

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

Complaint no. :	1259 of 2023
First date of hearing:	08.08.2023
Order Reserve On :	26.04.2024
Order Pronounced On :	31.05.2024

1. Sunita Mahajan 2. Kaushal Mahajan Both R/o: - E-93, 1 <sup>st</sup> floor, Kirti Nagar, Delhi-110015	<b>Complainants</b>
Versus	
M/s Suposhaa Realcon Pvt. Ltd. Registered Office at: - 12A floor, Tower-2, M3M International Financial Centre, Sector-66, Gurugram	<b>Respondent</b>
<b>CORAM:</b>	
Shri Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Shagun Singla (Advocate)	On behalf of complainant
Ms. Shriya Takkar	On behalf of respondent

**ORDER**

1. The present complaint dated 17.03.2023 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 unit details, 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:

Sr. No.	Particulars	Details
1.	Name of the project	Smartworld Orchard, Sector-61, Gurugram, Haryana.
2.	Nature of the project	Affordable Plotted Colony
3.	Project area	22.61875 acres
4.	RERA Registered/ not registered	Registered 74 of 2021 dated 03.11.2021 valid upto 31.12.2024
5.	DTCP License No.	68 of 2021 dated 16.09.2021 valid upto 15.09.2026
6.	Unit no. (Independent Floor Residence)	J-22D, Plot no. J-22, 4 <sup>th</sup> floor (Page no. 56 of complaint)
7.	Unit admeasuring	1150 sq. ft. (Page no. 56 of complaint)
8.	Welcome Letter	30.09.2022 (Page no. 32 of complaint)

9.	Allotment Letter	30.09.2022 (Page no. 46 of complaint)
10.	Agreement to sell	04.11.2022 (Page no. 53 of complaint)
11.	Pre cancellation Letter	11.11.2022 (Page no. 86 of complaint)
12.	Cancellation Letter	23.11.2022 (page no. 117 of reply)
13.	Email by respondent for payment	29.11.2022 (Page no. 118 of reply)
14.	Legal notice by complainant	29.12.2022 (page no. 107 of complaint)
15.	Termination vide email	17.12.2022 (Page no. 119 of reply)
16.	Third party rights created	03.04.2023 (Page no. 120 of reply)
17.	Possession clause	7.Possession of the Floor Residence:  ii. The Promoter assures to offer possession of the Independent Floor Residence along with exclusive right to use undivided demarcated proportionate terrace and basement area and one car

		parking space as per agreed terms and conditions herein on or before the Completion Time Period i.e., <b>31 Dec 2024</b> unless there is delay due to force Majeure Event, reasons beyond the control of the Promoter, non compliance on the part of the Allottee(s) including on account of any default on the part of the Allottee (s), court orders, Government guidelines, decisions affecting the regular development of the Project or due to any event or reason, which is recognized as a ground for extension by the Authority.
18.	Due date of delivery of possession	31.12.2024
19.	Total sale consideration	Rs. 1,26,18,375/- (as per payment plan on page no. 85 of complaint)
20.	Total amount paid by the complainant	Rs. 18,92,756/-
21.	Amount refunded by respondent after cancellation	Rs. 18,62,756/- (30,000 deducted)
22.	Occupation certificate	Not obtained

23.	Offer of possession	Not offered
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**B. Facts of the complaint**

3. The complainant has made the following submissions in the complaint: -
4. That in September 2021 respondent allegedly launched a group housing project 'Smart World Orchard' sector 61 Gurgaon, Haryana.
5. That the complainant believing on assurances made by respondent booked a unit on 09.09.2021 and paid the booking amount of Rs. 2,00,000/- . Further paid a sum of Rs. 10,00,000/- as per the respondent's demand.
6. That the respondent at the time of booking the unit in the project had assured the complainant that they have procured all the necessary permissions, licenses and approvals, and further committed that under all circumstances, they would be delivering the possession of the residential plot within twelve months from the date of application. The respondent also promised and assured the complainant that the respondent will convert the payment plan from "construction-linked plan' to 'subvention plan'.
7. That on 30.09.2022 allotment letter was issued with all the details of the allotted unit/flats. Subsequent to the allotment letter issued along with the unit/flat details and payment plans was shared as well. Further on 01.10.2022 demand letter of Rs. 50,47,355/- was sent to the complainants by the respondents.
8. That on 04.11.2022 builder buyer agreement was executed between both the parties. That it is further pertinent to mention here that as per

- the demand letter dated 01.10.2022 the complainant was expected to clear the outstanding payment of Rs. 50,47,355/- before 31.10.2022.
9. That on 11.11.2022 pre- cancellation letter was issued against the complainant by the respondents. However, the complainants were shocked and taken aback to learn from the said banker, that the said banker was not competent or authorized to extend such housing loan facility to the complainants as the authority to sanction housing loan to any buyer/investor in respect of the said project as being developed by the respondent was recognized and sanctioned in favour of only two banks, particularly, bank of maharashtra and HDFC bank on account which no other bank, whether private or nationalized was sanctioned, recognized or in a position to extend such loan facility to the complainants.
10. That even after various request made by the complainant to hold the unit flat for few days but paying no heed to the request of the complainants the representative of the respondent confirmed that the unit/flat will not be held further if the sanction letter of the loan will not be provided to the respondent.
11. That at the time of approaching the complainants and even at the time of execution of the said agreement to sell it was time and again represented by the respondent that they would not raise any arbitrary demands for payment of sale consideration amount as the said payment towards the remaining sale consideration would have to be made by the complainants as per the payment schedule appended and detailed as per schedule-V of the said agreement to sell subject to stage and phase of development of the said project.

12. That the housing loan was sanctioned by the HDFC Bank vide letter dated 13.12.2022. Further, subsequent to sanction of loan on 13.12.2022 so also in the intervening period ever since October 2022 till 11.11.2022, the complainants repeatedly made efforts to contact the respondent and its officials to bring to light the bonafide difficulty faced by them in procuring financial assistance.
13. That no default has been committed by the complainants which could in any manner justify the termination of agreement to sell and cancellation of allotment made in favour of the complainants. Further, assuming without admitting or prejudicing the rights of the complainants, if at all any alleged default was committed by the complainants in adhering to the demand letter issued by the respondent, under such circumstances as well, as per the terms of the agreement to sell and the relevant clauses therein, the allotment made in favour of the complainants could not have been cancelled prior to 90 days period as has been provided for in the agreement to sell.
14. That thereafter the complainants approached the respondent and communicated about the entire situation and to know about the payment process about the sanctioned loan amount, the respondent was shocked to hear that they blatantly refused to hand over the possession of the unit/flat allotted to the complainants.
15. That after receiving the legal cum demand notice the respondents and their representative approached the complainants to settle the matter amicably. That after their approach the complainants visited the office of the respondents to settle the matter and to the complete shock they got to know that the instead of handing over the possession of the allotted unit/flat, the respondents are returning back the advance amount which

was paid by the complainants pertaining to the above mentioned unit/flat.

16. That despite various e-mails sent to the respondent and continuously follow up by the complainant regarding the emails, the respondents did not even bothered to pay any heed to the same neither they reverted, nor they acknowledged regarding the updated possession of the units/flats.
17. That the respondent has been brushing aside all requisite norms and stipulations and has accumulated huge amount of hard-earned money of various investors/buyers in the project including the complainant, and are unconcerned about the delivery of the possession of the unit/flat.

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

18. The complainant has sought following relief(s)
  - I. Direct the respondent to handover the possession of the unit/flat..
  - II. Direct the respondent not to sale the alleged unit/flat and a put a stay on the sale on the sale of the alleged unit/flat.
  - III. Direct the respondent to pay a sum of Rs. 3,00,000/- to the complainant towards the litigation.
19. On the date of hearing, the authority explained to the respondent /promoter on 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 respondent**

20. The respondent contested the complaint on the following grounds. The submission made therein, in brief is as under: -
21. That the complainant has not approached this Hon'ble Authority with clean hands and has tried to mislead this Hon'ble Authority by making



incorrect and false averments and stating untrue and/or incomplete facts and, as such, is guilty of suppression of material facts. The complainant has suppressed and/or mis-stated the facts and, as such, the complaint apart from being wholly misconceived is rather the abuse of the process of law. On this short ground alone, the complaint is liable to be dismissed.

22. That the complainant being clued up of the respondent's distinguished and upright reputation in the market approached the respondent after conducting their own due diligence exhibiting an interest in buying a unit in the respondent's project smartworld orchard situated in Sector 61, Gurgaon, Haryana being developed by the answering respondent. The complainants requested for booking an independent floor residence located in the said project vide application form. The respondent had signed the application form after duly understanding all the clauses stipulated under the application form and being completely satisfied with the particulars/ details of the project.
23. That the complainant pursuant to the receipt of application form was further tendered with an allotment letter dated 30.09.2022 wherein the desired unit i.e., J-22D, in the said project was allotted to the complainants for a total consideration value of Rs. 1,26,18,375 /- plus other charges. The complainants opted for the specific payment plan.
24. That the complainants had duly collected the copies of agreement for sale/buyers agreement for execution at their end. After constant follow ups the agreement for sale was executed on 04.11.2022 and the same was duly registered.
25. That all the demands were raised as per the payment plan opted by the complainants. That vide demand letter dated 01.10.2022 the

complainants were called upon to remit a sum of Rs. 50,47,355/- which was due on part of the complainant in lieu of the purchase of the unit which was payable on or before 30.10.2022 after duly completing the formalities of execution and registration of agreement for sale. That countless requests pertaining to the clearance of the outstanding dues amount fell on a deaf ear and the respondent was constrained to issue a pre cancellation letter dated 11.11.2022 wherein the complainant was directed to clear the remaining dues along with interest and GST within 7 days.

26. That even after issuance of pre-cancellation letter dated 11.11.2022 the complainants failed to clear the arrears owing to which a cancellation letter dated 23.11.2022 was issued thus cancelling the allotment of the unit in question.
27. That the complainants after defaulting in the pay-out multiple times finally approached the respondent and requested to make timely payments and sought an extension wherein the said cancellation letter dated 23.11.2022 was halted in its operation subject to receipt of outstanding dues. Thus, the respondent vide email dated 29.11.2022 gave an opportunity to the complainants to clear their dues. Since, the complainants with a malafide intent again defaulted in the disbursement of the outstanding amounts, therefore the respondent was constrained to cancel the allotment of the complainants vide email dated 17.12.2022.
28. That as per the records of the respondent company the amount paid by the complainant was Rs.18,92,756/-. The respondent company to close the matter refunded an amount of Rs.18,62,756/- after deducting an amount of Rs. 30,000/- which were towards vouchers given to the complainants, vide RTGS (UTR No. KKBKR52023030100833576

01.03.2023, though as per the terms of the agreement for sale, the respondent was entitled to deduct the earnest money (10% of total sale consideration) along with non-refundable amounts as stated in terms of the agreement for sale.

29. That in furtherance of the termination of the subject independent floor the same has been re-allotted to one Ms. Deeksha Dhyani vide allotment letter dated 03-04-2023. Thus, the present complaint is infructuous.
30. 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 parties.

**E. Jurisdiction of the authority**

31. The respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands 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**

32. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by The 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**

33. 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 complainant.**

- I. Direct the respondent to handover the possession of the unit/flat..
- II. Direct the respondent not to sale the alleged unit/flat and a put a stay on the sale on the sale of the alleged unit/flat.

34. All the above-mentioned reliefs are interrelated accordingly, the same are being taken up together for adjudication. As the complainants has sought possession of the unit.

35. The complainant booked a unit bearing no. J-22D, Plot no. J-22, 4<sup>th</sup> floor in the project of the respondent company namely "Smartworld Orchard " at Sector-61 Gurugram. The allotment letter for the said unit was issued on 30.09.2022. Thereafter, a buyer's agreement dated 04.11.2022 was executed between the parties regarding the said unit for a total sale consideration of Rs.1,26,18,375/- and the complainant has paid a sum of Rs.18,92,756/- against the same in all.

36. The plea of the complainant-allottee is that the respondent company has illegally cancelled their unit and hereby they are seeking possession of the said unit.

37. The plea of the respondent-builder is otherwise and submitted that the complainants are a defaulter and has failed to make payment as per the agreed payment plan. Various reminders and final opportunities were

given to the complainant and thereafter the unit was cancelled vide email dated 17.12.2022. Accordingly, the complainant failed to abide by the terms of the agreement to sell executed inter-se parties by defaulting in making payments in a time bound manner as per payment schedule.

Now, the question before the authority is whether this cancellation is valid or not?

38. The authority has gone through the payment plan, which was annexed with application form and duly signed by the complainant, which is reproduced for ready reference: -

Name of Installment	%	BSP	CGST	SGST	Total amount
Booking amount	10.00	12,01,750	30,044	30,044	12,61,838
On start of Construction-Excavation of the Project Site (On Signing Of Agreement for sale)	25.00	30,04,375	75,109	75,109	31,54,594
On completion of Bulk Excavation of the Project Site	20.00	24,03,500	60,088	60,088	25,23,675
On Completion of Stilt Roof slab of Plot	10.00	12,01,750	30,044	30,044	12,61,838
On Completion of 2 <sup>nd</sup> Floor roof slab of the Plot	10.00	12,01,750	30,044	30,044	12,61,838
On Completion of top Floor roof slab of the Plot	5.00	6,00,875	15,022	15,022	6,30,919
On Start of Flooring of Unit	5.00	6,00,875	15,022	15,022	6,30,919

On Application of Occupation Certificate of Plot	5.00	6,00,875	15,022	15,022	6,30,919
On Offer of Possession	10.00	12,01,750	30,044	30,044	12,61,838

39. It is matter of record that the complainant booked the aforesaid unit under the above mentioned payment plan and paid an amount of Rs. 18,92,756/- towards total consideration of Rs.1,26,18,375/-. As per the payment plan the allottee had to make first instalment of 10% i.e., 12,61,838/- on booking of the unit. Thereafter second instalment was to be paid by the allottee on start of Construction-Excavation of the project Site (On Signing of Agreement for sale). The agreement to sell was executed between the parties on 04.11.2022.
40. It is pertinent to mention here that as per section 19(6) & 19(7) of Act of 2016, the allottee is under obligation to make payments towards consideration of allotted unit as per agreement to sale dated 04.11.2022. The respondent after giving reminders and pre cancellation letter dated 11.11.2022 has cancelled the subject unit on 23.11.2022. Thereafter respondent company again gave an opportunity to make the payment on 29.11.2022 and further cancelled the unit vide email dated 17.12.2022. Despite issuance of reminders, the complainant has failed to take possession and clearing the outstanding dues. The respondent has given sufficient opportunity to the complainant before proceeding with termination of allotted unit.
41. Thus, the cancellation in respect of the subject unit is valid and the relief sought by the complainant is hereby declined as the complainant-allottee has violated the provision of section 19(6) & (7) of Act of 2016 by

defaulting in making payments as per the agreed payment plan. In view of the aforesaid circumstances, only refund can be granted to the complainant after certain deductions as prescribed under law.


42. Now, another question arises before the authority that whether the authority can direct the respondent to refund the balance amount as per the provisions laid down under the Act of 2016, when the complainant has not sought the relief of the refund of the entire paid up amount while filing of the instant complaint or during proceeding. It is pertinent to mention that respondent in its written submission has submitted that they has refunded an amount of Rs. 18,62,756/- after deducting an amount of Rs. 30,000/- which were towards vouchers given to the complainants vide RTGS on 01.03.2023.
43. Keeping in view the above-mentioned facts the promoter was to return the paid-up amount on the date of cancellation itself and in the present matter the respondent has already refunded the paid up amount Rs. 18,62,756/- after deducting the Rs. 30,000/- (vouchers).
44. The counsel for the respondent during proceeding has stated that unfortunately they don't have the proof of Rs. 30,000/- (vouchers) which were refunded by them to the complainants. Hence, the authority hereby directs the respondent to refund the same.
- III. Direct the respondent to pay a sum of Rs. 3,00,000/- to the complainant towards the litigation.
45. The complainants in the aforesaid relief are seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as **M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.** (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

46. Complaint stands disposed of.

47. File be consigned to registry.



  
(Sanjeev Kumar Arora)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 31.05.2024

**HARERA**  
**GURUGRAM**