

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

Complaint no.: 5558 of 2022
Date of filing : 10.08.2022
Date of order : 04.03.2025

Neena Agrawal
R/o: - 269, First Floor, Mayfield Garden
Sector- 51, Gurugram, Haryana-122001.

Complainant

Versus

M/s Lotus Realtech Private Limited.
Regd. Office at: BU-5, SFS Flat, Outer Ring Road,
Pitampura, Delhi-110034.
Also at: 501, Nirvana Courtyard,
Nirvana Country, Sector-50, Gurugram- 122018.

Respondent

CORAM:

Shri Vijay Kumar Goyal
Shri Ashok Sangwan

**Member
Member**

APPEARANCE:

Sh. Rahul Yadav (Advocate)
Sh. Jagbir Singh (Advocate)

**Complainant
Respondent**

ORDER

1. The present complaint dated 10.08.2022 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 allottees 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.no	Particulars	Details
1.	Name of the project	"Lotus Homz", Sector- 111, Gurugram
2.	Nature of project	Affordable Group Housing Colony
3.	RERA registered/not registered	214/2017 dated 18.09.2017 Valid upto 30.06.2020
4.	DTPC License no.	47 of 2014 dated 18.06.2014
	Validity status	31.05.2021
	Name of licensee	Ashok Kumar & 1 Ors.
	Licensed area	05.09 acres
5.	Unit no.	503, Tower C (3), 5 th floor [as per buyer's agreement on page 15 of complaint]
6.	Unit measuring	605.55 sq. ft. (carpet area) [as per buyer's agreement on page 15 of complaint]
7.	Date of execution of Apartment buyer's agreement	02.02.2016 [as per buyer's agreement on page 13 of complaint]
8.	Possession clause	3.1 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 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 the payment plan, stamp duty and registration charges, the developer proposes to offer possession of the



		<i>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 "Commencement Date"), whichever is later.</i>
9.	Approval of Building Plan	22.10.2014 (as per buyer's agreement on page 14 of complaint)
10.	Environment clearance	01.07.2016 (as per information obtained from planning branch)
11.	Due date of possession	01.01.2021 (Calculated as 4 years from the date of grant of environment clearance being later i.e., 01.07.2016 as per policy, of 2013 + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020.)
12.	Total Sale Consideration	Rs.24,67,375/- [as per buyer's agreement on page 17 of complaint]
13.	Total amount paid by the complainant	Rs.6,16,844/- (as alleged by complainant on page 8 of complaint, but Rs.6,39,205/- as per cancellation letter on page 10 of reply)
14.	Offer of possession	N/A
15.	Demand Letter	10.01.2019 (page 11 of reply)
16.	Publication	14.03.2019 (page 12 of reply)
17.	Cancellation Letter	29.10.2020 (page 10 of reply)
18.	Occupation certificate	01.06.2021
19.	Refund of amount letter	11.07.2022

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That the respondent gave advertisement in various leading Newspapers about their forthcoming Affordable Group Housing Colony named LOTUS HOMZ, Sector-111, Gurugram, whereby promising various advantages, and timely completion/execution of the project etc. Relying on the promise and undertakings given by the respondent in the aforementioned advertisements complainant applied for provisional booking in the said project vide application no. 0419 dated 28.08.2015.
- II. That pursuant to the application a draw of flats in the said project was held on 01.12.2015 a Apartment bearing no. 503 in Tower C(3) having a carpet area of 605.55 sq. ft. and Balcony area of 90.35 Sq. Ft on 5th Floor together with the Two wheeler open parking site was allotted to the complainant for total sale consideration of Rs 24,67,375/-.
- III. That the complainant paid a sum of Rs. 1,23,369/- at the time of making application for provisional allotment and have further paid a sum of Rs. 4,93,475/- at the time of Allotment of the Apartment no.503 in Tower C (3).
- IV. That the apartment buyer agreement was executed between the complainants and M/S Lotus Realtech Pvt Ltd on 02.02.2016. That as per the clause no 3.1 of the apartment buyer agreement the agreed date of possession was agreed to be 48 months from the date of date of approval of building plans or grant of environmental clearance whichever is later.
- V. The complainants towards the total sale consideration of the booked unit made payment of Rs. 6,16,844/- to the respondent vide different cheques on different dates.
- VI. That as per the letter issued by the respondent wherein the unit no of the

complainant has been shown the building plans of the project were approved on 22.10.2014 and as such the respondent was required to complete and deliver the possession of the apartment to the complainant latest by 22.1.2018. Whereas the Occupation certificate for the project was issued by the DTCP, Haryana vide letter dated 01.06.2021. It is pertinent to mention here that no possession letter till date has been issued by the respondent to the complainant for her apartment.

VII. The agreement was executed on 02.02.2016 and accordingly the project was to be completed in 48 months from the date of Approval of Building Plans i.e 22.10.2014. The Respondent have committed various acts of omission and commission by making incorrect and false statement in the advertisement material as well as by committing other serious acts as mentioned in preceding paragraph.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
 - i. To direct the respondent-builder to deliver the possession of the unit along with delay penalty charges.
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 raised certain preliminary objections and has contested the present complaint on the following grounds: -
 - i. That the complainant now ceases to be allottee by virtue of the cancellation letter dated 29/10/2020 and thus she has no cause of action and locus standi to file this complaint before the Authority.
 - ii. That the flat in question after its cancellation had already been re-allotted to third party, who had already taken the possession of the allotted flat on



- payment of the sale consideration and thus the third party had acquired valuable rights on re-allotment by the answering respondent.
- iii. That the answering respondent had cancelled the flat in question allotted to the complainant strictly in accordance with the rules and regulations as contained in the Haryana Affordable Policy. The complainant had failed to deposit the balance outstanding amount of Rs 16,04,689 despite repeated letters and reminders sent to her from time to time as per payment schedule
- iv. Lastly, the answering respondent had sent the "Final Notice" dated 10/01/2019 asking the complainant to deposit the outstanding balance amount within 15 days from the receipt of notice failing which the cancellation proceedings would be initiated against her, but the complainant failed to deposit the balance outstanding amount despite the issuance of final notice. There-after, the respondent got published a public notice / a "Defaulter List" in the newspaper titled Hari Bhoomi dated 14/03/2019 at page 2 which includes the application no 0419 pertaining to the complainant being the allottee of flat no. C-503 and detail particulars of all the other allottees, who had not paid their outstanding dues despite repeated demand letters and subsequent reminders issued to them. The complainant along-with all other defaulters were requested to deposit their outstanding dues on or before 31/03/2019 failing which their allotment shall be liable to be cancelled without any further notice. The complainant failed to deposit her balance outstanding amount of Rs 19,13,111 on or before 31/03/2019 and thus the answering respondent was left with no other option except to cancel the allotment of flat in the name of the complainant by virtue of the cancellation letter dated 29/10/2020 after waiting for about one year and seven months over which the complainant cannot agitate.

v. That the complainant after cancellation of her flat in question had already received the refund of Rs 4,90,836 after deduction of Rs 1,48,369 in terms of Haryana Affordable Policy 2013 vide cheque no 15552 dated 11/07/2022 sent to the complainant vide letter dated 11/07/2022 through speed post vide receipt no EH326103354IN and thus she has no cause of action to file this complaint.

7. All other averments made in the complaint were denied in toto.

8. 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 those undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

9. 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

10. 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.

E.II Subject matter jurisdiction

11. 11(5) of the Act provides that the promoter may cancel the allotment only in terms of the agreement for sale. Section 11(5) of the Act is reproduced as hereunder:

Section 11(5)

The Promoter may cancel the allotment only in terms of the agreement for sale:

Provided that the allottee may approach the authority for relief, if he is aggrieved by such cancellation and such cancellation is not in accordance with the terms of the agreement for sale, unilateral and without any sufficient cause.

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.

12. 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 the 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 direct the respondent-builder to deliver the possession of the unit along with delay penalty charges.

13. The complainant had booked a unit bearing no. 503, Tower C, 5th floor in Affordable Group Housing Colony named as "Lotus Homz" vide buyer's agreement dated 02.02.2016 for a total sale consideration of Rs.24,67,375/-. Out of the said consideration she has paid a sum of Rs.6,39,205/- till date. Accordingly, demands were raised against the balance amount vide letter dated 10.01.2019 and publication was made in daily newspaper named "Haribhoomi" on 14.03.2019. But due to her failure in paying the same despite repeated requests, the unit was cancelled vide cancellation letter dated 29.10.2020 and after deducting Rs.1,48,369/- balance amount of Rs.4,90,836/- was sent to complainant vide Cheque bearing no. 15552 as refund. Hence, in view of the above said facts, the relief sought by the complainant stands rejected and the cancellation of the subject unit is held to be valid. Thus, the respondent-builder is entitled to deduct an amount of Rs.25000/- from the amount paid as per clause 5(iii)(i) of the Affordable Group Housing Policy, 2013 which is reiterated as under:

5(iii)(i)



"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".

14. 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.
15. The cancellation letter has been issued by the respondent on 29.10.2020. On 14.03.2019, the respondent published a list of defaulters for payments in the daily Hindi newspaper 'Haribhoomi' and cancelled the unit as per the provisions of the policy and is valid one. But as per copy of cancellation letter dated 29.10.2020 sent to respondent for confirmation of refundable amount, it is evident that the respondent-builder illegally charged an amount of Rs.1,48,369/- as cancellation charges. Therefore, the deduction made by the respondent-builder while cancelling the unit is not as per the policy of 2013. Thus, 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 Affordable Housing Policy 2013 along with prescribed rate of interest i.e., @11.10% per annum from the date of cancellation till the actual realization of the amount. The amount of Rs. 4,90,836/- already refunded by the respondent shall be deducted from the amount so assessed.

G. Directions of the authority

16. 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 is directed to refund the amount paid by the complainant after deduction of Rs.25,000/- as per clause 5(iii)(i) of the of Affordable Housing Policy 2013. The amount of Rs. 4,90,836/- already refunded by the respondent shall be adjusted from the amount so assessed.
 - ii. The remaining amount shall be refunded along with interest at the rate 11.10% from the of cancellation dated 29.10.2020 till its realization.
 - iii. 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.
17. Complaint stands disposed of.
18. File be consigned to registry.


(Vijay Kumar Goyal)
Member


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 04.03.2025