

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

Complaint no. : 318 of 2024

Date of decision : 13.02.2026

Mrs. Vandana Luthra

Address: - Flat No. A-301, Palm Court Apartments
Sector-19, Dwarka, New Delhi - 110075

Complainant

Versus

M/s St. Patricks Realty Pvt. Ltd.

Address: Registered Address: Aloft Hotel, Asset
5B, Aerocity Hospitality District,
IGI Airport, New Delhi - 110037

Respondent

CORAM:

Shri Arun Kumar

Chairman

APPEARANCE:

Shri Yogesh Kumar Goyal
Sh. Harshit Batra Advocate with
Shri Lokesh Madan AR

Counsel for Complainant
Counsel for Respondent

ORDER

1. The present complaint dated 12.02.2024 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 provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

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	Central Park Flower Valley, Sector-31
2.	Area of the project	10.925 acres
3.	Nature of the project	Group housing project
4.	DTCP License No.	84 of 2014 dated 19.08.2014.
5.	RERA Registered/ Not Registered	150 of 20174 dated 28.08.2017 valid upto 31.07.2022
6.	Date of application	12.06.2017 [Page 62 of the complaint]
7.	Unit no.	903, Tower-D,9 th floor [Page 62 of the complaint]
8.	Unit admeasuring	1590 sq. ft.
9.	Date of execution of buyer's agreement	10.06.2017 [Page 61 of the complaint]
10.	Possession clause	7. POSSESSION <i>The Company shall endeavour to offer possession of the said apartment to the Allottee within a period of thirty-six (36) months, along with a further grace period of six (6) months, from the date of this Agreement, subject to the Allottee having duly complied with all payment obligations, including payment of the sale consideration,</i>

		<i>applicable charges, and interest, in terms of this Agreement.</i>
11.	Due date of delivery of possession	10.12.2020 [as per date of agreement plus 6 months grace period as unconditional]
12.	Total sale consideration	Rs. 74,73,000/-
13.	Total amount paid by the complainant	Rs. 41,21,225/-
14.	OC received on	13.01.2023
15.	Offer of possession	18.02.2023 [Page 139 of complaint]
16.	Reminders letter dated	05.04.2023, 13.06.2023 and 06.07.2023
	Cancellation letter dated	17.07.2023

B. Facts of the complaint.

3. The complainant has made the following submissions in the complaint:
 - i. That the Respondent widely advertised its residential project "Central Park Flower Valley", inviting applications for booking. That the Complainant applied for a residential apartment of 1590 sq. ft. vide Application Form dated 16.05.2017. (Annexure P-1)
 - ii. That the Respondent issued Allotment Letter dated 12.06.2017 for Unit No. D-903, Tower-D, 9th Floor. (Annexure P-2). That an Apartment Buyer Agreement (ABA) was executed on 19.07.2017, wherein the Respondent agreed to hand over possession by 31.07.2020, as per Clause 7.1. (Annexure P-3).

- iii. That the total sale consideration was ₹ 89,90,330/-. The Complainant paid ₹ 46,21,226/- toward the same. Copies of receipts (Annexure P-4) and demand letters (Annexure P-5) are enclosed. That the Respondent issued an Offer of Possession dated 18.02.2023 demanding illegal and inflated charges totalling ₹ 68,89,247/-, contrary to RERA Act, 2016. (Annexure P-11).
- iv. That the Complainant paid ₹ 5,00,000/- on 28.04.2023, but the Respondent neither issued any receipt nor recorded the payment in cancellation papers. (Annexure P-4). That due to her daughter's sudden illness (a force majeure situation), the Complainant had to leave India on 18.07.2023 and returned only on 02.11.2023, which caused temporary delay in completing formalities. (Annexure P-12)
- v. That the Respondent illegally issued a Cancellation Letter dated 17.07.2023 without following the mandatory procedure under RERA, solely based on inflated/illegal dues. (Annexure P-10). That the Complainant's husband obtained Sanction Letter for ₹ 62,00,000/- from Indian Bank on 25.10.2023, proving their bona fide intent to pay. (Annexure P-7).
- vi. That the project is governed by provisions of the RERA Act, 2016, since the booking (16.05.2017) and ABA execution (19.07.2017) both took place after commencement of RERA (01.05.2017). As per Section 13 and Rule 8 of Haryana RERA Rules, the Builder must comply with the statutory "Agreement for Sale Rules". Key provisions include:
- (a) Agreement for Sale overrides inconsistent clauses of ABA



- (b) Unit must be sold on *carpet area* basis
- (c) No grace period allowed; fixed delivery date required
- (d) Price must be escalation-free
- (e) Area variation cannot exceed $\pm 5\%$
- (f) Price includes taxes, EDC, IDC unless actually enhanced by Govt.

vii. That the Respondent illegally raised escalation demand of ₹ 8,40,830/- , contrary to mandatory RERA Rules. Such illegal escalation must be struck down. That the Respondent illegally increased the area from 1590 sq. ft. to 1789 sq. ft., i.e., 199 sq. ft. = 12.52%, exceeding the legally permissible limit of 5%, and raised unlawful demand of:

- ₹ 9,35,300/- (extra area)
- ₹ 40,891/- (EDC/IDC on extra area)

This illegal demand violates Rule 8 of Haryana RERA Rules.

viii. That such abnormal area increase proves that construction was not as per approved building plans. This constitutes violation of Section 14 of RERA Act, requiring prior consent of 2/3 allottees, and prior approval of HARERA. Respondent is liable for penalty under Section 61. That the Respondent illegally demanded ₹ 5,72,546/- towards taxes, whereas Section 13 read with Rule 8 requires sale price to be inclusive of taxes. This illegal demand must be quashed. That despite repeated communications (Annexure P-6), the Respondent failed to offer lawful possession and is liable to pay delayed possession interest as per RERA Act.

C. Relief sought by the complainant:

4. The complainants have sought following relief(s).
 1. Direct the Respondent to restore/reinstate the cancelled unit allotted to the Complainant;

- II. Direct the Respondent to withdraw and remove the illegal, arbitrary, and invalid amounts demanded by the promoter at the time of offer of possession;
 - III. Direct the Respondent to hand over possession of the flat along with applicable delayed interest, as per law;
 - IV. In the alternative, if the originally booked unit is not available, direct the Respondent to allot an alternative unit of the same size and at the same rate in the same project of the Respondent.
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 has contested the complaint on the following grounds.
- I. That the present complaint filed by the Complainant is false, frivolous, and devoid of any cause of action, and is therefore liable to be dismissed.
 - II. That the Complainant has not approached this Authority with clean hands and has deliberately suppressed material facts.
 - III. That the complaint is an abuse of the process of law and is liable to be dismissed with exemplary costs.
 - IV. That in the year 2017, the Complainant, while searching for a residential property, came across the project "Aqua Front Towers" (formerly "Lake Front Towers") situated at Sector 31, Village Dhunela, Tehsil Sohna, District Gurugram, Haryana (hereinafter referred to as the "Project"), being developed by the Respondent.

- V. That the Complainant applied for allotment of a residential unit vide application dated 16.05.2017, along with a booking amount of ₹7,85,082/-. That the Complainant opted for a possession-linked payment plan.
- VI. That pursuant thereto, a Provisional Allotment Letter dated 12.06.2017 was issued for Unit No. 903, Tower-D, admeasuring approximately 1590 sq. ft., for a total consideration of ₹89,90,330/-.
- VII. That thereafter, an Apartment Buyer Agreement dated 19.07.2017 was executed between the parties. That the Respondent completed construction and applied for an Occupation Certificate on 06.10.2022, which was granted on 13.01.2023.
- VIII. That thereafter, the Respondent issued an Offer of Possession dated 18.02.2023 to the Complainant. That despite repeated requests and reminders dated 05.04.2023, 06.05.2023, 13.06.2023, and 06.07.2023, the Complainant failed to clear outstanding dues.
- IX. That a Last and Final Opportunity Letter dated 13.06.2023 was issued demanding payment of ₹68,45,717/-, but the Complainant failed to comply. That due to persistent default, the Respondent was constrained to issue a Cancellation Letter dated 17.07.2023.
- X. That after cancellation, the Respondent issued a refund of ₹37,05,279/- vide letter dated 19.08.2023. That upon clarification regarding an additional payment of ₹5,00,000/-, the Respondent issued revised refund cheques dated 19.12.2023 for: ₹37,05,279/, ₹5,00,000/-.
- XI. That only minimal deductions amounting to ₹4,15,946/- were made towards taxes and brokerage. That the Respondent, despite

being entitled, did not deduct 10% earnest money, showing bona fide conduct. That the unit in question has already been allotted to a third party on 21.04.2024.

- XII. That as per Section 19(6) of the Real Estate (Regulation and Development) Act, 2016, the Complainant was obligated to make timely payments. That as per Section 11(5) of the Act, the Respondent is entitled to cancel allotment in terms of the Agreement.
- XIII. That Clause 3 of the Agreement clearly provides that timely payment is the essence of the contract, and default entitles cancellation. That the cancellation was: In accordance with the Agreement, In compliance with the RERA Act, after granting sufficient opportunities. That upon cancellation and refund, the Complainant ceased to have any right, title, or interest in the unit.
- XIV. That the present complaint is therefore not maintainable.
7. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission 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, 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. 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 complainants at a later stage.
12. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022 (1) RCR (Civil), 357* and reiterated in case of *M/s Sana Realtors Private Limited & other Vs*

Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022, wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act, if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

13. 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 refund of the amount and interest on the refund amount.

F. Findings on the relief sought by the complainant.

- F. I Direct the Respondent to restore/reinstate the cancelled unit allotted to the Complainant;
- F.II Direct the Respondent to withdraw and remove the illegal, arbitrary, and invalid amounts demanded by the promoter at the time of offer of possession;
- F.III Direct the Respondent to hand over possession of the flat along with applicable delayed interest, as per law;

F.IV In the alternative, if the originally booked unit is not available, direct the Respondent to allot an alternative unit of the same size and at the same rate in the same project of the Respondent.

14. That all the reliefs sought by the Complainant are interrelated and are therefore being addressed together for the sake of brevity and to avoid repetition. The counsel for the Complainant submits that the BBA dated 10.06.2017 was duly executed between the parties, wherein the stipulated date for delivery of possession was 10.12.2020. It is further submitted that the total sale consideration of the said unit was ₹74,73,000/-, against which the Complainant has paid an amount of ₹41,21,225/-.
15. That the unit allotted to the Complainant was cancelled on 17.07.2023. It is contended that the said cancellation is unjustified and the Complainant seeks restoration of the unit along with directions to the Respondent/Promoter to withdraw and remove the alleged illegal, arbitrary, and invalid amounts demanded at the time of offer of possession. It is further prayed that possession of the flat be handed over along with applicable interest for delay, as per law. In the alternative, it is submitted that if the originally booked unit is no longer available, the Respondent be directed to allot an alternative unit of the same size and at the same rate within the same project. It is also alleged that the size of the unit was increased without the consent of the Complainant.
16. Per contra, counsel for the Respondent submits that the Complainant failed to adhere to the agreed payment plan and committed default in making timely payments. It is stated that the Occupation Certificate was duly

obtained on 13.01.2023 and possession was offered to the Complainant on 18.02.2023, along with a statement of outstanding dues as per the terms of the Agreement. Despite issuance of various reminders, the Complainant did not come forward to take possession. Instead, the Complainant intimated that he was in Canada and that his home loan was under process, and that he would return to India after six months. Owing to the continued default and failure on the part of the Complainant to comply with contractual obligations, the Respondent proceeded to cancel the allotment on 17.07.2023 in accordance with the terms of the Agreement.

17. Upon careful consideration of the submissions advanced by both parties, the documents placed on record, and the terms and conditions contained in the BBA, this Authority observes that the Occupation Certificate for the project was obtained on 13.01.2023, subsequent to which the Respondent issued the Offer of Possession on 18.02.2023. The record further demonstrates that the Respondent issued repeated reminders to the Complainant on 05.04.2023, 13.06.2023, and 06.07.2023, calling upon her to comply with the requisite formalities and clear outstanding dues. Despite such reminders, the Complainant failed to adhere to the obligations stipulated under the Agreement. Consequently, the Respondent proceeded to cancel the allotment on 17.07.2023, strictly in accordance with the contractual provisions governing default and termination.
18. In view of the above, this Authority holds that the cancellation dated 17.07.2023 stands valid, lawful, and in consonance with the terms of the Agreement executed between the parties.

19. Further, the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, states that-

"5. AMOUNT OF EARNEST MONEY

Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer."


20. However, in the interest of justice and in terms of the applicable provisions of the Real Estate (Regulation and Development) Act, 2016 and the Rules framed thereunder, the Respondent is directed to refund the amount deposited by the Complainant after deducting 10% of the Sale Consideration towards earnest money. The balance amount shall be refunded along with interest at the rate of 10.80% per annum, as prescribed under Rule 15 of the applicable Rules, calculated from the date of filing of the present complaint till the date of actual realization.

G. Directions of the Authority

21. 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 refund the paid-up amount of Rs. 41,21,225/- after deducting 10% of the sale consideration of Rs. 74,73,000/-with interest at the prescribed rate i.e., 10.80% on such balance amount, from the date of filing of complaint i.e., 12.02.2024 till the date of actual realization.
 - 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.
 - iii. The respondent is directed not to create any third party right against the unit before full realization of the amount paid by the complainant. If any transfer is initiated with respect to the subject unit, the receivable from that property shall be first utilized for clearing dues of the complainant-allottee.
22. Complaint stands disposed of.
23. File be consigned to registry.

Dated: 13.02.2026



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