

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

Complaint no.	:	716 of 2020
First date of hearing:		13.03.2020
Date of decision	:	15.02.2023

Akhilesh Bansal R/o: - House no. 47, Sector, Raj Niwas, Gurugram, Haryana-122001	Complainant
Versus	
M/s BPTP Limited. Regd. Office at: M-11, Middle Circle, Connaught Circus, New Delhi-110001.	Respondent

CORAM:	Member
Shri Sanjeev Kumar Arora	

APPEARANCE:	Advocate for the complainant
Sh. Ravi Rao Proxy Counsel	Advocates for the respondent
Sh. Harshit Batra & Ms. Tanya	

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:

S.N.	Particulars	Details
1.	Name of the project	"Astaire Gardens", Sector- 70-A, Gurugram
2.	Nature of project	Residential Plotted Colony
3.	RERA Registered/ Not Registered	Registered
4.	DTPC License no.	15 of 2011
	Validity upto	06.03.2024
	Name of licensee	Impartial Builders Developers Pvt. Ltd and 22 others
	Licensed area	102.2 Acre
7.	Unit no.	E-43-FF, First Floor [page no. 13 of complaint]
8.	Unit measuring	1090 Sq. Ft. (Page no. 13 of complaint]
9.	Date of execution of Floor buyer's agreement	Not executed

10.	Date of Allotment Letter	12.07.2011. (Page no. 13 of complaint)
10.	Possession clause as per allotment letter	22. Possession Clause The Company shall make all efforts to handover possession of the Floor/ Villa within Thirty (30) Months from the date of execution of the Floor/ Villa /Villa Buyer's Agreement, subject to certain limitations as may be provided in the Buyer's Agreement and timely compliance of the provisions of the Buyer's Agreement by the Applicant (s). The Applicant agrees and understands that the Company shall be entitled to a grace period of One Eighty (180) days) over and above the period more particularly specified here-in-above, for applying and obtaining necessary approvals in respect of the Project.
12.	Due date of possession	- N/A
13.	Total sale consideration	Rs. 73,26,000/- (Page no. 14 of complaint)
14.	Total amount paid by the complainant	Rs. 6,00,000/- (Page no. 15 of complaint)
15.	Cancellation	22.04.2013
16.	Occupation certificate dated	- N/A.
17.	Offer of possession	Not offered

B. Facts of the complaint

The complainant has made the following submissions in the complaint: -

3. That the complainant paid an initial booking amount of Rs.6,00,000/- towards the booking of the residential flat/unit no. E-43-FF in Project 'ASTAIRE GARDENS' located in sector 70-A, Gurgaon, Haryana-122001. That, the allotment letter was also issued to the complainant against the payment made by the complainant towards the booking of the above-mentioned residential flat/unit.
4. That complainant received an E-mail from the respondent stating that due to non-payment of the due amount towards the above-mentioned flat/unit by the complainant the booking of the said property stands cancelled and the booking amount which was paid by the complainant cannot be refunded or adjusted in another project. However, if the complainant wish to book another flat in another project he may do so.
5. That, the respondent by inappropriately keeping the money which was paid as an initial booking amount by the complainant and not delivering the possession of the residential flat/unit stand in violation of its contractual liability towards the complainant.
6. That the complainant sent several and incessant E-mails to the respondent regarding hand over of the possession of the abovementioned unit, but no constructive reply was given to the complainant instead only false and vexatious assurances were given to the complainant in order to procrastinate the delivery of the possession of the said unit.

7. The complainant cannot be expected to wait endlessly for the completion of the project. Hence, he preferred the present complaint for refund at a prescribed rate of interest.

C. Relief sought by the complainant:

8. The complainant has sought following relief(s).

1. To direct the respondent to refund the entire amount paid by the complainant along with prescribed rate of interest.

D. Reply by the respondents:

9. It is submitted that the complainant has approached this hon'ble authority with unclean hands i.e., by concealing and misrepresenting facts material to the present purported complaint. It is submitted that the Hon'ble Supreme Court in a plethora of cases has held that anyone approaching court must come with clean hands as any concealment/misrepresentation of facts amount to fraud not only on the respondent but also on the court and as such, the complaint warrants dismissal without any further adjudication. In this regard, reference may be made to the following:

- a) The complainant concealed as well as misrepresented the fact that he was unaware of the demand letters being sent by the respondent or that only emails were sent by the company. It is submitted that that the respondent after achievement of the construction milestones duly sent demand letters to the complainant, however the complainant failed to remit the

outstanding dues. It is pertinent to note that demand letters as well as reminder letters have been annexed by the complainant in the complaint itself, therefore it is very much apparent that the complainant is making false, frivolous and grave allegations against the respondent.

- b) It is further submitted that despite receipt of numerous reminders letters, the complainant did not clear the pending dues. hence, left with no alternative, the respondent issued final and last opportunity letter dated 14.03.2012 and upon expiry of 15 days therefrom, the booking allotment automatically stood cancelled/ terminated, in terms of the booking form. As per the booking form, respondent is liable to deduct 25% of total sale consideration as earnest money. Further, since the amount received from the complainant, till then (i.e., Rs.6,00,000/-), was lesser than the earnest money, the same stood forfeited. It is submitted that the complainant admitted that due to accident he did not carry out his contractual obligations and failed to pay the installment.
- c) That the complainant has suppressed that he has even failed to execute the flat buyer's agreement and the same was to be executed and returned within 30 days of receipt of the same by the complainant.
- d) The complainant has concealed that the respondent with an intent to encourage the complainant to make payments of the

demands raised within stipulated time, also offered additional incentive in the form of timely payment discount to the complainant.

10. All the averments made in the complaint are denied in toto.
11. Copies of all the relevant documents 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.

D. Jurisdiction of the authority

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

D.I Territorial jurisdiction

13. 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.

D.II Subject-matter jurisdiction

14. 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.

15. 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.

F.1 To direct the respondents to refund the entire amount paid by the complainant along with prescribed rate of interest.

16. In the present complaint, the complainant paid an booking amount of Rs. 6,00,000/- towards the booking of the residential flat no. E-43-FF in the project 'Astaire Garden' situated in sector 70-A, Gurgaon, Haryana. The complainant met with a major accident and was bed ridden for a long time, hence was not able to access his emails and unaware of the fact that the he received an email stating that due to non-payment towards the subject, the subject unit stands cancelled. It is pertinent to mention here that there is no buyer agreement executed between the parties.

17. Thereafter on 22.04.2013, the respondent terminated the unit of the complainant due to non-payment. It is observed by the authority that as per section 19(6) & 19(7) of Act of 2016, the allottee is under an obligation to make payments towards consideration of allotted unit as per allotment letter dated 12.07.2011. The complainant- allottee has violated the provision of section 19(6) & (7) of Act of 2016. However, there is nothing on record to show that the amount of the complainant has been refunded to them after deduction.
18. Further, the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, states that-

"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."

19. In view of aforesaid circumstances, the respondent should have refunded the amount paid by the complainant after deducting 10% of the sale consideration of the unit being earnest money. But the complainant paid only an amount of Rs. 6,00,000/- against a total consideration of Rs. 73,26,000/- constituting 8.1%, which is less than



HARERA
GURUGRAM

Complaint No. 716-2020

10% of total consideration. Hence, no direction to this effect can be given.

20. Complaint stands disposed of.

21. File be consigned to registry.


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 15.02.2023



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