

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

Complaint no.: 7556 of 2022
Date of filing: 30.12.2022
Date of decision : 01.03.2024

1. Mr. Tarun Sardana
2. Mrs. Sonia Sardana

Both RR/o: - C-1/301, Nirvana Floors,
KLJ Housing Society, Sector 15,
Bahadurgarh, Haryana- 124507

Complainants

Versus

M/s Sai Aaina Farms Pvt Ltd
Office address: 302-A, Global Foyer, Sector - 43,
Golf Course Road, Gurugram,
Haryana - 122009

Respondent

CORAM:

Shri Ashok Sangwan
Shri Sanjeev Kumar Arora

Member
Member

APPEARANCE:

Ms. Mannat Sardana
Ms. Rahul Raghav (proxy counsel)

Complainants
Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees 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 to the allottees as per the agreement for sale executed inter-se them.

A. Unit and Project related details:

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, 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	Mahira Homes sector-68, Village Badshahpur, Gurugram
2.	Nature of the project	Affordable housing project
3.	DTCP license no.	106 of 2017 dated 22.12.2017
4.	RERA Registered/ not registered	
5.	Allotment letter	03.05.2018 (Page 13 of complaint)
6.	Unit no.	J-606, 2BHK Tower-J admeasuring 536.65 sq.ft. carpet area Page no 13 of complaint)
7.	Date of builder buyer agreement	23.07.2018 (Page no 15 of compliant)
8.	Date of building plan approval	23.02.2018 [pg. 18 of complaint]
9.	Possession Clause	Clause 8.1 Promoter to offer possession of the said apartment to the allottee within a period of 4 years from the date of approval building plans or grant of environmental clearance, whichever is later.
10.	Due date of possession	23.08.2022 [Note: Grace period of 6 months allowed on account of COVID-19]



11.	Tripartite Agreement with Yes Bank	16.07.2021 (Page no 41 of complainant)
12.	Cancellation Letter	21.08.2021 (Page no 49 of complaint)
13.	Due date of possession	23.07.2022 (Calculated from the date of BBA)
14.	Total sale consideration	Rs.21,96,572/- (As per payment plan page no 39 of complaint)
15.	Paid up amount	Rs.20,75,761/- (As alleged by complainant on page 09 of complaint)
16.	Occupation certificate	NA
17.	Offer of possession	NA

B. Facts of the complaint

3. The complainants have made the following submissions: -

- a. That in the month of March 2018, the complainants were in search of a residential accommodation and observed an advertisement in the internet/online media portal related to a project authorized and registered under the Affordable Housing Policy of the Government of Haryana and thereto showed interest in project developed by the respondent in the name of Mahira Homes. The respondent represented that the project is one of the finest and relying on such representations, assurances, and meetings, the complainants applied for its Draw of lots for a residential unit under 2BHK Type B in the aforesaid project for a total consideration of Rs. 23,72,296/- on 18.03.2018 with initial deposit for participation on Draw of Lots of Rs. 1,12,000/-



- b. That subsequently on 27.04.2018, the draw of lots was conducted, and a unit was allotted in the name of complainants and in lieu of the same the respondent issued an allotment letter dated 03.05.2018 for the residential unit j-606 in Mahira Homes project.
- c. That the allotment Letter specifically mentioned that the allotment has been given as per the terms and conditions of Haryana Affordable Housing Policy 2013 and HRERA 2017. Moreover, the allotment of the said unit shall be effective subject to registration of builder buyer agreement and payment of allotment money simultaneously within 15 days from the date of issuance of allotment letter. That the demand of allotment money through demand letter raised on May 1, 2018 for amount of Rs. 4,81,075 was cleared by the complainants within the stipulated time. That due to the issue with an obligated clearance of the project, the respondent informed that there would be delay in the process and execution of builder buyer agreement; and hence the said agreement was executed and signed on 23.07.2018 under Certificate No. G0302018E301 and GRN No. 36173005.
- d. That the said unit, in compliance of the demands by the builder, has been majorly self-funded by the complainant, i.e., Rs. 18,39,223/-; though owing to the bad phase of businesses during COVID lockdown and pandemic, the complainant updated and approached the builder through mail intimating the said issue and requested for the list of pre-associated banks



related to loan for the said project and therewith the representative provided the name of the bank verbally and in accordance with same, the complainant approached Yes Bank, Okhla Phase I Branch.

- e. That all formalities related to the application of loan was updated to the builder by the complainant. In lieu of the application and loan sanction, the Tripartite Agreement, executed under Certificate No. IN- DL98286726388423T dated 16 July 2021 were signed between the complainant, the respondent and the bank.
- f. That in compliance with the norms of the tripartite agreement, the payment of Rs. 2,36,538/- was done by the Bank in compliance of the loan sanctioned and partly disbursed on August 16, 2021.
- g. That the said payment disbursed and made by the bank was accepted by the builder, but irrespective of accepting the instalment, the builder sent a cancellation notice of the unit dated 21 August 2021 and even published regarding the said cancellation/default in the Gurgaon Kesari newspaper on the same date.
- h. That it is pertinent to mention that Clause 2.5 of the builder buyer agreement under certificate no. G0302018E301 and GRN No. 36173005 (Annexure P/2) clearly mentions that: -

"In case there is any delay in making timely payment of instalments on the part of the Allottee, in that event, the Allottee shall be liable to pay an interest on the amount due @15% per annum from the due date, applicable for the period of delay. Subject to the provision for payment of interest in case, the Allottee fails to make the payment

of any instalment of the total price or any other amounts falling due within the stipulated time, in that event the Promoter/Developer may at its own absolute discretion issue a notice to the Allottee for making the payment of the due amount within a period of 15 (fifteen) days from the date of issuance of such notice. If the Allottee still defaults in making payment of the amount due along with interest within the Stipulated period of said 15 (fifteen) days, the Promoter/Developer may publish the... name of the Allottee in a regional Hindi newspaper in Haryana as a defaulter requiring the payment of the amount due within 15 (fifteen) days from the date of the publication of such notice. Upon the failure of the Allottee to clear/make payment of the entire due amount within the aforesaid additional period of 15 (fifteen) days, the allotment of the Said Apartment shall stand cancelled without the need for the Promoter/Developer to do or undertake any further steps. Time is the essence of this transaction"

- i. That it is highly submitted by the complainant that as per the afore-mentioned clause, a sequential order has been required in case of delay in payment, and in this case the builder has not followed the process as the respondent sent a back-dated cancellation notice, posted on August 27, 2021 with a mention of August 21, 2021 in the body of same letter mentioning that the unit stands cancelled, when the last instalment was accepted by the Builder on August 16, 2021. Moreover, the same dated, i.e., 20.08.2021 newspaper named Gurgaon Kesari cited the cancellation listing of the units.
- j. That it is highly submitted by the complainant that the cancellation letter was sent to the complainant unreasonably and arbitrarily where the primary part of the clause of liability of the instalment was not even taken into consideration. Moreover, the major procedure of a period of over 30 days of

notice and then publishing in the newspaper has been done by the builder in mere a single day.

- k. That the complainant, after receiving the said cancellation notice intimated the same to the bank representative on call and he asked the complainant to ignore the same as the bank has granted loan to more than 50% financed units in the said project; and that he also provided the latest picture update of the construction status of Tower J, as on 30.08.2021 at 11:13am, stating that until and unless there is no significant show-up of the building and it is next to impossible that the builder would be able to give possession of the project within the stipulated time frame with extension, i.e., August 2022, as mentioned in builder buyer agreement where 'time is an essence of the contract' under clause 6 of the builder buyer agreement, they cannot disburse the last instalment.
- l. That despite of several verbal and written requests by the complainant during the major suffering hit due to COVID pandemic for the extension and/or allowance for payment terms, all efforts went in vain as the respondent used to just mention verbally that the payment terms are required to be followed irrespective of any situation. That the complainant got the information regarding the notification directed by Sh. A.K. Singh, Principal Secretary to Government Haryana, Town and Country Planning Department, dated 25th June, 2021 that the Department granted time extension for delay in construction during the moratorium period, where it was also specifically

mentioned that "the colonizers/developers shall pass on the corresponding benefits to their allottees to ensure that the hardships faced by the end-users also get mitigated to that extent".

- m. That none of such corresponding benefits, as cited in the Notification dated 25th June 2021 were passed to the end-users, which is evident from the fact that recently when the relevant Authority-Department was investigating regarding the cancellation of licenses of the respondent's projects, a list was circulated where the said unit of the complainants has been *malafidely* re-allotted by the builder in favour of some third-party named Pushpa.
- n. That it is highly submitted by the complainant that the respondent has acted unreasonably, arbitrarily, and fraudulently just to deceive the complainants. That, irrespective of the fact that Builder is bound by several agreements as being a significant party in agreements signed and executed from the date of allotment of unit to till date; and also bound by bye-laws and regulations, the respondent has materially breached the clauses of the agreements, legally binding upon the respondent. That the re-allotment is expressly prohibited under the Haryana Affordable Housing Policy, 2013. The said policy expressly mentions under clause 7(iii) that: "Once an apartment through the procedure as specified above, the same cannot be transferred by the colonizer to any other person by

documentation in its records. Breach of this condition will attract penalty equivalent to 200% of the selling price of the flat. Moreover, legally binding Tripartite Agreement signed and executed between complainant, respondent and bank, in lieu of home loan on the said unit specifically and categorically mentions that:

“The developer also agrees and confirms that they shall take note of the said mortgage charge created by the borrower and undertake not to create any third-party rights or security interest of any sort whatsoever in respect of the said property without the prior written consent of Bank”. Such legally binding clauses has been breached by the Builder.

- o. That the complainants had booked a residential unit in the respondent project with many hopes. However, due to the respondent's arbitrary and illegal acts, the complainants are facing a great deal of trouble. The difficulties and agony before the complainants are incomparable and undeniable, hard-earned money has been invested by the complainants in project, which now resulted in perpetual anguish. That irrespective of such questionable status of the ownership in the Unit due to such cheating and malafide re-allotment by the Builder, the complainants are still making/paying timely EMIs for the home loan taken in the said unit to the Bank.

C. Relief sought by the complainants:

4. The complainants have sought following relief:



- a. Direct the respondent to pay interest for every month of delay at as per the prevailing interest in accordance with the prescribed rules, RERA rules and/or agreement executed between the parties.
 - b. Direct the respondent to set aside the illegal termination letter and to restore the unit no. J-606.
 - c. To direct the respondent to give the physical possession of the unit.
 - d. To compensate the complainants for the said legal action by paying the applicable litigation and other legal expenses being incurred.
5. The present complaint was filed on 30.12.2022 and registered as complaint no. 7556 of 2022. As per the registry, complainant has sent copy of complaint along with annexures through speed post as well as through email. The tracking report of the same has been submitted by the complainant with the complaint. On 13.10.2023 the authority proceeded ex-parte against the respondent. But on 05.01.2024 the counsel for the respondent appeared and filed an application for setting aside the ex-parte orders. The authority on 05.01.2024, in the interest of justice, directed the respondent to file written submissions within a period of 2 weeks i.e., by 19.01.2024. Till date no such written submissions have been filed by the respondent accordingly the authority presumes that respondent has nothing to say on his

behalf proceeding the matter as per the documents already placed on record and hereby the defence of the respondent stands struck off.

6. 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 submissions made by the complainants.

D. Jurisdiction of the authority

7. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

D.I Territorial jurisdiction

8. 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 complete territorial jurisdiction to deal with the present complaint.

D. II Subject matter jurisdiction

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee 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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;



34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottee and the real estate agents under this Act and the rules and regulations made thereunder."

10. So, in view of the provisions of the Act of 2016 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.

E. Findings regarding relief sought by the complainant.

E.I. Direct the respondent to set aside the illegal termination letter and to restore the unit no. J-606.

E.II. To direct the respondent to give the physical possession of the unit.

11. The above mentioned reliefs are being taken up together as the findings with respect to one relief will affect the findings of other reliefs. The complainant was allotted unit no. J-606, in the project "Mahira Homes" by the respondent/builder for a total consideration of ₹ 21,96,572/- under the Affordable Group Housing Policy 2013. A buyer's agreement was executed on 23.07.2018. The possession of the unit was to be offered with 4 years from approval of building plans or from the date of environment clearance whichever is later. The due date of possession have been calculated from the date of building plan (23.02.2018) as the date of environment clearance is not known. Accordingly, the due date of possession comes out to be 23.02.2022. The complainant paid a sum of ₹ 20,75,761/- via online gateway as per the details provided by the complainant on page 9 of complaint. The respondent promoter on 03.05.2018 issued the allotment letter of the unit. The last payment of ₹2,36,538/- on



16.08.2021. The respondent promoter thereafter issued cancellation notice dated 21.08.2021 after publication of list of defaulters in "Punjab Kesari" on 21.08.2021. In line with the aforesaid facts, the pleadings and documents placed on record, the main question which arises before the authority for the purpose of adjudication is that "whether the said cancellation is a valid in the eyes of law?"

12. The authority throws its light upon the cancellation notice dated 21.08.2021. Since the project is an affordable group housing project accordingly, the cancellation process shall be as per clause 5(iii)(i) of the AHP, 2013 only. The relevant clause is reproduced below for the reference:

"If any successful applicant fails to deposit the installments within the time period as prescribed in the allotment letter issued by the colonizer, a reminder may be issued to him for depositing the due installments within a period of 15 days from the date of issue of such notice. If the allottee still defaults in making the payment, the list of such defaulters may be published in one regional Hindi news-paper having circulation of more than ten thousand in the State for payment of due amount within 15 days from the date of publication of such notice, failing which allotment may be cancelled. In such cases also an amount of Rs 25,000/- may be deducted by the coloniser and the balance amount shall be refunded to the applicant. Such flats may be considered by the committee for offer to those applicants falling in the waiting list"

13. The due procedure of cancellation being mentioned in the policy, 2013 is that if any complainant makes default of any installment due then the promoter shall issue a reminder notice for clearing the outstanding dues within 15 days from the date of reminder and thereafter, if the default continues, publish the list of defaulter in daily newspaper and finally after the lapse of 15 days from the date of publication can issue the cancellation letter. Whereas, in the



present matter the last payment of ₹2,36,538/- have been made by the complainants on 16.08.2021 only and no reminder letter being issued by the respondent is placed on record. Moreover as per the cancellation letter dated 21.08.2021 on one hand the respondent gives 15 days' time to clear the outstanding dues and on the other hand states that they have published in the newspaper on 21.08.2021 and accordingly the allotment stands cancelled. Accordingly, the authority hereby opines that the letter dated 21.08.2021 has not been issued after following the due procedure mentioned in clause 5(iii)(i) of the AHP, 2013 as discussed above therefore, the said cancellation notice dated 21.08.2021 is not valid and the authority hereby sets aside the same.

14. In the present complaint, the complainant intends to continue with the project and is seeking possession of the subject unit. Moreover, the cancellation letter dated 09.09.2021 is set aside as referred above the respondent is hereby directed to re-instate the said unit of the complainant within 30 days from the date of this order and handover the possession of the unit within 2 months after receiving occupation certificate from the competent authority as per section 17(1) of the Act. The complainant is also directed to make the payment of the outstanding amount, if any according to the payment plan as prescribed under the Affordable Policy, 2013.

E.III. Direct the respondent to pay interest for every month of delay at as per the prevailing interest in accordance with the prescribed rules, RERA rules and/or agreement executed between the parties.

15. In the present complaint, the complainants intend to continue with the project and is seeking delay possession charges as provided



under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under:

*Section 18: - Return of amount and compensation
If the promoter fails to complete or is unable to give
possession of an apartment, plot or building, -*

*.....
Provided that where an allottee does not intend to
withdraw from the project, he shall be paid, by the
promoter, interest for every month of delay, till the
handing over of the possession, at such rate as may be
prescribed.*

1. Clause 5(i) of the Affordable Group Housing Policy, 2013 talks about the cancellation. The relevant part of the clause is reproduced below:

"If any successful applicant fails to deposit the instalments within the time period as prescribed in the allotment letter issued by the colonizer, a reminder may be issued to him for depositing the due instalments within a period of 15 days from the date of issue of such notice. If the allottee still defaults in making the payment, the list of such defaulters may be published in one regional Hindi newspaper having circulation of more than ten thousand in the State for payment of due amount within 15 days from the date of publication of such notice, failing which allotment may be cancelled. In such cases also an amount of Rs 25,000/- may be deducted by the coloniser and the balance amount shall be refunded to the applicant. Such flats may be considered by the committee for offer to those applicants falling in the waiting list"

16. **Due date of handing over possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the said flat within a period of 4 years from the date of approval of building plans (23.02.2018) or grant of environment clearance, whichever is later. The period of 4 years is calculated from building plans i.e., 23.02.2018 as the date of environment clearance is not known. Since the period of 4 years expires on 23.02.2022 the authority after considering the facts and circumstances of the case

and acting under its notification no. 9/3-2020 HARERA/GGM(Admn) dated 26.05.2020 hereby allows the 6 months grace period over and above the 4 years. Therefore, the due date of handing over possession is 23.08.2022.

17. **Admissibility of delay possession charges along with prescribed rate of interest:** The complainants are seeking delay possession charges for the delay in handing over the possession at the prescribed rate of interest. However, the allottees intend to continue with the project and are seeking delay possession charges in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

"Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public."

18. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
19. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as



on date i.e., 01.03.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

20. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of affordable housing policy, 2013, the possession of the subject apartment was to be delivered within 4 years from date of building plan approval or environment clearance whichever is later. The period of 4 years is calculated from building plan approval i.e., 23.02.2018 as the date of environment clearance is not known. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is 23.08.2022. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 23.08.2022 till the date of offer of possession plus two months or handing over of possession whichever is earlier, at prescribed rate i.e., 10.85 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

E.VII. To compensate the complainants for the said legal action by paying the applicable litigation and other legal expenses being incurred.

21. The complainants in the aforesaid relief are seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP*



& Ors. (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021), has held that an allottee is entitled to claim compensation 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 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. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of compensation.

F. Directions of the authority

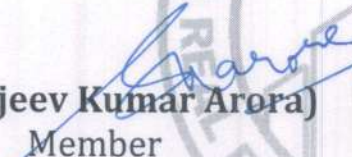
22. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:
- a. The respondent is directed to re-instate the unit of the complainant, within 30 days from the date of this order.
 - b. The respondent is directed to pay interest at the prescribed rate of 10.85% p.a. for every month of delay from due date of possession i.e., 23.08.2022 till date of offer of possession plus two months or handing over of possession whichever is earlier as per proviso to section 18(1) of the Act read with rule 15 of the rules.
 - c. The respondent is further directed to handover the possession of the unit within 2 months after receiving occupation certificate from the competent authority as per section 17(1) of the Act. The

complainant is also directed to make the payment of the outstanding amount, if any according to the payment plan as prescribed under the Affordable Policy, 2013

- d. The respondent shall not charge anything from the complainants which is not the part of the agreement. However, holding charges shall not be charged by the promoters at any point of time even after being part of agreement as per law settled by Hon'ble Supreme Court in civil appeal no. 3864-3889/2020.

23. Complaint stands disposed of.

24. File be consigned to registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 01.03.2024

HARERA
GURUGRAM