

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

**Complaint no. :** 5971 of 2022  
**Order reserved on :** 14.09.2023  
**Date of decision:** 19.10.2023

Pradeep Bhardwaj  
**R/o** RZ-28-J, Old Roshan Pura Najafgarh,  
New Delhi- 110043

**Complainant**

**Versus**

1. M/s Agrante Realty Ltd.  
**Office address:** 704, DLF Tower B,  
Jasola, New Delhi-110025
2. R.K Associates  
**Office address:** 125, Saini Wali Gali No.3,  
Rampura Tri Nagar, Delhi

**Respondents**

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**

Shri Nipun Rao (Advocate)  
Shri Tarun Biswas (Advocate)  
None

Complainants  
Respondent no. 1  
Respondent no. 2

**ORDER**

1. The present complaint dated 26.08.2022 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

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regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

**A. Project and unit related details**

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

S. N.	Particulars	Details
1.	Name of the project	"Kavyam", Sector- 108, Gurugram, Haryana
2.	Nature of project	Affordable group housing project
3.	<b>RERA registered/not registered</b>	Registered vide registration no. 23 of 2018 dated 22.11.2018
	Validity status	31.11.2022
4.	<b>DTPC License no.</b>	101 of 2017 dated 30.11.2017
	Validity status	29.11.2022
	Name of licensee	Arvinder Singh & others
	Licensed area	5 acres
5.	Application form filed by the complainant for allotment of the unit	24.06.2019 [Page 25 of complaint]
6.	Unit no.	TA4-1001, 10 <sup>th</sup> floor, tower TA4 [page 25 of complaint]
7.	Carpet area of the unit	512.50 sq. ft. [Page 25 of complaint]





8.	Apartment buyer agreement executed on	19.02.2020 [Page 18 of complaint]
9.	Possession clause as per apartment buyer agreement	7.1 Schedule for possession of the said Apartment The Promoter agrees and understands that timely delivery of possession of the Apartment is the essence of the Agreement. The Promoter, based on the approved plans and specifications, assures to hand over possession of the Apartment <b>within four years from the starts of construction</b> , unless there is delay or failure due to Court Order, Government Policy / guidelines, decisions, war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project ("Force Majeure"). If, however, the completion of the Project is delayed due to the Force Majeure conditions then the Allottee agrees that the Promoter shall be entitled to the extension of time for delivery of possession of the Apartment provided that such Force Majeure conditions are not of a nature which make it impossible for the contract to be implemented. [Page 33 of complaint]
10.	Possession clause as per Affordable housing policy, 2013	<b>1(IV) of the Affordable Housing Policy, 2013</b> All such projects shall be required to be necessarily completed <b>within 4 years from the approval of building plans or grant of environmental clearance, whichever is later</b> . This date shall be referred to as the "date of commencement of project" for the purpose of this policy.

		The licences shall not be renewed beyond the said 4 years period from the date of commencement of project.
11.	Date of start of construction	<b>Cannot be ascertained</b>
12.	Building plan approved on	06.07.2018 [As per project details]
13.	Environment clearance	20.08.2019 [As per project details]
14.	Due date of possession	20.02.2024 [calculated as 4 years from date of environmental clearance i.e., 20.08.2019 as the same is later + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020]
15.	Total sale consideration	Rs.21,01,049/- [As per clause 1.3 of the agreement at page 28 of complaint]
16.	Amount paid by the complainant	Rs.4,06,000/-
17.	Pre-cancellation letter dated	14.01.2021 [Page 50 of complaint]
18.	Cancellation vide letter dated	29.01.2021 [page 53 of complaint]
19.	Publication made in newspapers (Hindi and English)	30.01.2021 [Page 67 and 68 of reply]

**B. Facts of the complaint**

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

- a. The respondent no. 1 company launched an affordable group housing scheme in the name and style of "Kaavyam" in sector 108 Gurugram Haryana (hereinafter called and referred as Kaavyam project). The respondents' project is registered under the Act on 22.11.2018 with registration no. RC/REP/HARERA/GGM/2018/23. The respondent obtained a licence from the Directorate of Town and Country Planning, Haryana wide licence bearing number 101 of 2017 dated 30.11.2017.
- b. That the complainant vide application number 3489 dated 24.06.2019 applied for residential apartment in the above said project. The complainant application has been successful in a draw of allotment and an apartment no. TA4-1001 having carpet area of 512.50 sq. ft. on 10<sup>th</sup> floor in the Kaavyam project was allotted. The complainant deposited an amount of Rs. 1,06,000/- on 04.02.2019 as booking amount. Thereafter, as per demand raised by the respondents another installment of Rs.3,00,000/- was deposited by the complainant on 29.01.2020.
- c. That the complainant got shocked when he received notice dated 29.01.2021 purporting to be Pre-Cancellation Notice and final opportunity to retain unit no. TA4 - 1001. The alleged pre-cancellation notice mentioned about some alleged demand letter dated 01.07.2019, 06.01.2020, 01.07.2020, 11.01.2021 and reminder letter date 21.01.2020 & 30.01.2020 purported to be sent by respondents to the complainant, however, in fact the said alleged letters/reminder letter were never sent by the respondents or received by the complainant.
- d. That as per the alleged pre-cancellation notice dated 29.01.2021, the respondent falsely and furiously gave alleged last and final opportunity to retain the said unit by depositing the entire amount along with interest

within 15 days' notice. Therefore, to know the exact amount to be paid, the complainant contacted the official of respondents namely Ms. Sunita who said that the demands in the said notice are not the actual and asked the complainant to pay an amount of Rs.2,65,125/- to the respondents, which was duly paid by the complainant within time of 15 days as required in the said purported pre-cancellation notice.

- e. That on 16.05.2021 to the utter shock of the complainant, the said amount of Rs.2,65,125/- was retransferred in the account of the complainant. The complainant tried to contact the officials of respondents to know the retransfer of the said amount paid by complainant; however, due to 2nd wave of Covid-19 restriction, none was there in the respondents' office to be contacted. That thereafter due to pandemic of Corona, the complainant was not able to follow up physically with the respondents to know the reason for retransfer of payment made and status of his flat, but he kept on following the same via emails and sent emails dated 16.03.2021 & 24.03.2021. However, the respondents did not respond to the said emails.
- f. That, thereafter, on the downfall of the 2nd wave of pandemic, the complainant physically visited the office of respondents to enquire about the reason of retransfer of the amount in complainant's account and about the status of his flat. However, nobody in the respondents' office was ready to entertain the complainant. The complainant also tried to get the builder buyer agreement, but the officials of respondents' refused to give the same to the complainant. On regress insistence of the complainant, the official of the respondents started misbehaving with the complainant and very rudely and bluntly said "tumhara flat cancel ho chuka hai, tumhey kuch nhi milega". The complainant asked for the reasons, however, the officials of the

respondents refused to give any reason and asked the complainant to leave their office immediately; otherwise they will throw him out. To avoid any physical harm, the complainant left the office of the respondents.

- g. That thereafter, on 05.02.2022, the complainant filed a complaint before the police. On Police's intervention the respondent provided photocopies of builder buyer agreement and agreement to sell and copies of other notices.
- h. That the complainant was again shocked when he saw that respondent gave the copy of a forged and fabricated pre-cancellation notice dated 14.01.2021 and purported to be containing information of termination and cancellation of unit number TA 4-1001, whereas earlier the complainant received the cancellation notice dated 29.01.2021. The respondents have malafidely forged in record just to cancel the flat and apartment of the complainant.
- i. That as per the policy of affordable group housing 2013 before cancellation of any unit, the company or developer have to give cancellation notice which was given to the complainant on 29.01.2021 but as the complainant made the payment within prescribed time the respondent took a strange and illegal way to cancel the allotment by making publication regarding cancellation on 30.01.2021.
- j. That the action of the respondent clearly reflects to cancel the unit of complainant by hook or by crook. The respondent issued pre-cancellation notice dated 29.01.2021 to complainant and without waiting for next 15 days statutory period issued, and cancellation information by way of publication on 30.01.2021. But as the complainant made payment to respondent within prescribed time respondent made forged paper and record to justify its act of cancellation created pre-cancellation notice dated 14.01.2021 and information of cancellation dated 29.01.2021 which is act





of forgery and retransferred the amount of Rs.2,65,125/- to complainant just to show that his unit has been cancelled.

- k. That the cancellation of unit of complainant by the respondent is totally illegal and against the law that as per the affordable housing policy 2013, clause 5 sub clause (iii)(i) which provides as follow *"If any successful applicants fails to deposit the installment within time period as prescribed in the allotment letter issued by the coloniser, 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 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 case also an amount of Rs.25,000/- may be deducted by the coloniser and the balance amount shall be refunded to the applicant. Such flat may be considered as by the committee for offer to those applicants falling in the waiting list"*. Respondents have to publish a list of defaulters of payment and if within 15 days from the date of publication, payment is not made by the allottee, the allotment may be cancelled. But in the present case, respondents have not followed procedure laid down in the policy and has acted like dictators. Respondents issued pre-cancellation notice on 29.01.2021 and informed a cancelation while it has to publish a list of defaulters for payment. As the complainant made payment within the prescribed period his unit cannot be cancelled.

**C. Relief sought by the complainants: -**

4. The complainant has sought following relief(s)
- a. Set aside the respondents' cancellation of complainant's allotment.



- b. Direct the respondents to take the remaining amount from complainant, complete the project and give possession of the unit no. TA4 - 1001.
  - c. Award compensation to the complainant and against the respondents for the harassment caused by them to the complainant.
  - d. Any other relief, which the Hon'ble Authority deems fit may also, be granted.
5. On 02.08.2022, and 02.03.2023, the respondent was direct to file the reply within stipulated time period, but the respondent failed to comply with the orders of the authority. On the hearing dated 17.08.2023, the counsel for the respondent stated that the reply will be filed today in the registry of the authority. However, in view of the conduct of the respondent the order for striking off the defence stands.
6. Thereafter, the counsel for the respondent filed an application dated 25.08.2023, with regard to recall of order dated 17.08.2023. The counsel for the respondent stated that on 05.03.2023, he fell ill and was suffering from the viral, fever, symptoms of which seemed to be the mildest version of Covid-19, virus. Further, soon after the counsel of the respondent fell ill, his 7 months baby girls, wife and parents also caught the virus and were down with the similar symptoms. It took around 20-25 days for the whole family to recover and resume to the normal functioning of life and work.
7. The counsel for the complainant filed reply of the said application and mentioned that a reference in this regard may be made to the ratio of law laid down by the Haryana Real Estate Appellate Tribunal in case of ***Municipal Corporation of Faridabad vs. Rise Projects vide appeal no. 47 of 2022;*** decided on 22.04.2022 wherein it was held that the authority is not empowered to review its orders.



8. Vide order dated 14.09.2023, the authority in view of the legal position discussed above, declined the application dated 25.08.2023 filed by the respondent for recall of order.
9. 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 complainant.

**D. Jurisdiction of the authority**

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

**D. I. Territorial jurisdiction**

11. 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.

**D. II. Subject matter jurisdiction**

12. 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**

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(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

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*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.*

13. 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 complainants at a later stage.

**E. Findings on the relief sought by the complainants.**

**E.I Set aside the respondents' cancellation of complainant's allotment.**

**E.II. Direct the respondents to take the remaining amount from complainant, complete the project and give possession of the unit no. TA4 - 1001**

14. The complainant was allotted unit no. TA4-1001 on 10<sup>th</sup> floor, in tower - TA4, in the project "Kavyam" by the respondent/builder for a total consideration of Rs.21,01,049/- under the Affordable Group Housing Policy 2013. A buyer's agreement was executed on 19.02.2020. The possession of the unit was to be offered with 4 years from approval of building plans (06.07.2018) or from the date of environment clearance (20.08.2019) and whichever is later which comes out to be 20.08.2023. Further, as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 20.08.2023 i.e., after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the

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due date of handing over possession comes out to be 20.02.2024. The complainant paid a sum of Rs.4,06,000/- up to 29.01.2020, and he is always ready and willing to retain the allotted unit in question.

15. The counsel for the complainant states that notice for cancellation in the newspaper was published on 30.01.2021 giving 7 days time for making the payment of outstanding amount. However, the policy under clause 5(iii)(i) specifically provides for giving 15 days time to make the payment from the date of publication from the date of such notice before cancellation. The complainant/allottee has made payment of cheque on 09.02.2021 which is also realized in the account of the promoter on 12.02.2021 i.e. before lapse of 15 days time prescribed under the policy. But the promoter has returned the above amount on 16.02.2021 without accepting the above amount and no reason for non-acceptance were assigned.

Since the cancellation is bad as per policy and hence the complainant made a request for restoration for the unit and if the unit in question is not available than an alternative unit may be allotted in the project at the same price on similar terms and conditions.

16. The counsel for the respondent states that the outstanding amount on the date of cancellation was Rs.7,47,324/- as per demand raised and placed at page 52 while the complainant/allottee has paid only Rs.2,65,000/- even within the 15 days period and hence was not accepted. The pre-cancellation notice was sent on 14.9.2021 wherein no amount outstanding is specified. The counsel for the respondent states at bar that details of the outstanding amount were conveyed vide letter dated 21.01.2021, along with a statement of account showing the outstanding amount payable is shown as Rs.7,46,603/-. The outstanding amount was also conveyed while cancelling the unit on 29.01.2021, but the

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complainant/allottee failed to make payment of total outstanding amount despite repeated reminders and hence the unit was cancelled.

17. It is observed that the complainant failed to pay the remaining amount as per schedule of payment and which led to issuance of notice for cancellation by the respondent/builder dated 29.01.2021. In line with the aforesaid facts, the written submission filed by the parties and documents placed on record, the main question which arises before the authority for the purpose of adjudication is that "whether the said cancellation is a valid in the eyes of law?"
18. Clause 5(iii) (i) of the Affordable Group Housing Policy, 2013 talks about the cancellation. The relevant part of the clause is reproduced below:-

*"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".*

19. The respondent company has issued demand cum reminder letters dated 01.07.2019, 06.01.2020, 21.01.2020, 30.01.2020, 01.07.2020, and 11.01.2021. Thereafter, the respondent issued pre cancellation notice followed by cancellation notice dated 14.01.2021 which led to issuance of notice for cancellation by the respondent/builder dated 29.01.2021. The respondent has also published a list of defaulters of payments in the daily Hindi newspaper "Navodaya Times" New Delhi.
20. As per clause 5(iii)(b) of the Policy of 2013, the allottee/applicant is under obligation to deposit the 25% amount of the sale consideration of the unit till allotment. However, in the present case, the agreement to sell was executed

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inter-se the parties on 19.02.2020, and the complainant/allottee has paid an amount of Rs.4,06,000/- which constitutes only 19.32% of the total sale consideration. Accordingly, the respondent /builder issued numerous reminders dated 01.07.2019, 06.01.2020, 21.01.2020, 30.01.2020, 01.07.2020, and 11.01.2021 to the complainant. Thereafter, the respondent issued pre cancellation notice followed by cancellation notice dated 14.01.2021 which led to issuance of notice for cancellation by the respondent/builder dated 29.01.2021. The authority is of the considered view that the respondent/builder has followed the prescribed procedure as per clause 5(iii)(i) of the Policy, 2013 and in view of the same, the cancellation letter dated 14.06.2021 is held to be valid.

21. As per cancellation clause of the affordable housing policy of 2013 the respondent can deduct the amount of Rs.25000/- only and the balance amount shall be refunded back to the complainant. Till date no amount has been refunded back by the respondent-builder to the complainant/allottee. Thus, it has been using the funds of the complainant. In view of aforesaid circumstances, the respondent is directed to refund the amount paid by the complainant after deduction of Rs.25,000/- as per clause 5(iii)(i) of the Policy 2013 along with interest from date of cancellation of allotment i.e., 29.01.2021 till the actual realization of the amount.

**F.III. Award compensation to the complainant and against the respondents for the harassment caused by them to the complainant.**

22. The complainant in the aforesaid head is seeking relief w.r.t compensation. Hon'ble Supreme Court of India, in case 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

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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. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of compensation.

**F. Directions of the authority**


23. 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 is directed <sup>to</sup> refund the paid-up amount of Rs.4,06,000/- after deduction of Rs.25000/- as per clause 5(iii)(i) of the Affordable Housing Policy 2013 as amended by the State Government on 05.07.2019, along with interest @10.75% per annum as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of cancellation of allotment i.e., 29.01.2021 till the actual realization of the amount.
- II. 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.

24. Complaint stands disposed of.

25. File be consigned to registry.

Dated: 19.10.2023

  
**(Vijay Kumar Goyal)**  
Member  
Haryana Real Estate  
Regulatory Authority,  
Gurugram