

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

Complaint no.	:	4250 of 2021
Date of filing complaint:		12.11.2021
Date of order	:	28.04.2023

Arun Kumar Gupta S/o Madan Gopal Gupta Sunita Gupta w/o Arun Kumar Gupta both r/o: C-1/136, Sanjay Enclave, Uttam Nagar, West Delhi	Complainants
Versus	
M/s Vatika Limited, Vatika Triangle, 4th floor, Sushant Lok, Phase-I, Block-A, M. G. Road, Gurugram-122 002.	Respondent

CORAM:	
Shri Ashok Sangwan	Member
Shri. Sanjeev Kumar Arora	Member
APPEARANCE:	
Ms. Mahima Ahuja Advocate	Complainants
Sh. Dhurv Dutt Sharma Advocate	Respondent

ORDER

1. The present complaint has been filed by the complainant/allottees 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 provisions 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 the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S.no	Heads	Information
1.	Project name and location	"INXT floors, Vatika India Next, Sector 82, Gurugram.
2.	Project area	477.206 acres
3.	Nature of the project	Residential independent floors
4.	DTCP License	113 of 2008 dated 01.06.2008 valid upto 31.05.2018 71 of 2010 dated 15.09.2010 valid upto 14.09.2018 62 of 2011 dated 02.07.2011 valid upto 0.07.2024 76 of 2011 dated 07.09.2011 valid upto 06.09.2017
5.	RERA Registered/ not registered	Not registered
6.	Unit no.	57, First floor (Page 46 of complaint)
7.	Unit area admeasuring	1800 sq.ft. (super area)
8.	Date of allotment letter	24.11.2020 (Page no. 46 of complaint)
9.	Date of builder buyer agreement	10.12.2020 (Page 48 of complaint)
10.	Due date of possession	Within 2 (two) months from the date of complete payments. But not made by the complainant.
11.	Possession clause	Clause 7- Construction of the floor



		<p>The Floor is complete in its construction with its Occupational Certificate ("OC") received as memo no. 9758 dated September 16, 2019 with respect of the residential building on Plot no. 57, Street no. LAMPS AVENUE, sector Sec-82, Vatika India Next, Gurugram from the District Town Planner cum Member Secretary, Composition Committee, Gurugram for the complete building. 8 Possession Of The Floor</p> <p>Clause 8- Possession of the floor</p> <p>Schedule for possession of the said Floor, subject to timely payment of amounts due by the Allottee to the Company per agreed payment plan/schedule, as given in Schedule D of the Agreement, will be done within 2 (two) months from the date of such complete payment. The Company assures to hand over possession of the Floor along with parking as per agreed terms and conditions unless there is delay due to "force majeure", Court/Tribunals/NGT orders, Government policy/ guidelines, decisions affecting the regular development of the real estate project.</p> <p>(Emphasis supplied)</p>
12.	Total sale consideration	Rs. 82,80,000/- (as per agreement for sale, page 50 of complaint)
13.	Amount paid by the complainants	Rs. 8,30,000/- (as per SOA dated 12.11.2021, page 15 of reply)
14.	Occupation certificate	16.09.2019 (clause 7 of agreement for sale on page no. 53 of complaint)
15.	Offer of possession	24.05.2021

		(annexure R3, page 17 of reply)
16.	Notice for termination	23.07.2021 (annexure R4, page 20 of reply)
17.	Letter for cancellation	29.09.2021 (annexure R5, page 22 of reply)

B. Facts of the complaint:

3. The complainants have made the following submissions in the complaint:

a. That the complainants were in need of a residential property to fulfil the residential requirements of their family. While they were looking for a residential space, the respondent approached them and made elaborate representations and promises about one of their project. The respondent assured high living experience with exquisite amenities that would be provided. Further, it assured them that the project had already been completed and they have even received the occupation certificate on 16.09.2019. Several meetings were held with the complainants and during which the entire layout, design, and amenities of the project were explained to them. On being assured by its representations and promises and on thrusting the image of the respondent in the real estate market, they booked a unit bearing no. 57, first floor, lamps avenue, admeasuring super area of 1800 sq.ft. in the said project.

b. That at the time of booking the unit, the respondent gave two application forms to the complainants. In accordance with the first application form dated 21.09.2020, the respondent offered the unit at a total sale consideration of Rs. 87,00,000/- in respect of which, they paid the token money of Rs.1,00,000/-. After receiving and acknowledging the token money, it

executed a revised application form dated 11.10.2020 with the complainants and in which it was mentioned the total sale consideration of the unit to Rs. 82,80,00/- and the complainants had made a cash payment of Rs. 4,20,000/- While, submitting the revised application form, the complainants made an additional payment of Rs. 7,30,000/-. It is pertinent to mention that by 11.10.2020, the respondent had collected a substantial amount of Rs.12,50,000/- towards the total sale consideration of the booked unit.

- c. That the complainants after having paid a substantial amount of money were waiting for the respondent to issue an allotment letter and which it issued only on 24.11.2020 i.e., after a delay of almost 2 months from the date of first application form. After receiving the allotment letter, they pursued it through various phone calls and emails to execute the agreement to sell in their favour. It is pertinent to mention that the respondent after an unreasonable delay of almost 3 months from the date of booking executed an agreement to sell dated 10.12.2020. The agreement was filled with one-sided and arbitrary terms and conditions. However, the same could not be negotiated by them as any disagreement would have led to forfeiture of earnest money. For instance, they were liable to pay interest at the rate of 5% on delay in making payments. However, there is no liability mentioned in the agreement for the respondent to compensate the complainants for the delay in delivering the possession of the unit. As per clause 8 of the agreement, the possession of the unit was promised to be delivered within 2

months from the date on which complete payments have been made.

- d. That as the possession of the unit was contingent on the fact that the complainants make timely and complete payments towards the unit, they applied for a home loan with the Punjab National Bank. Mr. Arun Kumar Gupta complainant being a retired officer from PNB was being offered a home loan for Rs. 35,00,000/- and at a concessional simple interest rate of 6% p.a. On receiving the loan application of the complainants, the PNB sought copies of several documents qua the project such as completion certificate of the project, title deeds, NOC & approvals and memorandum of understanding or any other agreement. They raised a request with the respondent to share property chain documents for the unit *vide* email dated 15.12.2020 and which was refused by it *vide* email dated 21.12.2020 and further directed them to obtain the home loan from HDFC Bank instead of PNB. This conduct of the respondent was unwarranted and irrational. They, on being dissatisfied with its conduct, sent another email on 21.12.2020 wherein they raised their grievances with respect to the delay caused by it in executing the agreement and then non supplying of documents for availing home loan. The sanctioning of home loan was paramount to them as the same would have enabled them to make the timely payments to the respondent.
- e. Thereafter, the PNB through its senior manager sent an email dated 12.01.2021 to the respondent demanding relevant documents to be provided for sanctioning of the home loan and

which were not supplied. However, PNB after carefully perusing the documents supplied and communicated various issues with the respondent such as the fact that PNB could not obtain a non-encumbrance certificate from the Tehsil, the completion certificate so obtained by it was partial and that a case was filed against it and is still pending before the State Environment Impact Assessment Authority (SEIAA). In response to the non-encumbrance certificate issue, it sent 300 registries to the PNB. However, that was impossible for the PNB to identify proper registry. The rest of the issues so raised were never clarified by it. Instead of providing any clarifications, the respondent had gone on to charge penal interest on delayed payments which was subsequently waived off. It is reiterated that they were seeking a home loan solely to make timely payments to its demands. They cannot be made accountable for the default in services of the respondent and that any delay caused in making payments owes to the respondent.

- f. That despite the best efforts of the complainants to obtain a home loan from PNB, they were unable to obtain it due to unreasonable delay caused by the respondent in providing documents and clarifications to the issues raised by PNB. It continued to raise payment demands and further threatened to charge interest on delayed payments. The complainants on being apprehended by the threat of delayed payment charges, had no other choice but avail a home loan from the Housing Development Finance Corporation Limited for a total amount of Rs. 15,00,000/-. It is submitted that they applied for a home loan at the rate of interest of 6.7% p.a. with the HDFC Bank on



03.02.2021 and had provided all relevant documents to it by 17.02.2021. After a delay of 9 days, on 26.02.2021, the HDFC Bank raised questions about the documents shared by them, to which they promptly responded by providing all supporting details but after that, the HDFC Bank never replied to them. All this while, the respondent had been continuously pressurising the complainants to make payments towards the unit. However, since HDFC Bank had been causing a delay in sanctioning the loan, the payments could not be made. It is submitted that after receiving numerous requests from the complainants to advance the home loan, the HDFC bank *vide* email dated 16.03.2021 raised an absurd query with respect to the amount of pension that Arun Kumar Gupta complainant would be receiving post retirement. They were absolutely perplexed to receive such an irrational query from HDFC and instantly replied to the email. After an inordinate delay of almost 2 months from the date application of home loan, they were sanctioned a home loan of Rs. 15,00,000/- on 27.03.2021.

- g. That the sanction letter so issued to the complainants by the HDFC Bank had certain discrepancies. As per clause 7 of the terms and conditions of the sanction letter, no property description was mentioned by the HDFC Bank, even though the property details had already been provided by the complainants at the time of applying for the home loan. Further, the HDFC Bank had negligently stated in the sanction letter the rate of interest as 7% p.a. instead 6.7% p.a. as it was agreed at time of application submitted by them. The above-mentioned discrepancies were duly communicated by the complainants to

the HDFC Bank *vide* emails dated 31.03.2021 and 01.04.2021. However, the same were never rectified. The failure to correct the discrepancies caused further delay in loan disbursement, and thus payment demands raised by it could not be met on time.

- h. That it is pertinent to mention that it was the respondent who induced the complainants to avail home loan from the HDFC Bank rather than PNB. The failure of the HDFC Bank to rectify the details of the sanction letter and timely disburse the loan amount was communicated to it by them. However, that did not refrain it to raise payment demands against them. Thereafter, it issued a notice of cancellation of the unit *vide* letter dated 23.07.2021. Despite the fact that none of the delays in making timely payments were caused by their default. To the shock and dismay of the complainants, the respondent had, in its letter, stated the 'outstanding balance' as Rs. 81,48,054/, which was utterly false and incorrect and also threatened to cancel the unit if the 'outstanding balance' amount was not paid within 7 days. They were shocked and appalled to have received such a letter wherein they were only provided 7 days to make full payment which was in direct contravention with clause 10(x) of the agreement. The total sale consideration as per the revised application form was Rs. 82,80,000/- and in pursuance of which the complainants had made payment of Rs. 8,30,000/- The actual balance amount due to the respondent was Rs. 74,50,000/-. The complainants *vide* letter dated 03.08.2021 objected to the cancellation letter issued by the respondent wherein it was duly apprised of the factors that led to the delay



in making payments and the same were not intentional. However, the respondent refused to hear them and went on to arbitrarily cancel the unit.

- i. That after more than 2 months from the date of issuance of notice of cancellation, the respondent issued yet another letter of cancellation dated 29.09.2021, whereby it threatened the complainants to make payments totalling to Rs. 31,93,612.11/- within 10 days failing which it would be constrained to initiate legal proceedings against them. The respondent's sole intention in recovering the money was to forfeit it in the name of cancelling the unit.
- j. That the respondent has time and again failed to take any accountability for the delay caused in making payments. The said delay was caused due to number of defaults on the part of the respondent such as failure to timely execute the agreement, the same being executed after a delay of almost 3 months, the negligent conduct of the respondent not to cooperate with the PNB regarding the home loan sought by the complainants and instead pursuing and insisting the complainants to obtain the home loan from the HDFC Bank, and the delay caused due to the second wave of Covid-19 pandemic.
- k. That the complainants are aggrieved by the wrongful cancellation of the unit and that such cancellation has rendered the respondent to demand money only for it be forfeited. It is reiterated that the delay in making timely payments have been caused due to the deficiency in services of the respondent and the HDFC Bank. They had, on the very beginning, had been



wanting to the unit for their own residential requirements as they have retired from their services. They are absolutely disheartened by the arbitrary conduct of the respondent. The said cancellation of the unit has caused mental agony to the complainants and feel financially deprived as a significant amount of money lied with it. They humbly pray for the respondent to recall its cancellation letters dated 23.07.2021 and 29.09.2021 and their unit to be reinstated as they are willing to take possession subject to the fact all payments are made. Further, they pray for the respondent to refrain itself from charging any interest on late payments as it is the respondent and the HDFC Bank who are accountable for the delay.

1. It is submitted that the respondent has wrongfully, illegal and in contravention to the agreement have cancelled the unit of the complainants. They have been aggrieved by the gross misconduct and deficiency in services of the respondent as the unit was cancelled regardless of being apprised of the factors that led to the delay in making payments. They owe no responsibility to the delay caused in making timely payments. It is reiterated that the said delay has been caused due to negligence on its part and the HDFC Bank. They had booked the unit in the project of the respondent almost a year ago and has since then eagerly awaited possession of the unit. Therefore, they pray for the respondent to recall its cancellation letters dated 23.07.2021 and 29.09.2021, reinstate the unit back to the complainants and offer possession of the unit subject to when the payments are made in full.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
- i. Direct the respondent to recall its cancellation letters dated 23.07.2021 and 29.09.2021 and reallocate the unit no. 57, first floor, lamp Avenue back to the complainants.
 - ii. Direct the respondent to handover possession of the unit to the complainants complete in all respects and in conformity with the agreement subject to when the total sale consideration of the unit is paid by the complainants.
 - iii. Direct the respondent to pay delay possession charges along with interest.
 - iv. Direct the respondent to not charge any interest on the delay payments.

D. Reply by respondent:

5. The respondent made the following submissions in its reply:
- (a) That at the outset, respondent humbly submits that each and every averment and contention, as made/raised in the complaint, unless specifically admitted, be taken to have been categorically denied by respondent and may be read as travesty of facts.
 - (b) That the reliefs sought by the complainants appear to be on misconceived and erroneous basis. Hence, the complainants are estopped from raising the pleas, as raised in respect thereof, besides the said pleas being illegal, misconceived, and erroneous.



- (c) That further, without prejudice to the aforementioned, even if it was to be assumed though not admitting that the filing of the complaint is not without jurisdiction, even then the claim as raised cannot be said to be maintainable and is liable to be rejected for the reasons as ensuing.
- (d) That the complainants have frustrated the terms and conditions of the application form and agreement for sale, which were the essence of the arrangement between the parties and therefore, the complaint is not maintainable and should be rejected at the threshold.
- (e) That the complainants have failed to make payments in time in accordance with the terms and conditions of the application form and agreement for sale as well as they have failed to comply with the agreed payment plan and as such the complaint is liable to be rejected. Further, they after defaulting in complying with the terms and conditions of the application form and Agreement for sale and now wants to shift the burden on the part of the respondent. It is pertinent to mention here that out of the total sale consideration of Rs. 82,80,000/-, the amount paid by the complainants is Rs. 8,30,000/-; i.e., around 10% of the total sale consideration of the unit.
- (f) It is worthwhile to mention here that the respondent vide its demand letter dated 20.01.2021 had raised demand but the complainants never paid any heed to the same. Thereafter, it issued another demand letter vide letter dated 24.05.2021 and further intimated to the complainants about the pending dues



and possession formalities. However, yet again, the complainants failed to clear the outstanding payment. Since they were in continuous default even after repeated reminders, the respondent was constrained to issue notice of termination, vide letter dated 23.07.2021 again with an opportunity to clear all outstanding dues. But despite that reminder, the complainants once again did not come forward to make the payment. So, having left with no other alternative, the respondent was therefore constrained to cancel the booking of the complainant's unit vide cancellation letter dated 29.09.2021 and now they were left with no right, title, interest etc. in the same.

- (g) That it is worthwhile to mention here that, while executing the agreement for sale, the complainants had agreed that in case of default to make the payments or take over the possession, the company at its sole discretion may cancel their booking. It is a matter of record that in the case, the complainants have committed defaults as mentioned in the agreement and therefore, it was constrained to cancel their unit.
- (h) That it is pertinent to mention here that since the complainants failed to clear the outstanding dues, the respondent was constrained to and left with no other alternative cancelled the builder buyer agreement of the said unit as per clauses of the builder buyer agreement and further, they have defaulted to comply with the clause 3 of the said agreement, whereby the respondent has to recover the amount of Rs. 31,93,612/- from them.



- (i) That it is worthwhile to mention here that the respondent has already received the occupation certificate in respect of the unit booked by the complainant's way back in September 2019 and therefore, since the unit was ready for occupation, consequentially they had agreed to make the complete payment within 30 days of the booking or offer of possession whichever was later. However, they failed to make the payment as per the settled payment plan and resultantly, the respondent was therefore constrained to terminate/ cancel their booking. They from the very inception were never interested in the unit booked and only had entered into this arrangement with the respondent to make speculative gains.
- (j) That it is further worthwhile to mention here that, since the complainants failed to comply with the payment schedule and further failed to adhere with the requirements as reiterated in the agreement to sale, thus the respondent having no other alternative, terminated the said unit after duly serving the demand letters and giving sufficient time and opportunities to comply with the requirements of the agreement and subsequently deposit the outstanding amount. Further, now the respondent has allotted the said unit in question and created third party rights in favour of other clients.
- (k) All other averments made in the complaint were denied in toto.
6. Copies of all the relevant documents have been filed and placed on 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. The written submissions made by both the parties along with documents have also been perused by the Authority.

E. Jurisdiction of the authority:

7. 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

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. 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

9. 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.

10. 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.

F. Findings on the relief sought by the complainants:

F.I Direct the respondent to recall its cancellation letters dated 23.07.2021 and 29.09.2021 and re-allot the unit no. 57, first floor, lamps avenue back to the complainants.

F.II Possession.

F.III Delay possession charges.

11. Since all these issues are inter-connected, so the same are being taken together.
12. Some of the admitted facts of the case are that the unit bearing no. 57, first floor admeasuring 1800 sq. ft. situated in project by the name of INXT floors, Vatika India Next, Sector 82, Gurugram was allotted to the complainants for a total sale consideration of Rs. 82,80,000/- vide letter of allotment dated 24.11.2020. It led to execution of buyer's agreement dated 10.12.2020 between the parties setting out the terms and conditions of allotment, the dimensions of the unit, payment plan and due date of possession etc. The complainants paid a sum of Rs. 8,30,000/- to the respondent/builder as evident from statement of account dated 12.11.2021 filed with the reply. It is also a fact that due to one reason or the other, the complainants could not make the requisite

payments leading to issuance of letters dated 20.01.2021, 24.05.2021 & 23.07.2021 respectively. The unit in question was ultimately cancelled for non-payment of dues vide letter dated 29.09.2021 and also creating third party rights as per the pleadings of the respondent. It is the case of complainants that initially, the subject unit was booked by them for a total sale consideration of Rs. 87,00,000/- all inclusive on 21.09.2020 and paid a sum of Rs. 1,00,000/- as booking amount through an account-payee cheque besides Rs. 4,20,000/- in cash vide application form of even date. But later on, the respondent get filled another application dated 11.10.2020 and the total sale consideration of the unit was shown as 82,80,000/- all-inclusive and payment of only Rs. 1,00,000/- received by way of cheque on 21.09.2020 was shown. There was no mention of the receipt of amount of Rs. 4,20,000/- in cash already received by the respondent at the time of initial booking. After allotment of the unit in their favour, they applied for sanction of loan from PNB (one of the complainant being its ex-employee) and the same could not be sanctioned due to the fault of respondent for not supplying the requisite documents and completing the formalities required for that purpose. So, they have to approach HDFC for taking loan for the purchase of the allotted unit and the same was ultimately sanctioned with great difficulty. But by that time, the respondent illegally cancelled the allotment of the unit for no fault of theirs and which is liable to be set-aside and the unit be restored to its original position.

13. But the case of respondent is otherwise and who took a plea that after paying the initial amount, the complainants failed to pay the amount due despite issuance of various reminders and ultimately

leading to cancellation of the allotted unit vide letter dated 29.09.2021 and that too as per the terms and conditions of buyer's agreement 11.12.2020.

14. The Authority had perused the various documents placed on record by both the parties besides considering rival submissions made by them. It is evident from perusal of annexure- C at page no. 38 of the complaint that booking of the subject unit was made by the complainants by paying Rs. 1,00,000/- through an account-payee cheque and the total sale consideration was shown in that application as Rs. 87,00,000/- all-inclusive. There is no mention of payment of Rs. 4,20,000/- in cash by the allottees to the respondent at the time of initial booking on 21.09.2020. The second application dated 11.10.2020 was get filled by the allottees wherein the amount of Rs. 1,00,000/- as an amount of booking for the subject unit was shown and the total sale consideration of the unit was mentioned as Rs. 82,80,000. There is no mention of payment of any amount in cash to the respondent as alleged by the complainants. Moreover if they had paid any amount in cash, then the same would have been reflected in statement of account (Annexure R2 at page no. 15 of the reply) filled by the respondent. Lastly, while executing buyer's agreement on 10.12.2020, the sale price of the unit was shown as Rs. 82,80,000/- and the amount of Rs. 7,30,000/- was shown to have been received at the time of booking. The total amount received from the allottees is thus Rs. 8,30,000/- and not Rs. 12,50,000/- as alleged by them.
15. After allotment of the unit vide letter dated 24.11.2020 in favour of the complainants, an agreement for sale dated 10.12.2020 was

executed between the parties and wherein, the total sale price of the unit was mentioned as 82,80,000/-. It was also mentioned that the allottees have paid Rs. 7,30,000/- at the time of booking and the remaining amount against the sale consideration was to be paid within 30 days from the date of booking, bank loan or on offer of possession whichever is later. There is schedule of payment attached with that agreement which is being reproduced for a ready reference:

Schedule D

Schedule of Payments

HSG-015A-Living Ready 38

HSG-015A- At time of booking	100000
HSG-015A- Within 15 days from the date of booking	10% of BSP
HSG-015A- Within 30 days from the date of booking, bank loan or on offer of possession (whichever is later)	90% of BSP + 100% OF IFMS +100% of Electric meters +100% of Gas pipeline + Stamp duty & Registration charges + Escalation in construction cost (if any)

16. A perusal of the above-mentioned schedule of payments shows that though the complainants were required to pay a sum of Rs. 1,00,000/- at the time of booking and 10% of BSP within 15 days of booking, they made a payment of Rs. 7,30,000/- as per clause 1.4 of



buyer's agreement dated 10.12.2020. the remaining 90% of the BSP + other charges were to be paid within 30 days from the date of booking, bank loan or on offer of possession whichever was later. It has come on record that occupation certificate was received on 16.09.2019 and the same led to offer of possession of the allotted unit to the complainants by the respondent vide offer of possession dated 24.05.2021. Though the version of complainants is that they could not pay the amount due against the allotted unit due to un-cooperative attitude of the respondent i.e with regard to supplying project documents, NOC, and completion of the project and other details but their that plea is belied by their own document dated 27.03.2021 and vide which they were sanctioned Rs. 15,00,000/- as loan by HDFC. It is their version that the amount so sanctioned by the bank could not be disbursed due to discrepancy in the rate of interest to be charged on that amount but the respondent can't be held accountable for the same. It was the duty of the allottees to arrange funds for the purchase of the allotted unit and the respondent can't be held liable for the same. Even after sanction of the loan by HDFC on 27.03.2021, the respondent issued reminders dated 24.05.2021 and 23.07.2021 respectively in view of a condition in the schedule of payments detailed above and vide which the allottees were required to pay the remaining amount against the allotted units **within 30 days from the date of booking, bank loan, or on offer of possession (whichever is later)**. The offer of possession of the allotted unit was made to the complainants vide letter dated 24.05.2021 and where as the loan was sanctioned in their favour on 27.03.2021. So as per the schedule of payments, the complainants were required to make the

remaining amount due by 24.06.2021. Since they failed to pay that amount, it led to issuance of notice dated 23.07.2021 giving them time to make the payment due within seven days from receipt of letter and ultimately cancelling the allotment vide letter dated 29.09.2021 made in their favour. Thus, keeping in view the facts detailed above, it can't be said that the cancellation of the allotted unit made by the respondent and issued vide letter dated 29.09.2021 is wrong or illegal in any manner.

17. So, in view of findings on with regard to validity of letter of termination of the allotted unit, neither the complainants are entitled to its possession nor any delayed possession charges as claimed. Thus, the respondent is right in forfeiting the amount already paid by the allottees against the subject unit and they are not entitled to claim any refund in this regard.
18. Hence, in view of the findings of the Authority on issue no. F1 and discussion above, there is no merit in the complaint filed by the complainants seeking possession of the allotted unit by setting aside its cancellation issued vide letter dated 29.09.2021 by the respondent and as such the same is hereby ordered to be rejected.
19. Complaint stands disposed of.
20. File be consigned to the registry.


Sanjeev Kumar Arora


Ashok Sangwan
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 28.04.2023