

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

Complaint no.	788 of 2024
Date of filing	05.03.2024
Date of first hearing	24.04.2024
Date of decision	14.05.2025

Mr. Prem Kumar Nagpal

R/o: - C-432, Lajpat Rai Gali, Basti Nanak Chand,
Kotla, Mubarakpur, New Delhi- 110003

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 Ashok Sangwan

Member

APPEARANCE:

Mr. Gaurav Rawat

Advocate for the complainant

Mr. Mintu Kumar

Advocate for the 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. 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:

Sr. 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, Sandeep, Neera and Chander Bala
	Licensed area	9.775 acre
5.	Unit no.	4-305, tower 4, 3 rd floor (as per BBA page 55 of complaint)
6.	Unit measuring	583.04 sq. ft. (carpet area) (as per BBA page 55 of complaint)
7.	Application Form	14.02.2017 (Page no. 25 of complaint)
8.	Agreement to sell	05.02.2018 (Page no. 53 of complaint)
9.	Tri-partite agreement	08.10.2018 (Page no. 99 of complaint)
10.	Building plan	25.02.2017 (taken from another case CR/7880/2022 DOD:26.10.2023 of similar project)
11.	Environmental clearance	18.05.2017 (taken from another case CR/7880/2022 DOD:26.10.2023 of similar project)
12.	Possession clause	5. Possession "5.1 Within 60 (sixty) days from the date of issuance of Occupancy Certificate, the Developer shall offer the possession of the Said Flat to the Allotee(s). Subject to Force Majeure circumstances, receipt of Occupancy Certificate and Allotee(s) having timely complied with all its obligations, formalities or documentation, as prescribed by Developer in terms of the Agreement and

		not being in default under any part hereof including but not limited to the timely payment of installments as per the Payment Plan, stamp duty and registration charges, 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 plans or grant of environment clearance, (hereinafter referred to as the "Commencement Date"), whichever is later.
13.	Due date of possession	18.11.2021 (grace period is allowed in lieu of covid-19 calculated from the date of environment clearance being later)
14.	Total sale consideration	Rs. 20,98,944/- (BBA at page no. 61 of complaint)
15.	Total amount paid by the complainant	Rs. 10,53,096/- (As pleaded by complainant at page 11 of complaint- Herein Rs.2,04,152/- paid on 24.12.2018 post publication of cancellation)
16.	Occupation certificate	25.03.2022 (Taken from another file of the same project in CR/5446/2022 and confirmed from the website of Authority)
17.	Pre-Cancellation Notice	03.10.2017, 07.09.2018 and 09.11.2017 (page no. 44, 49 and 43 of complaint, respectively)
18.	Cancellation Notice	25.09.2018 (page no. 46 of complaint)
19.	Publication of cancellation in Jagran City Gurugram Newspaper	31.10.2018 (page no. 51 of complaint)
20.	Cheque sent by respondent to complainant refunding the amount paid	15.06.2019- Rs.8,33,382/- (page no. 20 of reply)

B. Facts of the complaint

3. The complainant has made the following submissions –

- That in 2016, the respondent issued an advertisement announcing an affordable group housing project "The Serenas" at Sector-36, Sohna, Gurugram, under the license no. 14 of 2016 dated 26.09.2016, issued by

- DTCP, Haryana, Chandigarh and thereby invited applications from prospective buyers for the purchase of unit in the said project.
- b) That relying on various representations and assurances given by the respondent, the complainant booked a unit in the project by paying a booking amount towards the booking of the said unit bearing no. 4-305, 3rd Floor, Block/Tower-4, having carpet area measuring 583.04 sq. ft. to the respondent dated 14.02.2017 and the same was acknowledged by the respondent. As per the RERA act, 2016, no builder/promoter/developer can take booking amount before getting the said project registered with the Authority but in the present case booking of the said unit was done on 14.02.2017 and the respondent obtain the RERA registration certificate bearing no. 02 of 2017 on 19.06.2017. Hence, the conduct of the respondent is against the spirit of the RERA Act, 2016 and necessary penal action be taken against the respondent.
- c) That the total sale consideration of the unit was Rs. 20,98,944/-, which includes basic price Plus EDC and IDC, Car parking charges, PLC, IFMS and other specifications of the allotted unit and providing the time frame within which the next instalment was to be paid.
- d) That on 05.02.2018 the buyer's agreement was executed with the complainant. However, the said agreement is even not as per the prescribed format provided under the RERA ACT, 2016 and HARERA Rules, 2017. The respondent is under obligation to get the buyers agreement executed as per the sample agreement provided under the Act, and HARERA Rules, 2017, made thereafter, but in the present case respondent failed to comply with the same.
- e) That the respondent obtain the environment clearance on 18.05.2017. Therefore, the due date of possession comes out to be 18.11.2021. The respondent has obtained the OC on 25.03.2022.

- f) That the complainant paid a total sum of Rs. 10,53,096/-, against the total sale consideration of Rs. 20,98,944.00. The complainant in order to pay the consideration amount applied for the loan from housing development finance corporation limited and got the same duly approved and tripartite agreement was executed between the parties on 08.10.2018.
- g) That the complainant requested for the inspection of the unit as per the agreement. Thereafter, the complainant sent several reminders through telephone to the respondent but they were never able to give any satisfactory response. The respondent instead of complying as per the provisions of the Act, and obtaining the OC, sent Pre-cancellation notice dated 07.09.2018 and termination letter dated 25.09.2018 and thereafter, publication for cancellation of unit was done on 31.10.2018, without providing any justification to same and against the spirit of the RERA Act, 2016.
- h) That the complainant on the bases of the assurance by the respondent for revocation of the cancellation letter, further in order to procure the unit made the payment of Rs. 2,04,152/- on 24.12.2018.
- i) That despite the repeated reminders respondent till date has failed to issue revocation letter in respect of the cancellation letter dated 25.09.2018 nor has paid the remaining amount after forfeiture as per the affordable group housing policy.
- j) That the respondent is guilty of deficiency in service within the purview of provisions of the RERA Act, 2016 and the provisions of Haryana Real Estate (Regulation and Development) Rules, 2017. The Complainant has suffered on account of deficiency in service by the Respondent and as such the Respondent is fully liable to cure the deficiency as per the provisions of the RERA Act, 2016 (Central Act 16 of 2016) and the

provisions of Haryana Real Estate (Regulation and Development) Rules, 2017.

- k) That as per section 18 of the RERA Act. 2016, the promoter is liable to refund the entire paid by the allottees of a unit along with prescribed rate of interest, building or project for a delay or failure in handing over of such possession as per the terms and agreement of the sale.
- l) That the complainant is entitled to get refund of the entire amount paid along with interest at the prescribed rate from date of payment to till the realization of money under section 18 and 19(4) of Act. The project in question is on-going as defined under Rule 2(o) of the Rules ibid and does not fall in any of the exception provided under the Rules.
- m) That the complainant after losing all the hope from the respondent, having their dreams shattered of owning a flat and having basic necessary facilities in the vicinity of the project and also losing considerable amount, are constrained to approach this Authority for redressal of their grievance.

C. Relief sought by the complainant:

- 4. The complainant herein is seeking the following relief(s):
 - I. Direct the respondent to refund the amount paid along with interest at the prescribed rate till the date of its realization.
 - II. Restrain the respondent from raising any fresh demands with respect to the project.
 - III. Direct the respondent not to create any third-party rights in the unit till final realization of total amount paid along with interest.
 - IV. Initiate penal proceedings against the builder on account of violation of various Sections or provisions of the Act, 2016 and Rules framed thereunder.
- 5. 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.

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

- a) That the complainant has relied solely on his personal judgement in entering into the agreement dated 05.02.2018 and to purchase the said unit. This has also been recorded in buyer's agreement dated 05.02.2018 at recital "L".
- b) That the conduct of the respondent i.e. taking of the booking amount prior to the RERA registration is not against the spirit and in violation of the RERA Act 2016 as the project of the respondent was going on when the Real Estate (Regulation and Development) Act, 2016 came into existence and Section 3 of the RERA Act 2016 which mandates the registration of the real estate project with Real Estate Regulations Authority itself came into force on 01.05.2017 vide S.O.1216 (E), dated 19th April, 2017, which stated that the projects which are going on the date of commencement of the RERA Act 2016 and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within the period of three months from the date of commencement of this Act. The respondent registered its project with RERA Authority on 19.06.2017 by obtaining the registration license no. 02 of 2017 which is well within the 3 months from the date of commencement i.e. 01.05.2017.
- c) That the respondent on 05.02.2018 got the buyer's agreement executed with the complainant. The respondent obtained the environment clearance on 18.05.2017 and OC on 25.03.2022. The agreement executed between the complainant and the respondent is as per the prescribed format mentioned in RERA Act 2016.
- d) That the delivery of the possession of unit and execution of the conveyance deed is subject to force majeure circumstances, intervention of statutory authorities, receipt of occupation certificate and allottee having complied with all obligations of allotment in a timely manner and ✓

further subject to completion of formalities/documentation as prescribed by the respondent and not being in default of any clause of the agreement. This has also been recorded in the BBA dated 05.02.2018 at clause 5.

- e) That in case performance of any of the obligation or undertaking mentioned in BBA is prevented due to force majeure conditions in that case respondent is neither responsible nor liable for not performing any of the obligations or undertakings mentioned in BBA. This has also been recorded in the BBA dated 05.02.2018 at clause 19.2.
 - f) That it is specifically mentioned in clause 19.3 that if possession of the unit is delayed due to force majeure in that case the time-period for offering possession shall stand extended automatically to the extent of the delay caused under the force majeure circumstances. Hence respondent is entitled for blanket of the above-mentioned clauses.
 - g) That the complainant failed to make the payment as per the payment plan and he is regular defaulter and his conduct can be manifested from the copy of the demand letter, reminder, cancellation notice etc. hence the respondent left with no option, cancelled the allotment of the complainant after complying with all the rules and regulations. Due procedure was followed in cancelling the unit.
 - h) That the respondent returned the entire amount of the complainant vide cheque bearing no.185863 dated 15.06.2019 after forfeiting the amount as per the Affordable group housing policy.
7. All other averments made in the complaint were denied in toto.
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.

E. 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.

E. 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.

E. 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.

F. Findings on the relief sought by the complainants.

F.I Direct the respondent to refund the amount paid along with interest at the prescribed rate till the date of its realization.

F.II Restrain the respondent from raising any fresh demands with respect to the project.

F.III Direct the respondent not to create any third-party rights in the unit till final realization of total amount paid along with interest.

13. The above-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

14. The complainant booked a unit bearing no. 4-305, 3rd floor, block/tower 4 admeasuring carpet area 583.04 sq. ft and balcony area 110.31 sq. ft. in the project "The Serenas" being developed by the respondent under the Affordable Group Housing Policy 2013. Subsequently, a builder buyer agreement was executed between the parties on 05.02.2018. Clause 5.1 of the buyer's agreement provides the time period of handing over possession and the same is reproduced below:

"5. Possession

5.1 within 60 days from the date of issuance of occupancy certificate, the Developer shall offer the possession of the said flat to the Allottee(s). Subject to force majeure circumstances, receipt of occupancy certificate and allottee(s) having timely complied with all its obligations, formalities or documentation, as prescribed by developer in terms of the agreement and not being in default under any part hereof including but not limited to the timely payment of instalments as per the payment plan, stamp duty and registration charges, the developer shall offer possession of the said flat to the allottee(s) within a period of 4 years from the date of approval of building plans or grant of environment clearance, (hereinafter referred to as the "commencement date") whichever is later."

15. **Admissibility of grace period:** As per clause 5.1 of buyer's agreement, the respondent promoter has proposed to handover the possession within a period of four years from the date of approval of building plan (25.02.2017) or from the date of grant of environment clearance (18.05.2017), whichever ✓

is later. Further, as per **HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 18.05.2021 i.e., after 25.03.2020.** Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. Therefore, the due date of handing over possession comes out to be 18.11.2021.

16. It is important to note that the complainant has only paid an amount of Rs.10,53,096/- against the total sale consideration of Rs. 20,98,944/-. The respondent on the other hand sent pre-cancellation notice dated 03.10.2017, 07.09.2018 and 09.11.2017 intimating the complainant for payment of the outstanding dues but he failed to adhere the same. The continuous default on part of the complainant to make payment of outstanding dues constrained the respondent to make a publication of the same in the newspaper "Jagran City Gurugram" on 31.10.2018.
17. It is observed that the complainant failed to pay the remaining amount as per schedule of payment, which led to issuance of notice for cancellation by the respondent/builder dated 25.09.2018. In line with the aforesaid facts, the written submission filed by the parties and documents placed on record, the main question which arises before the authority for the purpose of adjudication is that "whether the said cancellation is a valid in the eyes of law?"
18. 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 instalments 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 instalments 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 newspaper 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".

19. In the present case, the agreement to sell was executed inter-se the parties on 05.02.2018, and the complainant/allottee has paid an amount of Rs.10,53,096/- which constitutes only 50% of the sale consideration. Accordingly, the respondent issued numerous reminder/demand/pre-cancellation letters dated 03.10.2017, 07.09.2018 and 09.11.2017 to the complainant. Thereafter, the respondent made a publication of the same in the newspaper "Jagran City Gurugram" on 31.10.2018 after finally cancelling the unit on 25.09.2018. The authority is of the considered view that the respondent/builder has followed the prescribed procedure as per clause 5(iii)(i) of the Policy, 2013 and in view of the same, the cancellation dated 25.09.2018 is held to be valid.

20. As per cancellation clause of the Affordable housing policy of 2013 the respondent can deduct the amount of Rs.25000/- only and the balance amount i.e., Rs.10,28,096/- (Rs.10,53,096 - Rs.25,000) shall be refunded back to the complainant. In view of aforesaid circumstances, the respondent is directed to refund the amount paid by the complainant after deduction of Rs.25,000/- as per clause 5(iii)(i) of the Policy 2013 i.e., Rs.10,28,096/- along with interest at the prescribed rate of interest i.e., @ 11.10% p.a. (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 date of cancellation of

allotment i.e., 25.09.2018 till the actual realization of the amount within the timelines provided in Rule 16 of the Haryana Rules 2017 *ibid*. However, it is important to note that the amount already refunded by the respondent to the complainants i.e., Rs. 8,33,382/- shall be adjusted/deducted from the payable amount.

F.IV Initiate penal proceedings against the builder on account of violation of various Sections or provisions of the Act, 2016 and Rules framed thereunder.

21. If a developer fails to comply with the provisions of the RERA Act, including failing to deliver the property on time or not adhering to the declared project details, they are subject to penalties. However, before imposing such a penalty, RERA follows a due process that includes conducting an investigation and a hearing where the developer can present their case.
22. The above said relief was not pressed by the complainant counsel during the arguments in the course of hearing. Also, the complainant failed to provide or describe any information related to the above-mentioned relief sought. The authority is of the view that the complainant does not intend to pursue the above relief sought by him. Hence, the authority has not rendered any findings pertaining to the above-mentioned relief.

G. Directions of the authority

23. 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 respondent is hereby directed to refund the paid-up amount of Rs.10,53,096/- after deduction of Rs.25,000/- as per clause 5(iii)(i) of the Affordable Housing Policy 2013 i.e., Rs.10,28,096/- along with interest @11.10% per annum from the date of cancellation of allotment i.e., 25.09.2018 till the actual realization of the said amount.

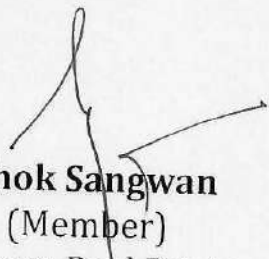
The amount already refunded by the respondent to the complainant i.e., Rs. 8,33,382/- shall be adjusted/deducted from the payable amount.

II. A period of 90 days is given to the respondent/builder to comply with the directions given in this order and failing which legal consequences would follow.

24. Complaint stands disposed of.

25. File be consigned to the Registry.

Dated: 14.05.2025



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