

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

Complaint no.:
Date of complaint:
Date of Decision:

3472 of 2024
23.07.2024
12.09.2025

Manisha
Address: - Ward no. 6, Hari Nagar, Sohna,
Gurugram, Haryana

Complainant

Versus

M/s Desi Construction Pvt. Ltd.
Office at: - 806-807, Best Key Tower, Netaji Subhash
Place, Pitampura, North West Delhi, Delhi - 110034

Respondent

CORAM:
Shri Arun Kumar

Chairman

APPEARANCE:
Sh. Sunil Kumar
Sh. Rahul Mangla

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 allottee as per the agreement for sale executed *inter se*.

A. Project and unit related details.

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name and location of the project	"Tathastu I", Sector 05, Sohna, Gurugram
2.	Project area	12.8847 acres
3.	Nature of project	Affordable Group Housing Colony
4.	RERA registered/not registered	Registered Vide registration no. 20 of 2023 dated 30.01.2023 Valid upto 14.11.2027
5.	DTPC license no. & validity status	189 of 2022 dated 16.11.2022 valid upto 15.11.2027
	Name of licensee	M/s SRE India M/s Desi Construction Pvt. Ltd.
6.	Allotment Letter	01.02.2024 (page no. 16 of complaint)
7.	Buyers agreement	Not executed
8.	Unit no.	1E-112 (page no. 16 of complaint)
9.	Unit area admeasuring (super area)	382.337 sq. ft. (page no. 16 of complaint)

10.	Refund request by complainant	07.05.2024 (page 23 of reply)
11.	Approval of building plans	23.01.2023
12.	Grant of environment clearance	09.02.2023
13.	Possession clause as per Affordable Housing Policy, 2013	1 (iv) All such projects shall be required to be necessarily completed within 4 years from the date of approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of the policy.
14.	Due date of possession	09.02.2027
15.	Total sale consideration	Rs. 61,28,192/- (as per allotment letter at page 17 of complaint)
16.	Total amount paid by the complainant	Rs. 7,33,000/- (as confirmed by both the parties)
17.	Occupation certificate	Not obtained
18.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint: -
- That the complainant Mrs. Manisha is a law abiding citizen of India who wish/dreams to take a commercial shop with all amenities and world class facilities. The sales persons of respondent boosted

swarnim project 1, is one of the best class commercial shop with all amenities and serene environment and facilities. That after the statements and presentation of the respondent, complainant lured to book a livelihood commercial unit in project "Swarnim A Tathastu Project 1" situated at Sector 5, Sohna, Gurugram, Haryana.

- II. That the sales representatives of respondent shared a quotation through Whatsapp too with an excel file price @14400/Sq. Ft. admeasuring 382.332 sq. ft. commercial unit. Wherein the BSP is Rs. 55,05,580/-, EDC+IDC+IFMS Charge @ 458/Sq. ft. is Rs.1,75,108/-, GST@5% is Rs.2,84,034/-, PLC 3% on BSP = Rs. 1,65,167/-, Total Cost including all Charges = Rs. 61,29,889/-.
- III. That the complainant requested the sales representatives of respondent to reduce PLC price at 2.5%, then sales representative agreed to reduce PLC price 2.5%.
- IV. That the complainant decided to paid all through cheque mode/ online mode only. The complainant in total has paid an amount of Rs. 7,33,000/-.
- V. Then the respondent started demanding 35% payment with 3% of PLC which was quite shocked and astonished for the complainant. As without allotment and executed agreement how the respondent can demand a huge amount.
- VI. Further, the complainant made a request to the sales representative on call for share the allotment letter through email. But surprisingly, allotment letter was not shared through email. Sales representative Mr. Anuj Dedha shared allotment letter as requested through Whatsapp vide dated 03.02.2024 and on allotment there were no date mentioned on letter.

- VII. That on allotment letter BSP charged @ 14,857/- sq. ft. which was wrongly mentioned and PLC charged with 18% GST also not mentioned on it. Then the complainant requested the sales representative and he said to give some time.
- VIII. That the complainant chased 4-5 days continuously to get the corrected allotment letter along with PLC + 18% GST and payment slips but no response was received from the respondent.
- IX. That the complainant emailed the respondent company but unfortunately, CRM team replied on the said email and states that please contact the sales person but the sales person was not picking up the calls.
- X. Then, at last with no hope to address the grievance of the complainant, the complainant requested through whatsapp for cancellation of the allotted unit on 13.04.2024. Further on 07.05.2024 complainant also sent an email for cancelation of the unit.
- XI. Hence, the present complaint is based on breach of trust, mislead, misrepresentation, cheating, fraud, malafide intention by the respondent. Hence, seeking refund of the total paid amount with interest as per RERA Act, 2016 and Rules, 2017.

C. Relief sought by the complainant: -

4. The complainant has sought following relief(s):
- (i) Direct the respondent to refund the total amount paid by the complainant with interest.
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 vide reply contested the complaint on the following grounds:

- I. That the contents of the present complaint are denied as the complainant is misleading this Hon'ble Forum and is using this Hon'ble Forum to malign the reputation of the respondent. That the present complaint in the present form is not maintainable as the same is contrary to the provision of the Real Estate (Regulation and Development) Act, 2016 and Haryana Real Estate (Regulation and Development) Rules, 2017 and therefore, the present complaint is liable to be dismissed in limine.
- II. That this Hon'ble Authority does not have the jurisdiction and adjudicate the present complaint. Therefore, the present complaint is liable to be dismissed.
- III. That the complainant is guilty of not making the payment of due installments on time and therefore, the complainant is not entitled to seek the relief as the complainant herself in the instant matter has cancelled her unit due to the reason best known to the complainant. However, it has been stated that the complainant has cancelled the booking of her unit due to the differentiation of the amount. In this regard it is stated that it has been admitted fact by the complainant herself that she has been allotted the shop no. 1E-112 by the respondent after the allotment letter was issued to the complainant. The said allotment was done by the respondent after the filling of the application by the complainant to the respondent.
- IV. That the complainant raised the alleged objection of the difference or deficiency in price before this Hon'ble Forum for the first time as evident from the emails trails exchanged between the parties. The demand was raised by the respondent, the complainant raised the false plea of

construction at the site and in order to evade the said demand by the complainant, the complainant is raising the false, frivolous and baseless objections against the said demand.

- V. That apart from that the complainant was in regular communication with the employees / executives of the respondent company and vide e-mail dated 06.05.2024, the complainant had herself mentioned in the e-mail that she has raised the objections of the construction not with respect to the deficiency / difference in the allotment amount. Hence, the complaint is contrary to the e-mails written by the complainant herself and in the entire e-mail trials sent by the complainant and the executives of the respondent it is crystal clear shown that the complainant was demanded for the refund of Rs. 7,33,000/- but the Respondent has forfeited amount after giving all the details of forfeiture. The complainant is liable to give balance amount of Rs. 1,03,559/- to the respondent in consonance of application form and allotment letter issued by the respondent.
- VI. That as per clause 8 of the application form signed and acknowledged by complainant the complainant has given right to the respondent to forfeit the amount of complainant in case of breach committed by complainant.
- VII. Thus, from the aforesaid it is crystal clear that present complaint filed by the complainant is misleading and based on concocted story.
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 complainant.

E. Jurisdiction of the authority

8. The respondent has raised an objection that the Authority has no jurisdiction to adjudicate the said matter. 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, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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) The promoter shall-

(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. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the case mentioned above, the authority has the jurisdiction to entertain a complaint seeking delay possession charges.

F. Findings on the relief sought by the complainant.

i. Direct the respondent to refund the total amount paid by the complainant with interest.

16. The complainant has submitted that she had booked a residential apartment in the Affordable Group Housing project of the respondent named "Tathastu I" at Sector-05, Sohna, Gurugram and was allotted a flat bearing no. 1E-112 having super area of 382.337 sq. ft. vide allotment letter dated 01.02.2024. The complainant in total has paid an amount of Rs.7,33,000/- against the said unit. The buyer's agreement was not executed between the parties. The complainant on 07.05.2024 has sent an email to the respondent and requested the refund of the paid up amount. The said email is reiterated as under:

Dear Team,

I wish to formally convey to you that I do not wish to buy your Commercial Unit 1E-112 Project Swarnim Tathastu Project 1, Sector-5 Sohna and therefore, I am hereby formally cancelling my "Application" or "request for Booking". Hence, I urge you to immediately refund my booking amount (Rs. 7,33,000/-) which was paid to you on

12.01.2024 date vide cheque no. 4 (Rs. 4,00,000/-)

23.01.2024 date vide cheque no. 7 (Rs. 1,68,000/-)

08.02.2024 date vide cheque no. 11 (Rs. 1,65,000/-)

17. The Authority observes that clause 5(iii)(h) of Affordable Housing Policy, 2013 as amended by Notification dated 05.07.2019 states as under:

On surrender of flat by any successful allottee, the amount that can be forfeited by the colonizer in addition to Rs. 25,000/- shall not exceed the following: -

Sr. No.	Particulars	Amount to be forfeited
(aa)	In case of surrender of flat before commencement of project	Nil;

(bb)	Upto 1 year from the date of commencement of the project	1% of the cost of flat;
(cc)	Upto 2 years from the date of commencement of the project	3% of the cost of flat;
(dd)	after 2 years from the date of commencement of the project	5% of the cost of flat;

Note: The cost of the flat shall be the total cost as per the rate fixed by the Department in the policy as amended from time to time.

18. In the instant case, the date of commencement of the project was calculated from the date of obtaining E.C i.e., 09.02.2023. However, the unit was surrendered by the complainant-allottee on 07.05.2024. Since the surrender of the unit by the complainant was done after commencement of construction. Hence the respondent/builder is entitled to forfeit the amount in accordance with amended section 5(iii)(h) of the policy, 2013.
19. The Authority observes that complainant is entitled for the refund of deposited amount after deduction of the amount as allowed under Affordable Group Housing Policy 2013 and amendment of 2019 which allow for deduction of 3% of the consideration money in addition to Rs.25,000/- as the complainant surrendered the unit within one year from the grant of environmental clearance. Thus, the respondent was bound to cancel the unit and return the amount as per clause 5(iii) (h) of the policy, 2013 as amended by the State Government on 05.07.2019, along with prescribed rate of interest i.e., @10.85% per annum from the date of surrender i.e. 07.05.2024 till the actual realization of the amount.

G. Directions of the authority

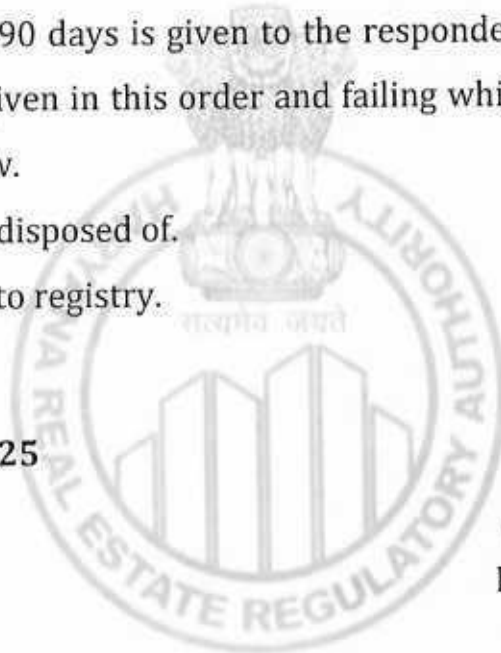
20. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent/promoter is directed to refund the paid-up amount of Rs.7,33,000/- after deduction of 3% of the consideration money in addition to Rs.25,000/- as per clause 5(iii)(h) of the Affordable Housing Policy 2013 as amended by the State Government on 05.07.2019, along with prescribed rate of interest i.e., @10.85% per annum from the date of surrender i.e. 07.05.2024 till the actual realization of the amount.
- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

21. Complaint stands disposed of.

22. File be consigned to registry.

Dated: 12.09.2025



(Arun Kumar)
Chairman
Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM