

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

Complaint no. : 2754 of 2020
Date of filing complaint : 12.10.2020
First date of hearing : 03.03.2021
Date of decision : 14.03.2023

Virendra Gupta R/O: - FF-1, plot no. 92, Pocket no. 1, Ramprastha Green, Sector-7, Vaishali, Ghaziabad.	Complainant
Versus	
M/s SS Group Pvt. Limited Regd. Office at: - SS House, Plot no.77, Sector-44, Gurugram, Haryana	Respondent

CORAM:

Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member

APPEARANCE:

Sh. M.P. Gupta	Advocate for the complainant
Sh. CK Sharma and Dhruv Dutt Sharma	Advocates 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 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 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	'The Leaf' , Sector -84-85, Gurugram
	Nature of the project	Group Housing Complex
	DTCP License No.	81 of 2011 dated 16.09.2011 Valid upto 15.09.2024
	RERA Registered/ Not Registered	RERA registered 35 of 2021 dated 14.07.2021
1	Unit no.	3C, 3rd Floor, Tower-2 (As per allotment letter on page no. 16 of complaint)

2	Unit admeasuring	1575 sq. ft. (As per allotment letter on page no. 16 of complaint)
3	Allotment Letter	10.09.2012 (As per page no. 16 of complaint)
4	Date of execution of builder buyer agreement	Not executed
5	Possession clause (Taken from the similar case of same project)	<p>8. Possession</p> <p>8.1: Time of handing over the possession</p> <p>8.1 (a) subject to terms of this clause and subject to the flat buyer(s) 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 complied with all provisions, formalities, documentation etc. as prescribed by the developer, the developer proposes to handover the possession of the flat within a period of thirty six months from the date of signing of this agreement. However, this period will automatically</p>

		stand extended for the time taken in getting the building plans sanctioned. The flat buyer(s) agrees and understands that the developer shall be entitled to a grace period of 90 days, after the expiry of thirty-six months or such extended period , for applying and obtaining occupation certificate in respect of the Group Housing Complex. (Emphasis supplied).
6	Due date of delivery of possession	10.09.2014 (Calculated from the date of allotment as BBA is not executed)
7	Total sale consideration	Rs. 92,18,000/- (As per page no. 23 of complaint)
8	Total amount paid by the complainant	Rs. 17,66,555/- (As alleged by the complainant)
9	Cancellation Notice	11.04.2014 (As per page no. 32 of complaint)

10	Demand letter cum final notice for payment	18.12.2020 (As pr page no. 50 of reply)
11	Occupation Certificate	06.05.2022 (as per pleaded by the respondent)
12	Notice for offer of possession	Not offered

B. Facts of the complaint

3. That the complainant booked a unit in the project "The Leaf" bearing no. 3C, 28311K having approximate super area of 1575 sq.ft in Tower no. 2, a residential complex, situated in Sector-85. Gurugram. The basic rate of allotment was @ Rs.4800/- per sq. ft., preferential location charges (PLC) @Rs.250/- per sq ft, EDC of Rs. 355 sq. ft., and infrastructural development charges @Rs.35/- sq.ft.
4. That the said unit was allotted and communicated vide letter Dated 10.9.2012. No details of sanctioned plan, lay out plans along with specifications were mentioned or displayed at the project site. Similarly, the stage wise time schedule of completion of project, civic infrastructure like water, electricity and sanitation were also not notified. Hence, the term and conditions mentioned in the agreement cannot be treated as valid agreement. The allotment amount to the tune of Rs.7.5 lacs

was paid on 19.6.2012 and thereafter, the request of the allottee was confirmed.

5. That the further payment was to be made on as per payment plan based on construction. However, the payments were not made by the complainant, as on physical verification, it was found that neither any construction was going at the site nor any subsequent letter about the commencement of the construction was received. Now it is transpired from the site of the respondent-developer that project was still under construction even after expiry of 105 months from the date of the allotment.
6. That the respondent has cancelled the allotment vide annexure P-8 and even after cancellation, it had been raising demand for payment of amount which remained outstanding as per the project.
7. That the complainant has at all times made payments against the demands of the respondent and as per payment schedule of the agreement pertaining to the unit. Therefore, the fraudulent act and conduct of the respondents needs to be penalized in accordance with the provisions of the Real Estate (Regulation and Development) Act, 2016 (Hereinafter being referred as "the act"),

C. Relief sought by the complainant.

8. The complainant has sought following relief:

- (i) Direct the respondent to refund the entire amount paid by the complainant along with prescribed rate of interest.
- (ii) Direct the respondent to pay the compensation for mental harassment.

D. Reply by the respondent.

9. That on 10.09.2012, the complainant was allotted Unit No. 3C, 2 BHK having an approximate super area of 1575 sq.ft. in the Tower-2 of the project "The Leaf" at the basic rate of Rs. 4800/- per sq.ft. and preferential location charges (PLC) of Rs. 250/- per sq.ft., external development charges (EDC) of Rs. 355/- per sq.ft., infrastructure development charges (IDC) of Rs. 35/- per sq.ft. to be payable as per the payment plan. It is submitted that the sale consideration of the flat booked by the complainant was Rs. 90,18,000/-. However, same was exclusive of the registration charges, stamp duty, service tax and other charges to be paid by the complainant at the applicable stage.
10. That the complainant has failed to make payments in time in accordance with the terms and conditions as well as payment plan annexed with the allotment letter. As such, the complaint is liable to be rejected. It is pertinent to mention here that as per the record maintained by the respondent, the complainant has not fulfilled his obligations and did not pay the installments on time fallen due, despite receipt of repeated demand letters and reminder letters. Hence, there can be no doubt that complainant's intention was of not abiding the terms of the buyer's agreement right from the inception and in breach of the contractual relations between the parties. The following payment sheet clearly shows the delay in number of days in making payment by the complainant:

Due Date of Payment	Due amount	Date of Payment	Base amount	Taxes	Total	Delay in Days
19-Jun-12	750,000	25-Jun-12	727,519	22,481	750,000	6
14-Sep-12	133,278	17-Oct-12	129,280	3,998	133,278	33
29-Oct-12	883,277	17-Nov-12	856,799	26,478	883,277	19
15-Jul-13	883,277	Not paid yet			-	2817
21-Jul-14	883,277	Not paid yet			-	2446
31-Aug-15	443,395	Not paid yet			-	2040
20-Nov-15	443,395	Not paid yet			-	1959
27-Feb-16	443,931	Not paid yet			-	1860
5-Feb-17	446,681	Not paid yet			-	1516
1-Jul-17	479,815	Not paid yet			-	1370
1-Jul-17	479,815	Not paid yet			-	1370
22-Nov-17	479,815	Not paid yet			-	1226
28-Feb-18	479,815	Not paid yet			-	1128
4-Jul-19	26,006	Not paid yet			-	637
	7,255,777		1,713,598	52,957	1,766,555	
						18427

11. It is submitted that out of the sale consideration of Rs. 90,18,000/- of the flat, the amount actually paid is Rs. 17,66,555/- i.e., less than 20% of the sale consideration of the flat booked by the complainant. It is submitted that even though the complainant agreed that the payment would be made as per the payment plan (construction-linked payment plan) annexed with the allotment letter but he, however, defaulted in making payments towards the agreed sale consideration of the flat from the very inception and the last payment was made by him on 17.11.2012. Since then, no payment has been made by the complainant. On account of non-receipt of the installment amount on time, the respondent had as per the terms of the allotment also issued a final reminder dated 08.10.2013 and final notice dated 06.12.2013 to the complainant. But since the

complainant did not make the payment, the respondent was thereafter constrained to issue a Cancellation Notice dated 11.04.2014 whereby the respondent informed him about the cancellation of the unit and further asked him to return all the original documents in order to enable the respondent to initiate the process of refund. However, the complainant failed to return the original documents and the respondent was left with no option but to continue with the booking of the complainant.

12. That on 18.12.2020, the respondent again called upon the complainant vide letter dated 18.12.2020 to make the payment of the outstanding amount within 30 days failing which his unit was liable to be cancelled. However, the complainant did not bother to make the payment.
13. That even otherwise, the claim for refund by the complainant is hopelessly time barred as the last payment was made by him on 17.11.2012 and since then, he did not bother to raise any claim with respect to refund
14. All the averments made in the complaint are denied in toto.
15. 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 submissions made by the parties.

E. Jurisdiction of the authority

The respondent has 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.

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.

G. Findings on the relief sought by the complainant.

G.I Direct the respondent to refund the entire amount paid by the complainant along with prescribed rate of interest.

- 16.* The complainant-allottee was allotted unit in the project of the respondent vide letter dated 10.09.2012 for a total sale consideration of Rs. Rs. 92,18,000/-. He paid an amount of Rs. 17,66,555/- from time to time against the total sale price of Rs. 92,18,000/- constituting 20% of total sale consideration. No buyer's agreement was executed inter-se parties.
17. The respondent-builder took a plea that the cancellation of allotted unit was made on 11.04.2014, as the complainant failed to make payment of the amount due after a number of reminders and the allotment of the unit being under construction linked payment plan. But the present complainant seeking refund of the paid up amount was filed on 12.10.2020 i.e. after a gap of more than 6 years being barred by the limitation. It is pleaded on behalf of the complainant that on cancellation of the unit, the respondent builder was required to refund the amount and that was not done giving rise to the cause of action to file the instant complaint. Secondly, though cancellation of the unit was made in the year 2014 but a final notice for payment was again issued to the complainant vide letter dated 18.12.2020. So, it means that cancellation dated 11.04.2014 was mere a paper transaction. The authority observes that the occupation certificate of the

tower "H" where the cancelled unit is situated was received on 06.05.2022. Keeping in view the fact that the occupation certificate of the said tower was received after coming into the force of the Act and the completion certificate has not been received accordingly, the project is well within the ambit of RERA. The unit of the complainant was cancelled way back on 11.04.2014 by the respondent and a reminder was again issued on 18.12.2020 after a gap of more than 6 years and directing that the unit would automatically stand cancelled if payment due was not paid within a period of 30 days. So, it means that the notice of 11.04.2014 was only a paper transaction and the builder did not act upon the same by returning the amount due after deduction of the amount towards earnest money. So that is why a reminder again ordered to be issued on 18.12.2020. No doubt that the allottee did not avail benefit of the same and filed the present complaint but the builder was required to return the amount after deduction of earnest money not more than 10% of the basic amount. However, the issuance of that letter for payment does not automatically revive the subject unit entitling the complainant to seek refund of the total paid-up amount besides interest.

18. Thus, in view of aforesaid circumstances and discussion detailed above, the respondent is directed to return the paid-up amount after deducting 10% of the basic sale price i.e. Rs. 75,60,000/- being earnest money as per allotment letter, along with interest @10.70% (MCLR+2%) from the date of cancellation i.e., 11.04.2014 till its realization.

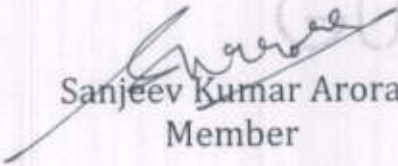
H. Directions of the authority


19. 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 is directed to refund the paid up of the complainant after deducting 10% of the basic sale consideration of the said unit i.e. Rs.75,60,000/- as earnest money along with prescribed rate of interest 10.70% from the date of cancellation i.e. 11.04.2014 to the date of actual refund.
- II. 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

20. Complaint stands disposed of.

21. File be consigned to registry.


Sanjeev Kumar Arora
Member


Ashok Sangwan
Member


Vijay Kumar Goyal
Member

Dated: 14.03.2023