

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

Order pronounced on: 11.09.2024

| Name of the Builder | | Regional Construction Pvt. Ltd. | |
|---------------------|---------------|---|--|
| Project Name | | Ekam | |
| S.no. | Complaint No. | Complaint title | Attendance |
| 1. | CR/245/2023 | Chandni Bajaj V/s Regional Construction Pvt. Ltd. | Lakshya Manchanda (Complainant) Himanshu Singh (Respondent) |
| 2. | CR/247/2023 | Chandni Bajaj V/s Regional Construction Pvt. Ltd. | Lakshya Manchanda (Complainant) Himanshu Singh (Respondent) |

| CORAM: | |
|---------------|--------|
| Ashok Sangwan | Member |

ORDER

1. This order shall dispose of both the complaints titled as above filed before this authority in form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Ekam" being developed by the same respondent/promoter i.e., **Regional Construction Pvt. Ltd.** The terms and conditions of the builder

buyer's agreements fulcrum of the issue involved in all these cases pertains to quashing of cancellation/forfeiture and possession of the plot.

3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, offer of possession, total sale consideration, amount paid up, date of conveyance deed and reliefs sought are given in the table below:

| | | | | | | | |
|---|--|--|--|--|--|--|--|
| Project: "Ekam" Sector- 05, Sohna, District Gurugram | | | | | | | |
| 8. POSSESSION OF THE PLOT | | | | | | | |
| 8.1 Schedule of possession of the plot | | | | | | | |
| 8.1.1 "The promoter agree and understand that timely handover /delivery of possession of the Plot to the Allottee and the handover of common Areas to the Association of Allottees of the Competent Authority, as the case may be, is the essence of the Agreement. Subject to Force Majeure Event, the Promoter shall handover possession of the Plot and the Common areas/services/facilities which are part of the Project on or before as per the date mentioned in the RERA Certificate." | | | | | | | |
| 1. Completion certificate- 18.07.2022 | | | | | | | |
| 2. DTCP License no. 55 of 2019 dated 08.09.2019 valid upto 07.03.2024- Regional Construction Pvt. Ltd. is the licensee for the project as mentioned in land schedule of the project. | | | | | | | |
| 3. Nature of Project- Residential Plotted Colony | | | | | | | |
| 4. RERA registration -38 of 2019 dated 08.07.2019, valid upto 08.03.2025 | | | | | | | |

| Sr. No. | Complaint no./title/ date of complaint | Reply status | Unit No. and area admeasuring | Date of execution of agreement for sale | Due date of possession & Offer of possession | Total sale consideration and amount paid by the Complainant (s) | Relief Sought |
|---------|---|------------------------------|--|---|---|---|---------------------------------------|
| 1. | CR/245/2023 Chandni Bajaj V/s Regional Construction Pvt. Ltd. DOF- 01.02.2023 | Reply received on 08.12.2023 | B-18, admeasuring 119 sq. yds. [pg. 21 of complaint] | 11.03.2020 (Page 19 complaint) | Due date- 08.03.2025 Offer of possession- 19.04.2021 | TSC: Rs.45,73,664/- (As per SOA on page 56 of complaint) AP: Rs.38,67,500/- (As per forfeiture letter at page 71 of complaint) | Quashing of cancellation, Possession. |



| | | | | | | | |
|----|---|---|--|---|--|--|--|
| 2. | CR/247/2023 Chandni Bajaj V/s Regional Construction Pvt. Ltd. DOF- 01.02.2023 | Reply received on 08.12.20 23 | N-11, admeasurin g 142 sq. yds. [pg. 22 of complaint] | 12.03.2020 (Page 21 of complaint) | Due date- 08.03.2025 Offer of possession- 19.04.2021 | TSC: Rs.54,58,657/- (As per SOA on page 57 of complaint) AP: Rs.46,15,000/- (As per forfeiture letter at page 72 of complaint) | Quashing of cancellati on, Possessio n. |
|----|---|---|--|---|--|--|--|

**Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:
Abbreviations Full form**

DOF- Date of filing complaint
TSC- Total Sale consideration
AP- Amount paid by the allottee(s)

4. The aforesaid complaints were filed by the complainants against the promoter on account of contraventions alleged to have been committed by the promoter in relation to Section 11(4)(a) of the Act, 2016.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoters/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoter, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/245/2023 titled as Chandni Bajaj V/s Regional Construction Pvt. Ltd.** are being taken into consideration for determining the reliefs of the allottee(s) qua quashing of cancellation/forfeiture and possession of the plot.

A. Project and unit related details

7. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

CR/245/2023 titled as Chandni Bajaj V/s Regional Construction Pvt. Ltd.

| S.N. | Particulars | Details |
|------|---|---|
| 1. | Name of the project | "Ekam" Sector- 05, Village Sohna, Tehsil Sohna, District Gurugram, Haryana. |
| 2. | Nature of the project | Residential plotted colony |
| 3. | DTCP license no. and validity status | 55 of 2019 dated 08.09.2019 valid upto 07.03.2024 |
| 4. | Name of licensee | Regional Construction Pvt. Ltd. |
| 5. | RERA Registered/ not registered | Registered vide no. 38 of 2019 dated 08.07.2019 |
| 6. | RERA registration valid up to | 08.03.2025 |
| 7. | Plot no. | B-18, admeasuring 119 sq. yds. [pg. 21 of complaint] |
| 8. | Date of execution of agreement for sale | 11.03.2020 (Page 19 of complaint) |
| 9. | Date of allotment letter | 04.10.2019 [page 17 of complaint] |
| 10. | Possession clause | <p>8. POSSESSION OF THE PLOT</p> <p>8.1 Schedule of possession of the plot</p> <p><i>8.1.1 The promoter agree and understand that timely handover /delivery of possession of the Plot to the Allottee and the handover of common Areas to the Association of Allottees of the Competent Authority, as the case may be, is the essence of the Agreement. Subject to Force Majeure Event, the Promoter shall handover possession of the Plot and the Common areas /services /facilities which are part of</i></p> |

| | | |
|-----|--------------------------------------|--|
| | | <i>the Project on or before as per the date mentioned in the RERA Certificate.</i> (Page 30 of complaint). |
| 11. | Due date of possession | 08.03.2025 [As per registration certificate issued by this authority] |
| 12. | Total sale consideration | Rs.45,73,664/- (As per SOA dated 19.04.2021 on page 56 of complaint) |
| 13. | Total amount paid by the complainant | Rs.38,67,500/- (As per forfeiture letter at page 70 of reply) |
| 14. | Completion certificate | 18.07.2022 |
| 15. | Offer of possession | 19.04.2021 (Page 57 of reply) |
| 16. | Reminders | 03.12.2021, 19.04.2022 (page 71-72 of reply) |
| 17. | Final Reminder | 31.10.2022 (page 70 of complaint) |
| 18. | Forfeiture Letter | 28.12.2022 (pg. 71 of complaint) |

B. Facts of the complaint

8. The complainant has made the following submissions: -

- I. That the complainant was allotted a plot bearing no. B-18 admeasuring 119 sq. yds. in the project of the respondent named "Ekam" at Sector 05, Sohna, Gurugram vide allotment letter dated 04.10.2019. Thereafter, on 11.03.2020, an agreement for sale was executed between the parties regarding the said allotment for a total sale consideration of Rs.38,67,500/-.
- II. That during tenure of agreement, complainant duly complied with the consideration plan as proposed by respondent and has paid all the due installments in timely manner. The complainant had till



- date paid up the total consideration of Rs.38,67,500/-.
- III. That on 19.04.2021, the respondent issued a letter of offer of possession to the complainant subject to clearance of dues. As per the statement of account apart from the due installment of basic sale price of the flat, the respondent imposed unreasonable charges under the name of EDC and IDC charges, electrical charges, water meter charges, one-time add charges along with interest on delayed payments and demanded Rs.11,63,414/- from the complainant.
- IV. That the complainant contacted the respondent and enquired about the miscellaneous charges which were imposed upon the complainant, but no satisfactory answer was received from them.
- V. That the complainant paid his last installment of Rs.4,57,250/- on 07.07.2021 and the entire sale price was paid by the complainant, but the unreasonable charges which were imposed by the respondent without any proper bills and invoices for the same were not paid by the complainant. Thereafter, the respondent issued a letter of reminder dated 31.10.2022 for payment of overdue installment amount against offer of possession, and demanded for payment of Rs.8,65,949/-.
- VI. That on 28.12.2022, the respondent issued a letter for forfeiture of provisional allotment of the said unit of complainant due to non-payment of outstanding dues.
- VII. That the respondent firstly imposed around Rs.9,00,000/- as miscellaneous charges upon the complainant, and thereafter when the said charges were not paid by the complainant, the respondent maliciously cancelled the allotment of the complainant and forfeited around Rs.11,35,559/- of the complainant.

VIII. That the inordinate imposing of miscellaneous charges in the name of EDC and IDC, interest on delay in payment, and other electricity and water supply charges upon the complainant is a shameful attempt by the respondent to usurp huge amount of money from the allottee and thereafter not delivering possession to her.

C. Relief sought by the complainant:

9. The complainant has sought following relief(s):

- i. Direct the respondent to quash the forfeiture letter dated 28.12.2022.
- ii. Direct the respondent to not to charge unreasonable charges from the complainant.

10. On the date of hearing, the authority explained to the respondent/ 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

11. The respondent vide its reply as well as written submissions dated 06.09.2024 has contested the complaint on the following grounds:

- i. That the complainant has suppressed vital facts of non-payment of entire consideration in terms of offer of possession dated 19.04.2021 and on this ground alone, the complaint is liable to be dismissed as not maintainable.
- ii. It is submitted that the complainant is not genuine plot purchaser or consumer and has purchased the said plot for commercial and investment purposes for which the jurisdiction of this Hon'ble Authority cannot be invoked, since the object of the RERA Act and Rules is to protect the interests of the consumers and not the investors.
- iii. That the complainant herself has been guilty of not adhering to the payment schedule and has made most of the payment after passing of the respective due dates.

- iv. That the respondent has received completion certificate for the plotted colony vide letter dated 18.07.2022 and the physical possession of the plot is already offered to the complainant on 19.04.2021. Further, the complainant is liable to pay EDC, IDC, and other statutory charges like any other allottees. The said amount goes to the government. Similarly, the respondent is entitled to one-time additional charge, maintenance charges etc. in terms of agreement.
- v. That the complainant herself defaulted/delayed in making payment of the instalments and has even not cleared the demand in terms of letter dated 19.04.2021.
- vi. That the complainant is defaulter in making payments. After execution of the agreement to sell, the respondent has issued time to time demand letters and reminder letters on 03.02.2020, 20.03.2020, 27.06.2020, 04.08.2020, 01.09.2020, 03.10.2020, 06.10.2020, 15.10.2020, 20.11.2020, 30.12.2020, 03.12.2021, and 19.04.2022, Thereafter, the respondent has issued cancellation letter on 28.12.2022. Subsequently to the issuance of the aforementioned cancellation letter, the respondent has allotted the said unit to Mr. Arul Misra vide builder buyer agreement dated 05.06.2023. The respondent has offered the possession of the said plot to the new buyer on 10.05.2023. It is further submitted that after forfeiture of earnest money, the respondent has even offered the refund of the balance amount upon submission of the original documents relating to the said unit, but the complainant is not coming forward with its original documents to claim her refund.
12. 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 these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

13. The respondent has raised preliminary objection regarding jurisdiction of authority to entertain the present complaint. 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

14. 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

15. 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.

16. 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 objections raised by the respondent:

F.I Objection regarding the complainant being investor.

17. The respondent has taken a stand that the complainant is an investor and not a consumer and therefore, she is not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumer of the real estate sector. It is settled principle of interpretation that the preamble is an introduction of a statute and states main aims and objects of enacting a statute but at the same time, the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the buyer's agreement, it is revealed that the complainant is a buyer and paid total price of Rs.38,67,500/- to the promoter towards purchase of a plot in the project of the promoter. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not

include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

18. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the unit application for allotment, it is crystal clear that the complainant is an allottee as the subject unit was allotted to her by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottee being investor is not entitled to protection of this Act also stands rejected.

G. Findings on the relief sought by the complainant:

G.I Direct the respondent to to quash the forfeiture letter dated 28.12.2022.

19. The complainant was allotted a plot bearing no. B-18 admeasuring 119 sq. yds. in the project of the respondent named "Ekam" at Sector 05, Sohna, Gurugram vide allotment letter dated 04.10.2019. Thereafter, on 11.03.2020, an agreement for sale was executed between the parties regarding the said allotment for a total sale consideration of Rs.38,67,500/- (excluding applicable charges) against which the complainant has paid a sum of Rs.38,67,500/- in all. As per clause 8.1.1 of the agreement dated 11.03.2020, the due date for handing over of possession was 08.03.2025. The respondent has obtained completion certificate of the project in question from the competent authority on 18.07.2022. However, the respondent vide offer of possession letter dated 19.04.2021, fraudulently offered possession of the plot in question to the complainant informing that it is in receipt of the occupation certificate and she is liable to pay the last

due installment of Rs.4,57,250/- against the BSP along with other charges payable at the time of offer of possession. Believing upon the said information, on 07.07.2021, the complainant paid her last due installment of Rs.4,57,250/- payable against the sale consideration at the time of offer of possession but objected to the other demands of the respondent. Thereafter, the respondent vide reminder letters dated 03.12.2021, 19.04.2022 and final reminder letter dated 31.10.2022 demanded the outstanding due installment from the complainant and on non-payment finally cancelled the allotment vide forfeiture letter dated 28.12.2022. Now the question before the Authority is whether the cancellation made by the respondent vide letter dated 28.12.2022 is valid or not.

20. This is a very peculiar case wherein the respondent has illegally and arbitrarily offered possession of the plot to the complainant before obtaining completion certificate from the competent authority and has even collected certain amount from the complainant vide offer of possession letter dated 19.04.2021. Although the final reminder letter dated 31.10.2022 was issued after receipt of completion certificate but was in continuation of the offer of possession letter dated 19.04.2021 and no separate offer of possession was made to the complainant post receipt of completion certificate. Seeing, various illegalities on part of the respondent in this particular case, the Authority is of view that the respondent should not be allowed to get unfair advantage of its own wrong. In view of the above, the said offer of possession letter dated 19.04.2021 as well as forfeiture letter dated 28.12.2022 cannot be held valid in the eyes of law and are hereby set aside.
21. Moreover, it has come to the notice of the Authority that post cancellation of the allotment vide forfeiture letter dated 28.12.2022, the respondent has created the third-party rights against the unit in question vide agreement to

sell dated 05.06.2023 and even offered possession of the unit to them during pendency of the complaint. Therefore, in the interest of justice and to end further litigation, the respondent is directed to offer possession of similarly located plot of same size at same rate as per specifications of the agreement for sale dated 11.03.2020 in the said project to the complainant. In case, the plot as per the specifications mentioned above is not available with the respondent, then the respondent shall refund the entire amount paid by the complainant alongwith interest at prescribed rate i.e. 11.10% as provided under section 18(1) of the Act read with rule 15 of the rules from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Rules 2017.

G.II. Direct the respondent to not to charge unreasonable charges from the complainant.

22. The complainant has submitted that the respondent is illegally demanding amount on account of EDC/IDC, external electrification charges, one time add. charges, advance maintenance charges etc. and is seeking relief w.r.t direction to the respondent to not to charge unreasonable charges from her. The Authority observes that direction w.r.t the above said charges has already been deliberated by the Authority in similar complaint bearing no. CR/5927/2022 of same project titled as "*Maganjot Kaur Vs Regional Construction Pvt. Ltd.* Ordered accordingly.

H. Directions of the authority

23. Hence, the authority hereby passes this order and issue 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):
- The offer of possession letter dated 19.04.2021 as well as forfeiture letter dated 28.12.2022 are set aside.



- ii. The respondent/promoter is directed to offer possession of similarly located plot of same size at same rate as per specifications of the agreement for sale dated 11.03.2020 in the said project to the complainant. In case, the plot as per the specifications mentioned above is not available with the respondent, then the respondent shall refund the entire amount paid by the complainant alongwith interest at the rate of 11.10% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount.
 - iii. The respondent shall not charge anything from the complainant which is not the part of the agreement for sale dated 11.03.2020 or provided under Affordable Plotted Housing Policy, 2016.
 - iv. 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.
24. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
 25. The complaints stand disposed of.
 26. Files be consigned to registry.

(Ashok Sangwan)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 11.09.2024