

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

Complaint no. : 2499 of 2021
First date of hearing : 30.07.2021
Date of decision : 10.09.2021

Mrs. Santosh Rani
R/o: C-48, Sanjay Gram, Old
Delhi Road, Gurugram

Complainant

Versus

M/s Signature Global Homes Pvt. Ltd.
Address: 1309, 13th Floor, Dr. Gopal Das
Bhawan, 28, Barakhamba Road, Connaught
Place, New Delhi-110001

Respondent

CORAM:

Shri Samir Kumar
Shri Vijay Kumar Goyal

**Member
Member**

APPEARANCE:

Shri Aditya Gupta
Shri Mintu

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 23.06.2021 has been filed by the complainant/allottee in Form CRA 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).

A. Project and unit related details

2. The particulars of the project, the details of 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:

S.No.	Heads	Information
1.	Project name and location	Signature Global Park IV, Sector 36, Sohna, Distt. Gurugram, Haryana
2.	Project registered area	11.65 acres
3.	Nature of the project	Residential Floors
4.	DTCP license no. and validity status	117 of 2019 dated 12.09.2019 Valid/renewed up to 11.09.2024
5.	Name of licensee	Narender Kumar S/o Ram Sarup and others
6.	HRERA registered/ not registered	Registered vide no. 29 of 2020 dated 08.10.2020 for 121681.20384 sq. mtr.
	HRERA registration valid up to	30.07.2022
7.	Provisional allotment letter dated	26.08.2020 [Page 64 of complaint]
8.	Unit no.	4-A98C-4F at Plot A98C, 4 th Floor, Block A [Page 70 of complaint]
9.	Unit measuring	1081.67 sq. ft.
10.	Date of execution of buyer's agreement	06.11.2020 [Page 67 of complaint]
11.	Payment plan	Construction linked payment plan [Page 78 of complaint]



12.	Total consideration	Rs.42,07,826/- [as mentioned in the apartment buyer's agreement page 77 of complaint]
13.	Total amount paid by the complainant	Rs.6,63,878/- [page no. 63 of complaint]
14.	Due date of delivery of possession as per clause 7.2 of the said agreement i.e. 30.07.2022 unless there is a delay due to "force majeure", court orders, Government policy/guidelines, decisions etc. affecting the regular development of the real estate project. [Page 63 of complaint]	30.07.2022
15.	Delay in handing over possession	No Delay

B. Facts of the complaint

3. The complainant has made following submissions in the complaint:
- That the complainant has booked a unit bearing no. 4-A98C-4F (3BHK+2T) in the project concerned, after hefty negotiations, at the rate of Rs. 3500/- per sq. ft., vide application no. 0755 dated 23.08.2020, wherein (in the accompanying brochure) the saleable area of the

concerned unit has been mentioned as 1081.67 sq. ft. along with its layout plan, thus amounting to Rs. 37,83,500/-, exclusive of the charges for car parking, power backup, EDC/IDC, IFMS and the taxes payable thereon. The total consideration, inclusive of all charges, stood at Rs. 44,07,825/- as per the payment plan and trying to sell the 'Super Area' to the complainant mentioned in the brochure including numerous other documents.

- ii. Further, an amount of Rs. 4,40,000/-, equivalent to 10% of the total consideration was credited to the respondent on 23.08.2020 and 29.08.2020, including that of Rs. 51,000/- as a cash-back given by the respondent. The printout of the e-mail dated 09.09.2020, acknowledging the receipt of booking amount of Rs. 4,40,000/-.
- iii. That the respondent issued a 'Demand Pre-Intimation Letter' dated 26.09.2020, wherein the respondent raised the demand for a payment of Rs. 6,63,878/-, based on super area of 1081.67 Sq. Ft., at the rate of Rs. 3599.75/- per sq. ft, by subsequently and unilaterally raising the price of the unit by Rs. 100/- per sq. ft. approximately, without even informing the complainant. On enquiring through e-mails and personal visits, the complainant came

to know that the subsequent increase of price was due to the inclusion of the EDC/IDC charges in the basic sale price itself.

- iv. That it is clear from the brochure that at the time of booking, the EDC/IDC charges were intended to be charged extra at the rate of Rs. 100.5/- per sq. ft. and the basic sale price was agreed at Rs. 3500/- per sq. ft. only. The respondent was forced to include the EDC/IDC charges in the basic sale price because as per the norms of the government and the regulations issued by this learned authority, EDC/IDC charges cannot be demanded in addition to basic sale price and is inclusive of these charges. However, the complainant, being unaware of the fact that EDC/IDC charges cannot be charged extra, made the payments accordingly at the rate of Rs. 3599.75/- per sq. ft., in due time.
- v. That the "welcome letter cum provisional allotment of unit' dated 26.08.2020 and 13.10.2020 were issued based on super area only which has been shown to be 1081.67 sq. ft., and there has been no mention of the carpet area of the unit to any of the buyer through any written or verbal means.

- vi. That it was only after the execution and registration of the Buyer agreement on 06.11.2020, that the complainant came to know about the carpet area of their respective unit. The buyer agreement also mentions the super built-up area of the apartment to be 1081.67 sq. ft. but the carpet area of the unit is 640.03 sq. ft. only, which is the actual usable area of the apartment, exclusive of the balcony and the external walls.
- vii. That as per the rules of the DTCP, Haryana and this learned authority, an apartment can be sold on the basis of its carpet area only and for that matter; the balconies, veranda and any external walls are not included in the carpet area. But the respondent has sold the units under the nomenclature of super area or saleable area, and the carpet area was never disclosed to the buyers till the time of execution of buyer agreement which was after 3 months of the booking.
- viii. That every promoter of a project has to disclose the complete particulars including the size and details of the units to be constructed in the project in its application for registration of the project with the authorities, but the respondent have taken approvals for the project by proposing it to be a plotted colony whereby only vacant

plots would be offered for sale to the prospective buyers rather than the constructed floors/apartments, and thus the number of apartments in registration application dated 27-01-2020 for the project shows the number of apartments to be zero.

- ix. That the respondents have defrauded the authorities as well as the buyers by changing the very nature of the project from their initial application and intentions, by constructing buildings and then selling the individual floors. had the application been made for the construction and sale of the apartments/floors, the respondents would have been under a legal obligation to disclose the carpet area in the application itself and no question of charging the buyers based on super/saleable area would have arisen in the first place.
- x. That the respondent has defrauded the buyer and the public in general by making false and misleading representation and thus guilty under section 7 (1) (c) read with sub clauses (ii) & (iii) of explanation to section 7(1) (c) of Act, 2016. Although there is no mention of the area of an apartment in the project application of the respondents, but the respondent has shown the built-up area of the unit concerned to be 1081.67 sq. ft., in the

advertisements, pamphlets and brochures, shown and delivered to the buyers at the time of booking. Also, in the 'demand pre-intimation letter' dated 26.09.2020, the respondent raised the demand for the payment on the basis of super area only.

- xi. On becoming aware of The Haryana Real Estate Regulatory Authority, Gurugram (Sale of apartments /floors in a real estate project on the basis of carpet Area) regulations, 2021, vide No. 22/RERA GGM Regulations 2021 dated 07.05.2021, the complainant made a complaint/representation to the respondent in this regard, through e-mail on 26.05.2021, against the practice of charging the buyers on basis of super area under the nomenclature of 'Saleable Area' instead on the basis of carpet area of the unit, and has requested the respondent to re-draft the payment plan on the basis of carpet area in compliance of the regulations of the authority.
- xii. That the respondent had deliberately and intentionally duped the buyer by charging them illegally on account of super/saleable area and by demanding additional EDC and IDC charges at Rs. 100.5/- per sq. ft. The respondent and the officials responsible for its business and management have remained silent on several illegalities

being committed in the project and thus, have made a mockery of justice by flouting all the rules and regulations of statutory authorities.

C. Relief sought by the complainant

4. The complainant has filed the present complaint for seeking following reliefs:

i. Direct the respondent to rectify and re-draft the payment plan, on the basis of carpet area only, considering the price of the unit at the rate of Rs. 3500/- per sq. ft. and multiplying the same with *640.03 sq. ft. carpet area in this case, with other justified additional charges on account of car parking, power backup, IFMS and taxes.

II. Impose an exemplary penalty on the respondent for misrepresentation and misleading advertisements and for an attempt to cheat the buyers by overcharging them on account of super area and EDC/IDC Charges.

5. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act and to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The respondent has raised certain preliminary objections and has contested the present complaint on the following grounds:

- (i) That it is submitted that complainant admittedly is hard negotiator and admittedly unit was booked after hefty negotiations. as such, it can easily be said that complainant has well knowledge of real estate transactions/booking of a unit.
- (ii) That it is submitted that since respondent was under statutory obligation to provide/give break up and description of total price, as such breakup and description of total price of total price was informed to complainant. Further terms 1.2 of the agreement of sale registered on 06.11.2020 are reproduced hereunder in this reference that "the total price for independent floors along with parking (applicable only if parking fee/ charges has been paid) based on the carpet area is Rs. 42,07,826 (Rupees forty-two lakh seven thousand eight hundred and twenty-six only) ("total price")
- (iii) However, it is submitted that the Act does not prescribe anywhere that an apartment can be sold only on the basis of carpet area, and it is pertinent to mention that company has charged the total price on carpet area as mentioned in registered agreement of sale dated 06.11.2021 and as per clause 21 of agreement to sale, it is clear that it is notwithstanding to the Act's obligations.



- (iv) That the "demand pre-intimation letter". referred letter simply provides certain information to complainant that may be useful on a certain point of time, it is submitted that no law prohibit respondent from providing any information to complainant. The letter itself does not create any right or liability upon anyone.
- (v) It is submitted that since respondent was under statutory obligation to provide/give break up and description of total price, as such breakup and description of total price of total price was informed to complainant and mentioned in agreement of sale. It would not be out of place to mention that the Hon'ble Supreme Court has categorically said, while dealing with certain issue under The Haryana Development and Regulation of Urban Areas Act, 1975 and rules made thereunder, "There is no price fixation formula devised under the provisions of the Act, Rules and Regulations framed thereunder. The statutory authorities have no role to play in the fixation of price and costs of land and rate at which the plots/ flats are to be sold". It would not be further out of place to mention that said act categorically says, "The colonizer shall in turn be entitled to pass on the infrastructure development charges paid by him to the plot holder."

(vi) It would not be out of place to mention that complainant did not challenge/dispute the same just after agreement of sale execution. The challenging/disputing the agreement of sale is nothing but an afterthought story for the reason best known to complainant. It is submitted since the booking/allotment was done after hefty negotiation, as admitted categorically by complainant, "welcome letter cum provisional allotment of unit' dated 26.08.2020 and 13.10.2020 were issued in said agreed terms and purpose. Now complainant itself disputing the contents of said letters of negotiation. It would not be out of place to mention that complainant did not challenge/dispute said letter just after receipt of the same. The challenging/disputing the said letter is nothing but an afterthought story for the reason best known to complainant.

(vii) It is submitted prior to notification of Haryana Real Estate Regulatory Authority, Gurugram (Sale of Apartments /Floors in a Real Estate Project on the basis of Carpet Area) Regulations, 2021, there was nothing prescribing basis of sale as is being projected by complainant. The licence of the project was granted under the Deen Dayal Jan Awas Yojna - Affordable Plotted Housing Policy 2016



which categorically allowed independent floors on plots. Further, company has obtained registration certificate, both, for plot and floor/apartment, hence, complaint has presented only part information and trying to hide information from the authority based on wrong facts, especially when, such information is available on publicly at authority website.

(viii) It is only the complainant who has defrauded the authority by presenting misleading information with the hon'ble authority. The regulations of 2021 have come into force with effect from 18.05.2021 the date of notification in the official gazette. however, booking/allotment was made much prior to 18.05.2021. further, since, in the registered agreement of sale, total price has been charged on carpet area, hence, it does not amount as unfair practice/fraudulent practice/ irregularity.

(ix) That present complaint is nothing but gross misuse of process of law by complainant as complainant is relying upon a regulation that was not in existence at the time of booking/allotment. Further, as per complaint, respondent would have been a clairvoyant to comply a regulation that may be notified in future.

- (x) Based on the above submissions, the respondent asserted that the present complaint deserves to be dismissed at the very threshold.

E. Findings on the relief sought by the complainant.

7. The authority observes that the complainant has filed the present complaint for seeking following reliefs: -

- i. direct the respondent to rectify and redraft the payment plan on the basis of carpet area.
- ii. impose an exemplary penalty on the respondent for misrepresentation and mis-leading advertisement.
- iii. direct the respondent to pay costs of this proceedings.

8. On the 10.09.2021 date of hearing arguments of both parties heard at length and the fact of matter were appreciated. After discussion of the aforesaid reliefs in the light of arguments, the authority has observed on the following reliefs as follows.

Reply has been submitted by the respondent. The complainant has not sought the relief for grant of delayed possession charges at the moment. The project is registered vide registration no. 29 of 2020 and the actual date of handing over possession of the unit comes out to be 30.07.2022 so the complaint is premature. So far as sundry issues raised do not pertain to the delayed possession charges. However, if any

doubt is in the mind of the complainant, then he can file a separate complaint before the Planning Branch and seek relief.


9. Complaint stands disposed of.
10. File be consigned to registry


(Samir Kumar)

Member

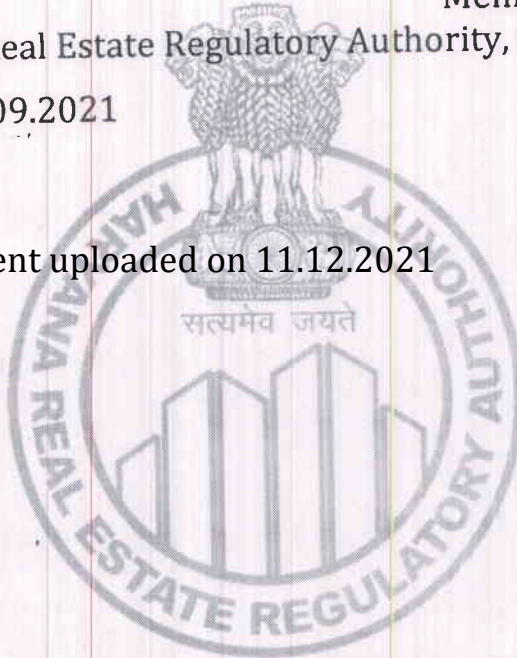
Haryana Real Estate Regulatory Authority, Gurugram

Dated: 10.09.2021


(Vijay Kumar Goyal)

Member

Judgement uploaded on 11.12.2021



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