

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

Complaint no. :	4016 of 2024
Date of Filing Complaint:	21.08.2024
Order reserved on:	10.01.2025
Order pronounced on:	02.05.2025

Mr. Dev Kumar**Address:-** R/o B-101, NFL Township,
Vijaipur, Guna Madhya Pradesh**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 Arun Kumar

Chairman**APPEARANCE:**

Ms. Meenal (Advocate)

Complainant

Sh. 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:

S.No.	Particulars	Details
1.	Name of the project	AURA VILLA, Sector-103, kadipur, Gurugram
2.	Nature of the project	Affordable Group Housing
3.	RERA Registered/ not registered	Registered vide registration no. 67 of 2021 DATED 12.10.2021 Valid upto 31.08.2025
4.	DTCP License no. and validity	2 of 2021 Crae Realtech Pvt. Ltd. & HCBS Developments Ltd.
5.	Unit no.	G-77, 7 th floor, tower G, sector-103
6.	Unit area admeasuring	Carpet area measuring 640.67 sq. ft.
7.	Date of booking	20.01.2022
8.	Date of allotment letter	14.01.2022 [Allotment letter at pg. 29 of complaint]
9.	Date of apartment buyer's agreement	15.06.2022 [Page 53 of complaint]
10.	Building plans dated	23.07.2021
11.	Environment clearance dated	30.07.2022

12.	Due date of possession	30.07.2026 calculated from the date of EC i.e., 30.07.2022
13.	Total sale consideration	Rs. 27,90,814/- (Page 56 of the complaint)
14.	Amount paid by the complainant	Rs. 7,04,679/- Rs. 9,86,533/- (As stated by the complainant) Note:- Rs. 2,81,872/- was paid by the complainant to the respondent after the cancellation of the unit on 30.05.2024 through RTGS.
15.	Occupation certificate /Completion certificate	Not obtained
16.	Offer of possession	N/A
17.	Reminders	05.08.2023, 05.04.2024, 06.05.2024, 18.03.2024, 01.05.2024 [PAGE 34,35,36, 38]
18.	Public notice issued before the cancellation in Nav Bharat and Times of India	27.04.2024
19.	Cancellation letter dated	29.05.2024 [Pg. 43 of complaint]

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- i. That the respondent company issued an advertisement announcing an affordable group housing project "AURA VILLA" at SECTOR- 103 Tehsil, KADIPUR ST, District, GURUGRAM was launched by respondent, under the license no. 2 of 2021 dated

21.01.2021, issued by DTCP, Haryana, Chandigarh, situated at Sector - 103, Gurugram and thereby invited applications from prospective buyers for the purchase of unit in the said project. Respondent confirmed that the projects had got Building Plan Approval from the authority.

- ii. That the Allottee, booked a unit in the project by paying an amount of Rs. 1,34,541.00 towards the booking of the said unit bearing no. 77, Tower-G, in Sector 103, having Carpet area measuring. 640.67 Sq. ft. and balcony area 110.44 Sq. Ft. to the respondent dated 20.01.2022 and the same was acknowledged by the respondent.
- iii. That after repeated reminders and follow ups with the respondent. Respondent provided the copy of the payment receipts and allotment letter. It is pertinent to note here that Complainant duly and timely made all the payments when demanded but respondent after delay of almost five months got the agreement executed.
- iv. That respondent sent a reminder dated 06.05.2024 to complainant raising demand of Rs.2,81,872.00. 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, builder cannot charge interest against the interest rate provided under the RERA Act,2016 and HARERA Rules framed thereafter.
- v. That the complainant on the bases of the assurance and representations of the respondent applied for loan arrangement from the SBI bank as the SBI has financed the said project and the complainant successfully got the loan sanctioned for amount of Rs. 20,00,000/- vide loan sanction letter dated 24.01.2024. 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 was also sent.

- vi. It is pertinent to mention here that SBI bank on 27.03.2024 inspected the project in order to get the construction update, in order to release the loan amount but unfortunately construction status on site was not upto the milestone as communicated/provided by the respondent builder to the SBI Bank. Hence, SBI bank refused to release the loan amount in favour of the respondent builder.
- vii. That on 24.05.2024, when complainant visited the office of the respondent it was shocking for the complainant that representatives of the respondent informed the complainant that their unit has already been stands cancelled, when complainant asked to provide the copy of the cancellation letter as they never received the same till date but same was not provided. Further to this, though there is no written communication from respondent side. It is pertinent to mention here that it was very shocking to complainant if the said unit was cancelled, therefore how can respondent levying interest at rate of 15%. Hence, the said demands are void, illegal and needs to be quashed.
- viii. As per the demands raised by the respondent, based on the payment plan, the Complainant to buy the captioned unit already paid a total sum of Rs. 9,86, 553/-, towards the said unit against total sale consideration of Rs. 27,90,814/-.
- ix. That Complainant raised objections on account of the concern/objection that on ground reality status of construction of

is not the same as the demand of money raised. Furthermore, requested for the inspection of the unit as per the agreement.

- x. The Respondent have completely failed to honour their promises and have not provided the services as promised and agreed through the brochure, allotment letter and the different advertisements released from time to time. Further, such acts of the Respondent are also illegal and against the spirit of RERA Act, 2016 and HRERA Rules, 2017.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- i. Direct the respondent to hand over the possession of the said unit with the amenities and specifications as promised in all completeness without delay and not to hold delivery of the possession for certain unwanted reasons much outside the scope of BBA.
 - ii. Direct the respondent to set a side cancellation letter dated 29.05.2024.
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 is estopped by their own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint. That the allotment of the unit of the Complainant was cancelled on 29.05.2024 due to the defaults of the Complainant. That the Complainant is in default of their obligations under the

Agreement, the Act, 2016 as well as the Affordable Housing Policy, 2013, and as such has disentitled himself from claiming any relief thereunder.

- ii. That at this stage it is submitted that the Respondent had obtained license no. 02 of 2021 from the Director, Town and Country Planning Department, Haryana for the development of an affordable housing project on the Project land under the Affordable Housing Policy 2013, issued by the Government, vide Town and Country Planning Department's Notification dated 19.08.2013.
- iii. That the project of the Respondent is being developed at full swing. That the Respondent had already obtained the approval of the Building Plan on 23.07.2021. Moreover, the Environment Clearance has also been obtained by the Respondent on 30.07.2022.
- iv. That the Project of the Respondent has also been registered with Haryana Real Estate Regulatory Authority vide RERA Registration No. 67 dated 12.10.2021. That the Respondent has been transparent in his conduct since the very beginning.
- v. 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 (the "Project") 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. 776 on 7th floor, Tower G tentatively admeasuring carpet area of 640.67 sq. ft. (the "**Unit**") was allotted to the Complainant vide Allotment Letter dated 21.01.2022.

- vi. Thereafter, an Apartment Buyer's Agreement was sent to the Complainant for signing the same, which was delayed by the Complainant. That finally the parties executed the Apartment Buyer's Agreement on 15.06.2022 (the "**Agreement**"). It is pertinent to mention that the Agreement was consciously and voluntarily executed and the terms and conditions of the same are binding on the Parties. That the Complainant opted for construction linked payment plan for remittance of the sales consideration of the unit.
- vii. It is submitted that the remittance of all amounts due and payable by the Complainant under the agreement as per the schedule of payment incorporated in the Agreement was of the essence under Clause 5 of the Agreement reiterated as under:
- "5. TIME IS THE ESSENCE***
Notwithstanding anything to the contrary contained herein, it is hereby expressly and unconditionally agreed to by the Allottee that time is of essence with respect to the Allottee's obligations to make any and all payments hereunder including the payment of any part of the Total Price, payment of any and all other applicable charges, considerations, interest, deposits, penalties and other payments such as applicable stamp duty, registration fee etc. and other charges as are stipulated under this Agreement."
- viii. 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
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1.	Demand Letter	3 rd installment at the time of stilt level	05.08.2023
2.	Demand Letter	4 th installment at completion of 20% structure (31 floors)	01.12.2023
3.	Reminder Letter		18.03.2024
4.	Reminder Letter 2		05.04.2024
5.	Demand Letter	5 th installment at completion of 40% structure (62 floors)	01.05.2024

- ix. 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 21.01.2023 i.e., at the stage "At the time of allotment of unit and BBA registration". That the Complainant willingly and voluntarily stopped making the payments even after receipt of multiple reminders and notices from the Respondent.
- x. That the Respondent issued the demand letter for 3rd installment i.e. at stilt level on 05.08.2023 which is unpaid by the Complainant. The Respondent issued another demand letter of 4th installment i.e. at completion of 20% of Structure (31 floors) dated 01.12.2023 however, the Complainant had failed to make payment of this installment also. That thereafter 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 2 installments till the date of cancellation of the unit.
- xi. 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).

- xii. It is most important to note that the all the demands were raised in a timely manner as per the stages of the construction. That in the Affordable Housing Project 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.
- xiii. That it is pertinent to mention again that since the very beginning the Complainant had stopped making payments of the installments and the **last payment received from the Complainant was on 21.01.2023 i.e., at the stage "At the time of allotment of unit and BBA registration"**. 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, 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 and Times of India dated 27.04.2024 as per the Affordable Housing Policy, 2013. That it is pertinent to mention herein that 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.

- xiv. That it is of essence to note that upon the non-payment by the Complainant, the Complainant was considered in default under the Agreement 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 of the Complainant under clause 9.3 of the Agreement and clause 5(III)(i) of the Affordable Housing Policy.

The relevant clauses are reiterated hereunder:

Apartment Buyer's Agreement:

9.3 The Allottee shall be considered under a condition of Default, on the occurrence of the following events:

1. In the event of any delay in making timely payment of any amount due on the part of the Allottee, the Allottee shall be liable to pay an interest on the entire amount due, at the rate to be determined in accordance with Rule 15 of the Haryana Real Estate Regulation and Development Rules, 2017, applicable for the entire period of delay. Subject to the provision for payment of interest, in the event the Allottee, upon having been allotted the Apartment, fails to make the payment of any of the instalments of the Total Price or any other amount falling due within the stipulated time, the Company may issue a notice to the Allottee for making the payment of the due amount within a period of 15 (Fifteen) days from the date of issue of such notice. If the Allottee still defaults in making payment of the amount due along with interest within the said period of 15 (fifteen) days, the Company may publish the name of the Allottee and other relevant details in a regional Hindi newspaper as a defaulter Developments Ltd. requiring the payment of the amount due (along with interest) to be made within 15 (fifteen), days from the date of the publication of such notice.

2. Upon the failure of the Allottee to pay the entire amount due, including interest on the delayed payment, within this additional period of 15 (fifteen) days, the Allottee shall be deemed to have surrendered his allotment of the Apartment and resultantly the allotment shall stand cancelled without the need for



the Company to do any more things or undertake any more steps. Upon such cancellation as mentioned above, the Allottee shall forfeit to the Company the amount as described in clause 7.5, as well as any processing fee, brokerage, taxes, interest on delayed payment and the amount of any other fine or penalty paid / payable by the Allottee, and the Allottee shall be left with no lien, right, title, interest or any claim of whatsoever nature in the said Apartment along with parking space and/or any part of the said Project or against the Company or any of its directors, shareholders, employees or agents. The amount(s) if any, paid over and above this amount as calculated in clause 7.5, processing fee, interest on delayed payments, taxes, interest on instalments, brokerage, amount of any fine or penalty etc., (all of which shall stand forfeited), would be refunded to the Allottee by the Company without any interest or compensation whatsoever. It is further clarified that as per existing tax norms, GST is payable on processing fee, interest on delayed payments, interest on instalments, brokerage, and amount of any fine or penalty and therefore along with deductions of all such amounts, the amount of GST shall also be payable and deductible from the amount paid by the Allottee to the Company.

- xv. That due to the continuous defaults of the Complainant since the 3rd installment at the time of stilt level, 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. That it is pertinent to note that the unit was cancelled not on the demand of 5th installment at completion of 40% structure dated 01.05.2024 but the demand pending since the 3rd installemnts at the time of stilt level. That accordingly, after termination of the allotment of the unit of the Complainant, the Complainant has been left with no right, titled, interest, charge or lien over the unit. That after the termination of the allotment of the unit of the Complainant, solely due to the default of the Complainant, the Respondent is well within their right to forfeit Rs 25,000 with. That in addition of Rs 25,000 the Respondent is also entitled to deduct 5% of the coast 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.

- xvi.** Without prejudice, it is submitted that the Complainant contends that he had paid Rs. 2,81,872 to the Respondent on 30.05.2024, however, the said payment was made by the Complainant after the allotment of the unit of the Complainant was already duly 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.
- xvii.** That without prejudice, it is also submitted that the obligation for making payment as per the payment plan was upon the Complainants himself. That in absence of any written agreement between the bank and the Respondent. However, the Complainant had defaulted in making payments and hence, cancellation is a valid cancellation as per the terms and conditions of the Agreement, the Act and Affordable Housing Policy.
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.

E. 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.

E. 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;

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.

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 Direct the respondent to hand over the possession of the said unit with the amenities and specifications as promised in all

completeness without delay and not to hold delivery of the possession for certain unwanted reasons much outside the scope of BBA.

E.II Direct the respondent to set aside cancellation letter dated 29.05.2024.

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. G-77, 7th floor, tower G of the project vide allotment letter dated 14.01.2022 for a total sale consideration of Rs.27,90,814/- out of which the complainant had paid an amount of Rs.7,04,679/-.
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. 7,04,679/- against basic sale consideration of Rs. 27,90,814/- of the unit allotted to him on 14.01.2022. The complainant has failed to adhere to the terms and conditions of the builder buyer agreement.
14. The respondent issued many reminders to the complainant for paying the outstanding dues on 05.08.2023, 05.04.2024, 06.05.2024, 18.03.2024 and 01.05.2024 thereafter issued cancellation letter on 29.05.2024 after issuance of notice in the newspaper.
15. 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".

16. 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. The respondent cancelled the unit of the complainant with adequate notices. Thus, the cancellation of unit is valid.
17. On 27.04.2024, the respondent published a list of defaulters for payments in the daily Hindi newspaper Nav Bharat and Times of India. 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. But there is nothing on record to show that the respondent has refunded the balance amount after deduction of Rs.25,000/- as per the provisions of clause 5(iii)(i) of the policy.

F. Directions of the Authority:

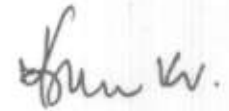
18. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:
 - i. The respondent is directed to refund the balance amount of complainants after deduction of Rs. 25,000/- as per clause 5(iii)(I) of the Policy 2013. The respondent has been using the amount paid by the complainants even after cancellation of subject unit. Therefore, the respondent is further directed to return the amount

paid by the complainant with 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.

- 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.

19. Complaint stands disposed of.

20. File be consigned to the registry.



(Arun Kumar)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 02.05.2025

HARERA
GURUGRAM