



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	401 of 2021
Date of filing:	01.04.2021
First date of hearing:	30.06.2021
Date of decision:	09.05.2024

Satpal Kundal

S/o Sh. Chanda Ram

R/o Uncha Samana, District- Karnal

Haryana

.....COMPLAINANT

Versus

1. M/s Aegis Value Homes Ltd,
Regd. Office, # 3, 1t floor, Gold floors, Sector-33, Karnal
132001, Haryana
2. Divey Sindhu Dhamija, Managing Director/HOD/CEO
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, Urban Estate Sector-6, Karnal
132001, Haryana

.....RESPONDENT

W

CORAM: Parneet S Sachdev**Chairman****Dr. Geeta Rathee Singh****Member****Chander Shekhar****Member**

Present: - Mr. Ramesh Vashishta, counsel for the complainant through VC.
Mr. Neeraj Goel, Counsel for the respondent through VC.

ORDER (PARNEET SINGH SACHDEV-CHAIRMAN)

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

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 Scheme
2.	Name of the promoter	Aegis Value Homes Ltd
3.	RERA registered/not registered	Unregistered
4.	Unit no. allotted	L-203, Second floor in Lime

		Tower
5.	Unit area	1000 sq. ft. approx
6.	Date of allotment	19.02.2014
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 booking, i.e., 05 december, 2013 + 6 months grace period, otherwise company will pay penalty of Rs. 8/- per sq.ft per month to provisional allottee."
9.	Due date of offer of possession	05.12.2017 including grace period
10.	Total sale consideration	₹22,27,500/-
11.	Amount paid by complainants	₹ 20,43,888/-
12.	Offer of possession	Not made till date

B. FACTS AS PER THE COMPLAINT

2. That complainant booked an apartment measuring 1000 sq ft in the respondent's project namely, "Aegis woods Scheme" being developed by the respondent at Karnal, Haryana by paying Rs 2,00,000/- as the booking amount vide cheque no 14914 dated 05.12.2013 and got the receipt number 00196 dated 28.12.2013 from the respondent. Copy of said receipt is annexed as Annexure C-4.

3. That thereafter respondent allotted an apartment bearing no. L-203, in Lime Tower to the complainant vide provisional allotment dated 19.02.2014 having approximate area of 1000 sq. ft. for basic sale price of ₹ 22,27,500/-. Copy of the provisional allotment letter dated 19.02.2014 is annexed as annexure C-1.
4. That as per Clause 14 of provisional allotment letter, respondent was supposed to hand over possession within 42 months from the date of booking, i.e., 05, December 2013+ 6 months grace period. So, as per the terms of allotment the deemed date of possession works out to 05.12.2017. But respondents have failed to handover possession to complainant till date for reasons known best to them.
5. Complainant has paid total amount of ₹ 20,43,888/- against the basic sale price of ₹ 22,27,500/-, however, respondents are not in position to offer possession as construction work is not completed at project site.
6. That the respondent has not completed the project till date; moreover, the respondents are not in position to complete the project in near future as same can be substantiated by the fact that construction work is not going on at site from last 3-4 years.
7. That the Complainant had visited several time to office of respondent enquiring about status of unit/project, but all in vain. The respondent never gave satisfactory replies. Moreover, the respondents have miserably failed to supply/show the copies of all relevant documents pertaining to the project



right from the initial stage like certificate of CLU, Title deed, permission for construction, environment certificate and other mandatory requirements.

8. That complainant got constructed his own house after availing loan from bank and financial help from his relatives. So, now 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

9. Complainant has sought following reliefs against respondents:

- a. Refund the entire sale consideration amount paid by the complainant for 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, built another house and is no more in need of the said flat now.
- b. Impose the penalty as prescribed under Section 61 of RERA on the respondent for having contravening the provisions of Section 11 and HRERA Rules, 2017
- c. Impose the penalty as prescribed under section 59 of RERA for having contravened the provisions of RERA
- 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 and authorised representative for correspondence with authorities of the respondent company, for breaching the trust of the innocent persons and cheating them with the intention to gain and usurp their money unlawfully.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT NO. 1

10. A short reply dated 29.05.2023 has been filed by the respondent stating therein that license no. 20/38/2010-3CI dated 30.03.2015 was obtained by JD Universal Infra Limited for 24.94 acres and respondent and JD universal entered into joint development agreement for jointly developing the property pf Aegis Woods in the land measuring 1.46 acres out of 24.94 acres.
11. That External development charges were to be paid by M/s JD Universal Infra limited to Directorate of Urban Local Bodies,Panchkula but JD universal failed to pay the above mentioned charges and hence, the project was sealed by the government. But even then project of respondent is complete to extent of 85%.
12. That the respondent is not at fault in delaying the project in any manner. However, the balance payment of the complainant is pending towards the unit in question.

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



Ld counsels for both the parties reiterated their submissions as mentioned in the complaint and reply. Ld. Counsel for respondent submitted that respondent no. 2 to 4 have been arrayed as parties whereas transaction pertaining to booked unit was carried out by complainant only with respect to respondent no.1. So, he requested that respondent no. 2 ,3 and 4 be deleted from array of parties.

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? If yes, then the quantum thereof including interest.

G. OBSERVATIONS AND DECISION OF AUTHORITY

13. 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 no. 1 namely "Aegis woods Scheme" situated at Karnal and provisional allotment letter dated 19.02.2014 for unit no. L-203, second floor, Lime Tower was issued in favour of the complainant. Against the basic sale price of ₹22,27,500/- complainant had paid total amount of ₹ 20,43,888/-. It is pertinent to mention here that complainant in its complaint and respondent no. 1 in its reply and allotment letter and



receipts has not mentioned 'Sector' of Karnal in which project in question –Aegis woods Scheme is situated. Complainant is aggrieved by the fact that despite making timely payments against the basic sale price, respondent no. 1 has neither handed over the possession of the unit within the stipulated timeline, nor refunded the amount paid by complainant.

14. Respondent no. 1 had only filed short reply dated 29.05.2023 stating therein that the construction and development of the project got delayed due to fault of JD Universal Infra Limited in not paying the EDC External development charges on time; now the project is near completion at it has already been completed to the extent of 85%. No separate reply has been filed by respondent no. 2 , 3 and 4. In respect of verbal request of respondent's counsel to delete the name of respondent no. 2,3, and 4 from array of parties, it is observed that complainant has impleaded respondent no. 2 to 4 being Director of respondent-company but no relief in particular i.e. in personal capacity of Directors, has been sought against each of them. Moreover, all transactions have been carried out between complainant and respondent no. 1 i.e. all amount has been paid to respondent no. 1 against which allotment letter was issued in favour of complainant by respondent no. 1 only. Therefore, no direction is being passed against respondent no 2 to 4 in this order.



15. Perusal of reply dated 29.05.2023 reveals that respondent no.1 had neither disputed the provisional allotment dated 19.02.2014, nor the deemed date of handing over of possession, nor the payment of an amount of Rs. 20,43,888 /- against basic sale price of ₹22,27,500/- paid by the complainant. Also, respondent no. 1 has not mentioned any date for completion of project in reply nor argued about the same. Further as per Clause-6 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. Further, an intimation regarding above was to be given by the developer to the allottee. It is important to mention here that on the one hand, vide the said letter of provisional allotment, the promoter had allotted unit no.203, second floor, Lime Tower, measuring 1000 sq.ft. in the project "Aegis woods Scheme", Karnal. 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. Further, the developer-Aegis Value Homes Pvt Ltd has not placed on record a valid license for the project. It implies that the promoter had provisionally allotted a unit to the complainant without even having statutory approvals to construct and develop an affordable housing colony in Karnal. Thus, the promoter allotted a unit and collected payment



against it even without having the competency and requisite permission to do so.

16. During the course of hearing of complaint cases pertaining to Aegis Value Homes Pvt Ltd on 17.05.2022 inclusive of present complaint case, it was observed by the Authority that both parties i.e. respondent no. 1 and respective complainants failed to produce any document/evidence substantiating their claims w.r.t construction and latest stage of project. Respondent- Aegis value homes, even did not chose to file detailed reply in the matters. Therefore, the Authority in order to have clear picture regarding status of project had appointed the CTP, HRERA, Panchkula as the Local Commissioner vide its interim orders dated 17.05.2022. Accordingly, 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". Further, it has been stated in the report that another project was being



executed by Aegis Vaue Homes Pvt Ltd as informed by Sh. Dhamija, Director, as a part of town planning Scheme approved for JD Universal measuring 25 acres approved by Urban Local Bodies Department. This group housing pocket (Part of the above 25 acres) is being constructed on land measuring 1.46 acres comprising of 104 flats and is being marketed as Aegis Woods. In respect of this project, it has been stated in report that no registered collaboration agreement/power of attorney has been executed by promoter-Aegis value homes pvt ltd with JD Universal who have been granted permission for the said Town planning scheme. With respect to current stage of project, it is submitted that the structure of the project is complete and project is 40% complete but no construction has taken place at site from last 4 to 5 years. Considering the aforesaid report, it is amply clear that no construction work is carried out on site after completion of basic structure and there is no scope of possession even in near future as respondent is not making any efforts to get it completed.

17. 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 booking i.e. 05.12.2013, which comes to 05.06.2017 plus six months grace period, i.e., by, 05.12.2017. However, the respondent-promoter failed to complete the project and hand over the possession by the said date. Also, during course of hearings, respondent no. 1 has



not disclosed a specific date for completion of project. Meaning thereby that respondent no. 1 has failed to fulfill its duty to hand over possession of unit within stipulated time. This gives the right in favour of complainant to withdraw from the project and avail the relief of refund.

18. 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.

19. 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;



20. 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. 09.05.2024 is 8.85%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.85%.

21. 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".

22. From above discussion, it is proven on record that the respondent has not fulfilled its obligations pertaining to handing over of possession of booked unit to complainant cast upon it under RERA Act,2016. This entitles the complainant to seek refund of deposited amount along with interest. Thus, Authority deems it fit to award refund of paid amount with interest to complainant. Therefore, 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 ₹20,43,888/- 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 10.85% (8.85% + 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 10.85% till the date of this order and total amount works out to ₹18,60,663/- as per detail given in the table below:

Sr.no.	Principal Amount	Date of payment	Interest Accrued till 09.05.2024
1.	11,000/-	18.02.2014.	12,210
2.	2,00,000/-	28.12.2013	2,25,085
3.	2,34,500/-	03.01.2014	2,63,494
4.	2,43,399/-	10.04.2015	2,40,067
5.	3,68,790/-	15.06.2015	3,56,506
6.	1,73,119/-	30.04.2016	1,50,885
7.	2,00,000/-	14.10.2016	1,64,385
8.	1,13,641/-	14.10.2016	93,404
9.	1,73,328/-	14.02.2017	1,36,125
10.	3,26,111/-	09.03.2018	2,18,502
Total=	20,43,888/-		18,60,663
Total amount to be refunded to the complainant = ₹2043888/- + ₹1860663/- = ₹39,04,551/-			

23. Further, the complainant is seeking 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 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.

24. In respect of relief clause no. b, c and e , it is to mention here that ld. Counsel for complainant has neither argued nor pressed upon these relief clauses. No mention of any sort in pleadings has been made by complainant against these reliefs. So, no order is passed against said reliefs.
25. It is pertinent to mention here that complainants have sought relief of 'refund alongwith prescribed rate of interest, computed on compounding basis'. No argument at the time of hearing or pleading in complaint has been made in respect of computation of interest on compounding basis. However, it is important to point out that refund of paid amount has to be awarded in consonance of provisions of



RERA Act,2016- Section 18 and HRERA Rules,2015-Rule 15.

Section 18 and Rule 15 are reproduced below for reference:-

“Section 18. Return of amount and compensation-(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building-

(a) In accordance with the terms of the agreement for sale or as the case may be , duly completed by the date specified therein or

(b) Due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

He shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project,without prejudice to any other remedy available, to return the amount received by him in respect of that apartment ,plot ,building, as the case may be ,with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act.

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”

Accordingly, the refund of paid amount has been calculated with interest in conformity with aforesaid provisions in paragraph no.22 of this order.

H. DIRECTIONS OF THE AUTHORITY


26. 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:

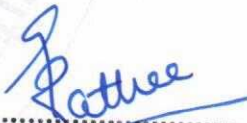


(i) Respondent is directed to refund the entire amount of ₹20,43,888/- with interest of ₹18,60,663/- to the complainant. It is further clarified that respondent will remain liable to pay interest to the complainant till the actual realization of the amount.

(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.

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


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CHANDER SHEKHAR
[MEMBER]


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


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PARNEET S SACHDEV
[CHAIRMAN]