

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

Complaint no. : 4550 of 2021  
Date of filing complaint : 24.11.2021  
First date of hearing : 26.11.2021  
Date of decision : 01.12.2022

Bharti Lohia R/O: - 4 <sup>th</sup> floor, Rosewood Lane, 17 Malibu Town, Gurgaon	<b>Complainant</b>
Versus	
1. M/s St. Patricks Pvt. Ltd. Regd. Office at: - Asset 5B, Hospitality District, Delhi Aerocity, New Delhi - 110037 2. Ms. Amrita Bakshi Regd. Office at: - 9 Green Avenue Vasant Kunj, New Delhi	<b>Respondents</b>

<b>CORAM:</b>	
Dr. K.K. Khandelwal	<b>Chairman</b>
Shri Vijay Kumar Goyal	<b>Member</b>
Shri Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Bhupinder Partap Singh	Advocate for the complainant
Sh. Amit Kumar	Advocate for the respondents

**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
1.	Name of the project	Central Park Flower Valley, Sector - 29, 30, 31 and 32, Sohna, District Gurugram
2.	Unit No.	J-52 Area - 391.96 sq. mtr. (As per page 30 of complaint)
3.	RERA Registration	Registered 11 of 2020 dated 18.03.2020
4.	DTCP License no.	07 of 2020 dated 29.01.2020
5.	Date of allotment	15.03.2021 (As per page 30 of complaint)
6.	Date of builder buyer agreement	Not executed



7.	Possession clause	-
8.	Due date of possession	Cannot be ascertained
9.	Total Sale Consideration	Rs. 3,08,50,781/- (As per page 30 of complaint)
10.	Amount paid by the complainant	Rs. 41,52,109/- (As pleaded by complaint)
11.	Occupation certificate	Not Obtained
12.	Offer of possession	Not Offered
13.	Cancellation Notice	28.10.2021 (As per page 43 of complaint)
14.	Grace period utilization	N.A.
15.	Reminder Letters	29.05.2021, 02.07.2021 and 16.08.2021 (As per annexures C- 5,6,7 and 8 of the complaint)
16.	Cancellation letters	26.08.2021 (After this on 05.09.2021, respondent sent a mail in which he requested the complainant to visit the office and discuss about the payment) (As on page 41 of complaint) Final Cancellation of the provisionally allotted unit - 28.10.2021 (As on page 43 of complaint)

### B. Facts of the complaint

3. That the complainant believing the representation of the respondents of timely completion and standardized construction of the project booked a plot bearing no. J-52, (hereinafter referred as

- the said 'unit') in the project "Central Park Flower Valley" situated in sector-29, 30, 31 & 32, Sohna, District Gurugram, (Haryana) (hereinafter referred as the said 'project') with an approximate super area of 391.96 sq. m. at total sale consideration of Rs. 3,08,50,781/-.
4. That the complainant had never expected that the respondents would demand 55% of the total consideration within 3 months of booking, especially when the due date of completion for the project was 31st Dec 2024.
  5. Though that there was some delay in making the payments on time, but the complainant was always committed to make the payments due and was only waiting for her loan to be approved. She always kept the respondents informed of the same.
  6. That the complainant by way of email dated 26.08.2021 requested for some additional time to make the payment as her loan approval application was taking time. Soon after receiving the request for extension of time on 26.08.2021, the respondents issued a termination notice on 27.08.2021.
  7. That by emails dated 30.08.2021 & 05.09.2021, the respondents again asked the complainant to visit their office to discuss the matter of extension of time. It was again agreed that the extension of time would be granted provided part payment was made with 4 weeks. To show her bonafide and commitment to paying the pending dues, the complainant made the part payment of Rs. 10,60,000/- on 27.09.2021 and 28.09.2021.
  8. But to the utter shock and surprise of the complainant, the respondents again approached her on 8.10.2021 and expressed its unwillingness to restore the unit and suggested that the only way for



her to escape forfeiture of Rs. 68,00,000/- paid by her (including Rs. 28,00,000/- paid by her in cash) was to sell the unit to one Mr. Tejveer Sidana who was willing to pay a premium of Rs. 20,00,000/- on the unit. Fearing forfeiture and huge financial loss the complainant agreed to sell the unit.

9. That without losing time, the complainant by her email dated 18.10.2021 informed the respondents that she would retain the unit and not sell to Mr. Tejveer Sidana and that she would pay the entire consideration due from her as her loan stood approved by the bank.
10. Further on 26.10.2021, the complainant issued a cheque for the entire balance consideration of Rs. 1,28,16,000/- dated 26.10.2021 drawn on ICICI Bank, Dronacharya Branch, Gurgaon. The respondents returned the above said cheque on 3.11.2021 and are not ready to restore the unit of the complainant

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

11. The complainant has sought following relief:

- (i) Direct restoration of the allotted unit by setting aside its cancellation by the respondents vide letters dated 26/27/28-10-2021.

**D. Reply by the respondents.**

12. That the complaint filed by the complainant before the authority, besides being misconceived and erroneous, is untenable in the eyes of law as well as on facts both. The complainant has filed the above captioned complaint before this authority by concealing the true and material facts. The complainant has willfully and knowingly concealed from this authority that the booking of the complainant has



been cancelled vide cancellation letter dated 26.08.2021 on account of non-execution of the apartment buyer agreement within the stipulated time period of 30 days from the date of communication to do so in terms of clause No.8 of the application form and despite of receipt of various subsequent reminders thereto. The complainant was duly apprised that she had been left with no right, title or interest in the said unit.

13. That the complainant has also concealed the fact that prior to cancellation of the unit, the plot buyer agreement/agreement for sale was sent to the her on 23.04.2021 along with request to complete various other formalities/documentation.
14. That the complainant at the time of ex-parte hearing of this complaint on 26.11.2021 concealed from the authority that the final price agreed between the parties was Rs.3,08,50,781/- out of which a sum of Rs. 23,87,500/- was deposited on 15.03.2021 and Rs. 7,04,609/- were deposited on 31.05.2021, the said payment also include the goods and service tax (GST) amount of Rs. 14,400/-. Hence, the consideration received till the date of cancellation of plot by respondents comes to 10% of agreed price i.e. Rs. 30,77,709/- and not 13.45% as portrayed. The above amount also includes the part payment of the registration charges of plot buyer agreement. Thereafter, the complainant did not come forward for execution of plot buyer agreement and hence, the plot in question was cancelled.
15. That the complainant has wilfully and knowingly concealed the very factum that after cancellation of her allotment on 26.08.2021, she illegally and unauthorizedly without notice, knowledge or consent of the respondents deposited a sum of Rs.10,60,000/- at her own on



27.09.2021 and 28.09.2021. The said fact came to the notice and knowledge of the respondents only after receiving the summons and copy of complaint along with the documents. The said illegal and unauthorized act of the complainant of depositing the said amount was malafide and dishonest to create a false ground for filling the present false and frivolous complaint. There was neither any occasion for the complainant to deposit any amount after cancellation of the allotment way back on 26.08.2021 nor there was any question of asking the complainant to deposit any alleged amount or to receive the same from her. The respondents also came to know that the aforesaid amount was illegally got deposited by the complainant in the account via RTGS from two different accounts in order to keep the same secret and she never apprised them about the said alleged illegal and unauthorized transfer of money. Since the said account happens to be in regular use for various transactions, therefore it could not be traced out as who has deposited the amount specially when the amount has been deposited at its own without any notice and knowledge of the respondents. However, after the notice of deposit of the aforesaid amount of Rs.10,60,000/- after receiving the summons from this authority, the respondents deposited the said amount in the account of the complainant on 28.12.2021 and sent a letter dated 28.12.2021 to the complainant regarding the illegal transfer of aforesaid amount and they refund the aforesaid amount via RTGS reference No. INDBR32021122800614339 in account No.245101500108.

16. That in this way it is quite clear that the cancellation of allotment of the complainants vide letter dated 26.08.2021 (Annexure-R1) is



perfectly legal, valid and justified in terms of clause No.8 of the application form (Annexure R2) according to which the respondents were well within their right to cancel her allotment. The whole claim of the complainant is based on the said application for allotment, the terms and conditions of the same are binding upon her and she cannot make hue and cry against the same.

17. That the perusal of the email dated 18.10.2021 (Annexure-C10) issued by the complainant regarding false allegations of transfer of unit to Mr. Tejveer Sidana subsequent to cancellation of her allotment on 26.08.2021 is false and after thought. But makes it clear that she was never interested in the allotment of the plot and that was the reason that she had not come forward for execution and registration of the plot buyer agreement mandatory as per Section-13 of the RERA Act. The respondents had legally and validly cancelled the allotment of the plot as per the agreement between the parties.
18. That the reliance of the complainant on subsequent email dated 30.08.2021 (Annexure-C7 at Page No.40-41) sent by the customer care makes it clear that the cancellation notice had already been sent and mere enquire regarding interest on delayed payment under any circumstances cannot be considered to be revival of the cancellation of her allotment specially when she had notice and knowledge of cancellation of the allotment on 26.08.2021 itself. Moreover, the said email dated 30.08.2021 cannot be read in piecemeals and the same does not give any right to the complainant to claim the property in view of cancellation of the allotment as per the agreement between the parties as stated above. Hence the complaint is liable to be dismissed. The complainant is not entitled to any of the relief as claimed.



19. 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**

The respondents have 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**

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**

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.

**F. Findings on the relief sought by the complainant.**

**Reliefs sought by the complainants:** The complainant has sought following relief(s):

- 1) Direct restoration of the allotted unit by setting aside its cancellation by the respondents vide letters dated 26/27/28-08-2021.
20. The complainant was allotted unit no J-52 measuring 468.78 sq. yd. in the project "Central Park Flower Valley" Sohna, District Gurugram by the respondent-builders for a total consideration of Rs. 3,08,50,781/- under the construction linked payment plan. No buyer's agreement w.r.t. the allotted unit was executed between the parties. After the allotment was made on 15.03.2021, the respondent-builders continued to raise and receive the payments against the allotted unit. It is pleaded that the complainant deposited several amounts against the allotted unit and paid a total sum of Rs. 41,52,109/- (which is approx.. 14% of the total sale consideration) to the respondent-builders. It is also pleaded that the demands for payments were



raised after initial payment and without execution of buyer's agreement. Though the respondents issued reminders for payments on 29.05.2021, 02.07.2021, 16.08.2021 and 26.08.2021 respectively but ultimately cancelled the provisional allotment of the unit by sending an email dated 28.10.2021 (2:20 P.M.). It is pleaded by the complainant that she arranged loan for purchasing the unit from the ICICI Bank and even send a mail on 28.10.2021(2.28 P.M.) along with an account payee cheque for Rs. 1,28,16,000/- dated 26.10.2021. But the same was returned and the respondents failed to restore the allotted unit. So, now the complainant is seeking setting aside cancellation of the unit, its restoration and possession.

21. But the case of respondents as set up in the written reply is that the provisional allotment of the unit was cancelled on 28.10.2021 as allottee failed to execute buyers' agreement despite issuance of various reminders on 30.05.2021, 07.08.2021, 17.08.2021 respectively. Thus, the unit allotted was cancelled legally and the same is not liable to be restored in any manner.
22. Keeping in view the above mentioned facts, it is evident that on the basis of application form dated 11.03.2021, the complainant was allotted abovementioned unit for a total sale consideration of Rs. 3,08,50,781/- . As per clause 8 of that application, the allottee was required to execute buyers' agreement with regard to that unit within a period of 30 days from the date of communication to do so and otherwise, the amount paid by her was liable to forfeited and the provisional allotment being treated as cancelled. It has come on record that vide letters dated 23.04.2021, 30.05.2021 and 07.08.2021 respectively, the respondents sent reminders to the complainant for



completion of documents and later for making due payments against the allotted unit . A request for extension of time was made by the complainant on 26.08.2021 and that too for a period of 20 days which was to be lapsed on 15.09.2021. But the unit allotted to her was cancelled on 28.10.2021 by sending an email to her . There are some emails from the side of respondents starting from 16.08.2021 ( annexure-C-6), 26.08.2021 ( annexure C-7), 27.08.2021(annexure C-8) reminding the allottee for making due payments, giving notice for cancellation of provisional allotment and cancellation of the allotment respectively. If infact, the allotted unit was cancelled by the respondent-builders as claimed then there was no need to call her for further discussion and informing her about the interest to be applicable on delayed payments. It implies that though the respondent-builders cancelled the allotment but that was only a paper transaction and nothing more than that. There is also another fact making the cancellation to be a paper transaction. The allottee deposited a sum of Rs. 10,60,000/- in the account of the respondent-builders on 27.09.2021 and 28.09.2021 respectively and that amount remained in that account and was transferred to the account of the allottee only on 28.12.2021 by way of RTGS. So, if the cancellation had already been effected as claimed by the respondent-builders vide letter dated 26.08.2021, then why the need of it sent letters dated 27.08.2021 and 28.08.2021 confirming the fact. Thirdly, it has also come on record that the complainant made a payment of Rs. 1,28,16,000/- to the respondent-builders vide an account payee cheque dated 26.10.2021 drawn on ICICI bank but that cheque was returned to her on 03.11.2021 on the pretext of cancellation of



allotment. If the complainant was not making payments as per the letter of allotment and had paid more than 10% of the basic sale price, then in the absence of buyers agreement to be executed between the parties, there was no need for issuance of reminders for due payments and the allotment could have been cancelled instead of sending payment reminders. Thus, all these facts prove that the cancellation of the unit made by the respondent-builders vide letters dated 26.08.2021, 27.08.2021 and 28.08.2021 is not sustainable in the eyes of law and is liable to be set-aside. It is also evident that issuance of various letters for cancellation for allotment was nothing but a ploy of the respondent-builder to put pressure upon her to agree for surrender her unit despite receiving more than 10% of the sale consideration after the Act of 2016 came into force. So, keeping in view all these facts and circumstances, a direction is given to the respondent-builders to withdraw those letters issued to the complainant and get executed the buyer's agreement within a month and continue to receive payments against the allotted unit as per the payment plan. The complainant is also directed to execute buyer's agreement of the unit within the time schedule mentioned above and make payments of the amount due against that unit as per payment schedule with interest at the prescribed rate and failing which the builder would be at liberty to proceed against her as per the provisions of latter of allotment.

#### H. Directions of the authority

23. 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 respondents are directed to withdraw letters dated 26.08.2021, 27.08.2021 and 28.08.2021 issued to the complainant and execute the buyer's agreement within a month and continue to receive payments against the allotted unit as per the payment plan.
- ii. The complainant is also directed to execute buyer's agreement of the unit within the time schedule mentioned above and make payments of the amount due against that unit as per payment schedule with interest at the prescribed rate and failing which the builder would be at liberty to proceed against her as per the provisions of latter of allotment.

24. Complaint stands disposed of.

25. File be consigned to registry.

  
(Sanjeev Kumar Arora)  
Member

  
(Vijay Kumar Goyal)  
Member

**HARERA**  
**GURUGRAM**

Haryana Real Estate Regulatory Authority, Gurugram  
**Dated: 01.12.2022**