

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

Complaint no. : 1829 of 2021
First date of hearing: 11.05.2021
Date of decision : 26.11.2021

Sangita Lakhara
Address: Dayal Hardware, Shop No-20, Sector-
44, Kanahigaon, Gurugram, Haryana

Complainant

Versus

1. Pyramid Infratech Pvt. Ltd.
2. Dinesh Kumar
3. Brahm Dutt
Regd. Office at: - Unit No. 501-508, Fifth Floor,
Unitech Trade Centre, Sector-43, Gurugram

Respondents

CORAM:

Shri KK Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Shri Ramesh Lakhara

Husband of complainant in
person

Shri Shrikant Kumar

Advocate for the respondents

ORDER

1. The present complaint dated 31.03.2021 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) and 11(5) 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.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No	Heads	Information
1.	Name of the project	Urban 67A
2.	Nature of the project	Affordable group housing colony
3.	Project area	9.83125 acres
4.	DTCP license no.	10 of 2016 issued on 26.08.2016 valid up to 25.08.2021
5.	RERA Registered/ not registered	Registered vide no. 350
6.	Unit no.	Apartment no. 806, 8 th floor, tower- 06 [page no. 17 of complaint]
7.	Unit measuring	691.91 sq. ft. of super area
8.	Date of execution of Flat buyer's agreement	20.04.2018 [page no. 14 of complaint]
9.	Environment clearance date (herein referred as commencement date)	Not placed on records [13.02.2018, as alleged by respondents]
10.	Building plans date	Not placed on records [02.11.2017, as alleged by respondents]



11.	Total consideration	Rs. 29,28,620/- [as per the statement of account on annexure R/11 on page no. 67 of reply]
12.	Total amount paid by the complainant	Rs. 19,55,944/- [as per the statement of account on annexure R/11 on page no. 67 of reply]
13.	Due date of delivery of possession as per clause 8.1 i.e., That the promoter proposes to offer possession of the said apartment to the allottee within a period of 4 years from the date of approval of building plans or grant of environment clearance, (herein referred to as the commencement date), whichever is later.	13.02.2022 [calculated from environment clearance date (herein referred as commencement date) as it is later than date of building plan]
14.	Offer of possession	Not offered as respondents has cancelled the apartment
15.	Occupation certificate	Not received

B. Facts of the complaint

3. That the respondents company gave advertisement in various leading newspapers about their forthcoming project named Pyramid Infratech Pvt. Ltd. project urban sector 67-A Gurugram promising various advantage, like world-class amenities and timely completion/execution of the project etc. Relying on the promise and undertakings given by the respondents in the advertisement's, complainant booked an apartment/ flat having a measurement of 591.19 sq. ft. & balcony area of 100 sq. ft. in aforesaid project for total sale



consideration is Rs. 26,07,940/- which includes SGST & CGST of Rs. 1,93,180/-BPS, car parking, IFMS, club membership, PLC etc.

4. That the complainant made payment of Rs.19,55,944/- to the respondents vide different cheques on different dates. The complainant has been continuously making the payment of instalments on the fixed date on issuance of demand / tax invoice according to the respondent's payment plan.
5. That the instalment for the month of September 2020 could not be paid because of prolonged lock-down in the country due to corona virus.
6. That for the half-yearly (Sep 2020) instalment, the complainant repeatedly requested to pay the two half yearly instalments together with the interest for the delayed period by going to the office of the respondents and contacting them over the phone. The respondents consented sympathetically due to coronavirus. On 28 February 2021, when the complainant went to give the cheque for the payment of half-yearly instalment for the month of September 2020 to the respondent's office, respondents refused to accept the same and said that the flat allotted to her has been rejected and your deposit with us will be credited in your bank account.
7. That when complainant checked her bank account, it was found that only 16,35,264/- had been credited by respondents against a total deposit of Rs. 19,55,944/-. A sum of Rs. 3,20,680 has been illegally and improperly deducted with an intention of causing financial loss to complainant.

8. That the breach of contract by the unilateral action on the part of respondents on allotted unit to the complainant is a violation of the rules and byelaws of the Indian Contract Act.

C. Relief sought by the complainant:

9. The complainant has sought the following relief:

- (i) Direct the respondents to pay interest for every month of delay at prevailing rate of interest.
- (ii) Direct the respondents that the cancellation of flat is in violation of RERA.
- (iii) Direct the respondents not to deduct the amount of Rs. 3,20,680/-.

10. On the date of hearing, the authority explained to the respondents/promoters about the contravention as alleged to have been committed in relation to section 11(4)(a) and 11(5) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondents.

11. That the present complaint is not maintainable before this authority because the complainant is in default of payment of instalment. The complainant has filed the present complaint seeking restoration of the flat after cancellation done by the respondents as per the affordable housing policy.
12. That the complainant has got no locus standi or cause of action to file the present complaint. That the present complaint is based on an erroneous interpretation of the provisions of the policy, Act as well as an incorrect understanding of the terms

and conditions of the apartment buyer's agreement dated 20.04.2018.

13. That the complainant had applied to the respondents for allotment of an apartment in the affordable group housing project developed by them namely "Urban 67A", located at sector-67A, Gurugram and after successful draw, an apartment no. 608, tower no.-2 in the project was provisionally allotted to her.
14. That the apartment buyer's agreement was executed between the parties on 20.04.2018 and registered before the sub-registrar, Badshahpur, Gurugram vide document no. 494. That the apartment buyer's agreement was consciously and voluntarily executed by the complainant after reading and understanding the contents thereof to her full satisfaction.
15. That the complainant has misconstrued and misinterpreted the clauses incorporated in the apartment buyer's agreement dated 20.04.2018 in the complaint filed by her. It is submitted that as per clause 2.3 of the apartment buyer's agreement, it was specifically agreed that the amount of Rs.25,000/- plus taxes would be treated as earnest money. The earnest money shall be liable to be forfeited in the event of surrender of allotment by the allottee and/or cancellation of allotment on account of default/breach of the terms and conditions of allotment/transfer contained herein, including non-payment of instalments.

16. That the demand raised by the respondents with respect to the same is legal and the complainant has no valid ground to challenge the same.
17. That without admitting or acknowledging in any manner the truth or correctness of the frivolous allegations levelled by the complainant and without prejudice to the contentions of the respondents, it is submitted that the so-called restoration of the unit is wrongly sought by the complainant.
18. That the complainant alleging various irregularities purportedly on the part of the respondents are superficial, false, and contrary to the actual state of affairs. Therefore, the same are unsustainable both in law and on facts. The complainant is misusing the process of law in order to needlessly victimise and harass the respondents.
19. That the complainant has not come before this authority with clean hands and has suppressed vital and material facts from this hon'ble authority.
20. That the complainant had persistently and regularly defaulted in remittance of instalments on time. Respondents were compelled to issue demand notices, reminders etc. calling upon her to make payment of outstanding amounts under the payment plan/instalment plan opted by her. However, the complainant despite having received the payment request letters, reminders etc. failed to remit the instalments on time to the respondents. Statement of account correctly maintained by respondents in due course of business reflecting the delay

in remittance of various instalments on the part of the complainant.

21. That the rights and obligations of complainant as well as respondents are completely and entirely determined by the covenants incorporated in the apartment buyer's agreement which continues to be binding upon the parties thereto with full force and effect.
22. That all the demands raised by the respondents are strictly in accordance with the terms and conditions of the buyer's agreement duly executed between the parties. There is no default or lapse on the part of the respondents. It is evident from the entire sequence of events, that no illegality can be attributed to the respondents. The allegations levelled by the complainant is totally baseless.

E. Written arguments on behalf of respondents.

23. The respondents have contended that the present complaint is not maintainable before this hon'ble authority because the complainant is in default of payment of instalment. The complainant The Complainant has filed the present complaint seeking restoration of the flat after cancellation done by the respondents as per the "Affordable Housing Policy 2013".
24. That the respondents abides by the law of "Affordable Housing Policy-2013" notified on 19/08/2013, under section 9-A of a Haryana Development and Regulation of Urban Areas Act,1975 and
clause no. 5(iii) (i) is reproduced herein

" 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"

25. That respondents have contended that the said clause has been amended on 05.07.2019 in clause 5(iii)h of policy

"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 the project	Nil
(bb)	Upto 1 year from the date of commencement of the project	1% of the cost of flat
(cc)	Upto 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

26. That as per the affordable housing policy, the complainant is in default of payment despite of demand letter dated 24.8.2020, reminder letter dated 17.09.2020 and publication of the notice in daily Hindi newspaper 'Rastriya Sahara' on 08.10.2020 and final reminder letter dated 09.10.2020. This shows that the respondents have complied with all the provisions of the policy and cancelled the unit of the complainant with adequate notice.

27. That the complainant had paid Rs.19,55,944/-towards the sale consideration and tax after deduction of cancellation charges i.e., Rs.3,20,680/- and an amount of Rs.16,35,264/-has been refunded by the respondents on 01.03.2021.

F. Jurisdiction of authority

28. The respondents have raised objection regarding jurisdiction of authority to entertain the present complaint and the said objection stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

F. I Territorial jurisdiction

29. 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

30. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale and 11(5) of the Act provides that the promoter may cancel the allotment only in terms of the agreement for sale. Section 11(4)(a) and 11(5) of the Act are 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,*

.....

(5) The promoter may cancel the allotment only in terms of the agreement for sale:

Provided that the allottee may approach the Authority for relief, if he is aggrieved by such cancellation and such cancellation is not in accordance with the terms of the agreement for sale, unilateral and without any significant cause.

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.

31. 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.

Relief sought by the complainant: The complainant had sought following relief(s):

- (i) Direct the respondents to pay interest for every month of delay at prevailing rate of interest.
- (ii) Direct the respondents that the cancellation of flat is in violation of RERA.
- (iii) Direct the respondents not to deduct the amount of Rs. 3,20,680/-.

32. On consideration of the documents available on record and submissions made by both the parties, the authority observed that complainant booked the flat in the project on 04.12.2017 and thereafter on 20.04.2018, the buyers' agreement was executed between the complainant and respondents. The respondents started raising demands as per the schedule of payment, and the complainant as per the payment plan has paid an amount of Rs. 19,55,944/- out of the total sale consideration of Rs. 26,07,940/-. The complainant failed to pay the remaining amount as per schedule of payment and which led to issuance of notice of cancellation by the respondents/builders on 27.10.2020. Now, the question before the authority is whether this cancellation is valid. According to clause 5(i) of the Affordable Group Housing

Policy, 2013, "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". As per the documents placed on record by the parties, the respondents raised a demand vide demand letter dated 24.08.2020 and the same was payable up to 15.09.2020. Thereafter, a reminder letter was issued on 17.09.2020. Subsequently, on 08.10.2020, the respondents published a notice of payment in daily Hindi newspaper Rastriya Sahara. Finally, the cancellation letter has been issued by the respondents on 27.10.2020. This shows that the respondents have followed the prescribed procedure as per clause 5(i) of the policy 2013 and cancelled the unit of the complainant with adequate notices. Thus, the cancellation of unit is valid being as per procedure prescribed by law.

33. Now, the question arises whether the deductions made under the cancellation letter is as per the policy of 2013. As per the

documents placed on record, the respondents have deducted an amount of Rs. 3,20,680/- out of the paid amount of Rs. 19,55,944/- and refunded Rs. 16,35,264 to the complainant. The respondents in their arguments stated that they have deducted the amount as per the clause 5 (iii)(h) of the Affordable Housing Policy as amended on 05.07.2019 and the same is reproduced as under:

"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 the project	Nil
(bb)	Upto 1 year from the date of commencement of the project	1% of the cost of flat
(cc)	Upto 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

The authority observes that the concept of surrender 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

respondents have deducted the amount as per clause 5(iii)(h) but the said clause 5(iii)(h) is applicable in case of surrender of flat by allottee. There is 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. The relevant provision is reproduced as under:

Clause 5(iii) (i) of the affordable housing policy:

"If any successful applicant fails to deposit the instalments within the time period as prescribed in the allotment letter issued by the colonizer, a reminder may be issued to him for depositing the due instalments within a period of 15 days from the date of issue of such notice. If the allottee still defaults in making the payment, the list of such defaulters may be published in one regional Hindi 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 failing in the waiting list"
(emphasis supplied)

34. As per cancellation clause of the affordable housing policy, the respondents could have deducted the amount of Rs. 25000/- only and the balance amount should have been refunded back to the complainant. In the present case, the respondents have deducted an amount of Rs. 3,20,680/- out of the paid amount of Rs. 19,55,944/- and refunded Rs. 16,35,264 to the complainant. Therefore, the deduction made by the respondents under the cancellation is not as per the policy of 2013, Thus, the respondents are directed to deduct

Rs.25,000/- only and refund the balance amount of Rs. 2,95,680/- to the complainant [Rs.3,20,680/- minus Rs.25,000 = Rs.2,95,680/-] as a sum of Rs. 16,35,264 has already been paid to her.

H. Directions of the authority


35. 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 respondents are directed to refund the balance amount of Rs. 2,95,680/- to the complainant after deduction of Rs. 25000/- from the amount of Rs. 3,20,680/- failing which legal consequences would follow.

36. Complaint stands disposed of.

37. File be consigned to registry.


(V. K Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 26.11.2021

Judgement uploaded on 13.01.2022.