

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

Complaint no. : 1209 of 2019  
Date of filing complaint : 20.03.2019  
Date of decision : 08.08.2022

1. Mrs. Birhmwati Singh 2. Mr. Dharamvir Singh <b>Both R/O:</b> - K-6068, Devender Vihar, Sector-56, Gurugram, Haryana	<b>Complainants</b>
Versus	
M/s Sana Realtors Pvt. Limited <b>Regd. Office at:</b> - H-69, Upper Ground Floor, Connaught Circus, Connaught Place, New Delhi-11000	<b>Respondent</b>

**CORAM:**

Dr. K.K. Khandelwal	<b>Chairman</b>
Shri Vijay Kumar Goyal	<b>Member</b>

**APPEARANCE:**

Sh. Gaurav Rawat	Advocate for the complainants
Sh. Gaurav Raghav proxy counsel for Sh. Ashish Upadhyaya	Advocate for the 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 allottees 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:

Sr. No.	Particulars	Details
	Name of the project	Precision Soho Tower
	Rera Registered	Not Registered
	DTCP License No.	72 of 2009 dated 26.11.2009 Valid upto 25.11.2019
1.	Unit no.	805, 8 <sup>th</sup> floor (As per BBA, page no. 16 of complaint)
2.	Unit admeasuring	525 sq. ft. (as per page no. 16 of complaint)
3.	Allotment Letter	10.04.2010 (As per page no. 23 complaint)



4.	Application for registration of showroom	30-03-2010 (page no. 15 of complaint)
5.	Possession clause	<b>11. Possession</b> <b>The Company shall endeavour to make and confirm the allotment of the said premises to the intending ALLOTTER(S) within a period of two and a half years from the date of registration for allotment of the said premises on complete payment of the consideration amount and other charges due and payable upto the due date of confirm allotment according to the payment plan applicable to him. The Company on completion of the said Commercial Building shall make and confirm the allotment of the said premises and issue notice to the intending ALLOTTEE(S) to take possession of the said premises. If the intending ALLOTTEE(S) fails and neglects to take possession of the said premises from the Company within thirty days of the Company dis patching written notice to the intending ALLOTTEE(S) that the said</b>

		<p>premises are ready for use and occupation, for reason whatsoever, then the intending ALLOTTEE(S) shall deemed to have taken possession of the said premises and he/she shall be liable to pay to the Company any expenditure regarding the caretaking/maintenance or any other charge of the said premises from the date onwards.</p> <p><b>(Emphasis supplied).</b></p>
6.	Due date of offer of possession	<p><b>30.09.2012</b></p> <p><b>(calculated from the date of registration)</b></p>
7.	Basic sale price	Rs. 20,23,350/-
8.	Total amount paid by the complainant	<p>Rs. 4,04,670/-</p> <p>(As alleged by the complainant)</p> <p>The counsel for the respondent clarified that for this unit he has paid by cheque only an amount of Rs. 4,04,670/- and the same was agreed by the counsel for the complainant)</p>
9.	Reminder Letters	24.02.2012 and 13.04.2012
10.	Notice for cancellation	<p>22.06.2012</p> <p>(page no. 16 of reply)</p>



11. Occupation Certificate	18.07.2017 (page no. 12 of reply)
12. Offer of possession	Not offered

**B. Facts of the complaint**

3. That the complainants were allotted a unit in the said project on 30.03.2010 details of which being such flat no. 805, 8<sup>th</sup> floor admeasuring super area 525 sq. ft. for the total sale consideration of Rs. 20,23,350/-and accordingly paid an amount of Rs. 4,04,670/- on before 31.05.2010.
4. That in a good gesture as per verbal communication, builder committed that the next demand would be raised when construction starts. Before then, the builder would not raise any demand and till 2013 even the builder did not start the construction on site. In 2013 the builder issued 2 Copy of BBA on complainant's customer code but were till date not received by complainants. On dated 07/02/2013. The complainants wrote a request letter to builder for issuing copy of buyers Agreement but with no results.
5. That after long perusal through visit in builder office and telephonic communication, the complainants wrote request letter to builder for refund the paid amount on dated 04/09/2018 but it did not reply to the letter and no refund the paid amount.
6. That the complainants have repeatedly been seeking an update on the progress of the development of the project for many years and execution of BBA. However, the queries of



the complainants were never replied to and the respondent was always vague and evasive to such requests. Finding their repeated efforts being thwarted and dashed, the complainants became suspicious of the motives and intentions of the respondent. The complainants realized that they had been cheated of their hard earned money where as the respondent Builder/Developer had extracted more than 25% amount of total sale consideration from complainants (Nine Year Back ).

7. That the complainants with good intentions have paid more than 30 % of the project cost; however respondent has failed to meet their obligations and commitments. This is not only a breach of trust, but is also indicative of ill intentions of the respondent. The act on part of respondent has caused undue financial loss and mental agony to the complainants.

**B. Relief sought by the complainant:**

The complainants have sought following relief(s):

- To direct the respondent to refund the amount of Rs. 4,04,670/- along with prescribed rate of interest.

**C. Reply by the respondents**

8. That the present complaint filed by the complainants is liable to be dismissed as the present project does not fall within the purview of RERA and they are having no privity of contract with the respondent. The unit of the complainants already stands cancelled on account of the non-payment of the overdue payments.



9. That the project of the complainants in respect of which occupation certificate was issued by the competent authority vide memo No. ZP-589/SD (BS)/2017/17063 dated 18/07/2017 In Form BR-VII, DTCP, is already complete and the complainants had failed to make the payments as per the construction linked payment. They were sent demand letters as well as cancellation letters dated 22.06.2012 but they never responded to the respondent.

10. That the complainants even failed to pay the make the payments and sign the flat buyer agreement. Hence, the unit of the complainants was cancelled and the earnest amount i.e. 20% of the total sale consideration was forfeited. The application form as submitted by the complainants is also denied and is a forged application form which was not signed by any person on behalf of the respondent.

11. That the complainants are not even in the customers or consumers of the respondent as their unit stood cancelled way back on 22/06/2012. Prior to the cancellation, the reminder letters dated 24/12/2012 and 13/04/2012 were also issued.

12. Copies of all the relevant do 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**

13. The respondent has raised an objection regarding jurisdiction of authority to entertain the present complaint. 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**

14. 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**

15. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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.*

**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.



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 promoters leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

**E. Findings on the relief sought by the complainants.**

**E. I Direct the respondent to refund the amount of Rs. 4,04,670/- along with prescribed rate of interest.**

16. The complainants were allotted a unit detailed above in the project of respondent for a total sale of consideration of Rs. 20,23,350/-. No buyer agreement was executed between the parties. The complainants paid a sum of Rs. 6,09,340/- against the allotted unit and did not pay the remaining amount. The counsel for the respondent clarified that for this unit, the complainants had paid only Rs. 4,04,670/- and the same was agreed by the counsel for the complainants.
17. The respondent cancelled the allotted unit on 22.06.2012 and forfeited the amount paid. The complainants never responded to the respondent regarding the cancellation of the unit. The cancellation order as per page 16 of the reply Annexure-R- wherein 20% of the total sale consideration has been shown to be treated as earnest money although no BBA was signed. No doubt, two reminders for payment due were issued and the unit was cancelled but the respondent could not retain the paid up amount and at the maximum, retain 10% of the sale price in

view of ratio of law laid down in case of *Jayant Singal & Anr.V/s M3M India Ltd, consumer case no. 2766 of 2017 decided on 26.07.2022* by following the ratio of law laid down in cases of *Maula Bux V/s Union of India,(1970) 1 SCR 928 and Sirdar K.B. Ram Chandra Raj Urs V/s Sarah C. Urs*, wherein it was held that the forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section-74 of Contract Act,1872 are attracted and the party so forfeiting must prove actual damage.

18. As per the provisions of regulation 11 of 2018 framed by the Haryana Real Estate Regulatory Authority, Gurugram, the respondent /builder has to return the remaining amount after deducting 10% of sale consideration i.e. Rs. 20,23,350/- as earnest money along with interest @9.8% (MCLR+2%) from the date of cancellation till date of payment.

**F. Directions of the Authority:**

19. 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 promoter 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 after retaining 10% of the sale consideration i.e. Rs.



20,23,350/- as earnest money and return the balance amount to the allottees along with interest @9.8% from the date of cancellation till its realization.

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.

20. Complaint stands disposed of.

21. File be consigned to the Registry.

*V.K. Goyal*

**(Vijay Kumar Goyal)**  
Member

*Dr. K.K. Khandelwal*

**(Dr. K.K. Khandelwal)**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 08.08.2022**

