

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

<b>Complaint no:</b>	<b>3225 of 2021</b>
<b>Date of pronouncement of order:</b>	<b>22.12.2023</b>

Jyoti Raghav <b>R/o:</b> P-P-12/13, Kabul line, Sadar Bazar Delhi, South West Delhi, 110010	<b>Complainant</b>
Versus	
Forever Buildtech Pvt. Ltd <b>Regd. office:</b> Ground Floor, Tower A, Signature Tower, South City-1, Gurugram, Haryana-122001	<b>Respondent</b>

<b>CORAM:</b>	
Shri Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Surbhi Bhardwaj (Advocate)	Complainant
Sh. Mintu Kumar (AR)	Respondent

**ORDER**

1. The present complaint dated 18.08.2021 has been filed by the complainant/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 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 allottees as per the agreement for sale executed inter se.

**A. Unit and project related details**

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

Sr. No.	Particulars	Details
1.	Name of the project	The Roselia, Sector 95-A, Gurugram, Haryana.
2.	Project area	8.034 Acres
3.	Nature of the project	Affordable Group Housing Colony
4.	DTCP License no. & validity status	13 of 2016 26.09.2016 up to 30.10.2023
5.	Name of Licensee	Forever Buildtech Pvt. Ltd.
6.	RERA Registered / not registered	Registered 05 of 2017 20.06.2017 up to 17.05.2021 <b><u>Registration expired</u></b>
7.	Allotment Letter	02.04.2018 (Annexure 1 page 24 of complaint)
8.	Unit no.	C 102, Tower C (Page 30 of complaint)
9.	Unit admeasuring	514 sq. ft. (Page 30 of complaint)
10.	Date of Building plan	09.01.2017



		(Taken from another file of the same project)
11.	Date of Environment clearance	18.05.2017 (Taken from page 2 of OC)
12.	Date of Builder Buyer Agreement	02.11.2018 (Page 27 of the complaint)
13.	Possession clause	<b>5. Possession</b> <b>5.1: The developer shall offer possession of the said flat to the allottee(s) within a period of 4 years from the date of approval of building plans or grant of environment clearance whichever is later (Emphasis supplied).</b>
14.	Due date of delivery of possession as per clause 5.1 of the flat buyer's agreement	18.11.2021 18.05.2021 +6 months (18.05.2017+4 years) - 18.05.2021 (Due date calculated from the date of the environment clearance i.e 18.05.2017 as per page 2 of OC)
15.	Sale consideration	Rs. 20,97,050/- (As per applicant ledger page 65 of complaint)
16.	Total amount paid by the complainant	Rs.19,82,297/- (As per applicant ledger page 65 of complaint)
17.	Occupation certificate	06.05.2022

18.	Offer of possession	Not Offered
19.	Reminder letters send by the respondent	04.05.2020, 21.09.2020, 07.10.2020, 24.10.2020 (Page 25 - 31 of reply)
20.	Pre-termination letter	10.11.2020 (Page 31 of reply)
21.	Newspaper advertisement	24.07.2021
22.	Termination mail	27.08.2021 (Page 38 of reply)

**B. Facts of the complaint:**

3. Somewhere around in mid-2017, the respondent advertised about its new group housing project namely "THE ROSELIA" located in Sector-95A District Gurugram.
4. That believing the representations of the respondent and on the lookout for an adobe for themselves and their family, she booked an apartment in the said project of the respondent by submitting the application form and paid an amount of Rs.1,04,852/- vide instruments bearing no.078561 dated 29-12-2017 towards the booking of the said unit.
5. That, thereafter on 02-04-2018 the respondent issued a provisional allotment letter and a demand letter for unit bearing no. C-102. That after almost 11 months from the date of booking, finally, on 02-11-2018, the buyer's agreement was executed between the parties. That as per clause 5.1 of the buyer's agreement dated 02-11-2018, the respondent had undertook to complete the project and handover possession of the unit within a period of 4 years from the date of approval of building plan or

grant of environmental clearance whichever is later. , i.e. by 09-01-2021. However, the respondent miserably failed in handing over possession of the unit till.

6. That she had paid a total sum of Rs. 19,82,297/- towards the unit in the project from 2017 till the date, as and when demanded by the respondent as against the total consideration of Rs.20,97,050/-. She had approached the financial institutions to obtain loan over the said unit but the same was declined by the banks. The respondent was also made aware about the same by her.
7. That when the respondent failed in handing over the possession, she visited the site and was stunned to see that the project was incomplete. Rather, almost negligible construction activity was going on at the project site.
8. She repeatedly requested the respondent to handover the possession of the unit, but instead of handing over the possession of the unit, it sent a final demand to the bank but the bank of the complainant clearly refused to disburse the amount as the payment demand is payable only after receiving of the valid occupation certificate. She came to know the said fact when the respondent published an advertisement in the newspaper regarding cancellation of unit on the ground of non-payment of the demand.
9. She sent an email to the respondent objecting to the cancellation through advertisement on the ground of non payment of demand. The said demand was not disbursed by the bank as the same was raised without having received the occupation certificate.
10. That when she had asked the respondent to clarify about the interest being charged by it on the delayed payments upon which it replied that

the interest is being charged on the basis of the agreement. It is pertinent to mention that while under clause 4.6 of Buyer's agreement dated 2-11-2018 the Respondent had been charging 15% interest on the account of delayed payments of the instalments and further under clause , sub -clause 4.6 of the buyer's agreement, allottee fails to make the payment of any installments of the total cost or any other amount, falling due within the stipulated time, the developer may issue notice within a period of 15 days .In case of cancellation of the project the allottee shall have no lien or claim on the said flat and the developer will be entitled to sell, convey or transfer the said flat to any party at its sole discretion. It is submitted that the above-mentioned clauses are not equitable, arbitrary in nature, completely one sided and nowhere fall in the line of laws enforceable as on today to regulate the real estate sector.

11. Moreover, the Respondents simply refused to hand over the possession till said payment was made. To this, the Complainant sought payment of delayed possession charges on the account of delay in handling of possession but it bluntly refused to pay the same. Rather, it threatened to levy holding charges.

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

12. The complainant has sought following relief(s):

- I. Direct the respondent to withdraw the cancellation (advertisement published in the newspaper) of the unit;
- II. Direct the respondent to award delay interest at the prescribed rate for every month of delay, from the due date of possession, i.e. 09-01-2021 till actual handing over of possession.

- III. Direct the respondent to charge delay payments, if any, at the prescribed rate in accordance with the Haryana Real Estate (Regulation and Development) Rules, 2017.
- IV. Direct the respondent to not charge anything outside the clauses mentioned in buyer's agreement.
- V. Direct the respondents to handover possession of the unit in the question to the complainant.
- VI. Direct the respondents to not levy any holding charges from the complainant.

**D. Reply by respondent:**

13. The respondent by way of written reply made following submissions: -
14. In reply thereto, it is submitted since the project is under the Affordable Housing Policy 2013 as applicable at relevant point of time, booking was made as claimed. The allotment was done in terms of guidelines prescribed under the Affordable Housing Policy 2013.
15. Furthermore she has failed to take cognizance of order issued on 26.05.2020 by this Hon'ble Authority which was issued taking suo moto cognizance of the outbreak of Covid-19 and subsequent development that the developer/ real Estate project shall get relief/ relaxation in compliance with the various provisions of the Real Estate Act and Rules made thereunder, for a period of six months. The World Health Organization has declared Covid-19 a pandemic on 11.03.2020. It is in public domain as widely reported that Covid-19 second wave has also hit badly 'like a tsunami' not only in Haryana but also in rest of India and the world as well. Haryana Government imposed lockdown for different periods terming it as "Mahamari Alert/Surkshit Haryana (Epidemic Alert/Safe Haryana) resulting slowdown of all activity within the state

of Haryana. It is pertinent to mention here that every phase of lockdown is not confined to the declared period only rather it also brings another 2 months (minimum period) delay in mobilization of construction activity at site once suspended because of certain reasons such as lack of human resources, availability of material etc. Nevertheless, From the Annexure 6 of the complaint, it categorically emerges that Present complaint is nothing but a pressure tactics to get extract money as admittedly allotted unit stands cancelled in terms of Affordable Housing Policy 2013 due to intentional default in making payment despite repeated demands/reminders.

16. It categorically emerges that present complaint is nothing but a pressure tactics to get extract money as admittedly allotted unit stands cancelled in terms of Affordable Housing Policy 2013 due to intentional default in making payment despite repeated demands/reminders.
17. That she never approached respondent with regard to terms and conditions of agreement of sale as alleged. She admittedly executed agreement of sale in 2018 and now same is being challenged in the year of 2021 and that too only after receipt of cancellation advertisement (which was published in terms of Affordable Housing Policy 2013) without making payment of defaulted installment/outstanding amount. As such, present complaint is nothing but a pressure tactics to get extract money as admittedly allotted unit stands cancelled in terms of Affordable Housing Policy 2013 due to intentional default in making payment despite repeated demands/reminders.
18. All the averments in the complaint are denied in toto.
19. Copies of all the relevant documents have been duly 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:**

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

**E. I Territorial jurisdiction**

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 completed territorial jurisdiction to deal with the present complaint.

**E.II Subject matter jurisdiction**

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.*

21. 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. Entitlement of the complainant for restoration of the unit:**

*F. I Direct the respondent to take payment against the allotted unit from complainants as prescribed in the clause 17 of the application form.*

*F. II Direct the respondent to charge interest as prescribed in rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.*

*F. III Direct the respondent to restore the unit, allotted to the complainants.*

*F. IV Impose a heavy penalty on the respondent for violating the payment plan schedule of the Haryana Affordable Housing Policy-2013.*

22. All these issues being interconnected are being taken together as the validity of the termination is to be ascertained first.

23. Some of the admitted facts of the case are that vide application dated 29.12.2017, the complainant applied for a unit under the affordable housing policy, 2013 in the project of the respondent detailed above. She is being successful and was allotted unit bearing no C 102, Tower C admeasuring 514 sq. ft., by the respondent for a total sum of Rs. 20,97,050/-. It led to execution of an apartment buyer agreement dated 02.11.2018 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. 19,82,297/- till date. She was issued various demand letters from May 2020 till November 2020 vide which last demand of Rs. 2,83,103/- that was due. But despite issuance of various letters the complainant failed to make payments leading to pre cancellation vide dated 10.11.2020. When the complainant failed to comply with the reminders, pre cancellation as well as public notice, the allotment of the unit made in her favour was cancelled vide mail dated 27.08.2021 (page 38 of reply) stating that the cheque of refundable amount has already been couriered on the registered address but no document/cheque has been placed on record to substantiate it. There is nothing on record to show that after cancellation of the allotted unit vide letter dated 27.08.2021, the respondent builder returned the remaining paid up amount to the complainant after deducting necessary deductions or not.

24. No doubt the complainant had already paid about 94.5% of the sale consideration but she 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. 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. A public notice dated 24.07.2021 through publication in the daily newspaper of "Danik Jagran" has been issued. when despite issuance of notice/reminder the complainant did not pay the amount due, it led to cancellation of the allotted unit vide mail dated 27.08.2021. Clause 5(iii)(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”.*

25. A perusal of the facts detailed earlier and the policy of 2013 shows that the respondent has followed the due process. But despite that she failed to make payment of the amount due. Thus, all these instances shows that the respondent followed the prescribed procedure as per clause 5(iii)(i) of the Affordable Housing Policy of 2013 as amended by State Government on 05.07.2019 and cancelled the unit of the complainant with adequate notices. So, the cancellation of the unit is valid as per the procedure prescribed by law.

26. So, on the above-mentioned grounds, the cancellation of allotted unit is hereby upheld. Thus, the respondent is directed to deduct only Rs. 25,000/- and refund the balance amount along with interest on the balance amount from the date of cancellation i.e., 27.08.2021 till its actual realization.

#### **G. Directions of the authority**

- i) The respondent/builder is directed to refund the paid amount of Rs. 19,82,297/- after deducting a sum of Rs. 25,000/- as per clause 5(iii)(i) of the Policy of 2013 as amended by State Government on



05.07.2019, along with interest @10.85% p.a. on the balance amount from the date of cancellation i.e., 27.08.2021 till its actual realization.

ii) A period of 90 days is given to the respondent/builder to comply with the directions given in this order and failing which legal consequences would follow.

27. Complaint stands disposed of.

28. File be consigned to the registry.

  
(Sanjeev Kumar Arora)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.12.2023