



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

Complaint no.	9 of 2023
Date of complaint	11.01.2023
First date of hearing	05.07.2023
Date of decision	08.11.2023

Alisha Gogna R/O: Flat no. B 1101, Aviation Heights, Sector- 52, Gurugram-122011, Haryana.	<b>Complainant</b>
Versus	
SS Group Pvt. Ltd. <b>Registered address at</b> Plot No. 77, SS House, Sector-44, Gurgaon, Haryana-122003.	<b>Respondent</b>

<b>CORAM:</b>	
Shri Ashok Sangwan	<b>Member</b>
<b>APPEARANCE:</b>	
Complainant in person	Complainant
Mr. Rahul Bhardwaj 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 29 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 the project, the details of sale consideration, the amount paid by the complainants, the date of proposed handing over of the possession, and the delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name and location of the project	"The Leaf", Sector -85, Gurugram
2.	Nature of the project	Group Housing Complex
3.	Project area	11.093 acre
4.	DTCP license no.	81 of 2011 dated 16.09.2011 Valid upto 15.09.2024
5.	Name of licensee	Shiva Profins Pvt Ltd
6.	RERA Registered/ not registered	RERA registered 23 of 2019 dated 01.05.2019
7.	Unit no.	T1 8C (Page no. 18 of Reply)
8.	Unit area admeasuring (super area)	1640 Sq Ft. (Page no. 18 of Reply)
9.	Date of application form	11.07.2022





		(Page no. 16 of Reply)
10.	Amount paid toward booking	Rs. 4,50,000/- (Page no. 16 of Reply)
11.	Date of execution of BBA	Not executed
12.	Request for cancellation	17.07.2022 (Page no. 21 of complaint)

**B. Facts of the complaint:**

3. In June-July 2022, the respondent approached the complainant through its representatives and offered a residential apartment in its project namely "The Leaf" located at Sector-85, Tehsil Manesar, Gurugram. The representative of the respondent company told the complainant and her family about the moonshine reputation of the company and painted a rosy picture of the project making tall claims.
4. Thereafter, the complainant along with her family visited the respondent's office where its representatives painted a rosy picture of the project and made various tall claims by showing the features and flats to them, thereby inducing them to purchase a unit in the said project.
5. The complainant and her family specifically asked that since they did not come up with a mindset to book a unit and since the units are about to be sold out, in case after booking, if there is a change of mind or the finances are not worked out, will their money be refunded back, to which the sales representatives of the respondent company, Mr. Ashish



Tandon, Mr. Rohan, assured that in case they would like to withdraw, the booking amount would be 100% refundable until 30 days from the date of booking and moreover, if the booking is made same day, they offered a discount and the unit would be available to them at a fixed price of Rs. 6200/- per sq. ft. all-inclusive and no further charges would be levied, thereby further luring the complainant.

6. Relying on the goodwill of the respondent company, the complainant booked a 2BHK residential unit bearing no. T1 8C in the said project by paying an amount of Rs. 4,00,000/- vide instrument bearing no. 588791 dated 09.07.2022, drawn on Axis Bank, along with a payment of Rs. 50,000 by way of RTGS on 11.07.2022 towards the booking of said unit. Further, while completing the booking formalities, the respondent took the signature of the complainant on a blank form, and upon questioning said conduct, the representatives of the respondent said that getting a blank form signed was standard practice as few details need to be filled after cross-checking from their office record and accordingly they would fill it themselves. It was also falsely assured that the terms and conditions entailed in the form were duly in accordance with the terms agreed between the parties.
7. At the time of booking, it was assured by the respondent's representative, Mr. Rohan that the brochure, payment receipt, and copy of the application form would be delivered by 10.07.2022. However, neither of these documents was delivered to the complainant. Accordingly, on 11.07.2022, the complainant visited the respondent's





office in order to collect the said documents but to no avail as the respondent's representative said that the same were confidential documents and could not be shared at that time. Rather, upon great insistence, only the unsigned terms and conditions of the application form were shared.

8. Thereafter, vide email dated 13.07.2022, the respondent acknowledged the receipt of payment towards the booking in question, but still failed to share a copy of the application form and other concerned documents.
9. Unfortunately, subsequent to the aforesaid chain of events, there was some financial emergency in the complainant's family because of which it was not feasible to continue with the said booking at that moment. Accordingly, vide email dated 17.07.2022, within a week of booking, the complainant requested the respondent to cancel the booking and to refund the booking amount of Rs.4,50,000/-, with an assurance that she would soon book a unit in said project. Immediately thereafter, the complainant also visited the respondent's office in order to cancel the booking and to take a refund of the booking amount. To this, the representative of the respondent company assured that within a week's time, all the formalities pertaining to cancellation would be completed.
10. However, even after a lapse of one week from 17.07.2022, no refund of the booking amount was initiated by the respondent. To this, the complainant again visited the respondent's office in order to inquire about the refund status but they said that the same would be done in another 10-15 days, but to no avail. The complainant kept writing email



reminders dated 5.08.2022, 30.08.2022, 9.09.2022 along with innumerable visits to the respondent's office, but all in vain.

11. The complainant was devastated to receive email dated 10.09.2022 from the respondent wherein it bluntly refused to refund the booking amount on the pretext that the same has been forfeited in accordance with the terms and conditions of the booking form.

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

12. The complainant has sought the following relief(s):
  - i. Direct the respondent to refund the entire amount paid along with the prescribed rate of interest.

**D. Reply by respondent:**

13. The present petition is not maintainable as the complainant has failed to disclose any maintainable cause of action under the said provisions of the Act as alleged.
14. The complainant had approached the respondent and expressed an interest in booking a unit in the residential project developed by the Respondent known as "The LEAF". Prior to making the booking, the complainant conducted extensive and independent inquiries with regard to the project and it was only after the complainant was fully satisfied with all aspects of the project, that the complainant took an independent and informed decision, un-influenced in any manner by the respondent.





15. Thereafter the complainant vide an application form dated 11.07.2022 applied for an allotment of a unit in the aforesaid project and booked apartment no. 8C in the tower- T-1, having a super area of 1640 sq. ft. for a basic sale price of Rs. 1,01,68000/- against which the complainant paid a sum of Rs. 4,50,000/- (booking amount) to the respondent.
16. The said application form was preliminary and the initial draft contained the broad terms and conditions for booking, the application form was to be followed with an allotment letter and a flat buyer's agreement to be executed between the parties. However, when the respondent approached the complainant to execute the flat buyer's agreement, the complainant for the reasons best known to her vide an email dated 17.07.2022 informed the respondent that she does not wish to continue with her allotment and wishes to cancel her booking while asking for refund of the amount paid by her. Furthermore, the complainant cited personal reasons for the cancellation of the unit, and due to her own reasons, the complainant failed to execute any of the subsequent agreements. The default of the complainant cannot be attributed to the respondent. The complainant is not even an allottee, as the complainant did not pay the earnest money and did not execute the allotment Letter/agreement for Sale.
17. At the time of submission of the application form the complainant was well aware of the fact that the respondent's project is fully developed and ready for possession and if the complainant fails to proceed further with the application and fails to execute the agreement for sale then the booking amount (which is part earnest money) paid would be forfeited.



As per clause 6 of the application form, it was clearly and categorically stated to the complainant that the said booking amount is not refundable owing to the cancellation by the complainant herself, which the complainant agreed upon and signed the form without any coercion as well as misrepresentation.

18. The complainant does not come under the ambit and scope of the definition of an Allottee under Section 2(d) of the Act, as the complainant is an investor and booked the unit in order to enjoy the good returns from the project, which the complainant could not accomplish.
19. The respondent is well within the realm of the provisions of the RERA Act, 2016 to forfeit the booking amount as the complainant was well aware of the status of the project (completed and received the occupational certificate). Despite the said fact, the purpose of forfeiting the booking amount/earnest amount is basically to compensate the respondent due to the non-performance of the buyers for the expenses incurred in booking the unit as well as towards the opportunity cost which the respondent could have enjoyed by selling the unit to the prospective serious buyer.

**E. Jurisdiction of the authority:**

20. The plea of the respondents regarding lack of jurisdiction of Authority is rejected. 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**

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.*

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.

**G. Entitlement of the complainant for refund:**

**G.I Direct the respondent to refund the amount deposited by the complainant along with interest at the prescribed rate.**

21. The complainant booked a unit in the project named "The Leaf" by filling out an application form dated 11.07.2022 by paying the booking amount of Rs. 4,50,000/-. Thereafter, on 17.07.2022, the complainant wrote an e-mail conveying her inability to continue with the project due to her financial exigency and demanded a refund of the amount paid. On non-receipt of any reply to the aforesaid request, the complainant wrote further e-mails dated 05.08.2022, 12.08.2022, 30.08.2022, and 09.09.2022 demanding a refund of the amount paid. Thereafter, on 10.09.2022, the respondent replied that the request for the refund can not be proceeded with as per the terms & and conditions of the application form dated 11.07.2022.
22. The respondent, on the other hand, contends that the refund cannot be allowed as per clause 6 of the application form dated 11.07.2022 which states that the booking amount shall be forfeited in case of cancellation of the unit by the complainant.
23. On consideration of the documents available on record and submissions by both parties, the Authority is of the view that the complainant has paid Rs. 4,50,000/- as the booking amount and cancelled the said flat on





17.07.2022. The contention of the respondent that as per clause 6 of the application form, the booking amount is non-refundable does not hold true in the instant case. A careful perusal of clause 6 of the application form suggests that the forfeiture of the booking amount can be made only post allotment. The relevant clause is produced below:

*6" I/We understand that the booking amount is non-refundable post allotment made by the company on my/our Application or I/We do not execute the Agreement for Sale within the time stipulated by the Company for the purpose, then my/our entire Booking amount shall be forfeited to the Company and I/We shall be left with no right, interest, claim, or lien on the said proposed Unit or its booking or otherwise on the Company in any other manner whatsoever.*

In the instant case, only an application was made, and in that regard certain amount was paid to the respondent. Nothing has been brought on record by the respondent that suggests that the final allotment has been made. Therefore, before any allotment was made by the respondent-builder, the complainant cancelled the said unit and requested for refund on 11.07.2022. Hence, the terms of clause 6 of the application form do not come into play.

24. Accordingly, the complainant is entitled to a refund of the entire amount paid by him at the prescribed rate of interest i.e., @ 8.75% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as of date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.



**H. Directions of the Authority:**

25. Hence, the authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance with obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016.
- i. The respondent/promoter is directed to refund the amount i.e., Rs.4,50,000/- received by them from the complainant/allottee along with interest at the rate of 10.75% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount.
  - ii. A period of 90 days is given to the respondents to comply with the directions given in this order failing which legal consequences would follow.
26. Complaint stands disposed of.
27. File be consigned to the registry.

Ashok Sangwan  
Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 08.11.2023**