



## HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: [www.haryanarera.gov.in](http://www.haryanarera.gov.in)

<b>Complaint no:</b>	<b>981 of 2019</b>
<b>Date of filing:</b>	<b>18.04.2019</b>
<b>Date of first hearing:</b>	<b>22.08.2019</b>
<b>Date of decision:</b>	<b>25.04.2024</b>

1. Ram Kishan Madaan S/o Devi Dayal,  
R/o 95-A, New Ramesh Nagar Extension,  
Karnal-132001

2. Puneet Madaan S/o Ram Kishan Madaan  
R/o # 19, Red Villa, Green Enclave, Zirakpur  
Punjab-140603

.....COMPLAINANTS

Versus

1. Aegis Value Homes Ltd,  
Regd. Office at:- EF-10, Second Floor  
Inderpuri, New Delhi-110012

2. M/s JD Universal Infra Ltd  
Regd. Office at RU-400, Pitampura  
Outer Ring Road, New Delhi-110034

.....RESPONDENTS

<b>CORAM:</b>	<b>Parneet Singh Sachdev</b>	<b>Chairman</b>
	<b>Nadim Akhtar</b>	<b>Member</b>
	<b>Dr. Geeta Rathee Singh</b>	<b>Member</b>
	<b>Chander Shekhar</b>	<b>Member</b>

**Present:** Mr. Navneet, Proxy Counsel for Adv. Kamaljeet Dahiya, Counsel for the complainants through VC.

Mr. Neeraj Goel, Counsel for the respondents through VC.

**ORDER (NADIM AKHTAR-MEMBER)**

1. Present complaint has been filed on 18.04.2019 by complainants 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 complainants, 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	O-104, First floor in Oak Tower
5.	Unit area	1000 sq. ft. approx
6.	Date of allotment	08.11.2013
7.	Date of builder buyer agreement	29.04.2016
8.	Possession clause in builder buyer agreement	"Clause 4.2 (a) of builder buyer agreement "AVHL shall after providing necessary infrastructure in the sector by the government but subject to force majeure circumstances and any other reasons or factors beyond the control of AVHL, endeavor to give possession of the said premises to the purchaser within 42 months from the date of booking, provided that a grace period of six months shall be available to AVHL without any additional charges or liabilities."
9.	Due date of offer of possession	30.10.2017 including grace period
10.	Basic sale consideration	₹21,78,000/- @Rs 2178/- per sq.ft.
11.	Amount paid by complainants	₹ 21,45,945/-
12.	Offer of possession	Not given till date.



**B. FACTS OF THE COMPLAINT**

2. That complainants booked an apartment measuring 1000 sq ft in the respondent's project namely, "Aegis woods Scheme" being developed by the respondents at Village Phoosgarh, Sector-33, Karnal, Haryana by paying Rs 2,00,000/- as the booking amount vide cheque no 206169 dated 09.11.2013 and got the receipt number 0042 dated 09.11.2013 from the respondent no. 1. Copy of said receipt is annexed as Annexure A-1.
3. That thereafter respondent no. 1 allotted an apartment bearing no. O-104, in Oak Tower to the complainants vide provisional allotment dated 08.11.2013 having approximate area of 1000 sq. ft. for basic sale price of ₹ 21,78,000/-. Copy of the provisional allotment letter dated 08.11.2013 is annexed as annexure C-1.
4. In pursuance of allotment letter, builder buyer agreement was executed between complainants and respondents on 29.04.2016 and as per clause 4.2 (a) of builder buyer agreement, respondent no. 1 was supposed to hand over possession within 42 months from the date of booking, i.e., 30, October 2013+ 6 months grace period. So, deemed date of possession works out to 30.10.2017. But respondent no. 1 has failed to handover possession to complainants till date for reasons best known to it.



5. That complainants had availed loan from Andhra Bank to purchase their dream home. Bank had sanctioned the loan of Rs 24,60,000/- in the year 2017. Complainants have paid total amount of ₹ 21,45,945/- against the basic sale price of ₹ 21,78,000/-, however, respondent no. 1 is not in position to offer possession as construction work is not completed at project site.
6. That the respondents have not completed the project till date and have not even offered the possession to the complainants. Respondents have delayed the possession of unit deliberately for reasons known best to them. Such uncalled act is leaving complainants in a lurch where they have left with no option but to be an aggrieved person in the hands of the respondent.
7. That the project is abandoned by the respondents without mentioning any reasons thereof. Only half structure is standing on the land and no further work is going on. Currently the project is only 40% completed and condition of the project is depicting in the photographs annexed as Annexure C-6.
8. That complainants have purchased the unit from the respondents in the year 2013 with a hope that the project would be completed by May,2017 as per assurances given by the respondents as well as their representatives. But the respondents continuously exploited the complainants by grabbing their hard earned money.



9. That complainants have suffered losses or damages due to false and incorrect statement or commitment made by the respondents for delivering the possession of the flat within stipulated time. Thus, the complainants are entitled to get the amount alongwith interest from the respondents.

**C. RELIEF SOUGHT**

10. Complainants have sought following reliefs :

- a. To give necessary directions to the respondents for return of the payment made in lieu of unit/apartment till date alongwith prescribed rate of interest from the date of first payment execution of allotment letter till realization as per the provisions of Section 18 and Section 19(4) of RERA Act, 2016.
- b. To impose the penalty upon respondents as per the provisions of Section 60 of RERA Act for wilful default committed by them.
- c. To impose the penalty upon respondents as per the provisions of Section 61 of RERA Act for contravention of Section 12, 14, 16 and 18 of RERA Act.
- d. To direct the respondents to pay penalty upto 10% of project cost to the complainant under Section 59 of RERA Act, 2016.



- e. To direct the respondent to pay interest, penalty for delayed payment to the complainant under Rule 21(3) (c) of HRERA Rules,2017.
- f. To issue directions to make liable every concerned i.e. Director, Manager Secretary or any other officer of the respondent's company at whose instance, connivance, acquiescence, neglect any of the offences has been committed as mentioned in Section 69 of RERA Act,2016 to be read with HRERA Rules,2017.
- g. To recommend criminal action against the respondents for the criminal offence of cheating, fraud and criminal breach of trust under Section 420,406 and 409 of the Indian Penal Code.
- h. To issue direction to pay the cost of litigation.
- i. Any other relief which this Hon'ble Authority deem fit and appropriate in view of the facts and circumstances of this complaint.

**D. REPLY SUBMITTED ON BEHALF OF RESPONDENT NO. 1**

11.A short reply dated 29.05.2023 has been filed by the respondent stating therein that license 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 of Aegis Woods in the land measuring 1.46 acres.



12. That the external development charges were to be paid by M/s JD Universal Infa Limited to Directorate of Urban Local Bodies, Panchkula, but the M/s JD universal Infra Limited failed to pay the above mentioned charges to the Directorate of Urban Local Bodies, Panchkula. Hence, the project was sealed by the Government. But even then the project of respondents is complete to the extent of 85%.
13. 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.
14. Neither reply has been filed by respondent no. 2 nor any counsel/ representative has put in appearance on behalf of respondent no. 2.

**E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT NO. 1**

15. Ld counsel for both the parties reiterated their submissions as mentioned in complaint and reply. A query was raised to ld. Counsel for complainants at time of hearing as to against which respondent relief of refund is claimed? To this, she stated that amount has been received by respondent no. 1 so direction be issued against respondent no. 1 for refunding the amount with interest.





**F. ISSUE FOR ADJUDICATION**

Whether the complainants are entitled to refund of amount deposited by them along with interest in terms of Section 18 of Act of 2016?

**G. OBSERVATIONS AND DECISION OF AUTHORITY**

16. 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 complainants booked a unit in the project of the respondents namely; "Aegis Woods Scheme" and provisional allotment letter dated 08.11.2013 for unit no. O-104, Oak Tower was issued in favour of the complainants. Against the basic sale price of ₹21,78,000/- complainants had paid total amount of ₹ 21,45,945/-.
17. Complainants are aggrieved by the fact that despite making timely payments against the basic sale price, respondent no. 1 neither handed over the possession of the unit within the stipulated timeline, nor refunded the amount paid by complainants.
18. 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 M/s JD Universal Infra Limited in not paying the EDC External Development charges on time; now the project is near as it has already been completed to the extent of 85%. No



separate reply has been filed by respondent no. 2. Counsel for complainants at the time of hearing has clarified that no relief in particular has been sought against respondent no. 2 and all amount has been paid to respondent no. 1 only so direction be passed against respondent no. 1 for refunding the amount with interest to the complainant. Considering the statement of complainant's counsel, no direction is being passed against respondent no. 2 in this order.

19. Perusal of reply dated 29.05.2023 reveals that respondent no. 1 had not disputed the provisional allotment 08.11.2023; execution of builder buyer agreement dated 29.04.2016; deemed date of handing over of possession; the payment of an amount of Rs. 21,45,945/- against basic sale price of ₹21,78,000/- paid by the complainants. Also, respondent no. 1 has not mentioned any date for completion of project in reply nor argued about the same. 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 licenses by the authorities to the developer. 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.O-104, Oak 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.

20. 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 Chief Town Planner, 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, 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 has been mentioned 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 ample 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.

21. Further, as per clause-4.2 (a) of the builder buyer agreement, possession was to be handed over within a period of 42 months from the date of booking, i.e., 30.10.2013, which comes to 30.04.2017 plus six months grace period, i.e., by, 30.10.2017. However, the respondent no. 1-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 complainants to withdraw from the project and avail the relief of refund.
22. 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.

23. 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;*

24. 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. 25.04.2024 is 8.85%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 10.85%.
25. 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”.*
26. From above discussion, it is proven on record that the respondent no. 1 has not fulfilled its obligations pertaining to handing over of possession of booked unit to complainants cast upon it under RERA Act,2016. This entitles the complainants to seek refund of deposited amount along with interest. Thus, Authority deems it fit to award refund of paid amount with interest to complainants. Therefore,



respondent no. 1 will be liable to pay the complainants interest from the date the amounts were paid till the actual realization of the amount. Authority directs respondent to refund to the complainants the paid amount of ₹21,45,945/- 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 said amount works out to ₹ 18,93,255/-as per detail given in the table below:

Sr.no.	Principal Amount	Date of payment	Interest Accrued till 25.04.2024
1.	11,000/-	30.10.2013.	12,527/-
2.	2,00,000/-	09.11.2013	2,27,166/-
3.	2,24,600/-	18.12.2013	2,52,504/-
4.	10,56,060/-	19.07.2016	8,90,918/-
5.	3,16,970/-	07.02.2017	2,48,277/-
6.	1,69,475/-	16.02.2017	1,32,293/-
7.	1,67,840/-	17.03.2017	1,29,570/-
Total=	21,45,945/-		18,93,255/-
Total amount to be refunded to the complainant = ₹2145945/- + ₹ 1893255/- = ₹ 40,39,200/-			

27. 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.

28. In respect of relief clause no. b, c, d, e, f and g mentioned in para 10 of this order, it is to mention here that Id. Counsel for complainants has neither argued nor pressed upon these relief clauses. No mention of any sort in pleadings has been made by complainants against these reliefs. So, no order is passed against said reliefs.

**C. DIRECTIONS OF THE AUTHORITY**

29. 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 ₹21,45,945/- with interest of ₹18,93,255/- to the complainants in equal share. It is further clarified that respondent will remain liable to pay interest to the complainants till the actual realization of the amount.
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.
30. **Disposed of.** File be consigned to record room after uploading of the order on the website of the Authority.

  
.....  
CHANDER SHEKHAR  
[MEMBER]

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

  
.....  
NADIM AKHTAR  
[MEMBER]

  
.....  
PARNEET S SACHDEV  
[CHAIRMAN]