BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	:	**4592 of 2022**
Date of complaint:		**04.07.2022**
Date of decision	:	**23.08.2023**

Bijender Singh
R/o: - House No. 1182, Sector- 15,
Sonepat, Haryana-131001. **Complainant**

Versus

M/s Pyramid Infratech Private Limited.
Regd. Office at: H-38, Ground Floor,
M2K White House, Sector-57,
Gurugram, Haryana- 122002.
Also at: 217A-217B, 2nd Floor,
Sun City, Golf Course Road,
Gurugram, Haryana- 122002. **Respondent**

CORAM:
Ashok Sangwan **Member**

APPEARANCE:
Manish Kumar Yadav Complainant
Shrikant (AR) Respondent

ORDER

1. The present complaint 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 Fusion Homes", Sec-70A, Gurgaon
2.	Nature of the project	Affordable Group Housing Colony
3.	DTCP license no.	84 of 2018 dated 10.12.2018 valid up to 09.12.2023 (area 5.11875 acre)
4.	RERA Registered/ not registered	10 of 2019 dated 21.02.2019 valid up to 21.02.2023
5.	Unit no.	405, 4th floor, Tower 5 [as per BBA on page 24 of reply]
6.	Unit admeasuring area	598.53 sq. ft. of carpet area 100.00 sq. ft. balcony area [page no. 24 of reply]
7.	Allotment letter	18.05.2019 [page 14 of reply]
8.	Date of builder buyer agreement	03.09.2019 [page 20 of reply]
9.	Possession clause	***8.1*** *: 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 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 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. ***Emphasis supplied***
10.	Date of approval of building plan	23.01.2019 [as per BBA on page 22 of reply]
11.	Date of environment clearance	N/A
12.	Due date of possession	23.01.2023
13.	Total sale consideration	Rs.24,68,562/- [as per BBA on page 25 of reply]
14.	Total amount paid by the complainant	Rs.9,27,462/- [as per statement of account dated 12.09.2022 on page 66-67 of reply]
15.	Reminder Letter- Final Reminder Letter- Demand Letter-	03.12.2019, 27.05.2020, 19.11.2020 10.12.2020, 23.06.2020 16.05.2019, 04.11.2019, 23.10.2020
16.	Cancellation of unit	28.12.2020 [page 65 of reply]
17.	Refunded amount	Rs.7,75,595/- (as per statement of account dated 12.09.2022 on page 66-67 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-Fusion Homes" in Sector-90A, Gurgaon and was allotted a unit bearing no. 405 on 4th floor, Tower 5 vide allotment letter dated 18.05.2019 for a total sale consideration of Rs.24,68,562/-. He paid an amount of Rs.9,27,462/- against the said consideration. Thereafter on 03.09.2019, a builder buyer agreement was executed between the parties regarding the said unit.

II. That the complainant received a demand notice dated 04.11.2019 for payment of next instalment and he paid an amount of Rs.3,05,256/- against the same. Thereafter, he never received any demand notice from the respondent. Further, the project of respondent was badly effected due to the spread of corona pandemic and the construction work was not done according to the terms of the agreement.

III. That in the month of December, complainant shocked when he received the cancellation letter dated 28.12.2020, without receiving any demand notice from the respondent. When complainant visited the office of respondent regarding the said cancellation, the representatives of respondent orally demand double amount to restore the allotment, which was not acceptable to him. They also informed him that he would receive back all his deposited amount back after some time.

IV. That at the time of signing the buyer's agreement it was clearly told to him that the possession of the unit would be handed over within four (4) years from the date of signing this agreement, but the work of respondent was going at very slow rate.

V. That the complainant visited the office of respondent many a times and asked the officials of respondent about the progress of project,

but he always got unsatisfactory reply. In such a condition complainant requested the respondent for some time for payment of instalment as the project is not going as per the terms and conditions of the buyer's agreement. However, the respondent denies his request and cancel the allotment of the said unit. Thereafter the respondent returned back only an amount of Rs.7,75,595/- in the account of complainant on 15.03.2021 and an amount of Rs.1,51,867/- is still pending to paid to him.

VI. That the complainant being aggrieved by the illegal and unlawful acts of the respondent wants his due amount to be returned and the respondent cannot be allowed to act despotically and arbitrarily taking advantage of its monopoly. Therefore, the complainant was left with no alternative, but to knock the doors of this authority for redressal of his grievances.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).

I. Direct the respondent to refund the balance amount of Rs.1,51,867/- along with interest.

II. Direct the respondent to pay Rs.50,000/- towards litigation charges.

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.

5. The respondent contested the complaint vide its reply dated 14.09.2022 on following grounds: -

i. That the complainant has applied for allotment of an apartment, under the Affordable Housing Policy-2013 in project named

"Pyramid Fusion Homes", located at Sector-70A, Gurugram and was allotted a unit bearing no. 405, tower-5 in the said project vide allotment letter dated 18.05.2019. Thereafter, an apartment buyer's agreement was executed between the parties on 03.09.2019.

ii. That the complainant was a chronic defaulter and had purchased the aforesaid units for his quick gains and seeing no returns, chose to ignore his reciprocal obligations of timely payments. The respondent sent several reminders dated 03.12.2019, 27.05.2020, 19.11.2020 and final reminder dated 10.12.2020 intimated the complainant to clear the outstanding dues of Rs.6,39,257/- which were due on 10.12.2020 as per the payment plan opted by him.

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.

v. That finally tired by the non-committal attitude of the complainant, the respondent was forced to issue defaulter notice in daily hindi newspaper 'Rashtriya Sahara' on 09.12.2020, thereby providing a final opportunity to the complainant to clear the dues.

vi. That even after multiple reminders, the complainant remained non-committal and did not pay the pending dues. Hence, the respondent vide cancellation letter dated 28.12.2020 was forced to cancel the unit.

vii. That ample opportunities were given to the complainant to fulfil his reciprocal obligations of making the timely payment, but despite repetitive reminders, he failed to make the necessary payment due and has filed this frivolous complaint.

6. 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

7. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

8. 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

9. 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.*

10. 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.

11. 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."*

12. 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.

13. The respondent has raised an objection regarding delay in payment by allottee as he has paid only a sum of Rs.9,27,462/- against the total sale consideration of Rs.24,68,562/- as evident from the statement of account dated 12.09.2022. The respondent vide reminder/demand letter dated 03.12.2019, 27.05.2020, 19.11.2020 and final reminder letter dated 10.12.2020 intimated the complainant for payment of the

outstanding dues and finally a public notice was issued in Daily Hindi Newspaper 'Rastriya Sahara' dated 09.12.2020 giving final opportunity to clear the outstanding dues. But the complainant failed to comply with that notice leading to issuance of cancellation letter dated 28.12.2020 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 refund the balance amount of Rs.1,51,867 alongwith interest.

14. The complainant submitted that he booked a residential apartment in affordable group housing colony named "Pyramid Fusion Homes", located at Sector-70A, Gurugram and was allotted a unit bearing no. 405, tower-5 in the said project vide allotment letter dated 18.05.2019. Thereafter, an apartment buyer's agreement was executed between the parties on 03.09.2019. The possession of the unit was to be offered within 4 years from the date of approval of building plans (23.01.2019) or from the date of environment clearance whichever is later. In absence of any document regarding the date of obtaining environmental clearance, the due date is calculated from the date of approval of building plans which comes out to be 23.01.2023. The

respondent vide reminder/demand letter dated 03.12.2019, 27.05.2020, 19.11.2020 and final reminder letter dated 10.12.2020 intimated the complainant for payment of the outstanding dues but he failed to adhere the same.

15. 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 28.12.2020 after issuance of notice in newspaper.

16. 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".*

17. 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.

18. The cancellation letter has been issued by the respondent on 28.12.2020. On 09.12.2020, 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. However, as per the provisions of clause 5(iii)(i) of the policy, the respondent can deduct only an amount of Rs.25,000/- from the paid-up amount while cancelling the unit. Therefore, the respondent is directed to refund the balance amount of Rs.1,51,867/- after deduction of Rs.25,000/- as per clause 5(iii)(i) of the of Affordable Housing Policy 2013 along with prescribed rate of interest i.e., @10.75% per annum from the date of cancellation till the actual realization of the amount.

G. II Cost of litigation.

19. The complainant is seeking relief w.r.t. compensation in the above-mentioned relief. 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.,*** 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, for claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainant may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules

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):

21. The respondent/promoter is directed to refund the balance amount of Rs.1,51,867/- after deduction of Rs.25,000/- as per clause 5(iii)(i) of the of Affordable Housing Policy 2013 along with prescribed rate of interest i.e., @10.75% per annum from the date of cancellation till the actual realization of the amount.
22. 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.
23. Complaint stands disposed of.
24. File be consigned to registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 23.08.2023