

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

<b>Complaint no.</b>	<b>3312 of 2022</b>
<b>Date of complaint</b>	<b>29.06.2022</b>
<b>First date of hearing</b>	<b>13.09.2022</b>
<b>Date of decision</b>	<b>18.10.2023</b>

Baljit Singh Bhatia <b>R/O: N/108, Ground Floor, Panchsheel Park, New Delhi-110017.</b>	<b>Complainant</b>
Versus	
SS Group Pvt. Ltd. <b>Registered address at Plot No. 77, SS House, Sector-44, Gurgaon, Haryana-122003.</b>	<b>Respondent</b>

<b>CORAM:</b>	
Shri Ashok Sangwan	<b>Member</b>
<b>APPEARANCE:</b>	
Ms. Rahul Srivastava Advocate	Complainant
Mr. Rahul Bhardwaj Advocate	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 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, the date of proposed handing over of the possession, and the delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name and location of the project	"The Leaf", Sector -85, Gurugram
2.	Nature of the project	Group Housing Complex
3.	Project area	11.093 acre
4.	DTCP license no.	81 of 2011 dated 16.09.2011 Valid upto 15.09.2024
5.	Name of licensee	Shiva Profins Pvt Ltd
6.	RERA Registered/ not registered	RERA registered 23 of 2019 dated 01.05.2019
7.	Unit no.	5A, 5 <sup>th</sup> floor, Building no. 7 (As per page no. 27 of the complaint)
8.	Unit area admeasuring (super area)	2280 sq. ft. (As per page no. 30 of the complaint)
9.	Date of execution of builder buyer agreement	31.12.2013 (Page no. 29 of complaint)



10.	Possession clause	<p><b>8. Possession</b></p> <p><b>8.1: Time of handing over the possession</b></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, <b>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.</b> 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 for applying and obtaining the occupation certificate in respect of the Group Housing Complex.</p>
11.	Due date of possession	<p>31.12.2016</p> <p><b>(Calculated from the date of buyer's agreement)</b></p>
12.	Total sale consideration	<p>Rs. 1,22,46,720/-</p> <p><b>(As per page no. 31 of the reply)</b></p>



13.	Amount paid by the complainant	Rs. 24,32,227/- (Page no. 28 of complaint)
14.	Occupation certificate	09.05.2022 (As per page no. 78 of the reply)
15.	Final notice and first cancellation	Final notice: 07.12.2013 (Page no. 75 of reply) Cancellation notice: 11.04.2014 (As per page no. 76 of the reply)
16.	Reminder/demand letters post the first cancellation	03.02.2015, 18.05.2015, 28.08.2015, 14.09.2015, 01.07.2016, 02.11.2016, 18.06.2018, 13.12.2018, 23.09.2020.
17.	Second cancellation cum final notice	21.12.2020 (As per page no. 77 of the reply)

**B. Facts of the complaint:**

3. The respondent approached the complainant and made elaborate representations and promises about its project, including the quality, standard, and exquisite facilities that would be provided. Further, the respondent assured him that the project would be timely constructed and thereafter possession of the flat would be timely delivered.
4. On being assured by the respondent's representations and promises, the complainant booked the unit in the project of the respondent by filling out the application form dated 12.07.2012. Upon filling out the application form, the respondent issued an allotment letter dated 10.09.2012 whereby the said unit was allotted to the complainant for a total sale consideration of Rs. 1,22,46,720/-. The complainant on

receiving the allotment letter advanced payment of Rs. 10,00,000/- towards the unit on 31.07.2012 which later got acknowledged by receipt dated 27.10.2012 issued by the respondent. That subsequent to the issuance of the allotment letter, the respondent, without even executing a buyer's agreement in favor of the complainant, continued to raise payment demands with respect to the sale consideration of the unit. The complainant being in an inferior position and on realizing that he had already made payments towards the unit, continued to meet the payment demands of the respondent. It must be noted that by 30.10.2012, the complainant had made a significant amount of payment of Rs. 24,32,227/- towards the said unit.

5. The respondent's conduct is clearly indicative of its mala fide that without even executing a formal agreement in favor of the complainant with respect to the said unit, the respondent continued to raise payment demands. It was only after continuous follow-ups and efforts made by the complainant, that the respondent finally executed a flat buyer's agreement on 31.12.2013 with the complainant i.e after an extraordinary delay of more than a year from the date of receipt of Rs. 24,32,227/- from the complainant.
6. The agreement was filled with one-sided and arbitrary terms and conditions. The complainant had opted for a construction-linked payment plan wherein the respondent was to only demand payments whenever the respondent reached a particular construction milestone. It is submitted that the respondent had already collected a significant amount of money from the complainant even prior to meeting its own construction milestones of the project.



7. As per clause 8. 1(a) of the agreement, the respondent had unanimously undertaken the obligation to deliver the possession of the unit within 36 months from the date of execution of the agreement along with a grace period of 90 days. That since, the agreement was executed on 31.12.2013, the respondent was liable to deliver possession of the unit by 31.03.2017.
8. The complainant on numerous occasions enquired about the construction status from the respondent through various phone calls and office visits however the same were neglected or were replied to with ambiguous assurances stating that the unit was progressing as per schedule, which sadly was not the case.
9. Since the respondent never gave any heed to the construction queries of the complainant, the complainant stopped meeting the illegal payment demands of the respondent. On the contrary, the respondent started to threaten the complainant that non-payment of their demands would lead to the cancellation of his unit.
10. The respondent not only failed to meet its construction goals while raising the payment demands but had even failed to complete the project by the promised date. It is submitted that as per form REP-1 submitted by the respondent with the Haryana Real Estate Regulatory Authority, it had declared the project to be "Ongoing" which clearly indicates the default on the part of the respondent.
11. As per the knowledge of the Complainant, the respondent without issuing prior notice, canceled the unit of the Complainant and has allotted the same to someone else. Due to the gross deficiency in services of the respondent and unethical trade practice of the respondent, it not only failed to complete the construction of the project

by the promised date of possession but has even unlawfully canceled the allotment of the unit of the complainant and transferred the same to someone else.

12. Acts of the respondent are in complete violation of section 18 of the Real Estate (regulation and development) Act, 2016. The grievances of the complainant are in pari materia to the various disputes already adjudicated upon and decided by this Hon'ble Authority against the same respondent herein and for the same project "The Leaf"

**C. Relief sought by the complainant:**

13. The complainant has sought the following relief(s):
- Direct the respondent to refund the entire amount paid along with the prescribed rate of interest.

**D. Reply by respondent:**

14. The complainant had approached the respondent and expressed his interest in booking a unit in the residential project developed by the respondent known as "The LEAF" situated in Sector 83, Gurgaon, Haryana. Prior to making the booking, the complainant conducted extensive and independent inquiries with regard to the project, and only when the complainant was fully satisfied with all aspects of the project, that the complainant take an informed decision, un-influenced in any manner by the respondent to book the unit in question.
15. Thereafter the complainant vide a booking receipt booked a unit in the project constructed by the respondent. The complainant, in pursuance of the aforesaid booking receipt dated 10.09.2012 was allotted a unit. The complainant consciously and willfully opted for a construction-linked payment plan for remittance of the sale consideration for the unit

in question and further represented to the respondent that he shall remit every installment on time as per the payment schedule.

16. The allotment letter being the preliminary and the initial draft contained the basic and primary understanding between both the parties, to be followed by the flat buyer's agreement to be executed between the parties. Thereafter, on 31.12.2014, the flat buyer agreement was executed between the complainant and the respondent which contained the final understandings between the parties stipulating all the rights and obligations.
17. On account of the non-payment of the outstanding amount, the respondent sent numerous demand letters to the complainant.
18. The construction of the project was within the timeline as stipulated in the flat buyer agreement and accordingly, the complainants were supposed to pay the installments of the said unit by way of the construction linked-payment plan. The respondent from the very inception had to run after the complainant to clear the outstanding dues. From 2015 to 2020, i.e., before the cancellation of the unit, the respondent sent numerous demand letters from 03.02.2015, 18.05.2015, 28.08.2015, 11.02.2016, 01.07.2016, 02.11.2016, 18.06.2018, 13.12.2018, 23.09.2020.
19. The complainant till the issuance of the final demand letter has only paid Rs. 12,16,127/- towards the total sale consideration amounting to Rs. 1,22,46,720/- which only accounts for approx. 10% of the total sale consideration. The complainant was very well aware of the continuous delays and was reminded on a continuous basis through the demand letters. Both the parties agreed as per the terms and



conditions and the complainant was well aware that "time being the essence" the total sale consideration was to be paid according to the construction-linked plan/down payment plan. The last payment towards the agreed sale consideration was made dated 28.09.2012 amounting to Rs. 2,16,127/- and since then no payment howsoever, has been made by the complainant.

20. The respondent sent a final notice dated 07.12.2013 and a cancellation notice dated 11.04.2014 as the complainant repeatedly defaulted on the payment of due installments.
21. The respondent after observing such behavior of the complainant canceled the said unit after sending the complainant a final warning by way of sending a final notice & demand dated 21.12.2020 to clear the outstanding dues for the unit.
22. The respondent shall be entitled to relief from this Hon'ble Authority for the breach in the terms and conditions of the flat buyer agreement by the complainant. As per clause 1.2(f) of the flat buyer agreement, the respondent is entitled to forfeit the earnest money as well as the brokerage along with the taxes and interest.
23. The project at present date has been completed and an occupation certificate has been received by the respondent dated 09.05.2022.
24. The complainant is attempting to raise the issue at a belated stage, attempting to seek a modification in the agreement entered between the parties in order to acquire benefits for which the complainant is not entitled in the least. The issues raised in the present complaint by the complainant are baseless and demonstrate an attempt to arm-twist the answering respondent into succumbing to the pressure so created by

the complainant in filing this frivolous complaint before this Hon'ble Authority.

**E. Jurisdiction of the authority:**

25. The plea of the respondents regarding lack of jurisdiction of Authority is rejected. 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, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be the entire Gurugram District for all purposes 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**

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per the 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 with the obligations cast upon the promoters, the allottees, and the real estate agents under this Act and the rules and regulations made thereunder.*

So, given 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. Entitlement of the complainant for refund:**

**G.1 Direct the respondent to refund the amount deposited by the complainant along with interest at the prescribed rate.**

26. The complainant booked a unit in the project named "The Leaf" in 2012. Thereafter, on 31.12.2013, an agreement was executed between the parties. As per the agreement, the possession was to be delivered within 36 months from the date of execution of the said agreement. The complainant contends that the respondent has not offered possession of the unit as per the agreement and that there is a significant delay on the respondent's part in fulfilling his obligations under the agreement between the parties. Further, the complainant contends that the respondent-builder did not build the project in time, and hence he stopped making payments.
27. The respondent, on the other hand, contended that the complainant had defaulted in payment of installments even after many reminders and that the last payment was made only in October 2012. It has placed on

record various demand/reminder letters. The respondent has canceled the unit of the allottee on account of non-payment of demands raised. The first cancellation was done on 11.04.2014. Thereafter, the respondent sent various demand/reminder letters to the complainant to revive the allotment but no payments were made by the complainant. In pursuance of this, the respondent sent a final notice letter to the complainant dated 21.12.2020.

28. On consideration of the documents available on record and submissions by both parties, the Authority is of the view that the complainant has paid Rs. 24,32,227/- against the total consideration of Rs. 1,22,46,720/-. In this case, the respondent-builder issued two cancellation letters to the complainant viz. 11.04.2014 and 21.12.2020. The first cancellation was valid but its effect was vitiated due to the later demands raised upon the complainant. The complainant, however, did not make payments as and when demanded by the respondent. Due to this, the respondent issued another letter dated 21.12.2020. The Authority is of the view that the letter dated 21.12.2020 is a valid cancellation letter and is not merely a final notice of payment. A careful perusal of the letter suggests that in case the complainant/allottee fails to make payment of the outstanding amount within 30 days of the receipt of this notice, the unit shall be deemed to be canceled. The relevant para of the letter dated 21.12.2020 is produced below:

*"In view of the above, in the absence of payment of installments, we feel it difficult to continue your booking in our project. However, you are given a final opportunity to cure/rectify the aforesaid event of default(s) within a period of 30 days from the date of this notice, failing which the said allotment shall*

*automatically stand canceled without any further notice or communication."*

Therefore, in the context of the aforesaid provision, the cancellation dated 21.12.2020 is held valid.

29. Furthermore, as per clause 1.2(f) of the agreement between the parties dated 31.12.2014, the earnest money shall be 10% of the sale price and it shall be liable to be forfeited in case the allottee fails to fulfill his obligations under the agreement. Clause 1.2(f) of the said agreement states that on the failure of the allottee to make timely payments, the entire earnest money shall be forfeited. The aforesaid clauses are produced below:

*"1.2(f) The Flat Buyer(s) has entered into this Agreement on the condition that out of the amount(s) paid/payable by him/her/them towards the SALE PRICE, the Developer shall treat 10% of the SALE PRICE as earnest money (hereinafter referred to as the "Earnest Money") to ensure fulfillment, by the Flat Buyer(s) of the terms and conditions as contained in the application and this Agreement.*

*The Flat Buyer(s) hereby authorize the Developer to forfeit out of the amounts paid/payable by him/her, the EARNEST MONEY as aforementioned together with the processing fee, any interest paid, due or payable, any other amount of a non-refundable nature in the event of the failure of the Flat Buyer(s) to perform his/her/their obligations or fulfill al/any of the terms and conditions set out in this Agreement executed by the Flat Buyer(s) or in the event of failure of the Flat Buyer(s) to sign and return this Agreement in its original form to the Developer within thirty (30) days from the date of its dispatch by the Developer."*

30. While canceling the unit, it was an obligation of the respondent to return the paid-up amount after forfeiting the amount of earnest money. However, a perusal of that letter issued by the respondent shows that it has retained the total paid-up amount of the complainant. The deductions made from the paid-up amount by the respondent are



not as per the law of the land laid down by the Hon'ble apex court of the land in cases of *Maula Bux vs Union of India 1969(2) SCC 554* and where it was held that a reasonable amount by way of the earnest money be deducted on cancellation and the amount so deducted should not be by way of damages to attract the provisions of section 74 of the Indian Contract Act, 1972. The same view was followed later on in a number of cases by the various courts. Even keeping in view the principles laid down in those cases, a regulation in the year 2018 was framed known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, providing 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 amount of the real estate i.e. apartment/plot/building as the case may be in all case 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."*

31. Thus, keeping in view the aforesaid provisions and the facts detailed above, the respondent is directed to refund the paid-up amount after deducting 10% of the basic sale price being earnest money to the complainant along with interest at the prescribed rates from the date of cancellation i.e., 21.01.2021 (30 days from the date of the letter dated 21.12.2020) up to the date of actual realization.

**H. Directions of the Authority:**

32. Hence, the authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance with obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016.
- i. The respondent is directed to refund the deposited amount of Rs.24,32,227/- after deducting 10% of the basic sale price of Rs. 1,03,94,520/- being earnest money along with an interest @10.75% p.a. on the refundable amount from the date of cancellation of unit (i.e. 21.01.2021) till the date of realization of payment.
  - ii. A period of 90 days is given to the respondents to comply with the directions given in this order failing which legal consequences would follow.
33. Complaint stands disposed of.
34. File be consigned to the registry.

  
Ashok Sangwan  
Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 18.10.2023**