

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

Complaint no.: 4297 of 2023
Date of filing of complaint: 22.09.2023
Date of Order: 30.05.2025

Malika Chaudhary

Complainant

R/o: Flat No. 204, Tower-3, Hero Homes, Sector-88,
Mohali, Punjab-140308.

Versus

M/s Kiwi Land and Housing Private Limited.

Respondent

Regd. Office at: C-114, 1st Floor, Fateh Nagar, Jail
Road, New Delhi-110018

Corporate Office At: C-7A, 2nd Floor, Omaxe Centre
Mall, Sohna Road, Sector-49, Gurugram, Haryana-
122018.

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Sh. Vivek Sethi & Vinayak Gupta (Advocates)

Complainant

Sh. Prashant Sheoran (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 provisions 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. No.	Particulars	Details
1.	Name and location of the project	"Rama Homes", Sector-89, Gurugram-Manesar Urban Complex, Gurugram
2.	Nature of the project	Affordable Group Housing
3.	Project area	5.1265 acres
4.	DTCP license no.	49 of 2021 dated 12.08.2021 valid up to 11.08.2026
5.	Name of licensee	Kiwi Land and Housing Pvt. Ltd.
6.	RERA Registered/ not registered	17 of 2022 dated 21.02.2022 valid up to 11.08.2026
7.	Unit no.	T1-005, ground floor & Tower-1 (As per page no. 29 of the complaint)
8.	Unit area admeasuring	644.66 sq. ft.(Carpet Area) and 129.92 (Balcony area) (As per page no. 29 of the complaint)
9.	Date of approval of building plans	30.12.2021 (As per page no. 29 of the complaint)
10.	Date of Environment Clearance	07.01.2022 (As per page no. 29 of the complaint)
11.	Allotment letter	27.01.2023 (As per page no. 28 of the complaint)
12.	Possession clause	N.A
13.	Due date of possession	11.08.2026 (As per RERA registration and page no. 28 of the complaint)
14.	Payment plan	Construction linked payment plan
15.	Total sale consideration	Rs.28,07,572/- (As per page no. 30 of the complaint)

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16.	Amount paid by the complainant	Rs.10,63,372/- (Rs.8,40,000/-As per SOA dated 14.08.2023 on page no. 36 of the complaint plus Rs.2,23,372/- through NEFT on 21.08.2023 as per page no. 6 of the rejoinder by the complainant)
17.	Occupation Certificate	Not obtained
18.	Offer of possession	Not offered
19.	Demand letter	02.03.2023 (As per page no. 34 of the complaint)
20.	Reminder letters	29.04.2023, 17.05.2023, 11.07.2023 & 25.07.2023 (As per page no. 38, 39, 40 & 41 of the complaint)
21.	Publication in various newspapers for payment of outstanding dues	05.08.2023 (As per page no. 13 & 14 of the reply)
22.	Intimation letter of cancellation	21.08.2023 (As per page no. 47 of the complaint)
23.	Email for reconsideration of cancellation and to reinstate the allotment	23.08.2023 (As per page no. 49 of the complaint)

B. Facts of the complaint:

3. The complainant has made the following submissions:

- I. That the complainant is a law-abiding citizen of India and is residing at Flat No. 204, Tower No. 3, Hero Homes, Sector 88, Mohali, Punjab - 140308.
- II. That the complainant in January 2023 came across a Affordable Group Housing project called "Rama Homes" located in Village Hayatpur, Sector 89, Gurgaon-Manesar Urban Complex, District Gurugram, Haryana to be developed by the respondent company and after going through brochure and media advertisements suggesting that the project would contain with modern

facilities/amenities, the complainant decided to invest. The respondent company being owner of land in Sector 89, Gurgaon, Haryana and represented the complainant that the respondent company is developing a residential project in the name of "Rama Homes" on the above said land with modern facilities/amenities. The respondent company further represented to the complainant that the said project would be completed by August 2026.

- III. That the complainant initially paid an amount of Rs.1,40,000/- to the respondent company on 24.01.2023 and along with that also filled up an application form seeking allotment of residential unit in the above-mentioned project on 24.01.2023.
- IV. That accordingly, allotment letter dated 27.01.2023 was issued to the complainant by the respondent. It further shows that proposed date of completion of the project & proposed date of possession of the unit is 11.08.2026.
- V. That vide allotment letter dated 27.01.2023, the complainant was allotted flat no. T1-005, Ground Floor, Tower 1 with carper area of 644.66 sq. ft. for a total sale consideration of Rs.28,07,572/- plus GST as applicable by government.
- VI. That the payment was supposed to be paid by the complainant as per construction linked plan as mentioned in clause 4 of the allotment letter dated 27.01.2023.
- VII. That the respondent forwarded a demand letter dated 02.03.2023 calling upon the complainant to pay an amount of Rs.9,28,051/- on or before 17.03.2023.
- VIII. That the complainant thereafter paid a total sum of Rs.10,63,372/- to the respondent towards the sale consideration of the above-said unit. It is submitted that all the above payments have been made in

time to the respondent without any default on the part of the complainant. The complainant has paid more than 30% of the total sale consideration to the respondent till date.

- IX. That the complainant periodically received reminder letters dated 29.04.2023, 17.05.2023, 11.07.2023 & 25.07.2023 from the respondent. On receiving last demand letter dated 25.07.2023, the complainant vide e-mail dated 14.08.2023 sought statement of account, which was provided to the complainant on same date by the respondent showing outstanding amount of Rs.2,23,372/-.
- X. That the complainant was shocked to receive letter dated 21.08.2023 from the respondent vide which the allotted unit/flat has been cancelled allegedly as per Haryana Affordable Housing Policy 2013.
- XI. That immediately on receiving the cancellation letter, the complainant vide e-mail communication dated 23.08.2023 expressed his willingness and intent to continue with the allocation of the flat at Rama Homes and accordingly requested for reconsideration of cancellation of allotted unit.
- XII. That the complainant visited the project in the month of August 2023 and was shocked to know that the construction activities on the site were at halt and the project was far from completion.
- XIII. That on recent visits of the project site in question, it transpired that said property is not in a deliverable condition and are far from being offered to be delivered. Hence, the present complaint.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
- i. Direct the respondent to set aside cancellation letter dated 21.08.2023.



- ii. Direct the respondent to reinstate allotment of the unit as allotted vide allotment letter dated 27.10.2023.
 - iii. Direct the respondent to pay Rs.1,00,000/- as part of damages to the complainant on account of mental agony, torture and harassment.
 - iv. Direct the respondent to pay Rs.1,00,000/- as compensation to the complainant as part of deficiency of service on your part.
 - v. Direct the respondent to refund of all legal cost of Rs.1,00,000/- incurred by the complainant.
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 vide its reply dated 28.03.2024 on following grounds:
- i. That the complainant in the present case has demanded setting aside of cancellation done by respondent on 21.08.2023. That filing of present complaint in itself acknowledges the fact that the terms and conditions of affordable housing policy as amended up to date are binding on both the parties and accordingly the complainant is also bound by the provisions affordable housing policy.
 - ii. That in the present case complainant has applied for allotment of a unit in general draw as per guidelines of DTCP and paid an amount of Rs.1,40,000/-.
 - iii. That thereafter a unit was allotted to complainant on 27.01.2023 being a successful allottee and an allotment letter was issued to complainant. It is submitted that as allotment letter was issued in compliance of provisions of affordable housing policy and as per



said allotment letter complainant was obliged to pay 5% at the time of applying for allotment & 20% of total price of unit at the time of allotment and thereafter on start of excavation another 5% and 7.5% of total price on completion of sub structure was required to be paid to respondent. Thus respondent issued a demand letter on 02.03.2023 and reminder letters on 29.04.2023, 17.05.2023, 11.05.2023, and 25.07.2023.

- iv. That the complainant had already received allotment letter and as per allotment letter she was obliged to pay as per payment plan and admittedly complainant never paid said instalments. That merely making part payment does not absolve the complainant from duty of making full payment and her allotment can still be cancelled as per affordable housing policy. It is submitted as per policy an allottee has to make payment of instalment demanded by promoter and as per complaint as well as documents annexed by complainant herself, she failed to make full payment of demand raised by complainant. The complainant kept on ignoring demands raised by respondent and chose to remain silent after receiving said demand letter as well.
- v. That thereafter as per the provisions of affordable housing policy a list of defaulters wherein complainant was one of them was published in newspaper for payment of due amount within 15 days from the date of publication of such notice, failing which allotment be termed as surrender and same will be cancelled. That publication was made on 05.08.2023 and after waiting of more than 15 days ultimately unit of complainant was cancelled vide letter dated 21.08.2023 and requested the complainant to provide original documents in order to initiate refund after deduction of amount as

per affordable housing policy. It is submitted that respondent validly cancelled allotment of complainant.

- vi. That keeping in view of above stated facts and circumstances, it is clear that the cancellation was done validly by the respondent and present complaint is not maintainable.
7. 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 parties.

E. Jurisdiction of the authority:

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

E.I Territorial jurisdiction

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

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.

9. 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.

F. Findings on the relief sought by the complainant.

F.I Direct the respondent to set aside cancellation letter dated 21.08.2023.

10. The complainant was allotted a unit in the project of respondent "Rama Homes", in Sector-89, Gurugram vide allotment letter dated 27.01.2023 for a total sum of Rs.28,07,572/-. Though no agreement for sale was executed between the parties but the complainant started paying the amount due against the allotted unit and paid a total sum of Rs.10,63,672/-. As per clause 1 (iv) of the Affordable Housing Policy, 2013, the possession of the apartment is to be delivered within 4 years from the date of approval of building plans or grant of environmental clearance, whichever is later. Clause 1(iv) of the Policy of 2013 is reproduced below for ready reference:
- 1.**
(iv) All such projects shall be required to be necessarily completed within 4 years from the approval of building plans or grant of environmental clearance certificate, whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of this policy.
(Emphasis supplied)
11. The due date of possession is to be calculated 4 years from the date of environment clearance i.e., 07.01.2022. Therefore, the due date of possession comes to 07.01.2026 as per the clause of Affordable Housing Policy, 2013.
12. In present complaint, the complainant intends to continue with the project and is seeking reinstate of the allotment of the unit, as the complainant intends to continue with project. But as per the documents

placed on record with the complaint, the Authority observed that the unit is cancelled on 21.08.2023 i.e., before the filing of the present complaint.

13. The complainant stated in facts of the complaint that the complainant intends to continue with the project and requests for setting-aside the cancellation of the unit. However, the respondent in its reply dated 28.03.2024 stated that the respondent has cancelled the unit of the complainant on account of non-payment by the complainant. He further stated in its reply that the respondent has raised demand for payment for outstanding dues but the complainant never paid any heed to the same and till date paid an amount of Rs.8,40,000/- only against the consideration of Rs.28,07,752/- and an amount of Rs.2,23,372/- paid after the cancellation will not be considered. However, the Authority observed that the amount of Rs.2,23,372/- paid on 21.08.2023 through NEFT transaction and thus, the total amount paid by the complainant comes to Rs.10,63,372/-. The respondent has duly followed the due procedure as per the Affordable Housing Policy, 2013 and after issuing reminder letters dated 29.04.2023, 17.05.2023, 11.07.2023 & 25.07.2023 made a publication in the newspaper on 05.08.2023 but the complainant failed to pay the outstanding dues. Thereafter, the respondent issued a cancellation letter dated 21.08.2023 and requested the complainant to provide original documents in order to initiate refund after deduction of amount as per affordable housing policy. On 23.08.2023, the complainant wrote an e-mail to the respondent to reconsider the cancellation and reinstate the unit of the complainant but the same cannot be done as the unit was cancelled after following the due procedure established by the Affordable Group Housing Policy, 2013. Thus, the cancellation of the unit stands valid.

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14. After consideration of the afore-mentioned facts and submissions, the only relief which can be provided to the complainant is of refund, the respondent already clarified his stance that the complainant is entitled to refund as per clause 5(iii)(i) of Affordable Housing Policy, 2013 in case any successful applicant fails to deposit the instalments within the stipulated time. In such case, an amount of Rs.25,000/- can be forfeited by the colonizer and the balance amount shall be refunded to the applicant-allottee. Relevant portion of clause 5(iii)(i) of the Affordable Housing Policy, 2013 is reproduced below for ready reference:

i. 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 news-paper having circulation of more than ten thousand in the State for payment of due 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.

15. In the present case, the complainant has failed to pay the due instalments even after issuance of demand letter, reminder letters and publication in the newspaper. Keeping in view the aforementioned factual and legal provisions, the respondent can retain the amount paid by the complainant against the booked unit as per clause 5(iii)(i) of Affordable Group Housing Policy, 2013 i.e., Rs.25,000/-.
16. The prescribed rate of interest as per Rule 15 of Rules, 2017 payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State Bank of India highest marginal cost of lending rate plus two percent.
17. The authority hereby directs the promoter to return the amount received by him i.e., Rs.10,63,372/- (Inadvertently mentioned as Rs.9,85,945/- in proceedings of the day dated 30.05.2025) after deducting the amount of Rs.25,000/- as per above-mentioned clause of Affordable Group Housing

Policy, 2013 along with interest at the rate of 11.10% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of cancellation i.e., 21.08.2023 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

F.II Direct the respondent to reinstate allotment of the unit as allotted vide allotment letter dated 27.10.2023.

18. The Authority observes that the unit of the complainant has been cancelled on account of non-payment of dues by the complainant-allottee by following due procedure as presented under Affordable Housing Policy, 2013 and only relief provided to the complainant is refund in terms of the said policy of State Government. As the Authority is allowing the refund of the paid-up amount along with interest as mentioned in para 17, the above sought relief by the complainant becomes redundant.

F.III Direct the respondent to pay Rs.1,00,000/- as part of damages to the complainant on account of mental agony, torture and harassment.

F.IV Direct the respondent to pay Rs.1,00,000/- as compensation to the complainant as part of deficiency of service on your part.

F.V Direct the respondent to refund of all legal cost of Rs.1,00,000/- incurred by the complainant.

19. The above sought relief(s) by the complainant are taken together being inter-connected.
20. The complainant is seeking above mentioned 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. (supra)*, has held that an allottee is entitled to claim compensation & litigation charges 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 & litigation expense 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 & legal expenses.

G. Directions of the authority:

21. 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):
- The respondent /promoter is directed to refund the amount i.e., **Rs. 10,63,372/-** received from the complainant-allottee after deducting the amount of Rs.25,000/- as per clause 5(iii)(i) of Affordable Group Housing Policy, 2013 along with interest on such balance amount at the rate of 11.10% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of cancellation i.e., 21.08.2023 till the actual date of refund of the amount.
 - A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.
22. Complaint stands disposed of.
23. File be consigned to registry.

Dated: 30.05.2025


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