

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

Complaint no. : 6774 of 2022
Date of complaint : 17.10.2022
Date of decision : 23.08.2023

Neha Gupta
R/o: - H. No. 846-P, Near IFFCO Chowk,
Sector-17-B, Gurugram-122001.

Complainant

Versus

M/s Prompt Engineering Private Limited
Regd. Office At: Cabin-1, LGF-F22,
Sushant Shopping Arcade, Sushant Lok,
Phase-I, Gurugram-122002.

Respondent

CORAM:

Ashok Sangwan

Member

APPEARANCE:

Rajan Gupta (Advocate)
Shriya Takkar (Advocate)

**Complainant
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 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 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 and location of the project	"M3M Corner Walk", sector-74, Gurgaon
2.	Nature of the project	Commercial
3.	DTCP license no.	121 of 2008 dated 14.06.2008 valid upto 13.06.2023 (area 7.44 acre)
4.	RERA Registered/ not registered	17 of 2018 dated 24.01.2018 valid upto 31.03.2025
5.	Unit no.	R4 201, 2 nd floor, Block-4 [page 60 of reply]
6.	Unit admeasuring area	4338.54 sq. ft. of super area [page no. 60 of reply]
7.	Allotment letter	02.08.2022 [page 59-60 of reply]
8.	Date of builder buyer agreement	Not executed
9.	Application form	14.07.2022 (page 68 of reply)
10.	Due date of possession	Cannot be ascertained Due date of completion of project is 31.03.2025 (as per application form on page 25 of reply)
11.	Total sale consideration	Rs.3,31,89,831/- [page 60 of reply]
12.	Total amount paid by the complainant	Rs.18,50,000/- [as per SOA dated 03.08.2023]
13.	Occupation certificate	31.08.2021 (page 72 of reply)
14.	Demand Notice	02.08.2022 (page 56 of reply)
15.	Pre-cancellation notice	17.08.2022 (page 68 of reply)
16.	Cancellation notice	01.09.2022 [page 42 of complaint]



B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
- I. That the complainant was lured by representations made by the representatives of respondent regarding its upcoming project named 'M3M Corner Walk' at Sector-74, Gurugram, Haryana. They informed her that the project comprises of commercial as well as residential components in it, which makes it different from other projects and is also having multiplex and food courts etc in it.
 - II. That the respondent assured her that if investment has been made in its project it will be double beneficial for the complainant as firstly the market value will increase because of residential component and multiplex in this project and secondly, it is offering 18% p.a assured return for 9 years on the investment made by the complainant.
 - III. That respondent showed one food court on the 2nd floor of the said project having total area of approximate 4338 sq.ft. @Rs.7950/- per sq. ft. which was not fully covered but it assured that the same will be covered within a week or two. Thereafter, the complainant asked the respondent company for discount as she did not want assured return offered and was interested to start a restaurant there.
 - IV. That after mutual discussion an amount of Rs.3975/- per sq.ft has been decided between the parties and accordingly on 29.05.2022, complainant paid an amount of Rs.5,50,000/- at the time of booking to the respondent company.
 - V. That one blank booking form has been signed by the complainant on the assurance of the respondent to share the final draft copy



once the same will be filled by the CRM office of the respondent company.

- VI. That on 11.06.2022, complainant received one mail from the office of respondent company giving confirmation regarding the booking of complainant in the said project, but very surprisingly only unit no. R4 201 was mentioned in it and no other details regarding the area, rate and other information was provided to her. So, she herself vide mail dated 14.06.2022, informed the respondent regarding the area after making calculations and also clarified that she wants to buy one single piece all covered/lockable, invoiced and registered unit. Surprisingly, no confirmation and clarification was given by the respondent to the said mail except another mail dated 29.06.2022 stating to close booking formalities on and before 14.07.2022. Thereafter, she visited the unit in question and was shocked to see that the area was not covered yet. Therefore, the complainant again vide mail dated 09.07.2022, 11.07.2022, 12.07.2022 and 14.07.2022 raised several issues/clarifications.
- VII. That the complainant almost every day had words with the representatives of respondent, but every they kept on lingering the matter and asking her to deposit the money. Therefore, the complainant on believing the promises made further paid an amount of Rs.10,00,000/- and Rs.3,00,000/- though RTGS in the respondent's account.
- VIII. That the complainant after making a total payment of Rs.18,50,000/- stopped making further payment without receiving entire clarification on the issued raised by the complainant and kept on writing mails to the respondent, but very surprisingly till



today it failed to share the copy of booking form blank signed by her.

- IX. That on 15.07.2022, respondent again asked her to pay dues otherwise it will terminate and forfeit the booking amount. Therefore, the complainant again vide mail dated 16.07.2022, asked the respondent to clarify what amount has been demanded, area in question, details of the unit, what if the complainant paid entire amount for presuming area to be 4358 sq.ft @3950/- per sq.ft., authorised map of the unit in question. The complainant also asked the respondent to sell 1400 sq.ft. area of R4 201, if respondent company is not able to cover the entire area as discussed at the time of booking.
- X. That on 17.07.2022, complainant for the first time received cost sheet of unit R4 201 from the respondent to give confirmation of the same, mentioning super area approx. 4338.50 sq.ft. @Rs.7950 per sq. ft. costing Rs.3,44,91,393/-. Thus, the complainant on 19.07.2022 asked the respondent to rectify its mistake as the rate decided between the parties were @Rs.3975/- per sq.ft. and not @Rs.7950/- because the complainant left the option of assured return @18% for 9 years. So, 50% discount was agreed to be given at the time of booking. But till date no queries of the complainant were answered by the respondent.
- XI. That on 02.08.2022, respondent sent an allotment letter mentioning carpet area 1374sq.ft and super area 4338 sq.ft which clearly means the intention of the respondent company from the very beginning was to cheat the complainant and as the complainant wants everything in writing, the respondent company



started demanding Rs.3,44,91,393/- and illegally cancelled the allotment vide cancellation letter dated 01.09.2022 and grabbed the entire booking amount paid by the complainant. Thus, the complainant having no other option approached this authority.

C. Relief sought by the complainant:

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

I. Direct the respondent to revoke the cancellation letter dated 01.09.2022 and to give possession of the unit in question having area 4338.54 sq.ft. @3975/- amounting to Rs.1,72,43,550/- and in alternative refund the paid-up amount.

5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The respondent has contested the complaint vide its reply dated 20.02.2023 on the following grounds: -

i. That the complainant approached the respondent expressing her interest in booking a commercial unit in its project named "M3M Corner Walk" at Sector 74, Gurugram vide application form along with a booking amount of Rs.10,00,000/- vide cheque dated 02.06.2022. That in furtherance of the application form, the complainant was supposed to complete the booking formalities, however despite various follow ups the complainant failed to come forward to complete the booking formalities.

ii. That since the complainant failed to come forward to complete the booking formalities, the respondent has enforced termination vide



- email dated 15.07.2022. Thereafter, she requested the respondent to revive the unit and based upon the assurances made by her, the allotment was revived.
- iii. That in due consideration of the complainant's commitment to make timely payments, unit bearing no. R4 201 was allotted to her for a total sale consideration of Rs.3,31,89,831/- plus other charges vide allotment letter dated 02.08.2022. In furtherance of the allotment, the respondent had sent the buyer's agreement to her for due execution along with the cover letter dated 03.08.2022. But for the reasons best known to her, she did not perform her contractual obligation and did not execute the same.
- iv. That the complainant defaulted in making payment of the outstanding amount as per the payment plan and therefore the respondent was constrained to issue a pre-cancellation letter dated 17.08.2022 requesting the complainant to comply with her obligation and execute the buyer's agreement and make the payment as per the payment plan. However, despite repeated follow ups and communications and even after the issuance of the pre-cancellation letter the complainant failed to act further and comply with her contractual obligations and therefore the allotment of the complainant was terminated vide letter dated 01.09.2022, as the complainant has made only a payment of Rs.13,50,000/- against the total sale consideration of Rs.3,31,89,831/- till date.
- v. That the respondent has completed the construction of the said project and has received the OC from the competent authorities on 31.08.2021 after due verification and inspection.



- vi. That the complainant has not adhered to the terms of the contract and has committed a breach of agreement. Thus, the respondent is entitled to deduct the earnest money and the present complaint be dismissed.
5. 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

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

E.I Territorial jurisdiction

7. 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

8. 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) 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.

9. 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.I Direct the respondent to revoke the cancellation letter dated 01.09.2022 and to give possession of the unit in question having area 4338.54 sq.ft. @3975/- amounting to Rs.1,72,43,550/- and in alternative refund the paid-up amount.**
10. The complainant booked a unit having total area of approximately 4338 sq.ft. @Rs.7950/- per sq. ft. in the project named " M3M Corner Walk' at Sector-74, Gurugram, Haryana and was provisionally allotted a unit bearing no. R4 201 vide email dated 11.06.2022. Thereafter, the respondent vide email dated 29.06.2022 sent a reminder to the complainant to complete the allotment formalities on or before 14.07.2022 which was not adhered to by the complainant. So, her allotment was cancelled vide email dated 15.07.2022. Thereafter, the complainant vide email dated 16.07.2022 requested the respondent to send clarification regarding the amount to be paid and in due consideration of the complainant's commitment to make timely payments, cost sheet was sent to the complainant for confirmation vide email dated 17.07.2022, mentioning total sale consideration of unit as Rs.3,31,89,831/- plus other charges. After receipt of same, the complainant brought to the notice of respondent vide email dated 19.06.2023 that after mutual discussion an amount of @Rs.3975/- per sq.ft was decided between the parties which needs to be rectified.



However, there is not even a single document on record to support her claim which can confirm the said agreement between the parties.

11. The Occupation certificate was received by the respondent from the competent authority on 31.08.2021 and on 02.08.2022 an allotment letter was issued to the complainant for a total sale consideration of Rs.3,31,89,831/- plus other charges along with a demand notice which is to be payable on or before 10.08.2022. However, the complainant defaulted in making payment of the outstanding amount as per the payment plan and therefore the respondent was constrained to issue a pre-cancellation letter dated 17.08.2022 requesting the complainant to comply with her obligation. However, despite repeated follow ups and communications and even after the issuance of the pre-cancellation letter the complainant failed to act further and comply with her contractual obligations and therefore the allotment of the complainant was finally terminated vide letter dated 01.09.2022.
12. The counsel for respondent during proceedings dated 05.07.2023 contended that the complainant had paid only an amount of Rs.13,50,000/- till date, which was contested by the counsel for complainant who states that an amount of Rs.5,00,000/- was transferred through RTGS on 12.07.2022 which was later on admitted by the respondent by submitting statement of account dated 03.08.2023. So, the complainant has paid an amount of Rs.18,50,000/- against the total sale consideration of Rs.3,31,89,831/- till date. Now the question before the authority is whether the cancellation issued vide letter dated 01.09.2022 is valid or not.
13. On consideration of documents available on record and submissions made by both the parties, the authority is of the view that on the basis



of provisions of allotment, the complainant had paid Rs.18,50,000/- against the total sale consideration of Rs.3,31,89,831/-. The respondent/builder sent a demand letter dated 02.08.2022 which is to be payable on or before 10.08.2022 as per payment plan mentioned in the allotment letter, before issuing a pre-cancellation letter dated 17.08.2022 asking the allottee to make payment of the amount due but the same having no positive results and ultimately leading to cancellation of unit vide letter dated 01.09.2022. Further, section 19(6) of the Act of 2016 casts an obligation on the allottee to make necessary payments in a timely manner. Hence, cancellation of the unit in view of the terms and conditions of the payment plan annexed with the allotment letter dated 02.08.2022 is held to be valid. Therefore, in this case only refund can be granted after certain deductions as prescribed under the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, which provides as under: -

"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."

14. Keeping in view the aforesaid factual and legal provisions, the respondent can deduct the amount paid by the complainant against the allotted unit as the as it is both the earnest money and 10% of the



consideration amount. So, the same was liable to be forfeited in terms Regulations 11(5) of 2018. However, the amount paid by the complainant i.e., Rs.18,50,000/- constitutes to only 5.57% of the sale consideration of Rs.3,31,89,831/-. Thus, no direction to this effect.

G. Directions of the Authority:

15. Hence, in view of the findings recorded by the authority on the aforesaid issues, cancellation is held valid and no case of refund of the paid-up amount with interest is made out. Hence, the complainant is liable to be dismissed being devoid of merits.
16. Complaint stands disposed of.
17. File be consigned to the registry.


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.08.2023