



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: [www.haryanarera.gov.in](http://www.haryanarera.gov.in)

Complaint no.:	542 of 2022
Date of filing:	05.04.2022
Date of first hearing:	28.06.2022
Date of decision:	01.07.2025

M/s Gurutek Estate Pvt. Ltd.  
through its Authorised Representative,  
Regd. Office: 318-319, third floor, DLF Star Tower  
Sector-30, Gurugram, Haryana

....COMPLAINANT

VERSUS

Mr. Sanjay Kumar  
S/o Balwant Singh  
R/o Village- Chamdhera, Post Office-Beri, Tehsil and  
Distt. Mahendergarh, Haryana-123029.

....RESPONDENT

**CORAM:**            **Dr. Geeta Rathee Singh**            **Member**  
                         **Chander Shekhar**                            **Member**

**Present:**            None for the complainant.  
                         Adv. Rohit, Counsel for the respondent.

### ORDER

1. Present complaint has been filed by complainant on 05.04.2022 under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short RERA Act of 2016) read with Rule 28 of the Haryana Real Estate

*Geeta Rathee*

(Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 and the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter and the allottee 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. Respondent/allottee applied for purchase of an independent floor promoted and developed by the complainant vide application dated 04.11.2019 along with a part payment of Rs. 2,00,000/- . He was allotted a unit bearing No. B-02-0155, 2nd Floor, Plot No. 155, Block B, Sweet Homes, Eshan Vatikka, Gurutek City, Sector 25 and 26, Rewari having a carpet area of 917.40 Sq. Ft. for a total sale consideration of Rs. 42,50,922/- on 04.11.2019. The complainant/developer sent a demand letter dated 04.11.2019 for a total payment of Rs. 35,02,839/-. Complainant/Promoter obtained the Occupation Certificate (OC) from the competent authority in respect of the unit allotted to the respondent on 13.12.2019. Agreement for sale was executed between the parties on 27.01.2020 and the same is duly registered with Sub-Registrar, Rewari bearing Document No. 8117 dated 27.01.2020.



3. That despite various follow-ups from the complainant, by issuing the demand letter dated 04.11.2019 and duly executing the agreement for sale the respondent did not come forward to timely clear the dues, hence, the complainant issued another demand letter dated 25.02.2020 for payment of pending dues of a total of Rs. 33,20,225/-.
4. Complainant/Promoter has the right to cancel the allotment of the subject unit and forfeit the booking amount along with the interest component as prescribed in the RERA Act, 2016 and the Rules thereunder. Clause 9.3 of buyer's agreement reproduced herein for ready reference:

*".....9.3 The Allottee shall be considered under a condition of Default, on the occurrence of the following events:*

- (i) *In case the Allottee fails to make payments for two consecutive demands made by the Promoter as per the Payment Plan annexed hereto, despite having been issued notice in that regard the Allottee shall be liable to pay interest to the Promoters on the unpaid amount at the rate prescribed in the Rules.*
- (ii) *In case of Default by Allottee under the condition listed above continues for a period beyond ninety days after notice from the Promoter in this regard, the Promoter may cancel the allotment of the Unit for residential usage in favour of the Allottee and refund the money paid to him by the Allottee by forfeiting the booking amount paid for the allotment and interest component on delayed payment (payable by the Allottee for breach of agreement and non-payment of any due payable to the Promoter)....."*

*g. Attree*



5. Respondent/allottee has made a total payment of Rs. 9,20,000/- till date, out of the total sale consideration of Rs. 43,00,000/-. Last Payment was made by the respondent on 16.02.2020 since then no further payment had been made by the respondent causing irreparable losses to the complainant/promoter.
6. The complainant/promoter through its counsel sent a notice to the respondent/ allottee on 02.07.2020 calling out the respondent to clear the dues in respect of the subject unit. Thereafter, complainant promoter sent "Cancellation Notice" dated 31.08.2020 after reply to the previously sent notice dated 02.07.2020 was not received. Said notice clearly incorporates that up to 25.08.2020 a total of Rs. 38,20,998/- was due and payable inclusive of GST and the interest component. Complainant promoter informed the respondent/allottee that the allotment of the unit stands cancelled and that the respondent shall come forward to return the original allotment letter, original payment receipts, original agreement to sale and other related documents before collecting the refund of dues if any after forfeiture of the amount.
7. Complainant promoter sent another notice dated 09.03.2021 through its counsel reiterating the aforementioned "Cancellation of Unit" and calling out the respondent to return the original documents before the process of refund. It was also clarified in the said notice that from the total amounts paid by the respondent/allottee i.e, Rs. 10,98,719/- the booking amount



and the interest component till 31.03.2022 is due to be forfeited in terms of the agreement for sale dated 27.01.2020 but the complainant/promoter has forfeited only an amount of Rs. 04,19,110/- ,i.e, the booking amount in terms of the Agreement for Sale, the RERA Act, 2016 and the Rules thereunder. In pursuance of notice dated 09.03.2021 complainant/promoter sent another notice dated 27.07.2021 through its counsel detailing out the entire transaction between the parties and respondent was again called out to come forward for the execution of the "Cancellation Deed" for the cancellation of the Agreement to Sale dated 27.01.2020.

8. The unit of the complainant/promoter continues to remain blocked and in the absence of a cancellation deed the same is not free to be sold further. As on 09.02.2022 a total of Rs. 40,20,605/- inclusive of the balance consideration towards the unit, taxes & levies and the interest component calculated at the prescribed rate remains due and payable.
9. Complainant promoters has referred to Section 19 of RERA Act, 2016 and stated that L.d. Authority has the power to issues directions upholding principles of natural justice, keeping in view the interests of the Complainant who is a bona fide promoter/builder acting strictly in consonance with the provisions of the RERA Act, 2016 and the Rules thereunder.



10. Complainant/promoter has also filed an application dated 06.11.2023 for placing on record complete copy of the builder buyer agreement. Same was placed on record and was made part of the file.

11. Hence, the present complaint is being preferred before this Hon'ble Authority for the grant of the following relief after proper adjudication of the facts and circumstances of the present case.

**B. RELIEF SOUGHT**

12. In view of the above forgoing facts the complainant prays for the following relief (s) :-

- i. to direct the respondent to come forward to return all the original documents including but not limited to the original allotment letter, original agreement to sale, original payment receipt & other related documents executed in relation to the unit bearing No. B-02-0155, 2nd Floor, Plot No. 155, Block B, Sweet Homes, Eshan Vatikka, Gurutek City.
- ii. To direct the Respondent to come forward and execute the "Cancellation Deed" in respect of the Agreement for Sale dated 27.01.2020 executed in respect of the unit bearing No. B-02-0155, 2nd Floor, Plot No. 155, Block B, Sweet Homes, Eshan Vatikka, Gurutek City and cancelled vide the Notice dated 31.08.20 in terms of the aforementioned Agreement for Sale.





- iii. And pass such other order or direction as this Hon'ble Forum may deem fit and proper to protect the rights of the complainant and interest of justice.

**C. REPLY SUBMITTED ON BEHALF OF RESPONDENT**

13. Learned counsel for the respondent/allottee filed reply on 20.02.2024 pleading therein as under:

- (i) It has recently come to the notice of the complainant that inadvertently certain pages of the builder buyer agreement are missing and are not part of the document filed by the complainant.
- (ii) That the complaint in the present form is neither maintainable, nor has the complainant got any locus-standi to file the same. The complainant is not entitled any kind of relief and the present complaint is filed by the complainant just to harass and humiliate and to create pressure upon the respondent.
- (iii) That the present complaint is not been filed by the competent person, there is not valid and legal resolution in the name of authorized representative in the absence of the same the complainant has got no right to file the present complaint.
- (iv) Respondent applied for purchase of an independent floor promoted and developed by the complainant along with the part payment of Rs. 2,00,000 towards the total value of the independent floor and the



respondent was allotted the unit bearing No. B-02-0155, second Floor, plot No. 155, Block B Sweet homes having the carpet area of 917.40 Sq. ft as the unit for total sale consideration of Rs. 42,50,922. Respondent was always ready to take possession of the said unit after its completion but the complainant failed to complete the unit or start construction as per schedule. The alleged demand letters or alleged notice were never received by the respondent so question of cancellation of allotment of the subject unit and forfeiture of the booking amount does not arise at all.

- (v) On every request from the respondent/allottee, complainant assured him that work will start as soon as possible as well as assurance of the complainant respondent has made the above said payments.
- (vi) The respondent has invested his hard earned money in the project of the great surprise to the respondent when he inspected the project site with his family, the work was not done as per assurance moreover even at present the roads and all other facilities are not been provided as promised by the complainant.
- (vii) The complainant be directed to place on record the valid documentary proof that till the date of alleged demand the complainant has completed the construction as per schedule.
- (viii) Respondent visited number of times in the office of the complainant regarding the outstanding payment but the complainant not supplied the actual account statement and respondent was always ready to pay as per





work done by the complainant. Rather respondent sent a mail to the complainant dated 24th of July 2023 showing his willingness to make the full balance but complainant/promoter wants to grab above said flat/subject unit and wants to sell the same on higher price.

(ix) Respondent is still ready to pay the outstanding amount subject to completion of all the work as per agreement and ready to take possession and execute the conveyance deed of the subject unit but the complainant is charging unjustified high rate of interest on the outstanding amount.

(x) Complainant has not obtained the completion certificate of the project from the Town and Country Planning Department, Haryana for the residential block B i.e subject unit.

#### **D. WRITTEN SUBMISSIONS FILED BY THE COMPLAINANT PROMOTER**

14. Id. Counsel for the complainant/promoter has filed written submissions on 19.09.2024. In said written submissions the facts of the complaint have been reiterated. In addition, it is submitted that Id. Real Estate Regulatory Authority, Rajasthan while discussing post cancellation consequences has observed that in view of Section 11(5) read with Section 31 of the RERA Act and upon consideration where the cancellation done as per the agreement and the same has been discovered to be valid the Authority may approve such action of the Promoter, declare the agreement to be void or voidable and accordingly direct



the Sub-registrar to note the cancellation, delete the encumbrance and correct all its record. Also the provision of the RERA Act, 2016 are to be read in addition of the other law(s) applicable in time being in force and hence in view of Section 88 of the Act, the attention of the Ld. Authority is brought upon Section 31 of the Specific Relief Act, wherein, if the instrument has been registered, the court shall also send a copy of the decree to the officer in whose record instrument has been so registered and such officer shall note on the copy of the instrument contained in his book the fact of its cancelled. Section 31 of Specific Relief Act is reproduced for ready reference:

*31. When cancellation may be ordered. - (2)*

*If the instrument has been registered under the Indian Registration Act, 1908 (16 of 1908), the court shall also send a copy of its decree to the officer in whose office the instrument has been so registered; and such officer shall note on the copy of the instrument contained in his books the fact of its cancellation.'*

15. That Id. Real Estate Regulatory Authority, Rajasthan vide its minutes of meeting dated 17.04.2023 has observed that in view of Section 11(5) read with section 31 of the RERA Act and upon consideration where the cancellation has been done as per the agreement and the same has been discovered to be valid the Authority may approve such action of the promoter, declare the agreement to be void or voidable and accordingly direct the concerned sub-registrar to note the cancellation, delete the encumbrance and correct all its record.



16. Further, In appeal no. 351 of 2020 titled as **M/s L & T Construction Equipment Limited vs. The Karnataka RERA and Ors.** the Hon'ble Karnataka Appellate Tribunal has observed that there is no embargo under section 11(5) of the RERA Act, for the promoter to approach the Authority seeking direction to the jurisdictional sub-registrar to make a note in the relevant register maintained in their office regarding cancellation of the registered agreement entered into between the parties, so that it discontinue to appear in the encumbrance register and the promoter can dispose of the flat to any other prospective buyer and the termination of the agreement so done was held to be valid.

17. Id. Counsel for the complainant promoter has also referred to a case decided by Id. Karnataka Real Estate Authority in case titled as **VHBC Mumbai Value Homes Limited vs. Mr. RN Chandrakala** in complaint no. **CMP/201230/0007363** wherein it has been decided that for the purpose of considering the encumbrance already created vide the agreement for sale registered before the concerned sub-registrar, vide order dated 02.01.2023, has first upheld the cancellation and had accordingly directed the Jurisdictional Sub-registrar to cancel the agreement for sale.

#### **E.ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT**

18. On hearing dated 11.02.2025, Authority posed a specific question to Id. counsel for the complainant as to under which provision of the RERA Act, 2016





complainant is seeking relief of allowing complainant to cancel the agreement to sale. To this, Id. counsel for the respondent referred to section 34(f) and 19(10) of the RERA Act, 2016 which are reproduced as under:

*Section 34(f)- 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;*

*Section 19(6) - Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.*

He further stated that under the rules of equity and natural justice the respondent allottee must come forward to execute the cancellation deed in case he is not abiding by the agreement executed between the parties.

19. Id. counsel for the complainant builder further referred to the judgement passed by Hon'ble Karnataka Appellate Tribunal in appeal no. 351 of 2020 titled as **M/s L & T Construction Equipment Limited vs. The Karnataka RERA and Ors.** wherein the Hon'ble Appellate Tribunal has observed that there is no embargo under section 11(5) of the RERA Act, for the promoter to approach the Authority seeking direction to the jurisdictional sub-registrar to make a note in the relevant register maintained in their office regarding cancellation of the registered agreement entered into between the parties, so that



it discontinue to appear in the encumbrance register and the promoter can dispose of the flat to any other prospective buyer and the termination of the agreement so done was held to be valid.

**F. ARGUMENTS OF THE RESPONDENT**

20. Ld. Counsel for the respondent allottee submitted that the demand letters dated 25.02.2020 and 02.07.2020 and cancellation notices dated 31.08.2020, 09.03.2021 and 27.07.2021 have never been received by the respondent allottee.

**G. ISSUES FOR ADJUDICATION**

21. Whether the complainants are entitled to relief of direction to the Respondent to come forward and execute the "Cancellation Deed" in respect of the Agreement for Sale dated 27.01.2020?

**H. FINDINGS AND OBSERVATIONS OF AUTHORITY ON RELIEFS CLAIMED BY COMPLAINANT**

22. On perusal of case file it is observed that the respondent has taken an objection with regard to the maintainability of the complaint filed by the complainant in the present form. Complainant has objected that the complainant does not have locus-standi to file the same. To deal with the said objection of the respondent/allottee reference is made to section 31 of the RERA Act, 2016. Same is reproduced herein for ready reference:



*Filing of complaints with the Authority or the adjudicating officer.—(1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder, against any promoter, allottee or real estate agent, as the case may be.*

*Explanation.—For the purpose of this sub-section “person” shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force.*

*(2) The form, manner and fees for filing complaint under sub-section (1) shall be such as may be [prescribed].*

Section 31 of the RERA Act, 2016 makes it clear that any aggrieved person may file a complaint before the Authority for any violation or contravention of the provisions of this Act or rules and regulations made thereunder against any promoter allottee or a real estate agent. In the present case “complainant” who is a “promoter” is allegedly ‘an aggrieved person’ who has filed the complaint against the respondent who is an “allottee” of his project for violation/contravention of Section 19(6) of RERA Act, 2016. Hence, the objection of respondent is misconceived, therefore rejected.

23. Respondent allottee has also raised an objection stating that the present complaint has not been filed by the competent person, there is no valid and legal resolution in the name of authorized representative who has filed the present complaint. Authority observes that complainant



promoter has submitted a "Board Resolution" annexed at page 21 of the complaint thereby authorising Mr. Kamal Agarwal to file the present complaint. So, this objection of the respondent allottee is not tenable.

24. Now proceeding on merit, there is no dispute between the parties with respect to the fact that respondent/allottee applied for purchase of an independent floor promoted and developed by the complainant vide application dated 04.11.2019 along with a part payment of Rs. 2,00,000/-; the respondent/allottee was allotted the unit bearing No. B-02-0155, 2nd Floor, Plot No. 155, Block B, Sweet Homes, Eshan Vatikka, Gurutek City having a carpet Area of 917.40 Sq. Ft. for a total sale consideration of Rs. 43,00,000/- on 04.11.2019; respondent allegedly has paid an amount of Rs. 9,20,000/- against the total consideration of the said unit.
25. Promoter is aggrieved by the fact that a demand letter dated 04.11.2019 for a total payment of Rs. 35,02,839/- was sent to the respondent allottee however the respondent/allottee has failed to make the payment as demanded. Subsequent thereupon demand notices dated 25.02.2020 and 02.07.2020 and cancellation notices dated 31.08.2020, 09.03.2021 and 27.07.2021 were also sent to the respondent allottee. Needless to say respondent allottee still did not make the payment therefore complainant promoter was constrained to cancel the unit of the respondent/allottee. It is the prayer of the complainant promoter that since the unit of the respondent allottee already stands cancelled he may be directed to



execute the cancellation deed as the builder buyer agreement was a registered document and the same can be nullified only by way of executing a cancellation deed in the office of the sub-registrar and the same shall enable the complainant promoter to sell the plot to any prospective buyer. In order to adjudicate upon the relief claimed by the complainant promoter it is to be ascertained that:

I. Whether the demands raised by complainants were in consonance with RERA Act, 2016?

II. Whether there was default on part of the respondent allottee in making the payments?

III. Whether the complainant promoter was rightful in cancelling the plot of the respondent allottee?

26. To adjudicate the issue that whether the demands raised by complainants were in consonance with RERA Act, 2016 reference is being made to the allotment letter issued by the complainant promoter to respondent allottee dated 04.11.2019 annexed as annexure C3 of the complaint. In the said allotment letter it is mentioned that plot no. 0155 was allotted to the respondent allottee for a total consideration of Rs. 42,50,922/- under construction linked plan and said payment plan is attached herewith. It is pertinent to mention that no such payment plan is annexed with the said allotment letter. Further reference is being made to the builder buyer agreement in the present case which was executed between the parties on



27.01.2020 annexed as annexure C-6 i.e, after RERA Act, 2016 coming into force. Perusal of the said agreement reveals that the payment plan is annexed as schedule C to the said agreement meaning thereby that said payment plan is a part of the agreement dated 27.01.2020 and was made available to the respondent allottee on said date only and not with allotment letter dated 04.11.2019. Plain reading of these documents reveals that the payment plan was provided to the respondent allottee on 27.01.2020 and not on 04.11.2019.

27. Further demand letter dated 04.11.2019 reveals that complainant promoter demanded an amount of Rs. 35,02,839/- from the respondent allottee on 04.11.2019 that is on the date of booking itself which is more than 10% of the sales price even before signing of the builder buyer agreement. Since the allotment and also builder buyer agreement in this case were entered between parties post RERA Act, 2016 coming into force Section 13 of RERA Act, 2016 came into play, same is being reproduced below for ready reference:

*"A promoter shall not accept a sum more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force.*

*(2) The agreement for sale referred to in sub-section (1) shall be in such form as may be prescribed and shall specify the particulars of development of the project including the construction of building and apartments, along with*





*specifications and internal development works and external development works, the dates and the manner by which payments towards the cost of the apartment, plot or building, as the case may be, are to be made by the allottees and the date on which the possession of the apartment, plot or building is to be handed over, the rates of interest payable by the promoter to the allottee and the allottee to the promoter in case of default, and such other particulars, as may be prescribed."*

Complainant promoter in the present case has demanded an amount of Rs. 35,02,839/- without first entering into an agreement for sale as per the provisions of RERA Act, 2016. There is clear violation of Section 13 of RERA Act, 2016 on the part of the complainant. Therefore it is clear that demands raised by the complainant promoter were not in consonance with the provisions of RERA Act, 2016 and the respondent allottee was not under an obligation to pay the same on 04.11.2019.

28. Complainant promoter has submitted that after execution of the agreement demand letters dated 25.02.2020 and 02.07.2020 were sent to the respondent allottee and when the same were not duly honoured by the respondent allottee, complainant promoter was constrained to send cancellation notices dated 31.08.2020, 09.03.2021 and 27.07.2021. Respondent allottee in his reply has stated that the demand letters dated 25.02.2020, 02.07.2020, 31.08.2020 and cancellation letter dated 09.03.2021 and 27.07.2021 were not actually received by the respondent allottee. Perusal of the complaint file reveals that proof of service of these demand letters have not been annexed

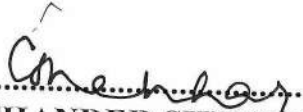


by the complainant promoter therefore it cannot be ascertained that whether these demand letters and cancellation notices /letters were served upon the respondent allottee.

29. Therefore Authority has no hesitation in holding that the demand letters issued by the complainant promoter before the execution of the builder buyer agreement dated 27.01.2020 were unjustified as the same was illegal in terms of Section 13 of RERA Act, 2016. Further, with respect to the demand letters dated 25.02.2020 and 02.07.2020 and cancellation notices dated 31.08.2020, 09.03.2021 and 27.07.2021, Since complainant promoter has failed to prove that said letters were served upon/delivered to the respondent allottee therefore respondent allottee was not bound to make payment for said demands.
30. As per the observations given by the Authority in the preceeding paragraphs there arises doubt with regard to sanctity/legal validity of the cancellation done by the complainant promoter of the plot allotted to the respondent allottee. Therefore relief of direction to the respondent allottee to come forward and execute the "Cancellation Deed" in respect of the Agreement for Sale dated 27.01.2020 is not allowed.



31. Case is **disposed off**. File be consigned to record room after uploading order on the website of the Authority.

  
.....  
CHANDER SHEKHAR  
[MEMBER]

  
.....  
DR. GEETA RATHEE SINGH  
[MEMBER]