

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

Complaint no. : 5923 of 2019
First date of hearing: 06.02.2020
Date of decision : 21.07.2022

Babita Joon W/o Amit Joon
R/o House No. 802, Sector 01, Near Delhi Bypass,
HUDA, Rohtak-124001

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 29.11.2019 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.	B-402, 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 allotment	Not applicable
6.	Date of builder buyer agreement	18.05.2016 (Page 16 of complaint)
7	Date of environment clearance	01.07.2016 (As per page 23 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. 22,96,882/- (As per page 17 of reply)
10.	Amount Paid	Rs. 21,02,098/- (As per page 17 of reply)
11.	Occupation certificate	Obtained on 08.08.2019 as per page no. 22 of reply
12.	Offer of possession	Not offered
13.	Demand/Reminder notices	28.03.2019 and 22.05.2019 as per page 12 and 15 of the reply.
14.	Newspaper publication of notice for cancellation	12.06.2019 (As per page 18 of the reply)
15.	Cancellation of allotment	09.09.2019 (As per page 29 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 04.01.2016 of the complainant, she was allotted on 10.03.2016 a flat bearing B-402, measuring carpet area 532 sq.ft. and balcony area 100 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 18.05.2016 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. 21,10,835/- in all to the respondent.

6. That as per clause "3.5" of the Apartment Buyer's Agreement, it was stipulated that the possession of the unit was supposed to be delivered by 18.05.2020. However, after receiving almost 98% amount from the complainant, the respondent vide letter dated 09.09.2019 unanimously cancelled the allotment of the unit in question.
7. 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.
8. 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 cancellation of the allotted unit be set aside, and allotment be restored immediately.
- b. The promoter be ordered to pay for harassment caused to the complainant as damages along with cost of litigation to the tune of Rs. 1,00,000/-.

D Reply by the respondent

The respondent has contested the complaint on the following grounds:

9. 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.
10. 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.

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. B-402, 2 BHK on 4 Floor, Tower-B, in Affordable Group Housing Project, "Suncity Avenue 102", situated at Sector-102, Gurugram, Haryana, through draw of lots vide allotment Letter dated 10.03.2016. Subsequently, an apartment buyers' agreement dated 18.05.2016 was executed between the parties which contained detailed terms and conditions of the allotment, total price of flat/ unit fixed as Rs.21,78,000/- 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.
12. That respondent vide letter dated 28/03/2019 raised a demand of Rs. 2,53,896/- 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 the respondent again vide a reminder issued vide letter dated 22/05/2019 requested for the payment of outstanding amount of Rs. 1,94,844/-. It was clearly mentioned in the said in the letter that in the event dues were not cleared within 15 days, then it would be deemed that complainant was no more interested in the allotment and the same would stands cancelled.
14. That again the respondent 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.
15. The complainant still failed to make the payment of installment despite repeated requests and reminders, and so the respondent was constrained to cancel the allotment of flat / unit, in question after following the due process as per Affordable Policy,2013 and the buyer's agreement vide letter dated 09.09.2019. Thereafter, the respondent refunded a sum of Rs.18,36,309/- after requisite deduction of Rs.2,65,789/- as per the affordable policy and buyers agreement to the complainant as per the break-up of deducted amount as follow:
 - Rs 1,05,766/- as per affordable policy, 2013 and buyers agreement
 - Rs.1,56,044/-on account of taxes deposited by respondent on behalf of complainant with the government authorities
 - Rs. 3979/- on account of interest for the delay
16. That the 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 i.e., 01.07.2020 and occupation certificate for the same was also issued by the Director, Town & Country Planning Department, Haryana 08.08.2019.

17. That the complainant is making false allegations. Rather, it is the complainant who defaulted in the making timely payment of instalments. Admittedly, the respondent vide letters dated 28.03.2019, 22.05.2019 and also through publication in the newspaper on 12.06.2019 requested her to make the payment of outstanding instalment but with no positive results. As such, the respondent has every right to cancel the allotment of flat in question.
18. 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

19. 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.

20. 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 cancellation of the allotted unit be set aside and allotment be restored immediately.

21. Some of the admitted facts of the case are that vide application dated 04.01.2016, 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. B-402 admeasuring 532 sq. ft. and having balcony area of 100 feet vide letter of allotment dated 10.03.2016, by the respondent for a total sum of Rs. 21,15,750/-. 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. 21,10,835/- upto 26.04.2019. She was issued letter dated 28.03.2019 and vide which a demand for Rs. 2,53,896/- was raised and out of which a sum of Rs. 6,100/- was paid. But she failed to pay the amount due despite issuance of reminder dated 22.05.2019 (page 15 of reply). 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 09.09.2019 (page 19 of reply) 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.

22. It is contended on behalf of complainant that she has already paid about 98% of the sale consideration of the allotted unit. There was no reason for her not to make the remaining amount due against the allotted unit. Neither the complainant issued any demand against the allotted unit on 28.03.2019, nor send letter dated 09.09.2019, by speed post. If that would have been the position, then there is nothing on the record to show the receipt of either of these letters. But the plea advanced in this

regard is devoid of merit. No doubt the complainant had already paid about 98% of the sale consideration but she 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. The letter dated 22.05.2019, was sent through post and the same was followed by a public notice dated 12.06.2019 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 09.09.2019 and also transferring the sum of Rs. 1836309/- via RTGS 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".

23. A perusal of the facts detailed earlier and the policy of 2013 shows that the respondent raised demand vide letter dated 22.05.2019, followed by public notice in the daily newspaper on 12.06.2019. 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 09.09.2019. 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.

24. 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 09.09.2019 while cancelling the allotment, the respondent deducted Rs. 2,65,789/- and remitted the remaining amount received from the complainant in her account through RTGS. 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: -

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

25. 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. 22 the order.
26. 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. 21,10,835/- 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 Rs. 2,40,789/- within a period of 90 days alongwith interest on the balance amount from the date of cancellation till its actual payment.

E.2 Legal Expenses

27. The complainant is claiming compensation under the present relief. The authority is of the view that it is important to understand that the Act has clearly provided interest and compensation as separate entitlement/rights which the allottee(s) can claim. For claiming compensation under sections 12,14,18 and Section 19 of the Act, the



complainant may file a separate complaint before the 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 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 of Rs. 2,40,789/- 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.
29. The Complaint stands disposed of.
30. File be consigned to registry.

Vijay Kumar Goyal
(Vijay Kumar Goyal)
Member

HARERA
GURUGRAM

Dr. K.K. Khandelwal
(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.07.2022

