



HARERA
GURUGRAM

Complaint No. 684 of 2024

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

Complaint no.:
Date of decision:

684 of 2024
03.09.2025

Shashi Bala

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

Complainant

Versus

M/s. Desi Construction Pvt Ltd.

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

Corporate office:- 1st Floor, Capital Cyber Space, Sector-
59, Gurugram- 122102.

Respondent

CORAM:

Ashok Sangwan

Member

APPEARANCE:

Jitender (Advocate)

Rahul Mangla (Advocate)

Complainant

Respondent

ORDER

1. The present complaint has been filed by the complainant/allottees 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 as provided under the provision of the Act or the Rules and

regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

B. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.no.	Particulars	Details
1.	Name of project	"Tathastu I"
2.	Nature of project	Affordable group housing
3.	Location of project	Sector-5, Village-Sohna, Gurugram.
4.	DTCP License	189 of 2022. Dated-16.11.2022
5.	RERA registered	Registered Vide registration no. 20 of 2023 Dated:-30.01.2023
6.	Allotment letter	24.04.2023 (As on page no. 52 of complaint)
7.	Unit no.	T5-506, Floor-5, Tower-5 (As on page no. 28 of complaint)
8.	Unit area	645.818 sq.ft. [Carpet-Area] 78.254 sq.ft. [Balcony Area]

		(As on page no. 28 of complaint)
9.	BBA	26.06.2023 (As on page no. 24 of complaint)
10.	Possession clause	4 years from the date of E.C or sanction of building plans , whichever is earlier.
11.	Due date of possession	23.01.2027 [Calculated 4 years from the date of statutory approvals as per data available on the RERA website]
12.	Total sale consideration	Rs.25,57,686/- (As on page no. 29 of complaint)
13.	Amount paid	Rs.9,65,850/-
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered
16.	Cancellation of unit	06.10.2023 [Note: Vide proceedings dated 20.08.2025, the same was inadvertently mentioned as 27.09.2023]
17.	Publication of cancellation	27.09.2023 (As on page no. 40 of reply)

C. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That in 2023, the respondent through its marketing executives had advertised through various medium and means and approached the complainant with an offer to invest and buy a residential unit in the proposed project of the respondent, under the name and style of "Tathastu I" situated at Sector-5, Village Sohna, Gurugram.
- II. Relying upon the assurances of the respondent, the complainant booked a residential unit /apartment /flat no. 506, in Tower – 5, Type – 2A (2 BHK + Store), on 5th Floor admeasuring Carpet area 645.818 sq. ft. and balcony area 78.254 sq. ft. alongwith stilt /basement parking in the project for a sale consideration of Rs.25,57,686/-.
- III. That, while booking the unit, it was represented by respondent that it has already secured all the necessary permissions, sanctions and approvals from the competent authorities and that it would allot the said unit in favour of the complainant well within a period of maximum one week. However, the respondent miserably failed in issuing any allotment letter to the complainant despite repeated requests of the complainant.
- IV. Thereafter, the respondent started raising the demand of money /installments from the complainant as per the agreed timelines and the complainant as on today had paid Rs.9,65,850/- which is very much evident from the receipts duly issued by the respondent.
- V. That the respondent issued an Allotment Letter on 24.04.2023, vide which the said unit /flat was allotted to the complainant. The Agreement registered at the office of Sub-Registrar, Sohna, vide vasika No.3859 dated 27.06.2023 in favour of the complainant. It is submitted that the complainant did not agree with some certain conditions of the Agreement, as the Agreement was unilateral one-sided and when the 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.

- VI. 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.
- VII. The respondent miserably failed in delivering the possession of the said unit to the complainant and 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". From the date of booking and till today, the respondent had raised various demands for the payment of installments 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 fulfilled otherwise also her part of obligations.
- VIII. The complainant stood shocked and astonished when the respondent issued letter dated 27.09.2023 with the subject "Cancellation of Unit", vide which the respondent cancelled the unit of the complainant illegally and unlawfully without affording her an opportunity of being heard and of making the payment.

- IX. Thereafter, the complainant 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 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.
- X. The complainant has undergone severe mental harassment due to the negligence on the part of the respondent to deliver her home on the agreed time and to restore the unit with immediate effect. The complainant had faced all these financial burdens and hardships from her limited income resources, only because of respondent's failure to fulfill its promises and commitments. The respondent 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.
- XI. 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% 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.9,65,850/- 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.
- XII. The cause of action accrued in favour of the complainant and against the respondent in the year 2023, when the complainant booked the said unit and it further arose when the respondent failed /neglected to deliver the

said unit. The cause of action is continuing and is still subsisting on day-to-day basis.

D. Relief sought by the complainant:

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

- i. Direct the respondent to handover 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. Pass an order 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. Pass an order, whereby directing 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, non-est in the eyes of law and not binding upon the rights of the complainant in any manner.
- v. Pay the penalty to the complainant on account of Delay Possession Charges in delivering possession of the unit.
- vi. Direct the respondent to pay an amount of Rs.55,000/- to the complainant as cost of the present litigation.

5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

E. Reply by the respondent.

6. The respondent contested the complaint on the following grounds: -

- I. That the complainant had voluntarily booked an apartment and had been allotted an apartment bearing no. 506, Tower 5, in the project "Tathastu I" located at Sector-5, Sohna, Gurugram by the respondent. After the allotment, the Allotment letter was issued to the complainant on 24.04.2023.
- II. That an Agreement to Sell/ Builder Buyer Agreement was duly executed and registered between the parties on 27.06.2023 at the office of Sub-Registrar, Sohna vide vasika no. 3859. The said Agreement clearly provides that possession shall be handed over within 36 months from the date of necessary approvals, subject to an applicable grace period as per industry norms.
- III. That the complainant has made default in making payment of sale consideration on the false and frivolous grounds. It is stated that the respondent is constructing the site as per the law and commitments made to the entire public at large. It is pertinent to mention here that apart from that the Authority is empowered to monitor the construction and progress over the project site of the respondent from time to time and there have been no lapse and other lacunas have been identified by the Authority with regard to construction status of the said project.
- IV. That the respondent had issued a reminder on 08.09.2023 against the outstanding due instalment but the complainant had failed to make timely payments of the due instalments. Subsequently, the respondent had issued a "Pre Cancellation Letter" against the subject unit to the complainant dated 18.09.2023 as per the mutually agreed terms and conditions of the registered Agreement for Sale and the Affordable Housing Policy, 2013.

- V. That the respondent had issued a "Final Reminder cum Publication of Public Notice" on 26.09.2023 seeking payment of the due instalments from the complainant. Consequently, the respondent had issued a cancellation letter dated 27.09.2023 to the complainant.
- VI. That the respondent also sent an email to the complainant on 06.10.2023, informing them about the cancellation of the unit along with a scanned copy of the refund cheque. Further, on 27.11.2023, another email was sent by the respondent to the complainant regarding the refund details, requesting them to verify their bank account particulars so that the refund could be processed through RTGS directly into the complainant's bank account.
- VII. That from the aforesaid it is clear that no cause action arises in favour of the complainant and that the present complaint is misleading and based on concocted story thus, the complaint is liable to be dismissed
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

F. Jurisdiction of the authority

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

F.1 Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district.

Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

F.II Subject-matter jurisdiction

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11.....

(4) 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;

11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter.

F. Findings on the reliefs sought by the complainant.

F.I. Direct the respondent to handover possession of the unit to the complainant with immediate effect.

F.II Direct the respondent to restore the unit booked by the complainant with immediate effect.

12. In the present complaint, the complainant booked a unit in the project of the respondent namely "Tathastu-I" situated at Sector-05, Sohna, Gurugram, Haryana. Vide allotment letter dated 24.04.2023, the complainant was allotted a unit bearing no.T5-506 on Floor-5th in Tower-5 having Carpet Area of 645.818 sq.ft and balcony area of 72.259 sq.ft. in "Tathastu-I". The Builder Buyer Agreement has been executed between the complainant and the respondent on 26.06.2023. The sale consideration of the unit is Rs.25,57,686/-. The complainant has till date paid an amount of Rs.9,65,850/- to the respondent. As per clause 1(iv) of the Affordable Housing Policy, 2013, the respondent is required to

complete the project within a period of four years from the date of sanction of Building plans or grant of Environmental Clearance, whichever is later. The same is reproduced below:

Clause 1 (iv)

*All such projects shall be required to be necessarily **completed within 4 years from the approval of building plans or grant of environmental clearance, whichever is later.** This date shall be referred to as the „date of commencement of project“ for the purpose of this policy.* [Emphasis supplied]

13. **Due date of handing over possession:** As per clause 1(iv) of the Affordable Housing Policy, 2013, the possession of the allotted unit was supposed to be offered to the complainant within a period of four years from the approval of building plans or grant of Environmental Clearance, whichever is later. In the present case, the date of approval of building plans was 23.01.2023, however, the date of obtaining the Environmental Clearance is not known. The due date of possession is calculated four years from the date of approvals of building plans. Thus, the due date of possession comes out to be 23.01.2027.

14. The respondent issued a Demand Letter dated 10.08.2023, raising a demand of Rs.3,27,960.68/- purportedly on account of the project reaching the stage of "On start of Excavation." The respondent sent a reminder for the demand on 08.09.2023. The respondent thereafter, issued a Pre-cancellation Letter on 18.09.2023 and published about the same on 27.09.2023. The respondent issued a cancellation letter in respect of the unit allotted to the complainant and informed the same to the complainant by way of Cancellation letter and also E-mail dated 06.10.2025. The said email dated 06.10.2025 has been reiterated below:

Dear Customer,

Greetings of the Day!!!!

Hope this email finds you well.

This is in regarding the cancellation of your unit in the project "Tathastu-II", which has been cancelled after the regular reminders and as per the

terms and conditions of the Affordable Housing Policy of the Haryana Government.

Reminders letters details are:

PARTICULARS	DATE OF ISSUE	DUE DATE
1. Demand (Excavation)	10 th August 2023	31 st August 2023
2. Reminder	08 th September 2023	14 th September 2023
3. Pre cancellation	18 th September 2023	24 th September 2023
4. Final Reminder (Advertisement)	27 th September 2023	03 rd October 2023

Please find attached the scanned copy of refund cheque. You are requested to collect the same from the below mentioned our office address.

[Emphasis supplied]

15. The Authority observes that the complainant was allotted a unit bearing no. T5-506 on 5th Floor in Tower-5 having Carpet Area of 645.818 sq.ft. and Balcony Area of 78.254 sq.ft. on 24.04.2023. Thereafter, the Agreement For Sale was executed between the complainant and the respondent on 06.06.2023 in regard to the above said unit. The total sale consideration of the unit was Rs.25,57,686/- and the complainant has till date paid an amount of Rs.9,65,850/-. As per clause 5 (iii) (I) of the Affordable Housing Policy, 2013, a procedure has been prescribed which is to be followed by the respondent in case of non-payment of the instalment in a timely manner. The same is reiterated below:

(I) *If any successful applicant fails to deposit the installments 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 installments 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 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.*

[Emphasis supplied]

16. As per clause 5 (iii)(I) of the Affordable Housing Policy, 2013, the respondent had to follow a due process on non-payment of the instalments in timely manner by the complainant. After issuing the demand letter, in case the complainant does not comply and make the payments, the respondent has to issue a reminder for making the

payments within a period of 15 days from the date of issuance of the notice. If the default still persists, the respondent have to make a publishment of list of defaulters in the regional Hindi newspaper, thereby giving notice to the allottee to pay the outstanding dues within a period of 15 days from the date of publication, failing which the allotment may be cancelled.

17. In the present complaint, the respondent issued a demand letter dated 10.08.2023 and thereafter a reminder was issued to the complainant on 08.09.2023 for the payment of the outstanding dues, followed by a Pre Cancellation Letter dated 18.09.2023. The Final Reminder by way of newspaper publication was made by the respondent on 27.09.2023. Vide email dated 06.10.2023, the unit of the complainant was cancelled by the respondent. Now the question before the Authority is whether the cancellation of the allotment of the complainant's unit was valid or not?
18. The Authority observes that the respondent has not followed the due procedure for cancellation of the allotment of complainant's unit. The respondent issued a demand letter dated 10.08.2023 and thereafter a reminder was issued to the complainant on 08.09.2023 for the payment of the outstanding dues, followed by a Pre Cancellation Letter dated 18.09.2023. The Final Reminder by way of newspaper publication was made by the respondent on 27.09.2023. The complainant has made a payment of Rs.25,000/- on 04.10.2023 and Rs.3,01,429/- on 05.10.2023 and the respondent has acknowledged the same via receipts dated 04.10.2023 and 05.10.2023 annexed on page no. 54 and 55 of the complaint. Vide email dated 06.10.2023, the unit of the complainant was cancelled by the respondent.
19. The Authority is of the view that the respondent has received the payment of Rs.25,000/- and Rs.3,01,429/- on 04.10.2023 and

05.10.2023 respectively, i.e., after the issuance of the publication on 27.09.2023. In terms of Clause 5(iii)(I) of the Affordable Housing Policy, 2013, a time period of 15 days was there with the complainant to make the payment. The time period of 15 days from 27.09.2023 was completing on 12.10.2023 and the complainant has made the payment on 04.10.2025 and 05.10.2025 i.e., much before the due time period and the same was also acknowledged by the respondent. Thus, the cancellation dated 06.10.2023 is bad in law.

20. In view of the above, the cancellation of the subject unit vide email dated 06.10.2025 is hereby set aside and the respondent is directed to restore the unit to the complainant within a period of 30 days of the order. In case, third party rights have been created on the unit, the respondent is directed to provide another similarly located unit to the complainant in the same project on the same sale consideration.

F.III. Pass an order 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 Pass an order, whereby directing 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, non-est in the eyes of law and not binding upon the rights of the complainant in any manner.

21. The respondent is directed to demand only those charges which were part of the Agreement executed between the parties and nothing over and above of it.

F.V Pay the penalty to the complainant on account of Delay Possession Charges in delivering possession of the unit.

22. In the present complaint, the complainant booked a unit in the project of the respondent namely "Tathasthu-I" situated at Village-Dhunela, Sohna, Gurugram. The allotment was made in favour of the complainant on

24.04.2023 and thereafter, the Agreement For Sale was executed between the complainant and the respondent on 26.06.2023. As per Clause 1(iv) of the Affordable Housing Policy, 2013, the respondent had to hand over possession of the unit to the complainant within a period of 4 years from the date of sanction of Building plans or grant of Environmental Clearance, whichever is later. The due date is calculated 4 years from the date of Sanction of Building Plans. Thus, the due date of possession comes out to be 23.01.2027. Since, the said due date of possession is yet to come, no delay on account of offering of possession can be established at this point of time and the said relief is declined being pre-mature.

F.VI Direct the respondent to pay an amount of Rs.55,000/- to the complainant as cost of the present litigation.

23. The complainant is seeking the above mentioned relief w.r.t. compensation. The Hon'ble Supreme Court of India in Civil Appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Ltd. V/s State of UP & Ors.(supra)* has held that an allottee is entitled to claim compensation and 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 and litigation expense shall be adjudged by the adjudicating officer having due regards to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation and legal expenses. Therefore, the complainant may approach the adjudicating officer for seeking the relief of compensation

H. Directions of the Authority

24. Hence, the Authority hereby passes this order and issues 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 of the allotment of the complainant's unit dated 06.10.2023 is hereby set aside. Consequently, the respondent/promoter is directed to reinstate the allotment of the complainant's unit within a period of 30 days of this order. In case, third party rights have been created on the unit, the respondent is directed to provide another similarly located unit to the complainant in the same project on the same sale consideration.
- ii. The respondent is directed to offer valid offer of possession to the complainant after receiving the Occupation certificate.
- iii. The respondent is directed to execute Conveyance Deed in favour of the complainant on payment of the requisite stamp duty, within 3 months from the date of valid offer of possession, after obtaining the Occupation certificate.
- iv. The respondent is directed not to charge anything other than the agreed charges in the Buyer's Agreement.

25. Complaints stands disposed of.

26. File be consigned to the registry.



(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 03.09.2025