

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

Complaint no. : 4934 of 2021
First date of hearing: 06.01.2022
Date of decision : 21.07.2022

Mr. Jagdev Singh Sidhu
R/o Flat no. 244, Tower-5, HEWO 2, Sector-56,
Gurugram.

Complainant

Versus

M/s Suncity Projects Pvt. Ltd.
Suncity Business Tower, 2nd floor, Golf Course Road,
Sector-54, Gurugram.

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

None
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 - 76, Sector - 76 , Gurugram, Haryana
2.	Unit No.	A-1-105, Carpet area - 583.33 sq. feet and balcony area - 100 sq.ft.
3.	HRERA Registration	78 OF 2019 dated 23.12.2019
4.	DTCP License no.	34 of 2018 dated 31.05.2018
5.	Date of Allotment	18.06.2021 (As per page 24 of complaint)
6.	Date of agreement for sale	29.06.2021 (As per page 34 of complaint)
7.	Possession clause - III	The developer proposes to offer possession of the said apartment within a period of <u>4 years from the date of approval of building plans or grant of environment clearance</u> , whichever is later
8.	Due date of possession	30.08.2023

		(4 years from the date of building plans i.e., 30.08.2019 at page no. 67 of reply)
9.	Total Sale Consideration	Rs. 24,03,114/- (As per page 26 of complaint)
10.	Amount Paid	As stated by respondent - Rs. 1,19,000/- (As per page 46 of reply)
11.	Occupation certificate	Not Obtained
12.	Offer of possession	Not offered
13.	Reminder Notices	1 st - 21.07.2021 (page 55 of reply) 2 nd - 13.09.2021 (page 57 of reply) Newspaper publication - (page 60 of reply)
14.	Cancellation Notice	24.10.2021 (Page 61 of reply)

B. Facts of the complaint

- That on the basis of advertisements and representations made by the respondents, 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**.
- That on the basis of the application dated 18.06.2021 of the complainant, he was allotted a flat bearing A1-105, Tower A measuring carpet area 582.33 sq.ft. and balcony area 100 sq. ft for a total sale consideration of Rs. 24,03,114/-.

5. That, in terms of its commitment, the respondent executed an agreement for sale duly registered at the office of Sub-Registrar, Manesar (Gurugram) vide vasika No.1766 dated 29.06.2021.
6. That the complainant was shocked on 24.10.2021, when the respondent issued a letter of cancellation and the amount already paid by him was forfeited by it on the basis of its whims and fancies. That, in the said letter dated 24.10.2021, the respondent has alleged that the complainant was in the arrears of Rs.14,02,592/-, while he has paid an amount of Rs.4,75,000/- to the respondent in cash on 18.06.2021, on the asking of respondent but yet issued any receipt thereof despite repeated requests of him citing the reason that it would adjust this amount slowly-slowly in further upcoming payments.
7. The complainant never remained in arrears of any amount, which itself evident from the payment of Rs.8,00,000/- made by him to the respondent through cheque bearing No.000126 duly encashed by the respondent company on 25.10.2021. It is pertinent to mention here that the complainant has issued the cheque to the respondent much prior to the cancellation letter dated 24.10.2021, and that the cheque bearing No.000256 was encashed on 25.10.2021.
8. 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.

9. That the complainant wants to continue with the project. So, the respondent be directed offer possession of the allotted unit besides delay possession charges and compensation.

C. Relief sought by the complainant:

- a. **To set aside cancellation letter dated 24.10.2021 in respect of the said unit.**
- b. **To direct the developer to provide possession of the unit.**
- c. **To prosecute the respondent for infringing the RERA Act, 2016, whereby forced the complainant to pay the amount of Rs. 4,75,000/- in cash in utter contravention**
- d. **To investigate the matter and audit the capital of the respondent**
- e. **To appoint a local commission**

D Reply by the respondent

The respondent has contested the complaint on the following grounds:

10. 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.
11. 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. A1-105, 2 BHK on 1st Floor, Tower-A-1, in Affordable Group Housing Project, "Suncity Avenue 102", situated at Sector-102, Gurugram, Haryana. Subsequently, an apartment buyers' agreement dated 29.06.2021 was executed between the parties which contained detailed terms and

conditions of the allotment, total price of flat/ unit fixed as Rs. 24,03,114/-. 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.

12. That respondent vide letter dated 21/07/2021 raised a demand of Rs. 13,82,947/- towards installment/outstanding as per the terms of the contract. However, the complainant failed to pay the same despite repeated requests from the respondent.
13. That again, the respondent vide public notice in the news paper i.e 'Dainik Bhaskar' on 07.10.2021 called upon the complainant to clear the aforesaid dues within extended time of 15 days. But despite best efforts from the respondent, he failed to make the payment due leading to cancellation of the allotment of flat vide letter dated 24.10.2021.
14. It is submitted that the complainant has failed to fulfil obligations as per the Act of 2016. The complainant has not complied with the obligations of section 19(6) of the Act providing the duty of the allottee to make necessary payments. The authority has no jurisdiction to entertain the present complaint and the same 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 To set aside cancellation letter dated 24.10.2021 in respect of the said unit.

F.II To direct the developer to provide possession of the unit

F.III To prosecute the respondent for infringing the RERA Act, 2016, whereby forced the complainant to pay the amount of Rs. 4,75,000/- in cash in utter contravention

17. Some of the admitted facts of the case are that vide application dated 18.06.2021, the complainant applied for a unit under the affordable housing policy, 2013 in the project of the respondent detailed above. He is being successful was allotted unit bearing no. A1-105 admeasuring 583.33 sq. ft. and having balcony area of 100 feet, by the respondent for a total sum of Rs. 24.03.114/-. It led to execution of an apartment buyer agreement dated 29.06.2021 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. 1,19,000/- till date. He was issued letters dated 21.07.2021 and 13.09.2021 vide which a demand was raised. But despite issuance of those letter the complainant failed to make payment leading to issuance of public notice in the newspaper on 07.10.2021, giving 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 favour was cancelled vide letter dated 24.10.2021. Now, the issue for consideration arises as to whether respondent in cancelling the allotment of the allotted unit and as per the provisions of the policy of 2013 or not.

18. The complainant was allotted the above mention unit under the policy of 2013 on 18.06.2021. As per the payment plan attached with the letter of allotment , he was required to pay the amount due by adhering to the following schedule

S.No	Installment Name	Installment Date	Total amount excluding taxes
1	At the time of application	18 june 2021	1,19,000
2	Within 15 days of issuance of allotment letter	03 july 2021	4,75,830
3	Within 6 months of issuance of 1 st allotment letter (24.02.2020)	03 july 2021	2,97,415
4	Within 12 months of issuance of 1 st allotment letter (24.02.2020)	03 july 2021	2,97,415
5	Within 18 months of issuance of 1 st allotment letter (24.02.2020)	24 Aug 2021	2,97,415
6	Within 24 months of issuance of 1 st allotment letter (24.02.2020)	24 feb 2022	2,97,415
7	Within 30 months of issuance of 1 st allotment letter (24.02.2020)	24 Aug 2022	2,97,415
8	Within 36 months of issuance of 1 st allotment letter (24.02.2020)	24 feb 2023	2,97,415
		Total (INR)	23,79,320

19. On the basis of allotment, demand for Rs. 12,01,558/- minus the amount of Rs. 1,19,000/- already paid was raised 18.06.2021. But, that demand was not fulfilled leading to issuance of letter dated 21.07.2021 raising demand for Rs. 13,82,947/- to be paid by the complainant by 24.08.2021. When the complainant failed to meet that demand, he was issued a reminder for payment vide letter dated 13.09.2021 raising demand for Rs. 1402582/- but with no positive results. So, the same led to giving a public notice to the complainant to deposit that amount within 15 days vide notice dated

07.10.2021. When he failed to even comply with that notice, the respondent vide letter dated 24.10.2021 cancelled the allotment and forfeited the amount of Rs. 1,19,000/- deposited by the complainant. Keeping in view the above mentioned facts, it is evident that while cancelling the allotted unit, the respondent followed the due procedure of law as provided under the policy of 2013. The complainant was required to pay 6 monthly installments as per the payment schedule annexed with the letter of allotment 18.06.2021. but he failed to adhere to that schedule leading to cancellation of allotted unit and forfeiting the amount deposited by him. The plea of complainant that he was not required to pay on the basis of demands raised by the respondent is not tenable as the same were as per the policy of 2013 and that schedule given earlier. So, the cancellation of allotment cannot be said to be wrong and illegal but forfeiture of the paid up amount is not sustainable. The respondent is directed to retain a sum of Rs. 25,000 on cancellation of the allotted unit as per the Affordable Housing Policy, 2013 and refund the remaining amount within a period of 90 days

F-IV To investigate the matter and audit the capital of the respondent

FV- To appoint a local commission

20. In view of findings on issues no. F-IV and F-V, these issues become redundant.

G. Directions of the Authority:

21. 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/- out of Rs. 1,19,000/- 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.

22. The Complaint stands disposed of.

23. File be consigned to registry.


(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.07.2022

HARERA
GURUGRAM

