

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

Complaint no. : 208 of 2022
First date of hearing: 08.02.2022
Date of decision : 07.03.2023

Biman Kumar Bhattacharya
R/o: - 881B, Sector- 10A,
Gurugram, Haryana-122001.

Complainant

Versus

1. Pyramid Infratech Private Limited.
Regd. Office at: Unit No. 501-508,
5th Floor, Unitech Trade Centre, Sector-43,
Gurugram, Haryana- 122003.
2. State Bank Of India (RACPC),
State Bank Credit Risk Management Academy
Regd. Office at: Plot No. 78, Institutional Area,
Sector-18, Gurugram, Haryana-122015.

Respondents

CORAM:

Shri Vijay Kumar Goyal
Shri Sanjeev Kumar Arora

Member
Member

APPEARANCE:

Sh. Ashwani Kumar (Advocate)
Sh. Rakesh Kumar (Advocate)
Sh. Deepankar Dutt Sharma (Advocate)

Complainant
Respondent No.1
Respondent No.2

ORDER

1. The present complaint dated 18.01.2022 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:

S.N.	Particulars	Details
1.	Name and location of the project	Urban 67A, Sector 67A, Gurugram.
2.	Nature of the project	Affordable Housing Colony
3.	DTCP license no.	10 of 2016 dated 26.08.2016 valid up to 12.02.2023 (area 9.83 acre)
4.	RERA Registered/ not registered	Registered vide no 350 of 2017 dated 17.11.2017 valid upto 31.10.2022
5.	Plot no.	807, tower 2
6.	Date of booking	04.12.2017 [as alleged by the complainant page 11 of complaint]
7.	Date of allotment	17.03.2018 [page 24 of complaint]
8.	Tripartite agreement	28 April 2018 [page 58 of reply no. 1]
9.	Date of apartment buyer agreement	24 April 2018 [page 24 of reply no. 1]
10.	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</i>



		<i>timely payment of installments of the other charges as per the payment plan, Stamp Duty and registration charges, the Promoter/Developer proposes to offer 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
11.	Building Plan approval	02.11.2017 [page 25 of reply no. 1]
12.	Environmental Clearance	13.12.2018 [page no. 4 of reply no.1]
13	Unit admeasuring area	591.19 sq. ft. carpet area 100 sq. ft. balcony [page 25 of complaint]
14.	Due date of possession	13.12.2022 {Calculated from the date of obtaining environmental clearance}
15.	Total sale consideration	Rs. 26,07,940/- [As per SOA dated 21.02.2022]
16.	Total amount paid by the complainant	Rs. 9,90,128/- [As per SOA dated 21.02.2022]
17.	Cancellation letters dated	01.05.2019 27.10.2020
18.	Occupation certificate	Not obtained

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That the complainant was allotted a dwelling unit bearing no. 807, tower 02 in project named "Urban 67A" at sector 67A, Gurugram vide allotment letter dated 17.03.2018.
- II. That the complainant approached the State Bank of India i.e., respondent no.2 to provide loan facility for purchasing the said unit.



An amount of Rs.23,40000/- was sanctioned in his favour vide sanction letter dated 30.03.2018 and it released all due instalments upto a sum of Rs.8,72,128/- and thereafter stopped releasing the payment to respondent-builder despite repeated requests by the complainant.

- III. That the respondent-builder raised a demand of Rs.3,25,993/- on the 18.02.2019 and the same was handed over to respondent no.2. But instead of releasing the said amount, it sent an email dated 24.03.2019 denying the payment request and intimated that the demand would be made only after construction work in the respective tower is completed up to 3rd floor level slab.
- IV. That the complainant continued to follow up with respondents, but no one could resolve the matter.
- V. That on 20.01.2020, the complainant again took up the matter with the respondent no.2 as respondent-builder instead of removing deficiency at its end was adamant for payment or otherwise for cancellation and sent reminder letters dated 16.03.2020, 04.06.2020 and final reminder letter dated 23.06.2020 to him.
- VI. That on 02.02.2021, respondent-builder sent a loan closure letter by sending notice of cancellation of the unit to respondent no.2 and issued a final notice for cancellation on 21.12.2021 giving him one month time.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
 - i. To direct the respondent-builder to not to cancel the allotted unit.
 - ii. To direct respondent no.2 to release the due installments to respondent-builder.



iii. To direct respondent no.2 to bear the interest on delayed payments if any.

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 respondents.

6. The respondent no.1 & 2 contested the complaint vide their replies dated 06.05.2022 & 03.02.2022 respectively on following grounds: -

D I Reply by respondent no.1.

- i. That the present complaint is not maintainable before this authority as the complainant is in default of payment of instalments and filed complaint seeking restoration of the flat after cancellation done by it as per the Affordable Housing Policy, 2013.
- ii. That the complainant applied for allotment of an apartment in the Affordable Housing Policy 2013 in project named "URBAN-67A" located at sector-67A, Gurugram and after successful draw, unit bearing no. 807, Tower 2 was provisionally allotted to him vide allotment letter dated 17.03.2018. Thereafter, a buyer's agreement was executed between the parties on 24.04.2018 and the complainant paid a sum of Rs.9,90,128/- against the said consideration.
- iii. That the 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, despite having received the payment request letters, reminders etc. he failed to remit the instalments on time to the respondent.



- iv. 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 would 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 on 5th July 2019 and the same is automatically applicable on the allottee.
- v. That a tripartite agreement dated 28.04.2018 was executed between the parties along with terms and conditions for financing the loan regarding purchase of the said unit.
- vi. That respondent no.2 vide letter dated 22.11.2021 requested for cancellation and refund of the entire amount paid by it including its own share regarding the financed unit so that its loan account could be settled as the complainant defaulted in repaying loan amount in time.
- vii. That as per the affordable housing policy, the complainant is in default of payment despite demand letter dated 24.8.2020, reminder letter dated 17.09.2020 and publication of the defaulter in Daily Hindi News Paper Rastriya Sahara on 08.10.2020. That shows that the respondent-builder complied with all the provisions of the policy and cancelled the unit of the complainant with adequate notice and following the due procedure of law.



viii. That it is submitted that all the demands raised by the respondent are 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.

D II Reply by respondent no.2.

- i. That respondent no.2 has strictly adhered to the terms of the loan agreement and also transferred the part payment of loan amount till plinth level. But thereafter, the complainant in collusion of the builder illegally start compelling it to transfer the next instalment likely to be transferred with issuance of the allotment letter or construction up to 3rd level slab whichever was later besides the fact that the tower 2 was only completed up to plinth level.
- ii. That the complainant is a habitual defaulter and made several defaults in paying instalments of the loan amount and mischievously applied for the release of the second instalment besides the fact that his account was about to be converted to NPA account. Due to his failure in making payment and under the compelling circumstances, respondent no.2 initiated the NPA proceeding against him and on 07.10.2021, the account of the complainant was classified as NPA.
- iii. That this authority does not have the jurisdiction to entertain the present complaint against it as Section 31 of the Act mandates filing of complaint for any violation or contravention of the provisions of the Act or rules and regulations made thereunder only against any promoter, allottee or real estate agent. It does not fall under any of



those categories and consequently is incapable of committing any violation or contravention of the provisions of the Act.

- iv. That the complainant is seeking direction against respondent no.2 to pay loan amount to respondent no.1 for the purchase of subject unit. But the cancellation process can only be done by respondent-builder and not by it.
- v. It is pertinent to mention that the present complaint is vague. While perusing relief, it appears that complainant is seeking the loan amount instalments to be paid to the respondent-builder according to his own whims besides the fact that the loan amount can only be disbursed as per construction stage.
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 those undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

8. The respondent have raised an objection regarding jurisdiction of authority to entertain the present complaint and the said objection 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.

F. I Territorial jurisdiction

9. 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 complete territorial jurisdiction to deal with the present complaint.

F. II Subject matter jurisdiction

10. 11(5) of the Act provides that the promoter may cancel the allotment only in terms of the agreement for sale. Section 11(5) of the Act is reproduced as hereunder:

Section 11(5)

The Promoter may cancel the allotment only in terms of the agreement for sale:

Provided that the allottee may approach the authority for relief, if he is aggrieved by such cancellation and such cancellation is not in accordance with the terms of the agreement for sale, unilateral and without any sufficient cause.

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 the compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the objections raised by the respondent.

F. I Objection regarding the delay in payments.

12. The respondent-builder has raised an objection regarding delay in payment of installments by the allottee as he has paid only a sum of Rs.9,90,128/- against the total sale consideration of Rs.26,07,940/- as evident from the statement of account dated 21.02.2022. The respondent vide reminder/demand letters dated 15.03.2018, 05.04.2018, 26.04.2018, 18.02.2019, 01.04.2019, 01.05.2019, 02.09.2019, 03.10.2019, 24.02.2020, 19.03.2020, 24.08.2020, 17.09.2020 and final reminder letter dated 09.10.2020 respectively



intimated the complainant for payment of the outstanding dues. Finally, a public notice was issued in Daily Hindi Newspaper 'Rastriya Sahara' dated 08.10.2020 giving another opportunity to clear the outstanding dues. But the complainant failed to comply with that notice leading to issuance of cancellation letter dated 27.10.2020 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-builder 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 direct the respondent-builder to not to cancel the allotted unit.

13. The complainant submitted that he booked a residential apartment in affordable group housing colony known "Urban 67A" at sector 67A, Gurugram and was allotted a unit bearing no. 807, Tower-2 vide allotment letter dated 17.03.2018 for a total sale consideration of Rs.26,07,940/-. He paid a sum of Rs.9,90,128/- against the said consideration. A buyer's agreement was executed on 24.04.2018. The possession of the unit was to be offered within 4 years from approval of building plans (02.11.2017) or from the date of environment clearance (13.12.2018) and whichever is later and which comes out to



be 13.12.2022. The respondent vide reminder/demand letters dated 15.03.2018, 05.04.2018, 26.04.2018, 18.02.2019, 01.04.2019, 01.05.2019, 02.09.2019, 03.10.2019, 24.02.2020, 19.03.2020, 24.08.2020, 17.09.2020 and final reminder letter dated 09.10.2020 intimated the complainant for payment of the outstanding dues but he failed to adhere the same. It is observed that the complainant 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 27.10.2020 after issuance of notice in newspaper. The respondent no.2 vide letter dated 22.11.2021 also requested respondent-builder to cancel the booking and arrange refund of the paid-up amount by it as the complainant is has been continuously defaulting in repaying the bank loan and due to his non-payment, his account was declared NPA on 07.10.2021. Hence, in view of the above said facts, the relief sought by the complainant stands rejected and the cancellation of the subject unit is held to be valid. Thus, the respondent-builder 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 which is reiterated 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".

14. 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.
15. The cancellation letter has been issued by the respondent on 27.10.2020. On 08.10.2020, 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 as per copy of cancellation letter dated 21.12.2021 sent to respondent no.2 for confirmation of refundable amount, it is evident that the respondent-builder illegally charged an amount of Rs.3,01,051/- as cancellation charges and also deducted GST amount of Rs.1,69,033/- paid to government on due demands. Therefore, the deduction made by the respondent-builder while cancelling the unit is not as per the policy of 2013. Thus, the respondent is directed to refund the paid-up amount of Rs.9,90,128/- after deduction of Rs.25,000/- as per clause 5(iii)(i) of the 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. The amount paid by the bank i.e., respondent no.2 would be paid back first from the refundable amount and thereafter balance if any, shall be refunded to the complainant.

H. Directions of the authority

16. 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/promoter is directed to refund the paid-up amount of Rs.990,128/- after deduction of Rs.25,000/- if not already done as per clause 5(iii)(i) of the 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.
 - ii. Out of total amount so assessed, the amount paid by the bank /payee be refunded in the account of bank and the balance amount along with interest if any would be refunded to the complainant.
 - iii. A period of 90 days is given to the respondent/builder to comply with the directions given in this order and failing which legal consequences would follow.
17. Complaint stands disposed of.
18. File be consigned to registry.


(Sanjeev Kumar Arora)
Member

V.I - 
(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 07.03.2023