

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

Complaint no. :	1312 of 2021
Date of filing complaint:	22.03.2021
First date of hearing:	09.07.2021
Date of decision :	24.08.2022

1. 2.	Sh. Gaurav Singh S/o Sh. Subhash Singh Sh. Subhash Singh S/o Sh. Mawasi Lal Both R/O: Flat no. 301, Gardenia Geetanjali Apartment, Sector-18, Vasundra, Ghaziabad, Uttar Pradesh	Complainants
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. Sashi Kant Sharma (Advocate)	Complainants
Sh. Prashant Sheoran (Advocate)	Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees 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 allottees 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 complainants, 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.	Application form dated		18.10.2012	(As per allotment letter filed by respondent with promoter information)
8.	Allotment letter dated		31.01.2013	(Filed by respondent with promoter information)
9.	Unit no.		H-1204, 12 th floor, Tower H (As per page 46 of complaint)	
10.	Area of the unit (super area)		3198 sq. ft. (As per page 53 of complaint)	
11.	Date of execution of buyer's		Not executed	

	agreement	
12.	Possession clause	<p>Clause 39 of application form</p> <p><i>Subject to the compliance of all terms and conditions of this agreement by the allottees(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. (application form)</i></p> <p>(page 32 of complaint)</p>
13.	Date of start of construction	03.02.2013 (As per demand letter on page no. 16 of reply)
14.	Due date of possession	03.08.2017

		(Since no buyer's agreement has been executed inter-se parties, due date is calculated from date construction 03.02.2013) Grace period is allowed
15.	Total Sale Consideration	Rs. 2,06,57,786/- (As alleged by the complainants at page 7 of their complaint.)
16.	Total amount paid by the complainants	Rs. 35,00,000/- (As per cancellation notice dated 12.06.2014 at page 22 of reply)
17.	Request for surrender the subject unit	23.07.2013 (As per page 47 of complaint) Followed by reminder letter dated 27.09.2013, 15.10.2013, 06.11.2013, 25.05.2017 (As per page 48-52 of complaint)
18.	Request by builder-respondent for execution of buyer's agreement	04.05.2013, 14.08.2013 (As per page 18-19 of reply)
19.	Demand letter dated	04.03.2014 (As per page 20 of reply)
20.	Cancellation letter	12.06.2014 (As per page 24 of reply)
21.	Offer of possession	Not offered

B. Facts of the complaint:

- That the respondent, somewhere in the year October 2012, through its agent approached the complainants and canvassed for the purchase of a

unit in its project namely "Oyster Grande" at Sector 102/102A Gurugram, Haryana for a price of Rs. 2,06,57,786/- all inclusive.

4. That the complainants discussed the details of the said project, wherein, it was represented that all necessary approvals and permissions in respect of the above said project has been secured and made them believe that the work/construction was started on December 2012. It was further assured to them that the construction of said unit would be finished within a period of 36 months. Relying on the representation made by the it, they agreed to jointly purchase one unit at the above project and pursuant thereto, booked a flat and paid booking amount of Rs. 15,00,000/-. At the time of booking it categorically made statement and representation that the construction has already started and assured that the same shall be completed within the timeframe guaranteed.
5. That an application booking form was executed between the parties, recording the various representations and assurances from the respondent and the terms of transaction (hereinafter referred to as the "application form") in respect of unit bearing no. H-1204 on 12th floor, of tower-H in the said project.
6. The application form agreement, amongst other things, stipulated the total sale consideration as Rs. 2,06,57,786/-. However, as against the assurance given at the time of booking of flat to the effect that the possession would definitely be given within 36 months from the date of booking, the respondent made an extended time line for handing over

the possession i.e., 6 months as a grace period from the signing of application form. However, they have already paid huge sum to it and did not have any other ways but to subdue to the highhanded and arbitrary approach and the one-sided terms made in the booking application form.

7. That however, the complainants were shocked to know that even after the lapse of one year of booking, the construction has not even been started, and it was revealed that the promises and assurances of respondent were fake and vague. However, considering the stringent conditions contained in the booking application with respect of the payment of balance amount and to avoid any sort circumstances where the respondent had to resort excuses, the complainants continued to pay demands of the respondent from time to time.
8. The complainants till June 2013 have paid a total sum of Rs. 35,00,000/- and in an arbitrary and high-handed charged interest @ 18% p.a. on the delayed payment from the customers.
9. That even after the benefit of such grace period, the possession of the allotted unit was to be handed over by May 2016. However, the complainants saw no sign of completion of work and handing over of the possession, as promised. In pursuance thereof, the complainants conducted general enquiry and also done search through the website of the respondent wherein, they came to know that the work of the above project started only in the month of June 2013 and the construction was

going on in disappointingly slow pace. On this, sometimes in the month of June 2013, the complainants visited respondent's office and shared their anxiety and apprehension. However, respondent again reiterated and promised that it would offer the possession of the flat strictly according to the schedule and there would not be any violation of the same from respondent side.

10. That as per the booking, the complainants have been regularly paying the amount as per the invoice/demand made by the respondent from time to time, as shown above. The complainants being resident of Ghaziabad, could not visit site or the office of the respondent for the enquiry or status of the construction of the project frequently. Thus, they used to enquire through telephonically and all the time, the respondent was making assurance that the construction was in progress and the possession of the flat would be handed over to them as per the schedule.
11. That as a matter of fact, from the date of booking to till June 2013, absolutely there were no progresses on the project. Moreover, there was no response from the respondent for the enquiry and mails of complainants about the date of handing over of the unit.
12. That in view of the above facts and circumstances of the case, it is evident that from the date of booking, the respondent indulged in cheating and fraudulent practices with complainants in order to illegally grab money from them. As the delivery date of the project was delayed from the agreed delivery date of May 2016, the complainants had no choice but to

issue a request for withdrawal on 23.07.2013. Further, they also issued an email dated 27.09.2013 to it repeating the same request. They sent various reminder letters through emails and speed post on 15.10.2013, 06.11.2013, 25.05.2017 & 27.05.2018 regarding refund of amount. But it miserably failed to refund the amount paid by them. Even the broker also wrote a letter requesting it to refund their amount.

13. It is respectfully submitted that all of sudden, the respondent sent an email on 27.02.2021 to one of their customers namely Mr. Rajiv Ranjan Jha in which they mentioned that the allottees violated the resident guidelines and fire norms in respect of unit no. H-1204. It means that the respondent has already sold the unit no. H-1204 to other party.

C. Relief sought by the complainants:

14. The complainants has sought following relief(s):
- Direct the respondent to immediately refund the total amount of Rs. 35,00,000/- to the complainants at the rate of 18% interest per annum from the date of payments till actual realization.

D. Reply by respondent :

The respondent by way of written reply made following submissions

15. That the present complaint is barred by law of limitation as allotment of complainants has already been cancelled in June 2014 i.e. 7 years ago from filing of present complaint and the said tower in which allotment was granted (which is already cancelled 7 year ago) was duly completed

and occupation certificate has already been received by respondent on 12.02.2019 i.e. much prior to filing of present complaint.

16. 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 complainants in the year 2012 approached the respondent to book a flat. Vide an application applied for allotment, they paid an amount of Rs.15,00,000/- and in lieu of the said amount receipts were issued to them. The complainants vide said application form specifically admitted that 15% of the BSP+PLC+Parking charges would be treated as earnest money to ensure terms and conditions contained in that application and buyers agreement and further admitted that in case of non-payment of installments, allotment would be terminated and said 15% of BSP+PLC+Parking charges along with brokerage charges + direct expenses i.e. taxes and any other loss suffered by developer was to be forfeited.
17. That the complainants made another payment of Rs. 20,00,000 and in lieu of which two receipts were issued by the respondent and the complainants were allotted flat bearing no. H-1204 of tower H on 12th floor in the said project. The above payments were given by the complainants as per the payment plan agreed upon by them when they approached the respondent for booking and filing of application in this regard.

18. That after execution of application form as well as allotment, a demand notice dated 03.02.2013 was sent to the complainants whereby an amount of Rs. 19,34,805/- and tax thereon was demanded with a specific request that the payment would be made latest by 15.02.2013.
19. That the complainants instead of making payment against the amount demanded, chose to ignore the said demand letter. That respondent thereafter vide its letter dated 04.05.2013 requested to execute an apartment buyer agreement sent to the complainants along with said letter. The complainants even after receiving of said letter failed to execute apartment buyer agreement within stipulated time period and sent a reminder letter to the complainants for submission of builder buyer agreement vide its letter dated 14.08.2013. However, they failed to submit the duly executed agreement at that time also. Since, the complainants had already agreed to the payment plan and other terms and conditions as mentioned in the application form, respondent sent another demand letter dated 04.03.2014 to them demanding an amount of Rs. 42,59,565/- with tax thereon and requested them to pay the same by 20.03.2014.
20. That even after issuance of reminder letters, they failed to come forward for either execution of the apartment buyer agreement or payment as demanded by the respondent. Consequently, it was constrained to issue a cancellation notice dated 12.06.2014, whereby it was specifically stated

that in case the payment was not made before 27.06.2014, the allotment of the unit would stand cancelled without further notice.

21. That even after receiving above said cancelled letter dated 12.06.2014, they failed to pay the amount demanded and thus vide letter dated 09.10.2014, allotment of the complainants was cancelled.
22. That after passing more than 1 years from the date of cancellation, they approached the respondent and requested that they were facing financial crisis and were unable to pay the future installments and requested to refund the total amount with interest. That at that point of time also the respondent duly apprised the fact that since the allotment has already been cancelled in favour of complainants, they are not entitled for any refund with interest, since as per agreed terms total amount which was to be forfeited comes to Rs. 41,20,635/-.
23. That after acquiring knowledge of cancellation in the year 2014 and again in the year 2015, they failed to challenge the said cancellation within the prescribed time period of three years. That now after passing of 7 years from date of cancellation, the respondent received present complaint based on false and frivolous grounds and is barred by limitation.
24. 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:

25. 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 allottees 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 allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoter, the allottees 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 complainants at a later stage.

F. Entitlement of the complainants for refund:

G.I Direct the respondent to immediately refund the total amount of Rs. 35,00,000/- to the complainants at the rate of 18% interest per annum from the date of payments till actual realization.

26. The complainants-allottees were allotted unit in the project of the respondent vide allotment letter dated 18.10.2012 for a total sale consideration of Rs. Rs. 2,06,57,786/-. The complainants paid an amount of Rs. 35,00,000/- against total sale price of Rs. 2,06,57,786/- constituting 16.95% of total sale consideration. No buyer's agreement was executed inter-se parties. The respondent builder issued reminder letter dated 04.05.2013 & 14.08.2013 for execution of buyer's agreement.
27. The respondent-builder took a plea that after the cancellation of allotted unit on 12.06.2014, the complainants filed the present complainants on 22.03.2021 i.e. after expiry of 6 years and thus, is barred by the limitation. The authority observes that the occupation certificate of the tower "H" where the cancelled unit was situated was obtained on 12.02.2019. 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 complainants is not against the cancellation letter issued way back as on 12.06.2014 as the same cannot be agitated as complaint was filed after 6 years well beyond 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 have 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.

28. However, it was brought to the notice of the authority that the complainants after visiting the site and not being satisfied with pace of construction issued letter dated 23.07.2013 followed by reminders dated 27.09.2013, 15.10.2013, 06.11.2013, 25.05.2017 for surrender of allotted unit. On the other hand, the respondent builder issued cancellation letter dated 12.06.2014 after sending demand letter dated 04.03.2014.
29. Now the question arises before the authority that whether such refund of amount should be payable from date of surrender of allotted unit or date of cancellation of unit by the respondent-builder.

The authority observes that the complainants made such request of surrender of unit before benchmark of due date of handing over of possession i.e. 03.08.2017. Therefore, in view of said circumstances where request of surrender has been repeatedly sent by the complainants before cancellation of unit by the respondent, cancellation by builder holds no value. But the fact cannot be ignored that the complainants should have approached the appropriate forum to raise their plea and not on the expiry of a reasonable time. Further, as observed in the landmark case i.e. **B.L. Sreedhar and Ors. V.K.M. Munireddy and Ors. [AIR 2003 SC 578]** the Hon'ble Supreme Court held that "*Law assists those who are vigilant and not those who sleep over their rights.*" Law will not assist those who are careless of his/her right. In order to claim one's right, he/she must be watchful of his/her rights. Only those persons, who are watchful and careful of using his/her rights, are entitled to the benefit of the law. In view of aforesaid circumstances, the authority affirms its stand and directs the promoter to refund the 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 cases 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 land, the Haryana Real Estate Regulatory Authority Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018, framed regulation 11 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 amount after deducting 10% of the sale 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 surrender i.e.; 23.07.2013 till the date of realization.

G. Directions of the Authority:

33. 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 sale 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 surrender i.e.; 23.07.2013 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.


34. Complaint stands disposed of.

35. File be consigned to the registry.

v.1-3
(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram


(Dr. KK Khandelwal)

Chairman

Dated: 24.08.2022