

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

Complaint no. :	3278 of 2024
Order reserved on:	31.10.2025
Order pronounced on:	21.11.2025

Subhash

R/O: 173C, DDA Flats, Shapurjat,
South Delhi, New Delhi - 110049**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**Address:** 301 & 302, 3rd Floor, Time Centre,
Golf Course Road, Sector-54, Gurugram,
Haryana**Respondent****CORAM:**

Shri Arun Kumar

Chairman**APPEARANCE:**

Sh. Vijay Pratap Singh

Sh. Abhimanyu Singh

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:

Sr. No.	Particulars	Details
1.	Name of the project	Yashika 104, Sector 104, Gurugram, Haryana
2.	Total area of the project	5.0375 acres
3.	Nature of the project	Affordable group housing
4.	DTCP license no.	101 of 2021 dated 28.12.2021 valid upto 07.12.2026
5.	HRERA registered/ not registered	Registered vide no. 44 of 2022 dated 25.05.2022 Valid till 06.01.2027
6.	Allotment Letter	02.09.2022 (page no. 20 of complaint)
7.	Builder buyer agreement	Not executed
8.	Date of approval of building plans	04.03.2022 (as per project details)
9.	Date of environment clearance	15.03.2022 (as per project details)
10.	Unit no.	1405, 14 th floor, Tower T1 [page no. 20 of complaint]

11.	Unit measuring (super area)	605.044 sq. ft. carpet area 87.08 sq. ft. balcony area (Page no. 20 of complaint)
12.	Possession clause as per agreement	Not mentioned
13.	Possession clause as per Affordable Housing Policy, 2013	1 (iv) All such projects shall be required to be necessarily completed within 4 years from the date of approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of the policy.
14.	Due date of possession	15.03.2026 (calculated from the date of environment clearance being later)
15.	Total sale consideration	Rs. 26,28,265/- (as alleged by respondent at page 02 of reply)
16.	Total amount paid by the complainant	Rs. 19,90,912/- Note: Rs. 9,95,455/- (before cancellation) Rs. 9,95,526/- (after cancellation)
17.	Reminder letters	03.06.2024, 14.06.2024
18.	Pre cancellation letter	21.06.2024
19.	Cancellation letter	12.07.2024 (Page no. 44 of complaint)
20.	Publication in newspaper	13.07.2024 (page no. 11 of reply)

21.	Amount refunded by respondent	Rs. 9,65,955/-
22.	Occupation certificate	Not obtained
23.	Offer of Possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
 - I. That the respondent made advertisement in the newspaper & through freelance real estate agents with regard to the location, specification and amenities and time of completion of the project under the name "affordable group housing colony" commonly known as "YASHIKA 104" floated under Haryana Government's Affordable Housing Policy, located at sector 104, Gurgaon, Haryana. The complainant applied for the flat through website of TCP Haryana vide application bearing no. 57478 having carpet area of 605.044 sq. ft. and balcony area of 87.08 sq. ft.
 - II. That the draw of the said project was held, wherein the complainant was allotted flat no T1 -1405 at 14th floor at Tower 1.
 - III. That while the construction at the site is slow, the respondent has been raising demand letters ahead of the stipulated time as given in the BBA. The complainant has paid till date 6th instalment i.e. 75% of the total demand. However as on 26th June 2024, only 2.5 slabs have been constructed at the project site. The respondent with only 2.5 slabs constructed in tower - 1 has already raised 5th demand for 2/3rd slab of super structure as well which was to be raised on 9.5 slabs being constructed.

IV. Hence the 4th & 5th demands raised by the respondent are illegal and should be stopped. Cancellation letter raised by the respondent basis non-payment of 4th & 5th instalments should be set aside.

C. Relief sought by the complainant:

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

(i) Direct the builder to not cancel my allotment and raise demands as per the BBA and actual construction on the site.

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 present complaint was respect to unit no. T1-1405, Tower no. 1, Floor no. 14 in the project "Yashika 104" located at sector 104, Gurgaon was allotted to the complainant under Affordable Housing Policy, 2013 by way of draw of lots conducted on 31.08.2022.
- II. That the total sale consideration of the allotted unit to the complainant stands at Rs. 26,28,265/-. However, the amount paid by the complainant is only 30% of the sale consideration i.e., Rs. 9,95,455/-.
- III. That the complainant has intentionally failed to make the payments to the builder withholding the dues even after knowing that the unit allotted to the complainant is under affordable housing policy.
- IV. That the various reminders were sent to the complainant to make the due payment. However, the same was never paid by the complainant.
- V. That the unit no. T1-1405 was cancelled wide cancellation letter dated 12.06.2024.

VI. That in following sequences reminder letters and cancellation letter were issued to the complainant for payment of the balance sale consideration.

S.no.	Particulars	Application no.	Date
1.	Demand Letter	57814	17/05/2024
2.	Reminder Letter	57814	03/06/2024
3.	Reminder Letter 2	57814	14/06/2024
4.	Pre Cancellation Letter	57814	21/06/2024
5.	Cancellation Letter	57814	12/07/2024
6.	Newspaper advertisement		13/07/2024

VII. Subsequently, even after sending the reminder letters there was no communication made or any payment was made by the complainant. That as the unit was allotted to the complainant was under Affordable Housing Scheme, so the respondent cancelled the unit no. T1-1405, tower 1, 14th floor, in sector-104, Gurugram, Haryana vide dated 12.07.2024.

VIII. That the flat bearing no. T1-1405 is the subject-matter of complaint and allotted to the complainant has already been cancelled due to the non-payment of consideration amount of Rs.6,63,634/- which amounts to more than 60% of the value of the unit. Therefore, it is clearly the fault of the complainant and respondent cannot be made liable for the default of the complainant.

IX. That the respondent had issue the cheque of the amount paid by the complainant after deducting the cancelation amount as per the Haryana

Affordable House Policy 2013 but the same was never collected by the complainant.

- X. That the cancellation is valid and is in accordance to the law.
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 builder to not cancel my allotment and raise demands as per the BBA and actual construction on the site.

12. 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. 1405, 14th Floor, Tower T1 admeasuring 605.044 sq. ft. of carpet area and 87.08 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. The total sale consideration of the unit was Rs. 26,28,265/- and the complainant has made a payment of Rs. 19,90,912/- against the same in all. As per possession clause of the affordable housing policy, 2013 the possession of the subject unit 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 15.03.2026.

13. 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. The complainant has also filed Quarterly Progress Report(QPR) and states that respondent has failed to complete the 2/3rd superstructure of tower 1 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.
14. 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. 9,95,455/-. Further an amount of Rs. 9,95,526/- was paid after cancellation of unit. However, various reminder letters were issued followed by pre cancellation letter dated 21.06.2024 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 12.07.2024. Now the question before the authority is whether the cancellation issued vide letter dated 12.07.2024 is valid or not.
15. 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".*

16. 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.
17. In the instant case, the demand for the payment was raised on 17.05.2024 and thereafter, reminders for the payment were sent by the respondent on 03.06.2024, 14.06.2024 followed by pre cancellation letter dated 21.06.2024. Thereafter respondent cancelled the unit vide letter dated 12.07.2024 and the publication of the defaulters list in the newspaper was published on 13.07.2024. 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. 9,65,955/- after deduction of Rs. 29,500/- 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.

18. 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.
19. The Authority further observes that even after receiving more than 10% 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.
20. 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

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):
- 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.
22. Complaint as well as applications, if any, stands disposed off accordingly.
23. File be consigned to registry.


(Arun Kumar)
Chairman**HARERA**
GURUGRAM

Dated: 21.11.2025