

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

Complaint no. :	824 of 2024
Order reserved on:	01.08.2025
Order pronounced on:	12.09.2025

Aarti Yadav

R/O: A-513, Palam Vihar, Gurugram,
Haryana - 122017**Complainant**

Versus

M/s Apricus Hills Pvt. Ltd.

Regd. office: H. no. 86, New Pole No. NJF XW-
23, Village Pandwala Kalan, Najafgarh, South
West Delhi, Delhi- 110043**Respondent****CORAM:**

Shri Arun Kumar

Chairman**APPEARANCE:**Sh. Sukhbir Yadav
Sh. Ankur YadavAdvocate for the complainant
Advocate for the 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 provisions of the Act or the

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

A. 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.	Heads	Information
	Name and location of the project	"Yashika 104", Sector 104, Village Dhanwapur, Gurugram
2.	Nature of the project	Affordable Group Housing Project
3.	Project area	5.0375 Acres
4.	DTCP License	101 of 2021 dated 28.12.2021 valid till 07.12.2026
5.	HRERA registered/ not registered	Registered Vide registration no. 44 of 2022 dated 25.05.2022 Valid up to 06.01.2027
6.	Booking receipt	31.08.2022 (page no. 26 of complaint)
7.	Approval of building plans	04.03.2022 (as per project details)
8.	Date of environment clearance	15.03.2022 (as per project details)
9.	Allotment letter	02.09.2022 (page no. 27 of complaint)
10.	Date of execution of flat buyer's agreement	Not executed

11.	Unit no.	1206 A, Tower 2, 12 th floor (page no. 27 of the complaint)
12.	Area admeasuring	638.198 sq. ft. carpet area 151.77 sq. ft. balcony area (page no. 27 of the complaint)
13.	Possession clause as per Affordable Housing Policy, 2013	1 (iv) All such projects shall be required to be necessarily completed within <i>4 years from the date of approval of building plans or grant of environmental clearance, whichever is later.</i> This date shall be referred to as the "date of commencement of project" for the purpose of the policy.
14.	Due date of delivery of possession	02.09.2026 (calculated from the date of environment clearance being later)
15.	Total consideration	Rs.28,32,201 /- (As alleged by complainant at page 24 of complaint)
16.	Total amount paid by the complainant	Rs. 17,55,144/- (as alleged by complainant at page 24 of complaint)
17.	Demand and reminder letters	20.11.2023, 17.05.2024, 03.06.2024 (page no. 10-14 of reply)
18.	Pre cancellation letter	14.06.2024

		(page no. 15 of reply)
19.	Cancellation by email	25.06.2024 (page no. 17 of reply)
20.	Publication in newspaper	26.06.2024 (Page no. 18 of reply)
21.	Occupation Certificate	NA
22.	Offer of possession	NA

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:

- I. That in the month of July 2022, the complainant booked a residential unit in the project of the respondent namely, Yashika 104 situated at Sector 104, Gurugram vide application no. 57872 after making payment of Rs 1,34,021/- under affordable Group Housing Policy, 2013.
- II. That the draw of lots of the said project was conducted on 31.08.2022 wherein the complainant emerged as a successful allottee. Subsequently, a unit bearing no. 1206A on the 12th floor of tower-T-02 measuring 638.198 sq. ft along with a balcony area of 151.77 sq. ft. was allotted to the complainant vide allotment letter dated 02.09.2022. A two-wheeler parking was also allotted to the complainant against the allotment of the said unit.
- III. That the said unit was booked and allotted for a total sale consideration of Rs. 28,32,201/- under the construction-linked payment plan.
- IV. That the 3rd installment was due on completion of the 1st floor slab of the tower. The respondent raised the demand for the 3rd instalment on 17.03.2023 amounting to Rs. 3,51,029/-. The complainant inquired

about the status of the construction of tower-2 and found that the 1st-floor slab of tower-2 was not completed. However, in good faith the complainant paid the 3rd installment of Rs 3,51,030/- on 04.04.2023.

- V. That in the meanwhile, the complainant was out of India and could not be available for execution of BBA for some time, the same was informed to the respondent vide an e-mail dated 25.01.2023. Thereafter, on 03.09.2023 the complainant wrote an e-mail to the respondent and requested for execution of BBA. The respondent replied on 05.09.2023 that due to the ongoing G-20 summit, they were unable to execute the BBA. The complainant vide another e-mail dated 06.09.2023 requested for a suitable date for execution of BBA but no reply to this mail was ever received from the respondent.
- VI. That the respondent has received more than 60% of the total sale consideration from the complainant. The complainant has been chasing the respondent since 03.09.2023 for execution of BBA but the respondent is reluctant to execute the BBA and has not answered E-mails of the complainant in this regard which is in contravention to Section-13(1) of The Real Estate (Regulation and Development) Act, 2016.
- VII. That after paying the initial three instalments on time the complainant received another demand letter on 20.11.2023 amounting to Rs. 3,51,026/-. The status of construction shown in the said demand letter was "On completion of 1/3rd slab of the super structure. However, when husband of the complainant visited the site and asked from the staff of respondent about the status of construction of tower-2, he was informed by the staff of the respondent that due to NGT ban in effect from 02.11.2023, the work was stopped at the site. He was

further informed that due to bad air quality, the ban was going to be extended till the whole winter season. Thereafter, on 31.01.2024, the complainant sent an e-mail to the respondent asking for the site photographs in order to ascertain the status of the construction of tower-2 so that she could proceed with the payment. However, no reply was given by the respondent.

- VIII. That the complainant was patiently waiting for the reply of the respondent and was ready to pay the legitimate dues. However, after not getting any response from the respondent, the complainant visited their office on 29.07.2024 to know the status of the construction and make payment accordingly. However, to the utter shock of the complainant she was informed that her unit was cancelled due to non-payment of dues.
- IX. Thereafter, on 30.07.2024 the complainant and her husband met the staff of respondent they said that unit has not been cancelled and asked to pay the balance payments as on date immediately on which they both agreed and complied. Relieved by the said act of the respondent, the complainant sent an e-mail on 02.08.2024 and thanked Mr. Amit Yadav and Ms. Neha for making it convenient to revoke the said cancellation.
- X. That the complainant paid the outstanding dues of Rs 7,02,056/- on 03.08.2024 as per the latest demand letter dated 17.05.2024.
- XI. Meanwhile, on 02.08.2024 the complainant sent a WhatsApp message to the respondent and asked for a suitable date for executing the BBA. However, no response to the same has ever been received from the respondent. Thereafter, the staff of the respondent started not picking up calls from the complainant.

XII. That despite numerous visits, emails, and letters, these efforts have been in vain. The respondent failed to mention the status of construction. The main grievance of the complainant in the present complaint is that despite the complainant paying the initial three instalments on time which amounts to 37.5% of the total sale consideration of the flat and being ready and willing to pay the legitimate demand, the respondent has failed to provide correct status of construction of her flat.

XIII. The respondent has neither issued acknowledgement of the last payment made by the complainant amounting to Rs 7,02,056/- nor any formal revocation of cancellation has ever been shared with the complainant.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
 - (i) Direct the respondent to restrain from creating 3rd party rights in the unit of the complainant.
 - (ii) To set aside the alleged cancellation of the complainant's unit.
 - (iii) To get the builder buyer's agreement executed with respect to complaint's unit.
 - (iv) To penalize the respondent for not executing the BBA despite receiving more than 60% of the total sale consideration.
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.

D. Reply by the respondent.

6. The respondent has contested the complaint on the following grounds.

- I. That the complainant applied for a unit in the project on 31.08.2022 and the respondent allotted unit no. 1206A in Tower -T2.
- II. That the total sale consideration of the allotted unit to the complainant was Rs.28,32,201/-. However, the amount paid by the complainant was Rs.10,53,088/- which is only 30% of the total sale consideration. The complainant has defaulted in making a payment of approximately Rs.27,02,059/- as per various demand letters because of which the respondent was forced to cancel the said unit.
- III. That the respondent at various occasions requested the complainant to execute the builder buyer agreement, whereas it was the complainant who has failed to execute the same on one pretext or another. Further, the complainant has failed to apprise correct facts to the court in order to mislead the court and take undue advantage of being an allottee.
- IV. Furthermore, the construction at the project sites is at full swing and the same has been communicated to the complainant various times. The tower wherein the unit of the complainant is located is at the verge of completion and it is also pertinent to bring to the notice of the Hon'ble Authority that the complainant has defaulted in making timely instalment/payments as per the agreed payment plan.
- V. This non-compliance resulted in a breach of contract, leaving the respondent with no option but to cancel the allotment under clause 5 of the affordable housing policy, 2013.
- VI. That the affordable housing policy mandates that payment obligations must be fulfilled within a stipulated timeline. Clause 5 specifically allows developers to cancel an allotment if payments are not received within 15 days of the due date. The policy emphasizes strict adherence to the payment schedule to ensure smooth project execution.

- VII. That the complainant has failed to adhere to the payment plan and has wilfully ignored the various demand letters sent to the complainant at several occasions. That the respondent at various dates on 20.11.2023, 17.05.2024, 03.06.2024, 14.06.2024 and 21.06.2024 sent reminders to the complainant allottee.
- VIII. Despite giving ample opportunities to the complainant, she failed to execute the BBA and further failed to make the payment of the pending installments and this left with the respondent with no other option but to cancel the unit as this was causing a lot of financial constraints for the respondent company.
- IX. That the respondent has acted in good faith and in strict compliance with the law. At every stage, reminders were issued to the complainant to ensure compliance. Despite these efforts, the complainant failed to fulfill payment obligations, leading to the cancellation of the unit. A cancellation notice was subsequently published in a widely circulated newspaper i.e., *Danik Bhaskar* on 13.07.2024.
- X. That due to the complainant's failure to make the payment of the due instalment, the respondent was compelled to publish in two newspapers with respect to the cancellation of the allotment of Unit T2-1206 on 13.07.2024, following due process as prescribed under the Haryana Affordable Housing Policy, 2013 and after providing sufficient notice to the complainant.
- XI. Additionally, the complainant's assertion that the slow construction progress in Tower T2 excuses her payment default is unsustainable in light of the legal principle that an allottee cannot withhold payment merely on the pretext of incomplete construction when the developer is diligently pursuing project completion.

XII. That the respondent has already refunded the amount of Rs. 17,25,645/- by way of RTGS paid by the complainant after deducting the requisite amount as per the Haryana affordable housing policy.

7. 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

8. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I 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.

E.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;

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.

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 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:

- (i) Direct the respondent to restrain from creating 3rd party rights in the unit of the complainant.**
- (ii) To set aside the alleged cancellation of the complainant unit.**
- (iii) To get the builder buyer's agreement executed with respect to complaint's unit.**
- (iv) To penalize the respondent for not executing the BBA despite receiving more than 60% of the total sale consideration.**

12. The above mentioned relief no. (i), (ii), (iii) and (iv) are interrelated to each other. Accordingly, the same are being taken up together for adjudication.

13. In the present complaint, the complainant booked a unit in the project of respondent namely, Yashika, situated at sector 104, Gurugram. The complainant was allotted a unit bearing no. 1206 A, 12th floor in Tower 2 admeasuring 638.198 sq. ft. of carpet area and 151.77 sq. ft. of balcony area vide allotment letter dated 02.09.2022. The apartment buyer's agreement was not executed between the parties till date. As per the allotment letter dated 02.09.2022 the total sale consideration

of the unit was Rs. 28,32,201/- and the complainant has made a payment of Rs. 17,55,144/- against the same in all. As per possession clause of the affordable housing policy, 2013 the possession of the subject nit was to be handed over within a period of 4 years from date of approval of building plans or grant of environment clearance, whichever is later. The date of approval of building plan is 04.03.2022 and the environment clearance was obtained on 15.03.2022. The due date of possession is calculated from the date of environment clearance being later which comes out to be 02.09.2026.

14. The complainant in the present matter has averred that the respondent has cancelled the unit of the complainant and seeking restoration of the unit allotted to her. The complainant has stated that the cancellation of the unit is invalid as the unit was booked under the construction linked payment plan and the respondent had raised demands which were not in accordance with the actual stage of construction. The complainant has also filed Quarterly Progress Report(QPR) and states that respondent has failed to complete the 1/3rd superstructure of tower 2 therefore the demand raised by respondent is illegal. The complainant further averred that the respondent despite receiving more than 60% of the total sale consideration has failed to execute the builder buyer agreement which is in contravention of Section 13(1) of the RERA Act, 2016.
15. The plea of the respondent is otherwise and stated that the demand were raised as per payment plan and the complainant has made payment of Rs. 17,55,144/-. However, various reminder letters were issued followed by pre cancellation letter dated 14.06.2024 but despite repeated follow ups the complainant failed to act further and comply

with their contractual obligations and therefore the unit of the complainant was finally terminated vide letter dated 25.06.2024.

Now the question before the authority is whether the cancellation issued vide letter dated 25.06.2024 is valid or not.

16. On consideration of documents available on record and submissions made by both the parties, the authority is of the view that the complainant booked a unit under an Affordable Group Housing Policy, 2013. The clause 5(iii)(i) of the Affordable Group Housing Policy, 2013 is relevant and reproduced hereunder for ready reference:

"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 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".

17. The Authority observes that clause 5(iii)(i) of the Affordable Housing Policy, 2013 provides that if an applicant fails to remit the installment within the prescribed time period, a reminder may be issued to the applicant, requiring payment of the outstanding installment within fifteen (15) days from the date of issuance of such notice. If the allottee fails to make the payment within the specified period, the list of defaulters may then be published in a regional Hindi newspaper. If the allottee continue to default, the allotment may be cancelled within fifteen (15) days thereafter.

18. In the instant case, the demand for the payment was raised on 20.11.2023 and thereafter, reminders for the payment were sent by the respondent on 17.05.2024, 03.06.2024 followed by pre cancellation letter dated 14.06.2024. Thereafter respondent cancelled the unit vide letter dated 25.06.2024 and the publication of the defaulters list in the newspaper was published on 26.06.2024. The Affordable Housing Policy, 2013 clearly states that *"within 15 days from the date of publication of such notice failing which allotment may be cancelled"*. Therefore, publication in newspaper is to be published 15 days prior to the date of cancellation and not afterwards. Moreover, post cancellation of the unit, the respondent has refunded an amount of Rs. 17,25,645/- after deduction of Rs. 29,499/- which is also illegal as per the clause 5(iii)(i) of the Affordable Housing Policy, 2013. Moreover, QPR dated 31.12.2023 also shows that Super Structure of Tower T1 to T7 was complete only upto 22%. Seeing, various illegalities on part of the respondent in this particular case, the Authority is of view that the respondent should not be allowed to get unfair advantage of its own wrong. In view of the above, the said cancellation is bad in law and is hereby set aside.
19. The respondent-promoter is directed not to create third party rights. In case the respondent has already created third party rights on the unit in question, then the respondent/promoter shall offer possession of a similarly located unit/flat of same size and specifications at same rate as per the allotment dated 02.09.2022 in the said project to the complainant.
20. The Authority further observes that even after receiving more than 61.97% of the sale consideration from the complainant, no efforts were

made by the respondent to execute a buyer's agreement against the unit in question with the complainant. The respondent is hereby directed to execute agreement to sale with the complainant within a period of 30 days of this order.


21. Moreover, Section 13(1) of the Act, 2016, provides that the respondent/promoter shall not accept more than 10% of the total sale consideration of the unit as an advance payment without first entering into agreement for sale. Despite the payment schedule being aligned with the Affordable Group Housing Policy, 2013, adherence to the provisions of the Act is mandatory. Thus, the respondent's actions are in violation of Section 13(1) of the Act, 2016. Hence, the Planning branch of the Authority is directed to initiate action against the promoter in this regard within 30 days of passing of this order.

G. Directions of the authority

22. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- i. The cancellation of the allotted unit is set aside.
 - ii. The respondent is directed to restore the subject unit to its original position in favour of the complainant.
 - iii. The respondent-promoter is directed not to create third party rights. In case the respondent has already created third party rights on the unit in question, then the respondent/promoter shall offer possession of a similarly located unit/flat of same size and specifications at same rate as per the allotment dated 02.09.2022 in the said project to the complainant.

- iv. The respondent is hereby directed to execute agreement to sale with the complainant within a period of 30 days of this order.
 - v. The Planning branch of the Authority is directed to initiate action against the promoter for violation of section 13 of the Act within 30 days of passing of this order.
 - vi. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
23. Complaint as well as applications, if any, stands disposed off accordingly.
24. File be consigned to registry.




(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.09.2025

HARERA
GURUGRAM