

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

Complaint no. : 6307 of 2022
First date of hearing: 10.01.2023
Date of decision : 12.10.2023

Dinesh Kumar
R/o: - F-38, West Jyoti Nagar, Shahdara, Delhi - 110094 **Complainant**

Versus

M/s Agrante Realty Limited.
Regd. Office at: 522-524, DLF, Tower- A, Jasola, New
Delhi- 110025 **Respondent**

CORAM:
Shri Vijay Kumar Goyal **Member**

APPEARANCE:
Sh. Dinesh Kumar (complainant in person) **Complainant**
Sh. Tarun Biswash (Advocate) **Respondent**

ORDER

1. The present complaint dated 13.09.2022 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 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. Unit and project related details

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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, 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.	TD-808, tower D [as per allotment letter at page 4 of complaint]
6.	Unit area admeasuring	488.30 sq. ft. [as per allotment letter at page 4 of complaint]
7.	Application dated	Not provided
8.	Allotment dated	01.07.2019 [Page no. 4 of complaint]
9.	Total sale consideration	Rs.20,12,995/- (As alleged by the complainant at page d of the complaint)

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10.	Amount paid by the complainant as per allotment dated 01.07.2019 at pg. 4 of complaint	Rs.99,653/-
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. 20 of reply]
15.	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]
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered
18.	Notice for surrender	22.09.2020 (As per page no. 8 of the complaint) (inadvertently mentioned as 17.07.2022 in the proceeding dated 12.10.2023)

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. He has paid an amount of Rs.99,653/- vide cheque no. 000042 dated 01.02.2019 for which respondent issued a receipt dated 13.02.2020. Thereafter, a unit bearing no. TD-808, Tower D having a carpet area of 488.30 sq. ft. was allotted to him vide allotment/demand letter dated 01.07.2019 for which a demand of Rs.4,04,594/- was raised on account of booking.
- II. That the complainant has made a cancellation request of the allotted unit to the respondent on 22.09.2020 along with affidavit. But the respondent/builder is not responding and threatening the complainant that they will not refund the amount. Further, the respondent is not responding to calls of the complainant and has changed their registered office without any intimation to customers. Therefore, the complainant is requesting before this Authority to refund the entire paid up amount along with interest.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
- i. Direct the respondent to refund the entire amount along with interest.
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: -

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- I. That an affordable housing project i.e., "kavvyam" 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 this Authority having RERA Registration No. GGM/291/2018/23 and is being constantly regulated as per its applicable rules and compliances. Further, it is relevant to apprise this 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.
- II. That the complainant had applied in the said project of the respondent vide application for allotment vide application no. 3712 for booking of a 2 BHK Type 3 property for a total sale consideration of Rs.20,12,995/- 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 he was allotted the unit bearing no. 808, TD tower.
- III. That the respondent is mandated under the affordable housing policy to deliver the possession of the units within the strict timelines. The project is being constructed as per the planned timelines and the respondent will deliver the project within the stipulated period. The complainant was defaulter who seems to be a speculative investor who subsequently changed his mind from investing further in the project.



The complainant had admittedly requested the respondent for surrender of his unit on 22.09.2020 on which date documents for surrender was submitted with the respondent along with all documents required in consonance with the policy guidelines. The said request for cancellation 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.

- IV. 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 time to time.
- V. The respondent has always been ready and willing to refund the money of the complainant as per policy of 2013. Therefore, in addition to deduction of Rs.25,000/- (mistakenly written by the complainant as Rs.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. The amount computed after statutory deductions is Rs.14,013/- which the respondent is ready to pay to the complainant.

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

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:

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. 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.

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F. Findings on the relief sought by the complainant.

F.1 Direct the respondent to refund the entire paid up amount along with interest.

11. The complainant was allotted unit no. TD-808 on 8th floor, in tower - D, in the project "Kavyam" by the respondent/builder for a total consideration of Rs.20,12,995/- under the Affordable Group Housing Policy 2013. No buyer's agreement was executed in this regard. 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.99,653/- as booking amount out of the total sale consideration. Further, the complainant vide email dated 17.07.2022 requested the respondent to refund the amount paid. The email dated 17.07.2022 is reproduced as under for a ready reference: -



To,
Agrante Realty Limited,



Unit No. 122, 1st Floor, Suncity Trade Tower, Sector-21, Gurugram-122016.

Subject. Notice for Refund of amount paid against application no. 3712 for Kavyam Homes, as per allotment letter dated 01.07.2019.

This is to report you that **a cancellation request of the unit allotted with subjected application number has been submitted on 22-09.2020.** Since then I am chasing with Agrate Realty (Kavyam Homes) but I am not getting the paid amount refund. It's been approx. two years I am chasing with kavyam homes, I had visited numerous time at your Jasola, New Delhi office address but no one attended me their properly and finally that office has been closed/vacated without any information to customers nor any message at this address for office change. I also send Notice on this address but that got returned.

Lately I came to know that Agrate (Kavyam Homes) office has been shifted to Suncity Trade Tower, Sector-21, Gurgaon, The notice has been served at this address and the same has been delivered by India Speed post.

Now I have filled the case with RERA, Gurugram for refund of amount I paid, as none of your team was responsive to all my follow ups and several times they misbehaved with me.

This is not right approach of your company, if you want to retain the goodwill of your organization than you have to deal with customers in professional way.

The all documents filled with this case is herewith attached, please review and see to refund my amount on priority.

Thanks & Regards,
Dinesh Kumar
9910036102

12. As per the clause 5 (iii)(h) of the Affordable Housing Policy, 2013 as amended by the State Government on 05.07.2019, the relevant provision is reproduced as under:

Clause 5(iii) (h) of the affordable housing policy

"A waiting list for a maximum of 25% of the total available number of flats available for allotment, may also be prepared during the draw of lots who can be offered the allotment in case some of the successful allottees are not able to remove the deficiencies in their application within the prescribed period of 15 days. [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 year from the date of commencement of the project	3% of the cost of flat

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(dd)	After 2 years from the date of commencement of the project	5% of the cost of flat
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Such flats may be considered by the committee for offer to those applicants falling in the waiting list. However, non-removal of deficiencies by any successful applicant shall not be considered as surrender of flat, and no such deduction of Rs 25,000 shall be applicable on such cases. If any wait listed candidate does not want to continue in the waiting list, he may seek withdrawal and the licensee shall refund the booking amount within 30 days, without imposing any penalty. The waiting list shall be maintained for a period of 2 years, after which the booking amount shall be refunded back to the waitlisted applicants, without any interest. All non-successful applicants shall be refunded back the booking amount within 15 days of holding the draw of lots.

13. Since the surrender of the unit by the complainant was done after commencement of construction, hence the respondent is entitled to forfeit amount in accordance with as per the clause 5 (iii)(h) of the Affordable Housing Policy, 2013 as amended by the State Government on 05.07.2019. 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.
14. The respondent/promoter is directed to refund the paid-up amount after deduction of 3% of the consideration money in addition to Rs.25,000/- as per clause 5(iii)(h) of the of Affordable Housing Policy 2013 as amended by the State Government on 05.07.2019, along with interest @10.75% per annum from the date surrender/withdraw of allotment till the actual realization of the amount.

G. Directions of the authority

15. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations

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cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent/promoter is directed to refund the paid-up amount of Rs.99,653/- after deduction of 3% of the consideration money in addition to Rs.25,000/- as per clause 5(iii)(h) of the Affordable Housing Policy 2013 as amended by the State Government on 05.07.2019, along with interest @10.75% per annum from the date surrender/withdraw of allotment i.e., 22.09.2020 till the actual realization of the amount along with interest at the rate of 10.75% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.
- 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.

16. Complaint stands disposed of.

17. File be consigned to registry.

Dated: 12.10.2023


(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram