

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

Complaint no. : 2044 of 2023
Date of decision: 29.05.2024

Manju Devi
R/O: Chamber no.-16, Panchayat Bhawan,
Opposite RERA Court

Complainant

Versus

M/s HCBS Promoters & Developers Pvt. Ltd.
Regd. office: Plot No.-137, Sector-27, Gurugram.

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Sh. Pankaj Kumar Yadav (Advocate)

Complainant

None

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 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 provision 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 complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name and location of the project	"Sports ville", Sector-2 & 35, Sohna, Gurugram.
2.	Nature of the project	Affordable Housing Colony
3.	Project area	6085 acres
4.	DTCP license no.	15 of 2014 (09-06-2019) RENEWAL 15 OF 2014 (09.01.2020)
5.	RERA Registered/ not registered	Registered vide no 228 of 2017 dated 19.09.2017
6.	Date of approval of building plans	01.10.2014
7.	Date of receipt of environment clearance	20.02.2015
8.	Unit no.	Unit no. – K-908, floor-9 th , Tower-k (As on page no. 15 of the complaint)
9.	Unit area admeasuring	321.20 sq. ft. (carpet area) + 63.81 sq.ft. (Balcony area) Along with 2 wheeler parking (Page no. 15 of the complaint)
10.	Allotment letter	25.03.2019 (As on page no. 15 of complaint)
11.	Date of flat buyer agreement	Not executed
12.	Due date of possession	20.02.2019 [Note: - Calculated 4 years from the date of receipt of environmental clearance]
13.	Total sale consideration	Not known
14.	Amount paid by the complainant	Rs.1,28,328/- (As per payment receipt on page no. 21-22 of complaint)
15.	Cancellation letter	09.12.2021 (As on page no. 21 of complaint)
16.	Occupation certificate	29.05.2019
17.	Offer of possession	Not known

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- I. That the respondent is working in field of construction and development of residential as well as commercial projects with the name of "HCBS Promoters & Developers Pvt. Ltd.". That the subject matter of the present complaint i.e., the real estate project named "Sports Ville" is situated at Sector-2 & 35, Sohna, District-Gurugram, Haryana.
- II. The complainant was allotted a residential apartment in the affordable housing project bearing no. K-908, located on 9th Floor, in Tower-K admeasuring 321 sq.ft. (Carpet area) and 63.81 sq.ft (Balcony area) alongwith a 2 wheeler car parking space.
- III. That after the allotment of the said unit, the complainant applied for home loan but the same was not sanctioned by the bank. The complainant was not able to pay the outstanding dues and thus the unit was cancelled by the respondent.
- IV. That the complainant is seeking refund of the amount paid by her i.e., Rs,1,28,328/- alongwith interest. Hence, the present complaint.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):

- I. Direct the respondent to refund the paid amount i.e., Rs.1,28,328/- alongwith interest.
5. The present complaint was filed on 03.05.2023 in the Authority. On 27.09.2023, 06.12.2023, 06.03.2024, the respondent was directed to file reply. However, despite specific directions and providing an

opportunity of being heard, no written reply has been filed by the respondent. Therefore, in view of order dated 15.05.2024, the respondent is proceeded ex-parte.

6. 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 submission made by the parties.

E. Jurisdiction of the authority:

7. The authority has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. 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.

E. 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 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;

10. 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 leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the relief sought by the complainant:

F.1 Direct the respondent to refund the total amount paid by the complainant i.e Rs.1,28,328/-

11. In the present complaint, the complainant intends to withdraw from the project and is seeking refund of paid up amount as per section 18(1) of the Act and the same is reproduced below for ready reference:

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building,-

- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or
(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

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."

(Emphasis supplied)

11. The complainant booked a unit in the affordable group housing colony project of the respondent known as "Sports Ville" situated at Sector-2 & 35, Sohna, Haryana and was allotted a unit bearing no. K-908 on 9th floor in tower- K of the project vide allotment letter dated 25.03.2019 and the complainant had paid an amount of Rs.1,28,328/- against the total sale consideration.

12. The possession of the unit was to be offered within 4 years from the date environment clearance (20.02.2015). The environmental clearance was received on i.e., 20.02.2015, so 4 years will be calculated from 20.02.2015 which comes out to be 20.02.2019. Therefore, the due date comes out be **20.02.2015**
13. The counsel for the complainant during the proceedings dated 15.05.2024 stated that the unit was cancelled on 20.09.2019 on account of non-payment of instalment as she could not avail loan from the Bank. It is observed that the complainant failed to pay the remaining amount as per schedule of payment and which led to issuance of notice for cancellation by the respondent/builder dated 20.02.2015.
14. Clause 5(iii) (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 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 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".*
15. The respondent had obtained the occupation certificate on 29.05.2019 . On the failure of the complainant in making payment of the outstanding dues, the respondent was constrained to cancel the unit.
16. As per clause 5(iii)(b) of the Policy of 2013, the allottee/applicant is under obligation to deposit the 25% amount of the sale consideration of the unit

till allotment. However, in the present case, the complainant/allottee has paid an amount of Rs.1,28,328 /-. Accordingly, the respondent /builder issued reminders to the complainant. But on the failure of the complainant in making payment of the outstanding dues, the respondent was constrained to issue notice for cancellation of unit .

17. As per clause 5(iii)(i) of the Affordable Housing Policy of 2013, in case of cancellation the respondent can deduct the amount of Rs.25,000/- only and the balance amount shall be refunded back to the complainant. Till date no amount has been refunded back by the respondent-builder to the complainant/allottee. Thus, it has been using the funds of the complainant. In view of aforesaid circumstances, the respondent is directed to refund the amount paid by the complainant after deduction of Rs.25,000/- as per clause 5(iii)(i) of the Policy 2013 along with interest from date of cancellation of allotment i.e., 20.09.2019 till the actual realization of the amount.

H. Directions of the Authority:

18. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of 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 is directed refund the paid-up amount of Rs.1,28,328/- after deduction of Rs.25,000/- as per clause 5(iii)(i) of the Affordable Housing Policy 2013 as amended by the State Government on 05.07.2019, along with interest @10.85% per annum as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of cancellation of allotment i.e., 20.09.2019 till the actual realization of the amount.

- ii. A period of 90 days is given to the respondent/builder to comply with the directions given in this order and failing which legal consequences would follow.
 - iii. Vide proceeding dated 06.12.2023, cost of Rs.5,000/- was imposed on the respondent/promoter which has not been paid by the respondent till date. Thus, the respondent is directed to pay the same to the complainant.
19. Complaint stands disposed of.
20. File be consigned to the registry.

Dated: 29.05.2024



(Ashok Sangwan)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM