


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

Complaint no. : 1339 of 2020
First date of hearing: 16.04.2020
Date of decision : 31.05.2022

AMK Agropro Trading Impex Pvt. Ltd.
Address: BA-24, Mangolpuri Industrial Area,
Phase 2, Delhi

Complainant


Versus

M/s Puri Constructions Pvt. Ltd.
Regd. Office at: - 4-7B, Ground Floor, Tolstoy
House, 15 and 17 Tolstoy Marg, New Delhi-
110001

Respondent

CORAM:
Shri KK Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:
Shri Manu Jain Advocate for the complainant
Shri Himanshu Juneja Advocate for the respondent

ORDER

1. The present complaint dated 17.03.2020 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(5) 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:

S. No	Heads	Information
1.	Name and location of the project	"Emerald Bay" at sector 104, Gurgaon, Haryana
2.	Nature of the project	Group Housing Project
3.	Project area	17.1745 acres
4.	DTCP license no.	68 of 2012 dated 21.06.2012 valid up to 21.06.2025 32 of 2013 dated 17.05.2013 valid up to 16.05.2024
5.	Name of license holder	Florentine Estate of India Ltd.
6.	RERA Registered/ not registered	Registered Vide no. 136 of 2017 issued on 28.08.2017 valid up to 28.02.2020
7.	Apartment no.	A3-1502, 15th Floor [annexure C3 on page no. 23 of complaint]
8.	Unit measuring	2450 sq.ft. of super area [annexure C3 on page no. 23 of complaint]
9.	Date of provisional allotment letter	02.04.2013

		[annexure C3 on page no. 23 of complaint]
10.	Date of builder buyer agreement	Not Executed
11.	Reminders for payment	30.07.2014 21.08.2014 (page no. 32 and 34 of reply)
12.	Final call notice	12.09.2014 (page no. 37 of reply)
13.	Cancellation of booking letter	11.03.2015 (page no. 40 of reply)
14.	Due date of possession	Cannot be ascertained
15.	Total consideration	Rs.2,28,43,477/- [As per payment plan page 24 of complaint]
16.	Total amount paid by the complainant	Rs.46,00,787/-+ 2,762 (TDS) [as per customer ledger on page no. 27 of complaint]
17.	Occupation certificate	21.11.2018 [as per annexure 7 on page no. 27 of reply]

B. Facts of the complaint

3. That in November 2012, officials and staff members of the respondent approached the complainant and made representations about the high-class luxury apartment complex "Emerald Bay" being developed by the respondent in sector 104, Gurugram, Haryana.
4. That on basis of assurances to provide luxury apartments at a prime location on Dwarka expressway at a very attractive price of Rs.7,250/- per square foot (inclusive of all charges),

- complainant paid Rs. 7,50,000/- through cheque on 7.11.2012 towards booking amount.
5. That thereafter, upon launch of the project, on 18.01.2013, the receipt was prepared and issued to the complainant.
 6. That thereafter on 30.3.2013, the officials of respondent company visited the complainant and demanded further payment saying that the allotment would be made only upon receipt of Rs.10,00,000/- as booking amount, However, it is pertinent to mention here that no such payments were due or payable. So, in the presence of officials of the respondent, complainant transferred an amount of Rs.2,50,000/- by RTGS on 30.03.2013.
 7. That on 02.04.2013, an offer of provisional allotment was made in favour of the complainant by way of a letter enclosing therewith a payment schedule. In this letter an amount of Rs.7,50,000/- was stated as booking amount whereas till 02.04.2013, payment of Rs.10,00,000/- was already extracted by the respondent, thereby an excess payment of Rs.2,50,000/- was illegally obtained.
 8. That even after receipt of Rs.10,00,000/- as booking amount, there was no confirmed allotment and the letter only gave an offer of allotment subject to other terms and conditions which were not disclosed to the complainant.
 9. That officials of the respondent company came to meet the complainant and demanded further instalments on the pretext that the confirmed allotment would be issued only after

receipt of at least 25% of the total amount. Therefore, being caught in the trap laid by the respondent, complainant was forced to make further payments on 27.05.2013 by cheque. Further the complainant was forced to make payment on 02.07.2013 by cheque. Thus, in total a sum of Rs.46,03,549/- was extracted by the respondent, without issuing even a confirmed allotment letter.

10. That the respondent had extracted an amount of more than 25% without executing any agreement to sale which is against the prescribed law and is in violation of the provisions of section 13(1) of the Haryana Real Estate (Regulation and Development) Rules, 2017.
11. That after obtaining more than 25% of the cost, it was informed to the complainant that unit no. A3-1502 was allotted to him. At this time, it was further intimated to complainant that the unit had 10% as prime location charges. Additionally other sums towards two car parking and club membership were demanded. The complainant was disturbed by these illegal demands and asked for a confirmed allotment letter and demand letter in consonance of oral assurances made in November 2012.
12. That on 28.03.2014, a letter was sent to complainant, enclosing therewith two booklets of "apartment buyer's agreement" for signatures and returning it to the company. But upon looking at the various illegal and unwarranted clauses in the printed form of agreement contained in the booklet, complainant did not deem it fit and proper to sign and



deliver the same. The complainant raised queries with regard to the illegal demands for prime location charges, car parking and club membership, penal clauses, and delay compensation with the officials of respondent company fraudulently stating that the he has to execute the said illegal agreement without any modification.

13. That it was also stated by the senior officials of the respondent that all apartments in this size had prime location and therefore 10% additional amount would have to be paid. It is apparent that this PLC is just a ploy to increase the price of the unit as all these factors were known to the respondent and if all the units have prime location, then the price should have been intimated earlier at the time of advance booking itself. but this fact was not communicated to the complainant in the beginning.
14. That at this stage, complainant lost faith in the respondent company and made oral request for refund of the amount.
15. That the respondent arbitrarily issued a cancellation letter dated 11.03.2015 thereby offering to refund an amount of Rs. 7,95,058/- out of Rs. 46,03,549/- received by it from the complainant. Even a cheque of Rs.7,92,058/- was never sent to the complainant. Thus, it is apparent that the cancellation has not come into effect and the said letter dated 11.03.2015 was merely a threat to cancel.
16. That the so-called forfeiture of about Rs.38,11,491/- as penalty for cancellation of unit was highly unjust, illegal,

unlawful, arbitrary and unjustifiable. The respondent is liable to refund the amount of Rs. 46,03,549/- of the complainant along with interest and compensation according to the provisions of section 18 of the Haryana Real Estate (Regulation and Development) Rules, 2017.

17. That the complainant get issued a legal notice dated 12.08.2015 to the respondent and demanded his entire deposited amount back. Instead of giving refund of deposited amount of the complainant after receiving notice dated 12.08.2015, respondent requested the complainant to visit its office. When complainant visited the office of respondent somewhere in October 2015 and met their sales manager, he was informed that the company is facing huge financial crisis and is not in a position to refund the deposited amount to him. The respondent requested not to initiate any legal action as it will ruin their reputation in the market. They further assured that they will refund the entire amount of complainant with interest. The representatives of respondent further informed that please consider the cancellation letter dated 11.03.2015 as non-effective.
18. That the complainant wanted to avoid litigation and accepted the offer of respondent to take some cheap unit in their new project. It was also convinced from the said offer that no amount was refunded to complainant even as per cancellation letter dated 11.03.2015 and respondent retained the amount of it with assurance that the entire amount would bear interest. In the beginning of the year 2019, complainant was

informed by the respondent that it was launching a new project in Gurugram.

19. The complainant approached the respondent and requested to allot a unit in the said project and to adjust its deposited amount. The respondent agreed to allot a unit in its new project as assured by it earlier and to adjust the deposited amount of complainant along with interest in the cost of the said unit but despite repeated requests of complainant, respondent has not allotted any unit in favour of the complainant.
20. That the respondent has used the money of complainant without making a firm offer of allotment and rather extracted money from it on the pretext of making allotment. The respondent has extracted large amount from complainant at pre-launch stage which is an offence. No agreement to sell was ever executed between the parties. The respondent has extracted more than 25% cost of the Unit without executing an agreement to sell in favour of complainant and has no right to retain the deposited amount.
21. That a sum of Rs.46,03,549/- has been used by the respondent for a long time. The respondent is liable to refund the deposited amount of the complainant along with interest @18% interest since it used the said amount of complainant for the benefit of the business.
22. That the complainant has already get issued 2 legal notices dated 12.08.2015 & 25.11.2019 and a reminder dated 01.02.2020 but despite receiving the said notices and

reminder the respondent has failed to even respond the same and hence this complaint seeking refund of the deposited amount with interest.

C. Relief sought by the complainant:

23. The complainant has sought the following relief:

- To refund the sum of Rs. 46,03,549/- along with interest @ 18% per annum from the date of deposit till the date of its refund.

24. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(5) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

25. That the complaint filed by the complainant is not maintainable under the provisions of RERA Act as the it is not allottee of the respondent on the date of coming into force of RERA Act and Rules made thereunder. As admitted by the complainant itself, the allotment of the complainant was cancelled on 11.3.2015 i.e., years prior to the coming into force of RERA Act and Rules, which have not been made applicable retrospectively. Hence, the present complaint be dismissed at the outset on this ground alone, as it is not covered under the provisions of the RERA Act and rules.

26. That the present complaint is hopelessly time barred and cannot proceed further. As admitted by the complainant the

cancellation of the apartment was done on 11.3.2015 and since then no transaction has taken place between the parties hence filing of the complaint in 2020 i.e., after expiry of 5 years from the date of cancellation of allotment is hopelessly time barred in any and every statute relating to the law of limitation. Hence, the present complaint be dismissed/rejected on this ground alone.

27. That the complainant had made the booking of apartment no. A2-1502 in the project-Emerald Bay, Sec-104, village Dhanwapur, Gurgaon in 2013 after going through and accepting the terms of the allotment/booking contained in the application form which was in its possession even prior to making any payment of booking amount.
28. Further, the complainant, who is a corporate entity itself, was provided with the payment plan which has been produced and accepted by it. Further, the complainant had made a couple of payments in furtherance of the said payment plan and thereafter defaulted in making regular payments and the respondent had issued the following letters/reminders/notices to it during the course of the booking/allotment/transaction/till cancellation of allotment:

S. no.	Particulars	Due date	Amount
1	Unit no.	A3-1502	
2	Demand 03.05.2013 (booking+ 129 days)	Due date 27.05.2013	Rs. 2,08,673/-

3	Demand 04.06.2013(booking + 162 days)	Due date 29.06.2013	Rs. 18,42,113/-
4	Demand 01.10.2013(on start of pile foundation)	Due date 01.10.2013	Rs. 21,26,012/-
5	Reminder 1	14.11.2013	Rs. 21,26,012/-
6	Reminder 2	27.11.2013	Rs. 21,26,012/-
7	TTC	17.12.2013	
8	Reminder for BBA	21.12.2013	
9	One time settlement letter	20.03.2014	Rs. 21,26,012/-
10	BBA acknowledgement receiving	28.03.2014	
11	Circular to broker for cancelling the unit	08.04.2014	
12	Demand 01.07.2014(on casting of lower basement roof slab)	23.07.2014	Rs. 45,16,232/-
13	Reminder 1	30.07.2014	Rs. 42,52,024/-
14	Reminder 2	21.08.2014	Rs. 42,52,024/-
15	Final call notice	12.09.2014	Rs. 42,52,024/-

16	Cancellation with refundable amount	11.03.2015	Rs. 7,92,058/-
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29. That the complainant has not come before the authority with clean hands and has concealed various facts and is also guilty of misrepresentation and hence the complainant is not entitled to any relief.
30. That the respondent has diligently invested all the amount received from the allottees, including complainant towards the completion of the construction/development of the project- Emerald Bay, Sec-104, village Dhanwapur, Gurgaon and towards taxes and development charges. It is a fact that though the respondent has discharged all its obligations under the terms of allotment but the complainant did not comply with the same and so its allotment was cancelled and refund of amount was offered in terms of agreed conditions of allotment contained in the application form duly executed by the complainant. The respondent after completing the construction has applied for grant of occupation certificate and the same has been issued/granted by the department of town and country planning Haryana on 21.11.2018. It is a fact that the real estate market has deteriorated since the year 2014 and this is the main reason the complainant who wanted to earn profit in short span of time and defaulted in making regular payments as per agreed payment plan. Further, it is submitted that the project has been completed and the

respondent has already offered the possession to all the allottees vide offer of possession letter dt. 21.01.2019.

31. That the complainant has got no cause of action to file the present complaint on the basis of alleged legal notices. The allotment stood cancelled in the year 2015 and the complainant had to collect the refund amount from the office of the respondent by submitting all the original receipts and documents. But it never turned up for the same. Hence, the lapses and breach on its part not clothe the it with any cause of action nor the complainant can claim that no refund cheque was sent to allege the cancellation as non-effective.
32. Copies of all the relevant documents have been filed and placed on 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 authority

33. The respondent has raised objection regarding jurisdiction of authority to entertain the present complaint and the said objection stands rejected. 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

34. 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

35. Section 11(5) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(5) is reproduced as hereunder:

Section 11(5)

The Promoter may cancel the allotment only in terms of the agreement for sale:

Provided that the allottee may approach the authority for relief, if he is aggrieved by such cancellation and such cancellation is not in accordance with the terms of the agreement for sale, unilateral and without any sufficient cause.

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.

36. 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.
37. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in

Newtech Promoters and Developers Private Limited Vs State of U.P and Ors." SCC Online SC 1044 decided on 11.11.2021 and followed in case of "*Ramprastha Promoter and Developers Pvt. Ltd. Versus Union of India and others dated 13.01.2022 in CWP bearing no. 6688 of 2021* wherein it has been laid down as under:

86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of sections 18 and 19 clearly manifests that when it comes to refund of the amount and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

38. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court and the Division Bench of Hon'ble Punjab and Haryana High Court in cases quoted above the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the relief sought by the complainant.

- F.I** To refund a sum of Rs. 46,03,549/- along with interest @ 18% per annum from the date of deposit till the date of its refund.

39. The complainant booked the flat in the project named as 'Emerald Bay' on 07.11.2012 and paid a booking amount of Rs. 7,50,000/-. Further on 30.03.2013 the complainant paid an amount of Rs. 2,50,000/-. That thereafter provisional allotment was made to the complainant on 02.04.2013. It made a payment of Rs. 46,03,549/- till 31.07.2013 out of the total sale consideration of Rs. 2,28,43,477/-. No builder buyer agreement was executed between the parties. Subsequently, the respondent/builder cancelled the allotment of the unit on 11.03.2015 and offered refund of amount of Rs. 7,92,058/- but no cheque was sent to the complainant. The complainant has pleaded that it sent legal notices dated 12.08.2015, 25.11.2019 and reminder of legal notice on 01.02.2020 for refund of an amount of Rs. 46,03,549/-.
40. The respondent in its reply has stated that the payments were raised as per payment plan. The complainant made a couple of payments and further defaulted in making payment and the respondent had to issue the various reminders dated 30.07.2014, 21.08.2014, 12.09.2014 and finally issued cancellation letter on 11.03.2015.
41. On consideration of the documents available on record and submissions by both the parties, the authority is of the view that on the basis of provision of allotment dated 02.04.2013, the complainant has already paid a sum of Rs. 46,00,787 + 2,762(TDS) up to 31.07.2013 i.e., within about 4 months of the allotment. No builder buyer agreement was executed between the parties due to dispute with regard to PLC. The respondent/

builder sent a number of reminders on 30.07.2014, 21.08.2014, 12.09.2014 asking the allottee to make payment of the amount due but having no positive result and ultimately leading to cancellation of unit vide letter dated 11.03.2015 (page no. 40 of reply) in view of the terms and conditions of the allotment. No doubt the complainant did not pay the amount due despite of various reminders but the respondent while cancelling the unit was under an obligation to refund the deposited amount/earnest money (15% in this case) as per clause 5 of the terms and conditions of the allotment but that was not done. Clause 5 of the application form is reproduced hereinunder for a ready reference:

Clause 5:

"That 15% of the total sale consideration shall constitute "Earnest Money". The applicant(s) agrees and understands to make the payment of total sale consideration including but not limited to Basic Sale Price (BSP), Development Charges (DC), including EDC/IDC, Preferential Location Charges (PLC), Electrification Charges (EC), Club Membership Charges (CMC), Utility Connection Charges (UCC), or any other charges as per demands raised by the Company from time to time in respect to the unit. The Applicants further agrees and undertakes to pay directly, or if paid by the Company, then reimburse to the company, on demand any municipal tax, Property Tax, Service Tax, VAT, Labour Cess, Enhanced EDC/IDC/IAC/DC or any Tax/Charges including any Fresh Incidence of Tax or compensation as maybe levied by the Government of Haryana/Competent Authority/ Central Government, retrospectively or prospectively. If such charges are increased (with retrospective effect) after the conveyance/sale deed has been executed. Then these charges shall be treated as unpaid sale price of the unit and the company shall have

a lien on the unit of the Applicant for the recovery of such charges."

42. Though it is pleaded that a cheque of Rs.7,95,058/- was sent to the complainant but there is no evidence on record in this regard. The complainant has already paid Rs. 46,03,549/- to the respondent/builder and the cancellation of the allotted unit was made on 11.03.2015 by retaining the amount beyond 10% which is not permissible in view the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, providing as under:-

"5. AMOUNT OF EARNEST MONEY

Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."

43. Keeping in view the aforesaid legal provisions, the respondent shall refund the deposited amount after forfeiting 10% of the basic sale price of the unit within a period of 90 days from the

date of this order failing which it shall pay the amount due along with prescribed rate of interest.

H. Directions of the authority

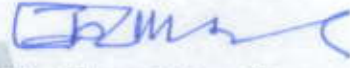
44. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

i. The respondent is directed refund the deposited amount after forfeiting 10% of the basic sale price of the unit within a period of 90 days from the date of this order.

45. Complaint stands disposed of.

46. File be consigned to registry.


(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 31.05.2022