

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

Complaint no. : 5544 of 2019
First date of hearing: 18.12.2019
Date of decision : 14.09.2022

1. Raj Kumar Chawla
2. Indu Chawla

R/O : K-3/15, Ground Floor, DLF Phase II,
Gurugram, Haryana

Complainants

Versus

M/s Parsvnath Hessa Developers Private Limited
Office: Parsvnath Metro Tower,
Near, Shahdara Metro Station,
Shahdara, Delhi 110032

Respondent

CORAM:

Shri K.K. Khandelwal
Shri Ashok Sangwan
Shri Sanjeev Kumar Arora

**Chairman
Member
Member**

APPEARANCE:

Sh. Nitin Yadav (Advocate)
Sh. Dhruv Gupta (Advocate)

**Counsel for the complainants
Counsels for the Respondent**

ORDER

1. The present complaint dated 05.03.2018 has been filed by the complainant/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.N.	Particulars	Details
1.	Name and location of the project	"Parsvnath Exotica", sector-53, Gurgaon
2.	Nature of the project	Group Housing
3.	DTCP license no.	69 to 74 of 1996 dated 30.05.1996 valid up to 02.05.2019 (area 33.51 acre) 52 to 57 of 1997 dated 14.11.1997 valid up to 13.11.2019 (area 4.61 acre) 191 of 2007 dated 20.06.2007 valid up to 19.06.2024 (area 53.54 acre) 1079-1080 of 2006 dated 28.08.2006 valid up to 01.09.2019 (area 4.99 acre)
4.	RERA Registered/ not registered	Not registered
5.	Unit no.	403, 4 th floor, Tower B-5 [page no. 51 of complaint]
6.	Unit admeasuring area	3390 sq. ft. of super area [page no. 51 of complaint]
7.	Date of booking	13.07.2012 (as per booking amount receipt, page 72 of complaint)
8.	Allotment letter	N/A
9.	Date of builder buyer agreement	03.09.2012 [page 49 of complaint]
10.	Possession clause	10 (a) Construction of the flat is likely to be completed within a period of thirty-

		<i>six (36) months of commencement of construction of the particular Block. In which the flat is located or 24 months from the date of booking of the flat. Whichever is later, with a grace period of six (6) months, on receipt of sanction of building plans/revised building plans and approval of all concerned authorities including the Fire Service Deptt.,....."</i>
11.	Date of start of construction	Not Provided
12.	Due date of possession	13.01.2015 (Calculated from the date of booking of the flat) *Note: Date of commencement of construction of the particular block is not given in file. So, due date is calculated from the date of booking of flat as per agreement)
13.	Total sale consideration	Rs.3,47,00,000/- (BSP Rs. 3,39,00,000/- + 2 covered car parking charges Rs. 8,00,000/-) [page 51 of complaint]
14.	Total amount paid by the complainant	Rs 1,55,26,537/- [as per customer ledger page 66 of complaint]
15.	Occupation certificate	Not obtained
16.	Offer of Possession (Fit-outs)	23.03.2018 (Page 52 of complaint)

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:
 - I. That the complainants and the respondent through its sister concern namely "Parsvnath Developers Limited" entered into a Memorandum of Understanding dated 01.09.2012. By virtue of aforesaid MoU, the

allotment of four shops in the favour of the complainants cancelled. It was agreed that the total amount of Rs. 79,60,537/- paid by the complainants towards the sale consideration of the aforesaid shops would be either refunded to them by 01.03.2013 or adjusted towards the sale consideration of the flat in question. It was further agreed between the parties that till the refund or adjustment of the said amount is not made, the respondent would not raise any demand on the complainants towards the sale consideration of the booking in question and would also not levy any delay penalty.

- II. That the complainants were induced to sign a pre-printed flat buyer's agreement dated 03.09.2012. The respondent allotted apartment bearing B5-403 on 4th floor in tower no. B5, having an approximate super area of 3390 sq. ft. for a total sale consideration of Rs. 3,47,00,000/-. As per clause 10(a) of the flat buyer agreement dated 03.09.2012, the respondent was under an obligation to complete the construction of the project and handover the physical possession of the unit within a period of 24 months from the date of booking of the flat. The complainant made payment of Rs.10,00,000/- to the respondent towards the booking amount and the same is reflected from the booking amount receipt dated 03.07.2012 issued by the respondent. Thus, the date of booking can be taken as 03.07.2012 to avoid all controversies with regard to the same and thus possession was to be handed over by 03.07.2014 and after inclusion of grace period of 6 months, the same date comes out to be 03.01.2015.
- III. That the complainants have paid a total sum of Rs. 1,55,26,537 towards the flat in question from July 2012 till July, 2014. It is pertinent to

mention that the complainants chose a payment plan as per which entire sale consideration was to be paid within 24 months from date of booking. However the respondent could not have raised any demand in terms of the MoU dated 01.09.2012 until adjustment of Rs. 79,60,537/- was made towards the sale consideration of the flat in question. The said amount of Rs. 79,60,537/- was adjusted in the account of complainants by the respondent only in the month of June, 2014. It is submitted that on account of aforesaid conduct of the respondent, the agreed payment plan between the parties stood frustrated. Furthermore, the respondent miserably delayed the construction of the tower in question and thus it could not have raised any demand towards the sale consideration as the tower was lying abandoned for almost four years i.e. from year 2014 to 2018. The complainants also wrote several emails to the respondent and demanded refund of the entire amount as the construction of the tower was inordinately delayed by it. However despite emails and several personal visits to the office of the respondent, it never paid any heed to the bonafide requests of the complainants.

- IV. That the respondent had promised to complete the project within a period of 24 months from the date of booking i.e. 03.07.2012. The respondent has failed to complete the project in time, resulting in extreme mental distress, pain and agony to the complainants. The respondent was under an obligation to handover the physical possession of the unit by 03.07.2014 and after inclusion of grace period of 6 months the same comes out to be 03.01.2015.

V. That the respondent does not have the requisite building plans for tower No. B5 and B6 and the same is reflected from the reply dated 12.07.2018 filed by it before the authority.

VI. That the complainants in view of the delay caused by the respondent in handing over physical possession of the unit filed a complaint bearing No. 25 of 2018 for seeking refund before the authority. The authority vide order dated 13.09.2018 rejected the prayer for refund and rather granted delayed interest to the complainants. The complainants herein preferred an appeal bearing No. 104 of 2019 before the Haryana Real Estate Appellate Tribunal, Chandigarh against the order passed by the authority. The Appellate Tribunal vide order and judgment dated 02.05.2019 allowed the appeal of the appellant and accordingly set aside the order passed by the authority and further directed the complainants to appear before adjudicating officer.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s).
 - I. **Direct the respondent to refund the entire amount of Rs. 1,55,26,537/- along-with interest @24/% from the date of payment till date of refund.**
 - II. **Direct the respondent to pay a sum of Rs. 50,000/- to the complainants towards cost of litigation.**
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.



- a. That the complainants approached the respondent and submitted an application form on 17.06.2012 wherein apartment no. B5-403 with the super area of 3390 sq. ft. in the project was allocated to them at the rate of Rs. 10,000/- sq. ft. AT A BASIC SALE PRICE OF Rs. 3,39,00,000/- plus Rs. 8,00,000/- as two covered car parking charges. An amount of Rs. 9,70,026/- was paid at the time of booking. The application form included indicative terms and conditions in respect of the said apartment and the project.
- b. That as per the agreed payment schedule, the complainants were to pay the next installment within three months of the booking, thereafter, the complainants had to pay installments every month on month to month basis at the percentage given in the payment plan, however, they had been negligent since beginning in payment of the installment as agreed between the parties. The first installment was due on 13.10.2012, and the complainants failed to pay the said amount in time. Similarly the other installments were also paid belatedly as shown in the account statement. It was further submitted that even the cheques paid towards the installment as well as sales tax dated 12.05.2013 were bounced for the reason. Insufficient funds' and the said fact was brought to the notice and knowledge of the complainants, but even after they were remained negligent in payment and always paid the amount with delay as depicted in the customer ledger. The respondent issued demand note dated 03.01.2015 to the complainants asking them to deposit the next agreed installment amounting to Rs.17,57,850/- and the total outstanding towards them



as per the demand note was Rs.1,33,42,417/- including the above said amount.

- c. That the respondent further issued a demand note on 11.02.2015 calling the complainants to deposit the next installment amounting to Rs.17,57,850/- and the total outstanding towards them as per the demand note was Rs.1,51,00,268/- including the above said amount. The respondent further issued a demand note on 02.03.2015 calling the complainants to deposit the next installment amounting to Rs.17,57,850/- and the total outstanding towards them as per the demand note was Rs.1,68,58,118/- including the above said amount. The respondent further issued a demand note on 01.04.2015 calling them to deposit the next installment amounting to Rs.17,57,850/- and the total outstanding towards them as per the demand note was Rs.1,86,15,969/- including the above said amount.
- d. That the complainants were issued flat buyers agreement which was executed on 03.09.2012 and sent in two copies to them. However, the complainants despite repeated request did not return the sign copies of the flat buyers agreement and kept both the copies with them, when the said fact came to the notice and knowledge of the respondent at the time of audit, it immediately issued a letter dated 12.09.2015 asking the complainants to submit both the agreements sent along with the letter dated 27.07.2012. The respondent again issued letter dated 28.09.2015 asking the complainants to complete KYC requirements as per the guidelines issued by the Govt.
- e. That vide letter dated 30.10.2015, it informed the complainants about the opening of ESCROW account of the respondent and requested to



deposit and issue cheques in the name of ESCROW account hence forth. The complainants were already allotted flat bearing No.B5-403 on 4" Floor in Tower/Block No. B5. Apartment No. 403 with the sale/super area of 3390 s sq. ft. in the project "Parsvnath Exotica" at the rate of Rs.3,39,00,000/- calculated at the rate of Rs. 10,000/- per sq. feet as well as two covered car park spaces for Rs.8,00,000/- plus other charges as mentioned in Para No.3 (a) to (c) of the flat buyers agreement.

- f. Thereafter, another letter was issued on 16.07.2016 reminding the complainants about the outstanding of Rs.1,86,15,969/-. However, the complainants paid no heed to the repeated request of the respondent to clear the outstanding amount. The respondent again issued second reminder on 04.08.2016 requesting the complainants to deposit the above said amount at the earliest. The third reminder was issued on 16.08.2016 to submit the above said outstanding amount or the respondent would be compelled to cancel the allotment as per the terms and conditions of flat buyers agreement. The respondent again sent a letter dated 04.02.2017 informing the complainants that the pending construction work of tower-B5 has started and the same would be completed within short time and further requested them to pay the outstanding amount. A reminder was also sent on 10.03.2017, asking the complainants to clear the outstanding amount. Another reminder was sent on 21.04.2017 asking to clear the outstanding amount. The third reminder was issued on 27.07.2017 on start of external plaster and the complainants were requested to clear the outstanding amount as early as possible enabling the respondent to



complete the work. The complainants even after repeated request failed to make the said payment of installments and contravened and flouted the payment schedule as per the flat buyers agreement. Thus, it is the complainants who are themselves on fault.

- g. That the complainants were issued a letter dated 23.03.2018 wherein the flat was offered to them for fit outs and they were also offered a rebate of Rs.14,00,000/- for carrying out finishing work. But the complainants despite receiving the said letter has not taken any action in taking possession of the flat. The final statement of the account of the complainants, the total outstanding towards them is to the tune of Rs.1,86,15,968.90/-.
- h. That the respondent is not liable to pay any interest along with compensation being claimed by the complainants. It is humbly submitted that, firstly, the interest of 24% per annum compounding as claimed by the complainants is exorbitant on the face of it, against the alleged deficiency of services. Secondly, and most importantly, as per the Clause 10(e) of the flat buyers agreement, the respondent is not liable to pay any interest to the complainant.

- 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 complainant 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 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.

I. Direct the respondent to refund the entire amount of Rs. 1,55,26,537/- along-with interest @24/% from the date of payment till date of refund.

14. The complainants submitted that they booked an apartment in the project named as "Parsvnath Exotica". On 13.07.2013, a receipt of Rs. 10,00,000/- towards the booking was issued to them by the respondent. A buyer's agreement was executed between the parties on 03.09.2012. As per clause 10(a) of the said agreement, the respondent was under an obligation to complete the construction of the project and handover the physical possession of the unit within a period of 24 months from the date of booking of the unit. The date of booking can be taken as 13.07.2012. Thus, the possession was to be handed over by the respondent on 03.07.2014 and after inclusion of grace period of 6 months, the same date comes out to be 03.01.2015. The complainants have paid a total sum of Rs. 1,55,26,537/- towards the unit in question. The complainants in view of the delay caused by the respondent in handing over physical possession of the unit filed a complaint bearing no. 27 of 2018 for seeking refund before the authority. The authority vide order dated 13.09.2018 rejected the prayer for refund and rather granted delayed interest to the complainants. The complainants herein preferred an appeal bearing no. 104 of 2019 before the Haryana Real Estate Appellate Tribunal, Chandigarh against the order passed by the authority. The appellate tribunal vide appeal bearing no. 06 of 2018 case titled as **Sameer Mahawar Vs MG Housing** decided on 02.05.2019 allowed the appeal of the appellants and accordingly set aside the order passed by the authority and further directed the complainants to appear before adjudicating officer. It is pertinent to mention here that respondent issued various reminders on 03.01.2015, 11.02.2015, 02.03.2015, 01.04.2015,

16.07.2016, 04.08.2016, 16.08.2016, 04.02.2017, 10.03.2017, 21.04.2017, 27.07.2017 respectively. However, the unit was never cancelled. In fact, the respondent issued an offer for fit outs on 23.03.2018.

15. Keeping in view the fact that the allottee/complainant wish to withdraw from the project and are demanding return of the amount received by the promoter in respect of the unit with interest on failure of the promoter to complete or inability to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. The matter is covered under section 18(1) of the Act of 2016. The due date of possession as per date of booking as mentioned in the table above is **13.01.2015** and there is delay of 3 years 1 months 20 days on the date of filing of the complaint.
16. The occupation certificate/completion certificate of the project where the unit is situated has still not been obtained by the respondent-promoter. The authority is of the view that the allottees cannot be expected to wait endlessly for taking possession of the allotted unit and for which they have paid a considerable amount towards the sale consideration and as observed by Hon'ble Supreme Court of India in ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021:***

".... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."

17. Further in the judgement of the Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (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.

18. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as they wish to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.
19. This is without prejudice to any other remedy available to the allottee including compensation for which they may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.
20. The authority hereby directs the promoter to return the amount received by him i.e., Rs. 1,55,26,537/-with interest at the rate of 10% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation

and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

FII. Direct the respondent to pay a sum of Rs. 50,000/- to the complainants towards cost of litigation.

21. The complainants are also seeking 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. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of litigation expenses.

F. Directions of the authority

22. 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):
- The respondent is directed to return the amount received by him i.e., Rs. 1,55,26,537/-with interest at the rate of 10% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate

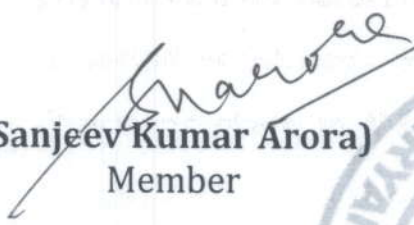


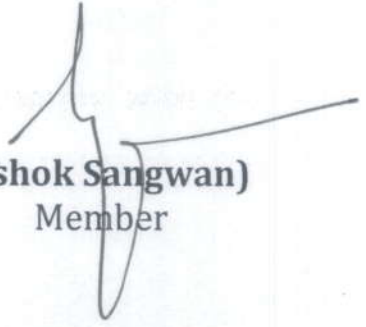
(Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount.

- 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.

23. Complaint stands disposed of.

24. File be consigned to registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.09.2022

HARERA
GURUGRAM