

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

Complaint no.: 5116 of 2024
Date of complaint: 14.11.2024
Date of decision: 27.01.2026

Sarita Kumari
R/o: A 1163, 3rd Floor, G D Colony
Mayur Vihar PII 3, Delhi

Complainant

Versus

M/s Desi Construction Private Limited
Regd. Office At: - 806, 807 Sky Tower Netaji Subhash
Place, Pitampura Delhi North East DL 110034

Respondent

CORAM:

Shri Arun Kumar
Shri Phool Singh Saini

**Chairman
Member**

APPEARANCE:

Mr. Rakesh Kumar (Husband of the complainant)
Shri Rahul Mangla (Advocate)

**Complainant
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. Project and unit 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. N.	Particulars	Details
1.	Name and location of the project	"Tathastu II", Sector-5, Village- Sohna Gurugram
2.	Nature of the project	Affordable Housing Project
3.	HREERA registered/ not registered	Registered as 20 of 2023 dated 30.01.2023
4.	Allotment letter dated	30.08.2023 (As per page 29 of complaint)
5.	Date of execution of flat buyer's agreement	Not executed
6.	Unit no.	T8-601 on 6 th floor, tower 8 (As per on page no. 29 of the complaint)
7.	Carpet Area	645.818 sq. ft. (As per on page no. 29 of the complaint)
8.	Possession clause	N/A
9.	Possession clause of Affordable Housing Policy	(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, whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of this policy. [xxxxxx]
10.	Date of environment clearance	09.02.2023

		(As information provided by the planning branch)
11.	Building Plans	23.01.2023 (Information provided by the planning branch)
12.	Due date of delivery of possession	09.02.2027 (Note: Due date to be calculated 4 years from the date of EC i.e., 09.02.2023 being later as per Affordable Group Housing Policy, 2013)
13.	Total consideration	Not mentioned anywhere in the documents available on record
14.	Total amount paid by the complainants	Rs.10,13,578/- (As stated at page 11 of the complaint)
15.	Newspaper Publication dated	05.08.2024 (Page 08 of reply)
16.	Reminder/ demand letters	20.04.2024, 23.05.2024, 05.08.2024 (No document is on record with regard to the same).
17.	Cancellation Letter dated	05.08.2024 (As per page no. 7 of the reply)
18.	Amount refunded by the respondent	Rs.9,61,703/- (As stated by the complainant in the complaint)
19.	Occupation Certificate	Not obtained
20.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:

- i. That the complainant is a house wife and with a dream of having own house has applied vide application No- T1APP/87374/23-24 dated 12.03.2023 for allotment of the residential flat in the Affordable Group Housing project "Tathastu I" offered by the respondent herein. Further the respondent vide letter dated 30.08.2023 has informed the complainant that being a successful allottee in the draw of lot conducted on 24.04.2023 in the presence of the government officials from DTCP, the complainant herein has been allotted residential flat no T8- 601 in Tower -8 having carpet area of 645.818 sq ft & balcony area of 78.254 sq Ft on floor 6, in the subject matter affordable Group Housing project "Tathastu I".
- ii. That the complete postal address of the complainant as submitted in the application form is as follows: Sarita Kumari, A 1163, 3rd Floor, G D Colony Mayur Vihar PH-III, East Delhi, Delhi-110096. The complainant has received the allotment cum demand letter at same postal address, which is submitted in the application form, mentioned as, Sarita Kumari, A 1163, 3rd Floor, G D Colony Mayur Vihar PH-III, East Delhi, Delhi-110096.
- iii. That the complainant has paid the entire amount of Rs 10,13,578/- through Account payee cheque No- 187047 of Rs 2,50,000/- ,187048 of Rs 4,00,000/- & 187049 of Rs 3,63,578/- dated 11.09.2023, 19.09.2023 & 20.09.2023 respectively, as per the terms of the allotment cum demand letter. As such the complainant has fulfilled the stipulation of allotment cum demand letter and has acquired the inalienable right in the captioned subject property. The payment was made in three parts on 11.09.2023, 19.09.2023, and 20.09.2023. This payment structure was necessitated because the builder issued a demand letter with an

increased rate as mentioned in the allotment letter which was higher than the offered price. Consequently, the complainant sent several emails to the builder, and after receiving their reply, I proceeded to make the payments on 19.09.2023 and 20.09.2023 to complete the remaining amount.

- iv. That in view of this, I would like to say again that the builder has not followed the Haryana Affordable Housing scheme to increase the rates. Despite of conducting the draw on 24.04.2023, they waited for the revised policy to change the rates till 19.07.2023 and after that the allotment of flats was done at rates which are not acceptable in any way. If the allotment draw was held on 24.04.2023 and the revised policy came into effect on 19.07.2023, then the original rates should apply to that allotment – even if the allotment letter was issued later.
- v. That the complainant changed the mail address from the earlier registered mail address shaifali2100@gmail.com to new registered mail address i.e skg3003@gmail.com and consequently informed the respondent herein vide mail dated 06.05.2024. The complainant received only one mail on 24.05.2024 at the new E-mail address skg30033@gmail.com and subsequently received the following mail from the respondent on 13.08.2024 “This is in regarding of your flat in the project “Tathastu I”. We have been following up with you for a long time regarding the over-dues against the flat allotted to you in our project Tathastu I. However, we haven't received the payment yet and subsequently we have left no option to cancel your flat as per the Affordable Housing Policy of the Haryana Government.”

- vi. That subsequently, a sum of ₹9,61,703/- was refunded via UTR Number: ICICR42024082100531265 against the total paid amount of ₹15,16,778.42. This act of treating the cancellation policy as a surrender policy demonstrates the respondent's arrogance, despite their wrongful and illegal actions in contravention of various clauses of the scheme and the objectives of the Haryana Affordable Housing Scheme.
- vii. That the complainant has not received any demand letter or reminder letters etc. at the registered postal address mentioned in the allotment cum demand letter, as submitted in the respondent's mail dated 13.08.2024 and has communicated the same to the respondent immediately vide mail dated 13.08.2024. The final reminder cum cancellation notice, along with the newspaper advertisement, was not served either through acknowledgment post at the registered postal address as per the allotment cum demand letter, nor was it served via email. Additionally, the complainant did not receive any call or message on the phone, despite the availability of various advanced communication technologies. It is further communicated to the respondent that the 10% of the requisite amount has already been deposited vide cheque number 327991 dated 29.07.2024 in the bank account of the respondent by dropping the same in the drop box of ICICI Bank, South Delhi. The complainant has appraised the series of event vide mail dated 16.08.2024 to the Director, Desi construction private limited.
- viii. Further as per the policy guidelines, 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 amount within 15 days from the date of publication of such notice, failing which allotment may be cancelled. Here the respondent vide his mail dated 13.08.2024 informed the allottee/complainant that admittedly the final reminder cum cancellation notice along with newspaper advertisement was published on 05.08.2024 and due date was 11.08.2024. First the respondent has not issued the requisite reminders at the registered postal address and subsequently after publication due time as contemplated by the policy guidelines of the States i.e. 15 days from the date of publication was not given and before 15 days the cancellation letter was addressed to registered e-mail of the allottee/complainant.

- ix. Thus, it is prayed from the Hon'ble RERA authority to set aside the illegal order of the respondent cancelling the allotment of the allottee/complainant in violation of the specific policy guidelines of the State under which the said housing project was developed and regularize the allotment in favour of the allottee/complainant in the interest of Justice.
- x. That the respondent in its reply has stated that the copy of public notice published on 31.01.2023 and cancellation letters sent via email dated 09.10.2023, 13.08.2024 and 14.03.2024 are annexed. These references reflect inconsistent and conflicting dates, which clearly demonstrates that the respondent has submitted a casual and unverified reply, without proper consideration of the facts and procedural requirements. Such conduct misleads the Hon'ble Authority and undermines the integrity of the proceedings.

- xi. The written submissions have been filed by the complainant. The same has been taken on record and perused further.

C. Relief sought by the complainant: -

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

- i. Direct the respondent to set aside the illegal order of the respondent canceling the allotment of the allottee/complainant passed in violation of the specific policy guidelines of the State.
- ii. Direct the respondent to regularize the allotment in favour of the allottee/complainant in the interest of Justice.
- iii. Direct the respondent to send further communication to the registered postal address with lack due and simultaneously at the registered e-mail of the allottee.
- iv. Direct the respondent to adjust the rate of the flat to the rate that was advertised at the time of the application, i.e., the rate announced on the date of the offer.
- v. Direct the respondent to compensate the complainant by paying interest and reasonable compensation due to the mental harassment of wrongful act of the respondent.

5. To 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 complainant.

6. The respondent has contested the complaint on the following grounds.

- i. That the complainant is guilty of not making the payments of due installments on time and therefore, the complainant is not entitled to seek the relief to set aside the cancellation letter sent by email dated 13.08.2024

and restoration of the subject unit to its original number rather the complainant are liable to pay the interest and damages to the answering respondent. 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 reminder Letter dated 05.08.2024. Moreover, the respondent had issued multiple reminders on 20.04.2024, 23.05.2024, against the outstanding due installments to the complainant but the complainant had failed to make timely payments of the due installments. Subsequently, the respondent had issued a final reminder cum cancellation notice on 05.08.2024 along with the publication of a public notice on 30.01.2023 by the respondent seeking the payment of the due installments from the complainant. Consequently, the Respondent had issued a cancellation letter against the subject unit No.601, Tower – T-8, situated in the revenue estate of village Sohna, Gurugram, Haryana, the Affordable Housing Policy, 2013.

- ii. That the respondent no. 2 has no authority to inspect the project site of the answering respondent. The respondent no. 2 has played mischief to let the complainant to default in making the payment of sale consideration on the false and frivolous grounds. it is stated that the answering respondent is constructing the site as per the law and commitments made to the entire public at large. It is further pertinent to mention here 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 and the respondent no. 2 in connivance and collusion

with each other did not made the payment of sale consideration as demanded vide Intimation reminder Letter dated 13.08.2024.

- iii. That the respondent no.2 Bank as well as the other Public Sector Banks have also financed various other units/ flats in the said Project and have duly disbursed the due installments amount as and when demanded by the respondent. The said banks along with allottees / buyers of the said units have duly satisfied and honored the demand letter of the respondent as and when demanded and have paid the sale consideration on time. It is further worthwhile to mention here that time is essence of the contract and as per the builder buyer agreement executed between the parties; the complainant has not complied with the terms of the builder buyer agreement as well as the tripartite agreement executed between the complainant and both respondents. As a result, the builder was compelled to cancel the allotment of the complainant's flat under the Affordable Housing Policy, 2013, due to the complainant's consistent default.
- iv. That the complainant is unfair and misleading this hon'ble authority by differentiating the project in tower wise base project. As per the Affordable Housing Policy, 2013 and the regulations of this Hon'ble Authority as well as per the terms of the agreement for sale dated 30.08.2023, the builder/ respondent is entitled to demand for the sale consideration as per agreed payment plan and raise the demand upon construction of 1/3rd of the superstructure of the entire project. Hence, the plea / averments of the complainant with regard to tower wise payment is barred, baseless and unfounded. Further, in the instant case, the said flat/ unit of the complainant was cancelled vide E-mail dated 13.08.2024 in accordance of the Affordable Housing Policy, 2013 due to the default of the complainant, in paying the sale consideration in connivance and collusion with the Respondent No. 2. The

same was also informed by the answering respondent to the complainant vide email dated 09.10.2023, 13.08.2024 and 14.03.2024.

- v. That in case the complainant/ allottee obtains loan facility, the complainant/ allottee is obligated to get the loan disbursed as per the developer's payment plan and to make payment of the due installments as per the payment plan, in case of any delay in disbursement by the bank due to any reason whatsoever. Therefore, the complainant has not complied with the terms of the builder buyer agreement as well as the tripartite agreement executed between the complainant and both respondents and due to the compelling circumstances, the builder/ answering respondent was constrained to cancel the allotment of the complainant's flat under the Affordable Housing Policy, 2013.
- vi. That no cause of action arises in favour of the complainants as alleged herein in the present complaint and therefore, the present complaint is liable to be dismissed for the lack of cause of action as alleged herein.
7. 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 on the basis of these undisputed documents and submission made by the parties.

E. 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.

E.I Territorial jurisdiction

9. 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

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.

F.I Direct the respondent to set aside the illegal order of the respondent canceling the allotment of the allottee/complainant passed in violation of the specific policy guidelines of the State.

F.II Direct the respondent to regularize the allotment in favour of the allottee/complainant in the interest of Justice.

F.III. Direct the respondent to send further communication to the registered postal address with lack due and simultaneously at the registered e-mail of

the allottee.

F. IV. Direct the respondent to adjust the rate of the flat to the rate that was advertised at the time of the application, i.e., the rate announced on the date of the offer.

12. The above-mentioned relief sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
13. The complainant was allotted unit no. t8-601 on 6th floor in tower 8 in the project "Tathastu I" by the respondent/builder under the Affordable Group Housing Policy 2013. Vide allotment letter dated 30.08.2023. No sale consideration is mentioned anywhere in the documents available on the record. No buyer's agreement is executed between the parties till date. As per the Affordable Group Housing Policy 2013, the possession of the unit was to be offered with 4 years from approval of building plans (23.01.2023) or from the date of environment clearance (09.02.2023). Therefore, the due date of possession is being calculated from the date of environmental clearance, being later. Therefore, the due date of possession comes out to be 09.02.2027. The complainant has paid a sum of Rs.10,13,578/-. The complainant is willing to retain the allotted unit in question other reliefs mentioned in the order above.
14. The respondent states that the demand letters/reminders were sent to the complainant on 20.04.2024,23.05.2024,05.08.2024 but the complainant has not made any payment further hence the unit of the complainant has been cancelled on 05.08.2024 and an amount of Rs. 9,61,703/- has been refunded to the complainant. Upon this, the complainant submitted that the complainant has not received any demand letter on their address and she has

communicated the same to the respondent vide many emails at page 39 on 13.08.2024.

15. Now, the question before the Authority is whether this cancellation letter dated 05.08.2024 and the publication for list of defaulters in the newspaper dated 05.08.2024 is valid or not. According to Clause 5(iii)(i) of the Affordable Group Housing Policy, 2013 which produce as under:

*"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. It is observed that the respondent has stated that reminder/demand letters were sent to the complainant on 20.04.2024, 23.05.2024, 05.08.2024 but the complainant has not made any payment and after this published a notice in the newspaper on 05.08.2024, and thereafter a notice of final reminder cum cancellation was sent by the respondent on 05.08.2024.

17. However, as per Clause 5(iii)(i) of the Affordable Group Housing Policy, 2013, reproduced hereinabove, it is clearly stipulated that after publication of the list of defaulters in the newspaper, a period of 15 days is required to be granted to the concerned allottee to clear the outstanding dues, failing which the allotment is liable to be cancelled.

18. In the present case, the respondent published the list of defaulters in the newspaper on 05.08.2024, wherein the name of the complainant was reflected. It is further observed from the record that the allotment of the unit in question was cancelled vide letter dated 05.08.2024.

19. After perusal of the documents available on record, it becomes apparent that the date of publication of the list of defaulters and the date of cancellation of the allotment is the same. Such action on the part of the respondent is in clear contravention of Clause 5(iii)(i) of the Affordable Group Housing Policy, 2013, which mandates that a period of 15 days must be granted to the allottee after publication of the defaulters' list before any action for cancellation of the allotment can be taken.
20. It also important to note that the there is no documentary proof submitted by the respondent with regard to the reminder/demand letters which can ascertain that the same was sent to the complainant for the payment of outstanding dues. To ascertain the cancellation the same was required to be submitted by the respondent. However, the same is not on record. The complainant itself has stated the same. Therefore, the action of the respondent in cancelling the allotment is arbitrary, unjustified. Consequently, the cancellation done by the respondent in this case invalid and is hereby set aside.
21. In view of the same, the respondent/promoter is directed to restore the allotted unit of the complainant. It is also evident from the record that the respondent has received substantial payment from the complainant without executing the Builder Buyer Agreement and in the absence of any agreed payment plan. Such actions are in violation of the principles of fair practice and legal obligations under the applicable housing regulations.
22. Further, during proceedings dated 27.01.2026, the counsel for the respondent has stated that after cancelling the unit of the complainant in the present case, the respondent has refunded an amount of Rs 9,61,703/- to the complainant. Further as per section 19(6) & 19(7) of Act of 2016, the allottee

is under obligation to make payments towards consideration of allotted unit as per agreement to sale once executed.

23. The respondent is also directed to raise demand for the payments on the correct email address and postal address given by the complainant as per the applicable rates when the allotment was made in favour of the complainant as per the Affordable Group Housing Policy, 2013.

F.V. Direct the respondent to compensate the complainant by paying interest and reasonable compensation due to the mental harassment of wrongful act of the respondent.

24. The complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s 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.

G. Directions of the Authority

25. Hence, the Authority hereby passes this order and issue the following directions under Section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act:

- i. The cancellation letter dated 05.08.2024, is not valid and is hereby set aside. Consequently, the respondent/promoter is directed to reinstate the allotment of the complainant's unit and take necessary steps to execute the Builder Buyer Agreement forthwith, in accordance with law.

- ii. The complainant is directed make the outstanding payment if any as per the agreed Affordable Housing Policy, 2013 within a period of one month.
- iii. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.80% by the respondent/promoter as per section 2(za) of the Act.
- iv. The respondent shall not charge anything from the complainant which is not the part of the Affordable Housing Policy, 2013 as well as buyer's agreement.

26. The complaint stand disposed of.

27. File be consigned to registry.



(Phool Singh Saini)

Member



(Arun Kumar)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated:27.01.2026