

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

Complaint no. : 1765 of 2021
Date of filing complaint : 21.12.2018
Date of decision : 12.07.2022

1. Mrs. Shalini Mathur 2. Maharani Mathur Both R/O: - 212, Gulmohar Enclave, New Delhi-110049	Complainants
Versus	
M/s Selene Construction Limited Regd. Office at: - M-62&63, First Floor, Connaught Place, New Delhi-110001	Respondent

CORAM:

Dr. K.K. Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member

APPEARANCE:

Sh. Pankaj Chandola	Advocate for the complainants
Sh. Rahul Yadav	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:

S.N.	Particulars	Details
1.	Name of the project	Indiabulls Centrum Park
2.	Nature of project	Residential Complex
3.	RERA Registered/ Not Registered	Not Registered
4.	DTPC License no.	N/A
	Validity upto	N/A
	Name of licensee	N/A
	Licensed area	N/A
7.	Unit no.	R061, 6 th floor, Tower-R [page no. 43 of complaint]
8.	Unit measuring	Sper Area- 1423 sq. ft. (page no. 43 of complaint)
9	Date of Application Form	13.12.2012 (page no. 24 of complaint)
10	Date of execution of floor	04.12.2013.



	buyer's agreement	(page no. 38 of complaint)
11.	Possession clause	21. Possession The Developer shall endeavor to complete the construction of the/said building/Unit within a period of three years, with an six months grace period thereon from the date of execution of the Flat Buyers Agreement subject to timely payment by the Buyer(s) of Total Sale Price payable according to the Payment Plan applicable to him or demanded by the Developer. The Developer on completion of the construction/development shall issue final call notice to the Buyer. who shall within 30 days thereof, remit all dues and take possession of the Unit. In the event of his/her failure to take possession of the Unit within the stipulated time for any reason whatsoever, he/she shall be liable to bear all taxes, levies, outflows and maintenance charges/ cost and any other levies on account of the allotted Unit along with interest and penalties on the delayed payment, from the dates these are levied/made applicable irrespective of the fact that the Buyer has not taken possession of the Unit or has not been enjoying benefit of the same. The Buyer in such an eventuality shall also be liable to pay the holding charges@ Rs.5per sq.ft (of the super area) per month to the Developer, from the date of expiry of said thirty days till the time possession is actually taken over by the Buyer.
12.	Due date of possession	04.06.2017

		(calculated from the date of execution of buyer agreement inclusive of grace period)
13.	Total Sale Consideration	Rs. 83,95,945/- (later on increased to Rs. 90, 47,604/-) (As per CRA)
14.	Total amount paid by the complainants	Rs. 81,98,558/- (as per CRA)
15.	Occupation certificate dated	05.02.2018 (page no. 45 of reply)
16.	Offer of possession	22.02.2018 (on page no. 47 of reply)

B. Facts of the complaint

3. That the complainants booked an apartment in the said project on 13.12.2012 details of which being such-2BHK flat no. R- 061, tower R, admeasuring super area 1413 sq. ft. for the total sale consideration of Rs. 83,95,945/-and accordingly paid an amount of Rs. 7,25,000/- via cheque No. 358573 and made further payment of Rs. 9,88,760/- through cheque no. 670164 dated 11.02.2013 as per the payment schedule duly agreed upon by the parties.
4. That after much pursuance and requests of the complainants, a flat buyer agreement (hereinafter referred to as "The Agreement") was executed after a delay of 1 year, between the respondent and the complainants on 04.12.2013. As per terms and conditions of the agreement, the complainants deposited **Rs. 81,98,558/-** against the total consideration as per



the demands raised by the respondent and the schedule of payment. The payments made by the complainants are as follows:

S.NO.	DATE	Cheque/NEFT/RTGS No.	AMOUNT
1	19.12.2012	358573	₹ 7,25,000/-
2	11.02.2013	-	₹ 9,88,760/-
3	03.01.2014	670164	₹ 13,08,212/-
4	12.02.2014	670179	₹ 8,62,777/-
5	03.04.2014	022018	₹ 8,62,762/-
6	31.05.2014	129862	₹ 8,62,762/-
7	05.07.2014	600086	₹ 8,62,762/-
8	11.08.2014	022020	₹ 8,62,762/-
9	04.04.2015	120865	₹ 73,358/-
10	02.05.2015	06451	₹ 7,89,403/-
Total			₹81,98,558/-

5. That the respondent had utterly failed to offer the possession to the complainants as per the terms of the agreement. The complainants visited the project site only to find out the utter shocking state of the progress in construction of the unit/flat booked and asked the respondent to refund the amount paid along with interest. However, the respondent never responded to the request of them.
6. That instead of providing the refund of the amount paid by the complainants, the respondent with dishonest intention, on 22.02.2018 raised a demand stating that the project is ready for possession and the complainants are liable to pay the demand due at the time of possession. The respondent by way of that letter asked the complainants to make a payment of Rs. 8,49,046/-.
7. That even after frequent follow ups by the complainants for refund as it had utterly failed to complete the project and



handover the unit within the stipulated time and cancelled the allotment of the unit. However, to the utter shock and dismay of the complainants, the respondent did cancel the allotment, however, arbitrarily and malafidely forfeited the amount paid by the complainants. That harbouring the malafide intention since the very beginning, the respondent cancelled the unit of the complainants with the intention of shifting the onus of failure upon the complainants. Initially vide E-mail dated 28.08.2018, the respondent communicated that the total deduction would be of Rs.18,85,554/- which included forfeiture of 15% of the total sale price, brokerage paid, VAT as well as interest and the amount to be refunded would be Rs. 63,13,004/-, further enquiring about the deduction, vide E-mail dated 06.09.2018, the respondent further deducted an amount of Rs.2,32,911/- as service tax applicable.

8. The respondent sent a letter to the complainants dated 16.02.2011 where respondent arbitrarily and unilaterally again changed the flat of the complainants from K-104 to J-201. The respondent demanded huge amount of Rs 33,30,392/- to be paid by the complainants towards the current dues of flat 1-201 along with outstanding dues of Rs.11,530/-.
9. That since there was inordinate delay purchaser opted to cancel the booking but the developer arbitrarily forfeited the amount of Rs. 21,18,465/- which includes forfeiture amount (15% of Total Sale Price) in spite of being aware of the fact



that the HRERA restricts the developer for forfeiting more than 10% of the earnest money

B. Relief sought by the complainants:

The complainants have sought following relief(s):

- To direct the respondent to refund the forfeited amount of Rs. 21,18,465/- along with prescribed rate of interest.
- To direct the respondent to pay the compensation of Rs. 5,00,000/- for causing mental agony, harassment to the complainants
- To direct the Respondent to pay the compensation of Rs. 2,00,000/- for legal costs

C. Reply by the respondents

10. That a unit bearing no. R061 booked by complainants in the project i.e. "INDIABULLS CENTRUM PARK" for which an agreement was executed on 04.12.2013. It is pertinent to mention herein that the instant complaint of the complainants is further falsifying their claim from the very fact that, they have in their complaint alleging delay in delivery of possession of the provisionally booked unit. However the complainants from the very beginning were aware, that the period of delivery as defined in clause 21 of flat buyer's agreement is not sacrosanct as in the said clause it is clearly stated that "the Developer shall endeavor to complete the construction of the said building/unit" within the stipulated time.

11. It is stated that it is a universally known fact that due to adverse market conditions viz. delay due to reinitiating of the existing work orders under GST regime, by virtue of which all the bills of contractors were held between, delay due to the

directions by the Hon'ble Supreme Court and National Green Tribunal whereby the construction activities were stopped, Non-availability of the water required for the construction of the project work & non-availability of drinking water for labour due to process change from issuance of HUDA slips for the water to totally online process with the formation of GMDA, shortage of labour, raw materials etc., which continued for around 22 months, starting from February'2015. Due to the above mentioned reasons, the project of the respondent was severely affected and it is in these above elaborated circumstances, which were beyond the control of the respondent, that the progress and construction activities, sale of various flats and spaces has not taken place as envisaged.

12. Further, as per the license to develop the project, external development charges were paid to the State Government and the State Government in lieu of the EDCs was supposed to lay the whole infrastructure in the licensed area for providing the basic amenities such as drinking water, sewerage, drainage including storm water line, roads etc. That the State Government terribly failed to provide the basic amenities due to which the construction progress of the project was badly hit.

13. Furthermore, the Ministry of Environment and Forest (hereinafter referred to as the "MoEF") and the Ministry of Mines (hereinafter referred to as the "MoM") had imposed certain restrictions which resulted in a drastic reduction in the availability of bricks and availability of Kiln which is the most basic ingredient in the construction activity. The MoEF restricted the excavation of top soil for the manufacture of



bricks and further directed that no manufacturing of clay bricks or tiles or blocks can be done within a radius of 50 (fifty) kilometres from coal and lignite based thermal power plants without mixing at least 25% of ash with soil. The shortage of bricks in the region and the resultant non-availability of raw materials required in the construction of the project also affected the timely schedule of construction of the project.

14. That in view of the ruling by the Hon'ble Apex Court directing for suspension of all the mining operations in the Aravalli Hill range in State of Haryana within the area of approx.. 448 sq. kms in the district of Faridabad and Gurgaon including Mewat which led to a situation of scarcity of the sand and other materials which derived from the stone crushing activities , which directly affected the construction schedules and activities of the project.

15. That despite the implementation of the project being affected on account of the above-mentioned force majeure conditions, the respondent being a customer-oriented company completed the construction of the tower in which the unit allotted to the complainants is located and the respondent applied for the grant of the occupation certificate on 17.03.2017 and the same was granted by the concerned authorities on 05.02.2018 and vide its letter dated 22.02.2018 informed the complainants that the construction of the unit is complete and is ready for possession. However, the complainants failed to remit the outstanding due amount against the unit and failed to take the physical possession of their unit.

16. That the complainants instead of taking physical possession of the unit and clearing their outstanding dues pending towards the cost of the unit, vide their letter dated 16.08.2018 showed their intent to cancel their provisional allotment of the said unit by cancelling the buyers agreement dated 04.12.2013.

17. That after deduction the respondent refunded to the complainants an amount of Rs. 61,42,410/- vide cheque bearing number 006571 dated 31.10.2018 drawn on HDFC BANK Ltd

18. That vide letter dated 23.10.2012, the complainants were informed that being a customer centric company and keeping best interest of its customers, they were allotted unit in Tower-J in order to ensure timely delivery of the flat and they were never objected to the change of allotment as they were satisfied with the same.

19. The complainants visited to the respondent's office on 24.07.2015 for discussing other alternate unit options, however complainants were not appealed by the same and henceforth no amicable settlement took place between the parties.

20. 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

21. The respondents have 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

22. 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

23. 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.1 Direct the respondents to refund the forfeited amount of Rs. 21,18,465/- along with prescribed rate of interest.

24. Vide application dated 13.12.2012, the complainants booked a unit detailed above in the project of respondent for a total sale of consideration of Rs. 83,95,945/-, later on increased to Rs. 90,47,604. A flat buyer agreement dated 04.12.2013 was executed in this regard between the parties. The due date for completion of the project and handing over possession of the allotted unit was fixed at 04.06.2013. The complainants started depositing various amount against the allotted unit and paid a sum of Rs. 81,98,558/- to the respondent upto 02.05.2015. Despite paying the above-mentioned amount, the respondent continued to raise demands against the complainant after the expiry of due date i.e. 04.06.2017 and the project was not complete. So, the complainants asked for refund of the deposited amount and the deduction to be made. The respondent vide email dated 22.02.2018(annexure C-4) informed the complainants about the same and ultimately vide



email dated 28.08.2018(annexure C-5) cancelled the allotted unit and refunded a sum of Rs. 6142410/- vide an account payee cheque dated 31.10.2018 received by Shalini Mathur (one of the complainants). While, refunding that amount , the respondent deducted /forfeited Rs. 2118465 under the following heads.

S.No.	Particular	Amount
1.	Total Amount Paid	Rs. 81,98,558/-
2.	Forfeiture of earnest Money (15% of total sale consideration)	Rs. 12,93,770/-
3.	Brokerage Paid	Rs. 4,42,931/-
4.	Service Tax	Rs. 2,32,911/-
5.	VAT	Rs. 86,536/-
6.	Total deduction amount (B+C+D+E)	Rs. 21,18,465/-
7.	Refundable Amount (A-F)	Rs. 61,42,410/-

25. Dissatisfied with that deductions, the complainants filed the present complaint seeking refund of the forfeited amount besides compensation by taking a no. of pleas, the same being against the provision of flat buyer agreement and the regulations framed by the authority in the year 2018. But, the case of respondent is otherwise and who took a plea that deduction were made from the total amount paid by the complainants as per the sale agreement and they are not entitled to seek refund of the forfeited amount.

26. As per clause 21 of the flat buyer agreement dated 04.12.2013, the project in which the complainants were allotted a unit was to be completed within a period of 3 years from the execution of that document with a grace period of 6 months. So, the due date calculated accordingly comes to 04.06.2017. the respondent failed to complete the project and offer possession of a unit to the complainants by that date. So that led to their email dated 28.08.2018 seeking refund and the amount to be deducted and which ultimately led to forfeiting a sum of Rs. 2118465/- and paying back Rs. 6142410/- to the complainants. There are clause 9 & 10 in the sale agreement dealing with the amount of earnest money being 15% of the total selling price of the unit and forfeiture of the same besides brokerage, dues including interest . the occupation certificate of the project was received on 05.02.2018 and an intimation regarding the same was sent to the complainants vide letter dated 22.02.2018. No doubt, the respondent allowed refund of the deposited amount to the complainants after receipt of OC and intimation of possession but only after forfeiting the earnest money plus other charges and as per clause 9 & 10 of the buyer's agreement. The cancellation of the allotted unit and refund of the remaining amount was made after the Act of 2016 came into force. So, while cancelling the allotted unit



and refunding the remaining amount, the respondent could not have deducted more than 10% of the sale price as per the law settled by the Hon'ble Apex Court of the Land. So, the act of respondent is deducting more than 10% of the sale price of the allotted unit besides other charges is not legal one and is liable to be set aside. Thus the respondent is directed to refund the forfeited amount after retaining 10% of the sale consideration against the allotted unit within period of 90 days.

E. II Direct the respondent to pay the Rs. 2,00,000/- of legal costs.

27. The complainant are claiming compensation in the above-mentioned reliefs. For claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainants may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

F. Directions of the Authority:

28. 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 forfeited amount after retaining 10% of the sale consideration against the allotted unit withing period of 90 days..
- ii) A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.

29. Complaint stands disposed of.

30. File be consigned to the Registry.


(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 12.07.2022