



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	402 of 2021
Date of filing:	01.04.2021
First date of hearing:	30.06.2021
Date of decision:	31.08.2023

### **Rajbir**

S/O Shri. Lakhi Ram  
#1142, Village Jakhauli,  
District Sonapat, Haryana

.....COMPLAINANT

Versus

- 1. Aegis Value Homes Limited through its Director,**  
Registered office, #3, 1<sup>st</sup> Floor, Gold floors,  
Sector-33, Karnal-132001, Haryana.
- 2. Divey Sindhu Dhamija, Managing Director,**  
#1008, Urban Estate,  
Sector-13, Karnal -132001, Haryana.
- 3. Raj Dhamija, Director,**  
#1008, Urban Estate,  
Sector-13, Karnal -132001, Haryana.

4. Rajat Dhamija,  
Authorised Representative for correspondence with Authorities,  
#977, Sector-6, Urban Estate,  
Sector-13, Karnal -132001, Haryana.

.....RESPONDENTS

**CORAM:** Dr. Geeta Rathee Singh                      Member  
                    Nadim Akhtar                                      Member

**Present:** - Mr. B.R Sarohi, Id counsel for the complainant.  
                    Mr. Sanjay Jain, Id. counsel for the respondents.

**ORDER (NADIM AKHTAR- MEMBER)**

1. Present complaint has been filed on 01.04.2021 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 proposed handing over the possession, delay period, 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 Value Homes Ltd
3.	RERA registered/not registered	Unregistered
4.	Unit allotted	1105, 1 <sup>st</sup> floor of Imperial tower
5.	Unit area	600sq. ft.
6.	Date of allotment (Letter of Provisional allotment)	05.09.2014
8.	Date of builder buyer agreement	Not executed.
9.	Due date of offer of possession	29.06.2018
10.	Possession clause in BBA	Clause 14 of the letter of provisional allotment "Developer shall make all possible endeavour to hand over possession of the studio 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..."
11.	Total sale consideration	₹18,34,800/-
12.	Amount paid by complainants	₹ 5,50,440/-
13.	Offer of possession (fit-out)	No offer of possession given



**B. FACTS OF THE COMPLAINT**

- i. That the complainant has purchased a flat in the project of respondent namely; "Address by Aegis Scheme" bearing unit no. 1105, 1st Floor of the Imperial Tower, measuring 600 sq. ft. in the year 2014 by paying the booking amount to the respondent and balance payment was paid to the respondent as per the payment plan.
- ii. That total basic sale price of the flat was ₹18,34,800/- which is exclusive of Preferential Location Charges (PLC), Corner Charges, Main/Wide road facing charges, North-East facing, East facing, Floor PLC and any other PLC.
- iii. That the complainant was allotted flat vide provisional allotment letter dated 05.09.2014 which is annexed as Annexure C-1.
- iv. That complainant has paid an amount of ₹5,50,440/- against the total price of Rs.18,34,800/-. However, respondents have failed to hand over the possession to the complainant as stipulated in Clause 14 of letter provisional allotment. It is submitted that the complainant has paid 30% of the total sale consideration price and is also ready to pay the remaining amount, but the developer did not raise any demand till date with the reason that the project has not yet commenced construction and no work is going on at





project site. Copy of receipts of all the payments made by the complainant till date is annexed as Annexure C-2.

- v. That as per Clause 14 of the letter of provisional allotment it was specifically stated that the construction of the unit will be completed and physical possession will be offered/handed over to the allottee/complainant within a period 42 months plus 6 months grace period from the date of draw,i.e.,29.06.2014. However, respondents failed to hand over possession till date.
- vi. The said unit was purchased by the complainant for his personal use but the respondents remained deficient in providing services and collected the money illegally from the complainant amounting to Rs.5,50,440/- and no further demand was raised by the respondents. It is evident from the facts that the complainant was paying the money to the respondent as per demand and the respondents have deliberately not carried-out the construction work of the apartment in accordance with the provisions of letter of allotment, hence breached the trust of complainant and violated the terms of letter of provisional allotment.
- vii. That the respondents have not commenced the construction work on the project and for delivering the possession of apartment, complainant paid number of visits since 2014 till date to the site as well as corporate office and requested the respondent to hand over



the possession but all in vain. This shows that the respondents are least bothered to hand over the possession of the apartment which they have already delayed wilfully.

- viii. That due to deficiency in services committed by the respondents, the complainant has suffered huge financial losses, mental agony, and trauma as his hard earned money has been invested in the said project.
- ix. Thus the complainant is entitled for the relief as sought in the present complaint.

**C. RELIEF SOUGHT**

3. Complainant sought following relief :

- (a) Refund the entire sale consideration amount paid by the complainant for the purchase of unit in the said project together with 24% compound interest as the complainant having exhausted all hopes of giving possession of flat by the developer-respondent, has made some alternate arrangement.
- (b) Impose penalty as prescribed under Section 61 of RERD Act,2016 on the respondents for having contravened the provisions of Section 11 and HRERA Rules, 2017;
- (c) Impose the penalty as prescribed under section 59 for having contravened the provisions of RERD Act, 2016;



- (d) Pay legal expenses incurred by the complainant in connection with case to the tune of Rs.50,000;
- (e) Initiate appropriate legal action under section 69 of the Act against the respondent No. 2, 3 and 4 being the directors of the respondent company, for breaching the trust of the innocent persons and cheating them with the intention to gain and usurp their hard earned money unlawfully.

**D. REPLY SUBMITTED ON BEHALF OF RESPONDENT**

- i. Respondent no.1 had filed reply on behalf Aegis Value Homes Ltd. through its Managing Director as all the other respondents ( respondent no.2,3 and 4) are related to same company. Moreover, no specific relief has been claimed against respondent no.2,3 and 4.As per brief reply dated 28.02.2023, wherein respondent stated that unit of the complainant is cancelled and amount forfeited by respondent on 16.12.2016 on account of the fact that complainant failed to adhere to payment plan inspite of several reminders sent by the respondent to the complainant.
- ii. Further, as per reply dated 29.05.2023, respondents stated that project of respondent is near completion and the possession is likely to be delivered by next two months from today. That complainant may make the balance payment of the unit/flat to the respondent before expiry of two months.



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

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 it is not a disputed fact that complainant booked a unit in the project of the respondent namely "Address by Aegis Scheme" and letter of provisional allotment letter dated 05.09.2014 was issued for unit





no.1105, 1<sup>st</sup> floor, Imperial Tower. Against the basic sale price of ₹18,34,800/-, complainant has already paid a total amount of ₹5,50,440/-.

- 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. The respondent promoter has also not disputed allotment of the unit; issuance of the letter of provisional allotment dated 05.09.2014; deemed date of handing over of possession 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 of the complainant on 16.12.2016 and to forfeit the entire deposited amount.
- iv. Respondent had filed short reply dated 29.05.2023 mentioning 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.
- v. It is pertinent to mention here that respondent promoter had filed the short reply on 29.05.2023 despite giving several opportunities to file



detailed reply. In fact, Authority had imposed cost of ₹25,000/- payable to the Authority on 30.05.2023. Therefore, Authority deems fit to rely upon the short reply filed by the respondent in absence of detailed reply.

- vi.** 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 has 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. Respondent promoter also failed to prove that despite the service of the raised demands/reminders the complainant failed to make the payments. The respondent has also not placed on record any document/cancellation letter proving or showing that the unit allotted to the complainant was cancelled on 16.12.2016. Thus, merely making a statement in the reply does not prove cancellation of the unit. Accordingly, the plea of the respondent that the unit stands cancelled in the year 2016 holds no good. Such statement on part of the respondent leaves no doubt that the unit was never cancelled.
- vii.** That respondent has not mentioned any date for completion of project in reply nor argued about the same. Further as per clause-4 of the 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 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.1105 on 1<sup>st</sup> floor measuring 600 sq.ft. in the project “Address by Aegis Scheme”, 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.

**viii.** During the course of hearing, it came to the notice of the Authority that no licence is issued by the Director, Town & Country Planning department, Haryana, in favour of Aegis Value Home Ltd. for development and construction of an affordable housing colony namely; “Address by Aegis Scheme”, 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. 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 course of hearing, Authority observes that as per the letter of provisional allotment, the unit allotted to the complainant is “Address by Aegis Scheme” is situated in Sector 32 and not in Sector 32-A. In order to remove 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 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 “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 “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.



- ix. Further, as per clause-14 of the allotment letter, possession was to be handed over within a period of 42 months from the date of draw, i.e., 29.06.2014 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.
- x. 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., 29.06.2018 including grace period, 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 (I) (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.

**xi.** 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.

- xii.** 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.

4. 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;

5. 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%.
6. 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".*



7. From above discussion, it is amply proved on record that the respondent has not fulfilled its obligations cast upon him under RERD 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 ₹5,50,440/- 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 31.08.2023 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 ₹10,88,512/- as per detail given in the table below:

Sr.no.	Principal Amount(in Rs.)	Date of payment	Interest Accrued till 31.08.2023(in Rs)
1.	11,000/-	22.07.2014	10,782/-
2.	2,00,000/-	07.07.2014	1,96,916/-
3.	2,00,000/-	09.08.2014	1,94,973/-





4.	1,39,440/-	22.08.2014	1,35,401/-
	5,50,440/-		5,38,072/-
Total amount to be refunded to the complainant = ₹5,50,440/- +₹5,38,072/-= ₹10,88,512/-			

8. The reliefs claimed under clause (b), (c) and (e) are not pressed by the complainant during the course of proceeding nor argued. Therefore, reliefs are rejected.
9. 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.





**C. DIRECTIONS OF THE AUTHORITY**

10. 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 ₹10,88,512/- 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.

(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.

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

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

  
.....  
**NADIM AKHTAR**  
**[MEMBER]**