



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

Date of decision: 27.05.2025

| NAME OF THE BUILDER | | Desi Construction Private Limited. |
|---------------------|--------------|---|
| PROJECT NAME | | "TATHASTU-II", Sector- 5, Gurugram, Haryana |
| S. No. | Case No. | Case title |
| 1. | CR/4346/2024 | Anoop Kumar Prajapati and Ragini Verma V/S Desi Construction Private Limited (R1) State Bank of India (R2) |
| 2. | CR/4347/2024 | Laxmi and Amar Nath V/S Desi Construction Private Limited (R1) State Bank of India (R2) |
| 3. | CR/4348/2024 | Shubham Badhana V/S Desi Construction Private Limited (R1) State Bank of India (R2) |
| 4. | CR/4353/2024 | Devendra Badhana V/S Desi Construction Private Limited (R1) State Bank of India (R2) |
| 5. | CR/4359/2024 | Shubha Shivam V/S Desi Construction Private Limited (R1) State Bank of India (R2) |
| 6. | CR/4360/2024 | Jagbir Singh Tanwar V/S Desi Construction Private Limited (R1) State Bank of India (R2) |
| 7. | CR/4362/2024 | Dharmender Kumar and Yogita Chauhan V/S Desi Construction Private Limited (R1) State Bank of India (R2) |
| 8. | CR/4424/2024 | Nitin Mehta V/S Desi Construction Private Limited (R1) State Bank of India (R2) |
| 9. | CR/4464/2024 | Karan Singh |

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| | | V/S Desi Construction Private Limited (R1) State Bank of India (R2) |
| 10. | CR/4343/2024 | Chandan Kumar Tiwari V/S Desi Construction Private Limited |

CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Chairman
Member
Member

APPEARANCE:

Sh. Rishabh Gupta (Advocate) from S. No. 1 to 9
Sh. Rajan Hans (Advocate) from S. No. 10
Sh. Rahul Mangla (Advocate)
Sh. Sanjeev Sagar (Advocate)

Complainant(s)
Respondent no. 1
Respondent no. 2

ORDER

1. This order shall dispose of 10 complaints titled above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Tathastu- II", Sector- 5, Gurugram, Haryana being developed by the respondent/promoter i.e., M/s Desi Construction Private Limited. The terms and conditions of the allotment letter, buyer's agreements, fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to

deliver timely possession of the units in question seeking award of possession and delayed possession charges and execute the conveyance deed and others.

3. The details of the complaints, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

| | |
|---|---|
| Project Name and Location | "Tathastu-II" at Sector 5, Gurugram. |
| Project area | 8.975 acres |
| Nature of the project | Affordable group housing colony |
| DTCP license no. and other details | 188 of 2022 dated 06.11.2022 Valid up to- 15.11.2027 Licensee- Desi Construction Pvt. Ltd. |
| Building plan approval dated | 23.01.2023 (As information obtained from the planning branch) |
| Environment clearance dated | 09.02.2023 (As information obtained from the planning branch) |
| RERA Registered/ not registered | 21 of 2023 dated 30.01.2023 Valid up to 14.11.2027 |
| Occupation certificate | Not yet obtained |
| Possession clause as per buyer's agreement | <i>"7.1 Schedule for possession of the said Plot/ Unit/ Apartment for Residential/ Commercial/ Industrial/ IT/ any other usage - The Promoter agrees and understands that timely delivery of possession of the Plot/ Unit/ Apartment for Residential/ Commercial/ Industrial/ IT/ any other usage (as the case may be) along with parking (if applicable) to the Allottee(s) and the common areas to the association of allottees or the competent authority, as the case may be, as provided under Rule 2(1)(f) of Rules, 2017, is the essence of the Agreement".</i> |
| Possession clause as per Affordable Housing Policy, 2013 | <i>1(IV) of the Affordable Housing Policy, 2013</i> <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. The licenses shall not be renewed beyond the said 4 years period from the date of commencement of project.</i> |



| S. No. | Complaint no., Case title, Date of filing of complaint and reply status | Unit no. and size | Allotment Letter And BBA | Due date of possession | Total sale consideration and Total amount paid by the complainant in Rs. | Demand/ Reminders Letters Newspaper Publication & Cancellation letter |
|--------|---|--|---|--|---|--|
| 1. | CR/4346/2024 Anoop Kumar Prajapati and Ragini Verma V/S Desi Construction Private Limited & State Bank of India DOF: 03.09.2024 RR: R1: 09.01.2025 & R2: 20.11.2024 | T6-404, 6 th floor, Tower T6 645.818 sq. ft. (carpet area) 78.254 sq. ft. (Balcony area) [Page 27 of complaint] | AL:- 24.04.2023 [Page 26 of complaint] BBA 19.05.2023 [Page 29 of complaint] | 09.02.2027 (calculated from the date of environment clearance dated 09.02.2023 being later) | TC: 25,57,686/- [As per clause 1.2 of the BBA at page 35 of complaint] AP: 9,61,715/- [As alleged by the complainant at page 16 of complaint] | DL:- 15.03.2024 RL:- 26.04.2024 & 29.05.2024 (Page 113 of complaint) NP:- 05.08.2024 (Page 20 of reply filed by respondent no. 1) CL:- 13.08.2024 (Page 21 of reply filed by respondent no. 1) |
| 2. | CR/4347/2024 Laxmi and Amar Nath V/S Desi Construction Private Limited & State Bank of India DOF: 03.09.2024 RR: R1: 09.01.2025 & R2: 20.11.2024 | T6-702, Floor-7 th , Tower-6 645.818 sq. ft. (carpet area) 72.259 sq. ft. (Balcony area) [Page 26 of complaint] | AL:- 24.04.2023 [Page 26 of complaint] BBA 07.08.2023 [Page 29 of complaint] | 09.02.2027 (calculated from the date of environment clearance dated 09.02.2023 being later) | TC: 25,51,631/- [As per clause 1.2 of the BBA at page 35 of complaint] AP: 12,75,815/- [As per receipts at page 65-77 of complaint] | DL:- 15.03.2024 RL:- 20.04.2024 & 23.05.2024 (Page 65 of complaint) NP:- 05.08.2024 (Page 21 of reply filed by respondent no. 1) CL:- 13.08.2024 (Page 22 of reply filed by respondent no. 1) |
| 3. | CR/4348/2024 Shubham Badhana V/S | T1-204, Floor-2 nd , Tower-1 | AL:- 24.04.2023 [Page 26 of complaint] | 09.02.2027 (calculated from the date of environment | TC: 25,57,686/- [As per clause 1.2 of the BBA | DL:- 15.03.2024 RL:- |

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|----|---|---|---|---|---|--|
| | Desi Construction Private Limited & State Bank of India DOF: 03.09.2024 RR: R1: 09.01.2025 & R2: 20.11.2024 | 645.818 sq. ft. (carpet area) 78.254 sq. ft. (Balcony area) [Page 26 of complaint] | BBA 28.07.2023 [Page 28 of complaint] | clearance dated 09.02.2023 being later) | at page 34 of complaint) AP: 12,85,744.51/- [As alleged by the complainant at page 14 of complaint] | 20.04.2024 & 23.05.2024 (Page 88 of complaint) NP:- 05.08.2024 (Page 21 of reply filed by respondent no. 1) CL:- 16.08.2024 (Page 22 of reply filed by respondent no. 1) |
| 4. | CR/4353/2024 Devendra Badhana V/S Desi Construction Private Limited & State Bank of India DOF: 03.09.2024 RR: R1: 09.01.2025 & R2: 20.11.2024 | T1-1003, Floor-10 th , Tower-1 645.818 sq. ft. (carpet area) 72.259 sq. ft. (Balcony area) [Page 26 of complaint] | AL:- 24.04.2023 [Page 26 of complaint] BBA 28.07.2023 [Page 28 of complaint] | 09.02.2027 (calculated from the date of environment clearance dated 09.02.2023 being later) | TC: 25,51,631/- [As per clause 1.2 of the BBA at page 34 of complaint] AP: 12,82,569/- [As alleged by the complainant at page 14 of complaint] | DL:- 15.03.2024 RL:- 20.04.2024 & 23.05.2024 (Page 67-68 of complaint) NP:- 05.08.2024 (Page 21 of reply filed by respondent no. 1) CL:- 13.08.2024 (Page 22 of reply filed by respondent no. 1) |
| 5. | CR/4359/2024 Shubha Shivam V/S Desi Construction Private Limited & State Bank of India DOF: 03.09.2024 RR: R1: 09.01.2025 & | T2-1909, Floor-19 th , Tower-2 645.818 sq. ft. (carpet area) 78.254 sq. ft. (Balcony area) [Page 24 of complaint] | AL:- 24.04.2023 [Page 24 of complaint] BBA 06.06.2023 [Page 43 of complaint] | 09.02.2027 (calculated from the date of environment clearance dated 09.02.2023 being later) | TC: 25,57,686/- [As per clause 1.2 of the BBA at page 52 of complaint] AP: 9,59,133/- [As alleged by the complainant at page 14 of complaint] | DL:- 14.03.2024 RL:- 20.04.2024 & 24.05.2024 (Page 21 of reply filed by R1) NP:- 05.08.2024 (Page 20 of reply filed by respondent no. 1) |



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|----|--|--|---|--|---|--|
| | R2: 20.11.2024 | | | | | CL:- 13.08.2024 (Page 21 of reply filed by respondent no. 1) |
| 6. | CR/4360/2024 Jagbir Singh Tanwar V/S Desi Construction Private Limited & State Bank of India DOF: 03.09.2024 RR: R1: 09.01.2025 & R2: 20.11.2024 | T8-610, Floor-6 th , Tower-8 645.818 sq. ft. (carpet area) 59.148 sq. ft. (Balcony area) [Page 26 of complaint] | AL:- 24.04.2023 [Page 26 of complaint] BBA 28.06.2023 [Page 28 of complaint] | 09.02.2027 (calculated from the date of environment clearance dated 09.02.2023 being later) | TC: 25,38,431/- [As per clause 1.2 of the BBA at page 34 of complaint] AP: 9,51,819/- [As alleged by the complainant at page 14 of complaint] | DL:- 14.03.2024 RL:- 20.04.2024 & 24.05.2024 (Page 23 of reply filed by R1) NP:- 05.08.2024 (Page 22 of reply filed by respondent no. 1) CL:- 13.08.2024 (Page 23 of reply filed by respondent no. 1) |
| 7. | CR/4362/2024 Dharmender Kumar and Yogita Chauhan V/S Desi Construction Private Limited & State Bank of India DOF: 03.09.2024 RR: R1: 09.01.2025 & R2: 20.11.2024 | T1-1504, Floor-15 th , Tower-1 645.818 sq. ft. (carpet area) 78.254 (Balcony area) [Page 25 of complaint] | AL:- 24.04.2023 [Page 25 of complaint] BBA 28.07.2023 [Page 35 of complaint] | 09.02.2027 (calculated from the date of environment clearance dated 09.02.2023 being later) | TC: 25,57,686/- [As per clause 1.2 of the BBA at page 39 of complaint] AP: 9,59,133/- [As alleged by the complainant at page 14 of complaint] | DL:- 15.03.2024 RL:- 20.04.2024 & 23.05.2024 (Page 92 of complaint) NP:- 05.08.2024 (Page 19 of reply filed by respondent no. 1) CL:- 05.08.2024 (Page 17 of reply filed by respondent no. 1) |
| 8. | CR/4424/2024 Nitin Mehta V/S | T2-12A07, Floor-13 th , Tower-2 | AL:- 19.10.2023 | 09.02.2027 (calculated from the date of | TC: 30,22,821/- | DL:- 15.03.2024 RL:- |



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|-----|---|---|---|---|---|---|
| | Desi Construction Private Limited & State Bank of India DOF: 11.09.2024 RR: R1: 09.01.2025 & R2: 20.11.2024 | 645.818 sq. ft. (carpet area) 72.259 sq. ft. (Balcony area) [Page 33 of complaint] | [Page 23 of complaint] BBA 26.10.2023 [Page 28 of complaint] | environment clearance dated 09.02.2023 being later) | [As per clause 1.2 of the BBA at page 34 of complaint] AP: 11,43,722/- [As alleged by the complainant at page 14 of complaint] | 20.04.2024 & 24.05.2024 (Page 21 of reply filed by R1) NP:- 05.08.2024 (Page 20 of reply filed by respondent no. 1) CL:- 13.08.2024 (Page 21 of reply filed by respondent no. 1) |
| 9. | CR/4464/2024 Karan Singh V/S Desi Construction Private Limited & State Bank of India DOF: 11.09.2024 RR: R1: 09.01.2025 & R2: 20.11.2024 | T5-903, Floor-9 th , Tower-5 645.818 sq. ft. (carpet area) 72.259 sq. ft. (Balcony area) [Page 34 of complaint] | AL:- 20.11.2023 [Page 25 of complaint] BBA 29.11.2023 [Page 27 of complaint] | 09.02.2027 (calculated from the date of environment clearance dated 09.02.2023 being later) | TC: 30,22,821/- [As per clause 1.2 of the BBA at page 36 of complaint] AP: 11,27,000/- [As alleged by the complainant at page 15 of complaint] | DL:- 14.03.2024 RL:- 23.05.2024 (Page 98-99 of complaint) NP:- 05.08.2024 (Page 22 of reply filed by respondent no. 1) CL:- 05.08.2024 (Page 22 of reply filed by respondent no. 1) |
| 10. | CR/4343/2024 Chandan Kumar Tiwari V/S Desi Construction Private Limited DOF: 09.09.2024 RR: 17.04.2025 | T5-110, Floor-1 st , Tower-5 645.829 sq. ft. (carpet area) 59.148 sq. ft. (Balcony area) [Page 27 of complaint] | AL:- 05.09.2023 [Page 22 of complaint] BBA 22.11.2023 [Page 24 of complaint] | 09.02.2027 (calculated from the date of environment clearance dated 09.02.2023 being later) | TC: 30,06,981/- [As per clause 1.2 of the BBA at page 28 of complaint] AP: 11,21,617.51/- [As per receipt at page 50-52 of complaint] | DL:- 14.03.2024 RL:- 20.04.2024 & 24.05.2024 (Page 12 of reply) NP:- 05.08.2024 (Page 12 of reply) CL:- 13.08.2024 |

Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

| Abbreviation | Full form |
|--------------|----------------------------------|
| DOF | Date of filing of complaint |
| RR | Reply received by the respondent |
| AL | Allotment Letter |
| BBA | Builder Buyer's Agreement |
| TSC | Total sale consideration |
| AP | Amount paid by the allottee/s |
| DL | Demand letter |
| RL | Reminder letters |
| NP | Newspaper Publication |
| CL | Cancellation letter |

Relief Sought by the complainants:-

1. Direct the respondent not to create any third party rights till final completion of the project.
2. Direct the respondent to restore the unit to its original number and issue demand as per the builder buyer agreement.
3. Or with any other relief which this Authority may deem fit, may kindly be pass in favour of complainant and against the respondent.

4. The facts of all the complaints filed by the complainant(s)/allottee(s) are similar. Out of the above-mentioned case, the particulars of lead case **CR/4346/2024 titled as Anoop Kumar Prajapati and Ragini Verma Vs. M/s Desi Construction Pvt. Ltd.and others.** are being taken into consideration for determining the rights of the allottee(s).

A. Project and unit related details

5. The particulars of the project, the details of 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:

CR/4346/2024 titled as Anoop Kumar Prajapati and Ragini Verma Vs. M/s Desi Construction Pvt. Ltd.and others

| S. N. | Particulars | Details |
|-------|---------------------|------------------------------------|
| 1. | Name of the project | Tathastu -II |
| 2. | Project location | Sector-05, Sohna, Gurgaon, Haryana |
| 3. | Nature of Project | Affordable Housing Policy |
| 4. | Area of Project | 8.975 acres |



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| 5. | DTCP License | 188 of 2022 dated 6.11.2022 valid up to 15.11.2027 |
| 6. | RERA registration | 21 of 2023 dated 30.01.2023 valid up to 14.11.2027 |
| 7. | Allotment letter | 24.04.2023 (Page 26 of complaint) |
| 8. | Unit No. | T6-404, Floor-4 th , Tower-6 (Page 35 of complaint) |
| 9. | Area admeasuring | 645.818 sq. ft. (Page 27 of complaint) |
| 10. | Buyer Agreement | 19.05.2023 (Page 29 of complaint) |
| 11. | Possession clause | 7.1 Schedule for possession of the said Plot/ Unit/ Apartment for Residential/ Commercial/ Industrial/ IT/ any other usage - The Promoter agrees and understands that timely delivery of possession of the Plot/ Unit/ Apartment for Residential/ Commercial/ Industrial/ IT/ any other usage (as the case may be) along with parking (if applicable) to the Allottee(s) and the common areas to the association of allottees or the competent authority, as the case may be, as provided under Rule 2(1)(f) of Rules, 2017, is the essence of the Agreement). |
| 12. | Possession clause as per Affordable Housing Policy, 2013 | 1(IV) of the Affordable Housing Policy, 2013 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. The licenses shall not be renewed beyond the said 4 years period from the date of commencement of project. |
| 13. | Date of environment clearance | 09.02.2023 (As information obtained from the planning branch) |
| 14. | Due date of possession | 09.02.2027 |

| | | |
|-----|--------------------------------|---|
| | | (Note:- calculated from the date of environment clearance dated 09.02.2023 being later) |
| 15. | Sale consideration | Rs.25,57,686/- (Page 35 of complaint) |
| 16. | Amount paid by the complainant | Rs.9,61,715/- (As alleged by the complainant at page 16 of complaint) |
| 17. | Loan sanction letter | 22.03.2024 (Page 78 of complaint) |
| 18. | Reminder/ Demand letter dated | 15.03.2024, 26.04.2024, 29.05.2024 (Page 113 of complaint) |
| 19. | Newspaper publication | 05.08.2024 (Page 20 of reply filed by respondent no. 1) |
| 20. | Cancellation letter | 13.08.2024 (Page 21 of reply filed by respondent no. 1) |
| 21. | Occupation Certificate | Not Obtained |
| 22. | Offer of Possession | Not Offered |

B. Facts of the complaint

6. The complainants have made the following submissions in the complaint: -

- I. That the respondent had advertised about their Affordable Housing project under name and style "TATHASTU II" situated in revenue estate of Village Sohna, Sector- 5 Tehsil Sohna, Gurugram alleging to be consisting of many advance technologies and amenities/infrastructures. Pursuant to the lucrative offer and strong market hold of the respondent, the complainant had shown interest in the said project and agreed to purchase a flat in the said Project. The said project is also registered before this Authority vide registration no. 21 of dated 31.1 2023. The registration shall be valid from a period commencing from 30.01.2023 till 14.11.2027.
- II. That the respondent company had invited application for booking in its Affordable Housing Project and vide application no. T2APP/87262/23-24



- dated 24.04.2023, the complainant applied for booking of the flat. The draw was conducted in presence of officials of Authority constituted by State of Haryana wherein the complainant was successfully allottee on the said draw.
- III. That the allotment letter dated 24.04.2023 was issued by the respondent company alleging the apartment bearing no. T-6, 404, having carpet area 645.818 sq. feet on 4th floor in tower no. - T-6, at the rate of Rs.3800/- per sq. feet as basic sale price and balcony area of 78.254/- sq. feet at the rate of Rs.1000/- per sq. feet, for the total sale consideration amounting to Rs.25,57,686/- (excluding taxes and other charges).
- IV. That the builder buyer agreement was got executed and registered on 19.5.2023 between the parties alleging the flat no. T-6, 404. The complainant paid total Rs.9,61,715/- (from his pocket) (Including all Government taxes and charges as and when demanded by the respondent company). The Total sale consideration price of the said unit is Rs.25,57,686/- (excluding taxes only). The remaining amount to be paid by the complainant as per annexure - B of the agreement mentioned at page no. 25 of the agreement.
- V. That it should not be out to mention herein that with the expectation of timely delivery of possession of the said flat, the complainant has obtained loan against the said unit under which the State Bank of India has sanctioned loan of Rs.18,00,000/- and next installment dated 16.3.2024 was to be paid by the Bank on behalf of complainant to respondent no. 1 in lieu of purchase of said unit.
- VI. That it has been specifically mentioned in clause 1.4 at page 6 of the agreement that "The allottee shall make the payment as per the payment plan set out in Schedule B (payment plan). As per clause 1.10 of the



agreement it has been specifically mentioned that *"II. The balance 75% amount of the flat cost will be recovered as per the stages of construction to be prescribed in Schedule B"*.

- VII. That the as per clause no. 7.1 of the builder buyer agreement, the possession was to be handed over as per prescribed under rule 2 (1) (f) of Rules 2017. Thus, keeping in view the HRERA registration certificate, the possession to the complainant was to be handed over on or before 14.11.2027, and also as per builder buyer agreement.
- VIII. That the project "TATHASTU -II", contain in all 6 towers out of which Tower-3 has been constructed up to 14th floor Superstructure and Tower-4 has been constructed up to 15th floor Superstructure. The said level of construction has also been confirmed by the Bank Inspection report dated 14.08.2024 but there is no construction/development in Tower-6 as per site visit by the complainant. The said construction was not completed when the demand was raised rather it was completed after raising the demand. As per Bank inspection report dated 01.05.2024, Tower - 3 was constructed up to 5th Slab and Tower 4 - was constructed up to 5th slab but there was no construction in Tower- 6 as per such report.
- IX. That officials of the bank as well as complainant visited the spite/spot where he was shocked to see that construction has been stopped by the respondent company and by stretch of imagination there is no hope for completion of project for the next 7-9 years. The respondent company is bent upon to demand the outstanding money from the complainant which is illegal, vague and unjustified in the eye of law. The construction of the project has been halted in Tower- 6 and the respondent is demanding the amount more than the construction done. This act and conduct of the respondent company shows that major deficiency of the service and unfair



trade practice opted to make fool of the gullible customers by delaying the construction of the project.

- X. That the respondent issued demand letter dated 16.03.2024 for an amount of Rs.3,19,711/- on the slab of completion 1/3rd of superstructure. There is no construction status specifically on Tower- 6 till this slab and the respondent has issued illegal and indefinite demand against the complainant which is liable to be set aside.
- XI. That the complainant had obtained loan to purchase the said flat and to make timely payment with the intention to get timely delivery of possession. On demand letter dated 16.03.2024 issued by respondent company, the complainant wrote an email dated 05.04.2024 to his Bank for disbursement of outstanding payment of Rs.3,19,711/- wherein the Bank has denied vide email dated 5.4.2024 , to disburse the amount with the reasons as "With Reference to the trail, we have to advice that the payment of demand raised by the Builder cannot be done as construction is not done as per demand. One of our officer visited the site and submitted the report on 28.3.2024 that construction of Tower 6 is foundation level but it should be 7th Slab." The reply received from Bank has also been forwarded by the complainant to the respondent company on 05.04.2024. The complainant also wrote an email dated 05.04.2024 to his Bank to disburse the amount as per the demand raised by the respondent company for which Bank has completely denied showing no construction done on part of respondent company at that level. Thus, there is no malafide intention of the complainant for paying any outstanding amount but it is the respondent company who had failed to performance its part of contract by adhering terms of Builder Buyer Agreement as well as Affordable Housing Scheme 2013 in demanding payment from the complainant and taking undue



advantage of escalation in price at the said area, is bent upon to cancel the unit arbitrary and unilaterally on the ground of nonpayment of outstanding dues and is threatening to create third party right in the said unit. This act and conduct of the respondent company shows that major deficiency of the service and unfair trade practice opted to make fool of the gullible customers by delaying the construction of the project.

XII. That the complainant is/has always been ready and willing to perform his part of contract as per terms of the Builder Buyer agreement but it was the respondent company who has failed to perform its part of contract by not constructing the tower- 1 at desired level and raising demand of that level of construction illegal, and arbitrary. The said demand raised by the respondent company is against the principle of natural justice and against the law and facts. The complainant has sufficient funds to pay the outstanding amount but the respondent has not constructed the tower at that level as mentioned in Schedule B of payment plan of builder buyer agreement. There is no default in payment to be paid by the complainant and the respondent company has not completed the project as per stipulated time mentioned in the builder buyer agreement and as per affordable housing scheme 2013.

XIII. That the demand raised by the respondent company is completely vague, illegal and not as per the level of construction but being in a dominant position, the respondent company is bent upon to cancel the unit and refunding the amount to the other allottees. The builder buyer agreement is registered document before the Sub- Registrar of the concerned area and it cannot be cancelled without cancelling the said agreement. The said agreement can only be cancelled by civil court only. The complainant is seeking possession of the unit with a dream to have one residential



property at City Gurugram but the act and conduct of the respondent company is completely against the terms and condition of the agreement and affordable housing scheme 2013. That the respondent has failed to fulfill its obligations as under builder buyer agreement and it is clear cut case of abuse of their dominant position of the respondent in the market and such an act needs to be penalized against the respondent.

- XIV. That the complainant had also wrote to Bank for not canceling the loan sanction in purchase of said unit and not to surrender the unit to the builder/respondentno.1. The complainant after exhausting all her patience had lastly contacted to the respondent representative to set aside the said cancellation letter dated 13.08.2024 and restore the unit to its original number but no fruitful answer has been replied by the respondent and its officials. Hence, the cause of action has arose to the complainant to file the present complaint before this Authority.

C. Relief sought by the complainants: -

7. The complainants have sought following relief(s):
- I. Directing the respondent not to create any third party rights till final completion of project.
 - II. Direct the respondent to restore the unit to its original number and issue demand as per the builder buyer agreement.
 - III. Or with any other relief which this Authority may deem fit, may kindly be pass in favour of complainant and against the respondent.
8. 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 respondents

D.1 Reply by respondent no. 1

9. The respondent no. 1 is contesting the complaint on the following grounds:-
- a. That the present complaint in the present form is not be maintainable as the same is contrary to the provision of the Act, 2016 and the Rules, 2017 and therefore, the present complaint is liable to be dismissed in limine. That this Authority does not have the jurisdiction and adjudicate the present complaint. Therefore, the present complaint is liable to be dismissed.
 - b. That the Complainant is guilty of not making the payments of due installments on time and therefore, the complainant is not entitled to seek the relief to set aside the cancellation letter sent by email dated 13.08.2024 and restoration of the subject unit to its original number rather the complainant are liable to pay the interest and damages to the respondent. That the complainant, in the present matter, had failed to make timely payments and there were substantial delays in making the payments of the due installment against the Intimation cum demand letter dated 15.03.2024. Moreover, the respondent had issued multiple reminders on 20.04.2024 and 23.05.2024 against the outstanding due installments to the complainant but the complainant had failed to make timely payments of the due installments. Subsequently, the respondent had issued a final reminder cum cancellation notice on 05.08.2024 after the publication of a public notice in the newspaper 'Punjab Kesari' on 05.08.2024 by the respondent/promoter seeking the payment of the due installments from the complainant. Consequently, the respondent /promoter had issued a cancellation letter against the subject flat no. T6-404, on 4th floor, Tower - T-6 in the project 'Tathastu - II', situated in the revenue estate of village Sohna, Gurugram, Haryana, to the complainant vide email dated 13.08.2024 as per the mutually agreed terms and conditions of the registered builder



buyer agreement/ agreement for sale dated 19.05.2023 and the Affordable Housing Policy, 2013.

- c. That the respondent no. 2 has no authority to inspect the project site of the respondent. The respondent no. 2 i.e., Bank/financial institute has played mischief to let the complainant to default in making the payment of sale consideration on the false and frivolous grounds. The respondent is constructing the site as per the law and commitments made to the entire public at large. Apart from that this Authority is empowered to monitor the construction and progress over the project site of the respondent/builder from time to time and there have been no lapse and other lacunas have been identified by this Authority with regard to the construction status of the said project. Hence, the complainant and the respondent no. 2 in connivance and collusion with each other did not made the payment of sale consideration as demanded vide Intimation cum demand letter dated 15.03.2024.
- d. That the respondent no.2 i.e., Bank as well as the other public sector banks have also financed various other units/flats in the said project and have duly disbursed the due installments amount as and when demanded by the respondent/promoter. The said banks along with allottees /buyers of the said units have duly satisfied and honored the demand letter of the respondent/promoter as and when demanded and have paid the sale consideration on time. That the time is essence of the contract and as per the builder buyer agreement executed between the parties; the complainant has not complied with the terms of the builder buyer agreement as well as the tripartite agreement executed between the complainant and both respondents. As a result, the builder was compelled to cancel the allotment of the complainant's flat under the Affordable Housing Policy, 2013, due to the complainant's consistent default.



- e. That the complainant is unfair and misleading this Authority by differentiating the project in tower wise base project. As per the Affordable Housing Policy, 2013 and the regulations of this Authority as well as per the terms of the agreement for sale dated 19.05.2023, the builder/respondent is entitled to demand for the sale consideration as per agreed payment plan and raise the demand upon construction of 1/3rd of the superstructure of the entire project. Hence, the plea /averments of the complainant with regard to tower wise payment is barred, baseless and unfounded. Further, in the instant case, the said flat/unit of the complainant was cancelled vide e-mail dated 13.08.2024 in accordance of the Affordable Housing Policy, 2013 due to the default of the complainant, in paying the sale consideration in connivance and collusion with the respondent no. 2.
- f. That in case the complainant/allotee obtains loan facility, the complainant /allotee is obligated to get the loan disbursed as per the developer's payment plan and to make payment of the due installments as per the payment plan, in case of any delay in disbursement by the Bank due to any reason whatsoever. Therefore, the complainant has not complied with the terms of the builder buyer agreement as well as the tripartite agreement executed between the complainant and both respondents and due to the compelling circumstances, the builder/ answering respondent was constrained to cancel the allotment of the complainant's flat under the Affordable Housing Policy, 2013.
- g. That no cause of action arises in favour of the complainants as alleged herein in the present complaint and therefore, the present complaint is liable to be dismissed for the lack of cause of action as alleged herein.

D.II Reply by respondent no. 2 i.e., Bank

10. The respondent no. 2 is contesting the complaint on the following grounds:-



- I. That the respondent no. 2 is the bank which has provided the loan to the complainant against the residential accommodation which is to be constructed by respondent no.1. The loan was provided by the bank after the execution of tripartite agreement.
- II. That the payment schedule of the builder mentioned that the payments are to be made partially as per the payment plan and the respondent no. 2/bank had agreed to pay in the same manner. According to the agreement the payment plan was as follows:

| S. No | Milestone | Installment to be paid |
|-------|---|--------------------------|
| 1 | At the time of booking | 5% of Total Unit Cost |
| 2 | At the time of allotment | 20% of Total Unit Cost |
| 3 | On start of excavation | 12.5% of Total Unit Cost |
| 4 | On completion of 1/3 rd of super structure | 12.5% of Total Unit Cost |
| 5 | On completion of 2/3 rd super structure | 12.5% of Total Unit Cost |
| 6 | On completion of super structure | 12.5% of Total Unit Cost |
| 7 | At the time of MEP | 10% of Total Unit Cost |
| 8 | At the time of Finishing | 10% of Total Unit Cost |
| 9 | On offer of possession | 5% of Total Unit Cost |

- III. The loan amount of Rs.18,00,000/- was sanctioned through final sanction letter loan account against the flat no. 404 Tower T-6, 4th floor, in the project namely, 'Tathastu II', situated in Sector 5, Sohna Gurgaon vide sanction letter dated 25.03.2024.
- IV. That the respondent no. 1 vide demand letter dated 14.03.2024 demanded payment for having reached a specific construction level. The respondent bank however did not disburse the amount demanded in demand letter dated 14.03.2024 by the respondent no.1. The respondent no. 2/bank denied the disbursement of amount vide email dated 04.04.2024 to the complainant because the respondent no.1 had raised fake demand since the construction was not yet completed as per the required payment plan by

the respondent no.1 in the respective tower T-2 where the complainant has the property. The bank has also shared the photographs and the site report with the complainants.

- V. That the bank has also conveyed to the respondent no.1 on email that the complainants are not wanting cancellation of the flat and thus the allotment should not be cancelled, and the loan account cannot be closed. The bank has done several communication with the respondent no. 1/builder and the complainants.
- VI. That the cause of action of the respondent no.1 for issuance of demand letter, cancelling the allotment of the complainant for not making payment of the demanded amount not actually due is illegal and thus the appropriate orders are required to be passed against the respondent no. 2.

11. 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 submission made by the parties.

E. Jurisdiction of the authority

12. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

13. 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

14. 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.

15. 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.

F. Findings on the relief sought by the complainants.

F.I Directing the respondent not to create any third party rights till final completion of project.

F.II Direct the respondent to restore the unit to its original number and issue demand as per the builder buyer agreement

16. The above-sought relief(s) by the complainants are taken together being inter connected.

17. The complainants have submitted that they were allotted a flat bearing no. T6-404, 4th Floor, in Tower-T6, measuring 645.818 sq. ft. and balcony area 78.254 sq. ft. in the Affordable Group Housing Project of the respondent named "TATHASTU-II" at Village Sohna, Sector-5, Gurugram vide allotment letter dated 24.04.2023. Thereafter, an apartment buyer agreement dated 19.05.2023 was also executed between the parties regarding the said allotment for a sale

consideration of Rs.25,57,686/-. As per clause 1(iv) of the Affordable Housing Policy, 2013 it is prescribed that *"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 this policy.* The respondent has obtained environment clearance and building plan approval in respect of the said project on 09.02.2023 and 23.01.2023 respectively. Therefore, the due date of possession is being calculated from the date of environmental clearance, being later. Therefore, the due date of possession comes out to be 09.02.2027.

18. Thereafter, the complainants and the respondent no. 2 signed an *AGREEMENT LETTER- Home Loan-HL FOR INDIVIDUALS*, on 27.03.2024 and a home loan to the tune of Rs.18,00,000/- was sanctioned. The complainants have paid an amount of Rs.9,61,715/- till 28.08.2023 against the agreed sale consideration. Further, the respondent no.1 demanded payments without any justification, over and above the agreed amount of total sale consideration. The respondent/promoter has issued demand letter dated 15.03.2024, which was payable on or before 06.04.2024. Thereafter, on 20.04.2024 and 23.05.2024, the respondent no.1 issued reminder letters to pay the outstanding dues on or before 26.04.2024 and 29.05.2024 respectively. Further, on 05.08.2024 the respondent no. 1 published a defaulter's list in a newspaper namely 'Punjab Kesari' inclusive of allottee/complainant's name (Mr. Anoop Kumar Prajapati) in it.
19. The respondent no. 1 i.e., promoter has submitted that as per agreed payment schedule, it has sent the demand and reminder letters dated 15.03.2024, demanding an amount of Rs.3,19,711/- under the head *"On completion of 1/3rd of super structure (unit cost and Balcony)"* against the subject unit. Further the

respondent submitted that all the 8 towers present in the project along with super structure are completed. The respondent no.1 sent the reminder letters on 20.04.2024 and 23.05.2024 and cancellation letter dated 05.08.2024, on account of non-payment. Further, only SBI, Badshahpur branch has refused the complainants to release their loan otherwise the other branch of SBI and other financial institutions are releasing the loan to the other allottees of the said project. Finally, the respondent no. 1 published the notice of cancellation due to non-compliance/default in the daily newspaper "Punjab Kesari" as per the guidelines under the Affordable Housing Policy 2013, Haryana.

The respondent no. 2 i.e., has submitted that the respondent no. 1 vide demand letter dated 14.03.2024 demanded payment for having reached a specific construction level. The respondent bank however did not disburse the amount demanded in demand letter dated 14.03.2024 by the respondent no.1. The respondent no. 2/bank denied the disbursement of amount vide email dated 04.04.2024 to the complainants because the respondent no.1 had raised demand but the construction was not yet completed as per the agreed payment plan by the respondent no.1 in the respective tower T-2 where the unit of the complainants was situated. The bank also conveyed to the respondent no.1 via e-mail dated 04.04.2024 that the complainants want to retain their allotment and thus their allotment should not be cancelled, further requesting the bank not to close their loan account. The bank did several communications with the respondent no. 1/builder and the complainants. The bank also shared the photographs and site report with the complainants as well as the respondent no. 1/promoter which is mentioned below for ready reference:-

Annexure-A
INSPECTOR REPORT OF PROJECT

| | |
|-------------------------------|--|
| Project name | TATHASTU-II |
| Registered Address of Builder | 806-807 BEST SKY TOWER, NSP PITAMPURA, DELHI |

| Project ID | P01210693 | | | | | |
|--|--|--------------|---|----------|----------------------|-----------------------------|
| Builder's Name | M/S DESI CONSTRUCTION PVT. LIMITED | | | | | |
| RERA NO. | RC/REP/HARERA/GGM/688/409/2023/21 DATED 30.01.2023 | | | | | |
| Last Inspection date & details | 12.07.2024 | | | | | |
| Name of site contact person with telephone number & designation | ASHOK SINGHAL-9205554002 | | | | | |
| Site Address | Sector-5, Sohna | | | | | |
| Landmark | Sector-5 | | | | | |
| Please mention against each column: | | | | | | |
| Plot no. | No. of floors | Slab/floors | Plasters | Flooring | Ready for possession | Excepted date of possession |
| Tower 1 | G.F/STILT+21 | RAFTING DONE | NO | NO | NO | 14.11.2027 |
| Tower 2 | G.F/STILT+21 | PLINTH LEVEL | NO | NO | NO | 14.11.2027 |
| Tower 3 | G.F/STILT+21 | 14 | NO | NO | NO | 14.11.2027 |
| Tower 4 | G.F/STILT+21 | 15 | NO | NO | NO | 14.11.2027 |
| Tower 5 | G.F/STILT+21 | 3 | NO | NO | NO | 14.11.2027 |
| Tower 6 | G.F/STILT+21 | RAFTING DONE | NO | NO | NO | 14.11.2027 |
| (Please use separate sheet for further wings of same projects) | | | | | | |
| Remarks on general progress of the project as per structured approved plan noted in RERA | | | Construction work is in progress | | | |
| Dated 14.08.2024 | | | Name of inspecting official: MOHINDER SONI Designation: DEPYT MANAGER SS No. 5S-1361 P.F. Index: 5334292 | | | |

The cause of action of the respondent no.1 for issuance of demand letter, cancelling the allotment of the complainants for not making payment against the due amount, without achieving the requisite construction for milestone in respect of the tower in which unit of the complainants are situated is not justified.

Now, the question before the authority is whether this cancellation is valid or not?

The authority has gone through the payment plan, which was duly signed by both the parties, which is reproduced for ready reference:-

| S. No | Milestone | Installment to be paid |
|-------|---|--------------------------|
| 1 | At the time of booking | 5% of Total Unit Cost |
| 2 | At the time of allotment | 20% of Total Unit Cost |
| 3 | On start of excavation | 12.5% of Total Unit Cost |
| 4 | On completion of 1/3 rd of super structure | 12.5% of Total Unit Cost |
| 5 | On completion of 2/3 rd super structure | 12.5% of Total Unit Cost |
| 6 | On completion of super structure | 12.5% of Total Unit Cost |
| 7 | At the time of MEP | 10% of Total Unit Cost |
| 8 | At the time of Finishing | 10% of Total Unit Cost |
| 9 | On offer of possession | 5% of Total Unit Cost |

20. After considering the documents available on record as well as submissions made by the parties, the Authority observes that in the instant case, the unit in question was allotted to the complainants vide allotment letter dated 24.04.2023 and as per the payment plan agreed between the parties vide builder buyer's agreement dated 19.05.2023. It is matter of record that the complainants booked the aforesaid unit under the above mentioned payment plan and paid an amount of Rs.9,61,715/- towards total consideration of Rs.25,57,686/- which constitutes 37.60% of the sale consideration and they have paid the last payment only on 28.08.2023. The respondent has issued the demand under the head of *on completion of 1/3rd of super structure (unit cost and Balcony)* was supposed to be raised on 15.03.2024. However, the respondent no.1 acting in contravention of the agreed payment terms raised inadequate demand of Rs.3,19,711/- from the complainants under the head "*On completion of 1/3rd of super structure (unit cost and Balcony)*" vide an 'intimation-cum-demand letter' dated 15.03.2024, i.e., prior to the actual due date. Thereafter, the respondent no.1 on non-payment of the balance said inadequate demand and in continuation of the said demand letter, issued a cancellation letter of the subject unit and even published the name of complainants in the list of defaulters in a daily newspaper namely 'Punjab Kesari' on 05.08.2024. Moreover, post cancellation of the unit, the

respondent has failed to refund the monies paid by the complainants in terms of Policy of 2013, till date.

21. In light of the aforesaid reasoned above, the Authority observes that the level of the construction of the unit is to be taken as per the stage of construction of 'particular tower' in which the unit of the complainants is situated. Thus, the level of construction of whole of the project could not be treated as 'level of construction of the unit and demand of instalment is required to be raised accordingly. Further, as per section 19(6) & 19(7) of Act of 2016, the allottee is under obligation to make payments towards consideration of allotted unit as per agreement to sale. In view of the above, the said cancellation letter dated 05.08.2024 made by the respondent no. 1 in continuation of the demand letter dated 15.03.2024, cannot be held valid in the eyes of law and is hereby set aside. Therefore, the respondent/promoter is obligated to restore the allotted unit of the complainants.

G. Directions of the authority

22. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:
- i. The cancellation letter dated 05.08.2024, is hereby set aside. The respondent no. 1/promoter is directed to restore the unit of the complainant within a period of 30 days from the date of this order and also issue a fresh statement of account as per agreed payment plan.
 - ii. The complainants are directed to make the payment to the respondent/promoter as per payment plan within a period of 30 days from the date of receipt of fresh statement of account.



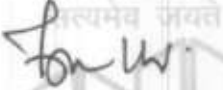
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and 9 others

- iii. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter as per section 2(za) of the Act.
23. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order wherein details of paid up amount is mentioned in each of the complaints.
24. Complaint as well as applications, if any, stand disposed off accordingly.
25. Files be consigned to registry.

(Ashok Sangwan)
Member

V.)
(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 27.05.2025

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