

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

Complaint no.:	2317 of 2023
Date of filing:	26.05.2023
Date of decision:	12.07.2024

Aditya Beri s/o Sanjeev Beri R/o: A-1, Ansal Villa, Satbari, Chattarpur, Delhi - 110074	Complainant
Versus	
Suposha Realcon Private Limited. Regd. Office: Unit no. SB/C/2L/Office/017A, M3M Urbana Sector - 67, Gurugram, Haryana- 122102	Respondent
CORAM:	
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Mr. Prashant Sheoran (Advocate)	Complainant
Ms. Shriya Takkar	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	28.09.2022 [Page no. 24 of complaint]
6.	Unit no.	Independent floor F-7A [Page no. 36 of complaint] Admeasuring area of 1549 sq. ft.
7.	Date of agreement for sale	27.10.2022 [Page no. 34 of complaint]
8.	Total sale consideration	Rs. 1,89,06,043/- [Page no. 26 of complaint]
9.	Total amount paid by the complainant	Rs. 18,91,000/- [As per payment receipts from page no. 18-23 of complaint]
10.	Due date of delivery of possession	31.12.2024 (page 45 of complaint)
11.	Occupation certificate	Not obtained
12.	Offer of possession	Not offered
13.	Payment plan	Construction linked (Page 26 of complaint)
14.	Demand letter	30.09.2022 (Page 79 of reply) (vide which respondent asked complainant to pay and amount of Rs.

		1,03,97,930/- with a timeline to be payable on or before 30.10.2022)
15.	Pre-Cancellation letter dated	11.11.2022 (Page 80 of reply) (Vide which he was called upon to pay the outstanding dues within a week)
16.	Cancellation letter dated	23.11.2022 (Page 81 of reply)
17.	Welcome letter in the name of M/s Clothield Impex India Pvt. Ltd.	02.03.2023 (page 84 of reply)

B. Facts of the complaint

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

- i. In the present case, the respondent forced the complainant to pay 1,22,88,930, i.e. 65 per cent of total sale consideration, i.e. 1,89,06,043. It is pertinent to mention here that the agreement to sell in the present case was executed and got registered on 27 October 2022, and before that he had already paid an amount of ₹ 18,91,000, i.e. 10% of the total sale consideration. Thus, the respondent should have waited to raise further demand letters till the agreement to sell was executed. However, in the present case, as stated above. The respondent had demanded an amount of ₹ 1,03,97,930/- on 30 September 2022 without waiting for the execution of a registered agreement to sell.
- ii. It is submitted that prior to the issuance of said demand letter respondent had raised, and the complainant had paid the total amount of rupees 18,91,000/- already stands paid by him as and when demanded by the respondent. However, it is pertinent to

mention here that at the time of issuance of receipts of amount paid, the respondent malafidely showed those amounts in their statement as if they were received on some other dates.

- iii. It is submitted that as per the agreement to sell, executed and got registered between the parties on 27 October 2022, it was specifically stated in the payment plan that the first instalment qua "on the start of construction" after payment of the booking amount shall only be paid on signing of the agreement for sale. However, as already stated above. The respondent issued a demand letter much prior to the signing and registration of the agreement for sale. Thus, the respondent violated the condition of the payment plan and malafidely raised a demand of ₹ 1,03,97,930/- from him. That even the payment plan annexed with the allotment letter, it is specifically mentioned that the next instalment of the booking amount shall be paid on execution of the agreement for sale. It is further submitted that after issuance of allotment letter on 28-09-2022 , complainant received a message from one of the officials of respondent on 6th of oct 2022 and confirmed whether complainant had received allotment letter , receipts and demand letters. That ultimately for the first -time company officials replied on 22 Oct 2022 and thereafter on 27-Oct-2022 the agreement for was got registered. That on the one hand company officials were not inclined to get the agreement done and on the other hand they send illegal demand of more than 65 % without execution of agreement for sale.

- iv. Thereafter on 27 October 2022, the agreement for sale was court executed and registered. It is submitted that though as per the assurances of respondent official's, they should have issued a fresh demand letter after execution of the agreement for sale, however respondent officials malafidely issued a pre-cancellation letter dated 11 November 2022 whereby the stated that since they have demanded an amount of ₹ 1, 03, 97, 930/- vide letter dated 30 September 2022, thus an amount of ₹ 32,119 is also payable as the late payment interest, as well as ₹ 5781, is payable as GST on delayed payment interest. It was specifically agreed between the parties that after issuance of a valid demand letter, if the allottee fails to pay the said amount within a period of 90 days, only thereafter the respondent could terminate the allotment of the allottee. For reference, clause 9.3 of the agreement for sale is reproduced here as follows" In case default by the allottee(s) under the condition listed in Clause 9.3(i) above continues for a period beyond 90 (ninety) days after notice received from the promoter in this regard, the promoter may terminate the present agreement and cancel the allotment of the said independent residential floor."
- v. Thus, as per the said provision, if an allottee commits a default in payment, then the respondent should issue him a notice specifying the default committed by him and further grant him a period of 90 days to rectify the default. The period of 90 days commences from the notice of default committed by the complainant. It is submitted that even if we assumed that the demand letter dated 30 September 2022 was issued validly, i.e. after execution and

registration of the agreement for sale and the period of 90 days commence from the date of issuance of the said demand letter, even then the period of 90 days expired on 30 December 2022. However, in the present case, the respondent had cancelled the unit of the complainant much prior to the letter dated 23 November 2022. Thus, legally the said cancellation is liable to be set aside. That vide email on 29 December 2022. The complainant specifically communicated to the respondent that I have received my loan sanction letter, so please tell me how to expedite the payment process, as I am asking for the same from the last 12 days. Thus, the complainant, within the prescribed period of time, offered to pay the amount. Thus, legally the said cancellation is liable to be set aside.

C. Relief sought by the complainant

4. The complainant has filed the present compliant for seeking following relief:
- i. Set-aside cancellation & demand letter dated 30-09-22.
 - ii. Restore the unit originally allotted.
 - iii. Raise fresh demand draft without levying any sort of interest.
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. At the outset, the respondent denies each and every statement, submissions and contentions set forth in the complaint to the extent that the same are contrary to and/or inconsistent with the true and complete facts of the case and/or the submissions made on behalf of the respondent in the present reply. The respondent further humbly submits that the averments and contentions, as stated in the complaint under reply, may not be deemed to have been admitted by the respondent, save and except what are expressly and specifically admitted and the rest may be read as travesty of facts.
- ii. That without prejudice to the aforementioned contentions it is stated that the complainant has not approached this Hon'ble Authority with clean hands and has tried to mislead this Hon'ble Authority by making incorrect and false averments and stating untrue and/or incomplete facts and, as such, is guilty of suppression very suggestion falsi. The complainant has suppressed and/or mis-stated the facts and, as such, the complaint apart from being wholly misconceived is rather the abuse of the process of law. On this short ground alone, the complaint is liable to be dismissed.
- iii. It is submitted that the complainant had opted for the specific payment plan being 15:75:10. However, the 75% of the total sale consideration would be demanded altogether in terms of construction linked payment plan. The complainant requested that the amount be transferred towards the unit in question i.e. Unit No. F-7A without any deductions. That the complainant visited the

office of the respondent company and collected the copies of the agreement for sale/buyer's agreement for execution at his end. after constant follow ups and requests the agreement for sale was executed on 27.10.2022 and the same was duly registered.

- iv. It is submitted that all the demands were raised as per the payment plan opted by the complainant. That vide demand letter dated 30.09.2022 he was called upon to remit a sum of Rs. 1,03,97,930/- which was due by him in lieu of the purchase of the unit, payable on or before 30.10.2022 after duly completing the formalities of execution and registration of agreement for sale/buyer's agreement. It is pertinent to mention on facts that in respect of the aforementioned demand letter countless requests pertaining to the clearance of the outstanding due amount were made which fell on deaf ears and the respondent was constrained to issue a pre-cancellation letter dated 11.11.2022 wherein he was requested to clear the remaining dues.
- v. That even after issuance of pre-cancellation letter dated 11.11.2022, he failed to clear the arrears owing to which the respondent herein was constrained to issue cancellation letter dated 23.11.2022 thus cancelling the allotment of the Unit in question.
- vi. That the respondent was constrained to cancel the unit on account of non-payment of the demand. It is submitted that the respondent has incurred various losses/damages on account of the breach of the terms of the buyer's agreement and allotment by the complainant. That the amount paid by him was only Rs.18,91,000/-

and that upon his request vide e-mail dated 28.02.2023. However, the allegations made in the said email are disputed. The respondent company in good faith to close the matter has already refunded an amount of Rs.18,56,000/- after necessary deductions, vide RTGS (UTR No. **KKBKR52023053000954976** on 30.05.2023, though as per terms of the agreement for sale, the respondent was entitled to deduct the earnest money (10% of total sale consideration) along with non-refundable amounts as stated in terms of the agreement for sale.

- vii. That admittedly the amount paid by him was only Rs.18,91,000/-. That upon his request, the respondent company in good faith to close the matter has already refunded an amount of Rs.18,56,000/- after necessary deductions, vide RTGS (UTR No. **KKBKR52023053000954976** on 30.05.2023, though as per terms of the agreement for sale, the respondent was entitled to deduct the earnest money (10% of total sale consideration) along with non-refundable amounts as stated in terms of the agreement for sale. That in furtherance of the cancellation of the subject independent floor, the same has been re-allotted to M/s. Clothield Impex India Pvt Ltd vide allotment letter dated 02-03-2023.
- viii. It is submitted that as per the clauses of the agreement for sale which is binding between the parties, both have agreed upon their respective obligations and consequences in case of breach of any of the conditions specified therein. In view of the above, the captioned complaint is not maintainable in law and is liable to be dismissed in limine.

ix. It is stated that the dispute and differences, if any, between the parties involves various questions of facts and law. The issues raised by him cannot be addressed before this Hon'ble Regulatory Authority and the subject matter cannot be adjudicated without going into the facts of the case which requires elaborate evidence to be led and which cannot be adjudicated upon under the summary jurisdiction of this Hon'ble Regulatory Authority. The complaint is liable to be dismissed on this ground alone.

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. **Set-aside cancellation & demand letter dated 30-09-22.**
 - ii. **Restore unit originally allotted.**
 - iii. **Raise fresh demand draft without levying any sort of interest.**
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 intend to continue with the project and is seeking set aside of cancellation letter and to restore the originally allotted unit.

14. It is evident from the perusal of the particulars given in the tabular form above that vide letter of allotment dated 28.09.2022, the complainant was allotted independent floor F-7A admeasuring area of 1549 sq. ft. for total sale consideration of Rs. 1,89,06,043/-. A buyer's agreement has been executed inter-se parties, however, it has been the version of the respondent-builder that it was constrained to issue a pre-cancellation letter dated 11.11.2022 wherein the he was requested to clear the remaining dues. That even after issuance of pre-cancellation letter dated 11.11.2022 he was failed to clear the arrears owing to which the respondent issued cancellation letter dated 23.11.2022 thus cancelling the allotment of the floor in question.
15. The respondent has sent demand letter dated 30.09.2022 asking the complainant to pay a sum of Rs.1,03,97,930/- towards "On Completion of Top Floor Roof Slab of Plot", payable on or before 30.10.2022. Thereafter, a pre-cancellation notice dated 11.11.2022 was also issued by the respondent asking the complainant to make the requisite payment of Rs. 1,03,97,930/- within a period of 7 days of the receipt of the said notice, failing which it shall be presumed by the respondent that the complainant is not interested in the subject unit and the respondent would be constrained to cancel the unit in question, thereby refunding the amount paid by the complainant after forfeiting the booking amount and other charges as per the terms agreed.
16. The complainant took a plea that he had got his home loan sanction letter late but booking was done and booking amount was transferred well within the time, due to which my apartment has been cancelled by respondent.

17. On the contrary, the respondent cancelled the allotted unit of the complainant vide cancellation letter dated 23.11.2022. Thereafter, third party rights were created against the said unit on 02.03.2023 by selling the unit in question to M/s Clothield Impex India Pvt. Ltd. Consequently, the respondent refunded Rs. 18,56,000/- to the complainant through bank transfer on 30.05.2023. Now, the question before the authority is whether the cancellation is valid or not?

18. The authority has gone through the payment plan (Schedule v) of the agreement executed between the parties, same is extracted below for ready reference: -

Name of Instalment	%	BSP	CGST	SGST	Total Amount
Booking Amount	10.00	18,00,576	45,014	43,964	18,90,605
On start of construction-Excavation of the Project Site (On signing of Agreement For Sale)	25.00	45,01,439	1,12,536	1,12,536	47,26,511
On Completion of bulk excavation of the project	20.00	36,01,151	90,029	90,029	37,81,209
On completion of stilt roof slab of plot	10.00	18,00,576	45,014	45,014	18,90,605
On completion of 2 nd floor roof slab of plot	10.00	18,00,576	45,014	45,014	18,90,605
On completion of Top Floor roof slab of plot	5.00	9,00,288	22,507	22,507	9,45,302
On start of flooring of unit	5.00	9,00,288	22,507	22,507	9,45,302
On application of occupation certificate of plot	5.00	9,00,288	22,507	22,507	9,45,302
On offer of possession	10.00	18,00,573	45,014	45,014	18,90,602
Total		1,80,05,755	4,50,144	4,50,144	1,89,06,043

19. After, considering the documents available on record as well as submissions made by the parties, it can be ascertained that the complainant has paid only Rs. 18,91,000/- towards the unit in question.

Therefore, the authority is of considered view that the respondent is right in raising demands as per payment plan agreed between the parties, i.e., towards the stage "On Completion of Roof Slab of Plot".

20. The respondent sent demand letter dated 30.09.2022, pre-cancellation notice dated 11.11.2022 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 11.11.2022 leading to cancellation of unit vide letter dated 23.11.2022.

21. As per clause 9 of the agreement to sell, the respondent has a right to cancel the unit and forfeit the earnest money where an allotment of the unit is cancelled due to default of complainant to make timely payments as per the agreed payment plan. Clause 9 of the buyer's agreement is reproduced under for ready reference:

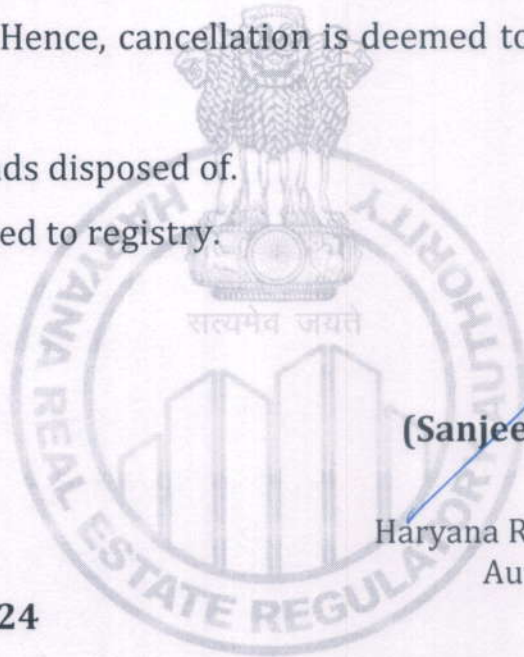
9.3

- (i) *In case the Allottee fails to make payments for demands made by the Promoter as per the Payment Plan annexed hereto, despite having been issued notice in that regard the allottee shall be liable to pay interest to the promoter on the unpaid amount for period of delay;*
- (ii) *In case of Default by Allottee under the condition listed above continues for a period beyond ninety days after notice from the Promoter in this regard, the Promoter may cancel the allotment of the Unit for Residential usage along with parking in favor of the Allottee and refund the money paid to him by the allottee by forfeiting the booking amount paid for the allotment, taxes paid by the Allottee 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 allottee 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 allottee shall be returned by the promoter to the allottee within ninety days of such cancellation. On such default, the Agreement and any liability of the promoter arising out of the same shall thereupon, stand terminated. Provided that, the promoter shall intimate the allottee about such termination at least thirty days prior to such termination.*

22. Further, Section 19(6) and Section 19(7) of the Act of 2016 casts an obligation on the allottee to make necessary payments in a timely manner. The respondent has given sufficient opportunities to the complainants and

finally cancelled the allotted unit of the complainant vide letter dated 23.11.2022. Hence, cancellation of the unit in view of the terms and conditions of the buyer's agreement dated 23.11.2022 is held to be valid.

23. Keeping in view the above-mentioned facts the promoter has already refunded the amount paid i.e., Rs. 18,56,000 (during the pendency of the case) after adjustment of coupon amount (given at the time of booking) to the complainants through RTGS on 30.05.2023 and the same has been accepted by him. Hence, cancellation is deemed to have been accepted by the complainants.
24. Complaint stands disposed of.
25. File be consigned to registry.



(Signature)
(Sanjeev Kumar Arora)

Member
Haryana Real Estate Regulatory
Authority, Gurugram

Dated: 12.07.2024

HARERA
GURUGRAM