



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no:	1761 of 2022
Date of filing:	27.07.2022
First date of hearing:	28.09.2022
Date of decision:	07.04.2025

Mr. Sumit Kanchi S/o Ram Rattan Khanchi
R/o LE-22, CHD City, Sector 45,
Karnal, Haryana

....COMPLAINANT

VERSUS

M/s Harsha Associate Pvt. Ltd.
117, Hargovind Enclave, VikasMarg Extension,
Near Karkardooma Metro Station,
New Delhi-110092

...RESPONDENT No.1

M/s Harsha Associate Pvt. Ltd.
(through its authorized person)
K3C Mall, Phase-1, Sector-12,
Karnal-132001

...RESPONDENT No.2

Sh. Harish Kathuria, Chief Managing Director
M/s Harsha Associate Pvt. Ltd.

117, Hargovind Enclave, VikasMarg Extension,
Near Karkardooma Metro Station,
New Delhi-110092

...RESPONDENT No.3

Sh. Sumit Kathuria, Managing Director,
M/s Harsha Associate Pvt. Ltd.
117, Hargovind Enclave, VikasMarg Extension,
Near Karkardooma Metro Station,
New Delhi-110092

...RESPONDENT No.4

Sh. Vipin Goyal Manager,
M/s Harsha Associate Pvt. Ltd.
117, Hargovind Enclave, VikasMarg Extension,
Near Karkardooma Metro Station,
New Delhi-110092

...RESPONDENT No.5

CORAM: **NadimAkhtar** **Member**
 ChanderShekhar **Member**

Present: - Mr. Himanshu Malik, Id. Counsel for the complainant
 through VC.
 Ms. Yukta, Id. counsel for the respondent through VC.

ORDER (NADIM AKHTAR - MEMBER)

1. Present complaint has been filed by the complainant on 27.07.2022 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. UNIT AND PROJECT RELATED DETAILS :-

2. The particulars of the project, the details of 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 table:

S.No.	Particulars	Details
1.	Name of the project	Harsha K3C Mall Location: Sector 12, P-1, Karnal, Haryana.
2.	Name of promoter	Harsha Associate Pvt.Ltd.
3.	Date of booking	27.02.2019
4.	Unit area	1018 Sq. fts and super area of 2036 sq. Fts.
5.	Date of allotment	Allotment made on 27.02.2019
6.	Date of builder buyer agreement	27.02.2019
7.	Basic Sale Price	₹1,47,50,000/-
8.	Amount paid by the complainant	₹ 30,00,000/-.
9.	Due date of possession	Not mentioned
10.	Offer of possession	Not given till date

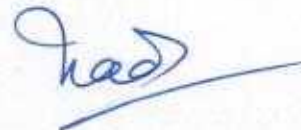
B. FACTS AS STATED IN THE COMPLAINT:-

3. That that complainant booked a shop in the said Mall for self-occupation and for his livelihood. On 27.2.2019, complainant for himself and also on behalf of his above named brother had booked a shop bearing No.21 on Ground Floor at Multiplex Cinema known as Harsha K3C Mall situated at Sector 12, P-1, Karnal belonging to M/s Harsha Associates Pvt. Ltd.
4. That on 27.2.2019, complainant and respondents signed the agreement wherein it is mentioned that complainant has paid a sum of ₹20,00,000/- vide demand draft bearing No.001099 dated 27.2.2019 for the said shop No. 21. Endorsement was made in favour of the complainant wherein it was stated that total sale consideration of the shop is ₹1,47,50,000/- and a sum of ₹10,00,000/- has been received by respondents in cash. In the endorsement, it is categorically stated that if the builder fails to get the Sale Deed executed and registered in the name of the buyer, double amount shall be paid by the builder. Copy of allotment letter dated 27.02.2019 is annexed as Annexure C-3.
5. That vide endorsement dated 24.05.2019, it was mutually agreed between the parties that all requisite documents required for the sanctioning of the loan shall be provided to the complainant by the builder. The complainant with the intention to honour the terms of the agreement and for further payment, approached IDBI Bank for loan towards the purchase of the said shop and a sum of ₹20,000/- has also been deducted from the account of



complainant towards the sanctioning of the loan. Copy of endorsement letter dated 24.05.2019 is annexed as Annexure C-4.

6. That for sanctioning the loan amount, certain documents relating to the property viz non encumbrance certificate / NOC from HUDA, clearance certificate/no dues certificate from M/s Harsha Associates Pvt. Ltd. and receipt of clearance of dues from Municipal Corporation were required by the Bank and it was assured by respondents that same shall be provided as and when required.
7. That complainant made several requests to the respondents, however, no documents relating to Mall were received by the complainant even though various mails were sent to the respondents and also telephonic conversation was made with them.
8. That complainant vide letter dated 29.05.2019 provided the respondents a letter from the bank requesting documents which were required for sanctioning the loan towards purchase of shop and all requisite steps were taken by the complainant in order to timely honour the terms and conditions of the agreement signed between the parties. Copy of letter dated 29.05.2019 is annexed as Annexure C-11.
9. A copy of Agreement to sell is annexed as Annexure C-2, Copy of Conveyance deed 29.03.2005 is annexed as Annexure C-7, copy of Occupation Certificate is annexed as Annexure C-8 and copy of all



statement of complainant and judgement of Hon'ble Forum & Hon'ble Commission are annexed as Annexure C-5 & C-6.

C. RELIEFS SOUGHT:-

10. Complainant in his complaint has sought following reliefs:
- (i) Direct the respondent to execute the Sale Deed in favour of complainant and to hand over the possession of shop in question with immediate effect.
 - (ii) Pass any other relief which Hon'ble Authority deems fit and appropriate on the facts and circumstances of the present complaint.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENTS:-

Learned counsel for the respondents filed a detailed reply on 22.08.2022 pleading therein as under :-

11. That the alleged shop was being purchased by the complainant for commercial activity and not for livelihood for his own employment because a sum of ₹1,31,72,380/- only was in his Bank account on 23.05.2019.
12. That an agreement was signed between the Complainant and Respondents on 27.02.2019 wherein it is mentioned that the shop in question has been purchased by the complainant for a Sum of ₹1,57,50,000/- out of which ₹30,00,000/- were paid by the complainant (a Demand Draft of ₹20,00,000 and ₹10,00,000/- in cash). Endorsement



Clause mentions that if the allottee fails to pay the rest of the payment in time, earnest money shall be forfeited by the Builder.

13. That the present complaint is grossly barred by limitation and this Hon'ble Authority does not have jurisdiction to entertain a time barred claim.
14. That all documents for sanctioning of the loan have already been provided by the Respondents as and when asked by the Complainant.
15. Respondent is entitled to forfeit the earnest money along with compensation to the tune of ₹5,00,000/- for mental harassment and financial losses suffered and Respondent is also entitled to an amount of ₹2,00,000/- as is account of litigation expenses.

E. DOCUMENT SUBMITTED BY RESPONDENTS:-

16. Written submissions in compliance of order dated 23.11.2022 have been filed by the respondents's counsel on 28.07.2023. In which she facilitate the Authority with the exact consideration amount of shop i.e. ₹1,57,50,000/.

F. ARGUMENTS OF LEARNED COUNSEL FOR THE COMPLAINANT AND RESPONDENTS:-

17. During oral arguments complainant reiterated the facts of the complaint. Learned counsel for complainant submitted that the complainant had paid a sum ₹30,00,000/- to the respondents till date and is ready to pay remaining outstanding dues. Ld. counsel for the respondents stated that



respondents are ready to give the possession of the shop provided the complainant pays the dues with interest as agreed upon in the Builder Buyer Agreement.

G. ISSUES FOR ADJUDICATION:-

18. Whether the complainant is entitled to get possession of the booked shop?

H. OBSERVATIONS AND FINDINGS OF THE AUTHORITY:-

19. The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both the parties, Authority observes as follows:

(i) Respondent has raised an objection regarding maintainability of the complaint on the ground that Authority does not have jurisdiction to decide the present complaint. In this regard it is stated that Authority has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

H.1 Territorial Jurisdiction:

As per notification no. 1/92/2017/ITCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Panchkula shall be entire Haryana except Gurugram District for all purpose with offices situated in Panchkula. In the present case the project in question is situated within the planning area Karnal, district. Therefore, this Authority



has complete territorial jurisdiction to deal with the present complaint.

H.2 Subject Matter Jurisdiction:

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)(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.

So, in view of the provisions of the Act of 2016 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 learned Adjudicating Officer if pursued by the complainant at a later stage.

- (ii) Factual matrix of the case is that admittedly, complainant booked a shop bearing No.21 on Ground Floor at Multiplex Cinema known as Harsha K3C Mall situated at Sector 12, P-1, Karnal belonging to M/s

Harsha Associates Pvt. Ltd. That on 27.2.2019, the complainant and respondents signed an agreement wherein, it is mentioned that complainant has paid a sum of ₹20,00,000/- vide demand draft bearing No.001099 dated 27.2.2019 payable to shop No. 21. An endorsement was given to the complainant wherein it was stated that total sale consideration of the shop is ₹1,47,50,000/- and a sum of ₹10,00,000/- has been received by respondent in cash. It means total amount paid by the complainant to the respondent till date is ₹30,00,000/- and the same has been admitted by the respondent in his reply.

(iii) That in the present complaint, question relating to total sale consideration of the shop has been raised by the respondents. As mentioned in pleadings and allotment letter dated 27.02.2019, the total sale consideration of shop was ₹1,47,50,000/-. However, respondents in their reply and averments have mentioned total sale consideration as ₹1,57,50,000/-. For this respondents have filed written submissions in which they have referred to a copy of police report duly signed by the S.P. Karnal (annexed as Annexure-1) and the statements of account of complainant, annexed as Annexure C-10 in which the total sale consideration is written as ₹1,57,50,000/-. Even the Hon'ble District Consumer Dispute Redressal Commission in its order dated 22.02.2022 has considered total sale consideration as ₹1,57,50,000/-. The complainant has nowhere objected to the averments made by the respondent w.r.t. the

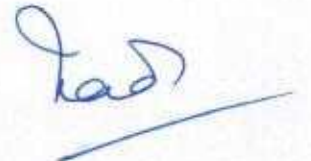


amount of total sale consideration in the said documents. In view of the same, the total sale consideration is considered as ₹1,57,50,000/-.

(iv) Respondents have also taken an objection that complainant purchased the said shop for commercial activity and not for his own livelihood. It is pertinent to mention here that in the Conveyance Deed dated 29.03.2005(annexure C-7), executed between HSVP and the respondent builder, it has been specifically mentioned that the site is to be used for commercial purposes. Further, in Occupation certificate dated 16.02.2008 (annexure C-8), issued by the HSVP, it is mentioned that site is a multiplex cinema cum commercial site and the same thing is mentioned in the agreement dated 27.02.2019 (annexure C-3).

(v) Hon'ble District Consumer Disputes Redressal Commission, Karnal, vide order dated 22.02.2022 has held that :-

"That the said Harsha K3C Mall is also situated in Karnal City, in high class/posh area where the complainant intended to purchase the shop in question from the ops and therefore, it cannot be said that purpose of the complainant to purchase shop in question for such a huge amount of more than Rs. One crore fifty lakhs is to earn his livelihood, rather it can be said that said shop is being purchased by the by complainant for commercial activities. So complainant cannot be consider a consumer and present dispute



does not fall under the ambit of Consumer Protection Act deserves to be dismissed being not maintainable".

No rebuttal has been filed by the complainant on the same issue. Hence, it is clear that the shop was purchased by the complainant for commercial purpose and not for his own livelihood.

(vi) That the complainant had issued letters dated 17.04.2019 and 17.05.2019 requesting the respondents to supply documents required for sanctioning of loan but no proof of their service to the respondents has been attached with the complaint. Even respondent has not attached any prove of service of these documents to the complainant with the reply. During oral arguments, Id. counsel for respondent informed that the required document have already been supplied many a times to the complainant for seeking loan, but no proof of that is attached. Thereafter, both parties vide endorsement dated 24.05.2019, mutually agreed that necessary documents shall be provided by the respondent to the allottee. In this endorsement, the date of balance payment was fixed as 26.05.2019. However, again both parties have failed to establish their contentions through documentary evidences of supply of documents for payment of due amount by the agreed date.

(vii) Regarding the plea of the complainant that he could not make the balance payments to the respondents as the necessary documents required for the sanction of loan from bank were not provided by the respondents,



Authority observes that the Hon'ble District Consumer Disputes Redressal Commission, Karnal, in its order dated 22.02.2022 has held that:-

"The shop in question has been purchased in the name of the complainant, and his brother namely Amit Khanchi. It is also admitted fact that the brother of the complainant namely Amit Khanchi is residing in USA and well settled there. It is not a case of the complainant, that he is unemployed. The shop in question has been purchased by the complainant on 27.02.2019 for the sum of Rs.1,57,50,000/-(Rs. one crore fifty seven lakh and fifty thousand only), out of which Rs.30,00,000/-(Rs. thirty lakhs) were paid by the complainant to the OPs. These facts have not been denied by the OPs. The target date of the sale deed was fixed as 23.05.2019. Thus the whole sale consideration was to be paid by the complainant within three months. It is evident from the account statement of the complainant Ex.C19, the sum of Rs.13172308.31 (Rs.one crore thirty one lakhs seventy two thousand three hundred eight only) was with the complainant on 23.05.2019, which is a very huge amount and by booking such a shop in the big project of the OPs i.e. in Mall, it cannot be said that complainant in order to earn his livelihood only was investing such a huge amount of more than 1.5 crore (one crore fifty lakhs). As per the account statement, the ' complainant was having the huge amount of ₹1,31,72,308/- in



cash and thus it cannot be said that he was unemployed at that time, and having no other source of income".

The above findings of the Hon'ble Commission makes it very clear that complainant was already having a huge amount in his account, however for reasons unknown, he waited for loan sanctioning for the payment of balance sale consideration on or before the targeted date of execution of sale deed, i.e., 23.05.2019. Thus, complainant has failed to perform its obligations towards agreement.

(viii) Authority vide its order dated 22.07.2024, Authority had given following directions to both the parties:

- Complainant is directed to prove his willingness to take possession and clearance of outstanding dues by paying the outstanding principle amount to the respondent.
- Further with regard to complainant contention that respondent is charging extra 24% of penal interest, Authority deems it appropriate to give one opportunity to both the parties to settle the component of interest.

Case was fixed for hearing on 21.10.2024. On 21.10.2024 Authority observed that, both parties have failed to comply with orders of Authority dated 22.07.2024 and also no settlement had been arrived between the parties. Keeping in view the above circumstances, Authority again directed the complainant to pay basic sale consideration of the unit to the



respondents to show his bonafide. Respondent was directed to file receivables and payables in the registry and the case was adjourned to 20.01.2025. In the meanwhile, on 18.10.2024, respondents had filed an application under Order VII of CPC. On 20.01.2025, both the parties were again directed to comply with the earlier orders and respondents were directed to place on record the account details which were shared with the complainant. In compliance, respondents filed an application on 04.04.2025 for placing on record the account details and also receivables and payables of interest component. However, complainant did not comply with the any orders of Authority which shows that the complainant is not willing to take possession of the shop and is interest only in lingering the matter. The same is also evident from the fact that last payment of ₹10,00,000/- was made by the complainant on 27.02.2019. By just making a part payment of ₹30,00,000/- he has blocked the property of respondent valuing about ₹1,57,50,000/- for the last 6 years.

(ix) Authority is also of the view that both the parties have defaulted at their own end. Primarily, it was the respondents who have not shared the requisite document for loan sanctioning. However, the required documents have been attached by the respondent with the written submissions dated 28.07.2023. Since, than a period of almost 2 years has passed but no efforts have been made by the complainant for sanction of




the loan amount and no proofs of making any efforts in this regard have been placed on record. Even the orders of the Authority, to pay basic sale consideration of the unit have not been complied. That ld. counsel for the respondents apprised the Authority on 22.07.2024 that respondent has already issued a letter dated 13.05.2024 to the complainant for taking possession by making payment of outstanding amount of the unit. That the complainant has not objected to the said statement of respondent and also has not acted upon it till date making it crystal clear that complainant has no intentions to perform his obligations. Complainant has booked his shop in the year 2019 by paying an amount of ₹30,00,000/- out of ₹1,57,50,000/-. Perusal of file also reveals that complainant firstly approached the Superintending Officer of Economic Offences Wing with complaint no. 1379 of 2019 which was dismissed. After that he approached the District Consumer Disputes Redressal Commission, Karnal under section 35 of Consumer Protection Act, 2019 where also his complaint was dismissed vide order dated 22.02.2022.

20. Complainant has filed the present complaint before Authority for seeking directions to the respondents to execute Conveyance Deed and hand over possession of the shop. However, as elaborated in previous paragraphs of this order, complainant has not complied his obligations as per BBA despite specific orders of the Authority which establishes the fact that complainant is himself not interested in possession of the said and just want to linger on the matter for



the reasons best known to him. which shows that complainant himself not willing to perform his obligations as per BBA. In view of aforesaid observations, Authority is of the view that relief claimed by the complainant has no merit, hence, the present case is hereby dismissed and accordingly disposed of.

21. **Disposed of.** File be consigned to record room after uploading of the order on the website of the Authority.


CHANDER SHEKHAR
[MEMBER]


NADIM AKHTAR
[MEMBER]

