

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

Complaint no. : 5160 of 2021
Date of filing complaint : 19.01.2022
First date of hearing : 17.03.2022
Date of decision : 31.01.2023

Asha Rani R/O: - F-504, Adani Oysters, Sector-102, Gurugram, Haryana.	Complainant
Versus	
M/s Countrywide Promoters Private Limited Regd. Office at: - OT-14, 3 rd floor, Next Door Parklands, Sector-76, Faridabad.	Respondent

CORAM:	
Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Ms. Kaveri & Sh. Arun Yadav	Advocate for the complainant
Sh. Harshit Batra	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	102, Eden Estate, Sector 102, Gurugram, Haryana.
1)	Unit no.	C-528. Block No. C (page no. 26 of complaint)
2)	Unit admeasuring	185 square yards (1665 sq. ft.) (page no. 26 of complaint)
3)	Date of execution of agreement for sale	04.12.2020 (on page no. 23 of complaint)
4)	Possession clause	8. Possession of the plot 8.1: The promoters assures to handover possession of the plot on or before 30.04.2024 unless there is delay due to "force majeure", Courts orders, government

		<p>policy/guidelines; decisions affecting the regular development of the real estate project. It, the completion of the project is delayed due to the above conditions, then the allottee agrees that the promoter shall be entitled to the extension of time for delivery of possession of the plot.</p> <p>(Emphasis supplied).</p>
5)	Due date of delivery of possession	30.04.2024 Note: As per possession clause of agreement for sale
6)	Allotment Letter	10.11.2020 (Page no. 39 of complaint)
7)	Total sale consideration	Rs. 1,14,54,968/- (vide statement of accounts dated 10.06.2021 on page no. 78 of complaint complaint)
8)	Total amount paid by the complainant	Rs. 98,44,751/- (Vide statement of accounts dated 10.06.2021 on page no. 78 of complaint complaint)
9.	Occupation certificate	Not obtained
10.	Offer of possession	Not offered

11.	Reminders Letters	15.03.2021, 14.06.2021
12	Termination Letter	04.08.2021

B. Facts of the complaint

3. That, the complainant was allotted a residential plot bearing C-528, 102 Eden Estate, Sector 102, Gurugram, Haryana, admeasuring 185 sq. yards wherein the said allotment letter clearly states that the total price of the aforesaid plot is Rs. 11,232,289.50/-. As per the payment plan mentioned in 'annexure A' of the allotment letter, the complainant has paid full as mutually agreed and accepted.
4. That subsequently a registered agreement for Sale dated 04.12.2020 was executed between the respondent. As per the clause 1.2 of above said agreement for sale dated 04.12.2020, the total price of the aforesaid plot was Rs. **11,232,290.05/-** and this total price include all the applicable taxes/charges including the booking amount and development price, interest free maintenance security deposit ("IFMSD"), interest free refundable contingency deposit("IFRCD") and administrative charges.
5. That, as per the agreed payment plan mentioned in the registered agreement for sale and the payment request dated 21.12.2020, the complainant paid Rs. 88,69,751/- till 09-02-2021, excluding the booking amount which was Rs.10,00,000/- to the respondent and in addition to this the complainant has also paid Rs 75000/- TDS, so as per annexure E of the payment plan, the complainant has paid full amount as payable by him which is mutually agreed and accepted in

the registered agreement for sale dated 04-12-2020 and the balance payment of Rs. 12,87,719/- was due at the time of the possession of the plot only, as per the agreed payment plan.

6. That, without giving any heed to the concerns of the complainant and the enquiries made over call regarding this alleged outstanding due, the complainant, in the month of august receives a notice dated 04.08.2021 bearing reference "TERMINATION / CANCELLATION INTIMATION IN RESPECT OF UNIT NO. C-528 IN PROJECT 102 Eden Estate at Haryana", whereby the complainant was informed that due to non-payment of the outstanding amounts, the allotment has been cancelled and all the paid amount for the plot has been forfeited by the respondent.
7. That, even after receiving the said letter dated 04.08.2021, the complainant made various telecom inquiries to the respondent but none was answered satisfactorily and no explanation was given to her. The complainant sent a legal notice dated 03.09.2021 to the respondent but the respondent did not give any response of the said legal notice.
8. That the act and conduct of the respondent amounts to grave deficiency in service and unfair trade practice of the highest degree. The respondent has caused great mental agony and physical harassment to the complainant. The complainant has paid such a huge amount after collecting her life's savings with hope to move into her own residential property.

C. Relief sought by the complainants:

The complainants have sought the following relief:

- i) To direct the respondent to abide by the terms and conditions of the agreement for sale dated 4th Dec 2020 between complainant & respondent and to cancel/revoke the illegal demands of payment through letter dated 14.06.2021 of Rs. 3,46,432 and letter dated 15.03.2021 of Rs. 3,31,244/- and declare above said letter null, void, ab-initio , nonest, inoperative and not binding upon the right, title or interest of the complainant and to restrain the respondent from alienation including allotment, execution of agreement to sell or any other agreement related to the above said plot no. C-528 in project 102 Eden Estate, Sector-102, Gurugram to any other party except complainant till the final disposal of the complaint by this hon'ble authority.
- ii) Respondent/opposite party be further directed to pay compensation and litigation expenses of Rs. 1,00,000/- to the complainants.

D. Reply by the respondent

The respondent by way of written reply made the following submissions.

9. That at the time of booking, the complainant was given a discount of Rs.688,810/- which was inclusive of down payment discount which was given by the respondent and broker discount. On 12.01.2021, the Respondent received a letter from the broker "Homz Care Associates" informing the respondent that no brokerage discount was agreed to be given to the complainant. In view of the said letter

from the broker the respondent withdrew the broker discount of Rs.3,39,160/- that was given to the complainant at the time of booking and requested the complainant for payment of the said amount of Rs. 3,39,160/-. The respondent also sent reminder letters dated 15.03.2021 and 14.06.2021 intimating the complainant to pay the same but the complainant did not pay heed to the reminders sent by the respondent and failed to clear her outstanding dues.

10. That due to non-payment of outstanding dues by the Complainant even after repeated reminders, the respondent as per clause 12.2.1 of the agreement to sale had no option but to cancel the said booking vide termination letter dated 04.08.2021.
11. All other averments made in the complaint were denied in toto.
12. 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.

E. Jurisdiction of the authority

13. 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 complainants at a later stage.

E. Findings on the relief sought by the complainant.

- E. I To direct the respondent to abide by the terms and conditions of the agreement for sale dated 4th Dec 2020 between complainant & respondent and to cancel/revoke the illegal demands of payment through letter dated 14.06.2021 of Rs.**

3,46,432 and letter dated 15.03.2021 of Rs. 3,31,244/- and declare above said letter null, void, ab-initio , nonest, inoperative and not binding upon the right, title or interest of the complainant and to restrain the respondent from alienation including allotment, execution of agreement to sell or any other agreement related to the above said plot no. C-528 in project 102 Eden Estate, Sector-102, Gurugram to any other party except complainant till the final disposal of the complaint by this Hon'ble Authority.

16. A registered agreement for sale dated 04.12.2020 was executed between the complainant and the respondent. The total price of the aforesaid plot was **Rs.1,12,32,290/-** (as alleged by complainant) and **Rs. 1,14,54,968/-** (as per statement of account dated 10.06.2021) including all the applicable taxes/charges. The complainant paid **Rs. 88,69,751/-** till 09.02.2021, excluding the booking amount which was **Rs. 10,00,000/-** to the respondent and in addition to that, the complainant has also paid **Rs. 75,000/-** TDS. The balance payment was due at the time of the possession only, as per the aforesaid agreed payment plan (Annexure E of the agreement for sale on page no. 48 of complaint). The complainant paid **Rs. 98,44,751/-** till 09.02.2021.
17. However, the complainant received reminder notices dated 15.03.2021 and 14.06.2021 and vide which demand for **Rs. 3,32,244/-** and **Rs. 3,46,432/-** was raised and the same was not paid. Consequently, the respondent issued termination of allotted unit on

04.08.2021 on the ground of non-payment of remaining amount despite reminders. However, a perusal of the payment plans shows that the complainant was required to pay 90% of the TSC within 90 days of booking and the remaining was to be paid at the time of offer of possession. The complainant has admittedly paid to the respondent a sum of Rs. 98,44,751/- till 09.02.2021 as evident from SOA dated 10.06.2021. She was required to pay 90% of TSC within 90 days of booking i.e., by 10.02.2021 and the remaining amount was to be paid at the time of offer of possession. The gap between the amount paid and to be paid is not such which may necessitate issuance of reminders for payment of the amount due and ultimately cancelling the allotted unit.

18. So, the respondent is directed to revoke termination of the unit and the complainant-allottee is directed to make the payment of outstanding amount in terms of buyer's agreement alongwith interest for the delayed period and remaining 10% amount is to be paid at the time of offer of possession. The respondent is also directed not to charge any amount or demand which is not part of buyers agreement and no brokerage charges beyond 0.5% of sale consideration is admissible.

E.II Cost of litigation

19. The complainant in the aforesaid relief is seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.* (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021), has held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to

be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation

F. Directions of the Authority:

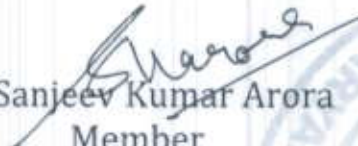
20. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:


- 1) The termination letter dated 04.08.2021 of the unit is set aside and the unit is restored to its original position.
- 2) The complainant-allottee is directed to make the necessary payments of outstanding amount in terms of buyer's agreement. However, 10% of amount of sale consideration is to be paid at the time of offer of possession as per buyer's agreement.
- 3) The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.60 % by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2 (za) of the Act.

- 4) No brokerage charges beyond 0.5% of the sale consideration are admissible.
- 5) The respondent is directed not to charge anything which is not part of buyer's agreement.
- 6) 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.

21. Complaint stands disposed of.

22. File be consigned to the Registry.


Sanjeev Kumar Arora
Member


Ashok Sangwan
Member


Vijay Kumar Goyal
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 31.01.2023

HARERA
GURUGRAM