

BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 5037 of 2024
Date of decision : 31.10.2025

Atul Kumar

R/o: - House No. GF02 Tower-1, Parsvnath Green,
Sohna Road, Gurgaon

Complainant

Versus

M/s SS Group Pvt. Ltd.

Office: 77 SS House, Sector-44 Gurugram

Respondent

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Complainant in person

Sh. Venket Rao and Gunjan Kumar

Counsel for Complainant

Counsel for Respondent

ORDER

1. The present complaint dated 09.10.2024 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	"The Leaf", Sector - 85 Gurugram.
2.	Project area	11.093 Acre
3.	Nature of the project	Group Housing complex
4.	DTPC License no.	81 of 2011 dated 16.09.2011
	Validity up to	15.09.2024
	Licensed area	11.9 Acres
5.	RERA Registered/ not registered	Registered vide no. 23 of 2019 dated 01.05.2019
6	Unit no.	1-B, 1 st floor [Page 20 of the complaint]
7	Unit area admeasuring	2600 sq. ft. [Page 20 of the complaint]
8	Flat Buyer's Agreement	22.08.2013 [Page 19 of the complaint]
9	Possession clause	8.1 Possession <i>Within 36 months from the date of execution of agreement plus 90 days grace period for applying the OC in respect of group housing complex.</i>
10	Due date of possession	22.08.2016
11	Total sale price	Rs. 1,42,29,000/- [as per payment plan on page 21 of the complaint]

12	Amount paid by the complainant	Rs.41,61,497/- [Page 46 of the complaint]
13	Occupation certificate	24.08.2021 [Page 40-42 of the reply]
14	Offer of possession	Not offered
15	Notice of cancellation dated	10.06.2021 [Page 38 of reply]
16	Cancellation letter dated	13.09.2021 [Page 43-44 of reply]

B. Facts of the complaint.

3. The complainant has made the following submissions in the complaint:

- i. That originally one Mr. Ravinder Kumar was allotted Unit No. 1B, comprising 4BHK + PR + SR, having a super area of 2,600 sq. ft., in Building-5 of the project, at a basic sale price of ₹4,550/- per sq. ft., along with Preferential Location Charges @ ₹225/- per sq. ft., External Development Charges @ ₹355/- per sq. ft., and Infrastructure Development Charges @ ₹35/- per sq. ft. Subsequently, the said allottee duly endorsed and transferred all his rights, title and interest in the said unit in favour of the present Complainant, Mr. Atul Kumar. By virtue of such endorsement and transfer, the Complainant stepped into the shoes of the original allottee and became entitled to all contractual and legal rights and obligations pertaining to the said unit.
- ii. That on 22.08.2013, a formal Builder Buyer Agreement/Agreement to Sell was executed between the Complainant and the Respondent,

thereby crystallizing the terms and conditions governing the transaction. The said Agreement constitutes a binding and enforceable contract, delineating the reciprocal rights and obligations of the parties. The Complainant undertook substantial financial commitments in terms thereof, with the legitimate expectation that the Respondent would complete construction and hand over possession of the unit within the stipulated time.

- iii. That the Complainant paid a sum of ₹27,68,799/- to the original allottee, Mr. Ravinder Kumar, towards transfer consideration, and a further sum of ₹13,92,698/- directly to the Respondent company. The said payments were duly acknowledged and form part of the total consideration payable towards the unit.
- iv. That the total sale consideration of the subject flat is ₹1,42,29,000/-. The Complainant adhered to the payment schedule as raised by the Respondent and, as reflected in the demand letters issued by the Respondent, a total sum of ₹41,61,497/- stood paid up to 15.07.2013. The Complainant has, at all material times, demonstrated his bona fides and readiness to comply with the financial obligations under the Agreement.
- v. That despite having paid an aggregate sum of ₹41,61,497/- (₹13,92,698/- to the Respondent and ₹27,68,799/- to the original allottee) at the initial stages of construction, the Complainant has been left remediless on account of the Respondent's failure to complete the project and hand over possession within the agreed timeframe. The

substantial investment made by the Complainant, constituting his hard-earned savings, was premised upon the assurance of timely completion. The inordinate delay has caused severe financial hardship, mental agony and uncertainty to the Complainant and his family.

- vi. That as per Clause 8 of the Buyer's Agreement, the Respondent was obligated to deliver possession of the unit within a period of 36 months from the date stipulated therein, along with a grace period of 90 days. However, the Respondent has failed to hand over possession even after expiry of the said period. The delay, despite receipt of approximately 31% of the total consideration, remains unexplained and unjustified. In view of the Respondent's failure to complete the project and offer lawful possession within the stipulated time, the Complainant is entitled to refund of the entire amount paid, along with interest from the respective dates of payment till realization, in terms of Section 18 of the Real Estate (Regulation and Development) Act, 2016, which provides for return of amount and compensation in cases of delay or failure to deliver possession.
- vii. That there has been an inordinate and unexplained delay of nearly five years beyond the committed period, with negligible or no visible progress at the project site. The Respondent has failed to provide any concrete timeline for completion. The persistent delay has given rise to a continuing cause of action and warrants intervention by this Hon'ble Authority to safeguard the rights of the Complainant.

viii. That as per Clause 8.3 of the Buyer's Agreement, in the event of failure on the part of the Respondent to hand over possession within the stipulated period including grace period, the Respondent is liable to pay compensation for delay at the rate of ₹5/- per sq. ft. per month of the super area for the period of delay till handing over of possession. The Respondent, having failed to comply with its contractual obligations, is liable to compensate the Complainant accordingly.

ix. That in view of the substantial and unexplained delay in delivery of possession, the Complainant, in order to safeguard himself from further financial exposure and loss, was constrained to withhold further payments to the Respondent. The said decision was neither arbitrary nor mala fide, but a bona fide step taken in light of the Respondent's continuing default.

x. That consequent upon the Complainant withholding further payments, the Respondent issued a Notice of Cancellation of the Flat Buyer's Agreement in respect of Unit No. 1B, Building-5, in the residential project "The Leaf" at Sector-85, Gurugram, Haryana, vide email dated 10.06.2021. The Respondent alleged that a sum of ₹73,78,257/- was outstanding and further claimed interest amounting to ₹55,61,252/- as on 10.06.2021. The said cancellation was unilateral, arbitrary and contrary to law, particularly in light of the Respondent's own failure to deliver possession within the agreed timeline.

xi. That the Complainant duly replied to the Notice of Cancellation vide email dated 09.07.2021, categorically highlighting the prolonged delay

in completion of the project, which as per the Agreement was to be completed by the year 2016. The Complainant expressed grave concern regarding the absence of any definite timeline for delivery and sought refund of the deposited amount along with interest, in view of the delay of more than five years and the unjustified and unilateral action of cancellation by the Respondent.

- xii. That there has been no communication lapse on the part of the Complainant. The Complainant has, on several occasions, approached and corresponded with the representatives of the Respondent seeking clarification regarding the status of construction and delivery timeline. However, no satisfactory response was furnished. Instead of completing the project, the Respondent resorted to issuance of a termination letter, thereby compounding the prejudice suffered by the Complainant.
- xiii. That the Complainant invested a substantial sum in the project with the legitimate expectation of securing a residential home for his family within the time prescribed under the Agreement. The Complainant had even arranged funds through friendly loans on interest. Due to the Respondent's failure to fulfil its contractual obligations, the Complainant has suffered financial strain, interest burden and considerable mental harassment.
- xiv. That the acts, omissions and conduct of the Respondent squarely fall within the ambit of deficiency in service and unfair trade practices. The Respondent has failed to honour the terms of the Agreement dated 22.08.2013 by not completing construction and not delivering

possession within the agreed period. The Respondent's conduct in raising unjustified demands, delaying construction and unilaterally cancelling the allotment despite its own default amounts to arbitrary and unfair conduct, entitling the Complainant to appropriate relief under the applicable law.

xv. That similarly, in *Anjali Bagai & Ors. v. M/s SS Group Pvt. Ltd.*, the Hon'ble National Consumer Disputes Redressal Commission directed the Opposite Party to refund the amount deposited by the complainants along with interest @ 9% per annum from the date of each payment till realization, on account of delay in delivery of possession. The ratio laid down therein squarely applies to the present case, and the Complainant is entitled to similar relief.

C. Relief sought by the complainant:

4. The complainants have sought following relief(s).
 - I. Direct the respondent to refund the entire amount along with interest.
 - II. Direct the respondent to pay Rs. 50,000/- as litigation charges.
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 has contested the complaint on the following grounds.
 - i. That Mr. Ravinder Kumar and Mr. Shiv Kumar (hereinafter referred to as the "Original Allottees") had applied for allotment of a residential unit in the project of the Respondent namely "The Leaf" (hereinafter

referred to as the "Project"). Pursuant thereto, Unit No. 1B, comprising 4 BHK + PR + SR, admeasuring 2600 sq. ft., situated in Building-5 (hereinafter referred to as the "Subject Unit"), was allotted to the Original Allottees vide Allotment Letter dated 10.09.2012.

- ii. That subsequent to the aforesaid allotment, in or around February 2013, the Respondent received a joint request from the Original Allottees and the present Complainant seeking endorsement/transfer of the Subject Unit in favour of the Complainant. That the said request for endorsement was duly considered and accepted by the Respondent, whereupon the Complainant stepped into the shoes of the Original Allottees. Pursuant thereto, the Complainant paid a sum of ₹13,92,698/- towards part sale consideration of the Subject Unit to the Respondent.
- iii. That thereafter, a Flat Buyer's Agreement dated 22.08.2013 (hereinafter referred to as the "BBA/FBA") was executed between the Complainant and the Respondent, recording the mutually agreed terms and conditions governing the allotment of the Subject Unit. That as per the agreed Construction-Linked Payment Plan annexed to the FBA, instalments were payable upon achievement of specified construction milestones. However, the Complainant failed to adhere to the agreed payment schedule. It is submitted that post-endorsement, the Complainant paid only ₹13,92,698/- to the Respondent from his own funds, and no further payments were made thereafter. The balance payments received by the Respondent pertained to amounts paid earlier by the Original Allottees.

- iv. That despite issuance of multiple demand letters and reminders, the Complainant failed to clear the outstanding dues. Consequently, the Respondent was constrained to issue a Notice for Cancellation dated 10.06.2021, granting the Complainant 30 days to clear the outstanding amounts, and clearly intimating that in the event of failure, the allotment would stand cancelled in terms of the FBA. That in the meantime, upon completion of construction and development of the Subject Unit, the Respondent applied for issuance of Occupation Certificate before the competent authority, and the same was duly granted on 24.08.2021.
- v. That despite receipt of the Notice dated 10.06.2021, the Complainant failed to make payment of the outstanding dues. Accordingly, the Respondent, in terms of the FBA, cancelled the allotment vide Cancellation Letter dated 13.09.2021 and duly informed the Complainant that after adjustment and deductions as per the contractual terms, no amount remained refundable.
- vi. That the present Complaint has been filed after expiry of approximately three years from the date of cancellation, seeking refund of amounts allegedly paid by the Complainant, which is wholly misconceived and legally untenable. That the present Complaint is frivolous, vexatious and devoid of merit. The Complainant has suppressed material facts and has not approached this Hon'ble Authority with clean hands. The allegations levelled against the Respondent are false, misleading and unsubstantiated, and appear to have been made with an ulterior motive.

to extract unlawful gains. The Complaint is liable to be dismissed in limine.

- vii. That under the Real Estate (Regulation and Development) Act, 2016, an allottee may seek relief under Sections 12, 14, 18 and 19. However, a plain reading of the statutory scheme indicates that claims under Sections 12, 14 and 18(1) & (3) are not exempted from the application of limitation, unlike Section 18(2), which pertains to compensation for defective title.
- viii. That post-endorsement, the Complainant paid only ₹13,92,698/- on 24.07.2013. Thereafter, the Respondent issued multiple demand and reminder letters upon completion of construction milestones, including but not limited to completion of basement slab, ground floor slab, second floor slab, tenth floor slab, brickwork, roof slab, external plaster and finishing works. Despite receipt of these communications, the Complainant failed to make any further payment. That the continued non-payment by the Complainant, despite repeated demands, clearly reflects deliberate and wilful default on his part.
- ix. That Clause 15 of the BBA provides that in the event of failure to make timely payments, the allottee shall be deemed to be in default and such default shall entitle the Respondent to cancel the allotment.
- x. That Clause 1.2(f) of the BBA defines "Earnest Money" as 10% of the sale price and expressly authorizes the Respondent to forfeit the same in the event of default by the allottee. That Clause 9.3 of the Model Agreement for Sale prescribed by the Authority similarly provides that

if an allottee fails to make payment of consecutive demands and continues in default beyond 90 days, the promoter is entitled to cancel the allotment and refund the amount after permissible deductions.

- xi. That in view of continuous default by the Complainant, the Respondent, exercising its contractual rights and in accordance with Section 11(5) of the RERA Act, issued Notice dated 10.06.2021 intimating outstanding dues of ₹73,78,257/- towards sale consideration and ₹55,61,252/- towards interest, granting 30 days to cure the default. That despite receipt of the said Notice, the Complainant failed to clear the dues. Meanwhile, the Respondent completed construction and obtained Occupation Certificate on 24.08.2021.
- xii. That having received no response to the Notice, the Respondent was constrained to cancel the allotment vide letter dated 13.09.2021 and informed the Complainant regarding forfeiture of earnest money and other permissible deductions in terms of the BBA and applicable law.
- xiii. That notwithstanding such force majeure constraints, the Respondent has completed construction of the Project and obtained Occupation Certificate. The Respondent has acted bona fide and in compliance with contractual and statutory obligations.
- xiv. That the present Complaint is based on false, frivolous and vexatious allegations and is a mere afterthought intended to harass the Respondent. The Complaint is devoid of merit and is liable to be dismissed with exemplary costs.

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 has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

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

E.II Subject-matter jurisdiction

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

Section 11

.....

(4) 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.

11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.
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. 2021-2022 (1) RCR (Civil), 357* and reiterated in case of *M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020* decided on 12.05.2022, wherein it has been laid down as under:

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

13. Hence, in view of the authoritative pronouncement of the hon'ble supreme court in the case 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 Direct the respondent to refund the entire amount paid by the complainant along with interest.

14. In the present complaint, the complainant intends to withdraw from the project and is 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."

15. The Complainant was allotted Unit No. 1-B, 1st Floor, Tower-B, admeasuring 2600 sq. ft., in the residential project "**The Leaf**" situated at Sector-85, Gurugram, by the Respondent-Builder for a sale consideration of ₹1,42,29,000/-. Out of the said total consideration, the

Complainant paid a sum of ₹41,61,497/- which constitutes approximately 29.25% of the sale consideration.

16. A Builder Buyer Agreement dated 22.08.2013 was duly executed between the parties in respect of the aforesaid unit. As per the terms of the Agreement, the Respondent was obligated to complete construction of the project and offer possession of the unit on or before 22.08.2016, subject to the terms and conditions contained therein.
17. It is alleged that the Complainant failed to make payments allegedly due against the allotted unit in accordance with the payment schedule. As per Clause 15 of the Builder Buyer Agreement, the Complainant was obligated to make timely payments of the instalments and other charges as and when demanded by the Respondent. In the event of default in payment, the respondent to cancel the allotment of the unit. The relevant clauses of the Builder Buyer Agreement are reproduced hereunder for ready reference:

Clause 15 of the BBA provides that in the event of failure to make timely payments, the allottee shall be deemed to be in default and such default shall entitle the Respondent to cancel the allotment.

Clause 1.2(f) of the BBA defines "Earnest Money" as 10% of the sale price and expressly authorizes the Respondent to forfeit the same in the event of default by the allottee.

18. The Occupation Certificate in respect of the project comprising the allotted unit was granted on 24.08.2021 by the competent authority. From the foregoing facts, it is evident that the Complainant paid a sum of ₹41,61,497/- against the total sale consideration of ₹1,42,29,000/- for the unit allotted to him pursuant to the Builder Buyer Agreement

dated 22.08.2013. It is the case of the Respondent that the Complainant failed to adhere to the terms and conditions of the Builder Buyer Agreement, particularly with regard to timely payment of instalments as per the agreed schedule.

19. On account of the alleged default in payment, the Respondent cancelled the allotment of the said unit on 24.08.2021, in accordance with the terms of the Agreement. The Respondent has stated that it is willing to refund the amount deposited by the Complainant, after deducting 10% of the sale consideration towards earnest money, in terms of the contractual provisions governing cancellation on account of default by the allottee.
20. Further, the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, states that-

"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."

21. Keeping in view, the aforesaid legal provision, the respondent/promotor directed to refund the paid-up amount i.e. 41,61,497/- (inadvertently mentioned in the POD dated 31.10.2025 as 13,92,698/-), after deducting 10% of the sale consideration and shall

return the amount along 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 cancellation i.e., 13.09.2021 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

ii. **Direct the respondent to pay Rs. 50,000/- as litigation charges.**

22. The complainant in the aforesaid relief is seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021)*, has held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation.

G. Directions of the Authority

23. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

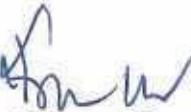
i. The respondent is directed to refund the paid-up amount of Rs. 41,61,497/- after deducting 10% of the sale consideration of Rs. 1,42,29,000/-with interest at the prescribed rate i.e., 10.85% on such balance amount, from the date of cancellation i.e., 13.09.2021 till the actual date of refund.

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.

24. Complaint stands disposed of.

25. File be consigned to registry.

Dated: 31.10.2025



(Arun Kumar)

Chairman

Haryana Real Estate Regulatory
Authority, Gurugram



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