

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

**Complaint no.** : 2390 of 2022  
**Date of filing:** 25.05.2022  
**Date of decision** : 04.05.2022

Deepika And Ashish Kumar Jakhar  
R/o Flat No 204, Tower B8, Tulip Orange, Sector-70,  
Gurugram-122101, Haryana.

**Complainants**

Versus

M/s Suncity Projects Pvt. Ltd.  
Regd Office at: 218 Suncity business tower, sector 54,  
golf course road, Gurugram

**Respondent**

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**

Ms. Daggar Malhotra  
Shri Rajan Gupta

Advocate for the complainants  
Advocate for the respondent

**ORDER**

1. The present complaint has been filed on 25.05.2022 by the complainant/allottees 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 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 the parties.

**A. Unit and project related details**

2. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	Suncity Avenue 102, Sector - 112, Gurugram (Affordable)
2.	Unit No.	B6-1103, Carpet area - 635.08 sq. feet and balcony area - 100 sq.ft.
3.	RERA Registration	91 of 2017 dated 24.08.2017
4.	DTCP License no.	3 of 2015 dated 19.06.2015
5.	Date of allotment	<b>24.02.2020</b> (As per page 18 of complaint)
6.	Date of builder buyer agreement	30.06.2020 (Page 36 of complaint)
7.	Date of environment clearance	01.07.2016 (Taken from another case of same project)

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8.	Possession clause - 7.1	The developer proposes to offer possession of the said apartment within a period of 4 years from the date of approval of building plans or grant of environment clearance, whichever is later
9.	Due date of possession	01.07.2020 i.e., calculated from date of environment clearance
10.	Total Sale Consideration	Rs. 26,16,223/- (As per page 17 of complaint)
11.	Amount Paid	Rs. 1,19,000/- (As per page 17 of complaint)
12.	Occupation certificate	-
13.	Offer of possession	Not Offered
14.	Demand/Reminder notices	12.05.2020, 17.09.2020, 12.03.2021
15.	Newspaper publication	22.06.2021 (As per page 95 of the reply)
16.	Cancellation Letter	03.09.2021 (page no. 68 of complaint)

### B. Facts of the complaint

3. That the complainants applied for allotment of a flat in the respondent's project under the affordable housing policy, vide allotment letter dated 24.02.2020, the complainants were allotted a residential unit- Flat No. B6-1103 on the 10th Floor in Tower-B6 of the respondent's project (Suncity Avenue 76).
4. The complainants were informed that the respondent had a tie up with several banks namely, AXIS Bank, SBI and ICICI Bank and that the complainants could easily procure loans from the said bank and that the

respondent would cooperate in providing necessary documents. believing the same to be true, the complainants applied for sanction of loan from SBI as the complainants lost his job during the 1st wave of Covid-19.

5. That, the complainants were informed by the bank that documents namely BBA, TPT and NOC would be required in order to sanction the loan. Accordingly, the complainants requested the respondent to provide the necessary documents to them.
6. The complainants sent several written correspondences requesting the same to the respondent vide email dated 05.03.2020. The respondent failed in providing the necessary documents to the complainants and instead of replying to the email of the complainants raised a demand via email dated 10.03.2020. Even after that, the respondents did not provide the documents to the complainants and the loan could not be sanctioned. The complainants emailed SBI asking for the sanction letter but could not procure the same without for lack of documents.
7. Since the documents namely BBA, NOC, TPT/TPA could have only been provided by the respondent, the complainants were left with no other option but to constantly request the respondent to provide the same. The respondent instead of replying to the email or providing the documents to the complainants, raised a demand via email dated 13.05.2020. The complainants in response to the said email sent an email dated 13.05.2020 clearly mentioning that even after several requests, the respondent had still not shared the BBA, NOC, TPA and thus the loan was not getting sanctioned and once again requested the respondent to share the said documents.
8. That even after the above, the respondent failed to share the above-mentioned documents necessary for sanction of loan, and therefore the

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complainants vide mail dated 23.06.2020 once again asked the respondent to share the necessary documents. Vide email dated 24.06.2020, the respondent confirmed that it will confirm the date and time of signing of BBA. On 30.06.2020, the respondent entered into an agreement to sell with the complainants in regard to the said unit.

9. Even after the above agreement to sell, the complainants sent multiple requests to the respondent regarding the remaining documents, but the respondent paid no heed to the same. The respondent failed to share the remaining requisite documents and because of the sheer failure on the part of the respondent, the complainant could not get the loan sanctioned from SBI and had to approach other banks.
10. That the complainant even shared with the respondent vide email dated 25.08.2021, the loan sanction letter and list of documents required by ICICI Bank for disbursement and even spoke with the representative of the respondent wherein the respondent acknowledge the sanction letter and asked the complainant to share the documents via email. The same was done vide email dated 25.08.2021. Therefore, the complainants were shocked to receive the cancellation letter dated 03.09.2021 cancelling the allotment of them.
11. That respondent has never shared the requisite documents for sanction of loan and has instead illegally cancelled the allotment of the complainants. The above cancellation is illegal, arbitrary and in sheer violation of the allotment letter and the agreement to sell.

**C. Relief sought by the complainant:**

- a. Direct the respondent is directed to set aside the cancellation letter and restore the allotment of the subject unit.

- b. Direct the respondent to share requisite documents that maybe necessary for sanction loan as the complainant may inform after restoration of allotment.
- c. Litigation Cost.

**D Reply by the respondent**

The respondent has contested the complaint on the following grounds:

12. That the present complaint, besides being misconceived and erroneous, is untenable in the eyes of law. The complainants have misdirected herself in filing the above captioned complaint before this Ld. Authority as the relief being claimed by the complainant cannot be entertained.
13. That it is pertinent to mention here that the present project has been developed by the respondent as per the terms and conditions of "Affordable Housing Policy, 2013" of the Govt. of Haryana, and the complainants were allotted a flat no. B6-1103, Unit type-1, 2 BHK, 11th Floor, Tower-B6, in Affordable Group Housing Project, "Suncity Avenue 102", situated at Sector-102, Gurugram, Haryana, on the terms and conditions contained in apartment buyer's agreement.
14. That respondent had issued an allotment cum demand letter dated 24.02.2020 to the complainants and demanded for an amount of Rs.5,35,056/- towards instalment as per the terms of Affordable Housing Policy 2013 as amended up to date. It is pertinent to submit here that the complainants were strictly liable to pay timely instalments as per payment plan given in the application form dated 29.11.2019, allotment letter 24.02.2020 and agreement for sale.
15. That respondent vide reminder letter dated 12.05.2020 as well as e-mail dated 13.05.2020 requested the complainants to pay outstanding amount



of Rs.5,43,765/- along with interest within 15 days however, the complainants failed to pay the amounts.

16. That subsequently, agreement for sale dated 30.06.2020 containing detailed terms and conditions of the allotment (hereinafter referred to as said 'Agreement') was executed between the complainants and respondent and duly registered before the Sub-Registrar, Manesar, Gurugram.
17. That since next instalment also become due, the respondent vide demand letter dated 23.07.2020 raised demand of Rs.8,62,084/- which included the amounts of previous instalment. It was also informed therein that a sum of Rs.18,823/- was due towards interest. However, still the complainants failed to pay the due instalments on stipulated time given by the respondent.
18. That respondent again vide reminder letter dated 17.09.2020 as well as email of even date requested the complainants to pay outstanding amount with interest within 15 days however, still the complainants failed to pay the due amount.
19. That the complainants instead of making the payment of due instalments, vide email dated 22.09.2020 categorically admitted that they are unable to make the timely payment of instalments.
20. That further since next instalment also become due, the respondent vide demand letter dated 21.01.2021 as well as email dated 25.01.2021 requested the complainants to deposit the payment of Rs.11,89,112/- which included the amount of previous two instalments also. A sum of Rs.57,210/- was also due on account of interest. However, complainants once again failed to make the payment of instalments.

21. That thereafter the respondent again vide reminder letter dated 12.03.2021 requested the complainants to deposit the payment of Rs.11,89,112/- which included the amount of previous two instalments also. A sum of Rs.70,875/- was also due on account of interest. However, complainants still did not bother to make the payment of instalments. It is pertinent to submit here that it was specifically mentioned in the said reminder letter that in the event dues are not cleared within 15 days from the date of issuance of this letter, it shall be presumed that complainants are no more interested in the allotment of the apartment and the respondent shall be constrained to proceed towards the cancellation as per the terms and conditions of Agreement/ Affordable Housing Policy 2013.
22. That since the complainants despite repeated requests and reminders failed to pay 3 consecutively instalments, the respondents in compliance of Affordable Housing Policy, 2013 vide public notice dated 22.06.2021 duly published in three News Papers i.e. Dainik Bhaskar (Hindi), Business Standard (Hindi) and Business Standard (English) finally called upon the complainants to pay their outstanding instalments within extended time of 15 days but despite best efforts from the respondent, the complainants had again failed to make the payment of due instalments. In said Public Notices also, it was specifically mentioned that in case of failure to make the payment of outstanding instalments within 15 days from the date of notice, the allotment of apartment shall be cancelled.
23. That however, since the complainants had failed to make the payment of instalments despite repeated requests and reminders, the respondent was constrained to cancel the allotment of flat / unit in question vide cancellation letter dated 03.09.2021 which was dispatched through speed



post on 20.09.2021 after following the due process as per Affordable Housing Policy, 2013 as amended up to date.

24. That the complainants are making false allegations rather it is the complainants who defaulted in the making of timely payment of instalments. Admittedly, the Respondent through various demand and reminder letters dated 24.02.2020, 12.05.2020, 23.07.2020, 17.09.2020, 21.01.2021, 12.03.2021 and also through publication in three News Papers on 22.06.2021 had repeatedly requested to the complainants to make the payment of outstanding instalments, however, the complainants had failed to make the payment of due instalments. As such, the Respondent has every right to cancel the allotment of flat in question. The present complaint has been filed with the sole intent to misuse the provisions of RERA Act, 2016. It is an arm-twisting technique which is used for ulterior motives or vested interest thus, liable to be dismissed solely on this ground.
25. All other averments made in the complaint were denied in toto.
26. 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 submission made by the parties.

**E. Jurisdiction of the authority**

The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E.1 Territorial jurisdiction**

27. 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.

### **E.II Subject matter jurisdiction**

The 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)(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 promoter, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

28. 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 relief sought by the complainants**

**F.I Direct the respondent is directed to set aside the cancellation letter and restore the allotment of the subject unit.**

29. Some of the admitted facts of the case are that vide application dated 29.11.2019, the complainants applied for a unit under the affordable housing policy, 2013 in the project of the respondent detailed above. She



is being successful was allotted unit bearing no. B6-1103 admeasuring 635.08 sq. ft. and having balcony area of 100 feet, by the respondent for a total sum of Rs. 26,16,223/-. It led to execution of an apartment buyer agreement dated 30.06.2020 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. 1,19,000/- till date. A reminder letter dated 12.03.2021 requested the complainants to deposit the payment of Rs.11,89,112/- which included the amount of previous two instalments also. A sum of Rs.70,875/- was also due on account of interest. But despite issuance of that letter the complainant failed to make payments leading to issuance of public notice in the newspaper on 22.06.2021, giving her 15 days' time to make payment. When the complainants failed to comply with the reminder as well as public notice, the allotment of the unit made in her favour was cancelled vide letter dated 03.09.2021 in terms of buyers' agreement and the affordable housing policy, 2013. Now, the issued for consideration arises as to whether direction of the respondent in cancelling the allotment of the allotted unit was made as per the provisions of the policy of 2013 or not.

30. The complainants only paid about 4.5% of the sale consideration but he was also required to pay the amount due on the basis of payment plan as per the policy of 2013, the terms and conditions mentioned in the buyers' agreement. A public notice dated 22.06.2021 through publication in the daily newspaper of "Danik Bhasker". when despite issuance of notice/reminder the complainant did not pay the amount due, it led to





cancellation of the allotted unit vide letter dated 03.09.2021 as per the policy of 2013 and buyers' agreement. Clause 5(i) of the Affordable Group Housing Policy, 2013 provides a provision for cancellation of allotted unit and which runs as follow:

*" 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 news-paper 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".*

31. A perusal of the facts detailed earlier, and the policy of 2013 shows that the respondent raised various demand and reminder letters dated 24.02.2020, 12.05.2020, 23.07.2020, 17.09.2020, 21.01.2021, 12.03.2021, followed by public notice in the daily newspaper on 22.06.2021. But despite that she failed to make payment of the amount due leading to cancellation of the allotment of the unit in her favour vide letter dated 03.09.2021. Thus, all these shows that the respondent followed the prescribed procedure as per clause 5(i) of the policy of 2013 and cancelled the unit of the complainants with adequate notices. So, the cancellation of the unit is valid as per the procedure prescribed by law.
32. As per cancellation clause of the affordable housing policy the respondent can deduct the amount of Rs. 25,000/- only and the balance amount shall be refunded back to the complainants. In the present case, there is nothing on record which shows that respondent-builder refunded the balance amount to the complainants. Thus, the respondent is directed to deduct



only Rs. 25,000/- and refund the balance amount of within a period of 90 days alongwith interest on the balance amount from the date of cancellation till its actual payment.

**Direct the Respondent to share requisite documents that maybe necessary for sanction loan as the Complainant may inform after restoration of Allotment.**

Keeping in view findings on the above-mentioned issue, this issue becomes redundant.

### **Litigation Cost**

33. The complainant in the aforesaid relief is seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021), has held that an allottee is entitled to claim compensation 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 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. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation

### **F. Directions of the Authority:**

34. 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. 1,19,000/- after retaining a sum of Rs. 25,000/- within a period of 90 days along with interest on such balance amount from the date of cancellation till its actual payment.
- ii. The above-mentioned amount be refunded to the complainant within a period of 90 days and failing which legal consequence would follow.

35. The Complaint stands disposed of.

36. File be consigned to registry.

  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 04.05.2023

**HARERA**  
GURUGRAM