

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

Complaint no. : 4604 of 2021
First date of hearing: 08.02.2022
Date of decision : 07.03.2023

Akhil Hooda
R/o: - Flat No. 1279, Sector- 16, Pocket-B,
Janta Flat, Dwarka, New Delhi-110075.

Complainant

Versus

Pyramid Infratech Private Limited.
Regd. Office at: Unit No. 501-508,
5th Floor, Unitech Trade Centre, Sector-43,
Gurugram, Haryana- 122003.

Respondent

CORAM:

Shri Vijay Kumar Goyal
Shri Sanjeev Kumar Arora

**Member
Member**

APPEARANCE:

None
Sh. Rakesh Kumar (Advocate)

Complainant
Respondent

ORDER

1. The present complaint dated 23.11.2021 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 allottee 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:

S.N.	Particulars	Details
1.	Name and location of the project	"Pyramid Elite", Sec-86, Manesar, Gurgaon
2.	Nature of the project	Affordable Group Housing Colony
3.	DTCP license no.	77 of 2018 dated 17.11.2018 valid up to 16.11.2023 (area 5.6125 acre)
4.	RERA Registered/ not registered	GGM/309/41/2019/03 dated 16.01.2019 valid up to 31.01.2023
5.	Unit no.	006, ground floor, Tower 5 [page no. 17 of complaint]
6.	Unit admeasuring area	572.27 sq. ft. of carpet area 100.00 sq. ft. balcony area [page no. 17 of complaint]
7.	Allotment letter	17.06.2021 [annexure 3, page 33 of reply]
8.	Date of builder buyer agreement	09.09.2021 [annexure 4, page 40 of reply]
9.	Possession clause	8.1 : <i>Subject to force majeure circumstances, intervention of statutory authorities, receipt of occupation certificate and Allottee having timely complied with all its obligations, formalities or documentation, as prescribed by Promoter Developer and not being in default under any part hereof and Apartment Buyer's Agreement, including but not limited to the timely payment of installments of the other charges as per the payment plan, Stamp Duty and registration charges, the Promoter/Developer proposes to offer</i>



		<i>possession of the Said Apartment to the Allottee within a period of 4 (four) years from the date of approval of building plans or grant of environment clearance, (hereinafter referred to as the "Commencement Date"), whichever is later.</i> Emphasis supplied
10.	Date of approval of building plan	31.12.2018 [annexure 3, page 33 of reply]
11.	Date of environment clearance	30.08.2019 [annexure 3, page 33 of reply]
12.	Due date of possession	30.08.2023 {Due date calculated from the date of EC i.e. 30.08.2019}
13.	Total sale consideration	Rs.23,62,470/- [as per statement of account date 18.11.2021 on page 75 of reply]
14.	Total amount paid by the complainant	Rs.2,36,248/- [as per statement of account dated 18.11.2021 on page 75 of reply]
15.	Cancellation of unit	11.09.2021 [page 95 of reply]

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That the complainant booked a residential apartment in affordable group housing colony known as "Pyramid Elite" in Sector-86, Gurgaon and was allotted a unit bearing no. 006, ground floor, Tower-5 vide allotment letter dated 17.06.2021 for a total sale consideration of Rs.23,62,470/-. He paid an amount of Rs.2,36,248/- against the said consideration.
- II. That on 03.08.2021, the complainant shared the loan sanction letter issued by the bank with the respondent and requested a date for execution of buyer's agreement. Thereafter on 09.09.2021, a buyer's



agreement was executed between the parties regarding the said unit. But within three days of its execution, the respondent-builder cancelled the said unit vide cancellation letter dated 11.09.2021 without his consent.

- III. That before execution of buyer's agreement, CRM team of the respondent confirmed and promised that they will not cancel the unit and will give him an exemption.
- IV. That thereafter, respondent stopped responding to the emails of complainant and even did not share the necessary documents required for loan disbursement. Hence, feeling aggrieved with the same, the complainant wishes to get the refund of the amount paid along with interest.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
- i. To get refund of the entire paid-up amount of Rs.2,36,248/- along with prescribed rate of 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 contested the complaint vide its reply dated 29.04.2022 on following grounds: -
- i. That the complainant has applied for allotment of an apartment, under the Affordable Housing Policy-2013 in project named "PYRAMID ELITE", located at Sector-86, Gurugram and was allotted a unit bearing no. 6, tower-5 in the said project vide allotment letter dated



17.06.2021 for a total sale consideration of Rs.23,62,470/-. The buyer's agreement was executed between the parties on 09.09.2021 and the complainant paid only a sum of Rs.2,36,248/- against the said consideration.

- ii. That the present complaint is not maintainable before this authority as the complainant persistently and regularly defaulted in remittance of installments on time and respondent was compelled to issue demand notices, reminders etc. However, the complainant, despite having received the payment request letters, reminders etc. failed to remit the instalments on time to the respondent.
- iii. That as per clause 2.3 of the buyer's agreement, it is specifically agreed that the amount of Rs.25,000/- plus taxes shall be treated as earnest money which shall be liable to be forfeited in the event of surrender/cancellation of allotment on account of default/breach of the terms and conditions of allotment including non-payment of installments. In the eventuality of surrender/cancellation, the earnest money will stand forfeited and the balance amount paid, if any, will be refunded to the allottee without any interest and such refund shall be made only when the said apartment is re-allotted/sold to any other person(s). Moreover, the Town and Country Planning Department, Haryana amended the policy and notified the policy on 5th July 2019 and the same is automatically applicable to the allottees.
- iv. That it is submitted that all the demands raised by the respondent were strictly in accordance with the terms and conditions of the buyer's agreement duly executed between the parties. There is no default or lapse on the part of the respondent. Thus, it is most



respectfully submitted that the present application deserves to be dismissed at the very threshold.

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 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 complainant 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*** and 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 cases 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 objections raised by the respondent.

F. I Objection regarding the delay in payments.

14. The respondent has raised an objection regarding delay in payment by allottee as he has paid only a sum of Rs.2,36,248/- against the total sale consideration of Rs.23,62,470/- as evident from the statement of account dated 18.11.2021. The respondent vide reminder/demand letter dated 08.07.2021, 03.08.2021 and final reminder letter dated 21.08.2021 intimated the complainant for payment of the outstanding dues and finally a public notice was issued in Daily Hindi Newspaper 'Rastriya Sahara' dated 21.08.2021 giving final opportunity to clear the outstanding dues. But the complainant failed to comply with that notice leading to issuance of cancellation letter dated 11.09.2021 and vide which the unit allotted was cancelled as per Haryana Affordable Housing Policy 2013. The complainant has not been able to show as to how the cancellation is void and illegal. When despite issuance of demands as well as reminders followed by public notice, he failed to clear the dues against the allotted unit, then the respondent was left with no alternative but to cancel the same. Hence, in view of the above said facts, the cancellation of the subject unit is held valid and respondent is entitled to deduct an amount of Rs.25000/- from the amount paid as per clause 5(iii)(i) of the Affordable Group Housing Policy, 2013.



G. Findings on the relief sought by the complainant.

G.I To refund of entire amount of Rs.2,36,248/- along with prescribed rate of interest.

16. The complainant submitted that he booked a residential apartment in affordable group housing colony known as "Pyramid Elite" in Sector-86, Gurgaon and was allotted a unit bearing no. 006, ground floor, Tower-5 vide allotment letter dated 17.06.2021 for a total sale consideration of Rs.23,62,470/-. He has paid a sum of Rs.2,36,248/- against the said consideration. A buyer's agreement was executed on 09.09.2021. The possession of the unit was to be offered within 4 years from approval of building plans (31.12.2018) or from the date of environment clearance (30.08.2019) and whichever is later which comes out to be 30.08.2023. The respondent vide reminder/demand letter dated 08.07.2021, 03.08.2021 and final reminder letter dated 21.08.2021 intimated the complainant for payment of the outstanding dues but he failed to adhere the same.
17. It is observed that the complainants failed to pay the remaining amount as per the schedule of payment and which led to issuance of notice for cancellation by the respondent/builder dated 11.09.2021 after issuance of notice in newspaper.
18. Now, the question before the authority is whether this cancellation is valid or not. According to clause 5(iii)(i) of the Affordable Group Housing Policy, 2013 which produce as under:

"If any successful applicant fails to deposit the installments within the time period as prescribed in the allotment letter issued by the colonizer, a reminder may be issued to him for depositing the due installments within a period of 15 days from the date of issue of such notice. If the allottee still defaults in making the payment, the list of such defaulters may be published in one regional Hindi newspaper having circulation of more than ten thousand in the State for



payment of due amount within 15 days from the date of publication of such notice, failing which allotment may be cancelled. In such cases also an amount of Rs 25,000/- may be deducted by the coloniser and the balance amount shall be refunded to the applicant. Such flats may be considered by the committee for offer to those applicants falling in the waiting list”.

19. It is to be noted that as per the schedule of collection of payment provided under section 5(iii)(b) of Affordable Group Housing Policy 2013, it is time linked payment plan instead of construction linked payment plan.
20. The cancellation letter has been issued by the respondent on 11.09.2021. On 21.08.2021, the respondent published a list of defaulters for payments in the daily Hindi newspaper Rashtriya Sahara and cancelled the unit as per the provisions of the policy and is valid one. But there is nothing on the record to show that the respondent has refunded the balance amount after deduction of Rs.25,000/- as per the provisions of clause 5(iii)(i) of the policy.

H. 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):
- The respondent/promoter is directed to refund the paid-up amount of Rs.2,36,248/- after deduction of Rs.25,000/- if not already done as per clause 5(iii)(i) of the of Affordable Housing Policy 2013 along with prescribed rate of interest i.e., @10.70% per annum from the date of cancellation till the actual realization of the amount.



HARERA
GURUGRAM

Complaint No. 4604 of 2021

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.


(Sanjeev Kumar Arora)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 07.03.2023



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