

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

Complaint no.: 4381 of 2024
Date of filing of complaint: 05.09.2024
Date of Order: 27.01.2026

Shashi Garg

R/o: A-901, Nirala Eden Park, Ahinsa,
Khand-2, Indirapuram, Shipra Sun City
Ghaziabad, Uttar Pradesh- 201014

Complainant

Versus

M/s Forever Buildtech Private Limited
Regd. Office at: 101, Ground floor, Tower A,
Signature Towers, South City-1, Gurugram,
Haryana-122001

M/s Signature Global Private Limited
Regd. Office at: Ground floor, Tower A,
Signature Towers, South City-1, Gurugram,
Haryana-122001

HDFC Limited

Regd. Office at: Ramon House, H T Parekh
Marg, 169, Backbay, Reclamation Church
Gate, Mumbai-400020

Respondents

CORAM:

Shri Arun Kumar
Shri Phool Singh Saini

**Chairman
Member**

APPEARANCE:

Dr. R K Yadav (Advocate)
Ms. Anjalika Sharma (Advocate)

Complainant
Respondent no.1 & 2
None for R-3

ORDER

1. The present complaint dated 05.09.2024 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 provision of the Act or the Rules and regulations made thereunder or to the allottee 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.	Heads	Information
1.	Name and location of the project	The Roselia, Sector 95-A, Gurgaon, Haryana
2.	Nature of the project	Affordable group housing colony
3.	DTCP license no.	13 of 2016 dated 29.09.2016
4.	RERA Registered/ not registered	Registered vide no. 62 of 2017 dated 17.08.2017 valid up to 16.02.2020
5.	Demand cum Allotment letter issued by R-1	15.10.2018 (page no. 27 of complaint)
6.	Demand pre intimation	19.11.2018 (page no. 29 of complaint)
7.	Apartment no.	I-906, Tower- I, 9 th Floor (page no. 38 of complaint)
8.	Unit measuring	514 sq. ft. (page no. 38 of complaint)
9.	Date of Agreement for Sale by R-1 i.e. Forever Buildwell Pvt. Ltd.	20.12.2018 (page 34 of complaint)
10.	Tripartite Agreement	23.01.2019 (page no. 74 of complaint)
11.	Possession clause	5. Possession

		<p><i>Within 60 days from the date of issuance of Occupancy Certificate, the developer shall offer the possession of the said flat to the allottee."</i></p> <p><i>(page 47 of complaint)</i></p>
12.	Due date of possession	*18.11.2017 (calculated 4 years from the date of grant of environment clearance, +6 month on account of Covid-19)
13.	Approvals of building plans	09.01.2017
14.	Date of grant of environment clearance	18.05.2017 (as taken from DTCP website)
15.	Total cost	Rs.20,97,050/- (page no. 44 of complaint)
16.	Amount paid by the respondent	Rs. 16,98,606/-
17.	Loan Sanctioned from R-3 dated 18.12.2018	Rs.20,00,000/- (page no. 31 of complaint)
18.	Payment plan	Time link plan at page 71 of the complaint
19.	Occupation certificate	06.05.2022
20.	Offer of possession	Not offered
21.	Demand pre-intimation	03.05.2019 for Rs. 3,20,077/- 04.11.2019 for Rs.3,21,962/- 04.05.2020 for Rs.6,22,280/- 07.02.2021 for Rs.2,94,315/- 22.02.2021 for Rs.2,94,315/- 09.03.2021 for Rs. 2,94,315/- (page no. 92, 94, 96, of complaint (at page no. 33, 35, 37 of reply)
22.	Pre cancellation letter	09.03.2021 (at page no. 37 of reply)
23.	Cancellation letter sent to respondent vide email	24.03.2021 *due to outstanding dues of Rs.2,94,315/- (at page no. 40 of reply)
24.	Publication in newspaper	At page 38 of reply
25.	Notice for termination	05.03.2021

		*due to outstanding dues of Rs.6,93,152/- (page no. 98 of complaint)
26.	Mail by R-2 to complainant regarding collection of refund	04.09.2023 23.08.2023 29.08.2023 31.08.2023 (at page 97, 98 of reply)
27.	Refund request by complainant	20.07.2023 30.07.2023 Page 102 & 103 of reply
28.	Unit allotted to 3 rd party	At page 104 of reply

B. Facts of the complaint:

3. The complainant has made the following submissions:

- a. That the respondent M/s Signature Global Private Limited is a builder /promoter of residential and commercial spaces and has its registered office at the address mentioned above. That the respondent Forever Buildtech Pvt. Ltd. is a sister-concern/developer of respondent no. 1 & respondent No. 3 HDFC Ltd. is a corporate bank.
- b. That the complainant was lured by the advertisements of the respondent no.1 and booked a flat with the Respondents No. 1& 2 by paying the booking amount of Rs.1,04,852/- vide Cheque no. 021196 dated 25.07.2018 drawn on Union Bank of India.
- c. That the Respondents No. 1 & 2 thereafter, allotted a flat to the Complainant in one of their projects, namely "The Roselia Sector 95A" Gurugram, Haryana bearing No. I- 906, in Tower 1, of the project, having carpet area of 514.272 Sq. Ft. and Balcony area of 79.923 sq. ft. on the 9th floor, along with a two-wheeler parking vide demand cum allotment letter dated 15.10.2018.

- d. That the Respondent No. 3 was the Financer of the Projects of Respondents No. 1 & 2 and they approved the loan of Rs. 20,00,000/- vide their offer letter dated 18.12.2018.
- e. That a registered builder buyer agreement was executed between the complainant & the respondents No. 1& 2 on 20.12.2018 for the total cost of Rs.20,97,050/- and the complainant paid the stamp duty of Rs.1,04,852/- for the registration of the builder buyer agreement which was registered on 21.12.2018. The complainant paid a sum of Rs.3,59,962/- to the respondent no. 1 & 2 upon the allotment.
- f. That as per the Agreement the total amount of the flat was payable in installments to be spread over 3 years, i.e. from December 2018 to December 2021.
- g. That the complainant, respondent no. 2 on behalf of respondent no. 1 entered into a Tripartite Agreement dated 23.01.2019 and the complainant sought the loan amount of Rs. 18 Lakhs from the respondent no. 3 through the said Tripartite Agreement. The Respondent no. 3 was liable to pay directly to the respondents no. 1& 2, as and when the demand was to be raised by the respondent nos. 1 & 2, being bound and in obligation to the Tripartite Agreement between the parties.
- h. That thereafter no liability of payment was upon the complainant to pay to the respondents no. 1& 2 and the sole liability of making the payment towards cost of aforesaid flat was upon the respondent no. 3 as per the demand raised by or on behalf of respondent no. 1& 2.
- i. That after execution of the tripartite agreement, the respondent no. 3 had directly paid a sum of Rs.9,50,691/- on 23.01.2019, to the respondents no. 1& 2 for the flat No. 1-906, out of the total cost of

- Rs.20,97,050/-. Thereafter, the respondent no. 3 had been making the payment upon the demand of respondents no. 1& 2.
- j.** That the complainant and the respondent no. 3 collectively paid a sum of Rs. 16,98,606 /- to the respondent no. 1 within a span of 10 months, from 25.07.2018 to 03.03.2019, aggregating to nearly 81% of the total cost of the flat.
- k.** That the respondents no. 1to 3 intentionally failed to respond to the persistent queries of the complainant, both through emails and personal visits, with regard to completion of the project and handing over possession of the flat. The Respondent No. 3 had been deducting the EMI's from the account of the Complainant till 2023.
- l.** That when no response was received from any of the respondents to the emails and messages of the complainant and her representative (husband), the complainant on 09.12.2022 visited the office of the respondents no. 1& 2 to enquire about the status of the flat, but was startled and taken aback on being informed that the respondents no. 1 & 2 had already cancelled the flat in the month of March, 2021 vide letter dated 05.03.2021 without any intimation to the complainant and they handed over a copy of the said letter for the payment along with the Publication of Cancellation in default of making the payment.
- m.** That it needs no reiteration that the amount as claimed i.e. Rs. 6, 93,152/- by Respondents No. 1 & 2 vide letter dated 05.03.2021 was to be paid by the Respondent No. 3 owing to execution of the Tripartite Agreement but due to the collusion between the Respondents, they defrauded the Complainant by keeping her in dark.
- n.** That neither any intimation nor any communication regarding cancellation of the flat was ever given to the Complainant by either of

the Respondents, whilst the Respondent No. 3 continued to charge/debit EMIs from the Complainant's account. It is noteworthy to mention that while the Respondent No. 3 had sanctioned the loan amount of Rs. 20,00,000/- but the Complainant has availed the loan of Rs. 18,00,000/- only vide Tripartite Agreement.

- o.** That the Respondent No. 3, on the basis of Tripartite Agreement, paid a sum of Rs. 12,37,792/- till July 2019 to the Respondents No. 1 and 2, on behalf of the Complainant as per their demands and the Respondents 1 & 2 duly acknowledged and reflected even zero credit balance in the account of the Complainant.
- p.** That the respondent no. 1 arbitrarily and illegally accepted money in advance from the complainant, although the same was liable to be paid in later dates. A perusal of the demand pre-intimation letter dated 04.05.2020 issued by the respondent no.1 would evidently reveal that the installments for the period 30.10.2018, 19.12.2018 & 19.06.2019 have been collected in advance and the amount payable by the complainant to the respondents continued to be depicted as zero. Besides the respondent no. 1 illegally levied interest upon the illegal demand having being raised by the respondent no.1.
- q.** That a sum of Rs. 5,66,208/- was with the Respondent No. 3 which was to be paid by it to the Respondents No. 1 & 2 upon their demand on account of cost towards allotment of the flat to the complainant, but to the knowledge of the Complainant, no demand of money by raised upon the Respondent No. 3 as per the Tripartite Agreement, for reasons best known to the Respondents No. 1 & 2, which is wholly inexplicable.

- r. That while on one hand, the Respondents No. 1 & 2 had allegedly cancelled the flat vide letter dated 05.03.2021, yet on the other they arbitrarily, illegally and maliciously raised a demand upon the Respondent No. 3, whereby the Respondent No. 3 paid a sum of Rs. 4 lacs on 19.09.2022 to the Respondents No. 1 & 2, on account of the cost of the flat. It would be prudent to mention that the total sum of Rs. 20,98,476/- had been received by the Respondents No. 1 & 2 towards cost of the allotted flat as against the total cost of the demand of Rs. 20,97,050/-. Despite having received the full and final payment towards the declared cost of the flat, the Respondents clandestinely and whimsically cancelled the flat without any intimation to the Complainant, which is ex facie illegal and untenable.
- s. That inspite of persistent requests to allot the flat and revoke the case of arbitrary cancellation of the flat in question afresh, instead of allotting and revoking the arbitrary cancellation, the respondent no. 1 & 2 under duress gave a Cheque amounting to Rs. 7,09,060/- on 11.09.2023 and the respondent no. 3 deposited sum of Rs. 87,617/- through NEFT on 09.08.2023 in the account of the complainant. The said payment was deposited by the respondents without the knowledge and consent of the complainant. It is pertinent to mention that the Respondents illegally deposited the amount of Rs.7,96,677/-, whereas, a sum of Rs. 20,98,476/- was received by the respondent no. 1 & 2 through Tripartite Agreement between the Respondents & the Complainant.
- t. That irony is that while the respondent no. 1 & 2 allegedly cancelled the flat allotted by them to the complainant on 5.3.2021, still they kept on accepting the payment from the respondent no. 3 as per the Tripartite Agreement till May,23 & the respondent no. 3 has been

deducting the instalments(EMI)from the account of the complainant till 05.05.2023.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
 - i. Direct the respondent that the revocation of the flat cancelled arbitrarily and unilaterally and to restore possession of the same to the Complainant upon the settled amount as agreed between the parties vide the registered Builder Buyer Agreement dated 21.12.2018.
 - ii. Direct the Respondents, jointly & severally, to pay a sum of Rs.10 lakhs as compensation towards the mental agony, pain, sufferings and harassment caused to 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 no. 1 i.e. Forever Buildtech Private Limited and respondent no. 2 M/s Signature Global Private Limited:

6. The respondent has contested the complaint on the following grounds:
 - a. That the initial amount has been deposited by the complainant in the account of respondent no.1 i.e. Forever Buildtech Pvt. Ltd. Further, there is no legal entity with the name i.e. M/s Signature Global Pvt. Ltd, exists in the record of respondent no.1. Further even otherwise there is no agreement between Signature Global Pvt. Ltd and the complainant, hence no liability whatsoever arises on behalf of respondent no.2.
 - b. That the respondent no. 1 allotted the unit and not by respondent no.2. Further even otherwise there is no agreement between

Signature Global Pvt. Ltd and the complainant, hence no liability whatsoever arises on behalf of respondent no.2.

- c. That the respondent no. 1 gave the Demand Pre-Intimation Letter to the complainant and not by respondent no. 2. Further even otherwise there is no agreement between Signature Global Pvt. Ltd and the complainant, hence no liability whatsoever arises on behalf of respondent no.2.
- d. That the BBA has been executed between the respondent no.1 and complainant and not between the respondent no.2., Hence respondent no.2 has no role to play and it is mis joinder of party to the present complaint hence needs to be deleted from the era of parties.
- e. That the complainant paid the said amount to respondent no. 1 and not to respondent no.2. The respondent no.2 never entered into any tripartite agreement as alleged by the complainant, further the respondent no.3 was only liable to pay all future cost of the flat directly to the respondent no.1 and not to respondent no.2. The respondent no.3 had made the payment to respondent no.1 and not to respondent no.2.
- f. That the respondent no.3 never remitted any monies in the account of respondent no.2. Further, the complainant admitted the fact that the respondent no.1 has informed the complainant in advance about the upcoming installment i.e. the installment within 36 months from the date of the Allotment, through Demand Pre-Intimation Letter, which itself manifested that the complainant had knowledge of the fact the complainant has to make the payment and in case she failed to do the same in that case the unit of the complainant will be cancelled.

- g.** Further, respondent no. 1 issued the reminder-I letter dated 07.02.2021 vide email dated 07.02.2021. Subsequent to, that the respondent no.1 had sent the reminder -2 letter dated 22.02.2021, vide email dated 22.02.2021. Thereafter, the respondent no.1 had sent the pre-cancellation letter dated 09.03.2021 vide email dated 09.03.2021, however the complainant did not make the payment in compliance of the said notice therefore the respondent no.1 advertised the name of the complainant in the newspaper in defaulter list and provided the 15 days to clear the dues however the complainant failed to do the same hence the respondent no.1 vide email dated 24.03.2021 sent cancellation notice dated 24.03.2021 to the complainant and cancelled the unit. All the email communication has been sent on the email id which is mentioned upon the demand cum allotment letter dated 15.10.2018 or reminder thereof or any other communication. The complainant never denied either receipt of the communication sent at said email id or email id itself.
- h.** That the respondent no. 1 cancelled the unit of the complainant after adopting the due process laid down by the Town and Country Planning Department Haryana.
- i.** That after cancellation, the respondent no.1 has credited the amount after deducting the amount as permissible by law, in the account of the complainant and respondent no.3.
- j.** That the respondent no. 1 had informed the complainant about the cancellation as well as due amount on the part of the complainant through emails. Further the contents of the reply to para i.e. 05.03.2021 may also be treated as a reply to this para. The complainant was having knowledge about the fact that the unit of the complainant has been cancelled by the respondent no.1 on

05.03.2021 as respondent no.2 informed about the same vide email dated 05.03.2021, therefore she did not raise any objection to that earlier, rather requested for refund. Further, even if it was the case as alleged by the complainant, the complainant did not challenge the said cancellation rather she asked for refund and that too after the period of more than 2 years from the date of cancellation notice dated 05.03.2021. Further malafide of the complainant is also manifested from the fact that on 09.12.2022 when the complainant visited the office of the respondent no. 1 as alleged by the complainant, even then she did not challenge the cancellation and now to extort the money from the respondent no.1, she filed the present complaint under reply.

k. That the Respondent no. 1 has cancelled the unit of the complainant by adopting due process and giving various opportunities to the Complainant for making payment. However, the complainant failed to pay the same to respondent no.1 therefore the respondent no.1 has cancelled the unit and refunded the amount to the complainant as per the law. If it was the case as alleged by the complainant, then why the complainant did not challenge the revocation on 05.03.2021 and 09.12.2022 and why she was waiting for more than 2 and half year from the dated of cancellation notice, which itself reflects that the complainant was not interested in retaining the unit and now to extort the money the complainant has filed the false and frivolous present complaint.

E. Reply by the respondent no. 3 i.e. HDFC Bank

7. The respondent has contested the complaint on the following grounds:
- a. That by and under an Order dated 17.03.2023 passed by the Hon'ble National Company Law Tribunal, Mumbai Bench in Company Scheme

- Petition No.243/2022 connected with Company Scheme Application No.200/2022, HDFC Ltd. has been amalgamated into 'HDFC Bank Limited', as a going concern and consequently all assets and liabilities of HDFC Ltd. now stand vested in 'HDFC Bank Limited'. That the scheme of amalgamation has come into effect on 01.07.2023.
- b.** That the mandate of Real Estate (Regulatory and Development) Act of 2016 is to protect the interest of home-buyers from the delays and defaults on part of the errant developers. The subject matter of the complaint has arisen due to the alleged default on part of Respondent no. 1 in timely construction and handover of the project. However, the complainants have decided to wrongly impleaded HDFC Ltd (presently HDFC Bank Ltd) as respondent no. 3.
- c.** That the complainant has chosen to ignore the fact that the relationship of HDFC Ltd (presently HDFC Bank Ltd) and the complainants have arisen out of a loan agreement which has no correlation whatsoever with the builder. The respondent, that this Authority lacks jurisdiction to issue any directions or orders to any other person or entity who is not a *promoter, real estate agent or allottee* and respondent no. 3 being the lender, does not fall under any of the aforementioned categories. The instant complaint is liable to be dismissed on account of mis-joinder of parties qua the Respondent no. 3. The domain of services provided by the respondent no. 3 is completely separate and independent of respondent no. 1 & 2 and hence the complaint ought to be dismissed as against respondent no.3 on account of lack of jurisdiction and lack of cause of action.
- d.** That the respondent no. 3 falls outside the domain of this Authority. The complainants have failed to disclose any separate cause of action against the respondent no. 3. The Authority may be pleased to delete

the respondent no. 3 from array of parties and/or dismiss the instant compliant as against respondent no. 3.

e. That the respondent no. 3 i.e. HDFC Ltd now as HDFC Bank Ltd is no way concerned with the present complaint except that it had sanctioned and disbursed the Home Loan in terms and conditions of the Home Loan Agreement (Loan A/c No 637121988) and Tripartite Agreement dated 28.12.2018.

F. Jurisdiction of the Authority:

8. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

F.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.

F.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.

9. 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.

G. Findings on the relief sought by the complainant:

G.I Direct the respondent that the revocation of the flat cancelled arbitrarily and unilaterally and to restore possession of the same to the Complainant upon the settled amount as agreed between the parties vide the registered Builder Buyer Agreement dated 21.12.2018.

10. The complainant was allotted a unit in the project of respondent "The Roselia", in Sector-95 A, Gurugram vide allotment letter dated 15.10.2018 for a total sum of Rs.20,97,050/-. Further agreement for sale was executed between the complainant and respondent no. 1 on 20.12.2018 and same was duly registered on 21.12.2018. As per clause 1 (iv) of the Affordable Housing Policy, 2013, the possession of the apartment is to be delivered within 4 years from the date of approval of building plans or grant of environmental clearance, whichever is later. Clause 1(iv) of the Policy of 2013 is reproduced below for ready reference:

1.

(iv) All such projects shall be required to be necessarily completed within 4 years from the approval of building plans or grant of environmental clearance certificate, whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of this policy.

(Emphasis supplied)

11. The due date of possession is to be calculated 4 years from the date of environment clearance i.e., 18.05.2017. Therefore, the due date of possession comes to 18.05.2021.
12. In present complaint, the complainant intends to continue with the project and is seeking reinstate of the allotment of the unit, as the complainant intends to continue with project. But as per the documents placed on record with the complaint, the Authority observed that the unit is cancelled on 24.03.2021 i.e., before the filing of the present complaint.
13. The complainant stated in facts of the complaint that the complainant intends to continue with the project and requests for setting-aside the cancellation of the unit. However, the respondent in its reply dated 16.01.2025 stated that the respondent has cancelled the unit of the complainant on account of non-payment by the complainant. He further stated in its reply that the respondent has raised demand for payment for outstanding dues but the complainant never paid any heed to the same and till date paid an amount of Rs. 16,98,606/- only against the consideration of Rs.20,97,050/-. The respondent has duly followed the due procedure as per the Affordable Housing Policy, 2013 and after issuing reminder letters dated 03.05.2019, 04.11.2019, 04.05.2020, 07.02.2021, 22.02.2021 & 09.03.2021 made publication in newspaper, but the compliant failed to pay the outstanding dues. Thereafter, the respondent issued a cancellation letter dated 24.03.2021 and requested the complainant to provide original documents in order to initiate refund after deduction of amount as per affordable housing policy.
14. The Authority observes that the complainant opted for payment plan as mentioned in Schedule D of the agreement for sale dated 20.12.2018. The payment plan as mentioned in the Schedule D of the agreement for sale dated 20.12.2018 is reproduced below for ready reference:-

At the time of application	5% of total cost
At the time of allotment	20% of total cost
Within 6 months from the date of allotment	12.5% of total cost
Within 12 months from the date of allotment	12.5% of total cost
Within 18 months from the date of allotment	12.5% of total cost
Within 24 months from the date of allotment	12.5% of total cost
Within 30 months from the date of allotment	12.5% of total cost
Within 36 months from the date of allotment	12.5% of total cost

15. Till date the complainant paid an amount of Rs.16,98,606/- and the respondent keep raising demands under the "*Within 24 months from the date of allotment*" from the complainant but complainant failed to make timely payment. The respondent cancelled the subject unit vide cancellation letter dated 24.03.2021 and mentioned that the amount shall be refund after adjusting the earnest money paid by the complainant as per agreed terms.
16. 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.
17. After consideration of the afore-mentioned facts and submissions, the only relief which can be provided to the complainant is of refund, the respondent already clarified his stance that the complainant is entitled to refund as per clause 5(iii)(i) of Affordable Housing Policy, 2013 in case any successful applicant fails to deposit the instalments within the stipulated time. In such case, an amount of Rs.25,000/- can be forfeited by the colonizer and the balance amount shall be refunded to the applicant-

allottee. Relevant portion of clause 5(iii)(i) of the Affordable Housing Policy, 2013 is reproduced below for ready reference:

- i. 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 news-paper having circulation of more than ten thousand in the State for payment of due 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.*

- 18.** In the present case, the complainant has failed to pay the due instalments even after issuance of demand letter, reminder letters and publication in the newspaper. Keeping in view the aforementioned factual and legal provisions, the respondent can retain the amount paid by the complainant against the booked unit as per clause 5(iii)(i) of Affordable Group Housing Policy, 2013 i.e., Rs.25,000/-.
- 19.** The prescribed rate of interest as per Rule 15 of Rules, 2017 payable by the promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State Bank of India highest marginal cost of lending rate plus two percent i.e. 10.80%.
- 20.** The Authority hereby directs the promoter to return the amount received by him i.e., Rs.16,98,606/- after deducting the amount of Rs.25,000/- as per above-mentioned clause of Affordable Group Housing Policy, 2013 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 cancellation i.e., 24.03.2021 till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017.

G.II Direct the Respondents, jointly & severally, to pay a sum of Rs.10 lakhs as compensation towards the mental agony, pain, sufferings and harassment caused to 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.

H.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 no. 1 is directed to refund the amount i.e., **Rs. 16,98,606/-** received from the complainant-allottee after deducting the amount of Rs.25,000/- as per clause 5(iii)(i) of Affordable Group Housing Policy, 2013 along with interest on such balance amount at the rate of 10.80% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of cancellation i.e., 24.03.2021 till the actual date of refund of the amount.
- ii. Out of total amount so assessed, the amount paid by the bank i.e. respondent no. 3 be refunded first in the bank and balance amount

along with interest if any will be refunded to the complainant. Further the respondent no. 1 is directed to provide the NOC to the complainant after getting it from respondent no. 3.

- iii. A period of 90 days is given to the respondents to comply with the directions given in this order and failing which legal consequences would follow.

23. Complaint stand disposed of.

24. File be consigned to registry.



(P S Saini)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 27.01.2026

HARERA
GURUGRAM