

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

<b>Complaint no:</b>	<b>992 of 2020</b>
<b>Date of filing complaint:</b>	<b>11.03.2020</b>
<b>First date of hearing:</b>	<b>21.07.2020</b>
<b>Date of decision:</b>	<b>27.09.2022</b>

1. Selvaraj Damiyon Raju 2. Mrs. D Prema W/O Sh. Selvaraj Damiyon Raju <b>Both r/o:</b> House No. 171/65, Shivaji Nagar G, Shivaji Nagar, Gurugram, Haryana	<b>Complainants</b>
Versus	
Forever Buildtech Pvt. Ltd <b>Regd. office:</b> 12th floor, Dr. Gopal Das Bhawan, 28 Barakhamba Road, New Delhi-1 10001	<b>Respondent</b>

<b>CORAM:</b>	
Shri Vijay Kumar Goyal	<b>Member</b>
Shri Ashok Sangwan	<b>Member</b>
Shri Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Abhay Jain (Advocate)	Complainants
Sh. Mintu Kumar (Advocate)	Respondent

**ORDER**

1. The present complaint has been filed by the complainant/allottees 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) 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 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 the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	The Roselia, Sector 95-A, Gurugram, Haryana.
2.	Project Area	8.034 Acres
3.	Nature of the project	Affordable Group Housing Colony
4.	DTCP License no. & validity status	13 of 2016 26.09.2016 upto 25.09.2021
5.	Name of licensee	Forever Buildtech Pvt. Ltd.
6.	RERA registered / not registered	Registered 20.06.2017 upto 17.05.2021
7.	Unit no.	E-206, Tower-E (Page no. 19 of reply)
8.	Unit admeasuring	594.195 sq. ft. (Carpet area 514.272 plus balcony area 79.923) (Page no. 19 of reply)
9.	Date of agreement to sell	06.03.2019 (Page no. 15 of reply)



10.	Date of Building plan	09 .01.2017 (Page 19 of the reply)
11.	Date of environment clearance	The details have not been placed on record
12.	Possession Clause	5. Possession 5.1: The developer shall offer possession of the said flat to the allottee(s) within a period of 4 years from the date of approval of building plans or grant of environment clearance whichever is later (Emphasis supplied).
13.	Due Date	09.01.2021 (Due date calculated from the date of the building plan i.e 09.01.2017 as per page 19 of the BBA as environment clearance date is not provided anywhere)
14.	Total Sale Consideration	Rs.22,64,810/- (Payment plan on page no. 32 of complaint)
15.	Total amount paid by the complainant	Rs.10,03,796/- (Payment plan on page no. 32of complaint)
16.	Occupation certificate	Not Obtained
17.	Possession	Not Offered

**B. Facts of the complaint:**

3. The complainants were approached by the sale representatives of the respondent, who made tall claims about the project 'The Roselia' situated in Sector 95 A , Gurugram as the world class project. A booking amount was paid by the complainants on 14.02.2018 of Rs.1,04,852/-.

A lucky draw was drawn and the unit no. E-206 having carpet area of 514 square feet in the project "The Roselia", Sector 95A, Gurugram, Haryana, was allotted in the favour of the complainants on 24.07.2018.

4. The complainants have taken substantial amount of loan of Rs.13,17,800 from the IIFL Home Finance Limited for buying the unit and till date only a sum of Rs.8,98,944/- has been disbursed by the IIFL Home Finance Limited. Therefore, the complainants had funds to pay if the respondent would have raised lawful and legitimate demands. Further, the complainants are paying a huge sum of money as Pre-EMI which majorly constitutes interest component of the loan amount and is a huge burden over them. The complainants further paid Rs.8,98,944/- and Rs.10,03,796/- till 14.03.2019.

5. A buyer's agreement was executed on 06.03.2019 between the parties. All of the sudden, the respondent sent an email on 11.04.2019 to the complainants and demanded Rs.5,25,467/- for their unit, but no dues were pending on that date, and rather the respondent had collected an extra sum of Rs.1,54,493/- till 11.4.2019 as per prescribed schedule of payment mentioned in the clause 17 of the application Form. The schedule of payment according to clause 17 of the application form is as follows:

Date	Events	Amount
14.02.2018	At the time of Application/booking (5% of the total consideration of unit)	Rs.1,13,240/-
10.08.2018	Within 15 days of Allotment (20% amount of total consideration) A lot of draw was held on 24 July, 2018	Rs.4,52,962/-
10.02.2019	Remaining six (6) months instalments.	Rs.2,83,101/-
10.08.2019	Remaining six (6) months instalments.	Rs.2,83,101/-
10.02.2020	Remaining six (6) months instalments.	Rs.2,83,101/-



10.08.2020	Remaining six (6) months instalments.	Rs.2,83,101/-
10.02.2021	Remaining six (6) months instalments.	Rs.2,83,101/-
10.08.2021	Remaining six (6) months instalments.	Rs.2,83,101/-
	TOTAL	Rs.22,64,810/-

6. The complainants have time and again approached the respondent and requested for rectification in the demand letters as per the schedule of payment mentioned in application form. The respondent did not reply to their letters, emails, personal visits, telephone calls and always demanded illegal and unlawful payments, thereby it violated section 11 read with section 19 of the act, 2016. The illegal and unlawful payments, demanded by the respondent are as follows:

Date	Payment demanded
17.09.2018	Rs.9,39,901/-
08.10.2018	Rs.10,55,456/-
19.11.2018	Rs.13,58,422/-
20.12.2018	Rs.13,73,210/-
05.01.2019	Rs.13,80,287/-
14.02.2019	Rs.14,03,555/-

7. The complainants are also beneficiaries under the Pradhan Mantri Awas Yojana (urban) mission, launched on 25.06.2015 which intends to provide housing for all in urban areas by year 2022. The mission provides central assistance to the implementing agencies through states/union territories (UTS) and central nodal agencies (CNAS) for providing houses to all eligible families/ beneficiaries against the validated demand for houses for about 1.12 cr. under the said scheme. The complainants have been provided subsidy on the loan amount and

are always motived to government policies and ready to pay the respondent based on the schedule of payment instead of succumbing to the illegitimate and unlawful demands raised by it.

8. The complainants have lost confidence and in fact have got no trust left in the respondent, it has deliberately and wilfully indulged in undue enrichment, by cheating them besides being guilty of indulging in unfair trade practices and deficiency in services by not demanding the payments of the unit according to the payment schedule and then remaining non-responsive to the requisitions of the complainants.

9. The complainants do not intend to withdraw from the project. as per the obligations on the respondent/promoter under section 18 of the act, 2016 read with rule 15 of the rules, 2017. The promoter has an obligation to follow terms and condition of the agreement for sale and has neglected his part of obligations by not demanding payments according to prescribed schedule of payment. The complainants reserve the right to seek compensation from the promoter for which they may make a separate application to the adjudicating officer, in case it is required.

10. By demanding illegal and unlawful payments, the respondent has unjustly enriched himself by taking more than the 100% payable amount and charging heavy interest of 15% on the complainants on delayed payments. Thereafter, the respondent tried to intimidate the complainants by publishing a newspaper advertisement on 06.04.2019 for cancellation of allotment due to non-payment of unlawful demands raised by the respondent, whereas the respondent has collected an extra amount of Rs.1,54,493/- till 11.04.2019 as per prescribed schedule of payment. By not responding to the requisitions of the complainants, the respondent has left them high and dry at their own

fate. This conduct and behaviour of the respondent is deplorable and constitute unfair trade practices & deficiency in service and cheating.

11. That on 14.03.2018, the payment of 5% of Rs.1,04,852/- was made by the complainants. On 24.07.2018 draw of allotment was conducted, thereby 20% payment of Rs.4,19,410/- became due. The reminders for payments were sent to the complainants. On 14.03.2019 payment of Rs.8,98,944/- was made by the complainants. Thus, all previous demands and notices for payment were automatically withdrawn/revoked legally. On 06.04.2019 a cancellation notice was published in the newspaper, illegally and unlawfully by the respondent as at that time, extra amount of Rs.2,17,403/- was lying with the respondent

12. That by way of amendment dated 16.11.2021 in the Affordable Housing Policy – 2013 notified under section 9A of Haryana Development and Regulation of Urban Areas Act, 1975 (Act no. 8 of 1975), it was clearly mentioned as under: - The existing part of clause 5(iii) (b) of the said policy as indicated in the table below, shall stand substituted in the following manner: -

Part of existing clause 5(iii)(b)	Shall stand substituted by the following
The balance 75% amount will be recovered in six equated monthly instalments spread over three years period, with no interest falling due before the due date of payment.	"The balance 75% amount of the flat cost will be recovered as per the stages of construction to be prescribed in the builder buyer agreement".

13. Thus, the respondent is mandate to mention schedule of balance 75% amount of the flat in the builder buyer agreement to be recovered as per the stages of construction. The respondent has executed the buyer's agreement with the complainants on 06.03. 2019. Clause 4.3 and 4.4 of the agreement are as follows:

*"Clause 4.3 and 4.4 of the Agreement state*

*4.3 "The allottee (s) has already paid to the Developer 5% of the Total Cost, at the time of submission of the Application. Further simultaneous with the execution and registration of the Agreement, the Applicant shall pay additional 20% of the Total Cost to the Developer."*

*4.4 "The Allottee (s) hereby agrees and undertakes to pay the balance 75% of the Total Cost in terms of the Payment Schedule, in six equated six-monthly instalments spread over three years period, with no interest falling from the due date of payment."*

14. As per, the Affordable Housing Policy - 2013 and the buyer's agreement, the complainants have already paid Rs.2,17,403/- extra to the respondent at the time of cancellation of the unit on 06.04.2019. Thus, the cancellation made by the respondent by publishing a notice on 06.04.2021 is on the ground of non- payment illegal and unlawful.

15. The respondent in its latest application has claimed that it has given a Cheque No. 970548 of Yes Bank Limited, amounting of Rs.3,20,537/- dated 18.11.2021 to the complainants. But no such cheque has ever been received by them till date.

16. Moreover, the respondent cancelled the unit illegally and unlawfully by publishing the advertisement in the newspaper on 06.04.2019 on the ground of non-payments of instalments by the



complainants, whereas the Amendment of the Affordable Housing Policy - 2013, on which the respondent is relying was issued by Haryana Government on 16.11.2021, around 31 months after the illegal and unlawful cancellation. The said Amendment became effective afterwards on the date, when it was notified i.e., 16.11.2021.

17. The complainants have suffered financial loss, mental agony and harassment as a result of the aforesaid deficiencies in services.

18. The respondent has cheated the complainants knowingly and has taken and demanded monies by deception, made fraudulent representations and deliberate false written promises to demand payments contrary to schedule of payment mentioned in application form. The fraudulent behaviour of the respondent also attracts criminal liability under the Indian criminal dispensation system. The conduct of the respondent is suspect, wilfully unfair and arbitrary, deficient in every manner and scandalous. The complainants have lost faith, confidence and trust of the respondent as it is continuously being deceptive and non-responsive to the requisitions made by them.

19. That equity demands that such unscrupulous Developers/Sellers/Builders, who after taking substantial cost of the apartment, but further raise unduly demands, and do not perform their part of obligations, should not be spared. A strong message is required to be sent to such developers/promoters that the Haryana Real Estate Regulatory Authority, Gurugram is not helpless in such type of matter. Therefore, it is a fit case where punitive damages should be imposed upon the respondent.

20. That respondents have cancelled the unit illegally and want restoration of the unit. Thus the complainants were left with no other

alternative but to file the present complaint seeking possession of the allotted unit besides delay possession charges and interest.

**C. Relief sought by the complainants:**

21. The complainants have sought following relief(s):

- i. Direct the respondent to take payment against the allotted unit from complainants as prescribed in the clause 17 of the application form.
- ii. Direct the respondent to charge interest as prescribed in rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.
- iii. Direct the respondent to restore the unit, allotted to the complainants.
- iv. Impose a heavy penalty on the respondent for violating the payment plan schedule of the Haryana Affordable Housing Policy-2013
- v. Direct the respondent developer not to impose any interest on the unit of the complainants as the lapses and faults had been committed by it and not by them.
- vi. Direct the respondent to pay legal expenses of Rs. 1,00,000/-

**D. Reply by respondent:**

The respondent by way of written reply made following submissions: -

22. The present complaint seeking the restoration of cancelled unit i.e., E-206, The Roselia Sector-95A, Gurugram, Haryana is not maintainable

as the said cancelled unit i.e., E-206 stands allotted to another allottee much prior to filing the present complaint.

23. The buyer's agreement was executed between the parties on 06.03.2019. Since Affordable Housing Policy 2013 was implemented to avoid speculation and to provide housing to the genuine persons, respondent tried to convince the complainants, to pay the installment in letter and spirit on the principle on which possession handing over period has been contemplated under the Affordable Housing Policy 2013.

24. The respondent issued a number of letters demanding to pay the installment in letter and spirit on the principle on which possession handing over period has been contemplated under the Affordable Housing Policy 2013.

25. In compliance of Affordable Housing Policy 2013, newspaper advertisement was issued mentioning list of defaulters on 06.04.2019 at page 53 . In respond to legal notice, complainants were informed about cancellation on 04.03.2020 by email.

26. That the said fact was well within the knowledge of the complainant and despite the same the present complaint has been filed seeking restoration of cancelled unit i.e., E-206, The Roselia Sector-95A, Gurugram, Haryana.

27. The amount received from the complainants also stands refunded to them. It is pertinent to mention here that they never raised any objection while taking refund of the amount. They failed to inform this to the Hon'ble Authority with a malafide intention and to mislead it.

28. The para 1(iv) of Affordable Housing Policy 2013 vide notification no. PF-27/48921 dated 19.08.2013 mandates amongst the others "All

*such projects shall be required to be necessarily completed within 4 years from the 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 this policy....."*

29. Originally Clause 5(iii)b of the policy mandated "All flats in a specific project shall be allotted in one go within four months of sanction of building plans or receipt of environmental clearance whichever is later, and possession of flats shall be offered within the validity period of 4 years of such sanction/ clearance"

30. However, the policy was amended vide Memo No. PF/27/2015/Sec/211 Dated: 22/07/2015 to regulate an absurd situation where the number of applications received is less than the number of sanctioned flats or allotment of surrender of flats as well as allotment of left-over flats. The said amendment mandated as under:

*"The flats in a specific project shall be allotted in one go within four months of the sanction of building plans. In case, the number of applications received is less than the number of sanctioned flats, the allotment can be made in two or more phases. However, the licensee will start the construction only after receipt of environmental clearance from the competent authority.*

*The licensee will start receiving the further installments only once the environmental clearance is received. Further, if the licensee, fail to get environmental clearance even after one year of holding of draw, the licensee is liable to refund the*

*amount deposited by the applicant along with an interest of 12%, if the allottee so desires".*

31. It is pertinent to mention that neither the project completion period nor the payment plan was amended to fill the gap of consequential situation. Accordingly, payment plan notified under the Affordable Housing Policy 2013 was bound to be changed as per date of each lot of allotment. Considering the letter and spirit of Affordable Housing Policy 2013 that handing over the possession to new allottee is same so payment liability would be same. Thus, the promoter demanded the outstanding amount from complainant at par with the initial lots of allottee. This principle has been confirmed by the government by amending the Affordable Housing Policy vide Notification NO. PF-27/15922 dated 05, July 2019.

32. It is submitted that prior to communication dated 11.04.2019, the complainants were served a number of letters informing them about requirement of payments in the letter and spirit of the principle on which possession handing over period has been contemplated under the Affordable Housing Policy 2013. Affordable Housing Policy 2013 mandates developer/colonizer to offer possession of flats within the validity period of 4 years of such sanction clearance irrespective of fact that whether Allottee is of the main draw i.e. 1st draw or re-draw. Accordingly, developer/colonizer is an under obligation to offer possession of unit at same time to both type of Allottees i.e. initial allottees (Allottee of the main draw i.e. 15 draw) and as well as to subsequent allottees (Allottee of the re-draw) irrespective of their different date of allotment.

33. That there are number of re-draw conducted in the project on different years and there would be different dates for the payment of last of installment after adding 15 days and 3 years into allotment date as per complainant as under:

Draw and Re-draw dates		Last date of installment as per complainant
19-06-17	Possession period is same for all the allottees of draw and re-draw as per policy	04-07-20
19-01-18		03-02-21
27-03-18		11-04-21
24-07-18		08-08-21
15-10-18		30-10-21
24-01-19		08-02-22
03-04-19		18-04-22
20-06-19		05-07-22

34. That the complainant reproduced the below schedule of payment at para 3.9 at page 15-6 of the complaint as per the copy of supplied to the respondent. Affordable Housing Policy 2013 mandates developer/colonizer to offer possession of flats within the validity period of 4 years of such sanction/ clearance irrespective of fact that whether Allottee is of the main draw i.e. 1st draw or re-draw. Accordingly, a developer/colonizer is under an obligation to offer possession of unit at same time to both type of Allottees i.e. initial



Allottees (Allottee of the main draw i.e. 1st draw) and as well as to Subsequent Allottees (Allottee of the re-draw) irrespective of their different date of allotment

35. Aforesaid principle has been confirmed by the government by amending the Affordable Housing Policy vide Notification no. PF-27/15922 dated 05, July, 2019 which says:

*"In case of re-allotment resulting after surrender of flats as well as allotment of left-over flats, the maximum amount recoverable at the time of such allotment shall be equivalent to the amount payable by other allottees in the project at that stage, installments were demanded."*

36. Considering the letter and spirit of Affordable Housing Policy 2013 that handing over the possession to new allottee is same so payment liability would be same, promoter demanded the outstanding amount.

37. If the literal interpretation of payment plan as given in Affordable Housing Policy 2013 is taken, payment would be made by new allottee even after handing over the possession as there is no situation to demand the payment in case of handing over possession prior to prescribed period as per the literal interpretation.

38. The present statutory framework, filing of complaint before this Hon'ble Authority has been allowed only for any violation or contravention of the provisions of the Sec-12, 14, 18 and Sec-19 of Real Estate Act, 2016 or the rules and regulations made thereunder (Ref: section 31 thereof) despite the fact that application of other laws has not been barred (Ref: section 81 thereof). The present complaint has been filed alleging violation of Affordable Housing Policy 2013 notified

under the provisions of Section 9A of the Haryana Development and Regulation of Urban Areas Act, 1975 by the Hon'ble the Governor of Haryana on 19.08.2013. As such, present complaint is not maintainable and needs to be dismissed advising the complainant to approach the concerned competent authority under the Haryana Development and Regulation of Urban Areas Act, 1975.

39. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Even the written submissions filed by both the parties have been pursued. Hence, the complaint can be denied on the basis of these undisputed documents and submissions made by the parties.

**E. Jurisdiction of the authority:**

40. The plea of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E. I Territorial jurisdiction**

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has completed territorial jurisdiction to deal with the present complaint.

**E.II Subject matter jurisdiction**





41. 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.*

42. 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.

**F. Entitlement of the complainants for restoration of the unit:**

**F. I Direct the respondent to take payment against the allotted unit from complainants as prescribed in the clause 17 of the application form.**

**F.II Direct the respondent to charge interest as prescribed in rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.**

**F.III Direct the respondent to restore the unit, allotted to the complainants.**

**F.IV Impose a heavy penalty on the respondent for violating the payment plan schedule of the Haryana Affordable Housing Policy-2013.**

43. All these issues being interconnected are being taken together.

44. A buyer's agreement with regard to the allotted unit was executed between the parties on 06.03.2019. The counsel for the respondent clarified that the respondent has issued the reminder for payment to the complainant-allottee as the above unit was allotted in a redraw and as per policy of DTCP, the subsequent allottee is liable to pay the amount due till date from original allottee of the same scheme and thus, the demand has been raised in pursuance of the said policy. Further, the BBA was executed which is on a standard format as per instructions of the department as no separate format is available for subsequent allottees.

45. Further, the policy stipulates issuance of reminder to the defaulter allottee and thereafter, cancellation can be affected after issuing a public notice in the newspaper. Following this procedure, the instant unit has been reallocated through the draw conducted by STP Gurugram and is no more available with the respondent-builder. Further, this process has been completed even before filing of the instant complaint.

46. The counsel for the respondent states that after cancellation the refund cheque of Rs.7,56,052/- was issued on 18.02.2020 and the same has also received by the complainant on 05.03.2020 and the instant cheque was in favour of the concerned financial institution from which



the loan against above unit has been taken. A Refund cheque was issued on 18.01.2021 for Rs. 3,20,000/-.

47. The respondent was directed to file complete details of the demands raised to the complainant-allottee along with issuance of reminders and copy of allotment letter of above unit subsequently issued along with proof delivery of refund cheque to the complainant.

48. The respondent states that it has sent reminder letter on 7.09.2018 which is on page 36 of the complaint. Na Pre cancellation letter was sent on 08.10.2018 which is evident from page 37 of the complaint. The demand pre-intimation letter dated was sent on 19.11.2018 which is evident from page 38-39 of the complaint, reminder letter was sent on 20.12.2018 which is evident from page 40 of the complaint, reminder-2 letter was sent on 05.01.2019 which is evident from page 41 of the complaint, cancellation letter was sent on 14.02.2019 which is evident from page 42 of the complaint. The newspaper advertisement dated 06.04.2019 (third line of running page 8 of the complaint, fifth line of para 2 of the running page 12 of the complaint, fourth line of para-B running page 21 of the complaint and running page 35 of the complaint.

49. The complainant was given 15 days' time even in cancellation letter dated 14-02-2019 to make payments which was admitted at 2<sup>nd</sup> line of 2<sup>nd</sup> last Para in below words:

*"...but as a goodwill gesture we are giving you this last and final opportunity to deposit the overdue amount of Rs.1403555.00/- within a period of 15 days....."* (running page 42 of the complaint). Hence, allotment was intact despite the issuance of the cancellation letter dated 14-02-2019.

50. That thereafter in compliance of the Affordable Housing Policy, advertisement was published, and complainant was informed at his email id i.e. [sdraju@gmail.com](mailto:sdraju@gmail.com) to pay outstanding amount within 15 days to avoid cancellation. This was also categorically admitted by the complainant in the complaint at running page 42 thereof.

51. However, due to implementation of the Real Estate Act 2016, execution and registration of BBA became mandatory and in compliance thereof, BBA was executed and got registered on 06.03.2019 since allotment was alive at that time. However, it is submitted that payment plan as given under the Affordable Housing Policy was mentioned in BBA without any change in compliance of the Affordable Housing Policy. It is further submitted that the Affordable Housing Policy did not allow at relevant point of time to modify the payment plan despite the complainant being an allottee of re-draw.

52. The execution and registration of BBA did not give any new right to the complainants nor the same amended the payment plan given in the Affordable Housing Policy. The execution and registration of BBA with standard terms and conditions was a compliance of the Real Estate Act 2016.

53. That in response to a communication for and behalf of complainants, below was informed on 04.03.2020 to their advocate at [legaljainassociates@gmail.com](mailto:legaljainassociates@gmail.com) before the actual filing of the present complaint and the same was never denied:

".....But prior to initiation of cancellation process, your alleged client was given a number of opportunities to make the payment. It is pertinent to mention here that we had reminded your client several

times @ [sdraju@gmail.com](mailto:sdraju@gmail.com) and by other means also to make payment.

But your client failed to make payment knowingly.....

54. The copy of the said RTI information i.e. office note enclosed with the written argument categorically clarifies that the subsequent allottee under the Affordable Housing Policy at the time of allotment should pay the amount equivalent to the amount payable by others allottees in the project at that stage. The complainants themselves admitted availing loan from the IIFL Home Finance Limited. This admission is at Para 3 running page no.5 further at Para 3.4 at running page no.14 furthermore at running page no.31.

55. That during the pendency of the complaint, the loan amount stood refunded vide cheque enclosed with the written arguments. The cheque was issued in favour of IIFL Home Finance Limited which already stands cleared. This can also be ascertained from the fact that the complainants never denied the clearance of the said cheque during the pendency of the complaint.

56. That further the cheque for remaining amount of Rs. 3,20,537/- was issued in favour of Damiyon Raju- one of the complainant being account payee with Corporation Bank-62401581035775900 and he did not come forward to collect the same despite repeated requests. So, in view of the facts detailed above, no cause of action in favour of the complainants survives. It is evident from the submissions detailed above that the allotted unit had already been cancelled and re-allotted on 21.06.2019 in favour of Mrs. Sakshi Sangwan by the committee headed by Senior Town Planning , Gurgaon as per all policies before filing of the complaint challenging cancellation of the allotted unit. So, the cancellation of the allotted unit can't be restored and particularly when the unit has been re-allotted , the amount taken from the

financial institution stands refunded and an account payee cheque for the due amount prepared by the respondent and the allottees unwillingness to collect the same from the respondent . However, the respondent builder is directed to transfer the amount due to the complainants in their account or send an intimation in this regard to them within a period of one month from the date of order. No case for restoration of the allotted unit is made out.

**F.II Direct the respondent to pay legal expenses of Rs. 1,00,000/-**

57. The complainants are seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (Supra)* has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of litigation expenses.

**G. Directions of the authority**

- i) The respondent- builder is directed to refund the amount of Rs. 3,20,537 as admitted by them to the complainants within a period of one month of the date of order and failing which legal consequences would follow.




58. Complaint stands disposed of.

59. File be consigned to the registry.

  
(Sanjeev Kumar Arora)

Member

  
(Ashok Sangwan)

Member

  
(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 27.09.2022



**HARERA**  
**GURUGRAM**

