

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

Complaint no. : 54 of 2022
Date of filing : 17.01.2022
Date of decision : 16.08.2023

Megha Rai
R/o H.No. 79, Ramme Lal Mandir, Azad Ward
Rotegaon, Narsimhapur, Satna, MP.

Complainant

Versus

M/s Sai Aaina Farms Pvt. Ltd.
302A Global Foyer, Sector 43, Gurugram

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Shri Sachin Yadav

None

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint has been filed on 17.01.2022 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 allottee as per the agreement for sale executed inter se the parties.

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:

Sr. No.	Particulars	Details
1.	Name of the project	'Mahira Homes', in village Badshahpur, Sector-68, Gurugram
2.	Registered /Non- Registered	Registered 21 of 2018 dated 02.02.2018
3.	Nature of the project	Affordable group housing project
4.	Unit no.	G-107, Tower-G (As per BBA))
5.	Unit admeasuring	Carpet Area 642.32 sq. ft. Balcony Area 99.90 sq.ft (As per BBA)
6.	Allotment letter	01.11.2018 (Annexure C-6 of the complaint)
7.	Date of building plan	23.02.2018 (As per BBA)



8.	Date of execution of builder buyer agreement	02.01.2019 (On page no. 48 of complaint)
9.	Possession clause	8.4 years from the date of approval of building plans and grant of environment clearance, whichever is later.
10.	Due date of delivery of possession	23.02.2022 (calculated from the date of building plan as environment clearances is not on record)
11.	Total sale consideration	Rs. 28,28,820/- (As per page no. 36 of complaint)
12.	Total amount paid by the complainant	Rs. 24,75,216/- (As alleged by the complainant)
13.	Cancelled unit through news paper	21.08.2021 (As per annexure C-10 of the complaint)
14.	Occupation Certificate	Not obtained
15.	Possession letter	Not offered

B. Facts of the complaint

3. That in November 2018 on impressive projections of the respondent, the complainant booked an apartment in the residential group housing project "Mahira Homes" situated within the Revenue Estate of Village Badshahpur at Sector- 68, Gurugram.



4. That at that time, the complainant paid an booking amount of Rs. 1,31,000/- vide cheque no. 000003 Dated 01.11.2018 drawn on Kotak Mahindra Bank and an amount of Rs. 1,51,877/- vide cheque no. 000002 dated 01.11.2018 drawn on Kotak Mahindra Bank and the same had been duly acknowledged by the respondent.
5. That after receiving the aforesaid amount from complainant, the respondent had allotted her a 3 BHK Apartment No. G-107, Unit Type 3 BHK Unit Type H in Tower-G at their aforesaid residential group housing project "Mahira Homes" situated within the Revenue Estate of Village Badshahpur at Sector- 68, Gurugram having the carpet area of 643 Sq. Ft. vide allotment letter dated 01.11.2018 and buyer agreement executed between the parties on 02.01.2019.
6. That after that in February 2019 as per respondent demand, complainant had also paid an amount of Rs. 7,77,931/- to the respondent vide Cheque No. 995828 Dated 15.02.2019 drawn on ICICI Bank Ltd. and the same has been duly acknowledged by the respondent vide Receipt No. 5548 Dated 19.02.2019.
7. That after that in May 2019 as per respondent's demand, complainant had also paid an amount of Rs. 2,21,996/- to the respondent vide Cheque No. 997299 Dated 17.05.2019 drawn on ICICI Bank Ltd. and the same has been duly acknowledged by the respondent vide Receipt No. 7698 Dated 30.05.2019.
8. That after that in June 2019, November 2019 and May 2020 as per various demand raised by the respondent, the complainant paid an amount of Rs. 1,08,688/- to the respondent through IMPS-IN/917416070804 Dated 23.06.2019 drawn on ICICI Bank Ltd. and the same has been duly acknowledged by the respondents vide Receipt No. 7750 Dated



23.06.2019, Rs. 3,76,520/- to the respondent vide Cheque No. 000558 Dated 08.11.2019 drawn on ICICI Bank Ltd., the same has been duly acknowledged by the respondent vide Receipt No. 14109 Dated 16.11.2019 and Rs. 3,53,602/- to the respondent through RTGS against the said demands.

9. That in the month of September 2020 as per respondent had issued a demand/tax invoice bearing No. DL-MH-2021-767 and forced to deposit an amount of Rs. 3,53,602/- but due to Covid-19 the complainant has faces financial crises in her life and failed to deposit the same and visited the office of respondent and requested them to give her some more time for depositing the same and the officials of respondent had assured the complainant that they will not take any action against the complainant if she failed to deposit the said amount to the respondent on time. But later on, in the month of March 2021, the respondent had again issued another Demand/Tax Invoice bearing No. DL-MH-2021-2185 and forced to deposit an amount of Rs. 3,53,604/- but this time also, the complainant had again failed to deposit the same within time.
10. That till date, the complainant had paid an amount of Rs. 24,75,216/- to the respondent in respect of aforesaid units/apartment and an amount of Rs. 3,53,604/- is still pending towards the complainant.
11. That in the first week of December 2021 the complainant had visited the office of respondent and asked the official of respondent to deposit the entire remaining amount in respect of her booked units. But the officials of respondent instead of depositing the same had informed that they have cancelled the booking of complainant at their own and handover a newspaper copy of dated 21.08.2021.

12. That now the complainant had ready to deposit the entire remaining amount to the respondent along with upto date penalty charges.
13. That the respondents have ignored the request of the complainant. It is pertinent to mention here that the terms of the agreement are completely one sided and favoured only the company and the same has been formulated in a way that they can take undue advantage of their dominant position at the site where the project is being developed and harass the complainant into making payments as and when demanding.

C. Relief sought by the complainant:

- a. Direct the respondent not to cancel the allotted unit or handover the possession along with prescribed rate of interest.
 - b. Litigation Cost.
14. 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 advocatesachinyadav@gmail.com and info@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:
- I. **Proceeding of the day dated 20.04.2022:** Written reply has not been filed by the respondent. The counsel for the respondent requests for an adjournment for filing of the reply as the settlement talks are in progress with the complainant and matter is likely to be settled amicably. The respondent is directed to file reply within three weeks i.e. by 12.05.2022 in the registry with a copy to the complainant, if matter is not amicably settled. Last opportunity is



being granted. In case reply is not filed within the time allowed, the defense of the respondent may struck off.

- II. **Proceeding of the day dated 03.08.2022:** Despite proper service of notice, no written reply has yet been filed. 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.
- III. **Proceeding of day dated 07.11.2022:** Despite proper service of notice, no written reply has yet been filed. Respondent is directed to file the reply within two weeks i.e., by 21.11.2022 in the registry with a copy to the complainant subject to cost of Rs. 10,000/- 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.
- IV. **Proceeding of day dated 01.03.2023:** No reply has been filed by the respondent despite imposition of cost of Rs.10,000/- on the last date of hearing. None has appeared on behalf of the respondent today. In view of the above, the defence of the respondent is struck off. The counsel for the complainant states that the subject unit was allotted on 01.11.2018 and despite making 90% payment of Rs.24,75,216/- against a total consideration of Rs.28,28,820/-, the respondent cancelled the unit of the complainant on 21.08.2021. No notice was issued to the complainant before cancellation In view of the above, unit of the complainant may be restored. Arguments heard. Order reserved.
15. 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.

16. 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 complainant.

E. Jurisdiction of the authority

17. 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

18. 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.

E.II Subject matter jurisdiction

The Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee 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.

19. 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 not to cancel the allotted unit or handover the possession along with prescribed rate of interest.

20. Some of the admitted facts of the case are that in November 2018, the complainant booked a unit under the affordable housing policy, 2013 in the project of the respondent detailed above. She is being successful was allotted unit bearing no. G-107, Tower-G admeasuring carpet area 642.32 sq. ft. and having balcony area of 99.90 feet, by the respondent for a total consideration of Rs. 28,28,820/-. It led to execution of an apartment buyer agreement dated 02.01.2019 between the parties containing various terms and conditions of allotment including dimensions of the unit, its price, due date of possession & payment plan etc. It is also not disputed that on the basis of that agreement the complainant started making various payments against the allotted unit and paid a total sum of Rs. 24,75,216/- till date and an amount of Rs. 3,53,604/- was pending towards the complainant. But a reminder was issued regarding the balance amount, the complainant failed to make payments leading to



cancellation of the unit through newspaper on 21.08.2021. Now, the issued for consideration arises as to whether direction of the respondent in cancelling the allotment of the allotted unit was made as per the provisions of the policy of 2013 or not.

21. No doubt the complainant had already paid about 95% of the sale consideration but he was also required to pay the amount due on the basis of payment plan as per the policy of 2013, the terms and conditions mentioned in the buyers' agreement. There is nothing on record which shows that respondent builder refunded the balance amount after cancellation. Though there is no pleading filed on behalf of the respondent to rebut the averments taken by the complainant in her complaint. On the basis of facts and circumstances, the cancellation is invalid in the eyes of law and respondent is directed to restore the subject unit to the complainant. It is pertinent to mention here that there is nothing on record that the respondent builder has created third party right or not, if it so, then respondent builder is directed to allot any alternative unit to the complainant.

Delay possession charges:

22. Further, the allottee intends to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Section 18(1) proviso reads as under:

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

h



23. Clause 8 of the buyer's agreement provides the time period of handing over possession and the same is reproduced below:

"8.. Possession

4 years from the date of approval of building plans and grant of environment clearance, whichever is later

24. The authority has gone through the possession clause of the agreement. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the complainant not being in default under any provision of this agreement and in compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottees that even a single default by the allottees in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning.
25. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both the builder/promoter and buyers/allottees are protected candidly. The space buyer's agreement lays down the terms that govern the sale of different kinds of properties like residential, commercials etc. between the buyer and builder. It is in the interest of both the parties to have a well-drafted flat buyer's agreement which would thereby protect the rights of both the builder and buyers in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background.



It should contain a provision with regard to stipulated time of delivery of possession of the apartment, plot or building, as the case may be and the right of the buyers/allottees in case of delay in possession of the unit.

26. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the prescribed rate of interest on the amount already paid by her. However, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

- (1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.:
Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

27. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
28. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 16.08.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.

29. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.

the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"

30. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.70% by the respondent/promoter which is the same as is being granted to him in case of delayed possession charges.

F.II Litigation cost:

31. 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. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensations

F. 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 of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent is directed to pay interest at the prescribed rate of 10.75% p.a. for every month of delay from the date of due date i.e., 23.02.2022 till offer of possession or physical handing over of possession whichever is earlier plus 2 months after obtaining occupation certificate.
- ii. The respondent is directed to adjust the amount of delay possession charges of the allotted unit and refund the remaining amount, if any.
- iii. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.75% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- iv. The arrears of such interest accrued from 23.02.2022 till the date of order by the authority shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to



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the allottee before 10th of the subsequent month as per rule 16(2) of the rules

v. The respondent-builder is directed not to charge anything which is not part of buyers' agreement.

33. The Complaint stands disposed of.

34. File be consigned to registry.


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 16.08.2023



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