



HARERA
GURUGRAM

HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

PROCEEDINGS OF THE DAY		45
Day and Date	Wednesday and 14.09.2022	
Complaint No.	CR/887/2020 Case titled as Mrs Vijay Rana and Aarushi Sinha vs. ILD Millennium Pvt. Ltd.	
Complainant	Mrs. Vijay Rana and Aarushi Sinha	
Represented through	None	
Respondent	ILD Millenium Pvt. Ltd.	
Respondent Represented	Shri Pankaj Chandola Advocate	
Last date of hearing	06.05.2022	
Proceeding Recorded by	Naresh Kumari and HR Mehta	

Proceedings

The present complaint was filed on 26.02.2020 and the reply was received on 30.03.2021.

File has been received on transfer from Adjudicating Officer in view of the judgment dated 11.11.2021 passed by the Apex Court in the case bearing no. **SLP(Civil) No(s). 3711-3715 OF 2021) titled as M/s Newtech Promoters and Developers Pvt Ltd Versus State of U.P. and Ors.,** and wherein it was held that as matters regarding refund and interest under section 18(1) are to be decided by the authority and matters regarding adjudging compensation to be decided by the Adjudicating officer.

The application filed in the form CAO with the adjudicating officer and on being transferred to the authority in view of the judgement quoted above, the issue before authority is whether the authority should proceed further without seeking fresh application in the form CRA for cases of refund along with prescribed interest in case allottee wishes to withdraw from the project

An Authority constituted under section 20 the Real Estate (Regulation and Development) Act, 2016
Act No. 16 of 2016 Passed by the Parliament

भू-संपदा (विनियमन और विकास) अधिनियम, 2016 की धारा 20 के अंतर्गत गठित प्राधिकरण
भारत की संसद द्वारा पारित 2016 का अधिनियम संख्यांक 16



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हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम, 884/2020

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on failure of the promoter to give possession as per agreement for sale. It has been deliberated in the proceedings dated 10.5.2022 in **CR No. 3688/2021 titled Harish Goel Versus Adani M2K Projects LLP** and it is observed that there is no material difference in the contents of the forms and the different headings whether it is filed before the adjudicating officer or the authority.

Keeping in view the judgement of Hon'ble Supreme Court in case titled as **M/s Newtech Promoters and Developers Pvt Ltd Versus State of U.P. and Ors. (Supra)**, the authority is proceeding further in the matter where allottee wishes to withdraw from the project and the promoter has failed to give possession of the unit as per agreement for sale irrespective of the fact whether application has been made in form CAO/ CRA. Both the parties proceeded further in the matter accordingly. The Hon'ble Supreme Court in case of **Varun Pahwa v/s Renu Chaudhary, Civil appeal no. 2431 of 2019 decided on 01.03.2019** has ruled that procedures are hand made in the administration of justice and a party should not suffer injustice merely due to some mistake or negligence or technicalities. Accordingly, the authority is proceeding further to decide the matter based on the facts mentioned in the complaint and the reply received from the respondent and submissions made by both the parties during the proceedings.

Succinct facts of the case as per complaint and annexures are as under:

S. N.	Particulars	Details
1.	Name and location of the project	"Grand Centra", Sector 37C, Gurugram
2.	Nature of the project	Group Housing Colony
3.	Project area	15.48 acres
4.	DTCP license no.	13 of 2008 dated 31.01.2008
5.	Name of licensee	Jubliant Malls Pvt. Ltd and 3 others

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CRV/88/2020

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6.	RERA Registered/ not registered	62 of 2017 dated 17.08.2017 valid upto 17.02.2020	
7.	Application for Booking	Initial Unit	New Unit
		13.09.2014 (Page 25 of complaint)	Not specified
8.	Unit no.	Initial Unit	New Unit
		1105, B Block (Page 25 of complaint)	1104, B Block (Page 30 of complaint)
9.	Unit area admeasuring (super area)	New Unit 1745 sq. ft. (Page 30 of complaint)	
10.	Date of apartment buyer agreement	Not Executed	
11.	Date of first payment	15.09.2014 (Page 32 of complaint)	
12.	Possession clause	N/A	
13.	Due date of possession	13.09.2017 (Taken as 3 years from date of signing of application form in accordance with Hon'ble Supreme Court judgment on the subject)	
14.	Total sale consideration	Rs. 81,14,250/-	

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		(As alleged by complainant on page 17 of complaint)
15.	Amount paid by the complainants	Rs. 20,93,268/- (As per SOA at annexure C7)
16.	Surrender Letter	17.07.2017 (Page 44 at annexure C5)
17.	Occupation certificate	Not obtained
18.	Offer of possession	Not obtained

The complainants have sought following relief:

1. Direct the respondent to refund the entire amount along with prescribed rate of interest.

That the complainants booked a unit in the project of the respondent named as "Grand Centra" situated at sector 37C, Gurgaon, Haryana for a total sale consideration of Rs. 81,14,250/-. The complainants paid an amount of Rs. Rs. 20,93,268/-. The BBA was never executed between the parties. The due date of possession has been calculated in accordance with The Hon'ble Supreme Court judgment in the case of *Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018* wherein it was observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract". In the instant case, the date of application for booking is 13.09.2014 and since that is the last agreement on record, the due date of possession has been calculated from this date which comes out to be 13.09.2017. The complainant, in the instant case, requested

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the respondent to refund its amount even before due date of possession. It is thus a case of surrender.

The surrender of any allotted unit by the respondent builder must be as per the provisions of regulation 11 of 2018 framed by the Haryana Real Estate Regulatory Authority, Gurugram providing deduction of 10% of total sale consideration as earnest money and sending the remaining amount to the allottee immediately.

So, the deduction should be made as per the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, which 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."

Keeping in view the above-mentioned facts and since the allottee requested for cancellation of the allotment on 17.07.2017. Hence the authority hereby directs the promoter to return the amount after forfeiture of 10% of basic sale consideration 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,

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CR/68/2020

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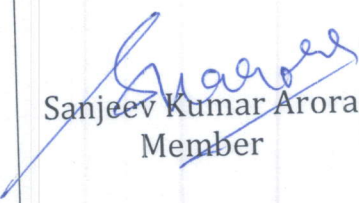
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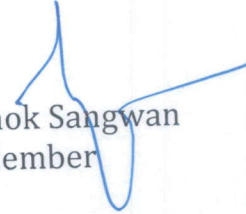
2017 from the date of email of surrender (inadvertently mentioned as email for cancellation in the proceeding of the day) i.e., 17.07.2017 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017.

3. Direct the respondent to pay for mental agony and also litigation cost.

The complainant is claiming compensation under the present relief. The Authority is of the view that it is important to understand that the Act has clearly provided interest and compensation as separate entitlement/rights which the allottee(s) can claim. For claiming compensation under sections 12,14,18 and Section 19 of the Act, the complainant may file a separate complaint before the adjudicating officer under Section 31 read with Section 71 of the Act and rule 29 of the rules.

The complaint stands disposed of. File be consigned to registry. Detailed order will follow.


Sanjeev Kumar Arora
Member


Ashok Sangwan
Member


Dr. KK Khandelwal
Chairman
14.09.2022