

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

Complaint no.:
Order pronounced on:

220 of 2024
23.04.2025

Sita Maheshwari
R/o: - 202, Rennainance Rainbow Apts,
ITPL, Main Road, Brook Field,
Bangalore-560037.

Complainant

Versus

1. M/s DSS Buildtech Private Ltd.
Regd. office: 506, Floor-5th,
Time Square Building, Sushant Lok,
Phase-I, Gurugram-122009.

**Respondent
no.1**

2. M/s Silverglades Holdings Pvt. Ltd.
Regd. Office: C-8/1-A, Vasant Vihar,
New Delhi-110057.

**Respondent
no. 2**

CORAM:
Shri Ashok Sangwan

Member

APPEARANCE:
Kailash Prashad Pandey (Advocate)
Harshit Batra (Advocate)

**Complainant
Respondent**

ORDER

1. This 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 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.	Allotment letter	Not available	
7.	Unit No.	Not available	



8.	Unit Area	Not available
9.	Date of execution of agreement for sale	Not executed
10.	Possession clause	Not available
11.	Due date of possession	Cannot be ascertained
12.	Total sale consideration	Rs.76,64,850/-
13.	Total amount paid by the complainant	Rs.6,00,000/- [Only booking amount paid]
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered

B. Fact of the complaint

3. The complainant has made the following submissions: -

- I. That in August, 2013, the complainant had seen an advertisement made by the respondents about the project namely 'The Melia', highlighting the location and features of the project.
- II. That the complainant was looking for a suitable accommodation for herself and her family for residential purpose. The complainant approached the respondents and booked an apartment admeasuring 1350 sq. ft. in the project and paid a booking amount of Rs.6,00,000/- . The complainants had issued cheques in favour of respondent no.2 i.e. M/s. Silverglades Holding Private Ltd on 16.08.2013. Details of the cheques issued by the complainant in favour of respondent no.2

are as follows :

Cheque No.	Date	Bank details	Amount
053807	16/08/2013	IDBI Bank	Rs.1,45,000
596595	16/08/2013	Corporation Bank	Rs.2,65,000
370062	17/08/2013	ICICI Bank	Rs.1,90,000

- III. On receipt of aforementioned amount, the respondents had sent letter dated 24.10.2013 to the complainant acknowledging the payments. After making the payment of Rs.6,00,000/- , the complainant came to know that the respondents have misrepresented and had wrongly shown the project location whereas the true fact was that the project is located at some other place.
- IV. After coming to the knowledge about the correct location of the project, the complainant raised her concern and requested the office bearers of the respondents to return her booking amount because the booking amount has been taken by misrepresenting location of the project whereas the project location is different from the location actually shown to the complainant.
- V. That originally, the office bearers of the respondent agreed to return the booking amount within a period of one week. Despite agreeing to return the booking amount, the respondents inordinately delayed in returning the booking amount to the complainant on one pretext to other. However, the complainant kept pursuing her refund from the officials of the respondents.
- VI. That despite agreeing to return the booking amount, the respondent



sent a demand letter dated 01.12.2013 asking the complainant to pay an amount of Rs.7,49,963/-. After receiving the demand letter, the complainant sent a letter dated 06.04.2014 to the respondents requesting to refund the booking amount along with interest @ 15% p.a. but the respondent neither returned the booking amount nor replied to the letter dated 06.04.2013.

- VII. That the respondents had again sent another demand letter dated 13.12.2014 amounting to Rs.14,24,945/-. After receipt of demand letter dated 13.12.2014, the complainant sent various letters i.e. letter dated 24.12.2014, 22.06.2015, 22.10.2015, 24.04.2016, 10.07.2016, 11.01.2017, 18.02.2017 requesting the respondents to return the booking amount but the respondent neither replied the aforesaid letters nor returned the booking amount.
- VIII. That the complainant had paid the booking amount under guise that the project would be built at a location that was shown to her at the time of payment of booking amount but the respondents without disclosing surreptitiously changed the location of the project. As soon the complainant came to the knowledge of change in location, the complainant requested the respondents to cancel the booking and return the amount paid to them and thereafter, had sent various follow up letters.
- IX. That the respondent vide letter dated 22.06.2023 intimidated the complainant that they are cancelling the booking and forfeiting the booking amount. It is respectfully submitted that the letter dated 22.06.2023 is totally illegal/arbitrary and against the settled principle of law as the same has been sent to the complainant

without following due process and without addressing the concern of the complainant.

- X. On receipt of the cancellation letter, the complainant sent a Legal Notice to the respondents through her counsel on 31.07.2023 asking the respondents once again to return the booking amount but the respondents neither replied nor returned the amount paid till date.
- XI. In these compelling circumstances, the complainant has left with no other option except to file the present complaint before the Authority praying for refund of entire deposited amount of Rs.6,00,000/- along with interest from the date of deposit till its realization as per provisions of RERA, Act.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- Direct the respondent to refund the entire deposited amount of Rs.6,00,000/- with interest from the date of deposit till its realization.
 - Direct the respondent to pay cost of litigation in favour of the complainant.

D. Reply filed by the respondent

5. The respondent no. 1 i.e., M/s DSS Buildtech appeared and filed reply to the present complaint on 11.03.2024. The respondent no.2 i.e, M/s. Silverglades Holdings Pvt. Ltd neither appeared before the Authority nor filed reply. Thus, respondent no.2 i.e., M/s. Silverglades Holding Pvt ltd is proceeded ex-parte.

6. The respondent no.1 has submitted the following by way of written reply:

- I. That the respondent is developing a residential group housing complex approximately over 17.418754 acres of land situated in village Mohamadpur Gujjar, Sector 35, Sohna, Gurugram (Haryana), named as "The Melia".
- II. At the outset, the complaint needs to be dismissed on account of maintainability. It is submitted that as the complainant is not allottee in the said project therefore the complaint is not maintainable before this Authority for this very specific reason. It is also submitted that the complainant herein has herself defaulted in making timely payments to the respondent and on that account alone is not entitled to any equitable relief under law. The complainant has agreed, to pay installments on time and discharge their obligations. Pertinent to note that complainant failed to clear the installments dues despite repeated reminders given by the respondent and also failed to execute any agreement such as Application Form, Allotment letter, Buyers Agreement etc. with the respondent.
- III. That in 2013, the complainant has 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. 76,64,850/- plus other statutory charges and taxes, as applicable. Thereafter, the respondent issued demand letter dated 13.12.2014 asking the complainant for a payment of Rs.14,24,945/-in accordance with the agreed payment plan.

- IV. That in terms of the provisions of the Environmental Clearance dated 20.09.2016, the respondent applied for the 'Consent to Establish' from the Haryana State Pollution Control Board, and was the same was granted on 12.11.2016. It is submitted that "Consent to establish" is the last necessary approval before commencement of construction activity.
- V. That the project is duly registered under the Act and the Haryana Real Estate (Regulation and Development) Rules, 2017 vide HRERA Registration No. 288 of 2017 dated 10.10.2017. It is pertinent to note that the respondent had applied for extension of RERA Registration Certificate before the Authority and the same is extended/renewed dated 28.11.2022 and is valid till 25.04.2025.
- VI. Moreover, it is humbly submitted on 17.08.2023, vide application before the DTCP, respondent has applied for the Occupation Certificate for towers A, D, E & F of the project.
- VII. That it is submitted that the respondents on 15.12.2017, as a goodwill gesture offered interest waiver letter to the complainant to waive off the interest charges amounting to Rs.7,70,912/-. However the complainant did not paid any heed to the same and failed to clear the outstanding dues according to the payment plan.
- VIII. That it is submitted that the complainant had been in default of making payments since the inception. As per clause 2 of the "Undertaking" and Clause 5 and 8 of the payment plans attached with the standard application form, timely payment is the essence of the allotment and the respondent is entitled to forfeit 10% of the total sale consideration along with the due interest in the event of default

committed by the buyer and subsequently terminate the application form and the allotment of the said unit. That in view of the aforesaid clause, the respondent cancelled the tentatively allotted unit in favor of the complainant vide cancellation letter dated 22.06.2023 and forfeited the entire amount of Rs.6,00,000/-.

- IX. That the complainant was under obligation and responsibility to make necessary payments in the manner and within the time and as and when demanded by the respondent. However, till date the complainant has only paid an amount of Rs.6,00,000/- and an amount of Rs.39,95,288/- with taxes towards the total sale consideration along with an amount of Rs.26,36,452/- is outstanding towards interest on delay payment as on 22.06.2023.
- X. It is imperative to mention herein that the complainant has only paid a booking amount of Rs.6,00,000/- and thereafter stopped making payments of the installment and have now filed the present complaint seeking refund of the payment made by them on baseless and frivolous grounds.
- XI. That the complainant has not made timely payment of due of installments despite, repeated demands raised by the respondent from time to time and thus the complainant has failed to comply with the payment terms subject to which the said unit had been agreed to be sold to the complainant. Thus, the complaint is liable to be dismissed.
7. 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

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, 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 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.

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 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 relief sought by the complainant:

F.I. Direct the respondent to refund the entire deposited amount of Rs.6,00,000/- with interest from the date of deposit till its realization.

12. In the year 2013, the complainant approached the respondents and booked an apartment in the project "The Melia" and paid a booking amount of Rs.6,00,000/- vide three cheques bearing no. 053807 dated 16.08.2018 of an amount of Rs.1,45,000/-, bearing no. 596595 dated 16.08.2013 of an amount of rs.2,65,000/- and bearing no. 370062 dated 17.08.2018 of an amount of Rs.1,90,000/- in favour of the respondent no.2. on receipt of the aforesaid amount, the respondents acknowledged the payment and issued an acknowledgement receipt dated 24.10.2013. Thereafter, the complainant came to know that the respondents have misrepresented the complainant and had wrongly shown the project location whereas in reality the project is located at some other place.

13. Thereafter, the complainant raised her concern and requested the respondents to return the booking amount paid by her. Instead of refunding the money paid by the complainant, the respondents issued a demand letter asking the complainant to pay an amount of Rs.7,49,963/-. Thereafter, the complainant sent a letter dated 06.04.2014 to the

respondents requesting them to refund the booking amount paid by the complainant. The respondent instead of replying to the letter sent another demand letter on 13.12.2014 amounting to Rs.14,24,945/-. After receiving the demand letter, the complainant again sent letter requesting the respondents to refund the amount paid by the complainant. There are various demand letters on record sent by the respondent to the complainant and various letters of the complainant seeking refund from the respondents. Right from the very beginning, the complainant has been requesting the respondent to return the booking amount paid by her. No allotment has been made in favour of the complainant till date and no Buyer' Agreement has been executed between the complainant and the respondent till date. The booking amount was paid by the complainant in the year, 2013 and since 2014 the complainant has been requesting the respondents to refund their booking amount. However, the respondents have turned a deaf ear to the said requests of the complainant and have retained the booking amount for more than 11 years.

14. That on 22.06.2023, the respondent issued a cancellation letter in respect of "Unit no. G-502" in the project "The Melia" situated at Sector-35, Sohna, Gurugram to the complainant stating that the unit allotted to the complainant stands cancelled and the amount paid by the complainant of Rs.6,00,000/- stands forfeited.

15. The Authority observes that no allotment letter has been issued to the complainant to date, nor has any Builder-Buyer Agreement been executed between the complainant and the respondents. Furthermore, none of the demand letters issued by the respondents to the complainant specified any unit number. It is only in the cancellation letter that unit no. 'G-502' was arbitrarily introduced without prior allotment. In the absence of any valid allotment of a unit to the complainant, there arises no question of any loss being incurred by the respondents. On the contrary, it is the respondents who have been in possession of the complainant's funds since 2013, nearly 11 years prior to the filing of the present complaint. Accordingly, the complainant is entitled to a refund of the amount paid by her to the respondents.
16. 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.
17. 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., 23.04.2025 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
18. The definition of term 'interest' as defined under section 2(z) 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;"*

19. In view of the foregoing factual circumstances and applicable legal provisions, the cancellation letter dated 22.06.2023 is legally unsustainable, as no unit had ever been allotted to the complainant. Moreover, the complainant had consistently sought a refund of the amount paid, citing the change in the location of the project as the basis for such request. Thus, the cancellation dated 22.06.2023 is hereby set aside.

20. The respondent cannot retain the amount paid by the complainant and is directed to refund the same 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 the request of refund was made by the complainant i.e., 06.04.2014 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 dated 22.06.2023 is hereby set aside.
- ii. The respondent is directed to refund the full paid-up amount of Rs.6,00,000 /- alongwith interest at the prescribed rate i.e., 11.10% on the amount paid by the complainant, from the date the request of refund was made by the complainant 06.04.2014 till the actual realization of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.
- iii. 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: 23.04.2025

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