

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

Complaint no. : 3508 of 2023

Date of decision : 11.12.2024

Pradeep Kumar
R/o: - 37 A/2, Chaman Garden,
Karnal (Rural) Part-I, Karnal,
Haryana-132001.

Complainant

Versus

M/s Agrante Realty Limited.
Regd. Office at: 522-524, DLF, Tower- A,
Jasola, New Delhi- 110025

Respondent

CORAM:

Ashok Sangwan

Member

APPEARANCE:

Tanuj Sharma (Advocate)

None

Complainant
Respondent

ORDER

1. The present complaint dated 11.08.2023 has been filed by the complainant/allottee 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 provision of the Act or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.



A. Unit and project related details

2. The particulars of unit details, 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 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.	TC-602, Floor-6th, Tower-C [As on page no. 29 of complaint]
6.	Unit area admeasuring	512.50 sq. ft. [Carpet-Area] [As on page no. 29 of complaint]
7.	Application dated	Not provided
8.	Allotment Letter	25.01.2021 [As on page no. 20 of complaint]
9.	Agreement For Sale	09.03.2021 (As on page no. 22 of complaint)



10.	Total sale consideration	Rs.21,00,000/- [As stated by the complainant]
11.	Amount paid by the complainant	Rs.21,27,050/- (As per payment receipts)
12.	Possession clause as per Affordable Housing Policy, 2013	1 (iv) 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.
13.	Building plan approved on	06.07.2018 [As per project details]
14.	Environment clearance	20.08.2019
15.	Due date of possession	20.02.2024 [Calculated as 4 years from date of environmental clearance i.e., 20.08.2019 as the same is later + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020]
16.	Tri-partite agreement	01.02.2021 (As on page no. 53 of complaint)
17.	Occupation certificate	Not obtained
18.	Offer of possession	Not offered
19.	Date of surrender	22.02.2023

B. Facts of the complaint

3. The complainant has made the following submissions: -



- I. That the complainant booked a unit in the Affordable Housing Project namely "Kavyam" at Sector-108, Gurugram. The complainant booked a unit bearing no. Tc-602, 2 BHK, Type-1 on 6th floor in Tower-C having a carpet area of 512.50 sq. ft. was allotted to him vide allotment letter dated 25.01.2021 for total sale consideration of Rs.21,00,000/-.
- II. That on 25.01.2021, the respondent issued an Allotment Letter to the complainant and thereafter a Builder Buyer Agreement was also executed between the complainant and the respondent on 09.03.2021.
- III. That the complainant has paid a total amount of Rs.23,57,155/- which is inclusive of Bank Loan of Rs.13,61,230/- and management fees of Rs.2,30,105/- but no receipt has been issued as the same has been paid by complainant in some different bank account as per the advice of the respondent's officials.
- IV. That at the time of executing the Builder Buyer Agreement, the respondent had assured the complainant that the possession of the unit shall be delivered within a prescribed period but till date no construction has been started by the respondent and even thereafter, the respondent had raised demands as per the payment schedule in spite of knowing the fact that the construction of the project was not complied.
- V. It is pertinent to mention that on the basis of assurance made by the respondent, the complainant had taken a loan from the Bank by entering into a Tripartite Agreement between the complainant ,



respondent and IIFL Home Finance Limited. The said loan amount was directly transferred into the Bank account of the respondent in tranches and same has used the funds as per their wish and in lieu of the said loan, the Bank has mortgaged the unit.

- VI. That the complainant has time and again visited the office of the respondent and inquired about the progress of the project but the officials of the respondent never gave proper response to the complainant. That thereafter, the respondent asked the complainant to cancel the unit and claim refund and said that the construction will take more than 5 years.
- VII. That in the month of February 2023, the respondent approached the complainant through email and asked the complainant to cancel the unit to get the refund. On 22.02.2023, the respondent issued one e-mail and asked the complainant to deposit an amount of Rs.5,5000/- for cancellation of Agreement. Further, the respondent assured the complainant to refund the entire amount paid by the complainant.
- VIII. That on the basis of assurances of the respondent, the complainant has entered into a cancellation agreement with the respondent and got his unit cancelled but till date no amount of refund has been initiated by the respondent.
- IX. It is pertinent to mention here that the respondent had transferred 2 bank EMI's directly into the account of the complainant, in the month of May 2023 and in July 2023.

X. Therefore, the complainant is requesting before this Authority to refund the entire paid up amount along with interest.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
 - i. Direct the respondent to refund the entire amount of Rs.23,57,155 along with interest.
 - ii. Direct the respondent to refund the amount of Rs.13,61,230/- directly to the bank along with interest and penalty.
 - iii. Direct the respondent to give possession of the unit if the respondent can not comply with the promise of refund.
 - iv. Direct the respondent to pay an amount of Rs.1,00,000/- on account of Litigation Charges.
5. The present complaint was filed on 11.08.2023 and registered as complaint no. 3508 of 2023. As per the registry, the complaint has sent copy of the complaint alongwith annexures through speed post as well as through e-mail. The respondent appeared through its advocate Tarun Biswas on 13.12.2023 but did not file reply. On 20.03.2024, the respondent appeared but did not file reply instead sought adjournment and adjournment was granted with direction to file reply within a period of three weeks. On 15.05.2024, again the respondent refrained from filing reply and sought adjournment. On 21.08.2024, it was observed by the Authority that the respondent is neither filing reply nor paying the cost imposed on it, the matter was listed for 16.10.2024 for final arguments. On 16.10.2024, the

proxy counsel of the respondent requested for another adjournment as the main counsel was not available for arguments. But the Authority observed that it was the 5th date of hearing and more than one year has passed since filing of the complaint. Thus, the defence of the respondent was struck off. However, in the interest of justice, the respondent was given an opportunity to file written submissions within a period of 2 weeks, but the respondent did not file any submissions too.

E. Jurisdiction of the authority

6. The Authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

7. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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.

E.II Subject-matter jurisdiction

8. 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;

9. 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 complainant.

- F.I Direct the respondent to refund the entire paid up amount of Rs.23,57,155/- along with interest.**
- F.II Direct the respondent to refund the amount of loan directly to the bank of an amount of Rs.13,61,230/- alongwith interest and penalty and close the loan of the complainant.**
- F.III Direct the respondent to handover possession of the unit, in case refund cannot be given.**

10. The above mentioned reliefs are contradictory to each other and thus the main relief of the complainant regarding grant to refund is taken into consideration hereinafter. The complainant was allotted unit no. TC-602, 2BHK, Type-1, in the project "Kavyam" by the respondent/builder for a total consideration of Rs.21,00,000/- under the Affordable Group Housing Policy 2013. The complainant submitted that an "Agreement for Sale" was executed in respect of the said unit between the complainant and the respondent on 09.03.2021. As per the Affordable Housing policy, 2013 , the possession of the unit was to be offered with 4 years from approval of building plans (06.07.2018) or from the date of environment clearance (20.08.2019) and whichever is later which comes out to be 20.08.2023.

Further, as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 23.11.2020 i.e., after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. Therefore, the due date of handing over possession comes out to be 20.02.2024. The complainant asserted that he had paid a total of Rs. 23,57,155/- towards the sale consideration of Rs. 21,00,000/-. Of the total amount paid, Rs. 9,95,925/- was provided by the financial institution, while Rs. 13,61,230/- was paid by the complainant from his own funds. However, upon reviewing the documents attached to the complaint, the Authority notes that the total payment receipts amount to Rs. 21,27,050/-, and the complainant has failed to submit certain payment receipts. Further, the respondent vide email dated 22.02.2023 informed the complainant that they have scheduled the cancellation of the BBA of the complainant's unit for 24.02.2023 and to refund the amount paid. The email dated 22.02.2023 is reproduced as under for a ready reference: -

Dear sir/madam,

Greetings from Agrante!!

We would like to inform you that we have scheduled your BBA registration cancellation on 24.02.2023. Kindly confirm your availability on the mentioned date.

We invite your kind attention towards registration cancellation charges which is Rs.5500/- you have to make the payment immediately as we have to purchase token of your name before two days. Requesting you to transfer the amount in below mentioned account details. Once it is paid let us know so that it could proceed ahead.

Please note if you do not visit at mentioned address for BBA registration after confirmation then you will have to give a penalty of Rs.5,500/-

We will initiate your refund amount as soon as possible once your BBA is cancelled. "

11. 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.

12. 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.

13. The respondent/promoter is directed to refund the paid-up amount after deduction of 5% of the consideration money in addition to Rs.25,000/- as per clause 5(iii)(h) of the of Affordable Housing Policy 2013 as amended by the State Government on 05.07.2019, along with interest @10.75% per annum from the date surrender/withdraw of allotment till the actual realization of the amount.

G. Directions of the authority

14. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent/promoter is directed to refund the paid-up amount of Rs.21,27,050/- after deduction of 5% of the consideration money in addition to Rs.25,000/- as per clause 5(iii)(h) of the of Affordable Housing Policy 2013 as amended by the State Government on 05.07.2019, along with interest @11.10% per annum from the date surrender/withdraw of allotment i.e., 22.02.2023 till the actual realization of the amount along with interest at the rate of 11.10%

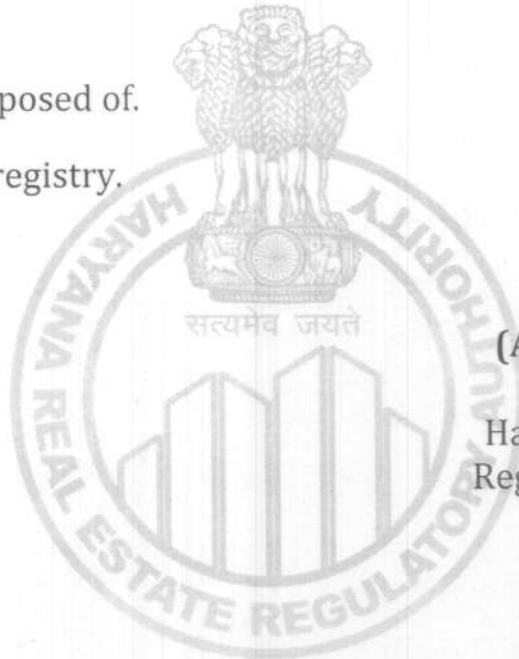
p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017. The amount paid by the financial institution shall be refunded first and then the remaining amount will be refunded to the complainant.

- 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.

15. Complaint stands disposed of.

16. File be consigned to registry.

Dated: 11.12.2024



(Ashok Sangwan)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM