

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

Complaint no. : 3980 of 2021
Date of filing complaint : 11.10.2021
Date of decision : 26.07.2023

Suraj Mal Yadav R/O: - H.No. B-200, FF, Sushant Lok-1, Near Galleria, DLF Phase-4, Gurugram, Haryana.	Complainant
Versus	
M/s St. Patricks Reality Private Limited Regd. Office at: - Asset 5B, Hospitality District, Delhi Aerocity, New Delhi-110037.	Respondent

CORAM:	
Shri Ashok Sangwan	Member
APPEARANCE:	
Sh. Sukhbir Yadav	Advocate for the complainant
Sh. Animesh Goyal	Advocate for the 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 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:

Sr. No.	Particulars	Details
1.	Name of the project	Central Park Flower Valley
2.	RERA Registration	Registered 619 of 2020
3.	DTCP License no.	54 of 2014 dated 20.06.2014 Upto 19.06.2024
4.	Unit No.	D-26, Block D (As per page no. 62 of complaint)
5.	Area	314.40 sq. mtr.
6.	Transfer of unit to plot no. D-26	20.12.2016
7.	Provisional allotment of plot no. D-26	27.12.2016 (as per page no. 24 of reply)
7.	Date of plot buyer agreement	Not executed

8.	Possession clause of application form	<p>8.1 The Company shall endeavor to handover the possession of the said Plot to the Applicant within a period of 24 (twenty four) months with a grace period of another 6 (six) months from the date of the Agreement subject to timely payment of sale price, other charges and all other payments including payment of interest by the Applicant as per Payment Plan and terms of this Agreement. In case of default in aforesaid payments by the Applicant or violation of any terms of this Agreement, the Applicant shall not be entitled to claim the possession of the said Plot as per this clause Further the handover of the possession of the said Plot in accordance of this clause shall be subject to Force Majure circumstances as defined in clause 20 of this Agreement or directions of Government/statutory authorities or any change in the laws, rules and regulations which are beyond the control of the</p>
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		Company.
9.	Due date of possession	N/A
10	Will by surrender Singh in favour of his father Suraj Mal (complainant)	26.08.2018 (Page no. 76 of complaint)
11	Total Sale Consideration	Rs. 2,06,83,625/- (page no. 88 of complaint)
12.	Amount Paid	Rs. 91,49,194/- (Page no. 88 complaint)
13.	Completion certificate	29.09.2020 (As per DTCP site)
14.	Offer of possession	23.11.2020 (Page no. 101 of complaint)
15	Notice before cancellation of provisional allotment due to non-execution of the buyer agreement and non-payment	15.04.2021 (Page no. 30 of reply)
14	Cancellation of provisional allotment	06.07.2021 (Page no. 29 of reply)

B. Facts of the complaint

- That the original allottee (Surender Yadav through his wife Rekha Yadav), booked one Plot bearing No. D - 18 in Block D admeasuring 375 sq. yd. and paid a booking amount of Rs. 15,00,000/- through RTGS and signed a pre-printed application form. The plot was purchased under the Development linked Plan for a sale consideration of Rs. 1,96,08,875/-. As per clause 8.1 of the application form the respondent has to give possession of the plot

within a period of 24 months with 6 months grace period from the date of the agreement. That the application form was made on 03.11.2016, therefore, the due date of possession was 03.11.2018 (03.05.2019 with 6 months grace period).

4. That earlier the allottee (Surender Yadav) booked Plot bearing No D-18, but the respondent for some reasons not mentioned to the allottee and asked the allottee to change the unit from D-18 To D-26 that being considering the request of the respondent the allottee agreed to change the plot and the respondent made endorsement on the application form and as well as in his records and also transferred all the funds from Plot No. D-18 to D-26 paid by the Allottee - Surender Yadav.
5. That on 06.02.2017, the original allottee sent an email to the respondent and asked to change the payment plan of the plot from DLP To PLP. Thereafter, the original allottee sent several emails to the respondent for the change of the payment plan. Thereafter on 06.07.2018 the respondent replied and stated "With reference to your email below, please be informed that basis your request for the change of payment plan vide email dated 06th February'17 from development linked plan (DLP) to possession linked plan (PLP), the same has been changed in our records. The basic sale price as per DLP was Rs. 40000/- per sq. yd. and basic sale price as per PLP was Rs. 43950/- sq. yd." The total sale consideration of plot as per development linked plan is Rs. 2,03,54,000/-.
6. That on 01.08.2018, the original allottee sent an email to the respondent and stated that due to some personal financial reasons he does not want to continue and asked to cancel the plot and refund the

paid amount as soon as possible. To which on 05.08.2018 the respondent replied and stated that "We understand the constraints that you must be facing in continuing your relationship with us, however at the same time request you kindly give us an opportunity to meet you to seek clarity regarding the way forward. This would be in our mutual best interest".

7. That on 26.08.2018, the deceased Surender Yadav duly executed a WILL in favour of his father Suraj Mal Yadav (present complainant) bequeathing all his legal rights, title, and interest in respect of residential plot D-26, Block - D, Plotted Colony, Central Park, Flower Valley, Sohna, admeasuring 314.40. Sq. mtr. in favour of his father (registered vide document No. 52 dated 30.04.2021 at the office of the Sub-Registrar, Gurugram), even otherwise it is settled law that the inheritance never remains in abeyance and as soon as the original allottee Sh. Surender Yadav expired, all his properties vested in the complainant as per the registered WILL as such the complainant being an inheritor of the property has every right to step in the shoes of the original allottee Sh. Surender Yadav.
8. That on 23.10.2018, Surender Yadav (Original Allottee) died due to some health issues and the respondent was duly informed about the death of the Allottee Surender Yadav. That after acquiring knowledge of the death of Surender Yadav the respondent asked to send a copy of surviving member certificate of Surender Yadav. The documents were duly shared with the respondent through email.
9. That as of date all the rights pertaining to the property in question have been inherited by petitioner in the strength of above said will and petitioner is fully entitled and legally competent to file and

contest the present case being the owner of the said property based on will. As the petitioner has inherited all the rights and interest in the said property based on the registered will and same has not been challenged by whosoever in any court of law. That the class - 1 legal heir of the deceased have given no claim affidavit on the said property.

10. That as per the statement of account dated 22.06.2019, the complainant/allottee has paid Rs. 91,49,194/-.
11. That on 03.11.2020, the respondent sent an email to the son of the allottee with an attached format of documents for the name deletion for the death case. It is pertinent to mention here that the complainant has submitted all documents required by the respondent and requested various times to the respondent to delete the name of Surender Yadav and substitute the name of Suraj Mal Yadav.
12. That on 23.11.2020, the respondent sent an offer of possession letter to the complainant and asked to pay Rs. 1,18,14,449/-. It is pertinent to mention here that the possession of the plot has been delayed by 18 months. It is again pertinent to mention here that even after informing the respondent various times regarding the death of Surender Yadav & and even made repeated requests for substitution of the name of Suraj Mal Yadav instead of Surender Yadav but the respondent till today failed to do the same and even sent the possession letter in name of Surender Yadav.
13. That the legal heir of the original allottee has sent several emails to the respondent on 29.12.2020, 31.12.2020, to cancel the allotment and refund the paid money. But the respondent did not pay any heed to the just and reasonable demand of the claimant.

14. That on 01.07.2021, the complainant sent another email and stated that "I would like to remind you to please initiate the transfer procedure of Plot D-26, Central Park, Flower Valley in favour of Shri Suraj Mal Yadav. As you requested, I've furnished the will of Late Sh. Surender Singh Yadav. Kindly acknowledge the same and help us through further process". Thereafter sent a reminder email on 11.07.2021.
15. That on 06.07.2021, the respondent sent cancellation of provisional allotment letter in respect of the Plot No. D-26 and cancel the allotment of the unit being allotted to the original allottee. It is pertinent to mention here that the complainant Suraj Mal Yadav (Beneficiary of the will of Surender Yadav) visited many times to the office of the respondent and asked the respondent to initiate the transfer process regarding the name substitution of Suraj Mal Yadav instead of Surender Yadav (now deceased) and also stated they are ready and willing to pay the outstanding demands raised by the respondent only after the name substitution in their records but the respondent did not paid any heed to the just and reasonable demands of the complainant and instead sent the cancellation letter to the complainant.
16. That the main grievance of the complainant in the present complaint is that despite the complainant has paid more than 44% of the actual cost of the plot and is ready and willing to pay the remaining amount (justified) (if any), the respondent arbitrarily cancelled the unit.

C. Relief sought by the complainant:

17. The complainant has sought the following relief:

- Direct the respondent to restore the cancellation unit.

- Direct the respondent to substitute the name Suraj Mal Yadav instead of Surender Yadav.

D. Reply by the respondent

The respondent by way of written reply made the following submissions.

18. That the original allottee, Mr. Surender Yadav on 31.10.2016 applied for 375 sq. yard plot under development linked plan (DLP) (Annexure-P1). Later, 30.11.2016, Mr. Surender Yadav through its dealer, informed the respondent vide email that his client intent to change its plot bearing no. D 18 to D 26. The said request was duly acknowledged by the respondent vide its email dated 20.12.2016 and plot bearing no. D 26 was provisional allotment vide letter dated 27.12.2016.
19. That the respondent on 02.02.2017 sent plot buyer agreement for execution to the original allottee, Sh. Surender Yadav via Courier requesting him to execute the plot buyer agreement. Two copies of the agreement for sale were sent to him with the request to sign and send back both within seven days for execution. However, the Sh. Surender Yadav never complied with the same and making his allotment liable for cancellation as per the terms and conditions of the application form.
20. That the company vide its letter dated 13.07.2018 again send the plot buyer agreement to Mr. Surender Yadav after considering its request to change the payment plan from development linked plan (DLP) to possession linked plan (PLP).
21. That even from the email dated 01.08.2018 (Annexure-P4) it is clear that the original allottee had cancelled its booking and was not having funds with him to make balance payment and he even did not come

forward to execute and get registered the agreement for sale, nor the legal heirs of the deceased ever came forward to make payment of the balance amount as stated above. Till 10.08.2018, the original allottee, Mr. Surender Yadav was in direct correspondence with the respondent. Thereafter, admittedly there was complete silence.

22. That thereafter in the month of October, 2020 the son of original allottee, Mr. Harsh Yadav approached the respondent office and informed to the representative of the respondent that Mr. Surender Yadav has expired and further asked the procedure for deletion and substitution of name in case of death from the respondent. The representative of respondent duly informed, the procedure to Mr. Harsh Yadav, who on 08.10.2020 sent only the legal heir certificate. Thereafter, the representative of the respondent sent the complete guideline for name deletion in case of death of allottee to Mr. Harsh Yadav vide its email dated 11.11.2020 but admittedly complete chain of documents at no point of time were submitted to the respondent by any of the legal heir of Late. Sh. Surender Yadav, so that name of Sh. Surender Yadav can be deleted from the records of the company.

23. That in between, the respondent received the completion certificate from the DGTCP, Haryana for the Plot bearing no. D-26 and since, no substitution in the name was done by the legal heirs of Late. Sh. Surender Yadav, the company representative sent the offer of possession dated 23.11.2021 vide its email dated 26.11.2020 in causal manner. But despite of all odds and repeated failure on the part of the legal heirs to get the name substituted, the legal heirs of original allottee never came forward to deposit the remaining amount due to be paid to the respondent towards remaining sale

consideration. The complainant has concealed this fact from the Ld. Authority wilfully and knowingly that a sum of Rs.1,18,14,499/- were due upon the plot in question which were required to be paid by the legal heirs of the deceased in order to show their bonafide along with the other amount of maintenance etc. as claimed in the said letter within 30 days i.e., by 23.12.2020. However, the legal heirs of the deceased never came forward to make payment of the said amount. Rather as detailed above, the son of the deceased Harsh Yadav sent an email **Annexure-P11** dated 29.11.2020 and email dated 31.12.2020 **Annexure-P12** requested for forfeiture of the plot in question and to refund the amount requesting the respondent to make the cheque in favor of his mother Rekha Yadav wife of Late Surender Singh Yadav. In view of these facts and circumstances the complainant and/or any other legal heirs of the deceased had been left with no claim upon the plot in question except to receive the amount as per the application form. It is pertinent to mention here that the complainant cannot be considered to be a legal heir of the deceased as only wife and children are the legal heirs as per **Annexure-P8** on file. Since the legal heirs of the deceased had been requesting for refund of the amount, which was earlier claimed by their predecessor, the original allottee Late Sh. Surender Yadav and on the other hand the complainant was claiming himself to be legal heir of the deceased on the basis of alleged Will registered on dated 30.04.2021, therefore in these circumstances it was not clear as to whom the deposited amount was to be refunded as per the agreement. Admittedly the plot in question was cancelled by the respondent vide letter dated 06.07.2021 (**Annexure-P14**). Even the respondent sent a notice for cancellation of the plot in

question vide letter dated 15.04.2021, apprising that the plot buyer agreement has not yet been executed and the remaining amount of Rs.1,15,82,049/- along with late payment charges have not yet been paid, further requesting to do the needful within 15 days failing which the provisional allotment shall be cancelled and the booking amount/EMD shall be forfeited without further notice. However the legal heirs of the deceased never came forward to do the needful as they had already requested for refund of the amount and the respondent had been left with no option but to cancel the allotment of the plot vide letter dated 06.07.2021 (**Annexure R-6**) and now the present false complaint has been filed as an afterthought without any basis or any cause of action for filling the same illegally and unauthorizedly claiming the plot in question. It is pertinent to mention here that the complainant has no locus standi to claim any relief from the Ld. Authority, especially the cancellation of the allotment of plot when the original allottee Sh. Surender Yadav and after his death his legal heirs have already been requesting for cancellation/forfeiture of the plot and refund of the amount.

24. That even otherwise the complainant has no locus standi or any cause of action for filling the present complaint alleging himself to be legal heir of deceased Surender Yadav on the basis of alleged Will alleged to be dated 30.04.2021 (Anneuxre-P5) as the same is totally illegal, null, void, forged and fabricated unregistered document and has been got registered much after the death of Sh. Surender Yadav only to give it a colour of genuineness. The bare perusal of the alleged Will would reveal that the alleged signatures of the deceased are forged and fabricated. Moreover, it is very unnatural that a person of the age of

52 year would execute a Will that too in favor of his father. Hence no reliance can be placed on the said Will specially when the same has not been upheld by any competent court. With due respect this Ld. Authority cannot rely upon the said Will unless the same is not upheld by the competent court of Law i.e. the Civil Court. The two cheques issued by Late Sh. Surender Yadav in favour of the respondent bearing his signatures are attached with **complaint on Page 58**. Rather the allottee as well as his legal heirs had been requesting the refund of their amount, therefore the provisional allotment was legally and validly cancelled. Hence, the complaint filed by the complainant is liable to be dismissed.

25. That since the original allottee and his legal heirs were never interested in continuing with allotment of the plot in question, therefore the respondent sold out the said plot to Mr. Rajiv and Mrs. Jyoti Gupta.

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

27. Copies of all the relevant do 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

28. 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

29. 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

30. 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.

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.

1. Direct the respondent to restore the cancelled unit.

2. Direct the respondent to substitute the name Suraj Mal Yadav instead of Surender Yadav.
31. The above mentioned two reliefs are interconnected so a combined finding is being given with this respect.
32. In the present complaint, the original allottee namely Surender Yadav since deceased was allotted initially unit no D-18, block-D in the project "Central Park Flower Valley" by the respondent-builder for a total consideration of Rs. Rs. 1,96,08,875/- under the development linked plan. But due to some issues, the respondent-builder requested the original allottee to change the unit from D-18 to D-26. Later on, unit no. D-26 was allotted to him for a total sale consideration of Rs. 2,03,54,000/-.
33. On 01.08.2018, 29.11.2020 and 31.12.2020, the original allottee and subsequently his father sent various emails to the respondent and asked to cancel the plot and refund the paid-up amount, but no fruitful result has been obtained as it told original allottee to have a meeting and advised to seek clarity.
34. Thereafter, as per documents placed on record by complainant i.e. **will** has been executed in favour of his father (Suraj Mal Yadav i.e. present complainant bequeathing all his legal rights, titles, interest in respect of residential plot D-26, block D, plotted colony.). After almost 2 months i.e., 23.10.2018, the original allottee died due to some health issues.
35. It is pertinent to mention here that in year 01.08.2018, 29.11.2020 and 31.12.2020 respectively, the original allottee and subsequently his father sent various emails to the respondent and asked to cancel

the plot and refund the paid-up amount, but respondent did not pay any heed to the complainant.

36. As per documents on the record shows that on the request of the complainant, the respondent informed the procedure of deletion the name of the original allottee to the complainant and on 08.10.2020, the complainant sent only the legal certificate, but admittedly complete chain of documents at no point of time were submitted to the respondent. Thereafter, the respondent has raised various demand letters to the complainant and gave sufficient time opportunities to the complainant to make a payment towards consideration of allotted unit and clear dues but lastly the respondent-builder cancelled the allotment vide cancellation letter dated 06.07.2021 and at present the subject unit has already been sold to a third party.
37. The authority observes that on 06.07.2021, the respondent builder has cancelled the allotted unit on account of non-payment, although cancellation made by the respondent is valid, but the complainant has been asking for refund since 01.08.2018, since then he has not withdrawn his request for refund. Keeping in view of the aforesaid circumstances and judgment of *Ireo Grace Realtech Pvt. Ltd. v/s Abhishek Khanna and Ors. Civil appeal no. 5785 of 2019 decided on 11.01.202*, it is concluded that if allottees still want to withdraw from the project, the paid-up amount shall be refunded after deduction as prescribed under the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018, which provides 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 consideration amount of the real estate i.e. apartment/plot/building as the case may be in all cases 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"

38. Thus, keeping in view the aforesaid factual and legal provisions, the respondent is directed to return the paid-up amount after deducting 10% being earnest money of the sale consideration as per allotment letter, along with interest @10.75% (MCLR+2%) from the date of surrender i.e., 01.08.2018 till its realization.

G. Directions of the Authority:

39. 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:

- i) The respondent-promoter is directed to deduct 10% of the sale consideration from the amount deposited by the complainant and return the remaining amount to the legal heirs of the deceased original allottee.
- ii) The abovementioned amount would be paid alongwith interest at the rate of 10.75% p.a. from the date of



surrender i.e., 01.08.2018 till the actual date of refund of that amount.

- iii) 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.

40. Complaint stands disposed of.

41. File be consigned to the Registry.



(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 26.07.2023

HARERA
GURUGRAM