

**BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY,
GURUGRAM**

Complaint no. : 3857 of 2021
Complaint filed on: 11.10.2021
Order pronounced on: 16.05.2024

Beg Raj and Bala Devi
R/o: B-231, Sai Kunj, New Palam Vihar, Phase -III,
Gurugram, Haryana

Complainants

Versus

M/s Agrante Developers Private Limited
Regd. office: 522,523,524 DLF Tower- A, Jasola,
Near Apollo Hospital, New Delhi-110025
Corporate Office: Unit no.122, 1st Floor,
Suncity Trade Tower, Sector-21, Gurugram, Haryana

Respondent

CORAM:
Shri Vijay Kumar Goyal

Member

APPEARANCE:
Mr. Beg Raj and Mrs. Bala Devi (In Person)
Shri Tarun Biswa (Advocate)

**Complainant
Respondent**

ORDER

1. The present complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities, and functions under the provisions of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter-se them.

A. Project and unit related details:



2. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), date of proposed handing over of the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	"Kavyam", Sector- 108, Gurgaon (Phase-1)
2.	Nature of project	Affordable group housing
3.	RERA registered/not registered	Registered vide registration no. 23 of 2018 dated 22.11.2018
	Validity status	5 acres
	Licensed area	31.11.2022
4.	DTPC License no.	101 of 2017 dated 30.11.2017
	Validity status	29.11.2022
	Name of licensee	Arvinder Singh & others
	Licensed area	5 acres
5.	Unit no.	510, tower TD [as alleged by the respondent]
6.	Unit area admeasuring	NA
7.	Application dated	05.02.2019 (As stated by the respondent in the reply on page 2 whereas no document has been attached for the same. Hence the same needs clarification)
8.	Allotment dated	Not provided by either of the parties.
9.	Total sale consideration	Rs. 20,12,996/- (As stated by the respondent in the reply on page 3 whereas no document has been attached for the same.)



10.	Amount paid by the complainant	Rs. 99,653/- [as per pg. 38 of complaint]
11.	Possession clause	NA
12.	Possession clause as per Affordable Housing Policy, 2013	1 (iv) <i>All such projects shall be required to be necessarily completed within 4 years from the date of approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of the policy.</i>
13.	Building plan approved on	06.07.2018 [As per project details]
14.	Environment clearance	20.08.2019 [pg. 18 of reply]
15.	Due date of possession	20.08.2023 [calculated as 4 years from date of environmental clearance i.e., 20.08.2019 as the same is later]
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered
18.	Surrender by the complainant due to covid the complainant could not gather the funds.	29.09.2020 and 26.07.2021. (Page 39, 40 of the complaint)

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint: -
- That the complainants were on the lookout to purchase a flat in the year 2018; for the purpose, the complainants researched on the internet about properties and here they came know about the Respondent's

project named 'Kavyam Affordable Housing', situated in Sector 108, Dwarka Expressway, Haryana, Tehsil & District Gurugram (hereinafter referred to as the "Project") and being interested in the same the Complainants researched about the above name project and was contacted by an executive of the respondent's company for the booking of flat in the project.

- b. That the complainants booked a flat bearing no. 510 which was a 2BHK type 3 flat situated in 'TD' tower with a super area of 568.03 sq. ft., in the above-mentioned project of the respondent. On 15.02.2019, the complainant paid an amount of Rs 99,653/- vide cheque no. 001639 drawn on Canara Bank. The total sale consideration was for Rs. 19,93,065/- which included the basic sale price, preferential location charges, parking charges and other charges exclusive of service tax.
- c. That the complainants were under a lot of stress due to COVID-19 pandemic lockdown because of which they were not able to gather the necessary funds for the payment of the same unit due to which he sent a handwritten letter dated 29.09.2020 for the cancellation of the same unit to the respondent.
- d. That no response to the previous mail and letter, the complainant sent a legal notice vide registered post, dated 26.07.2021 to the respondent for the cancellation of the unit and refund of the booking amount but no reply was ever received by the complainant. This undoubted shows the non-compliance of statutory obligation on the part of Respondent which is a violation of the Real Estate Regulation and Development Act, 2016.
- e. That it is imperative to mention that the complainant yet again sent an e-mail date 03.09.2021 for which he never received any reply

whatsoever. The respondent has not fulfilled its committed liability as on date.

- f. That the flat was booked as per the conditions laid down in the BBA and it is the right of the allottee to cancel the booking of the said unit if he wishes to. According to Clause 22 of the BBA, the allottee has the right to cancel his booking and the respondent is liable to refund back the booking amount.

C. Relief sought by the complainant: -

4. The complainant has sought following relief(s):

- a. Direct the respondent to refund the paid-up amount by the complainants to it along with the prescribed rate of interest payable from the date of payment made by the complainant to the respondent.
- b. Direct the respondent to compensate the complainant by paying an interest @ 12% per annum on the amount already paid i.e., Rs. 99,653/- from the time it was paid till date.
- c. Grant any other relief in favour of the Complainants as the Hon'ble Adjudicating Officer may deem fit and proper in the fact and circumstances of the case.

5. On the date of hearing, the authority explained to the respondent / promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent has contested the complaint on the following grounds:

- i. That the complainant has malafidely filed the present complaint with the objective to arm twist the respondent and to treat the complainant above



law neglecting the applicable rules and policy. It is submitted that the complainant has concealed vital material facts and circumstance for misleading this Hon'ble Authority.

- ii. That an Affordable Housing Project i.e., "KAVVYAM" ("Project") under the Pradhan Mantri Awas Yojna is being constructed with full vigour and without any delay at Sector 108, Village Dharampur, Gurugram, Haryana. The respondent has no hesitation to state on record that the said project is duly registered with Hon'ble Real Estate Authority Haryana having RERA Registration No RC/REP/HARERA/GGM/2018/23 and is being constantly regulated as per its applicable rules and compliances. Further, it is relevant to apprise this Hon'ble Authority that the project being built under the guidelines of Affordable Housing Policy as amended till date issued by Director Town and Country Planning (Government of Haryana) and thus the respondent as well the allottee are bound by it.
- iii. That the complainant had applied in the said project of the respondent vide application for allotment dated 05.02.2019 having application no. 3603 for booking of a 2 BHK, type 3 property for a total sale consideration of INR 20,12,996/-. That the complainant paid a sum of INR 99,653/- as the booking amount. Accordingly, the complainant was successful in the draw of lots held for the units in the project on 24.06.2019 and the complainant was allotted the unit bearing no. 510 in tower TD.
- iv. It is not out of place to mention that the respondent is mandated under the affordable housing policy to deliver the possession of the units within the strict timelines. It is pertinent to mention here that the project is being constructed as per the planned timelines and the respondent will deliver the project within the stipulated period. It is further submitted

that the complainant herein is a defaulter who seems to be a speculative investor who subsequently changed his mind from investing further in the project and has cooked up a false story of being financially impacted by COVID-19 lockdown. The complainant had admittedly requested the respondent for surrender of his unit on 29.09.2020 on which date a hand written letter for surrender was submitted with the respondent along with all documents required in consonance with the policy guidelines. The said letter is already filed by the complainant along with the complaint at page no. 39. It is pertinent to mention that the said letter was submitted after a lapse of more than one year from the date of commencement of the project that is August, 2019. It is stated that the date to be reckoned as the commencement date of the project is the date of environmental clearance of the project as per the affordable housing policy.

- v. The time of surrender of flats determines the percentage of statutory deductions leviable on the booking amount before refund is processed as per the Affordable Housing policy guidelines as amended till date. It is submitted that the respondent has always been ready and willing to refund the money of the complainant.
- vi. Therefore, in addition to deduction of INR 25,250/- as per the affordable housing policy in case of surrender/cancellation/termination an amount equivalent to 3% of the total cost of the flat falling under the column (cc) as the surrender was made after lapse of more than one year, shall be deducted from the amounts paid by the complainant. It is submitted that the amount computed after statutory deductions is INR 14,013/- which the respondent is ready to pay to the complainant.

- vii. That that from the conduct of the complainant it seems that he was looking for speculative real estate investment yielding profitable returns. It is further specifically denied that builder buyer agreement was executed on 05.02.19 as stated in the complaint. It is submitted that it was not builder buyer agreement but only an application for allotment in the project was applied by the complainant and only after successful allotment and subsequent payment of 10% of the cost of the unit the builder buyer agreement would have been executed. It seems that the counsel for the complainant has confused the application for allotment to be builder buyer agreement.
- viii. That the complainant was successful in the draw of lots for the units held by the respondent on 24.06.2019 and accordingly the unit no. 510 in TD tower was allotted to the complainant. The complainant was under demand from the respondent to pay the next instalment after successful allotment however, the complainant was a defaulter himself who had subsequently surrendered the unit.
- ix. It is denied that the complainant was under a lot of stress from COVID-19 Pandemic lockdown as they have not pleaded any specific grounds of stress whether financial or medical with supporting documents and have merely made a bald statement. Thus, it seems that the complainant changed his mind from further investing in this project and under the garb of COVID-19 tried to opt out of the project and is now before this Hon'ble Authority with a cooked up and concocted story. However, it is an admitted fact that the respondent had received the hand-written letter along with surrender documents as per policy only on 29.09.2019. It is pertinent to mention that the respondent had time and again apprised

the complainant about the statutory deductions that will be leviable on the booking amount paid him and after such deduction a cheque for the balance shall be handed over to the complainant. However, despite the applicable policy guidelines being in his knowledge he denied receiving the balance amount and filed a false complaint before this Hon'ble Authority to make an ill attempt to bypass the policy guidelines and deductions.

- x. That the complainant has right to cancel the booking of said unit and the respondent is liable to refund the amount paid to him as per the clause 2 of the application however only after necessary statutory deductions.
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submission made by the parties as well as the written submission of the complainant.

E. Jurisdiction of the authority

8. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.1 Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

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E. II Subject matter jurisdiction

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11

.....

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.
12. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022(1) RCR (Civil), 357 and reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*** and wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the

Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

13. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the relief sought by the complainants.

F.1 Direct the respondent to refund the paid-up amount by the complainants to it along with the prescribed rate of interest payable from the date of payable from the date of payment made by the complainant to the respondent.

14. The complainant was allotted a unit no. 510 on 10th floor, in tower/block- TD, in the project "Kavyam Affordable Housing" by the respondent/builder for a total consideration of Rs.20,12,966/- under the Affordable Group Housing Policy 2013. No buyer's agreement was executed between the parties. The possession of the unit was to be offered with 4 years from approval of building plans or from the date of environment clearance (20.08.2019) whichever is later. The due date of possession was calculated from date of approval of environment clearance i.e., 20.08.2019, as per policy, of 2013. The complainant paid a sum of Rs.99,653/- out of the total sale. Further, the complainant has

placed a letter dated 20.09.2020 on page no. 39 of the complaint which is reproduced as under for a ready reference:

"Sir, I have decided to cancel the above allotment due to domestic and financial issues and cancellation request of allotted unit no. TD-510 at Kavyam, sector 108, Gurugram, Haryana.

*...
In this regard it is once again requested that my allotment of the above said unit may be cancelled and the booking amount of Rs. 99,653/- may be refunded in my bank account."*

15. As per the clause 5 (iii)(h) of the Affordable Housing Policy, 2013 as amended by the State Government on 05.07.2019, the relevant provision is reproduced as under:

Clause 5(iii) (h) of the affordable housing policy

"A waiting list for a maximum of 25% of the total available number of flats available for allotment, may also be prepared during the draw of lots who can be offered the allotment in case some of the successful allottees are not able to remove the deficiencies in their application within the prescribed period of 15 days. [On surrender of flat by any successful allottee, the amount that can be forfeited by the colonizer in addition to Rs. 25,000/- shall not exceed the following: -

Sr. No.	Particulars	Amount to be forfeited
(aa)	In case of surrender of flat before commencement of project	Nil
(bb)	Upto 1-year from the date of commencement of the project	1% of the cost of flat
(cc)	Upto 2 year from the date of commencement of the project	3% of the cost of flat
(dd)	After 2 years from the date of commencement of the project	5% of the cost of flat

Such flats may be considered by the committee for offer to those applicants falling in the waiting list. However, non-removal of deficiencies by any successful applicant shall not be considered as surrender of flat, and no such deduction of Rs 25,000 shall be applicable on such cases. If any wait listed candidate does not

want to continue in the waiting list, he may seek withdrawal and the licensee shall refund the booking amount within 30 days, without imposing any penalty. The waiting list shall be maintained for a period of 2 years, after which the booking amount shall be refunded back to the waitlisted applicants, without any interest. All non-successful applicants shall be refunded back the booking amount within 15 days of holding the draw of lots”.

16. Since the surrender of the unit by the complainant was done after commencement of construction, hence the respondent is entitled to forfeit amount in accordance with as per the clause 5 (iii)(h) of the Affordable Housing Policy, 2013 as amended by the State Government on 05.07.2019. The date of commencement of project has been defined under clause 1(iv) to mean the date of approval of building plan or grant of environmental clearance, whichever is later. In the instant case, the date of grant of environment clearance i.e., 20.08.2019 is later and hence, the same would be considered as date of commencement of project.
17. Accordingly, the respondent is entitled to forfeit 3% of the consideration money in addition to Rs.25,000/- as mandated by the Policy of 2013 as amended by the State Government on 05.07.2019 and the request for surrender is within 2 years from the date of commencement of project.
18. The complainants are seeking refund amount at the prescribed rate of interest on the amount already paid by them. However, allottees intends to withdraw from the project and is seeking refund of the amount paid by him in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

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

19. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 16.05.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
20. The respondent/promoter is directed to refund the paid-up amount after deduction of 3% of the consideration money in addition to Rs.25,000/- as per clause 5(iii)(h) of the Affordable Housing Policy 2013 as amended by the State Government on 05.07.2019, along with interest @10.85% per annum on such balance amount from the date surrender/withdraw of allotment till the actual realization of the amount.

F. II. Compensation & litigation expenses.

21. The complainant in the aforesaid head is seeking relief w.r.t compensation. Hon'ble Supreme Court of India, in case titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.* (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021), has held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72.

19 Directions of the Authority:

22. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:

- i. The respondent is directed to refund the paid-up amount by the complainant(s) after making statutory deductions of 3% of the consideration money in addition to Rs.25,000/- along with interest on such balance amount from the date of surrender till the date of actual realization of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 (ibid).
 - ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
23. The complaint stand disposed of.
24. File be consigned to registry.

Dated: 16.05.2024




(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM