

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

Complaint no.: 5798 of 2023
Date of filing: 08.01.2024
Order pronounced on: 24.04.2025

Sompal
R/o:- VPO Kasan, Manesar,
Gurugram – 122051

Complainant

Versus

Sweta Estates Private Limited
Regd. Office at:- 21/48,
Malcha Marg, Diplomatic
Enclave, New Delhi-110021

Respondent

CORAM:
Shri Vijay Kumar Goyal

Member

APPEARANCE:
Shri Sanjeev Sharma (Advocate)
Shri Deepender Bangar (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 provision of the Act or the Rules and regulations made thereunder or to the allottees as per the agreement for sale executed *inter se*.

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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, delay period, if any, have been detailed in the following tabular form:

| Sr. No. | Particulars | Details |
|---------|--|---|
| 1. | Name of the project and location | Central Park-II, Sector-48, Gurugram |
| 2. | Nature of project | Residential |
| 3. | Unit no. | 918 EWS (page 15 of complaint) |
| 4. | Unit admeasuring | N.A. |
| 5. | Allotment Letter | 31.08.2018 (page 15 of complaint) |
| 6. | Date of execution of Builder buyer agreement | NA |
| 7. | Total sale consideration | Rs.1,50,000/- (page 18 of reply) |
| 8. | Total amount paid by the complainant | Rs.1,28,000/- (as per payment receipt page 22-23 of complaint) |
| 9. | Occupation certificate | 24.05.2016 (page 42 of reply) |
| 10. | Corrected OC | 12.01.2024 (page 16 of reply) |
| 11. | Possession Letter issued by respondent/offer of possession | 21.04.2025 (submitted by respondent during proceedings dated 24.04.2025) |
| 12. | Conveyance Deed | Not executed |

B. Facts of the complaint.

3. The complainant has made the following submissions: -

- I. That upon the representation by the respondent and advertisement done in said on behalf the respondent was to construct and develop ECONOMICAL WEAKER SECTION RESIDENTIAL GROUP HOUSING COLONY namely "Central Park" under an Economical Weaker Section Policy, situated in the revenue estate Central Park, Sector – 48, Gurugram.

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- II. That the complainant is the original allottee/purchaser wherein the complainant showed the interest in purchasing a residential unit/flat with the respondent and paid an amount of Rs.15000/- vide booking acknowledgement receipt bearing no. 450 dated 25.06.2014 wherein the allotment through draw of 300 EWS unites was held on 28.02.2018 in the Club Florence, Sector -56, Gurugram in the presence of officers of concern authority/agency as well as representative of company/respondent and the complainant was allotted a unit no. 918 EWS.
- III. That the allotment letter was issued on 31.08.2018 to the complainant /allottee regarding allotment of residential flat in Project "Central Park - II", Sector 48, Gurugram Haryana. The total sale consideration as per payment plan was Rs. 1,50,000/- of the said unit.
- IV. That the complainant has made a total payment of Rs.1,28,000/- as and when demanded by the respondent without any delay. The remaining payment of Rs.22,500/- is to be paid at the time of offer of possession which is still due to be made. That despite making payment of the requisite amount, the complainant has not been offered possession of the unit more than 4 years in question even till today and therefore, the complainant has approached the Authority relating to issue handover the possession of said unit and along with delay of possession charges.

C. Relief sought by the complainant:

4. The complainant has sought following relief:
- Direct the respondent to handover possession of the unit.
 - Direct the respondent to pay Interest for delay possession charges till the actual handover of the unit in question.
 - Direct the respondent not to alienated the unit to third party.

D. Reply by the respondent.

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

- I. That, in the year 2014 the complainant in search of a residential project, discovered the residential group housing colony, namely Central Park-II also

known as Central Park Resorts Sector 48, Gurugram, Haryana in particular the complainant was interested the Economically Weaker Section (EWS) units being developed by the respondent in the project in accordance with the EWS policy as notified by the Government of Haryana and amended from time to time.

- II. That the complainant applied for provisional allotment of an EWS unit in the project vide booking application no. 450 dated 25.06.2014 in pursuance of the brochure/advertisement for EWS units released by the respondent, after fully satisfying himself with the specifications and veracity of the project based upon his own judgment and independent due diligence and investigation. The complainant along with the application form paid an amount of Rs.15,000/- towards the earnest money as per the EWS Policy.
- III. That the complainant was aware of the terms of the application for allotment and decided to sign the same after being fully satisfied, without any protest or demur. As per the Haryana Government Policy of Allotment of flat for the EWS category, the size range of the units vary from 200-400 square feet and the maximum price for their allotment as capped by the Haryana Government is Rs.1,50,000/- or Rs.750/- per sq. ft. Thus, the aforesaid amount is the total sale consideration of the EWS unit in the project, which is inclusive of all other charges such as EDC, IDC, escalation charges, etc., and the said amount is payable in instalments as per the EWS Policy. EWS units in the project were allotted through a draw on 28.02.2018, duly held in Club Florence, Sector-56, Gurugram, in the presence of officers of the concerned Authority as well as company representatives, in accordance with the provisions of the EWS policy.
- IV. That in furtherance of the same, the Complainant vide Allotment Letter dated 31.08.2018 was informed that he was a successful applicant in the draw conducted on 28.02.2018 and accordingly EWS Unit No. 918 ("Unit") in the



project had been allotted to the complainant. The respondent along with the allotment letter had annexed the terms of allotment in accordance with the prevailing provisions of the EWS Policy as well as the payment plan enlisting the schedule of instalments of the payments due.

- V. That the complainant had failed to adhere to the aforementioned payment plan and despite being aware of the terms of allotment including the obligation to make timely payments and provision for cancellation of allotment on account of default in making timely payments.
- VI. That as per the EWS Policy framed by the Government of Haryana as amended from time to time, there is no timeline prescribed for handing over of possession of the EWS units. Thus, there can be no question of delay in handing over of possession or payment of any delay possession compensation since the EWS Policy itself is silent on the timeline for handing over of possession, the present complaint is not maintainable and liable to be dismissed.
- VII. That the maximum sale consideration for EWS units is fixed in the EWS Policy at Rs. 1,50,000/-, which is much less than the cost of construction of such units and in consideration of the difference between the cost of construction and the total sale consideration fixed by the State Government, no timeline has been fixed for handing over of possession of such units by the State.
- VIII. That the construction of EWS flats is a condition of the license which has been granted for development of Group Housing Colony by the competent authority and it is submitted that the development of the Group Housing colony is still in progress, as the same is being developed in phases. Therefore, the developer was not bound to handover the possession of EWS Flats prior to completion of all the phase(s) of the said Group Housing Project. Although, the construction of EWS Flats in the Project was completed at the time of grant of Occupation Certificate for Towers J to P ("Phase III") of

the Project vide Letter bearing Memo No. ZP-26-Vol.-II/SD(BS)/2016/10368 dated 24.05.2016 by the Department of Town and Country Planning Haryana ("DTCP"). However, due to an inadvertent typographical error, the number of floors for the EWS tower were mentioned in the said Occupation Certificate as "G+12 floors" instead of "G+11 floors". This inadvertent error got rectified/corrected by the DTCP through issuance of revised/corrected Occupation Certificate vide Memo No. ZP-26-IV/PA(DK)/2024/1325, dated 12.01.2024.

- IX. That upon the grant of the rectified occupation certificate by DTCP, the respondent proceeded to prepare and file the Deed of Declaration with respect to the EWS units, which was filed on 13.05.2024 and registered vide document no. 1983 before the Sub-Registrar, Badshahpur.
- X. That the present complaint has been filed by the complainant on 14.12.2023 i.e. prior to the grant of the rectified occupation certificate to the respondent. The Complainant at no point of time prior to filing the present complaint sent any communications or approached the respondent to seek possession or enquire the status of the Unit in which case the entire matter could have been clarified by the respondent to the complainant. The complainant instead chose to file the present complaint with false and frivolous allegations to unjustly enrich himself by seeking compensation which the complainant is not entitled to receive.
- XI. That prior to filing of the Complaint i.e. prior to 14.12.2023, while the respondent had already fulfilled its obligation to complete the construction of the EWS units in the project in accordance with the prevailing EWS policy at the time, the respondent could not have offered possession of the unit to the complainant since the rectified occupation certificate with respect to the Unit had not been granted by the DTCP till such date.



- XII. That the construction of the EWS units was completed way back in 2016 itself, however respondent has not raised any payment demands from the complainant as the possession could not have been offered without rectifying the occupation certificate. All the payments made by the complainant have been made voluntarily and of his own free will and volition. However, since the cost of construction and maintenance does not get covered in the sale consideration of EWS units which is fixed by the Government of Haryana, the respondent has been maintaining the said units in the best interests of the allottees at its own cost and expense.
- XIII. That as there is no timeline for offering possession of the EWS units as per the present policy there can be no question of any delay in offer of possession. Any delay or hinderance that may have been caused in the offer of possession is not attributable to or in the control of the respondent.
- XIV. That the entire case of the complainant is nothing but a web of lies, false and frivolous allegations made against the respondent and that the complainant has no cause of action to file the present complaint.
6. All other averments made in the complaint were denied in toto.
7. 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 these undisputed documents and submissions made by the parties.
- E. Jurisdiction of the Authority:**
8. The authority has complete territorial and 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 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.

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 complainant at a later stage.

F. Findings on the relief sought by the complainant.

F.I. Direct the respondent to handover possession of the unit.

F.II. Direct the respondent to pay Interest for delay possession charges till the actual handover of the unit in question.

12. The complainant through instant complainant contended that he is an original allottee under the Economically Weaker Section (EWS) residential group housing project "Central Park" in Sector 48, Gurugram, developed by the respondent wherein it applied for a unit by paying Rs.15,000/- on 25.06.2014 and was allotted a unit no. 918 EWS through a draw held on 28.02.2018. An allotment letter was issued on 31.08.2018, with a total sale consideration of Rs.1,50,000/-. The complainant has already paid Rs.1,28,000/- without delay, with Rs.22,500/- remaining payable at the time of possession. However,

despite full compliance with payment terms, the respondent has failed to offer possession of the unit for over four years.

13. On contrary the respondent submitted that the complainant applied for an EWS unit in the Central Park-II project in Gurugram in 2014, pursuant to a government-notified EWS housing policy, and was allotted the said unit. The allotment was confirmed via a letter dated 31.08.2018, and the complainant was made aware of the payment terms and policy conditions, including the lack of a prescribed possession timeline. Further, the respondent submitted that the complainant failed to adhere to the payment schedule, and that under the Haryana EWS Policy, there is no obligation to deliver possession within a specific timeframe due to the capped pricing and ongoing phased development. Though the construction of EWS flats was completed by 2016, possession was not offered earlier due to a typographical error in the Occupation Certificate, which was only rectified by the DTCP on 12.01.2024. The Deed of Declaration was subsequently registered on 13.05.2024.

14. Upon perusal of the submissions and documents on record, it is evident that the complainant was allotted a unit no. 918 under the EWS policy in 2018 for a sale consideration of Rs. 1,50,000/- after completion of construction of unit in the respondent's project. Although the original Occupation Certificate was obtained in 2016, but it did not mention the EWS units. This omission was later rectified, and a revised Occupation Certificate was issued by the competent authority on 12.01.2024 including the EWS units. In the present complaint the complainant intends to continue with the unit and is seeking delay period interest along with physical possession.

15. The Authority is of the view that the EWS policy does not specify any timeline for offering possession. As per the provisions of the policy, units are allotted only after the construction is completed. Furthermore, the units are offered at highly reasonable rates i.e. at the rate of Rs.750/- per sq. ft. only which is even

below the basic construction cost. In the present case, the concerned department issued the Occupation Certificate on 24.05.2016, however, it did not specify the EWS units. This was later rectified, and the corrected Occupation Certificate mentioning the EWS units was issued on 12.01.2024. Therefore, until the issuance of the corrected Occupation Certificate, the respondent cannot be held liable to pay interest for delay under Section 18 of the Act, 2016, due to delay in construction which was completed even before issuance of allotment letter dated 31.08.2018 for the subject unit, as EWS policy stipulates allotment of only constructed units.

16. Moreover, the delay in offering possession was primarily due to a clerical error in the original Occupation Certificate issued on 24.05.2016, which was subsequently corrected by the competent authority through the revised Occupation Certificate dated 12.01.2024. Hence, no interest for delay is payable by the respondent for the period prior to the issuance of the corrected Occupation Certificate.
17. However, the respondent offered possession of the said unit to the complainant only on 21.04.2025, which reflects delay of over a year even from the date of the revised OC. Accordingly, the respondent is liable to pay interest on delay on the period after issuance of corrected occupation certificate.
18. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the correct occupation certificate was granted by the competent authority on 12.01.2024. The respondent offered the possession of the unit in question to the complainant only on 21.04.2025. So, it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. This 2 months' of reasonable time is being given to the complainant

keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the date of issuance of corrected occupation certificate i.e. 12.01.2024 till the date of offer of possession (21.04.2025) plus two months i.e., 21.06.2025.

19. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainants are entitled to delay possession charges at rate of the prescribed interest @ 11.10% p.a. w.e.f. 12.01.2024 till the date of offer of possession (21.04.2025) plus two months i.e., 21.06.2025; as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

20. With regard to the relief sought for handing over physical possession of the unit, it is noted that the respondent has already issued an offer of possession letter dated 21.04.2025 to the complainant, as per the records submitted during the proceedings dated 24.04.2025. Accordingly, the respondent is directed to handover the physical possession of the unit and the complainant is directed to pay the outstanding dues.

F.III. Direct the respondent not to alienated the unit to third party.

21. Since the respondent has already issued the offer of possession letter to the complainant on 21.04.2025 after filing of the instant complaint. Hence, no relief can be issued to this effect.

G. 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 respondent is directed to pay interest to the complainant against the paid-up amount at the prescribed rate of 11.10% p.a. for every month of a delay from the date of issuance of corrected occupation certificate i.e. 12.01.2024 till the date of offer of possession (21.04.2025) plus two months i.e., 21.06.2025, as per Section 18(1) of the Act of 2016 read with Rule 15 of the Rules, *ibid*. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per Rule 16(2) of the Rules, *ibid*.
- II. The respondent is directed to handover the physical possession of the unit and the complainant is directed to pay the outstanding dues.
- III. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under obligation to get the conveyance deed executed in favor of the complainant. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question. Since the possession of the subject unit has already been offered after obtaining occupation certificate on 12.01.2024. The respondent is directed to get the conveyance deed executed within a period of three months from the date of this order

23. Matter stands disposed of.

24. File be consigned to registry.

Dated: 24.04.2025


(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram