

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

Complaint no.:	938 of 2022
First date of hearing:	12.05.2022
Date of decision:	10.01.2023

Surender Singh

R/o Village Un, Tehsil & District Charkhi Dadri, Haryana

Complainant

Versus

Agrante Realty Ltd.

Office address: 522-524 DLF Tower A, Jasola, New Delhi

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

Shri Ashok Sangwan

Member

APPEARANCE:

Shri Dinesh Munday (Advocate)

Complainant

Smt. Nishtha Jain (Advocate)

Respondent

ORDER

1. The present complaint dated 24.03.2022 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 28 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 as provided 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. Project and unit related details

2. 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:

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.	TA4-1204, tower A4 [as per allotment letter at page 34 of complaint]
6.	Unit area admeasuring	512.50 sq. ft. [as per allotment letter at page 34 of complaint]
7.	Application dated	NA
8.	Allotment dated	01.07.2019 [page 34 of complaint]

9.	Total sale consideration	Not Known
10.	Amount paid by the complainant	Rs. 7,95,375/- [as alleged by complainant at page 10 of complaint]
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. 15 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 letter dated 23.10.2020. [pg. 35 of complaint]

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint: -
 - a. That the respondent is a company which is duly incorporated under the provisions of the Companies Act, 1956 having its registered office at the address given above and Sh. Arvinder Singh, Sh. Ravinder Kaur &



Gurmeet Singh Kalsi are the whole time directors, of the respondent company and are fully liable and responsible for the day to day affairs, act, conduct, behaviour and work of the respondent company as the whole business of the respondent company has been managed and carried out by the Sh. Arvinder Singh, Ravinder Kaur & Gurmeet Singh Kalsi.

- b. That the respondent is engaged in the business of real estate and is a land developer company which purchased the land from the landowners and after developing its, sell the developed units in the form of commercial spaces, office space, shops, flats, apartment etc. to the purchasers.
- c. That the respondent company, "AGRANTE REALTY LIMITED" is entitled to develop the property vide collaboration agreements with its associates/ subsidiary companies in reference to the land falling in Sector- 108, Gurugram under the revenue estate of village Dharampur, Tehsil and District-Gurugram (Haryana). The said land was embarked for the purpose of building a group housing scheme herein referred to as 'Kavyam'.
- d. That the respondent launched its project "Kavyam", at Sector- 108, Gurugram, Haryana and sought applications from interested persons/buyers. Wherein the complainant/ applicant relying on the representation and assurances of the opposite party with respect to construction quality, availability of incidental facilities/amenities and timely delivery of possession, the complainant got lured and after completing necessary booking formalities booked a residential apartment (2BHK Type-1) vide application no. 2843 in the residential

- project called "Kavyam", at Sector-108, Gurugram, developed by the respondent.
- e. That on 24.06.2019 through draw a flat bearing unit no. TA4-1204 having carpet area 512.50 Sq. ft. and balcony area 130.30 Sq. ft. in the residential project called, "Kavyam" situated at Sector-108, Gurugram have been allotted by respondent to the complainant.
 - f. That on 01.07.2019 the respondent company had issued an allotment letter in respect of aforesaid property i.e., flat bearing unit no. TA4-1204 having carpet area 512.50 sq. ft. and balcony area 130.30 sq. ft. in the residential project called, "Kavyam" situated at Sector-108, Gurugram in favour of complainant.
 - g. That it is pertinent to mention here that at the time of booking the aforesaid flat, the complainant was assured by the officials of respondent that they will complete the construction work of the said project well within time period and delivered of the possession of the booked flat in question to the complainant.
 - h. That thereafter on 23.10.2020, the complainant had moved an application in the office of respondent and showing his interest in cancellation of booking of his booked flat and the said application received by officials of respondent namely Prashant Singh on dated 07.11.2020 but till date the respondent had not refunded the amount paid by complainant in respect of aforesaid flat.
 - i. That the respondent company has played a fraud upon the complainant and has cheated him fraudulently and dishonestly with a false promise. The complainant on the other hand has paid all the due instalments on time. The respondent did not give any heed to the repeated requests of the complainant and hence the necessity of filing of the present

complaint against the respondent arose. It is pertinent to mention here that the respondent did not convey the complainant about the delay in refund of his entire amount.

- j. That the respondent had taken an amount of Rs. 7,95,375/- out of the entire sale consideration of the above said apartment from the complainant/applicant on the basis of their impressive projections and false promises, and thus induced the complainant to deliver the respondent his hard-earned savings. Thus, the respondent has committed the offence of "Cheating" which is criminal offence in nature.
- k. That the respondent has misappropriated the hard-earned money of the gullible complainant for its selfish use without utilizing the same for the said project resulting in almost abandoning the construction work in between for which he is liable to refund the principal amount along with an interest besides compensation for the harassment, mental agony and litigation charges.
- l. That the complainant avers that in view of the principle of the parity the respondent is also liable to pay interest at the rate of 18% per annum as the same rate is being charged by him from the allottees in case of delayed payments. The respondent is also liable to pay pendent lite and future interest till the date of actual payment at the rate of 24% per annum.
- m. That the complainant avers that in view of the principle of the parity the respondent is also liable to pay interest at the rate of 18% per annum as the same rate is being charged by him from the allottees in case of delayed payments. The respondent is also liable to pay pendent lite and future interest till the date of actual payment at the rate of 24% per annum.

C. Relief sought by the complainant: -

4. The complainant has sought following relief(s)
 - a. Refund entire amount paid by the complainant along with the interest.
 - b. Compensation and litigation expenses.
5. 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.

6. 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 is 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 the 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 circumstances for misleading 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 having application no. 2843 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. TA4-1204. Further, on 01.07.2019 an allotment letter in respect of the unit was issued to the complainant.
- 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 to surrender of his unit on 29.10.2020 which was received on 07.11.2020 with the respondent. 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. Further, the false story of the complainant that no construction was taking place in the project falls to the ground as the contents of the above letter written by the complainant himself and filed on record clearly says that it was the complainant's difficulty in paying further installments towards the project as he suffered business loss due to COVID-19 and no longer has any business income. The construction is being done within its timelines and corresponding installments were demanded and the complainant due to his financial constraints surrendered the flat and now has cooked up a false story of no construction in order to claim full refund with interest. The complaint ought to be dismissed as the complainant did not approach the Hon'ble Authority with clean hands and deposed falsely in the affidavit.

- 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 complainant has till date deposited a total amount of ₹ 7,95,375/- and an amount computed after statutory deductions is ₹ 7,06,495/- 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 the 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.
7. 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

8. 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

9. 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

10. 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.

11. 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.
12. 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."

13. 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 complainant.

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

14. 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.
15. 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.

16. Since the surrender of the units by the complainants was done after commencement of construction, 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.
17. Accordingly, the details of the amount to be refunded as per the policy is as under:

Complaint no.	Date of surrender	Forfeiture of amount in addition to ₹ 25,000/-
CR/938/2022	23.10.2020	Respondent is entitled to forfeit 3% of the flat cost in addition to Rs. 25,000 as mandated by the Policy of 2013 as the request for surrender is after 1

		year from the date of commencement of project. *
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* **Note:** The amount to be forfeited is wrongly mentioned in the proceeding of the day dated 10.01.2023 as 1% which is being corrected in this order as mentioned above.

18. Thus, the respondent is entitled to forfeit the aforementioned amount and return the balance amount to the complainant 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.

19. 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

20. 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. The respondent is directed to return the amount of ₹ 7,95,375 as deposited by the complainant after forfeiture of the amount as per policy, 2013 as mentioned in table annexed to para 17 of this order along with interest on the balance amount 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.
 - 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.
21. The complaint stands disposed of. True certified copies of this order be placed on the case file.
 22. Files be consigned to registry.


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 10.01.2023