

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

Complaint no.: 279 of 2024
Order pronounced on: 18.12.2024

1. Sh. Sanjiv Gogna
2. M/s. Passerine Wealth Solutions Pvt. Ltd.
Formerly known as M/s Integrated Wealth Solutions
Pvt. Ltd. (Through AR)
Address: - W-110, Floor-2nd, Uppal Southend,
Sohna Road, Gurugram-122002, Haryana.

Complainants

Versus

M/s DSS Buildtech Private Limited.
Regd. office: 506, Floor-5th, Time Square Building,
Block-B, Sushnat Lok-I, Gurugram-122002..

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Sh. Pankaj Chandola & Siddhant Goel (Advocate)
Sh. Harshit Batra (Advocate)

Complainants
Respondent

ORDER

1. This complaint has been filed by the complainants/allottees 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 provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project details

2. The particulars of unit, sale consideration, the amount paid by the complainants, 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	"The Melia", Sector-35, Sohna, Gurugram, Haryana.
2.	Area of the project	17.41 acres
3.	Nature of project	Group housing
4.	DTCP license no.	77 of 2013
5.	RERA registered	Registered Registration no. 288 of 2017 Dated-10.10.2017
6.	Unit no.	D-404
8.	Allotment letter	Not available
9.	Date of execution of buyer's agreement dated	Not executed.

10.	Possession clause	Not available
11.	Due date of possession	Cannot be ascertained
12.	Basic sale consideration	Rs. 65,47,500/-
13.	Total amount paid by the complainant	Rs.13,50,000/-
14.	Cancellation letter	01.05.2023
15.	Occupation certificate	Not on record
16.	Offer of possession	Not offered

B. Fact of the complaint

3. The complainants have made the following submissions: -

- I. That the complainant no. 1 is a law abiding citizen of India and the complainant no. 2 is a company incorporated under the Companies Act, 1956 having its office at W-110, 2nd Floor, Uppal Southend, Sohna Road, Gurugram-122002, Haryana.
- II. That the respondent, M/s. DSS Buildtech Private Limited, is a company incorporated under the Companies Act, 1956 having its registered office is at 506, 5th Floor, Time Square Building, B-Block, Sushant Lok-I, Gurugram-122002, India and claims to be a real estate developer in Delhi NCR.
- III. That the project '*The Melia*' is located at Sector 35, Sohna, Gurugram, Haryana. The respondent through its marketing representatives invited the complainants to book an apartment in the said project.

Further, the respondent also claimed that construction would be in full swing and promised to deliver the possession of the apartment as per the projected date.

- IV. Believing upon the assurances and commitments of the respondent, the complainant booked a 2BHK apartment bearing no. D-404 in the project for a total sale consideration of Rs.79,34,850/- and paid an amount of Rs.6,00,000/- towards the booking amount. The said booking amount was acknowledged by the respondent on 24.10.2013.
- V. That the respondent on 01.12.2013 raised a demand of Rs.7,49,963/-. The complainants duly paid the demands raised by the respondent. The respondent again raised a demand of Rs. 6,74,945/- on 12.12.2014. Under the said demand notice, the respondent acknowledged that the complainants have paid an amount of Rs.13,50,000/-. It is to note that despite receiving more than 10% of the total sale consideration, the respondent failed to enter into a Builder Buyer Agreement and kept on raising demands to cheat and dupe the complainants.
- VI. That even after the payment of Rs.13,50,000/-, the respondent did not come forward to execute the Builder Buyer Agreement and kept on raising demands from the complainants on one pretext or the another which is in violation of Section 13 of the Real Estate (Regulation and Development) Act, 2016.
- VII. Therefore, it is very clear from the above provision that the Respondent was not entitled to accept the amount beyond 10% of the cost of the apartment without first entering into the Agreement.



However, the Respondent, even after accepting a sum of more than 10% of the cost of the Apartment, failed to execute the Builder Buyer Agreement and kept on raising demands.

- VIII. That from 2014 till 2022 , the complainants time and again approached the respondent to execute the Builder Buyer Agreement before demanding any further instalments or refund the amount paid along with interest in case the respondent do not wish to execute the Agreement. However, the respondent refused to execute the Agreement and pressurised the complainants to make payment failing which the complainants were threatened of forfeiture of the amounts paid by them.
- IX. That the respondent vide email dated 03.05.2023, sent a Letter of Cancellation on 01.05.2023 of the subject unit whereby the respondent cancelled the unit and forfeited the entire amount paid by the complainants which is completely unlawful and *non est* in the eyes of law. It is to note herein that the respondent was liable to refund the entire amount to the complainants due to non-execution of the Agreement despite payment of more than 10% of TSC and delay in the project. However, having *malafide* intention, the respondent unlawfully cancelled the unit and illegally forfeited the amount paid by the complainants.
- X. That the complainants have paid an amount of Rs.13,50,000/- as and when demanded by the respondent in accordance with the payment schedule. But, despite receiving the said amount, the respondent failed to execute the Agreement and further failed to showcase sufficient development in the project as per committed timelines.

XI. That even after such defaults and violation on account of the respondent, the complainants, under the hope of getting the refund of the hard earned money, kept approaching the respondent to know the status of the refund of the hard earned money paid by the complainant but all the requests and reminders were left unanswered.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
- i. Revoke/set aside the cancellation letter dated 01.05.2023 for the same being unfair and illegal.
 - ii. Direct the respondent to refund the entire amount i.e., Rs.13,50,000/- paid by the complainants along with prescribed rate of interest from the date of respective deposits till its actual realisation.

D. Reply filed by the respondent

5. The respondent has submitted the following by way of written reply:
- I. That the complaint needs to be dismissed on account of maintainability. It is submitted that the complainants are not allottees in the said project as the unit allotted to the complainants had already been cancelled vide cancellation letter dated 01.05.2023 therefore, the complaint is not maintainable before this Authority for this very specific reason.
 - II. That the complainants have themselves defaulted in making timely payments to the respondent and on that account alone is not entitled to any equitable relief under law. The complainants failed to clear the



instalments dues despite repeated reminders given by the respondent. It is relevant to mention here that the complainants did not pay the requisite payment on the initial stage i.e., "At the time of Allotment" which was pre requisite for final allotment of the unit. Thus, no agreement was executed such as Allotment letter, Buyers Agreement etc. with the complainants.

- III. That in 2013, the complainants approached the respondent for booking of a unit in the project and paid a booking amount of Rs.6,00,000/- against the total sale consideration of Rs.79,34,850/- plus other statutory charges and taxes, as applicable. As per the Application form, the respondent was tentatively allotted a 2 BHK unit admeasuring 1350 sq. ft.
- IV. Thereafter, the respondent issued a demand letter on 12.12.2014 asking the complainants for a payment of Rs.6,74,945/- in accordance with the agreed payment plan (refer annexure C/4 of the complaint).
- V. That the respondent obtained the sanction of Building Plan (BR-III) on 21.04.2015. The Fire Clearance/NOC was obtained by the respondent on 09.02.2016 and the same was submitted to DTCP Haryana. The Environmental Clearance was obtained by the respondent from State Environment Impact Assessment Authority (SEIAA) on 20.09.2016. the consent to establish was obtained on 12.11.2016.
- VI. That the respondent has applied for the Occupation Certificate for towers A, D, E & F of the said project and as a goodwill gesture offered interest waiver letter to the complainants to waive off the



interest charges amounting to Rs.14,58,650/- on 15.12.2017 & 01.05.2019. However, the complainants did not paid any heed to the same and failed to clear the outstanding dues according to the payment plan.

- VII. That the respondent has given ample opportunities to the complainants to clear the pending dues since 2014 but the complainants haven't paid any heed to the same and deliberately failed to clear the pending dues. It is submitted that the complainants had only made a payment of Rs.13,50,000/- towards the booking amount and thereafter stopped making the payments despite of various reminders sent by the respondent.
- VIII. That the complainants had opted for a Construction linked payment plan wherein the next instalment was due on the stage "**At the time of Allotment***" However the complainants failed to make the payment of the next instalment. It is relevant to mention here that the final allotment was subject to the payment of requisite payments as per the agreed payment plan i.e., 30% of the total sale consideration. The respondent had issued various demand letters, reminder letters to the complainants on various dates, however, it's been more than 9 year: since the booking but the complainants did not paid any heed to the said demand letters and reminder issued by the respondent and have failed to pay the pending instalments. Pursuant to which, vide letter date 01.05.2023, the respondent cancelled the tentatively allotted unit.
- IX. That after giving ample opportunities to the complainants for clearing pending instalments, the respondent cancelled the

tentatively allotted unit vide cancellation letter dated 01.05.2023 and forfeited the entire amount of Rs.13,50,000/-.

X. That the forfeiture calculation is being made herein below:

A. Total Sales Consideration Rs.79,34,850/-

B. Amount Forfeited- 10% Earnest Amount (10% of A) Rs.7,93,485/-

C. Interest till 01.05.2023 Rs. 33,67,806/- - Interest as per the RERA rules

D. Total Amount to be forfeited (B + C) Rs.41,61,291/-

E. Amount received by the allottees Rs.13,50,000/-

XI. That the complainants have only paid Rs.13,50,000/- thereafter the complainants stopped making payments of the instalment and have now filed the present complaint seeking refund of the payment made by him on baseless and frivolous grounds.

6. Copies of all the relevant documents have been filed and placed on the record. The authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents as well as written submissions made by the complainants.

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 allottees 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.

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 complainants at a later stage.

F. Findings on the reliefs sought by the complainant:

F.I. Revoke/Set aside the cancellation letter dated 01.05.2023, for the same being illegal.

F.II Direct the respondent to refund the entire amount i.e., Rs.13,50,000/- along with prescribed rate of interest from the date of respective deposits till its actual realisation.

11. In the present case, the complainants intend to withdraw from the project and are seeking return of the amount paid by them in respect of

subject unit along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building. -

- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or
- (b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:"

(Emphasis supplied)

12. **Date of possession:** In the present case, the complainant applied for a unit in the project "The Melia" located at Sector-35, Gurugram, Haryana and pursuant to the allotment letter dated 18.11.2013. The complainants booked a unit bearing no. D-404 in the project and paid an amount of Rs.6,00,000/- towards the booking amount and the same was acknowledged by the respondent vide receipt dated 24.10.2013. Thereafter, the respondent raised a demand letter on 01.12.2013 for an amount of Rs.7,49,963/- and requested the complainants to pay the same by 15.12.2013. The complainants made a payment of Rs.4,50,000/- and the same was acknowledged by the respondent vide receipt dated 12.02.2014. On 12.12.2014, the respondent again raised a demand letter of an amount of Rs.6,74,945/- and the same was to be paid by the

complainants by 31.12.2014. The respondent neither formerly allotted the unit to the complainants by issuing any allotment letter nor executed the Buyer's Agreement in favour of the complainants till date. After a delay of 10 years, from the date of booking, the respondent out of blue cancelled the unit on 01.05.2023 stating that due to non-payment of outstanding dues the unit has been cancelled.

13. Admissibility of refund along with prescribed rate of interest: The complainants are seeking refund of the amount paid by them at the prescribed rate of interest. However, the allottees intends to withdraw from the project and are seeking refund of the amount paid by them in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

14. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

15. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 18.12.2024 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.

16. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"

17. In the present complaint, the complainant booked a unit in the project "The Melia" situated at Sector-35, Gurugram, Haryana and the only document available on record is the "Application Form and the Payment Plan" dated 16.11.2013 wherein a booking amount of Rs.6,00,000/- was paid by the complainants. The application form and the payment plan mentions specifically that a 2 BHK unit has been booked admeasuring super area of 1350sq.ft. @Rs.4850/- per sq.ft. resulting in the basic sale

consideration of Rs.65,47,500/-. As per the payment plan annexed with the application form on page no. 25 of complaint, the complainants had to made the payment as follows:

<i>At the time of Booking</i>	<i>10% of BSP</i>
<i>Within 60 days from the booking date</i>	<i>10% of BSP</i>
<i>At the time of Allotment</i>	<i>10% of BSP</i>
<i>On Start of Excavation</i>	<i>5% of BSP + 50% of PLC (if any)</i>
<i>On Casting of Ground Floor Slab</i>	<i>7.5% of BSP + 50% of EDC and IDC</i>
<i>On Casting of 2nd Floor Slab</i>	<i>7.5% of BSP</i>
<i>On Casting of 5th Floor Slab</i>	<i>7.5% of BSP</i>
<i>On Casting of 7th Floor Slab</i>	<i>5% of BSP + 50% Additional Charges</i>
<i>On Casting of 9th Floor Slab</i>	<i>7.5% of BSP + 50% of EDC and IDC</i>
<i>On Casting of 11th Floor Slab</i>	<i>7.5% of BSP</i>
<i>On Casting of Top Floor Slab</i>	<i>7.5% of BSP</i>
<i>On Completion of Internal Plaster</i>	<i>5% of BSP + 50% of PLC (If any)</i>
<i>On Completion of Flooring</i>	<i>5% of BSP + 50% Additional charges</i>
<i>On Offer of Possession</i>	<i>5% of BSP + 100% IFMD + Other Charges.</i>

18. As per the above mentioned payment plan, the complainants had to make the payments in different stages. The complainants have paid an amount of Rs.13,50,000/- against basic sale consideration of Rs.65,47,500/-. The respondent failed to issue an Allotment Letter in favour of the complainants and also failed to execute the Buyer's Agreement till date and instead sent a cancellation letter on 01.05.2023.

19. Thus, keeping in view the aforesaid factual and legal provisions, the failure of the respondent is established under the Act, 2016 as the respondent failed to issue allotment letter and execute Buyer's Agreement even after a lapse of 10 years. Even after the coming of the Act, 2016, the respondent has been demanding more than 10% of the sale consideration which is a violation under Section 13 of the Act, 2016. As per the payment plan, the complainants are not in default as the

complainants had to pay 20% of the BSP in two stages i.e., 10% of BSP at the time of booking and 10 % of the BSP was to be paid within 60 days of the booking. The complainants have paid the above mentioned payments and the same is evident from the payment receipts issued by the respondent. 20% of BSP amounts to Rs.13,08,000/- and the complainants have paid an amount of Rs.13,50,000/- which is more than 20% of the BSP. As per the payment plan, the complainants had to make the next payment on the allotment of the unit and the same has not been issued by the respondent and thus, the complainants refrained themselves from paying any further. The respondent has been holding the amount paid by the complainants from 2013 and neither issued any allotment letter nor any Agreement has been executed by the respondent till date. The respondent cannot retain the amount paid by the complainants unit and the cancellation letter as issued by the respondent is bad in the eyes of law as the same has been issued by the respondent on the failure of the complainants to clear the outstanding dues but the same were not paid due to the respondent's own defaults. Thus, the respondent is directed to refund the full amount paid by the complainants i.e., Rs.13,50,000/- along with interest at the rate of 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, from

the date of each payment till the actual realization of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

H. Directions of the authority

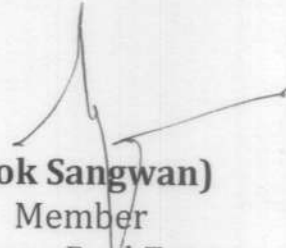
22. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The cancellation is set aside and the respondent is directed to refund the full paid-up amount of Rs.13,50,000 /- alongwith interest at the prescribed rate i.e., 11.10% on the amount paid by the complainants, from the date of each payment till the actual realization of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.
- ii. A period of 90 days is given to the respondent to comply with the directions given in the order and failing which legal consequences would follow.

23. Complaint stands disposed of.

24. File be consigned to registry

Dated: 18.12.2024



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