

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

Complaint no. :	2718 of 2020
Date of filing :	07.10.2020
Date of decision :	25.08.2023

Mohit Malik

**R/O:** - H.No. B2C/14, New Rohtak Road, Karo;  
Bagh, New Delhi-110005.

**Complainant**

Versus

1. M/s St. Patricks Reality Private Limited  
**Regd. Office at:** - Asset 5B, Hospitality  
District, Delhi Aerocity, New Delhi-110037.
2. Mahesh Giri  
**Regd. Address:** A-20, GF, Sushant Lok-III,  
Go;f Course Extn. Road, Grugram-122001.

**Respondents**

**CORAM:**

Shri Sanjeev Kumar Arora

**Member**

**APPEARANCE:**

Sh. Sukhbir Yadav

Advocate for the complainant

Sh. Amit Aggarwal

Advocate for the respondents

**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 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 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 of the project	"Central Park Flower Valley", Sec 29,30 and 32, Gurgaon
2.	DTCP	07 of 2020 dated 29.01.2020 54 of 2014 dated 20.06.2014
3.	RERA registration	Registered vide 11 of 2020 dated 18.03.2020
4.	Unit no.	D-108 [Annexure P4 at page 43 of the complaint]
5.	Super area	2700 sq. ft./300 sq. yard [Annexure P4 at page 43 of the complaint]
6.	Date of booking	10.07.2014
7.	Date of allotment	13.07.2015 (Annexure P4 at page 43 of the complaint)
7.	Date of builder buyer's agreement	Not executed
8.	Possession clause	<i>The company shall endeavor to handover the possession of the said plot of the applicant within a period of 24 months with a grace period of another 6 months from the date of the agreement subject to timely payment of sale price, other changes and all other payments including</i>

		<i>payment of interest by the applicant as per payment plan and terms of this agreement.</i>
9.	Due date of possession	Cannot be ascertained
10.	Cancellation dated	29.05.2018 [annexure K page 59 of reply]
12.	Total sale consideration	<b>Basic sale price - Rs.1,09,59,300/-</b> (As per page 6 of the complaint)
13.	Amount paid by the complainant	<b>Rs.12,00,000/-</b> [Page 22 of CRA]
14.	Completion certificate	29.09.2020
15.	Offer of possession	Not offered

**B. Facts of the complaint**

3. The complainant has pleaded the complaint on the following grounds:
- That in June 2014, Mr. Mohit Malik (the complainant) received a marketing call from a real estate agent Mr. Mahesh Giri (respondent no. 2), who represents himself as an authorized agent of the respondent no. 1 (St. Patricks Realty Private Limited) and marketed the plotted project of the respondent no. 1 by the name and style "Central Park - III" situated in Sector - 29, 30, 32 & 33, Sohna, Gurugram. The complainant along with the real estate agent visited the project site and local office of respondents. The marketing staff of the respondents showed a rosy picture of the project through glitzy advertisements and colourful brochures, proposing to develop and construct an integrated plotted project at the prime location of Sohna-Gurugram Road, Sohna, Gurugram, claiming the same to be a new concept of modern architecture and a unique amalgamation of plots, independent floors, high rise apartment, retail, office, and mall. Undeniably, the respondents,



vide the said glitzy advertisements and colourful brochures claimed to provide luxurious features including but not limited to the entrance through a marvellously designed entrance, the world-class landscaping, and ample surface parking for the visitors, 100% power back-up, CCTV's at the entry point and lifts, 24 hours manned surveillance and access barriers, etc.

- b. That lured by assurances, promises, and representations made by the respondents, the complainant signed an expression of interest form and issued a cheque of Rs. 12,00,000/- drawn in ICICI Bank and cheque amount was debited from the account on of the complainant on 01.08.2014, as booking amount for plot admeasuring 300 sq. yd., in the project under the development link payment plan at basic sale price (BSP) of Rs. 36,531/- per sq. yd. The original BSP was Rs. 39,000/- per sq. yd. and a special (pre-launch) discount was 1% i.e., Rs. 369/- per sq. yd., therefore total effective BSP of plot was Rs. 1,09,59,300/-.
- c. That at the time of accepting application money, the respondents have assured that apart from the basic sale price, the allottee has to pay EDC/IDC and taxes only. The respondents further assured that there is no hidden cost and assured about having all requisite approval and sanctioned plans to develop the project and showed license to the complainant. Moreover, the respondents represented that Plot will be handover over on or before 01.08.2017 (within 3 years from the date of booking). It is pertinent to mention here that both the respondents never told that there is facing PLC on plot.
- d. That on 16.06.2015, the respondents sent an invitation letter for physical presence at a draw ceremony for the allotment of plot in



the project on 30.06.2015 at 3:00 PM(IST) at sales and marketing office, Central Park- II, Sector – 48, Sohna Road, Gurgaon.

- e. That on 13.07.2015, respondents sent a provisional allotment of plot no. D – 108 in Central Park – III, Sohna, Gurgaon, along with a demand notice for 1st Instalment and asked to pay Rs. 15,39,825/- after acknowledging the received Rs. 12,00,000/-.
- f. That on 25.07.2015, the complainant contacted respondents and asked for clarification on PLC. respondents also reiterated that there was no “PLC for facing” at the time of booking and assured that he will ask the Builder to remove this PLC. It is pertinent to mention here that the plot was allotted to the complainant through an open draw (luck by chance) and the north-facing of the plot does not attract any PLC. It is again pertinent to mention here that it was never informed by both the respondents that there is any PLC for North facing.
- g. That on 23.09.2015, respondents sent a reminder for overdue payment towards plot no. D – 108 in Central Park – III, Sohna, Gurgaon and asked for the balance payment of Rs. 15,39,825/- That on 30.11.2015, the respondents sent another demand notice on “Commencement of Levelling Work” and asked for payment of Rs. 42,31,890/-.
- h. That on receipt of the above-said demand letter, the complainant again visited the office of the respondents along with respondents and asked for the removal of PLC from the cost of the Plot or refund of paid money along with interest. The office-bearers of the respondents have assured him to take-up this issue before top management and further assured to get it to resolve as soon as possible. It is pertinent to mention here that the complainant



informed the office bearers of the respondents that he will make further payment only on condition of removal of facing PLC.

- i. That on 06.10.2016, the respondents sent a letter about the change in the numbering of the plot from Plot No. D – 108 to D-168 and asked for payment of Rs. 68,74,140/- on stage “Commencement of Plot Demarcation at Site”.
- j. That on receipt of the above-said letter also, the complainant took follow-up from the respondents and asked for a plot without the cost of PLC or refund of paid money along with interest. The respondents further assured him to get resolve the matter as soon as possible.
- k. That on 24.03.2018, the respondents sent a “Notice before cancellation of provisional allotment due to non-execution of the Buyer Agreement & non-payment of the instalments due: Mikasa Plot No. D – 168”. In the said notice, respondents alleged for failure to execute the plot buyer agreement and making the payment of Rs. 68,74,140/-. It is pertinent to mention here that the complainant never receipts a copy of the plot buyer agreement and did not sign any detailed application form. When the complainant asked for a copy of the application form, then the respondent did not provide the same.
- l. That the complainant has visited several times to the office of the respondents and met with office bearers/representative namely Amit Mishra, Sumit Tandon, Priyanka, Divya Jain, and Manish Berry, etc. on different dates, to get resolve the issue of PLC, location of plot and to get the copy of the sanctioned plan of plot no. D-108/168. But all went in vain, till the date the respondents

did not refund the paid money nor resolved the grievances of the complainant.

- m. That the main grievance of the complainant in the present complaint is that despite the complainant paid Rs. 12,00,000/- on 07.07.2014 and ready and willing to pay the remaining legitimate and mutually agreed amount (if any amount becomes due), the respondents party has miserably failed to rectify the cost of the Plot and deliver the possession of PLOT, moreover, the respondents did not refund the paid amount.
- n. That it is more than 6 years from the date of booking and even the respondents did not correct the costing of the plot nor refunding the paid money along with interest, moreover, the development of the project is yet not completed, it clearly shows the negligence towards the builder. It is highly pertinent to mention here that the respondents have delayed the project unreasonably and utilized the hard-earned money of the complainant.

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

- 4. The complainant has sought the following relief:
  - a. Direct the respondent to refund the entire amount paid by him along with prescribed rate of interest.
  - b. The respondent party may kindly be directed to pay Rs. 10,00,000/- as compensation, mental agony and harassment.

**D. Reply by the respondent**

- 5. The respondent by way of written reply made the following submissions:
  - a. That on 10.7.2014, the complainant, of his own volition and accord, signed and submitted a detailed booking form for booking of a plot in the project in question. This booking form runs into 27



pages and bears the signature of the complainant on each and every page of the said booking form. The booking form contains detailed terms and conditions in relation to the allotment of the plot in question, including the "key indicators from the terms and conditions of the plot buyer's agreement". It also contains detailed information about the payment plans as well as the approximate cost of the plot in question, which includes charges towards basic sale price ("BSP"), preferential location charges ("PLC"), EDC, IDC, interest free maintenance security deposit ("IFMSD"), club membership charges and various other charges as mentioned in the said booking form. The total sales consideration of the said plot would come out to Rs. 1,39,02,000/- excluding IBMSD and taxes, as applicable. On page 5 of this booking form, the PLC for the plot is specifically mentioned as 8% of BSP. It may be pointed out that this page, like other pages, contains the signature of the complainant. Therefore, from the very beginning, the complainant had sought allotment of a plot with PLC of 8%.

- b. As per the booking form, the complainant was liable to make timely payment of instalments, and failure to adhere to this condition would entail cancellation and forfeiture of EMD and other amounts of non-refundable nature.
- c. As per the booking form, the complainant was also liable to execute the plot buyer's agreement and failure to do so in the time provided by the respondents, would entail cancellation of allotment and forfeiture of EMD and other amounts of non-refundable nature. In this regard, reference may be had to clause 7 of the booking form. On 16.6.2015, the respondent no.1 sent an





invitation to the complainant for conducting of a draw for allotting of plots. The said draw was to be conducted on 30.6.2015.

- d. Pursuant to the aforesaid draw, the complainant was allotted a plot bearing no. D-108, with north facing PLC. This fact was duly communicated to the complainant vide respondent No.1's provisional allotment letter dated 13.7.2015. Pursuant to the allotment of the Plot No. D-108, the respondents on 13.7.2015, sent another letter to the complainant in the form of a demand notice. As per this demand notice dated 13.7.2015, an amount of Rs.15,39,825/- was due and payable by the complainant on 17.8.2015.
- e. The respondent no. 1 also sent two copies of plot buyers agreement to Mr. Mohit Malik for signing on 15.07.2015 and requested to send back the said copies within 7 days for the purpose of execution. On 6.10.2016, the respondents sent a letter to the complainant to inform him that the numbering of the plot was changed from D-108 to D-168 for the purpose of linear numbering and marking system to remain in place for facilitating the convenience to residents and guests. However, it may be pointed out that only the numbering of the plot was changed and there was no change in location or orientation of the plot. As such, the plot remained the same and only its numbering was changed.
- f. Since the complainant failed to execute the plot buyer's agreement and make any payment pursuant to the demand notices and reminder letters, the respondent no.1 was constrained to send a "Notice before Cancellation" dated 24.3.2018 as a last opportunity for the complainant to comply with his obligations. Since even the aforementioned notice before cancellation dated 24.3.2018 had

no effect on the complainant, and the complainant remained in complete and utter default of his obligations under the booking form, the respondents were constrained to cancel the allotment vide cancellation letter dated 29.5.2018.

g. All other averments made in the complaint were denied in toto.

6. 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 submission made by the parties.

**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, 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**

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 complainant.**

**F.I Direct the respondent to refund the entire amount paid by him along with prescribed rate of interest.**

11. The complainant was allotted plot bearing no. D-108, admeasuring 300 sq. yds. vide allotment letter dated 13.07.2015 for a basic sale consideration of ₹ 1,09,59,300/- and the complainant has paid a sum of ₹ 12,00,000/- till date. The complainant in its application form opted for the development linked payment plan wherein the complainant was liable to pay 25% of BSP less booking amount within 45 days of provisional allotment letter.
12. The authority draws its attention towards the demand letter dated 13.07.2015 wherein the respondent demanded ₹ 15,39,825/- which was payable on or before 17<sup>th</sup> August 2015. Whereas, as per payment plan the due date of making payment of the above amount was 28.08.2015. Although the complainant did not pay the amount due even till 28.08.2015. Further the respondent raised the second demand on 30.11.2015 of ₹ 42,31,890/- on commencement of levelling work which also remained unpaid by the complainant. Furthermore, the complainant states that the respondent vide letter dated 06.10.2016

changed the numbering of the plot from D-108 to D-168 and raised unreasonable demand of ₹ 68,74,140/- including the outstanding amount on stage "commencement of plot demarcation at site". Also, the complainant in its complaint has contended that the respondent mentioned north facing PLC in the allotment letter dated 13.07.2015 however the draws were held for the allotment and it was luck by chance that the complainant was allotted the north facing plot therefore, he is not liable for PLC.

13. At the outset, it is relevant to comment on the fact that although the respondent sent the copy of BBA for execution on 15.07.2015 but the complainant on the other hand states that he never received the copy of buyer's agreement. Moreover, even though the respondent has raised the demands well within time and it was the complainant who did not pay the outstanding amount but, it will not be correct to ignore that the respondent did not insisted or paid any heed for getting the BBA executed between the parties except in the notice before cancellation dated 24.03.2018 wherein it is stated that "*We regret to note that despite being in receipt of the copies of the plot buyer agreement for over 30 days and despite several reminders you have failed to return the same to the company after executing it*". Also, no proof of delivery is placed on record by the respondent moreover no reminder to execute the BBA is placed on record for its reliance. Thereafter, the respondent sent termination letter dated 29.05.2018 for non-payment of the outstanding dues by the complainant.
14. This act of respondent is arbitrary and unjustified as the respondent took the payment of more than 10% of the sale consideration and kept demanding more payments without first entering into the buyer's agreement which is in violation of Section 13 of the Act and the

respondent is liable for penalty under section 61 of the Act, 2016. Accordingly, the authority hereby sets aside this cancellation letter dated 29.06.2018 being invalid and the complainant is entitled for refund of the paid up amount along with interest.

15. The authority hereby directs the respondent to refund the amount paid by the complainant i.e., ₹ 12,00,000/- along with interest at the prescribed rate @ 10.75% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of payment till the date of refund of the deposited amount is made.

**F.II The respondent party may kindly be directed to pay Rs. 10,00,000/- as compensation, mental agony and harassment.**

16. The complainant in the aforesaid relief is seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021), has held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation

**G. Directions of the Authority:**

17. Hence, the Authority hereby passes this order and issue 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:



- a. The authority hereby directs the respondent to refund the amount paid by the complainant i.e., ₹ 12,00,000/- along with interest at the prescribed rate @ 10.75% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of payment till the date of refund of the deposited amount is made.
- b. 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.

18. Complaint stands disposed of.

19. File be consigned to the Registry.



*(Signature)*  
**(Sanjeev Kumar Arora)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 25.08.2023