

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

<b>Complaint no.:</b>	<b>2453 of 2023</b>
<b>Date of filing:</b>	<b>30.05.2023</b>
<b>Date of decision:</b>	<b>02.08.2024</b>

Virendra Kumar Gupta <b>R/o:</b> O - 28, 2 <sup>nd</sup> floor, South City - 2, Gurugram, Haryana - 122001	<b>Complainant</b>
Versus	
Suposha Realcon Private Limited. <b>Regd. Office:</b> Unit no. SB/C/2L/Office/017A, M3M Urbana Sector - 67, Gurugram, Haryana- 122102	<b>Respondent</b>
<b>CORAM:</b>	
Shri Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE:</b>	
Mr. Vivek Singh (Advocate)	Complainant
Ms. Shriya Takkar (Advocate)	Respondent

**ORDER**

1. The present complaint has been filed by the complainant/allottee 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. No.	Heads	Information
1.	Project name and location	'Smart World Orchard, Sector-61, Gurugram
2.	Nature of the project	Residential
3.	DTCP license no. and validity status	68 of 2021 dated 16.09.2021 valid up to 15.09.2026
4.	RERA registered/ not registered	Registered dated 03.11.2021 vide no. 74 of 2021 valid up to 31.12.2024
5.	Allotment letter	13.12.2021 [Page no. 44 of complaint]
6.	Unit no.	Independent floor K-11A [Page no. 44 of complaint] <b>Admeasuring area of 1150 sq. ft.</b>
7.	Date of agreement for sale	Not executed
8.	Total sale consideration	Rs. 1,28,28,375/- [Page no. 68 of reply]
9.	Total amount paid by the complainant	Rs. 18,00,000/- [Page no. 9 of complaint and the same was admitted by respondent on page 1]
10.	Due date of delivery of possession	31.12.2024 (taken from another file from the date of rera registration)
11.	Occupation certificate	Not obtained
12.	Offer of possession	Not offered
13.	Demand letter	06.08.2022

		(Page 80 of reply) (vide which respondent asked complainant to pay and amount of Rs. 52,55,609/-)
14.	Final opportunity/ Pre-Cancellation letter dated	09.08.2022 (Page 81 of reply) (Vide which he was called upon to pay the outstanding dues within a week)
15.	Cancellation letter dated	16.08.2022 (Page 82 of reply)
16.	Welcome letter in the name of radhika	10.10.2022 (page 84 of reply)
17.	Letter by complainant	30.11.2022 (wherein complainant asked the respondent to either reinstate the unit or refund the amount)

### B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:

- i. That around May and June 2021, respondent advertised and promoted their project through different-different mode of communication. The respondent's executive has told complainant that the total cost of flat/apartment would be Rs. 1,20,17,500/- inclusive of all and no other cost but respondent's executive has said the aforesaid amount only orally and did not provide any documents of this effect.
- ii. That once complainant has paid an amount of Rs. 18,00,000/- then respondent issued an allotment letter vide allotment letter dated 13.12.2021 and allotted residential independent floor K-11A, 2.5 BHK in Block No. K-11 Having carpet area of 621.72 Sq. Feet, in "SMART WORLD ORCHARD" project situated at Sector-61,

- Gurugram, Haryana. In allotment letter respondent have increased the cost of the flat/apartment and the total cost of the flat become Rs. 1,28,28,375/- including PLC (Prime Location Charges) and other charges in place of Rs. 1,20,17,500/-.
- iii. That respondent's sales executive convinced complainant that only single flat is available for booking and available on first come and first serve basis in **15:75:10-Sub-Vention Payment Plan** and in Sub-Vention **payment plan**, complainant had to pay initial booking amount (i.e., 15% of total basic consideration amount of flat) at the time of booking and the remaining 75% of consideration amount had to be paid on the basis of the status of construction as per the payment plan by loan through bank. At the time possession of flat, complainant had to pay remaining 10% consideration amount.
- iv. That complainant immediately approached respondent and raised their concern about PLC and also asked respondent to remove the PLC charges as complainant has never opted for the PLC charges, even though respondent has imposed PLC charges of Rs. 2,00,000/- . He has also made several email communications for removing the PLC charges but complainant client efforts were gone in vein and respondent did not remove the PLC charges.
- v. That respondent's raised demand letter on 25.02.2022 and 09.08.2022 demanding an amount of Rs. 52,55,609 against the cost of the flat, which is totally unjust and unfair on account of cost of the flat. The complainant had paid an amount of Rs. 18,00,000/- as 15% of total consideration of the flat and remaining amount had to pay as per the sub-vention scheme, however in respondent's

- demand letter payment demanded by them are totally contrary to the payment plan, it is totally unjustified that respondent was demanding illegal amount from complainant.
- vi. He received a cancellation letter dated 16.08.2022 from respondent depicting that his allotment has been terminated by respondent without giving any appropriate reason and without resolving issue of complainant.
  - vii. The complainant being aggrieved by respondent's conduct, wrote an e-mail dated 29.08.2022 for redressal of his grievances, however respondent neither replied satisfactory nor resolved the issues of complainant.
  - viii. That respondent sold the flat to another person which has been allotted to complainant without any intimation and without resolving the issue of complainant, as complainant has requested respondent to resolve the aforesaid issues and consider the payment as per subvention scheme as promised by respondent during booking of the flat.
  - ix. That even after requesting several times for reinstate of allotment of the apartment, the respondent didn't reinstate the allotment of the apartment of complainant, then complainant was compelled to serve a legal notice dated 14.02.2023, through his counsel to the Respondent for reinstating the allotment of the apartment. That the legal notice was not received because as per tracking report address was not found as recipient has shifted their office which prima-facie shows that the respondent has mala-fide intention to garb the hard-earned money of the complainant.

- x. That the cause of action of the present complaint arose at the time of booking i.e., 24.06.2021 and further arose on 13.12.2021 i.e. date of issuance of the allotment letter of the apartment by the respondent. The cause of action for the present complaint is still in existence between the parties till the reinstatement of the allotment of apartment to the complainant by the respondent.

**C. Relief sought by the complainant**

4. The complainant has filed the present complaint for seeking following relief:
- Direct the respondent to reinstate the cancelled flat/apartment with subvention payment plan and also wave-off the PLC charges included in the cost of flat;
  - Direct the respondent to pay a sum of Rs. 10,00,000/- as damages for causing mental agony, harassment and loss of valuable time;
  - Direct the respondent to pay to the complainant a sum of Rs. 1,00,000/- as litigation expenses;
  - Penalise and punish the respondent for accepting the booking amount before registration of project.
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 respondent**

6. The respondent has contested the present complaint on the following grounds:



- i. Admittedly, the amount paid by the complainant towards the unit was Rs.18,00,000/- and the same was refunded on his request. As a goodwill gesture, the Respondent has already refunded the entire amount of Rs.18,00,000/- to the complainant without any deductions vide RTGS UTR No. KKBKR52023041500851055 on 15.04.2023. Further, the complainant has also accepted the said amount without raising any objection whatsoever. Although, as per terms of the application form and allotment letter the respondent was entitled and well within its rights to deduct the earnest money (10% of total sale consideration) along with non-refundable amounts as stated the application form and allotment letter. Thus, the complaint has become infructuous, and deserves to be dismissed.
- ii. That in due consideration of the complainant's commitment to make timely payments, the respondent allotted Unit No. K-11A vide allotment letter dated 13.12.2021 along with welcome letter dated 13.12.2021. The cost of the said Unit was Rs.1,28,28,375/- plus taxes and other charges.
- iii. Since the complainant did not come forward to make payment of outstanding dues nor returned the duly executed copy of the buyer's agreement. Therefore, the respondent was constrained to issue pre-cancellation notice dated 25.02.2022 but to no avail. Thereafter, the respondent herein issued cancellation notice dated 20.03.2022 thereby cancelling the allotment of the complainant.
- iv. That thereafter, since the complainant was neither coming forward to execute the agreement nor was clearing his dues, the respondent



was constrained to issue pre-cancellation notice dated 09.08.2022, thereby finally calling upon the complainant to clear the outstanding dues of Rs 52,55,609/- along with interest within 7 days from the receipt of the letter. That vide the said pre-cancellation notice, the complainant was notified that if he failed to make the said payments, then it shall be presumed that he was not interested in the allotment of the unit, and thus the allotment would be cancelled.

- v. As a consequence, the respondent was constrained to terminate the allotment of the complainant vide cancellation notice dated 16.08.2022 and forfeited an amount of Rs 12,82,838/- towards booking amount and other charges as per the terms of application form and allotment letter.
- vi. The complainant had paid an amount of Rs.18,00,000/- against the total consideration of Rs.1,28,28,375/- . It is pertinent to reiterate that as a goodwill gesture, the respondent has already refunded the entire amount paid by the complainant amounting to Rs.18,00,000/- to him without any deductions vide RTGS UTR No. KKBKR52023041500851055 on 15.04.2023. The amount was refunded on the specific request of the complainant made vide email dated 30.11.2022.
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 complainant at a later stage.

**F. Findings on the relief sought by the complainant**

- I. Direct the respondent to reinstate the cancelled flat/apartment with sub-vention payment plan and also wave-off the PLC charges included in the cost of flat;
  - II. Direct the respondent to pay a sum of Rs. 10,00,000/- as damages for causing mental agony, harassment and loss of valuable time;
  - III. Direct the respondent to pay to the complainant a sum of Rs. 1,00,000/- as litigation expenses;
  - IV. Penalize and punish the respondent for accepting the booking amount before registration of project.
12. The above-mentioned reliefs sought by the complainant 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 complainant intends to continue with the project and is seeking restoration of the originally allotted unit.
14. The respondent sent demand letter dated 06.08.2022, pre-cancellation notice dated 09.08.2022 to make payment of the outstanding amount. However, the complainant continued with his default and failed to make payment even after receipt of final reminder letter dated 09.08.2022 leading to cancellation of unit vide letter dated 16.08.2022.
15. Vide proceeding dated 12.07.2024, the complainant present in person and the counsel stated that they had booked a unit on 13.12.2021 by paying a sum of Rs.18 Lakhs against a total consideration of Rs.1,28,28,375/- and further agrees during the arguments that they had sent a mail on

30.11.2022 which is Annexure R8 page 83 which clearly stated that the complainant has sought refund of the amount.

16. On the contrary, the counsel for the respondent stated that since the complainant was not willing to continue with the project and did not pay the amount demanded on 09.08.2022 the unit was already cancelled on 16.08.2022 and further refund was processed and sent to the complainant through RTGs on 15.04.2023 and the complaint has been filed by the complainant post receipt of that refund amount, hence, as on the date of filing the complaint, the complainant had no claim of the said unit.

17. As per documents on record, the complainant sent a mail to respondent on 30.11.2022 w.r.t mentioning the status of subject unit and payment details. In the said mail the complainant has alternatively opted for the relief of refund. Further it is also observed during proceedings that amount paid by the complainant has been fully refunded to the complainant on 15.04.2023 through RTGS that is before the filing of the present complaint.

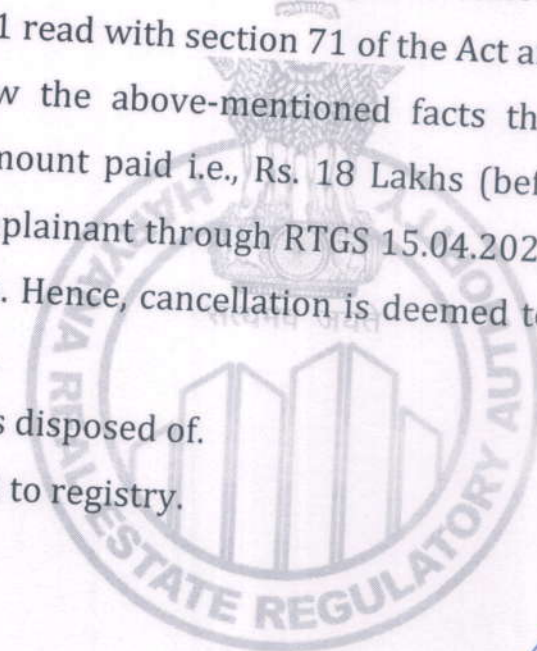
The content of the said mail is mentioned below:-

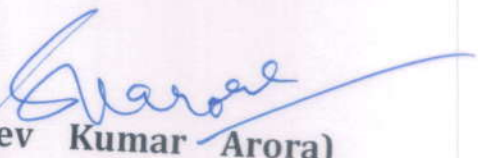
*This refers to my meeting at your office and several communications exchanged with respect to the subject unit. I was informed that you shall be processing the refund of my payment of Rs. 18 Lakhs with interest in September 2022. I have not been updated on this. Please make the refund or reinstate the unit to enable me to proceed with further transactions.*

18. The complainant is seeking relief w.r.t. compensation in the above-mentioned relief. Hon'ble Supreme Court of India in civil appeal titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.(supra)*, has held that an allottee is entitled to claim compensation & litigation charges 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 & litigation expense 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 & legal expenses. Therefore, for claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainant may file a separate complaint before the Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

19. Keeping in view the above-mentioned facts the promoter has already refunded the amount paid i.e., Rs. 18 Lakhs (before the pendency of the case) to the complainant through RTGS 15.04.2023 and the same has been accepted by him. Hence, cancellation is deemed to have been accepted by the complainant.
20. Complaint stands disposed of.
21. File be consigned to registry.



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

**Dated: 02.08.2024**