

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

Complaint no. :	640 of 2021
Date of filing complaint:	02.02.2021
First date of hearing:	30.03.2021
Date of decision :	24.08.2022

Sh. Navin Kumar Bhartia S/o Sh. Satya Narain Bhartia R/O: Flat No. 11W, Rajnigandha, 25B Rajnigandha, Behind Haldiram Ballygunge, Ballygunge, Kolkata	<b>Complainant</b>
Versus	
M/s Adani M2K Projects LLP Regd. office: Adani House , Plot No-83, Sector-32, Institutional Area, Gurugram-122001	<b>Respondent</b>

<b>CORAM:</b>	
Dr. KK Khandelwal	<b>Chairman</b>
Shri Vijay Kumar Goyal	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Gaurav Rawat (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:				
	<b>S no.</b>	<b>License no.</b>	<b>Validity</b>	<b>Licensed area</b>	<b>Licensee</b>
	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	3.518 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				

S no.	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:		
S no.	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 31 of complaint)	
8.	Unit no.	B-1103, 11 <sup>th</sup> floor, Tower B (As per page 31 of complaint)	
9.	Area of the unit (super area)	2579 sq. ft. (As per page 31 of complaint)	
10.	Date of execution of buyer's agreement	23.07.2013	

		(page 36 of complaint)
11.	Possession clause	<p><b>Article 5(A)- POSSESSION of agreement</b></p> <p><i>Subject to the compliance of all terms and conditions of this agreement by the 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 endeavour 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 58 of complaint)</p>
12.	Date of start of construction	03.02.2013 (As per demand letter on page no. 32)

		of complaint)
13.	Due date of possession	23.01.2018 (Calculated from date agreement dated 23.07.2013, being later) <b>Grace period is allowed</b>
14.	Total Sale Consideration	Rs. 1,69,37,059/- (As per payment plan annexed with BBA dated 23.07.2013 at page 91 of complaint.)
15.	Total amount paid by the complainant	Rs. 63,93,327/- (As per cancellation letter dated 28.02.2015 at page 110 of complaint.)
16.	Demand letters & reminders	08.10.2014, 12.11.2014, 25.11.2014, 30.12.2014
17.	Pre cancellation letter	28.02.2015 (As per page 110 of complaint)
18.	Cancellation letter	19.06.2015 (As per page 20 of reply)
19.	Occupation certificate for concerned tower B	20.12.2017
20.	Offer of possession	<b>Not offered</b>

**B. Facts of the complaint:**

3. That the complainant issued a cheque dated 13.10.2012 of Rs. 12,00,0000/- as booking advance for 10% of booking amount for flat (3BHK+Study) at Sector 102 on Main Dwarka Expressway, Gurgaon namely "Oyster Grande" being developed by the respondent. He received

a letter confirming "provisional allotment" in his favour on 05.01.2013. Later, a sum of Rs. 15,00,000/- was also paid in furtherance of the same. He then received a letter dated 03.02.2013 from respondent demanding a payment of Rs. 16,82,852/- on start of excavation by 15.02.2013. The complainant made the payment complying with the demand vide cheque dated 12.02.2013 and received a receipt dated 19.02.2013 against the same.

4. That the complainant, after nine months of payment of booking amount, entered into buyer's purchase agreement (hereinafter referred to as the 'agreement') on 23.07.2013 wherein the total consideration of Rs.16,937,059/- was agreed upon for the flat details mentioned in the 'provisional allotment' letter. The complainant received a letter dated 16.01.2014 demanding payment of Rs. 20,10,474/- for start of construction of lower basement slab by 31.01.2014. As a reply to this letter, a letter requesting extension of payment date to first week of April 2014 was sent by him to the respondent. Further, a letter dated 31.03.2014 demanding payment was also received. The complainant duly made the payment of Rs. 20,10,474/- vide cheque dated 04.04.2014 and a receipt dated 07.04.2014 was issued by it against such payment.
5. That the complainant received letters dated 08.10.2014, 25.11.2014 and 30.12.2014 demanding payment of Rs. 20,10,474/- for start of construction ground floor slab to be paid by 27.10.2014. As a reply to these, letters requesting extension of payment date to first week of

January 2015 and first week of March 2015 were sent to respondent on 27.10.2014 and 29.11.2014 respectively as asked by the respondent since the construction of the project was delayed. The respondent has earlier accepted installment payments from the complainant after extending the payment date without any interest being charged thereon. This is evident of the fact that the construction of the project had been delayed owing to the its inability thereby allowing the complainant delayed payment of installments.

6. That the respondent sent a letter dated 28.02.2015 containing statement showing outstanding installment of Rs. 20,10,473/- and cancellation notice of provisional allotment of apartment. After receiving cancellation intimation from the respondent vide letter dated 19.06.2015, the complainant a resident of Kolkata requested in reply to the cancellation request to provide the actual refund amount along with details of amount paid and cancellation charges sent to the respondent vide letter dated 24.06.2015. The complainant has not received any response to the request made five years ago till date showing malicious intention of part of the respondent to defraud and retain the amount of Rs. 63,93,327/- duly paid by the complainant towards the allotment of the apartment.
7. That after waiting for almost two years for response from the respondent, the complainant vide letters dated 17.05.2017 and 16.06.2017 requested it to make the payment of refund amounting Rs.

63,93,327/- along with interest for the default period w.e.f. 01.07.2015 due towards the complainant, but these letters remained answered.

8. That the complainant was left with no other option but to avail legal recourse and thereby served a legal notice dated 02.08.2017 to the respondent demanding the payment of refund amount along with interest due towards the complainant within 15 days of the receipt of the legal notice by the opposite party. The respondent, without any change in the past behaviour, chose to ignore the legal notice as well thereby leaving no other option with the complainant but to knock the doors of this authority.
9. That the respondent has obtained the occupancy certificate of other tower- D, tower -E and EWS block on 11.12.2017 while omitting to get these projects registered by 31.07.2017 thereby failing to fulfil its duty and at the same time misleading the authority by not getting the ongoing projects registered under the Haryana RERA. Moreover, the respondent has deliberately omitted to get registered tower -B even when its construction has not been completed when RERA was enforced and eventually has not obtained the completion certificate for tower -B, for a copy of which an application under RTI has been filed by the complainant on 04.08.2020 to which no response has been received till date. The respondent is thus, liable to be penalized for misleading the authorities and maliciously omitting to get the ongoing projects registered against the interest of public at large.



10. That it charges compound interest @ 18% p.a. in case of default on part of the allottee but agreed to pay less than 3% p.a. of the capital investment, in the event of his failure to fulfil the terms of agreement and hand over possession in the stipulated time. Such terms in the buyer's agreement also encourages the builder to divert the funds collected by him for one project, to another project being undertaken by him. He thus, is able to finance a new project at the cost of the buyers of the existing project and that too at a very low cost of finance. Moreover, the interest being charged by the banks and financial institutions for financing projects of the builders is many times more than the nominal compensation which the builder would pay to the flat buyers in the form of flat compensation. In fact, the respondent has no proof that the entire amount recovered by it from the flat buyers was spent on this very project. This gives credence to the allegation of the complainant that their money has been used elsewhere.

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

11. The complainant has sought following relief(s):
- i. Direct the respondent to refund 100% amount i.e. Rs. 62,93,327/- paid by the complainant along with interest @18% p.a. from date of receipt of payments made to the respondent.
  - ii. Direct the respondent to pay compensation on account of mental agony, harassment, discomfort and undue hardship.
  - iii. Direct the respondent to pay Rs. 2,00,000/- towards litigation cost

**D. Reply by respondent :**

The respondent by way of written reply made following submissions

12. That the respondent launched a residential project under the name and style of "Oyster Grande" in Sector 102/102A in Gurugram, Haryana ("said project"), wherein the complainant approached the respondent through a broker namely Proptiger Realty Pvt. Ltd. and made an application dated 21.10.2012, for allotment of an apartment in the said prestigious project. Thereafter, he was allotted an apartment bearing no. B-1103 in the said project vide provisional allotment letter dated 05.01.2013.
13. That the said unit was allotted for a total sale consideration of Rs. 1,69,37,059/- plus taxes and the complainant out of his own accord had chosen to make the payment of sale consideration of the said unit by way of construction linked plan attached with the apartment buyer agreement executed between the parties on 23.07.2013.
14. 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 complainant, calling upon him to make the payment of the installment linked with such stage of construction. As it would be discussed in detail hereinafter the complainant never made the payment of the due installments after 04.04.2014. In the case at hands, it is the complainant who has been in complete default of the terms and conditions which he

himself had agreed with regard to payment of due installments of the sale consideration of the said unit. That on 16.01.2014 respondent sent a demand letter wherein a demand of Rs. 20,10,474/- was raised against payment due on start of lower basement area plus service tax and requested to pay the same by 31.01.2014. Though said payment was made by complainant but with delay i.e. on 04.04.2014 vide cheque bearing no. 506672 dated 04.04.2014.

15. That the respondent vide demand letter dated 08.10.2014 raised further demand against payment due on start of ground floor roof slab and service tax amounting to Rs 20,10,474/- and requested him to pay the same by 23.10.2014. However, he never paid the same. Even e-mail dated 12.11.2014 of said demand was also sent to the complainant. Since, the complainant failed to pay even after receiving of said mail, the respondent sent another demand letter dated 25.11.2014 to him. That even this time, no amount was paid by the complainant. Thereafter another demand letter dated 30.12.2014 was also sent by it reminding him about the demand due towards him and even this time also he chose not to pay the same.
16. That when he did not come forward to pay the amounts due even after issuance of several demand letters and reminders, it ultimately sent a cancellation notice dated 28.02.2015 whereby it was duly intimated that since he has constantly failed and neglected to comply with the

allotment, thus consider that letter as final notice for payment of outstanding and falling which allotment would stand cancelled.

17. That since the complainant failed to pay the outstanding amount the respondent cancelled his allotment vide letter dated 19.06.2015. It is within notice and knowledge of the complainant that his unit was cancelled on 19.06.2015 as duly admitted in the complaint itself and filed the said complaint against respondent on 02.02.2021 i.e. after a lapse of 5 years 7 month and 14 days. Thus, it is crystal clear that the present complaint is hopelessly barred by limitation and the complainant is not entitled for any sort of relief even on this ground alone.
18. That the respondent has suffered considerable loss on account of non-payment of due installments and the subsequent cancellation of the unit in question.
19. That the tower where in the unit of the complainant is located has already been legally completed. The occupation certificate of the tower has already been obtained by the respondent. Whatever payments the complainant actually made to the respondent included the payment of service tax, external development charges, IDC have been utilized in construction of project. That the aforementioned tax and development charges have already been transferred by the respondent. The aforementioned submissions have been made to this honourable authority to kindly consider that once the amounts which had been received by the respondent have already been spent upon the

construction work and payment of taxes and development charges, then no question arises for refunding the same. It is also to be seen that the respondent has duly completed the construction in time bound manner.

20. That it would be an extremely heavy financial burden upon the respondent developer since whatever amounts received were duly utilised for the development work of the project and payment of taxes and development charges and once the money has already been spent 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 the complainant defaulted at many stages 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 100% amount i.e. Rs. 62,93,327/- paid by the complainant along with interest @18% p.a. from date of receipt of payments made to the respondent.**

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 23.07.2013, total sale consideration was agreed to Rs. 1,69,37,059/-. Before proceeding further, it is relevant to comment over the validity of the said cancellation as the same would definitely effect the findings against the relief sought by the complainant.

**25. Validity of cancellation**

The complainant paid an amount of Rs. 63,93,327/- against total sale price of Rs. 1,69,37,059/- constituting 37.75% of total sale consideration. The respondent-builder issued demand letters dated 08.10.2014, 12.11.2014, 25.11.2014, 30.12.2014 and pre-termination dated 28.02.2015 which was followed by cancellation letter dated 19.06.2015 on account of non- payments of demands.

The complainant submitted that against demand raised by the respondent vide letters dated 08.10.2014, 12.11.2014, 25.11.2014, 30.12.2014, he requested the respondent to allow him some extension till first week of January.

The authority observes that the said request of sufficient opportunities have been provided by the respondent-builder before cancellation of allotted unit vide cancellation letter dated 19.06.2015. 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.

As per article 6(V) and 3(D) of agreement dated 23.07.2013, an amount equivalent to earnest money (15%) of sale consideration shall 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 19.06.2015.

26. The respondent-builder took a plea that after the cancellation of allotted unit on 19.06.2015, the complainant filed the present complaint on 02.02.2021 i.e. after expiry of 5 years and thus, is barred by the limitation. The authority observes that the occupation certificate of the tower B where the cancelled unit was situated was obtained on 20.12.2017. 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 19.06.2015 on the same cannot be agitated as complaint was filed after 5 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 buyer 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.

27. The Hon'ble Apex Court of land 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.
28. Even keeping in view, the principle laid down by the Hon'ble Apex Court of the land, 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”*

29. In view of aforesaid circumstances, 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 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.; 19.06.2015 till the date of realization.

**F.II Direct the respondent to pay compensation on account of mental agony, harassment, discomfort and undue hardship.**

**F.III Direct the respondent to pay Rs. 2,00,000/- towards litigation cost.**

30. 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:**

31. 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.; 19.06.2015 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.

32. Complaint stands disposed of.

33. File be consigned to the registry.

  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

  
(Dr. KK Khandelwal)  
Chairman

**Dated: 24.08.2022**