

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

Complaint no. :	468 of 2021
Date of filing complaint:	11.02.2021
First date of hearing:	30.03.2021
Date of decision :	24.08.2022

Sh. Anil Suri R/O: J-62, Rajouri Garden, Delhi- 110027	Complainant
Versus	
M/s Adani M2K Projects LLP Regd. office: Adani House , Plot No-83, Sector-32, Institutional Area, Gurugram-122001	Respondent

CORAM:	
Dr. KK Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Sh. Harpreet Singh (Advocate)	Complainant
Sh. Prashant Sheoran (Advocate)	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 29 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.

A. Unit and project related details

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

Sr. No.	Particulars	Details			
1.	Name of the project	Oyster Grande, Sector 102, Gurugram, Haryana			
2.	Total area of the project	19.238 acres			
3.	Nature of the project	Group Housing Colony			
4.	DTCP license details:				
	Sno.	License no.	Validity	Licensed area	Licensee
	1.	29 of 2012 dated 10.04.2012	09.04.2020	15.72 acres	M/s Aakarshan Estates Pvt. Ltd. C/O M/s Adani M2K Projects LLP
	2.	30 of 2012 dated 10.04.2012	09.04.2020	3.52 acres	M/s Aakarshan Estates Pvt. Ltd. C/O M/s Adani M2K Projects LLP
5.	Registered/not registered	Registered by Adani M2K Projects LLP			
	Registration details				
	Sno.	Registration no.	Validity	Area	



	1.	37 of 2017 dated 10.08.2017	30.09.2024	Tower G (15773.477 sq. mtrs.)
	2.	170 of 2017 dated 29.08.2017	30.09.2019	Tower J Nursery school-1 & 2, Convenient Shopping, Community Block X-1 & X-2 (19056.69 sq. mtrs.)
	3.	171 of 2017 dated 29.08.2017	30.09.2019	Tower H (17229.629 sq. mtrs.)
6.	Occupation certificate details:			
	Sno.	Details of tower in OC	OC granted on	Area
	1.	D, E, EWS Block	11.12.2017	22710.284 sqm
	2.	A, B, C, F	20.12.2017	48919.8 sqm
	3.	J, H, Community Building X1, Convenient Shopping 2	12.02.2019	33517.932 sqm
7.	Provisional allotment letter		05.01.2013 (As per page 24 of complaint)	
8.	Unit no.		D-1204, 12 th floor, Tower D (As per page 24 of complaint)	
9.	Area of the unit (super area)		1689 sq. ft. (As per page 24 of complaint)	
10.	Date of execution of buyer's agreement		13.06.2013 (As per page 40 of complaint)	
11.	Possession clause		Article 5(A)- POSSESSION <i>Subject to the compliance of all terms and conditions of this agreement by the</i>	



		<p><i>allottee(s) including the timely payment of the sale consideration and other charges and all other applicable taxes/levies/interests/penalties, etc., the developer based on its present plans and estimates and subject to all just exceptions will endeavor to complete construction of said apartment within a period of forty eight (48) months from the date of execution of this agreement or from the date of commencement of construction, whichever is later with a grace period of six (6) months, subject to force majeure events (as defined herein) which shall include events/circumstances or combination thereof which may prevent/ obstruct/hinder/ delay the construction development of the said project/complex. For the purpose of this agreement, the date of making an application to the concerned authorities for issue of completion/part completion/occupancy/part occupancy certificate of the said project/complex shall be treated as the date of completion of the apartment. In particular, after filing an application for grant of such certificate(s), the developer shall not be liable for any delay in grant thereof by the competent authorities.</i></p> <p>(page 62 of complaint)</p>
12.	Date of start of construction	15.02.2013 (As per pre-termination letter dated 26.07.2014 on page no. 25 of complaint)
13.	Due date of possession	13.12.2017 (Calculated from date agreement dated

		13.06.2013, being later) <i>Grace period is allowed</i>
14.	Total Sale Consideration	Rs. 1,12,45,154/- (As per payment plan annexed with BBA dated 13.06.2013 at page 95 of complaint.)
15.	Total amount paid by the complainant	Rs. 38,70,352/- (As per cancellation letter dated 26.07.2014 at page 100 of complaint.)
16.	Request of surrender by the complainant	11.08.2014 (As per page no. 98 of complaint)
17.	Demand letters & reminders	27.12.2013, 28.01.2014, 31.03.2014, 12.08.2013, 14.05.2014, 17.06.2014 (As per page no. 11-24 of reply)
18.	Pre- cancellation letter dated	26.07.2014 (As per page no. 100 of complaint)
19.	Cancellation letter	26.07.2014 (As per page 100 of complaint)
20.	Occupation certificate	11.12.2017
21.	Offer of possession	Not offered

B. Facts of the complaint:

3. That allured by representations made by the representatives of the respondent such as committed to deliver timely possession, as per agreed terms and conditions, the complainant was motivated to invest in the project of the respondent and somewhere in the month of November,

2011, applied for allotment of unit bearing number D-1204, on 12th floor, admeasuring 1689/1219 sq. ft., for a consideration of Rs. 92,81,000/-, in the project "Oyster Grande", in Sector - 102/102A, Gurugram.

4. That the said booking was confirmed on 06.11.2012, followed by issuance of allotment letter, dated 01.01.2013. The complainant made payments against the other demand letters issued by the respondent in time bound manner followed even before the execution of builder buyer agreement.
5. That thereafter, builder buyer agreement between the parties was executed on 13.06.2013. The construction was not carried out, as per scheduled commitments, but the respondent kept on raising demands, for payments. Keeping in view the pace of construction, and the intentions of the respondent, the complainant preferred not to commit default while making timely payments and made a payment of Rs. 38,70,000/-.
6. That as the complainant expressed desire to know the status of construction of the project, the respondent assured timely delivery of possession of the unit. However, in the month of May 2014, he visited the project and was shocked to notice a dangerous fact that a high-tension electric wire having been erected across the allotted flat of the

complainant and to which he raised a serious concern and lodged a strong protest against the same through e mail.

7. That in order to mask its own lapse, it issued an unwarranted and unauthorized demand letter, thereby raising demands of alleged balance payment, without paying any heed to the concerns raised by him with regard to the high-tension wires and thereby threatening the complainant to cancel the said allotment of unit. The respondent made a unilateral cancellation of the unit and such cancellation was not followed by the refund of amount.
8. That the respondent without initiating refund of amount paid by the complainant on cancellation, further sold the flat to another person. Under the prevailing circumstances, at the time, and keeping in view the status of the project, he decided to withdraw from the project and made requests to respondent in this regard.
9. That the allotment of the same unit has already been made to a third party, as such the complainant is entitled to refund of his entire amount with interest. He is also entitled to the compensation on account of mental harassment and litigation costs, due to the unfair trade practices of respondent.

C. Relief sought by the complainant:

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

- i. Direct the respondent to refund the entire amount paid by the complainant to the respondent along with interest.
- ii. Direct the respondent to pay compensation on account of mental harassment and litigation cost.

D. Reply by respondent :

The respondent by way of written reply made following submissions

11. That the subject unit of the complainant was cancelled on 26.07.2014 and present complaint was filed on 22.01.2021, after a delay of more than six years. Thus, present complaint is liable to be dismissed on this ground alone.
12. That the respondent launched a residential project under the name and style of "Oyster Grande" in Sector 102/102A in Gurugram, Haryana (hereinafter "said project"), wherein the complainant approached the respondent and made an application for allotment of an apartment in the said project.
13. That he was allotted an apartment bearing no. D-1204 of the vide provisional allotment letter dated 05.01.2013 for a total sale consideration of Rs. 1,12,45,154/- plus taxes as applicable.
14. That the respondent duly achieved the various stages which were agreed through the construction linked plan and as and when such stages of construction were achieved, demand notices were issued to the petitioner, calling upon him to make the payment of the installments

linked to with such stage of construction. The complainant has defaulted in payment against demand raised and resultantly his allotment was cancelled.

15. That he opted for construction linked payment plan, and in pursuance thereof, he failed to pay the amount on time despite of several requests being made for the payment of installments, which were due towards the consideration of allotted unit, as per the construction linked plan.
16. That respondent issued several demand letters but he did not pay heed to the requests of the respondent, and eventually the respondent was constrained to issue a demand-cum-cancellation notice dated 26.07.2014, requesting him to make timely payment of the outstanding installments, failing which the provisional allotment of the said apartment would be cancelled.
17. That the said demand-cum-cancellation notice was necessitated on account of continuous defaults by the complainant. Further, it has suffered considerable losses on account of non-payment of due installments and the subsequent cancellation of the unit of the complainant.
18. That the tower wherein his unit was located in project has already been legally completed and the occupation certificate of same has already been obtained by the respondent. This tower is at distance of more than

52 mts from the HT wires, which duly complied with safety norms as per Haryana building code section 3.3. Moreover, the concerned authorities have sanctioned the plans of the colony after considering the safety and interest of the inhabitants of the colony. There is not even an apprehension in the mind of the complainant qua HT wires, rather such grounds have been taken only to claim the refund of amounts and at the time of execution of apartment buyer agreement complainant duly satisfied himself qua the site plan.

19. That whatever payments made by him to the respondent were inclusive of the payment of service tax, external development charges, IDC which were utilized in construction of project and the aforementioned tax and development charges were already transferred by the respondent.
20. That it is an extremely heavy financial burden upon the respondent developer since whatever amounts received are duly utilized for the development work of the project and payment of taxes and development charges and once the money has already been spent then if the same is ordered to be refunded then the same is certainly inequitable, unjust, illegal and against the interest of natural justice as well.
21. That from the above stated facts it is clear that he has defaulted in payment of the installments in his own chosen plan and did not pay any heed to the communications and notices of the respondent.

22. Copies of all the relevant documents have been filed and placed on 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:

23. The plea of the respondent regarding rejection of complaint on ground of jurisdiction 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.

E. I Territorial jurisdiction

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

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

allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 allottee and the real estate agents under this Act and the rules and regulations made thereunder.

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. Entitlement of the complainant for refund:

G.I Direct the respondent to refund the entire amount paid by the complainant to the respondent along with interest.

24. The complainant- allottee was allotted unit in the project of the respondent vide allotment letter dated 05.01.2013 and subsequently as per buyer's agreement executed inter-se parties on 13.06.2013, total sale consideration was agreed to Rs. 1,12,45,154/-.

25. **Validity of cancellation**

The complainant paid an amount of Rs. 38,70,352/- against total sale price of Rs. 1,12,45,154/- constituting 34.42% of total sale consideration. The respondent builder issued demand letters dated 27.12.2013, 28.01.2014, 31.03.2014, 12.08.2013, 14.05.2014, 17.06.2014 and pre-

termination cum cancellation letter dated 26.07.2014 on account of non-payments of demands.

26. The complainant submitted that he sent an email dated 11.08.2014 stating that after visiting the site, it observed that a high-tension wire was passing near his allotted unit. But on the other hand, respondent submitted that the concerned tower of the complainant is at a distance of 52 mtrs from high tension wires and it has duly complied with safety measures provided under Haryana Building Code Sec 3.3.
27. The authority observes that the said request of surrender was made after cancellation of allotted unit by the respondent and the fact cannot be ignored that the occupation certificate of concerned tower has been obtained on 11.12.2017 implying habitability of the tower concerned. Further, sufficient opportunities have been provided by the respondent-builder before cancellation of allotted unit vide cancellation letter dated 26.07.2014. The complainant has failed to fulfil the obligation conferred upon him as per section 19(6) of Act of 2016. Therefore, in view aforesaid circumstances, cancellation of the unit by the respondent is held valid.
28. As per article 6(V) and 3(D) of agreement dated 13.06.2013, an amount equivalent to earnest money (15%) of sale consideration was to be forfeited. However, there is nothing on record to show that the

respondent has returned the amount paid by the complainant after cancellation of unit vide letter dated 26.07.2014.

29. The respondent-builder took a plea that after the cancellation of allotted unit on 26.07.2014, the complainant filed the present complaint on 11.02.2021 i.e. after expiry of 6 years and thus, is barred by the limitation. The authority observes that the occupation certificate of the tower G where the cancelled unit was situated was obtained on 11.12.2017. keeping in view the fact that the occupation certificate of the said tower was received after coming into the force of the Act and the completion certificate has not been received accordingly, the project is well within the ambit of RERA. The case of the complainant is not against the cancellation letter which was issued way back as on 26.07.2014 and the same cannot be agitated as complaint was filed after 6 years well outside the limitation period. But the promoter was required to refund the balance amount as per applicable cancellation clause of the builder buyer agreement. The balance amount has not been refunded which is a subsisting obligation of the promoter as per the builder buyers' agreement. The respondent builder must have refunded the balance amount, after making reduction of the charges as mentioned in the buyers agreement. On failure of the promoter to refund the amount the authority is of considered opinion that the promoter should refund the balance amount after deducting 10% of the sale consideration and taxes which are not adjustable and have been borne by the promoter and brokerage charges as admissible as per law.

30. The Hon'ble Apex Court of law in case of *Maula Bux Vs. Union of India, (1970) 1 SCR 928* and *Sirdar K.B. Ram Chandra Raj Urs Vs. Sarah C. Urs, (2016) 4 SCC 136*, held that forfeiture of the amount in case of breach of contract must be reasonable and if forfeiture is in the nature of penalty then provision of the section 74 of the Contract Act, 1872 are attracted and the party so forfeiting must prove actual damage.
31. Even keeping in view, the principle laid down by the Hon'ble Apex Court of the law, the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018, framed regulation 11(5) provided as under-

"AMOUNT OF EARNEST MONEY

Scenario prior to the Real Estate (Regulations and Development) Act, 2016 was different. Frauds were carried out without any fear as there was no law for the same but now, in view of the above facts and taking into consideration the judgements of Hon'ble National Consumer Disputes Redressal Commission and the Hon'ble Supreme Court of India, the authority is of the view that the forfeiture amount of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/plot/building as the case may be in all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project and any agreement containing any clause contrary to the aforesaid regulations shall be void and not binding on the buyer"

32. In view of aforesaid circumstances, the respondent is directed to refund the paid-up amount after deducting 10% of the consideration of the unit being earnest money as per regulation Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018 and taxes which are not adjustable and have been

borne by the promoter and brokerage charges as admissible as per law within 90 days from the date of this order along with an interest @10 % p.a. on the refundable amount, from the date of cancellation i.e.; 26.07.2014 till the date of realization.

F.II Direct the respondent to pay compensation on account of mental harassment and litigation cost.

33. The complainant is seeking relief w.r.t compensation in the aforesaid relief, Hon'ble Supreme Court of India in civil appeal titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (SLP(Civil) No(s). 3711-3715 OF 2021)*, held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainant may approach the adjudicating officer for seeking the relief of compensation.

G. Directions of the Authority:

34. 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 functions entrusted to the Authority under Section 34(f) of the Act of 2016:



- i) The respondent is directed to refund the amount after deducting 10% of the consideration of the unit being earnest money as per regulation Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018 and taxes which are not adjustable and have been borne by the promoter and brokerage charges as admissible as per law along with an interest @10 % p.a. on the refundable amount, from the date of cancellation i.e.; 26.07.2014 till the date of realization.
- ii) A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

35. Complaint stands disposed of.

36. File be consigned to the registry.


(Vijay Kumar Goyal)
Member


(Dr. KK Khandelwal)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.08.2022