

BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER, HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM.

**Complaint No. 2966 of 2023
Date of Decision: 06.08.2025**

Virendra Gupta, R/o FF-1, plot no. 92, Pocket no. 1, Ramprastha Green, Sector-7, Vaishali, Ghaziabad.

.....Complainant.

Versus

M/s SS Group Pvt. Limited Regd. Office at:- SS House, Plot no.77, Sector-44, Gurugram, Haryana.

.....Respondent.

APPEARANCE

For Complainant:	Mr. Mahavir Parshad Gupta, Advocate.
For Respondent:	Mr. Rahul Bhardwaj, Advocate.

ORDER

This is a complaint filed by Virendra Gupta, (allottee) under section 31 read with section 71 of The Real Estate (Regulation and Development) Act, 2016 (in brief The Act of 2016), against M/s SS Group Pvt. Limited (promoter/ developer).

2. The brief facts of the complainant's case are that he (complainant) booked a Unit in the project "The Leaf", bearing no. 3C, 28311K having approximate super area of 1575 sq. ft. in Tower no.2, a residential complex, situated in Sector-85, Gurugram. The basic rate of

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allotment was @ Rs.4800/- per sq. ft., preferential location charges (PLC) @ Rs.250/- per sq. ft. EDC of Rs.355 sq. ft., and infrastructural development charges @ Rs.35/- sq. ft., making a total sale consideration of Rs.92,18,000/-.

3. That possession of flat was proposed to be handed over to complainant-allottee within a period of 36 months from the date of signing of agreement i.e. on 10.09.2012. No formal agreement was executed, however flat was allotted on the basis of terms of allotment letter. As per the terms of agreement, the respondent developer was entitled for an extension of 90 days, after expiry of 36 months for obtaining occupation certificate in respect of the said complex. Date of delivery of possession came to be 09.12.2015.

4. That in case respondent failed to refund sale price on account of failure to deliver possession, it (respondent) was to pay interest @ 15% for any period beyond the said period of 90 days. The allottee then had no other claim, against company in respect of the said unit.

5. That as per clause 10 of allotment letter, time was the essence of the contract. Further, any failure on the part of complainant to pay the instalment after delay of 60 days, attracted is liable to charge interest @ 18% per annum, from the date of such instalment. All this clearly shows that agreement was one-sided, and complainant had to sign the same on

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the dotted lines which does not maintain a level platform or even reflect a bargain between the parties. The complainant paid an amount of Rs.17,66,555/- from time to time.

6. That respondent cancelled allotment of unit vide letter dated 11.04.2014. The complainant filed complaint no. 2754 of 2020 before Hon'ble Authority. The Authority ordered the respondent to refund deposited amount along with interest @ 10.70% per annum from the date of cancellation of allotment till payment in full. The part payment of Rs.8,09,655/- was made on 06.05.2023, whereas interest of Rs.9,81,664/- is still payable.

7. That he (complainant) has suffered loss due to misconduct of the respondent. Therefore, the respondent is liable to pay loss and damages also. After payment of interest calculated and received, relief for refund of deposited amount stand closed, subject to further claim of compensation in pursuance of Section-18 of The Act of 2016.

8. Citing facts as described above, the complainant has sought following compensations: -

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|--|-------------------|
| i. As per calculation statement (interest) | - Rs.12,02,723/-, |
| ii. Rent loss | - Rs.37,80,000/-, |
| iii. Litigation Loss (previous) | - Rs.1,50,000/-, |
| iv. Dipropionate Gain | - Rs.9,45,000/- |
| v. Mental Agony | - Rs.3,00,000/- |
| vi. Total Loss | - Rs.63,77,723/-. |

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9. The respondent contested the claim of complainant by filing a written reply. It (respondent) denied all the averments, submissions and contentions raised by the complainant. It is averred that the present complaint is grossly misconceived, blatantly false and frivolous. That the present petition, so preferred is not maintainable as the complainant has failed to disclose any maintainable cause of action.

10. That as the complainant did not make any further payment towards his allotment, the respondent was constrained to issue a cancellation notice dated 11.04.2014 whereby respondent cancelled the complainant's unit. The respondent in bona-fide intention again sent a reminder letter in 2020, requesting the complainant to clear the outstanding dues in order to obtain the possession of the unit, however, that too fell on his deaf ear, the complainant did not pay any money. He (complainant) in its complaint filed before the Authority, never requested or sought any relief other than seeking refund of the amount, along with the interest.

11. Contending all this, the respondent prayed to dismiss the complaint.

12. Both parties filed affidavits in support of their claims.

13. I have heard learned counsels appearing on behalf of both of parties and perused the record on file.

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14. As stated earlier, the complainant approached Haryana Real Estate Regulatory Authority, Gurugram (The Authority) by filing a Complaint No. 2754/2020. It was decided on 14.03.2023. Copy of order is on the record. The Authority directed respondent to refund the paid up (amount) of the complainant after deducting 10% of the basic sale consideration of said unit i.e. Rs.75,60,000/- as earnest money along with prescribed rate of interest 10.70% from the date of cancellation i.e. 11.04.2014 to the date of actual refund.

15. while deciding said complaint, the Authority noted as follow: -

"The unit of complainant was cancelled way back on 11.04.2014 by the respondent and a reminder was again issued on 18.12.2020 after a gap of more than 6 years and directing that the unit would automatically stand cancelled if payment due was not paid within a period of 30 days. So, it means that notice of 11.04.2014 was only a paper transaction and the builder did not act upon the same by returning the amount due after deduction of the amount towards earnest money-----. No doubt that the allottee did not avail benefit of the same and filed the present complaint but the builder was required to return the amount after deduction of earnest money not more than 10% of the basic amount. However, the issuance of that letter for payment does not automatically revive the subject unit entitling the complainant to seek refund of the total paid-up amount besides interest".

16. Observing as above, the respondent was allowed to deduct 10% of basic sale price. In this way, according to the Authority, despite receiving reminder dated 18.12.2020 complainant inspite of retaining his

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unit opted to apply for refund of the amount. In other ^{words,} ~~way~~ the respondent was not found at fault by the Authority.

17. Section 18 (1) of The Real Estate (Regulation and Development) Act 2016 obliges the promoter to refund the amount on demand by the allottee in case promoter fails to complete or is unable to give possession of an apartment, plot or building in accordance with the terms of the agreement for sale. As noted by the Authority, the promoter, i.e. respondent by issuing notice dated 18.12.2020, asked the complainant to pay his dues, so that possession can be given, but the complainant, inspite of making payment of amount due, preferred to seek refund of amount. In this way, complainant is not entitled for any compensation.

18. Complaint is thus, dismissed. Parties to bear their own costs.

19. File be consigned to record room.

Announced in open Court today i.e. 06.08.2025.


(Rajender Kumar)
Adjudicating Officer,
Haryana Real Estate
Regulatory Authority, Gurugram.