

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

Complaint no. : 1948 of 2021  
First date of hearing: 11.05.2021  
Date of decision : 26.11.2021

Sneh Lata Sachan  
Address: Nurse Colony Near District Hospital  
Pithoragarh

**Complainant**

**Versus**

Pyramid Infratech Pvt. Ltd.  
Regd. Office at: - Unit No. 501-508, Fifth Floor,  
Unitech Trade Centre, Sector-43, Gurugram

**Respondent**

**CORAM:**

Shri KK Khandelwal  
Shri Vijay Kumar Goyal

**Chairman  
Member**

**APPEARANCE:**

Shri Rahul Kumar Singh  
Shri Shrikant Kumar

Advocate for the complainant  
Advocate for the respondent

**ORDER**

1. The present complaint dated 05.04.2021 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(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   | Pyramid Fusion Homes  |
| 2.    | Nature of the project   | Affordable group housing colony   |
| 3.    | Project area  | 5.11875 acres   |
| 4.    | DTCP license no.  | 84 of 2018 issued on 10.12.2018 valid up to 09.12.2023                              |
| 5.    | RERA Registered/ not registered                                   | Registered vide no. 10 of 2019  |
| 6.    | Unit no.  | Apartment no. 1504, 15 <sup>th</sup> floor, tower- 06<br>[page no. 42 of complaint] |
| 7.    | Unit measuring  | 680.54 sq. ft.<br>[page no. 42 of complaint]  |
| 8.    | Date of execution of Flat buyer's agreement                       | 07.11.2019<br>[page no. 37 of complaint]  |
| 9.    | Environment clearance date (herein referred as commencement date) | 30.05.2019<br>[as per project details]  |
| 10.   | Building plans date   | 23.01.2019<br>[as per project details]  |
| 11.   | Total consideration   | Rs. 25,21,816/-   |



|     |  |   |
|-----|--|---|
|     |  | [as per the statement of account on annexure R/11 on page no. 71 of reply]  |
| 12. | Total amount paid by the complainant   | Rs. 14,97,428/-<br>[as per the statement of account on annexure R/11 on page no. 71 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. | 30.05.2023<br>[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 respondent has cancelled the apartment   |
| 15. | Occupation certificate   | Not received  |

**B. Facts of the complaint**

- That the respondent is a real estate developer and developing a residential group housing colony known as Pyramid Fusion Homes - unit no. 1504, tower no. 6, sector-70A, Gurugram, Haryana under the government of Haryana affordable housing policy 2013. The rate of the said flat was agreed to be @ 4,000/- per sq. ft. and balcony area at 500/- per sq. ft. (excluding taxes) for a carpet area of 580.54 sq. ft. (excluding balcony).
- That at the time of booking, a sum of Rs. 1,18,608/- was paid by the complainant to the respondent and builder buyer

agreement was executed on 07.11.2019 between the respondent and complainant for the total sale consideration of Rs. 23,72,160/- excluding taxes.

5. That the complainant has been very punctual in making the payment of the instalments as and when demanded as per the schedule. Further, the complainant has made about 62% of the total price of the flat till filing of the present complaint.
6. That the husband of the complainant got hospitalized on 12.09.2020 to 28.09.2020 and also remained in intensive care unit (ICU) for some days. For complete recovery he remained isolated for another 14 days and thereafter remained bed rest for about one month thereafter.
7. That the respondent vide an email dated 23.10.2020 demanded payment of Rs. 2,99,486 from the complainant. That the complainant vide an email dated 23.11.2020 made a request for grant of 2-3 months in making the payment of the instalment.
8. That vide an email dated 28.11.2020 respondent clearly acknowledges that the delay will attract penalty i.e., interest which was accepted by complainant.
9. That on 11.01.2021 the complainant requested to give some time to make payment along with interest and on 12.01.2021 complainant paid an amount of Rs. 3,01,458/- including interest.
10. That the respondent vide an email dated 16.01.2021 arbitrarily and unilaterally cancelled the flat.



11. That the respondent has refunded some amount in the account of the complainant after deduction of hefty amounts towards artificial costs and interest.

**C. Relief sought by the complainant:**

12. The complainant has sought the following relief:
- (i) Direct the respondent to restore the flat.
  - (ii) Direct the respondent to set aside the cancellation of flat made by respondent.
13. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(5) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent.**

14. 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 respondent as per the affordable housing policy.
15. 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.
16. That the complainant had applied to the respondent for allotment of an apartment in the affordable group housing

project developed by respondent namely "Pyramid Fusion Homes", located at sector-70A, Village Palra, Gurugram and after successful draw, an apartment no. 1504, tower no.-6 in the project was provisionally allotted to the complainant.

17. That the apartment buyer's agreement was executed between the parties on 07.11.2019 and registered before the sub-registrar, Badshahpur, Gurugram. That the apartment buyer's agreement was consciously and voluntarily executed by the complainant after reading and understanding the contents thereof to his full satisfaction.
18. That the complainant has misconstrued and misinterpreted the clauses incorporated in the apartment buyer's agreement dated 07.11.2019 in the complaint filed by him. 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 shall be treated as earnest money. The earnest money would 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.
19. That the demand raised by the respondent with respect to the same is legal and the complainant has no valid ground to challenge the same.
20. 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



respondent, it is submitted that the so-called restoration of the unit is wrongly sought by the complainant.

21. That the complainant alleging various irregularities purportedly on the part of the respondent 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 respondent.
22. That the complainant has not come before this hon'ble authority with clean hands and have suppressed vital and material facts from this hon'ble authority.
23. That the complainant had persistently and regularly defaulted in remittance of instalments on time. Respondent was compelled to issue demand notices, reminders etc. calling upon the complainant to make payment of outstanding amounts payable by the complainant under the payment plan/instalment plan opted by them. However, the complainant despite having received the payment request letters, reminders etc. failed to remit the instalments on time to the respondent. Statement of account correctly maintained by respondent in due course of its business reflecting the delay in remittance of various instalments on the part of the complainant.
24. That the rights and obligations of complainant as well as respondent 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.

25. That all the demands raised by the respondent 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 respondent. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. The allegations levelled by the complainant is totally baseless.

**E. Written arguments on behalf of respondent.**

26. The respondent has 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 Respondent as per the "Affordable Housing Policy 2013".
27. That the respondent 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 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 falling in the waiting list"*

28. That respondent has 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 |

29. That as per the affordable housing policy, the complainant is in default of payment despite of demand letter dated 23.10.2020, reminder letter dated 19.11.2020 and 10.12.2020 and publication of the notice in daily Hindi newspaper Rastriya Sahara on 09.12.2020. This shows that the

respondent has complied with all the provisions of the policy and cancelled the unit of the complainant with adequate notice.

30. That the complainant had paid Rs.14,97,428/-towards the sale consideration and tax after deduction of cancellation charges i.e., Rs.1,25,934/- and an amount of Rs.13,71,494/-has been refunded by the respondent.

#### **F. Jurisdiction of authority**

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

##### **F. I Territorial jurisdiction**

32. 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**

33. 11(5) of the Act provides that the promoter may cancel the allotment only in terms of the agreement for sale. Section 11(5) of the Act is reproduced as hereunder:



**Section 11(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 sufficient cause.*

34. 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 respondent to restore the flat.
- (ii) Direct the respondent to set aside the cancellation of flat made by respondent.

35. On consideration of the documents available on record and submissions made by both the parties, the authority observes that complainant booked the flat in the project on 23.03.2019 and thereafter on 07.11.2019 buyers' agreement was executed between the complainant and respondent. The respondent started raising demands as per the schedule of payment, and the complainant as per the payment plan has paid an amount of Rs. 14,97,428/- out of the total sale consideration of Rs.



25,21,816/-. The complainant failed to pay the remaining amount as per schedule of payment and which led to issuance of notice of cancellation by the respondent/builder on 02.01.2021. 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 affordable housing policy the respondent raised a demand vide demand letter dated 23.10.2020 further the reminder letter was issued on 19.11.2020 and final reminder letter dated 10.12.2020 and on 09.12.2020 respondent published a public notice of payment in daily hindi newspaper Rastriya Sahara. Finally, the cancellation letter has been issued by the respondent on 02.01.2021. This shows that the respondent has 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.

36. 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 respondent has deducted an amount of Rs. 1,25,934/- out of the paid amount of Rs. 14,97,428/- and refunded Rs. 13,71,494/- to the complainant. The respondent in his arguments has stated that he has deducted the amount as per the clause 5 (iii)(h) of the affordable housing policy amended vide dated 05.07.2019 i.e., 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 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) but 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. It 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 falling in the waiting list"*

37. As per cancellation clause of the affordable housing policy the respondent 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 respondent has deducted an amount of Rs. 1,25,934/- out of the paid amount of Rs. 14,97,428/- and refunded Rs. 13,71,494 to the complainant. Therefore, the deduction made by the respondent under the cancellation is not as per the policy of 2013. Thus, the respondent is directed to deduct Rs.25,000/- and refund the balance amount of Rs. 1,00,934/- to the complainant [Rs.1,25,934/- minus Rs.25,000 = Rs.1,00,934/-] as a sum of Rs. 13,71,494/- has already been paid to him.

#### H. Directions of the authority


38. 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 is directed to refund the balance amount of Rs. 1,00,934/- to the complainant after deduction of Rs. 25000/- from the amount of Rs. 1,25,934 already deducted, failing which legal consequences would follow.

39. Complaint stands disposed of.

40. File be consigned to registry.

  
(V. k Goyal)  
Member

  
(Dr. K.K. Khandelwal)  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 26.11.2021