



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1829 of 2022
Date of filing:	03.08.2022
Date of first hearing:	21.09.2022
Date of decision:	03.05.2023

Rajvansh Gusian

R/o M-30A, Saurabh Vihar,

Badarpur,

New Delhi 110044

....COMPLAINANT

VERSUS

M/s Jotindra Steel & Tubes Limited

14/3, Mathura Road,

Sector 45, Faridabad 121003

Haryana

....RESPONDENT(S)

**CORAM:**

**Dr. Geeta Rathee Singh**  
**Nadim Akhtar**

**Member**  
**Member**

**Present:**

Mr. Roop Singh, counsel for the complainant, through VC.

Mr. Amrit Singh, counsel for the respondent through VC.

*Geeta Rathee*

**ORDER (DR. GEETA RATHEE SINGH - MEMBER)**

1. Present complaint dated 03.08.2022 has been filed by complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfill all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

**A. UNIT AND PROJECT RELATED DETAILS**

2. The particulars of the unit booked by complainant, the details of sale consideration, the amount paid by the complainant and details of project are detailed in following table:

S.No.	Particulars	Details
1.	Name of the project	Shree Homes (Phase II) by Sarvome, sector 45, Faridabad
2.	RERA registered/not registered	Registration No. HRERA-PKL- FBD- 171-2019
3.	Date of Booking	06.11.2019.
4.	Booking Amount	₹ 1,35,000/-
5.	Flat no.	Flat 1401, Tower 11



6	Flat area	645.84 sq.ft. (Carpet Area)
7.	Date of builder buyer agreement	Not Executed
8.	Deemed date of possession	Not mentioned
9.	Basic sale price	₹ 26,33,200/- (+ GST)
10.	Amount paid by complainant	₹ 6,64,883/-/-
11.	Offer of possession	Not made
12.	Cancellation date	26.05.2022

**B. FACTS OF THE CASE AS STATED BY COMPLAINANT IN THE COMPLAINT**

3. Complainant submits that on 06.11.2019, complainant made an application for allotment of a residential apartment in the group housing project "Shree Homes (Phase II) by Sarvome" situated in Sector 45, Faridabad, Haryana. Between 06.11.2019 to 24.08.2020, complainant paid an amount of Rs. 6,64,883/- (Rupees Six Lacs Sixty-Four Thousand Eight Hundred Eighty- Three Only) as demanded by the Respondent. On 04.09.2020, the complainant was allotted flat no. 1401 in tower 11, having carpet Area of 645.84 sq. ft. and balcony area of 100 sq. ft. in the said project. Even though the acknowledgement dated 06.11.2019 mentions the Balcony Area as 120 sq. ft., however, the allotment letter mentions the Balcony Area as 100 sq. ft. The agreed sale consideration of

the unit was approximately Rs. 26,33,200/- (Rupees Twenty-Six Lacs Thirty-Three Thousand and Two Hundred Only) plus GST. Even though the respondent did not provide any builder buyer agreement (BBA) for execution to the complainant through email or post, the complainant paid Rs. 8,600/- (Rupees Eight Thousand and Six Hundred Only) towards registration fee for the purposes of registering the (BBA) as demanded by the respondent in July 2021. The said payment was made by the complainant to the representative of the respondent, Mr. Jatin, through UPI. However, the respondent failed to either execute or register the BBA. Even after multiple requests and continuous follow-ups from the complainant regarding execution of the BBA, the respondent failed to execute the BBA and returned the said amount of Rs8,600/- back to the complainant through UPI on 19.03.2022. That, between 16.08.2021 to 15.05.2022, the complainant sent several reminders to the respondent to execute the BBA as the complainant was unable to obtain the required loan from the banks. During this time, complainant also made several phone calls to the representatives of the respondent and visited the office of the respondent on numerous occasions. However, despite of repeated assurances from respondent, neither the respondent executed the BBA nor provided any assistance to the complainant in availing the loan from the banks. Also, the complainant requested the respondent to provide the break-up of the amount due to be paid by him, however, no response was

received from the respondent in this regard. That on 16.05.2022, the respondent informed the complainant that they have sent all important communications on the registered email id of the complainant. On the same day, as per the complainant's request, the respondent also forwarded the earlier email messages sent by the respondent. At this time, the complainant noticed that the respondent had been sending the communications at the wrong email id, instead of sending the same at the complainant's email id which was updated by the complainant in september 2020 and again in November 2021 at the office of the respondent. On 17.05.2022, at the request of the complainant, the respondent provided the break-up of the total outstanding amount due to be paid by the complainant. On 26.05.2022, the respondent issued an email regarding cancellation of the allotment of flat.

4. Complainant submitted that the respondent has demanded and accepted 25% of the total sale consideration without even executing the BBA, which is a clear violation of Section 13 of the Real Estate (Regulation and Development) Act, 2016 (RERA Act, 2016). Section 13 of RERA Act, 2016 provide that *"A promoter shall not accept a sum of more than ten per cent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force"*.

Therefore, by charging more than 10% of the cost of the apartment, the respondent has violated the mandate of Section 13 of the RERA Act, 2016. Further, the respondent has deliberately failed to execute the BBA despite of repeated requests and reminders from the complainant. The complainant was kept in dark even after taking the charges for registration of the BBA (i.e. Rs. 8,600) by the respondent. This act of the respondent further shows that the respondent was not following the mandate of the RERA Act, 2016 and the guidelines framed in this regard under the affordable housing policy, 2013.

5. Complainant has stated that there was no fault of complainant in making the payment of the instalments as demanded by the respondent. In fact, the demand letters or emails were never received by the complainant. The respondent was continuously communicating with the wrong email id recorded with the respondent even after the complainant made two requests to update his correct email id. Also, as the complainant was seeking loan from banks to pay the remaining instalments, and the respondent was not providing any assistance in this regard, due to which all banks to which the complainant approached have refused to provide the loan facility to the complainant. The main reasons for refusal by the banks may be that the respondent did not execute the BBA and without BBA no bank was ready to provide loan to the complainant.

6. It is further submitted that as per Section 11(5) of the RERA Act, 2016 "The promoter may cancel the allotment only in terms of agreement for sale". Accordingly, when the respondent failed to execute the BBA inspite of repeated requests and reminders from the complainant, the cancellation of allotment issued by the respondent dated 26.05.2022 is without any sufficient cause. Therefore, the cancellation of apartment issued by the respondent on 26.05.2022 is liable to be set aside / quashed by this Hon'ble Authority.
7. On 30.05.2022, the complainant filed a complaint bearing No. RERA-PKL-1344-2022 before this Hon'ble Authority. However, upon scrutiny by the office of this Hon'ble Authority, the said complaint was rejected on 05.07.2022 for the reason that the complaint was not filed in the prescribed format and no compliance of Regulations 8(dd) and (ddd) was made by the complainant. Therefore, now has approached the Authority with the present complaint.

**C. RELIEF SOUGHT**

5. The complainant in his complaint has prayed that the respondent be directed to:
- (i) **S**et aside/quash the cancellation of allotment dated 26.05.2022 issued by the respondent;

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- ii) to issue necessary interim directions to the respondent not to dispose of the unit allotted to the complainant during the pendency of this complaint;
- (iii) to issue necessary direction to the respondent to immediately execute the BBA without further delay so that the complainant is able to obtain loan from the Banks;
- iv) to issue direction to the respondent not to charge any interest on the due instalments from the complainant as the complainant could not obtain the loan from the Banks due to the faults of the Respondent; and
- v) any other relief which this Hon'ble Authority may deem fit in the facts and circumstances of the case, be allowed.

**D. REPLY SUBMITTED ON BEHALF OF RESPONDENT**

6. Respondent has submitted reply in the Authority on 07.02.2023 and has pleaded that on 19.08.2013 the Town and Country Planning Department, Govt. of Haryana notified the "Affordable Housing Policy 2013 under the provisions of Section 9A of the Haryana Development and Regulation of Urban Areas Act, 1975 which has been concurred by the Finance Department vide UO No. 11/158/2013-5FDIII/22188 dated 05.08.2013 and approved by the Council of Ministers in its meeting held on 06.08.2013.



*Clause 5(iii)(h) of the policy reads as "In case of surrender of flat by any successful Applicant, an amount of Rs. 25,000/- may be deducted by the coloniser"*

*Clause 5(iii)(i) of the policy read as "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 her 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 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."*

*Clause 5(iii)(b) of the policy reads "Any default in payment shall invite interest @ 15% per annum."*

7. Complainant had applied for the allotment of an apartment at the affordable group housing project of the respondent in the name and style of 'Shree Homes by Sarvome' situated at Sector 45, Fairadabad and the complainant and the project are governed by the Affordable Housing Policy 2013 and its subsequent amendments. The complainant's application was allotted number 7093. The complainant had herself applied for obtaining allotment under the affordable housing project and there was never any inducement or persuasion on behalf of the respondents to the complainant. The complainant had been made aware that the documents of the parcel of the land are available on public domain and websites of the concerned Authority of the Government of Haryana. The respondent had acquired the licence to develop the

affordable group housing project from the concerned authority and thus no violation of Clause 7(1) of the Affordable Housing Policy 2013 has been committed.

8. On 05.11.2019 the complainant deposited a sum of Rs. 1,35,000/- vide RTGS being the booking amount in terms of Clause 5(iii)(b) of the affordable housing policy 2013 notified by the Government of Haryana, from the total cost of the flat valued at Rs. 26,33,360/- plus GST as applicable being the booking amount in terms of Clause 5(iii)(b) of the Affordable Housing Policy 2013 notified by the Government of Haryana. Vide its notification dated 05.07.2019 the Town and Country Planning Department, Govt. of Haryana notified an amendment to clause 5(iii)(h) of the "Affordable Housing Policy 2013" under the provision of Sec. 9A of the Haryana Development and Regulation of Urban Areas Act, 1975.
9. On 29.07.2020 the complainant voluntarily deposited a sum of Rs. 1,32,500/- vide cheque no. 001853 dated 29.07.2020 from ICICI Bank. On 11.07.2020 respondent raised the demand letter for a sum of Rs. 3,97,423.40/- to the complainant for the payment of the instalment (25% of total value of flat) in terms of the Affordable Housing Policy 2013 within 15 days. The balance 75% of the total cost of the flat will be recovered in 6 equated 6 monthly instalments. In terms of Clause 5(i)(b) of the Affordable Housing Policy 2013, any default in payment shall

invite interest @15% per annum. It was made clear in the letter that allotment of the unit does not entitle the complainant to any rights in the unit till the receipt of the balance amount of Rs. 3,97,423.40/- within the due date in terms of the payment plan in the Policy. Thus the complainant is only a successful Applicant subject to the deposit of the money to entitle him the allotment of the flat. The total cost of the flat is valued at Rs. 26,33,360/- plus GST as applicable. The complainant failed to make the payment of the due from the balance demand within 15 days. This is the period post first wave of COVID-19.

10. On 23.12.2020 the respondent raised demand letter for a sum of Rs. 7,29,824/- to the complainant for the payment of the instalment to be paid within 6 months from the date of issuance of allotment letter in terms of the Affordable Housing Policy 2013 within 15 days, however the same was not paid by the complainant. Here the complainant has already defaulted in the payment of the instalment to be paid at the time of allotment to be entitled to become allottee and has continued his default.
11. On 10.06.2021 the respondent raised demand letter for a sum of Rs. 6,64,971/- to the complainant for the payment of the instalment to be paid within 12 months from the date of issuance of allotment letter in terms of the Affordable Housing Policy 2013 within 15 days. However the same was not paid by the complainant. Here the complainant has

already defaulted in the payment of the instalment to be paid at the time of allotment vide demand dated 04.09.2020 and the demand dated 23.12.2020. The total due to be paid by the complainant as on date is Rs. 6,64,883/-.

12. On 11.12.2021 the respondent raised demand letter for a sum of Rs. 10,48,977/- to the complainant for the payment of the instalment to be paid within 18 months from the date of issuance of allotment letter in terms of the Affordable Housing Policy 2013 within 15 days. However the same was not paid by the complainant. Here the complainant has already defaulted in the payment of the instalment to be paid at the time of allotment vide demands dated 04.09.2020; 23.12.2020 and 10.06.2021. The total due to be paid by the complainant as on date is Rs. 10,48,977/-. On 18.04.2022 the respondent sent a final reminder for payment of due instalment to the complainant as per the demand letter dated 11.12.2021 on the email provided by him in the application form i.e., 'dhanveer83@gmail.com and alleges that the complainant admittedly did not comply with this reminder. The complainant has self furnished details in the application form. As the complainant continued his deliberate default, the respondent was coerced to issue a public notice in the newspaper 'The Pioneer' on 05.05.2022 upon the continued default of payment of due instalment by the complainant with a request to comply

with the provisions of the Haryana Affordable Housing Policy, 2013 and to pay their due amount within 15 days from the date of publication of the public notice failing which the allotment shall be cancelled. The respondent has complied with the provisions of Clause 5(iii)(i) of the Haryana Affordable Policy and there have been no violation of the provisions of the 2016 Act.

13. On 06.05.2022 the respondent sent a 2nd final reminder for payment of due instalment to the complainant as per the publication dated 05.05.2022 on the email provided by him in the application form i.e., 'dhanveer83@gmail.com' however the complainant admittedly did not comply with this reminder also.
14. The period of 15 days in terms of Clause 5(i) of the Policy has expired on 20.05.2022. The complainant continued his default and therefore his allotment has been cancelled. On 26.05.2022 the respondent informed the complainant about the cancellation of allotment on the new email id of the complainant as even after several follow ups and reminders through telephonic and electronic means, the outstanding amount was never paid and the complainant was requested to complete the formalities for refund of the amount deposited by them subject to deductions governed by the Affordable Housing Policy, 2013 issued by the Govt of Haryana. The Policy does not allow reinstating a legally cancelled allotment.

Respondent alleges that complainant is deliberately not appearing to initiate the refund process after the policy mandated deductions and has failed the present Complaint on false and frivolous facts and averments and a malafide intent. The Complaint is aimed to harass the respondent and to arm twist the respondent into reinstating her legally cancelled allotment. The Complaint has no merits and should be dismissed with costs.

**E. ISSUES FOR ADJUDICATION**

16. Whether the cancellation made by the respondent is illegal?

**G. OBSERVATIONS OF AUTHORITY ON RELIEFS CLAIMED BY COMPLAINANT**

17. On perusal of record and hearing the arguments of both the parties, Authority observes that complainant had booked a unit in the respondent's project i.e. residential apartment in a affordable group housing project "Shree Homes (Phase II) by Sarvome" situated in Sector 45, Faridabad, Haryana. Complainant signed "application for allotment of an apartment under Affordable Housing Policy 2013, Government of Haryana. Thereafter, allotment letter dated 04.09.2020 was issued to the complainant and he was allotted a unit, bearing flat no. 1401 in tower 11 against application number 7093 which was subject to the payment of Rs. 3,97,423/-. Complainant alleges that despite accepting 25% of the

cost of the unit and respondent till date has not executed builder buyer agreement. In pursuance of the same complainant had written various emails to the respondent from 16.08.2021 to 15.05.2022 to execute the builder buyer agreement as the complainant was unable to obtain a loan from the bank without builder buyer agreement. It is further contended by the complainant that respondent has wrongly cancelled the unit by sending him an email on 26.05.2022. Copies of the said emails have been attached in the complaint as annexure A-P/4.

18. On the other hand, the respondent has alleged that it had issued various reminders to the complainant for payment of demands. Respondent has further averred that upon failure of payment against demands raised, his unit was cancelled by the respondent on 26.05.2022 after following the due process for cancellation as provided under Affordable Housing Policy, 2013 i.e. by publishing a public notice in the newspaper "The Pioneer" dated 05.05.2022.
19. Perusal of record reveals that the basic sale price of the unit was fixed for Rs. 26,33,360/- plus GST as applicable against which the complainant has paid Rs. 6,64,971/-. As per section 13 of RERA Act, 2016 the promoter cannot ask for more than 10% of the basic sale price without executing builder buyer agreement. In the present case the basic sale price is Rs. 26,33,360/- and 10% arrives at Rs. 2,63,336/-. Further as per Affordable Housing Policy of Government of Haryana, 2013 the said

limit has been fixed to 25% of the basic sale consideration, which arrives at Rs. 6,58,340/- against the basic sale price. In both the circumstances the complainant has paid more than the settled percentage i.e Rs. 6,64,971/-. Authority is of the view that the respondent, despite receiving more than 10% of the basic sale price as per RERA, Act 2016 and 25% of the basic sale price as per Affordable Housing Policy 2013 failed in his obligation to execute a builder buyer agreement. The Authority observes that the complainant had also paid the registration fee of Rs. 8,600/- to get the BBA executed, however the respondent did not get the builder buyer agreement executed and instead returned the registration amount. Therefore, the intention of the complainant to fulfil his part of contract cannot be suspected. Counsel for the respondent in his oral submissions stated that the application for allotment letter shall be dealt as agreement between the parties and therefore there is no violation made by the respondent by cancelling the unit of the complainant.

20. Authority observes that the application form signed between the parties is a mere reflection of interest of the parties to enter into an agreement. The application form cannot be equated with an agreement for sale in particular. Further perusal of application form reveals that both the parties will be specifically executing builder buyer agreement. Relevant part of the Application form is reproduced below:



*It is only after I/we sign and execute the Buyer's Agreement in the Company's standard format agreeing to abide by the terms & conditions laid down therein that the allotment shall become final and binding upon the Company*

*In the event the Applicant becomes a successful allottee as per the procedure provided hereunder, he shall then have to, sign and execute the allotment letter ("Allotment Letter") and the Builder Buyer's Agreement/Agreement to Sell (Agreement") as per the Company's standard format within the time frame as provided by the Company I/We agree to abide by all the prescribed terms and conditions set forth in the said Allotment Letter and the Agreement and to comply with all the statutory requirements as applicable and adhere to all the applicable laws*

*In case of any discrepancy or an overlap between the terms in this Application, Allotment Letter and Agreement, the terms envisaged under the Agreement would prevail and such understanding is explicitly accepted by the Applicant.*

It has been brought to the knowledge of the Authority that the respondent has executed builder buyer agreement in other cases and his pleading that the application form be dealt as agreement cannot be accepted as his understanding to both are different and explained above. Therefore, submission of respondent that application shall be deemed to be agreement cannot be accepted.

21. The respondent has averred that the unit of the complainant has been cancelled on account of non-payment of instalments as and when

demanded. The respondent has admittedly state that it has sent reminder emails dated 18.04.2022 and 06.05.2022 to the recipient "dhanveer83@gmail.com" as the same was provided by the complainant in booking form. In contrast to the above fact, complainant stated that he had updated his email-id to "rajvanshgusain@gmail.com" from "dhanveer83@gmail.com" in September 2020 and again in November 2021. To substantiate his stand that he has updated his email-id with the office of the respondent, the complainant has relied upon his email communications sent to the respondent from his updated email-id i.e. "rajvanshgusain@gmail.com" between 16.08.2021 to 15.05.2022 wherein he has inquired about the status of the project and sought information with respect to execution of builder buyer agreement. On perusal of record, the Authority observes that the respondent promoter has reverted back to the queries of the respondent on the above mentioned updated email-id since 28th August 2021. Therefore, it is evident that the respondent promoter company was having the updated email-id of the complainant for making necessary communications and the respondent promoter intentionally chose to make or send the demands for instalments and the reminders on the email-id provided by the respondent at the time of booking of the unit. Such conduct of the respondent promoter raises the suspicion regarding his intention with respect to delivering the possession of the unit to the complainant. It cannot be a mere coincidence.



**I. DIRECTIONS OF THE AUTHORITY**

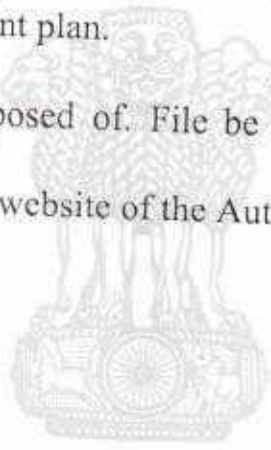
23. Authority has gone through the contentions of both the parties and issue directions to respondent as follow:

- (i) Quash the illegal cancellation of the unit made by the respondent.
- (ii) To execute the builder buyer agreement with a payment plan within 2 weeks from the date of uploading of this order.
- (iii) Complainant is also directed to make all necessary payments as per the payment plan.

24. This complaint is disposed of. File be consigned to record room after uploading order on the website of the Authority

*Nadim Akhtar*

.....  
NADIM AKHTAR  
[MEMBER]



*Dr. Geeta Rathee Singh*

.....  
Dr. GEETA RATHEE SINGH  
[MEMBER]