



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1359 of 2021
Date of filing:	07.12.2021
First date of hearing:	01.02.2022
Date of decision:	17.02.2025

Dr. Sangeeta Gorang
W/o Sh. S.P. Singh
C-702, Aerens Palm Residency,
Behind Heritage Lawns
Sector-35, Karnal-132001

....COMPLAINANT

VERSUS

1. Anil gupta
Managing Director, Sunniva Promoters Pvt .Ltd.
Registered office at 1411,
Chiranjiv Towers, 43, Nehru place,
New Delhi-110019
2. Multan Singh,
Director of Sunniva Promoters,
Office At:- Shopping Centre, Palm Residency,
Sector 35, Karnal -132001 (Haryana)
3. Vikas sharma,

Director of Sunniva Promotors

Office at:- Shopping Centre ,Palm Residency ,Sector 35,
Karnal-132001 (Haryana)

4. Krishan Kumar Aggarwal,
Director, Registered office at 1411,
Chiranjiv Towers, 43, Nehru Place,
New Delhi-110019
5. Hukam Singh,
Director, Registered office at 1411,
Chiranjiv towers, 43, Nehru Place,
New Delhi-110019
6. Sunniva Promotors Pvt. Ltd.
Registered office at 1411, Chiranjiv Towers, 43,
Nehru Place,
New Delhi-110019
7. Rajesh Bhatia ,
Director, Sunniva Promotors Pvt. Ltd.
Registered office at 1411,
Chiranjiv towers, 43,
Nehru Place, New Delhi-110019
8. Sunniva Promotors pvt. Ltd.
Shopping Complex, shop no :1, Palm Residency,
Sector 35, Karnal- 132001(Haryana)

-RESPONDENTS



CORAM: Nadim Akhtar
Chander Shekhar

Member
Member

Present: - Adv. S.P. Singh, Counsel for the complainant through VC.

Adv. Neeraj Goel, Counsel for the respondent through VC.

ORDER:(NADIM AKHTAR –MEMBER)

1. Present complaint has been filed by the complainant on 07.12.2021 under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made there under, wherein, it is inter-alia prescribed that the promoter shall be responsible to fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. FACTS OF THE COMPLAINT AS STATED IN THE COMPLAINT

2. Anil Gupta, Managing Director, through his company Sunniva Promoters Pvt. Ltd., invited applications for under-construction flats in the year 2007. The complainant applied for a flat and made a booking amount of ₹5,00,000/- through account payee cheque bearing no. 462052000022000, dated 14-09-2007, drawn from Account no. 14466 of Oriental Bank of Commerce. A copy



of the cheque is annexed as Annexure P/1. The application to Sunniva Promoters is annexed as Annexure P/2.

3. Upon encashment of the said cheque (Annexure P/1), Sunniva Promoters Pvt. Ltd. issued a Flat Buyer's Agreement for Flat No. C-702, 7th Floor on 18-09-2007, for a total sale consideration of ₹24,74,680/-. A copy of the agreement is annexed as Annexure P/3. However, Sunniva Promoters Pvt. Ltd., with mala fide intention, did not sign each page of the Flat Buyer's Agreement. Sunniva Promoters Pvt. Ltd. also issued an Allotment Letter for Flat No. C-702 on 18-09-2007 for the same consideration amount of ₹24,74,680/-, which is annexed as Annexure P/4. However, the company again failed to sign each page of the Allotment Letter.
4. To pay the remaining balance, complainant and her husband, Suraj Pal, took a home loan of ₹19,75,000/- from LIC Housing Finance Ltd. (Loan Account No. 8558). The final payment of ₹75,000 was made on 08-03-2010, bringing the total amount paid to Sunniva Promoters to ₹24,75,680/-, which exceeds the agreed consideration of ₹24,74,680/-. The complainant is yet to receive a refund for the excess amount paid. A 24% per annum interest is also applicable on this excess amount. The loan details issued by LIC Housing Finance Ltd. are annexed as Annexure C/5.



5. The complainant and her husband jointly paid a monthly EMI of ₹20,000 through RTGS from their State Bank of India account. Additionally, the complainant purchased a covered car parking space by paying ₹1,00,000/- via cheque to Sunniva Promoters. The company issued a receipt for this amount along with an allotment letter for the covered parking space. Thus, the total amount paid to Sunniva Promoters Pvt. Ltd. as of 08-03-2010 was ₹24,75,680/-.
6. As per the allotment letter, the possession of the flat was to be handed over within two years from the allotment date, i.e., on or before 18-09-2009. However, the possession was delayed by one year, and the complainant received the keys only on 18-09-2010, despite the flat still being under construction. The complainant accepted the keys due to urgent need.
7. As per Clause 12.2 of the allotment letter, in the event of a delay in handing over possession beyond the stipulated two-year period, the developer/builder is liable to pay compensation at the rate of ₹5/- per square foot per month. Since the flat measures 1,534 sq. ft., the applicable compensation is calculated as follows:
 - ₹5 per sq. ft. \times 1,534 sq. ft. = ₹7,670 per month
 - For one year (12 months): ₹7,670 \times 12 = ₹92,040



8. The builder has failed to make this payment for 13 years, from 18-09-2010 till date. Considering a 24% annual interest, the total amount due is approximately ₹14,00,000/-. Despite repeated requests, Managing Director, Anil Gupta, of Sunniva Promoters Pvt. Ltd. has not paid the legally owed compensation of ₹14,00,000/- as per Clause 12.2 of the Allotment Letter. If Mr. Anil Gupta seeks any additional payments, the complainant is willing to make the payment via cheque before this Hon'ble Authority. However, such a demand must be made in writing.

B. RELIEF SOUGHT

9. In view of the facts mentioned in complaint book, the complainant prays for following:
- i. To execute conveyance deed and registry of flat C-702 in Aerens Palm Residency Karnal constructed by Sh. Anil Gupta M.D. of Sunniva Promoters
 - ii. He may be directed to sign flat buyer's agreement and allotment letter himself and not by his employee or director who is removable by him.
 - iii. As per Clause 12.2 of the Allotment Letter, Mr. Anil Gupta may be directed to pay ₹14,00,000/-, calculated as $1,534 \text{ sq. ft.} \times ₹5 = ₹92,040/-$ per year, and $₹92,040/- \times 13 \text{ years} = ₹14,00,000$.



- iv. He should not demand hidden funds. Or should demand by a letter.
- v. He should pay compensation for harassment of 14 years continuously.
- vi. He should sign each page of flat buyers agreement and each page of allotment letter as was not done by him earlier.

C. REPLY SUBMITTED ON BEHALF OF RESPONDENT

- 10. That the present reply is being filed on behalf of Respondent No. 6, M/s Sunniva Promoters Pvt. Ltd., which is represented through Mr. Om Prakash Girdhar, son of Sh. Vishan Dass, duly authorized as per the resolution passed in the meeting of the Board of Directors of the respondent company held on 03.03.2023 at its registered office located at 1411, Chiranjiv Towers, 43, Nehru Place, New Delhi-110019. A true copy of the said resolution is annexed as Annexure R-1.
- 11. That the present complaint is frivolous, vexatious and an abuse of the process of law. The complainant, after having taken possession of the flat and settling all issues, has now approached this Hon'ble Authority with the intention of securing wrongful gains by misusing legal proceedings.
- 12. That the complainant voluntarily approached the respondent's office and expressed her interest in purchasing a unit in the said project. Consequently, a Flat Buyer Agreement was executed on 18.09.2007 for Flat No. C-702 on the



7th floor, having a super area of 1,534 sq. ft., at a basic sale consideration of ₹24,74,680/-, excluding additional charges as detailed in the agreement.

13. That the respondent offered possession of the flat within the agreed timeline, subject to the clearance of all outstanding dues by the complainant. However, the complainant failed to clear the statement of account, leading to the accrual of holding charges as per the agreement.
14. That the complainant only made a payment of ₹24,75,000/-, whereas the total payable amount stood at ₹29,15,317/-, including additional charges and applicable interest. The complainant still owes a balance of ₹4,20,317/- to the respondent. A true copy of the statement of account showing the outstanding dues is annexed as Annexure R-2.
15. That the complainant has been a persistent defaulter in making balance payments and has also failed to contribute towards maintenance charges, leading to a continuous accumulation of pending dues.
16. That despite assurances, the complainant failed to honor her commitment of clearing all outstanding payments before the execution of the conveyance deed.
17. That the respondent, after handing over possession, issued a final notice dated 22.11.2011, calling upon the complainant to clear the pending balance. The notice explicitly stated that failure to comply would lead to the automatic



cancellation of the allotment, yet the complainant failed to respond. A true copy of the notice along with postal receipt is annexed as Annexure R-3. That again on 30.10.2013, the respondent formally invited the complainant to complete the process of executing the conveyance deed upon clearance of all pending dues, along with applicable expenses and registration charges. However, the complainant failed to comply or respond. A true copy of the letter dated 30.10.2013, along with postal receipt, is annexed as Annexure R-4. That as per settled legal principles, a builder cannot be forced to execute a conveyance deed unless the buyer has cleared all outstanding dues and satisfied the full consideration amount.

D. ARGUMENTS OF LEARNED COUNSEL FOR THE COMPLAINANT

18. Mr. S.P. Singh, appearing on behalf of the complainant, stated that the complainant booked Flat No. C-702 with Sunniva Promoters Pvt. Ltd. in 2007, making a total payment of ₹24,75,000/-, including a home loan and ₹1,00,000/- for covered parking. Possession, which was to be given within two years, was delayed by a year, and the complainant received the keys on 18-09-2010, while the flat was still under construction. As per Clause 12.2 of the Allotment Letter, the builder is liable to pay ₹14,00,000/- in compensation for the delay, but no payment has been made despite repeated requests.



19. Authority questioned the learned counsel for the Respondent regarding the non-execution of the conveyance deed. In response, the counsel stated that the Complainant has only paid the basic sale price of the unit, while an outstanding balance of ₹4,20,317/- remains to be paid for the execution of the conveyance deed and registration.
20. The Authority further inquired whether there is any clause in the Builder-Buyer Agreement (BBA) justifying the amount demanded from the complainant. The respondent's counsel referred to Clause 5.1 of the BBA, annexed by the complainant at page 26 of the complaint, which states that *"the cost/charges for providing/ installing fire fighting equipments/ preventive measures in the said Project/ complex be charged additionally and to be paid by the Second Party @ proportionately. The Fire Fighting charges will be including for the cost of Civil Works Concerning Pump Houses, Underground and Overhead water Tanks, Pumping Sets, tube-well complete with Pumping Sets, allied electrical equipment & Cabling/Bus Ducting, fixed fire fighting equipment, fire alarm & Sprinkler System, horizontal/ vertical, refuge area etc as may be directed by local authorities from time to time or required under National Building Code and as per requirements of applicable bye-laws."*.. Additionally, Clause 11 of the agreement stipulates that *"any delay in making the payments without prejudice to other rights of First Party /*



Maintenance Agency shall be entitled for interest-cum-penalty @ 24% P.A. on the dues from the due date till the date of payment from the Second Party."

These clauses indicate that the complainant was obligated to make the required payments before the execution of the conveyance deed.

21. Authority then asked the respondent's counsel whether the Occupation Certificate (OC) had been obtained from the competent authority. The counsel confirmed that the OC was received on 09-07-2013 and has been annexed by the respondent in an application dated 14-01-2025. However, the complainant's counsel disputed this claim, asserting that the OC was never obtained and that no outstanding amount remains payable by the complainant.
22. Authority further asked the complainant's counsel whether the BBA annexed by the complainant is valid. In response, the counsel argued that the BBA is a forged document, as the builder did not sign it, and therefore, it cannot be considered valid.
23. The Authority noted that the complainant is simultaneously relying on the BBA while also disputing its authenticity, creating an inconsistency in the argument.

E. ISSUES FOR ADJUDICATION

24. Whether the complainant is entitled to the reliefs sought or not?



F. OBSERVATIONS AND DECISION OF THE AUTHORITY

25. The Authority has meticulously reviewed the documents available on record. According to the complainant's pleadings, she applied for an under-construction flat in 2007 by paying a booking amount of ₹5,00,000. Subsequently, a Flat Buyer Agreement was executed between the parties on 18-09-2007, allotting Unit No. C-702 in Tower/Block C on the 7th floor, with a super area of 1,534 sq. ft. The total sale consideration, as per the BBA, is ₹24,75,680, and the complainant claims to have made the full payment of ₹24,75,000. However, the respondent, in its reply, states that the total sale consideration of the flat is ₹29,15,317, and while the complainant has paid ₹24,75,000, an outstanding balance of ₹4,20,317 remains unpaid.
26. As per clause 7 of the flat buyer agreement "*that the first party shall try to complete the said project/complex within the period of 24 months from the date of agreement, subject to force majeure, force or any unforeseen delay caused due to the reasons beyond the control of the party.*". As per this clause, respondent was bound to deliver possession of the unit to the complainant by 18.09.2009.
27. The primary issue to be adjudicated by the Authority is whether the Flat Buyer Agreement (BBA) and Allotment Letter relied upon by both parties are legally valid and enforceable. The complainant has submitted that these



documents are the basis for seeking compensation under Clause 12.2 of the Allotment Letter for the delayed possession of the flat. However, at the same time, the complainant has challenged the authenticity of the agreement, alleging that it was executed under protest and is a forged document, as it bears only the complainant's signature while the builder has not signed it. On the other hand, the respondent (builder) has asserted that the agreement is valid and binding, arguing that the complainant is obligated to make additional payments before the conveyance deed can be executed. The builder also claims that the complainant cannot partially rely on the agreement for compensation while simultaneously disputing its validity. As per the RERA Act, 2016, a legally binding agreement between a builder and an allottee must be mutually executed, signed by both parties and enforceable under contract law. If the agreement is found to be forged or improperly executed, its terms and conditions, including compensation clauses, cannot be enforced by either party. Conversely, if the agreement is deemed valid, both parties must abide by its terms, including the payment obligations and the builder's liability for delayed possession. The complainant cannot selectively rely on specific clauses of an agreement while disputing its authenticity in general. If the agreement is forged, then none of its clauses, including compensation terms, can be enforced. Authority is of the view that since complainant has disputed

A handwritten signature in blue ink, appearing to be 'J. K. D.' with a long horizontal stroke underneath.

the validity of the agreement/ allotment letter, same cannot be relied upon to adjudicate the reliefs sought by complainant.

28. The Authority, after thoroughly examining the pleadings and records, finds that no valid cause of action arises in favour of complainant. The complainant has failed to establish any continuous or fresh cause of action that would justify the filing of this complaint after a prolonged delay of 11 years. The first cause of action, if any, would have arisen when the Builder Buyer Agreement (BBA) was executed/signed by complainant without the signature of the respondent. If the complainant believed that the agreement was incomplete or invalid due to the absence of the builder's signature, the natural course of action would have been to immediately communicate this concern to the builder in writing or take legal recourse at that time. However, no such communication, legal notice, or complaint has been provided by the complainant to support the claim that this issue was ever raised before the respondent at the relevant time. The complainant's silence on this issue for years suggests that the agreement was accepted in its existing form, and the present objection is being raised belatedly for undue advantage. Hence, relief pertaining to execution of BBA cannot be dealt at this stage.
29. The second cause of action would have arisen at the time of possession, i.e., on 18.09.2010, when the complainant was handed over the keys to the unit. If



the complainant had any grievance regarding the execution of the conveyance deed or outstanding payments, it should have been raised at that point/within reasonable time. However, the complainant did not object to the possession or raise any demand for execution of the conveyance deed at that time. By accepting possession with keys of unit that too without protest, the complainant impliedly accepted the terms of the transaction. Further, the complainant has only relied on a handwritten letter dated 16.12.2011, claiming that it was sent to the respondent regarding pending issues. However, the Authority finds that no proof of service is attached to the complaint, and there is no evidence that this letter was ever sent or received by the respondent. A self-serving, unverified letter cannot be treated as substantive evidence of a pending dispute. Moreover, after 2011, the complainant remained silent for 11 years before filing the present complaint in 2021. The complainant has failed to provide any reasonable explanation for this inordinate and unexplained delay. Under RERA Act, 2016, complaints should be filed within a reasonable timeframe and any delay must be justified with valid reasons supported with documentary evidence. In this case, the complainant has neither provided any continuous cause of action nor given any justification for the long delay in filing the complaint. The Authority finds that the complainant had multiple opportunities to raise concerns but



failed to act in a timely manner. The absence of any communication or legal action between the years 2010 to 2021 clearly indicates that the complainant had no real grievance at the relevant time. Infact it shows that complainant had duly accepted the conduct of the respondent. A complaint filed after an unreasonable delay of 11 years cannot be entertained, as it lacks a valid cause of action.

30. Further, Authority observes that during the course of arguments, the complainant sought relief for possession along with delayed interest. However, upon careful perusal of the complaint and the relief specifically sought in the prayer section on Page No. 10, it is evident that the complainant has not explicitly requested this relief in the pleadings/complaint. As per established legal principles, the Authority cannot go beyond the relief specifically sought by the complainant in the written complaint. The Real Estate (Regulation and Development) Act, 2016 (RERA Act) mandates that authorities must limit their decisions to the claims and reliefs explicitly pleaded by the parties. A complainant cannot introduce a new or additional relief during oral arguments without having initially sought it in the complaint. Doing so would amount to changing the scope of the complaint, which is not permissible. Since the relief of possession with delayed interest was not originally sought in the complaint, the Authority cannot grant relief



beyond what has been specifically requested. The complainant cannot be permitted to alter the scope of the complaint at the argument stage.

31. The Authority observes that in this case, respondent handed over the keys of the unit to the complainant on 18.09.2010, thereby granting the complainant access to the flat from that date. This act is significant in determining the issue of possession under legal principles governing property law. Under contract law and property law, the handing over of keys is widely recognized as a form of constructive possession. *Constructive possession means that even if a property is not physically occupied or fully completed, the transfer of keys signifies that the rights and control over the unit have been granted to the complainant.* In this case, once the complainant accepted the keys, she effectively took possession of the unit. If the complainant had any objections to the possession being handed over—such as issues of incomplete construction or pending formalities or delay interest—she should have refused to accept the keys at that time. However, by taking possession of the keys without objection and by admitting in her own pleadings that she has had possession since 18.09.2010, the complainant cannot now claim that possession was not given or seek relief for delayed possession. Once the developer grants control of the unit, possession is deemed to be transferred. Acceptance of the keys implies acceptance of possession and any concerns




regarding construction quality or pending dues should have been raised before taking possession, not afterward. Those issues, if any should have been raised within reasonable time. After expiry of 10-11 years said issues cannot be raised at a belated stage. Furthermore, if the complainant believed possession was incomplete or improper, she should have promptly objected in writing. Since no such protest or communication has been provided, her claim for delayed possession lacks merit.

32. Further, the complainant is seeking compensation for harassment of 14 years continuously. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2021 titled as "M/s Newtech Promoters and Developers Pvt. Ltd.V/s State of U.P. & ors.", has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaint in respect of compensation & legal expenses. Therefore, the complainants are advised to approach the Adjudicating Officer for seeking the relief of compensation harassment, mental agony and undue hardship to complainants and litigation cost.



33. Thus, consequent upon the considerable consideration, the Authority is constrained to conclude that the present complaint is nothing but an ill-advised luxurious litigation and a classic example of litigation to enrich oneself at the cost of another and to waste the precious time of this Authority. The Real Estate (Regulation and Development) Act 2016 is a beneficial/ social legislation enacted by the Parliament to put a check on the malpractices prevailing in the real estate sectors and to address the grievances of the allottees who have suffered due to the dominant position of the promoter. Therefore, the relief sought is not maintainable under HRERA.
34. Thus, Authority decides to dispose of the captioned **complaint as dismissed**. Hence, the complaint is accordingly **disposed of** in view of above terms. File be consigned to the record room after uploading of the order on the website of the Authority.


CHANDER SHEKHAR
[MEMBER]


NADIM AKHTAR
[MEMBER]