

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

Date of Decision: 04.07.2025

NAME OF THE BUILDER		ASTER INFRAHOME PRIVATE LIMITED	
PROJECT NAME		"Green Court"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/5883/2024	Malik Samina V/S Aster Infrahome Private Limited	Ms. Samridhi (Advocate) Ms. Sanya Arora (Advocate)
2.	CR/5884/2024	Malik Rufaida V/S Aster Infrahome Private Limited	Ms. Samridhi (Advocate) Ms. Sanya Arora (Advocate)
3.	CR/5887/2024	Saima Hussain V/S Aster Infrahome Private Limited	Ms. Samridhi (Advocate) Ms. Sanya Arora (Advocate)

CORAM:

Shri Arun Kumar

Chairman

ORDER

1. This order shall dispose of three complaints titled as above filed before this authority 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.

2. The core issues arising therefrom are of a similar nature; accordingly, the aforementioned complaints are hereby consolidated and shall be addressed jointly.
3. The details of the complaints, reply, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount and relief sought are given in the table below:

Project Name and Location		[Green Court] situated in Sector- 90, Gurugram.			
Project Area DTCP License No.		10.125 Acres 61 of 2014 dated 07.07.2014 valid upto 06.07.2019 62 of 2014 dated 07.07.2014 valid upto 06.07.2019			
RERA Registered		Registered 137 of 2017 dated 28.08.2017 valid upto 22.01.2020			
Possession Clause: - Not Available					
Occupation certificate: - 17.11.2022					
Sr. No.	Complaint no. / Title/ Date of Filing / Reply	Unit no. and area	Date of builder buyer agreement	Status of Possession	Total sale consideration and amount paid
1.	CR/5883/2024 Malik Samina V/S Aster Infrahome Private Limited DOF 28.11.2024 Reply 18.03.2025	0210, 2 nd floor, Tower-F Area: Not mentioned (page 8 of reply)	Allotment Letter: Not Executed BBA: Not Executed	Due date of possession: Cannot be ascertained OC: 17.11.2022 Offer of Possession: 24.11.2022 Reminders for payment: 12.06.2023, 22.06.2023, 04.07.2023 Publication in newspaper:	TSC: - Rs. 15,77,331/- AP: - Rs. 10,76,490/-



				20.07.2023 Cancellation Letter: 22.08.2023	
2.	CR/5884/2024 Malik Rufaida V/S Aster Infrahome Private Limited DOF 28.11.2024 Reply 18.03.2025	0709, 7 th floor, Tower-F Area: Not mentioned (page 8 of reply)	Allotment Letter: Not Executed BBA: Not Executed	Due date of possession: Cannot be ascertained OC: 17.11.2022 Offer of Possession: 24.11.2022 Reminders for payment: 12.06.2023, 22.06.2023, 04.07.2023 Publication in newspaper: 20.07.2023 Cancellation Letter: 22.08.2023	TSC: - Rs. 15,77,331/- AP: - Rs. 10,76,490/-
3.	CR/5887/2024 Saima Hussain V/S Aster Infrahome Private Limited DOF 28.11.2024 Reply 18.03.2025	1409, 14 th floor, Tower-G Area: Not mentioned (page 8 of reply)	Allotment Letter: Not Executed BBA: Not Executed	Due date of possession: Cannot be ascertained OC: 17.11.2022 Offer of Possession: 24.11.2022 Reminders for payment: 12.06.2023, 22.06.2023, 04.07.2023 Publication in newspaper: 20.07.2023 Cancellation	TSC: - Rs. 15,77,331/- AP: - Rs. 10,76,490/-

				Letter: 22.08.2023	
The complainant in the above complaint(s) have sought the following reliefs: <ol style="list-style-type: none"> 1. Direct the respondent to deliver the physical possession of the flat. 2. Direct the respondent to pay Rs. 5,00,000/- for deficiency in service 3. Direct the respondent to pay Rs. 5,00,000/- for causing mental agony and harassment to the complainant. 4. Direct the respondent to pay litigation cost. 					
Note: In the table referred above, certain abbreviations have been used. They are elaborated as follows:					
Abbreviation	Full form				
DOF	Date of filing complaint				
BBA	Builder buyer agreement				
OC	Occupation Certificate				
TSC	Total Sale consideration				
AP	Amount paid by the allottee(s)				

4. The aforesaid complaints were filed against the promoter on account of violation of the Real Estate Regulation and Development Act, 2016 for not handing over the possession by the due date, seeking award of possession of the unit.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/5883/2024 titled as Malik Samina V/S Aster Infrahome Private Limited** are being taken into consideration for determining the rights of the allottee(s).

A. Unit and project related details

7. 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:

Sr. No.	Particulars	Details
1.	Name of the project	"Green Court", Sector-90, District Gurugram, Haryana.
2.	Nature of the project	Affordable Group Housing Project
3.	Project area	10.125 acres
4.	RERA Registered/ not registered	Registered 137 of 2017 dated 28.08.2017 valid upto 22.01.2020
	Extension Certificate no.	09 of 2020 dated 29.06.2020
		Valid upto 22.01.2021
5.	DTCP License No.	61 of 2014 dated 07.07.2014 valid upto 06.07.2019
		62 of 2014 dated 07.07.2014 valid upto 06.07.2019
6.	Name of licensee	M/s Aster Infrahome Pvt. Ltd. (For both the licences)
7.	Allotment letter	Not Executed
8.	Flat Buyer Agreement	Not Executed
9.	Unit no.	F-0210, 2 nd floor, Tower F (Page no. 8 of reply)
10.	Unit admeasuring	Not mentioned
11.	Possession clause	Not available
12.	Due date of delivery of possession	Cannot be ascertained
13.	Total sale consideration	Rs. 15,77,331/-

		(as per SOA annexed with offer of possession at page 10 of reply)
14.	Total amount paid by the complainant	Rs. 10,76,490/- (as per SOA annexed with offer of possession at page 10 of reply)
15.	Occupation certificate	17.11.2022 (as per dtcp website)
16.	Offer of possession	24.11.2022 (Page no. 8 of reply)
17.	Reminders for payment	12.06.2023, 22.06.2023, 04.07.2023 (Page no. 11-13 of reply)
18.	Publication in newspaper	20.07.2023 (page no. 14-16 of reply)
19.	Cancellation letter	22.08.2023 (page no. 17 of reply)

B. Facts of the complaint:

8. The complainant has made the following submissions in the complaint:

- I. That the complainant purchased a residential flat bearing no. F-0210 situated at the 14th floor of Tower G along with 1 two wheeler parking on 20.03.2020 relying on the opposite party's advertisements and assurances by paying Rs. 10,00,000/- through RTGS.
- II. That in 2020 the respondent allotted the above said flat to the complainant by virtue of the allotment letter and as per the allotment letter, it was agreed that the total sale consideration in lieu of the said flat was Rs. 15,77,331/-.
- III. That various mails have been sent by the complainant to the respondent for providing the possession of the flat but the respondent paid no heed to it and delayed the matter on one pretext to another.

- IV. That during the year 2022-23, the complainant's mother was suffering from chronic ailments, including liver and lung cancer. Consequently, the complainant was preoccupied with providing care for her mother and was unable to follow up on the possession of the said unit. The complainant's mother passed away at the end of the year 2023 at Apollo Hospital, Bangalore due to chronic ailments including liver and lung cancer.
- V. That after the death of her mother, the complainant followed up with the respondent regarding possession of the said flat and sent an email informing them about the circumstances she had faced.
- VI. That as per the respondent statement of account dated 23.11.2022 the total cost of flat is Rs. 15,77,331/- and out of which Rs. 10,76,490/- have been already paid and there is remaining amount of Rs. 5,00,841/-.
- VII. That the respondent has cheated the complainant and even after taking major part of the payment for the flat failed to deliver same even after a significant time period from the committed date, which clearly shows that its intention is to cheat and dupe its consumers.
- VIII. That the complainant also sent a request letter to the respondent for giving possession and to intimate complainant regarding balance amount with the date of possession so that complainant could complete all the formalities.
- IX. That the complainant is therefore seeking possession of the unit.

C. Relief sought by the complainant:

9. The complainant has sought the following relief(s)
- Direct the respondent to deliver the physical possession of the flat.
 - Direct the respondent to pay Rs. 5,00,000/- for deficiency in service

- iii. Direct the respondent to pay Rs. 5,00,000/- for causing mental agony and harassment to the complainant.
 - iv. Direct the respondent to pay litigation cost.
10. 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:

11. The respondent has contested the complaint on the following grounds:
- I. That the present complaint filed by the complainant is false, frivolous, baseless and not disclosing any cause of action in favour of the complainant. The same is neither maintainable nor tenable in the eyes of the law and the complaint is liable to be dismissed at the outset.
 - II. That the complainant has filed the present complaint with respect to the unit bearing no. F-0210, 14th floor of tower-G, in the project name "Green Court", located at Sector-90, Village-Hayatpur, Gurugram of the respondent company.
 - III. That the present complaint was filed by the complainant on 27.11.2024 the occupation certificate of the said project was received in 17.11.2022 and the offer of possession was also made to the complainant on 24.11.2022.
 - IV. That the total sale consideration of the above-mentioned unit was Rs. 15,77,331/- out of which an amount of Rs. 10,76,490 /- has been paid by the complainant. However, a balance payment of Rs. 5,00,841/- has been defaulted by the complainant. The complainant had failed to make payment of the pending dues even after ample opportunities in the way of demand letters/ reminder letters were

given to the complainant. Therefore, upon the default in paying the payment of Rs. 5,00,841/- the unit of the complainant was cancelled as per the provisions of affordable Housing Policy.

- V. That the unit allotted to the complainant is under the Affordable Housing Policy, and the same grants a right to builder to cancel the unit in case of default in the payment.
- VI. That the affordable housing policy mandates that payment obligations must be fulfilled within a stipulated timeline. Clause 5 specifically allows developers to cancel an allotment if payments are not received within 15 days of the due date. The policy emphasizes strict adherence to the payment schedule to ensure smooth project execution.
- VII. That due to the non-payment of the pending dues of the unit of the complainant was cancelled wide cancellation letter dated 22.08.2023.
- VIII. That in the following sequence the reminder letters and cancellation letter were issued to the complainant for the payment of the balance sale consideration as per the regulation of Affordable Housing Policy 2016.

Sr. no.	Particulars	Dated
1.	Reminder Letter	12.06.2023
2.	Final Reminder	22.06.2023
3.	Final Reminder	04.07.2023
4.	Newspaper Advertisement/public notice	20.07.2023
5.	Cancellation notice	22.08.2023

IX. Subsequently, even after sending the reminder letters there was no communication made or any payment was made by the complainant so, the respondent cancelled the unit on dated 22.08.2023 as per the provisions of the Haryana affordable housing policy.

12. 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:

13. 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

14. 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

15. 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.

16. 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(s):

- i. **Direct the respondent to deliver the physical possession of the flat.**

17. The complainant intends to continue with the project and is seeking possession of the unit as provided under section 17(1) of the Act. Sec. 17(1) reads as under.

"Section 17: - Transfer of title

*17(1). The Promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees or the competent authority, as the case may be, and **hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws.**"*

18. In the instant complaint, the complainant had booked a unit in the affordable group housing project developed by the respondent under the name "Green Court", situated in Sector 90, Gurgaon, Haryana, for a total sale consideration of ₹15,77,331/-. Out of the said amount the complainant

has paid a sum of ₹10,76,490/- which was duly received and acknowledged by the respondent. However, no builder buyer agreement was executed between the parties. The grievance of the complainant is that they are seeking possession of the allotted unit. The respondent on the other hand, contends that the complainant has only paid ₹10,76,490/- out of the total sale consideration of ₹15,77,331/-. The respondent further submits that the occupation certificate was obtained on 17.11.2022 and the offer of possession was made to the complainant on 24.11.2022. Subsequently, the complainant was called upon to clear the outstanding dues through communications dated 12.06.2023, 22.06.2023, and 04.07.2023. However, the complainant failed to remit the balance payment. Thereafter, the respondent published a public notice in the newspaper on 20.07.2023 and proceeded to cancel the unit on 22.08.2023.

19. It is observed that the complainant failed to pay the remaining amount 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?"
20. On consideration of documents available on record and submissions made by both the parties, the authority is of the view that the project in question falls within the category of an 'Affordable Group Housing Project' and is therefore governed by the provisions of the Affordable Group Housing Policy, 2013, as notified by the competent authority. In accordance with the said policy, the financial demands raised upon the allottee(s) are to be paid in equated instalments over a span of six months. The complainant failed to adhere to the prescribed payment schedule and did not remit the

demanded amounts within the stipulated period of six months, as required under the said policy. Such non-compliance constitutes a breach of the terms and conditions of the governing policy. Accordingly, the complainant remains under a continuing obligation to make payments as per the policy framework, and failure to do so amounts to a breach of contractual and statutory obligations.

21. Moreover, 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".*

22. However, in the present case, it is evident from the material placed on record that the respondent company has issued demand cum reminder letters dated 12.06.2023, 22.06.2023, 04.07.2023. Thereafter, the respondent published a list of defaulters of payments in the daily Hindi newspaper on 20.07.2023 subsequently due to non-payment of outstanding dues respondent/builder cancelled the unit on dated 22.08.2023.
23. 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 22.08.2023 is held to be valid.

24. As per cancellation clause of the affordable housing policy of 2013 the respondent can deduct the amount of Rs.25,000/- only and the balance amount shall be refunded back to the complainant. Till date no amount has been refunded back by the respondent-builder to the complainant/allottee. Thus, it has been using the funds of the complainant. 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 unit i.e., 22.08.2023 till the actual realization of the amount.

- ii. **Direct the respondent to pay Rs. 5,00,000/- for deficiency in service**
- iii. **Direct the respondent to pay Rs. 5,00,000/- for causing mental agony and harassment to the complainant.**
- iv. **Direct the respondent to pay litigation cost.**

25. The complainant in the aforesaid relief is seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as **M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.** (Decided on 11.11.2021), has held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation.

G. Directions of the authority

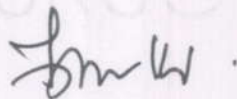
26. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent is directed refund the paid-up amount in all the cases after deduction of Rs. 25,000/- as per clause 5(iii)(i) of the Affordable Housing Policy 2013, along with interest @11.10% per annum on such balance amount as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of cancellation of unit i.e., 22.08.2023 till the actual realization of the amount.
- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

27. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.

28. Complaints stand disposed of.

29. Files be consigned to registry.



(Arun Kumar)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 04.07.2023