



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	168 of 2020
Date of filing:	31.01.2020
Date of first hearing:	26.05.2020
Date of decision:	17.01.2023

1. Jaiveer Singh,
S/o Sh. Om Prakash,
R/o village Harya Hera, Tehsil Sohna,
PO Ghamroj, Gurugram,
2. Anita Singh,
W/o Sh. Jaiveer Singh,
R/o village Harya Hera, Tehsil Sohna,
PO Ghamroj, Gurugram,

....COMPLAINANT(S)

VERSUS

M.G. Housing Pvt. Ltd.
Regd Office: G - 127, 12th floor,
Himalaya House, 23,
Kasturba Gandhi Marg,
New Delhi- 110001

....RESPONDENT(S)

J. Kataria

CORAM: Dr. Geeta Rathee Singh
Nadim Akhtar
Member
Member

Hearing: 8th

Present: - None for the complainants

Mr. T.S. Khaira, Learned counsel for the respondent through video conference

ORDER (Dr. GEETA RATHEE SINGH - MEMBER)

1. Present complaint dated 31.01.2020 has been filed by complainants under Section 31 of The Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of The Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

2. The particulars of the project, the details of 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 table:

Geeta Rathee

S.No.	Particulars	Details
1.	Name of the project	Anandam Awaas, Sector 19 & 24 Dharuhera, Rewari
2.	RERA registered/not registered	Registered
3.	DTCP License no.	21 of 2017 dated 19.05.2017
	Licensed area	13.40625 Acres
4.	Date of application for license by respondent	25.04.2019
5.	Unit no.	F-163 (Second floor)
6.	Unit area	870 sq. ft.
7.	Date of provisional allotment	03.05.2018
8.	Date of builder buyer agreement	04.05.2018
9.	Due date of possession	04.05.2021
10.	Total sales consideration	₹22,19,110/-
11.	Amount paid by complainants	₹1,24,000/-
11.	Offer of possession	Not made

B. FACTS OF THE COMPLAINT

3. Facts of complaint are that complainants made booking of a residential unit in the project of the respondent namely "Anandam Awaas" by making a payment of Rs. 1,24,000/- to respondent vide cheque on 08.02.2018. Complainants have annexed payment receipt dated 12.08.2018 as Annexure P-3 with complaint. Vide letter dated 03.05.2018, complainants received a provisional allotment of

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residential flat no. F-163, Second Floor in the project. Copy of said letter is annexed with complaint as Annexure P-4. After receipt of the provisional allotment letter, complainants approached the respondent regarding payment plan. On this the officials of the respondent disclosed that "The Builder Agreement" along with detailed plan and other relevant terms and conditions thereof will be sent on the registered communication address of the complainants. Moreover, the officials of the respondent disclosed the complainants that sample flats will be ready within four month or so and the complainants can visit the site to verify the position and accommodation and if the complainants feel that either the site or accommodation does not suits to the complainants, they can cancel/surrender the allotment and the total amount will be refunded without any deduction within a week.

4. That on 22.09.2018, the complainants visited the site of the respondent where the construction was going on and found that neither the location of the said flat nor the accommodation was sufficient for the complainants they decided to get said allotment canceled. The complainants requested the officials of the respondent to cancel his unit and the officials assured to do the needful in this regard.
5. That when no amount of whatsoever nature refunded to the complainants. The complainants again contacted the respondent and inquired about the refund and then the respondent directed the



complainants to submit the application for cancellation in writing. Accordingly, the complainants sent a reminder letter dated 14.01.2019 to the respondent for cancellation of flat and refund of the amount deposited. Copy of the letter dated 14.01.2019 is attached as Annexure P-5.

6. That the respondent on receipt of the letter dated 14.01.2019 of the complainants, informed the complainants vide their letter dated 17.01.2019 that they have already terminated this unit in their record on 22.09.2018 and further disclosed that they have forfeited the amount paid by the complainants. The respondent had played fraud, defrauded and cheated with the complainants as while booking unit, it was assured and disclosed to the complainants that in case the complainants intends to cancel the said unit, the same will be canceled at any point of time and the amount paid by the complainants will be refunded and only on these assurances the complainants agreed to book the unit in the said project of the respondent. Copy of the letter dated 17.01.2019 is attached as Annexure P-6
7. That thereafter, the complainants time and again visited the office of the respondent and after great persuasion of the complainants, the respondent agreed to refund the amount only after deducting the amount of GST i.e. Rs. 53,288/- illegally and unlawfully for which the

complainants refused. Aggrieved by the same, the complainants have filed the present complaint.

C. RELIEF SOUGHT

8. The complainants in their complaint have sought following reliefs:
- (i) The complainants prays that their initial deposit of Rs.1,24,000/- (Rupees One Lac Twenty Four Thousand only) be refunded alongwith interest @ 18% per annum from the date of deposit till actual realization.
 - (ii) Payment of compensation of Rs.5,00,000/- (Rupees Ten Lakhs only) for mental harassment, agony caused to the complainants. The company may be called upon and be prosecuted as per law.
 - (iii) Any other relief which the complainants are entitled as per RERA.
 - (iv) The complainants further for interim relief, if Hon'ble Authority calls upon The Company for a fixed Deposit of the amount of Rs.1,24,000/- (Rupees One Lac Twenty Four Thousand only) in Fixed Deposit receipt in the name of Hon'ble Authority..
 - (v) Litigation expenses Rs.55000/-

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed detailed reply on 21.11.2022 pleading therein:


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9. The respondent-promoter is developing a real estate group housing project by the name and style of "ANANDAM AWAS", situated at Sector 19, Dharuhera, District Rewari, Haryana.
10. That the Complainants have suppressed material facts in the complaint and hence the complaint is liable to be dismissed on the ground of concealment of material facts. The following facts would show that the captioned complaint is meritless.
11. That the Complainants have booked a Flat No, F-163 SF in the Project. Copy of application form is annexed hereto and marked as Annexure R-2. That the Complainants are liable to comply with all the terms and conditions specifically agreed by them towards the allotment of the flat, which was signed by the Complainants out of their own free will and consent. That as per the Flat Buyer Agreement dated 04.05.2015 executed by the Complainants, they were liable to pay the timely payment of the installments due in accordance with the payment plan as agreed upon by them. Copy of Buyers Agreement is annexed hereto and marked as Annexure R-3.
12. Complainants have inspected the project site and only thereafter they have booked the Flat. The averment of personal visit to location on 22.09.2018 etc., are totally incorrect and false averment. The allegations that the Opposite Party representative offered the complainants to refund the amount after deducting GST are totally



false and hence denied. It is further denied that the complainants contacted the respondent and inquired about the refund and then the respondent directed the Complainants to submit the application for cancellation in writing. Complainants have not annexed any document to substantiate these facts.

13. On 14.04.2018 the respondent issued a Demand Letter calling upon the complainants to pay an amount of Rs.4,97,353/- towards the pending demand as informed by the respondent to the Complainants on regular intervals. Copy of demand letter dated 14.04.2018 is annexed hereto and marked as Annexure R-4. Even after the receipt of the said demand notice the Complainants neither replied to the same nor paid the installments due. Thus, the respondent was compelled to send a termination notice dated 22.09.2018 terminating the allotment made in favour of the complainants. It is further submitted that the Complainants were further called upon in the said termination letter to approach the respondent within seven (7) days of the receipt of the said letter for full and final settlement of dues if any. Copy of termination notice is annexed hereto and marked as Annexure R-5. However, even after the receipt of the said termination letter the Complainants neither responded to the same nor raised any claim. Thus, the Opposite Party was constrained to forfeit the amount paid by the Complainants in accordance with the agreed terms and conditions.

14. Thereafter the respondent received a letter dated 17.01.2019 issued by the complainants with a request to cancel the allotment of the Flat. Since the allotment of the flat was already canceled in view of the letter dated 22.09.2018, respondent vide letter dated 17.01.2019 informed complainants regarding the said fact and also intimated that the entire amount was already forfeited. Same has been done in accordance with the Flat Buyer Agreement. As per clause 3.8 of the Flat Buyer Agreement it is specifically agreed that in case the buyer fails and/or neglects to make timely payments of the installments and defaults in payment for any three (3) installments as specified in the payment plan, the developer shall have the right to cancel the flat and forfeit Earnest money as provided in clause 2.7. Hence, in due exercise of the said right the respondent has canceled the allotment and forfeited the earnest money paid by the Complainants.
15. The complainants approached the Opposite Party showing their interest to book the Flat after conducting research and market survey. It is submitted that it was the complainants' sole option to book the flat. It is further submitted that before booking the Flat the Complainants visited the site and only after their complete satisfaction they have booked the Flat. It is most respectfully submitted that it was at the sole discretion of the complainants that they have booked the Flat.

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16. It is submitted that the instant complaint with frivolous and false allegations has been filed before this Hon'ble Authority only after the receipt of the termination letter. It is submitted that the Complainants have concealed many material facts and documents from this Hon'ble Authority with a malafide intention to mislead this Hon'ble Authority for favorable orders. In this context, the Opposite Party relies upon the judgment of the Hon'ble Supreme Court of India in K.D Sharma V/s. Steel Authority of India Ltd & Ors. (2008) 12 SCC 481, wherein the Hon'ble Supreme Court has held that if a party conceals the material facts, the Courts should have to refuse to proceed further with the examination of his case on merits.

E. ARGUMENTS OF LEARNED COUNSEL FOR RESPONDENT

17. During oral arguments learned counsel for the respondent M. G. Housing Pvt. Ltd. reiterated arguments as were submitted in writing. Learned counsel for respondent further stated that the cancellation of the unit was done in accordance with the FBA. By referring clause 2.7 and 2.8 of the FBA, he stated that where the buyer terminates agreement without any default or breach by the developer, in that case the promoter has the right to forfeit an amount equivalent to the 5% of the total sales consideration. In the present case there is no default on the part of the respondent, rather it was the complainants who are at

fault for not making the payments. The respondent vide call letter 14.04.2018 demanded Rs. 4,97,353/- towards the unit. Even after the receipt of the said demand notice the complainants neither replied to the same nor paid the installments due. Thereafter, the respondent sent a termination notice dated 22.09.2018 terminating the allotment made in favour of the complainants and forfeited the booking amount of Rs. 1,24,000/- paid by the complainants.

F. JURISDICTION OF THE AUTHORITY

18. Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

E.1 Territorial Jurisdiction

As per notification no. 1/92/2017/ITCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Panchkula shall be the entire Haryana except Gurugram District for all purposes with offices situated in Panchkula. In the present case the project in question is situated within the planning area Rewari district. Therefore, this Authority has complete territorial jurisdiction to deal with the present complaint.

E.2 Subject Matter Jurisdiction

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 of 2016 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 learned Adjudicating Officer if pursued by the complainants at a later stage.

G. ISSUES FOR ADJUDICATION

19. Whether the complainants are entitled to refund of the amount deposited by him along with interest in terms of Section 18 of Act of 2016?

H. OBSERVATIONS AND DECISION OF THE AUTHORITY

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20. The Authority has gone through the contentions of both the parties. In light of the background of the matter as raptured in this order and also the arguments submitted by both parties, Authority observes that complainants made booking in the project of respondent on 08.02.2018 by filing an application form. Copy of application form is annexed hereto and marked as Annexure R-2 of the reply. He made payment of Rs. 1,24,000/- to respondent vide cheque as the booking amount. Copy of the receipt of the payment is annexed as P-3 of the complaint. Respondent vide letter dated 03.05.2018 provisionally allotted a residential flat no. F-163, Second Floor in the project. Copy of said letter is annexed with complaint as Annexure P-4 of the complaint. Flat Buyer Agreement dated 04.05.2015 executed between the parties, copy of the same is annexed as R-3 of the reply. Respondent on 14.04.2018 issued a Demand Letter calling upon the complainants to pay an amount of Rs.4,97,353/- towards the pending demand. Copy of demand letter dated 14.04.2018 is annexed hereto and marked as Annexure R-4. However, the same was not paid by the complainants. For non-payment of the installment by the complainants, respondent sent a termination notice dated 22.09.2018 to the complainants terminating the allotment made in favour of the complainants and forfeited the amount paid by complainants. Copy of termination notice is annexed hereto and marked as Annexure R-5.



Mr. T.S. Khaira, ld. counsel for respondent referred clause 2.7 and 2.8 of the FBA and stated that cancellation was made in accordance with FBA. On the other hand complainants in his complaint mentioned that after allotment he approached the officials of respondent company for execution of FBA where they assured the complainants that sample flats will be ready within four month or so and he can visit the site to verify the position and accommodation and if he feels that either the site or accommodation does not suits to him, he can cancel/surrender the allotment and the total amount will be refunded without any deduction within a week. Furthermore, on 22.09.2018, the complainants visited the site of the respondent and found that neither the location of the said flat nor the accommodation was sufficient for the complainants he decided to get said allotment canceled. The complainants requested the officials of the respondent to cancel his unit and the officials assured to do the needful in this regard. However, he has not placed on record any document showing that officials of the respondent company ever made such assurance. No correspondence has been placed on record by complainants to substantiate that he asked respondent to cancel the unit. He has annexed a letter dated 17.01.2019 wherein he requested the respondent to cancel the unit and refund the paid amount by the complainants. However, the unit was already canceled by respondent on 22.09.2018.

21. In order to determine whether the cancellation of the unit by the respondent was lawful or not, perusal of clause 2.7 and 2.8 of the FBA is necessary. The same is reproduced below:

"2.7 The Parties hereby agree that any amount to be forfeited under this Agreement due to happening of any of the contingencies mentioned in Clause 2.8 below shall be forfeited in the manner provided below ("Earnest Money"):

- i) 2.50% (Two Point Five Percent) of the Total Sale Price for the first 30 (Thirty) days of occurrence of any of the contingencies mentioned in Clause 2.8 below; and*
- ii) After expiry of the above mentioned 30 (Thirty) days, 5% (Five Percent) of the Total Sale Price.*

2.8 The Earnest Money shall be liable for forfeiture in case any of the following contingencies occur:

- i) In case the Buyer terminates the present Agreement without any default or breach by the Developer.*
- ii) If the Buyer terminates the Agreement on the basis of default or breach by the Developer, then the Developer shall not have the right to forfeit any amounts deposited by the Buyer as the same shall be recoverable only on the determination of the issues between the Parties by the Arbitrator.*
- iii) In case the Buyer fails to make payments of any 3 (three) installment of Payment Plan, despite having been issued notice in that regard."*

Perusal of the above mentioned clauses makes it clear that in case of cancellation of the unit due to the fault of complainants, the respondent-promoter is entitled to forfeit 5% of the TCS and cancel the allotment. Remaining amount has to be refunded back to the complainants.

22. In light of the above facts, Authority observes that the complainants have paid a total sum of Rs. 1,24,000/- to respondent. Respondent is entitled to forfeit 5% of the total sales consideration as per clause 2.7 and 2.8 of BBA. The total sales consideration in the matter is Rs. 22,19,110/-. 5% of it comes out to Rs. 1,10,955.5/-. Therefore, respondent shall refund the remaining amount of Rs. 13,044.5/- along with interest as per Rule 15 of HRERA Rules, 2017. Interest is calculated on the amount of Rs. 13,044.5 from the date of receipt i.e., 12.002.2018 till the date of the order i.e., 17.01.2023 @ SBI MCLR + 2% i.e., 10.60% which comes out to be Rs. 6,823/-. Total amount to be refunded comes out to Rs. 19,867.5/-.

I. DIRECTIONS OF THE AUTHORITY

23. Respondent is directed to make the entire payment of ₹19,867.5/- within 90 days from the date of this order, as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017.

24. The complaint is, accordingly, **disposed of**. File be consigned to the record room and order be uploaded on the website of the Authority.



.....
Dr. GEETA RATHEE SINGH
[MEMBER]



.....
NADIM AKHTAR
[MEMBER]

