



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

Complaint no.: 4422 of 2023
Date of decision: 23.02.2024

1. Atul Kumar Ninawat 2. Urmila Devi Both R/o: B-336, UGF Mohan Garden, Near Dwarka Mor Metro station, New Delhi - 110059	Complainants
Versus	
1. M/s Puri Constructions Private Limited. Regd. Office: 4-7B, Ground Floor, Tolstoy House, 15 & 17, Tolstoy Marg, Delhi Central, New Delhi - 110001 2. M/s Florentine Estates of India Limited Regd. Office :- -112-115, First Floor, Tolstoy House, 15 & 17, Tolstoy Marg, Delhi Central, New Delhi - 110001	Respondents
CORAM:	
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Mr. Ishaan Jain, proxy counsel (Advocate)	Complainants
Ms. Smriti A.R. of the company	Respondents

ORDER

1. The present complaint dated 21.09.2023 has been filed by the complainants/allottees in Form CRA 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 allottee as per the agreement for sale executed inter se them.

A. Project and unit related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, 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	"Emerald Bay", sector-104, Gurgaon
2.	DTCP License no.	68 of 2012 dated 21.06.2012 valid up to 20.06.2025
3.	RERA registration no.	Registered vide certificate no. 136 of 2017 dated 28.08.2017 valid up to 28.02.2020 Registration expired
4.	Unit no.	A1- 2303 [page no. 22 of complaint]
5.	Unit admeasuring area	2,450 sq. ft. of super area [page no. 22 of complaint]
6.	Allotment letter	24.07.2023 (Page no 22 of complaint)
7.	Date of builder buyer agreement	No executed
8.	Due date of possession	24.07.2026 (Calculated 3 years from date of allotment)
9.	Email for draft of BBA and suggested changes shared by respondent	10.08.2023 (Page no 28 of complaint)
10.	Email of cancellation and refund the amount by respondent.	06.09.2023 (Page no 45 of complaint)
11.	Total sale consideration	Rs.2,83,04,270/- (Page no 06 of rejoinder to the reply)
12.	Total amount paid by the complainant	Rs.27,89,325/- (page no 7 of complaint)

13.	Occupation certificate	21.11.2018 (As per DTCP website)
14.	Offer of possession	NA
15.	Cancellation letter dated	06.09.2023 (Page no 45 of complaint)

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:
- Complainants visited the project namely 'Emerald Bay' somewhere in June, 2023 and met with the sales team of the Respondents. The sales team of the respondents showed the Unit No. A - 1, 2303 to the complainants. The entire consideration payable for the purchase of the said unit was stated as Rs. 3,06,25,000/-. Since the project is nearly complete, it was also informed that they would be required to pay Rs. 1,15,000/- as advance towards the annual maintenance charges upfront and in advance.
 - Apart from the aforesaid, they were explained that an amount nearly of about 5 - 6% would have to be spent by them on the registration formalities etc. The picture of the sales team note pad which was clicked by the complainant No. 1 from his phone. The terms which were offered after negotiations form a part of the allotment letter which was issued to them after making payment of 10% of the total price.
 - They had also duly filled the allotment application form made available by the sale team at the time of this booking.
 - In all an amount of Rs. 28,89,325/- has been paid by them to the respondent No. 1 and Rs. 28,175/- has been deposited as TDS with



the concerned authorities. Vide letter dated 20.07.2023, they recorded the factum of the payments made by him requested the respondents to issue the necessary documents required from them to obtain the loan to purchase the subject flat / apartment.

- v. Vide letter dated 24.07.2023, the respondents accepted the application form filled by them and issued the allotment letter in favour of them. The said letter records the factum of allotment and the payments made by them. The payment schedule and the details of the property as well as the car parking's offered in the price so agreed by the parties are also recorded in the payment schedule shared by the respondents with them.
- vi. In terms of the payment schedule attached to the aforesaid letter, the next tranche of the payment was required to be made 06.09.2023.
- vii. After making the payment of the initial 10% amount required for allotment; they requested the respondents to enter into a formal builder buyer agreement [hereinafter 'BBA']. Vide email dated 10.08.2023, the respondents informed that the BBA will be endeavored to be signed on 14.08.2023.
- viii. Vide email dated 12.08.2023, they suggested certain changes to the BBA. The draft BBA which was sent for approval / signing had certain clauses which were redundant considering the project already having been completed. Therefore, they were constrained to suggest certain changes to the BBA through email.
- ix. Thereafter, the complainants again wrote to the respondents on 22.08.2023 requesting them to expedite to the process of signing of the BBA. They required the BBA so that he is able to submit the



same with the bank for loan formalities. On 24.08.2023, the respondents sent an email stating that they will be responding to them soon for signing of the BBA.

- x. On 06.06.2023, they again wrote an email to the respondents asking them as to why the signing of the BBA is taking so much time. The respondents had told them that the changes suggested to the BBA were being reviewed by the legal team of the respondents in August 2023. Since the legal team was taking to respond; the respondents kept on dragging the matter.
- xi. Vide an email dated 06.06.2023, the respondents unilaterally cancelled the allotment of the complainants.

With reference to your trailing email, we regret to inform you that the company has decided to refund the amounts received from you along with interest thereon, as the Company is not going ahead with the booking of the said apartment in your favour due to unavoidable circumstances and reasons.

The company has transferred the amounts of Rs. 2789325/- received from you vide RTGS as per details attached herewith.

- xii. As is evident from the aforesaid, the respondents have neither explained the 'unavoidable circumstances' nor any other plausible reasons.
- xiii. The action of the respondents to have cancelled the allotment of the complainant is mala fide, arbitrary and illegal.
- xiv. As per the belief of the complainants, the respondents have cancelled the allotment amidst the rising prices of the apartment in

the near vicinity of the 'Project'. The respondents have cancelled the allotment so that they can offer the same apartment to another customer at higher rates. The action of cancellation besides being statutorily wrong is non – est and invalid.

C. Relief sought by the complainants

4. The complainants have filed the present compliant for seeking following relief:

- i. Set aside the cancellation communication issued by the respondents on 06.09.2023.
- ii. Direct the respondents to abide by the terms of the sale of the unit as reflected in the payment schedule appended to the allotment letter dated 24.07.2023;
- iii. Direct the respondents to enter into a revised builder buyer agreement with the complainants the terms of which are not in derogation of the fact that the complete consideration of the Unit No. 2303 in Tower A -1, Emerald Bay, Sector – 104, Village Dhanwapur, Gurugram, Haryana is Rs. 2,83,04,270/- and nothing more is payable to the respondents after payment of the aforesaid amount;

5. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondents

6. The respondents have contested the present complaint on the following grounds:



- i. That the present complaint is not maintainable and cannot proceed further as the unit i.e. booking of apartment bearing no. A1-2303 situated at Emerald Bay, Sector-104, Gurgaon (herein "Said Unit") was cancelled vide email dated 6.9.2023. Further the Respondents refunded the complete principal amount of Rs.27,89,325/- along with interest i.e. Rs.36,459/- @ 10.15% the rate prescribed by RERA Act, 2016 to the Complainant. Further the Respondents have also refunded the TDS amount of Rs. 28,175/- as deposited by the complainant.
- ii. That the complainants have not come to this Hon'ble Authority with clean hands and has concealed the entirely true and material facts including refund of complete principal amount along with interest at the rate which is prescribed by RERA Act i.e. SBI MCLR rate + extra 2%.
- iii. That the allegations levelled by the complainants are totally wrong and incorrect hence denied. The present complaint is not maintainable and the claim made by them is totally baseless and wrong and complainants are not entitled to any relief as the Respondents had already sold the Said Unit to a third party after cancelling the Said Unit and refunding the entire principal amount along with interest to the Complainant.
- iv. That in reply to the contents of para no.4(b) of the complaint it is submitted that the total sale consideration of the said unit was Rs.2,83,04,270/- instead of Rs.3,06,25,000/- as alleged by the them in their complaint.
- v. That in reply to the contents of para no.4(c) of the complaint it is submitted that the they made total payment of Rs.27,89,325/- as

wrongfully alleged as Rs. 28,89,325/- in its complaint. Further the Respondents have also refunded the TDS amount of Rs. 28175/- to the complainant.

- vi. That in reply to the contents of para no.4(k) of the complaint it is submitted that as per the request of them, the respondents sent copy of ABA to the complainants vide email dated 11.8.2023. Further it is a matter of record that they suggested certain changes in the clauses of the ABA and sent the same vide email dated 12.8.2023.
- vii. That in reply to the contents of para 5 (a) of relief sought, the respondents have already sold the said unit to a third party after refunding the entire principal amount along with interest to the Complainant. Hence cancellation of allotment cannot be revived.
- viii. That in reply to the contents of para 5 (c) of relief sought, it is submitted that the respondents have already sold the said unit to a third party after refunding the entire principal amount along with interest to the Complainants. Hence the respondents is restricted from entering into revised apartment buyer agreement with them for the said unit.
- ix. That in the light of facts and circumstances mentioned in the reply, they are not entitled to any other reliefs as the respondents while abiding by the provisions of RERA Act, 2016 after cancelling the allotment of the Said Unit without any deduction refunded the entire principal amount along with interest to the Complainant. Hence the present complaint be rejected and all other reliefs mentioned in the remaining paras cannot be allowed and the complaint is liable to be dismissed.

7. Copies of all the relevant documents have been filed and placed on 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 parties.

E. Jurisdiction of the authority

8. 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

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana 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.

E.II. Subject-matter jurisdiction

10. 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) The promoter shall-

- (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 of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

11. So, in view of the provisions of the Act quoted above, 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 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 relief sought by the complainants

F.I Set aside the cancellation communication issued by the Respondents on 06.09.2023.

F.II Direct the Respondents to abide by the terms of the sale of the unit as reflected in the payment schedule appended to the allotment letter dated 24.07.2023;

F.III Direct the respondents to enter into a revised builder buyer agreement with the complainants the terms of which are not in derogation of the fact that the complete consideration of the Unit No. 2303 in Tower A -1, Emerald Bay, Sector - 104, Village Dhanwapur, Gurugram, Haryana is Rs. 2,83,04,270/- and nothing more is payable to the respondents after payment of the aforesaid amount; .

12. The above-mentioned reliefs sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
13. In the present complaint, the complainants intend to continue with the project and is seeking set aside of cancellation letter and to enter into revised agreement.
14. It is evident from the perusal of the particulars given in the tabular form above that vide letter of allotment dated 24.07.2023, they were allotted unit A1-2303 of 2450 sq. ft. for total sale consideration of Rs. 2,83,04,270/-. No buyer's agreement has been executed inter-se parties, however, it has been the version of the respondent-builder that it supplied a copy of

buyer's agreement to the complainants but the same was never signed. On the contrary it is stated by the them that they have suggested some changes in the agreement through mail dated 10.08.2023. To which it replied on 24.08.2023 to the said mail stating that it will be responding soon to them for signing agreement

15. They have already paid an amount of Rs. 27,89,325/- towards sale consideration of subject unit. Since no buyer's agreement has been executed inter-se parties, the due date of handing over of possession is calculated from date of allotment i.e. 24.07.2023. As such due date of handing over of possession comes out to be 24.07.2026.
16. As was mentioned in cancellation letter dated 06.09.2023, the booking/allotment of the subject unit was cancelled due to unavoidable circumstances and reasons. The respondent-builder has also returned the full paid up amount received by them through RTGS.
17. Keeping in view the tangled facts involved, it is relevant to comment upon the validity of cancellation letter/email dated 06.09.2023. The Authority observes that the alleged cancellation letter dated 06.09.2023 that has been placed on record is sent only after a month of allotment letter. Neither any reminder/ communication nor any proper reason for cancellation has been defined by the respondent. Even no demand has been raised in that one month and unilaterally a cancellation mail has been sent. The fact is quite surprising that despite several emails wrote by the complainants to the respondents as mentioned above for execution of agreement, it has failed to provide copy of same to them. Hence, the said cancellation letter dated 06.09.2023 cannot be taken into consideration as it would be unjust to rely on any document placed on record by any party, existence of which is one-sided and arbitrary. Further, as far as validity of cancellation vide

mail dated 06.09.2023 is concerned, the same cannot be considered valid and is hereby set aside.

18. This, inconsistency casts doubts on the respondents reasoning for cancelling the unit. The respondent/promoter has failed to execute the agreement and cancelled the unit on account of its own fault/omission. Accordingly, he is liable to reinstate the subject unit to the complainants at the same rate as per the agreed terms of subject allotment letter on account of its inability and one- sided action. The rationale behind the same is that the allottee booked the subject unit in July 2023 and paid the demanded amount in hope to get possession.
19. It is observed that the occupation certificate/part occupation certificate or completion certificate/part completion certificate has been obtained by the respondents from the competent authority on 21.11.2018.
20. Thus, the respondents is liable to handover the possession of the subject unit to the complainants as per specifications of allotment letter dated 24.07.2023 at the same rate at which the unit was earlier allotted thereafter, the complainants are obligated to take the possession within 2 months as per Section 19 (10) of the Act, 2016.
21. Separate proceeding to be initiated by the planning department of the Authority for taking an appropriate action against the builder as the registration of the project has been expired.

G. Directions of the authority

22. 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):



- i. The cancellation is held to be bad in the eyes of law and the subject unit is being restored.
 - ii. The respondent-builder is liable to handover the possession of the subject unit to the complainants as per specifications of the allotment letter dated 24.07.2023 at the same rate at which the unit was earlier purchased within two months of this order
 - iii. The complainants are directed to pay outstanding dues. The rate of interest chargeable from the complainant-allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent-promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delay possession charges as per section 2(za) of the Act.
 - iv. The complainants w.r.t. obligation conferred upon him under section 19(10) of Act of 2016, shall take the physical possession of the subject plot/unit, within a period of two months of the completion certificate or occupation certificate from the competent authority.
 - v. The respondent-builder shall not charge anything from the complainants which is not the part of the builder buyer agreement.
23. Complaint stands disposed of.
24. File be consigned to registry.

Dated: 23.02.2024


(Sanjeev Kumar Arora)
Member
Haryana Real Estate Regulatory
Authority, Gurugram