

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

Complaint no.:	950 of 2022
First date of hearing:	14.07.2022
Date of decision:	16.05.2023

Vikas Dhaiya

R/o RZH-54, Rajnagar-II, Palam Colony, New Delhi-
110077

Complainant

Versus

Agrante Realty Ltd.

Office address: 122, 1st floor, Suncity Trade Tower,
Sector-21, Gurugram, Haryana-122016

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

Shri Ashok Sangwan

Member

APPEARANCE:

Shri Sunil Kumar (Advocate)

Complainant

Shri. Tarun Vishwas (Advocate)

Respondent

ORDER

1. The present complaint dated 01.04.2022 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.	805, tower D [as per surrender letter dated 07.12.2020]
6.	Unit area admeasuring	Cannot be ascertained
7.	Application dated	Cannot be ascertained

8.	Allotment dated	Cannot be ascertained
9.	Total sale consideration	Cannot be ascertained
10.	Amount paid by the complainant	₹ 5,03,248.68/- [as per affidavit pg. 32 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. 18 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 letter dated	07.12.2020 [pg. 30 of complaint]

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint: -

- a. That the complainant is a law-abiding citizen of India having residence at RZH-54, Rajnagar-II, Palam Colony New Delhi-110077.
- b. That the complainant approached the respondent in the month of October 2019 to buy a flat in the residential real estate project of the respondent company by the name of "KAVYAM". Thereafter, during negotiations the respondent company convinced the complainant that his investment/ money was safe and secure with the respondent which was a venture of M/S Agrante Realty Ltd and the company was leaders in real estate development sector.
- c. The complainant believing the assurances given by the respondent company agreed to buy flat in residential real estate project "KAVYAM" and paid a sum of ₹ 99,653/- against application number 4607 in the name of Kavyam collection account as per the demand of the respondent and same was encashed in the account of the respondent on 23.03.2020.
- d. That draw process was conducted by the respondent on 01.08.2020 and complainant was allotted, tower-D, flat no. TD-805, 2BHK type-3, having carpet area of 488.30 sq. ft. approx. and balcony area of 79.73 sq. ft., the complainant was informed by the respondent by way of an email regarding the allotment of flat.
- e. That after that as per the terms and conditions an additional amount of ₹ 4,03,596/- had to be paid within 15 days of the allotment letter for that complainant contacted on phone number 011-41924100/199 and got in touch with one Ms. Reena Singh (M:8800098864) working with the respondent as a client relationship manager and she guided complainant to make online payment and then complainant made the payment of second installment of ₹ 4,03,596/- on 21.08.2020 through



RTGS in Kavyam collection account A/c no 918020110921754, IFSC Code UTIB0001148, Axis Bank Ltd., Jasola, New Delhi.

- f. That after making the payment for second installment the complainant was relaxed that now he needs not pay anything for next six months as per the terms and conditions of the HRERA also and Kavyam Homes who were advertising the same. But to the utter shock complainant again received a demand letter via email on 06.11.2020 with the direction to pay again an amount of ₹ 5,03,249/-.
- g. That then the complainant wrote an email to Kavyam on 18.11.2020 stating that it is not as per the rules of HRERA, and the respondent cannot make such huge demand in a short span of time, but the respondent never replied to the same email but kept on sending reminder/demand for payment time to time on the email of the complainant. That doubt was created in the mind of complainant and he personally visited on the site where the construction was to be done and then complainant came to know that no construction work has been started by the respondent and still demanding money therefore the complainant did not make any further payment instead he gave an application for cancellation of his unit in tower-D, flat no. TD-805, 2BHK type-3, having carpet area of 488.30 sq. ft. approx. and balcony area of 79.73 sq. ft. on 07.12.2020 to one Ms. Ankur Tyagi (8800499383) also working as client relationship manager at their office in Jasola, Delhi.
- h. That after the complainant gave an application for cancellation, he didn't get any email from Kavyam Homes. The complainant wrote to the Kavyam many times for status of his payment refund. At First instance the complainant was told by the respondent that the complainant will receive his refund in three months, but respondent failed to refund the

amount of complainant till date. The complainant was in continuous touch with Ms. Reena Singh, she then informed complainant telephonically that he will receive his payment after six months and then kept on delaying the payment on one aspect or the other and then finally on 26.08.2021, the respondent flatly refused that we will not be able to make your payment, without mentioning any rhyme or reason.

- i. That the complainant had to undergo great pain suffering, mental pain, inconvenience and agony due to a huge amount of hard-earned money is being stuck with the respondent for more than a year and respondent are using the same for their personal requirement because till date no construction work has been started on the site where the flat was allotted.
- j. That the respondent being the owner/director of "Kavyam Homes" is legally bound to refund the amount of the complainant's cancelled unit and the same is also legally recoverable from the respondents. That the amount of the ₹ 5,03,249/- is still due on the respondents which the respondent is liable to return to complainant with an interest of 24% P.A. from the date of application given to the respondents by complainant i.e. 07.12.2020 until the payment is refunded.
- k. That finding no other alternate the complainant decided to take a legal action against the respondent and on 07.09.2021 sent a legal notice through his council but the notice was returned un-served with the remarks that no such company exist/left without information. Thereafter, the complainant sent the legal notice to the respondent through email on their email id: crm@kavyamhomes.com; reena.crm@kavyam.com on 20.09.2021. Thereafter the complainant did not receive any information or update from the respondents

regarding the refund of his money status. However, on the 5th of January the complainant came to know about the fresh address of the respondents that they have shifted to a new office in Gurugram. The complainant did contact the respondent on the landline numbers given there as well but were of no use and none of the phones were picked up. Therefore, the complainant did not find any other alternative but to file the present case in front of the Hon'ble Authority.

- l. That the aforesaid amounts to deficiency in services and unfair trade practice and the complainant is entitled to refund of his entire amount of money paid to the respondent along with interest at 24% per annum. The complainant is also entitled to compensation of ₹ 5,00,000/- against the aforesaid deficiency of services by the respondent as the complainant has been made to suffer due to the above said acts of the respondent. The complainant is also entitled to compensation in lieu of physical pain, mental agony, and trauma.
- m. That the complainant submits that the respondent is not entitled to keep, deduct or forfeit any amount as the respondent company is itself guilty of breach of contract. The respondent company has thus acted in most unjust and unfair manner in not returning the amount paid by the complainant with interest and has caused wrongful loss to the complainant.

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 for mental harassment.

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:
- 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 12.07.2022.
 - 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.
 - 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.
 - That an affordable housing project i.e., "KAVYAM" ("Project") under the Pradhan Mantri Awas Yojna is being constructed with full vigor 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 further submitted that the project named "Kavyam affordable House Project" of the respondent is an affordable housing project wherein the complainant had booked a 2 BHK flat, type 3 having a carpet area 488.30 bearing unit no. 805 sq. ft approx. and balcony area of 79.73 sq. ft. The booking was allotted vide the second draw of flats by the respondent for its project on 01.08.2020.
- f. That the respondent issued an allotment/demand letter dated 04.08.2020 regarding the allotment of the flat no. TD-805, 2 BHK type-3 having a carpet area 488.30 sq. ft. approx. and balcony area of 79.73 sq. ft. and requested to deposit an amount of ₹ 4,03,596/- i.e., 25% of the total cost of the flat, within 15 days i.e., 19.08.2020.
- g. It is submitted that the complainant paid an amount of ₹ 99,653/- dated 23.03.2020 "at the time of submission" of the application form and ₹ 4,03,596/- to the respondent's collection account vide RTGS/YESBR52020082174429137 dated 21.08.2020 for which the respondent issued a receipt dated 21.08.2020.
- h. That the project being subject to the provisions of affordable housing policy has to comply with its mandatory guidelines. The respondent as per the policy guidelines is mandated to offer for possession of the units in the project within 4 years from the date of environmental clearances or date of sanction of building plans whichever is later and will be considered as the project commencement date of the project. It is



submitted that the subject matter project received its environmental clearance in the month of August 2019 and thus the period of 4 years is to be computed from the 19.08.2019 and units be offered for possession within 4 years from project commencement date. It further categorically provides that the allottee shall pay a total of 25% of the cost of the unit at the time of allotment of the unit. Thereafter, the balance 75% will be received in six equated monthly installments which shall be spread over the three years available from the date of commencement of the project. It is submitted that the complainant has strictly adhered to the payment plan as made applicable and has demanded amounts as and when they fell due from the allottees who were allotted units in the first draw of flats held on 24.05.2019.

- i. It is submitted that the number of units become available for re-allotment due to surrender by the original allottees or by termination of the units by the respondent and some of the units remain unallocated. The respondent in such circumstances conducts 2nd draw of such units later however that does not entail a fresh period of time beyond the 4 years that is available for offering possession of the units. Further, the six equated monthly instalments for payment of the balance 75% of the unit consideration is to be spread over three years commencing immediately from the allotments of units conducted in the first draw on 24.05.2019. It is emphasized that fresh three years for payment of six equated monthly instalment would not be available for allottee who have been allotted units in 2nd or 3rd draw subsequently. The respondent is under mandate of the policy guidelines to deliver the possession of the project with completion certificate within the strict timelines. The payments of the units would have become due and

payable if the units were not cancelled/surrendered by the successful allottees of the first draw. Therefore, corresponding payments have to be realized from the new allottees of the units vide 2nd and 3rd draw for timely completion of the project and if the contention of the complainant is to be accepted then every allottee who have been allotted units subsequently would get fresh three years to make full payments and that would inevitably delay the project and prejudice the interest of the allottees of first draw who await offer of possession by 2023. The only intent was timely completion of the project and not harassment as alleged by the complainant. That the respondent accordingly raised demand notices and charged interest for delay in payment.

- j. The complainant is one such allottee who was allotted the subject matter unit in the 2nd draw held on 01.08.2020. The timelines as applicable on the complainant was communicated and agreed by. The respondent after receiving the 20% towards allotment issued demands in alignment with the stage of construction that has already taken place and would have been received if the unit was not subsequently re-allotted to the complainant vide 2nd draw. The complainant has unnecessarily without understanding the scope and spirit of the affordable policy guidelines refrained from meeting the demands.
- k. That the respondent gave sufficient time and opportunity to the complainant to clear the due instalments and also issued demand notice dated 05.11.2020 reminder via e-mail dated 06.11.2022 to the complainant for clearing the dues timely. It is submitted that even after granting sufficient time and opportunity to the complainant, the

complainant miserably failed in depositing the outstanding instalment amount.

1. The complainant had admittedly requested the respondent for surrender of his unit on 07.12.2020 on which date a handwritten letter for surrender was submitted with the respondent along with all documents required in consonance with the policy guidelines and is filed by the complainant himself which is on record. The said letter is being filed by 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. It is stated that the date to be reckoned as the commencement date of the project is the date of environmental clearance of the project as per the affordable housing policy.
- m. The respondent submits that it is ready and willing to refund the complainant the due amount only after levying the applicable statutory deductions.
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/950/2022	07.12.2020	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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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 10.70% [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 ₹ 5,03,248.68/- 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 10.70% [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.
 - iii. The cost of ₹ 5,000/- levied upon the respondent vide order dated 07.10.2022 for not filling the reply shall also be added in the refundable amount.
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: 16.05.2023