



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

Complaint no.: 1071 of 2023
Order reserved on: 14.05.2024
Order pronounced on: 02.07.2024

Rajesh Kumar

R/O: 206/18, Baroda Road, opposite Allahabad Bank,
Gohana, Sonapat, Haryana- 131301

Complainant

Versus

M/s Aster Infrahome Private Limited.

Regd. office: 24A, Ground Floor, Vipul Agora,
Gurugram- 122001

Respondent

CORAM:

Shri Arun Kumar

Shri Vijay Kumar Goyal

Shri Ashok Sangwan

Chairman

Member

Member

APPEARANCE:

Sh. Anuj Chauhan (Advocate)

Sh. ShankarWig (Advocate)

Complainant

Respondent

ORDER

1. The present complaint dated 15.03.2023 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 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.

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:

S. No.	Particulars	Details
1.	Name and location of the project	"Green Court", Village Hayatpur, Sector-90, Gurugram
2.	Nature of the project	Affordable group housing project
3.	Project area	10.125 acres
4.	DTCP license no.	i. 61 of 2014 dated 07.07.2014 valid up to 06.07.2019 ii. 62 of 2014 dated 07.07.2014 valid up to 06.07.2019
5.	Name of licensee	M/s Aster Infrahome Pvt. Ltd. (For both the licences)
6.	RERA Registered/ not registered	Registered 137 of 2017 dated 28.08.2017 valid up to 22.01.2020
7.	Extension Certificate no.	09 of 2020 dated 29.06.2020 valid up to 22.01.2021
8.	Date of allotment	Not placed on record
9.	Date of execution of agreement of sale	10.03.2016 (Page no. 27 of the complaint)
10.	Unit no.	1204 on 12th floor, in tower F (Page no. 30 of the complaint)
11.	Unit area admeasuring	Carpet area- 320 sq. ft. Balcony area- 98 sq. ft. [As per page no. 30 of the complaint]
12.	Possession clause	<i>Subject to the force major circumstances, intervention of</i>



		<i>statutory authorities, receipt of occupation certificate and Allottee having timely complied with all its obligations, formalities or documentation, as prescribed by Developer and not being in default under any part hereof, including but not limited to the timely payment of installments of the other charges as per the payment plan, Stamp Duty and registration charges, the Developer proposes to offer possession of the Said Flat to the Allottee within period of 4(four) years from the date of approval of building plans or grant of environment clearance, whichever is later (hereinafter referred to as the "Commencement Date.")</i>
13.	Building plan approvals	22.10.2014 [As mentioned in the buyer's agreement at page 29 of complaint]
14.	Environment clearance	22.01.2016 (As per information obtained by the planning branch)
15.	Basic sale price	Rs.13,29,000/- [Page 31 of the complaint]
16.	Amount paid	Rs.10,09,731/- [As alleged by the complainant on page no. 15 of the complaint]
17.	Occupation certificate	17.11.2022
18.	Offer of possession	24.11.2022 (Page no. 14 of the written submission filed by the respondent)
19.	Reminder	12.06.2023 , 22.06.2023 , 04.07.2023 (Page 123-125 of reply)



20.	Cancellation publishes in newspaper dated	20.07.2023 Note: - cancellation is done after the filling of complaint before the Authority (Page no. 126-127 of reply)
21.	Cancellation letter	22.08.2023 (Page no. 24 of the written submission filed by the respondent)

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- I. That in the year 2015, respondent promoted an affordable housing project named 'Green Court' pursuant to the licenses no. 61 & 62 of 2014 under Affordable Housing Policy dated 19.08.2013 on land admeasuring 10.125 acres situated in the revenue estate of village - Hayatpur, Sector - 90, Gurugram.
- II. That the respondent failed to disclose complete set of specifications in advertisements, agreements which were to be adopted for finishing/fittings including but not limited to floorings; door & window frame and panel; kitchen worktop & wall finishing; toilet & bathroom fittings and wall finishing; internal electrical wiring; fitting, electrical points etc.; Internal public services - pipes and fittings, sewage and sanitary fittings; wall finishing; staircase and balcony railing, etc.
- III. That the complainant believing the promises and assurances made by the respondent as true applied for booking a flat on 10.03.2015 vide application bearing no. 004133 Rs.68,503/- were also paid as booking amount. In pursuant to the successful application, allotment of flat no. 1204 in block/tower F having carpet area of 320 sq. ft. and



balcony are of 98 sq. ft. along with one two wheeler parking was done by the respondent in favor of the complainant after draw.

- IV. That the flat buyer's agreement was executed on 10.03.2016 between the parties wherein total cost of the said unit was agreed at Rs.13,29,000/- as per the Affordable Housing Policy, 2013 and Rs.3,32,250/- were already paid and acknowledged till the date of execution of BBA, which is more than 10% of the total cost.
- V. That the possession of the said unit was promised to be delivered within 4 years form approval of building plans or grant of environmental clearances whichever is later. The license was issued to the respondent on 07.07.2014 and environmental clearance was provided on 22.01.2016. Therefore, as per the agreement, the possession date comes out to be 22.01.2020, but the respondent drastically failed to provide the possession on the promised date.
- VI. That the complainant paid installments of Rs.2,75,103/-, Rs.1,66,125/- and Rs.5,00,000/- on 05.09.2015, 15.11.2016 and 24.06.2019 respectively against the allotted unit. Thereafter, the respondent continuously violating applicable laws and terms of BBA and has charged allottees with unreasonable extra charges and payments on one pretext or another.
- VII. That the respondent issued letter dated 22.06.2022 subject as 'Offer of Possession for Fit-out' to the complainant without receiving the occupation certificate from the competent authority along with final demand of various illegal and unlawful demands which include payment of interest free operating security of Rs.10,000/-, service tax of Rs.11,356/-, power backup of Rs.35,000/-, external electrification charges of Rs.27,000/-, dual meter charges of Rs.9,000/-, service



charge & Elect. Cons. of Rs.9,690/-, Labour Cess of Rs.6,137/-, VAT of Rs.26,192/-, administration charges of Rs.15,000/-, GST on other charges, registration charges, stamp duty charges etc. along with other illegal demands.

- VIII. That the respondent is abusing its dominant position against the innocent allottees including complainant and resorting to unfair trade practices to maximize profit at the cost of complainant. Further, that neither the units are habitable or complete nor the common areas and facilities are complete. The respondent has issued final call on incomplete units. The respondent has also not properly disclosed the details of material and products which are used into the construction of the project which is violation of Haryana Affordable Housing Policy, 2013 and other applicable laws.
- IX. That the complainant was sure that having paid huge sum he would get the assured return on monthly basis and possession of the said unit as per the promised dates, but the hopes and confidence has been shattered beyond imagination and it has become a constant harassment and mental torture besides financial loss which he is suffering continuously. That the complainant/allottees being from lower income group and not having any other option had to suffer and to bear rent for months in delay period. The rent paid by the allottees is over and above all the expenses borne by the complainant.
- X. That the respondent has gained undue enrichment to itself by collecting huge sums from the buyers without forwarding any benefits to them. The complainant has lost rent/profit for the more 3 years. The complainant has also lost the value of money which is deposited with the respondent since years. The complainant has also



lost the profit of appreciation of the property due to the delay caused by the developer. The complainant has suffered huge mental agony and harassment as he has been following the respondent via various platform but all efforts of no use.

- XI. That even after making huge payments to developer, the complainant has not received any relief and the mental agony and harassment are continuing till date. The respondent has wrongfully enriched itself by not providing the possession of the said unit to the complainant on due date and is still reaping the benefits of hard-earned life savings of the complainant by retaining the same with itself even after failure to complete the said project.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- i. Direct the respondent company to pay delayed possession charges at the 15% rate of interest.
 - ii. Quashing of illegal and unlawful charges and interest called by the respondent.
 - iii. Penalizing respondent for violation of Act of 2016, and other applicable laws and for breach of contract.

D. Reply by respondent:

5. The respondent by way of written reply made following submissions:
- I. That the complaint filed by the complainant is a misuse of process of law and is misconceived. The complainant has suppressed true and material facts from this Hon'ble Authority and has not placed exact version and material facts before this Authority.



- II. That the complainant has not approached this Authority with clean hands. He is not ready to understand the ongoing situation of pandemic as well as economic slowdown which resulted in delay in completion of project. The matter in dispute does not fall within the purview of Consumer Protection Act. The complainant had booked the flats for speculative purposes and to gain premium over the same, hence the present complaint is not maintainable before this Hon'ble Authority and is liable to be dismissed.
- III. The respondent company is well repudiated company in the real estate market and never had such intentions to cause delay in delivery of its any of the project. Due to reasons beyond the controls of respondent, the delay occurred and still in hard stuck situation after COVID- 19, is standing in all respect to complete the project soon as possible. Allegations made in this para of the complaint are totally false, fabricated, bogus, misrepresented, and indefinite and have no evidentiary value in the eye of law. There is no negligence or any unfair trade practice in order to dupe the hard-earned money of the complainant on the part of respondent company.
- IV. That due to reasons beyond the controls of respondent company, the delay occurred and still in hard stuck situation after COVID- 19, is standing in all respect to complete the project soon as possible. There is no negligence or any unfair trade practice in order to dupe the hard-earned money of the complainant on the part of respondent company. Due to reasons beyond the controls of respondent company, the delay occurred and still in hard stuck situation after COVID- 19, is standing in all respect to complete the project soon as possible. There is no negligence or any unfair trade practice in order



to dupe the hard-earned money of the complainant on the part of respondent company.

V. That the complainant was informed about the terms and conditions of buyer's agreement at the time of booking of the said unit and that said agreement was signed by the complainant after understanding each and every clause, no harassment caused to complainant.

6. Copies of all the relevant documents have been filed and placed on 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. Written submission filed by the parties.

7. The complainant and respondent have filed the written submissions on 24.06.2024 and 21.05.2024 respectively which are taken on record. The additional facts apart from the complaint or reply have been stated by the parties in written submissions are mentioned below.

E.I written submission on behalf of the complainant:

8. The complainant has filed the written submission on 24.06.2024, and made the following submissions: -

- a) The complainant has made payments till 24.06.2019 as apparent from the documents on record and the ledger issued by the respondent.
- b) That the no default notice or reminder was issued by the respondent in name of the complainant.
- c) That the respondent only issued the reminder letters after 12.06.2023, which is after filing of the complaint in March 2023 to make records against the innocent complainant even after respondent breaching all the terms of the BBA.
- d) The respondent has received the OC on 17.11.2022. However, no possession was offered to the complainant after issuance of OC which is apparent from the list of documents wherein respondent has stated



that the offer of possession was made on 22.06.2022 and the OC was later received on 17.11.2022.

- e) The respondent has admitted the fact that no valid offer of possession has been issued to the complainant after issuance of OC.
- f) That the respondent is only claiming to have served reminder dated 12.06.2023, 22.06.2023 and 04.07.2023. All the said reminders were never served upon the complainant and no tracking report has been attached with the list of documents to support their claim.
- g) The said reminder was alleged to be in reference to the offer of possession for fit out dated 24.11.2022 which was never intimated or served upon the complainants. The said offer of possession has also not been annexed with any submission of the respondent. It will not be out of place to state that no offer of possession was issued on 24.11.2023.
- h) The complainant further mentioned the pendency of the present complaint. The complainant further requested to issue valid offer of possession along with copy of OC after removing illegal charges and adjusting delayed possession charges. But, the respondent did not paid any heed.
- i) The cancellation is alleged to be made on 20.08.2023 and the said letter is alleged to be dispatched vide postal receipt dated 22.08.2023, the same was alleged to be dispatched vide postal receipt dated 22.08.2023 to ensure that the complainant is not made aware of such illegal cancellation before the first date of hearing i.e., 23.08.2023.
- j) The alleged cancellation was also not informed to this Authority on the first date of hearing i.e., 23.08.2023. The respondent was duty bound to inform the Authority about the major developments, if any. The respondent intentionally hid the said alleged cancellation to ensure the Authority did not impose any stay on the cancellation or creation of third-party rights. Further, the respondent after intentionally hiding the alleged cancellation, claims to have created third party right by 01.09.2023 without even informing the Authority and the complainant.
- k) That the alleged cancellation claimed by the respondent after filing of the complaint, without service of reminder and illegal and irregular



publication, is liable to be set aside and the unit is liable to be reinstated in the name of the complainant.

- l) The respondent is liable to offer the said unit of the complainant with fresh offer of possession along with copy of OC and charge only legal and valid charges and the complainant is entitled to delayed possession charges.

E.II Written submission on behalf of the respondent:

9. The respondent has filed the written submission on 21.05.2024, and made the following submissions: -

- a. That the complainant booked a flat bearing unit no. F-1204, (Tower F in 12th floor) in the project named "**Green Court**" Commercial Complex in Sector 90, Gurugram, Haryana on 10.03.2015 by making the advance token payment of Rs.68,503/-. The complainant did not have the booking allotment application form with him because the same was never issued by the respondent.
- b. That communication in regard to non-payment of dues for the allotted unit was sent to the complainant *vide* letter 05.09.2020, 03.11.2020, 20.07.2021, 22.06.2022, 24.11.2022, 12.06.2023, 22.06.2023, 23.06.2023, 04.07.2023 and 11.07.2023.
- c. Despite the delay in construction which were beyond the control of the respondent, the occupation certificate with respect to the same was received from the concerned authority on 17.11.2022.
- d. That the complainant was under an obligation to pay the balance sale consideration as per the schedule in a phased manner but the complainant had probably some other plans or was not able to arrange the amount and hence maintained stoic silence despite the various verbal written reminder to him and his broker.
- e. Pursuant to Haryana Government Town and Country Planning Department Notification No. FF-27/15922 dated 5th July 2019, the builder issued a public notice on 20th July 2023 in Dainik Bhaskar and the Tribune newspaper, announcing the cancellation of the allotted flat to the complainant. The same was also intimated to the Complainant *vide* cancellation letter dated 22.03.2022 reference no. 24436.
- f. That the complainant who was acting in a representative capacity to the complainant was also served with the said cancellation letter



dated 22.03.2022 and informed that the respondent had requested the complainant to share their bank details so that refund process can be done. The respondent have refunded Rs.9,06,830/- to the complainant dated 22.11.2023 through RTGS.

F. Jurisdiction of the authority:

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

F. 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.

F. 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(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 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.

G. Findings on the relief sought by the complainant:

G.I Direct the respondent company to pay delayed possession charges at the 15% rate of interest.

G.II Quashing of illegal and unlawful charges and interest called by the respondent.

G.III Penalizing respondent for violation of Act of 2016, and other applicable laws and for breach of contract.

14. The complainant booked a unit in the affordable group housing colony project of the respondent known as "Green Court" situated at sector 90, District- Gurgaon, Haryana and was allotted a unit bearing no. 1240 on 12th floor in tower- F of the project vide application bearing no. 004133, dated 10.03.2015. The flat buyer agreement was executed between the complainant and the respondent on 10.03.2016 for a sale consideration of Rs.13,29,000/- out of which the complainant had paid an amount of Rs.10,09,731/-. As per the possession clause, the possession of the unit was to be offered within 4 years from the date of approval of building plans or from the date of environment clearance, whichever is later.

15. The respondent vide reminder/demand letters dated 12.06.2023, 22.06.2023, final reminder letter dated 04.07.2023 and 11.07.2023 intimated the complainant for payment of the outstanding dues but he failed to adhere the same. It is observed that the complainant failed to pay the remaining amount as per the schedule of payment and which led to issuance of notice for cancellation by the respondent/builder dated 22.08.2023.

16. 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 22.08.2023. In line with the aforesaid facts, the documents and submissions 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?"

17. 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".

18. The respondent company has issued demand cum reminder letters dated 05.09.2020, 03.11.2020, 20.07.2021, 12.06.2023 and final reminder on 22.06.2023 and 04.04.2023. The respondent company has obtained the occupation certificate on 17.11.2022 and offered possession of the allotted unit on 24.11.2022, but on failure of the complainant to take possession of the allotted unit after payment of the outstanding dues, the respondent was constrained to issue notice for cancellation of unit after publishing a list of defaulters in the daily Hindi and English newspaper on 20.07.2023. 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 05.01.2022 is held to be valid.

19. As per clause 5(iii)(i) of the Affordable Housing Policy of 2013, in case of cancellation the respondent can deduct the amount of Rs.25,000/- only and the balance amount shall be refunded back to the complainant. The complainant has made payment of Rs.10,09,731/- and after cancellation, the respondent has refunded Rs.9,06,830/- on 22.11.2023. The respondent company has not returned the balance amount to the complainant in terms with the Affordable Group Housing Policy, 2013 as the respondent has deducted Rs.1,02,901/- instead of Rs.25,000/-. 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., 22.08.2023, till the actual realization of the amount.

G. Directions of the Authority:

20. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:
- The respondent is hereby directed to refund the paid-up amount of Rs.10,09,731/- after deduction of Rs.25,000/- as per clause 5(iii)(i) of the Affordable Housing Policy 2013 and the amount of Rs.9,06,830/- already refunded along with interest @10.95% per annum on such balance amount from the date of cancellation of allotment i.e., 22.08.2023 till the actual realization of the amount.

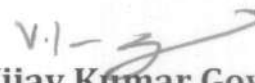



- ii. A period of 90 days is given to the respondent/builder to comply with the directions given in this order and failing which legal consequences would follow.

21. Complaint stands disposed of.

22. File be consigned to the registry.


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 02.07.2024