

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

Complaint no.: 7945 of 2022
Date of filing complaint: 05.01.2023
Date of decision: 05.09.2024

Urvashi Saini
R/o: - H.no: BS 12J, Ground floor, Malibu Town,
Sector 47, Gurugram-122018.

Complainant

Versus

M/s Sternal Buildcon Private Limited
Regd. Office at: - 12th Floor, Dr. Gopal Das
Bhawan, 28 Barakhamba Road, New Delhi-
110001.

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Sh. Rishabh Jain (Advocate)

Complainant

Sh. Neeraj Kumar (Advocate)

Sh. Mintu Kumar (AR of the company)

Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee 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 provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A

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, have been detailed in the following tabular form:

S.No.	Particulars	Details
1.	Name of the project	"The Serenas", Sector- 36, Sohna, Gurugram
2.	Nature of project	Affordable group housing
3.	RERA registered/not registered	Registered 02 of 2017 dated 19.06.2017 valid up to 17.05.2021
4.	DTPC License no.	14 of 2016 dated 26.09.2016
	Validity status	25.09.2021
	Name of licensee	Pardeep and Sandeep
	Licensed area	9.78 acre
5.	Unit no.	2-505, 5 th floor, tower 2
6.	Unit measuring	Carpet Area- 583.04 sq. ft. Balcony Area- 110.31 sq. ft.
7.	Date of execution of Floor buyer's agreement	05.03.2018 (page 45 of complaint)
8.	Possession clause	5. Possession 5.1 <i>The developer shall offer possession of the said flat to the allottee(s) within a period of 4(four) years from the date of approval of building plan or grant of environment clearances, whichever is later.....</i>
9.	Building plan	25.02.2017 (taken from another complaint 7880/2022 DOD 26.10.2023 of the same project)
10.	Environment clearance	18.05.2017 (taken from another complaint 7880/2022 DOD 26.10.2023 of the same project)
11.	Due date of possession	18.11.2021 (Calculated from the date of environment clearance being later 18.05.2021 plus six months grace period in lieu of covid-19 i.e., 18.11.2021)
12.	Total sale consideration	Rs. 21,48,944/-

ra

13.	Total amount paid by the complainant	(As per BBA page no. 56 of complaint) Rs.18,80,326/- (submitted by the complainant during proceedings dated 05.09.2024)
14.	Demand/Reminder Letter	12.06.2020, 25.09.2020 and 13.10.2020 (submitted by respondent along with additional information filed on 06.02.2024)
15.	Pre-Cancellation notice	03.11.2020 (submitted by respondent along with additional information filed on 06.02.2024)
16.	Date of publication in newspaper	15.01.2021
17.	Cancellation notice	18.01.2021 (page 9 of reply)

B. Facts of the complaint.

3. The complainant has submitted as under: -

- I. That the respondent published attractive colourful brochure, highlighting the affordable group housing project 'The Serenas', Sector 36, village Dhunela, Sohna, Gurugram, Haryana. The respondent claimed themselves to be one of the best and finest in construction and one of the leading real estate developers of the country, in order to lure prospective customers including the complainant to unit in the project. The project was launched in 2016 with the promise to deliver the possession in time and huge funds was collected over the period by the respondent.
- II. That the complainant made an application via application no. 2628 dated 23.02.2017 for allotment of a unit in the said project and paid Rs.1,07,447/- as registration amount to the respondent, same was acknowledged by the respondent and issued a payment receipt dated 23.02.2017 to the complainant.
- III. That based on the applications received by the respondent, the draw of lots for allotment of units in the project was held on 20.07.2017. Thereafter, the complainant was allotted a unit no. 2-505, 5th floor, tower 2, admeasuring 583.04 sq. ft. carpet area and 110.31 sq. ft. balcony area along with a two-

wheeler open parking site. Further, the buyer's agreement was executed between the parties on 05.03.2018 towards purchase of the allotted unit for a total consideration of Rs.21,48,944/-.

- IV. That the complainant approached the financial institution, IIFL Home Finance Limited (formerly known as India Infoline Housing Finance Limited) for obtaining a loan of Rs.18,98,660/- for making payment of the balance sale consideration to the respondent for the subject unit. The financial institution, IIFL Home Finance Limited sanctioned a loan of Rs.18,98,660/- via loan account no. IL10018228 on 05.06.2018. The complainant through IIFL Home Finance Limited paid all instalments as and when demanded by the respondent. The complainant through IIFL Home Finance Limited paid a total amount of Rs.15,43,844/- to the respondent-developer in different instalments.
- V. That the due date of possession of the allotted unit as per the clause 5.1 of the agreement was to be calculated four years from the date of approval of the building plans or grant of environment clearance, whichever is later. The building plan approvals were obtained by the respondent on 25.02.2017 and the environment clearance was granted on 18.05.2017. Therefore, the due date of possession of the allotted unit was 18.05.2021, calculated four years from the date of grant of environment clearance i.e. 18.05.2017, being the later date. Also, the authority, Gurugram vide its notification no. 9/3-2020 dated 26.05.2020 had granted grace period of six months on account of force majeure due to COVID-19 outbreak for projects having completion date on or after 25.03.2020. Thus, the due date of possession for the subject unit comes 18.11.2021.
- VI. That the respondent kept telling the complainant that the unit would be ready as per the commitments and the promises made to the complainant. The complainant has reposed faith in the representations made by the

A

respondent, about the development of the project. The respondent kept raising illegal and unlawful demands from the complainant despite receiving more than hundred percent of the cost of the unit.

- VII. That the complainant sent a letter dated 15.12.2020 to the respondent seeking more time to pay the last instalment due to the Covid-19 outbreak. However, the respondent cancelled the allotted unit via notice in the newspaper on 15.01.2021 on account of delay in making the payment for the unit.
- VIII. That the respondent-developer via email dated 29.07.2022 mentioned that out of total paid amount of Rs.21,56,922/-, the complainant is entitled for the refund of Rs.14,60,024/- and has forfeited the earnest money illegal, violating the provisions mentioned in the agreement. The complainant was ready to make the payment of the legal and lawful demands but the respondent only informed that the unit has been cancelled and same cannot be retrieved.
- IX. That the complainant, in total paid a sum of Rs.21,56,922/- as and when demanded by the respondent, as per the payment plan mentioned in the agreement to the respondent. Despite receiving more than the cost of the unit, the respondent developer cancelled the allotment of the unit of the complainant on 15.01.2021 due to delay payment of the last instalment. The respondent failed to fulfil his obligation to offer the legal and legitimate possession of the unit to the complainant as per commitment made in the buyer's agreement. The respondent has neither refunded the deposited amount to the complainant till date after deducting earnest money of Rs.25,000/- as per the Haryana Affordable Housing Policy, 2013 and as per the provisions of the agreement, with interest.
- X. That the complainant is entitled for the possession of the allotted unit as the complainant allottee had already paid Rs.21,56,922/- to the respondent

1a

developer against the total consideration of Rs.21,48,944/-, i.e. Rs.7978/- more than the cost of the unit. Despite receiving more than the cost of the allotted unit, the respondent developer kept raising illegal, unlawful and fraudulent demands from the complainant allottee.

- XI. The complainant, being aggrieved, is ready to pay the legal, lawful and genuine demands to seek the possession of the allotted unit or any other alternative unit at same cost in the project along with delay possession charges from the date of possession till the date of handing over of possession to the complainant, if the allotted unit is sold or handed over to the third party the complainant seeks refund of her deposited amount after deducting the earnest money of Rs.25,000/- as per the agreement, with interest from the date of cancellation of the unit on 15.01.2021 till the entire amount is realised from the respondent.
- XII. That the complainant hereby seeks to redress the various forms of legal omissions and illegal commissions perpetuated by the respondent, which amounts to unfair trade practices, breach of contract and are actionable under the Act, 2016. In the present circumstances, the complainant has been left with no other options but approach and seek justice before the Authority, Gurugram.

C. Relief sought by the complainant:

- (i) Direct the respondent either to handover the possession of the allotted unit/similar unit along with delay possession charges or refund the paid-up amount along with interest.
4. 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.

- A 5. The respondent has contested the complaint on the following grounds: -

- I. That the complainant was allotted a unit bearing no. 2-505 in tower 7 admeasuring carpet area of 583.04 sq. ft. on 6th floor and balcony area 110.31 sq. Ft. with the two-wheeler open parking site and the pro rata share in the common areas through draw of lots held on 20.07.2017 under the Affordable Group Housing Policy, 2013.
- II. That subsequent to the allotment of the said unit the complainant entered into agreement with the respondent for the delivery of possession of the said unit on the terms and conditions as contained therein.
- III. That the complainant paid initial sum towards the part of sale consideration of the said unit at the time of booking of the unit and the balance payment was to be made in terms of the BBA as under:

Sr. No.	Particulars	% of total cost
1	At the time of application	5%
2	At the time of allotment	20%
3	Within 6 months from the date of allotment	12.5%
4	Within 12 months from the date of allotment	12.5%
5	Within 18 months from the date of allotment	12.5%
6	Within 24 months from the date of allotment	12.5%
7	Within 30 months from the date of allotment	12.5%
8	Within 36 months from the date of allotment	12.5%

- IV. That the complainant defaulted in making payment of the instalment which became due and payable and despite several reminders the outstanding amount remained unpaid.
- V. That the complainant failing to pay the outstanding amount despite repeated reminders, the respondent admittedly cancelled the allotment vide cancellation letter dated 18.01.2021 after due publication in the local newspaper in accordance with the clause 4.6 of the buyer's agreement.
- VI. That pursuant to the cancellation of the allotment of the unit the respondent is entitled to deduct the amount from the payment received from the complainant, in accordance with Affordable Housing Policy 2013.
- VII. That the respondent is entitled to deduct Rs. 25,000/- + 3% of the total cost of the unit i.e., Rs. 21,56,922/- + interest on overdue payment + 18% of the

GST. In total a sum of Rs. 4,91,219/- along with GST has been deducted towards the charges for the cancellation of the unit and after deduction of the aforesaid amount a sum of Rs. 14,60,024/- was refunded to the IIFL vide instrument dated 27.10.2021 since IIFL Home Finance Limited had lien over the unit pursuant to the loan sanctioned to the complainant. The complainant had paid a sum of Rs. 18,68,952/- only against the total cost of the unit of Rs. 21,48,944/- excluding the taxes.

6. All other averments made in the complaint were denied in toto.

E. Written submissions by the complainant.

7. The counsel for the respondent filled statement on behalf of the complainant on 05.09.2024 and submitted:

- i. That the complainant has paid Rs.6,13,078/- directly to the promoter.
- ii. Further, after adjustment of loan related charges (insurance, filing etc.) the IIFL Home Finance Limited has disbursed a sum of Rs.12,67,248/- to the respondent/promoter. Therefore, a total sum of Rs.18,80,326 have been received by the respondent/promoter toward subject unit.

8. 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.

F. Jurisdiction of the authority.

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

F.I Territorial jurisdiction

10. 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.

F.II Subject matter jurisdiction

11. 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 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.

12. 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 complainants at a later stage.

G. Findings on the relief sought by the complainants.

G.I Direct the respondent either to handover the possession of the allotted unit/similar unit along with delay possession charges or refund the paid-up amount along with interest.

13. Some of the admitted facts of the case are that vide application dated 23.02.2017, the complainant applied for a unit under the affordable housing policy, 2013 in the project of the respondent "The Serenas". The complainant being successful was allotted a unit 2-505, 5th floor, tower 2, admeasuring 583.04 sq. ft. carpet area and 110.31 sq. ft. balcony area by the respondent for a consideration of Rs.21,48,944/-. It led to execution of a buyer's agreement dated 05.03.2018 between the parties containing various terms and conditions of allotment including dimensions of the unit, its price, due date of possession & payment plan etc. It is further admitted by both parties

that the complainant has paid a sum of Rs.6,13,078/- directly to the promoter and Rs.12,67,248/- through financial institution (IIFL Home Finance Limited) totalling Rs.18,80,326/- against the subject unit. Further, allotment of the subject unit was cancelled by the respondent vide cancellation letter dated 18.01.2021. Therefore, the complainant through present complainant is seeking possession of the allotted unit/similar unit or to refund the paid amount along with interest.

14. Now, the issue arises before the Authority is whether the cancellation of the subject unit was made as per the provisions of the policy of 2013 or not. In the present case the complainant ^{paid} only Rs.18,80,326/- against Rs.21,48,944/- i.e. the sale consideration of the unit but she was also required to pay the amount due on the basis of payment plan as per the policy of 2013, the terms and conditions mentioned in the buyers' agreement. However, the complainant in her facts admittedly stated that she sent a letter dated 15.12.2020 to the respondent seeking more time to pay the last instalment due to the Covid-19 outbreak showing her financial difficulties. A public notice dated 15.01.2021 through publication in the daily newspaper of "Danik Jagran" was made by the respondent, when the complainant failed to pay the outstanding dues despite issuance of various reminder. Subsequently, it led to the cancellation of the allotted unit as per the policy of 2013 and buyers' agreement.
15. Clause 5(iii)(i) of the Affordable Group Housing Policy, 2013 talks about the cancellation. The relevant part of the clause is reproduced below: -

" if any successful applicant fails to deposit the installments within the time period as prescribed in the allotment letter issued by the colonizer, a reminder may be issued to him for depositing the due installments within a period of 15 days from the date of issue of such notice. If the allottee still defaults in making the payment, the list of such defaulters may be published in one regional Hindi news-paper having circulation of more than ten thousand in the State for payment of due amount within 15 Days from the date of publication of such notice, failing which allotment may be cancelled. In such cases also an amount of Rs. 25,000/- may be deducted by the

coloniser and the balance amount shall be refunded to the applicant. Such flats may be considered by the committee for offer to those applicants falling in the waiting list".

16. A perusal of the facts detailed earlier, and the policy of 2013 shows that the respondent has sent demand and reminder letters dated 12.06.2020, 25.09.2020 and 13.10.2020 respectively followed by pre cancellation notice 03.11.2020. But despite that complainant failed to make payment of the outstanding dues leading to cancellation of the allotment of the said unit on 20.11.2020. Thus, it shows that the respondent followed the prescribed procedure and cancelled the unit of the complainant with adequate notices. So, the cancellation of the unit is valid as per the procedure prescribed by law.

17. Clause 5(iii)(i) of the Affordable Housing Policy, 2013 specifies the deduction of amount in case of cancellation of the unit on account of failure of the allottee to deposit the instalments within the time period. Same is reiterated below:

If any successful applicant fails to deposit the installments within the time period as prescribed in the allotment letter issued by the colonizer, a reminder may be issued to him for depositing the due installments within a period of 15 days from the date of issue of such notice. If the allottee still defaults in making the payment, the list of such defaulters may be published in one regional Hindi news-paper having circulation of more than ten thousand in the State for payment of due amount within 15 days from the date of publication of such notice, failing which allotment may be cancelled. In such cases also an amount of Rs 25,000/- may be deducted by the coloniser and the balance amount shall be refunded to the applicant. Such flats may be considered by the committee for offer to those applicants falling in the waiting list.

18. As per the abovementioned clause in the case of cancellation, the respondent can deduct the amount of Rs.25,000/- only from the amount paid by the complainant and the balance amount shall be refunded back to the complainant. In the present case, the complainant has paid Rs.6,13,078/- directly to the promoter and remaining Rs.12,67,248/- was paid by the

financial institution (IIFL Home Finance Limited) to the respondent. The respondent during proceedings dated 21.12.2023 submitted that it had already refunded Rs.14,60,024/- to the financial institution (IIFL Home Finance Limited).

19. Thus, the respondent is directed to deduct only Rs.25,000/- from the amount received by the respondent i.e. Rs.18,80,326/- against the subject unit as per clause 5(iii) (i) of the policy of 2013 and refund the balance amount to the complainant after adjusting the payment made to the financial institution, if any within a period of 90 days along with interest on the balance amount from the date of cancellation notice i.e. 18.01.2021 till its actual realization.

H. 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 function entrusted to the authority under section 34(f):
- The respondent is directed to deduct only Rs.25,000/- from the amount received by the respondent i.e. Rs.18,80,326/- against the subject unit as per clause 5(iii) (i) of the Affordable Housing Policy, 2013 and refund the balance amount to the complainant after deducting the payment made to the financial institution within a period of 90 days along with interest @11.10% per annum as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on such balance amount from the date of cancellation notice i.e. 18.01.2021 till the actual realization of the amount.
 - The above-mentioned amount be refunded to the complainant within a period of 90 days and failing which legal consequence would follow.
21. The complaints stand disposed of.
22. File be consigned to Registry.

Dated: 05.09.2024

V.1 - 
(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory
Authority, Gurugram