BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	:	**2471 of 2025**
Date of filing:		**23.05.2025**
Date of decision	:	**08.09.2026**

Nanak Lal Arora
R/o House No. A-93, Radhey Shyam Extension, Sector-90, Gurugram

Complainant

Versus

M/s BDInfradevelopers Pvt. Ltd.
Regd. Address at. Unit No. 131, Vatika Tower-A, Sector 54, Gurugram.

Respondent

CORAM:
Arun Kumar — **Chairman**

APPEARANCE:
Shri Dinesh Kumar Dakoria — Advocate for the complainant
Shri Shivani Dang — Advocate for the 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

provision of the act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se the parties.

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.	Particulars	Details
1.	Name of the project	"Ultimus"
2.	Location of the project	Sector 90, Gurgaon, Haryana
3.	Nature of the project	Affordable Group Housing Colony
4.	Project Area	**5 acres**
5.	DTCP license no. and validity status	30 of 2019 dated 11.09.2019
6.	RERA Registered	72 of 2019 dated 23.12.2019 valid upt0 01.01.2024
7.	Allotment cum demand letter	18.02.2020
8.	Unit no.	A1-12A06, tower A1, 13th floor (page 41 of complaint)
9.	Area admeasuring	616.11 Sq.ft sq. ft. (carpet area) 99.64 (balcony area) (page 41 of complaint)
10.	Date of execution of buyer's agreement	27.10.2020 [Page 40 of complaint]
11.	Possession Clause	5.2 The developer shall offer possession of the said flat to the allottee within a period of 4 years from the date of approval of building plans or grant of environment clearance, whichever is later.
12.	Environment clearance	Not provided
13.	Building plan approvals	11.09.2019 (page 41 of complaint)
14.	Due date of possession	11.03.2024 (calculated from the date of building plan approvals in the absence of environment clearance) (6month grace period is allowed in lieu of covid-19)

15.	Total sale consideration	Rs.25,39,398/- (as per applicant ledger, page 61 of complaint)
16.	Amount paid by the complainant	Rs.22,21,976/- paid till 16.03.2023 (as per applicant ledger, page 61 of complaint) (87.5%)
17.	Reminder	28.05.2020, 05.11.2020
18.	Pre-cancellation	19.11.2020 (page 39 of reply)
19.	Reminder/demand letter	18.01.2021, 17.02.2021 (page 42 of reply)
20.	Pre-cancellation	26.02.2021 (page 45 of reply)
21.	Reminder	18.08.2021 (page 50 of reply)
22.	Pre-cancellation	03.09.2021 (page 53 of reply)
23.	Publication	07.10.2021 (page 56 of reply)
24.	Final cancellation	08.10.2021 (page 58 of reply)
25.	Reminder	14.07.2022, 17.08.2022 (page 66 of reply)
26.	Pre-Cancellation	12.09.2022 (page 71 of reply)
27.	Demand/reminder	16.01.2023, 21.2.2023, 17.06.2023
28.	Pre-cancellation	27.06.2023 (page 84 of reply)
29.	Newspaper publication	14.07.2023 (page 87 of reply)
30.	Final cancellation	14.07.2023 (page 88 of reply)
31.	Refunded amount through cheque dated 04.11.2023	21,80,530/- (page 93 of reply)
32.	Occupation Certificate	07.05.2025 (page 96 of reply)

B. Facts of the complaint

I. That the complainant is the victim of illegal cancellation of allotment of affordable Flat by the respondent builder despite receipt of almost full payment, consequently the present complaint is being filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016

("RERA Act") read with Rule 28 of the Haryana Real Estate (Regulation and Development Rule), 2017 for violation of Section 11 (4) (a) of the Act and praying for issuance of appropriate directions to the Respondent Builder to set-aside the cancellation letter dated 14.07.2023 and restore the allotment of the subject Flat and handover the possession of the same in terms of the Flat Buyer's Agreement dated 27.10.2020 within time bound manner and further delay and also to pay cost of litigation and delay possession charges. The copy of illegal Cancellation Letter dated 14.07.2023 is annexed as **Annexure-A** for the kind perusal of the Hon'ble Authority.

II. That the complainant is a law abiding citizen of India and permanent resident of the abovementioned address.

III. That the respondent is a real estate developer company having its registered office at the above mentioned address.

IV. That on 19.08.2013, the Government of Haryana notified the comprehensive "Affordable Housing Policy 2013" under the provisions of Section 9A of the Haryana Development and Regulation of Urban Areas Act, 1975 with the aim and object to provide houses to the poor section of society in the urban areas on "**affordable prices**" "**predefined size**" within a "**specified time-frame**", wherein it is categorically mentioned in **Clause No. 5 (iii) (b)** that *"All flats in a specific project shall be allotted in one go within four months of sanction of building plans or receipt of environmental clearance whichever is later and possession of flats shall be offered within the validity period of 4 years of such sanction/ clearance. Any person interested to apply for allotment of flat in response to such advertisement by a coloniser may apply on the prescribed application form alongwith 5% amount of the total cost of the flat. All such applicants shall*

be eligible for an interest at the rate of 10% per annum on the booking amount received by the developer for a period beyond 90 days from the close of booking till the date of allotment of flat or refund of booking amount as the case may be. The applicant will be required to deposit additional 20% amount of the total cost of the flat at the time of allotment of flat. ***The balance 75% amount will be recovered in six equated six monthly instalments spread over three-year period, with no interest falling due before the due date for payment. Any default in payment shall invite interest @15% per annum.***" The copy of Affordable Housing Policy is annexed as **Annexure-B** for the ready reference of the Hon'ble Authority.

V. That in the year 2019, the respondent launched a residential affordable housing project under the name **'ULTIMUS'** situated at Village Badha, Sector-90, Tehsil-Manesar, District-Gurugram, Haryana as per the License No. 30 of 2019, issued by the Director General, Town & Country Planning (DTCP), Haryana. Further, the building plans of the project was approved by the DTCP vide Memo No. ZP-1325/AD(RA)/2019/22280 dated 11.09.2019. The copy of License No. 30 of 2019, issued by the Director General, Town & Country Planning (DTCP), Haryana is annexed as **Annexure-C** for the ready reference of the Hon'ble Authority.

VI. That vide Registration No. 72 of 2019 dated 23/12/2019, the aforesaid Affordable Housing Project got registered by the Respondent Builder from HRERA. The copy of HRERA Registration Certificate is annexed as **Annexure-D** for the ready reference of the Hon'ble Authority.

VII. That the respondent published several attractive advertisements in various newspapers, digital platforms and roadside hoardings pertaining

to the aforementioned project and invited the applications for allotment of affordable flats from the general public.

VIII. That pursuant to the aforesaid advertisement, the Complainant applied for allotment of a flat in the aforesaid project vide Application No. 2793 and accordingly paid the requisite 5% amount i.e. Rs. 1,25,713/- of total cost of flat i.e. Rs. 25,14,261/- along with the application.

IX. That after conducting draw of lots, the respondent allotted the Flat No. 12A06, 13th Floor, Tower A1 having a carpet area of 616.11 sq. ft. and a balcony area of 99.642 sq. ft. along with a two-wheeler parking space vide Allotment-cum-Demand Letter dated 17.02.2020. It is submitted that through the aforesaid Allotment-cum-Demand Letter, a sum of Rs. 5,09,138/- was demanded by the respondent and the same was deposited by the complainant vide cheque no. 140066 dated 10.06.2020 accordingly. The copy of Allotment-cum-Demand Letter dated 17.02.2020 is annexed as **Annexure-E** for the kind perusal of the Hon'ble Authority.

X. That as per the provisions of The Real Estate (Regulation & Development) Act, 2016, the respondent executed a Flat Buyer's Agreement with the complainant vide registration no. 2973 dated 27.10.2020 duly registered in the office of Sub-Registrar, Manesar. It is relevant to mention herein that the **Payment Plan** as well as **Specifications of the Flat** is the parts and parcel of the said agreement. It is submitted that the terms and conditions of the Flat Buyer's Agreement dated 27.10.2020 are equally applicable upon both the complainant and the respondent builder. The copy of Flat Buyer's Agreement dated 27.10.2020 is annexed as **Annexure-F** for the kind perusal of the Hon'ble Authority.

XI. It is admitted fact and also available on record that as per the aforesaid Flat Buyer's Agreement, the total cost of the flat was **Rs. 25,14,261/-**, out of which **Rs. 24,42,897/- (or say 97.16% amount)** has already been paid by the complainant to the respondent in various installments as per demands raised by the respondent time to time. The only a meagre amount of Rs. 71,364/- is due on the part of complainant. However, the respondent cancelled the allotment of flat of the complainant illegally and fraudulently vide Cancellation Letter dated 14.07.2023. The account ledger showing receipt of amount of Rs. 22,42,897/- and further acknowledgement of Rs. 2,00,000/- vide email dated 21.03.2023 are annexed as **Annexure-G & H** for the kind perusal of the Hon'ble Authority.

XII. The cancellation of the allotment is not only illegal but also classic example of unfair and deceptive practice on the part of respondent builder. The cancellation letter is liable to be set aside on the following *inter alia* grounds;

A. **Because,** the cancellation letter is contrary to the mechanism provided by the Government of Haryana in the comprehensive "Affordable Housing Policy 2013" issued under the provisions of Section 9A of the Haryana Development and Regulation of Urban Areas Act, 1975 with the aim and object to provide houses to the poor section of society in the urban areas on "**affordable prices**" "**predefined size**" within a "**specified time-frame**", wherein it is categorically mentioned in **Clause No. 5 (iii) (b)** that *"All flats in a specific project shall be allotted in one go within four months of sanction of building plans or receipt of environmental clearance whichever is later and possession of flats shall be offered within the*

validity period of 4 years of such sanction/ clearance. Any person interested to apply for allotment of flat in response to such advertisement by a coloniser may apply on the prescribed application form alongwith 5% amount of the total cost of the flat. All such applicants shall be eligible for an interest at the rate of 10% per annum on the booking amount received by the developer for a period beyond 90 days from the close of booking till the date of allotment of flat or refund of booking amount as the case may be. The applicant will be required to deposit additional 20% amount of the total cost of the flat at the time of allotment of flat. ***The balance 75% amount will be recovered in six equated six monthly instalments spread over three-year period, with no interest falling due before the due date for payment. Any default in payment shall invite interest @15% per annum.***". It is apparent from the said policy that in case of any delay in making the payment of installment by allottee, in that eventuality, the builder is entitled to charge 15% interest for such delayed period. Although, in the present case there is no delay in making the payment of last installment, however, if this authority reached on the conclusion that there was delay on the part of complainant in making the payment of last installment, in that eventuality, the builder can only be awarded 15% interest for such delayed period. Hence, the cancellation of allotment of Flat is absolutely wrong and illegal.

B. **Because,** the cancellation of Unit/Flat is clear-cut violation of the terms and conditions of Flat Buyer's Agreement, wherein at page 8-9, the default and consequences has been mentioned. The relevant

part of the default clause is being reproduced herein for the ready reference of the Hon'ble Authority;

The allottee(s) shall be considered under a condition of default, in the following events:

(i) Allotee(s) fails to make two consecutive payments of the agreed Total Cost, or part thereof, within the time as stipulated in the Payment Plan or does not meet the demand(s) of the Developer in terms of this Agreement,

(ii) Dishonor of any cheque(s), including post-dated cheques, given by the Allotee(s) to the Developer, for any reason whatsoever,

(iii) Failure to execute the Conveyance Deed and any other document required to be executed by the Allottee(s), within such the timelines as stipulated by the Developer and in terms of the Agreement;

(iv) Allotee (s) fails to take possession of the Said Flat, within the time provided in Possession Notice;

(v) Failure to pay any Taxes and other charges including stamp duty, legal charges, registration charges, any incidental charges etc. in terms of this Agreement;

(vi) Any other breach of a provision under this Agreement or the Policy by the Allotee(s).

It is crystal clear from the above clause that the default can only be considered when the allottee fails to make the payment of two consecutive installments, but herein no such default on the part of allotee/complainant, therefore the cancellation clause cannot be invoked by the respondent builder. In fact, the complainant never breached any condition at any point of time, therefore the

cancellation letter is liable to be set aside and the allotment of the Flat is liable to be restored by the Hon'ble Authority.

C. **Because,** the story prepared by the respondent behind issuance of cancellation letter is itself proved false, since it is admitted fact that out of the total demand of Rs. 346,102/- (*having breakup Rs. 3,14,280/- as principal Amount, Rs. 1,571/- as CGST, Rs. 1,571/- as SGST, Rs. 28,680/- as interest*) the respondent builder has already receipt a sum of Rs. 2,00,000/- from the Complainant on 04.03.2023. The said payment of Rs. 2,00,000/- has been duly acknowledged vide email dated 21.03.2023. Therefore, the question of issuance of cancellation letter does not arise. The fraudulent act on the part of respondent builder clearly established from the account statement and the acknowledgement of Rs. 2,00,000/-. Hence, the cancellation letter is liable to be set aside and the allotment of the Flat is liable to be restored by the Hon'ble Authority.

D. **Because,** the reason behind withholding the payment of Rs. 1,46,102/- by the complainant was that the project was far from completion. In fact, construction was going on, licence was expired, RERA Registration was near to expire, progress report of construction was not shown, no occupation certificate obtained, no water connection, no Sewerage connection, No STP, No open Area developed, No Community Center in Oprational etc., even the complainant discussed the aforesaid issues with respondent's CRM Team and they had agreed to receive the aforesaid amount of Rs. 1,46,102/- at the time of offering of possession of the Flat, however they cunningly issued the aforesaid cancellation letter on the ground of delay in making the aforesaid balance payment of Rs. 1,46,102/-

In fact, the complainant could not understand the hidden motive of the respondent builder.

E. **Because,** the respondent builder involved in the unfair and deceptive practices for which the respondent builder is liable to be penalize as per section 7 and 8 of the RERA Act, 2016 and Rules framed thereunder.

F. **Because,** the respondent builder itself defaulted in timely execution of the project. It is submitted that in terms of License and RERA Registration, the project was to be completed by the respondent builder within a period of four years (10.09.2023) from the date commencement i.e. 11.09.2019 (date of sanction of building plan), however the project is still incomplete. Even, the license is lying expired. The RERA Registration was granted on 23.02.2019 and the same was expired on 30.06.2024. The extension of RERA Registration was granted by the RERA Authority for a period of one year which is also near to expire on 29.06.2025, however the project is still incomplete and no facilities and amenities is available in the project. Moreover, the Occupation/Completion Certificate has not been obtained by the respondent builder till date. There is inordinate delay about more than two years in completion of the project. In fact, the respondent builder is still not in position to handover the flats to the allottees. The reality is that the builder has committed wrong with the allottees by not giving the possession of the flat on time, despite receipt of almost full payment, hence the cancellation letter is liable to be set aside and allotment of the Flat is to be restored by the Authority.

G. **Because,** admittedly, there is delay in completion of the project and the respondent builder should have been given delay interest to the complainant allottee, but in contrary, the respondent builder cancelled the allotment of the Flat of the innocent allottee to earn more profit by selling the same to third party on the current market price i.e. more than 60 lakhs. The act and conduct of the respondent builder clearly shows that he is involved in the corrupt practices and unfair real estate business for which the RERA Registration is liable to be revoked and the project is liable to be handed over either to RWA or Government for completion of the same in accordance with Section 7 & 8 of RERA Act.

H. **Because,** the respondent builder has violated its functions and duties provided Under Section 11(4)(a) of the RERA Act, wherein the promoter is required to act in a transparent manner and discharge its duties in good faith within time bound manner, but herein the respondent builder has cancelled the allotment of the Flat of the complainant despite receiving the almost full sale consideration, which constitutes a violation of the statutory provisions imposed under the Act. Hence the cancellation letter is liable to be set aside and allotment of the Flat is to be restored by the Hon'ble Authority.

I. **Because,** the aforesaid act and conduct of the respondent clearly shows that the developer company is involved in unfair trade practice and deceiving the innocent home buyers for which the builder is liable to be punished in accordance with law and the RERA registration is also liable to be revoked by the Hon'ble HRERA Authority as per Section 7 of the RERA Act, 2016.

J. **Because,** the illegal cancellation of allotment was strongly opposed by the complainant by sending an email dated 16.02.2024, even the complainant visited several times in the office of the respondent builder and requested that he never made any default in making the payment and he was ready and willing and still ready and willing. Further, requested to withdraw the illegal cancellation letter and restored the allotment of the Flat, however the respondent builder flatly refused to restore the allotment of the complainant's Flat. Hence the cancellation letter is liable to be set aside and allotment of the Flat is to be restored by the Hon'ble Authority. The printout of email dated 16.02.2024 is annexed as **Annexure-J** for the kind perusal of the Hon'ble Authority.

K. **Because,** no notice was served to the complainant prior issuance of cancellation letter, which is clear-cut violation of the Natural Justice, hence the cancellation letter is liable to be set aside and allotment of the Flat is to be restored by the Hon'ble Authority.

L. **Because,** the cancellation of the allotment of Flat is arbitrary, illegal, unlawful, result of unfair trade practice, due to which the complainant has suffered with mental agony, harassment, and financial loss. Hence the cancellation letter is liable to be set aside and allotment of the Flat is to be restored by the Hon'ble Authority.

M. **Because,** the RERA Act, 2016 was enacted by the Legislature and the RERA authority was stablished for the sole purpose to ensure the sale of plots, apartment or building, as the case may be or sale of real estate project, in efficient and transparent manner and to protect the interest of consumer in the real estate sector and to establish an adjudicating mechanism for speedy redressed of the disputes. It is

submitted that the complainant is the victim of illegal cancellation of allotment of affordable Flat by the respondent builder despite receipt of almost full payment. Hence the cancellation letter is liable to be set aside and allotment of the Flat is to be restored by the Hon'ble Authority.

XII. That the cause of action for filing the present complaint has arisen in favor of the complainant and against the respondent on multiple occasions. The cause of action arose, when the respondent builder promised to hand over the flats within periods of four years but failed to complete the project. The cause of action arose, when the respondent builder raised untimely demands of installment without construction of the building. The cause of action arose, when the respondent builder received almost full amount of **Rs. 24,42,897/-** but failed to deliver the possession of the Flat. The cause of action arose, when the respondent builder issued the cancellation letter dated 14.07.2023 without any reason and in violation of the Flat Buyer's Agreement. The cause of action arose, when the complainant sent email dated 16.09.2024 and requested to withdraw the cancellation letter, but the respondent builder did not pay any heed. The cause of action arose on 22.04.2025, when the complainant requested the respondent builder to take the balance amount of Rs. 1, 46,102/-, but the respondent builder refused the accept the same and stated to collect the cheque of Rs. 21,80,530/- and returned the original documents of the Flat. The cause of action is continued and subsisting.

XIII. In these Circumstances, the complainant is having no other option but to knock the door of this Hon'ble Authority to get justice. Hence this complaint before this Hon'ble Authority.

XIV. That this Hon'ble Authority is having the proper jurisdictions to try and decide the present complaint since the project in question is situated in Sector-90, Village-Badha, District- Gurugram.

3. That there is no other complaint or any other of litigation has been decided or pending between the parties before any court of law.

C. Relief sought by the complainant:

a. To set aside the cancellation letter dated 14.07.2023 issued by the respondent builder, wherein the allotment of Flat No. 12A06, 13th Floor, Tower A1 in the Project named "ULTIMUS" at Sector- 90, Gurugram, Haryana of the complainant has been cancelled and pass the appropriate direction to the respondent builder to restore the allotment of subject Flat/Unit.

b. To direct the respondent to hand over the physical possession of the subject flat to the complainant in accordance with the terms and conditions of the Flat Buyer's Agreement within time bound manner and in case of delay to pay interest/compensation to the complainant for the delay in handing over the possession of the flat as per Section 18(1) of the RERA Act, 2016 and/or at such rate and for such period as this Hon'ble Authority may deem just and proper.

c. To restrain the respondent from creating any third-party rights or interest in respect of the said flat during the pendency of the present complaint.

d. To initiate suo-moto complaint under section 7 of the RERA Act, 2016 for revocation of the RERA registration for blatant violations of the provisions of RERA Act, 2016 and Rules framed thereunder, since the

respondent builder is involved in unfair and deceptive practice and cheating with the innocent allottees like complainant.

e. To direct the respondent to pay Rs. 10,00,000/- to the Complainant towards pain, suffering, mental agony and harassment etc. suffered by him.

f. To direct the respondents to Pay Rs. 1,50,000/- towards the legal and litigation expenses.

D Reply by the respondent

The respondent has contested the complaint on the following grounds:

1. That the complainant has not approached this Hon'ble Authority with clean hands and has intentionally suppressed and concealed the material facts in the present complaint. The present complaint has been preferred by the complainant maliciously within ulterior motive and it is nothing but a sheer abuse of the process of law. The true and correct facts are as follows:-
2. That the M/s B.D. Infradevelopers LLP (hereinafter called 'the builder') is reputed real estate builder having immense goodwill, comprised of law abiding and peace loving persons and has always believed in satisfaction of its customers.
3. That the builder undertook the work of construction and development of residential affordable group housing project namely, 'Ultimus' Sector 90, Gurugram (hereinafter called 'said project'). After the Complainant checking the veracity of the said project, the complainant applied for allotment of an affordable residential apartment vide booking application form dated 23.12.2019 along with booking application amount of Rs. 1,25,713/-. That after conducting draw of lots, the builder allotted flat bearing no. A1-12A06, Tower A1, 13th Floor having a carpet

area of 616.11 sq. ft. and balcony area of 99.642 sq. ft. along with one two wheeler open parking space vide allotment letter dated 18.02.2020 and a demand of Rs. 5,09,138/- was raised from the complainant. Upon failure of the complainant to comply with the said demand letter, the builder was constrained to send reminder dated 28.05.2020. Thereafter, the complainant paid a sum of Rs. 5,09,138/- vide cheque bearing no. 140066 dated 10.06.2020.

4. That as per the Payment Plan stipulated in the Builder Buyer's Agreement (BBA) and in accordance with the Affordable Housing Policy, 2013, the Complainant was required to pay 5% of the total cost of the unit at the time of application. Upon allotment of the unit, an amount equivalent to 20% of the total cost of the unit becomes payable, while the remaining 75% of the total cost is to be paid in 6(six) equated half-yearly instalments @ 12.5% each, spread over a period of 3(three) years. Accordingly, the demands were duly raised from the Complainant in consonance with the said Payment Plan.
5. That the builder raised 1st instalment demand of Rs.3,17,425/- vide demand letter dated 14.07.2020 within 06 months from the date of allotment. Email dated 18.07.2020 was also sent by the builder to the complainant demanding the said amount of Rs. 3,17,425/-. Upon failure of the complainant to pay the said amount, the builder was constrained to send reminder dated 05.11.2020 and pre-cancellation letter dated 19.11.2020. The builder also sent the said pre-cancellation letter vide email dated 19.11.2020.
6. That the builder raised the 2nd instalment demand in respect of the next instalment within 12 months i.e. vide demand letter dated 18.01.2021 for Rs. 3,17,425/- along with outstanding interest payable by the

complainant. The builder also sent email dated 21.01.2021 in this behalf. Upon failure of the complainant to make payment within stipulated time period, the builder was constrained to issue reminder dated 17.02.2021, email dated 17.02.2021, pre-cancellation letter dated 26.02.2021 and email dated 26.02.2021 in this behalf.

7. That the complainant made belated payment of Rs. 3,17,425/- on 08.03.2021. The builder raised 3rd instalment demand of Rs. 3,17,425/- vide demand letter dated 14.07.2021 within 18 months from the date of allotment. The said demand letter was also sent to the complainant vide email dated 15.07.2021. Upon failure of the complainant to pay the said amount of Rs. 3,17,425/-, the builder was constrained to send reminder dated 18.08.2021. The said reminder was also sent by the builder to the complainant vide email dated 18.08.2021. When no payment was made by the complainant, the builder was constrained to send pre-cancellation letter dated 03.09.2021. The builder also sent email dated 03.09.2021 to the complainant in this behalf.

8. That again when no payment was made by the complainant, the builder got issued advertisement in newspaper namely 'Hari Bhoomi' on 07.10.2021 calling upon the complainant to make payment failing which the builder shall be constrained to cancel the unit of the complainant. Following this, the builder also sent final cancellation letter dated 08.10.2021 and email dated 08.10.2021 calling upon the complainant to make payment within 15 days from the date of advertisement in order to prevent the cancellation of the unit in question by the builder. Ultimately, the complainant paid a sum of Rs. 3,17,425/- belatedly on 13.10.2021.

9. That the builder raised 4th instalment demand of Rs. 3,17,425/- vide demand letter dated 14.01.2022 within 24 months from the date of allotment. The builder also sent email dated 14.01.2022 to the complainant. When payment was not made by the complainant, the builder sent reminder dated 17.02.2022 and also email dated 25.01.2022 calling upon the complainant to make payment of his outstanding dues. The complainant made a payment of Rs. 3,17,425/- belatedly on 19.02.2022.
10. That thereafter, the builder raised the 5th instalment demand for a sum of Rs. 3,17,425/- vide payment demand letter dated 14.07.2022. The builder also sent email dated 14.07.2022 to the complainant in this behalf. When no payment was made by the complainant to builder, the builder sent reminder dated 17.08.2022 to the complainant. The builder also sent email dated 18.08.2022 to the complainant calling upon the complainant to make payment. Again when no payment was made, the complainant was constrained to send pre-cancellation letter dated 12.09.2022. The said pre-cancellation letter was also sent vide email dated 12.09.2022 by the builder to the complainant. Ultimately, the payment was made by the complainant belatedly on 20.09.2022.
11. That the builder raised 6th Instalment demand within 36 months vide payment demand letter dated 16.01.2023 for a sum of Rs. 3,17,425/-. The builder also sent email dated 16.01.2023 calling upon the complainant to pay the said amount along with outstanding arrears of interest. When no payment was made by the complainant, the builder sent reminder dated 21.02.2023 to the complainant. The builder also sent email dated 21.02.2023 to the complainant calling upon the complainant to make the payment of the outstanding due amount. Again

when no payment was made by the complainant, the builder sent email dated 23.03.2023 calling upon the complainant to pay his outstanding dues. Thereafter, the builder sent another reminder letter dated 17.06.2023 to the complainant. The builder also sent email dated 22.06.2023 calling upon the complainant to make payment. The builder then sent pre-cancellation letter dated 27.06.2023 to the complainant. The builder also sent pre-cancellation letter vide email dated 28.06.2023 to the complainant calling upon the complainant to make payment of the outstanding dues.

12. That again when no payment was made by the complainant, the builder was constrained to issue advertisement in newspaper namely 'Veer Arjun' on 14.07.2023 calling upon the complainant to make payment. Thereafter, final cancellation letter dated 14.07.2023 was sent by the builder to the complainant calling upon the complainant to make payment of the outstanding dues. The builder also sent email dated 15.07.2023 calling upon the complainant to make payment of the outstanding amount.
13. That finally when no payment was made by the complainant, the builder was constrained to cancel the unit of the complainant vide final cancellation intimation dated 25.09.2023. The builder also sent email dated 25.09.2023 to the complainant confirming cancellation of the unit previously allotted to him.
14. That thus the complainant is now left with no right, title or interest and claim of any nature whatsoever in respect of the said allotment or agreement. After cancellation of the unit, the builder vide its letter dated 18.11.2023 called upon the complainant to obtain cheque bearing no. 001789 dated 04.11.2023 for Rs. 21,80,530/- after deducting 5% + Rs.

25,000/- +CGST+ SGST+ interest amount of Rs. 38,082 + Rs. 381. However, the complainant did not come forward to collect his cheque and return the original documents. Since the said cheque had lapsed the builder again sent email dated 17.02.2024 to the complainant calling upon the complainant to collect the cheque of refund.

15. That after cancellation of the unit in question, the builder has already allotted the subject unit to Mr. Nirmal Suri vide registered flat buyer's agreement bearing Vasika No.13788 dated 19.12.2023. Moreover, the builder has already completed the construction of the project in question and obtained occupation certificate from DTCP, Haryana on 17.05.2025.

16. That thus, it is clear that on account of non-fulfillment of the contractual obligations by the complainant despite several opportunities extended by the builder to the complainant, the allotment of the unit was cancelled. The complainant is now left with no right, title or interest in the said unit or with respect to the said flat buyer's agreement. As per the terms and conditions of the flat buyer's agreement, timely payment of the instalments within the agreed timeframe was the very essence of the allotment. It appears that the complainant never had sufficient funds to purchase the said property and he was never ready and willing to abide by his contractual obligations.

17. That the present complaint has been filed now by the complainant as an afterthought with totally mala fide motives in order to somehow blackmail, pressurize and harass the builder. The complainant has no right to do so being a chronic defaulter himself. The present baseless, false, frivolous, untenable and misconceived complaint being an abuse of the process of law is liable to be dismissed.

18. 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

19. 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

20. 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

21. The 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)(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 promoter, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

22. 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 To set aside the cancellation letter dated 14.07.2023 issued by the respondent builder, wherein the allotment of Flat No. 12A06, 13th Floor, Tower A1 in the Project named "ULTIMUS" at Sector- 90, Gurugram, Haryana of the complainant has been cancelled and pass the appropriate direction to the respondent builder to restore the allotment of subject Flat/Unit.

F.II To direct the respondent to hand over the physical possession of the subject flat to the complainant in accordance with the terms and conditions of the Flat Buyer's Agreement within time bound manner and in case of delay to pay interest/compensation to the complainant for the delay in handing over the possession of the flat as per Section 18(1) of the RERA Act, 2016 and/or at such rate and for such period as this Hon'ble Authority may deem just and proper.

F.III To restrain the respondent from creating any third-party rights or interest in respect of the said flat during the pendency of the present complaint.

F.IV To initiate suo-moto complaint under section 7 of the RERA Act, 2016 for revocation of the RERA registration for blatant violations of the provisions of RERA Act, 2016 and Rules framed thereunder,

since the respondent builder is involved in unfair and deceptive practice and cheating with the innocent allottees like complainant.

23. Some of the admitted facts of the case are that the complainant applied for allotment of a residential unit under the Haryana Affordable Housing Policy, 2013, in the project of the respondent, as detailed above. Upon being successful in the allotment process, the complainant was allotted unit bearing No. A1-12A06, Tower A1, 13th Floor, admeasuring 616.11 sq. ft., with a balcony area of 99.64 sq. ft., vide allotment-cum-demand letter dated 18.02.2020, for a total sale consideration of Rs. 25,39,398/-. Thereafter, a buyer agreement was executed between the parties on 27.10.2020, incorporating various terms and conditions governing the allotment, including the specifications and dimensions of the allotted unit, sale consideration, payment plan and schedule for handing over possession. It is further not in dispute that, pursuant to the aforesaid agreement, the complainant made payments towards the sale consideration and deposited a total amount of Rs. 22,21,976/- with the respondent.

24. The respondent states that despite the complainant having been duly informed of the outstanding payment obligations, he failed to adhere to the agreed payment schedule. In this regard, the respondent claims to have issued several demand/reminder letters dated 28.05.2020, 05.11.2020, 18.01.2021, 17.02.2021 and 18.08.2021, calling upon the complainant to clear the outstanding dues. The respondent further claims to have issued a notice dated 22.05.2019 through post and, subsequently, published a public notice in the newspaper 'Dainik Bhaskar' on 14.07.2023, granting the complainant a further period of 15 days to clear the outstanding amount. However, according to the

respondent, the complainant failed to make the requisite payment despite the aforesaid reminders and public notice. Consequently, the respondent cancelled the allotment of the unit vide cancellation letter dated 14.07.2023 (page 88 of the reply) and refunded an amount of Rs. 21,80,530/- to the complainant through RTGS, after deducting Rs. 41,386/- towards taxes and other permissible deductions, purportedly in accordance with the terms and conditions of the Flat Buyer Agreement and the Haryana Affordable Housing Policy, 2013.

25. In view of the submissions and the material placed on record, the issue which arises for consideration is whether the cancellation of the allotment by the respondent on account of alleged non-payment of the outstanding instalments was in conformity with the provisions of the Haryana Affordable Housing Policy, 2013, and the terms and conditions of the buyer agreement executed between the parties.

26. The complainant states that the complainant had already deposited a substantial portion of the total sale consideration of the allotted unit and, despite having received almost the entire consideration, the respondent arbitrarily and illegally cancelled the allotment on 14.07.2023 without serving any valid and effective prior notice upon the complainant. It was further contended that the respondent itself had failed to complete the project and hand over possession of the allotted unit within the stipulated period and, therefore, could not be permitted to take advantage of its own alleged defaults by cancelling the allotment of the complainant. The complainant accordingly alleged violation of the provisions of the Haryana Affordable Housing Policy, 2013, as well as the terms and conditions of the buyer agreement.

27. On the other hand, the respondent submitted that the complainant, notwithstanding having deposited a substantial amount towards the sale consideration, was under a contractual obligation to make the remaining payments in accordance with the prescribed payment schedule under the buyer agreement and the Haryana Affordable Housing Policy, 2013. It was contended that the respondent had issued several reminders/demand letters dated 28.05.2020, 05.11.2020, 18.01.2021, 17.02.2021 and 18.08.2021, calling upon the complainant to clear the outstanding dues. The respondent further relied upon the alleged service of a notice dated 22.05.2019 through post and the subsequent publication of a public notice dated 14.07.2023 in the daily newspaper 'Dainik Bhaskar', whereby the complainant was granted 15 days' time to deposit the outstanding amount. However, as per the respondent, the complainant failed to comply with the payment demands despite the aforesaid opportunities. Consequently, the respondent proceeded to cancel the allotment vide letter dated 14.07.2023 and refunded Rs. 21,80,530/- through RTGS after deducting Rs. 41,386/-, purportedly in accordance with the applicable policy and the terms of the Buyer Agreement. Clause 5(i) of the Affordable Group Housing Policy, 2013 provides a provision for cancellation of allotted unit and which runs as follow:

> *" 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 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. 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".

28. A perusal of the facts detailed earlier and the policy of 2013 shows that the respondent raised various reminders/demand letters dated 28.05.2020, 05.11.2020, 18.01.2021, 17.02.2021 and 18.08.2021, followed by public notice in the daily newspaper on 14.07.2023. But despite that she failed to make payment of the amount due leading to cancellation of the allotment of the unit in her favour vide letter dated 14.07.2023. Thus, all these shows that the respondent followed the prescribed procedure as per clause 5(i) of the policy of 2013 and cancelled the unit of the complainant with adequate notices. So, the cancellation of the unit is valid as per the procedure prescribed by law.

29. Now, the second question which arises for consideration is as to whether deduction made vide cancellation letter are as per the policy of 2013. While cancelling the allotment, the respondent deducted Rs. 41,386/- and remitted the remaining amount received from the complainant in her account through RTGS. Though, it is pleaded on behalf of the respondent that the deduction of the amount was made as per the policy of 2013, but the plea advanced in this regard is not tenable. Clause 5(iii)(h) of the Affordable Housing Policy, 2013 amended on 05.07.2019 is relevant in this regard and the same is reproduced as under:

"In clause no. 5 (Allotment Rates; Allotment & Eligibility Criteria), of the Annexure A of notification dated 19th August 2013: -
a. In clause 5(iii)h of policy dated 19.08.2013, the words "In case of surrender of flat by any successful applicant, an amount of Rs 25,000/- may be deducted by the colonizer", shall be substituted as under :- "On surrender of flat by any successful allottee, the amount that can be forfeited by the colonizer in addition to Rs. 25,000/- shall not exceed the following: -

Sr. No.	*Particulars*	*Amount to be forfeited*

(aa)	*In case of surrender of flat before commencement of project*	*Nil;*
(bb)	*Up to 1 year from the date of commencement of the project:*	*1% of the cost of flat;*
(cc)	*Up to 2 years from the date of commencement of the project:*	*3% of the cost of flat;*
(dd)	*after 2 years from the date of commencement of the project*	*5% of the cost of flat;*

30. The authority observed that the concept of surrendering of flat by the allottee and cancellation of flat by the promoter are two different concepts under the policy of 2013. In the present case, the respondent has deducted the amount of the complainant as per clause 5(iii)(h) bu6t the said clause 5(iii)(h) is applicable in case of surrender of flat by allottee. There is a distinction between the two i.e., surrender of flat and cancellation of flat. In case of cancellation of flat clause 5(iii)(i) of the affordable housing policy will be followed and clause 5(iii)(i) has not been amended so far and a reference to the same has already been given in earlier para no. 22 the order.

31. As per cancellation clause of the affordable housing policy the respondent can deduct the amount of Rs. 25,000/- only and the balance amount shall be refunded back to the complainant. In the present case, the respondent has deduction an amount of Rs. 41,386/- out of the total amount of Rs. 22,21,976/-. So, the deduction made by the respondent while cancelling the allotted unit is not as per the policy of 2013. Thus, the respondent is directed to deduct only Rs. 25,000/- and refund the balance amount within a period of 90 days.

F.V To direct the respondent to pay Rs. 10,00,000/- to the Complainant towards pain, suffering, mental agony and harassment etc. suffered by him.

F.VI To direct the respondents to Pay Rs. 1,50,000/- towards the legal and litigation expenses.

32. The complainant is claiming compensation under the present relief. The authority is of the view that it is important to understand that the Act has clearly provided interest and compensation as separate entitlement/rights which the allottee(s) can claim. For claiming compensation under sections 12,14,18 and Section 19 of the Act, the complainant may file a separate complaint before the adjudicating officer under Section 31 read with Section 71 of the Act and rule 29 of the rules.

F. Directions of the Authority:

33. 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 respondent/promoter is directed to refund the paid-up amount of Rs.22,21,976/- after deduction of Rs.25,000/- if not already done as per clause 5(iii)(i) of the of Affordable Housing Policy 2013 along with prescribed rate of interest i.e., @10.80% per annum from the date of cancellation till the actual realization of the amount.

ii. A period of 90 days is given to the respondent/builder to comply with the directions given in this order and failing which legal consequences would follow.

34. The Complaint stands disposed of.

35. File be consigned to registry.

Dated: 08.09.2026

(Arun Kumar)
Chairman
Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM