

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

Complaint no. : 4084 of 2020
First date of hearing: 16.12.2020
Date of decision : 21.07.2022

Bharti Choudhary

R/O: - WP - 393A, Wazirpur Village, Near Ram
Mandir, Ashok Vihar - 1, New Delhi - 110052

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:

Complainant in person with Shri
Pulkit Advocate

Advocate for the complainant

Shri Rajan Gupta Advocate

Advocate for the respondent

ORDER

1. The present complaint dated 09.11.2020 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:

Sr. No.	Particulars	Details
1.	Name of the project	Suncity Avenue 102, Sector - 112, Gurugram (Affordable)
2.	Unit No.	A-1002, 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 Date of allotment	05.01.2016 (As per page 15 of complaint) 10.03.2016 (As per page 16 of complaint)
6.	Date of builder buyer agreement	10.06.2016 (Page 19 of complaint)
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. 22,96,861/- (As per page 43 of complaint)
10.	Amount Paid	Rs. 20,19,132/- (As per page 43 of complaint)
11.	Occupation certificate	Obtained dated 08.08.2019 on page no. 19 of reply
12.	Cancellation Letter	05.08.2019
13.	Demand/Reminder notices	28.03.2019 (As per page 12 of the reply) 22.05.2019 (As per page 15 of the reply)
14.	Newspaper publication	12.06.2019 (As per page 18 of the reply)
15.	Tripartite agreement	25.06.2016 (As per page 36 of complaint)

B. Facts of the complaint

- 1.1. The respondent company approached the complainant with an offer to purchase an apartment in the project to be developed by it in the name and style of "**Suncity Avenue 102/ Affordable Group Housing Colony**", located in **Dhankot, Sector-102, Gurgaon, Haryana**.
- 1.2. That the respondent company is the leading real-estate developer in India. Somewhere in the month of December 2015, the respondent approached the complainant for the purchase of the apartment in the project to be developed by the respondent for a total sales consideration of **Rs. 21,78,000/-**. The complainant initially not very keen on buying the said apartment refrained herself from making the booking, as was requested by the respondent. Thereafter, the

complainant, vide an application dated 05.01.2016, booked a residential apartment bearing No. A1002 in block/tower A in the project to be developed by the respondent and by making the payment for booking amount of Rs. 1,09,000/- vide Cheque/DD. bearing no. 051235 drawn on SBI Bank and the same was acknowledged by the respondent vide receipt dated 05.01.2016. Thereafter the respondent sent an email dated 10.03.2016, notifying the complainant about the allotment of the apartment in the above-mentioned project and also demanded to pay the instalments as per the schedule provided in the said email.

1.3. Subsequently an other email dated 17.03.2016 informing the complainant about the timings of the office of the respondent company was sent by the respondent to the complainant. It is pertinent to mention here that the said email dated 17.03.2016 was sent on the very same email id of the complainant as the previous email dated 10.03.2016 was sent, as stated in para 4.5 of the present complaint, which implies that the respondent company was aware of the complainant's email address and the same was provided by the complainant at the time of booking of the said apartment. Also, the said email dated 17.03.2016 was sent by Mr. Vivek Garg from his email id: *vivekgarg@suncityprojects.com*, who is the authorised signatory of the respondent company, as stated on the page no. 1 of the apartment buyer's agreement dated 10.06.2016. It is also not out of place to mention here that Mr. Vivek Garg is the authorised signatory who signed the apartment buyer's agreement dated 10.06.2016.

1.4. It is pertinent to mention here that as per *clause 3.1* of the said agreement dated 10.06.2016; the respondent was to deliver the

possession of the said apartment within a period of 4 years. Thereafter, a tripartite agreement dated 25.06.2016 was executed between the respondent, the complainant and the Dewan housing finance corporation limited (herein after referred as the "DHFC"). Thus, a total payment of Rs. 20,37,602/- was made by the complainant to the respondent till 05.02.2019.

- 1.5. Thereafter, despite having the complete address of the complainant, as stated on the page no. 1 of the apartment buyer's agreement resulting to which the said demand letter could never be delivered to the complainant. Subsequently, due to the reasons best known, the respondent sent another demand letter dated 22.05.2019 on the same address, on which the earlier demand letter dated 28.03.2019 was sent and thus that demand letter also could not be delivered to the complainant.
- 1.6. Thereafter, the respondent on 12.06.2019 even got published a public notice in a newspaper. It is also not out of the place to mention here that the complainant was making regular follow-ups with the respondent qua the expected date on which it would be handing over the possession and for the said purpose, the complainant used to make regular visit to the office of the respondent however, the respondent, having malafide intentions to gulp the money so paid by the complainant, never apprised her qua the outstanding amount due. Further, it is also not out of the place to mention here that the complainant having made payment of more than 90% of the total sales consideration never enquired qua the outstanding, as the same was to be paid by her at the time of taking the possession.
- 1.7. However, on 22.01.2020, when the complainant again went to the office of the respondent to enquire qua the status of the flat so booked

and also the expected date of possession to be offered by the respondent, she got the shock of her life. Upon reaching there, the representatives of the respondent apprised that the booking of the flat, as was booked by the complainant has been cancelled. On being further asked by the complainant, the said representative informed qua the demand letters dated 28.03.2019 and 22.02.2019, as were sent by the respondent. The complainant apprised the said representative that the address mentioned in the said letters were wrong and these had never been received by the complainant.

- 1.8. It is pertinent to mention here that despite having the email id of the complainant, i.e., *rajputgeeta009@gmail.com*, the respondent never sent the demand letters dated 28.03.2019 and 22.05.2019 to the complainant *via* email and never even intimated about the same to her, during her visit to the office of the respondent. It is not out of the place to mention that the respondent for the reason best known to them, never emailed the complainant about the public notice, which was published in the newspaper, dated 12.06.2019, despite being aware of the fact that she resides at New Delhi and the said newspaper is circulated/distributed in Gurgaon, Haryana, and not in New Delhi. The complainant having ***paid more than 90% of the total sales consideration for the Apartment so booked and is willing to pay the outstanding amount and take the possession of the Apartment,*** kept chasing the respondent to rectify the mistake and deliver the possession and for the said purpose the respondent has made the complainant run from pillar to post but all in vain.
- 1.9. From the above acts, it is borne out that the respondent company had deliberately and willfully harassed the complainant with a view to cheat the complainant and thereby caused unlawful gain to

themselves and unlawful loss to the complainant. The acts clearly speak of the respondent company's intention to cheat and deceive the complainant by sending the demand letters at a wrong address despite having her complete address and by publishing the public notice in a newspaper which is not circulated where the complainant resides and by not communicating her *via* email despite having her email id, only with a purpose to misappropriate the payments made by her and to gulp the same in the name of forfeiture of earnest money deposited.

- 1.10. That the cause of action for filing the present case accrues in favour of the complainant and against the respondents in the month of December 2015 when it approached the complainant for the purchase of the apartment in the project to be developed by it. The cause of action further arose on 05.01.2016 when the complainant paid the booking amount towards the booking of the said apartment is continuous one.

C. Relief(s) Sought:

In view of the facts mentioned in paragraph 4 above, the Complainant prays the following compensation(s).

- 1.10.1. Pass necessary orders and directions, thereby directing the respondent to handover the vacant, physical and lawful possession of the apartment bearing no. A1002 in Block/Tower A in the project "Suncity Avenue 102/ Affordable Group Housing Colony", located in Dhankot, Sector-102, Gurgaon, Haryana.
- 1.10.2. Pass necessary orders and directions, thereby directing the respondent to return the prescribed rate of interest @24% on the total consideration in case delay in delivery of possession.

- 1.10.3. Pass necessary orders and directions, thereby directing the Respondent to pay the Interest and Compensation for every month of delay at prevailing rate of interest. Prevailing Interest Rate as per RERA Act and Rules.

D. Reply by the respondent

That the respondent has contested the complaint on the following grounds:

1. The complainant has misdirected herself in filing the above captioned complaint before this Ld. Authority as the relief being claimed by her cannot be entertain. That it is pertinent to mention here that the prayer of the complainant in the complaint is not maintainable in the eyes of law as she herself defaulted in making the timely payment of instalments despite repeated requests and reminders. Therefore, keeping in view the principles of natural justice and in public interest, the relief sought by the complainant cannot be allowed. It is humbly submitted that on the part of 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. That on this ground alone, the complaint is liable to be rejected.
2. That it is pertinent to mention here that the present project has been developed by the respondent that apartment buyer's agreement dated 16.06.2016 was executed between complainant and respondent which contained detailed terms and conditions of the allotment. As per affordable housing policy, 2013 and apartment buyers agreement, the

complainant was required to make the payment of consideration in instalments as per payment plan provided therein.

3. That respondent vide demand letter dated 28/03/2019 raised a demand of Rs. 2,79,303/- towards instalment/outstanding as per the terms of the contract. However, complainant failed to pay the same despite repeated requests from the respondent.
4. That the respondent again vide reminder letter dated 22/05/2019 requested for the payment of outstanding amount of Rs. 2,81,686/- and it has been clearly mentioned in the said letter that in the event dues are not cleared within 15 days, then it would be deemed that complainant is no more interested in the allotment and allotment stand cancelled.
5. That again the respondent company vide public notice in the news paper i.e., Dainik Bhaskar on 12/06/2019 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. That however, since the complainant had still failed to make the payment of instalment despite repeated requests and reminders, the respondent has every right to cancel the allotment of flat / unit in question after following the due process as per affordable policy, 2013.
6. That respondent always complied with the terms of the agreement and the same can be seen from the fact that construction of the project has been completed before the due date and occupation certificate for the same is also issued by the Director, Town & Country Planning Department, Haryana.

7. That the complainant is making false allegations. Rather, it is the complainant who defaulted in the making of timely payment of instalment. Admittedly, the respondent vide letters dated 28.03.2019, 22.05.2019 and also through publication in the newspaper on 12.06.2019 had requested to make the payment of outstanding instalment, however, the complainant had failed to make the payment of instalment. As such, the respondent has every right to cancel the allotment of flat in question. The present complaint has been filed with the sole intent to misuse the provisions of RERA Act, 2016. It is an arm-twisting technique which is being used for ulterior motives or vested interest and thus, liable to be dismissed solely on this ground.
8. That it is submitted that the complainant has failed to fulfil her obligations as per RERA Act, 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.
9. The complainant has failed to bring on record anything contradictory or in violation of the provisions of RERA Act, 2016. Moreover, nowhere in the complaint any violation of the provisions of RERA Act, 2016 has been mentioned. Thus, the petition is liable to be dismissed solely on this ground.
10. Thus, in view of the submissions made above, no relief much less as claimed can be granted to the complainant. It is reiterated at the risk of repetition, and without prejudice to the aforesaid submissions, that in any event, the complaint, as filed, is liable to be dismissed.

11. That Hon'ble Authority has no jurisdiction to entertain the present complaint and present complaint is liable to be dismissed on this ground only. That the complainant has no locus standi or cause of action to file the present complaint. That complaint filed is misconceived and untenable, at the outset the respondent denies all and any singular allegation and contentions made in the complaint as if the same have been specifically traversed and denied, save and except to the extent specifically admitted hereinafter and/or which are not contrary to or inconsistent with what is stated herein later and nothing shall be deemed to have been admitted by the respondent merely for want of denial.

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

3. 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.

4. 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.

G. Findings on the relief sought by complainant

- G.I To handover the vacant, physical and lawful possession of the apartment bearing no. A1002 in Block/Tower A in the project "Suncity Avenue 102/ Affordable Group Housing Colony", located in Dhankot, Sector-102, Gurgaon, Haryana



5. 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 being successful was allotted unit bearing no. A1002, Tower-A, admeasuring 532 sq. ft. and having balcony area of 100 feet vide email of allotment of the apartment dated 10.03.2016, by the respondent for a total sum of Rs. 22,96,861/-. It led to execution of an apartment buyer agreement dated 10.06.2016 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. 20,37,602/- upto 05.02.2019. But she failed to pay the remaining amount due despite issuance of reminder dated 28.03.2019 and 22.02.2019 and thus 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 reminders as well as public notice, the allotment of the unit made in her favour was cancelled vide letter dated 05.08.2019 (page 56 of reply) in terms of buyers' agreement and the affordable housing policy, 2013 prior to that reminder was also issued in this regard on 12.04.2018 and 29.10.2018. When that demand was not met, a notice by way of publication on 12.06.2019 in Hindi newspaper was issued. However, despite that the claimant failed to make the requisite payment leading

to cancellation of her unit vide letter dated 05.08.2019. On 22.01.2020, complainant went to the office of the respondent to know the status and expected due date of the apartment, where she got to know that the unit booked by the complainant has been cancelled. On being further asked by the complainant, she was informed qua demand letters dated 28.03.2019 and 22.02.2019 sent by the respondent, where she apprised the respondent the address in the said letters was wrong.

6. 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 stated that the unit in question has already been allotted to a 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 has to be refunded back to the complainant. The authority observes that when allottee under an affordable housing scheme has paid 90% of the amount, then the unit should not be cancelled. But the promoter has taken exception to the provisions of the Affordable Housing Scheme that after 15 days of notice, the unit can be cancelled. Thus, the respondent is directed to deduct only Rs. 25,000/- and refund the balance amount within a period of 90 days along with interest on the balance amount from the date of cancellation till its actual payment.

G. Directions of the authority



7. 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/- 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
8. The Complaint stands disposed of.
9. File be consigned to registry.

V.I - 
(Vijay Kumar Goyal)

Member


(Dr. K.K. Khandelwal)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.07.2022

HARERA
GURUGRAM

