

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

Complaint no.:	3856 of 2021
First date of hearing:	25.11.2021
Date of decision:	26.09.2023

Ashok Kumar

R/O B-220, Sai Kunj, New Palam Vihar , Gurugram
Haryana

Complainant

Versus

Agrante Realty Ltd.

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

Respondent

CORAM:

Shri Ashok Sangwan

Shri Sanjeev Kumar Arora

Member

Member

APPEARANCE:

Shri Sunil Jogpal (Advocate)

Shri Nishta Jain (Advocate)

Complainant

Respondent

HARERA
GURUGRAM
ORDER

1. The present complaint 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 29 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

provisions 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.	813, tower TD [as alleged by the respondent]
6.	Unit area admeasuring	568.03 sq. ft. [as alleged by the complainant]
7.	Application dated	05.02.2019 but not signed (As per page no. 35 of the complaint)
8.	Allotment dated	NA

9.	Total sale consideration	Rs. 19,93,065/- (As alleged by the complainant in the facts) Rs. 20,12,996/- (As alleged by the respondent in the reply)
10.	Amount paid by the complainant	Rs. 99,653/- [as alleged by complainant at page 35 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	29.09.2020 , 19.07.2021 [pg. 36 and 37 of complaint]

B. Facts of the complaint

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

- a. That the complainant was on the lookout to purchase a unit in the year 2018; For this purpose, the complainant researched on the internet about properties and here he came to know about the respondent's project named 'Kavyam Affordable Housing', situated in Sector-109, Dwarka Expressway, Haryana, Tehsil & District Gurugram and being interested in the same the complainant researched about the above named project and was contacted by an executive of the respondent's company for the booking of a unit in the project.
- b. That the complainant booked a unit bearing no.813 which was a 2BHK situated in 'TD' tower with a super area of 568.03 sq. ft., in the above mentioned project of the respondent. On 15.02.2019, the complainant paid an amount of Rs 99,653/- vide cheque no. 001639 drawn on Axis Bank. The total sale consideration was for Rs. 19,93,065/-which included the basic sales price, preferential location charges, parking charges and other charges exclusive of service tax.
- c. That the complainant was under a lot of stress due to COVID-19 pandemic lockdown because of which he was not able to gather the necessary funds for the payment of the said unit due to which he sent an e-mail dated 11.07.2020 for the cancellation of the said unit. No response was given by the respondent so the complainant sent a handwritten letter dated 29.09.2020 to the respondent's registered address but no response towards the cancellation was received.
- d. That no response to the previous mail and letter was given by the respondent, the complainant sent a legal notice vide registered post-dated 19.07.2021 to the respondent for the cancellation of the unit and refund of the booking amount. That it is imperative to mention that the complainant yet again sent an e-mail dater 03.09.2021 for which he

never received any reply whatsoever. The respondent has not fulfilled its committed liability as on date.

- e. That the unit was booked as per the conditions laid down in the application form and it is the right of the allottee to cancel the booking of the said unit if he wishes to. According to clause 22 c of the application form, the allottee has the right to cancel his booking and the respondent is liable to refund back the booking amount paid to him.

C. Relief sought by the complainant: -

4. The complainant has sought following relief(s)
 - a. Direct the respondent to refund the entire amount paid by the complainant along with the interest.
 - b. Direct the respondent to compensate the complainant for mental and physical harassment of the complainant and his family.
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 dated 05.02.2019 having application no. 3604 for booking of a 2 BHK Type 3 property for a total sale consideration of INR 20,12,996/-. That the complainant paid a sum of Rs. 99,653/- as the booking amount. 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. 813, TD tower.
- f. It is not out of place to mention that the respondent is mandated under the affordable housing policy to deliver the possession of the units

within the strict timelines. It is pertinent to mention here that the project is being constructed as per the planned timelines and the respondent will deliver the project within the stipulated period. It is further submitted that the complainant herein is a defaulter who 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. It is submitted that the complainant is serving in Delhi Police and being a government servant was recipient of his salary income even during the lockdown period. The complainant had admittedly requested the respondent for surrender of his unit on 29.09.2020 on which date a hand written letter for surrender was submitted with the respondent along with all documents required in consonance with the policy guidelines. The said letter is already filed by the complainant along with the complaint at page no. 36. 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.

- 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 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:

"In clause no.5 (Allotment Rates: Allotment & Eligibility Criteria), of the Annexure-A of notification dated 19th August, 2013: -

a. In clause 5(iii)h of policy dated 19.08.2013, the words "In case of surrender of flat by any successful applicant, an amount of Rs 25,000/- may be deducted by the colonizer", shall be substituted as under: -

"On surrender of flat by any successful allottee, the amount that can be forfeited by the colonizer in addition to Rs. 25000/- 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 project;	1% of the cost of flat;
(cc)	upto 2 year from the date of commencement of project;	3% of the cost of flat;
(dd)	after 2 year from the date of commencement of 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."

h. It is submitted that the respondent has always been ready and willing to refund the money of the complainant as per the above table. Therefore, in addition to deduction of ₹ 25,250/- as per the affordable housing policy in case of surrender/cancellation/termination an amount equivalent to 3% of the total cost of the flat falling under the column (cc)

as the surrender was made after lapse of more than one year, shall be deducted from the amounts paid by the complainant. It is submitted that the amount computed after statutory deductions is Rs. 14,013/- 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 Direct the respondent to refund the entire amount paid by the complainant along with the interest.

14. The complainant is allottee in the project "Kavyam", an affordable group housing colony developed by the respondent. The complainants were allotted the unit 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 unit by the complainant 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/3856/2021	29.09.2020	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. *

* *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 10.75% [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).

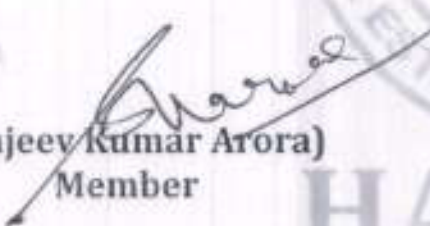
F. II. Direct the respondent to compensate the complainant for mental and physical harassment of the complainant and his family.

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 Rs. 99,653/- 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 10.75% [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.



(Sanjeev Kumar Arora)
Member



(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 26.09.2023