

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

Complaint no. :	5007 of 2021
Date of filing complaint:	17.01.2022
First date of hearing:	24.02.2022
Date of decision :	05.04.2023

Swati Beohar Both R/O: 1221, 2 nd floor, Lotus Avenue, Sector-43, Gurugram	Complainant
Versus	
M/s Sai Aaina Farms Pvt. Ltd. Regd. office: 302-a, 3 rd floor, Global Foyer Building, Golf Course Road, Sector-43, Gurugram-122001	Respondent

CORAM:	
Shri Ashok Sangwan	Member
APPEARANCE:	
Ms. Swati Beohar	Complainant in person
None	Respondent

EX- PARTE 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 29 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 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:

Sr. No.	Particulars	Details
	Name of the project	'Mahira Homes', in village Badshahpur, Sector-68, Gurugram
	Registered /Non- Registered	Registered 21 of 2018 dated 02.02.2018
	Nature of the project	Affordable group housing project
1.	Unit no.	F-708, Tower-F (As per allotment letter)
2.	Unit admeasuring	Carpet Area 543.72 sq. ft. (As per allotment letter)
3.	Allotment letter	03.05.2018 (As per page no. 9 of the complaint)
4.	Date of execution of builder buyer agreement	Not executed
5.	Possession clause	8.4 years from the date of approval of building plans and



		grant of environment clearance, whichever is later.
6.	Due date of delivery of possession	03.05.2022 (Calculated from the date of allotment letter)
7.	Total sale consideration	Rs. 24,00,000/- (as alleged by the complainant)
8.	Total amount paid by the complainant	Rs. 18,00,000/- (As alleged by the complainant)
9.	Cancelled unit	21.08.2021 (As per page no. 15 of the complaint)
10.	Occupation Certificate	Not obtained
11.	Possession letter	Not offered

B. Facts of the complaint:

3. That in 2018, the complainant was allotted one unit bearing No. 708, Tower-F, having carpet area admeasuring 543.72 sq. ft. under affordable housing scheme.
4. That no buyer agreement has been executed between the parties and till date complainant paid an amount of Rs. 18,00,000/-.
5. That in Nov 2019 & Jan 2020, the complainant sent email to respondent for changing the correspondence/communication address, but the new



address was not updated and the respondent continue to send all the demand letters to previous address.

6. That the respondent issued a cancellation notice on 21.08.2021 in which time limit upto 6 Sep 2021 for making demand payment which was sent to wrong address.

C. Relief sought by the complainants:

7. The complainants have sought following relief(s):
 1. Direct the respondent to set-aside the cancelled unit or handover the possession along with prescribed rate of interest
8. The authority issued a notice dated 29.01.2022 of the complaint to the respondent by speed post and also on the given email address at swatibeohar7@rediffmail.com and MD@mahiragroup.com. The delivery reports have been placed in the file. Despite the following opportunities the respondent failed to file a reply in the matter. The proceedings are reproduced as under:

- a) **Proceeding of the day dated 20.04.2022:** "Written reply has not been filed by the respondent. The complainant in person states that an amount of Rs.18 Lakhs has been paid out of total consideration amount of Rs.24 Lakhs and the balance amount could not be paid as demand notice were not sent by the promoter on the changed address which was duly communicated vide email dated 06.01.2020 and is ready to make the payment of balance amount and requests

hr

for setting aside the cancellation notice sent on previous address with a copy on WhatsApp. The respondent/promoter put in appearance and marked attendance and requests for an adjournment for filing of the reply and assures that no third party rights in respect of above unit shall be created till further orders of the Authority. The respondent is directed to file reply within two weeks i.e., by 04.05.2022 in the registry with a copy to the complainant and is hereby restrained from creation of any third party rights in respect of the above allotted unit for which more than 70% amount has already been paid and the allottee is willing to make the balance payment after receiving of the demand notice at the new address. Last opportunity is being granted. In case reply is not filed within the time allowed, the defense of the respondent may struck off"

- b) **Proceeding of the day dated 03.08.2022:** "The interim directions issued vide order dated 20.04.2022 for non-cancellation of the unit shall continue and promoter is directed not to raise any demand which are not part of BBA or allowed under affordable housing policy. The complainant present in person states that the interest for delayed payment is being demanded even for the amount for which demand notice has not been issued on the correct address for which an e-mail request for change of address has been made to the respondent in January 2019 as well as in March 2019. The

respondent is directed to take note of change address and to issue the demand at the correct and current address only. The respondent is directed to file the reply within two weeks i.e., by 17.08.2022 in the registry with a copy to the complainant subject to cost of Rs. 5,000/- to be paid to the complainant. In case the reply is not filed within the time allowed, the defence of the respondent may struck off."

c) **Proceeding of day dated 07.11.2022:** "Case has been called out, but no one has appeared on behalf of the respondent. On the last date of hearing, a cost of Rs.5,000/- was imposed upon the respondent with the direction to file reply. The respondent is given a final opportunity to file reply within two weeks with cost of Rs.10,000/- to be paid to the complainant. In case the reply is not filed within the time allowed, the defense of the respondent may struck off."

d) **Proceeding of day dated 01.03.2023:** "On the last date of hearing, none appeared on behalf of the respondent and a cost of Rs.10,000/- was imposed on the respondent with final opportunity to file reply. However, the respondent has neither put in appearance today nor filed the reply as directed. In view of the above, the defence of the respondent is struck off. The complainant is present in person states that respondent has unlawfully cancelled the allotted unit on

hr

21.08.2021 by sending communication including demand letter on the wrong address. The complainant states that the complainant had shifted to a new address in 2019 and duly notified the new address to the respondent vide emails sent in 2019. When the address was not updated a reminder was again sent on 06.01.2020 but the respondent deliberately did not update the communication address and on enquiry, stated that the unit has already been cancelled. Therefore, the cancellation is bad in law”

9. It shows that the respondent is intentionally delaying the procedure of the court by avoiding filing written reply and despite specific directions it failed to comply with the orders of the authority. Accordingly, the authority is left with no other option but to decide the complaint ex-parte against the respondent.
10. 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 submission made.

D. Jurisdiction of the authority:

11. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D.1 Territorial jurisdiction



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.

D. 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;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoter, 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. Entitlement of the complainants for refund:



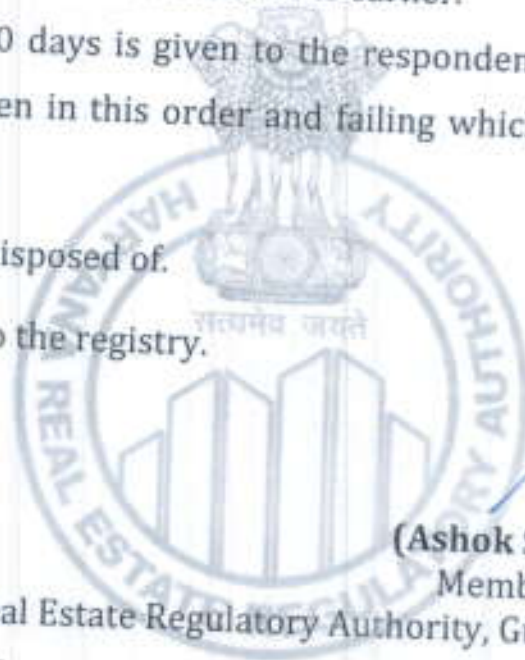
- E.1 Direct the respondent to set-aside the cancelled unit or handover the possession along with prescribed rate of interest**
12. The project detailed above was launched by the respondent under affordable housing scheme and till date no agreement has been executed between the parties. In year 2019, the complainant shifted to a new address and duly notified the new address to the respondent, but respondent did not update the communication address after various reminder by the complainant.
13. The respondent builder cancelled the allotted unit on 21.08.2021 by sending communication including demand letter on the wrong address.
14. The authority is of view that the respondent has unlawfully cancelled the allotted unit on 21.08.2021 by sending communication including demand letter on the wrong address even after notified the new address to the respondent by the complainant in year 2019. The respondent deliberately did not update the communication address and on enquiry, stated that unit has already been cancelled. It is pertinent to mention here that the respondent-builder had received more than 10% of the total sale consideration without entering into agreement. Therefore, the cancellation is bad in the eye of law. So, the respondent is directed to handover the possession of the allotted unit to the complainant and also the complainant is entitled for delay possession charges along with prescribed rate of interest. i.e., 10.70%.

F. Directions of the Authority:

15. 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 functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i) The respondent/promoter is directed to pay interest at the prescribed rate of 10.70 % p.a. for every month of delay from the due date of possession i.e., 03.05.2022 till actual handing over of possession or till offer of possession plus 2 months after obtaining occupation certificate, whichever is earlier.
 - 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.
16. Complaint stands disposed of.
17. File be consigned to the registry.



(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 05.04.2023

HARERA
GURUGRAM