

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

**Complaint no. : 422 of 2022**  
**Order reserved on: 01.03.2023**  
**Order pronounced on: 24.05.2023**

Seema Dagar,  
R/O- J-159, Phase-I, New Palam Vihar, Haryana -  
122017

**Complainant**

**Versus**

Mahira Buildtech Pvt. Ltd  
Address: - House no. 302-A, Global Foyer Mall, Sector-  
43, Golf Course Road, Gurgaon, Haryana.122009

**Respondent**

**CORAM:**

Shri Ashok Sangwan

**Member**

**APPEARANCE:**

Sh. Vijay Pratap Singh  
None

Advocate for the complainant  
Advocate for the respondent

**EX-PARTE ORDER**

1. The present complaint dated 21.02.2022 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 as provided under the provision 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 of the project	Mahira Homes, Sector- 103, Gurugram
2.	Project area	5.40347 acres
3.	Nature of the project	Affordable Group Housing
4.	DTCP license no. and validity status	31 of 2019 dated 01.03.2019 valid till 28.02.2024
5.	Name of licensee	Bijender Singh and others C/o Mahira Buildtech Pvt. Ltd.
6.	Unit no.	1302, 13 <sup>th</sup> floor, Tower- F
7.	Unit area admeasuring	570 sq. ft.
8.	Allotment letter	01.07.2019 [page 41 of the complaint]
9.	Date of execution of agreement to sell	15.07.2021 [page 51 of the complaint]
10.	Possession clause	<b>4. POSSESSION</b>  <i>A. Subject to force majeure circumstances, intervention of statutory authorities, receipt of occupation certificate and Allottee having timely complied with all its</i>

		<p><i>obligations, formalities or documentation, as prescribed by Developer and not being in default under any part hereof and Flat Buyer's Agreement, including but not limited to the timely payment of instalments of the other charges as per the payment plan, Stamp Duty and registration charges. the 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></p>
11.	Date of approval of building plans	N/A
12.	Date of environment clearance	N/A
13	Due date of possession	N/A
14	Basic sale consideration as per BBA at page no. 57 of complaint	Rs. 23,30,000/-
15	Amount paid by the complainant	Rs. 17,65,012/-
16	Occupation certificate /Completion certificate	N/A
17	Offer of possession	N/A
18	Cancellation notice issued on	21.08.2021 [page 95 of the complaint]



**B. Facts of the complaint**

3. The complainant made the following submissions in the complaint:

- i. That one-sided development agreement, time is essence clause that though the payment of instalment to builder is time linked, the progress of construction is also time linked and the construction of the project are never upto the level where it should be as on date. The terms of the agreement are non-negotiable and buyers even if they do not agree to a term, there are no option of modifying it or even deliberating it with the builder. This aspect has often been unfairly exploited by the builder, whereby the buyer imposes unfair and discriminatory terms and conditions. That the complainant was subjected to unethical trade practice as well as subject of harassment, flat buyer agreement clause of escalation cost, many hidden charges which was forcedly imposed on buyer at the time of possession as tactics and practice used by builder guise of a biased, arbitrary and discriminatory.
- ii. That on 01.07.2019 an allotment letter was issued informing the allotment of flat no. E-1302, 2 BHK, Type D, tower E, 570 sq. ft. and balcony area 162 sq. ft. total area 732 sq. ft. in the project "Mahira Homes", Sector - 103, Gurugram. That the complainant issued a cheque of 20 % of the BSP value via Cheque bearing No. 696708 dated 22.07.2019 of Rs.1,21,000/- of Syndicate Bank now Canara Bank and cheque bearing no. 696710 dated 30.07.2019 of Rs.3,52,326/- of Syndicate Bank now Canara Bank against the allotment of the said unit.



- iii. That the respondent has invited application from the allottees in the month April 2019 prior to even applying the environment clearance certificate and has intentionally delayed in getting the environment certificate bearing no SEIAA/HR/2020/38, by almost one year. The EC has been received by the respondent on dated 29.01.2020. The respondent is liable to hand over the possession of a said unit before 29.01.2024 as per buyer's agreement clause no 4a.
- iv. The complainant paid against demand of 12.5% which was raised in December 2019 of amount Rs.2,94,162/- via Internet banking reference Id 001903296497 of ICICI bank. Complainant paid 37.5% of the total amount by this date. On 21/09/2020 another payment of Rs. 2,94,162 /- was made via reference id 2079444755 ICICI BANK, thereafter on complaint made payment of Rs. 2,94,200/- on dated 30/01/2021 vide 0032139719 ICICI BANK and sum of Rs 2,94,162/- on dated 13/09/2021 vide 000207091916 ICICI BANK with makes 75% of the total BSP till date against all demands raised by the respondent.
- v. That the respondent to dupe the complainant in their nefarious net even executed a one-sided flat buyer agreement signed between complainant and the representative of the respondent 15.07.2021, just to create a false belief that the project shall be completed in time bound manner, and in the garb of this agreement persistently raised demands due to which they were able to extract huge amount of money from the complainant. That the complainant during pandemic period due to her own financial crunch approached to the Canara Bank i.e, approved banker for the said project, but The Canara bank categorically refused to sanction the loan amount stating that we are



not sanctioning loan for the said project to the buyers hereby showing the letter dated 10/08/2021 addressing to one of the buy of the said project. Which states that "*although payments of installment to builder is time linked, we understand that progress of construction should also be time linked and the construction of the project is not up to the level where it should be as on 31/07/2021*".

- vi. That the complainant somehow has arranged money from her relatives and friends the desired money that too during pandemic period and paid Rs 2,94,162/- via internet banking reference ID 000207091916 of ICICI Bank. By this time the complainant has paid 75% of the BSP of the flat. The respondent has not yet issued receipt against this two-payment made vis internet banking. That the total cost of the said flat based on carpet area is Rs 23,53,300 including EDC and PLC but excluding service tax, GST against which the complainant has already paid a sum of Rs. Rs 17,65,050/- including service tax Paid by the complainant i.e (more than 75% of Total Sale Consideration) statement of account along with the demand email and the receipts till date annexed as Annexure P/3 and P/6 . That as per the BBA Clause no. 3A the complainant was supposed to make the payment on written demand by the respondent within the stipulated period through demand draft , account payee cheque or through online payment respondent to dupe the complainant in their nefarious net even executed a one-sided flat buyer agreement signed between complainant and the respondent 15/07/2021, just to create a false belief that the project shall be completed in time bound manner, and in the garb of this agreement persistently raised demands due to which they were able to extract huge amount of money from the

complainant. The complainant sent the snapshot of online payment of Rs 294162/- ref no 000207091916 through ICICI BANK , the Respondent didn't send a acknowledgement of same.

- vii. That the respondent sent an email to the complainant stating hereby that the complainant allotted flat was under cancellation process. The complainant asserts here that the respondent had not yet cancelled the flat till 27/09/2021, the complainant can't be said to be at default in making the payment as such the respondent duly received the payment on dated 13/09/2021 ,else they could have refunded the amount to the complainant along with a cancellation letter duly confirmed .That it is pertinent mentioned here that according to the statement the complainant paid a sum of rs 17,65,012/- to the respondent till date and two instalments are remaining/ yet to be paid as per the payment schedule  
(More than 75% of total sale consideration paid by complainant) and paid amount is demanded by the respondent without doing appropriate work on the said project so after extracting more than 75% amount which is illegal and arbitrary.
- viii. That the malafide intentions of the respondent and due to non-delivery of the flat unit the complainant has accrued huge losses on account of the career plans of their family member and themselves and the future of the complainant and their family are rendered dark as the planning with which the complainant invested her hard earned monies have resulted in subzero results and borne thorns instead of bearing fare ruts. Complainant sent email to the respondent on dated 23/12/2021 hereby protesting the cancellation of her flat and also asked to clarify the illegal termination and revoking the cancellation

of the flat. It is pertinent to mention here that as per construction schedule the actual construction work at the site of Mahira Homes 103 is just 20% of the projected. That the complainant while protesting her illegal flat cancellation has made several correspondences with the respondent, the STP office but the complainant has not so far been given relief hence the present complaint before the authority.

**C. The complainant is seeking the following relief:**

4. The complainant has sought following relief:
  - i. Direct the respondent to revoke the cancellation of flat made by the respondent and reinstate booked unit in the name of the complainant. and offer possession without charging any interest on delay payment to be made by the complainant during the period of cancellation of unit.
5. The authority issued a notice dated 25.03.2022 of the complaint to the respondent by speed post and also on the given email address at [gurgaon@mahiragroup.com](mailto:gurgaon@mahiragroup.com). The delivery reports have been placed in the file. Despite service of notice, the respondent has neither put in appearance in the hearings dated 24.04.2022, 03.08.2022 and 07.11.2022 nor file reply to the complaint within the stipulated period. Accordingly, the authority is left with no other option but to decide the complaint ex-parte against the respondent.
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 based on these undisputed documents and submission made by the complainant.



**D. Jurisdiction of the authority**

7. The authority observed that it has territorial as well as 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 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.

**E.II Subject-matter jurisdiction**

9. Section 11(4)(a) of the Act 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.*

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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 as per provisions of section 11(4)(a) of the Act 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 relief sought by the complainant**

**F. I Direct the respondent to revoke the cancellation of flat made by the respondent and reinstate booked unit in the name of the complainant and offer possession without charging any interest on delay payment to be made by the complainant during the period of cancellation of unit.**

11. Admitted facts of the case are that vide welcome letter dated 01.07.2019, the complainant booked for a unit bearing no. E-1302 admeasuring 570 sq. ft. and having balcony area of 162 feet, by the respondent for a total sum of Rs. 23,30,000/- under the affordable housing policy, 2013 in the project of the respondent detailed above. It led to execution of an apartment buyer agreement dated 15.07.2021 between the parties containing various terms and conditions of allotment including dimensions of the unit, its price, due date of possession & payment plan etc. It is also not disputed that on the basis of that agreement the complainant started making various payments against the allotted unit and paid a total sum of Rs. 17,64,974/-. Thereafter the respondent instead of issuing reminder letter for payment of the due amount the respondent cancelled the unit on 21.08.2021.
12. **Now the question before the authority arises that whether the cancellation dated 21.08.2021, is valid or not?**

13. Since this project is an affordable group housing project therefore the terms of allotment and cancellation shall be governed by the policy of 2013. In the present matter the complainant had made a payment of ₹ 14,70,850/- till January 2021 whereas according to the payment plan annexed with the BBA an amount of ₹ 17,64,974/- was to be made till July 2021. There is no document on record to show the demand raised by the respondent. Whereas the respondent instead of issuing reminder letter for payment of the due amount the respondent on 21.08.2021 published the list of defaulters in the Hindi newspaper namely "Punjab Kesari" and cancelled the unit on the same day by issuing the cancellation letter dated 21.08.2021. Thereafter the complainant also made a payment of ₹ 2,94,162/-
14. According to the affordable policy, 2013 the unit shall be cancelled in consonance to clause 5(iii)(i). the relevant clause is produced as under:

*"If any successful applicant fails to deposit the instalments 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 instalments 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".*

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15. A perusal of the facts detailed earlier, and the policy of 2013 shows that the respondent did not raise any demand just published the list of defaulters in the Hindi newspaper namely "Punjab Kesari" and cancelled the unit on the same day by issuing the cancellation letter dated 21.08.2021. Thus, all these acts of the respondent shows that the respondent did not follow the prescribed procedure as per clause 5(iii)(i) of the policy of 2013 and cancelled the unit of the complainant without adequate notices. So, the cancellation of the unit is not valid as per the procedure prescribed by law and the authority hereby declares this cancellation as invalid. Keeping in view of the authority, the respondent is directed to set aside the cancellation of the subject unit and the same is restore within a period of 30 days from the date of this order.

**F. 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 authority hereby set aside the cancellation of the unit allotted to the complainant and to restore the unit within 30 days from the date of this order.
- ii. The respondent is directed to offer the possession of the allotted unit within 60 days after obtaining completion certificate from the competent authority. The complainant w.r.t. obligation conferred upon her under section 19(10) of Act of 2016, shall take the


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physical possession of the subject unit, within a period of two months of the completion certificate/occupation certificate.

iii. The respondent is directed not to create any third-party rights against the subject unit.

17. The Complaint stands disposed of.

18. File be consigned to registry.



Ashok Sangwan  
(Member)

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.05.2023



**HARERA**  
**GURUGRAM**