

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

**Complaint no.** : 5072 of 2023  
**Date of complaint** : 07.11.2023  
**Date of decision** : 07.08.2024

Rajiv Gupta,  
R/o: - AG-248, IInd Floor,  
Near A.L. Market, Shalimar Bagh,  
North West Delhi, Delhi-110088.

**Complainant**

**Versus**

M/s Kiwi Land and Housing Private Limited.  
**Regd. Office at:** C-7A, 2<sup>nd</sup> Floor, Omaxe Centre Mall,  
Sohna Road, Sector-49, Gurugram, Haryana-122018.

**Respondent**

**CORAM:**  
Ashok Sangwan

**Member**

**APPEARANCE:**  
Deepali Mittal (Advocate)  
Prashant Sheoran (Advocate)

Complainant  
Respondent

**ORDER**

1. The present complaint 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 under the provisions 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	"Rama Homes" sector- 89, Gurugram
2.	Project area	5.15 acres area
3.	Nature of project	Affordable Group Housing Project
4.	RERA registered/not registered	Registered vide no. 17 of 2022 dated 21.02.2022
5.	RERA registration valid upto	11.08.2026
6.	DTCP Licence no.	49 of 2021 dated 12.08.2021 Valid upto 11.08.2026
	Name of licensee	Kiwi Land And Housing Private Limited
7.	Unit no.	T1-704, 7 <sup>th</sup> floor, tower/block- 1, (Page no. 27 of the complaint)
8.	Unit measuring	644.66 sq. ft (carpet area) 10.505 sq. ft. [balcony area] (page 27 of complaint)
9.	Date of execution of flat buyer's agreement	05.06.2023 (Page no. 23 of the complaint)
10.	Possession clause	<b>8.1 Possession</b> Subject to force majeure circumstances, intervention of Statutory Authorities, receipt of occupation certificate and Allottee having timely complied with all its obligations, formalities, or documentation, as prescribed by the Promoter/Developer and not being in default under any part hereof and Apartment Buyer's Agreement, including but not limited to the timely payment of installments of the other charges as per payment plan, Stamp Duty and registration charges, the Promoter/Developers 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 " <b>Commencement Date</b> "), whichever is later. (Page no. 33 of the complaint).
11.	Date of approval of building plans	30.12.2021 [as per information obtained from the planning branch]
12.	Date of grant of environment clearance	Not provided
13.	Due date of possession	30.12.2025 [Note: - The due date of possession is calculated from the date of approval of building plans.]
14.	Basic sale consideration	Rs.28,07,572/- (page no. 27 of the complaint)
15.	Total amount paid by the complainant	Rs.10,63,371.60/- (As per ledger account 01.02.2024, page no. 11 of the reply)
16.	Occupation certificate	Not obtained
17.	Cancellation letter	21.08.2023 (page 97 of complaint)

**B. Facts of the complaint**

3. The complainant has made the following submissions: -

- I. That the complainant was allotted a flat/apartment bearing no. T1-704, Tower-1, 7th Floor having carpet area of 644.66 sq. ft. and balcony area of 105.50 sq. ft. approx in project of the respondent named "Rama Homes", Sector 89, Gurugram vide allotment letter dated 16.08.2022. Thereafter, an agreement for sale was executed between the parties on 05.06.2023 for a total sale consideration of Rs.28,07,572/-.
- II. That the complainant took home loan from IIFL vide loan account no. IL103142290 towards the sanctioned loan amount is Rs.26,25,000/-



- to be paid on each demand raised by the respondent. That the amount paid by the allottee till date of assignment is Rs.10,63,371/- was transferred in the name of complainants to the respondent towards the instalments of the said apartment against the demand letters issued by the respondent time to time.
- III. That the respondent raised the second demand on 21.03.2023 via email to the complainant same was intimated to the bank by him. Then, the first reminder was sent through letter to the complainant on 29.04.2023 for the sum of Rs.203459.40/- and second reminder on 17.05.2023, and third reminder on 12.07.2023. The complainant was regularly communicating with the loan bank to disbursement but due to some technicalities the loan was disbursed on 25.07.2023 which is well on time, as before completion of 3rd reminder.
- IV. That the respondent had again sent the 4th reminder on 25.07.2023 on which the allottee had informed him regarding the payment through email and also tried to call him telephonically but the respondent did not respond to their email.
- V. That the respondent issued notice for cancellation of the said allotment of flat vide letter dated 21.08.2023 stating that the allottee failed to pay the outstanding instalment due to which the said allotment is cancelled, which is null and void as the complainant has already paid the said amount and it was delay on the part of the bank.
- VI. That the complainant has already paid the said amount on 25.07.2023 through the loan bank. So, the cancellation is not maintainable on such grounds. So, the complainant has filed the present complaint before this Authority for passing directions to respondent to recall the cancellation notice dated 21.08.2023 as



complainant is regularly making payment to the respondent through bank namely IIFL.

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

4. The complainant has sought following relief(s).
  - i. Direct the respondent to handover possession of the unit and recall the cancellation letter.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent.**

6. The respondent has contested the complaint vide its reply dated 06.02.2024 on following grounds: -
  - i. That the complainant in the present case has demanded setting aside of cancellation done by respondent on 21.08.2023. That filing of present complaint in itself acknowledges the fact that the terms and conditions of affordable housing policy as amended upto date are binding on both the parties and accordingly the complainant is also bound by the provisions affordable housing policy.
  - ii. That in the present case complainant has applied for allotment of a unit in general draw as per guidelines of DTCP and thereafter a unit was allotted to complainant being a successful allottee and an allotment letter was issued to complainant. It is submitted that as allotment letter was issued in compliance of provisions of affordable housing policy and as per said allotment letter complainant was obliged to pay demands as per agreed payment plan as mentioned in allotment letter as well as agreement to sell.



- iii. That the unit in question was cancelled by the respondent for the reason that the complainant failed to pay demand even after issuance of reminders and publication in the newspaper. It is submitted that those reminders were also admitted by the complainant in his own complaint.
- iv. That these reminders were issued against demand letter dated 02.03.2023. It is submitted that when the complainant failed to pay the amount demanded vide above stated demand letter as well as after issuance of several reminders, respondent on 05.08.2023, published a list of defaulters in the newspaper, wherein it was reminded that in order to stop cancellation of their allotment the payment should be made within a period of 15 days of this advertisement.
- v. That after waiting of 15 days ultimately unit of complainant was cancelled vide letter dated 21.08.2023. It is pertinent to mention here that after cancelling the unit of complainant, respondent had received the amount as demanded by above stated demand letter dated 02.03.2023 and four reminders on 23.08.2023. However, since the said amount was received after the cancellation of the unit. Thus, the respondent is not bound to accept the same and is not liable to restore the allotment of the complainant.
- vi. That since the complainant failed to pay the amount on time, thus the respondent is also entitled to deduct Rs.25,000 plus 3% of the sale consideration as per the terms and condition of Affordable Housing Policy (as amended up to date).
- vii. That keeping in view of above stated facts and circumstances, it is clear that the cancellation was done validly by the respondent and present complaint is not maintainable. It is submitted that the complainant falsely claimed that the above stated amount of Rs.203,459/- was



received by the respondent on 25.07.2023. It is submitted that on the said date no such amount was received by the respondent and the same was received only on 23.08.2023 as evident from the copy of bank statement dated 23.08.2023.

7. 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 submissions made by the parties.

**E. Jurisdiction of the authority**

8. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E.I Territorial jurisdiction**

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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**

10. 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.*

11. 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.

**F. Findings on the objections raised by the respondent.**

**F. I Objection regarding the delay in payments.**

12. The respondent has raised an objection regarding delay in payment by allottee as he has paid only a sum of Rs.10,63,371.60/- against the sale consideration of Rs.28,07,572/- as evident from the ledger account annexed with the complaint. The respondent vide demand dated 21.03.2023 followed by four reminders dated 29.04.2023, 17.05.2023, 12.07.2023 and 25.07.2023 intimated the complainant for payment of the outstanding dues and finally a public notice was issued in Daily Hindi Newspaper as well as English Newspaper i.e., 'Dainik Bhaskar' and 'Hindustan Times' dated 05.08.2023 giving final opportunity to clear the outstanding dues. But the complainant failed to comply with that notice leading to issuance of cancellation letter dated 21.08.2023 and vide which the unit allotted was cancelled as per Haryana Affordable Housing Policy 2013. The complainant has submitted that he could not make timely payment to the respondent due to default on part of the bank and he has already paid the outstanding amount through the bank loan only on 25.07.2023 which is well on time, as before completion of 3rd reminder. However, it is evident from the bank statement annexed with reply dated 23.08.2023 (Annexure R4) that an amount of Rs.2,03,459/- was credited through NEFT in bank account of





the respondent only on 23.08.2023 i.e., after issuance of cancellation letter dated 21.08.2023. Therefore, when despite issuance of demand as well as reminders followed by public notice, the complainant failed to clear the dues against the allotted unit, then the respondent was left with no alternative but to cancel the same. Hence, in view of the above said facts, the cancellation of the subject unit is held valid.

**G. Findings on the relief sought by the complainant.**

**G.I Direct the respondent to handover possession of the unit and recall the cancellation letter.**

13. The complainant is seeking direction to handover possession of the unit after recalling the cancellation letter. However, in view of findings recorded by the Authority with regard to the objection regarding the delay in payments, no direction can be issued regarding handing over possession of the unit and recalling of cancellation letter as despite issuance of demand through email as well as reminders followed by public notice, the complainant failed to clear the dues against the allotted unit. Thus, the respondent was constrained to cancel the same vide letter dated 21.08.2023. In view of the above, the complainant is not entitled to the relief of restoration of said allotment and only refund can be granted to him as per clause 5(iii)(i) of the Affordable Group Housing Policy, 2013.
14. Now, the question before the authority is whether this cancellation is valid or not. According to clause 5(iii)(i) of the Affordable Group Housing Policy, 2013 which produce as under:

*"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”.*

15. 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.
16. The cancellation letter has been issued by the respondent on 21.08.2023. On 05.08.2023, the respondent published a list of defaulters for payment in Daily Hindi Newspaper as well as English Newspaper i.e., 'Dainik Bhaskar' and 'Hindustan Times' dated 05.08.2023 and cancelled the unit as per the provisions of the policy and is valid one. However, there is nothing on the record to show that the respondent has refunded the balance amount after deduction of Rs.25,000/- as per the policy of 2013. Thus, the respondent is directed to refund the paid-up amount of Rs.10,63,371.60/- after deduction of Rs.25,000/- as per clause 5(iii)(i) of the Affordable Housing Policy 2013 along with prescribed rate of interest i.e., @11% per annum from the date of cancellation i.e., 21.08.2023 till the actual realization of the amount. The amount paid by the bank if any, would be paid back first from the refundable amount and thereafter balance if any, shall be refunded to the complainant.

**H. Directions of the authority**

17. 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.10,63,371.60/- after deduction of Rs.25,000/- as per clause 5(iii)(i) of the Affordable Housing Policy 2013 along with prescribed rate of interest i.e., @11% per annum from the date of cancellation i.e., 21.08.2023 till the actual realization of the amount.
  - ii. Out of total amount so assessed, the amount paid by the bank /payee if any, be refunded in the account of bank and the balance amount along with interest will be refunded to the complainant.
  - iii. 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.
18. Complaint stands disposed of.
19. File be consigned to registry.

**(Ashok Sangwan)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 07.08.2024

**HARERA**  
**GURUGRAM**