



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

Date of decision: 22.10.2024

S. No.	Case No.	Case Title	Appearance
1	CR/4589/2021	Dalmia Family Office Trust V/S Almonds Infrabuild Private Limited	Adv. Sagar Chawla (Complainant) Adv. Deeptanshu Jain (Respondent)
2	CR/4638/2021	Dalmia Family Office Trust V/S Almonds Infrabuild Private Limited	Adv. Sagar Chawla (Complainant) Adv. Deeptanshu Jain (Respondent)
3	CR/4639/2021	Dalmia Family Office Trust V/S Almonds Infrabuild Private Limited	Adv. Sagar Chawla (Complainant) Adv. Deeptanshu Jain (Respondent)
4	CR/4640/2021	Dalmia Family Office Trust V/S Almonds Infrabuild Private Limited	Adv. Sagar Chawla (Complainant) Adv. Deeptanshu Jain (Respondent)
5	CR/4641/2021	Dalmia Family Office Trust V/S Almonds Infrabuild Private Limited	Adv. Sagar Chawla (Complainant) Adv. Deeptanshu Jain (Respondent)
6	CR/4648/2021	Dalmia Family Office Trust V/S Almonds Infrabuild Private Limited	Adv. Sagar Chawla (Complainant) Adv. Deeptanshu Jain (Respondent)
7	CR/4649/2021	Dalmia Family Office Trust V/S Almonds Infrabuild Private Limited	Adv. Sagar Chawla (Complainant) Adv. Deeptanshu Jain (Respondent)
8	CR/4684/2021	Dalmia Family Office Trust V/S Almonds Infrabuild Private Limited	Adv. Sagar Chawla (Complainant) Adv. Deeptanshu Jain (Respondent)
9	CR/4685/2021	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 9 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 9 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/4589/2021 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 9 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 Buyer's Agreement	Unit No. and Area admeasuring	Total sale consideration in (Rs. Crore)
1	CR/4685 /2021	Dalmia Family Office Trust V/S Almonds Infrabuild Private Limited	Investment Agreement dated 03.09.2013	Allotment letter dated 03.09.2013	3052, 5 th Floor, in Tower- 3, 2150 sq. ft.	1,29,00,000/-
2	CR/4648 /2021	Dalmia Family Office Trust V/S Almonds Infrabuild Private Limited	Investment Agreement dated 03.09.2013	Allotment letter dated 03.09.2013	2041, 4 th Floor, in Tower- 2, 2585 sq. ft.	1,55,10,000/-
3	CR/4639 /2021	Dalmia Family Office Trust V/S Almonds Infrabuild Private Limited	Investment Agreement dated 03.09.2013	Allotment letter dated 03.09.2013	1042, 4 th Floor, in Tower- 1, 3150 sq. ft.	1,89,00,000/-
4	CR/4649 /2021	Dalmia Family Office Trust V/S Almonds Infrabuild Private Limited	Investment Agreement dated 03.09.2013	Allotment letter dated 03.09.2013	2051, 5 th Floor, in Tower- 2, 2585 sq. ft.	1,55,10,000/-
5	CR/4641 /2021	Dalmia Family Office Trust V/S Almonds Infrabuild Private Limited	Investment Agreement dated 03.09.2013	Allotment letter dated 03.09.2013	1052, 5 th Floor, in Tower- 1, 3150 sq. ft.	1,89,00,000/-
6	CR/4684 /2021	Dalmia Family Office Trust V/S Almonds Infrabuild Private Limited	Investment Agreement dated 03.09.2013	Allotment letter dated 03.09.2013	2052, 5 th Floor, in Tower- 2, 2585 sq. ft.	1,55,10,000/-
7	CR/4589 /2021	Dalmia Family Office Trust V/S Almonds Infrabuild Private Limited	Investment Agreement dated 03.09.2013	Allotment letter dated 03.09.2013	1031, 3 rd Floor, in Tower- 1, 3150 sq. ft.	1,89,00,000/-
8	CR/4638 /2021	Dalmia Family Office Trust V/S Almonds Infrabuild Private Limited	Investment Agreement dated 03.09.2013	Allotment letter dated 03.09.2013	1041, 4 th Floor, in Tower- 1, 3150 sq. ft.	1,89,00,000/-
9	CR/4640 /2021	Dalmia Family Office Trust V/S Almonds Infrabuild Private Limited	Investment Agreement dated 03.09.2013	Allotment letter dated 03.09.2013	1051, 5 th Floor, in Tower- 1, 3150 sq. ft.	1,89,00,000/-
Total Investment						15.15 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	Triumph	15.00	19



			Developer s			
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 2013, the respondent company had approached the complainant and informed that the respondent company, is developing a residential group housing project under the name "**ATS Tourmaline**" over a parcel of land admeasuring 10.41875 acres in Sector-109, Gurugram, Haryana (currently having RERA registration number as 41 of 2017). The respondent company through its promoter/director i.e., Mr. Getamber Anand requested the complainant for advancing a sum of Rs.15, crores in favour of the respondents for the purpose of development of the above-mentioned project.
- VI. That the complainant was assured by the respondent company that the said amount will be repaid within a period of thirty-seven (37) months with returns of 24% per annum compounded annually. The complainant was further assured that the promoter/director of the respondent company, 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.



- VII. That based on the respondent company tall claims, representations and assurances, an investment agreement dated 03.09.2013 was executed between respondent company and its promoter/director (Mr. Getamber Anand) being the Guarantor of one part and the complainant of the other part for an investment of Rs.15 Crores ("Investment Amount"). That on 03.09.2013, the complainant disbursed the entire investment amount to respondent company through RTGS (UTR No. PUNBH13246012523) and the receipt thereof was acknowledged by respondent company under the investment agreement itself.
- VIII. That in addition to the above, a sum amounting to Rs.15,15,152/-, was also deposited by the complainant towards T.D.S. with the concerned government department. Therefore, the total amount that was disbursed by the complainant amounted to Rs.15,15,15,152/- to the respondent company.
- IX. That in terms of the investment agreement, inter-alia, the following terms were agreed between the complainant and the respondent company:
- 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 the Developer shall, unconditionally and irrevocably transfers the ownership right in respect of 25,000 (Twenty-Five Thousand) 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/or its designated nominees".
- X. Thus, as per clause 2.1 of the investment agreement, in lieu of the aforesaid investment amount remitted by the complainant, respondent company agreed to unconditionally and irrevocably transfer the ownership rights in respect of 25,000 sq. feet of developed land i.e., saleable apartment space in the said project to the complainant. Subsequently 09 (nine) Flats



in the said Project ("**Allotted Space**") were allotted to the Complainant, the details of which are as under:

S. No	Flat No.	Area (sq. ft.)
1.	3052	2150
2.	2041	2585
3.	2052	2585
4.	2051	2585
5.	1031	3150
6.	1042	3150
7.	1041	3150
8.	1051	3150
9.	1052	3150
Total Area		25000 (approx.)

- XI. As per clause 5.1 of the investment agreement, it was agreed that respondent company shall buy back the ownership rights in respect of aforesaid 25,000 sq. ft. of apartment space as mentioned in clause 2.1, for a net consideration of Rs.29,17,13,472/- ("Minimum Repayment Amount"), within a period of 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 24% p.a. compounded annually on the investment amount for the period of thirty-seven (37) months. Under clause 5.2 it was further agreed that on the date of repayment, if the market rate of apartment is more than Rs.11,669/- per sq. ft. of saleable area ("additional amount"), in that case the additional amount for the aforesaid area of 25,000 sq. ft. in excess of Rs.11,669/- shall also be distributed in the manner agreed in clause 5.2 of the Investment Agreement;
- XII. Further, as per clause 3.1 of the investment agreement, it was agreed that the complainant shall have an exclusive charge on an area of 50,000 sq. ft.



("Security Charge") of developed saleable area in the said project as security for repayment of the investment amount. 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, even after eight (8) years of execution of the investment agreement, neither the allotment letters for the same have been issued by respondent company nor the relevant details, as assured under the investment agreement, have been provided to the complainant till date. Further, pursuant to clause 3.4 of the investment agreement, respondent company issued two post-dated cheques (dated 37 months from the date of disbursement of the investment amount) amounting to Rs.15 Crores and Rs.14,17,13,472/- respectively in favour of the complainant representing the minimum repayment amount.

XIII. That additionally, as per clause 5.5 of the investment agreement, the promoter/director of the respondent company, Mr. Getamber Anand, being the Guarantor agreed to execute an unconditional, absolute and irrevocable personal guarantee in favour of the complainant, guaranteeing payment of the minimum repayment amount along with additional amount under the investment agreement. That accordingly, the promoter/director of the respondent company executed a separate guarantee agreement dated 03.09.2013, giving his personal guarantee in terms of clause 5.5 of the investment agreement.

XIV. That in accordance with clause 3.4 of the terms of the investment agreement dated 03.09.2013, respondent company executed a guarantee agreement dated 03.09.2013 in favour of the complainant ("Corporate Guarantee Agreement"). It is submitted that the said corporate guarantee



agreement was executed to further secure the payment obligations of the respondent company under the investment agreement.

- XV. That it was further represented by the respondent company accused persons that upon failure of the respondent company to buy back the said flats on the scheduled dates of payment, at the fixed rates, the complainant shall also have an unconditional and irrevocable right to sell the aforesaid flats, without any prior consent of the respondent company (Ref: 'Events of Default' Clause 6.3). Further, it was also represented that the ownership rights over the aforesaid allotted space and security charge area would be relinquished/released by the complainant only upon payment of complete dues under the investment agreements (Ref: Clause 5.7) by the respondent company and that the respondent company had no subsisting rights over the allotted space and security charge area, until the allotted flats were bought back as per the terms of the agreements by the respondent company.
- XVI. 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, respondent company admittedly failed to pay the minimum repayment amount to the complainant. Instead of paying the minimum repayment amount to the complainant when it fell due, the respondent company through its promoter/director approached the complainant and requested for an extension of time for repayment of the minimum repayment amount.
- XVII. That consequently, on 30.04.2018, based on the representations and assurances of the respondent company regarding payment, a supplemental agreement was executed between the complainant of one part and, respondent company and its promoter/director (guarantor) of

the other part ("first supplemental agreement") whereby the complainant agreed to provide an extension to respondent company, for repayment till 01.10.2018 ("revised repayment date").

- XVIII. However, on 01.10.2018 (the revised repayment date as per the first supplemental agreement), respondent company yet again defaulted in payment of the agreed revised minimum repayment amount (as defined in the first supplemental agreement) to the complainant, in breach of its payment obligations under the first supplemental agreement. Instead of remitting the payment, the respondent company approached the complainant once again and requested for further time for repayment.
- XIX. That based on the respondent company's assurances and representations, another supplemental agreement dated 18.12.2018 was executed between the complainant of one part and respondent company of the other part ("second supplemental agreement"), whereby the date of repayment was further extended till 30.06.2019 ("Modified Repayment Date"). Accordingly, the promoter/director of the respondent company and the respondent company also executed fresh guarantee agreements i.e. personal guarantee agreement and corporate guarantee agreement dated 20.12.2018 in favour of the complainant replacing the two earlier guarantee agreements dated 03.09.2013.
- XX. That again instead of making the payment due under the second supplemental agreement, the respondent company 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 respondent company amicably, agreed to respondent company's request for another supplemental agreement



dated 18.10.2019 was executed between the complainant, respondent company and its promoter/director ("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").

XXI. That accordingly, vide two separate guarantee agreements dated 18.10.2019, the corporate guarantee and the personal guarantee both dated 20.12.2018, were replaced and modified by fresh agreements executed by respondent company and the promoter/director of the respondent company. By the said corporate guarantee agreement, respondent company inter-alia guaranteed the repayment of enhanced modified minimum repayment amount and fulfilment of other obligations by respondent company as mentioned in the investment agreement. Therefore, it is clear that the corporate guarantee agreement dated 18.10.2019 was 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, the promoter/director of the respondent company also guaranteed the repayment of enhanced modified minimum repayment amount and fulfilment of other obligations by respondent company as mentioned in the investment agreement read with supplemental agreements thereto, and further guaranteed to make the said payments personally in case of a default in repayment by respondent company.

XXII. Pertinently, in terms of the third supplemental agreement, the extended modified repayment date for payment of enhanced modified minimum repayment amount of Rs.55,45,89,865/- was 31.03.2020 and thereafter, the three (3) months cure period as per clause 6.2/6.3 of the investment



agreement dated 03.09.2013 also expired. However, admittedly till date, respondent company has not paid the admitted enhanced modified minimum repayment amount to the complainant, nor has respondent company discharged any other obligations as agreed in the investment agreement read with supplemental agreements thereto.

XXIII. That there were numerous 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 under the agreements executed with the complainant. In furtherance thereof, in one such phase of discussions in May 2020 a draft of the 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 respondent company, owing to a lack of consensus ad idem between the parties, the same were neither finalised nor signed by either of the parties, and the parties could not arrive at any agreement.

XXIV. That the respondent company was granted occupation certificate for the said project dated 10.05.2019 from the competent authority. That by virtue of the investment agreement, the respondent company executed various allotment letters in favor of the complainant. Similarly, the respondent company executed an allotment letter dated 03.09.2013 in favor of the complainant, wherein the complainant was allotted an apartment bearing no. 1031 on the 3rd floor of tower 1, having super built-up area of 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/-. That the complainants 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.

- XXV. That as per the clause 9.2 of the allotment letter cum builder buyer agreement (BBA) executed between the parties, the possession of the said residential apartment was to be offered to the complainant by the respondent company within a period of 45 months (including the grace period of 3 months) from the date of the allotment letter.
- XXVI. Therefore, by bare perusal of the above-mentioned clause enunciating the deemed date of possession of the said residential unit, it can be stated that the respondent company was under the obligation to deliver the said apartment unit on 03.06.2017 (including the grace period of 3 months). However, the respondent company even after receiving the occupational certificate has failed to deliver the possession of the said unit to the complainant. The respondent company has delayed the delivery of the possession of the said unit by almost 4.5 years. Therefore, it would not be out of place to state that the respondent company is deficient in rendering its services and after extracting 100% of the sale consideration from the complainant has diverted the funds of the project for personal benefits. This clearly shows the ulterior motive of the respondent company and also demonstrates the unfair trade practices and restrictive trade practices under the provisions of the Act, 2016.
- XXVII. That as per section 18 of the Act, 2016, where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession. The word 'shall' indicates that this provision is mandatory and it is the absolute right of the allottee/homebuyer which accrues on account of promoter's failure either to complete the apartment or to give its possession in accordance



with the terms of the agreement for sale or on the date specified therein for completion of it. Therefore, the complainant is squarely covered by section 18 of the Act of 2016 and is entitled to seek delay possession charges for every month of delay from the respondent.

XXVIII. That even after the expiry of almost 4.5 years, the respondent company has failed to provide the possession of the said residential apartment to the complainant despite receiving the occupational certificate from the competent authority on 10.05.2019. Despite the failure at the part of the respondent company, 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 sale consideration of the said unit has been duly paid by virtue of the "Investment Agreement".

XXIX. That the complainant in spite of multiple attempts having been made time and again to amicable 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. It is submitted that 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 1031 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 Hon'ble Authority for proper adjudication of captioned complaint as the complainant has deliberately concealed various vital information and documents from this Hon'ble 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 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. 1 of 2021 arising out of same cause of action, i.e., the agreement/investment agreement dated 03.09.2013 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 03.09.2013. It is submitted that in terms of the Investment Agreement, the complainant invested Rs.15,00,00,000/- in the project and as the respondent was to transfer the ownership right in respect of 25,000/- sq. ft. of the saleable apartment space in the project. Accordingly, the respondent allotted 9 (nine) units in the name of complainant including the unit mentioned in the captioned complaint. Further, under the terms and conditions of the investment agreement, the respondent undertook to buyback the ownership rights in respect 25,000/- sq. ft. of the saleable apartment space. Simultaneously, BBA was executed between the parties wherein the respondent undertook to repay Rs.20,96,60,000/- in forty two (42) months and the complainant



promised to release the security to the complainant and transfer all the rights with respect to the said units back in the name of respondent company for sale in open market. It is respectfully submitted that on conjoint reading of both the aforesaid agreements, it is aptly clear that the FBA is a part of just a loan transaction executed between an investor and a developer and such a 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.42,27,21,249/- on or before 01.10.2018.
- viii. That on 18.12.2019, both the parties once again mutually agreed to extend the date of re-payment of buyback amount and executed second supplementary agreement dated 18.12.2019. 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.48,39,52,332/- to the complainant.
- ix. That again on 18.10.2019, both the parties again mutually agreed to extend the date of re-payment of buy back amount and executed third supplemental agreement dated 18.10.2019. in terms of the third



supplementary agreement, it is once again mutually decided by the parties to extend the date of repayment of principal amount along with interest from 30.06.2019 to 31.03.2020. The respondent agreed to repay the revised buy back price along with additional interest for the extended period i.e., Rs.55,45,89,865/- 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. That some of the restrictions being imposed by the government of India are in effect, even as on date. It is submitted that due to 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 six (6) 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 03.09.2013, invested an amount of Rs.15 crore with the respondent for construction and development of a project. In respect of the loan amount advanced by the complainant, the complainant herein and "Mr. Getamber Anand" (as "Guarantor") entered into a Guarantee Agreement dated 03.09.2013. 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 i.e., by 03.10.2016 and as a security of the loan amount, allotted 9 units for a total area admeasuring 25,000 sq. ft. in the proposed project of the respondent company namely "ATS Tourmaline" situated in sector- 109 Gurugram vide separate allotment letters dated 03.09.2013. After the lapse of due date of repayment i.e., 03.10.2016, 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 03.09.2013, 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.15 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 loan amount, an agreement was executed between the parties on 03.09.2013 and a Guarantee Agreement was also executed on the same date 9 allotment letters separately were issued on the same date i.e., 03.09.2013. Pertinently, vide said agreement, the respondent company agreed to sell and transfer in favour of the complainant, nine fully developed flats in the subject project for an area aggregating 25,000 sq. ft. The consideration of the said transaction was fixed as Rs. 15 crores which was agreed to be paid by the complainant through RTGS (UTR no. PUNBH13246012523 dated 03.09.2013) for credit to the developer account no. 01812000008156 maintained with Kotak Mahindra Bank Limited, Sector- 18, Noida. Also, Mr. Getamber Anand executed a personal guarantee vide guarantee agreement dated 03.09.2013 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 that in case the respondent company abandons the project or fails to complete the project within 42

months with a grace period of 3 months from the date of this allotment letter i.e., on or before 03.06.2017, the allotment shall stand terminated automatically and the respondent company shall refund the amounts received by it from the complainant along with an additional sum of Rs.10,96,60,000/-. Further, pursuant to clause E of the third supplementary agreement 18.10.2019, respondent company issued a post-dated cheque bearing no. 007999 dated 31.03.2020 in favour of the complainant, representing the buyback price. 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. 4589/2021, the respondent company executed allotment letter dated 03.09.2013 in favor of the complainant, wherein an apartment bearing no. 1031 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. 1 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 sectary 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