

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

Complaint no. : 5595 of 2023
Date of Filing Complaint: 22.12.2023
Date of decision: 07.08.2025

Sunita Yadav

R/o: Village Dhunela, Tehsil Sohna, District Gurugram,
Haryana- 122103

Complainant

Versus

M/s Desi Construction Pvt. Ltd.

Regd. office: 806-807, Best Sky Tower, Netaji
Subhash Palace, Pitampura, New Delhi- 110034

Respondent**CORAM:**

Shri Vijay Kumar Goyal

Member**APPEARANCE:**

Sh. Jitender Yadav (Advocate)

Complainant

Sh. Rahul Mangla (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. N.	Heads	Information
1.	Name and location of the project	"Tathastu I", Sector-5, Village-Sohna Gurugram
2.	Nature of the project	Affordable Housing Project
3.	Project area	12.8847 acres
4.	HRERA registered/ not registered	Registered as 20 of 2023 dated 30.01.2023
5.	Allotment letter dated	24.04.2023 (as per page 21 of complaint)
6.	Date of execution of flat buyer's agreement	27.06.2023 (As per on page no. 23 of the complaint)
7.	Unit no.	T8-1203 on 12 th floor, tower 8 (As per on page no. 26 of the complaint)
8.	Carpet Area	645.818 sq. ft. (As per on page no. 26 of the complaint)
9.	Possession clause	7.1 <i>The promoter assures to handover possession of Plot/Unit/ Apartment for Residential /Commercial/Industrial/IT/ any other usage (as the case may be) along with parking (if applicable) as per agreed terms and conditions unless there is delay due to 'force majeure', 'court orders', Government Policy/ guidelines, decisions affecting the regular development of real estate projects. If, the completion of the Project is delayed due to the above conditions, then the Allottee agrees that the Promoter shall be entitled to the</i>

		extension of time for delivery of possession of Plot/Unit/Apartment for residential/commercial/industrial/ IT/ any other usage (as the case may be). (As per page 33 of complaint)
10.	Date of environment clearance	09.02.2023 (As information provided by the planning branch)
	Building Plans	23.01.2023 (Page 4 of BBA at 26 of complaint)
11.	Due date of delivery of possession	09.02.2027 (Note: Due date to be calculated 4 years from the date of EC i.e., 09.02.2023 being later as per Affordable Group Housing Policy, 2013)
12.	Total consideration	Rs.25,51,631/- (As per page no. 27 of the complaint)
13.	Total amount paid by the complainants	Rs.9,57,451/- (As stated at page 10 of the complaint)
14.	Cancellation Letter dated	27.09.2023 (As per page no. 27 of the complaint)
15.	Amount refunded by the respondent	Rs.8,80,927/- (As stated by the respondent in the reply and stated by the complainant vide proceedings dated 20.03.2025)
16.	Occupation Certificate	Not obtained
17.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainant has made the following submissions: -

1. This complaint is preferred by the Complainant under the enabling provisions of the Real Estate (Regulation & Development) Act, 2016 (herein after referred to as ["Act"]) and Haryana Real Estate





(Regulation and Development Rules), 2017 (hereinafter referred to as "Rules").

- II. The respondent has always advertised itself as a very ethical business group that lives onto its commitments in delivering its housing projects as per promised quality standards and agreed timelines. The respondent while launching and advertising any new housing project always commit and promise to the targeted consumers that his/her/their dream home will be completed and delivered to him/he/them within the agreed timeline initially in the agreement while selling the dwelling residential unit to him/her/them. The respondent also assured the consumers like complainant that they have secured all the necessary sanctions and approvals from the appropriate authorities for the construction and completion of the real estate project sold by them to the consumers in general.
- III. The respondent was very well aware of the fact that in today's scenario looking at the status of the construction of housing projects in India, especially in NCR, the key factor to sell any dwelling residential unit is the delivery of completed house within the agreed and promised timelines and that is the prime factor which a consumer would consider while purchasing his/her/their dream home. Therefore, the respondent used this tool, which is directly connected to emotions of gullible consumers, in its marketing plan and always represented and warranted to the consumers that his/her/their dream home will be delivered within the agreed timelines and consumer will not go through the hardship of paying rent along-with the instalments of home loan like in the case of other builders in market.

- IV. Somewhere in the year 2023, the respondent through its marketing executives had advertisement done through various medium and means approached the complainant with an offer to invest and buy a residential unit in the proposed project of respondent, which the respondent was going to launch the project under the name and style of "TATHASTU I" situated at Sector-5, Village Sohna, Gurugram (hereinafter be referred to as "said project"). The respondent had represented to the complainant that the respondent is very ethical business house in the field of construction of residential and commercial project and in case, the complainant would invest in the project of respondent then they would deliver the possession of proposed residential unit on the assured delivery date as per the best quality assured by the respondent. The respondent had further assured the complainant that the respondent has already secured all the necessary sanctions and approvals from the appropriate and concerned authorities for the development and completion of said project on time with the promised quality and specification. The respondent had also shown the brochures and advertisement material of the said project to the complainant given by respondent and assured that the allotment letter and builder buyer's agreement for the said project would be issued to the complainant within one week of booking to be made by the complainant. The complainant while relying on the representations and warranties of the respondent and believing those to be true had agreed to the proposal of the respondent to book the residential unit in the project of respondent. The representative of the respondent had also shown the brochures to the complainant.



- V. The respondent arranged the visit of its representatives to the complainant and they also assured the same as assured by the respondent to the complainant, wherein it was categorically assured and promised by respondent that they already have secured all the sanctions and permissions from the concerned authorities and departments for the sale of said project and would allot the residential unit in the name of complainant immediately upon booking. Relying upon those assurances and believing those to be true, the complainant booked a residential unit/apartment/flat no. T-8-1203, in tower - 8, type - 2A (2 bhk + Store), on 12th floor measuring carpet area 645.818 sq. ft. and balcony area 72.259 sq. ft. along-with stilt /basement parking in project TATHASTU I at Sector-5 situated within the revenue estate of Village Sohna, Tehsil Sohna, District Gurugram for a Sale Consideration of Rs.25,51,631/-.
- VI. While booking the said unit, it was represented by respondent that the respondent has already secured all necessary permissions, sanctions and approvals from the competent authorities and since the complainant has booked the unit, the complainant was assured by the respondent that it would allot the said unit in favour of the complainant well within period of maximum one week. However, the respondent miserably failed in issuing any allotment letter to the complainant despite repeated requests made by complainant in this regard.
- VII. Thereafter, respondent started raising the demand of money /instalments from the complainant as per the agreed timelines and complainant as on today had paid Rs.9,57,451/- which is very much evident from the receipts duly issued by the respondent. As a confirmation of the allotment of the said unit by the respondent, the

respondent has issued an allotment letter dated 24.04.2023, vide which the said unit /flat was allotted to the complainant.

VIII. The respondent in wake of its promises even after repeated requests of the complainant executed agreement registered at the office of Sub-Registrar, Sohna, vide vasika No.3858 dated 27.06.2023 in favour of the complainant. The complainant was not agree with some certain condition of the agreement, as the Agreement was unilateral one and when complainant refused to sign the same, the respondent threatened the complainant to sign the same, otherwise the payment made by complainant to the respondent shall be forfeited by respondent and the said unit shall also be cancelled by the respondent. Under such threats, the complainant was left with no other efficacious remedy available but to sign the unilateral agreement.

IX. As per clause-7 of the agreement, the respondent was required to handover the possession of the said unit to the complainant within 3 months from the date of approval and in case, the developer fails to deliver the possession of the said unit to the complainant well within stipulated time period, in that eventuality, the respondent shall pay Rs.5/- per sq. ft. of the super area per month along-with applicable service tax for the period of such delay.

X. The respondent miserably failed in delivering the possession of the said unit to the complainant and therefore, has miserably defaulted in fulfilling its commitment as per the terms of the agreement. The respondent raised various demands for payments from time to time, which were duly paid by the complainant as per the schedule because the complainant has opted for the construction linked plan.

XI. From the date of booking and till today, the respondent had raised various demands for the payment of instalments on complainant



towards sale consideration of the said unit and the complainant has duly paid and satisfied all those demands without any default or delay on her part and has also fulfilled otherwise also her part of obligations but the respondent having fraudulent intention never started.

- XII. The complainant stood shocked and astonished when respondent issued letter dated 27.09.2023 with the subject cancellation of unit, vide which the respondent has cancelled the unit of the complainant illegally and unlawfully without affording her an opportunity of being heard and of the payment.
- XIII. The complainant thereafter had tried her level best to reach the representatives of the respondent to seek a satisfactory reply in respect of the said Unit but all in vain. The complainant requested the respondent to deliver the said Unit and also to restore the said Unit at its original nature and stage but the respondent never cared to listen to her grievances and left her with the suffering and pain on account of its default and negligence.
- XIV. The complainant has undergone severe mental harassment due to the negligence on the part of the respondent to deliver her home on time agreed and to restore the unit with immediate effect. The complainant had faced all these financial burdens and hardship from her limited income resources, only because of respondent's failure to fulfill its promises and commitments. Failure of commitment on the part of respondent has made life of the complainant miserable socially as well financially as all his personal financial/fiscal plans and strategies were based on the date of delivery of possession as agreed by the respondent. Therefore, respondent has forced the complainant to suffer grave, severe and immense mental and financial harassment with no fault on her part. The complainant being common person just

made the mistake of relying on respondent's false and fake promises, which lured her to buy a flat in the aforesaid residential project of the respondent. The respondent has trapped the complainant in a vicious circle of mental, physical and financial agony, trauma and harassment in the name of delivering her dream home within deadline representing itself as a multinational real estate giant.

- XV. The respondent committed grave deficiency in services by not delivering the possession of the unit, which is still not near completion. On top of that the respondent has charged heavy rate of interest on delayed payment, which is at the rate of 18 percent per annum but miserably failed to perform its part of the agreement. The complainant suffered a huge loss by paying a huge amount of Rs.9,57,451/- and still continues to suffer at the hands of respondent as being deprived of her money for a number of years without being delivered any possession of the said Unit or without being paid any interest on the huge amount.
- XVI. The agreement drafted by the respondent was totally unfair and unilateral and shows wrong unfair trade practice, which complainant never expected. It is pertinent to mention here that while executing the agreement, the respondent threatened the complainant to sign the unilateral agreement, otherwise, the amount paid by the complainant be forfeited. The complainant finding no other option had to sign the unilateral agreement.
- XVII. The cause of action accrued in favour of the complainant and against the respondent in year 2023, when complainant had booked the said unit and it further arose when respondent failed/neglected to deliver the said unit. The cause of action is continuing and is still subsisting on day-to-day basis.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- i. Direct the respondent to handover the possession of the unit to the complainant with immediate effect.
 - ii. Direct the respondent to restore the unit booked by the complainant with immediate effect.
 - iii. Direct the respondent to waive off the charges being demanded /levied by the respondent on account of various heads, which were not the part of the agreement, which are demanded /levied by the respondent illegally, unlawfully and deliberately.
 - iv. Direct the respondent not to charge or claim any charges other than the basic sale price, if any is being charged by the respondent, then the same may kindly be waived off being illegal, null, void, ab-initio, nonest in the eyes of law and not binding upon the rights of the Complainant in any manner whatsoever.
 - v. Direct the respondent to pay the penalty to the complainant on account of delay possession charges in delivering possession of the unit.
 - vi. Direct the respondent to pay Rs.55,000/- for litigation expenses.

D. Reply by respondent:

5. The respondent by way of written reply made following submissions:
- i. The complaint is not maintainable as the cause of action alleged by the complainant in the matter are without merits and facts of the matter. The project i.e. "THATHASTU I", at Sector 5 Sohna, District Gurugram, Haryana is regulated by the rules and regulation formulated by Director of Town and Country Planning Haryana

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(DTCP). The cancelation of the allotment of the complainant is as per the rules and regulation of the DTCP, Haryana.

- II. The complainant has concealed the material facts from this Hon'ble Forum as it is admitted fact that the apartment buyer agreement was executed between the respondent and the complainant on 27.06.2023. The content of the said apartment buyer agreement was duly acknowledged, accepted and agreed upon by the complainant in which all the payment terms with payment schedule was mentioned. Hence, the complainant is misleading this Hon'ble Forum as the complainant himself failed to make the payment as per the payment schedule. The Respondent also sent several reminders to the complainant through e-mail, whatsapp given by the complainant at the time of application. It is pertinent to mention here that the complainant with the best reason known to herself did not make the payments as per the payment schedule and rules and regulations of the DTCP. Under these compelling circumstances the respondent was constraint to report the said delay in the payment to DTCP and thereafter DTCP processed the cancellation of the allotment of the flat to the complainant.
- III. The complaint is liable to be rejected as after cancelation of the flat of the complainant, the said flat is already allotted to subsequent allottee who was in the waiting list as per the list of the DTCP. The said cancelation of the allotment of the complainant was duly processed as per the rules of the DTCP and thereafter another allotment of the flat was given to another buyer on the basis of the waiting list by the DTCP itself. Thus, from this it becomes clear that there is no cause of action arising in favor of the complainant against the respondent.

- IV. That a refund of Rs.8,80,927/- was also processed after making the necessary deduction in favor of the complainant as per Haryana Govt. And DTCP Rules and thus complainant has no cause of action against the answering respondent.
- V. At the time of applying for the residential apartment by the complainant all the terms and conditions of the payment schedule was duly mentioned to the complainant at the time of the advertisement as well as at the time of filing of the application form. That the complainant himself failed to make the payments as per the payment schedule as is now trying to make a false case against the respondent. That anything contrary of the records is denied in toto.
- VI. The respondent executed agreement registered at the office of sub-registrar, Sohna, vide vasika No.3858 dated 27.06.2023 in favor of the complainant. It is denied that the respondent threatened the complainant to sign the same, otherwise the payment made by complainant to the respondent shall be forfeited by respondent and the said unit shall also be cancelled by the respondent. It is further denied that under such threats, the complainant was left with no other efficacious remedy available but to sign the unilateral agreement. The complainant signed the said agreement voluntarily and with free will after going through each and every clause of the said agreement.
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;

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.

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 restore the unit booked by the complainant with immediate effect.

11. The complainant was allotted a unit in the project of respondent namely, "Tathastu I", in Sector-5, Village-Sohna, Gurugram vide allotment letter dated 24.04.2023 for a total sum of Rs.25,51,631/-. A flat buyer's agreement was executed between the parties on 27.06.2023 and the complainant started paying the amount due against the allotted unit and paid a total sum of Rs.9,57,451/-. 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:

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(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)

12. The due date of possession is to be calculated 4 years from the date of environment clearance i.e., 09.02.2023 being later. Therefore, the due date of possession comes to 09.02.2027 as per the clause of Affordable Housing Policy, 2013.
13. In present complaint, the complainant intends to continue with the project and is seeking reinstate of the allotment of the unit. But as per the documents placed on record with the complaint, the Authority observed that the allotted unit of the complainant is cancelled vide cancellation noticed dated 27.09.2023 i.e., before the filing of the present complaint.
14. 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. The counsel for the complainant vide proceedings of the day dated 30.05.2025 mentioned that the unit was cancelled by the respondent without following the due procedure as per Affordable Housing Policy, 2013 since the notice for payment is required to be given for 15 days but only 7 days' time has been given in the notice and hence, cancellation is bad and requests for setting aside the same and further stated that the amount of Rs.8,80,927/- has been refunded without the consent of the complainant. The counsel for the respondent clarified during proceedings dated 30.05.2025 that the cancellation was made after following the due procedure as per the Affordable Housing Policy, 2013 and the unit of the complainant is not available as the same has been allotted to the next allottee in the waiting list. The Authority observed that the respondent has issued reminder letter dated 08.09.2023, followed by a pre-cancellation dated 18.09.2023 & made a publication in the newspaper on 26.09.2023 and cancelled the unit on 27.09.2023. Though 15 days' time from the date of publication on the date of cancellation has not been placed but the complainant has encashed the amount of Rs.8,80,927/- paid by the respondent after cancelling the unit which itself depicts that the complainant has accepted the cancellation. Moreover, the cancellation is done due to non-payments of the outstanding amounts despite of above-mentioned reminders. Thus, the cancellation of the units stands valid.

15. After consideration of the afore-mentioned facts and submissions, the only relief which can be provided to the complainant is of refund, thus 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.

16. In the present case, the complainant has failed to pay the due instalments even after issuance of demand letter, reminder letter 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/-.
17. 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.
18. The authority hereby directs the promoter to return the amount received by him i.e., Rs.9,57,451/- (Clarified during proceedings of the day dated 20.03.2025) after deducting the amount of Rs.25,000/- and Rs.8,80,927/- which has already been refunded to the complainant as per above-mentioned clause of Affordable Group Housing Policy, 2013 along with interest on such balance amount at the rate of 10.90% (inadvertently mentioned as 11.10% in the proceedings dated 07.08.2025) (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., 27.09.2023 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 handover the possession of the unit to the complainant with immediate effect.

F.III Direct the respondent to waive off the charges being demanded /levied by the respondent on account of various heads, which were not the part of the agreement, which are demanded /levied by the respondent illegally, unlawfully and deliberately.

F.IV Direct the respondent not to charge or claim any charges other than the basic sale price, if any is being charged by the respondent, then the same may kindly be waived off being illegal, null, void, ab-initio, nonest in the eyes of law and not binding upon the rights of the complainant in any manner whatsoever.

F.V Direct the respondent to pay the penalty to the complainant on account of delay possession charges in delivering possession of the unit.

19. The Authority observes that the unit of the complainant has been cancelled on account of non-payment of dues by the complainant-allottee and the same has been accepted by the complainant by receiving the amount of Rs.8,80,927/- refunded by the respondent after cancellation of the unit. As the Authority is allowing the refund of the paid-up amount along with interest as mentioned in para 18, the above sought relief by the complainant becomes redundant.

F.VI Direct the respondent to pay Rs.55,000/- for litigation expenses.

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.

H. Directions of the Authority:

21. 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 refund the paid-up amount of **Rs.9,57,451/-** after deduction of Rs.25,000/- and Rs.8,80,927/- which has already been refunded to the complainant as per clause 5(iii)(i) of the Affordable Housing Policy 2013 as amended by the State Government on 05.07.2019, along with interest on such balance amount @10.90% per annum as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of cancellation of allotment i.e., 27.09.2023 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.

22. Complaint stands disposed of.

23. File be consigned to the registry.

Dated: 07.08.2025


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