

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

Complaint no. :	4660 of 2024
Date of Filing:	10.10.2024
Date of Decision:	31.10.2025

Saurabh Kapoor

R/O: AE, 1st Floor, Shalimar Bagh, Delhi-
110088**Complainant**

Versus

M/s Desi Construction Pvt. Ltd.

Office: 806, 807, Sky Tower, Netaji Subhash
Place, Pitampura, Delhi- 110034**Respondent****CORAM:**

Shri Arun Kumar

Chairman**APPEARANCE:**

Sh. Anuruddha Singh

Sh. Rahul Mangla

Advocate 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.	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.	Unit no.	T6-12A10 on 13 th floor in Tower-6 (As on page no. 13 of complaint)
7.	Unit area	645.829sq.ft [Carpet Area] 59.148 sq.ft. [Balcony Area] (As on page no. 13 of complaint)
8.	Allotment letter	24.04.2023 (As on page no. 13 of complaint)
9.	Agreement For Sale	08.05.2023 (As on page no. 14 of complaint)
10.	Approval of building plans	23.01.2023

11.	Grant of environment clearance	09.02.2023
12.	Possession clause	Clause 1(iv) of Affordable Hosuing policy, 2013 4 years from the date of E.C or sanction of building plans, whichever is earlier.
13.	Due date of possession	09.02.2027 [Calculated 4 years from the date of EC]
14.	Total sale consideration	Rs.25,38,431/- (As on page no. 19 of complaint)
15.	Amount paid	Rs.12,69,217/- (As per payment receipts on page no. 44 to 49 of complaint)
16.	Reminders	20.04.2024, 23.05.2024 (As on page no. 8-9 of reply)
17.	Cancellation Letter	05.08.2024 (As on page no. 51 of complaint)
18.	E-mail intimating the cancellation	14.08.2024 (As on page no. 54 of complaint)
19.	Legal notice on behalf of complainant to the respondent to withdraw the cancellation notice dated 10.08.2024 and restore the unit	23.08.2024
20.	Publication of cancellation	Not on record
21.	Occupation certificate	Not obtained

22.	Offer of possession	Not offered
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B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
 - I. That the complainant booked an apartment bearing no. T6-12A10 in tower-6 having carpet area of 645.829 sq. ft. and balcony area of 59.148 sq. ft. on 13th floor under construction linked plan in the project named "Tathastu I" accordingly an allotment letter dated 24th April 2023 has been issued.
 - II. That after allotment of the said unit, builder buyer agreement has been executed on 08th may 2023 between the respondent and the complainant.
 - III. That the complainant has paid a sum of Rs.12,69,217/- as and when demand raised by the respondent which is approximately 50% of the total cost of the abovementioned apartment under the construction linked payment plan by the complainant.
 - IV. That the respondent sent a demand letter on 14th March, 2024 to the complainant for the payment of dues payable by the complainant and thereafter sent a reminder letter on 23rd May 2024 and it is stated that the complainant was unable to make payment of demand letter issued in March 2024 and reminder letter issued in May 2024, due to some financial crunches and difficulties arising at that time and he was consistently making arrangements to the pay said demand.
 - V. It is extremely shocking to the complainant to receive a reminder to cancellation letter on 10th August 2024 sent by the respondent mentioning the date of 05th August 2024 on the notice while posted

through speed post on 08.08.2024 as per speed post receipt without sending any pre-cancellation notice.

- VI. That the complainant received the reminder cum cancellation letter on 10th August 2024, so it is established that the communication of reminder cum cancellation is made to the complainant by giving 7 days i.e., up to 17th August 2024 to make the payment by mentioning that if the outstanding amount is not paid within given time period the refund process will be initiated. The complainant made the payment of entire outstanding demand on 13th August 2024 i.e., within 3 days from the date of receipt of communication. But it is extremely surprising that even after receiving the payment on 13th August 2024, the respondent has cancelled the unit of the complainant on the same day 13th August 2024 through an email giving the reference that your notice date was 05th August 2024 and time of 7 days expires on 12th August 2024, without bothering that reminder cum cancellation notice dated 05th Aug 2024 was sent through speed post on 08th August 2024 which is delivered to the complainant on 10th August 2024.
- VII. That the respondent by taking the timeline of 7 days assuming that the reminder cum cancellation notice was served or communicated to the complainant on 05.08.2024, is just a pretention. As per Section 4 of Indian Contract Act, it is defined that "the communication is complete when it comes to the knowledge of the person to whom it is made" which is a well settled law time to time referred by the Hon'ble Supreme Court and the Hon'ble High Courts in various judgments and here in this case the communication is made on 10th August 2024, when it is received to our client and timeline of seven days will be counted after that.

VIII. That the respondent falsely cited the final reminder cum cancellation notice along with newspaper advertisement dated 05th August 2024 to the complainant.

IX. That the respondent made a payment of Rs. 8,00,283/- in the complainant's account arbitrarily without any intimation or confirmation and sent a mail communication for making refund of Rs. 8,00,283/- on 21.08.2024, whereas the complainant paid a total sum of Rs.12,69,217/-. The complainant has denied through its legal notice that it does not accept the refund amount of Rs. 8,00,283/- which is refunded without consent and knowledge of the complainant and asked the respondent to provide the account details so that he will be able to immediately return the said amount. Moreover, the complainant specifically wants possession of his unit and he is ready to pay the interest for delay in payment but cannot accept refund.

X. That the aggrieved complainant sent a legal notice to the respondent dated 23rd August 2024 to the respondent with the directions to immediately withdraw the cancellation notice dated 10.08.2024 and restore the unit since the complainant is seeking possession of the unit.

C. Relief sought by the complainant:

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

- (i) Direction to respondent to withdraw the cancellation notice with immediate effect.
- (ii) Directions to the respondent to restore the unit of the complainant which is cancelled by the respondent arbitrarily with immediate effect.
- (iii) Directions to the respondent to provide the current account of the company where the complainant could transfer the amount of

Rs. 8,00,283/- which is deceitfully refunded in the account of the complainant.

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 has been allotted the apartment bearing no. T6-12A10 tower 6 by the respondent after the allotment letter was issued to the complainant.
 - II. That the complainant, in the present matter, had failed to make timely payments and there were substantial delays in making the payments of the due installment against the intimation cum demand letter dated 14.03.2024. Moreover, the answering respondent had issued reminder on 20.04.2024 and 23.05.2024 against the outstanding due instalment to the complainant but the complainant had failed to make timely payments of the due
 - III. That the complainant has not made the timely payment due to the reason mentioned in para D of the present complaint. It has been stated by the complainant in the present complaint itself that he was undergoing with the financial crunches and difficulties arising at that time and the complainant was consistently making the arrangements to pay the said demand. The arrangements and the financial crunches were never explained by the complainant herein before this Hon'ble Forum.

- IV. That consequently, the answering respondent had issued a cancellation letter against the subject flat no. T6-12A10 floor 13 Tower 6 in the project Tathastu - I located at Sector 5, Sohna, Gurgaon, Haryana to the complainant dated 05.08.2024 as per the mutually agreed terms and conditions of the registered builder buyer agreement/ agreement for sale dated 08.05.2023 and the Affordable Housing Policy, 2013.
- V. That the complainant has made default in making the payment of sale consideration on the false and frivolous grounds. The respondent is constructing the site as per the law and commitments made to the entire public at large. That apart from that the Hon'ble Authority is empowered to monitor the construction and progress over the project site of the answering respondent/ builder from time to time and there have been no lapse and other lacunas have been identified by the Hon'ble Authority with regard to the construction status of the said project. Hence, the complainant in connivance and collusion did not make the payment of sale consideration as demanded vide intimation cum demand letter dated 14.03.2024.
- VI. That the respondent has demanded the amount of the consideration vide demand letter dated 14.03.2024 and due to the default committed by the complainant cancelled the allotment/flat of the complainant herein on 10.08.2024. The said cancelation was duly communicated and acknowledged by the complainant. The present allotment was as per the Haryana Affordable Housing Policy and the allotment is driven by the rules & regulations formulated in Haryana Affordable Housing Policy. Hence, it is a duty of the respondent to channelize and sent the reminders to the complainant with respect to the demand raised by the respondent. But in the instant matter all the demands and reminders

were ignored by the complainant and in pre planned manner after the completion of the cancellation process made the delayed payment in order to justify the present false and frivolous complaint. Hence, the present complaint is liable to be dismissed as the complainant after receipt of the demand letter, reminder letter has not communicated with the respondent with respect to his financial difficulty or thus, it is prove that the present complainant is playing mischief with the respondent as well as is filing the false and frivolous case to achieve wrongful gain.

- VII. That in builder-buyer agreements, time is of the essence and delays in payment by one buyer adversely affect the entire project timeline and the interests of other buyers who have made timely payments. The respondent has contractual and legal obligations towards other stakeholders in the project and cannot allow one defaulting buyer to jeopardize the completion of the project within the promised timeline. The cancellation has been effected in accordance with the terms of the builder-buyer agreement and applicable laws. The respondent has exercised its legitimate contractual right to terminate the agreement due to material breach by the complainant. The acceptance of partial payments does not constitute a waiver of the respondent's right to cancel for subsequent defaults, particularly when the breach is continuing and substantial.
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) Direction to respondent to withdraw the cancellation notice with immediate effect.
 - (ii) Directions to the respondent to restore the unit of the complainant which is cancelled by the respondent arbitrarily with immediate effect.
 - (iii) Directions to the respondent to provide the current account of the company where the complainant could transfer the amount of Rs. 8,00,283/- which is deceitfully refunded in the account of the complainant.
12. The above mentioned relief no. (i), (ii) and (iii) 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 affordable project of respondent namely, Tathastu I, situated at sector 5, Sohna, Gurugram. The complainant was allotted a unit bearing no. T6-12A10, 13th floor in Tower 6 admeasuring 645.829 sq. ft. of carpet area and 59.148 sq. ft. of balcony area vide allotment letter dated 24.04.2023. The agreement for sale was executed between the parties on 08.05.2023. As per the agreement dated 08.05.2023 the total sale consideration of the unit was Rs. 25,38,431/- and the complainant has made a payment of Rs. 12,69,217/- 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 23.01.2023 and the environment clearance was obtained on 09.02.2023. The due date of possession is calculated from the date of environment clearance being later which comes out to be 09.02.2027.

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 him. 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.
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. 12,69,217/-. However, various reminder letters were issued on 20.04.2024, 23.05.2024 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 05.08.2024.
16. Now the question before the authority is whether the cancellation issued vide letter dated 25.06.2024 is valid or not.
17. After considering the documents available on record as well as submissions made by the parties, the Authority observes that the said project is regulated as per the Affordable Housing Policy, 2013. Further, the clause 5(iii)(i) of the Affordable Housing Policy, 2013 is relevant in the case of cancellation by the respondent promoter. The said clause is reproduced below 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”.

18. 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.
19. In the present case, it is evident that the demand for payment was raised on 20.04.2024, followed by a reminder issued on 23.05.2024 and the unit was thereafter cancelled on 05.08.2024. The Authority finds that the mandatory procedure prescribed under the Affordable Housing Policy, 2013 has not been duly complied with by the respondent. Notably, the requisite publication of the list of defaulters in a regional Hindi newspaper as mandated under the Policy was not carried out prior to cancellation of the allotment. Further, the record reflects that the complainant had already paid an amount of Rs. 12,69,217/- against the total sale consideration of Rs. 25,38,431/-.

In view of the above, the said cancellation is bad in law and is hereby set aside and the subject unit is ordered to be restored to its original position in favour of the complainant.

20. 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 agreement to sale dated 08.05.2023 in the said project to the complainant.

G. Directions of the authority

21. 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):
- The cancellation of the allotted unit is set aside.
 - The respondent is directed to restore the subject unit to its original position in favour of the complainant.
 - 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 agreement to sale dated 08.05.2023 in the said project to the complainant.
 - The complainant is directed to pay outstanding amount as per the affordable housing policy, 2013.
 - The rate of interest chargeable from the allottees by the promoter, in case of default shall be at the prescribed rate i.e., 10.85% by the

respondent/promoter, which is the same rate of interest which the promoter shall be liable to pay to the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

- vi. The respondent shall not charge anything from the complainant which is not provided under Affordable Housing Policy, 2013.
 - vii. 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.
22. Complaint as well as applications, if any, stands disposed off accordingly.
23. File be consigned to registry.




(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 31.10.2025

HARERA
GURUGRAM