

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

Complaint no. : 1968 of 2021
First date of hearing: 11.05.2021
Date of decision : 26.11.2021

Ayush Shukla
Address: 152-B, 6th Lane, Nishatganj, New
Hyderabad, Lucknow

Complainant

Versus

Pyramid Infratech Pvt. Ltd.
Regd. Office at: - H-38, Ground Floor, M2k
White House, Sector-57, Gurgaon

Respondent

CORAM:

Shri KK Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Shri Deepanshu Singla
Shri Shrikant Kumar

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 16.04.2021 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	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/ registered	not Registered vide no. 350
6.	Unit no.	Apartment no. 608, 6th floor, tower- 02 [page no. 25 of the complaint]
7.	Unit measuring	678.27 sq. ft. [page no. 25 of the complaint]
8.	Date of execution of Flat buyer's agreement	25.05.2018 [page no. 24 of complaint]
9.	Date of building plan	Not placed on records [02.11.2017, as alleged by respondent]
10.	Environment clearance date (commencement date)	Not placed on records

		[13.02.2018, as alleged by respondent]
11.	Total consideration	Rs. 27,65,655/- [as per the statement of account on annexure R/18 on page no. 102 of reply]
12.	Total amount paid by the complainant	Rs. 12,76,062/- [as per the statement of account on annexure R/18 on page no. 102 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 respondent has cancelled the apartment
15.	Occupation certificate	Not received

B. Facts of the complaint

- That the respondent is a company named as M/s. Pyramid Infratech Pvt. Ltd. registered under the Companies Act, 1956 having its registered office at H-38, GF, M2K White House sector-57, Gurgaon HR-122001.
- That the complainant has purchased a residential unit in the advertised affordable group housing project of the respondent company.

5. That the subject project is being developed by the respondent company in the name of 'Urban 67-A', located at Sector 67-A, Gurugram, Haryana. The said project is being developed under the licence no. 10 of 2016 and transfer of license memo no. LC-3185 JE(VA)/2017/28736 dated 13.11.2017 issued by Director General Town and Country Planning, Haryana on a land parcel of 9.83125 acres.
6. That the respondent advertised about his project in the year 2017 booked a unit in the said project of the respondent company.
7. That the complainant after enquiring about the project of the respondent company made an application for booking of the flat along with the 5% of the total cost of the flat. the said application was made vide application bearing no. 01133 as acknowledged by the respondent.
8. That after the application the respondent held a draw of the approved applications on 15.03.2018 in presence of the officials of DGTCP/DC, Gurgaon. On the same date the complainant was allotted a unit bearing no. 608, 6th floor, type-2 BHK, type-C in tower-02 admeasuring carpet area of 578.27 sq. ft. & balcony area of 100 sq. ft., as acknowledged by the respondent company.
9. That the respondent company issued a reminder for the payment against allotment of the subject unit in the name of the complainant on 05.04.2018 for Rs. 5,21,165/-.

10. That the complainant understanding his obligation for timely payment made a payment of Rs. 5,21,165/- vide a cheque dated 05.05.2018 bearing no. 000007 drawn on Standard Chartered Bank.
11. That apartment buyer's agreement was executed between the parties on 25.05.2018. vide such agreement the complainant was allotted a unit bearing no. 608, 6th floor, Type-C, 2-BHK, Tower-02 admeasuring Carpet Area of 578.27 sq. ft. and Balcony Area of 100.00 sq. ft. for a total sale consideration of Rs. 25,52,126/-.
12. That on 28.08.2018, the respondent sent a mail to the complainant and raised a demand/tax invoice of Rs. 3,25,851/- which was to be paid by the complainant till 15.09.2018. In the said demand letter, the respondent has levied an interest of Rs. 6,836/- which has no explanation, that on what basis such interest has been levied.
13. That on 12.09.2018, the respondent again sent a mail to the complainant vide which it was acknowledged by the respondent company that a payment of Rs. 3,25,851/- against the above stated demand invoice has been received vide cheque bearing no. 022039 dated 12.09.2018 drawn on Axis Bank Ltd.
14. That on 18.02.2019, the respondent company again raised a demand for payment of Rs. 3,19,015/- vide a mail sent to the complainant, which was to be paid by 15.03.2019. Against the said demand raised by the respondent company the complainant made a payment of demanded amount through

NEFT on 15.03.2019 and sent a mail to the respondent regarding the same.

15. That on 18.03.2019, the respondent issued a receipt in the name of the complainant against the payment of Rs. 3,19,015/- made by the latter and sent a mail to the latter along with that receipt issued.
16. That on 29.08.2019, the complainant met with a severe accident and got his spinal cord injured in the accident. After the accident the complainant was found to be suffering from acute lumbago and advised by the physician for complete and strict bed rest for first 6 months. He was advised for light activities, to avoid strenuous activities and to travel anywhere for the next 3 months after the end of 6 months.
17. That on 02.09.2019, the respondent sent a mail along with a demand invoice to the complainant vide which a demand was raised by the respondent for the payment of Rs. 3,19,015/- which was to be paid 15.09.2019 to avoid any interest charges on the delay in payment.
18. That another mail from the side of the respondent was sent to the complainant on 03.10.2019 regarding the demand of the abovesaid instalment and stating that any delay in payments would attract interest on the amount due @SBI highest marginal cost of lending rate plus two% from the due date till the date of payment.
19. That as the complainant was recovering from his injuries with time, on 02.09.2020 he got shocked to see a transaction in his bank account made by the respondent company on

- 31.08.2020, vide which the respondent refunded an amount of Rs. 10,62,533/- to the complainant.
20. That the respondent had cancelled the unit of the complainant on 31.08.2020 without giving any notice for cancellation. That during the period from 03.10.2019 to 31.08.2020, the respondent had neither raised any demand from the complainant, nor any notice has been sent for the cancellation of the unit.
21. That the complainant sent a mail to the respondent on same day i.e., 02.09.2020 in which he stated that he got to know about the cancellation of his unit when he saw the transaction in his bank account from their side. In his mail the complainant stated that he wanted to retain his unit and was ready to clear all his previous dues along with the interest to be applied on the delay payments. He asked the respondent to give him time till 15.09.2020 and he will clear all the dues against him along with the interest.
22. That the respondent mailed to the complainant on 02.09.2020 asking the complainant to come and visit their office regarding the same. the complainant requested for some time. and after visiting the respondent's office complainant got to know that his unit has been cancelled permanently by them and it cannot be revoked now.
23. That till now the complainant had paid Rs. 12,84,031/- against the subject unit and the respondent had refunded Rs. 10,62,533/- against the cancellation of the unit. the respondent had deducted Rs. 2,21,498/- at the time of

cancellation of the unit, however as per clause 5(iii) (i) of the policy, 2013 he is only liable to deduct Rs. 25,000/- from the amount given by the complainant at the time of cancellation.

C. Relief sought by the complainants:

24. The complainants have sought the following relief:

(i) Direct the respondent to revoke the cancellation done by the respondent.

25. 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.

26. That the present complaint is not maintainable before this hon'ble 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.

27. 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 25.05.2018.

28. That the complainant had applied to the respondent for allotment of an apartment in the affordable group housing project developed by respondent namely "Urban 67A", located

at sector-67A, Gurugram and after successful draw, an apartment no. 608, tower no.-2 in the project has been provisionally allotted to the complainant.

29. That the apartment buyer's agreement was executed between the complainant and the respondent on 25.05.2018 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 his full satisfaction.
30. That the complainant has misconstrued and misinterpreted the clauses incorporated in the apartment buyer's agreement dated 25.05.2018 in the complaint filed by him. It is submitted that as per clause 2.3 of the apartment buyer's agreement, it is specifically agreed that the amount of Rs.25,000/- plus taxes shall 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.
31. 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.
32. 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 flat is wrongly sought by the complainant.

33. 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.
34. That the complainants have not come before this hon'ble authority with clean hands and have suppressed vital and material facts from this hon'ble authority.
35. That the complainants had persistently and regularly defaulted in remittance of instalments on time. Respondent was compelled to issue demand notices, reminders etc. calling upon the complainants to make payment of outstanding amounts payable by the complainants under the payment plan/instalment plan opted by them. However, the complainants 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.
36. That the rights and obligations of complainants 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.

37. 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 complainants are totally baseless.

E. Written arguments on behalf of respondent.

38. 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".
39. 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.

In clause no. 5(iii) (i) same 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"

40. 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

41. That as per the affordable housing policy, the complainant is in default of payment despite of demand letter dated 02.09.2019, reminder letter dated 03.10.2019 and publication of the defaulter in daily Hindi newspaper Rastriya Sahara on 20.10.2019. This shows that the respondent has complied with

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

42. That the complainant had paid Rs.12,84,031/-towards the sale consideration and tax after deduction of cancellation charges i.e., Rs.2,21,498/- an amount of Rs.10,62,533/-has been refunded by the respondent on 31.08.2020.

F. Jurisdiction of authority

43. 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

44. 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

45. 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.

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.

46. 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 complainants 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 revoke the cancellation done by the respondent.

47. On consideration of the documents available on record and submissions made by both the parties, the authority observes that on 15.03.2018 the draw was held after receiving the applications by various home buyers and a unit bearing no. 608, type C, tower 02 was allotted to the complainant and thereafter on 25.05.2018 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. 12,84,031/- out of the total sale consideration of Rs. 27,65,655/-. 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 08.11.2019. 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 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*"

As per the documents placed on record the respondent raised a demand vide demand letter dated 02.09.2019 to pay the instalment of Rs. 3,19,015/- payable upto 15.09.2019 further the reminder letter was issued on 03.10.2019 and on 20.10.2019 respondent published a public notice of payment in daily Hindi newspaper Rastriya Sahara. Finally, the

cancellation letter has been issued by the respondent on 08.11.2019. 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.

48. 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 respondent has deducted the amount of Rs. 2,21,498/- out of the paid amount of Rs. 12,84,031/- and refunded Rs. 10,62,533 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. 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"

49. 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. 2,21,498/- out of the paid amount of Rs. 12,84,031/- and refunded Rs. 10,62,533/- 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/- only and refund the balance amount of Rs. 1,96,498/- to the complainant [Rs.2,21,498/- minus Rs.25,000 = Rs.1,96,498/-] as a sum of Rs. 10,62,533 has already been paid to him.

H. Directions of the authority

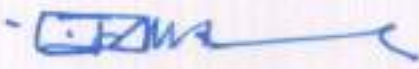
50. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent is directed to refund the balance amount of Rs. 1,96,498 to the complainant after deduction of Rs. 25000/- from the amount of Rs. 2,21,498 already deducted, failing which legal consequences would follow.

51. Complaint stands disposed of.

52. 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.



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