

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

Complaint no. : 4246 of 2023
Order pronounced on : 13.11.2024

1. Preeti Yadav
2. Deepak Yadav

Both R/o:- Flat no. 201, GH-11, Kailash Society,
IMT, Sector-1, Manesar-122.51.

Complainants



Versus

M/s AKME Projects Limited.

Address:- Floor-1st, Shop No-53,
Krishna Market Kalkaji, New Delhi-110019.

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Sh. Gaurav Rawat (Advocate)

None

Complainants

Respondent

EX-PARTE 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 29 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 the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S.No.	Heads	Information
1.	Name of project	Akme Raaga
2.	Location of the project	Sector-M1D, Village-Lakhaula, Tehsil-Manesar, Gurugram, Haryana.
3.	Area of the project	10.881 acres
4.	Nature of the project	Group Housing Colony
5.	DTCP License no. and validity	120 of 2008 Dated 13.06.2008
6.	Name of the Licensee	M/s Subros Limited
7.	HRERA Registered	Not registered
8.	Allotment	Not on record
9.	Memorandum of Understanding	18.05.2011 (As on page no. 29 of complaint)
10.	Unit no.	1202, Tower-F (As on page no. 30 of complaint)
11.	Unit area	1855 sq.ft. [Saleable Area] (As on page no. 30 of complaint)

12.	Total sale consideration	Rs.56,55,000/- (As on page no. 30 of complaint)
13.	Amount paid by complainants	Rs.45,35,733/- (As per receipts issued by respondent)
14.	Possession clause	Not available
15.	Due date of possession	18.05.2014 [Calculated 3 years from date of execution of M.O.U]
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainants have made the following submissions in the complaint:

- I. That the present complaint is with reference to the Group Housing Complex "Akme Raaga", situated in Sector- M1D, Village- Lakhaula, Tehsil- Manesar' Gurugram, Haryana" being launched by the respondent. The respondent thereby invited applications from prospective buyers for the purchase of unit in the said project.
- II. That the respondent advertised about its project namely Akme Raaga and painted a rosy picture of the project in its advertisements making tall claims.
- III. The complainants while searching for a unit was lured by such advertisements and calls from the brokers of the respondent. Relying on various representations and assurances given by the respondent and on belief of such assurances, the complainants booked a unit in the project by paying an amount of Rs.15,32,125/- towards the booking of unit bearing no. 1202 in Tower-F, having super area measuring 3000 sq. ft. on 17.05.2011 and the same was acknowledged by the respondent.

- IV. That the respondent confirmed the booking of the unit to the complainants providing the details of the project, confirming the booking of the unit on 17.05.2011, allotting a unit no. 1202, Tower-F, having super area measuring 3000 sq. ft. in the aforesaid project of the developer for a total sale consideration of Rs.56,55,000/- .
- V. That an M.O.U was executed between the complainants and the respondent on 18.05.2011. As per the ,he total sale consideration of the unit i.e. Rs.56,55,000/-, it includes EDC/IDC, PLC, power back-up installation cost, club membership and other facilities.
- VI. That as per the agreed terms of the MOU and application form the respondent proposed to hand over possession of the apartment within a period of 36 from the date of the MOU. Hence, the due date of possession comes out to be 18.05.2014.
- VII. As per the demands raised by the respondent, the complainants has paid a total sum of Rs.45,35,733/- towards the said unit against total sale consideration of Rs.56,55,000/-. That the complainants requested the respondent to refund the amount paid by the complainants for the unit. The complainants were never informed about the delay in construction of Tower-F.
- VIII. That the complainants went to the office of respondent several times and requested them to allow them to visit the site but they were never allowed. The complainants even after paying amounts still received nothing in return but only loss of the time and money invested by them.
- IX. The complainants contacted the respondent on several occasions and were regularly in touch with the respondent. The respondent never gave any satisfactory response to the complainants regarding the status of the construction and were never definite about the delivery of the possession.

- X. That the respondent have completely failed to honor its promises and have not provided the services as promised and agreed through the brochure, agreement and the different advertisements released from time to time.
- XI. That the respondent is guilty of deficiency in service within the purview of provisions of the Real Estate (Regulation and Development) Act, 2016 (Central Act 16 of 2016) and the provisions of Haryana Real Estate (Regulation and Development) Rules, 2017. The complainants have suffered on account of deficiency in service by the respondent.
- XII. That the complainants are entitled to full refund of the amount paid by them along with interest at the prescribed rate from date of payment to till the realization of money under section 18 & 19(4) of Act.
- C. Relief sought by the complainants:**
4. The complainants have sought following relief(s):
- a) Direct the respondent to refund the amount of Rs.45,35,733/- paid by the complainants to the respondent alongwith interest from the date of payment in respect of the said unit.
5. The Authority issued a notice of the complaint to the respondent by speed post and also on the e-mail of the respondent. The delivery reports have been placed in the file. Vide proceedings dated 20.12.2023, 27.03.2024, the Authority granted several opportunities to the respondent for filing the reply to the complaint within a stipulated time period. Accordingly, the Authority is left with no other option but to decide the complaint ex-parte against the respondent.
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 those undisputed documents and written submissions made by the complainants.

E. Jurisdiction of the authority:

7. 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

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

E. 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)(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;

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.

10. 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. 2020-2021 (1) RCR (c) 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."

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.

D. Findings on the relief sought by the complainants:



D.I Direct the respondent to refund the entire paid-up amount along with interest at the prescribed rate.

11. In the present complaint, the complainants initiated a booking for a unit in the "Akme Raaga" project located at Sector-M1D, Village-Lakhaula in Tehsil Manesar Gurugram. The complainants submitted the application form for the allotment of the unit and expressed interest in a unit. The respondent confirmed the booking. Subsequently, on 18.05.2011, the respondent and the complainants executed a Memorandum of Understanding in respect of unit bearing no. 1202 in Tower-F admeasuring 1855 sq.ft., for a total sale consideration of Rs.56,55,000/-.
12. In the present complaint, the complainants intend to withdraw from the project and are seeking return of the amount paid by them 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."

(Emphasis supplied)

13. The Memorandum of Understanding dated 18.05.2011 has no mention regarding the due date of handing over of possession of the unit. The Hon'ble Supreme Court has held in *Fortune Infrastructure Vs. Trevor D'Lima Civil Appeal No. 3533-3534/2017* "15. Moreover, 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 the case, a time period of 3 years would have been reasonable for completion of the contract" Accordingly, the due date of possession is calculated as 3 years from the date of execution of the Memorandum of Understanding i.e., 18.05.2011. If we calculate 3 years from 18.05.2011, it comes out to be 18.05.2014. Therefore, the due date of handing over possession comes out to be 18.05.2014.

14. **Admissibility of refund along with prescribed rate of interest:** The complainants intends 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.

15. 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.
16. 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., 13.11.2024 is **9.10 %**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
17. On considering the documents available on the record and the arguments made by the complainants, the Authority is of the view that the due date for handing over possession of the unit was 18.05.2014 and the occupation certificate in respect of the project has not been obtained by the respondent till date. In the interest of justice, the complainants 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 the **Hon'ble Supreme Court of Indian 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"*
18. Further in the judgement of the Hon'ble Supreme Court of India in the cases of **Newtech Promoter and Developers Private Limited Vs State of U.P. and ors. (2021-2022(1)RCR(Civil)'357)** 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
observed as under:

" The unqualified right of the allottees 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 allottees, 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 allottees/home buyer, the promoter is under an obligation to refund the amount on demand with interest."

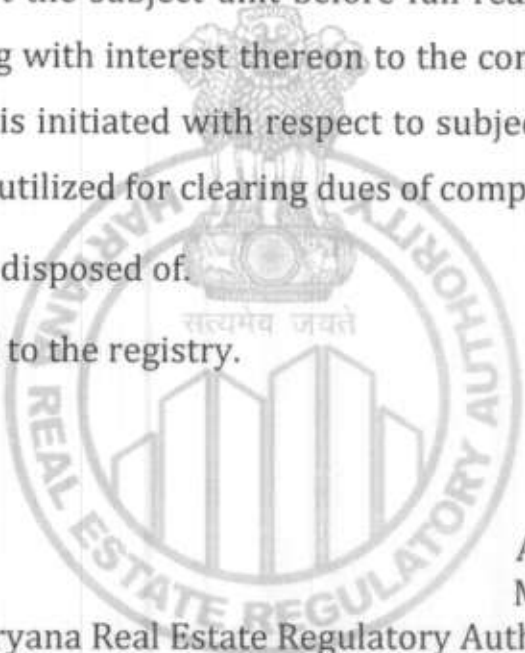
19. Accordingly, the non-compliance of the mandate contained in section 13(1) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainants are entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @11.10% p.a. (the 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*.

E. Directions of the Authority:

20. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016.
- i. The respondent/promoter is directed to refund the amount paid by the complainants i.e., Rs.45,35,733/- along with interest at the rate of 11.10% p.a. as prescribed under rule 15 of the Haryana Real

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

- 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.
 - iii. The respondent is further directed not to create any third-party rights against the subject unit before full realization of the paid-up amount along with interest thereon to the complainants and even if, any transfer is initiated with respect to subject unit, the receivables shall be first utilized for clearing dues of complainants-allottees.
21. Complaint stands disposed of.
22. File be consigned to the registry.


Ashok Sangwan
Member
Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.11.2024

HARERA
GURUGRAM