



HARERA
GURUGRAM

Complaint No. 5758 of 2022

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

Complaint no. : 5758 of 2022
Date of complaint : 18.08.2022
Date of decision : 29.03.2024

1. Mrs. Kuldeep Kaur,
2. Mr. Chetan Rishi
R/o - U block, 22/20, 1st floor, Pink Town House,
DLF Phase-3, Nathupur Gurugram,
Haryana 122002

Complainants

Versus

M/s Silverglades Infrastructure Private Limited,
Corporate office - 5th floor,
Time square building, B Block,
Sushant Lok Phase I, Gurugram
122009, Haryana.

Respondent

CORAM:

Sanjeev Kumar Arora

Member

APPEARANCE:

Umesh Gulati (Advocate)
Harshit Batra (Advocate)

**Complainants
Respondent**

ORDER

1. The present complaint has been filed by the complainant/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 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 complainants, 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	"High Town" Sector 28, Gurugram
2.	Project area	4.85 acres
3.	Nature of the project	Residential Project
4.	DTCP license no. and validity status	110/2013 dated 27.12.2013 valid up to 26.12.2024
5.	RERA registered/not registered	Registered 22/2020 dated 01.09.2020 valid up to 11.10.2025
6.	Unit no.	C-1703, 17 th Floor, Tower 3 (Page no. 18 of complaint)
7.	Unit area admeasuring	2500 sq ft. (Page no 41 of complaint)
8.	Booking Dated	15.02.2021 (Page no 25 of complaint)
9.	Allotment letter	05.01.2022 (Page 29 of the complaint)
10.	Agreement to sale	Not executed
11.	Possession clause	Can't be ascertained
12.	Due date of possession	05.01.2025 (Calculated 3 years from date of allotment)
13.	Reminders for execution of agreement to sale by respondent	Dated, 28.02.2022, 07.03.2022 and 16.03.2022
14.	Reminder for clearing outstanding dues by respondent	Dated 30.05.2022 and 10.06.2022
15.	Total Sale consideration	Rs. 3,78,62,500/-



		(As per payment plan on page no.32 of complaint)
16.	Total amount paid by the complainants	Rs. 70,79,985/- (As per Statement of accounts on page no 28 of reply)
17.	Occupation certificate /Completion certificate	Not received
18.	Offer of Possession	Not offered
19.	Cancellation letter	01.08.2022 (Page no. 80 of the complaint)

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:

- I. That on 05.02.2021 complainants were approached by the respondent in relation of booking of apartment bearing No. C-1703 located on 17th Floor of Tower/ Building No. C, having carpet area of 1447 sq. ft. and super area measuring 2500 sq. ft. in the project "HighTown" situated in the revenue state of Village Sukhrali, Sector -28, District Gurgaon 122001, Haryana and the total sale consideration was Rs. 3,55,00,000/-. That cheque no. 156856 & 000136 were given by the complainants to the respondent of Rs. 30,00,000/- at the time of booking of apartment. It is submitted that it is mentioned in the terms and conditions which are contained in the booking form that rate of interest payable by the intending applicant to the promoter on delayed payment shall be the State Bank of India highest marginal cost of landing rate plus two percent.
- II. That on 15.02.2021 confirmation letter of booking of apartment bearing No. 1703 located on 17th Floor of Tower/ Building No. C, having carpet area of 1447 sq.ft. and super area measuring 2500



sq.ft. in the project "High Town" situated in the revenue state of Village Sukhrali, Sector -28, District Gurgaon 122001, Haryana was issued by the respondent to them.

- III. That between 04.06.2021 to 14.12.2021, they made the timely payment as and when demanded by the respondent and issued the cheque bearing no. 022866 dated 14.12.2021 of Rs. 15,81,485/- and cheque bearing no. 408062 dated 14.12.2021 of Rs, 4,00,000/- both cheques were drawn on Yes Bank. After that the cheque no. 825854 dated 30.03.21. of Rs. 1,27,295/- drawn bank State Bank of India was issued by the complainants to the respondent. They further paid to the respondent through cheque no. 825857, 825860 and 825861 all dated 04.06.21 of Rs. 8,71,205/-, 9,90,000/- and 1,10,000/-. Therefore, the total amount of Rs.70,79,985/- was paid by them to the respondent in view of the installments towards the payment of apartment and when the demand was raised by the respondent herein. The complainants made the extra payment of Rs. 20,00,000/- to the respondent from the demands made by the respondent.
- IV. That 05.01.2022 The allotment letter of apartment bearing No. 1703 located on 17th Floor of Tower/ Building No. C, having carpet area of 1447 sq.ft. and super area measuring 2500 sq.ft. in the project "HighTown" was issued by the respondent to the complainants. The complainants were shocked when they saw the Annexure- I of the allotment letter in which respondent mentioned that if there is single day delay will increase the Total Sales Value to Rs. 3,78,62,500/- from Rs. 3,55,00,000/- which was totally illegal and unjust and against the principle of natural justice. They approached to the respondent for this illegal and unjust clause in



- allotment letter and in respect of that respondent assured to them that said clause will not be mentioned in the agreement of sale.
- V. That on 14.01.2022 the complainant No. 1 namely Kuldeep Kaur and her son namely Mr. Chetan Rishi entered into an agreement for Sale with the respondent and as per Builder Buyer agreement dated 14.01.2022 the total sale consideration price was Rs. 3,55,00,000/- including PLC and other charges.
- VI. That on 30.05.2022 That respondent had sent the demand/reminder letter to the complainants in which again they mentioned that total sale value is Rs. 3,78,62,500/- and refer the clause 1.5 of the sale agreement which is unlawful, illegal and against the provisions of The Real Estate (Regulation & Development) Act, 2016.
- VII. That from 30.06.2022 to 05.07.2022 they wrote several emails to the respondent for restoring the original cost of the flat to Rs. 3,55,00,000/- from Rs. 3,78,62,500/-. That an additional amount Rs. 23,00,000/- approximately is imposed just because there is delay of 10 days. It is submitted that complainant also mentioned in his emails that they are ready to pay the demand if it will be raised as per total sale consideration amount which is mentioned in sale agreement i. e Rs. 3,55,00,000/-. It is further submitted that acts of the respondent here in have caused severe harassment both physically and mentally and that respondent has duped the complainants of the hard-earned money invested by the complainants.
- VIII. That till 01.08.2022 the respondent sent the cancellation letter to them and cancelled the booking of apartment bearing No. C-1703 located on 17th Floor of Tower/ Building No. C, having carpet area



of 1447 sq. ft. and super area measuring 2500 sq. ft. in the project "HighTown" situated in the revenue state of Village Sukhrali, Sector -28, District Gurgaon 122001, Haryana.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s).
 1. Direct the respondent to declare the cancellation letter dated 01.08.2022 was totally unlawful, illegal and against the provisions of the real estate (Regulation and development) act,2016.
 2. Direct the respondent to charge the initial cost which was agreed by both parties i.e. Rs. 3,55,00,000/-towards the total cost of the apartment which is mentioned in agreement to sale.
 3. Direct the respondent to receive the payment as per the payment plan which are mentioned in the sale agreement and restore the ownership of the complainants.
5. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions 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

6. The respondent contested the complaint on the following grounds: -
 - i. That on 05.02.2021 the complainants herein had through real estate agent namely "United Estate", applied for a residential unit bearing C-703, 17th floor- tower 3 having super area admeasuring 232 Sq. mt. in the aforesaid project through booking application form and paid Rs. 30,00,000/-. That the complainant had agreed and signed the payment. It is pertinent to mention that in the said form it was clearly



- stated that timely payment rebate (Discount) would be conditional on *"timely payment by customer of each instalment due."*
- ii. That pursuant to the aforesaid application, on 15.02.2021, the respondent acknowledged and confirmed the booking and tentatively allotted the aforementioned unit to the complainants.
 - iii. That it is apposite to state that, at the time of booking application, the complainants had to pay Rs. 30,50,000/- however they had only made a payment of Rs. 30,00,000/-. Thereafter on 30.03.2021, i.e., after a delay of 38 days, the complainants herein made an outstanding payment of Rs. 1,27,295/- to the respondent.
 - iv. That on 25.05.2021, in accordance with the agreed payment plan, the respondent herein issued demand letter of Rs. 20,22,705/- to the complainants, which was to be paid by 07.06. 2021.however, on 05.06.2021, the complainants made a payment of Rs. 1,10,000/- and 9,90,000/-, on 29.06.2021, i.e., after a delay of 22 days, made a part payment of Rs. 8,71,205/- towards total outstanding as on 07.06.2021 and on 15.12.2021, after a delay of 191 days, made a part payment of Rs. 4,00,000 towards outstanding dues and Rs. 15,81,485/ respectively.
 - v. That on 05.01.2022, the respondent herein issued allotment letter to the complainants and allotted them a unit bearing C-1703 with one car parking space in the project. That in the said allotment letter, it was clearly indicated that the total sales value of the allotted unit (inclusive of GST) was Rs. 3,78,62,500. It was also explicitly mentioned that the total sales value was calculated excluding the timely payment rebate (TPR), and that the final total sales value would include the TPR discount value if *"all the instalments are paid on time as per the attached payment plan."* The terms and conditions of the payment plan



(both with and without TPR). The total sales value without TPR would amount to Rs. 3,78,62,500, while the total sales value with TPR would amount to Rs 3,55,00,000.

- vi. That on 14.01.2022, the agreement for sale was executed between the parties. (Same was annexed but not executed between the parties)
- vii. That vide reminder letter dated 28.02.2022, 07.03.2022 and 16.03.2022, the respondent herein has requested the complainant for the registration of the said agreement for sale with the concerned sub-registrar office in compliance with the provisions of the RERA Act. However, despite various follow ups, they were failed to adhere the said obligation.
- viii. That the reminder letter dated 30.05.2022 and 10.06.2022, the respondent requested to clear the aforesaid due amount along with an interest however the complainants did not pay any heed to the said letters and failed to make outstanding dues. It is apposite to state that in said letters, the respondent herein also informed the complainants that since the total payment as on 10.06.2022 made by them is delayed for more than 30 days cumulatively, hence, the TPR discount is withdrawn consequently, the total sale value of the said unit stands revised to Rs. 3,78,62,500/- in accordance with the terms of the booking application form, allotment letter and agreement for sale.
- ix. They have violated both the agreement for sale and the real estate (Regulation and Development) Act, 2016, by not making timely 'instalment payments. As a result of their intentional and blatant disregard for the agreement's terms, the respondent had no choice but to cancel the allotment of unit No. C-1703, in accordance with Clause 9.3 of the Agreement for Sale.

x. That till the date of filing the present reply, the complainants have only paid an amount of Rs. 70,79,985/- and as per the statement of account, an amount of Rs. 57,78,765/- is outstanding towards installments and an amount of Rs. 6,52,060 is outstanding towards interest as on 31.07.2023.

5. All other averments made in the complaints were denied in toto.
6. 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

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

E.I Territorial jurisdiction

7. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

8. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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.

9. 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 complainants at a later stage.

F. Findings on the relief sought by the complainants.

1. Direct the respondent to declare the cancellation letter dated 01.08.2022 was totally unlawful, illegal and against the provisions of the real estate (Regulation and development) act,2016.
 2. Direct the respondent to charge the initial cost which was agreed by both parties i.e. Rs. 3,55,00,000/-towards the total cost of the apartment which is mentioned in agreement to sale.
 3. Direct the respondent to receive the payment as per the payment plan which are mentioned in the sale agreement and restore the ownership of the complainants.
10. The above-mentioned reliefs no. F.1, F.2 & F.3 as sought by the complainant is being taken together as the findings in one relief will definitely affect the result of the other reliefs and these reliefs are interconnected.

11. The complainants were allotted a unit bearing no. C-1703 in the project named "HIGHTOWN Residences" at Sector-28, Gurugram vide allotment letter dated 05.01.2022. No buyer's agreement has been executed between the parties, whereas, allotment letter for the apartment bearing no 1703, 17th floor, Tower C, having carpet area of 1447 sq ft. and super area measuring 2500 sq ft. dated 05.01.2022 was issued by the respondent, regarding the said allotment for a total sale consideration of Rs.3,78,62,500/- and the complainants have paid a sum of Rs.70,79,985/- against the same unit.

12. The respondent states that they have sent several reminders for execution of BBA as well as the payment outstanding which were accompanied with the progress of the project under construction but the complainants did not come forward to execute the same and further stated that there were clear cut mention in the application form itself which is clause 13 at page 22 of the complaint. Clause 13 is re-produced as under:-

"If the intending applicant fails in submission of consent or seeks cancellation/withdrawal from the project without any fault of the promoter or fails in payment of required additional amount towards TSV of unit and signing of agreement for sale within given time, then the promoter is entitled to forfeit the entire application money or 10% of the total Sales Value as may be applicable and interest component on delayed payment (payable by the customer for breach of agreement and non payment of any due payable to the promoter). The rate of interest payable by the intending applicant to the promoter shall be the State Bank of India highest marginal cost of lending rate plus two percent. The balance amount of money paid by the intending applicant shall be returned within ninety days of such cancellation. Any special incentive discount, offer or privilege offered to the applicant at the time of sale shall stand revoked in such situation"

13. The complainant received cancellation notice dated 01.08.2022 and respondent-builder refunded an amount of Rs. 29,99,884/- after deduction of earnest money, interest till 01.08.2022 and GST. The RTGS



had been made to the account of Ms. Kuldeep Kaur and Mr. Chetan Rishi amounting of Rs. 14,99,943/- each dated 12.08.2022. However, it was observed that the RTGS pertaining to the account of Mr. Chetan Rishi returned back to respondent's account reason being NRE VALIDATION FAILED. Now the question before the authority is whether the cancellation issued vide letter dated 01.08.2022 is valid or not.

14. On consideration of documents available on record and submissions made by both the parties, the authority is of the view that on the basis of provisions of allotment, the complainants have paid Rs.70,79,985/- against the total sale consideration of Rs.3,78,62,500/-. The respondent/builder sent reminders letters dated 30.05.2022 and 10.06.2022 asking the allottees to make payment of Rs. 50,70,015/- as per payment plan but the same having no positive results and ultimately leading to cancellation of unit vide letter dated 01.08.2022. The authority is of view that as per section 19 (6) and (7) of Act of 2016, the allottee is under obligation to make timely payment as per payment plan towards consideration of the allotted unit. Also vide proceeding dated 22.12.2023, it is observed that complainant wrote a mail dated 16.03.2022, stating that "we had noted your initial letter in this regard kindly do not issue further reminder". Through which it is concluded that they have made defaults w.r.t. agreement by not executing it in prescribed time period. The complainants have continued with their default and making payment even after of various reminder letters, which led to cancellation of their unit. The authority is of considered view that the cancellation done by respondent is valid in the eyes of law. However, the deductions made from the paid up amount by the respondent are not as per the law of the land laid down by the Hon'ble apex court of the land in cases of **Maula Bux vs Union of India 1969(2)**



SCC 554 and where in it was held that a reasonable amount by way of earnest money be deducted on cancellation and the amount so deducted should not be by way of damages to attract the provisions of section 74 of the Indian Contract Act, 1972. The same view was followed later on in a number of cases by the various courts. Even keeping in view, the principles laid down those cases, a regulation in the year 2018 was framed known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, providing as under:

"5. AMOUNT OF EARNEST MONEY

Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment /plot /building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."

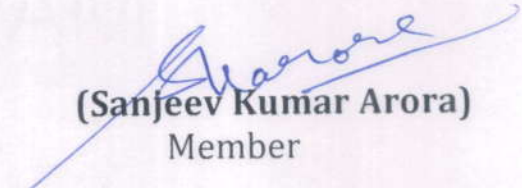
15. There is nothing on record which shows that RTGS done by the respondent to the complainant.1 of amount of Rs. 14,99,943/- was returned back to the respondent. So, keeping in view the aforesaid legal provisions and the facts detailed above, the respondent is directed to refund the deposited amount of Rs.70,79,985/- after deducting 10% of the basic sale price being earnest money after adjustment of Rs. 14,99,943/- already paid to the complainant no. 1 along with an interest @10.85% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on the refundable amount, from the date of cancellation i.e., 01.08.2022 till



actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

H. Directions of the Authority:

16. 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 respondent/builder is directed to refund the deposited amount of Rs.70,79,985/- after deducting 10% of the basic sale price being earnest money and adjustment of Rs. 14,99,943/- already paid to the complainant no. 1 along with an interest @10.85% on the refundable amount, from the date of cancellation i.e., 01.08.2022 till the date of realization of payment.
 - ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
17. Complaint stands disposed of.
18. File be consigned to the registry.


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 29.03.2024