

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

**Complaint no.:** 2587 of 2023  
**Date of filing:** 06.06.2023  
**Order pronounced on:** 04.07.2024

Sushree Mathur  
**R/o:-**510/3, Prem Nagar II, Sector 12A,  
Gurugram, Haryana

**Complainant**

Versus

- 1.Sweta Estates Private Limited  
**Regd. Office at:-** 21/48, Malcha Marg, Diplomatic  
Enclave, New Delhi-110021
- 2.M/s Central Park Estate Pvt. Ltd  
**Regd. Office at:**22-C Commercial Complex,  
Diplomatic Enclave, Malcha Marg, Chankyapuri,  
New Delhi-110021
- 3.M/s Bellevue Central Park-II Condominium  
Association  
**Regd. Office at:-** Near G.D. Goenka Public School,  
Sector-48, Sohna Road, Gurugram

**Respondents**

**CORAM:**  
Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**  
Shri Abhishek Rao (Advocate)  
Shri Rohan Gupta (Advocate)  
None

Complainant  
Respondent no. 1 & 2  
Respondent no. 3

**ORDER**

1. This 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 thereunder or to the allottees 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 and location	Central Park-II, Sector-48, Gurugram
2.	Nature of project	Residential
3.	Unit no.	6C, Bellevue 9- Phase-I
4.	Unit admeasuring	2557 sq. ft. (super area)
5.	Date of execution of Builder buyer agreement	NA
6.	Total sale consideration	NA
7.	Total amount paid by the complainant	Rs.1,27,85,000/- (as per conveyance deed page 56 of complaint)
8.	Occupation certificate	09.09.2010 (page 16 of reply)
9.	Possession Letter	17.02.2015 (page 27 of reply)
10.	Conveyance Deed	04.03.2015 (page 56 of complaint)

**B. Facts of the complaint.**

3. The complainant has made the following submissions: -

- I. That the complainant instituted a civil suit CIS:CS/6678/2013 Civil Suit no. 1007 of 2009 titled Sushree Mathur vs Suraj Pal and Ors. against Suraj Pal and respondents no. 1 & 2 wherein the court decreed the suit in favor of the complainant. Subsequent to the judgment & decree dated 31.01.2015 the

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respondent no. 1 sent a notice of offer of possession cum demand letter dated 26.02.2015 to the complainant whereby illegally and unauthorizedly demanded an amount of Rs.81,98,713/- along with an amount of Rs.6,39,300/- for stamp duty charges besides other expenses for the execution and registration of sale deed in favor of the complainant.

- II. The amount of Rs.81,98,713/- also included an amount of Rs.37,66,170/- as interest on account of delayed payment. This amount of interest was illegally and wrongly claimed by the respondent no. 1 and the same was helplessly paid by the complainant under duress and coercion. Complainant being fed up by long drawn litigation and being apprehensive of filing of appeal by Suraj Pal and respondents which may have further delayed the execution and registration of conveyance deed in favor of the complainant which was ultimately filed by Suraj Pal and the same was dismissed on 20.03.2018. That under these circumstances the possession of incomplete and unfinished, unpainted and uncleaned apartment was given to the complainant by respondent no. 1 vide possession letter dated 17.02.2015. The complainant being helpless and no other option available unwillingly and under protest gave the demand amount to the respondent no. 1 for getting the conveyance deed and possession of the said unit.
- III. That respondent no. 1 gave the improper possession by way of handing over one set of keys of the unit to the complainant on 17.02.2015 and it was told to the complainant that presently the unit is incomplete and that all the finishing work will be completed at the earliest. The complainant immediately after getting conveyance deed registered on 04.03.2015 sent an email dated 11.03.2015 to the officials of respondents no. 1 to 3 who replied the said mail on 18.03.2015 stating therein that when they went on behalf of the complainant for the final paint and to clean the apartment they were stopped by the officials of RWA i.e. respondent no. 3 and they were told by

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the officials of respondent no. 3 that they will not allow to do any work in the subject unit and will not give electricity connection etc. till the dues towards the maintenance charges and vide email also informed the officials of the respondent no. 1 that there is an order and decree dated 31.01.2015 passed by the Civil Court, Gurugram in favor of the complainant with respect to the subject unit.

IV. Further, the complainant sent an email dated 24.03.2015 and 09.04.2015 to the officials of respondents no. 1, 2 and 3 for completing the unit of the complainant at the earliest and to update their record and to enter the ownership of the subject unit in the name of the complainant and further sent letters dated 30.04.2015 and 27.07.2015 to respondent no. 1 and 3 for the said purpose.

V. That the complainant also wrote letter dated 27.07.2015 to respondent no. 3 for incomplete and defective work at the subject unit which was received in the office of respondent no.3 on 28.07.2015 along with the photographs of the site. Again, the complainant sent an email dated 30.07.2015 to respondent no. 1 at above 11:39 AM and the same was replied by Sh. MM Goyal on behalf of respondent no. 1 showing an amount of Rs.7,09,244/- total dues outstanding as on 30.07.2015 with respect to subject unit and an additional amount of Rs.25,000/- payable towards change of ownership in the records of the association. Thereafter, email dated 27.08.2015 was sent to the respondents which was replied by Umesh Gupta Vice President of CPCA wherein it was admitted that no transfer charges will need to be paid if the complainant is the first owner and it was further mentioned in the email that the current owner is liable for all previous dues and the current owner to collect the dues from the present owner or the builder.

VI. That the complainant has been continuously requesting the respondents to complete the subject unit and make it habitable by providing water and

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electricity connection and to remove the defects. The respondent no. 1 and 2 have been taking shelter under respondent no.3 and alleging that it is the R.W.A which is not permitting the respondents no. 1 and 2 to complete the work of the subject unit without payment of the maintenance amount and electricity charges since 2010. The demand of maintenance and electricity charges from 2010 is totally illegal and unauthorized as the apartment has not been completed till September 2019 and was not made habitable by the respondent no. 1 and 2. The complainant sent the notice dated 19.07.2018 to the respondent no. 1 and 2 along with email dated 20.07.2018. Thereafter the complainant had a meeting with respondent no. 3 (R.W.A), who raised an illegal demand of Rs.16,19,669/- on account of membership fee, ibms, maintenance charges, electricity charges. (for common facilities), common chargers, late fee charges and interest charges for various bills raised by R.W.A since 01.07.2014.

VII. Also, the complainant pointed out to the R.W.A that she took the paper possession of the subject unit on 17.02.2015. However, the unit was not habitable as none of the finishing items were complete and it was in knowledge of respondent no.3, that the builder was completing the finishing items of the apartment after taking permission from the R.W.A and the complainant is still waiting for the respondent no. 3 to handover the completed apartment. In the meeting it was threatened by respondent no. 1 that it shall not provide water and electricity connection and shall not permit the complainant to occupy the apartment without first receiving the said amount of Rs.16,19,699/-.

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

4. The complainant has sought following relief:

- i. To return the amount received by the promoter in respect of the excess amount received by the promoter in lieu of the alleged delayed payments with interest from the date of payment of the excess amount plus with the interest from the

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filling of this complaint till the payment of the claimed amount at the prescribed rate.

**D. Reply by the respondent no.1.**

5. The respondent no. 1 contested the complaint on the following grounds: -

I. That the complainant filed a civil suit bearing no. CS/6678/2013 titled as Sushree Mathur Vs Suraj Pal and Ors. for declaration, mandatory and permanent injunction and claimed the assignment of rights and interests in the subject unit as certain disputes arose between the complainant and Suraj Pal (the first allottee) and had also made the respondent no. 1 and 2 as other parties to the said suit. The said suit has been adjudicated and decreed in favor of the complainant vide judgment and decree dated 31.01.2015 whereby, the Civil Court passed the following order:

*"15. For the reasons aforesaid, the suit of the plaintiff succeeds and is hereby decreed and a decree for declaration to the effect that the cancellation of special power of attorney dated 27.07.2005 Ex. P5 by the defendant No. 1 is illegal, null and void. Further a decree for mandatory injunction directing the defendants No. 2 and 3 to substitute the name of the plaintiff in place of defendant No. 1 in their records in respect of Apartment No. 6-C, Bellevue-9, Central Park-II, Gurgaon, is passed in favor of the plaintiff and against the defendants. Further a decree for mandatory injunction directing the defendants no. 2 and 3 to transfer the ownership and possession of the aforesaid apartment in favor of the plaintiff in future upon the compliance by the plaintiff of the terms and conditions of the allotment of the aforesaid apartment, is also passed in favor of the plaintiff and against the defendants. Further a decree for permanent injunction restraining the defendants from transferring alienating or creating third party interest in the suit property so long as the plaintiff complies with the terms and conditions of the allotment is also passed in favor of the plaintiff and against the defendant. Decree sheet be prepared accordingly. File be consigned to record room after due compliance."*

II. That in compliance of the judgment dated 31.01.2015, the respondent no. 1 offered the physical possession to the complainant. Therefore, the Authority cannot act as a court of appeal to the judgment and decree passed by the civil court, Gurugram.

III. Moreover, the complaint is barred by limitation as the complainant had approached the Authority belatedly after the lapse of more than 8 years since the date of execution and registration of the conveyance deed bearing document no. 28194 dated 04.03.2015, registered with sub-registrar

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- Gurugram whereby the complainant accepted and acknowledged the receipt of the actual and vacant peaceful physical possession of the unit from the respondent no. 1.
- IV. That the complainant failed to raise any objection or concern at the time of execution and registration of conveyance deed dated 04.03.2015 or at the time of offer of physical possession dated 16.02.2015 and the complainant had taken over the physical possession of the unit vide possession letter dated 17.02.2015 in full and final settlement with respondent no.1. Hence the present complaint is highly time barred and the same cannot be entertained by the Authority and is liable to be dismissed.
- V. That the complainant accepted the physical possession and got the conveyance deed dated 04.03.2015 registered in her favor in compliance of judgment and decree dated 31.01.2015 without any objection or concern and made the payment of all dues along with delay interest as per the agreed terms of the buyer's agreement dated 20.03.2007.
- VI. That the complainant raised the false and frivolous claims against the respondent only as an afterthought as the complainant had never objected to the levy of interest in accordance with the terms and conditions of the buyer's agreement dated 20.03.2007 and paid the accrued interest on the delayed payment of instalments. The complainant also failed to annex any letter, document or email by which the complainant had raised the alleged objections against the levy of interest on delayed payments prior to execution of conveyance deed. Hence, the present complaint is nothing else but blackmailing tactics to force the respondent to shell out the money being falsely claimed. Moreover, as per the principle of Doctrine of Estoppel applicable to the present facts and matter, the complainant is barred from raising the objections as raised in the present complaint against the levy of interest by the respondent no. 1 as the complainant had already accepted the

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same and had made the payment of the interest amount without any objection, demur or protest. The complainant had further executed an indemnity bond in favor of the respondent no. 1 which clearly demonstrate that the complainant was left with no grievances.

VII. Also, the Authority does not have the jurisdiction to entertain and adjudicate the complaint as there is no existing relationship of a promoter and an allottee as on the date of filing of the present complaint. The respondent no.1 had fulfilled its obligations qua the complainant and executed and registered a conveyance deed on 04.03.2015 in favor of complainant and thus there is no existing relationship of the promoter and allottee between the complainant and the respondent no.1. The complainant cannot file the present complaint before the Authority as neither the project is registered before the Authority nor the respondents are the promoters anymore of the said project in the subject unit. The said project was completed much before the promulgation of the Act, 2016 and the rules framed there under. The occupation certificate of the said project was granted on 09.09.2010. In furtherance to the grant of occupation certificate dated 09.09.2010, the respondent issued the notice of offer of possession dated 04.04.2011 to the first allottee i.e. Suraj Pal. However, there being pending litigations between the first allottee and the complainant, the physical possession was not taken over by anyone inspite of the said unit being ready for the possession since April 2011. Hence the Authority does not have the jurisdiction to entertain and adjudicate the present complaint and the provisions of Act, 2016 are not applicable to the facts and circumstances of the complaint.

**E. Reply by the respondent no.2.**

6. The respondent no. 1 contested the complaint on the following grounds: -

- I. That the complainant had not disclosed the true and correct facts and had hidden material facts and had furnished false affidavit along with complaint.

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Therefore, the complaint is liable to be dismissed on this ground alone along with imposition of heavy costs.

- II. That no cause of action arises in favor of the complainant, as alleged by the complainant in the present complaint, against the respondent no. 2 which necessitated the complainant to file the present complaint and hence the present complaint is liable to be dismissed on this ground alone.
  - III. That the respondent no. 2 having no privity of contract with the complainant and the respondent no. 2 is not aware of the understanding/agreement reached between the complainant and the respondent no. 1. Therefore, the respondent no. 2 is unable to give the reply on merits to the complaint as filed by the complainant and hence the same is denied for the want of knowledge.
  - IV. That the respondent no. 2 is neither a necessary nor a property party to the present complaint as the respondent no. 2 has not received any part of the consideration from the complainant. Therefore, the respondent no.2 is not a necessary and a proper party to the present complaint.
  - V. That the respondent no. 2 is not a promoter to the real estate project Central Park - II, Sohna Road, Sector -48, Gurugram in accordance with the provisions of the Act, 2016 and rules framed thereunder and hence the respondent no. 2 is not a proper party to the present complaint.
7. The present complaint was filed on 06.06.2023 in the Authority. On 10.10.2023 reply was received by respondent no. 1 and 2. However, the respondent no. 3 failed to put in appearance and has also failed to file reply. In, view of the same the matter is proceeded ex-parte against respondent no.3
8. All other averments made in the complaint were denied in toto.
9. 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.

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**E. Jurisdiction of the Authority:**

10. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E.I Territorial Jurisdiction:**

11. 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:**

12. 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;*

*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.*

13. 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 complainants.**

**F.I. To return the amount received by the promoter in respect of the excess amount received by the promoter in lieu of the alleged delayed payments with interest from the date of payment of the excess amount plus with the interest from the filling of this complaint till the payment of the claimed amount at the prescribed rate.**

14. The facts presented in this case reveals that the complainant received the possession of subject unit on 17.02.2015, and the conveyance deed was registered on 04.03.2015. The complainant herein filed the complaint seeking refund for the extra amount the interest for delayed payment amounting to Rs.37,66,170/-. However, the respondents claim that these payments were made voluntarily and without any objections at that time.
15. Another objection raised by respondent is regarding jurisdiction, it's important to note that the possession and execution of the conveyance deed happened before the enactment of the Act, 2016. By accepting possession and registering the conveyance deed, the complainant essentially agreed to the terms and cannot seek to change them now.
16. Moreover, the complaint is considerably delayed. The issue arose in early 2015, but the complaint was filed over 8 years later. The complainant paid the interest and other charges without any objection at that time, indicating acceptance of those terms. The respondent also submitted that the complaint lacks merit because there is no ongoing relationship of promoter and allottee between the complainant and respondent. This relationship ended after the conveyance deed was registered. The Act, 2016, applies to ongoing relationships and projects after it came into effect. Additionally, the project received its occupation certificate on 09.09.2010, long before the Act was enacted, meaning the authority does not have jurisdiction in this matter.
17. Another dispute pertains to the issue claimed against respondent no.2. The respondent no.2 submitted that the complainant has not disclosed all relevant facts and has provided false information. So, the complaint should be dismissed. Respondent no. 2 also claims that no cause of action arises against them since they have no direct contractual relationship with the complainant and are not aware of the specifics of the agreement between the complainant and respondent no. 1. The claim that respondent no. 2 is not a necessary or proper

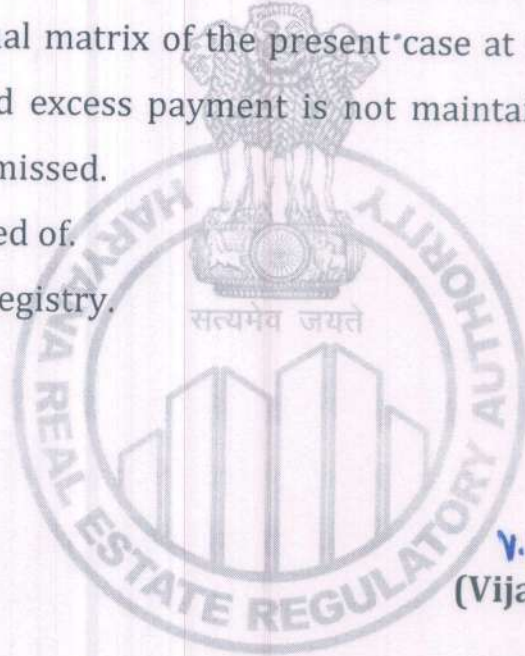
party to this complaint is valid. The respondent no.2 has not received any money from the complainant and is not a promoter of the project in question, according to the Act, 2016. Thus, respondent no. 2 having no involvement as per the transactions made in conveyance deed between the complainant and respondent no. 1, there arise no basis for a claim against respondent no. 2.

18. The authority observes that handing over of possession and conveyance deed has happened much before the commencement of the Act and hence, at this later stage, the relief of any alleged excess payment is not maintainable. Thus, considering the factual matrix of the present case at this belated stage relief sought of any alleged excess payment is not maintainable and thereby, the complaint stands dismissed.

19. Matter stands disposed of.

20. File be consigned to registry.

**Dated: 04.07.2024**



*V.I - 3*  
**(Vijay Kumar Goyal)**  
Member  
Haryana Real Estate  
Regulatory Authority,  
Gurugram

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