

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

Complaint no. : 4325 of 2024
Order pronounced on: 09.07.2025

Surender Kumar
R/o:- F-05, Palam Vihar EXTN,
Cartarpuri alias, Daulatpur, Nasirabad (63)

Complainant

Versus

M/s HCBS Developments Ltd.

Address:- Unit no. 205, Plot no. 6,
Vardhman Bahanhof Plaza, Sector-12, Dwarka,
New Delhi-110078

Also At:- 137, Sector-27 Gurgaon HR 122009
And Unit 69, 70 MGF Metropolis, MG road, Gurugram

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Sukhbir Yadav (Advocate)

Complainant

Harshit Batra (Advocate)

Respondent

ORDER

1. The present complaint 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:

Sr. No.	Particulars	Details
1.	Name of the project	"HCBS Auroville"
2.	Nature of project	Affordable Group Housing
3.	Location of project	Sector-103, Gurugram, Haryana.
4.	Hrera registered	Registered Vide registration no. 913 of 2021 Dated-12.10.2021
5.	DTCP License	License no. 2 of 2021 Dated-21.01.2021 Valid upto-20.01.2026
6.	Allotment letter	21.01.2022 (As on page no. 33 of complaint)
7.	Unit no.	No.-22J, Nature-Flat, Type-4 (As on page no. 34 of complaint)
8.	Unit area	497.19 sq.ft. [Carpet Area] 102.68 sq.ft. [Balcony Area] (As on page no. 34 of complaint)
9.	Buyer's Agreement	Not executed



10.	Possession clause	<p>As per Clause 1(iv) of the Affordable Housing Policy 2013</p> <p><i>All such projects shall be required to be necessarily completed within 4 years from the approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the „date of commencement of project“ for the purpose of this policy.</i></p> <p><i>[Emphasis supplied]</i></p>
11.	Approval of Building Plan	<p>23.07.2021</p> <p>(As per respondent's submission on page no. 7 of the reply)</p>
12.	Environmental Clearance	<p>30.07.2022</p> <p>(As per respondent's submission on page no. 7 of the reply)</p>
13.	Due date of possession	<p>30.07.2026</p> <p>[Calculated 4 years from the date of E.C i.e., 30.07.2022]</p>
14.	Total sale consideration	<p>Rs.22,10,080/-</p> <p>(As on page no. 35 of complaint)</p>
15.	Total amount paid by the complainant	<p>Rs.9,95,125/- [As alleged by complainant]</p> <p>Rs.7,73,528/- [As per respondents S.O.A]</p> <p>[Note: The respondent submits that an amount of Rs.2,21,008/- was made by the complainant</p>

		after the cancellation. The complainant has made the payment through RTGS/NEFT without the consent or knowledge of the respondent and the same does not amount to revocation of the cancellation]
16.	Publication in newspaper	27.04.2024 (As on page no. 39 of compliant)
17.	Cancellation letter	29.05.2024 (As on page no. 40 of reply)
18.	Occupation certificate	Not obtained
19.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- I. That the complainant got to know about the Affordable Housing project " HCBS AURAVILLA" at Sector- 103 Tehsil Kadipur, District Gurugram being developed by the respondent under the license no. 2 of 2021 dated 21.01.2021, issued by DTCP, Haryana, Chandigarh, situated at Sector - 103, Gurugram.
- II. That somewhere in the second week of December 2021, the complainant booked a unit in the project by paying an amount of Rs.1,04,999/- towards the booking of the said unit. The respondent acknowledged the said payment through receipt dated 16.12.2021. That the complainant was allotted a residential flat bearing no. 22, 2nd Floor, Tower-E, in Sector 103, having carpet area admeasuring 497.19 sq.ft. and balcony area 102.68 sq. ft. to the respondent on 21.01.2022 and the same was acknowledged by the respondent.



- III. The unit was booked by the complainant under the construction-linked. At the time of booking, the respondent assured that the project would be completed within 36 months and agreement will be executed within a period of 2 months but the same has been executed after lapse of four month and copy of the same was provided later on after repeated requests and reminders.
- IV. That the allotment letter dated 14.01.2022 was issued to the complainant confirming the booking of the unit for a total sale consideration of the unit i.e. Rs.27,90,815/- which includes basic price plus EDC and IDC, ETC and other specifications and provided the time frame within which the next installment was to be paid. After the allotment, the respondent raised demand of Rs.5,70,140/- and the complainant in time bound manner duly paid the said demand.
- V. That as per Section 13 of the Act:
- No deposit or advance to be taken by promoter without first entering into agreement for sale.*** —(1) A promoter shall not accept a sum more than ten per cent. of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force. (2) The agreement for sale referred to in sub-section (1) shall be in such form as may be prescribed and shall specify the particulars of development of the project including the construction of building and apartments, along with specifications and internal development works and external development works, the dates and the manner by which payments towards the cost of the apartment, plot, or building, as the case may be, are to be made by the allottees and the date on which the possession of the apartment, plot or building is to be handed over, the rates of interest payable by the promoter to the allottee and the allottee to the promoter in case of default, and such other particulars, as may be prescribed.
- VI. In the present case respondent has collected approx. Rs.3,34,541/- till date and further raised demand without executing the builder buyer agreement. Hence, the said demand is void, illegal and needs to be

quashed. After repeated request and reminders, the respondent executed the apartment buyer agreement on 05.04.2022 with the complainant.

- VII. That the respondent sent a reminder in August, 2023 to complainant raising demand. Further, levying interest at rate of 15% per annum. It is pertinent to mention here that after coming into force of the RERA Act, 2016, the respondent cannot charge interest against the interest rate provided under the Act, 2016 and HARERA Rules framed thereafter.
- VIII. That respondent sent a reminder dated 01.05.2024 to complainant raising demand of Rs.2,80,477/-, levying an interest at rate of 15% per annum. It is pertinent to mention here that the last date for making the payment was 01.06.2024 as per demand letter.
- IX. That in May, 2024, the complainant requested the respondent that he has already deposited the amount as and when demanded and is willing to pay the further payments also but requested to provide some time to make the further payment and requested to provide the status of the construction and provide environment clearance as obtained by the builder as compulsory for the start of the construction and date of completion of project but no satisfactory response till date. Thereafter various reminder were also sent by the complainant to the respondent.
- X. That instead of replying to the emails and reminders of the complainant, the respondent kept on sending the demand letters to pay the demanded amount. Further, levying interest at rate of 15%.
- XI. That on 24.05.2024, when the complainant visited the office of the respondent, the complainant was shocked when the respondent informed the complainant that his unit has already been cancelled and when the complainant requested the respondent to provide the copy of the cancellation letter, the same was not provided.



- XII. That the complainant went to the office of respondent several times and requested them to resolve the issue and accept the amount and allow him to visit the site but he was never allowed saying that they do not permit any buyer to visit the site during construction period. The complainant even after paying amounts still received nothing in return but only loss of the time and money invested by him.
- XIII. As per the demands raised by the respondent, based on the payment plan, the complainant has already paid an amount of Rs.7,06,481/-/-, towards the said unit against total sale consideration of Rs.27,90,815/- . That the respondent instead of complying as per the provisions of the Act, and obtaining the Occupation certificate, sent an intimation of termination dated 29.05.2024 to the complainant, forfeiting an amount without providing any justification to same and against the spirit of the Act, 2016. It is pertinent here that as per demand letter dated 01.05.2024 last date of making the payment was 01.06.2024 but the respondent acting arbitrary without the lapse of last date of payment cancelled the said unit.
- XIV. Thereafter, when the complainant visited the office of the respondent company on 06.06.2024 and asked for the justification of the above said act, the respondent assured to re-instate the said unit and asked to make the payment.
- XV. That the respondent assured to provide the same, asked the complainant to visit the office after 3-4 days and to bring the cheque of remaining amount and assured to provide the re-instate letter on same day. On the basis of the assurance provided, the complainant on 09.06.2024, visited the office of the respondent alongwith the cheque on 06.06.2024, but the representative of the respondent refused to



accept the said cheque and to re-instate the allotted unit. Even till date, the complainant is ready and willing to make the payment.

- XVI. That the complainant requested the respondent many times and challenged the demand letters sent by the respondent. Furthermore, the complainant repeatedly requested the respondent to provide justification, withdraw the demand letters and issue fresh demand letters after execution of the agreement, without illegal demands and interest charged @ 15% but respondent failed to do so till date.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
 - i. Pass an order to set aside the cancellation and direct the respondent to withdraw the cancellation of the unit.
 - ii. Direct the respondent to execute the BBA in accordance with the model BBA of RERA.
 - iii. Direct the respondent to handover the possession of the unit after completing in all aspect to the complainant and not to force to deliver an incomplete unit.
 - iv. Restrain the respondent from charging illegal unlawful demands and other charges which are not chargeable.
 - v. Direct the respondent to provide all the requisite documents such as payment receipts and statement of account to the complainant's unit.
 - vi. To get an order to penalize the respondent for violation of the Act, and terms of registration.
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 complainant being interested in the real estate development of the respondent, known under the name and style of "HCBS Auroville" at Sector 103, Village- Tikampur, District Gurugram approached the respondent to purchase the unit. That upon the draw of lots and acceptance of his application for allotment of the unit, a flat bearing no. 22 on 2nd floor, Tower J tentatively admeasuring carpet area of 497.19 sq. ft. and balcony area 102.68 sq. ft. was allotted to the complainant vide Allotment Letter dated 22.01.2022.
- II. Thereafter, the respondent as per the terms and conditions of Allotment letter requested the complainant to pay the allotment demand and further requested to complainant to visit the office to sign the 'Agreement for Sale' within 15 days from the date of issue of the allotment letter. But despite multiple correspondences made, the complainant has failed to sign the "Agreement to Sale" and also failed to pay the demand raised along the allotment letter within the prescribed time limit. It is submitted that the complainant has defaulted in timely payments from the very beginning as evident from the Statement of Account.
- III. That the remittance of all amounts due and payable by the complainant as per the Payment Plan incorporated in the Allotment Letter as 'Annexure A' was of the essence as the Agreement of sale was never signed by the complainant. It has been specifically mentioned in Clause 1.3 of the Allotment letter that the allottee is liable to pay the consideration value of the unit as shown in the payment plan.

"1.3. Upon issuance of this allotment letter, the allottee shall be liable to pay the consideration value of the unit as shown in the payment plan as annexed.

1.4 The total price (as defined in the terms and conditions in agreement for sale) shall be payable on the date as specifically mentioned in the "payment plan" as annexed."

IV. That the complainant had defaulted/delayed in making the due payments, upon which, reminders were also served to the complainant. That the *bonafide* of the respondent is also essential to be highlighted at this instance, who had served a number of demand letters and reminders to the complainant to ensure that the payments are made in a timely fashion. A list of the Demand Letters and Reminders are as under:

S. No.	Particulars	Stage/Milestone	Dated
1.	Demand Letter	At the time of allotment of unit and BBA registration	
2.	Demand Letter	3 rd installment at the time of stilt level	17.03.2023
3.	Demand Letter	4 th installment at completion of 20% structure (31 floors)	01.12.2023
4.	Reminder Letter		18.03.2024
5.	Reminder Letter 2		05.04.2024
6.	Demand Letter	5 th installment at completion of 40% structure (62 floors)	01.05.2024

V. That all the demands were raised in a timely manner as per the stages of the construction. That the development of certain number of floors means the development of the floors in the entire project and not just in the tower of the allottee. Thus, the respondent has validly raised the demand on reaching the respective stage of the construction of the floors. That in this regards the respondent had sought clarification from the Directorate of Town and Country Planning, Haryana and it was clarified vide letter dated 02.12.2021 that the construction of overall project shall be considered for a construction linked payment plan for charging the instalments from the allottees. The relevant para of the letter is reiterated as below:

Query 7: Will the payment be linked with the construction of the tower of the allottees or will it be linked to overall construction of the project as a whole?

Reply: As per the amendment dated 16.11.2021, the project has been defined as single license to develop a colony. Therefore, the term construction linked plan shall mean the construction of a project as defined above for the purpose of charging the instalments from the allottees."

- VI. That the complainant is a habitual defaulter who has been in default of payments at various instances since the very beginning and had stopped making payments of the installments on 27.02.2024 i.e., at the stage "At the time of 4th installment at completion of 20% structure". That the complainant willingly and voluntarily stopped making the payments even after receipt of multiple reminders and notices from the respondent.
- VII. That the respondent issued the demand letter for 3rd installment i.e., at stilt level on 17.03.2023. The respondent issued another demand letter of 4th installment i.e. at completion of 20% of Structure (31 floors) dated 01.12.2023. Thereafter, the respondent on 01.05.2024 issued demand letter for 5th installment i.e. at completion of 40% of structure (62 floors), which remains unpaid along with previous outstanding till the date of cancellation of the unit.
- VIII. That a similar obligation to make the payment against the unit and the payment of interest in case of non-payment is also as per the Real Estate (Regulation and Development) Act, 2016, under Sections 19(6) and 19(7) which are reiterated hereunder:

Section 19(6) and 19(7) of the RERA, 2016:

19(6). Every allottee, who has entered into an Agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said Agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.

19(7) The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6).

- IX. That since the very beginning, the complainant had stopped making payments of the instalments and the last payment received from the complainant was on 27.02.2024 i.e., at the stage "4th installment". That the complainant willingly and voluntarily stopped making the payments even after receipt of multiple reminders and notices from the respondent. That it is submitted that as the complainant failed to make timely payment of the instalments, the complainant was served with reminder letters dated 18.03.2024 and 05.04.2024. That despite having received the reminder, the default of the complainant continued hence, the respondent issued public notice in Nav Bharat Times dated 27.04.2024 as per the Affordable Housing Policy, 2013. The respondent was obligated to issue the reminders to the complainant as per the Agreement or the Affordable Housing Policy, however in their bonafide conduct, the respondent had issued multiple reminders to the complainant.
- X. That the complainant was considered in default under the term of Allotment Letter as well as the Act and Affordable Housing Policy, and upon the failure of the complainant to pay due amounts/installments, the respondent had complete right to terminate the allotment under clause 3.2 of the Allotment Letter and clause 5(III)(i) of the Affordable Housing Policy.
- XI. That due to the continuous defaults of the complainant, since the 5th installment and previous outstanding, the respondent was constrained to cancel the allotment of the complainant and the same was communicated to the complainant vide Cancellation Letter dated 29.05.2024.

XII. That after the termination of the allotment of the unit, the respondent is well within their right to forfeit Rs.25,000/-. That in addition of Rs.25,000/-, the respondent is also entitled to deduct 5% of the cost of the flat along the delayed payment interest till the date of termination and other non-refundable amount including the statutory dues paid against the unit. That the respondent has requested the complainant to collect the balance amount after the deduction vide letter dated 09.08.2024.

XIII. Without prejudice, it is submitted that the complainant contends that he had paid Rs.9,95,125/- to the respondent, however, the complainant had paid Rs.7,73,528/- till the date of cancellation of the unit and amount of Rs.2,21,008/- and the said payment was made by after the allotment of the unit was cancelled on 29.05.2024 by the respondent. Moreover, the complainant had made the payment to the respondent through RTGS/NEFT without the consent or knowledge of the respondent hence, the same does not amount to revocation of the cancellation whatsoever.

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 these undisputed documents and submission made by the parties.

D. Jurisdiction of the authority:

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

D. I Territorial jurisdiction

9. 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.

D. II Subject matter jurisdiction

10. 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

11. 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.

E. Findings on the relief sought by the complainant:

- E.I Pass an order to set aside the cancellation and direct the respondent to withdraw the cancellation of the unit.**
- E.II Direct the respondent to execute the BBA in accordance with the model BBA of RERA.**
- E.III Direct the respondent to handover the possession of the unit after completing in all aspect to the complainant and not to force to deliver an incomplete unit.**
- E.IV Restrain the respondent from charging illegal unlawful demands and other charges which are not chargeable.**
- E.V Direct the respondent to provide all the requisite documents such**



as payment receipts and statement of account to the complainant's unit.

E.VI To get an order to penalize the respondent for violation of the Act, and terms of registration.

12. The complainant booked a unit in the affordable group housing colony AURA VILLA, Sector-103, Kadipur, Gurugram and was allotted a unit bearing no. 22J, Flat, type-4 in the project vide allotment letter dated 21.01.2022 for a sale consideration of Rs.22,10,080/- out of which the complainant had paid an amount of Rs.9,95,125/-.
13. As per the affordable housing policy the due date of possession is calculated from the date of environment clearance i.e., 30.07.2022 which comes out to be 30.07.2026. It is evident from the above-mentioned facts that the complainant paid a sum of Rs.9,95,125/- against sale consideration of Rs.22,10,080/- of the unit allotted to him. No Builder Buyer Agreement was executed between the complainant and the respondent. The payment plan, Annexure-A of the Allotment Letter, is "Construction Linked". The complainant has paid an amount of Rs.7,73,528/- in lieu of the instalments i.e., 1st instalment "At the time of submission of application for allotment" and 2nd instalment "At the time of allotment of unit & BBA registration". The respondent raised a demand via demand letter dated 17.03.2023 i.e., "3rd installment at the time of stilt level" amounting to Rs.3,31,512/- and the same was not paid by the complainant. Then, the respondent further raised a demand via demand letter dated 01.12.2023 i.e., "4th instalment at completion of 20% Structure (31 Floors) and thereafter, raised demand via demand letter dated 01.05.2024 i.e., "5th instalment at completion of 40% structure (62 floors).

14. The respondent has submitted that the complainant is a defaulter and has been continuously defaulted in making payments since the very beginning. The complainant failed to make the payment in lieu of the 3rd installment i.e., at the stage "At the stage of stilt level" and thereafter, the 4th and 5th installment and even after receipt of multiple reminders and notices from the respondent, no payment was made by the complainant. The respondent raised reminders dated 18.03.2024, 05.04.2024 to the complainant but the complainant blatantly ignored the reminder letters therefore public notices dated 27.04.2024 were issued by the respondent in newspapers and the unit was cancelled.
15. The respondent issued many reminders to the complainant for paying the outstanding dues and thereafter issued cancellation letter on 29.05.2024 after issuance of notice in the newspaper on 27.04.2024.
16. Now, the question before the Authority is whether this cancellation is valid or not. According to clause 5(iii)(i) of the Affordable Group Housing Policy, 2013 which produce as under:

"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 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".

17. The Authority is of the considered view that the complainant has been in default since the 3rd instalment ie., "At the stage of time of stilt level" and the respondent have duly served reminder dated 18.03.2024 and thereafter, another reminder dated 05.04.2024. The respondent served notice of the same in the newspaper on 27.04.2024 and thereafter, sent

cancellation letter dated 29.05.2024 to the complainant. The objection taken by the complainant that the respondent cancelled the unit and have demanded more than 10% of the sale consideration, prior to the execution of the Builder Buyer Agreement. The Authority is of the view that the complainant has failed to place on record any communication with regard to protest of the above said demand of more than 10% of sale consideration by the respondent and the same seems to be a mere after thought.

18. 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 construction linked payment plan. The respondent cancelled the unit of the complainant with adequate notices. Thus, the cancellation of unit is valid. On 27.04.2024, the respondent published a list of defaulters for payments in the daily Hindi newspaper Nav Bharat Times. Finally, the cancellation letter has been issued by the respondent on 29.05.2024. The respondent has cancelled the unit as per the provisions of the policy and is valid one. The respondent has submitted that vide letter dated 09.08.2024, the respondent has sent a refund cheque amounting to Rs.6,66,566/- to the complainant and the same was encashed by the complainant. A Payment amounting to Rs.2,21,008/- was made by the complainant through RTGS in the respondent's bank, after the cancellation of the unit and the same was also returned back to the complainant. But there is no proof of the same, on record.
19. Thus, the respondent is directed to refund the balance amount to the complainant after deduction of Rs.25,000/- as per clause 5(iii)(i) of the Policy 2013 alongwith an interest @11.10% per annum from the date of cancellation of allotment i.e., 29.05.2024 till the actual realization of



the amount. Any amount that has been refunded by the respondent to the complainant shall be adjusted from the payable amount.

F. 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:
- i. The respondent is directed to refund the balance amount to the complainant after deduction of Rs.25,000/- as per clause 5(iii)(i) of the Policy 2013 alongwith an interest @11.10% per annum from the date of cancellation of allotment i.e., 29.05.2024 till the actual realization of the amount. Any amount that has been refunded by the respondent to the complainant shall be adjusted from the payable 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

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.07.2025