

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

**Complaint no. : 3146 of 2020**

**Date of decision : 13.10.2021**

**USHA SHARMA**  
R/O : House No P6/1, DLF  
City, Phase-2, Gurugram

**Complainant**

**Versus**

1. M/s SILVERGLADES INFRASTRUCTURE  
PVT. LTD.  
ADDRESS : C-8/1 A, Vasant Vihar,  
New Delhi
2. M/s EVERLIKE BUILDON PVT. LTD.  
ADDRESS : C-8/1 A, Vasant Vihar,  
New Delhi

**Respondents**

**APPEARANCE:**

For Complainant:

For Respondents:

Nitin Jaspal (Advocate)

Suresh Rohilla (Advocate)

**ORDER**

1. This is a complaint filed by Usha Sharma (also called as buyer) under section 31 of The Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of The Haryana Real Estate (Regulation and Development)



Rules, 2017 (in short, the Rules) against respondents/developers.

2. As per complainant, on 28.01.2013, she booked a commercial unit in respondent's project **Merchant Plaza** situated at sector-88, Gurugram and paid Rs 5,00,000 as booking amount. The respondent issued an allotment letter dated 09.06.2014 and allotted a unit No. FF-44, admeasuring 470.93 sq. ft. for a total consideration of Rs 44,15,068 including BSP, PLC and EDC, etc. A buyer's agreement dated 17.04.2015 was executed between parties.
3. As per Clause 11.1 of buyer's agreement, possession of unit was proposed to be delivered within 4 years from the date of approval of building plan or other such approvals whichever is later, with further grace period of 180 days. The building plan was approved on 30.05.2013.
4. She (complainant) availed loan facility of Rs 21,50,000 for the said unit from ICICI Bank vide sanction letter dated 17.07.2015. In pursuance of the said loan, respondent issued letter of permission to mortgage dated 27.07.2015.
5. When complainant enquired about the progress of said project, to her utter dismay and shock, the project was much delayed as per stipulated period, given in buyer's agreement.
6. As per payment plan, opted by the complainant, she made timely payment of Rs 11,60,000. The respondent kept on

*dvj*  
A.O.

13-10-21





raising payment demands from her (complainant) without sharing actual status of construction work. The respondent breached basic terms of agreement, by not demanding instalment as per agreed payment plan. The complainant approached respondent with respect to arbitrary payment demands. As respondents failed to address the issues raised by the complainant, she stopped making further payments, towards subject unit.

7. The respondent vide letter dated 17.02.2020 offered possession of the unit to complainant after obtaining occupation certificate dated 11.02.2020. In the statement of account, annexed with the offer of possession, Rs 53,97,631 has been shown as outstanding amount in respect of subject unit. The respondent is not entitled to recover any amount as mentioned in said statement of account, as same has violated basic terms of the buyer's agreement.
8. The respondent vide letter dated 25.08.2020 cancelled the allotted unit for non-payment of outstanding amount and forfeited entire amount paid by her (complainant).
9. Contending all this, complainant sought refund of entire amount of Rs 11,60,000, along with interest at prescribed rate as per Rule 15 and Rs 20,00,000 towards compensation.
10. The particulars of the project, in tabular form are reproduced by complainant as under:

hvl  
A.O.  
13-10-21



S.No.	Heads	Information
<b>PROJECT DETAILS</b>		
1.	Project name	<b>Merchant Plaza</b>
2.	Project Location	Sector 88, Gurugram
3.	Nature of Project	Commercial Complex
4.	DTCP License No.	01 of 2013 dated 07.01.2013
5.	Area of Project	2.75625 acres
6.	Name of License holder	Magnitude Pvt. Ltd.
7.	HRERA Registration	Registered vide registration no. 340 of 2017
8.	Building Plans	30.05.2013
9.	Date of Occupation Certificate	11.02.2020
<b>UNIT DETAILS</b>		
1.	Unit no.	FF-44
2.	Unit measuring	470.93 sq. ft.
3.	Date of Booking	28.01.2013
4.	Date of Buyer's Agreement	17.04.2015
5.	Clause 11.1 of buyer's agreement, possession of unit was proposed to be delivered within 4 years from the date of approval of building plan or such	30.05.2017





	other approval, whichever is later, with further grace period of 180 days .	
6.	Delay in handing over possession till date of offer of possession	2 years 9 months
7.	Offer of Possession	17.02.2020
8.	Cancellation Letter	25.08.2020
<b>PAYMENT DETAILS</b>		
9.	Total sale consideration	Rs 44,15,068
10.	Amount paid by the complainants	Rs 11,60,000

11. Respondent contested the claim by filing written reply dated 14.07.2021. It (respondent) raised the objection with respect to jurisdiction of adjudicating officer to entertain the present complaint. According to it, as per section 38(3)(b) only regulatory Authority has power to adjudicate on issues relating to agreement, action, omission, practice, or procedure. The complainant ought to have approached the Authority, as only authority has power to adjudicate on cancellation of agreement.

12. It is averred that respondent has complied with provisions of Act of 2016 and also that of agreement. It had been updating allottees regarding progress of project regularly. Despite various demand letters and reminders as per payment plan, complainant





defaulted in making payment of installments. She did not pay since 2013. The project was completed way back in September 2019 and occupation certificate dated 11.02.2020 has been received. It (respondent) offered possession of unit vide letter dated 17.02.2020 but complainant failed to take possession of the unit. Respondent clarified that as on 24.08.2020, amount of Rs 36,44,465 along with interest Rs 13,28,703 <sup>was</sup> ~~is~~ outstanding towards <sup>the</sup> ~~the~~ said unit and complainant has failed to clear due amount. According to it, as complainant failed to make payment of outstanding amount, despite several reminders and extended timelines. It (respondent) had no other option but to cancel the unit vide letter dated 25.08.2020.

13. Moreover, stipulated date of delivery of possession was subject to force majeure circumstances. The construction was stopped due to orders passed by NGT, EPCA and Supreme Court etc, which were neither anticipated nor within the control of respondent.

14. As per clause 11.1 of buyer's agreement, possession was to be delivered within 4 years from the date of approval of building plans or other such approvals required, whichever is later. The respondent received the last approval to commence the construction i.e. 'Consent to establish' on 16.06.2014. Moreover, completion date (deemed as possession date) as per HARERA registration of project is 20.06.2021 and hence there is no delay in offer of possession of unit.

13-10-21

A.D.



15. Contending all this, respondent prayed for dismissal of complaint.
16. I have heard ld. Counsels for parties and have perused the record.
17. It is not in dispute that complainant was allotted service apartment bearing No.513, 5<sup>th</sup> floor on 09.06.2014 and Apartment Buyer Agreement(in brief ABA) was signed between the parties on 17.04.2015. As per clause 11.1 of said ABA, subject to terms thereof and to the buyer, having complied with all the terms and conditions of this agreement, the Company proposed to hand over possession of the unit, within a period of four years from the date of approval of the Building Plans or other such approvals required, whichever is later, to commence construction of the project or within such other timelines as may be directed by any competent authority. ABA further mentions that it was further agreed that even after expiry of the commitment period, the company shall be further entitled to a grace period of a maximum of 180 days for issuing the possession notice(grace period).
18. It is claimed by the complainant that respondent received a sum of Rs.1,25,000/- and Rs.3,75,000/- totalling Rs.5,00,000/- at the time of booking on 28.01.2013. She (complainant) was made to pay further Rs.6,60,000/- on 28.03.2013. In this way, the respondent received more than 25% of total sale consideration before the ABA was signed. As per learned counsel for





complainant, this was contrary to provisions of Act of 2016. The complainant was compelled to take loan of Rs.21,50,000/- from ICICI Bank, when respondent forced <sup>her</sup> him to make payment, even when the respondent did not fulfil its promise to complete the proportionate construction. Offer of possession was delayed for more than two years. The complainant, being senior citizen, does not require the apartment now. She requested for refund of amount paid by her.

19. Even, as per respondent, building plans were approved on 03.05.2013, Environment clearance was received on 28.02.2014, and 'consent to establish' was received on 16.06.2014 and fire approval was got on 28.10.2013. Counting the due date commencing from 16.06.2014, which is latest from all dates, <sup>due date</sup> comes to 16.06.2018. It is well established that a builder/developer is entitled to grace period of force majeure circumstances only when it was beyond its control that project/unit could not be completed. No such circumstances are shown on behalf of respondent.

20. When, due date, to offer possession was 16.06.2018 and respondent offered possession only on 17.02.2020 i.e. too delayed. I find weight in the contention of complainant alleging that respondent without any reason enjoyed the amount i.e. equal to 25% of total sale consideration for a long time without execution of ABA, which was ultimately executed on 17.04.2015. On the basis of this, in my opinion, the complainant is well



within her right to claim refund, in view of section 18(1) of RERA, 2016.

21. According to ABA, project land was owned by M/s Magnitude Properties Pvt Ltd. The project land owner entered into collaboration agreement. Though, irrevocable power of attorney, said land owner assigning the project land with M/s Everlike Buildcom Pvt Ltd. i.e. respondent No.2. The later, is stated to have been formally merged with M/s Silverglades Infrastructure Pvt Ltd. i.e. respondent No.1. The complainant claims to have made payment in favour of respondent No.2. Both of these respondents are thus jointly and severally responsible towards the complainant. Respondents are thus, directed to refund the amount of complainant i.e. Rs.11,60,000/- within a period of 90 days alongwith interest @ 9.30% p.a. from the date of each payment till realisation. Cost of litigation of Rs.1,00,000/- is also imposed upon the respondents to be paid to the complainant.

22. File be consigned to the Registry.

  
**(RAJENDER KUMAR)**  
**Adjudicating Officer,**  
**Haryana Real Estate Regulatory Authority**  
**Gurugram**  
**13.10.2021**

Judgement uploaded on 22.10.2021.