

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

Complaint no. : 7152 of 2022
Date of filing complaint : 01.11.2022
Date of decision : 23.08.2023

Divit Wadhwa Narang R/O : - 221, Deed Plaza Complex, Opp. Civil Court, Gurugram	Complainant
Versus	
1. M/s Synergyshine Infra LLP in collaboration with Gulmohar Finance Ltd. Regd. Office at : - 1205, Emaar Palmsprings Plaza, Golf Course Road, Sector-54, Gurugram, Haryana 2. M/s Royal Greens Realiy Regd. Office at : 802, Pragati Tower, 26 Rajendra Place, New Delhi-110008	Respondents

CORAM:	
Shri Ashok Sangwan	Member
APPEARANCE:	
Sh. Sanjeev Sharma	Advocate for the complainant
Sh. Diwakar Awasthi	Advocates 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 allottee 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	"Royal Green Heights", Sector 62, Gurugram
2.	Nature of project	Affordable Group Housing Colony
3.	RERA Registered/ Not Registered	Registered
5.	Unit no.	N/A
6.	Unit measuring	N/A
7	Date of Allotment	N/A
8	Date of execution of buyer's agreement	N/A
9.	Possession clause	N/A
10.	Due date of possession	N/A

11.	Total consideration	sale	N/A
12.	Total amount paid by the complainant		Rs. 1,29,677/- (As alleged by the complainant)
13.	Occupation certificate dated		N/A
14.	Notice for Offer of possession		N/A

B. Facts of the complaint

3. The complainant is the original allottee/purchaser wherein the complainant showed the interest in purchasing the residential unit with the respondents upon which an acknowledgment cum applicant copy was issued by the respondents dated 20.04.2022 wherein the complainant paid the booking amount of Rs. 1,29,677/- vide transaction no. DP156567 and DP156920 bearing application no. 47693 in project ID 76.
4. That on June 29, 2022, the complainant requested for refund of his amount and the same was duly acknowledged by the respondents the same day. That on August 5, 2022, the respondent informed the complainant that the amount shall be refunded in 5-7 working days however, the same was not refunded, the complainant on August 11, 2022, informed the respondents that the amount has not been refunded.
5. That the complainant again sent an email on September 22, 2022 requesting the respondents to refund the amount to which the

respondents replied that the payment will be working on 7 to 10 days but since the same was not getting initiated, the complainant requested for allotment of the unit and vide email dated September 24, 2022 sent to the respondents, the complainant sought for confirmation status regarding the allotment of the unit and the complainant wrote a letter dated September 24, 2022 to the office of DTCP regarding the continuance of the allotment since the refund was not processed.

6. That on September 24, 2022, the complainant received an email from the account's office of the respondent no. 1 that the allotment of the unit already stands cancelled, and the money has been refunded in the bank account of the complainant. It is submitted that the re-instatement of the unit was to be done from the waiting list instead the respondents illegally terminated the allotment of the complainant.
7. That the complainant seeks indulgence of the Hon'ble Authority to direct the respondents to re-instate the allotment of the complainant and hand over legal, actual, physical and vacant possession of the unit along with delay possession charges by the respondents.

C. Relief sought by the complainant.

8. The complainant has sought following relief:
 - (i) Re-instate the unit of the complainant.
 - (ii) Handover the actual, legal, physical and vacant possession of the unit.
 - (iii) Interest for delay possession charges till the actual handover of the unit in question

D. Reply by the respondent.

9. That the respondent M/s. Synergyshine Infra LLP is a real estate developer involved in the development of affordable group housing, namely "Royal Green Heights", in Sector 62, Sohna Road, Gurugram, Haryana having Project-ID-76 ("the Project") in accordance with Affordable Group Housing Policy, 2013 dated 19.08.2013 amended as on date ("AHP").
10. That the second respondent named by the complainant i.e., royal green realty is the brand name of the respondent No.1. The royal green realty is not a legal entity.
11. That the complainant being interested in the project applied for the same vide application No. 47693 (3bhk Unit Type II in General Category) in accordance with the AHP depositing the Application Money of Rs.1,29,087 with the Town and Country Planning Office.
12. That as this project was launched under affordable group housing project, it is strictly governed and monitored in accordance with the AHP suitably amended from time to time. It is worth mentioning here that the process and procedure of allotment of apartments in Affordable Group Housing Project is through detailed check and balances by the State / District administrative authorities and in a very transparent manner. right from the issuance of the advertisement, scrutiny of applications, at each stage, the process is monitored by district town planner (of the office of Director Town and Country Planning Haryana) of the district concerned. The final step of draw of lots for allotment of apartments is made by the participation and in the presence of committee consisting of deputy commissioner of the

district concerned or his representative (at least HCS rank Officer), senior town planner etc.

13. That the Government of Haryana has notified comprehensive Affordable Group Housing Policy 2013 with effect from 19.08.2013 for providing affordable houses be made available for public at predefined rates within a targeted time frame.
14. That in accordance with the AHP, the office of Senior Town Planner (STP) conducts draws of lots, which by now have conducted more than 100 draw of lots of different builders. It is worth mentioning here that it is the website/ portal of the department where the entire process of application, selection, scrutiny, draw of lots etc. are done. Even the list of selected applicants is mentioned on the portal of the department including objections, shortcomings etc.
15. That in case of respondent also, the office of STP conducted draw of lots on 15.06.2022 wherein the complainant application was unsuccessful being placed under waiting list serial No. 26. 9. The complainant on being unsuccessful in draw of lots, wrote the respondent vide its email dated 29.06.2022 to initiate the refund and cancel his name from waiting list. 10. That after undertaking necessary formalities, the respondent wrote on 05.08.2022 to various unsuccessful applicant including the complainant herein that the respondent has already submitted request for processing of refund with the STP Office.
16. That the complainant kept sending the reminders for refund vide his letter dated 11.08.2022, 15.08.2022 and the respondent kept assuring that the refund is under process with the STP Office. 12. That the

respondent further submitted with STP Office the written request for refund dated 22.07.2022 with proper receiving on 24.08.2022.

17. That on 16.09.2022 the respondent again submitted the refund request with the STP Office.
18. That on 23.09.2022 the complainant wrote informing non receipt of refund and requested for confirmation for refund status. The complainant also wrote that if the money cannot be refunded then confirmation of the status of his allotted unit.
19. That the account officer of STP duly informed the complainant through email (AOSTPGGN@gmail.com) immediately, that the refund is already processed and the same upon transfer by the STP Office was deposited in the account of the complainant on 30.09.2022.
20. That the complainant acknowledging receipt of refund wrote to the respondent on 06.10.2022 seeking total amount to be paid to the respondent so that a unit can be allotted to him.
21. That the AHP allows allotment of unit only in accordance draw of lots conducted in accordance with the established procedure and since the request for refund of the complainant was duly processed, the respondent cannot accept such request from any applicant. However, the complainant is free to apply during second draw of lots after filing necessary application as and when such draw takes place.
22. That the respondent even after being very new entrant in the real estate have acted very diligently and in accordance with the AHP without causing any delay on it part while processing refund, therefore there arise no question of any interest or delayed penalty as there is no delay on the part of the respondent. That even the perusal of the

documents filed by the complainant would show that the respondent has been very prompt in responding, apprising and communicating with the complainant.

23. That the complainant has deliberately filed vague and misleading complaint before this Hon'ble Authority hiding the receipt of refund dated 30.09.2022 in the present complaint before you but have attached the proof of refund.
24. That as such none of the prayer of the complainant is maintainable and the complaint is liable to be dismissed with exemplary cost because the refund is already processed, there is no delay on the part of the respondent for interest liability and no unit can be allotted post cancellation unless the complainant participates in the second/next draw of lots in accordance with established procedures of AHP 2013.
25. All other averments made in the complaint were denied in toto.
26. 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

27. 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

28. 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

29. 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.

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.

G. Findings on the relief sought by the complainant.

G.I (i) Re-instate the unit of the complainant.

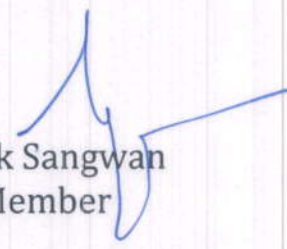
(ii) Handover the actual, legal, physical and vacant possession of the unit.

(iii) Interest for delay possession charges till the actual handover of the unit in question.

30. The above-mentioned reliefs are interconnected so a combined finding is being given with this respect.
31. On 20.04.2022, the complainant applied for a unit under the affordable housing policy, 2013 in the project namely "Royal Green Heights" sector-62, Gurugram and paid the booking amount of Rs. 1,29,677/-. On 15.06.2022, the office of STP conducted draw wherein the complainant's application was placed under waiting list serial no. 9.
32. On 29.06.2022, 22.07.2022, 11.08.2022 and 15.08.2022 respectively, the complainant kept requesting the respondent to refund the amount paid by him, cancel his name from waiting list and the respondent kept assuring the complainant that the refund is under process with the STP office.
33. on 23.09.2022, the complainant again inquired about the status of the project and requested if money cannot be refunded then confirm the status of his unit. Thereafter, the account officer of STP informed the complainant via email that refund has already been processed and on 30.09.2022, the paid-up amount has been refunded to the complainant.
34. The authority is of view that the complainant is left with no right or interest in the unit as refund has already been refunded to the complainant. As far as reinstatement of the unit is concerned, the unit cannot be reinstated as the complainant was never allotted a unit and his name was in the waiting list from where he had withdrawn himself. So, keeping in view all the facts, the complaint filed by the complainant is not admissible.

G. Directions of the authority

35. Hence, in view of the factual as well as legal positions detailed above, the complaint filed by the complainant seeking certain reliefs against the respondents is not admissible and the same is hereby ordered to be rejected.
36. Complaint stands disposed of.
37. File be consigned to registry.



Ashok Sangwan
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 23.08.2023