

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

Complaint no. : 3362 of 2023
Date of filing complaint: 26.07.2023
Order Reserve On: 28.03.2025
Order Pronounced On: 23.05.2025

Gunjan Garg
R/o: - D-275, D Block, Gali no. 19,
Dashrathpuri, Dabri Palam Road, New Delhi-110045

Complainant

Versus

1. M/s Agrante Realty Limited
Regd. Office at: 522, 524 DLF Tower-A,
Jasola, New Delhi-110045
2. IDBI Bank Ltd.
Office: 51/3, Desh Bandhu Gupta Road,
(opp. Khalsa college), Karol Bagh, New Delhi-110005

Respondents

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Sh. Vishal Khadia
Ms. Ankur Berry

Complainant
Respondent

HARERA
GURUGRAM
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 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. N.	Particulars	Details
1.	Name of the project	"Kavyam", Sector- 108, Gurugram
2.	Nature of project	Affordable group housing
3.	RERA registered/not registered	Registered vide registration no. 23 of 2018 dated 22.11.2018
	Validity status	31.11.2022
	registered area	5 acres
4.	DTPC License no.	101 of 2017 dated 30.11.2017
	Validity status	29.11.2022
	Name of licensee	Arvinder Singh & others
	Licensed area	5 acres
5.	Unit no.	TC-505, in Tower C, 5 th floor [page 38 of complaint]
6.	Unit area admeasuring	512.50 sq. ft. (carpet area) [page 38 of complaint]
7.	Allotment dated	01.07.2019 [page 25 of complaint]
8.	Agreement to sale	24.10.2019 (page no. 28 of complaint)
9.	Building plan approved on	06.07.2018 [as per data available at DTCP official website]





10.	Environment clearance	20.08.2019 [as per data (A-H) available in the website of the authority]
11.	Date of start of construction	Not available
12.	Tripartite agreement	11.10.2019 (page no. 72 of complaint)
13.	Possession clause	7. Possession of the apartment 7.1 Schedule for possession of the said apartment The Promoter agrees and understands that timely delivery of possession of the Apartment is the essence of the Agreement. The Promoter, based on the approved plans and specifications, assures to hand over possession of the Apartment within 4 years from the start of construction, unless there is delay or failure due to Court Order, Government Policy/guidelines, decisions, war, flood,.....
14.	Possession clause as per Affordable Housing Policy, 2013	1 (iv) All such projects shall be required to be necessarily completed within 4 years from the date of 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 the policy.
15.	Due date of possession	20.02.2024 [Calculated as 4 years from date of environmental clearance i.e., 20.08.2019 as the same is later + 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]

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16.	Payment plan	Construction link payment plan (page no. 77 of complaint)
17.	Total sale consideration	Rs.21,00,000/- [Page 42 of complaint]
18.	Amount paid by the complainant	Rs.5,30,250/- [As per demand letter dated 16.07.2021 at pg. 39 of reply]
19.	Demand letters	06.01.2020, 01.07.2020, 11.01.2021, 10.07.2021, 27.01.2022, 01.07.2022 (page no. 36-41 of reply)
20.	Pre cancellation letter	09.12.2022 [page 96 of complaint]
21.	Cancellation letter	19.05.2023 [page 31 of reply]
22.	Occupation certificate	Not obtained
23.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That the complainant based on the assurances given by the marketing agents of the respondent no.1, filled the application no. 3295 in February-2019 and deposited Rs. 1,06,050/-.
- II. That the draw was held on 24.06.2019 and subsequently, the complainant received an allotment-cum-demand letter dated 01.07.2019 to confirm the allotment of unit no. 505 in Tower C on 5th floor along with demand further Rs. 4,24,492/- to be deposited within 15 days of the allotment.



- III. That the complainant requested the respondent no. 1 to help in availing of the bank loan, as promised at the time of application. The respondent no.1 initiated the bank loan process with IDBI Bank.
- IV. That builder buyer agreement was signed on 24.10.2019. On 31.10.2019 respondent no.1 called the complainant to sign a tripartite agreement.
- V. That based on this tripartite agreement, the complainant was granted a home loan by the respondent no.2 (IDBI Bank Ltd.) for a total amount of Rs. 18,90,000/- at a monthly EMI of Rs. 14,932/- for a tenure of 298 months.
- VI. That the dispute started when respondent no. 1 stopped the construction of allotted Tower-C but still kept sending unlawful and undue demand letters in violation of the tripartite agreement. The construction stage has not arrived per the tripartite agreement, and therefore, the respondent no.2 (Bank) has denied the disbursal.
- VII. That in May-2022, respondent no.1 called the complainant and lured to take a parking slot against Rs. 1,60,000/- to safeguard against possible cancellation of allotment. Mr Rahul Das of respondent no.1 came on 28.05.2022 to handover the parking allotment letter against cash payment of Rs. 1,60,000/-. He confirmed the receipt.
- VIII. That on 29.04.2023 complainant again wrote to the respondent no.1 that the further amount shall be paid only as per the tripartite agreement, i.e., according to construction stages.
- IX. That the complainant received a "pre-cancellation notice" on 24.06.2023 threatening that the allotment of the said flat shall be cancelled if complainant does not pay the demands. The complainant and respondent no.2 (IDBI Bank Ltd.) are ready to pay if the respondent



complies with the agreed construction-linked stages. On 30.06.2023 complainant sent a reply to the respondent no. 1.

- X. That the complainant received an "information of termination and cancellation" of allotted unit of the complainant on 24.06.2023. The respondent no.1 is unlawfully threatening the complainant, whereas it is itself breaching the terms of the tripartite agreement and is also under violation of delay in construction.
- XI. Hence, this complaint is before the Hon'ble HRERA against the respondent no.1 for undue delay, unlawful demands, unlawful cancellation letters and mental harassment to the complainant etc.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
- Cancel all demands, including penalty charges that respondent has levied on the complainant relating to demands on casting of 3rd floor.
 - Cancel all pre cancellation and information to cancellation letters that respondent no. 1 has sent to the complainant.
 - Direct the respondent to submit a plan as to how it will complete the work by February 2024 i.e., on or before the expiry of the granted extension.
5. On the date of hearing, the authority explained to the respondents/promoters about the contravention 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 no. 1

6. That the complainant herein is Mrs Gunjan Garg, who along with her husband Mr Pawas Garg had booked the unit bearing no. TC-505, Tower-C, 2-BHK, Type – 1, having a carpet area of 512.50 sq. ft. and balcony area of 130.30 sq. ft. in the project of the respondent no.1 company i.e., M/s



Agrante Reality Ltd. namely "kavyam" which is situated at Sector 108, Gurgaon-122001, Haryana. The said unit was booked for a total consideration amount of Rs. 22,60,000/- excluding taxes, wherein the principal amount for the flat unit was Rs 21,00,000/- and Rs 1,60,000/- was for the parking.

7. That the complainant issued a cheque bearing no. 057808 dated 30.01.2019 amounting to Rs.1,05,758/-. However, upon presentation to the bank of respondent no.1, the said cheque was dishonored due to insufficiency of funds.
8. That on 19.09.2019, the complainant paid an amount of Rs. 1,06,050/- as booking amount and the respondent no.1 issued an acknowledgement receipt for the same.
9. That on 25.11.2019, respondent no.1 issued a receipt to the complainant of Rs. 3,18,442/- towards the payment received from the complainant as per the payment schedule from its financing institution IDBI Bank.
10. That on 06.01.2020, the respondent no.1 issued a demand letter for the payment of the installment of Rs.2,65,125/- which had become due and payable by the complainant for the said flat/unit as per the pre-decided payment schedule. Further, the complainant was requested to remit the said amount on or before 15 days from the date of issuance of the letter to the respondent no.1.
11. That on 01.07.2020, respondent no.1 issued another demand letter for the payment of the installment of Rs. 5,65,922/- which had become due and payable by the complainant for the flat/unit as per the pre-decided payment schedule. The complainant was requested to remit the said amount on or before 15 days from the date of issuance of the letter to the respondent no.1.



12. That on 11.01.2021 respondent no.1 issued another demand letter for the payment of the installment of Rs. 8,72,093/- which had become due and payable by the complainant for the flat/unit as per the pre-decided payment schedule. The complainant was requested to remit the said amount on or before 15 days from the date of issuance of the letter to the respondent no.1.
13. That on 10.07.2021 respondent no.1 issued another demand letter for the payment of the installment of Rs. 11,95,069/- the flat/unit as per the pre-decided payment scheduled. The complainant was requested to remit the said amount on or before 15 days from the date of issuance of the letter to the respondent no.1.
14. That respondent no.1 sent reminder letter dated 27.01.2022 to the complainant with regards to payment of overdue outstanding instalment amount of Rs. 15,39,827/- for the allotted flat unit.
15. That the respondent no.1 sent another reminder letter dated 10.07.2022 to the complainant with regards to payment of overdue outstanding instalment amount of Rs. 15,39,827/- and applicable interest @ 15% p.a. for the allotted unit.
16. That on 09.12.2022 respondent no. 1 has issued a pre-cancellation notice and final opportunity, citing the non-payment of the outstanding amount as specified in the earlier demand letters and reminder letters. Despite multiple reminder letters and phone calls regarding the unpaid dues, the amount remained is still unpaid. The respondent no.1 gave the final opportunity to retain the said unit by depositing the entire due amount along with interest within 15 days from the issuance of the said letter.
17. That the complainant did not make any payment despite service of the pre-cancellation notice. Therefore, on 19.05.2023, the respondent no.1 issued the termination and cancellation notice for the unit allotted to the

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complainant since no payment has been made towards the outstanding amount of Rs.21,01,804/-. Further, it was informed that the amount already paid by the complainant will be refunded after adjusting according to the policy.

18. That therefore it can be seen that the default period of the complainant starts from 06.01.2020 and runs till 19.05.2023 which is the date of termination of the unit by the respondent no.1. The time afforded to the complainant to remit payments thus stands to be 3 years 4 months before terminating the unit of the complainant. If the version of the complainant is to be believed then the reason for non-disbursal of the amount raised via demand notice of the respondent no.1 dated 06.01.2020 must have been no construction progress of the project. It is hard to believe that the complainant since then for straight three years have neither cancelled the unit owing to no construction progress nor has remitted the amounts and remained in default while remitting EMI's for the disbursed amount. The version of the complainant completely falls to the ground and the present complaint is nothing but abuse of process of law.

E. Reply by the respondent no. 2

19. That the complainant was allotted a flat in tower-C, flat no. TC505, 2-BHK having a carpet area of 512.50 sq. ft. and balcony area of 130.30 sq. ft. in the project of the respondent namely, Kavyam situated at Sector 108, Village Dharampur, Gurgaon-122001, Haryana.
20. That the above-said allotment was done vide letter dated 01.07.2019. Thereafter builder buyer agreement (BBA) was signed on 24.10.2019.
21. That thereafter in order to avail bank loan a tripartite agreement was signed on 31.10.2019 between complainant, respondent no.1 and respondent no.2.

22. That in order to satisfy the demand of Rs. 4,24,200/- vide allotment-cum-demand letter dated 01.07.2019, the payments of Rs. 1,06,050/- and Rs. 3,18,442/- was disbursed.
23. That till 03.01.2020, an amount equivalent to 25% of the agreed total flat value was paid by the complainant to respondent no.1, which was according to the contractual liability of the complaint as per the tripartite agreement.
24. That in May 2022, respondent no.1 called the complainant and lured to take a parking slot against Rs. 1,60,000/-. The complainant has paid the said amount.
25. That the respondent no.1 stopped the construction of Tower-C and further raised various demands. The complainant received a "pre-cancellation notice" on 24.06.2023 (dated 09.12.2022) threatening that the allotment of the said flat shall be cancelled if the complainant does not pay the demands.
26. That the complainant and respondent no.2 (IDBI Bank Ltd.) have paid 25% of the total cost of the flat. All demands mentioned were illegal and not per the construction stage agreed in the tripartite agreement.
27. That the respondent no.2 (IDBI Bank Ltd.) subjected to consent by the complainant was and still is ready to comply with demands if they are as per the construction stages.
28. That in this stage the complainant has closed his loan account held with respondent no.2.
29. 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 these undisputed documents and submissions made by the complainant.

F. Jurisdiction of the authority

30. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

F.I Territorial jurisdiction

31. 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.

F.II Subject-matter jurisdiction

32. 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) 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.

33. 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.



G. Findings on the relief sought by the complainant.

- i. **Cancel all demands, including penalty charges that respondent has levied on the complainant relating to demands on casting of 3rd floor.**
- ii. **Cancel all pre cancellation and information to cancellation letters that respondent no. 1 has sent to the complainant.**
- iii. **Direct the respondent to submit a plan as to how it will complete the work by February 2024 i.e., on or before the expiry of the granted extension.**

34. The above mentioned relief no. (i), (ii) and (iii) are interrelated to each other. Accordingly, the same are being taken up together for adjudication.

35. In the present complaint, the complainant booked a unit in the project of respondent namely, Kavyam, situated at sector 108, Gurugram. The complainant was allotted a unit bearing no. 505, 5th floor in Tower C admeasuring 512.50 sq. ft. vide allotment letter dated 01.07.2019. Thereafter, the agreement to sell was executed between the complainant and the respondent on 24.10.2019. The tripartite agreement was executed between the complainant, respondent and the bank on 11.10.2019. The total sale consideration of the unit was Rs. 21,00,000/- and the complainant has made a payment of Rs. 5,30,250/- against the same in all.

36. The complainant in the present complaint has stated that the respondent has cancelled its unit vide letter dated 19.05.2023 which is invalid as the payments were to be raised as per construction linked payment plan mentioned in the agreement to sale dated 24.10.2019.

37. The plea of the respondent is otherwise and stated that the complainant had booked a unit in its project titled 'Kavyam' located at Sector-108, Gurugram, which is an affordable group housing project

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governed and regulated under the Affordable Housing Policy, 2013. It is further averred that all demands raised by the respondent were in accordance with the provisions of the said Affordable Housing Policy, 2013. However, various reminder letters were issued followed by pre cancellation letter dated 09.12.2022 but despite repeated follow ups the complainant failed to act further and comply with their contractual obligations and therefore the unit of the complainant was finally terminated vide letter dated 19.05.2023. Now the question before the authority is whether the cancellation issued vide letter dated 19.05.2023 is valid or not.

38. On consideration of documents available on record and submissions made by both the parties, the authority is of the view that the agreement to sell was executed between the complainant and respondent on 24.10.2019. 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.
39. The complainant has contended that due to the alleged non-completion of construction by the respondent, he is not under an obligation to make further payments. However, the Quarterly Progress Reports (QPRs) duly submitted before the authority, indicates that the sub-



structure of the project has been completed to the extent of 100%. These reports, being official submissions, carry evidentiary value and demonstrate that substantial progress in construction has been achieved in accordance with the sanctioned plan.

40. In view of the above, the complainant cannot unilaterally withhold payment on the mere ground of alleged construction delay, especially when the respondent has complied with its reporting obligations under the regulatory framework and there is no contrary evidence to disprove the progress reflected in the QPRs. 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.
41. 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".*

42. 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 06.01.2020, 01.07.2020, 11.01.2021, 10.07.2021, 27.01.2022, 01.07.2022. Thereafter, the respondent issued pre cancellation notice followed by cancellation notice

dated 09.12.2022 which led to issuance of notice for cancellation by the respondent/builder dated 19.05.2023. The respondent has also published a list of defaulters of payments in the daily Hindi newspaper "Pioneer" New Delhi.

43. 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 19.05.2023 is held to be valid.
44. 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., 19.05.2023 till the actual realization of the amount.

G. Directions of the authority

45. 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 of Rs. 5,30,250/- 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., 19.05.2023 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.

46. Complaint stands disposed of.

47. File be consigned to registry.

Dated: 23.05.2025



HARERA
GURUGRAM


(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram