

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

Complaint no. :	5015/2021
Date of filing complaint:	22.12.2021
First date of hearing:	15.02.2022
Date of decision :	20.09.2023

Mr. Upender Kumar <b>Resident of:</b> House No. 1097/1, Dayanand colony, Gurugram, Haryana.	<b>Complainant</b>
Versus	
M/s Venetian LDF Projects LLP. <b>Regd. office:</b> Sector 83, Village Sihu, Gurugram-122004	<b>Respondent</b>

<b>CORAM:</b>	
Shri Ashok Sangwan	<b>Member</b>
<b>APPEARANCE:</b>	
Ms. Asha Barak Advocate	Complainant
Shri Harshit Batra 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 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 provisions 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 the project, the details of sale consideration, the amount paid by the complainant, the date of proposed handing over of the possession and the delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	"83 Avenue", Sector 83, Gurugram, Haryana
2.	Project area	2.36 acres
3.	Nature of the project	Commercial Colony
4.	DTCP license no. and validity status	12 of 2013 dated 13.03.2013 valid up to 12.03.2019
5.	Name of licensee	Dharam Singh
6.	RERA Registered/ not registered	Registered vide no. 42 of 2019 dated 16.01.2019
7.	Unit no.	G-109, Ground Floor (Page no. 38 of reply)
8.	Unit admeasuring area	424.70 sq. ft. (Page no. 39 of complaint)
9.	Date of start of construction	Not mentioned
10.	Date of execution of agreement to sell	19.08.2014 (Page no. 45 of the reply)
11.	Possession clause	<b>38 Possession</b> The developer based on its present plans and estimates, contemplates an





		offer of possession of said unit to the allottee within 36 months from signing of the agreement or within 36 months from the start of construction of the building, whichever is later. (Page 47 of the complaint).
12.	Due date of possession	19.11.2017 (Calculated from the date of signing of this agreement, it being later)
13.	Total sale consideration	Rs.59,50,047/- (As per on page 38 of the complaint)
14.	Amount paid by the complainants	Rs. 19,58,169/- (Page no. 110 of reply)
15.	Occupation certificate /Completion certificate	Not received.
16.	Offer of possession	Not offered
17.	Grace period	allowed
18.	Reminder letter	12.08.2014,24.09.2014,10.10.2014, 13.10.2015,16.11.2015,29.12.2015, 16.01.2016,23.02.2016,03.03.2016
19.	Cancellation letter	03.03.2021 (As per on page 109 of reply)
20.	Final notice	11.03.2021 (As per on page 108 of the reply)



**B. Facts of the complaint:**

3. In 2013, the respondent through its marketing executives approached the complainant with an offer to invest and buy a commercial unit in the proposed project of the respondent namely "83 AVENUE" at Sector-83, Village Sihi, Gurugram.
4. The respondent further assured the complainant that it had already secured all the necessary sanctions and approvals from the concerned authorities to develop and complete the said project on time. The respondent assured that the allotment letter and Builder Buyer Agreement for the said project would be issued to the complainant within one week of the booking made by the complainant.
5. Relying upon these assurances, the complainant booked a commercial unit bearing No. G-105, measuring an area of 424.700 sq. ft. on the ground floor of 83 Avenue, in Sector-83 by paying the amount of Rs.5,50,000/-
6. The respondent vide letter dated 10.12.2013 allotted the said unit to the complainant, whereby it was informed by the respondent that the sale consideration of the commercial unit is Rs.58,50,242/-. Later on, the respondent issued another allotment letter dated 08.01.2014, vide which the respondent increased the total sale consideration at the rate of Rs.59,50,047/-.
7. That the respondent issued a letter vide Ref. No.000059 dated 05.05.2014, whereby it was intimated to the complainant that the unit of the complainant has been changed to G-109 from G-105, and the complainant was directed to treat the letter dated 05.05.2014 as confirmation of the new unit number with all other terms and conditions of the application unchanged. That, in wake of the said letter dated 05.05.2014, the respondent issued another



allotment letter dated 01.06.2014 to the complainant, whereby it allotted the commercial unit No. G-109, on the ground floor, super built-up area 424.700 sq. ft. in 83 Avenue, Sector-83, Gurugram.

8. The space buyer's agreement was executed on 08.05.2014. Thereafter, the respondent started raising the demand of money from the complainant as per the agreed timelines, and the complainant as of today had paid a total amount of Rs.18,21,693/-. That the complainant is still ready and willing to pay the remaining sale consideration to the respondent subject to the timely handing over of the unit.
9. That the respondent was required to hand over the possession of the said unit to the complainant within 36 (Thirty-Six) months with a grace period of 3 (three) months from the date of agreement. The date of possession was August 2016. The respondent has failed utterly in delivering the possession of the said Unit to the complainant.
10. That, when the respondent miserably failed in handing over the possession of the said unit, the complainant served a legal notice dated 06.07.2020 via speed post to the respondent, vide which the respondent was called upon to handover the possession of the said unit within 30 days from the receipt of legal notice. Neither the respondent had yet offered possession to the complainant nor had any reply given.
11. From the date of booking till today, the respondent had raised various demands for the payment of installments on the complainant towards the sale consideration of the said unit, and the complainant has duly paid and satisfied all those demands without any default or delay on their part but the respondent having fraudulent intention never started construction of the project on earth as agreed by it and sold the said unit to the complainant by



misrepresentation as the respondent never had any intention to construct any such project as promised by it to the complainant.

12. The complainant requested the respondent to deliver the said unit citing the extreme financial and mental pressure he was going through, but the respondent left him with the suffering and pain on account of its default and negligence.

13. The respondent committed a grave deficiency in services by not delivering the possession of the unit, which is still not near completion. On top of that the respondent has charged a heavy rate of interest on delayed payment, which is at the rate of 18 percent per annum but miserably failed to perform its part of the agreement.

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

14. The complainant has sought the following relief(s):

- i. Direct the respondent to hand over the possession of the said unit to the complainant.
- ii. Direct the respondent to pay the interest at the prescribed rate of 18% per annum on the amount of Rs.18,21,693/- paid by the complainant to the respondent against the sale consideration.
- iii. Direct the respondent to pay an amount of Rs. 55,000/- to the complainant as the cost of the present litigation.

**D. Reply by the respondent**

15. Around November 2013, the complainant herein, learned about the project launched by the respondent titled '83 Avenue' situated at Sector 83, Village Sihi, Gurgaon, and approached the respondent repeatedly to know the details of the project.



16. The complainant desired to book a unit and applied for the same vide an Application Form. The complainant was aware of every term of the aforesaid application and only after being fully satisfied agreed to sign without any protest any demur.
17. Clause 7 of the Application form specifically sets out that the unit being allotted to the complainant is tentative and subject to change at any time before the execution of the sale deed.
18. On 08.01.2014, the respondent issued an allotment letter in favor of the complainant whereby the complainant was tentatively allotted a unit bearing No. G-105 in the project. That thereafter, the provisional unit allotted to the complainant was revised from G-105 to G-109 vide letter dt. 05.05.2014 and the respondent requested the complainant to give their confirmation by signing the said letter if they are willing to accept the unit bearing G-109. The complainant again provided his assent by signing the said letter. It needs to be categorically noted that the complainant willingly, voluntarily, and on his own accord and with free will accepted the revised unit. After having received such acceptance from the complainant, the respondent sent an allotment letter for G-109 admeasuring 424.700 super area on 01.06.2014, which was duly accepted by the complainant, who, upon his unequivocal acceptance, signed the same.
19. Thereafter, a space buyer's agreement was executed between the complainant and the respondent on 19.08.2014. As per the agreement, the sale price of the said unit is Rs. 59,50,047/-.



20. As per clause 38 of the agreement, the estimated and contemplated due date of the offer of possession was 36 months after the signing of this agreement (19.08.2014) or within 36 months from the date of start of construction of the said Building (13.12.2013) whichever is later with a grace period of 3 months. Accordingly, the proposed and estimated date comes out to be 19.11.2017 as per clause 38 of the Agreement. However, the same was not absolute and was subject to force majeure events, governmental action/inaction, and reasons beyond the control of the developer.
21. The respondent was adversely affected by various construction bans, lack of availability of building materials and laborers, regulation of the construction and development activities by the judicial authorities including NGT in NCR on account of the environmental conditions, restrictions on usage of groundwater by the High Court of Punjab & Haryana, HC, demonetization, adverse effects of covid, etc. and other force majeure circumstances.
22. It must be noted that it was the obligation of the complainant to make due payments against the unit, under the agreement and the RERA Act, 2016 as well, however, the complainant miserably failed to comply with his obligations. In the aforesaid application form, the complainant has agreed to make the payment towards the total sale consideration of the said unit timely failing which, the respondent, at its sole discretion, may cancel the allotment made to the complainant.
23. The respondent was committed to completing the project and has always tried its level best to adhere to the terms as provided in the agreement and



complete the project as per the milestone. However, due to the default on the part of the complainant and other analogous allottees of the Project, the respondent has faced various roadblocks in the smooth execution of the project in question.

24. As per clause 5 read with clauses 22, 23, and 24 of the said agreement, the complainant undertook to pay the instalments as per the agreed payment schedule failing which the respondent shall be entitled to forfeit the earnest money together with the interest on delayed payments, etc
25. As per clause 23 of the Agreement, on default on the part of the complainant in adhering to the terms of the payment schedule, the respondent shall be entitled to the forfeiture of the earnest money together with interest on delayed payment and any other amount of non-refundable nature including but not confined to brokerage paid.
26. That the complainant being a habitual defaulter in terms of payment has failed to adhere to the payment plan and also violated the terms and conditions embodied under Clause 24 of the agreement which states that timely payment is the essence of this agreement.
27. The respondent has in various instances from 2013-2021, issued many reminders to the complainant, however, he failed to make the requisite payment and accordingly, the unit of the complainant was terminated.
28. That on not receiving the outstanding instalments and being left with no alternative, the respondent on 03.03.2021 was constrained to cancel the unit



bearing number G-109 allotted to the complainant and forfeited the earnest money together with interest on delayed payment and any other amount of non-refundable nature as per the agreement. Upon cancellation of the said unit, the complainant is left with no rights over the unit bearing No. G-109.

List of reminders are listed below:

S. NO.	PARTICULAR	DATE
<b>2013</b>		
1.	Intimation of instalment	11.12.2013
<b>2014</b>		
2.	Intimation of instalment	08.01.2014
3.	Reminder 1	03.02.2014
4.	Reminder 2	17.02.2014
5.	Reminder 3	04.03.2014
6.	Intimation of instalment	10.07.2014
7.	Reminder 1	12.08.2014
8.	Reminder 2	24.09.2014
9.	Reminder 3	10.10.2014
<b>2015</b>		
10.	Intimation of instalment	13.10.2015
11.	Reminder 1	16.11.2015
12.	Reminder 3	29.12.2015
<b>2016</b>		
13.	Intimation of instalment	16.01.2016
14.	Reminder 1	23.02.2016
15.	Reminder 2	03.03.2016
16.	Reminder 3	15.03.2016
17.	Intimation of instalment	07.04.2016
18.	Reminder 1	10.05.2016
19.	Reminder 2	20.05.2016
20.	Reminder 3	15.06.2016
21.	Final Reminder	26.08.2016
22.	Final Notice	14.09.2016
<b>2021</b>		
23.	Final Notice	11.03.2021
24.	Cancellation notice	03.03.2021



29. The complainant failed to make payments after February 2015 and has paid only Rs. 19,58,169 till date.

**E. Jurisdiction of the authority:**

30. The plea of the respondent regarding the rejection of the complaint on grounds of jurisdiction stands rejected. The authority observes that it has territorial and 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.

31. 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.

**F. Findings on the relief sought by the complainant:**

**F.I Direct the respondent to hand over the possession of the said unit to the complainant.**

**F.II Direct the respondent to pay the interest at the prescribed rate of 18% per annum on the amount paid by the complainant to the respondent against the sale consideration.**

32. The complainant booked a unit in the project named "83 Avenue" in 2014. Thereafter, on 19.08.2014, an agreement was executed between the parties. 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 cancellation letter dated 03.03.2021 is infructuous as the final notice for payment was made on 11.03.2021, thus vitiating the cancelation letter dated 03.03.2021.

33. 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 February 2015. It has placed on record various demand/reminder letters. After the issuance of these reminders, a cancellation letter was issued on 03.03.2021 and thereafter a final notice was given on 11.03.2021 in which the complainant was given the last opportunity to pay the outstanding amount, furthermore, it was stated that if the amount is not paid by 26/03/2021, the allotted unit shall stand canceled without any further notice.

34. On consideration of documents available on record and submissions by both parties, the authority is of the view that the complainant had paid Rs. 19,58,169/- against the total sale consideration of Rs. 59,50,047/-. The respondent/builder sent a number of demand letters and reminder letters before issuing a cancellation letter dated 11.03.2021. The Authority is of the view that the letter dated 11.03.2021 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 by 26/03/2021, the unit shall be deemed to be canceled. The relevant para of the letter dated 11.03.2021 is produced below:

*"We wish to inform you that as per the payment plan opted by you the total Outstanding of Rs. 31,87,441/- (Rupees: Thirty-One Lakhs Eighty Seven Thousand Four Hundred Forty-One Only.)*

*A final opportunity is hereby given to you with the request to kindly remit the said outstanding along with the late payment interest due latest by 26/03/2021. Please note that in case of non-receipt of the outstanding dues within the aforesaid period. We shall presume that you are no more interested in continuation of the booking and the said allotment shall be cancelled by the company without any further notice and the amount deposited by you will be refunded within 90 days,*



*without any interest and after deduction of earnest money as per clause 8 & 9 of the application for registration of provisional allotment of the said booking and allotment of the said unit."*

35. Therefore, in the context of the aforesaid provisions, the cancellation is held valid and the complainant is not entitled for DPC and possession. Furthermore, as per clause 23 of the agreement between the parties, the earnest money shall be 10% of the basic sale price and it shall be liable to be forfeited in case the allottee fails to fulfill his obligations under the agreement. Clause 24 of the said agreement states that on failure of the allottee to make timely payments, the entire earnest money shall be forfeited. The aforesaid clauses are produced below:

*"23. The "DEVELOPER/LLP" and the Allottee hereby agree that the amounts paid on booking/on allotment and/or in installments as the case may be, to the extent of 10% of the Basic Sale Price of the said unit will collectively constitute the earnest money. Non fulfillment of any of the terms and conditions of the sale and those of the agreement as also in the event of failure to sign this agreement by Allottee within the time allowed, may entail the forfeiture of the earnest money together with interest on delayed payments and any other amount of non-refundable nature including but not confined to brokerage paid by the "DEVELOPER/LLP"."*

*"24. That the timely payment of the installment and other charges as stated in schedule of payment (Annexure-III) is the essence of this Agreement. It shall be incumbent on the Allottee to comply with the terms of payment and/or other terms and conditions of this Agreement failing which he/she shall forfeit to the "DEVELOPER/LLP" the earnest money together with interest on delayed payments and any other amount of non-refundable nature including but not confined to brokerage paid by the "DEVELOPER/LLP" and the allotment/this Agreement shall stand cancelled and the Allottee shall be left with no lien, right, title, interest or any claim of whatsoever nature in the said Unit along with parking space(s). The "DEVELOPER/LLP" shall thereafter be free to resell and/or deal with the said Unit in any manner whatsoever at its sole discretion. The amount(s) if any, paid*





over and above the earnest money would be refunded to the Allottee by the "DEVELOPER/LLP" after making deductions referred to above and only when such amounts are realised by the developer/LLP from another prospective purchaser on resale of the unit but without any interest or compensation of whatsoever nature. The "DEVELOPER/LLP" shall have the first lien and charge on the said Unit (s) for all its dues payable by the Allottee to the "DEVELOPER/LLP".

36. 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."*

37. 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., 11.03.2021 up to the date of actual realization.

38. Therefore, in the instant case, instead of a delayed possession charge, the complainant is entitled to receive a refund after permissible deductions.

**F.III Direct the respondent to pay an amount of Rs. 55,000/- to the complainant as the cost of the present litigation.**

39. The complainant are also seeking relief w.r.t litigation expenses. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.* (supra), has held that an allottee is entitled to claim compensation & litigation charges 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 & litigation expense 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 & legal expenses. Therefore, the complainants are



advised to approach the adjudicating officer for seeking the relief of litigation expenses.

**G. Directions issued by the Authority:**

40. 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 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.19,58,169/- after deducting 10% of the basic sale price of Rs. 46,71,700/- being earnest money along with an interest @10.75% p.a. on the refundable amount from the date of cancellation of unit (i.e. 26.03.2021) till the date of realization of payment.
  - ii. A period of 90 days is given to the respondent to comply with the directions given in this order failing which legal consequences would follow.
41. Complaint stands disposed of.
42. File be consigned to the Registry.

  
**Ashok Sangwan**  
(Member)

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 20.09.2023