



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	766 of 2024
Date of filing:	31.05.2024
First date of hearing:	05.08.2024
Date of decision:	17.03.2025

Mr. Vaibhav Swami, S/o Sh. Gopal Krishan Swami,
R/o 0605, Tower N17, Jaypee Green Aman,
Sector-151, Noida, Uttar Pradesh-201301

.....COMPLAINANT

Versus

PSG Propbuild LLP

Regd. Office: H.no.A-43, 1st floor, Front site Shera Mohalla Garhi,
Near East of Kailash, New Delhi-110065.

Corporate office: 1F-22-26, Ozone Centre, Sector-12, Faridabad, Haryana

.....RESPONDENT

CORAM: Nadim Akhtar

Member

Chander Shekhar

Member

Present: - Adv. Nipun Rao, Counsel for the complainant, through VC.

Adv. Rohan Gupta, Counsel for the respondent through VC.

ORDER (NADIM AKHTAR-MEMBER)

1. Present complaint has been filed by the complainant on 31.05.2024 under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (hereinafter referred as RERA Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

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, delay period, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name of the project	Adore Prosperity Homes, Sector-86, Faridabad, Haryana
2.	Name of the promoter	PSG Propbuild LLP
3.	Unit No. allotted	M-104, Tower M, 1 st floor
4.	Unit area (Carpet	645.84 sq.ft.



	area)	
5.	Date of allotment	20.12.2023
6.	Date of Builder Buyer Agreement	Not executed
7.	Due date of offer of possession	Not required
8.	Possession clause in BBA	Not available
9.	Total sale consideration	₹35,16,660/-
10.	Amount paid by complainant	₹1,61,460/- as on record. As per allegation of complainant ₹8,95,074/-.
11.	Offer of possession	Not given

B. FACTS OF THE COMPLAINT

3. Complainant booked a unit having carpet area of 645.84 sq. ft. in the project namely; Adore - Prosperity Homes, Sector-86, Faridabad, Haryana of the respondent for total sale consideration is ₹35,16,660/-.
4. That on 18.11.2023, complainant made payment of ₹1,61,460/- having transaction ID as DP405243. That booking amount paid is annexed as Annexure C-1.
5. That respondent allotted unit no. M-104 in Tower-M, 1st Floor, having a carpet area of 645.84 sq. ft. and balcony area of 180 sq. ft. along with two-wheeler parking and car parking area in the above mentioned project to the complainant vide letter dated 20.12.2023. That after that a demand of ₹7,33,614/- was raised by the respondent,



upon this demand a cheque amounting to ₹7,33,614/- dated 07.01.2024 of HDFC Bank was issued by the complainant in favor of the respondent and the same was duly sent to the respondent. That the allotment letter and the second payment made are annexed as Annexure C-2 & C-3.

6. It is pertinent to mention here that the said cheque in question was never realized/encashed by the respondent till date. That the complainant raised this issue with the respondent through email dated 31.01.2024 stating that the said cheque is sent by him at their corporate office address and further asked them to acknowledge the payment made by the complainant.
7. That the respondent being in a dominant position acted arbitrarily and reverted to the email of the complainant on dated 31.01.2024 stating therein ^{that} "Your unit stands cancelled, no payment is accepted now, your DD of refund is ready, kindly receive it from the office directly". That the respondent company has unilaterally and arbitrarily cancelled the unit and the complainant never thought of getting the unit cancelled. That the copy of email transaction and the email dated 31.01.2024 are annexed as Annexure C-4.
8. It is pertinent to mention here that the complainant never received any pre-cancellation notice or any cancellation/termination letter or the



respondent had never got the publication done as per the norms of the valid cancellation of Affordable Housing Policy 2013.

9. That the main rationale of the respondent behind the cancellation was that the respondent wants to sell the above said unit at a higher rate to some other buyer, as the price paid by the complainant as per the allotment dated 20.12.2023 was low, as compared to prices of the units in that area as of today. That the respondent company is an experienced company in the business of making residential/affordable apartments, this deliberate act of cheating its customer and at the same time, committing a gross misconduct of non-compliance of the rule is nothing short of criminal. The aforesaid arbitrary and unlawful acts on the part of respondent have resulted into extreme kind of financial hardship, mental distress, pain, and agony to the complainant.
10. That the complainant has requested the respondent several times on making telephonic calls and also personally visiting the offices of the respondent to execute the builder buyer agreement of the unit in question and the complainant is ready to pay the balance amount of the sale consideration as per the terms agreed between the parties in the allotment letter, but respondent has flatly refused to do so. Thus, the respondent in a pre-planned manner defrauded the complainant



with his hard-earned huge amount of money and wrongfully gains himself and caused wrongful loss to the complainant.

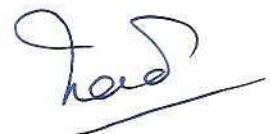
11. That the present complaint has been filed in order to seek a direction to the respondent to set aside the cancellation conveyed by the respondent via email dated 31.01.2024 and to get the registration of builder buyer agreement in favour of the complainant.

12. That in the interest of justice, the compliant may be allowed and necessary direction as mentioned in relief sought to execute the builder buyer agreement in favor of complainant be passed. According to the relief claimed by the complainant, this Hon'ble Forum only has Jurisdiction to try the present complaint. The complainant reserves the right to seek compensation from the promoter for which he shall make a separate application before the Adjudicating Officer, if required.

C. RELIEFS SOUGHT

13. Complainant has sought following reliefs :

- (i) The cancellation letter dated 31.01.2024 vide which unit allotted to the complainant shall either be cancelled by the respondent company or may kindly be set aside.
- (ii) Directions shall be given to the respondent company to execute the builder buyer agreement of the said unit with the complainant.



- (iii) Directions shall be given to the respondent to accept the payment made by the complainant.
- (iv) Directions shall be given to the respondent to restrain the respondent from allotting or selling the subject unit to any other party.
- (v) A direction to the respondent to refund of all legal cost of ₹1,00,000/- incurred by the complainant including cost related to this complaint, may kindly be issued.
- (vi) Issue of such other appropriate order as this Hon'ble Authority may deem fit and proper in the facts and circumstances of the case and in the interest of justice, equity and good conscience.
- (vii) **Interim order:** Restrain the respondent from creating any third party interest on the said unit, till final decision of the present complaint and set aside the cancellation of the said unit, if any, made by the respondent.

D. REPLY ON BEHALF OF RESPONDENT

14. That the respondent filed a detailed reply on 02.08.2024 stating therein that the respondent is developing a project "Adore Prosperity Homes" (Affordable Group Housing Colony) in Sector-86, Faridabad over the land admeasuring area of 6.34375 Acres in terms of the Licenses bearing no. 112 of 2023 and the building plans were sanctioned by DTCP vide memo no. ZP- 1811/JD(NK)/2023/30576 dated 14.09.2023. The Project of the Respondent is duly registered



with HRERA Panchkula vide Registration No. HRERA-PKL-FBD-509 of 2023 and the same are valid and subsisting.

15. That vide allotment letter dated 20.12.2023, the complainant was asked to complete 25% of the total consideration of the flat along with taxes, i.e., ₹7,33,614/- within 15 days from the date of the said allotment letter. That in the said letter it has been clearly mentioned that *"Please be noted that in the event of your failure to make the payment due as aforesaid within 15 days of the date of this letter, the company shall be entitled to cancel your right of allotment and shall refund the amount paid by you."* Thus, the complainant were to make the payment on or before 05.01.2024 (last date of expiry of 15 days period from the offer of allotment letter dated 20.12.2023). Copy of offer of allotment letter dated 20.12.2023 is annexed as Annexure R1.
16. It is denied that the complainant in this regard visited the respondent company enquiring about the execution of builder buyer agreement but all went in vain thereafter, through email sent by the respondent dated 31.01.2024, the complainant got shocked to know that despite receiving an initial amount by the respondent, the respondent arbitrarily cancelled the unit and is trying to sell the unit in question at a higher price.
17. That the complainant has concealed the letters dated 11.01.2024 and 08.02.2024, sent by the respondent through speed post pertaining to



the information regarding the "*Cancellation of the allotment of flat*" but the complainant failed to reply to the said letters. Vide said letters the respondent informed the complainant-allottee that the allotment of unit stood cancelled and respondent is ready with draft for refund of the entire booking amount which can be got collected from the office of the respondent. Respondent further informed that the respondent shall not be liable to pay any interest on the same to the complainant. The said letters dated 11.01.2024 and 08.02.2024 along with the speed post receipts are annexed as Annexure - R-2. Complainant has hidden the receipt of the said letters intentionally which clearly shows that the complainant is trying to put the blame on the respondent for his delay in making the payment and failed to pay with in the time given as per allotment letter dated 20.12.2023.

18. Complaint is not maintainable as the complainant-allottee is a defaulter in making timely payment of instalment due upon allotment despite in receipt of the offer of allotment cum demand letter. The allotment has been cancelled in accordance with the Affordable Housing Policy 2013 (as amended upto date) of the Govt. of Haryana ("Policy").

19. Further, there has been series of the email communications between the complainant and the respondent which clearly proves that the complainant was not ready with the funds for making the payment of



the allotment amount and is further not having sources to make the payment of future instalments and is relying on the housing loan to be availed by the complainant to make future payments. As per the emails attached by the complainant, the complainant had stated the following vide his email dated 08.01.2024:

"I acknowledge receipt of your letter with the above reference regarding allotment of flat no. M-104 in my name, received attached your mail dated 23 Dec 2023. In this connection, I advise that I am in process of availing housing loan from HDFC, Faridabad for the above mentioned flat and will make payment as per demand letter shortly. This is for your kind information please."

The company replied to the said email dated 08.01.2024 vide reply email dated 22 January 2024, which states as under:

"25% payment is to be done by self-funding, it's compulsory. You can process the loan only after paying the demanded amount."

The complainant replied vide his email dated 22 January 2024

"Dear Sir, I have arranged funds as per your advise to make this payment. I will avail Housing Loan to make subsequent payments. Please advise on which address cheque is to be sent, Registered office address or Corporate office address. However, it would be best if you can provide me account details of the firm, so that I can



make payment in form account directly through RTGS and can share screenshot of payment. Please advise."


The complainant again on 31 January 2024 sent an email, which stated as under:

"Dear Sir

In continuation of my trailing mail, I have sent Cheque of Rs.7,33,614/- (scan copy attached) to your corporate office address by courier dated 30 Jan 2024. Please acknowledge receipt. Please let me know if any interest obligation is there due to delayed payment. I shall make the payment immediately."

Thus admittedly, the complainant sent the cheque only on 30.01.2024 as per his own version of the emails exchanged with the respondent company.

20. That the respondent for the benefit of the complainant had sent an email dated 03.02.2024 to the complainant stating that *"Sir, do visit the office and have a word with HOD directly"* but here also the complainant vide email dated 05.02.2024 replied that he is in Bangalore right now and will come to office next time when he will visit Delhi. It is well evident that the complainant was least interested in the said flat and rather coming to office and had words with the authorities, he kept playing blame game on emails and at last filed the present application based on false and frivolous facts.



21. It is denied that the complainant made payment of Rs.8,95,074/- to the respondent vide cheque, the respondent duly accepted the first payment made by the complainant. That on 18.11.2023 the complainant made a payment of ₹1,61,460/- having transaction ID as DP405243 as booking amount. Whereas, as per the offer of allotment letter dated 20.12.2023 and as per the policy, terms and conditions of the said letter, the complainant had failed to pay the allotment installment on time, i.e., completion of 25% of the total consideration amount to ₹8,95,074/- out of which ₹1,61,460/- has been paid and ₹7,33,614/- was to be paid by the complainant within 15 days from the date of the said letter i.e., by 05.01.2024. That as per the email conversations of the complainant and respondent via email dated 08.01.2024, it is evident that the complainant after the stipulated time got over had sent email to the respondent for seeking time for the arrangement of funds wherein the respondent has duly replied that the complainant had to pay 25% payment through self-funding.

22. Thereafter on 22.01.2024, the complainant sent an email stating that he has arranged the funds fully knowing that the stipulated time had got over but failed to send the cheque even on the said date. The complainant had admitted in his email dated 31.01.2024 that the complainant had sent the cheque only on 30.01.2024 through courier. The above said facts clearly transpires that the complainant was



negligent as well as in default in making the payment and by the time the complainant had sent the cheque, the allotment was already cancelled by the respondent vide letter dated 11.01.2024. Copy of email conversations are Annexed as R-3.

23.It is admitted to the extent that an offer of allotment letter was issued by the respondent in favor of the complainant vide letter dated 20.12.2023. It is wrong and denied that after that a demand of ₹7,33,614/- was raised by the respondent, upon this demand a cheque amounting to ₹7,33,614/- dated 07.01.2024 of HDFC Bank was issued by the complainant in favor of the respondent and the same was duly sent to the respondent. That the schedule for next payment was duly mentioned in the said demand cum allotment letter dated 20.12.2023. As per the said letter, the last date of making the due payment was of 04.01.2024. Whereas the complainant had sent the cheque only on 30.01.2024 which was antedated, which clearly shows the failure on the part of the complainant to make the payment within the given time period as per letter dated 20.12.2023.

24.The cheque in question was never realized/encashed by the respondent till date as the offer of the allotment stood cancelled vide letter dated 11.01.2024. It is further wrong and denied that the complainant raised the issue with the respondent through email dated 31.01.2024 stating that the said cheque is sent by him at their



corporate office address and further asked them to acknowledge the payment made by the complainant. That the cheque sent by the complainant to the respondent was not encashed/realized as the complainant has failed to pay the installment/ due amount on time and as per the terms and conditions of the demand cum allotment letter dated 20.12.2023, the unit of the complainant stands cancelled which was duly informed to the complainant vide letter dated 11.01.2024.

25. That the respondent has neither violated the Affordable Housing Policy and Haryana Real Estate (Regulation and Development) Act, 2016 nor arbitrarily cancelled the unit nor forfeited the amount paid by the complainant. That having defaulted in making the payment by the complainant, the unit of complainant stood cancelled and the amount which the complainant had paid, the same has been offered to the complainant without the any deductions, as a goodwill gesture but the complainant had failed to collect the DD from the respondent's office and had filed the present false and frivolous case before the Hon'ble Authority.

26. It is wrong and denied that the main rationale of the respondent behind the cancellation was that the respondent wants to sell the above said unit at a higher rate to some other buyer, as the price paid by the complainant's as per the allotment dated 20.12.2023 was low as compared to prices of the units in that area as of today. It is



submitted that the project is an affordable housing project and prices of the same are regulated by the DTCP, Haryana and the Respondent cannot make the allotment without taking permission from DTCP. It is further wrong and denied that the respondent company is an experienced company in the business of making residential/affordable apartments, this deliberate act of cheating its customer and at the same time, committing a gross misconduct of non-compliance of the rule is nothing short of criminal.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT:

27.Ld. counsel for complainant reiterated the facts of the complaint and stated that respondent did not adhere to the clause 5 (i) of the Affordable Housing Scheme 2013, as per which respondent was required to send the reminders before cancellation. On the other side, ld counsel for respondent reiterated that pleadings of the reply and stated that complainant did not paid an amount of ₹7,33,514/- upon which only allotment was confirmed. Further, there was no requirement to fulfil the clause 5(i) because this clause is applicable only when the confirmation money is paid by the complainant.

F. ISSUE FOR ADJUDICATION

28.Whether the complainant is entitled to reliefs sought or not ?



G. OBSERVATIONS AND DECISION OF AUTHORITY

29. Authority has gone through the arguments submitted by both the parties and observes that complainant applied for a 2BHK residential flat in the project namely Prosperity Homes Sector-86, Faridabad via application no. 120487 and by paying booking amount of ₹1,61,460/- on 18.11.2023. Thereafter, respondent allotted a residential flat (2BHK) bearing no. 104, Tower M on the 1st floor having carpet area of 645084 sq. ft and Balcony area of 180 sq. ft for a total sale consideration of ₹35,166,60/- vide allotment letter dated 20.12.2023. After receiving the allotment letter, no payment is being made by the complainant within 15 days as stipulated in the allotment letter. On 08.01.2024, complainant wrote an email to the respondent that he acknowledges the receipt of the allotment letter and stated that he is in the process of availing housing loan from HDFC, Faridabad for the abovementioned flat and will make the payment as per the demand letter shortly. In reply to this email, on the same date respondent wrote to the complainant that *25% payment is to be done by self funding, its compulsory. You can process the loan only after paying the demanded amount.* Even then no payment was made by the complainant.

Thereafter, respondent cancelled the allotment letter and cancellation letter dated 11.01.2024 was sent at the address of the complainant



which can be inferred from the postal receipt attached as Annexure R2. After issuing of cancellation letter no communication took place between the parties.

On 22.01.2024, complaint wrote an email to the respondent mentioning that he has arranged the funds as per advise and will avail housing loan to make subsequent payments. Again on 31.01.2024, complainant wrote an email stating that he has sent cheque of ₹7,33,614 to the corporate office address by courier dated 30.01.2024. In reply to this, respondent stated that your unit stands canceled, no payment is accepted now and informed that DD of refund is ready and receive it from office. Thereafter 01.02.2024, 02.02.2024, 03.02.2024, 05.02.2024, 06.02.2024 and 15.02.2024 various emails were exchanged between the parties regarding cancellation of allotment and refund of paid amount.

30. Now to determine the validity of a cancellation letter issued on 11.01.2024, a thorough review of the sequence of events, including the allotment terms and terms of the cancellation clause are necessary. It is clear that as no builder buyer agreement is executed till date. Therefore, complainant was obliged and bound by the terms and conditions of allotment letter dated 20.12.2023. As per the allotment letter dated 20.12.2023, complainant was liable to complete 25% of the total sale consideration of flat alongwith applicable taxes



within 15 days from the date of allotment letter. Also, complainant was required to remit an amount of ₹7,33,614/- in favour of "PSG Propbuild LLP" on or before 05.01.2024 to confirm acceptance of allotment letter. Details of the amount payable is appended below for reference:

Dues payable on Allotment (complete 25% of Total consideration) (A)	GST Payable (B)	Total Payable (C) (A+B)	Already Paid (D)	Net Payable (C-D)
8,79,165	15,909	8,95,074	1,61,460	7,33,614

Also, relevant paras of allotment letter are reproduced for reference:

".....You shall not be entitled to any rights in the said allotment/Flat, till the execution of Agreement for Sale by you & receipt of allotment money of Rs.7,33,614/- as aforesaid.

Please be noted that in the event of your failure to make payment dues as aforesaid within 15 days of the date of this letter, Company shall be entitled to cancel your right of allotment and shall refund the amount paid by you."

In consonance with the terms of letter, complainant was required to complete the initial payment of 25% of total cost of flat within 15 days that is on or before 05.01.2024 and on failure to make payment company shall be entitled to cancel right of allotment and refund the



paid amount. Meaning thereby, allotment rights in favor of the complainant were to accrue only on the payment of ₹7,33,514/- and execution of agreement for sale. This condition is clearly highlighted in the allotment letter. Also, it is admitted in pleadings and not denied during the course of argument that complainant had not received the allotment letter dated 20.12.2023. Hence, complainant was well aware that he was obligated to make payment and follow the terms and conditions of the allotment letter to become a successful allottee of respondent. Despite having detailed and duly comprehensive agreed allotment letter containing all the required ingredients of agreed terms and conditions, complainant did not make the payment as required and therefore, respondent was right in exercising his right for cancellation of allotment. Therefore, the cancellation dated 20.12.2023 is valid and no rights to claim allotment of unit are created in favour of the complainant. At this stage, no valid allotment stands in favour of complainant.

In view of aforesaid observations, the Authority is of view that reliefs claimed by the complainant vis-à-vis execution of builder buyer agreement, accept the payment made by the complainant and restrain third party rights cannot be adjudicated.

31. Authority decides to dispose of the captioned complaint as **dismissed** on the ground mentioned above. Hence, the complaint is



accordingly **disposed of** in view of above terms. File be consigned to the record room after uploading of the order on the website of the Authority.


CHANDER SHEKHAR
[MEMBER]


NADIM AKHTAR
[MEMBER]

