



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	26 of 2022
Date of filing:	27.01.2022
Date of first hearing:	15.03.2022
Date of decision:	31.05.2023

1. Smt, Neetu Mehta,
w/o Sh. Dheeraj Mehta,
r/o Ward no. 9, Barwala, Hisar,
Haryana
2. Sh, Dheeraj Mehta,
s/o Sh. Subhash Mehta,
r/o Ward no. 9, Barwala, Hisar,
Haryana

.....COMPLAINANTS

VERSUS

1. M/S HL Promoters Pvt. Ltd.,
Office: Flat No. 3 GF, Naurang House,
Plot no. 5, Block No. 134,
21 Kasturba Gandhi Marg
NEW DELHI- 110001

Fattree

2. M/S TATA Value Homes,
Office: Vistara Training Centre,
Sector-72, Gurugram
3. M/S HLT Residency Pvt. Ltd.,
Office: S-1, HL Square, Sector -5 (MLU),
Plot No. 6, Dwarka
NEW DELHI
4. M/S SAS Realtech, LLP
Office: S-1, HL Square, Sector -5 (MLU),
Plot No. 6, Dwarka
NEW DELHI

....RESPONDENTS

CORAM: **Dr. Geeta Rathee Singh** **Member**
Nadim Akhtar **Member**

Present: Mr. Kaustubh Bhardwaj and Mr. Ajay Sejwal, learned
counsels for the complainants
Mr. Kamal Dahiya, learned counsel for the respondent no.2
None for respondent no .1, 3, 4.

Geeta Rathee

ORDER (Dr. GEETA RATHEE SINGH - MEMBER)

1. Present complaint dated 27.01.2022 has been filed by complainants under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

2. The particulars of the unit booked by complainants, the details of sale consideration, the amount paid by the complainants and details of project are detailed in following table:

S.No.	Particulars	Details
1.	Name of the project	NewHeaven, Bahadurgarh, Sector-37, Haryana Group Housing Project
2.	RERA registered/not registered	Registered / HRERA-PKL-JJR-327-2022
3.	Date of booking	05.11.2015



5.	Flat no.	Flat- T-7-102 (2BHK)
6	Flat Area	918 sq. ft.
7.	Date of allotment	29.12.2015
8.	Date of Apartment buyer agreement	02.04.2016
9.	Deemed date of possession	On or before October, 2019
10.	Basic sale price/total sale consideration	₹62,21,880/-
11.	Amount paid by complainants	₹62,59,816/-
12.	Offer of possession	18.02.2021
13.	Physical possession	12.06.2021
14.	Sale deed	18.06.2021

B. FACTS OF THE COMPLAINT

3. That the complainants visited the project site on 05.11.2015, in response to the advertisement about the project seen by complainant no. 2 on 04.11.2015. There they met Mr. Himanshu Bamola, who claimed himself to be the sales executives of the respondent company, who showed all the

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plans and layout of the project, impressed by which complainants immediately booked a 2BHK flat and made the token/ advance payment of ₹ 30,000/- from his credit card, the receipt of which was confirmed by email dated 05.11.2015 annexed as '**Annexure C-1- colly**'.

4. That on 23.11.2015, via email respondent has provided the cost estimate and payment plan to the complainants for approval of Flat No. T-7-102, having carpet area 918 sq. ft. for total consideration of ₹62,21,880/- excluding taxes applicable and other registration charges. Copy of email is annexed as '**Annexure C-2**'
5. That on 29.12.2015 allotment letter was issued and thereafter the builder buyer agreement was executed between complainants and the respondents on 02.04.2016, annexed as '**Annexure C-3&4**'. Complainants have made timely payments as per demand raised by the respondents. Copy of statement of account is annexed as '**Annexure C-5**'. Possession of the flat was offered on 18.02.2021 and actual physical possession was handed over to the complainants on 12.06.2021 by the respondents. Copy of the same has been annexed as '**Annexure C-6**'. Sale deed in the favour of complainants also stands executed on 18.06.202, copy has been annexed as '**Annexure C-7**'

6. That due to posting of complainant no. 2 at Lebanon on UN & due to paucity of time, complainant was unable to check the dimensions of the flat. However, on 19.06.2021 when complainants checked the flat for the first time they found that the carpet area size offered at the time of sale was (918 sq. ft.). However, the actual carpet area given to complainant is (795 sq. ft.). when complainants checked the sale deed, they found that respondent mischievously has divided the area into three parts i.e. super Area, Carpet Area, Balcony Area. In response to this complainants sent an email to the respondents on 26.06.2021 mentioning all their grievances to which respondents never replied clearly and gave an excuse that 'as per trade practice the balconies have been included in the carpet area'. However, as per Section 2(k) of RERA Act "carpet area" means the net usable floor area of an apartment. Therefore, balcony can never be included in carpet area. However, respondent have included the balcony area into the carpet area. Due to this, complainants have been charged ₹10,00,000/- in excess by the respondents. However, no calculation or details have been provided by the complainants in the complaint with regard to the said amount.
7. That complainants approach this Hon'ble Authority seeking suitable direction /order for refund of the amount extra charged along with interest @12 %. Hence, present complaint has been filed.

C. RELIEF SOUGHT

8. In view of the facts mentioned above, the complainant prays for the following relief(s):-
- a) The respondents be directed to refund the excess amount wrongly and illegal charged by them.
 - b) The Respondent be directed to pay interest @12 % on the amount wrongly and illegal charged from the complainants from the date of payment till actual realization of the said amount.
 - c) The respondents be directed to pay Rs. 5 lac towards the compensation for causing harassment, in-convenience and mental agony to the complainants.
 - d) Any other relief (s) or direction (s) which this Hon'ble Forum may deem fit proper & necessary in the facts and circumstances of the present case be also passed.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondent filed reply on 20.07.2022 pleading therein:

9. That the complainants have sought relief for compensation in this compliant. Hence, it is not maintainable before Hon'ble Authority due to lack of jurisdiction and compliant should be dismissed as power to

adjudicate complaints where compensation is sought is vested with Hon'ble Adjudicating Officer.

10. That respondents have already discharged their obligations as project is completed in all respects in terms of Apartment Buyer Agreement executed in the year 2021. Possession of the booked unit was offered to the complainants vide letter dated 18.02.2021 after obtaining Occupation Certificate for the project in question. Letter of possession dated 18.02.2021 is annexed as 'Annexure R-2' Complainants took physical possession of the booked flat on 12.06.2021. From bare perusal of the above facts, it could be concluded that possession to complainants were offered on 18.02.2021, however complainant took physical possession on 12.06.2021, meaning thereby complainants had enough time of approximately 4 months to verify the details of the flat before taking physical possession but complainants have agreed without any protest with clause 4 of letter of possession which says that complainants have inspected and satisfied themselves with all details of the project before taking possession.
11. Further, conveyance deed stands executed between the parties on 18.06.2021, which was executed by the complainants without raising any objection. Copy of the same has been annexed as Annexure C-7.

12. Respondents alleged that complainants were well aware of the carpet area/ super area and the amount charged for the same in respect of the booked flat. As builder buyer agreement was executed on 02.04.2016 and as per clause 1.1.5 of the agreement, respondents have clearly mentioned the definition of carpet area which is annexed as Annexure G with the BBA at page no. 81 of the complaint book, which clearly shows that balcony was included in the carpet area. Therefore, now after good gap of almost seven years, complainants cannot take the plea that they were not aware about the area or definition of carpet area.
13. Further, regarding allegation that carpet area is 795 sq. ft. as against 918 Sq ft. which is 123 Sq ft. less, respondents state that complainants being fully aware had submitted an application form dated 05.11.2015; Apartment buyer agreement 03.04.2016 which is undisputed as same is much prior to RERA came into force. Further, he states that area of apartment measuring 918 sq ft. was inclusive of Balcony as stated in Annexure G of the builder buyer agreement. However, now after coming into force of RERA Act technical terms regarding carpet area, super area etc are much more clearly defined. Now, carpet area and balcony area are two separate terms in the eyes of law.
14. That Respondent company has specifically mentioned in the application form, builder buyer Agreement and in conveyance deed that super area of

the apartment was 1296 sq ft. which is still same in all documents. Further, as conveyance deed is executed in the year 2021 i.e after coming into force of the RERA Act, super area, carpet area and balcony area are separately mentioned as per the rules. So, there is no shortfall of any area in the apartment booked by the complainants.

15. That respondent has submitted that according to the principle of estoppel by conduct, the complainants shall be estopped from taking the plea that they were unaware about the dimensions of the flat. Also, complainants have peacefully enjoyed the possession for seven months before filing of the compliant i.e. on 27.01.2022. Hence, present compliant should be dismissed as no cause of action has arisen.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

16. During oral arguments learned counsel for the complainants reiterated arguments as mentioned in Para 3-8 of this order. On the other hand, Sh. Kamal Dhaiya, counsel for respondent-promoter has reiterated the facts mentioned in para 9-15. Further, counsel for respondents stated that respondents have fully discharged thier liabilities towards the complainants as sale deed stands excuted in the year 2021. Therefore, captioned complaint be dismissed.

F. ISSUES FOR ADJUDICATION

17. Whether the complainants are entitled to refund the excess amount wrongly and illegal charged by respondent along with interest in terms of Section 18 of Act of 2016?

G. FINDINGS OF AUTHORITY ON RELIEFS CLAIMED BY COMPLAINANT

18. Arguments of both parties have been heard and record has been perused. Both the parties do not dispute the fact pertaining to allotment of flat in favor of complainants; execution of builder buyer agreement; receipt of paid amounts and signing of sale deed dated 18.06.2021. It is the case of the complainants that they had signed the sale deed without physically checking the measurements of the flat, however when they got the flat measured, immediately after signing sale deed i.e. on 19.06.2021, they found that the area is not as per builder buyer agreement and had been reduced. Complainants had communicated this fact to the respondent-promoter via email on 26.06.2021. On the other hand, respondent stated that possession of the booked flat was offered to the complainants on 18.02.2021, however the complainants took physical possession on 12.06.2021, i.e. after a period of four months from the date of offer of possession. Thereafter, on 18.06.2021, sale deed in the favour of

complainants was executed, wherein dimension of the booked flat were distinctly mentioned and same was signed by the complainants without raising any objection or protesting for the same. Respondent has stated that builder buyer agreement, clause L, mentioned at page no. 49 of complaint book, shows that allottee was promised that they shall get a unit admeasuring carpet area of 918 sq.ft and what shall constitute the carpet area was also disclosed in the builder buyer agreement itself at clause 1.1.5 read with Annexure G. The definition of carpet area so provided at clause 1.1.5 read with Annexure G provides that the carpet shall be inclusive of the balcony area, thus the respondent has fulfilled his obligation as per the builder buyer agreement by delivering an carpet area of 795 Sq.ft and balcony area of 143.59 sq.ft, which in totality is even more than the area promised in builder buyer agreement(i.e. 918 sq.ft).

19. The careful perusal of builder buyer agreement shows that the parties agreed that the carpet area of the flat would be 918 sq.ft. The builder buyer agreement executed between the parties contain the definition of the carpet area at clause 1.1.5 read with Annexure G at page no. 49 and 81 of the complainant book i.e. " 1.1.5 Carpet Area- As defined in Annexure-G for the purpose of computation of carpet area of the said apartment". Further, Annexure G provides the following list of inclusion in the carpet area of the unit:

1. Wall finish

2. Offsets

3. All accessible full height areas:

- ***

- ***

- ***

-Dry balcony/Utility

-***

-Covered balcony

-***

4. ***

5. ***

6. ***

7. ***

8. ***

9. ***

10. ****

20. Perusal of sale deed shows that carpet area as 795 sq.ft, area of the balcony which as per builder buyer agreement is the part of carpet area as 143.59 sq.ft. Thus, the conjoint reading of the builder buyer agreement and the sale deed leaves no room of doubt and categorically proves that the developer has discharged his part of obligation under the builder buyer agreement by handing over the area as promised in the builder buyer agreement. So far as the pleadings and arguments of the complainants that after coming into force of the RERA ACT, 2016 the area of balcony cannot be included in

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carpet area and as such the sale deed cannot be treated to be as per builder buyer agreement, the same is not acceptable for two reasons. Firstly, that the RERA ACT, 2016 nowhere provides for rewriting of the builder buyer agreement, meaning thereby the terms and conditions of builder buyer agreement entered between parties prior to the commencement of the RERA ACT, 2016 are to given effect as per the spirit of the original builder buyer agreement and RERA Act, 2016 would not change the terms and conditions of the agreement. Secondly, if the argument is accepted, then in that eventuality, the promoter would be required to change the entire structure, layout plan etc which is not the intent of the RERA Act 2016. Therefore, though the arguments put forth by the complainants seem to be convincing on its face but it fails to make out a case for the complainants and hence the arguments is hereby turned down. Accordingly, present complaint is **disposed of as dismissed**.

21. File be consigned to record room after uploading of this order on the website of the Authority.


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NADIM AKHTAR
[MEMBER]


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Dr. GEETA RATHEE SINGH
[MEMBER]