



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

Date of decision: 22.10.2024

S. No.	Case No.	Case Title	Appearance
1	CR/4912/2021	Dalmia Family Office Trust V/S Almonds Infrabuild Private Limited	Adv. Sagar Chawla (Complainant) Adv. Deeptanshu Jain (Respondent)
2	CR/4913/2021	Dalmia Family Office Trust V/S Almonds Infrabuild Private Limited	Adv. Sagar Chawla (Complainant) Adv. Deeptanshu Jain (Respondent)
3	CR/4914/2021	Dalmia Family Office Trust V/S Almonds Infrabuild Private Limited	Adv. Sagar Chawla (Complainant) Adv. Deeptanshu Jain (Respondent)
4	CR/4915/2021	Dalmia Family Office Trust V/S Almonds Infrabuild Private Limited	Adv. Sagar Chawla (Complainant) Adv. Deeptanshu Jain (Respondent)
5	CR/4916/2021	Dalmia Family Office Trust V/S Almonds Infrabuild Private Limited	Adv. Sagar Chawla (Complainant) Adv. Deeptanshu Jain (Respondent)
6	CR/4917/2021	Dalmia Family Office Trust V/S Almonds Infrabuild Private Limited	Adv. Sagar Chawla (Complainant) Adv. Deeptanshu Jain (Respondent)
7	CR/4918/2021	Dalmia Family Office Trust V/S Almonds Infrabuild Private Limited	Adv. Sagar Chawla (Complainant) Adv. Deeptanshu Jain (Respondent)

CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan
Shri Sanjeev Kumar Arora

Chairman
Member
Member
Member

ORDER

1. This order shall dispose off all the 7 complaints titled as ***Dalmia Family Office Trust V/s Almonds Infrabuild Pvt. Ltd.*** filed before this Authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred to as "the Rules"). That these complaints emanate from the six (6) independent sets of transactions, having jurisdiction in Gurugram, executed inter se different ATS group companies and the Dalmia Group entities from the year 2013 and up to the year 2015. The said transactions can be broadly categorized under three different categories. Since common questions of law and facts are involved in all the below-mentioned 7 complaints which are similarly titled as ***Dalmia Family Office Trust V/s Almonds Infrabuild Pvt. Ltd.***, so for the disposal of the same, the facts of complaint bearing no. CR/4912/2021 are considered. The fulcrum of the issue involved in all these cases pertains alleged to failure on the part of the respondent/promoter to deliver timely possession of the unit in question and consequent award for delay possession charges as per provisions of section 18 of the Real Estate (Regulation and Development) Act, 2016. The details of all the 7 case numbers, type of agreement, and date of execution of buyer's agreement, unit no., unit area and total sale consideration are given below in the tabular form.

S. No.	Case No.	Case Title	Type of Agreement and date	Date of execution of Flat Buyer's Agreement	Unit No. and Area admeasuring	Total sale consideration in (Rs. Crore)
1	CR/4912 /2021	Dalmia Family Office Trust V/S Almonds Infrabuild Private Limited	Investment Agreement dated 31.03.2014	Allotment Letter dated 31.03.2014	1032, 3 rd Floor, in Tower-1, 3150 sq. ft.	1,89,00,000/-



2	CR/4913 /2021	Dalmia Family Office Trust V/S Almonds Infrabuild Private Limited	Investment Agreement dated 31.03.2014	Allotment Letter dated 31.03.2014	1061, 6 th Floor, in Tower-1, 3150 sq. ft.	1,89,00,000/-
3	CR/4914 /2021	Dalmia Family Office Trust V/S Almonds Infrabuild Private Limited	Investment Agreement dated 31.03.2014	Allotment Letter dated 31.03.2014	1071, 7 th Floor, in Tower-1, 3150 sq. ft.	1,89,00,000/-
4	CR/4915 /2021	Dalmia Family Office Trust V/S Almonds Infrabuild Private Limited	Investment Agreement dated 31.03.2014	Allotment Letter dated 31.03.2014	1072, 7 th Floor, in Tower-1, 3150 sq. ft.	1,89,00,000/-
5	CR/4916 /2021	Dalmia Family Office Trust V/S Almonds Infrabuild Private Limited	Investment Agreement dated 31.03.2014	Allotment Letter dated 31.03.2014	1081, 8 th Floor, in Tower-1, 3150 sq. ft.	1,89,00,000/-
6	CR/4917 /2021	Dalmia Family Office Trust V/S Almonds Infrabuild Private Limited	Investment Agreement dated 31.03.2014	Allotment Letter dated 31.03.2014	1082, 8 th Floor, in Tower-1, 3150 sq. ft.	1,89,00,000/-
7	CR/4918 /2021	Dalmia Family Office Trust V/S Almonds Infrabuild Private Limited	Investment Agreement dated 31.03.2014	Allotment Letter dated 31.03.2014	2042, 4 th Floor, in Tower-2, 2585 sq. ft.	1,55,10,000/-
Total Investment						12.75 Crore

A. Facts of the case

2. The complainant has made the following submissions:

- i. That the complainant, "Dalmia Family Office Trust", earlier known as "Mridu Hari Dalmia Parivar Trust" and is a part of the "Dalmia Group" which includes Dalmia Family Office Trust and Dalmia Family Holdings LLP.
- ii. That the respondent company namely M/s Almond Infrabuild Private Limited, is purportedly inter-alia engaged in the business of construction and development of residential group housing projects, managed by Mr. Getamber Anand being the Director of respondent company. The respondent company i.e., M/s Almond Infrabuild Private Limited and other ATS group companies namely ATS Infrastructure Limited, Anand Divine Developers Private Limited, Domus Greens Private Limited and



ATS Housing Private Limited are collectively referred to as "ATS group companies".

iii. That from the year 2013 and up to the year 2015, six (6) independent sets of transactions having jurisdiction in Gurugram were entered into between different ATS group companies and the Dalmia Group entities. The said transactions can be broadly categorized under three different categories/ heads:

- Investment Transactions;
- Flat purchase and buyback transactions;
- Loan Transactions;

Date	Deal Structure	Dalmia Entity	Borrower	Project	Amount (Rs. Cr)	No. of Units allotted
03-Sep-13	Investment	DFOT	Almond Infrabuild	Tourmaline	15.15	9
31-Mar-14	Investment	DFH LLP	ATS Infrastructure	Tourmaline	12.75	7
11-Jun-15	Purchase and Buyback	DFOT	Anand Divine Developers	Triumph	10.00	7
11-Jun-15	Loan	DFOT	Anand Divine Developers	Triumph	15.00	19
15-Jun-15	Purchase and Buyback	DFOT	Almond Infrabuild	Tourmaline	10.00	7
15-Jun-15	Loan	DFOT	Almond Infrabuild	Tourmaline	15.00	24
					77.90	73

iv. That separate and independent agreements were entered into between the above-mentioned parties governing each of the above-mentioned six (6) transactions. Each of the six transactions, included agreements having their own terms and conditions, having no correlation with agreements of another transaction.



- v. That in and around 2014, the respondent no. 1 through its promoter/director i.e. Mr. Getamber Anand had approached the complainant and informed that the respondent no. 1, through its affiliate, the respondent no. 2 i.e., M/s Almond Infrabuild Private Limited, is developing a residential group housing project under the name "ATS Tourmaline" with a saleable area of approximately 9,60,000 square feet over a parcel of land admeasuring 10.41875 acres in Sector-109, Gurugram, Haryana. The respondent no. 1 through its promoter/director requested the complainant for advancing a sum of Rs.12,75,00,000/- in its favour, for the purpose of development of the said project.
- vi. That the complainant was inter-alia assured by the respondent no. 1 that the said amount will be repaid within a period of thirty-seven (37) months with returns of 27% per annum compounded annually. The complainant was further assured that the promoter/director of the respondent no. 1 i.e. Mr. Getamber Anand would act as a surety and execute a guarantee agreement in favour of the complainant, thereby categorically assuring the complainant of the timely repayment of the aforesaid amount along with interest. Based on the the respondent no. 1 tall representations and assurances, an agreement dated 31.03.2014 was executed between the respondent no. 1 and the promoter/director of the the respondent no. 1 i.e. Mr. Getamber Anand, of one part and the complainant ("Investor" therein) of the other part ("Investment Agreement") for an investment of Rs.12,75,00,000/- ("Investment Amount"). On 28.03.2014, the complainant disbursed part of the investment amount being Rs.7,42,50,000/- to the respondent no. 1 through RTGS (UTR No. PUNBR32014032800011659) and the receipt thereof was acknowledged by the respondent no. 1 under clause 1.2 of the investment/buy back



agreement itself. In addition to the above, a sum amounting to Rs.7,50,000/-, was also deposited by the complainant towards T.D.S. with the concerned government department.

- vii. In terms of the investment agreement, inter-alia, the following terms were agreed between the respondent no. 1 and the claimants:

Clause 2.1 of the Investment Agreement provided as under:

"2.1. In lieu of the Investment Amount made available by the Investors to Developer, Developer shall, and the Guarantor shall ensure that Developer shall, unconditionally and irrevocably transfers the ownership rights in respect of 21250 (Twenty-One Thousand Two Hundred Fifty) square feet of developed land i.e., saleable apartment space in the Project as defined in Recital A hereinabove, in the name of the Investor and designated nominees"

- viii. Thus, as per clause 2.1 of the investment agreement, in lieu of the aforesaid investment amount remitted by the complainant, the respondent no. 1 agreed to irrevocably transfer the ownership rights in respect of 21,485 sq. ft. of developed land i.e., saleable apartment space in the said project to the complainant. Subsequently 07 (seven) flats in the said project were allotted to the complainant covering and area of 21,485 sq. ft., the details of which are as under:

S. No	Flat No.	Area (sq. ft.)
1.	2042	2585
2.	1061	3150
3.	1072	3150
4.	1071	3150
5.	1032	3150
6.	1081	3150
7.	1082	3150
	TOTAL	21485 (approx.)

- ix. That as per clause 5.1 of the investment/buy back agreement, it was agreed that the respondent no. 1 shall buy back the ownership rights in respect of aforesaid 21,250 sq. ft. of apartment space as mentioned in Clause 2.1, for a net consideration of Rs.26,42,36,000/- within thirty-



- seven (37) months from the date of disbursement of the amount invested by the complainant, so that the complainant receives a minimum fixed return of 27% p.a., compounded annually on the investment amount for the period of thirty-seven (37) months.
- x. That as per clause 3.1 of the investment agreement, it was agreed that the complainant shall have an exclusive charge on an area of 42,500 sq. ft. of developed saleable area in the said project as security for repayment of the investment amount. It was specifically captured in the investment agreement that relevant details of the security charge such as apartment/tower number, apartment size etc. would be informed along with the execution of investment agreement. However, in breach of the aforesaid undertaking, till date even after nearly eight (8) years of execution of the investment agreement, the said area has not been earmarked or allotted in favour of the complainant. It is submitted that it is not known whether the said area is even available with the respondent no. 1 or has been wrongfully and dishonestly alienated by the respondent no. 1. Clause 3.3 of the investment agreement further recorded that the security charge could neither be booked, sold nor any third-party interest can be created with respect to the same without prior written consent of the complainant. Further, pursuant to clause 3.4 of the investment agreement, the respondent no. 1 issued two post-dated cheques (dated 37 months from the date of disbursement of the investment amount) amounting to Rs.12,75,00,000/- and Rs.13,67,36,000/- respectively in favour of the complainant representing the repayment amount.
- xi. That as per clause 5.3 and 7.3 of the investment agreement, the respondent no. 1 through the respondent no. 2 had undertaken to unconditionally and irrevocably transfer the ownership rights in respect



of the allotted space in favour of the complainant, and as per clause 6.2, it was expressly agreed that the complainant would relinquish its rights over the allotted space and the security charge, only upon receipt of the repayment amount on or before the repayment date. Admittedly, the respondent no. 1 defaulted in payment, and the said default continues till date. The respondents had no rights over the allotted Space, i.e., the 07 (seven) flats until repayment of the repayment amount. Further, clause 9 of the investment agreement, the respondent no. 1 and the guarantor jointly and severally agreed and undertook that they shall hold harmless the complainant against any and all actions, claims, suits, proceedings, losses, liabilities, damages, costs, charges and expenses, including legal fees and disbursements in connection therewith, incurred by the complainant, arising from or in connection with or in relation to (a) any breach of any covenant in the investment agreement; (b) any breach, inaccuracy or incorrectness of any representation or warranty or agreement made or failure to perform (whether in whole or in part) any obligation required to be performed by the respondent no. 1 and/or the guarantor pursuant to the investment agreement. It was further agreed by the complainant company that the indemnification rights of the complainant under the investment agreement are independent of, and in addition to, other rights and remedies as the complainant may have at law or in equity or otherwise, including the right to seek specific performance or other injunctive relief, none of which rights or remedies shall be affected or diminished thereby. That the said indemnification clause shall survive the expiry or termination of the investment agreement by either party for any reason.



- xii. That as agreed in the investment/buy back agreement as per the respondent no. 1 requirements, the complainant disbursed the balance investment amount of Rs.5,19,75,000/- to the respondent no. 1 vide RTGS ref. No. PUNBR32014051600076760 on 16.05.2014. In addition to the above, a sum amounting to Rs.5,25,000/-, was also deposited by the complainant towards T.D.S. with the concerned government department.
- xiii. That in accordance with clause 3.5 of the terms of the investment/buy back agreement dated 31.03.2014, the respondent no. 1 executed a "Guarantee Agreement" dated 31.03.2014 in favour of the complainant. That the said guarantee agreement was executed to further secure the payment obligations of the respondent no. 1 under the investment agreement, which remains valid and subsisting, read with the supplemental agreements thereto. Additionally, in accordance with clause 3.6 of the investment agreement, the promoter/director of the respondent no. 1 i.e., Mr. Getambar Anand, being the 'Guarantor' under the investment agreement, executed an unconditional, absolute and irrevocable personal guarantee dated 25.07.2014 in favour of the complainant, guaranteeing payment of the repayment amount under the investment agreement.
- xiv. That on the expiry of the period of thirty-seven (37) months from the date of disbursement of the investment amount, i.e., on the date agreed for repayment of the agreed minimum repayment amount, the respondent no. 1 admittedly failed to pay the minimum repayment amount to the complainant. Instead, the respondent no. 1 approached the complainant and requested for an extension of time for repayment of the minimum repayment amount. Consequently, on 30.04.2018, based on the representations and assurances of the respondent no. 1 regarding payment, a supplemental agreement was executed between the



respondent no. 1 and the promoter/director of the respondent no. 1 i.e. Mr. Getamber Anand of one part and the complainant of the other part ("First Supplemental Agreement") whereby the complainant agreed to provide an extension the respondent no. 1, for repayment till 01.10.2018 ("Revised Repayment Date"), thus modifying/extending the investment agreement. Under clause i of the said first supplemental agreement, the respondent no. 1 undertook to pay an amount of Rs.34,16,26,072/- ("Revised Repayment Amount") to the complainant on or before the revised repayment date. However, on 01.10.2018 (the revised repayment date as per the first supplemental agreement), the respondent no. 1 yet again defaulted in payment of the agreed revised repayment amount to the complainant, in breach of its payment obligations under the first supplemental agreement. Instead of remitting the payment, the respondent no. 1 approached the complainant once again and requested for further time for repayment. Based on respondent no. 1 assurances and representations, another supplemental agreement dated 18.12.2018 was executed between the complainant of one part and the respondent no. 1 of the other part ("second supplemental agreement"), whereby the date of repayment was further extended till 30.06.2019 ("modified repayment date"). That as per clause I of the second supplemental agreement, the respondent no. 1 agreed to pay a sum amounting to Rs.39,11,10,536/- ("modified repayment amount") to the complainant on or before the modified repayment date.

- xv. Accordingly, the promoter/director of the respondent no. 1 itself executed a fresh personal guarantee agreement as well as fresh corporate guarantee agreement dated 20.12.2018 respectively in favour of the complainant replacing the earlier guarantee agreement. By the said fresh personal



guarantee agreement, promoter/director of the respondent no. 1 inter alia guaranteed the repayment of modified repayment amount along with fulfilment of other obligations as envisaged in the investment agreement.

- xvi. That instead of making the payment, respondent no. 1 approached the complainant, for the third time and requested for further time for repayment. The complainant, having regard to the longstanding relationship between the parties, and in the hope and bona fide belief of recovering its dues from the respondent no. 1 amicably, agreed to its request and another supplemental agreement dated 18.10.2019 was executed between the complainant and the respondent no. 1 (Third Supplemental Agreement"). By way of the third supplemental agreement, the complainant agreed to extend the date of repayment till 31.03.2020 ("extended modified repayment date"). That as per clause I of the third supplemental agreement, the respondent no. 1 undertook to pay a sum amounting to Rs.44,81,96,909/- ("enhanced modified minimum repayment amount") to the complainant on or before the extended modified repayment date, being 31.03.2020.
- xvii. Accordingly, vide two separate guarantee agreements dated 18.10.2019, the corporate guarantee agreement and the personal guarantee agreement, both dated 20.12.2018, were replaced and modified by fresh personal and corporate guarantee agreements executed by the respondent no. 1 and by its promoter/director of the respondent no. 1 respectively. By the said corporate guarantee agreement, the respondent no. 1 inter-alia guaranteed the payment of the agreed enhanced modified minimum repayment amount and fulfilment of other obligations by the respondent no. 1 as mentioned in the investment agreement read with supplemental agreements thereof. Therefore, it is submitted that it is clear



that the corporate guarantee agreement dated 18.10.2019 did not in any manner supersede the terms of the investment agreement, as alleged by the respondents, but was in fact only in furtherance of clause 3.5 of the investment agreement read with clause v of the third supplemental agreement. Similarly, by the said personal guarantee agreement dated 18.10.2019, promoter/director of the respondent no. 1 also guaranteed the payment of the agreed enhanced modified minimum repayment amount and fulfilment of other obligations by the respondent no. 1 as mentioned in the investment agreement, and further guaranteed to make the said payments personally in case of a default in repayment by the respondent no. 1.

- xviii. That the respondent no. 1 in breach of their obligations failed and neglected to pay to the complainant, the entire admitted "enhanced modified repayment amount" or any part thereof, on 31.03.2020 or even thereafter, despite requests and reminders from the complainant. This clearly shows the respondent no. 1 disinterest in remitting the enhanced modified minimum repayment amount or any part thereof and honoring its payment obligations towards the complainant. That upon failing to meet their payment obligations even on the extended modified repayment date being 31.03.2020, the respondent no. 1 again approached the complainant with yet another request for extension of the 18 dates for repayment of the amounts under the agreement(s) between the respondent no. 1 and the complainant. However, admittedly till date, the respondent no. 1 has not paid the admitted extended modified repayment amount or any part thereof to the complainant, nor it has the respondent company discharged any other obligations including providing the

possession of the said apartments/units as agreed in the investment agreement read with supplemental agreements thereto.

- xix. That there were oral discussions and emails exchanged between the parties from time to time between March 2020 till early November 2020, with a view to amicably resolve the defaults on the part of the ATS Group including the Respondent No. 1 under the Agreements executed with the Complainant. In furtherance thereof, in one such phase of discussions in May 2020, a draft memorandum of understanding ("MoU") was also exchanged between the parties. Similarly, in July 2020, another proposal was put forth, however, despite efforts to amicably resolve the defaults on the part of the respondents, owing to a lack of consensus ad idem between the parties, the same were neither finalized nor signed by either of the parties, and the parties could not arrive at any agreement on further deferring the repayment of the amounts due and payable by the respondent no. 1 to the complainant. That it is pertinent to mention that the respondent no. 2 company was granted occupation certificate for the said project dated 09.08.2019 from the competent authority.
- xx. That by virtue of the investment agreement, respondent no. 1 through the respondent no. 2 company executed various allotment letters in favor of the complainant. Similarly, the respondent no. 2 company executed an allotment letter dated 31.03.2014 in favor of the complainant, wherein the complainant was allotted an apartment bearing no. 1032 on the 3rd floor of tower 1, having total area equivalent to 3150 sq. ft. in the residential group housing project "ATS Tourmaline" situated in sector 109, Gurgaon, Haryana for a total consideration of 1,89,00,000/-. The complainant at such till date, have paid a sum of Rs.1,89,00,000/- (inclusive of all the other charges) for the said allotted residential unit as per the allotment letter.



However, that as per the *Clause 9.2* of the allotment letter executed between the parties, the possession of the said residential apartment was to be offered to the complainants by the respondent company within a period of 42 months with the grace period of 3 months from the date of the allotment letter. That even after the expiry of almost 4 years, the respondent companies have failed to provide the possession of the said residential apartment to the complainant despite receiving the occupational certificate from the competent authority on 09.08.2019. Despite the failure at the part of the respondent companies, the complainant intends and wishes to take the possession of the said apartment. It is further to state that no outstanding amount with respect to the said unit is due on the part of the complainant and the entire consideration of the said unit has been duly paid by virtue of the "investment agreement". The complainant in spite of multiple attempts having been made time and again to amicably settle the dispute with the respondents, the former has been unable to get any positive response from either of them thus making it a clear-cut case of unfair trade practices as per sec 7(c) of the Act and against the provisions of sec 11(4)(a) of the Act, 2016.

- xxi. That the complainant in spite of multiple attempts having been made time and again to amicably settle the dispute with the respondent company, the former has been unable to get any positive response from the respondent company thus making it a clear-cut case of unfair trade practices as per sec 7(c) of the Act and against the provisions of sec 11(4) (a) of the Act of 2016. The present petition is being filed by the complainant under section 31 of the Act, 2016 in the capacity of an allottee as per the definition under section 2(d) of the Act. That therefore, the complainant in the present

scenario is a homebuyer as per section 2(d) of the Act, 2016 by virtue of FBA, BBA read with ABA. It is pertinent to note that section 2(d) of the Act of 2016 does not create any distinction or discriminate between a person, legal entity, trust, company and etc. and states that any person to whom a plot, apartment or building has been allotted, sold or otherwise transferred by the promoter shall come within the ambit of an allottee. That the complainant further states that the present complaint has been made with bona fide intention and the same is not pending having similar relief before any court of law or any other authority or any other Tribunal.

B. Relief sought by the complainant:

3. The complainant is seeking the following reliefs:
 - i. Direct the respondent company to grant possession to the complainant, of the fully developed/constructed residential unit bearing number 1032 on 3rd floor of tower 1 having saleable area of 3150 sq. ft. with all the amenities;
 - ii. Direct the respondent company to give the delayed possession interest @ prescribed rate from the due date of possession till the actual date of possession (complete in all respect with all amenities after obtaining the OC);
 - iii. To get an order in the favour of the complainant by restraining the respondent company from charging more than the agreed price as per the allotment letter;
 - iv. Such other incidental costs or expenses including the legal cost incurred by the complainant arising out of the present complaint may also be awarded to the complainant, and;
 - v. Such other order or further orders be passed as this Authority may deem fit and proper in the facts and circumstances of the case.

C. Reply by the respondent:

4. The respondent has submitted as under:

- i. That the respondent, i.e., M/s Almond Infrabuild Pvt. Ltd. is a part of ATS group of companies and is engaged in the business of construction and development of real estate projects. However, the complainant herein, Dalmia Family Office Trust, is a part of the Dalmia Group and is engaged in the business of providing finance to other business in their regular course.
- ii. That the respondent raised the following issues before this Authority for proper adjudication of captioned complaint as the complainant has deliberately concealed various vital information and documents from this Authority:-
 - Whether the complainant has, to get favourable orders from this Authority, misled this Authority by concealing necessary facts and documents with respect to pending Arbitration proceedings?
 - Whether the captioned complaint is liable to be dismissed as the issue raised in the instant complaint has already been adjudicated upon by the Arbitral Tribunal vide its order dated 12.10.2021 in Arbitration case bearing nos. 1, 2 and 3 of 2021?
- iii. That it is submitted that the respondent is not filing the reply to the captioned complaint in seriatim as the complaint is not maintainable being sub-judice before the Arbitral Tribunal. However, the respondent is seeking liberty of this Authority to raise additional objections/grounds before this Authority at a later stage with the permission of this Hon'ble Authority, if so warranted. It is submitted that the complainant in the para 7 of the complaint, has wrongly stated as under:

"The Complainant(s) further declares that the matter regarding which this Complaint has been made is not pending having similar relief before any court of law or any other authority or any other tribunal(s)."



- iv. That it is submitted that the complainant has deliberately concealed the pendency of Arbitration proceedings before Mr. Justice Swatenter Kumar (Retd.) in the arbitration case bearing no. 3 of 2021 arising out of same cause of action, i.e., the flat buyer agreement and buy back agreement executed between the complainant and respondent. Therefore, the captioned complaint is liable to be dismissed solely on this ground alone for making wrongful declaration on oath before this Authority. Further, the respondent reserves its right to initiate appropriate legal actions against the complainant for wrongly deposing before this Authority.
- v. That as per the mutual understanding between the Dalmia Group and ATS Group, Dalmia Group had been investing in the projects being constructed by ATS Group and as such in the intervening period from year 2013 and 2015, Dalmia Group made various investments in the projects of ATS group through separate agreements. As a matter of fact, there are three broad categories of agreements executed between Dalmia Group and ATS Group:-
- Investment Agreement;
 - Flat Buyer Agreements and Buyback Agreements;
 - Loan Agreements.
- vi. That in the present case, the complainant and the respondent executed an agreement dated 31.03.2014 (herein referred to as "Investment agreement"). It is submitted that in terms of the investment agreement, the complainant invested Rs.12,75,00,000/- in the project and as such the respondents was transferred to ownership rights in respect of 21,250/-sq. ft. of over the project land. Accordingly, the respondents allotted 7 units in the name of the complainant by the respondent including the unit mentioned in the captioned complaint. Further, under the terms and conditions of the investment agreement, the respondent undertook to buy



back the ownership rights in respect of 21,250/- sq. ft. land in the project for a net consideration amount of Rs.26,42,36,000/- within a period of Thirty-seven (37) months from the date of disbursement of the amount. It is respectfully submitted that on bare perusal of the investment Agreement, it is aptly clear that the complainant had no intention for occupying the unit or taking physical possession of the unit.

- vii. That during the prevailing market conditions, the complainant and the respondent company in the regular course of business mutually agreed to extend the period of repayment of buy back price vide supplementary agreement dated 30.04.2018. It is humbly submitted that in term of the first supplementary agreement, both the parties mutually agreed to modify the date for repayment of the buyback price from 01.10.2018. It was also agreed that the respondent shall repay money invested by the complainant along with additional interest for the extended period i.e., Rs.34,16,26,017/- on or before 01.10.2018.
- viii. That on 18.12.2018, both the parties once again mutually agreed to extend the date of re-payment of buy back amount and executed second supplementary agreement dated 18.12.2018. In terms of the second supplementary agreement, it is once again mutually decided by both the parties to extend the date of repayment of principal amount along with interest from 01.10.2018 to 30.06.2019. The respondent agreed to repay the revised buy back price along with additional interest for the extended period, i.e., Rs.39,11,10,536/- to the complainant.
- ix. That again 18.10.2019, both the parties once again mutually agreed to extend the date of re-payment of buy back amount and executed second supplemental agreement dated 18.10.2019. In terms of third supplementary agreement, it is once again mutually decided by both the



parties to extend the date of repayment of principle amount along with interest from 30.06.2019 to 31.03.2020. the respondents agreed to repay the revise buy back price along with additional interest for the extended period i.e., Rs.44,81,96,909/- to the complainant.

- x. That it is submitted that on bare perusal of transaction documents, it is evident that the complainant is an investor and the entire transaction was merely an investment of monies in the project being developed by respondent to earn very high rate of interest from the same. It is pertinent to mention here that the complainant, till before the filing of the captioned complaint, had never demanded the possession of the unit. It is further submitted that the complainant, in order to force the respondent to kneel before their illegal demand, has filed the captioned complaint.
- xi. That as a matter of fact, on 22.03.2020, before expiry of modified date of payment of buy back price, the Government of India declared nation wide lockdown of all the business and government offices. It is submitted that due to the restrictions being imposed by the government, the real estate sector was affected the most. Since the respondent was incurring huge losses, the respondent thereafter approached the complainant seeking relaxation in repayment of the loan amount. Though the parties tried to amicably settle the disputes, however the same was not resolved. It is pertinent to mention herein that the parties arrived at a holistic settlement whereby ATS Group had handed over post-dated cheques and 42 units as security towards repayment of all the amounts under the various agreements executed between the parties.
- xii. That during the pendency of the settlement talks, the respondent initiated proceedings under section 11 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "Arbitration Act") before the Hon'ble High

Court of Delhi. The Hon'ble High Court of Delhi was pleased to allow the petition under section 11 of the Arbitration Act and appointed Retd. Justice Swatanter Kumar as the Ld. Sole Arbitrator to adjudicate the dispute between the parties in relation to the transaction documents. It is submitted that subsequent to appointment of Ld. Sole Arbitrator, the present respondent and the complainant filed their separate applications under section 17 of Arbitration Act seeking interim protection. It is humbly submitted that the application under section 17 of Arbitration Act had already been adjudicated upon by the Arbitral Tribunal vide its order dated 12.10.2021 and thereby, the Arbitral Tribunal has secured the rights of the complainant.

- xiii. That it is humbly submitted that vide the said order so as to secure the rights of the complainant, the Ld. Sole Arbitrator has directed the respondent to allot five (5) fresh units to the complainant as security along with bank guarantee in the same project to secure their amount payable by the respondent to the complainant, if any. It is pertinent to mention that the arbitration proceedings arising out of the transaction documents are sub-judice before the Ld. Sole Arbitrator and as such the captioned complaint is not maintainable before this Authority.
- xiv. That on bare perusal of the order passed by the Ld. Sole Arbitrator, it can be concluded that the complainant has sought reliefs with respect to payment of buy back price and as such the complainant has waived its right to seek possession of the unit. It is reiterated for the sake of brevity that the complainant was never interested in the possession of the units and as such was only interested in recovering higher rate of interest on the amount invested in the said project. Therefore, the reliefs being sought by the complainant for handing over the possession of unit is uncalled for and



not maintainable in view of the arbitration proceedings pending between the parties. Further, it is submitted that the question with respect to handing over the possession of the unit allotted to the complainant under the terms of FBA and BBA is pending adjudication before the Ld. Sole Arbitrator. Therefore, the captioned complaint is not maintainable before this Authority.

- xv. That moreover, the respondent is not deficient in any way as a promoter as the construction of project is completed and the occupation certificate of the project has already been issued by DTCP, Haryana vide its letter dated 09.08.2019.
- xvi. That In light of the aforesaid fact and submissions made, it is submitted that the complainant has concealed the aforesaid facts in its complaint and deliberately made wrongful declaration before this Authority. Further, the complainant has concealed all these facts and documents in order to mislead this Authority and get contradictory orders to the order dated 12.10.2021 already passed by the Arbitral Tribunal. In view of the same, the captioned complaint is liable to be dismissed on this ground alone. In view of the aforesaid, the captioned complaint is liable to be dismissed with heavy cost.

D. Jurisdiction of the authority

5. The authority observes that it has complete territorial jurisdiction to adjudicate the present complaint for the reasons given below:

D.1 Territorial jurisdiction

6. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by the 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.

E. Findings of the authority

7. It is a matter of record that the complainant vide agreement dated 31.03.2014, invested an amount of Rs.12.75 crore with the respondent for construction and development of a project. In respect of the investment amount advanced by the complainant, the complainant herein and "Mr. Getamber Anand" (as "Guarantor") entered into a Guarantee Agreement dated 31.03.2014 and 25.07.2014 respectively. The respondent was obligated to repay the said amount within a period of 37 months from the date of disbursement of the investment amount by the investor to developer and as a security of the loan amount, allotted 7 units for a total area admeasuring 21,250 sq. ft. in the proposed project of the respondent company namely "ATS Tourmaline" situated in sector- 109 Gurugram vide separate allotment letters dated 31.03.2014. After the lapse of due date of repayment the parties again entered into a supplemental agreement dated 30.04.2018, for extension of period of repayment till 01.10.2018. Thereafter, the second supplemental agreement dated 18.12.2018, for again extending the period of repayment till 30.06.2019 was executed. Also, on 20.12.2018, a guarantee agreement in lieu of second supplemental agreement was executed inter se parties. Subsequently, third supplemental agreement dated 18.10.2019 to agreement dated 31.03.2014, as amended by a supplemental agreement dated 30.04.2018 and second supplemental agreement dated 18.12.2018 was executed vide which the time for repayment was extended i.e., on or before 31.03.2020. In lieu of third supplemental agreement dated 18.10.2019, a guarantee agreement was

executed on 18.10.2019 between the parties i.e., complainant herein and "Mr. Getamber Anand" as "Guarantor.

8. The Authority observes that the present matter emanates from investment/loan transactions wherein the respondent company through its promotor/director Mr. Getamber Anand requested the complainant for advancing a sum of Rs.10 crores in favour of the respondents for the purpose of development of the subject project namely "ATS Tourmaline" situated in sector- 109 Gurugram. To secure the repayment of the aforementioned investment amount, a agreement was executed between the parties on 31.03.2014 and a Guarantee Agreement was also executed on the same date 7 allotment letters separately were issued on the same date i.e., 31.03.2014. Pertinently, vide said agreement, the respondent company agreed to sell and transfer in favour of the complainant, seven fully developed flats in the subject project for an area aggregating 21,250 sq. ft. The consideration of the said transaction was fixed as Rs. 12.75 crores which was agreed to be paid by the complainant to the respondent. Also, Mr. Getamber Anand executed a personal guarantee vide guarantee agreement dated 25.07.2014 in the complainant's favour, inter-alia, guaranteeing the payment of the buyback price along with interest and other amounts payable to the complainant in terms of the agreement. Vide clause 9.2 of the allotment letter, it was agreed to complete the construction of the apartment within 42 months with a grace period of 3 months from the date of this allotment letter i.e., on or before 31.12.2017. Further, pursuant to clause I of the third supplementary agreement 18.10.2019, respondent company issued a post-dated cheque bearing no. 000448 dated 31.03.2020 in favour of the complainant, representing the buyback price agreed by it. However, the respondent company failed to pay the agreed amount in agreed manner i.e., by 01.10.2018. Thereafter, a series of two

supplemental agreements, supplemental agreements to agreement and fresh personal guarantee agreements were executed inter se parties wherein the buyback price had been increased and timelines to pay such increased amount were extended to 01.10.2018, 30.06.2019 and 31.03.2020 respectively. Although the respondent company failed to pay the agreed amount in agreed manner again. It is a matter of fact that by virtue of the allotment letter, the respondent company executed various allotment letters (hereinafter referred as FBA) in favor of the complainant. In respect of the lead case bearing no. 4912/2021, the respondent company issued an allotment letter dated 31.03.2014 in favor of the complainant, wherein an apartment bearing no. 1033 on the 3rd floor of tower 1, having total area equivalent to 3150 sq. ft. in the residential group housing project "ATS Tourmaline" situated in Sector 109, Gurgaon, Haryana for a total consideration of Rs.1,89,00,000/- was allotted and the complainant has paid the entire sale consideration w.r.t subject unit thereby seeking possession of the subject unit along with payment of delay possession charges as per the provisions of the Act of 2016.

9. The case of the complainant is that the complainant in the present matter is a homebuyer and comes under the ambit of "allottee" as per section 2(d) of the Act, 2016 by virtue of allotment letters read with various agreements. It is further submitted that section 2(d) of the Act of 2016 does not create any distinction or discriminate between a person, legal entity, trust, company and etc. and states that any person to whom a plot, apartment or building has been allotted, sold or otherwise transferred by the promoter shall come within the ambit of an allottee. Further, the respondent company has failed to handover the possession of the subject unit to the complainant with the stipulated due date as committed by the respondent company in the ABA thereby violating

section 11(4)(a) of the Act of 2016 and thus, is entitled to delay possession charges/interest in terms of section 18 of the Act.

10. The respondent has challenged the maintainability of the present complaint and stated that the captioned complaint is liable to be dismissed as the issue raised in the instant complaint has already been adjudicated upon by the Arbitral Tribunal vide its order dated 12.10.2021 in Arbitration cases bearing no. 1, 2 and 3 of 2021. It is further submitted by the respondent that the complainant has deliberately concealed the pendency of Arbitration Proceedings before Mr. Justice Swatenter Kumar (Retd.) in the Arbitration case bearing No. 3 of 2021 arising out of same cause of action, i.e., the flat buyer agreement and buy back agreement executed between the complainant and respondent.
11. Vide order of this Authority dated 12.05.2023, both the counsels were directed to file written submissions with regard to maintainability issue within a period of 10 days with an advance copy to each other. Further, vide order of this Authority dated 13.10.2023, it was noted that in spite of the specific directions by this Authority vide its order dated 12.05.2023 w.r.t filing of written submissions with regard to maintainability but both the complainant and the respondent has failed to file the written submissions till date. Hence, the complainant was directed to file the written submissions within 2 weeks, with an advance copy to the respondent, along with penalty of Rs.50,000/- under section 67 of the Act, to be deposited with the Authority. However due to continued non-compliance by the complainant, it was decided during proceeding dated 05.01.2024 to impose a further penalty of Rs.5 Lakhs under section 67 of the Act, 2016 to be deposited within one week along with previously imposed penalty of Rs.50,000/- and last opportunity was given to file the written submissions w.r.t maintainability. However, the complainant

has failed miserably to abide by the directions of this Authority and has neither filed the written submissions nor has deposited the penalty amount with this Authority. Therefore, the authority is left with no other option but to proceed further in view of the documents placed on record in the complaint and the reply.

12. Keeping in view the factual matrix of the present case, the question posed before the authority is whether the complainant falls within the definition of the term "Allottee" as defined under section 2(d) of the Act of 2016 and whether the present complaint is maintainable before this Authority in the light of arbitration proceedings before the Arbitration Tribunal and appeal filed before the Hon'ble Delhi High Court seeking setting aside of the order of the interim order dated 12.10.2021 passed by the Ld. Sole Arbitrator-Hon'ble Mr. Justice Swatanter Kumar.
13. The counsel for the complainant during the course of hearing has submitted that as per section 88 and 89 of the Act of 2016, both the Arbitration and RERA proceedings can go together. The Authority is of the view that any aggrieved person can file a complaint to the Real Estate Regulatory Authority under Section 31 of the Act of 2016. The authority has wide powers to issue directions to varied individuals and groups. However, it is the duty of the Authority to exercise such power with utmost care so as to uphold the principles of justice and keeping in view the intention of the legislature behind the enactment of the Act of 2016.
14. The most pious objective behind the enactment of the Real Estate (Regulation and Development) Act, 2016 is to ensure the sale of real estate project in an efficient and transparent manner along with protecting the interest of the consumers in the real estate sector. In respect of the Act, the endeavour was to ameliorate the sufferings of the allottees/persons, who have invested their

hard-earned money in the real estate sector. The object of the RERA is to protect the 'allottees' and simplify the remedying of the wrongs committed by the 'promoter'.

15. The authority observes that the term "allottee" has been defined under section 2(d) of the Act and the same is reproduced as under:

2. In this Act, unless the context otherwise requires-
(d) "allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent".

16. The Authority is of the considered view that the above definition shall be read keeping in view the intention of the legislature behind the enactment of the Act of 2016. The present matter prima facie does not seem to be a dispute between an allottee or a promoter or between a consumer or a developer but on the contrary, it arises out of a loan/financing transaction wherein the complainant has advanced certain amount of money to the respondent as a loan and in order to secure the said advance monies, has been allotted certain units as guarantee. The above facts are already admitted by both the parties. The Authority is of the considered view that the object behind the enactment of the Act of 2016 was to ensure that the sale of real estate project is carried in an efficient and transparent manner along with protecting the interest of the consumers in the real estate sector. The intent of the legislature in bringing the Act of 2016 into existence has been enshrined in the preamble of the Act itself which states as under: -

"An Act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real


Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto."

17. Hence, the definition of the term allottee as defined under the Act of 2016 has to be interpreted in terms of a conjoint reading of Section 2(d) and the preamble/objects as stated above. In the present case, the complainant is admittedly an entity which has acted in the capacity of a financier for the real estate project where the primary intention was never to purchase any apartment. The allotment of the apartments was only to ensure the repayment of loan as a guarantee and is purely incidental in nature. Therefore, the Authority is of the view that the complainant is not entitled to relief under the ambit of the Act of 2016. It is further observed that if the Authority engages itself in resolving such financial disputes, then it would be encumbered with a plethora of similar complaints and the true objective of carrying out the purposes of the Act, 2016 would be defeated.
18. Furthermore, it has been brought to the notice of the Authority that the issue raised in the present complaint is already the subject matter of adjudication of the High Court/Arbitral Tribunal and the said fact has not been disclosed by the complainant before this Authority.
19. In view of the above, the Authority does not find the present complaint maintainable and the same is accordingly, dismissed. Pending applications, if any, also stand disposed off.
20. In the present case, the Authority (Hon'ble Chairman and all three members) heard the complaint and reserved the order on 09.04.2024, the same was fixed for pronouncement of order on 30.07.2024. However, the said order was not pronounced on 30.07.2024 and 10.09.2024 and 15.10.2024, was further adjourned for orders on 22.10.2024. On 16.08.2024, one of the member Shri. Sanjeev Kumar Arora retired and has since demitted office. Hence, rest of the presiding officers of the Authority have pronounced the said order.



21. This decision shall mutatis mutandis apply to cases mentioned in para 1 of this order.
22. The secretary of the Authority is directed to take necessary action with regard to recovery of penalty amount imposed by the Authority during proceeding dated 13.10.2023 and 05.01.2024 respectively.
23. File be consigned to registry.


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.10.2024

HARERA
GURUGRAM