

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

Complaint no. : 990 of 2020
First date of hearing: 25.03.2020
Date of decision : 21.07.2022

Mr. Nishant Thareja
R/o 221, Deed Plaza Complex, Opp. Civil Court,
Gurugram.

Complainant

Versus

M/s Suncity Projects Pvt. Ltd.
LGF -10, Vasant Square Mall, Plot - A, Sector - B,
Pocket - V, Community centre, Vasant Kunj, New
Delhi - 110070

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Shri Sanjeev Sharma
Shri Rajan Gupta

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint has been filed on 02.03.2020 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 the parties.

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:

Sr. No.	Particulars	Details
1.	Name of the project	Suncity Avenue 102, Sector - 112, Gurugram (Affordable)
2.	Unit no.	G-904, Carpet area - 532 sq. feet and balcony area - 100 sq.ft.
3.	RERA Registration	91 of 2017 dated 24.08.2017
4.	DTCP License no.	3 of 2015 dated 19.06.2015
5.	Date of booking	05.01.2016 (As per page 5 of complaint)
6.	Date of builder buyer agreement	06.10.2016 (Page 18 of complaint)
7	Date of environment clearance	01.07.2016 (As per page 47 of reply)
7.	Possession clause - III	The developer proposes to offer possession of the said apartment within a period of 4 years from the date of approval of building plans or grant of environment clearance, whichever is later
8.	Due date of possession	01.07.2020 i.e., calculated from date of environment clearance (01.07.2016) - taken from page 20 of reply

9.	Total Sale Consideration	Rs. 21,15,750/- (As per page 19 of the complaint) Rs. 22,31,883/- (As per page 29 of complaint)
10.	Amount Paid	Rs. 19,84,725 /- (As per page 29 of complaint)
11.	Occupation certificate	Obtained on 08.08.2019 as per page no. 46 of reply
12.	Offer of possession	Not offered
13.	Demand/Reminder notices	27.05.2019 and 23.07.2019 (Page 35 and 38 of reply)
14.	Newspaper publication of notice for cancellation	29.01.2020 (As per page 41 of reply)
15.	Cancellation of allotment	14.02.2020 (Page 32 of complaint)

B. Facts of the complaint

3. That on the basis of advertisements and representations made by the respondent, the complainant applied for allotment for a unit in its project known as "**Suncity Avenue 102/ Affordable Group Housing Colony**", located in **Dhankot, Sector-102, Gurgaon, Haryana**.
4. That on the basis of the application dated 05.01.2016 of the complainant, she was allotted a flat bearing G-904, measuring carpet area 518 sq.ft. and balcony area 87.50 sq. ft for a total sale consideration of Rs. 21,15,750/-.
5. That in pursuant to allotment of the unit, an apartment buyer's agreement dated 06.10.2016 was executed between the parties. It is the case of the complainant that in pursuant to execution of apartment buyer agreement and payment plan annexed with it, she started making various payments against the allotted unit and paid a total sum of Rs. 19,84,725/- in all to the respondent. However, after receiving almost 98% amount from the complainant, the respondent vide letter dated 14.02.2020 unanimously cancelled the allotment of the unit in question.

6. That the act of respondent in cancelling the unit and not offering its possession is against the law. Thus, the respondent is bound to offer possession of the allotted unit to the complainant and its act of cancellation is illegal calling for immediate directions of the Authority.
7. That the complainant wants to continue with the project. So, the respondent be directed offer her possession of the allotted unit besides delay possession charges and compensation.

C. Relief sought by the complainant:

- a. The respondent is directed to reinstate the unit and handover the possession to the complainant..
- b. The respondent be ordered to provide the copy of the occupancy certificate if obtained.

D Reply by the respondent

The respondent has contested the complaint on the following grounds:

8. That the present complaint, besides being misconceived and erroneous, is untenable in the eyes of law. The complainant has misdirected herself in filing the above captioned complaint before this Ld. Authority as the relief being claimed by the complainant cannot be entertained.
9. That in the present case, the complainant is seeking the relief of setting aside of the cancellation of unit/ flat in question alongwith the compensation for harassment. It is pertinent to mention that the prayer of the complainant in the present complaint is not maintainable in the eyes of law as she herself defaulted in making the timely payment of installments despite repeated requests and reminders. Therefore, keeping in view the principles of natural justice and in public interest, the relief sought by the complainant seeking setting aside of cancellation of unit cannot be allowed. It is humbly submitted that due to this reason, the

complaint cannot be entertained as the complainant has not come to the authority with clean hands and has concealed the material fact that she has been a wilful defaulter, having deliberately failed to make the payment of outstanding dues.

10. That it is pertinent to mention here that the present project has been developed by the respondent as per the terms and conditions of "Affordable Housing Policy, 2013" of the Govt. of Haryana, and the Complainant was allotted a flat no. G-904, 2 BHK on 9 Floor, Tower-G, in Affordable Group Housing Project, "Suncity Avenue 102", situated at Sector-102, Gurugram, Haryana, on the terms and conditions contained in apartment buyer's agreement. Subsequently, an apartment buyers' agreement dated 06.10.2016 was executed between the parties which contained detailed terms and conditions of the allotment, total price of flat/ unit fixed as Rs.22,31,883/- excluding other charges, VAT and other taxes etc. As per affordable housing policy, 2013 and buyers' agreement, the complainant was required to make the payment of sale consideration in installments as per payment plan provided therein.
11. That respondent vide letter dated 23/07/2019 raised a demand of Rs. 2,48,991/- towards installment/outstanding as per the terms of the contract. However, the complainant failed to pay the same despite repeated requests from the respondent.
12. That again the respondent vide public notice in the news paper i.e 'Dainik Bhaskar' on 29/01/2020 called upon the complainant to clear the aforesaid dues within extended time of 15 days. But despite best efforts from the respondent, the complainant failed to make the payment.
13. The respondent company left with no other option, cancelled the allotment of flat vide letter dated 14.02.2020 and refunded the deposited

amount as per Affordable Housing Policy, 2013 vide cheques no. 000945 dated 14.02.2020 drawn n ICICI Bank.

14. It is submitted that the complainant has failed to fulfil her obligations as per the Act of 2016. The complainant has not complied with the obligations of section 19(6) of the Act where it talks about the duty of the allottee to make necessary payments. The authority has no jurisdiction to entertain the present complaint and complaint is liable to be dismissed on this ground also.

E. Jurisdiction of the authority

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

15. 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

The 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;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoter, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

16. 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.

F. Findings on the relief sought by the complainant

F. I The respondent be directed to reinstate the unit and handover the possession of the complainant.

17. Some of the admitted facts of the case are that vide application dated 05.01.2016, the complainant applied for a unit under the affordable housing policy, 2013 in the project of the respondent detailed above. She is being successful was allotted unit bearing no. G-904 admeasuring 518 sq. ft. and having balcony area of 87.50 feet, by the respondent for a total sum of Rs. 22,31,883/-. It led to execution of an apartment buyer agreement dated 18.05.2016 between the parties containing various terms and conditions of allotment including dimensions of the unit, its price, due date of possession & payment plan etc. It is also not disputed that on the basis of that agreement the complainant started making various payments against the allotted unit and paid a total sum of Rs. 19,84,725/- till date. She was issued letter dated 27.05.2019 and vide which a demand for Rs. 5,46,253/- was raised and out of which a sum of Rs. 2,64,486/- was paid. But despite issuance of that letter the complainant failed to make payments leading to issuance of public notice

in the newspaper on 12.06.2019, giving her 15 days' time to make payment. When the complainant failed to comply with the reminder as well as public notice, the allotment of the unit made in her favour was cancelled vide letter dated 14.02.2020 (page 32 of complaint) refunding Rs. 18,36,309/- via RTGS in her account after deducting Rs. 2,65,789/- in lieu of taxes etc. in terms of buyers' agreement and the affordable housing policy, 2013. Now, the issued for consideration arises as to whether direction of the respondent in cancelling the allotment of the allotted unit was made as per the provisions of the policy of 2013 or not.

18. No doubt the complainant had already paid about 98% of the sale consideration but he was also required to pay the amount due on the basis of payment plan as per the policy of 2013, the terms and conditions mentioned in the buyers' agreement. A public notice dated 29.01.2020 through publication in the daily newspaper of "Danik Bhasker". when despite issuance of notice/reminder the complainant did not pay the amount due, it led to cancellation of the allotted unit vide letter dated 14.02.2020 and also transferring the sum of Rs. 1836309/- after deduction of Rs. 265789/- as per the policy of 2013 and buyers' agreement. Clause 5(i) of the Affordable Group Housing Policy, 2013 provides a provision for cancellation of allotted unit and which runs as follow:

" if any successful applicant fails to deposit the installments within the time period as prescribed in the allotment letter issued by the colonizer, a reminder may be issued to him for depositing the due installments within a period of 15 days from the date of issue of such notice. If the allottee still defaults in making the payment, the list of such defaulters may be published in one regional Hindi news-paper having circulation of more than ten thousand in the State for payment of due amount within 15 Days from the date of publication of such notice, failing which allotment may be cancelled. In such cases also an amount of Rs. 25,000/- may be deducted by the coloniser and the balance amount shall be refunded to the applicant. Such flats may be considered by the committee for offer to those applicants falling in the waiting list".

19. A perusal of the facts detailed earlier and the policy of 2013 shows that the respondent raised demand vide letter dated 23.07.2019, followed by public notice in the daily newspaper on 29.01.2020. But despite that she failed to make payment of the amount due leading to cancellation of the allotment of the unit in her favour vide letter dated 14.02.2020. Thus, all these shows that the respondent followed the prescribed procedure as per clause 5(i) of the policy of 2013 and cancelled the unit of the complainant with adequate notices. So, the cancellation of the unit is valid as per the procedure prescribed by law.
20. Now, the second question which arises for consideration is as to whether deduction made vide cancellation letter are as per the policy of 2013. As per the letter dated 14.02.2020 while cancelling the allotment, the respondent deducted Rs. 2,65,789/- and remitted the remaining amount received from the complainant in his account. Though, it is pleaded on behalf of the respondent that the deduction of the amount was made as per the policy of 2013, but the plea advanced in this regard is not tenable. Clause 5(iii)(h) of the Affordable Housing Policy, 2013 amended on 05.07.2019 is relevant in this regard and the same is reproduced as under:

"In clause no. 5 (Allotment Rates; Allotment & Eligibility Criteria), of the Annexure A of notification dated 19th August 2013: -

a. In clause 5(iii)h of policy dated 19.08.2013, the words "In case of surrender of flat by any successful applicant, an amount of Rs 25,000/- may be deducted by the colonizer", shall be substituted as under :- "On surrender of flat by any successful allottee, the amount that can be forfeited by the colonizer in addition to Rs. 25,000/- shall not exceed the following: -

<i>Sr. No.</i>	<i>Particulars</i>	<i>Amount to be forfeited</i>
<i>(aa)</i>	<i>In case of surrender of flat before commencement of project</i>	<i>Nil;</i>

(bb)	Up to 1 year from the date of commencement of the project:	1% of the cost of flat;
(cc)	Up to 2 years from the date of commencement of the project:	3% of the cost of flat;
(dd)	after 2 years from the date of commencement of the project	5% of the cost of flat;

21. The authority observed that the concept of surrendering of flat by the allottee and cancellation of flat by the promoter are two different concepts under the policy of 2013. In the present case, the respondent has deducted the amount of the complainant as per clause 5(iii)(h) but the said clause 5(iii)(h) is applicable in case of surrender of flat by allottee. There is a distinction between the two i.e., surrender of flat and cancellation of flat. In case of cancellation of flat clause 5(iii)(i) of the affordable housing policy will be followed and clause 5(iii)(i) has not been amended so far and a reference to the same has already been given in earlier para no. 20th order.
22. Vide order dated 08.07.2022, it has been directed to the respondent to file an affidavit with respect to the unit in question and its availability for allotment. The respondent has submitted an affidavit on 11.07.2022 through which it states that the unit in question has already been allotted to third party after cancellation and no other unit is available for allotment/sale. As per cancellation clause of the affordable housing policy the respondent can deduct the amount of Rs. 25,000/- only and the balance amount shall be refunded back to the complainant. In the present case, the respondent has deduction an amount of Rs. 2,65,789/- out of the total amount of Rs. 22,31,883/- and refunded Rs. 18,36,309/- to the complainant. So, the deduction made by the respondent while cancelling the allotted unit is not as per the policy of 2013. Thus, the respondent is

directed to deduct only Rs. 25,000/- and refund the balance amount of within a period of 90 days alongwith interest on the balance amount from the date of cancellation till its actual payment. The counsel for the complainant has stated that a demand draft of refunded amount was sent to the complainant, the date of the said draft has expired and requests for re-validation. The counsel for the respondent is directed to revalidate the demand draft.

F. Directions of the Authority:

23. 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 balance amount after retaining a sum of Rs. 25,000/- within a period of 90 days alongwith interest on the balance amount from the date of cancellation till its actual payment
 - ii. The above mentioned amount be refunded to the complainant within a period of 90 days and failing which legal consequence would follow.
 - iii. The respondent is directed to revalidate the demand draft.
24. The Complaint stands disposed of.
25. File be consigned to registry.


(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.07.2022

