

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

Complaint no. :	3057 of 2021
Date of complaint :	09.08.2021
Date of pronouncement of order :	09.08.2024

Sunil Kumar Goyal

Mini Goyal

**Both R/o:** - A-012, Belvedere Tower,  
DLF Phase -II, Gurugram

**Complainants**

M/s Bestech India Pvt. Ltd.

**Regd. Office at:** Bestech House, 124, Sector - 44,  
Gurugram, Haryana - 122002

Versus

**Respondent**

**CORAM:**

Sanjeev Kumar Arora

**Member**

**APPEARANCE:**

Kuldeep Rana (Advocate)

J.K. Dang (Advocate)

Complainants

Respondent

**ORDER**

1. The present complaint has been filed by the complainants/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 thereunder 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:

S. N.	Particulars	Details
1.	Name of the project	"Park View Sanskruti", Sector- 92, Gurugram.
2.	Project area	12.7875 acres
3.	Nature of the project	Residential group housing
4.	DTCP license no. and validity status	i. 13 of 2009 dated 21.05.2009 valid up to 20.05.2024 ii. 43 of 2011 dated 13.05.2011 valid up to 12.05.2024
5.	Name of licensee	Spring Water Properties Pvt. Ltd. and others
6.	RERA Registered/ not registered	Not Registered
7.	Unit no.	1802, 17 <sup>th</sup> floor, Tower/block- A (Page no. 18 of the complaint)
8.	Unit area admeasuring	1995 sq. ft. (Super area) (Page no. 18 of the complaint)
9.	Allotment letter	10.05.2013 (Page no. 12 of the complaint)





10.	Date of execution of agreement to sell	Not executed
11.	Possession clause	<b>3. POSSESSION</b> a). Offer of possession <p>That subject to terms of this clause and subject to the APARTMENT ALLOTTEE(S) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and further subject to compliance with all provisions, formalities, registration of sale deed, documentation, payment of all amount due and payable to the Developer by the APARTMENT ALLOTTEE(S) under this agreement etc., as prescribed by the Developer, the Developer proposes to offer the possession of the APARTMENT within a period of <i>Thirty Six (36) months from the date of signing of this Agreement or from the date of approval of Building Plans by Town and Country Planning Department, whichever is later.</i> It is clearly understood and agreed by the APARTMENT ALLOTTEE(S) that the Developer shall be entitled for grace period (beyond a period of 36 months) of Six (6) months. It is however understood between the parties that the possession of various Towers comprised in the Complex as also the various common facilities planned therein shall be ready &amp; completed in phases and will be handed over to the APARTMENT</p>

		ALLOTTEE(S) of different Towers as and when completed and in a phased manner. (Page no. 23 of the complaint)
12.	Grace period	<b>Grace period of 6 months allowed being unqualified.</b>
13.	Approval of building plans	04.05.2013 [Page no. 85 of the reply]
14.	Due date of possession	04.11.2016 (Note: - 36 months from date of agreement (agreement not executed) or the date of building plans (04.05.2013) whichever is later + 6 months grace period)
15.	Sale consideration at page no. 35 of the reply	Rs.1,28,46,055/-
16.	Amount paid by the complainants as per averment of complainant, at page 8 of the complaint	Rs.20,00,000/- As admitted by respondent on page 9 of reply
17.	Occupation certificate	19.06.2018 (page 102 of reply to be read with project info submitted by respondent)
18.	Offer of possession	Not offered
19.	Reminder letters	14.08.2013, 07.09.2013, <b>05.10.2013 FINAL NOTICE</b>
20.	Date of cancellation letter	01.07.2014 (Page no. 42 of the reply)



**B. Facts of the complaint:**

3. The complainants have made the following submissions: -

- I. That Relying upon those assurances and believing them to be true, the Complainants booked a Flat bearing A-1802 on 17<sup>th</sup> Floor having super area of 1995 Sq. ft. for total sale consideration of Rs./- 1,25,46,555/- at the proposed project. It was assured and represented to the Complainants by the Respondent that they had already taken the required necessary approvals and sanctions from the concerned authorities and departments to develop and complete the proposed project on the time as assured by the Respondent.
- II. That while booking the aforesaid unit the respondent assured that the complainants will get all the facilities like lift and free car parking space etc as these are the basic facilities and rights of allottees.
- III. That after booking the said unit the respondent sent a allotment letter dated 10.05.2013 in which it has mentioned the specification of the unit and the charges which the complainants have to pay the respondent . thereafter the respondent sent the Apartment Buyers Agreement to the complainants which was supposed to signed by the complainants. Copy of allotment letter dated 10.05.2013 and Apartment Buyers Agreement is annexed herewith as **Annexure C1** and **Annexure C2**.
- IV. That upon receiving the Apartment Buyers Agreement from the respondent for signature the complainants inquired about the status of the project to the respondent and its employee but no satisfactory response received by the complainant.
- V. That after that the respondent started raising the demands for further payments which were duly paid by the complainants at that

time, and the complainants time and again requested the respondents and its representatives about the status of work whether it has started or not. But the respondents didn't bothered to reply the same and the representative of respondent also started ignoring the complainant.

- VI. Thereafter being hopeless the complainants stopped paying the demands of the respondent and approached /visited the respondents office for the inquiry of the status of work but to utter shock and dismay the complainants came to know that the respondent took almost Rs.20,00,000/- from the complainants had not even started the construction, whereas it is clearly mentioned in the Apartment Buyers Agreement that it would deliver the apartment in 36 months.
- VII. That on 05.10.2013 the respondent sent a demand notice in which it demanded for further payment and threatened the complainants about the cancellation of his unit in condition of non-payment of installment. Copy of demand letter dated 05.10.2013 is annexed herewith as **Annexure C-3**.
- VIII. That upon receiveing the demand letter the complainants visited the office of respondent many times regarding the refund of the hard earned money which was paid by the them to the respondent upon time to time but the respondent ignore the complainants and finally on 01.07.2014 the respondent sent a Final cancellation letter to the complainants for the aforesaid Flat.
- IX. That the complainants with folded hands requested the respondent to return his money which he has invested in the project of respondent by relying the fake assuresence of it but the respondent



ignored them all and didn't bother to respond.

- X. That as on today Complainants as on today had paid total amount of Rs.20,00,000/- ( Twenty Lakh Rupees ) to the respondent towards the sale consideration of the aforesaid Flat which is evedent from the letter dated 05.10.2013 sent by the respondent to the complainant.
- XI. That the conduct on the part of Respondent has cleared the dust on the fact that all the promises made by the Respondent at the time of sale of said Shop were fake and false. The respondent had made all those false, fake, wrongful and fraudulent promises just to induce the Complainants to buy the said Flat on basis of its false and frivolous promises, which the Respondent never intended to fulfill.
- XII. The Complainants had faced all these financial burdens and hardship from its limited income resources, only because of Respondent's failure to fulfill its promises and commitments. Therefore, the Respondent has forced the Complainants to suffer grave, severe and immense mental and financial harassment with no-fault on their part. The complainants being common person just made the mistake of relying on Respondent's false and fake promises, which lured him to buy a Flat in the aforesaid residential project of the Respondent.
- XIII. That the cause of action accrued in favor of the complainants and against the Respondent in 2013, is continuing and is still subsisting on day-to-day basis as the respondent has not refunded the sale consideration paid by the complainants even after various repeated requests made by the Complainants to the respondent in this regard.
- XIV. That the Complainants further declare that the matter regarding which the present complaint has been made is not pending before any court of law and any other authority or any other tribunal on the

subject matter.

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

4. The complainants have sought following relief(s):

I. Direct the respondent to refund the balance paid-up amount along with prescribed rate of interest.

5. On the date of hearing, the authority explained to the respondents/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 has contested the complaint by filing reply on the following grounds: -

- i. That the present complaint is not maintainable in law or on facts. The provisions of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the 'Act') are not applicable to the project in question. The application for issuance of occupation certificate in respect of the apartment/tower in question was made on 30.06.2017, i.e well before the notification of the Haryana Real Estate Regulation and Development Rules 2017 (hereinafter referred to as the 'Rules'). Subsequently occupation certificate has also been issued by the competent authority on 19.6.2018. Thus, the project in question is not an 'Ongoing Project' under Rule 2(1)(o) of the Rules. This Hon'ble Office does not have the jurisdiction to entertain and decide the present complaint. The present complaint is liable to be dismissed on this ground alone.



- ii. That the complaint is barred by limitation and liable to be dismissed on this ground as well. The allotment of the complaint was cancelled as far back as on 01.07.2014.
- iii. That the Complainants were provided with the application form containing the terms and conditions of provisional allotment and the Complainants were given the opportunity to familiarize themselves with the same. Clause 11 of the terms and conditions of booking was specifically brought to the Complainants notice which provided that timely payment of instalments/balance sale consideration/security deposits/charges, shall be the essence of the contract. It was specifically emphasized by the officials of the Respondent that interest @ 18% per annum, compounded quarterly shall be levied on delayed payments and that in the event of delay in payment of outstanding amount along with interest, the allotment was liable to be cancelled and earnest money was liable to be forfeited.
- iv. That the Respondent specifically informed the them that as per the terms and conditions of booking, an amount of Rs 19,28,492/- plus taxes, was required to be deposited by the Complainants at the time of booking. The terms and conditions as set out in the application form were accepted by the Complainant. However, the Complainants conveyed that they could only make payment of Rs 10 lacs and that the remaining amount would be paid by the Complainants shortly.
- v. That the Complainants made payment of Rs 10 lacs vide cheque bearing no 748438 dated 19<sup>th</sup> November 2012 issued in favour of the Respondent and drawn on the ICICI Bank, at the time of booking. Subsequently cheque dated 11.2.2013 was issued by the Complainants

in favour of the Respondent for sum of Rs.10,00,000/-, drawn on the ICICI Bank.

- vi. That allotment letter was issued in favour of the Complainants on 10.5.2013 whereby apartment bearing number A-1802 was provisionally allotted to the Complainants. The payment plan was appended along with the allotment letter reflecting the total sale consideration payable by the Complainants to be Rs 1,28,46,055/- (exclusive of applicable taxes and other charges payable at the time of possession).
- vii. That since the complainants continued ignored the payment demands issued by the Respondent in accordance with the payment schedule, final notice dated 5 October 2013 was sent to the complainants calling upon them to make payment of Rs.16,82,397.38.
- viii. That on account of the willful and persistent defaults by the complainants in refusing to make the payment as per the applicable payment plan and also on account of the refusal to execute the Buyer's Agreement, the Respondent was constrained to cancel the allotment in favor of the Complainants vide cancellation notice dated 1 July 2014. The complainants were informed that the amounts paid by the complainants stood forfeited in accordance with the terms and conditions of booking and that no amount was required to be refunded to the complainants. On the contrary, an amount of Rs.3,22,645/- was due and payable by the complainants as interest.
- ix. That thus the allegations levelled by the Complainants against the Respondent are totally baseless and do not merit any consideration by the Hon'ble Adjudicating Officer. The Complainants has failed to make the payments as per the agreed payment plan. The Complainants have



admittedly till date only made payment of Rs. 20,00,000/- against the consideration amount of Rs. 1,28,46,055/-, exclusive of taxes (GST, VAT) and other charges at the time of possession.

7. 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 those undisputed documents and submissions made by the parties.

**E. Jurisdiction of the authority**

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**

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 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.*

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.

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

**F.I Direct the respondents to refund the balance paid-up amount along with prescribed rate of interest.**

11. In the present complaint, the complainants intend to withdraw from the project and is seeking return of the amount paid by him in respect of subject unit along with interest 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)*

12. Clause 3 of the unsigned buyer's agreement provides the time period of handing over possession and the same is reproduced below:

*That subject to terms of this clause and subject to the APARTMENT ALLOTTEE(S) having complied with all the terms and conditions of this Agreement and not being in default under*



*any of the provisions of this Agreement and further subject to compliance with all provisions, formalities, registration of sale deed, documentation, payment of all amount due and payable to the Developer by the APARTMENT ALLOTTEE(S) under this agreement etc., as prescribed by the Developer, the Developer proposes to offer the possession of the APARTMENT within a period of Thirty Six (36) months from the date of signing of this Agreement or from the date of approval of Building Plans by Town and Country Planning Department, whichever is later. It is clearly understood and agreed by the APARTMENT ALLOTTEE(S) that the Developer shall be entitled for grace period (beyond a period of 36 months) of Six (6) months. It is however understood between the parties that the possession of various Towers comprised in the Complex as also the various common facilities planned therein shall be ready & completed in phases and will be handed over to the APARTMENT ALLOTTEE(S) of different Towers as and when completed and in a phased manner.*

13. **Due date of handing over possession and admissibility of grace period:** As per clause 3 of the unsigned buyer's agreement, the possession of the allotted unit was supposed to be offered within a period of Thirty Six (36) months from the date of signing of this Agreement or from the date of approval of Building Plans by Town and Country Planning Department, whichever is later plus 6 months of grace period. Therefore, the due date has been calculated as 36 months from the date of approval of building plans i.e, 04.05.2016. Further a grace period of 6 months is allowed to the respondents being unqualified. Thus, the due date of possession come out to be 04.11.2016.
14. The complainants were allotted a unit bearing no. 1802, 17th floor, Tower/block- A in the project of the respondent named "Park View Sanskruti" at Sector-92, Gurgaon vide allotment letter dated 10.05.2013, for a sale consideration of Rs. 1,28,46,055/- and against the same the complainants had paid a sum of Rs.20,00,000/- to the respondent. As per clause 3 of the buyer's agreement, the due date of possession was 04.11.2016.



15. The respondent started raising payments demands from the complainants from the year 2013 but they defaulted to make the payments. The complainant-allottee in total has made a payment of Rs. 20,00,000/-. The respondent has sent various demand letters and reminder letters on 14.08.2013, 07.09.2013 and 05.10.2013.
16. Thereafter the respondent cancelled the allotment of the plot vide letter dated 01.07.2014. The occupation certificate of the tower where the allotted unit is situated has been received on 19.06.2018.
17. As per schedule 3 (vi): forfeit the earnest money, processing fee, Brokerage, interest on delayed payment, any interest paid, due or payable, any other amount of a non-refundable nature. Thereby the respondent has forfeited 20% of total sale consideration along with other charges. Whereas as per the settled law of the land in the various pronouncements of the Hon'ble Apex Court and as per Regulation 11(5) of 2018 known as Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder), the respondent could have deducted 10% of the sale consideration from the paid-up amount and was bound to return the remaining amount.
18. The due date for completion of the project was 04.11.2016, the occupation certificate has been obtained on 19.06.2018 whereas offer of possession has not been made due to non-payment. Also, the respondent has sent various reminders before cancelling the unit. Therefore, the cancellation is said to be valid. However, the respondent has failed to refund the refundable amount after certain deductions as prescribed under law to the complainant. Thus, after cancelling the unit before the due date of possession, the respondent could not have retained more than 10% of the sale consideration and was bound to



return the remaining. Even the Hon'ble Apex court of the land in cases of *Maula Bux Vs. Union of India (1973) 1 SCR 928*, *Sirdar K.B Ram Chandra Raj Urs Vs. Sarah C. Urs, (2015) 4 SCC 136*, and followed by the National Consumer Dispute Redressal Commission, New Delhi in consumer case no. 2766/2017 titled as *Jayant Singhal and Anr. Vs. M/s M3M India Ltd.* decided on 26.07.2022 took a view that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in nature of penalty, then provisions of Section 74 of Contract Act, 1872 are attracted and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder and as such, there is hardly any actual damage. So, it was held that 10% of the sale price is reasonable amount to be forfeited in the name of earnest money. Thus, keeping in view the principles laid down by the Hon'ble Apex court in the above mentioned two cases, the rules with regard to forfeiture of earnest money were framed by the authority known as Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 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."*

19. Thus, the respondent cannot retain the amount paid by the complainants against the subject unit and is directed to refund the same in view of the agreement by forfeiting the earnest money (which shall not exceed the 10% of the sale consideration of the said unit) along with non-refundable statutory charges as per settled law of the land and shall return the balance amount along with interest at the rate of 11% (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, from the date of cancellation i.e., 01.07.2014 till the actual date of refund of the amount, within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

**G. Directions of the Authority:**

20. 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 functions entrusted to the Authority under Section 34(f) of the Act of 2016:
- i) The respondent is directed to refund the paid-up amount of Rs.20,00,000/- after deducting 10% of the sale consideration of Rs. 1,28,46,055/- being earnest money along with non-refundable statutory charges as per settled law of the land along with an interest @11% p.a. [the State Bank of India highest marginal cost of lending rate [MCLR) applicable as on date +2%) as prescribed under rule 15 of Haryana Real Estate (Regulation and Development) Rules 2017 on the refundable amount from the date of cancellation till actual refund of amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.



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.

21. Complaint stands disposed of.

22. File be consigned to the registry.

  
(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.08.2024



**HARERA**  
GURUGRAM