

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

Complaint no. : 1310 of 2021
Date of filing complaint: 03.03.2021
First date of hearing : 11.05.2021
Date of decision : 15.02.2022

1. Shri Jagir Singh 2. Shri Kanwar Deep Singh Both R/O: - J-1/38, Second Floor, DLF Phase-2, Gurugram, Haryana-122008	Complainants
Versus	
DSS Buildtech Private Limited Regd. Office at: - 506, 5th Floor, Time Square Building, B-Block, Sushant Lok-1, Gurugram, Haryana-122022.	Respondent

CORAM:	
Dr. K.K. Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Complainants in person with Sh. Ishwar Singh Sangwan (Advocate)	Complainants
Sh. Suresh Rohilla (Advocate)	Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees 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 provision of the Act or the rules and regulations made there under 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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.No.	Heads	Information
1.	Project name and location	"The Melia", Sector-35, Sohna, Gurugram.
2.	Project area	17.41875 acres
3.	Nature of the project	Group housing complex
4.	a) DTCP license no.	77 of 2013 dated 10.08.2013
	b) Validity status	Valid till 09.08.2024
	c) Name of the licensee	Smt. Aarti Khandelwal and others.
5.	a) RERA registered/not registered	Registered
	b) Registration no.	288 of 2017
	c) Valid from	10.10.2017
	d.) Valid till	25.10.2021+6 months in lieu of

		Covid-19 i.e., 24.04.2022
6.	Unit no.	I-802, 8 th floor [annexure R-6 on page no. 41 of reply]
7.	Unit measuring (Super area)	2400 sq. ft. [annexure R-6 on page no. 41 of reply]
8.	Allotment letter	28.03.2016 [annexure R-6 on page no. 41 of reply]
9.	Date of execution of apartment buyer's agreement	09.05.2016 [annexure- I on page no. 12 of complaint]
10.	Date of approval of building plan	21.04.2015 [annexure R-2 on page no. 22 of reply]
11.	Date of environment clearance	20.09.2016 [annexure R-2 on page no. 23 of reply]
12.	Date of consent to establish	12.11.2016 [annexure R-4 on page no. 33 of reply]
13.	Payment plan	Construction linked payment plan [annexure R-7 on page no. 42 of the reply]
14.	Total consideration	Rs. 1,38,16,400/- [as per statement on account on page no. 42 of reply]
15.	Total amount paid by the complainants	Rs. 42,81,746/- [as per statement on account on page no. 42 of reply]
16.	Possession clause	14.1 Subject to the terms hereof and to the Buyer having complied with all the terms

		<p>and conditions of this Agreement, the Company proposes to hand over possession of the Apartment within a period of 48 (forty eight months) from the date of receiving the last of Approvals required for commencement of construction of the Project form the Competent Authority and or the date of signing the agreement whichever is later and to this period to be added for the time taken in getting Fire Approvals and Occupation Certificates and other Approvals required before handing over the possession of the Apartment or for such other requirements/conditions as may be directed by the DGTCP. The resultant period will be called as "Commitment period". However, this Committed Period will automatically stand extended by for a further grace period of 180 days for issuing the Possession Notice and completing other required formalities ("Due Date of Possession").</p> <p>(emphasis supplied)</p>
17.	Due date of possession	<p>12.05.2021 (Calculated from the date of consent to establish)</p>
18.	Occupation Certificate	Not obtained
19.	Offer of Possession	Not offered

20.	Grace period utilization	In the present case, the promoter is seeking a grace period of 180 days for issuing the possession notice and completing other required formalities. As a matter of fact, the promoter has not offered possession to the complainants till date. Therefore, as the promoter has not offered possession till the date of this order, he does not fulfil the criteria for grant of the grace period. Therefore, the grace period is not allowed for the same. But in lieu of Covid-19 restrictions, a grace period of 180 days is allowed, and the due date of possession comes out to be 12.05.2021. (emphasis supplied)
21.	Status of project	Ongoing

B. Facts of the complaint

- That the respondent is developing a residential group housing complex "The Melia" (hereinafter referred as the 'said project') situated within the revenue estate of village Mohammadpur Gurjar, sector-35, Sohna, Gurugram, Haryana consisting of residential units in accordance with the layout plan approved and sanctioned by DTCP bearing license no. 77 of 2013 dated 09.08.2013. The brochures issued by the respondent, represented, assured, and promised the public at large that the project will be completed, and possession of the residential units will be handed over within the time

period of 48 months.

4. That based on the representations made and assurances given by the officials of the respondent, the complainants initially booked a unit bearing no. A-506, a 3-BHK apartment and later changed it to a 4-BHK apartment bearing no. I-802, measuring 240 sq. ft. (hereinafter referred as the 'said unit') in the said project and paid a sum of Rs. 41,81,746/- for it.
5. That the respondent issued an allotment letter dated 28.03.2016 in respect of the said unit to the complainants on the terms and conditions set out in the apartment buyer's agreement dated 09.05.2016 which was duly signed by the parties. That as per demand raised by the respondent, the complainants continuously paid the amount to the respondents well within time.
6. That the respondent has failed to perform their part of the agreement and the construction work of the project has not yet commenced. The complainants several times visited the construction site but the work at the construction site was not going on as per construction linked payment plan. The complainants requested to the respondent to complete the work and handover possession at the earliest. The complainants booked the said unit believing the representations made by the respondent that it shall handover the said unit to them within 48 months plus 180 days as grace period. The complainants made several visits to

the office of the respondent and met its concerned officials, but it was of no avail.

7. That the respondent did not even bother to respond to the genuine requests of the complainants. Since then, they have continued to meet the respondent's officials till date, pursuing their request for the refund of their money with interest, but to no avail.
8. That the complainants submitted that the respondent is in utter breach of its contractual obligation towards them and has failed to handover possession of the said unit within prescribed time period. The respondent is liable to refund to the complainants the amount paid by them towards sale consideration along with prescribed rate of interest, the rate, at which the respondent is charging on delayed instalments from the allottee. The respondent has no authority, in law or otherwise, to withhold the said deposited amount and refund with interest. Section 18 of the Real Estate (Regulation and Development) Act, 2016 entitles the complainants to seek the refund of the amount paid by them to the respondent with interest as the respondent has failed to give possession of the said unit to the complainants in accordance with the terms of the agreement.

C. Relief sought by the complainants.

9. The complainants have sought following relief(s):

- I. Direct the respondent to refund total amount of Rs. 42,81,746/- and further be directed to pay interest @ 18% per annum on said amount from the date of deposit of each amount till its actual realization.

D. Reply by the respondent.

10. That the project of the respondent namely 'The Melia' is duly registered under the Real Estate (Regulation and Development) Act, 2016 and the Haryana Real Estate (Regulation and Development) Rules, 2017 vide HRERA Registration No. 288 of 2017 dated 10.10.2017.
11. That the complainants approached the respondent and submitted an application dated 02.11.2015 for booking of a 4-BHK flat admeasuring 2399.92 sq. ft. at the basic sale price of Rs. 4,750/- per sq. ft. and paid a sum of Rs. 25,00,000/- as booking amount. The complainants had agreed and signed the plan for payment of instalments dues as per a construction linked plan.
12. That pursuant to the application form, the respondent allotted the complainants a unit bearing no. I-802 on 8th floor in the said project, vide allotment letter dated 28.03.2016, for the basic sale consideration of Rs. 1,14,00,000/- plus all other charges, service tax, levies, and other allied charges as per the payment plan.
13. That the complainants and the respondent had executed an apartment buyer's agreement on 09.05.2016 for the above-mentioned unit.

14. That in terms of apartment buyer's agreement, the complainants are obligated to pay the instalments within the time agreed there in and any delay in making payment was to be chargeable with 15 % simple interest. The relevant clauses 11.1.1 and 11.1.2 of the apartment buyer's agreement are reproduced hereunder for ready reference:

"11. Time is the essence; Buyer's Obligation

11.1.1 Time is essence with respect to the obligations of the Buyer to pay the Total Sale Consideration as provided in the Schedule-III on or before the due date(s) as may be prescribed. It is clearly agreed and understood by the Buyer that except for a demand notice for payments, the Company shall not be required to remind the Buyer for payments due as per the Payment Plan or for performance of any other obligations of the Buyer in the terms hereof.

11.1.2 For any delay in making any payment in terms hereof, simple interest @15 % shall be chargeable. The Company shall also be within its rights to decline to execute the Conveyance Deed and refuse to transfer the Apartment in the name of any other buyer unless all payments are fully paid."

15. That as per the payment plan, there was an outstanding amount of Rs. 16,099/- along with interest of Rs. 63,189/- up to 31.07.2021 to be paid by the complainants. Further as per clause 14.1 of the apartment buyer's agreement and subject to other conditions thereof the tentative timeline given was 48 months with grace period of 180 days from the date of receiving the last approvals required for commencement of construction.
16. That the respondent has duly complied with all applicable provisions of the Real Estate (Regulation and Development)

Act, 2016 and rules and that of the agreement for sale qua the complainants and other allottees. Since the commencement of the development of the said project the customer care department of the respondent is in regular touch with the buyers for providing them assistance and updates on the progress of the said project.

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

E. Jurisdiction of the authority

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

18. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, 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, and therefore this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject-matter jurisdiction

19. The authority is well within its jurisdiction to proceed further in the matter to grant refund to the complainants in

view of the recent judgement of the Hon'ble Apex court in the case of **"Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors."** SC/1056/2021 decided on 11.11.2021 and observes that: -

"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"

20. So, in view of the above-mentioned reasons, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act, leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

G. Findings on the relief sought by the complainants.

Relief sought by the complainants: Direct the respondent to refund total amount of Rs. 42,81,746/- and further be directed to pay interest @ 18% per annum on the above said amount from the date of deposit each amount till its actual realization.

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

(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.

22. Clause 14.1 of the apartment buyer's agreement provides for handing over possession and the same is reproduced below:

14.1 Subject to the terms hereof and to the Buyer having complied with all the terms and conditions of

*this Agreement, the Company proposes to hand over possession of the Apartment within a period of **48 (forty eight months) from the date of receiving the last of Approvals required for commencement of construction of the Project from the Competent Authority and or the date of signing the agreement whichever is later** and to this period to be added for the time taken in getting Fire Approvals and Occupation Certificates and other Approvals required before handing over the possession of the Apartment or for such other requirements/conditions as may be directed by the DGTCP. The resultant period will be called as "Commitment period". However, this Committed Period will automatically stand extended by for a further grace period of 180 days for issuing the Possession Notice and completing other required formalities ("Due Date of Possession").*

23. A flat buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builders/promoters and buyers/allottees are protected candidly. A flat buyer's agreement lays down the terms that govern the sale of different kinds of properties like residentials, commercials etc. between the buyer and builder. It is in the interest of both the parties to have a well-drafted agreement which would thereby protect their rights in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the apartment, plot or building, as the case may be and the right of the buyers/allottees in case of delay in possession of the unit.

24. The authority has gone through the possession clause of the agreement and observes that the respondent promoter has proposed to handover the possession of the subject flat within a period of 48 from the date of receiving the last of approvals required for commencement of construction of the project from the competent authority and or the date of signing the agreement whichever is later. Accordingly, the due date of possession is calculated from the date of grant of CTE i.e., 12.11.2016, being the later date as mentioned in the said possession clause and the due date of possession comes out to be 12.05.2021.
25. **Admissibility of refund along with the prescribed rate of interest:** The complainants are seeking refund the amount paid by them at the rate of 18% p.a. However, the allottees intend to withdraw from the project and are seeking refund of the amount paid by them in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

26. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
27. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 15.02.2022 is 7.30% p.a. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30% p.a.
28. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

29. On consideration of the circumstances, the documents, submissions made by the parties and based on the findings regarding contravention as per provisions of section 31 of the Act of 2016 and rule 28(1) of the rules of 2017, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 14.1 of the apartment buyer agreement executed between the parties on 09.05.2016, the possession of the subject apartment was to be delivered within a period of 48 months from the date of receiving the last of approval required for commencement of construction of the project from the competent authority and or the date of signing the agreement whichever is later. Therefore, the due date of possession is calculated from the date of grant of CTE i.e., 12.11.2016, being the later date as mentioned in the said possession clause and further in lieu of the Covid-19 restrictions, a grace period of 180 days is allowed in the present matter. Accordingly, the due date of possession comes out to be 12.05.2021. It is also a matter of fact that the respondent-promoter has failed to obtain the occupation certificate w.r.t the subject matter and there are no signs of completion of the subject project in the near future. Further, the allottees intend to withdraw from the project and are well within their right to do the same. So, keeping in view the above-mentioned facts, the authority has no hitch in proceeding further and to grant a relief of refund in the present matter. Even as per the recent judgement of

the Hon'ble Apex Court in "***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.***" ***SC/1056/2021 decided on 11.11.2021***, it has seen held and observed as under:

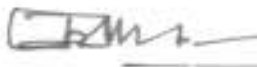
"Para 25: and was observed that in terms of section 18 of the Rera Act, if a promoter fails to complete or is unable to give possession of the apartment duly completed by the date specified in the agreement, the promoter would be liable, on demand, to return the amount received by him in respect of that apartment if the allottee wishes to withdraw from the project. Such right of the allottee is specifically made "without prejudice to any other remedy available to him". The right so given to the allottee is unqualified and if availed, the money deposited by the allottee has to be refunded with interest at such rate as may be prescribed."

So, in view of mandate of the Apex Court of the land and on failure of the builder to offer possession to the allottee by the due date, the complainants have got an indefeasible right to claim refund and the plea taken to the contrary cannot be taken into consideration.

30. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainants are entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @ 9.30% p.a. from the date of payment of each sum till its actual realization as per provisions of section 18(1) of the Act read with rule 15 of the rules, 2017.

31. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- i. The respondent/promoter is directed to refund the entire amount paid by the complainants along with prescribed rate of interest @ 9.30% p.a. from the date of payment of each sum until the date of its actual realization within 90 days from the date of this order as per provisions of section 18(1) of the Act read with rule 15 of the rules, 2017.
 - ii. The cost imposed during the proceedings on either of the party to be part of the decree sheet.
32. Complaint stands disposed of.
33. File be consigned to registry.


(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 15.02.2022

Judgement uploaded on 16.03.2022.