



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

Complaint no. : 4985 of 2021
First date of hearing: 23.02.2022
Date of decision : 28.09.2023

Chirag Madan
S/o Sh. Suresh Madan
R/o: - E-51, Arya Samaj Road, Uttam Nagar, D.K.
Mohan Garden, West Delhi - Delhi

Complainant

Versus

M/s Agrante Realty Limited.
Regd. Office at: 704 DLF, Tower- B, Jasola, New Delhi-
110025

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Sh. Rishab Bajaj (Advocate) and complainant in person
Sh. Tarun Biswash and Ms. Nishtha Jain (Advocates)

Complainant
Respondent

ORDER

1. The present complaint dated 22.12.2021 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 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*.

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A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over 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, Gurugram |
| 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-114, 1 st floor, in Tower D [page 26 of complaint] |
| 6. | Unit area admeasuring | 488.30 sq. ft. [page 26 of complaint] |
| 8. | Agreement to sell | 23.11.2020 [page 19 of complaint] |
| 9. | Possession clause | 7.1 Schedule for possession of the said Apartment The Promoter agrees and understands that timely delivery of possession of the Apartment is the essence of the Agreement. The Promoter, based on |

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|-----|----------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | | <p>the approved plans and specifications, assures to hand over possession of the Apartment within four years from the starts of construction, unless there is delay or failure due to Court Order, Government Policy / guidelines, decisions, war, flood, drought, fire, cyclone, earthquake or any other calamity caused by nature affecting the regular development of the real estate project ("Force Majeure"). If, however, the completion of the Project is delayed due to the Force Majeure conditions then the Allottee agrees that the Promoter shall be entitled to the extension of time for delivery of possession of the Apartment provided that such Force Majeure conditions are not of a nature which make it impossible for the contract to be implemented.</p> <p>[Page 34 of complaint]</p> |
| 10. | Possession clause as per Affordable Housing Policy, 2013 | <p>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.</p> |
| 11. | Date of start of construction | Cannot be ascertained |
| 12. | Building plan approved on | 06.07.2018 [As per project details] |
| 13. | Environment clearance | 20.08.2019 [as contended by the respondent at pg. 2 of reply] |

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|-----|--------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 14. | Due date of possession | 20.02.2024 [calculated as 4 years from date of environmental clearance i.e., 20.08.2019 as the same is later + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020] |
| 15. | Total sale consideration | Rs.19,93,065/- (As per clause 1.3 of the agreement to sell dated 23.11.2020 at page no. 29 of the complaint) |
| 16. | Amount paid by the complainant | Rs.5,03,275/- (As per demand letter dated 17.12.2020 at pg. 52 of complaint) |
| 17. | Occupation certificate | Not obtained |
| 18. | Offer of possession | Not offered |
| 19. | Pre cancellation letter | 26.05.2021 [pg. 64 of complaint] |
| 20. | Cancellation letter | 14.06.2021 [as alleged by the respondent in its reply at pg. 5 of reply] |

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That the complainant booked a unit in the Affordable Housing Project namely "Kavyam" at Sector-108, Gurugram. Thereafter, a unit bearing no. TD-114, Tower D having a carpet area of 488.30 sq. ft. was allotted to him vide allotment/demand letter dated 04.08.2020 vide which a demand of Rs.4,03,596/- was raised on account of booking.

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- II. That the complainant paid an amount of Rs.4,02,599/- vide cheque no. 495714 dated 19.08.2020 for which respondent issued a receipt dated 19.08.2020.
- III. That the next installment was to be due after 6 months as per the Affordable Housing Scheme 2013. But the developer has malafidely raised the demand on 05.11.2020 for payment of installment on the slab of 'within 6 months' and 'within 12 months' which is illegal and in arbitrary manner from the complainant, violating the payment plan terms mentioned in the aforesaid housing scheme plan.
- IV. That according to clause 5(iii)(b) of the Affordable Housing Policy 2013, "the applicant will be required to deposit additional 20% amount of the total cost of the flat at the time of allotment of flat. The balance 75% amount will be recovered in six equated monthly instalments spread over three-year period, with no interest falling due before the due date of payment."
- V. That on 23.11.2020 the respondent, after much follow up by the complainant, executed an agreement for sale. That according to clause 1.3 of agreement for sale it is specifically mentioned that "the allottee shall be strictly bound to pay in terms of the payment plan & taxes as applicable prepared strictly adhering to the Haryana Affordable Housing Policy, 2013".

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- VI. That the complainant is always ready and willing to retain the property/flat in question as the complainant has already apply for the bank loan and also receive the pre-approval of the bank to finance the said unit on 14.07.2021, so that the installments may kindly be made on time without any delay. Thus, the complainant has no malafide intention to back out from the terms agreed in the agreement to sell as well as the affordable housing scheme between the complainant and the respondent.
- VII. That on 26.05.2021, developers/respondent has illegally sent a pre-cancellation notice giving the final 15 days opportunity to deposit the amount which was illegal and unlawful and against the terms agreed between the parties in agreement for sale and also against the Affordable Housing Scheme, 2013.
- VIII. That various emails were exchanged between the complainant and the developer/respondent, but no fruitful answer has been received from the developer/respondent. That the complainant wants to retain the unit and the pre-cancellation letter dated 26.05.2021 may kindly be set aside.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
- Direct the respondent to set aside the pre-cancellation letter dated 26.05.2021.
 - Direct the respondent to restore the said unit to the complainant and raise the demand for installments as per the policy of 2013.

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- iii. Direct the respondent not to create any third-party rights over the said unit.
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 contested the complaint on the following grounds: -
- I. That the project named "Kavyam" is an affordable housing project under Pradhan Mantri Awas Yojna (PMAY) wherein the complainant has booked a 2 BHK Type 3 having a carpet area 488.30 sq. ft. and balcony area 79.73 sq. ft.
- II. That the complainant is an allottee of the project and was allotted the subject matter unit vide the 2nd draw of units held on 01.08.2020. The complainant had applied vide application no. 9209 and his application was successful in the 2nd draw and unit bearing no. TD-114 was allotted to him subject to payment clearance.
- III. That the respondent issued an allotment/demand letter dated 04.08.2020 regarding the allotment of the flat no. TD-114, Tower-D i.e. 2 BHK Type-3 having a carpet area 488.30 sq. ft. and balcony area 79.73 sq. ft. and requested to deposit an amount of Rs.4,03,596, within 15 days i.e., 19.08.2020.

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- IV. That the complainant paid an amount of Rs.99,653/- vide cheque no. 000013 dated 06.03.2020 'at the time of submission' of the application form and Rs.4,02,599/- to the respondent's collection account vide cheque no., 495714 dated 19.08.2020 for which the respondent issued a receipt dated 19.08.2020.
- V. 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 clearance i.e., 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.
- VI. That 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

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complainant vide 2nd draw. The complainant has unnecessarily without understanding the scope and spirit of the affordable policy guidelines refrained from meeting the demands.

- VII. That the respondent gave sufficient time and opportunity to the complainant to clear the due installments and also issued multiple demand notices dated 05.11.2020, 03.02.2021, 05.05.2021, 19.05.2021 and reminders for clearing the dues timely. However, the complainant miserably failed in depositing the outstanding installment amount. Therefore, the respondent after raising multiple demand notices issued a pre cancellation notice dated 26.05.2021 whereby the complainant was apprised that a final opportunity is being given to the complainant to retain the said unit by depositing entire due amount along with the interest within 15 days, failing which the said unit allotted shall be cancelled/terminated without any further notice as per the policy.
- VIII. That the complainant even after receiving the pre-cancellation notice did not deposit the due amount in the given time and did not even revert to the letter received by his. Thus, the respondent finally issued a termination and cancellation letter on 14.06.2021

E. Jurisdiction of the authority

7. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

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8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

9. 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: सत्यमेव जयते

Section 11

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(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.

10. 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.



11. 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. 2021-2022(1) RCR (Civil), 357*** 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*** and 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."

12. 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 Direct the respondent to set aside the pre-cancellation letter dated 26.05.2021.**



F. II Direct the respondent to restore the said unit to the complainant and raise the demand for installments as per the policy of 2013.

F.III Direct the respondent not to create any third-party rights over the said unit.

13. The complainant was allotted unit no. TD-114 on 1st floor, in tower - D, in the project "Kavyam" by the respondent/builder for a total consideration of Rs.19,93,065/- under the Affordable Group Housing Policy 2013. A buyer's agreement was executed on 23.11.2020. The possession of the unit was to be offered with 4 years from approval of building plans (06.07.2018) or from the date of environment clearance (20.08.2019) and whichever is later which comes out to be 20.08.2023. Further, as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 23.11.2020 i.e., after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession comes out to be 20.02.2024. The complainant paid a sum of Rs.5,03,275/- up to 17.11.2020, and he is always ready and willing to retain the allotted unit in question as the complainant has applied the home loan and also receive the pre-approval of the bank to the finance of the said unit on

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14.07.2021. That the respondent gave the sufficient time and opportunity to the complainant to clear the due installments and also issued multiple demand notices dated 05.11.2020, 03.02.2021, 05.05.2021, 19.05.2021 and reminders for clearing the dues timely. However, the complainant miserably failed in depositing the outstanding installment amount. Therefore, the respondent after raising multiple demand notices issued a pre cancellation notice dated 26.05.2021 whereby the complainant was apprised that a final opportunity is being given to the complainant to retain the said unit by depositing entire due amount along with the interest within 15 days, failing which the said unit allotted shall be canceled/terminated without any further notice as per the policy.

14. During proceeding, the counsel for the respondent states that vide e-mail dated 09.11.2020 the complainant-allottee was informed about the payment plan as applicable to the initial allottee and after a gap of 8 months, the cancellation was effected and hence enough opportunity to the complainant-allottee even to make the payment were given and on failure publication in newspaper was also made, as per provisions of Affordable Housing Policy of 2013.

15. It is observed that the complainant failed to pay the remaining amount as per schedule of payment and which led to issuance of notice for cancellation by the respondent/builder dated 14.06.2021. In line with the aforesaid facts, the written submission filed by the parties and

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documents placed on record, the main question which arises before the authority for the purpose of adjudication is that “whether the said cancellation is a valid in the eyes of law?”

16. Clause 5(iii)(i) of the Affordable Group Housing Policy, 2013 talks about the cancellation. The relevant part of the clause is reproduced below:-

*“If any successful applicant fails to deposit the installments within the time period as prescribed in the allotment letter issued by the colonizer, a reminder may be issued to him for depositing the due installments **within a period of 15 days from the date of issue of such notice**. If the allottee still defaults in making the payment, the list of such defaulters may be published in one regional Hindi newspaper having circulation of more than ten thousand in the State for payment of due amount within 15 days from the date of publication of such notice, failing which allotment may be cancelled. **In such cases also an amount of Rs 25,000/- may be deducted by the coloniser and the balance amount shall be refunded to the applicant**. Such flats may be considered by the committee for offer to those applicants falling in the waiting list”.*

17. The respondent company has issued reminders letter dated 05.11.2020, 03.02.2021, 05.05.2021. Thereafter, the respondent issued pre cancellation notice followed by cancellation notice dated 19.05.2021 which led to issuance of notice for cancellation by the respondent/builder dated 14.06.2021. The respondent has also published a list of defaulters of payments in the daily Hindi newspaper “Navodaya Times” New Delhi.

18. Accordingly, the authority is of the considered view that the respondent/builder has followed the prescribed procedure as per clause 5(iii)(i) of the Policy, 2013 and in view of the same, the cancellation letter dated 14.06.2021 is held to be valid.

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19. As per cancellation clause of the affordable housing policy of 2013 the respondent can deduct the amount of Rs.25000/- only and the balance amount shall be refunded back to the complainant. Till date no amount has been refunded back by the respondent-builder to the complainant-allottee. Thus, it has been using the funds of the complainant. In view of aforesaid circumstances, the respondent is directed to refund the amount paid by the complainant after deduction of Rs.25,000/- as per clause 5(iii)(i) of the Policy 2013 along with interest from date of cancellation of allotment i.e., 14.06.2021 till the actual realization of the amount.

G. Directions of the authority

20. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent is directed refund the paid-up amount of Rs.5,03,275/- after deduction of Rs.25000/- as per clause 5(iii)(i) of the Affordable Housing Policy 2013 as amended by the State Government on 05.07.2019, along with interest @10.75% per annum as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of cancellation of allotment i.e., 14.06.2021 till the actual realization of the amount.

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HARERA
GURUGRAM

Complaint No.4985 of 2021

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. Complaint stands disposed of.
22. File be consigned to registry.

Dated: 28.09.2023



HARERA
GURUGRAM

v.l - g
(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram