



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	649 of 2019
Date of filing:	25.03.2019
First date of hearing:	25.04.2019
Date of decision:	31.08.2023

Mrs. Jyoti Chopra

W/O Shri Subhash Chopra,
#712, New Housing Board Colony,
Sector-13, Karnal-132001

.....COMPLAINANT

Versus

1. M/s Aegis Value Homes Ltd

Registered office at EF-10, Second
Floor, Inderpuri, Delhi – 110012

2. Mr. Divey Dhamija, Director, M/s Aegis Value Homes Ltd

Registered office at EF-10, Second
Floor, Inderpuri, Delhi – 110012

3. M/s JD Universal Infra Ltd,

35 Basement Community Centre,
Vasant Vihar, Delhi-110057

Jad

4. Municipal Corporation,
Shakti Colony, Karnal,
Haryana, through Executive Officer

**5. State of Haryana through Director Town & Country
Planning, Department**
SCO-71-75, Bridge Market, Sec-17C, Chandigarh, 160017

.....RESPONDENTS

CORAM: Nadim Akhtar Member
Dr. Geeta Rathee Singh Member

Present: - Mr. Manpreet, proxy counsel for Mr. Aishwarya Bajaj, counsel
for the complainant.
Mr. Sanjay Jain, learned counsel for the respondent no.1.

ORDER (NADIM AKHTAR- MEMBER)

1. Present complaint has been filed on 25.03.2019 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

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	Smart Homes Karnal
2.	Name of the promoter	M/s Aegis Value Homes Ltd
3.	RERA registered/not registered	Registered
4.	Unit no.	A3-1402
5.	Unit area	638.80 sq.ft
6.	Date of Apartment Buyer Agreement	24.01.2018
7.	Due date of offer of possession	24.10.2021 (as per agreement)
8.	Possession clause in BBA	<i>Clause 3.1 "Subject to Force Majeure Circumstances, intervention of Statutory Authorities, receipt of occupation certificate and Allottee having timely complied with all its obligations and requirements in accordance with this agreement without any default, the Developer will endeavour to offer possession of the said Apartment to the Allottee within a period four years from the date of approval of building plans or</i>



		<i>grant of environment clearance whichever is later (hereinafter referred to as the "Commencement Date")"</i>
9.	Total sale consideration	₹19,89,320/-
10.	Amount paid by complainants	₹10,44,393/-
11.	Offer of possession (fit-out)	No offer of possession given

B. FACTS OF THE COMPLAINT

1. That complainant book the flat in the aforesaid project having a carpet area of around. 638.80 sq.ft. for a total consideration of approximately ₹19,89,320/- out of which an amount of ₹10,44,393/- has been paid by the complainant. The copy of the agreement dated 24.01.2018 and the payment receipts depicting the same are annexed herewith as Annexure C-1 & C-2 respectively.
2. That the respondent-builder assured the complainant that the possession of the said flat would be delivered to the complainant within 4 years from the date of approval building plans or grant of environmental clearance whichever is later. However, respondent failed to hand over possession.

3. That the respondent-builder after entering into the agreement with the complainant and taking huge amount of ₹10,44,393/- did not give any information to the complainant regarding the ongoing construction of the said flat. As per section 19 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter Act 2016) the complainant is entitled to know stage wise time schedule of completion of the project. The complainant when did not receive any information from the respondent-builder after paying such a huge amount of money inquired about the said project, then she was shocked to know that nothing at all has been done by the respondent-builder after taking the money from the complainant.
4. That the respondent-builder while acting in an utterly unlawful arbitrary and illegal manner played a fraud upon the complainant by taking money from her and raising only minimal construction over the project site. The photographs of the project site are annexed as Annexure C-3(colly).
5. It is clear from the aforementioned photographs that the respondent-builder has not raised any construction over the project site and has already taken consideration amount to the tune of ₹10 lakhs from the complainant. The complainant is a middle class lady who gave her family hard earned money with the assurance that she will get the possession of the said flat within four years from



the commencement date but it is apparent that the respondent-builder is not willing to proceed with the project.

6. The malafide intention of the respondent-builder can be ascertained from the aforementioned facts as till today no construction work has been started over the project site.
7. That the complainant when inquired about the aforementioned project and the respondent-builder, then she was shocked to know that various FIR are pending against the respondent-builder as many innocent buyers were cheated by the respondent-builder. That the Regd. Office of the respondent-builder at Karnal is locked for the last so many months and the respondent-builder is not even responding to the various e-mails sent by the complainant. The complainant has been duped by the respondent-builder just like so many other persons. The copy of the cutting of news paper "The Tribune" dated 16.02.2019 is annexed herewith as Annexure C-4.
8. That the respondent-builder is a habitual offender as it is patent from the aforementioned facts. The respondent-builder never had any intention to construct any flat and the sole intention of the respondent-builder was to take money from the innocent persons such like the complainant and never give it back.



9. That the possession of the flat cannot be delivered on or before the completion date as stipulated in the agreement dated 24.01.2018. As it is amply clear from the photographs annexed by the complainant and as well as by the fact regarding the aforementioned FIR pending against the respondent-builder the respondent cannot deliver the possession of the flat and therefore, the complainant is entitled to claim the refund of amount paid by her alongwith interest.
10. That the respondent-developer claims to have obtained license No.02 of 2016 dated 05.03.2016 granted by the Director, Town & Country Planning, Department, Government of Haryana, for construction and development of an affordable group housing colony as per Affordable Group Housing Policy 2013 on a freehold plot of land measuring approximately 5.6534 Acres (hereinafter referred to as Project Land) situated at Sector 32-A, Tehsil and District Karnal. The respondent developer further claimed that he got the building plan approved vide memo No.ZP-1112/AD(RA)/2017/404 dated 03.03.2017 from the office of DGTCP.
11. That the complainant entered into Apartment Buyers Agreement dated 24.01.2018 (Annexure C-1) for a Flat measuring 638.80 sq.ft. (carpet area) (hereinafter referred to as Unit) alongwith one



parking space comprising the common area, after making the total payments of Rs.10,44,393/-, vide cheque no.000022, drawn on HDFC Bank dated 17.08.2017 (ANNEXURE C-2) amounting to Rs.298398/-, (2) cheque No.000020 dated 08.02.2018 drawn on HDFC Bank, amounting to Rs.250768/-, (3) cheque No.000015 dated 03.08.2017 drawn on HDFC Bank, amounting to Rs.200000/-, (4) cheque No.000014 dated 07.07.2017 drawn on HDFC Bank, amounting to Rs.200000/-, (5) cheque No.000012 dated 06.06.2017 drawn on HDFC Bank, amounting to Rs.95227/-

C. RELIEF SOUGHT

12. Complainant sought following reliefs :

- i. That the respondent-developer be directed to refund the consideration amount paid by the complainant alongwith interest @ 24% per annum.
- ii. That the respondent-developer be directed to pay an amount of Rs.5 lakhs to the complainant on account of mental harassment being caused due to the illegal and unlawful conduct of the respondent-developer.
- iii. That the rate of interest levied on the computation sheet is the same which the respondent-developer would have otherwise charged from the complainant in case of any default, Section



2(z) of the Act 2016 provides for such levying of rate of interest. That the exemplary penalty may be levied on such defaulting promoters, so as to curb the practice of exploitation of innocent buyers.

- iv. That the bank accounts no.009511100002634, Andhra Bank, Chandigarh, of the respondent-developer be seized so as the compensation and other penalties levied as per law may be realized. Further, any other bank account which may come to the notice of this Hon'ble Authority may also be seized for the purpose mentioned above and for the purpose of Escrow Account as provided in Section 4 of the Act, 2016.
- v. That in addition to the compensation detailed above, further compensation on account of legal expenses and other forced misc. expenses also to be paid for an amount Rs.2 lacs.
- vi. Any other order or direction as this Hon'ble Authority may find reasonable in the facts and circumstances of instant case, may also be granted.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT No.1

13. In short reply dated 29.05.2023 filed by the respondent no.1, it is stated that project of respondent is near completion and the possession is likely to be delivered in next two months.



14. That the project of the respondent was delayed due to the pandemic Covid-19 prevalent in the country.
15. That the RERA Authority has given extension of time to the respondent for 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.
16. No separate replies have been filed by the respondent no.2 and 3 but they are related parties of the respondent no.1.

E. REPLY SUBMITTED ON BEHALF OF RESPONDENT No.4

17. As per reply dated 19.04.2019, it is stated that complainant has got no locus standi to file and maintain the present complaint against the answering respondent No.4 as the answering respondent has no concerned with the land in question and respondent no.4 has not issued any license to the builder.
18. That the appeal presented by the complainant does not disclose any cause of action against the answering respondent and not claimed any relief against answering respondent.
19. That the scheme was not formulated or sanctioned by the answering respondent and as such the present complaint may be dismissed on this score alone against the answering respondent.



F. REPLY SUBMITTED ON BEHALF OF RESPONDENT No.5

20. Respondent No.5 filed the reply on 25.04.2019 and as per reply, a sale agreement enclosed with the complaint it comes to notice that the matter in dispute relates to licence no. 2 of 2016 dated 05.03.2016. The status of licence no. 2 of 2016 dated 05.03.2016 is given as under:-

- i. That the License No. 2 of 2016 dated 05.03.2016 was granted in favour of JD Universal Infra Ltd. in collaboration with Aegis Values Homes Ltd. for development of Affordable Group Housing colony over an area measuring 5.6534 acres in village Budhakera, Sector- 32 A, District Karnal, which is valid upto 04.03.2021.
- ii. That the land owning company JD Universal Pvt. Ltd. has applied on 23.02.2016 to transfer the land in favour of developer company, i.e., Aegis Values Homes Ltd. The in-principle approval in this regard was issued on 01.12.2017, but due to non compliance of the terms and conditions of in-principle approval, the final permission in this regard has not been granted so far.
- iii. That the building plans of Affordable Group Housing colony were approved vide Memo No. 4047 dated 03.03.2017 (Annexure-1). As per approved building plans, in all 8 no of



tower's having total 877 residential units were approved. The licensee has applied for approval of revised building plans, which are under consideration.

iv. That the environment clearance from Competent Authority for this project has been taken by the licensee on 24.10.2017.

v. That an amount of ₹43.19 lacs is outstanding against EDC as on 15.04.2019.

G. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

21. Ld counsel for the parties reiterated their submissions as mentioned in complaint and replies submitted by them.

H. ISSUE FOR ADJUDICATION

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

I. OBSERVATIONS AND DECISION OF AUTHORITY

23. 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 the complainant booked a flat in the real estate project "Smart Homes Karnal" being developed by the promoter and she was allotted unit no.A3-1402, Tower A3, in project "Smart Homes Karnal" Sector 32-A, Karnal and builder buyer agreement was



executed between the parties on 24.01.2018. Complainant had paid a total of ₹10,44,393/- against the basic sale price of Rs. 19,89,320/- .

24. As per clause 3.1 of agreement respondent/developer was under obligation to hand over possession to the complainant within 4 years from the date of approval of building plans or grant of environment clearance whichever is later. Relevant clause is reproduced for reference:

“Clause 3.1 “Subject to Force Majeure Circumstances, intervention of Statutory Authorities, receipt of occupation certificate and Allottee having timely complied with all its obligations and requirements in accordance with this agreement without any default, the Developer will endeavour to offer possession of the said Apartment to the Allottee within a period four years from the date of approval of building plans or grant of environment clearance whichever is later (hereinafter referred to as the "Commencement Date")”

As per the reply of respondent no.5, respondent/ developer received approval of building plans on 03.03.2017 and got the environment clearance on 24.10.2017. That means, as per possession clause a period of 4 years to be taken from 24.10.2017 and therefore, date of handing over of possession comes to 24.10.2021.



25. Respondent/ developer has filed a brief reply dated 29.05.2023, wherein respondent has not disputed allotment of the unit; signing of the builder buyer agreement dated 24.01.2018; deemed date of handing over of possession; against basic sale price of Rs. 19,89,320/- an amount of ₹10,44,393 /- paid by the complainant for the unit. Respondent had simply taken plea that project is near completion and the possession is likely to be delivered in next two months.

26. Factual position is that despite receipt of amount of ₹10,44,393 /-, last payment upto 06.06.2017, respondent failed to deliver possession within stipulated time, i.e., 24.10.2021 without any justified reasons. Therefore, present complaint was filed by the complainant in year 2019 alleging that no construction of project is going on at site. Photographs of site are also attached as Annexure C3 to the complaint. 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. CTP, HRERA, Panchkula submitted his 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”. Relevant portion of report as below:

Registration No. 265 of 2017 dated 09.10.2017 was granted to Aegis Value Homes Ltd. for developing the said colony. This Registration was valid for a period of 4 years from the date of grant of Environmental Clearance for the proposed Group Housing. Since the environment clearance was granted on 24.10.2017 therefore, the said registration shall be valid up to 23.10.2021.

The promoter had applied for Extension of Registration. This Extension was granted up to 23.07.2023 including the nine months covid period.

The project was proposed to be completed by 23.07.2022 (if 9 months relief for the COVID Period is also included).

However, about 70% of the works have been executed at site and if the works are undertaken at a pace at which they were being undertaken at the time of site visit the project could be completed within one year.



Report of local commissioner reveals that construction is going on and 70% works has been executed and if the works are undertaken at a pace at which they are being undertaken, project could be completed within one year. Accordingly, if one year is taken from the report of local commissioner, i.e., 07.07.2022, date comes 07.07.2023, and as per submission of respondent in reply dated 29.05.2023, the date of completion/handing over of unit comes to 29.07.2023. Both the dates have already expired and nothing concrete has been placed on record by respondent to prove that construction is actually at a pace that possession could be delivered within 2-3 months. Therefore, Authority deems fit to allow the relief of refund in favour of complainant.

27. Further, the respondent/ developer had taken a plea that the delay happened due to outbreak of Covid-19 in 2020. Regarding this Authority observes that if 9 months relief of covid is given to the respondent then date for completion of project comes to 24.07.2022. Therefore, even after giving relief of covid period to respondent, still respondent/developer failed to hand over possession. Thus, the respondent/ developer cannot be allowed to take benefit of any force majeure event as respondent failed to substantiate the claim. 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.

28. 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 ₹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 reason has been furnished by respondent for causing delay in filing reply, hence said application for waiving off cost is dismissed. Therefore, respondent is directed to pay cost of ₹10,000/- payable to Authority.

29.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;



30. 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”.

31. 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%.

32. 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 no.1 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 no.1 to refund to the complainant the paid amount of ₹10,44,393/- 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 ₹16,80,249/- as per detail given in the table below:

Sr. No.	Principal Amount	Date of payment	Interest Accrued till 31.08.2023
1.	₹95227/-	10.06.2017	₹63777/-
2.	₹2,00,000/-	02.08.2017	₹1,30,826/-
3.	₹2,00,000/-	07.08.2017	₹1,30,532/-
4.	₹2,50,768/-	19.02.2018	₹1,49,190/-
5.	₹2,98,398/-	20.08.2018	₹1,61,531/-
	Total= ₹10,44,393/-		₹6,35,856/-
Total amount to be refunded by respondent to complainant = ₹10,44,393/- + ₹6,35,856/- = ₹16,80,249 /-			

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

34. Complainant had impleaded respondent no.4 and 5 as parties in the complaint and both the respondent no.4 and 5 had filed their

replies in complaint. On perusal of complaint, it came to notice of Authority that complainant had not claimed any relief against respondent no.4 and 5.

35. Further, the complainant is seeking compensation on account of mental agony caused to the complainant and legal expenses. 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.

J. DIRECTIONS OF THE AUTHORITY

36. 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 ₹16,80,249/- to the complainant in complaint no. 1 of 2021. 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.
- (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.

37. 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]