



HARERA
GURUGRAM

Complaint No. 1218 of 2022

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

Complaint no. : 1218 of 2022
First date of hearing: 19.04.2022
Date of decision : 27.04.2023

Rohit Ranjan, S/o Late. Sh. Ravi Shankar Prasad,
R/o: - Flat No. J-104, Corona Optus,
Sector- 37C, Gurugram, Haryana-122001.

Complainant

Versus

M/s Lotus Realtech Private Limited.
Regd. Office at: 501, Block-C, Nirvana Courtyard,
Nirvana Country, Sector-50, South City-II,
Gurugram, Haryana- 122018.

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Sh. Madan Bhatiwal (Advocate)

Sh. Jagbir Singh (Advocate)

Complainant
Respondent

ORDER

1. The present complaint dated 25.03.2022 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 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.No	Particulars	Details
1.	Name of the project	"Lotus Homz", Sector- 111, Gurugram
2.	Nature of project	Affordable Group Housing Colony
3.	RERA registered/not registered	214/2017 dated 18.09.2017 Valid upto 30.06.2020
4.	DTPC License no.	47 of 2014 dated 18.06.2014
	Validity status	31.05.2021
	Name of licensee	Ashok Kumar & 1 Other
	Licensed area	05.09 acres
5.	Unit no.	903, Tower J, 9 th floor [as per buyer's agreement on page 21 of complaint]
6.	Unit measuring	605.55 sq. ft. (carpet area) [as per buyer's agreement on page 25 of complaint]
7.	Date of execution of Apartment buyer's agreement	22.12.2015
8.	Possession clause	3.1 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 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 developer

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		<i>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>
9.	Approval of Building Plan	22.10.2014 (as per buyer's agreement on page 23 of complaint)
10.	Environment clearance	01.07.2016
11.	Due date of possession	01.07.2020(calculated from the date of obtaining environmental clearance) (inadvertently mentioned as 22.10.2018 in proceedings dated 27.04.2023)
12.	Total Sale Consideration	Rs.24,67,375/- [as per buyer's agreement on page 26 of complaint]
13.	Total amount paid by the complainant	Rs.9,85,532/- (as alleged by complainant on page 8 of complaint and duly admitted by respondent on page no. 11 of reply) Rs.5,72,163/- has been given by ICICI Bank and remaining amount by the complainant.
14.	Occupation certificate	01.06.2021
15.	Offer of possession	N/A
16.	Demand Letter	02.07.2019 (page 57 of complaint)
17.	Cancellation Letter	27.11.2020 (annexure R-1) {after issuance of reminder on 02.07.2019 (annexure R-6) as well as publication in the newspaper dated 10.08.2019 (annexure R-5)}
18.	Refund Request	27.09.2021 (annexure R-2)

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 "Lotus Homz" in Sector-111, Gurugram and was allotted a unit bearing no. 903, having carpet area of 605.55 sq.ft. and balcony area of 90.35 sq.ft., 9th floor, Tower-J vide buyer's agreement dated 22.12.2015 for a total sale consideration of Rs.24,67,375/-. He has paid an amount of Rs.9,85,532/- against the said consideration. Out of which an amount of Rs.5,72,163/- was disbursed by the ICICI bank.
 - II. That the respondent was continuously raising illegal and unlawful demands in respect of the above said unit through emails. As per email dated 29.11.2021, it informed the complainant that the allotment of the above said unit has been cancelled vide cancellation letter dated 27.11.2020 due to non-payment of Rs.16,15,423/- which was illegal, unlawful, unjust.
 - III. That the respondent is in breach of the terms of the agreement and miserably failed to fulfil its duty of delivering possession on time. As per the terms of the agreement, the possession of the said unit was to be handed over to the complainant within 4 years. But neither the possession has been handed over to him nor the due compensation has been paid and there is continuous delay in handing over of possession till date.
 - IV. That the respondent has illegally and unlawfully cancelled the unit of the complainant. Therefore, the unit be restored in his name and the said cancellation letter is liable to be declared null and void and not binding upon the rights of the complainant.
- C. Relief sought by the complainant:**
4. The complainant has sought following relief(s).

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- i. To direct the respondent to restore allotment of the subject unit in his favour after declaring the cancellation null and void.
 - ii. Cost of litigation of Rs.2,00,000/-.
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 has contested the complaint vide its reply dated 27.03.2023 on following grounds: -
- i. That the complainant now ceases to be an allottee by virtue of the cancellation letter dated 27.11.2020 and thus he has no cause of action and locus standi to file this complaint.
 - ii. The complainant failed to deposit the balance outstanding amount of Rs.16,15,423 despite repeated letters and reminders sent from time to time as per the payment schedule. Lastly, it sent a final notice dated 02.07.2019 and a public notice in newspaper named "Hari Bhoomi" dated 10.08.2019 to deposit the balance amount. But on his failure to deposit the same, the respondent was left with no other option except to cancel the allotment of unit.
 - iii. That the complainant after receipt of cancellation letter dated 27.11.2020 made a request for refund of the paid-up amount vide email dated 27.09.2021 as allotment of the unit in question had already been cancelled. Thereafter, the respondent vide emails dated 29.11.2021 and 03.03.2022 requested him to deposit the original document qua permission to mortgage issued by it along-with other relevant documents so that the deposited amount may be refunded to

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him as per the rules. But the complainant failed to deposit the said documents till date and thus refund could not be processed.

- iv. That the unit in question after its cancellation had already been re-allotted to a third party and after offer of possession, the subsequent allottee had already took possession of the allotted flat and become the rightful owner. Thus, the complaint is not maintainable in the present form.
- v. All other averments made in the complaint are denied in toto.
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:

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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.

F. Findings on the objections raised by the respondent.

F. I Objection regarding the delay in payments.

12. The respondent has raised an objection regarding delay in payment by allottee as he has paid only a sum of Rs.9,85,532/- against the total sale consideration of Rs.24,67,375/- as evident from the ledger account annexed with the complaint. The respondent vide demand letter dated 02.07.2019 intimated the complainant for payment of the outstanding dues and finally a public notice was issued in Daily Hindi Newspaper 'Hari Bhoomi' dated 10.08.2019 giving final opportunity to clear the outstanding dues. But the complainant failed to comply with that notice leading to issuance of cancellation letter dated 27.11.2020 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 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 to restore allotment of the subject unit in his favour after declaring the cancellation null and void.

13. The complainant is seeking direction to restore the allotment of subject unit in his favour after declaring the cancellation null and void. However, in view of findings recorded by the Authority with regard to the objection regarding the delay in payments, no direction can be issued regarding restoration of allotment in his favour as the unit in question after its cancellation had already been re-allotted to a third party and after offer of possession, the subsequent allottee had already took possession of the allotted flat and became the rightful owner. Thus, the complainant is not entitled to the relief of restoration of said allotment as third-party rights has already been created in the subject unit and only refund can be granted to the complainant as per clause 5(iii)(i) of the Affordable Group Housing Policy, 2013.
14. 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



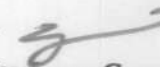
installments within a period of 15 days from the date of issue of such notice. If the allottee still defaults in making the payment, the list of such defaulters may be published in one regional Hindi newspaper having circulation of more than ten thousand in the State for payment of due amount within 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".

15. 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.
16. The cancellation letter has been issued by the respondent on 27.11.2020. On 10.08.2019, the respondent published a list of defaulters for payment in the daily Hindi newspaper Hari Bhoomi 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 policy of 2013. Thus, the respondent is directed to refund the paid-up amount of Rs.9,85,532/- 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 i.e., 27.11.2020 till the actual realization of the amount (inadvertently mentioned as date of surrender/withdraw of allotment in proceedings dated 27.04.2023). The amount paid by the bank 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

17. 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.9,85,532/- 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 i.e., 27.11.2020 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 will be refunded to the complainant.
 - iii. 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.
18. Complaint stands disposed of.
19. File be consigned to registry.

v.i - 
(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 27.04.2023