

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

Complaint no. : 6433 of 2024
Date of decision : 09.01.2026

Uma Srivastava through SPA Shailesh
Kumar Srivastava
R/o: - A-58, Vrindavan Apartments, Plot-I,
Sector-6, Dwarka

Complainant

Versus

M/s Betterchoice Realtors Pvt. Ltd.
Regd. Office at: - G 79, Ground Floor,
Vijay Chowk Laxmi Nagar, Delhi-110092

Respondent

CORAM:
Shri Arun Kumar

Chairman

APPEARANCE:
Ms Urvashi Gupta (Advocate)
None

Complainant
Respondent

EX-PARTE 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 allottees 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 and location of the project	"Vanya City", sector-99A, Gurugram
2.	Nature of the project	Commercial Colony
3.	Project area	10.83 acres
4.	RERA registered/ not registered	105 of 2022 dated 21.11.2022
5.	Unit no.	S1-303, 3 RD floor
6.	Unit area	500.12 sq. ft. (super area)
7.	Date of allotment letter	26.06.2024 [Page 51 of complaint]
8.	Builder buyer agreement	Not executed
9.	Possession clause as per BBA	Not available
10.	Due date of possession	26.06.2027 (3 years from allotment letter)
11.	Total sale consideration	Rs. 47,01,936/- [Page 23 of complaint]
12.	Total amount paid by the complainant	Rs. 4,44,333 /- [as per payment receipts on Page 50 of complaint]

13.	Occupation certificate	N/A
14.	Offer of possession	N/A

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint: -
- i. That the complainant has been allotted a unit no. S1-303/3T03, at third floor plus terrace S1, admeasuring 499.94 & 200.049 sq. Ft. respectively in the project Vanya City commercial complex situated at/ Sector 99-A Gurugram, Haryana for total consideration of Rupees 49,88,821/- to be developed by the respondent against which the complainant has paid the booking amount including registration fee.
 - ii. That the present complaint is filed by Smt. Uma Srivastava through her husband Sh. Shailesh Kumar Srivastava by executing Special Power of Attorney in his favor. The complainant and the respondent collectively to be referred as "the parties".
 - iii. That as per clause 1 of the Application Form the total area admeasuring was 46.46 sq. mtrs. i.e. (499.94 sq. ft) Carpet Area of 27.88 sq. mtrs. with exclusive Terrace area of 200.049 sq. ft respectively, the complainant after considering the terms and the area proposed as per the application form decided to invest in the said booking and has paid the registration amount of sum of Rupees 31,000/-.
 - iv. That vide email dated 26.04.2024 complainant has been informed that her application has been successful in draw of lots for allotment and requested to further deposit the amount of 4,13,333/- i.e. the 9% of payment towards the total sale consideration as per the terms towards the said allotment. That is the pertinent to note that in the

very email the admeasuring area was stated to be as same as in the initial application form i.e. 46.46 sq. mts.

- v. That in pursuance of the said allotment complainant filled an application for provisional allotment for which of Rupees 4,13,333/- has been made as per the proposed application form and the same was duly acknowledged.
- vi. That in furtherance of the said purchase the total amount deposited by the complainant so far towards this allotment is Rupees 4,44,333/- including registration fee.
- vii. That thereafter the respondent issued an allotment letter via email dated 27.06.2024 confirming the allotment of the above stated unit for the consideration paid.
- viii. That the complainant feeling aggrieved by the act of reducing Carpet Area & Terrace Area by 37.3% which more than permissible percentage as per the terms of allotment without seeking her consent requested the respondent vide letter dated 05.07.2024 & vide email dated 02.08.2024 to return the total amount paid till date but the respondent has paid no heed. Subsequent to this respondent has sent an email dated 30.07.2024 in response wherein the respondent was silent on this more than 3% reduction in Carpet Area & Terrace Area and has stated that the respondent is entitled to forfeit the booking amount since the fault is not from their end therefore the amount is non- fundable.
- ix. That to the utter dismay of the complainant with such huge deviation in the Carpet Area & Terrace Area complaint has lost its faith. Respondent has failed to act in accordance with the terms of its own agreement and has played fraud against the complainant by not

seeking their consent for an act which is not inconsonance with the terms of proposed application and allotment offer.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
 - I. Direct the respondent to refund the entire paid-up amount along with interest.
 - II. Direct the respondent to pay legal expenses of Rs. 1,00,000/-.
5. The present complaint was filed on 23.01.2025. The counsel for the respondent neither appeared nor filed the reply in the complaint. Despite multiple opportunities for filing reply on 02.05.2025, 01.08.2025, 07.11.2025, it failed to comply with the orders of the authority. It shows that the respondent was intentionally delaying the procedure of the court by avoiding to file written reply. Therefore, the authority assumes/ observes that the respondent has nothing to say in the present matter and accordingly the authority proceeds with the case ex-parte.
6. 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 complainant.

D. Jurisdiction of the authority

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

D.I Territorial jurisdiction

8. 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.

D. II Subject-matter jurisdiction

9. 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.

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. 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."

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.

E. Findings on the relief sought by the complainant.

E. I. Direct the respondent to refund the entire paid-up amount along with interest.

13. The complainant was allotted unit no. S1-303 on 3rd floor, in the project "Vanya City" by the respondent/builder for a total consideration of Rs.47,01,936/- and he has paid an amount of Rs.4,44,333/-.
14. The OC for the project of the allotted unit was not obtained till date. It is evident from the above-mentioned facts that the complainant has paid a sum of Rs. 4,44,333/- against basic sale consideration of Rs.47,01,936/- of the unit allotted. In the present complaint, the complainant wrote an email to the respondent on 02.08.2024, and even requested for withdrawal/surrender of the allotment of the said unit due to the harsh circumstances and requested for the refund of the paid-up amount.

15. The Hon'ble Apex Court of law in cases of *Maula Bux Vs. Union of India, (1970) 1 SCR 928* and *Sirdar K.B. Ram Chandra Raj Urs Vs. Sarah C. Urs, (2016) 4 SCC 136*, held that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provision of the section 74 of the Contract Act, 1872 are attracted and the party so forfeiting must prove actual damage.
16. Even keeping in view, the principle laid down by the Hon'ble Apex Court of the law, the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018, framed regulation 11 provided 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."

17. Keeping in view the above-mentioned facts, the promoter was required to return the paid-up amount after retaining 10% of the basic sale consideration. However, in the present matter the complainant has paid only Rs.4,44,333/- against the total sale consideration of Rs.47,01,936/- which constitutes about only 10% of consideration money and hence, no case for refund of any amount is made out.

E. II Cost of litigation of Rs. 1,00,000/-.

18. The complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation & litigation charges 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 & litigation expense 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 & legal expenses.
19. Complaint stands disposed of.
20. File be consigned to registry.

Dated: 09.01.2026



(Arun Kumar)
Chairman
Haryana Real Estate
Regulatory Authority,
Gurugram