HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1036 of 2024
Date of filing:	22.08.2024
First date of hearing:	21.10.2024
Date of decision:	13.10.2025

Neeraj Bansal
S/o Ram Kumar Bansal
R/o Gali no. 5, Rajiv Colony,
Near Holy Cross School,
Murthal Road, Sonepat, Haryana ....COMPLAINANT

VERSUS

Super Max Affordable Housing Pvt. Ltd.
Registered office- UG 60, Parker Mall, Kundli,
Sonepat, Haryana- 131028

HDFC Ltd.
Ramon House 169,
Black Bay Reclamation,
Mumbai-400020 ....RESPONDENTS

Present: - Adv. Anuj Gupta, counsel for the complainant through VC.

Adv. Neeraj Goel, counsel for respondent no. 1 through VC.

None for Respondent no. 2.

ORDER:(NADIM AKHTAR –MEMBER)

Captioned complaint was listed for hearing on 06.10.2025. However due to constitution of Benches, matter has been taken up today for hearing.

A. UNIT AND PROJECT RELATED DETAILS

1. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following table:

S.No	Particulars	Details
1.	Name &location of project	"Super Max – The New Town.", Sector-33, Village Rathdhana, District Sonipat, Haryana
2.	Unit no.	Flat no. 102
3.	Carpet area	646 sq. ft.
4.	Date of Allotment	21.06.2018
5.	Apartment buyer agreement	10.07.2018
6.	Deemed date of possession	24.01.2022 (4 years from the date of environmental clearance, i.e., 24.01.2018)
7.	Total Sale Consideration	27,00,000/-
8.	Amount paid by complainants	25,80,000/-
9.	Occupation Certificate received by the respondent	26.10.2021
10.	Offer of possession	28.10.2021

B. FACTS OF THE PRESENT CASE AS STATED BY THE COMPLAINANT IN THE COMPLAINT:

2. Facts of the present complaint that in the year 2018, the Complainant was approached by the representative of Respondent No. 1. He informed that respondent no. 1 isa developer engaged in constructing and developing an affordable group housing colony under the name and style of "Super Max – The New Town."

3. That both the parties entered into an agreement on 10.07.2018, through which complainant was allotted Apartment No. 102 in Block/Tower A of the said project, having a carpet area of 646 sq. ft. and balcony area of 126 sq. ft., for a total consideration of ₹27,00,000/- exclusive of applicable taxes.

4. That the Complainant agreed to make the payment as per the scheme proposed by Respondent No. 1, i.e., 5% of the total cost on application, 20% at the time of allotment (total 25% at agreement stage), and the remaining 75% in six equated monthly instalments of 12.5% each, spread over three years.

5. That the Complainant availed a housing loan of ₹24,00,000/- from Respondent No. 2 – HDFC Ltd., and a tripartite agreement was executed among the parties.

6. That the Complainant has always been prompt in discharging his payment obligations and regularly paid the instalments. Despite facing business challenges, he ensured all payments were made in good faith, establishing that he never intended to withhold any amount.

7. That on 01.09.2021, Respondent No. 1 issued a demand letter for an amount of ₹2,61,876/-, along with an additional and exorbitant demand of ₹1,52,289/- towards interest/charges, which was not in line with RERA guidelines. The Complainant immediately raised objections with the representatives of Respondent No. 1, but no clarification was provided.

8. That on 27.10.2021, Respondent No. 1 issued an offer of possession, vaguely stating that dues should be cleared to obtain possession, but without specifying the correct details or period.

9. That when the Complainant contacted Respondent No. 1's representatives, he was informed that the management was considering his objections. The matter lingered for about three months, during which the Complainant explained his financial difficulties arising out of the pandemic and requested time to clear dues once corrected in accordance with law.

10. That thereafter, on 24.01.2022, another reminder letter was issued demanding payment by 06.02.2022, this time with an even higher penal interest @18% p.a. Shocked by the arbitrary demand, the Complainant again contacted

Respondent No. 1's representatives, who casually stated it was a mass communication and discussions were still on with management.

11. That in April 2022, Respondent No. 1 finally communicated that it would not waive or reduce the exorbitant interest and demanded a total of ₹5,52,324/-, including interest of ₹1,66,324/-. The Complainant immediately wrote an e-mail on 28.04.2022 expressing his willingness to pay the legitimate dues and even take an additional loan to comply.

12. That despite the Complainant's bona fide conduct, Respondent No. 1 adopted a high-handed approach. During his visit in October/November 2022, Respondent No. 1's representatives blatantly stated: *"Jo kar sakte ho kar lo, tumhara flat hamari taraf se cancelled hai."*

13. That the Complainant, having already paid ₹25,80,000/- out of a total consideration of ₹29,16,000/- (including taxes), i.e., about 88.5% of the total value, could not accept such arbitrary cancellation for a mere balance of 11.5%, which he was always willing to pay. The said action amounts to unfair trade practice, fraud, and malafide conduct on the part of Respondent No. 1

14. That left with no alternative, the Complainant served a legal notice dated 22.11.2022 upon Respondent No. 1 (Annexure 7). Respondent No. 1, however, vide reply dated 08.12.2022, denied the Complainant's claims and maintained that the flat already stood cancelled.

15. That the conduct of Respondent No. 1 clearly establishes dishonest intentions since inception, with an aim to usurp the premium flat allotted to the Complainant under the lottery-based system and to deprive him of his hard-earned money.

16. That thereafter, the Complainant instituted Complaint Case No. CC/364/2023 before the Consumer Forum, North West Delhi, which is pending adjudication.

17. That despite the pendency of said proceedings, Respondent No. 1 initiated illegal arbitration proceedings on 12.04.2024 before Sonepat District Court by unilaterally appointing a sole arbitrator. The Complainant has already raised objections to the said proceedings, which remain sub judice.

18. To support his pleadings, the complainant filed a rejoinder dated 24.02.2025. The Authority has duly taken this rejoinder on record and considered the same for the proper and just adjudication of the matter.

C. RELIEFS SOUGHT

19. That the complainant seek following relief and directions to the respondent:-

i. Assign the aforesaid flat to the Plaintiff along with details of dues pending as per Haryana RERA guidelines which the defendant no. 1 assures to clear as per timelines set as per the instruction of this honorable forum. *Alternatively,* the Defendant no. 1 is open to, as a secondary recourse to flat allotment, accept :

* The amount paid by the him till date along with interest at 18% p.a. from the date of payment of initial amount, i.e., 28 Feb 2018.

* The additional premium received to Petitioner on the flat from the new buyer along with interest from the date of cancellation of flat.

ii. Instruct to the petitioner to pay to defendant no. 1 a sum of ₹5,00,000/- as a compensation for the mental harassment and torture caused to the defendant 1.

iii. Instruct the petitioner to pay to respondent no. 1 a sum of ₹2,00,000/- as a compensation towards the legal costs of this complaint.

iv. Grant any necessary relief that this tribunal may deem fit.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENTS

A. The respondent no. 1 submitted a detailed reply on 04.02.2025 contesting the complainants' claims on several grounds.

20. That captioned case is a mere abuse of process of law, wherein the complainant, despite having settled all issues before the learned Arbitral Tribunal, Sonipat, has approached this Hon'ble Authority with unclean hands and filed the present complaint for wrongful gains by misusing the process of law. The same is objected to and defended as under.

21. That the project in question has been duly approved in terms of statutory requirements. The Environmental Clearance dated 11.01.2018 (Annexure R-1/3), Building Plan approval dated 24.01.2018 (Annexure R-1/4), and RERA Registration Certificate dated 27.10.2017 (Annexure R-1/5) were obtained prior to commencement. In accordance with clause 1(iv) of the Affordable Housing Policy, 2013, the completion period of 4 years was reckoned from 24.01.2018, i.e., the date of building plan approval, thereby fixing 24.01.2022 as the project completion date.

22. That the complainant had applied for allotment vide Application No. 18 and, upon being successful in the draw of lots, was issued an Allotment Letter dated 21.06.2018 (Annexure R-1/6). The same was followed by execution of a Builder Buyer Agreement dated 10.07.2018 (Annexure R-1/7) incorporating terms and conditions mutually agreed.

23. That the respondent diligently initiated construction and completed it within the stipulated period, as is evident from the Occupation Certificate dated 26.10.2021 issued by the Ld. DTCP (Annexure R-1/8). Immediately thereafter, an Offer of Possession dated 28.10.2021 was sent to the complainant by registered post (Annexure R-1/9), requesting him to clear outstanding dues and take possession.

24. That on failure of the complainant to act, the answering respondent issued a First Reminder dated 24.01.2022 (Annexure R-1/10), Second Reminder dated 19.02.2022 (Annexure R-1/11), and a Final Reminder dated 09.03.2022 (Annexure R-1/12). Despite repeated opportunities, the complainant willfully abstained from clearing his dues or taking possession. Consequently, a Cancellation Notice dated 28.03.2022 was served (Annexure R-1/13).

25. That the complainant's default was also published in leading newspapers, namely on 19.04.2022 and 20.04.2022 (Annexure R-1/14), after which, due to persistent non-compliance, a Cancellation Letter dated 18.05.2022 was issued, giving a final opportunity to settle accounts, which the complainant again failed to avail.

26. That as the unit in dispute was mortgaged with Respondent No. 2, the respondent invoked the arbitration clause under the Builder Buyer Agreement, leading to Arbitration Petition No. 10 of 2024. The learned Sole Arbitrator, after considering all issues, passed an Arbitral Award dated 17.07.2024 (Annexure R-1/15). However, the complainant has concealed this material fact from this Hon'ble Authority, which by itself renders the present complaint liable to dismissal.

27. That it is further relevant that the answering respondent has already obtained a Completion Certificate dated 18.09.2024 from the Ld. DTCP (Annexure R-1/16), confirming completion of the project.

28. That the non-disclosure of the arbitral award by the complainant amounts to forum shopping and suppression of material facts. Furthermore, the complainant's own Email dated 28.04.2022 admitted financial incapacity to make balance payment, thereby making his default willful.

29. That the present project has been developed strictly under the Haryana Affordable Housing Policy, 2013 notified vide notification no. PF-27/48921 dated 19.08.2013 (Annexure R-1/17). The entire allotment, construction, and cancellation procedure has been undertaken strictly in compliance with the said policy and clause 2.5 of the Builder Buyer Agreement.

30. That even as on date, the complainant continues to have outstanding dues amounting to ₹12,86,945/-, as per the duly maintained Account Statement of the complainant (Annexure R-1/18).

B. The respondent no. 2 submitted a detailed reply on 22.10.2024, pleading therein:-

31. That Housing Development Finance Corporation Limited ("HDFC Limited") has undergone a scheme of amalgamation and merged with HDFC Bank Limited. The said scheme of amalgamation was duly approved by the Hon'ble

National Company Law Tribunal, Mumbai Bench, Court (II), vide Company's Scheme Petition No. 243 of 2022 connected with Company Scheme Application No. 200/2022, decided on 17.03.2023 (Annexure R-2/1).

32. Consequently, all assets and liabilities of HDFC Limited automatically vested in HDFC Bank Limited with effect from 01.07.2023. Reliance is placed on the communication dated 30.06.2023 issued by HDFC Limited to the Bombay Stock Exchange Limited regarding the effective date of amalgamation (Annexure R-2/2).

33. Accordingly, all contracts, deeds, bonds, agreements, arrangements, and other instruments of whatsoever nature, to which HDFC Limited was a party or beneficiary, continue to be in full force and effect as if HDFC Bank Limited were the original party.

34. Since HDFC Limited ceases to exist as a juristic entity in its own name and stands amalgamated into HDFC Bank Limited, it is humbly prayed that the cause title of the present case be amended to reflect HDFC Bank Limited in place of HDFC Limited, and an amended memo of parties be filed.

35. Respondent No. 2, HDFC Bank Limited, has its registered office at Senapati Bapat Marg, Lower Parel (West), Mumbai – 400013, and a branch office at Capital Court, Munirka, Outer Ring Road, Olof Palme Marg, New Delhi – 110067. The present reply is being filed through the authorized signatory, Mr.

Saurabh Tiwary, duly empowered by Board Resolution dated 30.06.2023 (Annexure R-2/3).

36. That this Hon'ble Authority lacks jurisdiction to issue directions against Respondent No. 2, being merely a lender, as the mandate of the Real Estate (Regulation and Development) Act, 2016 ("RERA Act") extends only to promoters, real estate agents, and allottees. Respondent No. 2 does not fall within these categories and has neither violated nor contravened any provision of the Act or rules made thereunder.

37. That the present complaint is not maintainable qua Respondent No. 2 as no relief has been claimed against this answering respondent.

38. That the complainant has already instituted Consumer Complaint No. CC/793/2022 before the District Consumer Disputes Redressal Commission-V, North-West, Govt. of NCT of Delhi, which is still pending. A copy of the order dated 14.05.2024 passed in the said matter is annexed herewith (Annexure R-2/4).

39. As per Section 71 of the RERA Act, 2016, a complainant cannot simultaneously pursue remedies before Consumer Forum and RERA. The complainant has failed to withdraw the consumer complaint before filing the present one, which renders this complaint non-maintainable.

40. The complainant's act of pursuing parallel remedies amounts to forum shopping and violates the doctrine of election, as upheld by the Hon'ble Supreme Court in *Ireo Grace Realtech Pvt. Ltd. v. Abhishek Khanna and others* (2021) 3 SCC 241 and *Vodafone Idea Cellular Ltd. v. Ajay Kumar* (2022) 6 SCC 496.

41. The complaint against this answering respondent is further liable to be dismissed on the ground of misjoinder of parties, as no effective relief is sought against Respondent No. 2 and its services are independent of Respondent No. 1.

42. That it is submitted that the role of Respondent No. 2 is limited to sanctioning and disbursing a housing loan of ₹24,00,000/- (Rupees Twenty-Four Lakhs only) under Loan Account No. 635203475, of which ₹22,80,000/- was disbursed, pursuant to the Loan Agreement dated 11.11.2018 (Annexure R-2/5). The said loan was secured against the property being Flat No. 102, 1st Floor, Tower A, "The New Town," Sector-33, Village Rathdhana, Sonipat (hereinafter referred to as the "Secured Asset").

43. Simultaneously, a Tripartite Agreement dated 11.09.2018 was executed among the complainant (borrower), Respondent No. 1 (builder), and Respondent No. 2 (lender), setting out the obligations of the parties (Annexure R-2/6).

44. As per the terms of the Loan Agreement and Tripartite Agreement:

- The complainant's liability to repay EMIs is absolute and independent of any disputes with the builder.
- Clause 4 of the Tripartite Agreement clearly stipulates that the borrower remains liable to repay the loan irrespective of construction delays or possession status.
- Clause 8 of the Tripartite Agreement provides that in case of cancellation, the builder is bound to refund the outstanding loan dues directly to HDFC Bank, and the borrower subrogates all refund rights in favour of the lender.

45. As of 30.09.2024, the complainant has an outstanding liability of ₹19,82,223/- (Rupees Nineteen Lakh Eighty-Two Thousand Two Hundred and Twenty-Three only) towards Respondent No. 2.

46. Thus, if any refund is ordered by this Hon'ble Authority, the same must first be paid to Respondent No. 2 towards adjustment of the complainant's loan account, as per Clause 9 of the Tripartite Agreement.

E. ARGUMENTS OF LEARNED COUNSEL FOR THE COMPLAINANT AND RESPONDENT

47. The learned counsel for the complainant submitted that the complainant has paid a total sum of ₹25,80,000/- towards the unit in question, as reflected at

page no. 76 of the complaint book. He further submitted that there are certain discrepancies in the previous order dated 28.07.2025. Firstly, it has been incorrectly recorded in the said order that an email was sent to the complainant on 22.11.2022, whereas, in fact, the email was sent on 28.04.2022, and the complainant's unit was subsequently cancelled on 18.05.2022. Secondly, in paragraph no. 5 of the said order, it has been inadvertently recorded that the complainant responded after receiving the final reminder letter dated 28.03.2022; however, the correct date is 28.04.2022. Upon this, the Authority enquired from the learned counsel for the complainant whether any efforts were made by the complainant after the cancellation of the unit. In response, the learned counsel referred to page no. 79 of the complaint book, wherein an email dated 22.11.2022 has been placed on record, showing that the complainant had requested the respondent to revise the demand and levy interest in accordance with the provisions of the RERA Act.

48. On the other hand, the learned counsel for Respondent No. 1 submitted that the dispute had already been resolved before a Sole Arbitrator appointed in Arbitration Petition No. 10 of 2024. The arbitral award dated 17.07.2024 provided that the balance amount remaining with the applicant (Super Max Affordable Housing Pvt. Ltd.) was to be adjusted appropriately. He further

submitted that the complainant had opted for a Time-Linked Payment Plan (TLP), under which 12.5% of the total cost was payable within 36 months from the date of allotment. The respondent also annexed a detailed table showing amounts received, dates, and delays in payments (page 102). Multiple reminders were issued to the complainant on 24.01.2022, 19.02.2022, 09.03.2022, and 28.03.2022, warning that failure to make payment would lead to cancellation. Despite these, the complainant did not comply, necessitating the publication of a public notice on 19.04.2022 and 20.04.2022 regarding default. The learned counsel emphasized that all procedural steps under the Apartment Buyer Agreement and Affordable Housing Policy, 2013 were strictly followed.

49. The learned counsel for Respondent No. 2 (HDFC Bank) submitted that the bank's role was limited to financing the unit, and no relief is sought against it by the complainant. It was contended that the Tripartite Agreement does not include the bank in arbitration proceedings, and no clause permits the bank to be made a party. Further, as per Section 31 of the RERA Act, the bank cannot be made a party to a dispute arising solely between the allottee and the developer. The counsel also submitted that the total loan due from the complainant is ₹19,82,232/-, whereas the amount received was ₹22,80,000/-, and the primary liability to repay the loan rests with the complainant.

50. The Authority also observed that all statutory and contractual obligations were meticulously complied with by Respondent No. 1, while Respondent No. 2's role is limited to financing.

F. ISSUES FOR ADJUDICATION

51. Whether the complainant is entitled to reliefs sought by him or not?

G. FINDINGS AND OBSERVATIONS OF THE AUTHORITY

52. 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:

53. It is an admitted fact that the Complainant had applied for allotment of a 2BHK apartment in the Respondent's project namely *"Supermax The New Town"*, situated at Sector-33, Village Rathdhana, District Sonipat, Haryana, vide Allotment Letter dated 21.06.2018. Accordingly, the Complainant was allotted Flat No. 102, admeasuring carpet area of 646 sq. ft., situated in Block–A. Thereafter, an Apartment Buyer Agreement was executed between the parties on 10.07.2018, wherein it was explicitly stipulated that the project is being developed in terms of the provisions of the *Affordable Group Housing Policy, 2013*, issued by the Government of Haryana vide Town and Country Planning Department Notification dated 19.08.2013. It is further an admitted position that the Occupation Certificate in respect of the said project

was obtained by the Respondent from the Competent Authority on 26.10.2021, and thereafter, the possession of the subject unit was duly offered to the Complainant on 28.10.2021.

54. Upon perusal of the clause 3.1 of the Apartment Buyer Agreement,

"Developer proposes to offer possession of the said apartment to the allottee within 4 years from the approval of building plans or grant of environmental clearance, whichever is later."

The respondent, in its reply, has annexed documentary proof with respect to both the grant of environmental clearance and the sanction of building plans. The record reveals that the environmental clearance was granted by the State Environmental Impact Assessment Authority, Haryana on 11.01.2018 (Annexure at page no. 19 of the reply duly signed by the Chairman). Further, the building plan was approved on 24.01.2018, copy whereof has been annexed by the respondent at page no. 30 of the reply. Since Clause 1(iv) of the Policy mandates that the later of the two dates—i.e., environmental clearance or building plan sanction—shall be taken as the "date of commencement of project", the Authority deems it appropriate to take 24.01.2018, being the date of approval of the building plan, as the relevant date. Accordingly, the project was required to be completed within a period of **four years** therefrom, i.e., on or before **24.01.2022**, which shall be construed as the deemed date of possession for the purpose of adjudication of the present matter.

55. The issue to be adjudicated by the Authority is whether the complainant is entitled to reliefs sought by him in accordance with the RERA Act, 2016?

56. Authority observes that the respondent issued an offer of possession letter to the complainant on 28.10.2021, which was duly accompanied by the Occupation Certificate dated 26.10.2021 issued by the competent authority. The Authority is of the considered view that, in terms of law, any offer of possession made by a promoter must necessarily be supported by the requisite statutory approvals, particularly the occupation certificate, in order to be treated as valid and enforceable. In the present case, since the possession letter dated 28.10.2021 was accompanied by the occupation certificate, the same constitutes a legally valid offer of possession. The Authority further observes that the said offer of possession has also been admitted by the complainant in his pleadings, thereby establishing that the complainant was duly aware of the fact that possession was offered. Accordingly, the Authority clarifies that although the said offer was made prior to the deemed possession date of 24.01.2022, the same shall be treated as due compliance of the respondent's obligation, as possession was offered within the permissible period and was duly backed by the occupation certificate.

57. The Authority is of the considered view that the scheme of the RERA Act, 2016 seeks to maintain a balanced and reciprocal relationship between the promoter and the allottee. On the one hand, the promoter is under a statutory obligation to offer possession of the unit within the prescribed time and in compliance with law; on the other hand, the allottee is equally bound to discharge his corresponding obligations, particularly to make timely payments as per the agreed terms. In this regard, Section 19(6) of the RERA Act, 2016 specifically stipulates that:

> *"Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any."*

Further, Clause 5(iii)(b) and 5(iii)(i) of the Affordable Housing Policy, 2013 reinforces the same obligation by providing that:

> *"Clause 5(iii)(b) The applicant will be required to deposit additional 20% amount of the total cost of the flat at the time of allotment of flat. The balance 75% amount will be recovered in six equated six monthly instalments spread over three-year period, with no interest falling due before the due date for payment. Any default in payment shall invite interest @15% per annum. The project-wise list of allottees shall also be hosted on the website of the Department.."*

> *"5(iii)(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."

In light of the above provisions, the Authority concludes that the complainant was duty-bound to make timely payment of the sale consideration in accordance with the Apartment Buyer Agreement and the Affordable Housing Policy, 2013. However, it is observed from the record that the complainant failed to comply with this obligation, despite the respondent having issued multiple reminder letters dated 24.01.2022, 19.02.2022, and 19.03.2022, copies of which are annexed in the reply. The fact that such reminders were duly received by the complainant also stands admitted in the pleadings of complainant.

58. As per Clause 5(iii)(i) of the Affordable Housing Policy, 2013,

> *"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."*

59. The Authority observes that the respondent has meticulously adhered to the prescribed procedure under the Apartment Buyer's Agreement as well as the Affordable Housing Policy, 2013. At the outset, reminder notices were issued to the complainant on 24.01.2022, 19.02.2022, and 09.03.2022. Copies of these reminder letters have been annexed by the respondent as Annexures R-1/10, R-1/11, and R-1/12 of the reply book, along with the respective postal receipts evidencing dispatch. Despite repeated reminders, the complainant failed to discharge the outstanding dues. Subsequently, the respondent issued a cancellation notice dated 28.03.2022, wherein it was specifically stated: *"you are once again requested in your own interest to please deposit your outstanding dues as stated above upto 07.04.2022 to avoid cancellation of your flat and forfeiture of your deposited amount against the above said flat."* Thereafter, the respondent, in further compliance with due process, published a default notice in widely circulated regional newspapers dated 19.04.2022 and 20.04.2022. Perusal of record reveals that the newspaper clippings annexed at page nos. 79 and 83 of the reply book specifically reflect the name of the complainant under the list of defaulters. Despite being granted multiple opportunities, including reminders, cancellation notice, and publication of public notice, the complainant remained in persistent default. Consequently, the respondent was constrained to issue a final cancellation notice on

18.05.2022. In view of the above, the Authority is of the considered opinion that the respondent, by issuing successive reminders, providing grace period, publishing default notices, and finally issuing a cancellation letter, has strictly followed the procedure contemplated under the Affordable Housing Policy, 2013 and the terms of the Apartment Buyer's Agreement. Hence, the cancellation of the complainant's unit stands legally valid, proper, and fully justified.

60. Authority concludes that respondent has complied with all statutory and contractual obligations under the Apartment Buyer Agreement and the Affordable Housing Policy, 2013. The possession of the unit was offered to the complainant on 28.10.2021, accompanied by the Occupation Certificate dated 26.10.2021 issued by the competent authority, well within the permissible period calculated under the Policy. It is evident from the record that the complainant's grievance arises solely from his own failure to make timely payments, despite multiple reminders issued by the respondent. In strict compliance with Clause 5(iii)(i) of the Affordable Housing Policy, 2013, and Clause 2.5 of the Apartment Buyer Agreement, the respondent lawfully initiated cancellation proceedings, including issuance of cancellation notices, publication of default in regional newspapers and ultimately issued the final cancellation notice on 18.05.2022. The Authority further notes that

all procedural safeguards prescribed under the Agreement and Policy were adhered to, and the complainant was provided ample opportunity to regularize his payments. At no stage did the respondent act arbitrarily or contravene any legal or contractual provision. The complainant's entitlement to the allotment was inherently conditional upon the fulfillment of his own obligations, and having failed to honor these obligations. Therefore, Authority deems appropriate to not grant reliefs as sought by the complainant in his complaint book.

61. The Authority observes that Respondent No. 2, HDFC Bank Limited, is a financial institution that merely sanctioned and disbursed the home loan to the complainant pursuant to the Home Loan Agreement dated 11.09.2018 and the Tripartite Agreement dated 11.09.2018. It is pertinent to note that Respondent No. 2 has no direct contractual relationship with the complainant in respect of the sale or allotment of the apartment. The complainant's dispute pertains exclusively to the allotment, possession, and payment obligations under the Apartment Buyer Agreement with Respondent No. 1, and no cause of action arises against Respondent No. 2 in this regard. Section 2(k) and Section 3 of the RERA Act, 2016 define the scope of "promoter" and "allottee" for the purposes of adjudication. A lender or financial institution does not fall within any of these statutory categories. Consequently, Respondent No. 2 is neither a

promoter, real estate agent, nor allottee under the RERA framework, and this Authority has no jurisdiction to grant any relief against it. It is further observed that the complainant has not made any specific allegation against Respondent No. 2, nor sought any relief from it under the provisions of the Act. The complainant's claims, including refund or compensation, are directed solely against Respondent No. 1, and any attempt to include Respondent No. 2 amounts to misjoinder of parties. Established principles of law, including the test laid down by the Allahabad High Court in *Benares Bank Ltd. vs. Bhagwan Das (1946 SCC Online All 68)*, require that a party can only be made a necessary party if there exists a right to relief against it and an effective order cannot be passed in its absence. Both conditions are clearly absent in the present case with respect to Respondent No. 2. In view of the above, the Authority is of the considered opinion that Respondent No. 2 has been erroneously impleaded, is not a proper or necessary party, and any prayer for relief against it is outside the jurisdiction of this Authority.

62. Further, the respondent in his reply has submitted that the matter was also placed before the Independent Sole Arbitrator vide Arbitration Petition No. 10 of 2024, wherein the issues between the parties were duly framed and adjudicated, culminating in the passing of an arbitral award dated 17.07.2024. The said award has been annexed by the respondent as Annexure R-15 at

page no. 85 of the reply book. Perusal of the arbitral award reveals that the complainant himself had appeared and actively participated during the arbitral proceedings. In addition, the complainant himself has admitted in his present complaint that in order to claim possession of the flat, he has also instituted a case before the District Consumer Disputes Redressal Commission, North West Delhi, registered as Case No. CC/364/2023, which is still pending adjudication. The Authority observes that the complainant has already invoked multiple legal remedies for the same cause of action – firstly by submitting to arbitration proceedings which culminated in a binding award dated 17.07.2024, and secondly by approaching the Consumer Forum where his case is still sub judice. Once the complainant has chosen to avail these remedies, particularly where an arbitral award has already been rendered, he cannot be permitted to simultaneously pursue parallel proceedings before this Authority. Entertaining the present complaint would result in multiplicity of litigation and re-agitation of disputes already adjudicated or pending before other competent forums. In view of the above, the Authority is of the considered opinion that the dispute between the parties already stands adjudicated through arbitral award dated 17.07.2024, and the complainant has further availed remedy before the Consumer Forum which is still under consideration.

63. 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.

64. The complainant is seeking compensation of ₹5,00,000/- for the mental harassment and torture and ₹2,00,000/- towards litgation cost. 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 PvL 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.

65. 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.

66. Hence, the complaint is accordingly **<u>disposed of</u>** 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]