

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

Complaint no.: 2549 of 2024
First Date of Hearing: 19.09.2024
Date of Decision: 23.01.2025

Nisha
R/o: VPO-Kherka Gujar, Dulhera
Jhajjar, Haryana-124507

Complainant

Versus

M/s Riseonic Realty Private Limited.
Regd. Office at: A-611, 6th Floor,
Pioneer Urban Square, Sector-62,
Golf Course Extension Road,
Gurugram-122001

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Sh. Harshit Batra (Advocate)
Sh. Prashant Sheoran (Advocate)

Complainant
Respondent

ORDER

1. The present complaint dated 30.05.2024 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 thereunder or to the allottee as per the agreement for sale executed *inter se*.

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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. No.	Particulars	Details
1.	Name and location of the project	"Solitaire" Sector- 70, Gurugram
2.	Nature of the project	Affordable Group Housing
3.	Project area	9.0625 acres
4.	DTCP license no.	03 of 2022 dated 07.01.2022 valid up to 06.01.2027
5.	Name of licensee	Revital Reality Pvt. Ltd. & others
6.	RERA Registered/ not registered	42 of 2022 dated 25.05.2022 valid up to 31.10.2022
7.	Unit no.	307, 3 rd floor and Tower/Block-T4 (As per page no. 19 of the complaint)
8.	Unit area admeasuring	640.66 sq. ft. (Carpet area) & 150.69 sq. ft. (Balcony Area) (As per page no. 4 of the complaint)
9.	Date of allotment letter	24.09.2022 (As per page no. 16 of the complaint)
10.	Date of execution of agreement for sale	Not executed
11.	Date of building plan approval	07.04.2022 (As per page no. 19 of the complaint)
12.	Environmental clearance dated	20.04.2022 (As per page no. 19 of the complaint)
13.	Possession clause	N.A
14.	Due date of possession	20.04.2026 [Note: Due date of possession to be calculated 4 years from the date of environmental clearance dated 20.04.2022, being later] (As per Affordable Group Housing Policy, 2013)
15.	Total sale consideration	Rs.27,90,814/- (As per page no. 20 of the complaint)
16.	Amount paid by the complainant	Rs.7,04,880/- (As per demand letter dated 22.03.2023)

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17.	Occupation certificate	Not obtained
18.	Offer of possession	Not offered
19.	Demand letter	22.03.2023 (As per page no. 22 of the reply)
20.	Reminder letter	13.04.2023 (As per page no. 30 of the reply)
21.	Pre-cancellation letter	30.05.2023 (As per page no. 41 of the reply)
22.	Publication in newspaper	04.08.2023 (As per page no. 45-46 of the reply)
23.	Cancellation notice by email	24.08.2023 (As per page no. 50 of the reply)
24.	Intimation to collect the cheque dated 12.09.2023 for refund of the amount	Rs.6,42,249/- (As per page no. 53 of the reply)
25.	Allotment letter in favour of third party i.e., Mr. Sandeep	26.08.2023/- (As per page no. 54 of the reply)

B. Facts of the complaint:

3. The complainant has made the following submissions:
- I. That the complainant is a law-abiding and peace-loving citizen of India having residential address as VPO-Kherka Gijar, Dulhera Jhajjar, Haryana, who was lured by the respondent to invest her hard-earned money into the project of the respondent.
 - II. That the complainant booked a unit in the Affordable Housing Project "Solitaire" of the respondent situated at Sector 70, Gurugram under the Affordable Housing Policy, 2013 on 15.07.2022 and paid an amount of Rs.1,35,130/- towards the booking amount.
 - III. That after the said booking, the respondent issued an allotment letter dated 24.09.2022 to the complainant and allotted a unit bearing no. T4-307 on 3rd floor, Tower T4 (3BHK-type 1) admeasuring 640.66 sq. ft. carpet area and 150.69 sq. ft. balcony area.



- IV. That the complainant believing the false representations made by the respondent with respect to the timely delivery of the said project and the execution of the buyer's agreement paid an amount of Rs.7,05,270/- to the respondent on 18.10.2022. However, all of the promises made by the respondent were proved to be false as the respondent failed to execute the BBA.
- V. That the complainant visited the offices of the respondent numerous times to get the same executed, however, to the dismay of the complainant, the respondent paid no heed to the requests of the complainant and failed to execute the builder buyer's agreement despite the payment of more than 10% of the total sale consideration of the unit.
- VI. That it is most vehemently submitted that the non-execution of the agreement does not bar the present claim of the complainant. It is also categorical to note that by taking a substantial sum of money without executing the buyer's agreement is a grave violation of section 13 of the Act.
- VII. That the complainant's dream of owning a peaceful possession, as promised by the respondent has been shattered by the respondent in a most unlawful and illegal manner. It is anticipated that the respondent had *malafide* intention from the very beginning with the intention to cheat and harm the innocent homebuyers.
- VIII. That the complainant, trusting the words and promises of the respondent, diligently kept on paying the demands raised by the respondent in the hopes that the said payments from her hard-earned income is going towards the timely delivery of her dream home. However, all the promises of the respondent turned out to be false and the respondent, owing to its *malafide* intention, never executed

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the buyer's agreement despite the complainant making all the payments on due time.

- IX. That the complainant had visited the site of the project and was devastated to see the fact that the construction of the project is far behind its schedule. Even after almost 2 years of the booking of the unit, it has not been completed and not even any BBA has been executed by the respondent which clearly shows the *malafide* intention of the respondent.
- X. That with the dream of owning a house that was advertised to be a progressive and aesthetic property, the complainant made payments to the respondent as and when required however, looking at the status of the construction of the project, the complainant could not help but feel helpless as there was not even an iota of construction to be seen at the project site.
- XI. That the complainant after the payment of dues against her unit realized that all the assurances and representations made by the respondent are fraudulent.
- XII. That the act and conduct of respondent is contrary to the settled law. It is patent from the present facts that there has been grave default in fulfilment of commitments by respondent, in a timely fashion and the same has been acting contrary to the lawful.
- XIII. That the complainant strongly opines that the method chosen by the respondent in duping the complainant amounts to unfair trade practices for which the respondent is liable to be punished in accordance with the law, hence the present complaint.

C. Relief sought by the complainant:

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

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- i. To restrain the respondent from terminating the unit till the final disposal of the present complaint.
 - ii. Direct the respondent to execute and register the builder buyer's agreement.
 - iii. Direct the respondent to provide on affidavit, a date till which a valid offer of possession shall be given.
 - iv. Direct the respondent to provide a valid physical possession after receipt of occupancy certificate.
 - v. Direct the respondent to pay delay possession charges.
 - vi. Direct the respondent to execute the conveyance deed after offering valid offer of possession to the complainant.
 - vii. To restrain the respondent from charging any labour cess, VAT and maintenance charges in future as the complainant is not bound to pay the same under the Affordable Housing Policy, 2013.
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 on the following grounds:
- I. That the present complaint is not maintainable as the unit has already been cancelled and complainant had specific notice and knowledge of the same and same was not challenged by complainant.
 - II. That the complainant in the present case has demanded compliance of affordable housing policy. That filing of present complaint itself acknowledged the fact that the terms and conditions of affordable housing policy are binding on both the parties and accordingly the



- complainant is also bound by the provisions of Affordable Housing Policy, 2013. It is submitted that merely because complaint has been filed before this authority but as the project in issue is an affordable housing project thus the rules of affordable housing policies will be applicable in present case and even the Act of 2016 was enacted in addition to already existing laws. That as the affordable housing policy is a special law thus same is applicable in present case and said fact was regularly acknowledged by the Act of 2016 itself either it may be case of cancellation, time and manner of payment, date of possession, interest, maintenance charges etc. The affordable housing policy is deals with each and every aspect related to relation between builder and buyer, thus same is applicable even in the absence of any builder buyer's agreement, since all the rights and duties of builder and buyer are well defined in policy itself.
- III. That it is clear from the pleadings that date of possession is yet to arrive, however since the allotment is already stand cancelled due to defaults committed by complainant, thus even otherwise complainant is not entitled for possession. That the issue revolves around the fact whether cancellation done by respondent is valid or not or whether same has been done after following due process of law.
- IV. That as per Affordable Housing Policy, 2013 "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 him 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 news-paper having circulation of more than ten thousand in the State for payment of due amount within 15 days

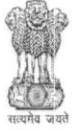
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from the date of publication of such notice, failing which allotment may be cancelled". That in the present case cancellation has been done after following due process.

- V. That as per Affordable Housing Policy, 2013 " Any person interested to apply for allotment of flat in response to such advertisement by a coloniser may apply on the prescribed application form along with 5% amount of the total cost of the flat" and it is further specifically mentioned in affordable housing policy that "the applicant will be required to deposit additional 20% amount of the total cost of the flat at the time of allotment of flat" thus the plea of complainant that promoter cannot demand more than 10% is of no use in case of affordable housing policy since as per law an applicant is required to pay 25% at the time of allotment. In the present case admittedly allotment of the flat was done on 24.09.2022.
- VI. That at the time of issuance of allotment letter respondent requested the complainant to get the agreement signed within 20 days of allotment. However, complainant intentionally didn't come forward to execute builder buyer's agreement. That clearly the intentions of complainant were to avoid payment of remaining 75% payment on time. That like complainant lots of other allottee also failed to come forward for execution of builder buyer's agreement after getting allotment in their favour thus, on respondent on 27.01.2023 sent an email to the complainant along with other allottees to update their availability from Monday to Friday so that their registration of builder buyer's agreement could be completed. However, the complainant herself failed to present herself for getting the BBA registered. It is submitted that merely because complainant was not coming forward to get the BBA registered does not means she is not liable to pay any

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amount by taking shield of her own fault of not getting the BBA registered. That the allotment letter itself contained payment plan and as per said payment plan complainant was obliged to pay 12.5% of total cost at the stage of completion of sub-structure. That respondent tried several times that the complainant would come for execution of buyer's agreement but each and every time complainant pays no heed to genuine request of respondent.

- VII. That in the meantime as the construction of project progresses and respondent achieved the milestone of completion of sub-structure and accordingly respondent sent an email to complainant and demanded payment as per payment plan. The complainant even after receiving of said demand letter neither came forward to get the builder buyer agreement registered not opted to pay the amount demanded by the respondent on the stage of completion of sub-structure.
- VIII. That the complainant is a habitual defaulter and since inception complainant was making defaults in payment as well as execution of builder buyer agreement. It is pertinent to mention here that payment plan in affordable housing policy is governed by said policy.
- IX. That even respondent followed due course of law as prescribed in Haryana Affordable Housing Policy, 2013 and even requested to collect the balance amount, however complainant failed to collect the said cheque. That the unit was later on allotted to applicants in waiting list and the current allottee of the unit in question is Mr. Sandeep.
- X. That complainant intentionally not coming forward to collect the cheque and for the same reason respondent is not liable to pay any interest on the balance amount as the respondent is always ready and

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still ready to pay balance amount, that an order against complainant my kindly be passed directing her to receive balance amount either in court or by providing her account details, so that amount can be transferred online directly in her account.

- XI. That the above stated grounds are sufficient enough for dismissing the complaint of complainant. Thus, the present complaint may kindly be dismissed.
7. 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 those undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority:

8. 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, 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

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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.

9. 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. Findings on the relief sought by the complainant:

F.I To restrain the respondent from terminating the unit till the final disposal of the present complaint.

10. The complainant was allotted a unit in the project of respondent "Solitaire", in Sector-70, Gurugram vide allotment letter dated 24.09.2022 for a total sum of Rs.27,90,814/-. Though no agreement for sale was executed between the parties but the complainant started paying the amount due against the allotted unit and paid a total sum of Rs.7,04,880/-. As per clause 1 (iv) of the Affordable Housing Policy, 2013, the possession of the apartment is to be delivered within 4 years from the date of approval of building plans or grant of environmental clearance, whichever is later. Clause 1(iv) of the Policy of 2013 is reproduced below for ready reference:

1.

(iv) All such projects shall be required to be necessarily completed **within 4 years from the approval of building plans or grant of environmental clearance certificate, whichever is later.** This date shall be referred to as the "date of commencement of project" for the purpose of this policy.

(Emphasis supplied)

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11. The due date of possession is to be calculated 4 years from the date of environment clearance i.e., 20.04.2022. Therefore, the due date of possession comes to 20.04.2026 as per the clause of Affordable Housing Policy, 2013.
12. In present complaint, the relief sought by the complainant in the complaint is of delayed possession charges as per the provisions of the Act of 2016, as the complainant intends to continue with project. But as per the documents placed on record with the complaint, the Authority observed that the unit is cancelled on 24.08.2023 i.e., way before the filing of the present complaint.
13. The counsel for the complainant vide proceedings of the day dated 23.01.2025 stated that the complainant intends to continue with the project and requests for setting-aside the cancellation of the unit. However, the counsel for the respondent brought to the notice of the Authority that the respondent has cancelled the unit of the complainant on account of non-payment by the complainant. Though the respondent has raised demand for payment for outstanding dues but the complainant never paid any heed to the same and till date paid an amount of Rs.7,04,880/- only against the consideration of Rs.27,90,814/-. The respondent has duly followed the due procedure as per the Affordable Housing Policy, 2013 and after issuing reminder letter as well as pre-cancellation letter dated 30.05.2023 made a publication in the newspaper on 04.08.2023 but the complainant failed to pay the outstanding dues. Thereafter, the respondent issued a cancellation letter dated 24.08.2023 and allotted the unit of the complainant to third-party and issued an allotment letter in favour of Mr. Sandeep on 26.08.2023. The counsel further stated that an email dated 03.10.2023 was sent to the complainant for collection of cheque of Rs.6,42,249/- for refund of the

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amount paid by the complainant after deductions as per Affordable Housing Policy, 2013, but no proof of the same has been placed on record whether the cheque has been encashed by the complainant or not. He further states that the unit of the complainant cannot be restored at this stage as the unit has already been allotted to third-party and he is willing to refund the amount after deductions as per Affordable Housing Policy, 2013.

14. The cancellation of the unit stands valid as the respondent cancelled the unit after following the due procedure prescribed under Affordable Housing Policy, 2013. The unit of the complainant is not available anymore and the only relief which can be provided to the complainant is of refund, the respondent already clarified his stance that the complainant is entitled to refund as per clause 5(iii)(i) of Affordable Housing Policy, 2013 in case any successful applicant fails to deposit the instalments within the stipulated time. In such case, an amount of Rs.25,000/- can be forfeited by the colonizer and the balance amount shall be refunded to the applicant-allottee. Relevant portion of clause 5(iii)(i) of the Affordable Housing Policy, 2013 is reproduced below for ready reference:

- i. 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 him 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 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.*

15. In the present case, the complainant has failed to pay the due instalments even after issuance of demand letter, reminder letter, pre-cancellation and publication in the newspaper. Keeping in view the aforementioned

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factual and legal provisions, the respondent can retain the amount paid by the complainant against the booked unit as per clause 5(iii)(i) of Affordable Group Housing Policy, 2013 i.e., Rs.25,000/-.

16. The prescribed rate of interest as per Rule 15 of Rules, 2017 payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State Bank of India highest marginal cost of lending rate plus two percent.
17. The authority hereby directs the promoter to return the amount received by him i.e., Rs.7,04,880/- after deducting the amount of Rs.25,000/- as per above-mentioned clause of Affordable Group Housing Policy, 2013 along with interest at the rate of 11.10% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of cancellation i.e., 26.08.2023 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

F.II Direct the respondent to provide a valid physical possession after receipt of occupancy certificate.

F.III Direct the respondent to pay delay possession charges.

F.IV Direct the respondent to execute and register the builder buyer's agreement.

F.V Direct the respondent to provide on affidavit, a date till which a valid offer of possession shall be given.

F.VI Direct the respondent to execute the conveyance deed after offering valid offer of possession to the complainant.


F.VII To restrain the respondent from charging any labour cess, VAT and maintenance charges in future as the complainant is not bound to pay the same under the Affordable Housing Policy, 2013.

18. The Authority observes that the unit of the complainant is not available at this stage as the same has been cancelled on account of non-payment of dues by the complainant-allottee by following due procedure as presented under Affordable Housing Policy, 2013 and only relief

provided to the complainant is refund in terms of the said policy of State Government. As the Authority is allowing the refund of the paid-up amount along with interest as mentioned in para 17, all above sought reliefs by the complainant becomes redundant.

G. Directions of the Authority:

19. 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 amount i.e., **Rs. 7,04,880/-** received from the complainant-allottee after deducting the amount of Rs.25,000/- as per clause 5(iii)(i) of Affordable Group Housing Policy, 2013 along with interest on such balance amount at the rate of 11.10% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of cancellation i.e., 24.08.2023 till the actual date of refund of the amount.
 - ii. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.
20. Complaint stand disposed of.
21. File be consigned to registry.


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 23.01.2025