



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

Complaint no. : 6003 of 2019
Date of filing complaint : 03.12.2019
First date of hearing : 06.02.2020
Date of decision : 07.07.2022

1. Rakesh Kapoor 2. Pooja Kapoor R/O: - B-7/1, DLF PHASE-1, Gurugram, Haryana.	Complainants
Versus	
M/s Splendor Landbase Limited Regd. Office at: - Splendor Forum, 3 District Centre, Jasola, New Delhi-25	Respondent

CORAM:

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

APPEARANCE:

Ms. Monika Sharma	Advocate for the complainants
Sh. Ravi Aggarwal	Advocate for the respondent

ORDER

1. The present complaint has been filed by the complainant/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: सत्यमेव जयते

Sr. No.	Particulars	Details
	Name of the project	Splendor Epitome, Sector-62
1.	Unit no.	SE/050, Ground Floor, Tower-A (As per reminder letter, page no. 23 of complaint)
2.	Unit admeasuring	600 sq. ft. (As per reminder letter, page no. 23 of complaint)
3.	Provisional Allotment Letter	10.12.2013 (page no. 15 of reply)



4.	Date of execution of agreement for sale	Not executed
5.	Building Plan	NA
6.	Possession clause (As per allotment letter)	Xxiii The Company shall endeavor to complete the construction of the Complex including the Said Space within a period of three years from the date of approval of building plans of the Complex subject to timely payment by the Intending Allottee(s) of sale price, and other and charges due and payable according to the Payment Plan applicable to him or as demanded by the Company and subject to force majeure. The Company on obtaining certificate for occupation/completion and use of the Complex from the regulatory authorities shall hand over the Said Space to the Intending Allottee for his/her/its occupation and use subject the Intending Allottee having complied with



		<p>all the terms and conditions of the Space Buyers' Agreement. In the event of his/her failure to take over or occupy and use the Said Space provisionally and/or finally allotted within thirty (30) days from the date of intimation in writing by the Company, then the Intending Allottee shall be deemed to have taken possession of the Said Space (hereinafter referred to as "Deemed Possession") and the same shall lie at his/her risk and cost and the Intending Allottee shall be liable to pay to the Company holding charges for the entire period of such delay. The holding charges shall be distinct charge in addition to maintenance charges, and not related to any other charges as provided in this Application and the Space Buyers Agreement. (Emphasis supplied).</p>
7.	Due date of delivery of possession	NA



8.	Total sale consideration	Rs. 49,49,344/- (as per page no. 26 of reply)
9.	Total amount paid by the complainant	Rs. 19,66,500/- (as per page no. 26 of reply)
9.	Occupation certificate	Not obtained
10.	Offer of possession	Not offered
11.	Reminders Letters	25.04.2014 and Final reminder letter 07.07.2019
12.	Termination Letter	02.08.2019 (page no. 28 of complaint)

B. Facts of the complaint

3. The complainants applied with the respondent for a commercial project titled as 'Splendor Epitome', Sector 62, golf course extension road Gurgaon, Haryana and paid a sum of Rs. 9,83,250/- vide cheque no. 721594 drawn upon HDFC Bank towards the booking amount on 29.09.2011 and on 10.12.2012. The complainants again paid sum of Rs. 9,83,250/- vide cheque no. 721595 drawn upon HDFC Bank at the time of bhoomipoojan.
4. That it would be observed that payments amounting to Rs.19,66,500/- have been made against total sale price of



Rs.49,49,344/-. The payment already made constitute approx. 45% of the total sale price of the commercial project.

5. That as per the record of the respondent, the construction has not been initialised as per the letter dated 05.10.2016 vide which the complainants were informed about the likelihood of the commencement of construction.
6. That the complainants received cancellation notice dated 02.08.2019 having cancelled the allotment of the commercial project along with cheque payment of Rs. 5,80,556 vide cheque no. 00097 from the total deposit amount of Rs. 19,66,500/- without their consent and without reflecting the correct status of the project.

B. Relief sought by the complainants:

The complainants have sought the following relief:

- a). Direct the respondent to refund the entire payment made to it.

C. Reply by the respondent

The respondent by way of written reply made the following submissions.

7. At the outset, it is stated that there is no merit whatsoever in the complaint filed and the same is liable to be dismissed. The complaint filed by the complainants before the Ld. Authority, besides being misconceived and erroneous, is untenable in the eyes of law. The complainants have misdirected themselves in filing the above captioned complaint before this Ld. Authority as



the reliefs being claimed by the complainants cannot be said to even fall within the realm of jurisdiction of this Ld. Authority.

8. That the respondent has collected approx. 45% of the total sale price of the commercial project comprising of an area of 600 sq. ft. and the project is lying incomplete. In fact, the total sale price of the unit booked by the complainants is Rs.71,25,000/- inclusive of basic sale price of Rs.65,55,000/-, PLC of Rs.3,00,000/-, EDC/IDC of Rs.2,40,000/- and EEC of Rs.30,000/- service tax / GST and other taxes, levies, charges as applicable from to time as per applicable laws. The complainants had deposited Rs.19,66,500/- which comes to 26.80% of the total sale price and made a false statement before this Authority that they have paid approx. 45% of the total sale price.

9. That the complainants defaulted in making payment of the outstanding amount as per agreed construction linked payment plan since December 2013 as is evident from the various demand letters annexed by the complainants as Annexure 3 to the complaint. The respondent sent demand letter dated 10.12.2013 to the complainants to make payment of the then outstanding amount of Rs.8,50,444/- as became due on start of excavation. Since, the complainants had not made any payment after receipt of the said demand letter, the respondent sent reminder letters dated 18.01.2014 and 25.4.2014 to them to make payment of outstanding installment of Rs.8,50,444/- as

per payment plan opted by them. But they failed to make any payment.

10. Since the complainants had again failed to make any payment or send any response to the said letters, the respondent had sent final reminder letter dated 07.07.2019 to them giving them last and final opportunity to make payment of the aforesaid outstanding amount of Rs.29,82,844/- within a period of 15 days from the receipt of the said letter falling which it was informed that the respondent shall be constrained to take consequential action in terms of application / provisional allotment letter. Since, the complainants continued with the default and again failed to make payment of the aforesaid outstanding amount of Rs.29,82,844/- even after receipt of final reminder letter dated, the respondent was constrained to cancel the booking of the said unit made by them and remit the cheque of the refundable amount after deduction of earnest money and the service tax vide cancellation notice dated 02.08.2019.

11. The question of any refund and / or payment of delayed penalty as sought by the complainants does not arise since the complainants themselves are defaulters and also not entitled to any relief in view of the provisions of section 51 of the Indian



Contract Act. It is clear that since the complainants are unable to continue with the allotment of the said unit and want to evade making payment towards the said unit, they have filed the present complaint. Therefore, this Authority ought to dismiss the present complaint on this ground alone.

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

F. Findings on the objections raised by the respondent.

F. I Objection regarding untimely payments done by the complainants.



16. The respondent has contended that the complainants have made defaults in making payments as a result thereof, it had to issue reminders dated 25.04.2014 and 07.07.2019 respectively, it is further submitted that the complainants have still not cleared the dues. The counsel for the respondent referred to clause 10 of the allotment letter dated 26.05.2008 wherein it is stated that timely payment of instalment is the essence of the transaction, and the relevant clause is reproduced below:

10.15% of the total basic sale consideration i.e., Base Price + Specification charges on the total super area of the Flat shall constitute the "Earnest Money". Timely payment of each installment of the total sale consideration-i.e: basic sale price and other charges as stated herein is the essence of this transaction/ agreement. In case payment of any installment as may be specified is delayed, then the Applicant(s) shall pay interest on the amount due 18% p.a. compounded at the time of every succeeding installment or three months, whichever is earlier. However, If the Applicant(s) falls to pay any of the installments with interest within three (3) months from the due date of the outstanding amount, the Company may at its sole option forfeit the amount of Earnest Money and other charges including late payment charges and interest deposited by the Applicant(s) and in such an event the Allotment shall stand cancelled and the Applicant(s) shall be left with no right, lien or interest on the said Flat and the Company shall have the right to sell the said Flat to any other person. Further the company shall also be entitled to terminate/ cancel this allotment in the event of defaults of any terms and conditions of this application. In case the applicant withdraws his



application for the allotment for any reason whatsoever at any point of time, then the Company at its sole discretion may cancel/terminate this Agreement and after forfeiting the earnest money as stated hereinabove may refund the balance amount to the Applicant without any interest..."

17. At the outset, it is relevant to comment on the said clause of the allotment letter i.e., "10. **TIMELY PAYMENT ESSENCE** wherein the payments to be made by the complainants have been subjected to all kinds of terms and conditions. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favor of the promoter and against the allottees that even a single default by the allottees in making timely payment as per the payment plan may result in termination of the said agreement and forfeiture of the earnest money. There is nothing on the record to show as to what were the terms and conditions of allotment of the unit in favour of the complainants. Admittedly, the unit allotted to the complainants initially was changed two times by the respondent due to one reason or the other. The total sale price of the allotted unit to the complainants as per letter of allotment letter was Rs49,49,344/-. The complainants admittedly paid a sum of Rs. 19,66,500/- to the respondent from time to time. Though, no buyer agreement was executed between the parties but possession of the allotted unit changed



from time to time was to be given within a period of 3 years from the date of approval of building plans of the project. The complainants admittedly made default in making payments but what was the status of construction at the spot at the time when termination of the unit was made by the respondent. Moreover, if the complainants were committing default in making payments due as alleged by the respondent, then on cancellation of their unit vide letter dated 02.08.2019, it was obligatory on it to retain 15% of the basic sale price and return the remaining amount to them. There is nothing on the record to show that after deducting 15 % of the basic sale price, the respondent sent any cheque or bank draft of the remaining amount to the complainants, and which is against the settled principle of the law as laid down by the Hon'ble Apex Court of the land in cases of in *Maula Bux V/s Union of India* AIR 1970 SC, 1955 and *Indian Oil Corporation Limited V/s Nilofer Siddiqui and Ors, Civil Appeal No. 7266 of 2009* decided on 01.12.2015 and wherein it was observed that forfeiture of earnest money more than 10% of the amount is unjustified. Keeping in view the principles laid down in these cases, the authority in the year 2018 framed regulation bearing no. 11 providing forfeiture of more than 10% of the consideration



amount being bad and against the principles of natural justice.

Thus, keeping in view in the above-mentioned facts, it is evident that while cancelling the allotment of unit of the complainants, the respondent did not return any amount and retained the total amount paid by the complainants.

E. Findings on the relief sought by the complainants.

E. I Direct the respondent to refund the entire amount along with interest.

18. While discussing earlier it has been held that the complainants were in default in making timely payments leading to cancellation of the allotted unit by the respondent as per the term and conditions of allotment. Now, the issue for consideration arises as to whether the complainants are entitled for refund of the illegal deduction of earnest amount from the respondent.

As per cancellation letter dated 02.08.2019 annexed on page no. 28 of complaint, the earnest money deposit and service tax shall stand forfeited against amount of Rs. 19,66,500/- paid by the complainants. As per the complaint, the said unit was booked under time linked plan and till date a total consideration of Rs. 19,66,500/- was paid against total consideration of Rs.49,49,344/- which is approx 30% of total

consideration. Upon perusal of documents on records from page no. 24-32 of reply, various reminders for payment were raised by the respondent, the complainants received cancellation notice dated 02.08.2019 along with cheque payment of Rs. 5,80,556/- after deduction of earnest money and the service tax. It is observed that the respondent has raised various demand letters to the complainants and as per section 19 (6) & (7) of Act of 2016, the allottees were under an obligation to make timely payment as per payment plan towards consideration of the allotted unit. When sufficient time and opportunities have been given to the complainants to make a payment towards consideration of allotted unit, it would be violation of section 19 (6) & (7) of Act of 2016. 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 total sale consideration as earnest money, along with interest @9.40% (MCLR+2%) from the date of cancellation till its realization. The authority observes that the complainants are not entitled to refund to the entire amount as their own default, the unit has been cancelled by the respondent after issuing proper reminders. Therefore, the cancellation of the



allotted unit by the respondent is valid. However, the respondent has contravened the provision of sec 11(5) of the Act and illegally held the monies of the complainants. Therefore, the respondent is directed to return the paid up amount after deducting 10% being earnest money of the total sale consideration as per allotment letter, along with interest @9.40% (MCLR+2%) from the date of cancellation till its realization.

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 deduct 10% of the sale consideration from the amount deposited by the complainant along with Rs. 5,80,556 already paid to the allottee and to return the remaining amount to the complainant.
- ii) The abovementioned amount would be paid alongwith interest at the rate of 9.80% p.a. from the date of




cancellation i.e. 02.08.2019 till the actual date of refund of that amount.

- iii) 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.


(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 07.07.2022

