

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

Complaint no. : 7662 of 2022  
Date of complaint : 15.12.2022  
Date of decision : 28.08.2024

Spark Town Planners Private Limited.  
**Registered Office at:** 1<sup>st</sup> floor, East Tower, NBCC  
Place, Bhishma Pitamah Marg, Pragati Vihar, Lodhi  
Road, South Delhi, Delhi- 110003

**Complainant**

Versus

Ms. Vedith Reddy  
**R/o:** D-5-D-1, Type -V quarter, HUDCO Place,  
Andrews Ganj, New Delhi- 110049

**Respondent**

**CORAM:**

Shri Ashok Sangwan

**Member**

**APPEARANCE**

Shri Nitish Harsh Gupta  
None

Advocate for the complainant  
Advocate for the respondent

**ORDER**

1. The present complaint dated 15.12.2022 has been filed by the complainant/promoter 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 19(10) of the Act wherein it is inter alia prescribed that the allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said unit. Also, the

obligation of allottee to make necessary payments in the manner and within time as specified in the agreement for sale under Section 19(6) and to pay interest, at such rate as may be prescribed, for any delay in payments as per Section 19(7) of the Act.

**A. Project and unit related details**

2. The particulars of the project, the details of sale consideration, the amount paid by the respondent, 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	"Gurgaon 99", Sector 99, Dhankot village and Kherki Majra, Gurugram, Haryana
2.	RERA Registered/ not registered	Not Registered
3.	Allotment Letter	07.12.2011 (Page 23 of complaint)
4.	Date of execution of builder buyer agreement	08.12.2011 (Page 26 of complaint)
5.	Plot no.	947 (Page 23 of complaint)
6.	Possession clause	Clause 3.1 <i>"3.1 The Developer subject to force majeure shall offer the possession of the said plot within a period of 24 months from the date of execution of the Agreement. If the completion of the development work of the Said plot is delayed by Force Majeure including reason of civil commotion or by reason of war or enemy action or earthquake or any act of God, or is a result of any statute, notice, order, rule or notification of the judiciary/Government and/or authority or for any other reason beyond the control of the Developer then in any of the aforesaid events the developer shall be entitled to a reasonable extension of time for offering delivery of possession of the</i>



		<i>said plot."</i> <i>(Emphasis supplied)</i>
7.	Due date of possession	08.12.2013 (Calculated to be 24 months from the date of execution of buyer's agreement)
8.	Basic sale price	Rs.36,98,100/- (Page 28 of complaint)
9.	Total Sale Consideration	Rs.53,86,604/- (Page 43 of complaint)
10.	Amount paid by the complainants	Rs.12,18,656/- (As mentioned in cancellation notice dated 12.01.2021 at page 74 of complaint)
11.	Occupation certificate	19.08.2014 (Page 01 of additional documents)
12.	Offer of possession	04.11.2014 (Page 64 of complaint)
13.	Reminder to take offer of possession	27.10.2015, 18.02.2017 (Page 65 and 66 of complaint)
14.	Payment overdue notices	15.09.2018, 29.11.2018, 02.02.2019, 15.04.2019, 05.08.2019 and 29.11.2019 (Page 67-72 of complaint)
15.	IFMS demand	11.01.2021 (Page 73 of complaint)
16.	Notice for cancellation	12.01.2021 (Sent to respondent by speed post on 13.01.2021) (Page 74 of complaint)
17.	Cancellation published in newspaper	22.07.2021 (Page 77 of complaint)

**B. Facts of the complaint**

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

- a) That the complainant has developed, planned in phased manner a township under the name and style of "G99(Gurgaon 99)" comprising of various residential plots and commercial complexes therein, with suitable infrastructural facilities over a period of time, on the land situated at village Dhankot and Kherki Majra, Sector 99, Gurugram. The development

has been carried out in planned and phased manner in accordance with the licenses and the building plans as approved by DGTCP from time to time. In accordance with the sanctioned building plans, the complainant has already developed the project with suitable infrastructural facilities.

- b) That the complainant obtained license no. 178 of 2008 dated 27.08.2008 from the DTCP under the provisions of the Haryana Development and Regulation of Urban Areas Act, 1975 and the rules made thereunder for using the land for the construction and development of the township thereon in a planned and phased manner. The complainant has obtained and shall be obtaining further necessary sanctions, permissions and approvals from the concerned authorities for the development of the township.
- c) That the respondent being impressed by the project constructed by the complainant approached the complainant with an intention to make a booking in the township G99 being developed by the complainant. The complainant in due consideration of the receipt of the booking amounts from the allottee, allotted plot no. 947 vide allotment letter dated 07.12.2011 to the respondent. That after the allotment of the plot, the allottee made payment in accordance with the agreed payment plan.
- d) That in compliance of the payment schedule, the allottee had made a payment of Rs. 10,00,000/- towards booking amount. Subsequently, the plot buyer's agreement was executed on 08.12.2011 between the parties. While executing the buyer's agreement, it was agreed between the parties that they would be bound by the terms and conditions of the buyer's agreement as illustrated therein.
- e) That in compliance of the payment schedule, the complainant sent various payment due letters as under:

Sr. No.	Payment due letters/Reminders	Amount (in Rs.)	Due date
1.	14.12.2011	2,18,656/-	31.12.2011
2.	01.02.2012	12,18,656/-	29.02.2012
3.	14.05.2012	7,39,620/-	02.07.2012
4.	20.10.2012	19,58,276/-	Immediate
5.	21.01.2013	19,58,276/-	Immediate
6.	16.04.2013	7,39,620/-	Immediate
7.	18.06.2013	26,97,896/-	Immediate
8.	24.10.2013	26,97,896/-	Immediate
9.	10.12.2013	3,69,810/-	Immediate

- f) Despite the allottee's failure to make payment of the outstanding instalments, the complainant completed all the works and issued notice for possession dated 04.11.2014 and subsequently issued reminders on 27.10.2015 and 18.02.2017 with respect to the plot to the allottee thereby requesting the allottee to take possession of the plot after clearing all the pending dues in term of the agreement.
- g) That the complainant again issued several payment overdue notices dated 15.09.2018, 29.11.2018, 02.02.2019, 15.04.2019, 05.08.2019 and 29.11.2019. Such notices were issued by the complainant to the allottee in reference with the notice for possession of plot dated 04.11.2014 for clearing payment of outstanding instalments and accepting possession of the plot immediately.
- h) Thereafter, a letter dated 11.01.2021 was sent by the complainant requesting the allottee to make timely payment of interest free maintenance security deposit for the plot for an amount of Rs. 3,58,400/- payable as per the terms of the agreement with due date being 31.12.2020.

- i) Consequently, the complainant issued notice for cancellation of allotment of plot dated 12.01.2021 to the respondent thereby intimating her that since the total outstanding dues for an amount of Rs.43,85,916/- have not been cleared within the stipulated time even after sending umpteen letters and reminders, therefore, as per the terms of the agreement, the booking and allotment of the plot stands cancelled and all rights of the allottee stand relinquished. Such notice was sent to the allottee via speed post on 13.01.2021.
- j) Upon observation of highly deplorable conduct of the allottee, since the allottee was not making the payment of outstanding dues and not taking the possession of the plot, the complainant was left with no choice but to issue final notice dated 22.07.2021 which was published in the newspaper pertaining to cancellation of the allotment of the plot due to failure in payment of outstanding dues towards the plot and giving a final opportunity to the allottee to clear the dues within 15 days of the said notice, failing which the allotment of the plot shall be deemed cancelled.
- k) That despite the circumstances as mentioned above, the complainant completed the construction of the project diligently and timely, without imposing any cost implications of the aforementioned circumstances on the allottee. The plot was completed in all respect in accordance with the approved plans and that the plot was in a habitable and liveable condition.
- l) That the allottee did not pay any heed to the requests of complainant and pertinently did not even responded to the above communication by the complainant. The allottee intentionally breached the terms of the agreement without any just cause and with malafide intentions to wriggle out of her contractual obligations.
- m) That it is further submitted that in light of clause 11.1 containing the details for cancellation of the agreement, Schedule-A containing the details

of charges and Schedule-B containing the payment schedule for the said plot, the allottee has been a chronic defaulter and has neglected the various notices, letters and reminders sent by the complainant for payment of outstanding dues and handing over the possession of the said plot.

- n) That the complainant has already spent enormous amount of money towards the due construction and development of the various blocks/segments/constituents/parts/phases of the township including the block in which the plot of the allottee is situated and the same being ready for occupation.
- o) That the project "G99" consists of total 617 plots out of which 590 plots have already been sold and possession had also been offered to the eligible allottees. The project is habitable and the possession of approximately 415 plots have been taken over by the respective allottees and around 50 families have already taken possession of the plots in the project as of now and the said figure is increasing day by day with more possessions being taken over and more families moving into the project and enjoying the various facilities and amenities therein. Further, the respective allottees are enjoying and making use of the various facilities and amenities as provisioned for their comfort.
- p) Considering the above facts, the allottee has defaulted in the obligation casted upon her and thus the complainant is entitled to seek the remedy as provided under the Act. That the cause of action to file the present case is continuing as allottee continue to fail to make timely payments and take the possession of the plot in question as per the terms and conditions of the buyer's agreement and the payment plan opted by the allottee. Further cause of action also arose when despite repeated follow ups by the complainant, the allottee withheld her contractual obligations.

**B. Relief sought by the complainant.**

4. The complainant has filed the present complaint for seeking following reliefs:

- i. Direct the respondent to take the possession of the said unit which is ready and in the state of being occupied after completion of the requisite formalities by the respondent including payment of all outstanding dues.
- ii. Direct the respondent to pay the balance consideration and delayed interest as per Section 19 of the RERA Act, 2016.
- iii. Direct the respondent to pay holding charges as per the terms and conditions of the plot buyer's agreement.

5. The present complaint was filed on 15.12.2022 in in the Authority. On 10.05.2023, the respondent was directed to file the reply within two weeks in the registry of the Authority. Further, vide hearing dated 20.09.2023 and 20.12.2023, the respondent was again directed to file the reply in the registry. However, despite specific multiple directions and providing an opportunity of being heard, no written reply has been filed by the respondent. Therefore, in view of order dated 20.12.2023, the defence of the respondent was struck off.

6. 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 based on those undisputed documents and submissions oral as well as written made by the parties.

**C. Jurisdiction of the authority**

7. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**D.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 completed territorial jurisdiction to deal with the present complaint.

**D.II Subject matter jurisdiction**

9. 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 and duties of the allottee as per section 19(6), (7) and (10) of the Act leaving aside compensation, which is to be decided by the adjudicating officer, if pursued by the parties at a later stage.

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

**E.I Direct the respondent to take possession of the said unit which is ready and in the state of being occupied after completion of the requisite formalities by the respondent including payment of all outstanding dues.**

**E.II Direct the respondent to pay the balance consideration and delayed interest as per Section 19 of the RERA Act, 2016.**

**E.III Direct the respondent to pay holding charges as per the terms and conditions of the plot buyer's agreement.**

10. In the present complaint, the complainant/promoter intends to give possession of the plot to the respondent/allottee. Therefore, the complainant/promoter has prayed that respondent/allottee be directed to make payment of outstanding dues as per the payment schedule within time as specified in the agreement for sale under Section 19(6) and to pay interest, at such rate as may be described, for any delay payments as per Section 19(7) of the Act.

11. Due date of possession: Clause 3.1 of the buyer's agreement provides for time period of handing over of possession and is reproduced below:

***"3.1 The Developer subject to force majeure shall offer the possession of the said plot within a period of 24 months from the date of execution of the Agreement. If the completion of the development work of the Said plot is delayed by Force Majeure including reason of civil commotion or by reason of war or enemy action or earthquake or any act of God, or is a result of any statute, notice, order, rule or notification of the judiciary/Government and/or authority or for any other reason beyond the control of the Developer then in any of the aforesaid events the developer shall be entitled to a reasonable extension of time for offering delivery of possession of the said plot."***

***(Emphasis supplied)***

12. The promoter has proposed to handover the possession of the said unit within a period of 24 months from the date of execution of buyer's agreement. The buyer's agreement was executed between the parties on 08.12.2011. Thus, the due date of handing over of possession comes out to be 08.12.2013.
13. The plot in question was allotted to the respondent/allottee vide allotment letter dated 07.12.2011 and thereafter, buyer's agreement was executed inter-se parties on 08.12.2011. The respondent/allottee has made a payment of Rs.12,18,656/- against the total sale consideration of Rs.53,86,604/-. The due date for handing over of possession comes out to be 08.12.2013 as computed above. On perusal of documents on record, it is observed that the occupation certificate of the said project was granted by the competent authority on 19.08.2014 and the complainant has offered the possession of the subject plot to the respondent/allottee on 04.11.2014.
14. It is pertinent to mention here that the complainant/promoter cancelled the allotment of the respondent/allottee vide cancellation notice dated 12.01.2021 and further made a publication of the same in newspaper on 22.07.2021. During the last hearing dated 08.05.2024, the complainant/promoter submitted that the complainant/promoter has not

cancelled the unit of the respondent allottee till date. However, due to lack of evidence substantiating the same, the case was suo motu reopened and listed for re-hearing today, i.e., on 28.08.2024. Today, during the course of hearing, the complainant/promoter submitted that he had inadvertently made the previous submission that the unit has not been cancelled, however the same had been duly cancelled vide cancellation letter dated 12.01.2021 and its further publication in newspaper dated 22.07.2021 giving final opportunity to clear all the outstanding dues within a period of 15 days, failing which the allotment of the respondent/allottee shall be deemed to be cancelled. Thus, the unit allotted to the respondent/allottee stands duly cancelled on 06.08.2021.

15. The Authority is of the considered view that the relief(s) sought by the complainant/promoter are no longer maintainable as the complainant/promoter itself cancelled the unit of the respondent/allottee on 06.08.2021 on failure of complainant/promoter to clear all the outstanding dues. However, it is important to note that occupation certificate w.r.t. the project where the unit of the respondent/allottee in question is situated was received by the complainant/promoter on 19.08.2014 and in furtherance of the same, possession was offered to the respondent/allottee on 04.11.2014. Several reminder dated 27.10.2015, 18.05.2017, 15.09.2018, 29.11.2018, 02.02.2019, 15.04.2019, 05.08.2019 and 29.11.2019 were issued in favour of the respondent/allottee to make payment of the outstanding dues, but to no avail. Thus, it is manifest that the unit of complainant/allottee has been cancelled owing to her own fault, i.e., failure to make payment of outstanding dues. Therefore, the complainant/promoter will be required to refund the amount paid by the respondent/allottee after certain deductions.

16. The Authority is of view that the complainant/promoter cannot not retain more than 10% of the sale consideration and is 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."*

17. Therefore, in view of the aforesaid legal provisions and the facts detailed above, the complainant/promoter is directed to refund the amount paid by the respondent/allottee after deducting 10% of the sale consideration being earnest money along with an interest @11.10% (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 surrender/withdrawal i.e., 06.08.2021 till its actual realization, within the timelines provided in Rule 16 of the Haryana Rules, 2017 *ibid*.

**F. Directions of the authority:**


18. 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) of the Act:

(i) The cancellation of unit of the respondent/allottee is valid. Thus, the complainant/promoter is directed to refund the amount paid by the respondent/allottee after deducting 10% of the sale consideration being earnest money along with an interest @11.10% (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 surrender/withdrawal i.e., 06.08.2021 till its actual realization, within the timelines provided in Rule 16 of the Haryana Rules, 2017 *ibid*.

(ii) A period of 90 days is given to the complainant/promoter to comply with the directions given in this order failing which legal consequences would follow.

19. Complaint stands disposed of.
20. File be consigned to registry.

**Dated:28.08.2024**

  
**Ashok Sangwan**  
**(Member)**  
Haryana Real Estate Regulatory  
Authority, Gurugram



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**GURUGRAM**