

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

Complaint no.: 456 of 2023
Date of decision:- 11.09.2024

Mr. Shree Jit Nair
R/o:- H.No-1009, Bock-C,
Sanjay Gram, Gurgugram, Haryana

Complainant

Versus

1. Mr. Manish Kumar Pandey
R/o- 1911, Floor-2nd, Sector-45,
Gurugram.
2. Mr. Anand Yadav
R/o- Flat No.-302, Floor-4th, Plot-9A,
ASD Homes, Mianwali Colony, Near Sector-12,
Gurugram.
3. ASD Homes
Address:- Khasra No.-7050/1577 min,
Mianwali Colony, Gurugram.

Respondent

CORAM:

Shri Ashok Sangwan

HARERA
GURUGRAM

Member

APPEARANCE:

Sh. Vikas Yadav (Advocate)
Sh. Sham Taneja (Advocate)
Sh. Anand Yadav

Complainant
Respondent no. 1
Respondent no. 2

ORDER

1. The present complaint dated 20.02.2023 has been filed by the complainant under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) for violation of the provisions of the Act wherein it is *inter alia* prescribed that any aggrieved person may file a complaint with the Authority for the violation of any provisions of the Act or the rules made thereunder against any real estate agent.

A. Unit and project 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 and delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	ASD Homes
2.	Location of the project	Mianwali Colony, Gurugram
3.	Total area of the project	Not known
4.	Nature of the project	Residential
5.	DTCP license no.	Not known
6.	Registered/not registered	Not registered
7.	Allotment letter	Not available
8.	Unit no.	Flat no. 004, Upper ground floor,

		3BHK (As on page no. 13 of complaint)
9.	Area of the unit	684 sq.yards (As on page no. 13 of complaint)
10.	Agreement to sell	05.02.2022 (As on page no. 12 of complaint)
11.	Possession clause	<i>Not available</i>
12.	Due date of possession	Ready to move in
13.	Total sale consideration	Rs.73,00,000/- (As on page no. 13 of complaint)
14.	Total amount paid by the complainant	Rs.15,00,000/- (As on page no. 13 of complaint)
18.	Occupation certificate	Not on record
19.	Offer of possession	Not on record

B. Facts of the complaint:

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

- I. That the complainant was looking for a property for his residence and thereupon he saw an advertisement of the "ASD Homes". On 30.01.2022, upon further enquiries and visiting the site of ASD Homes, the complainant saw a board of "Poonji Seed Real Estate Private Limited and the director of the company i.e., respondent no.1

herein Mr. Manish Pandey showed an interest in selling the flat in that property.

- II. That directors of the Poonji Seeds Real Estate Private Limited are Harera registered real estate agents i.e., respondent no. 1 and respondent no.2. On 01.02.2022 they dishonestly portrayed themselves the owners of Flat no. 0044, Upper ground floor, 3-BHK and duped the complainant in purchasing the said unit.
- III. Based on the portrayal and forged registry which respondent no.1 showed to the complainant, the complainant was induced in making the payment of Rs.15,00,000/- in lieu of the Agreement to Sale. That the payment was made of Rs.1,00,000/- on 04.02.2022 and Rs.14,00,000/- on 05.02.2022.
- IV. Thereafter, when the complainant realized that the directors of the M/s Poonji Seeds Real Estate Private Limited were duping him as the flat in respect to which the agreement to sale has been executed and payments were received by the respondents, the respondents did not had any title to the said property and the agreement was also forged.
- V. That thereafter, when the complainant tried to contact the respondents, respondent no.1 went untraceable and respondent no.2 resigned from the company to avoid his liability.
- VI. That a criminal complaint has been lodged against the respondent no.1 under IPC Section-420 and 120B.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
 - i. Direct the respondent to refund the amount of Rs.15,00,000/- alongwith interest.
 - ii. Direct the respondents to pay Rs.1,50,000/- spent by the complainant in lieu of the rent being paid because of the non-delivery of the property.
 - iii. Impose a penalty on the respondents to the extent of 5% of Rs.73,00,000/-.
5. The present complaint was filed on 20.02.2023 and registered as complaint no. 456 of 2023. As per the registry, complainant has sent copy of the complaint along with annexures through speed post as well as through e-mail. On 02.11.2023, the director of the company i.e., Poonji Seeds Real Estate Private Limited Mr. Manish Kumar Pandey appeared but reply was not filed. Thus, vide order dated 03.07.2024 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 on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

7. 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 allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;

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 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.

- F.I Direct the respondent to refund the amount paid by the complainant i.e., Rs.15,00,000/- along with interest.**

11. In the present complaint, the complainant seeks refund of the amount paid to the respondents. During the proceedings, the Authority noted that the respondents are registered real estate agents operating under the name Poonji Seeds Real Estate Private Limited. Respondent no. 1 and respondent no. 2 serve as directors of the company and are alleged to have fraudulently sold a flat, bearing no. 004 on the upper ground floor of ASD Homes, to the complainant. An agreement to sell was executed on 05.02.2022, between respondent no. 1, Mr. Manish Kumar Pandey (Chairman of Poonji Seeds Real Estate Private Limited), and the complainant. The agreement clearly outlines the particulars of the parties and the unit in question. The respondents agreed to sell the unit for a total consideration of Rs.73,00,000, of which the complainant paid Rs.15,00,000 as advance/earnest money on 04.02.2022 and 05.02.2022. On consideration of the facts of the case and the documents submitted by the parties the Authority is of the view that the complainant has been duped by the respondents and the respondents have violated Section 9(7) and Section 10(c)(i) of the Act, 2016. Consequently, a notice be issued to impose a penalty pursuant to Section 62 of the Act, 2016 and proceedings to revoke the registration of the real estate agent be initiated under Section 9(7) of the Act, 2016 be initiated.

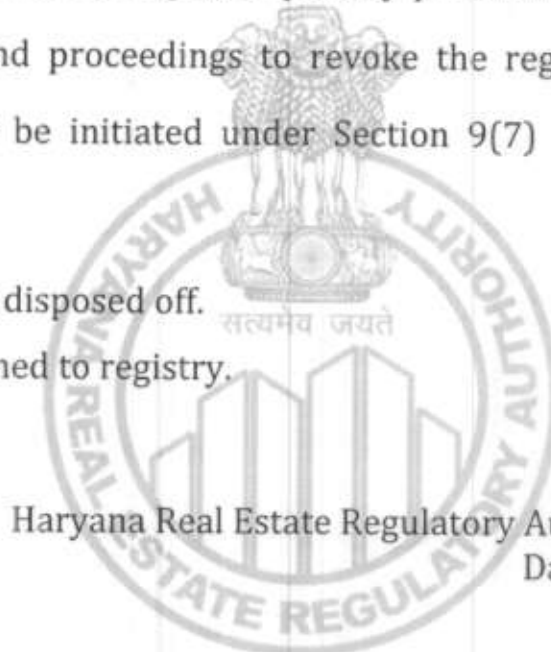
13. The relief of refund cannot be granted as there is no provision under the Act, 2016 for refund against the real estate agent. The complainant may approach the court of competent jurisdiction for the same.

G. Directions of the Authority:

14. Notice be issued to impose a penalty pursuant to Section 62 of the Act, 2016 and proceedings to revoke the registration of the real estate agent be initiated under Section 9(7) of the Act, 2016 be initiated.

15. Matter stands disposed off.

16. File be consigned to registry.



Ashok Sangwan
(Member)

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 11.09.2024

HARERA
GURUGRAM