

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

Complaint no.: 5239 of 2024 &
5240 of 2024
Date of filing of complaint: 07.11.2024
Date of Order: 27.01.2026

NAME OF THE BUILDER		Citra Properties Limited	
PROJECT NAME		"Mahira Homes 104"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/5239/2024	Subhash Kumar Arora Vs Tathastu Realty Private Limited	Shri Pankaj Kumar Yadav & Ramesh Kumar, Advocate And Shri Rahul Mangla, Advocate
2.	CR/5240/2024	Puneet Kumar Arora Vs Tathastu Realty Private Limited	Shri Pankaj Kumar Yadav & Ramesh Kumar, Advocate And Shri Rahul Mangla, Advocate

CORAM:

Shri Arun Kumar
Shri P S Saini

Chairman
Member

ORDER

1. This order shall dispose of all the 2 complaints titled as above filed before the authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, **“Tathastu-35”** being developed by the same respondent/promoter i.e., M/s Tathastu Realty Private Limited.
 3. It has been decided to treat the aforesaid complaints as an application for non-compliance of statutory obligations on the part of the promoter/ respondent in terms of section 34(f) of the Act which mandates the Authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
 4. The facts of the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case ***CR/5239/2024 titled as Subhash Kumar Arora Vs Tathastu Realty Private Limited are*** being taken into consideration for determining the rights of the allottee(s) qua the reliefs sought by the complainant-allottees
- A. Unit and project related details**
5. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Heads	Information	
1.	Name and location of the project	“Tathastu-35” sector-35, Gurugram, Haryana	
2.	Project area	5.90 acres	
3.	Nature of project	Commercial	
4.	DTCP license no.	43 of 2012 dated 05.05.2012	
5.	RERA Registered/ not registered	Registered vide no. 131 of 2023 dated 04.12.2023	
6.	Allotment letter	24.01.2024	23.01.2024

		(as per page 12 of complaint)	(as per page 13 of complaint)
7.	Unit no.	GF-047, (As per page no. 12 of the complaint)	FF-017, (As per page no. 13 of the complaint)
8.	Unit measuring	242 sq. ft. (As per page no. 12 of the complaint)	215.28 sq. ft. (As per page no. 13 of the complaint)
9.	Date of Agreement for Sale	Not executed	
10.	Total sale consideration	Rs.42,56,682.5/-	Rs.30,67,740/-
11.	Amount paid by the respondent	Rs. 3,76,174/-	Rs3,19,663/-
12.	Due date of possession	Cannot be ascertained	
13.	Offer of possession	Not offered	
14.	Demand letter	<ul style="list-style-type: none"> • 05.03.2024 • 19.03.2024 (at page 11, 12 of reply)	<ul style="list-style-type: none"> • 05.03.2024 • 19.03.2024 (at page 11, 12 of reply)
15.	Pre cancellation	29.04.2024 (at page 13 of reply)	29.04.2024 (at page 13 of reply)
16.	Cancellation letter	21.06.2024 (at page 13 of complaint)	<ul style="list-style-type: none"> • 21.05.2024 • 21.06.2024 (at page 14 of reply) (at page 15 of reply)
17.	Newspaper publication	<ul style="list-style-type: none"> • 21.07.2024 • 04.12.2023 (at page 15 of reply) (at page 17 of complaint)	04.12.2023 (at page 16 of reply)

B. Facts of the complaint:

6. The complainant has made the following submissions:

- a. That the present complaint has been filed against the Unfair Trade Practices and Deficiencies in the Services committed by the respondents, Tathastu Realty Private Limited in regard to Unit no. GF-

047, Tower No. 3, Fourth Floor, booked by the complainant on dated 23th January, 2024, paying their hard-earned money, in the project called "Swarnim 35" in Sector- 35 at Tehsil- Sohna, Mohammadpur Gujjar, Sohna Haryana-122103.

- b.** That the complainant paid, as and when demanded by the respondent's company, a total of Rs. 3,76,174/- for the said flat on 24th January 2024. The respondent has failed to offer possession to the complainant and the common area facilities and amenities have still not been developed.
- c.** Hence, the present complaint is filed, seeking refund of their deposited amount with prescribed rate of interest as per Real Estate (Regulation and Development) Act, 2016.

C. Relief sought by the complainant:

- 7.** The complainant has sought following relief(s):
- a.** Direct the respondent to return/refund full amount deposited by the complainant amounting Rs. 3,76,174/- along with interest from the date of receipts at the rate prescribed by the Act, 2016.
- b.** Direct the respondent to pay legal expenses of Rs. 1,00,000/- incurred by the complainant.

D. Reply filed by the respondent:

- 8.** The respondent has contested the complaint on the following grounds:
- a.** That the complainant has applied for commercial shop bearing no. GF-047, Tower No. 3, Fourth Floor, in the project name SWARNIM 35. Consequently, the amount of Rs.3,76,174/- vide receipt dated 24.01.2024 was paid by the complainant.
- b.** That as per the IOM dated 22.06.2024, the following payment has been agreed between the parties.

Payment Plan : 10% BSP+GST

40% BSP+EDC/IDC 50% +GST
(Within 15 days from Allotment Letter)

40% BSP+EDC/IDC 50% +GST
On Apply of Occupancy Certificate (OC)

10% BSP+GST+ Other Charges if applicable
(On offer of Possession)

Hence, it has been agreed between the parties that after making the payment of 10% of the booking amount 45% of the agreed amount shall be paid by the Complainant within 15 days from the allotment Letter. But in the instant matter the Complainant failed to do the balance payment of the sale consideration amount between the parties.

- c. That thereafter reminder dated 05.03.2024 was sent to the complainant. Further, the second reminder dated 19.03.2024 was sent to the complainant by the respondent despite the fact the complainant failed to the terms and conditions of the allotment letter.
- d. That since the respondent had no other officious remedy but to send the pre-cancellation letter dated 29.04.2024. The said letter was duly acknowledged by the complainant. That after the pre-cancellation letter a final cancellation letter dated 21.06.2024 was also sent to the complainant despite the fact the complainant failed to make the payment.
- e. That the complainant in compliance of the rules and regulations formulated by this Authority published the cancellation notice dated 21.06.2024 in the local newspaper Punjab Kesari and along with the cancellation letter dated 21.06.2024 duly communicated with the complainant. Hence, the complaint has been provided ample time to make the payment. After the clearance of the booking amount despite the fact the complainant failed to make.

- f. That the complainant has authorized the respondent but forfeit the amount paid by the complainant if in case there is breach of terms and conditions of the application therefore in the instant matter the complainant is not entitled for the refund of the amount as prayed by the complainant.
- g. That the contents of the complaint filed by complainant are proved as wrong and denied. The contents of the complaint are vehemently denied and the contents of preliminary objections are reiterated in reply to para wise reply of the complaint.
9. 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:**
10. The Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

E.I Territorial jurisdiction

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

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) 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:

F.I Direct the respondent to return/refund full amount deposited by the complainant amounting Rs. 3,76,174/- along with interest from the date of receipts at the rate prescribed by the Act, 2016.

12. In the present matter the complainant was allotted the unit no. GF-047 having area of 242 sq. ft. vide allotment letter dated 24.01.2024. for a total sale consideration of Rs.42,56,682.5/- & till date BBA was not executed between the parties.
13. The complainant opted for payment plan as mentioned in Intimation of money dated 19.01.2024. The Payment plan as mentioned in Intimation of money dated 19.01.2024 is reproduced below for ready reference:-

Payment Plan : 10% BSP+GST

40% BSP+EDC/IDC 50% +GST
(Within 15 days from Allotment Letter)

40% BSP+EDC/IDC 50% +GST
On Apply of Occupancy Certificate (OC)

10% BSP+GST+ Other Charges if applicable
(On offer of Possession)

14. Till date the complainant paid an amount of Rs.3,76,174/-, which is less than 10% of the BSP and the respondent keep raising demands vide demand letter dated 05.03.2024 & 19.03.2024 from the complainant but complainant failed to make timely payment.
15. On consideration of documents available on record and submissions made by both the parties, the Authority is of view that on basis of allotment letter dated 24.01.2024, the complainant has paid Rs.3,76,174/- against the total sale consideration price of Rs.42,56,682/-. The respondent sent various reminders letters dated 05.03.2024 & 19.03.2024 & pre cancellation letter dated 29.04.2024 and asking the allottee to make payment of the amount as per payment plan but having no positive results, the respondent cancelled the unit vide letter dated 21.06.2024. Publication regarding the same was also done by respondent on 04.12.2023 & 21.07.2024 in newspaper.
16. For the convenience list of dates and events are as under:

S.NO.	DATES	EVENTS
1.	19.01.2024	IOM (Intimation of Money)
2.	05.03.2024	First reminder

3.	19.03.2024	Second reminder
4.	29.04.2024	Pre-cancellation letter
5.	21.05.2024	Cancellation letter
6.	21.06.2024	Final cancellation letter
7.	21.07.2024	Cancellation notice published in newspaper.

17. The respondent cancelled the subject unit vide cancellation letter dated 21.06.2024 wherein the respondent stated that the due to outstanding dues of amount of Rs.19,12,870/- unit has been cancelled and 10% of total sale consideration amount stand forfeited.
18. The Authority is of view that as per section 19(6) and (7) of the Act of 2016, the allottee is under obligation to make timely payment as per payment plan towards consideration of the allotted unit. The Authority is of considered view that the cancellation done by respondent is valid in the eyes of law.
19. The issue with regard to deduction of earnest money on cancellation of a contract arose in cases ***of Maula Bux VS. Union of India, (1970) 1 SCR 928 and Sirdar K.B. Ram Chandra Raj Urs. VS. Sarah C. Urs., (2015) 4 SCC 136***, and wherein it was held that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty, then provisions of section 74 of Contract Act, 1872 are attached and the party so forfeiting must prove actual damages. After cancellation of allotment, the flat remains with the builder as such there is hardly any actual damage. National Consumer Disputes Redressal Commissions in CC/435/2019 ***Ramesh Malhotra VS. Emaar MGF Land Limited*** (decided on 29.06.2020) and ***Mr. Saurav Sanyal VS. M/s IREO Private Limited*** (decided on 12.04.2022) ***and followed in CC/2766/2017 in case titled as***

Jayant Singhal and Anr. VS. M3M India Limited decided on 26.07.2022, held that 10% of basic sale price is reasonable amount to be forfeited in the name of “earnest money”. Keeping in view the principles laid down in the first two cases, a regulation known as the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 11(5) of 2018, was framed providing as under:

“5. AMOUNT OF EARNEST MONEY

Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon’ble National Consumer Disputes Redressal Commission and the Hon’ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer.”

20. So, keeping in view the law laid down by the Hon’ble Apex court and provisions of regulation 11 of 2018 framed by the Haryana Real Estate Regulatory Authority, Gurugram, and the respondent/builder can’t retain more than 10% of sale consideration as earnest money on cancellation but that was not done. So, the respondent/builder is directed to refund the amount received from the complainant after deducting 10% of the total consideration and return the remaining amount along with interest at the rate of 10.80% (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 the date of each cancellation in both complaint till its realization within the timelines provided in rule 16 of the Haryana Rules 2017 ibid

F.II Direct the respondent to pay legal expenses of Rs. 1,00,000/- incurred by the complainant.

21. That 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.** 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:

22. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- i. The Cancellation is valid. The respondent is directed to refund the paid-up amount to complainant after deducting 10% of the total consideration being earnest money along with interest at the rate of 10.80 % as prescribed under Rule 15 of the Rules, 2017, on such balance amount from the date of cancellation/termination. Thereafter, refund balance amount with interest from date of cancellation till its realization, if any.
 - ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
23. This decision shall mutatis mutandis apply to both complaints.

24. Complaint stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
25. File be consigned to registry.



(P S Saini)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 27.01.2026

