



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	01 of 2021
Date of filing:	04.01.2021
First date of hearing:	25.02.2021
Date of decision:	31.08.2023

Seema Gulati

W/O Harish Kumar,

#85/1, Ward no. 29, Gandhi Dham Jagadhri,

Yamunanagar

.....COMPLAINANT

Versus

Aegis Value Homes Ltd

Aegis Value Homes Ltd,

Registered office at EF-10, Second

Floor, Inderpuri, New Delhi – 110012

.....RESPONDENT

CORAM: Dr. Geeta Rathee Singh

Member

Nadim Akhtar

Member

Present: -Mr. Nitin Gulati, learned counsel for the complainant.

Mr. Sanjay Jain, learned counsel for the respondent.

ORDER (NADIM AKHTAR- MEMBER)

1. Present complaint has been filed on 04.01.2021 by complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

A. UNIT AND PROJECT RELATED DETAILS

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of handing over of the possession, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name of the project	Ananda Phase I, Sector-32, Karnal
2.	Name of the promoter	Aegis Value Homes Ltd
3.	RERA registered/not registered	Registered
4.	Unit no.	C605, 6 th floor of Crown tower
5.	Unit area	477 sq. ft. approx
6.	Date of allotment	10.09.2015
8.	Date of builder buyer agreement	Not executed.



9.	Due date of offer of possession	27.12.2019
10.	Possession clause in BBA	Clause 9 of Provisional Allotment letter "Developer shall make all possible endeavour to hand over possession of the apartment to provisional allottee within a reasonable time, may be within 48 months from date of draw i.e. 27 June 2015+ 6 months grace period, otherwise company will pay penalty of Rs. 20 per sq.ft per month to provisional allottee."
11.	Total sale consideration	₹17,45,053/-
12.	Amount paid by complainants	₹ 6,78,117/-
13.	Offer of possession (fit-out)	No offer of possession

B. FACTS OF THE COMPLAINT

3. That complainant booked 2BHK apartment in the real estate project "ANANDA PHASE I" Integrated Township (Colony), being developed by the respondent at Sector 32, KARNAL. Complainant paid ₹ 87,253/- as the booking amount on 19.03.2015 vide cheque no 841693 and got the receipt number API/EOI/0015 from the respondent. Copy of the receipt dated 20/03/2015 is annexed as Annexure C-1.



4. That thereafter complainant made a payment of ₹1,74,505/- each to the respondent on 09.07.2015 and 23.07.2015 vide cheque no. 841695 and 841696 respectively. Copy of the receipt is annexed as annexures C-2 and C-3 respectively.
5. That respondent allotted an apartment to the complainant vide provisional allotment booking number AP1/BK/599, having approximate carpet area of 477 sq. feet@1745053 for total sale price of ₹17,45,053/-. Copy of the provisional allotment letter dated 10.09.2015 is annexed as annexure C-4. Subsequent thereupon, complainant again made a payment of ₹2,41,854/- on 26/05/2016 vide cheque number 841697. Copy of the receipt is annexed as annexure C-6.
6. That as per Clause 8 of provisional allotment letter respondent on 10.09.2015, respondent was supposed to hand over possession within 48 months from the date of draw, i.e., 27 June 2015+ 6 months grace period. So, as per the terms of allotment the date of offer of possession was June 2019 and with grace period of six months that ended on January 2020. Thus, the respondent has delayed in handing over possession of the apartment deliberately or for reasons known best to them.
7. Complainant has paid total amount of ₹6,78,117/- against the total consideration of ₹ 17,45,053/- including basic sale price, FDC,



IDC, PLC, however, respondents failed to complete the construction and to deliver the possession of the apartment till date.

8. That the respondent has not completed the project till date; moreover, the respondents are not in position to complete the project in near future as same can be substantiated by the photographs attached as Annexure C-7.
9. That the Complainant had telephonically tried to communicate with the respondent, but all in vain. The respondent never gave satisfactory replies. Moreover, the respondent never provide any progress report of the construction thereafter, complainant served a legal notice for refund of her money given to respondent. Copy of the legal notice dated 08/05/2019 is annexed herewith as annexure C-8. That the respondent neither completed the project till date nor replied to the legal notice or refunded the money already received by it from the complainant. The respondents are not in position to complete the project in near future. The respondents is acting in most despotic and horrendous manner, which amounts to unfair trade practice as well as such act is against the settled principle of law and natural justice.

C. RELIEF SOUGHT

10. Complainant sought following relief :



- I) To give necessary directions to the respondents for return of the payment made in lieu of unit/apartment till date along with the prescribed rate of interest from the date of execution of Allotment Letter till realization as per the provisions of Section 18 and 19(4) of the RERA Act.
- II) To impose penalty upon the respondents as per the provisions of Section 60 of RERA Act for wilful default committed by them.
- III) To impose penalty upon the respondents as per the provisions of Section 61 of RERA Act for contravention of Sec. 12, Sec. 14, Sec. 15 and Sec. 16 of RERA Act.
- IV) To direct the respondents to pay penalty upto 10% of project cost to the Complainants under Sec. 59 of RERA, Act, 2016.
- V) To direct the respondents to refund the amount collected from the complainants in lieu of interest, penalty for delayed payments under Rule 21(3)(c) of HRERA Rules, 2017.
- VI) To issue directions to make liable every officer concerned i.e. Director, Manager, Secretary, or any other officer of the respondent's company at whose instance, connivance, acquiescence, neglect any of the offences has been committed as mentioned in Sec.69 of RERA Act, 2016 to be read with HRERA Rules, 2017.



VII) To recommend criminal action against the respondents for the criminal offence of cheating, fraud and criminal breach of trust under section 420,406 and 409 of the Indian Penal Code.

VIII) To issue direction to pay the cost of litigation.

IX) Any other relief which this Hon'ble Authority deem fit and appropriate in view of the facts and circumstances of this complaint.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

11. A brief reply was filed on 28.02.2023 on behalf of the respondent, where it is stated that unit of the complainant had been cancelled and amount has been forfeited by respondent on 14.01.2017 on account of the fact that complainant failed to adhere to payment plan inspite of several reminders sent by the respondent to the complainant.

12. Further, as per short reply dated 29.05.2023 respondent stated that project of respondent is near completion and the possession is likely to be delivered in next two months.

13. That the project of the respondent was delayed due to the pandemic Covid-19 prevalent in the country.

14. That the RERA Authority has given the extension of time to the respondent for the completion of work by July, 2023. Copy of the time extension granted by the Haryana Real Estate Regulatory



Authority, Panchkula vide letter dated 09.06.2022 is annexed as Annexure R-A.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

15. Ld counsel for both the parties reiterated their submissions as mentioned in complaint and reply.

F. ISSUE FOR ADJUDICATION

16. Whether the complainant is entitled to refund of amount deposited by her along with interest in terms of Section 18 of Act of 2016.

G. OBSERVATIONS AND DECISION OF AUTHORITY

17. Authority has gone through rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both the parties, Authority observes that admittedly, the complainant vide booking no. API/BK/599 dated 10.09.2015 booked a unit in the real estate project "Ananda" being developed by the promoter, situated at Sector 32-A, Karnal by paying a booking amount of Rs.87,253/- vide cheque no.841693, dated 19.03.2015, Rs.1,74,505/- vide cheque no.841695 dated 03.07.2015 and Rs.1,75,505/- vide cheque no.841696 dated 21.07.2015. Subsequently, she was allotted unit no.C605, 6th floor,



of Crown Tower, in project "Ananda Phase-I" Sector 32, Karnal. Thereafter, she made a payment of Rs.2,41,854/- vide cheque no. 841697 dated 06.05.2016, meaning thereby that the complainant had paid a total of Rs.6,78,117/- against the basic sale price of Rs.17,45,053/-.

18.The complainant is aggrieved by the fact that despite making payment of more than one third of the basic sale price, there is no construction going on at the project site. The complainant had served a legal notice dated 08.05.2019 upon the respondent, however, the respondent neither refunded the amount nor had handed over the possession.

19.The respondent promoter filed a brief reply on 28.02.2023 wherein the respondent had not disputed allotment of the unit; signing of the letter of provisional allotment dated 10.09.2015; deemed date of handing over of possession; amount of Rs.6,78,117/- against basic sale price of Rs.17,45,053/- paid by the complainant for the unit. However, the respondent has pleaded that the complainant has defaulted in its obligation as per the agreement (letter of provisional allotment) due to which the respondent after issuing reminders was constrained to cancel the allotted unit on 14.01.2017 and to forfeit the entire deposited amount. The respondent has also taken a plea that the construction and development of the project



got delayed due to covid-19 outbreak in the year 2020, now the project is near completion and shall be ready for handing over possession in two months time from the date of reply.

20. With regard to the plea of the respondent that, it is a complainant who has failed to make payments for the allotted unit, it is observed that the respondent had failed to prove by way of placing any document on record that any demands in consonance with stage of construction were duly sent to the complainant and despite the service of the raised demands/reminders the complainant failed to make the payments. The respondent had also not placed on record any document/cancellation letter proving or showing that the unit allotted to the complainant had been cancelled on 14.01.2017. Thus, merely making a statement in the reply does not prove cancellation of the unit and accordingly, the plea of the respondent that the unit stands cancelled in the year 2017 holds no good. Such statement on part of the respondent leaves no doubt that the unit was never cancelled.

21. With regard to the second plea taken by the respondent that the project couldn't be completed due to the outbreak of COVID-19, on perusal of the complaint file Authority observes that the complainant vide application no.599 dated 20.03.2015 paid an amount of Rs.87,253/- through cheque bearing no.841693 dated



19.03.2015 towards allotment of an apartment "Ananda", affordable housing colony, situated at Sector 32-A, Karnal. However, subsequently, as mentioned in clause-3 of the letter of provisional allotment dated 10.09.2015 the respondent, after getting approval/consent from the complainant vide transfer application no.1106 changed the project of the complainant from "Ananda" situated at Sector 32-A, Karnal to "Ananda Phase-I" situated at Sector 32, Karnal. It is also mentioned therein that the complainant appeared in the draw conducted at Siri Fort Auditorium on 27.06.2015 and made a further payment of 20% of the basic sale price after selection of application under the category of lucky clients and accordingly, the complainant was allotted unit no.C-605 on 6th floor of Crown Tower measuring carpet area 477 sq.ft. approximately for a basic sale price of Rs.17,45,053/-. Further, as per clause-4 of the mentioned letter of provisional allotment, the allottee was liable to pay further amount of basic sale price only after approval of the layout plan and grant of all valid licences by the authorities to the developer regarding which an intimation regarding the same was to be given by the developer in due course of time. It is pertinent to mention here that on one hand vide the said letter of provisional allotment, the promoter had allotted unit no.605 on 6th floor measuring 477 sq.ft. in the project



“Ananda Phase-I”, Sector 32, Karnal, whereas on the other hand, the promoter in clause-6 of the same allotment letter mentioned that the allotment is provisional as the layout/ building plans of the complex have yet not been approved by the competent authority and as such a valid licence has yet not been issued to the developer, meaning thereby that the promoter had provisionally allotted a unit to the complainant without even having a valid licence to construct and develop an affordable housing colony in Sector 32, Karnal. Thus, the promoter allotted a unit and collected payment against it even without having the competency and requisite permission to do so.

22. During the course of hearing in the matter, it came to the notice of the Authority that there is no licence issued by the Director of Town & Country Planning in favour of Aegis Value Home Ltd. for development and construction of an affordable housing colony “Ananda Phase-I”, located at Sector 32, Karnal. In order to adjudicate the complaint for refund, the status of the project is required to be ascertained, for this purpose, the Authority vide its interim orders dated 17.05.2022 appointed the CTP, HRERA, Panchkula as the local commissioner. The CTP submitted its report on 07.07.2022, wherein it is mentioned that the promoter M/s Aegis Value Home Ltd. is developing an “affordable group



housing colony” namely “Smart Homes Karnal” on land measuring 5.653 acres in Sector 32-A, Karnal and the same is also registered with the Authority vide registration No.265 of 2017, now valid upto 23.07.2023. It is also mentioned in the report that the Director of the Company Shri Divey Sindhu Dhamija informed that the said project was being marketed/promoted in different names such as “Ananda Phase-I”, “Aegis Scheme”, “Aegis Smart Value Homes”. However, during course of hearing, Authority observes that as per the letter of provisional allotment, the unit allotted to the complainant in “Ananda Phase-I” is situated in Sector 32 and not in Sector 32-A. In order to remove this ambiguity surrounding the exact location of the project where the unit is located, the Authority directed the respondent vide its interim order dated 6.12.2022 to submit on affidavit all the project that are being developed by the respondent company at Karnal. The respondent on 28.02.2023 on affidavit submitted that the respondent company is carrying out two projects at Karnal namely; “Aegis Smart Home” and “Aegis Wood”. In this affidavit, there is no mention of the project “Ananda Phase-I” in which the unit of the allottee is situated. Accordingly, in order to clarify the matter, information sought from the Project Branch of the Authority wherein it was informed that the respondent had got registered the project namely “Smart



Homes Karnal”, which is an affordable housing colony in Sector 32-A, Karnal vide registration no.265 of 2017. The Project Branch further informed that a promoter namely “Aegis Skyhigh Housing Corporation Pvt. Ltd” is developing a plotted project colony “Affordable Residential Plotted Colony” in Sector 32, Karnal. There exists no information neither in the Authority nor on the website of DTCP regarding development and construction of an affordable housing colony in Sector 32, Karnal. Further, the fact that subsequent to the signing of the letter of provisional allotment, the builder never executed a builder buyer agreement raises serious doubts whether the promoter ever received any permission/licence for development of an affordable housing colony in Sector 32, Karnal. Further, there is no document placed on record by respondent to show that the allotment of the unit in question was done, as per norms prescribed as per Affordable Housing Policy 2013. Possibility could not be ruled out that the promoter allotted unit to the complainant under some pre-launch scheme, which were common in pre-RERA times.

23. Looking at the case from the other angle, even if the statement of the Director, “Aegis Value Home Ltd.” made before the local commissioner that the project “Ananda” and “Ananda Phase-I” are one and the same is believed or accepted, then also the promoter



was obligated to hand over the possession of the unit as per the terms of agreement. As per clause-9 of the allotment letter, possession was to be handed over within a period of 48 months from the date of draw i.e. 27.06.2015 plus six months grace period i.e. by 27.12.2019, however, the respondent promoter failed to complete the project and hand over the possession by the said date.

24. The respondent promoter had taken a plea that the delay happened due to outbreak of Covid-19 in 2020. However, since the event of outbreak of Covid-19 in the year 2020 occurred post the promised deemed date of possession, i.e. 27.12.2019, thus, the promoter cannot be allowed to take benefit of any force majeure event that occurred after the lapse of the stipulated period for handing over of possession. In this regard, Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. vs Vedanta Ltd. & Anr. bearing OMP (1) (Comm.) No.88/2020 and I.A.s 3696-3697/2020* dated 29.05.2020 had observed that :

“69. The past non-performance of the contractor cannot be condoned due to Covid-19 lockdown in March, 2020 in India. The contractor was in breach since September, 2019. Opportunities were given to the contractor to cure the same repeatedly. Despite the same, the contractor could not complete the project. The outbreak of pandemic cannot be used as an excuse for non-performance of a contract for which the deadline was much before the outbreak itself.



Hence, the plea of the respondent regarding delay due to Covid-19 stands rejected and the complainant is well within its rights under section 18 of the RERA Act to demand refund of the amount paid along with interest.

25. Further, Hon'ble Supreme Court in the matter of "*Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others* " in Civil Appeal no. 6745-6749 of 2021 has highlighted that the allottee has an unqualified right to seek refund of the deposited amount if delivery of possession is not done as per terms agreed between them. Para 25 of this judgement is reproduced below:

"25. The unqualified right of the allottee to seek refund referred under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed."



The decision of the Supreme Court settles the issue regarding the right of an aggrieved allottee such as in the present case seeking refund of the paid amount along with interest on account of delayed delivery of possession. As complainant wishes to withdraw from the project of the respondent , therefore, Authority finds it to be fit case for allowing refund in favour of complainant. Further, it is pertinent to mention that vide order dated 30.05.2023, Authority had imposed cost of ₹25,000/- payable to the Authority. Part of order dated 30.05.2023 is reproduced below for reference:

2. L.d. counsel for respondent apprised the Authority that reply in each case was filed in the registry yesterday only i.e. 29.05.2023. Perusal of order dated 02.03.2023 reveals that respondent was directed to file reply within three weeks time with advance copy to the complainants. Such actions of respondent in filing of reply one day before the date of hearing appears to be a delay tactics on the part of the respondent. Even on the last date of hearing, i.e., 02.03 2023 respondent had filed documents one day prior to the date of hearing,i.e., 1.03.2023. Therefore, Authority deems it fit to impose a cost of Rs.10.000/- each in complaint no. 180 of 2021, 649 of 2019,1230 of 2020, 1598 of 2022 and 2217 of 2019 payable to Authority within four weeks. In complaint no. 1 of 2021 respondent is directed to pay a cost of Rs.25.000/- payable to the Authority within one week. In complaint no. 401 of 2021, 402 of 2021,509 of 2020, 981 of 2019, 721 of 2021, 1420 of 2020, 2299 of 2019, 2851



of 2019 and 2852 of 2019 respondent is directed to pay a cost of Rs. 25,000/- each to the Authority within four weeks

In this regard respondent had filed an application dated 27.06.2023 for waiving off above mentioned cost stating that reply was filed one day before the date of hearing with no intention to delay the proceedings. W.r.t said application authority observes that respondent was granted sufficient time to file reply within time bound manner and no justified reason has been furnished by respondent for causing delay in filing reply, therefore said application for waiving off cost is dismissed. Therefore, respondent is directed to pay cost of ₹25,000/- payable to Authority.

26. The definition of term 'interest' is defined under Section 2(z) of the Act which is as under:

(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation.-For the purpose of this clause-

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to



the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;

27. Consequently, as per website of the state Bank of India i.e., <https://sbi.co.in>, the highest marginal cost of lending rate (in short MCLR) as on date i.e. 31.08.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.75%.

28. Rule 15 of RERA Rules, 2017 provides for prescribed rate of interest which is as under:

“Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19] (1) For the purpose of proviso to section 12; section 18, and sub sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%: Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public”.

29. From above discussion, it is amply proved on record that the respondent has not fulfilled its obligations cast upon him under RERA Act, 2016 and the complainant is entitled for refund of deposited amount along with interest. Thus, respondent will be liable to pay the complainant interest from the date the amounts were paid till the actual realization of the amount. Authority directs



respondent to refund to the complainant the paid amount of ₹6,78,117/- along with interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e. at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 10.75% (8.75% + 2.00%) from the date amounts were paid till the actual realization of the amount. Authority has got calculated the total amount along with interest calculated at the rate of 10.75% till the date of this order and total amount works out to ₹12,49,160/- as per detail given in the table below:

Sr. No.	Principal Amount	Date of payment	Interest Accrued till 31.08.2023
1.	₹87,253/-	26.06.2015	₹76,811/-
2.	₹ 1,74,505/-	09.07.2015	₹1,52,952/-
3.	₹ 1,74,505/-	23.07.2015	₹1,52,233/-
4.	₹ 2,41,854/-	26.05.2016	₹1,89,047/-
5.	Total=₹6,78,117/-		₹5,71,043/-
6.	Total amount to be refunded by respondent to complainant = ₹ 12,49,160/-		

30. The reliefs claimed under clause (ii), (iii) and (iv) are not pressed by the complainant during the course of proceeding nor argued.

Further, relief under clause (v) is not pressed upon nor it mentioned about the payment which had been collected by the respondent. Therefore, relief under clause (v) is rejected.

31. Further, the complainant is seeking litigation charges. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt Ltd. V/s State of U.P. & ors.*" (supra.), has held that an allottee is entitled to claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

H. DIRECTIONS OF THE AUTHORITY

32. Hence, the Authority hereby passes this order and issues following



directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

- (i) Respondent is directed to refund the entire amount of ₹12,49,160/- to the complainant in complaint no. 1 of 2021. Further directed to pay cost of ₹25,000/- payable to the Authority as imposed vide order dated 30.05.2023 as application for waive off has been dismissed by the Authority.
- (ii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.

33. Disposed of. File be consigned to record room after uploading on the website of the Authority.



.....
DR.GEETA KATHEE SINGH
[MEMBER]



.....
NADIM AKHTAR
[MEMBER]