



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

**Complaint no. : 4846 of 2022**  
**First date of hearing: 06.09.2022**  
**Date of decision : 01.12.2022**

Vikas Chandra  
R/O: S-240, First Floor,  
Greater Kailash-II, New Delhi, Delhi

**Complainant**

Versus

1. M/s Puri Constructions Pvt. Ltd.  
Office: 4-7B, Ground Floor, Tolstoy House,  
15 & 17 Tolstoy Marg, New Delhi  
2. SBI Bank Limited  
Office : Retail Assets Central Processing  
Centre, Ground Floor, A-Block, DAO  
Building, II Sansad Marg, New Delhi-110001

**Respondents**

**CORAM:**

Shri Vijay Kumar Goyal  
Shri Sanjeev Kumar Arora

**Member**  
**Member**

**APPEARANCE:**

Sh. Vikas Chandra  
Sh. Himanshu Juneja

**Complainant in person**  
**A/R for the respondent**

**ORDER**

1. The present complaint dated 18.07.2022 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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.N.	Particulars	Details
1.	Name of the project	Diplomatic Greens, Sector 110A & Sector 111, village Chouma, Gurugram.
2.	Date of allotment	16.12.2011 (page 62 of reply)
3.	Apartment no.	901, 9 <sup>th</sup> floor, block no. C2 admeasuring 2950 sq. ft. (Page 25 of complaint)
4.	Subsequent allottee vide endorsement dated	26.06.2013 (page 18 of complaint)
5.	Date of builder buyer agreement	26.05.2012 (page 23 of complaint)
6.	Possession clause	<b>14. Possession</b> <i>14(a) Subject to terms of this clause and subject to the Apartment Allottee having complied with all the terms and conditions of this Agreement, and not being in default under any of the provisions of this Agreement and compliance with all provisions formalities, documentation etc., as prescribed by the Company, the company proposes to hand over the possession of the Apartment within 42 months of the execution of this agreement. The Apartment Allottee agrees and understands that the Company shall be entitled to a grace period of an additional one hundred eighty (180) days, for applying and obtaining the occupation certificate in respect of the Group Housing Complex.</i> <i>(Emphasis supplied)</i>

7.	Due date of possession	26.11.2015 [calculated from the date of execution of agreement]  (Note: Grace period of 180 days for applying and obtaining occupation certificate is disallowed)
8.	Sale price	Rs. 2,20,41,700/- as per clause 1.2(a) of BBA (page 26 of complaint)
	Total sale consideration	Rs. 2,53,02,221/- as per customer ledger dated 29.01.2018 (page 39 of reply)
9.	Paid up amount	Rs. 1,58,18,592/- as per customer ledger dated 29.01.2018 (page 39 of reply)
10.	Occupation certificate	29.08.2016 (annexure R4, page 29 of reply)
11.	Offer of possession	N/A
12.	Pre-cancellation dated	17.02.2015 (page 65 of reply)
13.	Cancellation letter dated	20.03.2015 (page 65 of reply)

**B. Facts of the complaint:**

3. The complainant has made the following submissions in the complaint:

- I. That the initially Mr. Sanjeev Bhatiani and his wife Mrs. Sunita Bhatiani booked an apartment no. 901, 9th floor, Tower/Block No.C2, having super area 2950 sq. ft. in the said project. On 26.05.2012, Erstwhile allottees, executed an apartment buyer's agreement in the name of Mr. Sanjeev Bhatiani with the respondent no. 1 which was then later transferred and duly endorsed by the respondent no 1 in favour of the complainant Mr. Vikas Chandra as the real allottee on 26.06.2013 from the erstwhile allottee and transferor Mr. Sanjeev Bhatiani. Respondent no 1 allotted the said apartment for a total sale consideration of **Rs. 2,14,70,950-**.
- II. As per clause 14(a) of the said builder buyer agreement respondent no 1 was to deliver/handover the possession of the said apartment within a period of 42 (Forty) months from the date of execution of the said

agreement which comes out to be 26.11.2015. After obtaining occupancy certificate, only the promoter developer was under the legal obligation to handover the valid possession as per terms and conditions of the builder buyer agreement and amount agreed and executed upon as per the duly endorsed builder buyer agreement in favour of the complainant.

- III. That on 26.06.2013, the respondent no.1 transferred the said unit from the original and erstwhile allottee in favour of the complainant and as on date the complainant has paid an amount of **Rs. 1, 55, 37,570/-** towards the said unit which amounts to 71% of the total sale consideration. The respondent no.1 was to handover the possession of the said unit by 26.11.2015 but has miserably failed to offer and hand over the possession of the said apartment till date this complaint is filed before authority.
- IV. That the complainant applied for loan from SBI bank against the said apartment for timely payment to respondent no. 1 that is promoter builder therefore with mutual agreement and participation of all three, "it was mutually agreed and documents were executed and signed by the complainant. Respondent no. 1 that is promoter builder even after receiving first disbursement from respondent no. 2 that is SBI Bank and the margin money from the complainant failed to provide and submit these mandatory legal documents to the banker and complainant despite repeated requests of the same time and again due to which the bank did not disburse any further loan installments in absence of the same but still the respondent no 1 unfairly kept on accumulating the interest at the rate of 18% in the complainant account and raising unreasonable demands from the complainant time and again without fulfilling the mandatory obligations on his part till date.

- V. It is pertinent to note that complainant was and is ready to pay the valid and bonafide balance sale consideration, excluding the false interest accumulation and other charges that were being imposed by the builder due to the service deficiency on his part, upon furnishing of all pending documents like tri-partite agreement, permission to mortgage, letter of confirmation of transfer of unit etc. and it was communicated on multiple occasions that the builder must provide the above mentioned documents at the earliest to the bank which he should have provided at the first instance itself but remained elusive till date from his side. It is also pertinent to mention that there was no further demand generated or provided from the respondent's side for any further installments till date after the raising the issue of the missing tri-partite agreement and other mandatory documents on multiple occasions as stated above or withholding such document with him for the ulterior motives.
- VI. It is also pertinent to mention that the respondent no.1 has handed over possession to all the rest of the allottees except the complainant and is not offering possession to the complainant till date on account of its own service deficiency and malafide by not providing the Tri-partite agreement and other mandatory documents as stated above to the bank for the reasons best known to him and despite this inordinate delay and misdoings on their parts refusing to pay any interest over the amount of money transferred to the respondent no.1 by complainant and respondent no. 2 (Bank) and delayed possession charges or compensation to the complainant for all these years of inordinate delay, distress and harassment to the complainant. during all this period the complainant has been duly paying all of the loan EMI's to the respondent no.2 (Bank).

**C. Relief sought by the complainant:**

4. The complainant has sought following relief(s).
- I. Direct the respondent to pay interest for delay possession for the total delayed period till the time of actual possession of the apartment by the complainant, compensation and the handover of possession of apartment.
  - II. An amount of Rs. 1,50,000/- as legal charges to be paid by the developer/respondent to the complainant.
5. 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(4) (a) of the act to plead guilty or not to plead guilty.

**D. Reply by the respondent**

6. The respondent has contested the complaint on the following grounds.
- a. That the complaint filed by the complainant is not maintainable and cannot proceed further, as the answering respondent has already made the payment of Rs.98,19,809/- to the respondent no. 2 i.e. SBI, towards the loan facility availed by the complainant from SBI, as the said loan account of the complainant has become NPA and demand letters dt. 25.08.2021 and 27.07.2022 were issued by the SBI and in furtherance of the said demand letters, the answering respondent had made the requisite payments as mentioned in the said letter to the SBI and for the remaining applicable refundable amounts the answering respondent is hereby issued vide the cheque no. 909977 dated 28.07.2022 for Rs. 33,30,880/- in favor of the complainant. Hence in view of the above stated facts and circumstances, the present complaint cannot proceed further hence the same be dismissed.
  - b. That the present complaint is hopelessly barred by law of limitation, as the cancellation of the unit was done on 20.03.2015 and the present



complaint has been filed on 07.07.2022 i.e. after expiry of more than 7 years hence the present complaint is barred by law of limitation.

- c. That the present complaint is not maintainable under the provisions of Act and applicable rules, as the occupation certificate was received in the year August, 2016 before coming into force of Real Estate (Regulation and Development) Act, 2016. Hence the complaint should be outrightly rejected by this authority. The occupation certificate for the project was granted by DTCP on 29.8.2016 i.e. much prior to the publication of the said rules in 2017. Hence the said project was not on going project on the date of publication of said rules and therefore the said project is not covered under the ambit of HRERA rules 2017, and hence the present complaint is not maintainable.
- d. That the complainant has got no cause of action to file the present complaint. The whole complaint is nothing but absolute lies and concealment of facts and absolute breaches on the part of the complainant and stoic silence from 2013 till 2015 i.e. the date of cancellation of the unit and present complaint has been filed after expiry of 7 years from the date of cancellation of the unit, hence the present complaint be dismissed on this ground alone.
- e. That the respondent had offered the possession of the apartments to all the eligible allottees on 17.02.2017 and since then more than 350 families are residing in the said complex and hence the allegations of the complainant to the contrary in the present complaint are totally false and baseless. Hence the complaint is being based upon false representations and facts and breach which is solely on account of complainant and hence the complaint be dismissed.
- f. That the complainant is estopped from filing the present complaint as the unit was cancelled on 20.03.2015 and request for revival of the



same was made by the complainant in June 2015 which was not acceded to and further the respondent has offered one time settlement to the complainant in 2018 which was also not complied with by the complainant and now lately in March 2022 the respondent in reply to the legal notice of the complainant has offered settlement but again the same was not adhered to by the complainant but now in view of the demand notice of SBI and subsequent payments by the respondent to SBI, towards the home loan facility availed by the complainant, now the complainant is estopped from filing the present complaint by his own act and conduct of being in breach/default of making payments to the answering respondent as well as SBI. All these facts have been concealed by the complainant. Hence the present complaint be dismissed.

**7. Written arguments filed by the complainant:**

- a. The complainant submitted that on requests made by the complainant the first installment of his disbursement was made out of the loan amount sanctioned to the complainant against the unit purchased and endorsed by the respondent. SBI ban claims to have categorically disbursed the first installment on specific condition of signed original copies. SBI had issued letters to the complainants till the year 2018 asking to submit the pending documents from the builder and asking the registry date, creation of equitable mortgage on the property and after which only any further loan disbursement to the builder/respondent against his demands to the complainant could have been made which was conveyed to the respondent no. 1 by the complainant. Complainant has submitted all the copies of these bank letters in court, this once again proves that neither the bank aware of any such so called cancellation from the builder's side in the year 2015



- nor the builder had obtained any such prior consent letter from the SBI as per the PTM undertaking given by him to the bank on 08.05.2014 as per his own admission and reply filed in the court.
- b. As per the averment of complainant and submission rendered by the respondent no. 1 before the court on 06.09.2022, it was directed by the authority vide its proceedings dated 06.09.2022 to submit proof of cancellation, if any, made by respondent in the year 2015 as alleged by him in arguments.
- c. The respondent failed to provide any proper and valid speed post receipt of the cancellation letter of 2015 or any email to the complainant with regard to any cancellation as alleged by him. In spite of claiming the alleged cancellation in the year 2015 itself the builder/respondent sent an email to the complainant in 2018 confirming that the flat is ready for handover and asking to confirm the handover date.
- d. As per respondent no. 1 admission has submitted permission to mortgage of unit to the bank on dated 08.05.2015 and submitted a copy of the same to this court where it is clearly undertaken by himself that unit was in lien of the bank and no cancellation of the unit can be done without any prior written consent of the SBI bank the prior written consent for which he never took from the bank and advised to the complainant before making the alleged cancellation letter.
- e. Email were exchanged between 06-03-2018 to 01- 09-2021 between complainant and CRM of the respondent regarding the unit in question which no where reflects about the claimed concocted cancellation of unit.
- f. Builder offered foreclosure loan amount to the complainant's bank only after complainant took legal action and made refund to the bank in July

2022 as an afterthought and only after giving legal notices and filing of the case in the court by the complainant, builder and bank made this illegal transaction without the NOC of the buyer and having valid tripartite agreement in place with the complainant, this once again proves that no such cancellation ever took place in the year 2015.

g. Complainant had been paying regular EMI to the bank till April 21 as per the bank statements submitted by him in the court and the bank never advised the complainant at any stage regarding any such cancellation of 2015 with the bank's prior written consent as per the PTM undertaking given by the builder to the bank but on the contrary bank had been asking the complainant in 2018 to register the property in his name from the builder and arrange the tripartite agreement from the builder before that which had been pending from the builder, this once again proved the concocted cancellation in the year 2015 by the builder.

8. The written submissions made by the respondent along with documents have been perused by the authority.
9. 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 the authority**

10. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

#### **E.I Territorial jurisdiction**

11. 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**

12. 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) The promoter shall-

(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.

13. 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.
14. 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. 2021-2022 (1) RCR (Civil), 357*** and 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, 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."*

15. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme court in the cases mentioned 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 Direct the respondent to pay interest for delay possession for the total delayed period till the time of actual possession of the apartment by the complainant, compensation and the handover of possession of apartment.**

**F. II An amount of Rs. 1,50,000/- as legal charges to be paid by the developer/respondent to the complainant.**

16. The complainants submitted that Mr. Sanjeev Bhatiani and his wife Mrs. Sunita Bhatiani booked an apartment bearing no. 901, 9th floor, tower/block no.C2, having super area 2950 sq. ft in the said project. On 26.05.2012, erstwhile allottees, executed an apartment buyer's agreement

in the name of Mr. Sanjeev Bhatiani with the respondent no. 1 which was later transferred and duly endorsed by the respondent no. 1 in favor of the complainant Mr. Vikas Chandra as the real allottee on 26.06.2013 from the erstwhile allottee and transferor Mr. Sanjeev Bhatiani. Respondent no.1 allotted the said apartment for a total sale consideration of Rs. 2,14,70,950/-. As per clause 14(a) of the said agreement, respondent was under obligation to handover the possession of the said apartment within a period of 42 months from the date of execution of the said agreement which comes out to be 26.11.2015. As on date the complainant has paid an amount of **Rs. 1,55,37,570/-** towards the said unit which amounts to 71% of the total sale consideration.

17. The complainant applied for loan from respondent no. 2 i.e., SBI bank against the said apartment for timely payment to respondent no. 1 that is promoter builder therefore with mutual agreement and participation of all three, "it was mutually agreed, and documents were executed and signed by the complainant. Respondent no. 1 i.e. promoter builder even after receiving first disbursal from respondent no. 2 and the margin money from the complainant Sh. Vikas Chandra failed to provide and submit certain mandatory legal documents to the banker and complainant despite repeated requests of the same time and again due to which the bank did not disburse any further loan installments in absence of the same but still the respondent no. 1 unfairly kept on accumulating the interest at the rate of 18% in the complainants account and raising unreasonable demands from the complainant time and again without fulfilling the mandatory obligations on his part till date.
18. The respondent-builder raised a demand of Rs. 09,17,815/- to the complainant. Further, various demand cum reminder letters dated 13.07.2013, 19.09.2013, 17.10.2013, 20.11.2013, 17.12.2013,

07.01.2014, 22.01.2014, 20.02.2014, 25.03.2014, 01.04.2014, & 21.07.2014 were sent to the complainant, and cancellation letter dated 20.03.2015 was also sent to the complainant. As per section 19(6) and (7) of Act of 2016, the allottee is under an obligation to make timely payment as per payment plan towards consideration of the allotted unit. The respondent has given sufficient time and opportunity to the complainant to make a payment towards consideration of allotted unit. Hence, the said cancellation is valid in eyes of law. Therefore, relief of complainant seeking delay possession charges becomes redundant.

19. As per submissions of AR during the proceedings dated 01.12.2022, it was clarified that in view of letter dated 27.07.2022 of bank wherein recalling of loan, the respondent has already made payment to the bank towards loan sanctioned. The Authority observes that the complainant has approached the Authority seeking relief of delayed possession charges, but in view of cancellation, the said relief has become infructuous. However, the respondent was under obligation that after making necessary directions, it must have refunded the remaining amount to the complainant. Thus, the respondent-builder has been using the amount of the complainant.
20. As per Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018, which is provides 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."*

21. The respondent no. 1 is directed to refund the paid up amount i.e. Rs. 1,58,18,592/- after deducting 10% of the sale consideration of the unit being earnest money as per regulation Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018 along with an interest @ 10.35% p.a. on the refundable amount, from the date of cancellation i.e., 20.03.2015 till the date of realization of payment.

**F. Directions of the authority**

22. The authority observes that the cancellation of the allotted unit by the promoter held to be valid as discussed above. 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 no. 1 is directed to refund the paid up amount i.e. Rs. 1,58,18,592/- after deducting 10% of the sale consideration of the unit being earnest money as per regulation Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018 along with an interest @ 10.35% p.a. on the refundable amount, from the date of cancellation i.e., 20.03.2015 till the date of realization of payment.
  - ii. The respondent no. 1 is entitled for deduction of amount already paid to the bank as per "permission to mortgage letter dated 08.05.2014" from the refundable amount as per (i) above direction.



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.

23. Complaint stands disposed of.

24. File be consigned to registry.

  
(Sanjeev Kumar Arora)  
Member

  
(Vijay Kumar Goyal)  
Member

**Haryana Real Estate Regulatory Authority, Gurugram**

Dated: 01.12.2022