

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

Date of decision: 10.01.2023

NAME OF THE BUILDER		AGRANTE REALTY LTD.	
PROJECT NAME		KAVYAM PHASE-1	
S. No.	Case No.	Case title	Appearance
1.	CR/1734/2022	SHREYA DINDA V/s AGRANTE REALTY LIMITED	Sh. Yogesh Kilhore (Advocate) Smt. Nishtha Jain (Advocate)
2.	CR/2436/2022	DINESH ARORAV/s AGRANTE REALTY LIMITED	Shr. Shyam Diwan (Advocate) Smt. Nishtha Jain (Advocate)

CORAM:

Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Member
Member

HARERA
GURUGRAM
ORDER

1. This order shall dispose of all the 2 complaints titled as above filed before this authority in form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

- The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Kavyam Phase-1" (affordable group housing colony) being developed by the same respondent/promoter i.e., M/s Agrante Realty Limited. The terms and conditions of the buyer's agreements, fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of refund the entire amount along with interest and the compensation.
- The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	AGRANTE REALTY LTD. "KAVYAM PHASE-1" Sector-108, Gurugram.				
Possession clause as per policy, 2013: -					
"1 (iv)					
All such projects shall be required to be necessarily completed within 4 years from the date of approval of building plans or grant of environmental clearance , whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of the policy."					
(Emphasis supplied)					
Occupation certificate: - Not obtained					
Due date of possession	4 years from date of environmental clearance i.e., 20.08.2019 as the same is later.				
S n o.	Compl aint No.	Reply Status	Unit No.	Date of allotment	Total Consideration (TC), Basic

					sale price (BSP) & Total Amount paid by the complainant (AP)
1.	CR/17 34/202 2	22.09.2022	TD-116, tower D [as per allotment letter at page 21 of complaint]	01.07.2019 [page 21 of complaint]	TC: ₹ 19,93,060/- AP: ₹ 4,98,266/-
2.	CR/24 36/202 2	18.01.2023	TD-1612, tower D [as per allotment letter at page 21 of complaint]	08.09.2021 [pg. 21 of complaint]	BSP: NOT KNOWN AP: ₹ 5,03,251/-

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the apartment buyer's agreement executed between the parties in respect of said unit for not handing over the possession by the due date, seeking award of refund the entire amount along with interest.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/ respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.

6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/1734/2022 Shreya Dinda V/S Agrante Realty Limited.** are being taken into consideration for determining the rights of the allottee(s) qua refund of the entire amount along with interest and compensation.

A. Project and unit related details

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

CR/1734/2022 Shreya Dinda V/S Agrante Realty Limited.

S. N.	Particulars	Details
1.	Name of the project	"Kavyam", Sector- 108, Gurgaon (Phase-1)
2.	Nature of project	Affordable group housing
3.	RERA registered/not registered	Registered vide registration no. 23 of 2018 dated 22.11.2018
	Validity status	5 acres
	Licensed area	31.11.2022
4.	DTPC License no.	101 of 2017 dated 30.11.2017
	Validity status	29.11.2022
	Name of licensee	Arvinder Singh & others
	Licensed area	5 acres
5.	Unit no.	TD-116, tower D

		[as per allotment letter at page 21 of complaint]
6.	Unit area admeasuring	488.30 sq. ft. [as per allotment letter at page 21 of complaint]
7.	Application dated	04.02.2019 [page 20 of complaint]
8.	Allotment dated	01.07.2019 [page 21 of complaint]
9.	Total sale consideration	Rs. 19,93,060/- [as alleged by complainant at page 12 of complaint]
10.	Amount paid by the complainant	Rs. 4,98,266/- [as per receipts annexed by complainant]
11.	Possession clause	NA
12.	Possession clause as per Affordable Housing Policy, 2013	1 (iv) All such projects shall be required to be necessarily completed within 4 years from the date of approval of building plans or grant of environmental clearance , whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of the policy.
13.	Building plan approved on	06.07.2018 [As per project details]
14.	Environment clearance	20.08.2019 [pg. 16 of reply]
15.	Due date of possession	20.08.2023

		[calculated as 4 years from date of environmental clearance i.e., 20.08.2019 as the same is later]
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered
18.	Surrender	Vide email dated 25.07.2020. [pg. 24 of complaint]

B. Facts of the complaint

8. The complainants have made the following submissions in the complaint: -
- That the complainant is resident of L-201, ICB Flora, Gota S G Highway, Ahmedabad 382481 and is a law abiding citizen of India. That the Respondent, M/s Agrante Realty Ltd. is a company duly formed under the provisions of the Indian Companies Act, 1956. That the respondent is dealing in real estate business of constructing housing projects.
 - That the respondent through its authorized representative and executives approached the complainant and informed that they are working as a real estate developer and own huge land and all requisite permissions(s) and inclined to construct a residential project under name and style "Kavyam-Affordable Housing Project", at sector-108, Upper Dwarka Expressway, Gurgaon.
 - That the authorized representative of the respondent informed the complainant that the above-mentioned project is in pre-launch stage and lured the complainant to book a unit in project by trapping the complainant by using lucrative claims viz. purported project 'Kavyam-affordable housing project' is a residential project with a difference.

- d. That the respondent induced the complainant and lured her to book a residential unit in the above-mentioned residential project. That in good faith and interest upon, the complainant showed interest in the proposal and booked a unit bearing no. TD-1116 in the upcoming residential project namely "Kavyam" on date 04-02-2019 vide cheque bearing no. 000001 dated 04.02.2019 for Rs. 99,653.00/- and consequently respondent issued an allotment letter dated 01.07.2019 and allotted a unit bearing no. TD-1116, complainant made consecutive payments of Rs. 2,00,000.00/- vide cheque no. 000002 dated 04.012.2019 and a payment of Rs. 1,98,613.00/- vide cheque no. 000003 dated 6.01.2021. All the cheques were drawn from HDFC bank in favor of "KAVYAM COLLECTION ACCOUNT" and all cheques were duly encashed.
- e. That the complainant, after booking and realization of cheques qua pre-launch booking, lost her job due to the pandemic and covid situation resulting in financial crisis and hardships and due to this very main reason her bank loan also not sanction, the complainant left with no option but to withdraw her consent towards the booking made under the above-mentioned residential project. On 25.07.2020, complainant approached respondent with a request to cancel her booking and to initiate with refund of her paid up amount towards the allotted unit in the above mentioned project, same was conveyed to respondent company by telephonic conversation as well as E-mail dated 25.07.2020.

- f. That the complainant tried really hard to contact the respondent company on regular basis, after conveying the cancellation request via mail dated 25.07.2020 and was utterly surprised to see the behaviour/ conduct of the respondent company that they are highly ignorant on their part in discharging of their obligation towards the complainant.
- g. That after 54 days and several follow ups the respondent company acknowledged the request of complainant for cancellation of allotted unit bearing no. TD-1116 in said project "Kavyam" and reverted back on 18.09.2020 via E-mail , for surrendering the allotted unit with supporting document, same was supplied by complainant to respondent company via speed post within a period of week time i.e. on 24.09.2020 along with the request of initiating the refund of the paid up amount against the total sale consideration.
- h. That the complainant again waited for a long time and despite several follow-ups got no response from the respondent company, finally on 20.02.2021 respondent company acknowledged the receiving of the necessary documents for cancellation via E-mail dated 20.02.2021.
- i. That the complainant waited for refund of the amount paid as per RERA, within 90 days of cancellation but the respondent company paid no heed to it and was reluctant and ignorant towards the complainant. Complainant tried to connect several a time to the office of the respondent company for the refund and even sent a reminder E-mail on 26.06.2021 but got no response. Aggrieved from the act and conduct of respondent company, complainant served a legal notice dated 14.07.2021.

- j. That the respondent company assured the complainant that they will refund the paid-up amount of Rs. 4,98,266/- (four lakhs ninety-eight thousand two hundred and sixty-six only) many a times but failed to liquidate aforesaid liability.
- k. That even after the cancellation of booking, the respondent company for its illicit financial gains and with mala fide intents, did not initiate for refund of paid-up amount Rs. 4,98,266/- against the allotted unit bearing no. TD-1116 to the complainant, within the prescribed period of time as per the Act i.e., 90 days from the day of cancellation.
- l. That it is pertinent to mention that the promoters have failed to fulfil their obligation and duties u/s section 11 of the Act ibid, Also the promoted is liable to compensate the complainant u/s 18(1) of the Act ibid. It is pertinent to mention that the section 19 of the Act safeguards the right of the complainant as the complainant have full right to have information relating to the project which was eventually concealed in this case by the respondent.
- m. The complainant, after losing all the hope from the respondent company, having her dreams shattered of owning a flat & having basic necessary facilities in the vicinity of the Kavyam project and also losing considerable amount, are constrained to approach this Hon'ble Authority for redressal of their grievance.

C. Relief sought by the complainant: -

9. The complainant has sought following relief(s)
 - a. Refund entire amount paid by the complainant along with the interest.
 - b. Compensation and litigation expenses.

10. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent.

11. The respondent has contested the complaint on the following grounds:

- a. That the present reply is being verified and filed by Sh. Satish Kumar who is the authorized representative of the respondent i.e., Agrante Realty which a duly incorporated company. Sh. Satish Kumar is duly authorized vide board resolution dated 12.09.2022.
- b. That M/s Agrante Realty Limited arrayed as the respondent and it states on record that the all the averments, facts, documents and all supporting evidence, if any filed along with the present complaint are denied *in toto* by the respondent unless specifically admitted herein and nothing herein shall be deemed to be admitted for the want of specific traverse.
- c. It is submitted that complainant has malafidely filed the present complaint with the objective to arm twist the respondent and to treat the complainant above law neglecting the applicable rules and policy. It is submitted that the complainant has concealed vital material facts and circumstance for mis leading this Hon'ble Authority.
- d. That an affordable housing project i.e., "KAVVYAM" ("Project") under the Pradhan Mantri Awas Yojna is being constructed with full vigour and without any delay at Sector 108, Village Dharampur, Gurugram,

Haryana. The respondent has no hesitation to state on record that the said project is duly registered with Hon'ble Real Estate Authority Haryana having RERA registration no RC/REP/HARERA/GGM/2018/23 and is being constantly regulated as per its applicable rules and compliances. Further, it is relevant to apprise this Hon'ble Authority that the project being built under the guidelines of affordable housing policy as amended till date issued by Director Town and Country Planning (Government of Haryana) and thus the respondent as well the allottee are bound by it.

- e. It is submitted that the complainant had applied in the said project of the respondent vide application for allotment dated 04.02.2019 having application no. 3843 for booking of a 2 BHK Type 1 in the residential project "KAVYAM". That the complainant paid the booking amount along with application. Accordingly, the complainant was successful in the draw of lots held for the units in the project on 24.06.2019 and the complainant was allotted the unit bearing no. 1116, TD tower.
- f. It is not out of place to mention that the respondent is mandated under the affordable housing policy to deliver the possession of the units within the strict timelines. It is pertinent to mention here that the project is being constructed as per the planned timelines and the respondent will deliver the project within the stipulated period. It is further submitted that the complainant seems to be a speculative investor who

- subsequently changed his mind from investing further in the project and has cooked up a false story of being financially impacted by COVID-19 lockdown. The complainant had admittedly requested the respondent for surrender of his unit on 29.10.2020 on which date the respondent was in receipt of all necessary documents required in consonance with the policy guidelines. It is pertinent to mention that the said letter was submitted after a lapse of more than one year from the date of commencement of the project that is August 2019.
- g. It is submitted that the time of surrender of flats determines the percentage of statutory deductions leviable on the booking amount before refund is processed as per the affordable housing policy guidelines as amended till date. The date of commencement of the project is reckoned from the date of environmental clearance of the project as per affordable housing policy. The table for the purposes of calculation of the statutory deductions as per the above amendment is reproduced in verbatim for the ready reference of the Hon'ble Authority.
- h. It is submitted that the respondent has always been ready and willing to refund the money of the complainant as per the above table. Therefore, in addition to deduction of ₹ 25,250/- as per the affordable housing policy in case of surrender/cancellation/termination an amount equivalent to 3% of the total cost of the flat falling under the column (cc) as the surrender was made after lapse of more than one year, shall be

deducted from the amounts paid by the complainant. It is submitted that the amount computed after statutory deductions is ₹ 4,17,609/- which the respondent is ready to pay to the complainant.

- i. That the above calculation is in the knowledge of the complainant as he was made aware of the same by the respondent however, he withheld this from this Hon'ble Authority. The complainant thus by way of concealing material facts has misrepresented this Hon'ble Forum and got notice issued against the respondent. It is submitted that complainant has not approached this hon'ble authority with clean hands and thus the complainant is liable to be dismissed on this short ground alone.

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

13. The application 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

14. 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

15. 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) The promoter shall-

(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 promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

16. 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.
17. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed

by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Supra) and reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

18. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the relief sought by the complainants.

F.I Refund entire amount paid by the complainant along with the interest.

19. The complainants are allottees in the project "Kavyam", an affordable group housing colony developed by the respondent. The complainants were allotted

the units in the project and then surrendered the unit before the expiry of due date.

20. It is pertinent to mention clause 5(iii)(h) of Affordable Housing Policy, 2013 as amended by Notification dated 05.07.2019 which states 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 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;

Note: The cost of the flat shall be the total cost as per the rate fixed by the Department in the policy as amended from time to time.

21. Since, the surrender of the units by the complainants was done after commencement of construction, hence the respondent is entitled to forfeit amount in accordance with amended section 5(iii)(h). The date of commencement of project has been defined under clause 1(iv) to mean the date of approval of building plan or grant of environmental clearance, whichever is later. In the instant case, the date of grant of environment clearance i.e., 20.08.2019 is later and hence, the same would be considered as date of commencement of project.
22. Accordingly, the details of the amount to be refunded as per the policy in each case is as under:

Complaint no.	Date of surrender	Forfeiture of amount in addition to ₹ 25,000/-
CR/1734/2022	25.07.2020	Respondent is entitled to forfeit 1% of the flat cost in addition to Rs. 25,000 as mandated by the Policy of 2013 as the request for surrender is within 1 year from the date of commencement of project.
CR/2436/2022	27.10.2021	Respondent is entitled to forfeit 5% of the flat cost in addition to Rs. 25,000 as mandated by the Policy of 2013 as the request for surrender is after 2 year from the date of commencement of project.

23. Thus, the respondent in total is entitled to forfeit the aforementioned amount and return the balance amount to the complainants along with interest at the rate 10.60% [the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%] as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of surrender till the date of actualization within the timelines provided in rule 16 of the Haryana Rules 2017 (ibid).

F. II. Compensation & litigation expenses.

24. The complainant in the aforesaid head is seeking relief w.r.t compensation. Hon'ble Supreme Court of India, in case titled as *M/s Newtech Promoters*


and Developers Pvt. Ltd. V/s State of UP &Ors. (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021), has 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. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of compensation.

G. Directions of the authority

25. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:

- i. Thus, the respondent in total is entitled to return the balance amount to each of the complainants along with interest at the rate 10.60% [the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%] as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of surrender till the date of actualization within the timelines provided in rule 16 of the Haryana Rules 2017 (ibid) after making statutory deductions as mentioned in table annexed to para 22 of this order.
- 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.

26. This decision shall mutatis mutandis apply to all the cases mentioned in para 3 of this order.
27. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.
28. Files be consigned to registry.


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 10.01.2023



HARERA
GURUGRAM