



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	509 of 2020
Date of filing:	26.05.2020
First date of hearing:	07.08.2020
Date of decision:	31.08.2023

Rajesh Kumar

S/o Sh. Pritam Singh

R/o VPO Kirmah, District- Kurukshetra

(Haryana)

.....COMPLAINANT

Versus

Aegis Homes Ltd,

Regd. Office at:- 243, City Centre, Sector-12, Karnal

Now: Near Radha Swami Satsang Centre, Sector-33,

38 First floor, Gold Floors,

Behind Beanstalk School, Karnal

.....RESPONDENT

CORAM: Dr. Geeta Rathee Singh

Nadim Akhtar

Member

Member

Present: - Mr. Ripudaman Singh, counsel for the complainant through VC.
Mr. Sanjay Jain, Id counsel for the respondent.

had

ORDER (NADIM AKHTAR- MEMBER)

Present complaint has been filed on 26.05.2020 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	Address by Aegis Scheme,
2.	Name of the promoter	Aegis Homes Ltd
3.	RERA registered/not registered	Unregistered
4.	Unit no.allotted	1109, First floor in Imperial Tower
5.	Unit area	600 sq. ft. approx
6.	Date of allotment	13.10.2014
7.	Date of builder buyer agreement	Not executed
8.	Possession clause in allotment letter	Clause 14 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 42 months from date of draw,i.e.,29 June 2014+ 6 months grace period, otherwise company will pay penalty of Rs. 20/- per sq.ft per month to provisional allottee.”
9.	Due date of offer of possession	29.06.2018 including grace period
10.	Total sale consideration	₹18,34,800/-
11.	Amount paid by complainants	₹ 8,08,880 /-
12.	Offer of possession	No offer of possession given

B. FACTS OF THE COMPLAINT

- i. That complainant booked a studio apartment measuring 600 sq ft in the project namely; "Address by Aegis Scheme" being developed by the respondent at Sector-32, Karnal, Haryana. Before booking of said apartment, it was assured by the respondent that it has received all the approvals and sanctions for the development of the said project and the possession of the said apartment would be delivered by June, 2014.
- ii. That for the purpose of booking of said apartment, the complainant paid an amount of Rs.11000/- to the respondent vide cheque dated 29.04.2014. Copy of said cheque dated 29.04.2014 along with the



receipt dated 22.07.2014 are attached as Annexure C-1. An application no.5791 was generated in favour of the complainant.

- iii. That thereafter, the respondent conducted the draw of lots of the studio apartments on 29.06.2014 and duly intimated about the same to the complainant by the letter, annexed as Annexure C-2. Vide the said letter, it was also intimated by the respondent that the complainant has also received a special discount of 12% on the basic sale price of Rs.2085000/- and demanded Rs.2,00,000/- to be deposited before 10.07.2014, in order to avail the said discount.
- iv. That accordingly complainant paid an amount of Rs.2,50,000/- to the respondent on 07.07.2014 vide cheque bearing no. 875020. A copy of said cheque dated 07.07.2014, amounting to Rs.2,50,000/- along with the receipt dated 24.07.2014 are attached as Annexure C-3.
- v. That on further demand raised by the respondent, the complainant paid an amount of Rs.2,89,500/- vide the cheque dated 10.08.2014. Copy of said cheque dated 10.08.2014 along with the receipt dated 01.09.2014 are attached as Annexure C-4. Thus by 10.08.2014, the complainant had already paid an amount of Rs.5,50,500/- to the respondent.
- vi. That respondent issued provisional allotment letter dated 13.10.2014 to the complainant, allotting a studio apartment bearing



Unit no.1109 on First Floor, in Imperial Tower, measuring 600 sq ft. The basic sale price after giving the discount came to Rs. 18,34,800/-. All the payments amounting to Rs.5,50,500/- which were made by the complainant prior to the issuance of the said allotment letter were duly reflected in the said allotment letter. Copy of the said allotment letter dated 13.10.2014 is attached as Annexure C-5.

- vii. That, as per clause 14 of the said allotment letter, the respondent committed to deliver the possession of the said studio apartment within a period of 42 months from the date of draw, i.e., 29.06.2014 plus 6 months grace period. Thus the possession of the said apartment was required to be handed over by 29.06.2018.
- viii. That after the issuance of said provisional allotment letter dated 13.10.2014, the respondent failed to commence any construction at the project site.
- ix. That complainant during the year 2014 & 2015, many times personally visited the site office to enquire about the construction status but every time he was told by the representative of the respondent company that the construction would be started soon. The respondent kept on giving the assurances till the year 2017 that construction would be started soon and the possession of the said



apartment would be handed over within time as prescribed in the allotment letter.

- x. That in first week of November, 2017 when the complainant visited the site office of the respondent, he was informed by the representative of the respondent company that they have received the pending approvals and construction of the Imperial Tower would commenced very soon. The said representative asked the complainant to pay an amount of Rs.2,58,380/- demanded vide letter dated 12.11.2016. The complainant duly paid the said amount to the respondent vide cheque dated 13.11.2017. A copy of the said cheque dated 13.11.2017 along with the receipt dated 31.08.2018 are attached as Annexure C-6. Thus by 13.11.2017, the complainant had paid an amount of Rs.8,08,880/- to the respondent.
- xi. That feeling dissatisfied and harassed due to unfair trade practice on the part of the respondent and being deficient in providing proper services to the complainant, the complainant has no option except to withdraw from the project. The complainant on 30.10.2019, finally asked the respondent to refund the entire amount paid by him along with interest but the respondent refused to refund the same. A similar request was made on 07.01.2020 but to no avail. Since the respondent has failed to deliver possession



and considerable time has passed, since the committed date of possession, the complainant has no option but to withdraw from the project and thus is seeking refund of the amount paid by him along with interest as prescribed under Rule 15 of HRERA rules.

- xii.** The respondent is also guilty of launching the project without obtaining all the approvals and sanctions for the development of the project. The building plans of the said project were not approved when the flat/apartment was sold to the complainant. It is well settled that a builder cannot receive any amount from the prospective buyer without obtaining all the approvals and sanctions from the competent authorities.
- xiii.** That till date the respondent failed to start any construction of Imperial Tower in which the said flat/apartment of the complainant was located. Rather the respondent has abandoned the project. Since the period during which the respondent was to handover the possession of the said flat/apartment has already expired on 29.06.2018 and further the respondent has failed to start any construction of the said tower, the complainant does not wish to remain in the project and thus withdrawing from the project and claiming refund under Section 18 of Real Estate (Regulation & Development) Act, 2016.



C. RELIEF SOUGHT

Complainant sought following relief :

- i. To direct the respondent to refund the amount of Rs.8,08,880/- along with interest at the rate prescribed under Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the respective dates of payments till its realization, since under Section 18 of Real Estate (Regulation and Development) Act, 2016.
- ii. To direct the respondent to pay Rs.2,00,000/- as compensation for deficiency in service, unfair trade practices and mental harassment suffered by the complainants and damages for the physical and mental torture, agony, discomfort and undue hardships caused to the complainant, by not delivering the possession in a time bound manner;
- iii. To direct the respondent to pay Rs.1,00,000/- towards the litigation expenses.
- iv. To pass any other order or direction as deemed fit and proper in the peculiar facts and circumstances of the present case.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

- i. A short reply dated 29.05.2023 has been filed by the respondent stating therein that project of respondent is near completion and the possession is likely to be delivered in next two months.



- ii. That the project of the respondent was delayed due to the pandemic Covid-19 prevalent in the country.
- iii. That the RERA has given 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 resolution dated 09.06.2022 is annexed as Annexure R-A.

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. 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 complainant booked a unit in the project of the respondent namely "Address by Aegis Scheme" and provisional allotment letter dated 13.10.2014 for unit no.1109, 1st floor in Imperial Tower was issued in



favour of the complainant. Against the basic sale price of ₹18,34,800/- complainant had paid total amount of ₹8,08,880/-.

- 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. Respondent had only filed short reply dated 29.05.2023 stating therein 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.
- iv. On perusal of reply dated 29.05.2023, it is observed that respondent had not disputed allotment of the unit; signing of the letter of provisional allotment dated 13.10.2014; deemed date of handing over of possession; payment of an amount of Rs.8,08,880 /- against basic sale price of ₹18,34,800/- paid by the complainant for the unit in the short reply. Also, respondent has not mentioned any date for completion of project in reply nor argued about the same. Further as per Clause-4 of the provisional allotment letter, 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 was to be given by the developer in due



course of time. It is important to mention here that on the one hand, vide the said letter of provisional allotment, the promoter had allotted unit no.1109 on 1st floor, Imperial Tower, measuring 600 sq.ft. in the project "Address by Aegis Scheme", Sector 32, Karnal, whereas on the other hand, 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.

- v. During the course of hearing, it came to the notice of the Authority that there is no licence issued by the Director, Town & Country Planning Department in favour of Aegis Value Home Ltd. for development and construction of an affordable housing colony "Address by Aegis Scheme", located at Sector 32, Karnal. In order to adjudicate the complaint for refund, the status of the project was ascertained. 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”. However, during the course of hearing, Authority observes that as per the letter of provisional allotment, the unit allotted to the complainant is in “Address by Aegis Scheme” is situated in Sector 32 and not in Sector 32-A. In order to remove the 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 details of all the projects 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 “Address by Aegis Scheme” 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 under 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.

- vi. Further, as per clause-14 of the letter of provisional allotment, possession was to be handed over within a period of 42 months from



the date of draw, i.e., 29.06.2014, which comes to 29.12.2017 plus six months grace period, i.e., by, 29.06.2018, However, the respondent promoter failed to complete the project and hand over the possession by the said date. 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.

vii. 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., 29.12.2017, 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.

viii. 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.

ix. The definition of term 'interest' is defined under Section 2(za) 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;

- x. 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%.
- xi. 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”.

- xii. 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 ₹8,08,880/- 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 ₹14,83,849/-as per detail given in the table below:

Sr.no.	Principal Amount	Date of payment	Interest Accrued till 31.08.2023
1.	11,000/-	22.07.2014.	10,782/-
2.	2,50,000/-	24.07.2014	2,44,894/-
3.	2,89,500/-	01.09.2014	2,80,262/-
4.	2,58,380/-	31.08.2018	1,39,031/-
	8,08,880/-		6,74,969/-
Total amount to be refunded to the complainant = ₹8,08,880/- + ₹6,74,969/- = ₹14,83,849/-			

xiii. Further, the complainant is seeking deficiency in service, mental harassment, mental torture and agony, and cost of litigation. 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 PvL 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.

xiv. 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. 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, therefore said application for waiving off cost is dismissed. Respondent is directed to pay cost of ₹25,000/- 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 ₹14,83,849/- to the complainant. 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.

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 on the website of the Authority.


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


.....
NADIM AKHTAR
[MEMBER]