



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Order pronounced on : 17.01.2023

Name of Builder	M.G. Housing Pvt. Ltd.
Project Name	Anandam Awaas

Sr. No.	Complaint No.	Complainant
1.	94 of 2022	Sunil Kumar s/o Sh. Sada Ram, r/o VPO Karasan, Ambala, Tehsil - Naraingarh, Haryana-134202
2.	95 of 2022	Manoj Kumar s/o Sh. Mange Ram, r/o RZ-F-222/98, Gali no. 31 D Sadh Nagar-II, Palam Colony, New Delhi - 110045
3.	98 of 2022	Mukesh Kumar s/o Sh. Billu Ram, r/o Berli Kheral, Post office Musepur, Near Bank of Baroda, Choki Mod, Rewari, Haryana - 123401
4.	99 of 2022	Vinod Kumar s/o Sh. Ram Karan, r/o Village + P.O. Yara, The Shahbad (Markanda), Kurukshetra, Haryana - 136135

Versus

M.G. Housing Private Limited, through its Director, having its registered office at G-127, 12th floor, Himalaya House, K.G. Marg, New Delhi – 110001

G. Bhatnagar

CORAM: Dr. Geeta Rathee Singh
Nadim Akhtar

Member
Member

Date of Hearing: 17.01.2023

Hearing: 4th

Present: Mr. Col. P.K. Saran, Ld. counsel for the complainant through VC.

Mr. T.S. Khaira, Ld. counsel for the respondent through VC.

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. This order shall dispose of all the 4 complaints titled as above filed before this Authority under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

2. Captioned complaints are taken up together as facts and grievances of all these complaints are identical and relate to the same project of the respondent, i.e., "Anandam Awaas", situated in Sector 19 & 24 Dharuhera, Rewari. The terms and conditions of the builder buyer's agreements that had been executed between the parties are also similar. The fulcrum of the issue involved in all these cases pertains

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to failure on part of respondent promoter to execute agreement to sell and deliver timely possession of units in question. Therefore, complaint no. 94 of 2022 titled "Sunil Kumar v/s M.G. Housing Pvt. Ltd.", has been taken as lead case for disposal of all these matters.

A. UNIT AND PROJECT RELATED DETAILS:

3. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over possession, delay period, if any, in lead complaint case no. 94 of 2022, have been detailed in following table:

Sr. No.	Particulars	Details
1.	Name of project	Anandam Awaas, Sector 19 & 24 Dharuhera, Rewari
2.	Nature of the Project	Residential Plots
3.	RERA registered/not registered	Registered
4.	DTCP License no.	21 of 2017 dated 19.05.2017
	Licensed area	13.40625 Acres
5.	Allotment letter dated	25.10.2017
6.	Unit No.	Plot No. F-96 in Block F
7.	Carpet Area	88.972 sq. mtr.
8.	Basic Sale Price	₹24,37,999.17/-
9.	Paid by the complainant	₹2,43,800/-
10.	Due date of possession	Not mentioned
11.	Offer of possession	Not Made

B. FACTS OF THE CASE AS STATED IN THE COMPLAINT FILED BY THE COMPLAINANT

4. Complainant booked a unit in project of the respondent namely "Anandam Awaas" situated in Sector 19 & 24 Dharuhera, Rewari on 21.09.2017 through application form by making payment of ₹ 1,00,000/-. Receipt of the payment is annexed as Annexure C-01. Vide allotment letter dated 25.10.2017, Plot no. F-96, measuring area of 88.972 sq. mtr. was allotted to him. Allotment letter is annexed as Annexure C-02. Simultaneously, the builder also issued a demand letter dated 25.10.2017 (Annexure C-03) for ₹ 1,43,800/- to be paid on or before 04.11.2017; without executing the agreement to sell.

5. On 26.10.2017, the complainant visited the office of the respondent builder at Dharuhera and requested for execution of agreement to sell to facilitate him get the home loan sanctioned by getting the plot mortgaged with bank for disbursement of demanded ₹1,43,800. On 31.10.2017 complainant made payment (Annexure C-04) of ₹1,43,800/- through State Bank of India Cheque no 005567. On 06.11.2017 the respondent builder contrary to his promise issued another demand letter (Annexure C-05) for payment of ₹6,09,500/- to be paid on or before 20.11.2017.

6. On 09.11.2017, the complainant and co-workers visited office of respondent at Dharuhera project site to enquire as to why the demand letter (Annexure C-05) has been issued without executing the agreement to sell contrary to their promises dated 21.09.2017 and 26.10.2017. Respondent further gave false assurance to the complainant and co-workers saying that the agreement to sell is likely to be executed any time soon. The respondent builder further asked the complainant and co-workers to get his provisional loan approved from the bank in the meantime. Accordingly, the complainant processed his application for home loan with HDFC bank for purchase of plot and construction of house. On 28.04.2018 complainant accordingly got his home loan worth ₹ 20,00,000/- approved from HDFC Bank (Annexure C-06) subject to legal and technical clearance of the property financed as mentioned in clause 8 of the bank's terms and conditions. The bank assured that the loan will be disbursed subject to production of agreement to sell and further execution of tripartite agreement between bank, complainant and respondent to mortgage the allotted plot. However, despite repeated verbal reminders, the respondent builder did not execute the agreement to sell. Resultantly, neither the plot could be mortgaged nor the tripartite agreement between the bank, complainant and respondent could be signed to facilitate disbursement of home loan to respondent by the bank.

7. On 27.05.2019, after repeated verbal reminders, the complainant wrote a formal e-mail (Annexure C-07) to the respondent to execute agreement to sell; however, the respondent did not reply. On 01.06.2019 complainant in representative capacity sent a reminder e-mail (Annexure C-08) to the respondent reminding him for execution of agreement to sell and possession of the plot.

8. Respondent builder via email dated 03.06.2019 sent a reply (Annexure C-09) to the e-mail of the complainant; wherein, he promised to hand over possession of the plot by end of year 2019. It was further promised in the email that the delay in possession will also be compensated at the time of possession as per the agreement to sell executed between the parties. However, complainant in his complaint has mentioned that the respondent builder did not execute any agreement to sell despite repeated reminders. Further, by the month of September, 2020 respondent builder started taking excuse of COVID-19 pandemic situation and kept on delaying execution of agreement to sell as well as possession of the plots to complainant and co-workers. It is pertinent to note that the location of the project "Anandam Awaas" being prime, demand of the plots increased, thereby escalating the prices of these plots which made the respondent greedy. Accordingly, the respondent reportedly sold- out allotted plots of the complainant and some of the co-workers on the higher cost to third parties clandestinely.

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9. On 10.09.2020, complainant sent a legal notice (Annexure C-11) to the respondent for refund of his payment amounting to ₹ 2,43,800/- with @ 18% interest. Till date nothing has been refunded by respondent. Hence this complainant has been filed before the Authority seeking refund of the amounts deposited against the plots.

C. RELIEF SOUGHT:

10. The complainant in his complaint has sought following reliefs:
- i. To direct the respondent to refund the amount paid by complainant i.e., ₹2,43,800/- along with the interest as per the provision of the act from respective dates of payment till its realization;
 - ii. Direct respondent to pay ₹ 2,00,000/- as compensation for rendering mental agony with no fault of the complainant.
 - iii. Direct respondent to also pay ₹ 50,000/- as litigation expenses.
 - iv. Any other relief which this Hon'ble Authority deems fit and proper may also be granted in favour of the complainant.

D. REPLY:

Learned counsel for the respondent filed detailed reply on 21.11.2022 pleading therein:

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11. The respondent-promoter is developing a real estate group housing project by the name and style of "ANANDAM AWAS", situated at Sector 19, Dharuhera, District Rewari, Haryana.

12. That the Complainants have suppressed material facts in the complaint and hence the complaint is liable to be dismissed on the ground of concealment of material facts. The following facts would show that the captioned complaint is meritless.

13. That the Complainants have booked a Plot No, F-96 in the Project by way of application form. Copy of application form is annexed hereto and marked as Annexure R-2. It is pertinent to mention here that the allotment letter categorically mentioned that the allotment of the unit would be provisional and allottee would be bound by the terms and conditions forming part of the application form. That the Complainant made payment for a sum of Rs. 2,43,800/- towards the unit and the same was duly acknowledged by the respondent.

14. That the perusal of the terms and conditions of the application form makes it abundantly clear that there was no specific timeline to execute conveyance deed and the execution of the conveyance deed was subject to timely payment of the installments as per the payment structure opted by the Complainant.

15. That in terms of clause 4.1 of the application form unequivocally states that issuance of allotment letter/ builder buyer agreement shall not confer any right/claim on the complainant unless and until all terms and conditions of application form have been complied with. Complainant is liable to comply with all the terms and conditions specifically agreed by him towards the allotment of the unit in the project, which was signed by the complainant out of his own free will and consent.

16. That the respondent after duly completing the project and development work at the project site applied for receipt of the completion certificate and the same was issued by the concerned Authority on 10.11.2020. Copy of Completion Certificate is annexed hereto and marked as Annexure R-3. Respondent issued various demand letters and reminders seeking clearance of the outstanding amount however, the complainant failed to clear the outstanding amount. Copy of demand letters dated 25.10.2017, 06.11.2017 and 13.02.2018 and reminder letter are annexed hereto and marked as Annexure R-4(Colly).

17. After the receipt of the completion certificate the respondent sent various letters and emails seeking payment of the outstanding amount however, the complainant failed to clear the outstanding amount and take possession of the unit.

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Copy of letters and emails for payment dated 11.11.2020, 13.11.2020, 14.12.2020
15.12.2020 are annexed hereto and marked as Annexure R-5(Colly).

18. That in terms of Clause 5.1 and 5.2 of the application Form, a failure to meet the payment obligations can result in cancellation of the provisional booking and the respondent is entitled to deduct the cancellation charges as per Clause 7 of the application form.

19. That since the complainant failed to honour the terms as agreed by him and further failed to clear the outstanding dues and take possession of the unit, the respondent being left with no other option terminated the allotment made in favour of the complainant and forfeited the amount paid by the complainant.

E. ARGUMENTS OF LEARNED COUNSEL FOR RESPONDENT

20. During oral arguments Mr. Col. P.K. Saran, learned counsel for the complainants in all captioned complainant made verbal averments in addition to his pleadings, that all the four complainants got their loan sanctioned from the HDFC bank. As demanded by the respondent, they deposited 10% of the basic sale price to the respondent. Thereafter, the complainants demanded agreement to sell be executed but respondent failed to execute the same, due to which bank could not disburse the loan amount. He further alleged that respondent with malafide intent did not sign the agreement to sell and that his completion certificate dated

10.11.2020 has also been revoked by the Directorate of Town & Country Planning, Haryana. A public notice board has been placed by the DTPC, Haryana at the project site. Copy of the same is annexed as Annexure C-12 with the rejoinder of counsel for the complainant. He further prayed that respondent has violated provisions of RERA Act, 2016 by making demand of ₹6,09,500/- vide letter dated 06.11.2017 without executing any agreement to sell or builder buyer agreement. Complainants are pressing for refund of the amount paid by them along with permissible delay interest as per the provisions of RERA Act.

21. In response to this, Mr. T.S. Khaira, ld. counsel for respondent stated that as per his instruction completion certificate has not been withdrawn as such, there is a dispute going on between electricity board and builder due to which some embargo had been imposed. He further stated that as per his instructions this dispute stands resolved and the ban will be set aside soon. He stated that the respondent promoter is ready to refund the amount after deducting GST.

E. JURISDICTION OF THE AUTHORITY:

22. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

E.1: 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, Haryana, Panchkula shall be the rest of Haryana except Gurugram for all purposes with office situated in Panchkula. In the present case the project in question is situated within the planning area Palwal District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.2: 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:

“(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:

34. Functions of Authority.—The functions of the Authority shall include—(f) 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”

In view of the Provisions of the Act of 2016 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 Office, if pursued by the complainants at a later stage.

F. ISSUES FOR ADJUDICATION:

- i. Whether complainant is entitled to refund of the deposited amount along with interest in terms of Section 18 of Act of 2016 ?

G. OBSERVATIONS OF THE AUTHORITY:

23. After considering facts and circumstances of the case and going through oral as well as written arguments, Authority observes and orders as follows:

- i) Allotment letter was issued in favour of complainant on 25.10.2017. Basic sales consideration was agreed to be ₹ 24,37,999.17/- (₹ 27,401.87/- x 88.972 sq. mtr.) as per the allotment letter. Complainant had paid over Rs. 2,43,800/- upto 31.10.2017.
- ii) This is an affordable residential plotted colony. Allottees of such projects are middle class or lower middle class people. It is assumed that they arranged funds with great difficulty. After making payment of 10% of basic sale price, complainant several times approached

respondent for execution of agreement to sell. However respondent willfully did not execute the agreement to sell and without executing any ATS made further demand towards basic sale consideration. Demand of ₹6,09,500/- by the respondent without executing agreement to sell/builder-buyer agreement itself appears unreasonable. The correct course of action in this situation is that after receiving earnest money a builder-buyer agreement has to be executed in which balance consideration to be paid has to be clearly stipulated along with terms of payment. RERA Act, 2016 does not provide for payment of almost entire consideration before execution of builder-buyer agreement. Section 13 of RERA Act provides that not more than 10% money can be demanded without execution of builder-buyer agreement. Section 13 is reproduced below:

“Section 13: No deposit or advance to be taken by promoter without first entering into agreement for sale.

—
(1) A promoter shall not accept a sum more than ten per cent. of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said

agreement for sale, under any law for the time being in force.

(2) The agreement for sale referred to in sub-section (1) shall be in such form as may be prescribed and shall specify the particulars of development of the project including the construction of building and apartments, along with specifications and internal development works and external development works, the dates and the manner by which payments towards the cost of the apartment, plot, or building, as the case may be, are to be made by the allottees and the date on which the possession of the apartment, plot or building is to be handed over, the rates of interest payable by the promoter to the allottee and the allottee to the promoter in case of default, and such other particulars, as may be prescribed."

Section 13, therefore entitles an allottee to demand execution of builder-buyer agreement in which terms of payment will be mutually settled and only thereafter the allottee is duty bound to make payment in accordance with such terms. Therefore, complainant is not at fault for not making further payment without executing agreement to sell/builder-buyer agreement

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iii) Regarding the contention of counsel for respondent that they are ready to refund the paid amount after deducting Goods and Service Tax, Authority observes that GST is paid when a good or a service is purchased by a customer. But in the present case, complainants have decided to get refund of the paid amount, their arrangement of buying the units have become infructuous, hence in actual they have not received any good or service from the respondent. Therefore, in these matters respondent is not at liberty to deduct GST while refunding the amount.

24. Therefore, Authority finds it to be fit case for allowing refund in favour of complainant. As per Section 18 of Act, interest shall be awarded till the realization of the entire amount at such rate as may be prescribed. Rule 15 of HRERA Rules, 2017 provides for prescribed rate of interest which is as under:

“Rule 15: Interest payable by promoter and Allottee. [Section 19] - An allottee shall be compensated by the promoter for loss or damage sustained due to incorrect or false statement in the notice, advertisement, prospectus or brochure in the terms of section 12. In case, allottee wishes to withdraw from the project due to discontinuance of promoter's business as developers on account of suspension or revocation of the registration or any other reason(s) in terms of clause (b) sub-section (I) of Section 18 or the promoter fails to give possession of the apartment/ plot in accordance with terms and conditions of agreement for sale in terms of sub-section (4) of section 19. The promoter shall return the entire amount with interest as well as the compensation payable. The rate of interest payable by the

promoter to the allottee or by the allottee to the promoter, as the case may be, shall be the State Bank of India highest marginal cost of lending rate plus two percent. In case, the allottee fails to pay to the promoter as per agreed terms and conditions, then in such case, the allottee shall also be liable to pay in terms of sub-section (7) of section 19:

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public."

25. The legislature in its wisdom in the subordinate legislation under the provisions of Rule 15 of the Rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

26. Consequently, as per website of the state Bank of India i.e. <https://sbi.co.in>, the marginal cost of lending rate (in short MCLR) as on date i.e. 17.01.2023 is 8.60%. Accordingly, the prescribed rate of interest will be SBI MCLR + 2% , i.e., 10.60%.

27. Authority has got calculated the total amount to be refunded along with interest calculated at the rate of 10.60% till the date of this order in all the captioned complaints; details are given in the table below -

Sr. No.	Complaint No.	Principal Amount (in Rs.)	Interest @10.60% till 17.01.2023 (in Rs.)	Total amount to be refunded (in Rs.)
1.	94 of 2022	2,43,800/-	1,35,459/-	3,79,259/-
2.	95 of 2022	2,00,000/-	81,431/-	2,81,431/-
3.	98 of 2022	2,00,000/-	82,477/-	2,82,477/-
4.	99 of 2022	2,43,800/-	1,35,417/-	3,79,217/-

H. DIRECTIONS OF THE AUTHORITY:

28. Taking into account above facts and circumstances, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

- (i) Respondent is directed to refund the entire amount along with interest of @ 10.60 % to the complainants as are specified in the table above.
- (ii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.

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29. These complaints are, accordingly, **disposed of**. Files be consigned to the record room and order be uploaded on the website of the Authority.

Nadim Akhtar

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NADIM AKHTAR
[MEMBER]

Geeta Rathee

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DR. GEETA RATHEE SINGH
[MEMBER]

