

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

Complaint no.: 1351 of 2024
Order pronounced on: 27.01.2026

Pankaj Kumar Jha
R/o: Flat no. 1202, Tower-G, GLS Avenue 51,
Sector-92, Gurugram.

Complainant



M/s. Aster Infrahome Pvt Ltd.
Regd. Office: 24-A, Ground Floor, Vipul Agora,
Gurugram.

Respondent

CORAM:
Shri Arun Kumar
Shri Phool Singh Saini

**Chairman
Member**

APPEARANCE:
Manoj C Mishra, Advocate
Shankar Vij, Advocate

**Complainant
Respondent**

HARERA
GURUGRAM

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 to the allottee as per the agreement for sale executed inter-se them.

A. Unit and Project related details:

2. The particulars of the project, the details of 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	"Green Court"
2.	Nature of project	Affordable Group Housing
3.	Location of project	Sector-90, Village Hayatpur, Gurugram.
4.	RERA Registered	Registered Vide registration no. 412 of 2019
5.	DTCP license	Licence no. 61, 62 of 2014 Dated-07.07.2014
6.	Allotment Letter	Not on record
7.	Agreement	06.06.2016 (As on page no. 19 of complaint)
8.	Unit no.	0603, Floor-6 th , Block no.-J (As on page no. 22 of complaint)
9.	Unit area	590sq.ft [Carpet Area] 100 sq.ft [Balcony Area] (As on page no. 22 of complaint)
10.	Possession clause	Clause 1(iv) of Affordable Housing policy, 2013 <i>Within 4 years from the date of sanction of building plans or grant of Environmental Clearance, whichever is earlier.</i>

11.	Date of sanction of building plans	22.10.2014
12.	Date of grant of Environmental Clearance	22.01.2016
13.	Due date of possession	22.01.2020 [Calculated 4 years from the date of Environmental Clearance]
14.	Basic sale consideration	Rs.24,10,000/- (As on page no. 23 of complaint)
15.	Amount paid	Rs.21,41,193/- (As on page no. 57 of complaint)
16.	Reminders	12.06.2023 (As on page no. 7 of written submission submitted by the respondent)
17.	Final reminder	22.06.2023 (As on page no. 61 of complaint)
18.	Cancellation Letter	22.08.2023 (As on page no. 65 of complaint)
19.	Publication	20.07.2023 (As per page no. 12 of written submissions submitted by the respondent on 26.08.2025)
20.	Occupation Certificate	17.11.2022 (As on page no. 52 of complaint)
21.	Offer of possession	24.11.2022 (As on page no. 55 of complaint)

B. Facts of the complaint.

3. The complainant has made the following submissions: -

- I. That the complainants after seeing advertisements of the respondent/builder herein, in the newspaper for launching the project namely "Green Court" situated in revenue estate of Village Hayatpur, Sector - 90, Gurugram, Haryana, came into contact with the executives of the respondent, who embarked upon the complainant with their sales team with various promises of timely completion of project and swift delivery of possession on time.
- II. That believing on the promises of the respondents, the complainant applied for allotment of a flat in the project and paid a sum of Rs.9,03,750/- as demanded by the respondent on 06.06.2016 and booked residential Flat No. 0603, in Block/Tower No. 1 having approx. carpet area of 590 sq.ft. and balcony area of 100 sq. ft. on 6th Floor together with one open parking space for two wheeler and together with proportionate undivided, unidentified, impartial interest in the land underneath along with elementary rights and appurtenance and with the right of user of common areas and facilities including common right to use community hall and Anganwadi-cum-Creche in the said project in the name of the complainants. The basis price of the flat amounts to Rs.24,10,000/-.
- III. That a Buyer's Agreement was signed between the parties on 06.06.2016. Thereafter, from time to time further payments were made to the respondent by the complainant as per payment plans annexed with the Builder-Buyer Agreement. As per clause 8(a) of the Buyer's agreement, the respondent agreed to handover possession of unit within a period of 4 years from the date of approval of building plans or grant of environment clearance, whichever is later.

- IV. That vide permission later dated 22.08.2016, the subject unit was mortgaged with ICICI Bank Ltd and a Housing Loan was availed. The complainant paid a total amount of Rs.21,41,193/- to the respondent and the amount of around Rs.6,36,644/- was pending as per the receipts shared by the respondent. This amount was due and payable by the complainant only on handing over the possession to the complainant.
- V. That as per the record Date of approval of Building Plans is 22.10.2014 and the date of grant of environment clearance is 01.01.2016. In view of condition stipulated in Clause 8(a) of the Agreement the Respondent was obliged to hand over the possession of the Flat allotted to the Complaint by on or before 22.01.2020. However the Builder failed to hand over the possession of the said flat by the due date i.e. within a period of 4 (four years of date of approval of Building Plans and date of grant of environment clearance.
- VI. That the bank after inspection of the site refused to disburse the amount as the Bank's technical team raised a concern about the property construction not being as per the terms of the agreement. The complainant upon further investigation found that there was not only delay in construction but the respondent also did applied for Occupation Certificate and therefore the bank loan amount could not been disbursed by the Bank after the receipt of the above requirements.
- VII. Instead of completing the construction, the respondent asked the complainant to pay the outstanding amount. Accordingly the complainant immediately visited the office of the respondent on 07.03.2020 only to find that the office was closed. When the complainant contacted the representative of the respondent through phone call it was intimated and assured to the complainant that no interest would be charged on the remaining balance payment.

- VIII. That when the complainant approached the lender bank for disbursing of amount it was directed to the complainant to make a payment of Rs.1,15,600/- to the respondent after which the bank would disburse the pending amount of Rs.11,17,375/-. The complainant promptly make the payment and shared the same with respondent on 15.10.2020.
- IX. That the complainant thereafter tried his level best to reach the representatives of the respondent and to lender and explain his situation regarding disbursement of balance amount to the respondent.
- X. That the complaint came to know that the respondent applied for Occupation Certificate on 31.05.2021. The OC was received on 17.11.2022 due to more than 3 years of delay in construction. The respondent offered the possession on 24.11.2022. However the said letter was not given to the complainant either through email or post and the same was given to the complainant only on 01.07.2023 when the complainant visited the office of the respondent. The complainant signed the acknowledgment of receiving the offer of possession Letter on 01.07.2023, which is in possession of the respondent.
- XI. That the respondent finally shared offered for possession in email dated 11.07.2023 after more than 3 year of delay with the unfair demand for the additional interest @ 15% per annum. The complainant through email dated 12.07.2023 requested the respondent to accept the payment of Rs. 6,60,744/- as appendix A to the Possession Letter sent by the respondent.
- XII. That the complainant with his willingness to pay the balance amount of Rs.6,60,744/-approached the ICICI bank for a load. However, the bank was only willing to issue a cheque of Rs.6,36,644/- after deducting Rs.24,100/- for stamp duty charges.

- XIII. That the complainant issued cheque no. 20532 dated 14.08.2023 for an amount of Rs.6,36,644 in favour of the respondent and carrying the balance amount of Rs.24,100/- in cash visited the office of the respondent to hand over the cheque however the respondent refused to accept the said cheque. The respondent acting in a high handed arbitrary manner, after refusing to accept the cheque clearing the balance amount, issued Cancellation Letter dated 22.08.2023 vide ref. No. 24426 cancelling the booking/allotment of Flat No. "J-0603" in the said project.
- XIV. That the complaint got a Legal Notice issued against the respondent calling upon it to revoke the cancellation letter and handover peaceful and vacant possession and also to pay compensation due to delay caused in delivery of possession. However the respondent paid no heed to the same and ignored the notice.

C. Relief sought by the complainant

4. The complainant has sought following relief(s):
- i. Direct the respondent to revoke the cancellation letter.
 - ii. Direct the respondent to handover peaceful and vacant possession as per the agreed specifications in BBA.
 - iii. Direct the respondent to waive off and withdraw the claim of irregular and unfair interest demanded from the complainant.
 - iv. Direct the respondent to pay interest @ 15% p.a. for the delay which has to be calculated as and when the 48 months (4 years was completed. Further, the calculation shall be done on the total amount paid at the abovementioned interest rate till the date of order pendent -lite.

v. To pay a sum of Rs.80,000/- as cost of litigation/present proceedings to the complainant.

5. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submissions made by the complainant.

D. Reply by the respondent:

6. The respondent has contested the complaint on the following grounds:
- I. That due to reasons beyond the control of respondent, the delay occurred and still in hard stuck situation after Covid- 19, is standing in all respect to complete the project as soon as possible. There is no negligence or any unfair trade practice in order to dupe the hard-earned money of the complainant on the part of respondent company.
 - II. That the complainant was informed about the terms and conditions of Builder Buyer Agreement at the time of booking of the said unit and that said agreement was signed by the complainant after understanding each and every clause, no harassment caused to the complainant.
 - III. That the complainant has filed the present complaint with respect to the unit bearing no. 0603 in Tower-J, on the 6th floor having a carpet area of 590.00 sq. ft., in the project named "Green Court", Sector-90, Village Hayatpur, Gurugram, which was allotted to the complainant under the Affordable Housing Policy, 2013, by way of a fair and transparent draw of lots.
 - IV. That the Total Sale Consideration of the above-mentioned unit was Rs.28,01,937/- and the Basic Sale Consideration was Rs.24,10,000/- at the time of signing of BBA. Out of the total sale consideration, only an

amount of Rs.21,41,193/- has been paid by the complainant till date, which does not cover even the Basic Sale Consideration.

V. That the complainant defaulted in making payment of Rs.76,36,644/- despite being served with three written reminders, dates of which are mentioned in a table set out below.

<i>S.No</i>	<i>Particulars</i>	<i>Date</i>
1.	<i>Reminder Letter</i>	<i>12.06.2023</i>
2.	<i>Final Reminder</i>	<i>22.06.2023</i>
3.	<i>Final Reminder 2</i>	<i>04.07.2023</i>
4.	<i>Newspaper Advertisement (Dainik Bhaskar & The Tribune)</i>	<i>20.07.2023</i>
5.	<i>Cancellation letter</i>	<i>22.08.2023</i>

VI. That the respondent afforded the complainant ample opportunities to fulfil their obligations; however, no payment was received within the stipulated time frame. Due to the complainant's continuous non-compliance and failure to make the due payments, and in the interest of transparency, the respondent published a public notice under Clause 5(iii)(i) in *Dainik Bhaskar* and *The Tribune* newspapers on 20.07.2023, clearly informing the complainant that if the outstanding payment was not made within 15 days from the date of publication, the allotment shall stand cancelled. Despite this public notice, no payment was made by the complainant.

VII. That the cancellation has been brought to effect due to intentional default in making payments despite repeated reminders/demands by the complainant. The complainant is also attempting to implead the third party, in whose favour rights have been created with respect to the subject unit, as well as the mortgagee in respect of the said unit, ICICI

Bank Ltd to further complicate the matter. Before impleading any other parties— particularly an innocent third party with no fault—the primary issue that ought to be determined by this Authority is whether the unit cancellation dated 22.08.2023 is, if at all, bad in law.

VIII. That it is further submitted that adjudicating upon the validity of the cancellation at the outset is essential to prevent prejudice to third parties who have acted in good faith and acquired rights only after the cancellation was effected. Impleading such parties at this stage, without first determining whether the cancellation itself is legally sustainable, would not only cause unnecessary hardship and expense to innocent persona but also lead to unwarranted multiplicity of proceedings.

E. Jurisdiction of the authority

7. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

E.I Territorial jurisdiction

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. 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

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(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;

10. So, in view of the provisions of the Act of 2016 quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside the 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

- F.I Direct the respondent to revoke the cancellation letter.**
- F.II. Direct the respondent to handover peaceful and vacant possession as per the agreed specifications in BBA.**
- F.III. Direct the respondent to waive off and withdraw the claim of irregular and unfair interest demanded from the complainant.**
- F.IV. Direct the respondent to pay interest @ 15% p.a. for the delay which has to be calculated as and when the 48 months (4 years) was completed. Further, the calculation shall be done on the total amount paid at the abovementioned interest rate till the date of order pendent -lite.**
11. The complainant was allotted unit no. 0603, 6th floor, Block no.-J, in the respondent's project "Green Court" at basic sale consideration of Rs.24,10,000/- under the Affordable Group Housing Policy 2013. The builder buyer agreement was executed between the parties on 06.06.2016. The possession of the unit was to be offered within 4 years from approval of building plans (22.10.2014) or from the date of environment clearance (22.01.2016), whichever is later. The date of grant of Environmental Clearance is later and therefore, the due date is calculated from the date of grant of Environmental Clearance, which comes out to be 22.01.2016.

Therefore, the due date of handing over possession comes out to be 22.01.2020. The complainant paid a sum of Rs.21,41,193/- towards the subject unit. The respondent vide reminder/demand letters dated 12.06.2023, 22.06.2023 intimated the complainant for payment of the outstanding dues but he failed to adhere the same. The continuous default on part of the complainant to make payment of outstanding dues constrained the respondent to make a publication of the same on 20.07.2023.

12. It is observed that the complainant failed to pay the remaining amount as per schedule of payment and which led to issuance of notice for cancellation by the respondent/builder dated 22.08.2023. In line with the aforesaid facts, the main question which arises before the Authority for the purpose of adjudication is that "Whether the said cancellation is a valid in the eyes of law?"
13. Clause 5(iii)(i) of the Affordable Group Housing Policy, 2013 talks about the cancellation. The relevant part of the clause is reproduced below: -

"If any successful applicant fails to deposit the instalments 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 instalments 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".

14. In the present case, the Builder Buyer Agreement was executed inter-se the parties on 06.06.2016, and the complainant/allottee has paid an amount of Rs.21,41,193/-. Accordingly, the respondent issued demand letter dated 24.11.2022 and thereafter, numerous reminder/demand letters dated

12.06.2023, 22.06.2023, 04.07.2023 to the complainant. Thereafter, the respondent made a publication of the same in the newspaper "Dainik Bhaskar and The Tribune" on 20.07.2023 and finally the unit was cancelled on 22.08.2023. The Authority is of the considered view that the respondent/builder has followed the prescribed procedure as per clause 5(iii)(i) of the Policy, 2013 and in view of the same, the cancellation dated 22.08.2023 is held to be valid.

15. As per cancellation clause of the affordable housing policy of 2013 the respondent can deduct the amount of Rs.25,000/- only and the balance amount shall be refunded back to the complainant. Till date no amount has been refunded back by the respondent to the complainant/allottee. Thus, it has been using the funds of the complainant. In view of aforesaid circumstances, the respondent is directed to refund the amount paid by the complainant after deduction of Rs.25,000/- as per clause 5(iii)(i) of the Policy 2013 along with interest at the prescribed rate of interest i.e., @ 10.80% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from date of cancellation of allotment i.e., 22.08.2023 till the actual realization of the amount within the timelines provided in Rule 16 of the Haryana Rules 2017 *ibid*.

16. The Authority observes that vide proceedings dated 27.01.2026, it has been clearly held that the Cancellation of the allotment is valid and the respondent was directed to refund the entire amount paid by the complainant. However, the refund of entire amount paid by the complainant was inadvertently mentioned in the daily order dated 27.01.2026, because as per clause 5(iii)(i) of the Policy, 2013, the deductions of Rs.25,000/- is mandatory as per the Policy, 2013 and the

interest has to be paid from the date of cancellation of the allotment i.e., 22.08.2023 till the actual realization of the amount, within the timelines provided in Rule 16 of the Haryana Rules 2017 ibid. The same being an error apparent from record is hereby rectified.

F.V. To pay a sum of Rs.80,000/- as cost of litigation/present proceedings to the complainant.

17. The Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. Vs. State of UP & 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 adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the 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.

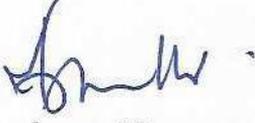
G. Directions of the Authority.

18. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the authority under Section 34(f) of the act of 2016:

- i. The respondent is hereby directed to refund the paid-up amount after deduction of Rs.25,000/- as per clause 5(iii)(i) of the Affordable Housing Policy 2013 along with interest @10.80% per annum from the date of cancellation of allotment i.e., 22.08.2023 till the actual realization of the amount.
- ii. A period of 90 days is given to the respondent/builder to comply with the directions given in this order and failing which legal consequences would follow.

19. Complaint stands disposed of.
20. File be consigned to registry.


Phool Singh Saini
(Member)


Arun Kumar
(Chairman)

Dated: 27.01.2026

Haryana Real Estate
Regulatory Authority,
Gurugram



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