

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

Complaint no. : 960 of 2023
Date of filing complaint: 01.03.2023
First date of hearing: 18.08.2023
Date of decision: 12.07.2024

Atiqur Rahman Ansari
R/o: - 33, Badhya Sardaha, Tehsil-Bhanapur, District-
Basti,, UP-272190

Complainant

Versus

M/s ALM Infotech City Private Limited.
Regd. Office at: B-418, New Friends Colony, New Delhi-
110087

Respondent

CORAM:
Shri Sanjeev Kumar Arora

Member

APPEARANCE:
Sh. Gaurav Rawat
None

Complainant
Respondent

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 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 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	Project name and location	"ILD Grand", Sector 37C, Gurugram
2.	Project area	5.697 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP license no. and validity status	96 of 2010 dated 03.11.2010 118 of 2011 dated 26.12.2011
5.	RERA Registered/ not registered	Registered vide no. 386 of 2017 dated 18.12.2017 extended upto 30.06.2023
6.	Unit no.	16A, 15 th Floor, Tower-Vision [Page no. 54 of the complaint]
7.	Unit measuring	1819 sq. ft. [Page no. 54 of the complaint]
8.	Date of booking	28.08.2012 [page no. 20 of complaint]
9.	Date of allotment	06.08.2013 [page no. 29 of complaint]
10.	Apartment agreement buyer	04.03.2013 [page no. 51 of complaint]
11.	Possession clause	9. Possession



		<p><i>"Subject to force majeure circumstances as defined herein and subject to timely grant of all approvals, permissions, NOCs, etc. and further subject to the Allottee(s) having complied with all obligations under the terms and conditions of this Agreement and the Allottee(s) not being in default under any part of this Agreement including but not limited to the timely payment of the total Sale Consideration and other charges/fees/taxes/levies and also subject to the Allottee(s) having complied with all formalities or documentation as prescribed by the Developer, the Developer proposes to complete the construction within a period of 36 months computed from the date of execution of this agreement with further grace period of 180 days under normal circumstances".</i></p> <p>(Page no. 64 of the complaint).</p>
12.	Due date of possession	04.09.2016 [Calculated from date of agreement including grace period of 180 days as it is unqualified.]
13.	Total consideration	Rs. 88,58,215/- [As per payment plan at page no. 55 of complaint]



14.	Total amount paid by the complainant	Rs.84,20,089/- [as alleged by complainant]
15.	Occupation certificate /Completion certificate	Not received
16.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submissions: -
4. That relying on various representations and assurances given by the respondent company and on belief of such assurances, complainant booked a unit in the project by paying an amount of Rs.15,00,166/- vide cheque dated 31.07.2012, towards the booking of the said unit bearing no. 16A, 15th floor, having super area measuring 1819.00 sq. ft. to the respondent dated 31.07.2012 and the same was acknowledged by the respondent.
5. That the respondent sent welcome letter dated 28.08.2012 to the complainant providing the details of the project, confirming the booking of the unit dated 31.07.2012, allotting a unit no.16A, 15th Floor, block-vision, having super area measuring 1819 sq. ft. in the aforesaid project of the developer for a total sale consideration of the unit i.e. Rs. 88,58,215/-, other specifications of the allotted unit and providing the time frame within which the next instalment was to be paid. The original booking was under the subvention payment plan but same was arbitrarily changed by the respondent company from subvention payment plan to construction linked payment plan vide letter dated 18.02.2013.



6. That an apartment buyer agreement was executed between the allottee and the respondent on 04.03.2015. As per clause 9 of the ABA the company proposes to hand over possession of the apartment within a period of 36 months from the date of execution of the agreement plus 180 days grace period. Hence, the due date of possession comes out to be 04.03.2016.
7. That as per the demands raised by the respondent, based on the payment plan, the complainant to buy the captioned unit timely paid a total sum of Rs. 84,20,089/- towards the said unit against total sale consideration of Rs. 88,58,215/-.
8. That various e-mail's has been sent by the complainant to the respondent regarding money refund for the said unit and also legal notice dated 10.11.2022 was served upon the respondent. Since the complainant already paid 90% of the amount, and the delay is a sheer distress for them demands refund of the entire amount paid by them.
9. That the complainant approached the respondent and asked about the status of construction and also raised objections towards non-completion of the project. The payment/demands/ etc. have not been transparent and demands were being raised without sufficient justifications and maximum payment was extracted just raising structure leaving all amenities/finishing/facilities/common area/road and other things promised in the brochure, which counts to almost 50% of the total project work.
10. That during the period the complainant went to the office of respondent several times and requested them to allow them to visit the site but it was never allow saying that they do not permit any buyer to visit the site during construction period, once complainant visited the site but



was not allowed to enter the site and even there was no proper approached road. The complainant even after paying amounts still received nothing in return but only loss of the time and money invested by them.

11. The respondent have completely failed to honour their promises and have not provided the services as promised and agreed through the brochure, agreement and the different advertisements released from time to time. Further, such acts of the Respondent is also illegal and against the spirit of RERA Act, 2016 and HRERA Rules, 2017.

C. Relief sought by the complainant:

12. The complainant has sought following relief(s).
 - i. Direct the respondent to refund the amount of Rs. 84,20,089/- paid by the complainant to the respondent along with interest till the date of its realization.
13. The present complaint was filed on 01.03.2023. On hearing dated 18.08.2023 counsel for the respondent appeared and was directed to file reply in the authority with a period of two week. Despite specific directions, 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. Further on the proceedings dated 10.11.2023 and 23.02.2024 none on behalf of respondent appeared. Therefore, the authority assumes/ observes that the respondent has nothing to say in the present matter and accordingly the defence of the respondent company was struck off vide proceeding dated 23.02.2024.
14. 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 submissions made by the complainant.

D. Jurisdiction of the authority

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

D.I Territorial jurisdiction

16. 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

17. 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.

18. 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.

19. 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."

20. 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 amount of Rs. 84,20,089/- paid by the complainant to the respondent along with interest till the date of its realization.

21. In the present complaint, the complainant intends to withdraw from the project and is seeking return of the amount paid by him 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)

22. As per clause 9 of the agreement to sell provides for handing over of possession and is reproduced below:

9. "Subject to force majeure circumstances as defined herein and subject to timely grant of all approvals, permissions, NOCs, etc. and further subject to the Allottee(s) having complied with all obligations under the terms and conditions of this Agreement and the Allottee(s) not being in default under any part of this Agreement including but

not limited to the timely payment of the total Sale Consideration and other charges/fees/taxes/levies and also subject to the Allottee(s) having complied with all formalities or documentation as prescribed by the Developer, the Developer proposes to complete the construction within a period of 36 months computed from the date of execution of this agreement with further grace period of 180 days under normal circumstances”.

23. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to providing necessary infrastructure specially road, sewer & water in the sector by the government, but subject to force majeure conditions or any government/regulatory authority's action, inaction or omission and reason beyond the control of the seller. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in making payment as per the plan may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such a clause in the agreement to sell by the promoter is just to evade the liability towards the timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such a mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.
24. **Due date of handing over possession and admissibility of grace period:** As per clause 9 of the apartment buyer agreement, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 36 months from the date of execution of apartment buyer agreement with a further grace period of 180 days (6

months). Since in the present matter the BBA incorporates unqualified reason for grace period/extended period in the possession clause. Accordingly, the authority allows this grace period of 180 days (6 months) to the promoter at this stage.

25. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by him at the prescribed rate of interest. However, the allottee intends to withdraw from the project and is seeking refund of the amount paid by her 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., 12.07.2024 is **8.95%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.95%**.
28. On consideration of the circumstances, the documents, submissions and based on the findings of the authority regarding contraventions as per



provisions of rule 28(1), the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 9 of the apartment buyer agreement executed between the parties on 04.03.2013, the possession of the subject unit was to be delivered within a period of 36 months from the date of execution of buyer's agreement which comes out to be 04.03.2016. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over of possession is 04.09.2016.

29. Keeping in view the fact that the allottee/complainant wishes to withdraw from the project and 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 plot 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.
30. The due date of possession as per buyer's agreement as mentioned in the table above is **04.09.2016** and there is inordinate delay. Till date neither the construction is complete nor has the offer of possession of the allotted unit been made to the allottee by the respondent/promoter. The authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit which is allotted to it and for which they have paid a considerable amount of money towards the sale consideration. Further, the authority observes that there is no document place on record from which it can be ascertained that whether the respondent has applied for occupation certificate/part occupation certificate or what is the status of construction of the project. In view of the above-mentioned fact, the allottees intend to withdraw from the

project and is well within the right to do the same in view of section 18(1) of the Act, 2016.

31. Moreover, 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 he has 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.....".

32. 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."

33. 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 is 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 she wishes 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.
34. 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 complainant is entitled to refund an amount of Rs.84,20,089/- paid by him at the prescribed rate of interest i.e., @ 10.95% 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*.

F Directions of the authority

35. 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):

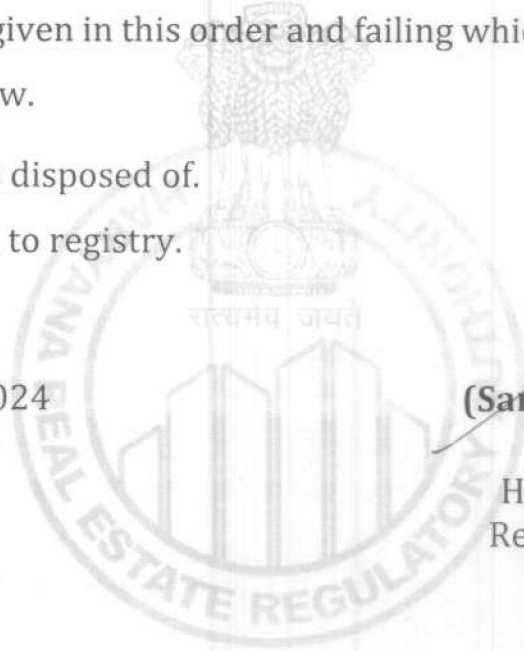


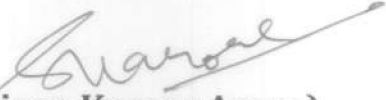
- i. The respondent/promoter is directed to refund the amount i.e., Rs.84,20,089/- received by it from the complainant along with interest at the rate of 10.95% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited 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.

36. Complaint stands disposed of.

37. File be consigned to registry.

Dated: 12.07.2024




(Sanjeev Kumar Arora)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM