



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2349 of 2022
Date of filing:	07.09.2022
First date of hearing:	08.02.2022
Date of decision:	15.09.2025

Manju

D/o Khem Singh

R/o house no. 169, Gali no. 8,

Shivpuri, Meethapur extn.,

Badarpur, New Delhi-110044

.....COMPLAINANT

Versus

M/s Jotindra Steel & Tubes Ltd.

Registered Office: 14/3, Mathura Road

Faridabad, Haryana-121003

(Through its Director)

.....RESPONDENT

Present: - Adv. Shailender Singh, counsel for the complainant through VC .

Adv. Amrit Singh, counsel for the respondent through VC.

ORDER (NADIM AKHTAR –MEMBER)

A. FACTS OF THE COMPLAINT

1. Case of the complainant is that in the year 2019, the Respondent company, upon obtaining the requisite license from the office of Director, Town and Country Planning, Haryana (DTCP), launched a scheme for allotment of apartments in its Affordable Group Housing Project namely, “*Shree Homes by Sarvome*” situated at Sector-45, Faridabad, Haryana, in compliance with the provisions of Affordable Housing Policy, 2013 issued by the Government of Haryana. Copy of Affordable Housing Policy, 2013 is annexed as Annexure-1.
2. That the complainant, relying upon the commitments made by the respondent, applied for a 2 BHK apartment in the said project and paid a sum of ₹1,33,000/- (Rupees One Lakh Thirty-Three Thousand Only) through Cheque No. 000004 dated 21.11.2019 drawn on HDFC Bank towards the booking amount, which is approximately 5% of the total cost of the apartment. Copy of the Booking Form along with the said cheque is annexed as Annexure-2 (Colly).
3. That subsequently, the Respondent conducted the draw of lots on 10.07.2020 at its registered office, in accordance with the Affordable Housing Policy,



2013, in the presence of Government Officials and members of the general public. The name of the Complainant was duly included in the list of successful allottees and the same was communicated vide Allotment Letter dated 07.08.2020. Copy of the Allotment Letter dated 07.08.2020 is annexed as Annexure-3.

4. That as per the said Allotment Letter, Complainant was allotted Flat No. 2102 in Tower-9, having a Carpet Area of 645.8 sq. ft. and was directed to make the balance payment of ₹5,31,883/- towards the total cost of the said unit.
5. That in pursuance of the above, the Complainant paid a further sum of ₹3,98,883/- through Cheque No. 234907 dated 01.09.2020 drawn on IndusInd Bank, which was duly cleared on 03.09.2020. Copy of the said cheque along with bank statement is annexed as Annexure-4.
6. That for the remaining balance payment, the complainant applied for a housing loan, however, no bank was willing to extend loan facility on the project in question due to non-compliances on part of the Respondent. Meanwhile, due to the unprecedented COVID-19 pandemic, the Complainant lost her employment and suffered severe financial hardship, thereby requesting time for payment of the balance consideration.
7. That it is relevant to mention that the Hon'ble Supreme Court, in various judicial pronouncements during the COVID period, granted waivers in respect



of penalties arising due to delay in payments. On the strength of the said pronouncements, Complainant also requested waiver of penalties from the Respondent, but the same was never considered.

8. That apart from the above, the Complainant repeatedly requested change of the allotted flat, as she is a patient of *acrophobia* (fear of heights). On such request, the Respondent orally assured to shift the allotment to Flat No. 1701 in Tower-12. However, no document confirming such change was ever issued by the Respondent.
9. That instead, the officials of the Respondent coerced the Complainant to issue an email for cancellation of the allotment on the pretext that refund of the entire money would be processed. Believing upon such false assurances, the Complainant sent an email consenting to cancellation. However, no refund was ever made by the Respondent.
10. That thereafter, in March 2022, the Complainant personally met one Ms. Smriti, official of the Respondent, who again offered a fresh unit, i.e., Flat No. 1701 in Tower-9. The Complainant even wrote an email confirming his willingness, but again the Respondent chose not to act upon the same.
11. That despite repeated requests through several emails, the Respondent has neither allotted any unit nor refunded the amount paid by the Complainant till date, thereby causing wrongful loss and harassment to the Complainant.



B. RELIEFS SOUGHT

12. Complainant vide present complaint has sought following reliefs:

- i. Direct the respondent to allot the flat bearing no. 1701 in Tower 9 in favour of the complainant;
- ii. Hold that respondent is guilty of delay in completing the project and further direct the respondent to pay interest @18% per annum for the period on account of delay in handing over the possession to till date and further the pendilite interest till the date of actual payment.
- iii. Direct the respondent to pay ₹55,000/- as litigation costs.
- iv. Direct the respondent to pay ₹55,000/- as compensation for the pain and agony.
- v. Pass any orders/ directions as it may deem fit and proper by this Hon'ble Authority in the interest of justice.

C. REPLY ON BEHALF OF RESPONDENT

Respondent submitted a detailed reply on 09.02.2023 in the registry of the Authority pleading therein as under:

13. That the project "*Shree Homes by Sarvome*" situated at Sector-45, Faridabad, launched by the Respondent, is a duly licensed Affordable Group Housing Project under the "Affordable Housing Policy 2013. Copy of the Affordable Housing Policy 2013 is annexed as Annexure R-1.



14. That the said Policy, under Clause 5(iii)(h) and 5(iii)(i), clearly provides that in case of surrender or cancellation of allotment, the colonizer is entitled to deduct an amount of ₹25,000/- and refund the balance. Further, Clause 5(ii)(b) provides that any default in payment of instalments shall invite penal interest @15% per annum. Subsequent amendments to the Policy further regulate the forfeiture in case of surrender depending upon the stage of the project. Copy of the amendment to the Affordable Housing Policy, 2013 is annexed as Annexure R-2.
15. That the Complainant, having accepted the terms of the said Policy, applied for allotment of an apartment in the said project and deposited a booking amount of ₹1,33,000/- vide Cheque No. 000004 dated 21.11.2019 drawn on HDFC Bank, which is approximately 5% of the total cost of the flat valued at ₹26,33,360/- plus applicable GST. Acknowledgement dated 23.11.2019 is annexed as Annexure R-4 (Colly).
16. That the draw of lots was duly conducted on 10.07.2020 in the presence of the Deputy Commissioner, Faridabad, and officials of the Town & Country Planning Department, wherein the Complainant was declared a successful allottee. Thereafter, the Respondent issued an Allotment-cum-Demand Letter dated 31.08.2020 demanding a sum of ₹5,31,883/- towards the balance 20%



consideration payable within 15 days. Copy of the said demand letter is annexed as Annexure R-5.

17. That the Complainant, instead of paying the full demanded sum, only deposited ₹3,98,883/- vide Cheque No. 234907 dated 01.09.2020 drawn on IndusInd Bank, thereby defaulting in making the complete installment payment. Copy of cheque is annexed as Annexure R-6.
18. That as per the Affordable Housing Policy, the balance 75% of the flat cost was recoverable in six equated half-yearly instalments. Accordingly, the Respondent issued subsequent demand notices including Demand Letter dated 10.12.2020 for ₹3,32,464/- and Demand Letter dated 10.06.2021 for ₹7,97,971/-. The Complainant failed to make payment in compliance with the said notices. Copy of Demand Letter dated 10.06.2021 is annexed as Annexure R-7.
19. That despite repeated reminders, including final reminder email dated 08.12.2021, the Complainant did not make payment. Copy of said email reminder is annexed as Annexure R-8.
20. That instead of complying with the payment obligations, the Complainant vide email dated 09.12.2021 raised an excuse of alleged fear of heights (acrophobia) and sought cancellation/refund of the allotted unit. Copy of said email is annexed as Annexure R-9. The Respondent, vide reply dated



11.12.2021, duly informed the Complainant that allotment was strictly as per draw conducted under the Affordable Housing Policy and further reminded her of outstanding dues. Copy of said reply email is annexed as Annexure R-10.

21. That in compliance with Clause 5(iii)(i) of the Affordable Housing Policy, 2013, the Respondent also published a public notice in the widely circulated daily 'The Pioneer' on 11.12.2021, calling upon the Complainant to make the due payment within 15 days failing which allotment would stand cancelled. Copy of said public notice is annexed as Annexure R-11.
22. That thereafter, as a special exception, considering the Complainant's medical condition, the Respondent vide email dated 13.12.2021 agreed to shift her allotment to another flat (17th Floor, Tower-12) subject to submission of original documents of the earlier allotted unit. Copy of said email is annexed as Annexure R-12. That despite the said concession, the Complainant instead chose to send an email dated 15.12.2021 requesting cancellation and refund. The Respondent accordingly informed her to contact its representative for initiating the cancellation and refund process. Copies of the said correspondence are annexed as Annexure R-13 (Colly). That on account of continued non-payment, the Respondent once again published a public notice on 05.05.2022 in 'The Pioneer' giving the Complainant one last opportunity



of 15 days to clear outstanding dues, failing which allotment stood cancelled. Copy of the public notice is annexed herewith as Annexure R-14. That it is therefore evident that the Complainant was a persistent defaulter who failed to adhere to the payment schedule prescribed under the Affordable Housing Policy, 2013. The Respondent has acted strictly in accordance with law and policy provisions, issuing timely reminders, demand letters, and even granting special concessions, but the Complainant has failed to honour her obligations.

D. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

23. During the course of hearings, learned counsel for the complainant submitted that the complainant has paid a total amount of ₹6,64,883/- towards the unit, with receipts annexed at pages 24, 25, and 27 of the complaint book. It was submitted that page 25 contains a cheque of ₹3,98,883/-, page 27 a statement of account, and page 24 a demand letter dated 07.08.2020, which the complainant requested be treated as proof of payment of ₹1,33,000/-, a request which the Authority accepted. The counsel further submitted that the total sale consideration for the unit is ₹26,33,360/-. He referred to an email dated 13.12.2021 at page 48 of the reply book, where the respondent proposed to change the unit to the 17th floor of Tower-12 and sought original documents for the previous unit. The complainant objected to the change due

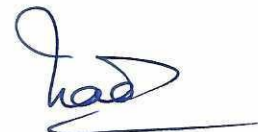


to vertigo, but the respondent continued issuing demand letters. An email dated 15.12.2021 at page 49 records the complainant's request to cancel the unit and seek a refund. Despite this, the complainant filed the present complaint on 07.09.2022 seeking possession and interest for delay.

24. The learned counsel for the respondent submitted that the complainant had indeed raised concerns regarding height phobia, as evidenced by an email annexed at page 45 of the reply book. Subsequently, at page no. 46, the respondent issued a payment reminder to the complainant and thereafter accepted the complainant's request not to change the unit, as sent through an email dated 11.12.2021. Furthermore, the respondent submitted that at page no. 48 of the reply, the complainant was invited to visit the office and submit all original documents in order to initiate the refund process. It was submitted that the complainant failed to comply with the said request, and hence no refund process could be initiated. In light of these facts, the learned counsel for the respondent prayed that the present complaint be dismissed.

E. ISSUE FOR ADJUDICATION

25. Whether the complainant is entitled for reliefs sought by her or not?



F. OBSERVATIONS AND DECISION OF AUTHORITY

26. The Authority has gone through rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both the parties, Authority observes as follows:
27. It is an admitted fact that complainant applied for a 2BHK Apartment in the respondent's project namely "*Shree Homes by Sarvome*", Sector-45, Faridabad, Haryana by paying an amount of ₹1,33,000/- through a cheque dated 21.11.2019. Thereafter, draw of lots were held on 10.07.2020 in accordance with the Affordable Housing Policy, 2013.
28. The issue to be adjudicated by the Authority is whether the complainant is entitled to the relief of possession along with delayed interest or not?
29. The Authority has carefully perused the pleadings of both the parties as well as the documents placed on record. The Complainant has asserted that the Respondent initially issued an allotment letter dated 07.08.2020, whereby Flat No. 2102 in Tower-9 was allotted to the Complainant. On the contrary, the Respondent has placed reliance upon another allotment letter dated 31.08.2020, issued in the name of the Complainant, which also refers to the draw of lots held on 10.07.2020, but mentions the allotment of Flat No. 1902 in Tower-11. Further, it is noted that the Complainant, while seeking the relief of possession, has claimed entitlement in respect of Unit No. 1701 in Tower-



9, which is altogether different from the two flats mentioned in the allotment letters. The record also contains an email communication dated 13.12.2021 issued by the Respondent to the Complainant, wherein it is categorically stated that *"with reference to our discussion, the company will change your allotted flat to 17th Floor, Tower-12. You are requested to kindly submit all the original documents of the earlier allotted unit, i.e., T-11-1902."*

30. From the sequence of documents brought on record, it clearly emerges that the flat/tower number allotted to the Complainant has undergone changes on more than one occasion. This shifting stand, coupled with the inconsistent claims of the parties, leads to a situation where the very identity of the unit allotted to the Complainant is disputed and remains uncertain. While the Complainant presses for possession of Flat No. 1701 in Tower-9, the documents on record do not support such allotment in an unequivocal manner. On the contrary, the Respondent's own correspondence reflects alterations in the unit number over time, without there being a final, concluded and mutually acknowledged allotment between the parties. In such circumstances, the Authority is of the considered view that the relief of possession cannot be granted in favour of the Complainant, since it is not possible to identify with certainty the particular unit in respect of which possession can be ordered. Further, the consequential relief of interest for alleged delay in handing over



possession is equally untenable, for the reason that delay can only be computed with reference to a specific and undisputed unit and in the present case, the unit itself is in dispute. Unless the allotment is conclusively established through cogent material and duly accepted by both sides, the Authority cannot fasten any liability upon the Respondent to deliver possession of a particular flat or to pay delay interest.

31. Further, it is also pertinent to mention that the Complainant states that she deposited a total sum of ₹5,31,883/- (₹1,33,000/- at the time of booking and ₹3,98,883/- thereafter) but could not arrange the balance amount on account of (i) banks not sanctioning loan for the project, (ii) loss of job during COVID-19 pandemic, and (iii) her medical condition of acrophobia due to which she requested change of allotted flat. It is further the grievance of the Complainant that despite repeated requests, the Respondent neither changed the allotment nor refunded her money. Per contra, the Respondent has filed a detailed reply submitting that the project is a duly licensed Affordable Housing Project under the Affordable Housing Policy, 2013 notified by the Government of Haryana. The Respondent has contended that the Complainant herself is a persistent defaulter who failed to comply with the payment schedule as prescribed in the Allotment-cum-Demand Letter dated 31.08.2020. The Respondent has further relied upon Clause 5(ii)(b), 5(iii)(h)



and 5(iii)(i) of the Affordable Housing Policy, 2013. As per Clause 5(ii)(b), any default in payment invites penal interest @ 15% per annum. As per Clause 5(iii)(i), upon failure to deposit the instalments even after issuance of reminder and publication of notice in a regional newspaper, the allotment may be cancelled after deduction of ₹25,000/- and the balance amount refunded. However, complainant herself has made it clear vide application dated 13.12.2024, that complainant is not interested in getting refund of her paid amount and is willing to continue with the project.

32. Furthermore, from the material placed on record, it is observed that the complainant deposited only part of the demanded amount i.e., ₹3,98,883/- against the demand of ₹5,31,883/- raised vide letter dated 31.08.2020. Thereafter, subsequent demands were raised by the Respondent vide Demand Letter dated 10.12.2020 for ₹3,32,464/- and Demand Letter dated 10.06.2021 for ₹7,97,971/-. Despite issuance of reminders including email dated 08.12.2021 and publication of public notices in 'The Pioneer' on 11.12.2021 and 05.05.2022, the complainant did not deposit the due instalments. The plea of the Complainant that loan was not sanctioned by banks or that she suffered financial hardship due to COVID-19 cannot override the statutory mandate of the Affordable Housing Policy, 2013, which clearly fixes the obligation to pay the instalments within prescribed timelines. Further, the alleged medical



condition (acrophobia) also does not absolve the complainant from performing her contractual obligations. It is noted that even when the respondent via letter dated 13.12.2021, as a matter of goodwill, offered to shift her allotment to a flat in Tower-12 subject to completion of necessary formalities, the complainant instead opted for cancellation and refund via letter dated 15.12.2021, without clearing her outstanding dues.

33. Authority is of the view that from the documents placed on record, it is evident that the complainant is a defaulter who has failed to honour the payment plan despite repeated opportunities and statutory notices. The respondent has acted strictly in compliance with Clause 5(iii)(i) of the Affordable Housing Policy, 2013 and has duly afforded multiple opportunities to the complainant before proceeding with cancellation. Authority is of the view that a defaulter allottee cannot be allowed to take advantage of her own breach and seek relief contrary to the provisions of the Affordable Housing Policy, 2013. The scheme is time-bound and regulated by Government policy, leaving no scope for relaxation beyond the terms thereof. The Hon'ble Supreme Court's directions regarding waiver of penalties during the COVID-19 period also do not assist the complainant, as those pronouncements do not extinguish the liability to pay instalments under the Affordable Housing Policy.



34. Authority with regard to the above aid issue concludes that in view of defaults made by the complainant, the complainant is not entitled to reliefs sought by her in captioned complaint.
35. The complainant is seeking ₹ 55,000/- as litigation costs and ₹55,000/- as compensation for the pain and agony. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt Ltd. V/s State of U.P. &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 learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned 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. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.
36. Thus, consequent upon the considerable consideration, Authority is constrained to conclude that the present complaint is nothing but an ill-advised luxurious litigation and a classic example of litigation to enrich oneself at the cost of another and to waste the precious time of this Authority.



The Real Estate (Regulation and Development) Act 2016 is a beneficial/ social legislation enacted by the Parliament to put a check on the malpractices prevailing in the real estate sectors and to address the grievances of the allottees who have suffered due to the dominant position of the promoter.

37. Hence, the complaint is accordingly **disposed of** in view of above terms. File be consigned to the record room after uploading of the order on the website of the Authority.



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NADIM AKHTAR
[MEMBER]