was constrained to cancel the provisional allotment in their favour vide cancellation notice dated 31.08.2015. The complainants were informed that the amounts paid by the complainants stood forfeited in accordance with the terms and conditions of booking. The complainants were informed that the complainants were not left with any right, title or interest in the apartment in question. The said cancellation letter was also sent to the complainants at the email address provided by them by way of abundant caution. The cancellation letter was duly received by the complainants but the complainants neither contacted the respondent nor did they take any legal action to challenge the cancellation notice sent by the respondent.
- xvii. That although under no legal obligation to do, nevertheless as a gesture of goodwill, the respondent sent a letter dated 19.02.2019 (**Annexure R11**)

informing the complainants that the project had received the occupation certificate from Directorate of Town and Country Planning, Haryana, Chandigarh and that the Complainants could obtain possession of the unit in question on payment of balance consideration. Thus, the complainants were given yet another opportunity to reinstate the allotment of unit subject to payment of balance amounts as per the buyer's agreement. However, the complainants failed to make any payment and in fact did not even bother to contact the respondent.

- xviii. That in the meanwhile, the respondent was compelled to sell the unit in question at a substantial loss. The unit was further resold for sale consideration of Rs.80,11,975/- whereas at the time of the booking by the complainants the unit had been sold at the price of Rs.1,53,26,425/- (exclusive of applicable taxes and other charges payable at the time of possession). The respondent reserves its rights to seek damages and compensation for the losses suffered by it including but not limited to loss of Rs.73,14,450/- in terms of sale price, by filing a complaint before the Hon'ble Adjudicating Officer.
- xix. That from the averments made hereinabove it is evident that the respondent has made every effort to accommodate the complainants by repeatedly granting them extension of time in making payment of installments which was required to be paid by the complainants. There is no breach or default whatsoever that can be legitimately imputed to the respondent.
- xx. That thus the allegations levelled by the complainants against the respondent are totally baseless and do not merit any consideration by the Authority. The complainants have failed to make the payments as per the agreed payment plan. The complainants have admittedly till date only made payment of Rs.43,70,611/- plus Rs.1,29,389/- as taxes against the

consideration amount of Rs.1,53,26,425/- (exclusive of applicable taxes and other charges payable at the time of possession).It is ridiculous on the part of the complainants to claim failure in delivery of possession of the said apartment in question by paying approximately less than 20% of the sale consideration.

- xxi. That it is submitted that the project in question has been completed on time and there has been no delay on the part of the respondent in offering possession to the other allottees of the project who have paid all the dues.On the contrary, the respondent had completed construction of the project and applied for the occupation certificate in respect of the same from the competent authority on 30.06.2017 itself. Occupation Certificate has also been granted by the competent authority. Actually, the complainants never had sufficient funds to make payment of the sale consideration and have proceeded to make false and baseless allegations against the respondent so as to try and cover up their own lapses and willful defaults.
- xxii. That the following circumstances (which were beyond the reasonable control of the respondent) will comprehensively establish that no lapse can be attributed to the respondent insofar implementation of the aforesaid project by the respondent is concerned:
- a) After issuance of the licences bearing No 13 of 2009 dated 21.5.2009 (**Annexure R14**) and Licence no 43 of 2011 dated 13.5.2011 (**Annexure R15**) for setting up of a Group Housing Complex on land measuring approximately 12.78 acres, the Town & Country Planning Department approved the combined Zoning Plan of the complex vide letter dated 3rd of September 2011 (**Annexure R16**) and the combined Zoning Plan dated 3rd of September 2011(**Annexure R17**) was also approved by the Department. It

shall not be out of place to mention that at that stage the respondent was unaware of the existence of gas pipeline running across the project. Even said combined Zoning Plan dated 3rd September 2011 the Town & Country planning Department failed to earmark the Gas Pipeline running through the land forming part of the complex. Based on said zoning plan the respondent prepared the building plans for the complex and subsequently applied for sanction of the building plans vide letters dated 22nd of November 2012 and 29th of January 2013. Building Plans with respect to the complex were sanctioned by the Town & Country planning Department vide memo bearing number ZP-577/JD(BS)/2013/38657 dated 4th of May 2013.

- b) That it is pertinent to mention that even till this stage the gas pipeline running through the complex was not earmarked by the Town & Country planning Department in the said site plan forming part of the Building Plans approved by the Town and country Planning Department Haryana.
- c) That it is only when the respondent started excavations of the site for the purpose of carrying out the construction of the complex, somewhere in the month of April/May 2013, the officers of GAIL approached the site and raised objections and apprised the respondent with regard to existence of the gas pipeline running through the complex. The respondent made enquiries from GAIL as well as Town and Country Planning Department and explored options for possibility of shifting of the said Gas Pipeline. It was conveyed by GAIL that the shifting of Gas pipeline was not possible. It is pertinent to mention that at this stage the respondent once again approached the Town and Country Planning Department for

revision of site plan of the Complex. The Town and Country Planning Department advised the respondent that since location of only one tower was to be realigned, the respondent could safely commence construction of the complex in its entirety after shifting the location of Tower H so as to build it beyond the prohibited distance from the Gas Pipeline. The respondent was further intimated by Town and country Planning Department Haryana, that after completing the construction of the Complex the respondent could apply for occupation certificate and at that stage necessary modifications shall be incorporated in the competition drawings of the complex. With this assurance the respondent commenced the construction of the complex.

- d) That the process of planning for changing/revising/modifying the building plans/soil testing and shifting of the location of Tower H and services/ basement entry etc. of the Complex took several months due to which the construction could not be carried. Despite this, the respondent was able to complete the construction and applied for occupation certificate on 30th of June 2017.
- e) That after approaching the Town & Country Planning Department, the Department, for issuance of Occupation Certificate, contrary to the assurance given in the beginning, directed the respondent to get the plans revised with respect to the complex. Thus, the respondent first applied for revision of the building plans.
- f) That the sanction of the said revised plans was granted by Town & Country planning Department vide memo bearing number ZP-577/Vol-I/SD(BS)/2017/ 17366 dated 20th of July 2017.
- g) That though the building plans with respect to the complex were revised in July 2017, considerable time was taken by Town &

Country Planning Department to issue Occupation Certificate with respect to the Complex.

- h) That it shall not be out of place to mention that vide order 08.11.2016 (**Annexure R24**) Haryana State Pollution Control Board, in compliance of order dated 08.11.2016 of Hon'ble National Green Tribunal, directed all construction activity in Delhi NCR to be stopped due to rise in pollution levels. The construction activity was stalled for almost 7 to 10 days' which led to demobilisation of the labour force at site due to which the construction activities almost came to stand still for a period of almost 1 month.
- i) That in light of facts submitted above, documents appended and contractual stipulations agreed between the parties it has been amply demonstrated that there has not occurred any delay whatsoever in the implementation of the project by the respondent. Even otherwise the facts and circumstances of the present case are required to be harmoniously construed in their correct perspective. In the entire sequence of events, the respondent has conducted itself in a diligent and prompt manner. The existence of the Gas Pipeline had never been disclosed to the respondent by the land owner with whom the respondent had entered into contractual arrangement for undertaking the implementation of the project.
- j) That it needs to be appreciated that no corresponding advantage would have been derived ever by the respondent by conceptualising the Tower H of the project within prohibited distance of the Gas Pipeline. In fact, the respondent bona fide and genuinely believed that it would be able to undertake the implementation of the project on the basis of plans initially drawn up and sanctioned. Consequently, there does not exist any circumstance which

warrants that any financial liability or penalty or fine be imposed upon the respondent or for that matter any financial benefit in the shape of compensation or by any other means be made available to the complainants.

k) That from the facts and circumstances set out in the preceding paras, it is evident that the respondent has acted strictly in accordance with the terms and conditions of the contract between the parties. There is no default or lapse on the part of the respondent. The allegations made in the complaint by the complainants are fabricated and concocted with a view to justify their own breaches and lapses. The Complainants are chronic defaulters and cannot be permitted to take advantage of their own wrongdoing. The complainants are not entitled to any refund or interest under RERA. This is without prejudice to the submission of the respondent that RERA is not applicable to the project in question and that the delay, if any, has been caused due to reasons which were wholly beyond the power and control of the respondent.

6. All other averments made in the complaint were denied in toto.
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.

E. Jurisdiction of the authority:

8. 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

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 allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

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

Section 34-Functions of the Authority:

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

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.
12. 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."

13. 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:

F.I To pass an order in his favor by directing the respondent party to refund the paid amount along with interest from the date of each payment till the realization of the money.

14. The complainants, Ranjit Singh Saini and Sushant Saini, booked a residential apartment in the respondent Bestech India Pvt. Ltd.'s project "Park View Sanskruti" at Sector-92, Gurugram, in 2013 on the assurances of timely construction and possession by August 2016. Relying on these representations, they paid a total sum of Rs. 45,00,000/- under a construction-linked plan. However, the respondent was not the lawful

owner of the land project at the time of booking, failed to commence construction as promised, issued arbitrary and false demand notices, illegally cancelled the allotment, and compelled the complainants to make further payments under threat of forfeiture. Despite repeated requests, possession was never offered within the stipulated period, nor was any refund made. Instead, the respondent subsequently sold the same flat to third parties at a substantially lower price, allegedly without a valid occupation certificate. Therefore, the complainants, having suffered prolonged financial loss and mental agony, seek refund of the entire amount paid along with interest.

15. On the contrary, the respondent contends that the occupation certificate for Tower D (Tower 4) was duly received on 19.06.2018. The respondent challenges the maintainability of the complaint on the grounds of an invalid and unstamped Special Power of Attorney, non-joinder of a necessary party, and previous dismissal of a similar complaint. It is further alleged that the complainants are chronic defaulters who failed to make payments as per the agreed payment plan, having paid less than 20% of the total sale consideration. Due to persistent defaults despite repeated reminders and opportunities, the allotment was cancelled in accordance with the terms of the Buyer's Agreement and the unit was subsequently resold at a substantial loss. they have completed the project on time, obtained all necessary approvals, and offered possession to compliant allottees.
16. Now the question arises whether the cancellation made by the respondent is valid or not. It is important to note that after the cancellation, on

19.02.2019, the respondent sent a letter of offer of re-instatement to complainant stating the OC has been received, make the outstanding dues and we will hand over the possession within 4 weeks, clearly renders the said cancellation self-contradictory and legally unsustainable. Once the allotment stood terminated due to alleged non-payment, there could be no occasion for the respondent to offer possession of the same unit unless the termination was treated as non-est or waived by the respondent itself. Therefore, the cancellation made by the complainant is invalid in the eyes of law.

17. In the present complaint, the complainants intend to withdraw from the project and are seeking return of the amount paid by him in respect of subject unit along with interest at the prescribed rate as provided under the proviso to section 18(1) of the Act. Section 18(1) proviso reads as under:

“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, —

*.....
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.”*

18. The section 18(1) is applicable only in the eventuality where the promoter fails to complete or unable to give possession of the unit in accordance with terms of agreement for sale or duly completed by the date specified therein. This is an eventuality where the promoter has obtained occupation certificate from the competent Authority and on demand of due payment, the allottee wishes to withdraw from the project and demand return of the

amount received by the promoter in respect of the unit with interest at the prescribed rate.

19. It has come to the notice of the Authority that the complainant had earlier filed Complaint No. CR/6295 of 2022 before the Authority, which came to be dismissed vide order dated 15.03.2024 on the technical ground that the co-allottee had not been impleaded as a necessary party. The said dismissal was not on the merits of the case but only on account of a procedural defect. Thereafter, the present complaint has been filed on 15.07.2024 after curing the said defect by impleading the co-allottee. Since the earlier complaint had been diligently pursued and the cause of action remained the same, the complainant cannot be made to suffer for a mere technical lapse. Therefore, the relief of refund of the deposited amount along with interest ought to be considered from the date of filing of the earlier complaint in 12.09.2022, as the complainant had already invoked the jurisdiction of the Authority at that time and had continuously pursued the remedy.
20. The due date of possession as per agreement for sale as mentioned in the table above is 09.02.2017. The allottees in this case has filed the earlier complaint on 12.09.2022 as discussed above after obtaining occupation certificate from the competent Authority on 19.06.2018. As per the section 19(10) every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be. In the present case, the complainants did not take the possession as they had objection to completion of the unit as well as demands which were raised by

the respondent. It is pertinent to mention here that the allottee never earlier opted/wished to withdraw from the project even after the due date of possession and the obtaining of occupation certificate.

21. The right under section 18(1)/19(4) accrues to the allottees on failure of the 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. If allottees have not exercised the right to withdraw from the project after the due date of possession is over till the offer of possession was made to them, it impliedly means that the allottees tacitly wished to continue with the project. The promoter has already invested in the project to complete it. Although, for delay in handing over the unit by due date in accordance with the terms of the agreement for sale, the consequences provided in proviso to section 18(1) will come in force as the promoter has to pay interest at the prescribed rate of every month of delay till the handing over of possession and allottee's interest for the money they have paid to the promoter is protected accordingly and the same was upheld by in the judgement of the Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)*** reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022***, it was observed:

"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"

22. 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. This judgement of the Supreme Court of India recognized unqualified right of the allottees and liability of the promoter in case of failure 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. But the complainant-allottee failed to exercise his right although it is unqualified one. The complainant has to demand and make his intentions clear that he wishes to withdraw from the project. Rather tacitly wished to continue with the project and thus made himself entitled to receive interest for every month of delay till handing over of possession. It is observed by the authority that the allottee invest in the project for obtaining the allotted unit and on delay in completion of the project never wished to withdraw from the project and when unit is ready for possession, such withdrawal on considerations other than delay such as reduction in the market value of the property and investment purely on speculative basis will not be in the spirit of the section 18 which protects the right of the allottees in case of failure of promoter to give possession by due date either by way of refund if opted by the allottees or by way of delay possession charges at prescribed rate of interest for every month of delay.
23. The authority has observed that the respondent has occupation certificate on 19.06.2018 but the complainants want to surrender the unit and refund the amount paid by them. Keeping in view the aforesaid circumstances, that the respondent builder has already obtained occupation certificate from the

competent authority, and judgment of *Ireo Grace Realtech Pvt. Ltd. v/s Abhishek Khanna and Ors. Civil appeal no. 5785 of 2019 decided on 11.01.202*, it is concluded that if allottees still want to withdraw from the project, the paid-up amount shall be refunded after deduction as prescribed under the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018, which provides as under:

"5. AMOUNT OF EARNEST MONEY

Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment /plot /building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."

24. Keeping in view the aforesaid factual and legal provisions, the respondent is directed to refund the paid-up amount of Rs. 45,00,000/- after deducting 10% of the sale consideration of Rs. 1,53,26,425/- being earnest money along with an interest @10.80% 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 on the refundable amount, from the date of filing of earlier complaint i.e., 12.09.2022 requesting for refund of the amount till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

G. Directions of the Authority:

25. 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 is directed to refund the paid-up amount of Rs. 45,00,000/- to the complainant after deducting 10% of the sale consideration of Rs. 1,53,26,425/- as earnest money with interest at the prescribed rate i.e., 10.80%, from the date of filing of earlier complaint i.e., 12.09.2022 till the date of realization of payment.
 - 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.
26. The complaints stand disposed of.
27. Files be consigned to the registry.



Phool Singh Saini
Member



Arun Kumar
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 27.01.2026

HARERA
GURUGRAM