

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

Complaint no. :	5759/2022
Date of filing complaint:	26.08.2022
First date of hearing:	11.01.2023
Date of decision :	21.02.2024

Rahul Saxena and Aru Srivastava Resident of: N-108 Panchsheel Park, New Delhi-110017.	Complainants
Versus	
M/s St. Patricks Realty Pvt Ltd Regd. office: Asset 5B, Hospitality district, Delhi Aerocity, New Delhi-110037	Respondent

CORAM:	
Shri Ashok Sangwan	Member
APPEARANCE:	
Shri Rajul Srivastava Advocate	Complainants
Shri Animesh Goyal Advocate	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 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 complainants, 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	Central Park Flower Valley, Sector 32-33, Sohna, Gurugram.
2.	Project area	10.925 Acres
3.	Nature of the project	Integrated township
4.	DTCP license no.	84 of 2014 dated 19.08.2014
5.	Name of licensee	Ravinder Singh
6.	RERA Registered/ not registered	Registered 619 of 2020 dated 18.03.2020
7.	Unit no.	502, Tower F, 5 th Floor (Page no. 19 of complaint)
8.	Unit area measuring	1590 sq. ft. (Page no. 19 of complaint)
9.	Date of execution of apartment buyer's agreement	25.07.2017 (page no. 18 of complaint)
10.	Agreement to sell between the	09.04.02022

	complainants and purchasers	(page no. 41 of reply)
11.	No objection certificate from the respondent to complainants for transfer of their unit.	16.05.2022 (Page no. 50 of complaint)
12.	Transfer fee paid to respondent by the complainants	Rs. 4,50,228/- (Page no. 56 of complaint)
13.	Transfer fee charge	Rs. 240/- per sq ft (Page no. 55 of complaint)

B. Facts of the complaint:

3. The complainants in the year 2017 were looking to purchase a residential property and they were approached by the respondent for purchasing a unit in the residential integrated township being developed by the respondent namely "Central Park Flower Valley" located at Sector 32-33, Sohna town, Gurugram.
4. Based on the representations made by the respondent, the complainants booked a unit and an apartment buyer agreement was executed on 25.07.2017. Subsequently, the complainants were allotted unit on F-502 the 5th floor, in Aqua front tower, Flower valley central park III, admeasuring 1590 sq. ft.
5. The complainants in 2022 decided to sell the unit to Mr. Avinash Maheshwari & Mrs. Sneha Maheshwari. The complainants conveyed their intention to the respondent well in time regarding the selling of the unit. The respondent being in opportunistic

situation imposed an arbitrary transfer fee of Rs. 150 per sq. ft. to which complainants objected since there was no mention of any such transfer fee in the apartment buyer agreement. Since the respondent was not ready to remove such arbitrary charges, the complainants had no other option but to reluctantly agree on the demand made by the respondent. That when the deal got finalized between the complainant and the buyer of the unit, the complainants went to respondent to initiate the process of transfer of unit, however, the respondent denied to initiate the process of transfer at the initially agreed transfer fee of Rs. 150 per sq. ft. and increased the transfer fee to Rs. 300 per sq. ft. excluding GST.

6. The complainants opposed the sudden hike in transfer fee as the revised transfer fee was 2 times of the initially agreed transfer fee. The complainants wrote to the respondent and opposed the baseless hike in the transfer charge. After multiple requests, the respondent reduced the transfer fee to Rs. 240 per sq. ft. excluding GST. The complainants agreed to the arbitrary transfer fee charges at Rs. 240 per sq. ft. excluding GST as the deal was on the verge of completion and the complainants did not want to make the new buyers wait more for the transfer of unit.
7. That since the complainants had already finalized the deal, they bowed down to the arbitrariness of the respondent and paid the amount of Rs. 4,50,228/- to the respondent.
8. The agreement contained one-sided and arbitrary terms and conditions in case the unit was transferred to some other name. As per the clause 12.1 of the agreement, the builder could charge any amount whatever it wants and the complainants will have no say to

that. The complainants were made to sign under the threat of having their earnest money forfeited and their allotment cancelled.

C. Relief sought by the complainants:

9. The complainants have sought the following relief(s):
- i. Direct the respondent to refund Rs. 4,50,228/-paid as transfer fees by the complainants.
 - ii. Direct the respondent to pay litigation cost and cost for causing mental agony to the complainants.

D. Reply by the respondent.

10. The complainants wilfully and knowingly concealed the fact that they were liable to pay the transfer charges as per the policy of the respondent as they had categorically agreed to pay the same even at the time of submitting the application form for allotment. Further, the apartment buyer's agreement dated 25.07.2017 also clearly bound the complainants to make payment of the transfer charges as per clause 12.1 of the same.
11. Even prior to transfer of the property in favour of subsequent purchasers by the complainants, the complainants entered into an agreement dated 09.04.2022 wherein they categorically agreed to make payment of the amount of transfer charges. The total sale consideration agreed between the complainants/allottees and the purchasers includes the amount of transfer charges agreed to be paid by the complainants directly to the respondent and the expenses for stamp and registration charges were agreed to be paid by the purchaser.

12. After entering into the agreement to sell dated 09.04.2022, the complainants approached the respondent seeking NOC for transferring the said apartment in favour of subsequent purchasers. The respondent vide letter dated 16.05.2022 gave its NOC for the transfer subject to furnishing duly executed substitution documents and complying with other requisite formality as they stand on the date of submissions of papers.
13. The respondent vide email dated 13.06.2022 apprised the complainants about payment of transfer charges @ 300/- per sq. ft. (excluding GST), however upon the request of the complainants the respondent agreed to decrease the transfer charges to Rs.240/- per sq. ft.+ GST as onetime special gesture and same communicated by the respondent via email dated 18.06.2022.
14. The complainants being satisfied with the transfer charges and agreeing to the same acknowledged and confirmed the payment via email dated 20.06.2022 apprising the respondent about deposit of the amount of Rs.4,50,228/- towards transfer charges calculating it @Rs.240/- per sq. ft. + GST regarding the unit no. F-502 in Aqua front tower, Central park flower valley and subsequently the respondent issued receipt dated 23.06.2022 in favour of complainants.
15. After depositing the said amount, the complainants submitted an application dated 16.07.2022 to the respondent, and the subsequent purchasers also submitted a request letter to the respondent for transfer of right to purchase the apartment No. 502 in favour of subsequent purchasers Avinash Maheswari and Sneha

Maheswari. And accordingly, the unit in question was transferred in favour of aforesaid persons and the complainants had been left with no right, title or interest in any manner and the subsequent purchasers became allottee under the respondent.

16. The complainants after transferring the unit/apartment no. 502, Tower-F, 5th Floor, in Central park flower valley township, sector - 32 Sohna, in favour of subsequent purchasers Mr. Avinash Maheswari and Sneha Maheswari are no more allottees of the respondent and have no right to file the present complaint invoking the jurisdiction of the Ld. Authority to claim the alleged amount of transfer fees.

E. Jurisdiction of the authority:

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

E.1 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.

18. 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 complainants at a later stage

F. Findings on the objections raised by the respondent.

F.I Objection of the respondent regarding validity of transfer fee charges on account of its presence in the apartment buyer's agreement.

19. The respondent-builder contends that it is eligible to raise the demand for transfer fee charges as it is allowed by clause 12.1 of the apartment buyer agreement dated 25.07.2017. The said clause is reproduced below:

"12.1 The Company may at its sole discretion and as per its policies allow the Allottee(s) to get the name of his/her nominee substituted on his/her place or added the name of his/her nominee or deleted

his/her name from the allotment of the said Apartment with the prior approval of the Company and subject to terms, conditions and payment of charges as may be imposed and prescribed by the Company from time to time. The terms, conditions and amount of charges for nomination/assignment/substitution/addition/deletion/transfer can be raised/changed at any time at the sole discretion of the Company."

20. On bare perusal of the said clause, the Authority finds that the complainants had while signing the apartment buyer's agreement agreed to the payment of transfer fee charges. And in this view, the respondent is eligible to raise demand of transfer fee charges.
- G. Findings on relief sought by the complainants.**
- G.I Direct the respondent to refund Rs. 4,50,228/- paid as transfer fees by the complainants.**
21. The complainants contend that they entered into a buyer's agreement on 25.07.2017 and thereafter, due to some exigency they intended to sell their allotted unit. In pursuance to this, they requested the respondent-builder to grant them the no objection certificate for the sale of their unit. The complainants further contend that the respondent-builder raised an arbitrary demand of transfer fees which was totally illegal. Having no other option, the complainants agreed to the demand raised by the respondent and paid a sum of Rs. 4,50,228/- to it.
22. On the other hand, the respondent contends that the demand of transfer fee charges is wholly justified as the same is part of the apartment buyer's agreement dated 25.07.2017. Furthermore, the respondent contends that the complainants are not allottees as per the Real Estate (Regulation & Development) Act, 2016 since they

have already sold the said apartment vide agreement to sale dated 09.04.2022.

23. On perusal of records brought before this Authority, and as already discussed above, the demand of transfer fee charges raised as per clause 12.1 of the apartment buyer's agreement dated 25.07.2017 is justified and is legal. On the respondent's contention that the complainants are not allottees as per the Act, the Authority observes that it is a matter of fact that the complainants have sold the said apartment on 09.04.2022, and thereafter the complainants filed the instant complaint on 26.08.2022. Now, the important question which needs to be determined by this Authority is whether the complainants herein are entitled to the aforesaid reliefs as are sought by them in the complaint. The complainants ceased to be allottees on 09.04.2022 when they sold the said unit.
24. It is of utmost importance to go through the definition of the term "allottee" as defined under section 2(d) of the Act and the same is reproduced below for ready reference:

(d) "allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;

Accordingly, the following are the allottees as per this definition:

- a) **Original allottee:** A person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter.

b) Allottees after subsequent transfer from the original allottee: A person who acquires the said allotment through sale, transfer or otherwise.

However, allottee would not be a person to whom any plot, apartment or building is given on rent.

25. In the present complaint, the complainants are not allottee under the Act as the complainants does not fall under any of the two categories stated above, reason being that the complainants have already transferred the subject unit. After transferring the unit, the complainants do not have any right, title, or interest in the said property.
26. In view of the above, the complainants have no locus standi to claim refund of the transfer fees charges before the Authority as they do not fall under the term allottee of the Act. Consequently, the relief claimed by the complainants can't be granted to them as they are not an allottee within the meaning of section 2(za) of the Act. Thus, the present complaint is not maintainable in this Authority.
27. Complaint stands dismissed
28. File be consigned to registry



Ashok Sangwan
(Member)

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.02.2024