

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

Complaint no.: 4598 of 2024
Date of complaint: 18.09.2024
Date of decision: 07.04.2026

Renu Upadhyay
R/o: 505 Panchmarhi Tower, Kaushambi
Ghaziabad

Complainant

Versus

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

State Bank of India
Regd. Office At: Rama Complex Badshahpur,
Sohna Road, Badshahpur

Respondents

CORAM:
Sh. Arun Kumar

Chairman

APPEARANCE:
Rishabh Gupta (Advocate)
Shri Rahul Mangla (Advocate)
None

Complainant
Respondent No. 1
Respondent No. 2

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 of the project	"Tathastu I", Sector-5, Tehsil Sohna, Gurugram, Haryana
2.	Total area of the project	2.60 acres
3.	Nature of the project	Affordable Housing Policy
4.	DTCP license no.	189 of 2022 dated 16.11.2022
5.	RERA Registration no.	20 of 2023 dated 30.01.2023
6.	Application dated	24.04.2023 [Stated by the complainant at Page 07 of complaint]
7.	Allotment letter	24.04.2023 [Pg. 25 of complaint]
8.	Unit no.	T6-103, 1 st Floor, Tower-6 [Pg. 25 of complaint]
9.	Area of the unit	645.818 sq. ft. [Pg. 25 of complaint]
10.	Tripartite agreement	03.10.2023 (Page 78 of the complaint)
11.	Date of execution of BBA	26.06.2023

		[Pg. 27 of complaint]
12.	Possession clause	<p>Clause 7.1</p> <p><i>The Promoter assures to handover possession of the Plot/Unit/Apartment for Residential / Commercial Industrial/IT/any other usage (as the case may be) along with parking (if applicable) as per agreed terms a conditions unless there is delay due to "force majeure", Court orders, Government policy/guidelines, decisions affecting the regular development of the real estate project. If, the completion of the Project is delayed due to above conditions, then the Allottee agrees that the Promoter shall be entitled to the extension of time for delay of possession of the Plot/Unit/Apartment for Residential /Commercial/Industrial /IT/ any other usage (as case may be).</i></p> <p style="text-align: right;"><i>(Emphasis supplied)</i></p>
13.	Possession clause of Affordable Housing Policy	<p>[Page 39 of complaint]</p> <p>(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]</p>
14.	Date of environment clearance	<p>09.02.2023</p> <p>(As information provided by the planning branch)</p>
15.	Building Plans	<p>23.01.2023</p> <p>(Information provided by the planning branch)</p>

16.	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)
17.	Payment Plan	Construction Linked [Page 54 of complaint]
18.	Sale consideration	Rs.25,51,631/- (exclusive of taxes) [As mentioned in buyer's agreement at page 33 of complaint]
19.	Total amount paid by the complainant	Rs. 9,56,861/- [As per receipts at page 56-62 of complaint]
20.	Demand/ reminder letters dated	14.03.2024, 20.04.2024, 24.05.2024, 05.08.2024 [Page 16-17 of reply]
21.	Publication dated	05.08.2024 [Note: Page 18 of reply]
22.	Cancellation letter dated	05.08.2024 [As per page 63 of complaint]
23.	Offer of possession	Not offered
24.	Occupation certificate	Not obtained

B. Facts of the complaint

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

- i. That the respondent no. 1 had advertised about their Affordable Housing project under name and style "TATHASTU I" situated in revenue estate of Village Sohna, Sector- 5 Tehsil Sohna, Gurugram alleging to be consisting of many advance technologies and amenities/ infrastructures. Pursuant to the lucrative offer and strong market hold of respondent no. 1, the complainant had shown interest in the said project and agreed to purchase a flat in the said project. The said project is also registered before the HARERA vide registration no. 20 of dated 31.1.2023. The registration shall be valid from a period commencing from 30.01.2023 till 14.11.2027.
- ii. That respondent no. 1 had invited application for booking in their Affordable Housing Project and vide application No. TAPP/84677/23-24 dated 24.4.2023, and accordingly, the complainant applied for booking of the flat. As part of the process, the complainant was also required to pay a sum of Rs. 1,22,705/- along with the application for booking in the said Affordable Housing Project. Accordingly, the complainant paid the said booking amount along with its booking application on 24.4.2023. The draw was conducted in presence of Officials of Authority constituted by State of Haryana wherein the complainant was successfully allotted unit bearing no. T-6, 103, having carpet area 645.818 sq. ft on floor 1 in tower no. - t-6 of the said project on the said draw.
- iii. That the allotment letter dated 24.4.2023 was issued by respondent no. 1 alleging the apartment booked as T-6, 103, having carpet area 645.818 sq feet of floor 1 in tower no. - t-6, at the rate of Rs. 3800 per sq feet as basic sale price and balcony area of 72.259 sq. ft at the rate of Rs. 1000/- per sq ft total sale consideration amounting to Rs. 25,51,631/-. The builder buyer agreement got executed and registered on 26.6.2023 between the parties alleging the T-6, 103, having carpet area 645.818 sq ft of floor 1 in tower no.

- t-6, at the rate of Rs. 3800 per sq feet as basic sale price and balcony area of 72.259 sq ft at the rate of Rs. 1000/- per sq ft as mentioned in the builder buyer agreement. The complainant paid total Rs.6,38,498/- (from her pocket) (Including all Government taxes and charges as and when demanded by respondent no. 1). The Total Sale consideration price of the said unit is Rs. 25,51,631/- (excluding Taxes only). The remaining amount to be paid by the complainant as per Annexure B of the agreement mentioned at page no. 25 of the agreement.

iv. That, after the registration of BBA, the complainant received a demand letter dated 10.08.2023 from respondent no. 1 for a sum amounting to Rs.3,18,954/- The complainant, with the expectation of timely delivery of possession of the said flat, the complainant decided to obtain a home loan against the said unit from the State Bank of India (the respondent no. 2). Upon completing due formalities, respondent no. 2 sanctioned a home loan amounting to Rs.22,96,000. Since the complainant now had a home loan sanctioned by respondent no. 2, the payment towards the said demand letter dated 10.08.2023 was paid and disbursed Rs. 3,18,954/- on 04.10.2023 by respondent no. 2 on behalf of complainant to respondent no. 1 in lieu of the said demand letter dated 10.08.2023.

v. That, respondent no. 1 issued a subsequent demand letter dated 14.03.2024 requesting thereby a sum amounting to Rs.3,18,954/- on completion of 1/3 of super structure However, respondent no. 2 denied to process payment towards the said demand by respondent no. 1 because as per respondent no. 2, respondent no. 1 had not carried out the construction of the said project as per the construction plan attached the with the builder buyer agreement. Despite respondent no. 2 denying the demand of respondent no. 1, respondent no. 1 kept issuing several reminders to the

complainant for payment towards the demand letter dated 14.03.2024 and kept threatening the complainant that if the complainant will not make the payment towards the said demand, respondent no.1 will cancel complainant's allotment of the said flat unit.

- vi. That, it has been specifically mentioned in clause 1.4 at page 6 of the agreement that "I...The allottee shall make the payment as per the payment plan set out in Schedule B (Payment plan)." It is also pertinent to mention herein that as per clause 1.10 of the agreement it has been specifically mentioned that "II. The balance 75% amount of the flat cost will be recovered as per the stages of construction to be prescribed in Schedule B". As per clause 7.1 of the builder buyer agreement, the possession was to be handed over as per prescribed under rule 2 (1) (f) of Rules 2017. Thus, keeping in view the HARERA Registration Certificate, the possession to the complainant was to be handed over on or before 14.11.2027 as per builder buyer agreement.
- vii. That the project "TATHASTU -I", contains in all 8 towers out of which Tower-3 has been constructed upto 19" floor superstructure, tower-4 has been constructed upto 18 floor superstructure and tower-8 has been constructed upto 8" floor superstructure. The said level of construction has also been confirmed by the Bank Inspection report dated 14.8.2024 but there is no construction/ development in Tower-6 as per site visit by the complainant. The said construction was not completed when the demand was raised rather it was completed after raising the demand.
- viii. That, officials of respondent no. 2 as well as complainant visited the site/ spot where he was shocked to see that construction has been stopped by respondent no. 1 and by no stretch of imagination there is hope for completion of project within the next 7-9 years. Without completing the

construction of the said project as per the construction plan attached with the bba, respondent no. 1 is bent upon demanding the outstanding money upon completion of 1/3rd of the super structure from the complainant, which is illegal, arbitrary, vague and unjustified in the eye of law. The construction of the project has been halted in Tower- 6 and the respondent is demanding the amount more than the construction done. This act and conduct of the respondent company shows that major deficiency of the service and unfair trade practice opted to make fool of the gullible customers by delaying the construction of the project.

ix. There is no construction status specifically on Tower- 6 till this slab and the respondent has issued illegal and indefinite demand against the complainant which is liable to be set aside. The same has also been affirmed by the inspection reports of respondent no. 2 whose officials visited the spot and inspected the site construction. Accordingly, respondent no. 2 has denied to disburse the amount to respondent no. 1 as per the demand letter dated 14.03.2024 of which respondent no. 1 is taking undue advantage of dominant position, is bent upon to cancel the unit.

x. That complaint had obtained loan to purchase the said flat and to make timely payment with the intention to get timely delivery of possession. On demand letter dated 14.03.2024 issued by respondent no. 1, the complainant wrote an email dated 23.04.2024 to respondent no. 2 for disbursement of outstanding payment wherein the Bank has denied vide email dated 23.04.2024, to disburse the amount with the reasons as " With reference to the trail, we submit that as per the latest inspection report by our staff, the construction has not reached the desired level as per your demand for Tower-2, TATHASTU-1. Therefore, the payment cannot be processed." Thus, there is no malafide intention of the complainant for not paying the

outstanding amount rather, it is respondent no. 1 who had failed to perform its part of contract and failed to adhere with the relevant terms and conditions of builder buyer agreement as well as Affordable Housing Scheme 2013 in demanding payment from the complainant and taking undue advantage of escalation in price at the said area, is bent upon to cancel the unit arbitrary and unilaterally on the ground of non-payment of outstanding dues and is threatening to create third party right in the said unit.

- xi. That the complainant is/ has always been ready and willing to perform his part of contract as per terms of the builder buyer agreement but it was the respondent company who has failed to perform its part of contract by not constructing the Tower- 6 at desired level and raising demand of that level of construction illegal, and arbitrary. The said demand raised by respondent no. 1 is against the principle of natural justice and against the law and facts. There is no default in payment to be paid by the complainant as the respondent no. 1 has not completed the project as per stipulated time mentioned in the builder buyer agreement and as per Affordable Housing Scheme 2013.
- xii. That the demand raised by respondent no. 1 is completely vague, illegal and not as per the level of construction but being in a dominant position, the respondent company is bent upon to cancel the unit and refunding the amount to the other allottees. The builder buyer agreement is registered document before the Sub- Registrar of the Concerned area and it cannot be cancelled without cancelling the said agreement. The said agreement can only be cancelled by Civil Court only. It is imperative to mention here that the complainant is seeking possession of the unit with a dream to have one residential property at City Gurugram but the act and conduct of the

respondent company is completely against the terms and condition of the agreement and Affordable housing scheme 2013.

xiii. That, the respondent no. 1 ultimately issued a cancellation letter dated 05.08.2024 to complainant to the effect stating that if the complainant fails to make the payment towards the said demand letter dated 14.03.2024 within a period of seven (7) days from the date of issuance of the said cancellation letter. It is pertinent to mention that to the surprise of the complainant, though the said cancellation letter is supposedly issued on 05.08.2024 by the respondent no. 1, however, a copy of the said cancellation letter was not provided by respondent no. 1 to the complainant over the email (like every other correspondence they have made) and the physical copy of the said cancellation letter was received by the complainant on 12.08.2024, leaving no opportunity for the complainant to take any action for avoiding the cancellation of allotment of the said flat unit. Accordingly, respondent no. 1 issued a cancellation notice dated 13.08.2024 upon the complainant thereby cancelling the allotment of the said flat unit. It is pertinent to note that the said cancellation notice was communicated by respondent no. 1 to the complainant over the email, however, respondent no. 1 failed to provide a copy of the said cancellation letter dated 05.08.2024 to the complainant over email. This failure on part of respondent no. 1 is shocking, surprising and reflects the malice and ill intentions of respondent no. 1.

xiv. That the complainant had also wrote to respondent no. 1 vide email dated 13.08.2024 for not cancelling the allotment of said unit on the ground that the cancellation is illegal and arbitrary. The complainant also wrote an email dated 21.08.2024 to respondent no. 2 thereby intimating respondent no. 2 that they will initiate appropriate action against respondent no. 1 and

further requested to respondent no. 2 not to surrender the unit to the builder/ respondent no.1.

xv. That the complainant after exhausting all her patience had lastly contacted to the respondent representative to set aside the said cancellation notice dated 13.08.2024 and restore the unit to its original number but no fruitful answer has been replied by the respondent and its officials. Hence, the cause of action has arisen to the complainant to file the present complaint before the Hon'ble Authority

C. Relief sought by the complainant: -

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

- i. Direct the respondent to set aside cancellation letter dated 13.08.2024.
- ii. Direct the respondent to not to create third party rights till final completion of the project.
- iii. Direct the respondent to restore the unit to its original number and issue demand as per the bba.

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 respondent no. 1 .

6. The respondent no.1 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 05.08.2024 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. That 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 cum demand letter dated 14.03.2024. Moreover, the answering respondent had issued multiple reminders on 20.04.2024 and 29.04.2024 against the outstanding due installments to the complainant but the complainant had failed to make timely payments of the due installments. Subsequently, the answering respondent had issued a final reminder cum cancellation notice on 05.08.2024 after the publication of a public notice in the newspaper 'Punjab Kesari' on 05.08.2024 by the answering respondent seeking the payment of the due installments from the complainant. Consequently, the answering respondent had issued a cancellation letter against the subject flat no. t6-103, on 1st floor, tower – t-6 in the project tathastu – i, situated in the revenue estate of village Sohna, Gurugram, Haryana, to the complainant vide email dated 13.08.2024 as per the mutually agreed terms and conditions of the registered builder buyer agreement/ agreement for sale dated 08.05.2023 and 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 cum demand letter dated 14.03.2024.
- iii. That the complainant himself accepted the cancellation letter alongwith the requisite communications held between the complainant and the answering respondent. The complainant accepted the refund amount from the Answering Respondent and thereafter filed the present complaint. It is further pertinent to mention here that after the last date of hearing, the complainant in order to make the present complaint maintainable again made the payment towards the cancelled unit. Thus, it is crystal clear that once the complainant has accepted the refund amount in that circumstances the unit of the complainant cannot be revived.
- iv. 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 answering respondent. The said banks along with allottees / buyers of the said units have duly satisfied and honored the demand letter of the answering 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.
- v. 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 08.05.2023, the builder/ answering 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 05.08.2024 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.

vi. 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.

vii. That no cause of action arises in favour of the complainant 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. Reply by the respondent no.2

8. The respondent no.2 has contested the complaint on the following grounds:
- That the respondent no.2 is the Bank which has provided the loan to the complainant against the residential accommodation which is to be constructed by respondent no.1. The loan was provided by the bank after the execution of tripartite agreement.
 - The payment schedule of the builder mentioned that the payments are to be made partially as per the payment plan and the respondent bank had agreed to pay in the same manner. According to the agreement the payment plan was as follows:

S.No	Milestone	Installment to be paid
1	At the time of booking	5% of Total Unit Cost
2	At the time of allotment	20% of Total Unit Cost
3	On start of excavation	12.5% of Total Unit Cost
4	On completion of 1/3 rd of super structure	12.5% of Total Unit Cost
5	On completion of 2/3 rd super structure	12.5% of Total Unit Cost
6	On completion of super structure	12.5% of Total Unit Cost
7	At the time of MEP	10% of Total Unit Cost
8	At the time of Finishing	10% of Total Unit Cost
9	On offer of possession	5% of Total Unit Cost

- The loan amount of Rs. 20,00,000/- was sanctioned against the flat no. 103 tower t-6 1th floor, tathastu I, Sector 5, Sohna Gurgaon vide sanction letter dated 30.09.2023.

- iv. That the respondent no.1 vide demand letter dated 14.03.2024 demanded payment for having reached a specific construction level. The respondent bank however did not disburse the amount demanded in demand letter dated 14.03.2024 by the respondent no.1. The answering respondent bank denied the disbursement of amount vide email dated 23.04.2024 to the complainant because the respondent no.1 had raised fake demand since the construction was not yet completed as per the required payment plan by the respondent no.1 in the respective tower T-6 where the complainant has the property.
- v. The bank has also shared the photographs and the site report with the complainant, copy of which has been annexed by the complainant only.
- vi. That the bank has also conveyed to the respondent no.1 on email that the complainant is not wanting cancellation of the flat and thus the allotment should not be cancelled, and the loan account cannot be closed.
- vii. That the answering bank has done several communications with the builder and the complainant. The action of the respondent no.1 for issuance of demand letter, cancelling the allotment of the complainant for not making payment of the demanded amount not actually due is illegal and thus the appropriate orders are required to be passed against the respondent no.2.

F. Jurisdiction of the Authority

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

F.1 Territorial jurisdiction

10. 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.

F. II Subject matter jurisdiction

11. 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.

12. 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 to set aside cancellation letter dated 13.08.2024.

G.II Direct the respondent to not to create third party rights till final completion of the project.

G.III Direct the respondent to restore the unit to its original number and issue demand as per the bba.

13. 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.
14. The complainant was allotted unit no. t6-103 on 1st floor in tower 6 in the project "Tathastu II" by the respondent/builder for a total sale consideration of Rs.25,51,631/- under the Affordable Group Housing Policy 2013. The buyer's agreement was also executed on 26.06.2023 interse parties. That 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.9,56,861/-. The complainant is willing to retain the allotted unit in question.
15. The respondent states that the unit has been cancelled after issuance of demand letter dated 14.03.2024, 20.04.2024, 24.05.2024, 05.08.2024. Upon this, the complainant submitted that the cancellation done by the respondent is illegal and the construction is not yet done in Tower 6 and this is the reason the respondent no.2 i.e the Bank has not disbursed any loan amount . Yet the respondent has cancelled the unit.
16. 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."*

17. It is observed that the complainant failed to pay the remaining amount as per the demand letter dated 14.03.2024, 20.04.2024, 24.05.2024 and 05.08.2024 served upon the complainant. and after this published a notice in the newspaper on 05.08.2024, and thereafter a notice for cancellation by the respondent on 05.08.2024.
18. 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.
19. 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. The complainant has also stated that the respondent vide email dated 13.08.2024 sent an email that the unit is cancelled as per the Affordable Housing Policy.

20. 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. Also, the email of 13.08.2024 is not in accordance with the policy as still the time period of 15 days was not over. Therefore, the action of the respondent in cancelling the allotment on the very same day as the publication of the defaulters' list is arbitrary, unjustified. Consequently, the cancellation done by the respondent in this case invalid and is hereby set aside.
21. Therefore, the respondent is directed to restore the unit allotted 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.

H. Directions of the Authority

22. 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. The respondent is directed to restore the unit allotted to the complainant.
 - ii. The complainant is directed make the outstanding dues along with prescribed rate of interest within 90 days from the date of this order as per the agreed Affordable Housing Policy, 2013.

- 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(z) of the Act.
 - iv. The respondent will not create any third-party rights in respect of the said unit.
 - v. The respondent is also directed to handover the possession to the complainant after obtaining occupation certification from the competent Authority.
 - vi. 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.
23. The complaint stand disposed of.
24. File be consigned to registry.



(Arun Kumar)

Chairman

Haryana Real Estate Regulatory Authority,
Gurugram

Dated: 07.04.2026