



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	2217 of 2019
Date of filing:	19.09.2019
First date of hearing:	24.10.2019
Date of decision:	07.11.2023

Sajid Ali,

S/o Shri Samsheer Ali,

R/o- C-137, Mahendrapuri,

Modinagar, Ghaziabad (U.P)

.....COMPLAINANT

Versus

1. Aegis Value Homes Limited,

EF-10, 2nd floor, Inder Puri, New Delhi
and Sector-33, Near Five Star Hotel Noormahal,
Karnal, Haryana

2. J D Universal Infra. Ltd

1008, Sector-13, Urban Estate Karnal-132001,
behind Dr. Sudarshan Clinic,

.....RESPONDENTS

CORAM: Nadim Akhtar
Dr. Geeta Rathee Singh

Member
Member

Present: - Mr. Sajid Ali, complainant in person.

Mr. Sanjay Jain, through VC and Mr. Neeraj Goel, counsels for
respondents.

ORDER (NADIM AKHTAR- MEMBER)

Present complaint has been filed on 19.09.2019 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

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	Aegis Woods
2.	Name of the promoter	Aegis Value Homes Limited
3.	RERA registered/not registered	Unregistered
4.	Unit no. allotted	P- 102, First floor, Palm Tower, in the "AEGIS Woods"
5.	Unit area	1346.738 Sq.fts
6.	Date of builder buyer agreement	04.07.2018
7.	Possession clause in allotment letter	4.2 Possession Time and Compensation Subject to due and timely



		<p><i>payment in terms of this Agreement and full compliance with all terms hereof:</i></p> <p><i>(a) AVHL shall, after providing necessary infrastructure in the sector by the government but subject to force majeure circumstances and any other reasons or factors beyond the control of AVHL, endeavor to give possession of the said premises to the purchaser on 31.12.2018, provided that grace period of 60 days shall be available to AVHL without any additional charges or liabilities.</i></p>
9.	Due date of offer of possession	31.02.2018, including 60 days grace period
10.	Total sale consideration	Rs.37,50,000/-
11.	Amount paid by complainant	Rs.16,00,000/- (as per agreement)
12.	Offer of possession	No offer of possession given

B. FACTS OF THE COMPLAINT

- i. That the complainant is the proprietor of a firm with the name of 'M/s Great Height Associates' and had worked as a building contractor for the promoters/respondents in its different projects and an amount of Rs.25,49,738/- was due on the promoter for the works done by the complainant.

- ii. The promoters claimed themselves to be the absolute owners of the property measuring about. 1.46 Acres at Vill. Phoosgarh, Sec.-33, Teh. & Distt. Karnal and said to have proposed the project named as, "AEGIS WOODS" under the licence No. 20/38/2010-3a dated 30.03.2015 of Urban Local Bodies, Panchkula. The above mentioned Promoters are under Joint Development Agreement for development of the property as a Residential Group Housing Colony proposed to be known as "AEGIS WOODS".
- iii. The complaint was allotted a proposed residential apartment no. P-102 admeasuring approx. 1346.738 Sq.fts. on First floor, Palm Tower, in the "AEGIS Woods" building in the complex along with right to use car parking, against a total consideration of Rs.37,50,000/- (all inclusive BSP, EDC, FFC, ECC, PLC, Car Parking and Taxes) vide allotment dated 04.07.2018.
- iv. The promoters were entitled to receive only 10% of the total consideration amount as the earnest money for the allotment of the apartment P-102, however the promoters deducted from complainant Rs.16,00,000/- as received against the part payment of the total consideration amount of the apartment. The promoters duly acknowledged the receipt of the said amount against the allotment of apartment No. P-102, First Floor, Palm Tower, Aegis Woods at Karnal, Haryana.



- v. That despite of having received an amount of Rs.16,00,000/- from the complaint, the promoters have failed to enter into a registered agreement to sell for apartment No. P-102, as required by RERD Act and further have not furnished the RERA registration number for the project "AEIGS WOODS" despite of several requests and reminders of the complainant. The complainant has been told that his remaining amount of Rs.9,49,738- with the promoters has also been adjusted towards the remaining part payment of the total consideration amount.
- vi. The complainant has neither been supplied with the site plan of the apartment P-102, First floor, Palm Tower, nor has been allowed to visit the site by the security personnel of promoter.
- vii. That the promoters, thus are neither making the sale of apartment No. P-102, first floor, Palm Tower, "AEGIS WOODS" in favour of the complainant nor refunding the amount of Rs.25,49,738/- of the complainant.
- viii. That the promoters has failed to comply with the provisions of sections of the RERD Act 2016. The promoters, have not accounted the amount of Rs.25,49,738/- received against allotment of apartment from the complainant to the account of the project.



C. RELIEF SOUGHT

Complainant sought following relief :

- i. The respondent may kindly be directed to refund the amount of ₹25,49,738/- received as part payment from the complainant against the allotment of apartment no.P-102, 1st floor, Palm Tower, "AEGIS WOODS" at Vill. Phoosgarh, Sec.-33, Teh. & Distt. Karnal.
- ii. The promoter be penalized for the acts committed in contravention of RERA Act,2016 and Haryana RERA Rules.
- iii. Any other relief which Hon'ble Authority deems fit and proper in the favour of the complainant and against the respondent.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT No.1

- i. Respondent no.1 has filed reply on 29.05.2023, wherein it is submitted that complainant in present case is not a regular client, rather was a barter client who had done construction work at the site of respondent and in exchange of that the respondent agreed to give him one flat. However, the complainant submitted bills to the respondent for the work which he has done, but later on said bills were found to be false and fabricated during the audit conducted by the respondent. As a result, the complainant was served with a legal notice by the respondent. Copy of legal notice dated 05.09.2018 is annexed herewith as Annexure R-A.



- ii. Due to the above mentioned conduct of the complainant whereby he submitted forged and fabricated bills, the respondent cancelled allotted flat/unit of the complainant.
- iii. That the complainant was informed by the respondent through the above mentioned legal notice, that complainant may come and contact the officials of respondent, so that matter could be settled, but the complainant did not bother to get in touch with the officials of the respondent to explain his position.
- iv. That in the above mentioned circumstances, the complainant has not approached this Hon'ble Authority with clean hands and is guilty of concealment of material facts from this Hon'ble Authority. Since the complainant is guilty of forging and fabricating of the bills, hence is not entitled for the unit/flat in question.
- v. No reply has been filed by respondent no.2 as respondent no.2 is related company to respondent no.1.

**E. ARGUMENTS OF LEARNED COUNSEL FOR
COMPLAINANT AND RESPONDENT**

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



F. ISSUE FOR ADJUDICATION

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

G. OBSERVATIONS AND DECISION OF AUTHORITY

- i. Authority has gone through rival contentions. It is admitted fact that an apartment buyer agreement dated 04.07.2018 was executed between complainant and respondent by which complainant was allotted an apartment no.P-102 admeasuring 1346.738 Sq.ft on first floor, in Plam Tower in project of the respondent namely; “Aegis Woods” against the basic sale price of ₹37,50,000/-.
- ii. Complainant is aggrieved by the fact that despite making timely payments against the basic sale price, respondent neither handed over the possession of the unit within the stipulated timeline, nor refunded the amount paid by complainant
- iii. On perusal of reply dated 29.05.2023, it is observed that respondent has made a submission that they both agreed that in exchange of amount due against the construction work, respondent will to give one flat in project of respondent to the complainant. However, respondent stated that bills for the work done by the complainant are false and fabricated as found after audit conducted by the respondent and in respect of that respondent sent legal notice dated 05.09.2018 to the



complainant and as a result, respondent cancelled the flat as was allotted to the complainant. Hence, respondent is not liable towards the complainant as flat is cancelled. In this regard Authority observes that, main issue is w.r.t amount paid by the complainant. It is observed that complainant had paid total amount of ₹16,00,000/- under barter system which is admitted in Clause 3.2 of apartment buyer agreement against a particular unit. The respondent failed to substantiate in reply that alleged construction bills adjusted against the cost of unit to the complainant were false or fabricated. 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. 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 or bills are fabricated or false holds no good. Such statement on part of the respondent leaves no doubt that the unit was never cancelled.

iv. Authority observes that complainant had claimed refund of ₹25,49,738/- from the respondent and in this regard Authority via order dated 31.08.2023, directed complainant to file receipts of payments made to the respondent or an affidavit to prove the amount paid to the respondent. In compliance of this order, complainant had filed an affidavit dated 20.09.2023 which mentions about amount paid



to the respondent. On perusal of said affidavit, it is observed that against the amount of ₹25,49,738/-, only amount of ₹16,00,000/- is proved which is reflected in the clause 3.2 of the buyer agreement. The remaining amount of ₹9,49,738/-, is business transaction between the complainant and respondent and is not reflected in BBA. Therefore, Authority deems fit to adjudicate with respect to the amount of ₹16,00,000/- only.

- v. On perusal of clause 4.2 of apartment buyer agreement, respondent was under obligation to hand over possession to the complainant on 31.12.2018. Relevant clause is reproduced for reference:

4.2 Possession Time and Compensation

Subject due and timely payment in terms of this Agreement and full compliance with all terms hereof:

(a) AVHL shall, after providing necessary infrastructure in the sector by the government but subject to force majeure circumstances and any other reasons or factors beyond the control of AVHL, endeavor to give possession of the said premises to the purchaser on 31.12.2018, provided that grace period of 60 days shall be available to AVHL without any additional charges or liabilities.

Respondent failed to prove any force majeure conditions or any other reasons for non completion of project of respondent. Therefore, inspite of providing specific timeline, i.e., 31.12.2018, further including 60 days which comes to 31.02.2019 for completion of project by the



respondent, respondent fails to fulfill its obligation to hand over possession of flat to the complainant. Also, during course of hearing respondent has not disclosed a specific date for completion of project. Therefore, respondent failed to fulfill its duty to hand over possession of unit on time. This gives the right in favour of complainant to withdraw from the project and avail the relief of refund.

- vi. 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.

vii. 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;



viii. Rule 15 of HRERA 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”.

- ix. 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. 07.11.2023 is 8.75%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.75%.
- x. 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 ₹16,00,000/- 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 ₹25,20,318/-as per detail given in the table below:

Sr.no.	Principal Amount	Date of payment	Interest Accrued till 07.11.2023
1.	₹16,00,000	04.07.2018	₹9,20,318/-
Total amount to be refunded to the complainant =₹25,20,318/-			

- xi. Further, it is pertinent to mention that vide order dated 30.05.2023, Authority had imposed cost of ₹10,000/- 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. With respect to said application, Authority observes that respondent was granted sufficient time to file reply within time bound manner and no justified reasons have been furnished by respondent for causing delay in filing reply, therefore said application for waiving off cost is dismissed. Respondent is directed to pay cost of ₹10,000/- payable to Authority.



H. DIRECTIONS OF THE AUTHORITY

i. 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:

1. Respondent is directed to refund the entire amount of ₹25,20,318/- to the complainant. Further directed to pay cost of ₹10,000/- payable to the Authority as imposed vide order dated 30.05.2023 as application for waive off has been dismissed by the Authority.

2. 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.

ii. **Disposed of.** File be consigned to record room after uploading of the order on the website of the Authority.



.....
DR.GEETA RATHEE SINGH
[MEMBER]



.....
NADIM AKHTAR
[MEMBER]