

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

Complaint no. : 7316 of 2022
Complaint filed on : 24.11.2022
Date of decision : 07.02.2024

QVC Realty Developers Limited.

Regd. office at: 619, Aceron Tervezo,
First Floor, 6th B Main, Indiranagar 2nd Stage,
Bangalore-560038.

Also at: 1st Floor, Ocus Technopolis, Tower-B,
Golf Course Road, Sector-54, Gurugram,
Haryana-122002.

Complainant

Versus

Mariyama Alexender, W/o Late Victor Alexander
R/o: F-1/15, DLF Phase-I, Gurugram, Haryana.

Respondent

CORAM:

Ashok Sangwan

Member

APPEARANCE

Deeptanshu Jain (Advocate)

Complainant

Anil Parkash Gupta (Advocate)

Respondent

ORDER

1. The present complaint has been filed by the complainant/promoter 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 19(10) of the Act wherein it is inter alia prescribed that the allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the



occupancy certificate issued for the said unit. Also, the obligation of allottee to make necessary payments in the manner and within time as specified in the agreement for sale under section 19(6) and to pay interest, at such rate as may be prescribed, for any delay in payments as per section 19(7) of the Act.

A. Project and unit related details

2. The particulars of the project, the details of sale consideration, the amount paid by the respondent, 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	"Gurgaon 99", Sector-99, Gurgaon
2.	Project type	Residential
3.	DTCP license	License No. 173 of 2008 dated 27.08.2008, Valid upto 26.09.2025
4.	Name of Licensee	Moonlight Buildwell Pvt. Ltd. & 19 Ors.
4.	RERA Registered/ not registered	Not registered
5.	Date of allotment	20.11.2014 (As per annexure-E on page 44 of complaint)
6.	Unit no.	113 (As per annexure-E on page 44 of complaint)
7.	Unit area admeasuring	479.27 sq yds. (As per annexure-E on page 44 of complaint)
8.	Possession clause	Clause 15 <i>The Company shall endeavor to give possession of the PLOT to the Applicant within 24 months from the date of execution of the plot buyer agreement (with a reasonable extension of 6 months), subject to force majeure</i>

		<i>circumstances and reasons beyond the control of the Company.</i> (As per page 54 of complaint)
9.	Plot buyer's agreement executed	Not on record
10.	Due date of possession	20.11.2017 (calculated from the date of allotment) [Calculated as per <i>Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018</i>]
11.	Total sale consideration	Rs.3,38,95,850/- (As per page 63 of complaint)
12.	Amount paid by the respondent	Rs.99,05,661/- (as per cancellation letter dated 29.08.2018 on page 70 of complaint)
13.	Completion/ Part Completion certificate obtained on	19.08.2014 (as per page no. 5 of additional documents placed on record by the respondent dated 31.01.2024)
14.	Notice for possession	18.06.2015 (page 66 of complaint)
15.	Cancellation letter	29.08.2018 (As on page 69 of complaint)
16.	Withdrawal/Refund request on behalf of respondent	06.10.2018 (page 71 of complaint)
17.	Demand w.r.t. monthly maintenance charge	22.01.2021 (page 81 of complaint)
18.	Final notice published in newspaper giving final opportunity to the respondent to clear dues	18.04.2022 (As on page 82 of complaint)

B. Facts of the complaint

3. The complainant/promoter has made following submissions in the complaint:

- I. That the complainant company vide provisional allotment letter dated 20.11.2014 allotted a plot bearing no. 113 admeasuring 479.27 sq. yds. in favour of the respondent-allottee for a basic sale price of Rs.2,79,51,026/-. Thereafter, a plot buyer's agreement dated 17.12.2014 was executed between the parties towards the said allotment.
- II. That the complainant company issued a payment request letter dated 03.06.2015 for payment of instalment against the sale consideration amounting to Rs.60,00,000/- to the allottee for payment of such instalment with due date as 30.06.2015.
- III. That after completing all the construction, notice of possession dated 18.06.2015 was issued to the allottee to take possession of the plot after clearing all the outstanding dues as per agreed payment schedule. However, the allottee has neither paid the instalment nor intimated regarding the possession of the plot. Subsequently as a reminder, the complainant company issued payment request letter dated 01.12.2015 for an amount of Rs.60,00,000/- to the allottee for payment of instalment with due date as 31.12.2015.
- IV. That as the allottee failed to make the payment of the outstanding instalments, the complainant company was constrained to issue the cancellation of booking letter dated 25.05.2016 to the allottee thereby intimating the allottee regarding the cancellation of booking of plot, forfeiture of earnest money. The letter further stated that after deduction of Rs.55,90,205/- on account of earnest money as per clause 11 of the agreement from the total amount deposited by the allottee of Rs.99,04.137/-, a credit balance of Rs.43,13,392/- was to be

refunded by the complainant company within a period of thirty days of resale of the plot as per the terms of the agreement.

- V. That the complainant company issued notice for cancellation of allotment of plot dated 29.08.2018 to the allottee thereby intimating the allottee that since the outstanding dues till date have not been cleared within the stipulated time even after sending several letters and reminders, as per the terms of the agreement, the booking and allotment of the plot stands cancelled and all rights of the allottee stand relinquished. Nevertheless, since the instalments paid by the allottee were delayed and the other instalments were outstanding, notice was sent to the allottee via speed post on 26.09.2018.
- VI. That in response to the aforesaid notice, the allottee sent a reply dated 06.10.2018 wherein the allottee denying to make the payment, made a vague and baseless allegation upon the complainant company that she has no obligation to pay any amount towards the booking of allotment of plot, rather on the contrary, an amount of Rs.1,65,91,982/- stands outstanding on account of deposit made by the her qua the allotment of plot and interest thereon @18% p.a. payable by the complainant company. Thereafter, the complainant company duly reverted back to the reply dated 06.10.2018 of the allottee vide its reply dated 21.12.2018 wherein it stated that the cancellation of allotment of plot was a matter of consequence of extraordinary delay in payment of instalments and failure to take possession of the plot by the allottee. However, the letter could not be delivered and the same was returned back on 25.12.2018 for reasons stated as "shifted".

- VII. That the complainant company sent an email dated 22.01.2021 to the allottee wherein it was intimated to the allottee regarding charging and payment of monthly maintenance for the plot along with attached monthly maintenance letters.
- VIII. That upon observation of highly deplorable conduct of the allottee, as the allottee was not making the payment of outstanding dues and not taking the possession of the plot, the complainant company was left with no choice but to issue final notice dated 18.04.2022 which was published in the newspaper giving a final opportunity to the allottee to clear the dues within 15 days of the said notice, failing which the allotment of the plot shall be deemed cancelled.
- IX. That the complainant company has completed the construction of the project diligently and timely. The plot was completed in all respect in accordance with the approved plans and the plot was in a habitable and liveable condition. However, the allottee did not pay any heed to the requests of the complainant company.
- X. That the complainant company is entitled to file the present complaint under Section 19 of the Act which provides for the rights and duties of the allottee, read with Section 31 and 71 of the Act.
- XI. That the complainant company is also equally entitled to the interest on the payments due, which were delayed by the allottee as per the provisions of the Act, 2016.
- XII. That in view of the above facts and reasons, the complainant is left with no option other than to approach this Authority seeking suitable direction/order.

C. Relief sought by the complainant/promoter

4. The complainant has filed the present complaint for seeking following reliefs:
- i. Direct the respondent to take possession of the unit from the complainant after completion of all formalities by the allottee including payment of all the outstanding dues.
 - ii. Direct the respondents to pay the balance sale consideration and delay interest as per Section 19 of the Act.
 - iii. Direct the respondents to pay holding charges as per the terms and conditions of the unit buyer's agreement.
5. On the date of hearing, the authority explained to the respondent/allottee about the contravention as alleged to have been committed in relation to section 19(6), (7) & (10) of the Act to plead guilty or not to plead guilty.

D. Reply by respondent/allottee:

6. The respondent vide reply dated 17.10.2023 contested the complaint on the following grounds:
- i. That the respondent was allotted a residential plot bearing no. 113 in the project "G99" at Sector-99, Gurugram and had made a payment of Rs.99,05,661/- towards the said allotment in all.
 - ii. That the complainant prior to approaching the respondent, had illegally threatened the respondent to cancel the allotment of the plot and even proceed to publication in the newspaper despite the fact that the complainant had already asked for refund of her amount with interest.
 - iii. That earlier also a notice dated 29.08.2018 was illegally sent by the complainant regarding cancellation of allotment of the plot to the

respondent as the complainant had not followed the conditions mentioned in clause no.11 of the plot buyer's agreement dated 17.12.2014.

- iv. That the complainant company cannot sell or offer for sale and receive money in respect of the said sale or offer for sale of the plot in the project unless the real estate project registered with the Authority. In these circumstances, the complainant company is not entitled to receive the balance instalment of the sale price of the plot from the respondent without getting the project registered with the Authority and without obtaining completion certificate for the project/colony.
- v. That cancellation notice dated 29.08.2018 or any other notice/cancellation letter stand automatically withdrawn/deemed to be withdrawn by virtue of the publication dated 18.04.2022, whereby the complainant has given 15 days time to clear alleged outstanding dues.
- vi. That the complainant has filed the present complaint only after when the respondent vide legal notice dated 06.10.2018 & 29.04.2022 asked for refund of the amount with interest.
- vii. That the complainant has not obtained the occupation certificate in respect of residential project till today and has obtained completion certificate in respect of only commercial site measuring 4.14 acres falling in residential plotted colony.
- viii. That as the complainant fails to register the project under the provisions of the Act, 2016 and not having obtained completion certificate of the colony from the statutory authority(ies), the respondent exercised her right as per Section 18 of the Act, 2016 seeking return/refund of the amount along with compensation vide

reply dated 06.10.2018. Hence the present complaint is not maintainable.

- ix. That in view of above stated submissions, the present complaint may kindly be dismissed and the complainant be directed to refund the amount paid alongwith interest till actual realization.
7. Copies of all the documents have been filed and placed on record. The authenticity is not in dispute. Hence, the complaint can be decided on the basis of theses undisputed documents.

D. Jurisdiction of the authority

8. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D.I Territorial jurisdiction

9. 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 completed territorial jurisdiction to deal with the present complaint.

D.II Subject matter jurisdiction

10. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act and duties of the allottee as per section 19 of the Act leaving aside compensation, which is to be decided by the adjudicating officer, if pursued by the parties at a later stage.

E. Finding on the relief sought by the complainant/promoter

11. The complainant has sought the following reliefs:

- i. **Direct the respondent to take possession of the unit from the complainant after completion of all formalities by the allottee including payment of all the outstanding dues.**
- ii. **Direct the respondents to pay the balance sale consideration and delay interest as per Section 19 of the Act.**
- iii. **Direct the respondents to pay holding charges as per the terms and conditions of the unit buyer's agreement.**

12. Due date of possession and admissibility of grace period: As per the documents available on record, no BBA has been executed between the parties and the due date of possession cannot be ascertained. A considerate view has already been taken by the Hon'ble Supreme Court in the cases where due date of possession cannot be ascertained then a reasonable time period of 3 years has to be taken into consideration. It was held in matter *Fortune Infrastructure v. Trevor d' lima (2018) 5 SCC 442 : (2018) 3 SCC (civ) 1* and then was reiterated in *Pioneer Urban land & Infrastructure Ltd. V. Govindan Raghavan (2019) SC 725 -:*

"Moreover, a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract i.e., the possession was required to be given by last quarter of 2014. Further there is no dispute as to the fact that until now there is no redevelopment of the property. Hence, in view of the above discussion, which draw us to an irresistible conclusion that there is deficiency of service on the part of the appellants and accordingly the issue is answered."

13. Accordingly, the due date of possession is calculated as 3 years from the date of allotment. Therefore, the due date of handing over of the possession for the space/unit comes out to be 20.11.2017.

14. On perusal of documents on record, it is observed that the completion certificate/part completion certificate of the said project was granted by the competent authority on 19.08.2014 and the complainant has offered possession of the subject unit to the respondents-allottees on 18.06.2015. However, the respondent-allottee has failed to abide by the terms and conditions of the allotment by not making the payments in timely manner as per the payment plan opted by her and by not taking the possession of the unit in question as per the terms and conditions mentioned therein. Further, despite repeated follow-ups by the promoter and having performed its contractual obligations, the respondent-allottee withheld to perform her contractual obligation. The respondent-allottee has failed to make the requisite payment as per the provision of section 19(6) of the Act and as per section 19(7) of the Act to pay the interest at such rate as may be prescribed for any delay in payments towards any amount or charges to be paid under sub-section (6). Proviso to section 19(6) and 19(7) reads as under:

"Section 19: - Right and duties of allottees. -

.....

*(6) every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13[1], shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, **maintenance charges**, ground rent, and other charges, if any.*

(7) the allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6).

15. As per clause 3 of the application form annexed with the complaint, the respondent-allottee is also contractually liable to pay the instalment as per payment plan opted by her. Clause 3 of the application form is reproduced as under:

3. "Timely payment of installments of basic sale price and all other charges pertaining to the PLOT is the essence of the terms of the booking/allotment. However in the event of breach of any of the terms and conditions of the allotment by the Applicant, the allotment will be cancelled at the discretion of the Company and the earnest money together with any interest on installments due but unpaid, interest on delayed payments and all other administrative expenses shall stand forfeited. The balance amount shall be refundable to the Applicant without any interest, after the PLOT is allotted to some other intending allottee and after compliance of certain formalities by the allottee. The Company in its absolute discretion may condone the delay by charging penal interest @ 18% p.a. for upto one month delay from the due date of payment and @ 24% p.a. thereafter on all outstanding dues from their respective due dates. Upon cancellation of the allotment, the Applicant shall be left with no rights and/ or claims against the PLOT and/or the Company in any manner whatsoever".

16. The authority observed that the possession of the plot was offered to the respondent-allottee on 18.06.2015 and despite repeated reminders to the respondent-allottee, she is not coming forward to clear the outstanding dues and to execute conveyance deed. Section 19(6) & 19(7) of the Act provides that every allottee shall be responsible to make necessary payments as per agreement for sale along with prescribed interest on outstanding payments from the allottee and to take physical possession of the apartment as per section 19(10) of the Act.
17. However, the counsel for the respondent-allottee stated that the respondent is no longer interested in remaining with the project and has already requested for refund of the amount deposited vide letter dated 06.10.2018 (Annexure-N of complaint), but the same has not been refunded till date and now she cannot be forced to take possession and prayed before this Authority to refund the amount paid along with interest.
18. As far as contention of the complainant regarding obligation of the respondent-allottee to take possession is concerned, the authority is of

the view that no one can be forced to purchase a plot as she has already surrendered the plot vide letter dated 06.10.2018, but the same was surrendered after receipt of offer of possession dated 18.06.2015 from the complainant, which will amount to the breach of the contract on her part. Accordingly, the complainant is entitled to forfeit 10% the basic sale consideration as laid by the Hon'ble Appellate Tribunal in appeal no. **255 of 2019** titled as **Ravinder Pal Singh V/s Emaar MGF Land Ltd. & anr.:**

"32. However, nobody can be forced or compelled to purchase the house, but as the appellant himself is at default in making the payment as per the payment schedule and if he still intends to withdraw from the project out of his own which will amount to the breach of the contract on his part, in that eventuality he will be entitled for refund of the amount paid by him after forfeiting 10% of the basic sale consideration, which will be considered to be the reasonable earnest money amount and after deducting the statutory dues already deposited with the government"

19. Keeping in view the aforesaid circumstances, that the complainant-promoter has already offered the possession of the allotted plot to the respondent-allottee after obtaining completion certificate/part completion certificate from the competent authority. The complainant-promoter is entitled to forfeit earnest money as prescribed under the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 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

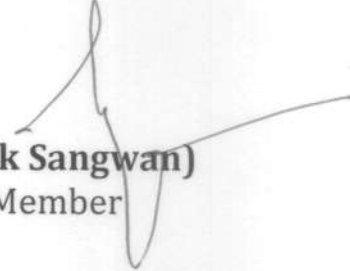
more than 10% of the consideration amount of the real estate i.e. apartment /plot /building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."

20. Thus, keeping in view the aforesaid legal provisions and orders passed by the Appellate Tribunal mentioned above, the complainant-promoter is directed to refund the deposited amount of Rs.99,05,661/- after deducting 10% of the basic sale consideration i.e., 2,79,51,026/- being earnest money along with an interest @10.85% (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 on the refundable amount, from the surrender i.e., 06.10.2018 till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

F. Directions of the authority:

21. 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) of the Act:
- i. The complainant-promoter is directed to refund the deposited amount of Rs.99,05,661/- after deducting 10% of the basic sale consideration i.e., 2,79,51,026/- being earnest money along with an interest @10.85% on the refundable amount, from the surrender i.e., 06.10.2018 till the date of realization of payment.
 - ii. A period of 90 days is given to the complainant-promoter to comply with the directions given in this order and failing which legal consequences would follow.

22. Complaint stands disposed of.
23. File be consigned to registry.


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 07.02.2024



HARERA
GURUGRAM