

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

Complaint no. : 5046 of 2023
Date of decision: 25.07.2025

Chetan Pal Singh

R/O: Office no. 221, 1st floor Deep Plaza, Complex
Opp. Civil Court, Gurugram

Complainant

Versus

M/s BD Infra developers Pvt. Ltd.

Regd. office: unit no. 131, Vatika Tower-A, Sector 54,
Gurgaon, Haryana

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Sh. Sanjeev Sharma (Advocate)

Complainant

Sh. Animesh Goyal (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

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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. N.	Particulars	Details
1.	Name and location of the project	"Ultimus, Sector 90, Gurugram
2.	Nature of the project	Residential project with commercial complex (Affordable)
3.	Project area	5 acres
4.	DTCP License	30 of 2019 dated 28.02.2019 valid till 27.02.2025
5.	Name of the licensee	Fortune Land and Housing Private Limited & 3 others
6.	HRERA registered/ not registered	Registered vide no. 72 of 2019 dated 23.12.2019 valid till 01.01.2024
7.	Application dated	24.12.2019 (As per page no. 19 of complaint)
8.	Date of execution of apartment buyer's agreement	03.06.2020 (As per page no. 17 of complaint)
9.	Unit no.	A3 001 on Ground floor, tower A3 (As per page no. 19 of complaint)
10.	Super Area	613 sq. ft. (As per page no. 19 of complaint)
11.	Total consideration	Rs. 24,92,562/- (As per BBA, page no. 22 of the complaint)
12.	Total amount paid by the complainants	Rs. 21,72,744/- (As per page 39 of complaint)
13.	Possession clause	Clause 5.2 <i>(The Developer shall offer possession of the said to the allottee within a period of 4 years from the date of approval of building plans or grant of EC whichever is later)</i>
14.	Date of approval of building plans	11.09.2019 (As per agreement on page 17 of complaint)

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15.	Date of EC	18.12.2019 (as obtained from planning branch of the Authority)
16.	Due date of possession	18.06.2024 (Calculated from the date of EC being later plus grace period of 6 months covid is given)
17.	Demand/Reminders	05.11.2020,14.07.2022,17.02.2022, 17.06.2023, 22.06.2023 (Page 6 and 7, 15, 26 and 27 of reply)
18.	Pre cancellation letter	27.06.2023, 28.06.2023 (Page 8 of reply)
19.	Final cancellation letter	14.07.2023 (Page 10 of reply)
20.	Published in newspaper	14.07.2023 (page 12 of reply)
21.	Occupation Certificate	Not obtained
22.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- i. It is humbly submitted that upon the representation by the respondent and advertisement done in said on behalf the respondent was to construct and develop residential group housing colony namely "Ultimus" under an Affordable Group Housing Policy, 2013 piece and parcel of land admeasuring 5.00 acres located/situated in the revenue estate Village Badha, Sector 90, Gurgaon, Haryana for which the respondent has obtained licence bearing no. 30 of 2019 dated 11.09.2019 from DGTCP.
- ii. The complainant is the original allottee/purchaser wherein the complainant showed the interest in purchasing a residential unit with



the respondent vide application bearing no. 4578 dated 24.12.2019 wherein the allotment through draw of lots was held on 14.02.2020 and the complainant was allotted unit no. A3 - 001, Block/Tower – A3, ground floor was allotted to the complainant. The unit area was 613.150 sq. ft. @ Rs. 4000/- per sq. ft. and balcony area of 79.923 sq. ft. @ Rs. 500/- per Sq. Ft. total cost of the unit comes out to be Rs. 24,92,562/- plus taxes.

- iii. The builder buyer agreement was executed on 03.06.2020 & payment plan was explained in BBA as per schedule B of the agreement. The possession and other payments were to be made as per the scheme floated by Government of Haryana Policy "Affordable Housing Policy 2013" noticed at that time.
- iv. The administration, surrenderance, possession, charges etc are to be made as per the policy floated by Haryana Government. As per the policy of the possession has to be handed over within 4 years from the date of approval of building plans or environmental clearance certificate whichever is later. The complainant has paid Rs. 21,72,744/- till 22.09.2022 out of the total payment of Rs. 24,92,562/- till handing over of possession.
- v. The complainant completed the initial payment of 25% of the sale consideration on 03.03.2020 itself. The remaining amount instalments of Rs. 18,63,191/- were to be paid in six equal half yearly instalments in 6 instalments. The complainant had already paid 5 instalments and before paying last instalment of Rs. 3 lacs the unit was cancelled by respondent unilaterally which is challenged before this authority U/s 11(5) at the RERA act.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):



- i. Direct the respondent to set aside the cancellation letter and not create any third party right in respect of the subject unit.
- ii. Direct the respondent to pay delay possession charges and restore the unit.

D. Reply by respondent:

5. The respondent has made following submissions:

- i. That the present complaint of the complainant is neither maintainable nor tenable in eyes of law as well on facts both, the same is totally false, frivolous, bogus, malafide, concocted and has been filed only to blackmail the respondent without there being any right, title or interest to do so.
- ii. That the respondent has all the requisite approvals from the concerned authorities and is working round the clock for the timely completion of the project.
- iii. That the complainant has not come to this Hon'ble court with clean hands and he is guilty of suppressing true and correct facts from the court wilfully and knowingly. It is pertinent to mention here that due to the non-payment of the instalment by the complainant, the respondent has cancelled the unit of the complainant vide cancellation letter dated 14.07.2023 sent by speed postdated 15.07.2023 and respondent also sent an email to the complainant on his email id i.e. chetanpal1980@gmail.com on 15.07.2023 attaching the final cancellation letter requesting again to make payment of outstanding amount within ten days from the date of advertisement i.e. 14.07.2023 was also sent to the said email address. The respondent had advertised the said cancellation in the newspaper on 14.07.2023 after complying all the necessary guidelines of DTPC



Haryana and according to the Affordable Group Housing Policy, Haryana.

- iv. After waiting for a while the respondent officials had sent mail to the complainant on his aforesaid email address to inform that the allotted unit to complainant has been cancelled and the refund has been processed and will inform once the full and final amount cheque is prepared. The respondent sent another email dated 18.11.2023 to the complainant on his aforesaid email Id stating that refund amount cheque is prepared and also attached the photocopy of the refund cheque and demanded the requisite property documents mentioned in the email.
- v. The cheque of Rs. 19,15,854/- in favour of complainant is with the respondent and the respondent is still ready to give the cheque to the complainant on submission of necessary document of the cancelled unit as mentioned in the email dated 18.11.2023.
- vi. That the complainant had been allotted the unit in question after being successful in draw in the project and after that the respondent and complainant got executed and registered the flat buyer agreement dated 03.06.2020 vide Vasika No.247 dated 03.06.2020. It was agreed that the balance sale consideration of 75% shall be paid as per the payment plan mentioned in the schedule B attached with the flat buyer agreement and in that schedule, time is the essence for the payment of due instalment against the unit in question which is as per the affordable group housing policy, Haryana.
- vii. That on 17.06.2023 respondent sent a reminder to the complainant regarding the instalment of 36 months from the allotment date vide speed post-dated 17.06.2023, respondent again sent an email to the complainant on 22.06.2023 regarding the payment of above

instalment. The respondent sent pre-cancellation letter dated 27.06.2023 to the complainant vide speed post receipt dated 27.06.2023 to the complainant regarding payment of the above instalment and pre-cancellation letter was also sent by email dated 28.06.2023.

viii. To the aforesaid email address of the complainant. Apart from these letters the officials of the respondent tried to connect to the complainant telephonically but the complainant did not respond to the officials of the respondent and the complainant did not pay any heed to just and genuine demand of the respondent regarding payment of the aforesaid instalment. That since the registration of the flat buyer agreement the complainant has been in default in making the timely payment of the instalments sent by the respondent time to time as per the agreed payment plan. The copies of reminders, pre-cancellation letter sent in 2022, 2021 and 2020. Hence, the complaint liable to be dismissed on this ground alone for not making the timely payment to the respondent.

6. 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.

E. Jurisdiction of the authority:

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

E. I . Territorial jurisdiction

8. 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

9. 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;

10. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the relief sought by the complainant:

F.I. Direct the respondent to set aside the cancellation letter and not create any third party right in respect of the subject unit.

F.II. Direct the respondent to pay delay possession charges and restore the unit.

11. Some of the admitted facts of the case are that vide application dated 24.12.2019, the complainant applied for a unit under the affordable housing policy, 2013 in the project of the respondent "Ultimus". The complainant being successful was allotted a unit A3 001, Ground floor,



tower A3, admeasuring 613 sq. ft. carpet area by the respondent for a consideration of Rs.24,92,562/-. It led to execution of a buyer's agreement dated 03.06.2020 between the parties containing various terms and conditions of allotment including dimensions of the unit, its price, due date of possession & payment plan etc. It is further admitted by both parties that the complainant has paid a sum of Rs.21,72,744/- against the subject unit. Further, allotment of the subject unit was cancelled by the respondent vide cancellation letter dated 14.07.2023. Therefore, the complainant through present complainant is seeking the relief to set aside the cancellation letter and reinstate the said unit.

12. Now, the issue arises before the Authority is whether the cancellation of the subject unit was made as per the provisions of the policy of 2013 or not. In the present case the complainant only Rs.21,72,744/- against Rs.24,92,562/- i.e. the sale consideration of the unit but she was also required to pay the amount due on the basis of payment plan as per the policy of 2013, the terms and conditions mentioned in the buyers' agreement. A public notice dated 14.07.2023 through publication in the daily newspaper of "Veer Arjun" was made by the respondent, when the complainant failed to pay the outstanding dues despite issuance of various reminder. Subsequently, it led to the cancellation of the allotted unit as per the policy of 2013 and buyers' agreement.
13. Clause 5(iii) (i) of the Affordable Group Housing Policy, 2013 talks about the cancellation. The relevant part of the clause is reproduced below: -

"If any successful applicant fails to deposit the 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".

14. In the instant case, the cancellation letter was issued by the respondent on 14.07.2023 and publication of the defaulters list in the newspaper was published on the same day. Here, the complainant raised the contention that 15 days' time period was not provided between issuing notice in the newspaper and issuing the cancellation notice. The word 'may' here imply "not a binding effect but to be judge whether adequate opportunities have been given by the respondent or not". So, perusal of the facts detailed earlier, and the policy of 2013 shows that the respondent has sent demand and reminder letters dated 14.07.2022, 17.06.2023 and 22.06.2023 respectively followed by pre cancellation notice 27.06.2023. But despite that complainant failed to make payment of the outstanding dues leading to cancellation of the allotment of the said unit on 14.07.2023.
15. Thus, it shows that the respondent followed the prescribed procedure and cancelled the unit of the complainant with adequate notices. So, the cancellation of the unit is valid.
16. As per the abovementioned clause in the case of cancellation, the respondent can deduct the amount of Rs.25,000/- only from the amount paid by the complainant and the balance amount shall be refunded back to the complainant.
17. Keeping in view of the above, the respondent is directed to refund the amount received by the respondent i.e. Rs.21,72,562/- against the subject unit after the deduction of Rs. 25,000/- as per clause 5(iii)(i) of the Affordable Housing Policy, 2013 within a period of 90 days along with



interest @10.90% per annum as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on such balance amount from the date of cancellation notice i.e. 14.07.2023 till the actual realization of the amount.

H. 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 amount received by the respondent i.e. Rs.21,72,562/- against the subject unit after the deduction of Rs. 25,000/- as per clause 5(iii)(i) of the Affordable Housing Policy, 2013 within a period of 90 days along with interest @10.90% per annum as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 on such balance amount from the date of cancellation notice i.e. 14.07.2023 till the actual realization of the amount.

ii. The above-mentioned amount be refunded to the complainant within a period of 90 days and failing which legal consequence would follow.

19. Complaint stands disposed of.

20. File be consigned to the registry.

Dated: 25.07.2025


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