

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

Complaint no. : 924 of 2019
Date of filing complaint : 25.03.2019
Date of decision : 08.08.2022

Trilok Chand & Sons Pvt. Ltd. R/O: - Plot no.5, Khatri Plaza, 1 st floor, New Rajendra Nagar, New Delhi-110060	Complainant
Versus	
M/s Splender Landbase Ltd. Regd. Office at: - Splender Forum 3 District Centre, Jasola, New Delhi-110025	Respondent

CORAM:

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

APPEARANCE:

Sh. Atul Vashisht	Advocate for the complainant
Sh. Ravi Agarwal	Advocate for the respondent

ORDER

1. The present complaint 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 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
	Name of the project	Splender Epitome, Sector-62
1	Unit no.	140, first floor (page no. 22 of reply)
2	Unit admeasuring	565 sq. ft. (As per page no. 22 of reply)
3	Provisional Allotment Letter	19.07.2012 (page no. 22 of reply)
4	Date of execution of agreement for sale	Not executed
5	Building Plan	15.07.2013 (page no. 43 A of reply)
6.	Revised building plan	26.12.2018 (page no. 37 of reply)
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 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).
7	Due date of delivery of possession	15.07.2016 (calculated from the date of approval of building plan)
8	Basic sale consideration	Rs. 45,20,000/- (as per page no. 22 of reply)
9	Total amount paid by the complainant	Rs. 19,72,679/- (alleged by the complainant)
10	Occupation certificate	26.12.2018 (page no. 37 of reply)
11	Offer of possession	Not offered
12	Reminders Letters	11-06.2019, 04.08.2020, 31.07.2021 and final reminder letter 01.09.2021
13	Termination Letter	27.07.2022



B. Facts of the complaint

3. That the complainant purchased a shop / office / unit no. 140 admeasuring of 565 sq. ft. area at the rate of Rs. 8000/- per sq. ft. amounting total consideration of Rs. 45,20,000/- on the assurance that construction would be complete and possession would be handed over in time and paid booking amount of Rs. 5,00,000/- on 24.08.2011. The Instalments amount of Rs. 19,72,679/- were paid as and when demanded by the respondent.
4. The space buyer agreement dated 19.07.2012 was signed between both the parties i.e., M/s Splendor Landbase Ltd. and the complainant on the terms and conditions as laid down by the respondent. As per the space buyer agreement, the possession of the unit in question was to be handed over within period of 3 years from date of approval of building plans of the complex.
5. That meanwhile on 23.12.2013, the respondent raised demand of EDC & IDC Charges along with payments of excavation work as per the demand letter but still without any handing over of possession.
6. That as per the space buyer agreement, the possession of the unit in question was to be handed lastly by August 2014 however at that time, the construction of the project was far from completion.
7. That till now, the respondent is still without any signs of offer of possession even after the lapse of good 7½ years i.e. from 24.08.2011 to 01.03.2019. Hence, this complaint before Haryana Real Estate Regulatory Authority seeking refund of the paid up amount.

B. Relief sought by the complainant:

The complainant has sought following relief(s):

- To direct the respondent to refund the amount of Rs. 19,72,679/- along with prescribed rate of interest.

C. Reply by the respondent

8. That the present complaint filed by the complainant is liable to be dismissed as the present project does not fall within the purview of RERA and there is no privity of contract with the respondent as the unit of the complainant already stands cancelled on account of the non-payment of the overdue payments.

9. That in the present case, the complaint pertains to the alleged delay in delivery of possession for which the complainant has filed the present complaint and is seeking the relief of interest and compensation u/s 18 and 19 of the said Act. The present complaint is ought to be filed before the Adjudicating Officer under Rule-29 of the said Rules and not before this Hon'ble Regulatory Authority under Rule-28 as this Hon'ble Regulatory Authority has no jurisdiction whatsoever to entertain such complaint and such complaint is liable to be dismissed on this ground. The respondent had filed a separate application for rejection of the present complaint on the ground of jurisdiction and this reply is being filed without prejudice to the rights and contentions of the respondent in the said application.

10. That without prejudice to the above it is also most respectfully submitted that the complainant has not come to this Hon'ble Regulatory Authority with clean hands and has concealed the material facts and made various

misrepresentations in the present complaint to mislead this Hon'ble Authority. It is submitted that no space buyer agreement had ever been executed between the respondent and him. However, the complainant in the present complaint has falsely stated that space buyer agreement has been executed between the parties and alleging delay in possession and claiming interest and compensation under the space buyer agreement which is non-existent and has never been executed. Hence, the present complaint is not maintainable and is liable to be dismissed.

11. That the respondent sent various reminder letter to the complainant dated 11.06.2019, 04.08.2020, 31.07.2021, 01.09.2021 and sent pre-cancellation letter dated 14.12.2021 to clear of outstanding dues, but the complainant never responded to the respondent. However, in the meanwhile, the respondent sent a letter on 27.07.2022 terminating the allotment of unit no. 140 and forfeiting the earnest money amounting to Rs. 4,94,375/- against the total amount of Rs. 19,72,679 and balance amount of Rs. 14,78,304 has been remitted vide cheque no. 183068 dated 27.07.2022 drawn on HDFC Bank.

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 complainant at a later stage.

E. Findings on the relief sought by the complainant.

E.1 Direct the respondents to refund the amount of Rs. 19,72,679/- along with prescribed rate of interest.

16. The complainant was allotted a unit detailed above in the project of respondent and till date a total consideration of Rs. 19,72,679/- was paid against basic consideration of Rs.45,20,000/-, constituting 40% of total consideration. While discussing early the comer, it has been held that the complainant was 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 cancellation of the allotted unit is valid and as per the provisions of the buyer's agreement and secondly whether the complainant is entitled to any amount after cancellation of allotment, or the respondent promoter is entitled to retain the whole of the paid-up amount.
17. It is observed that the respondent has raised various demand letters to the complainant to clear the outstanding dues, but it never responded to those communication leading to cancellation of the allotted unit vide letter dated 27.07.2022,

forfeiting the earnest money of Rs. 494375/- against the paid-up amount of Rs. 19,72,679/- and returning balance amount of Rs. 1478304/- vide check bearing no. 183068 dated 27.07.2022 drawn on HDFC Bank.

18. In the judgement of the Hon'ble Supreme Court of India in the cases of Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (2021-2022(1)RCR(Civil),357) reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022. it was observed

25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed

19. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of

the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as he wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.

20. The authority is of the view that the cancellation order/termination letter is held to be invalid as during pendency of matter before the authority, the allottee has sought refund on account of failure of promoter to offer possession on the due date as per BBA and which is statutory right conferred on him under section 18(1) of the act, 2016 to seek refund. Even to deal with such type of situation, regulation 11 of 2018 was framed by the Haryana Real Estate Regulatory Authority, Gurugram. So, the respondent builder has to return the amount received by him i.e., Rs. 19,72,679/- along with interest @9.8% (MCLR+2%) from the date of each payment till the actual date of refund of the amount. The amount received by the complainant by way of refund if any during the pendency of the complaint would be set off against the total amount due against the respondent.

F. 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


functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i) The respondent /promoter is directed to refund the amount paid by complainant i.e., Rs. 19,72,679/- along with interest @9.8% (MCLR+2%) from the date of each payment till the actual date of refund of the amount.
- ii) The amount received by the complainant from the respondent by way of refund if any, during the pendency of complaint would be set off against the total recoverable 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.

22. Complaint stands disposed of.

23. File be consigned to the Registry.


(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 08.08.2022