

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

Date of decision:	22.10.2024
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S. No.	Case No.	Case Title	Appearance
1	CR/4812/2021	Dalmia Family Office Trust V/S Anand Divine Private Limited	Adv. Sagar Chawla (Complainant) Adv. Deeptanshu Jain (Respondent)
2	CR/4808/2021	Dalmia Family Office Trust V/S Anand Divine Private Limited	Adv. Sagar Chawla (Complainant) Adv. Deeptanshu Jain (Respondent)
3	CR/4787/2021	Dalmia Family Office Trust V/S Anand Divine Private Limited	Adv. Sagar Chawla (Complainant) Adv. Deeptanshu Jain (Respondent)
4	CR/4774/2021	Dalmia Family Office Trust V/S Anand Divine Private Limited	Adv. Sagar Chawla (Complainant) Adv. Deeptanshu Jain (Respondent)
5	CR/4789/2021	Dalmia Family Office Trust V/S Anand Divine Private Limited	Adv. Sagar Chawla (Complainant) Adv. Deeptanshu Jain (Respondent)
6	CR/4754/2021	Dalmia Family Office Trust V/S Anand Divine Private Limited	Adv. Sagar Chawla (Complainant) Adv. Deeptanshu Jain (Respondent)
7	CR/4803/2021	Dalmia Family Office Trust V/S Anand Divine Private Limited	Adv. Sagar Chawla (Complainant) Adv. Deeptanshu Jain (Respondent)
8	CR/4804/2021	Dalmia Family Office Trust V/S Anand Divine Private Limited	Adv. Sagar Chawla (Complainant) Adv. Deeptanshu Jain (Respondent)
9	CR/4805/2021	Dalmia Family Office Trust V/S Anand Divine Private Limited	Adv. Sagar Chawla (Complainant) Adv. Deeptanshu Jain

S. No.	Case No.	Case Title	Appearance
			(Respondent)
10	CR/4810/2021	Dalmia Family Office Trust V/S Anand Divine Private Limited	Adv. Sagar Chawla (Complainant) Adv. Deeptanshu Jain (Respondent)
11	CR/4809/2021	Dalmia Family Office Trust V/S Anand Divine Private Limited	Adv. Sagar Chawla (Complainant) Adv. Deeptanshu Jain (Respondent)
12	CR/4776/2021	Dalmia Family Office Trust V/S Anand Divine Private Limited	Adv. Sagar Chawla (Complainant) Adv. Deeptanshu Jain (Respondent)
13	CR/4788/2021	Dalmia Family Office Trust V/S Anand Divine Private Limited	Adv. Sagar Chawla (Complainant) Adv. Deeptanshu Jain (Respondent)
14	CR/4777/2021	Dalmia Family Office Trust V/S Anand Divine Private Limited	Adv. Sagar Chawla (Complainant) Adv. Deeptanshu Jain (Respondent)
15	CR/4811/2021	Dalmia Family Office Trust V/S Anand Divine Private Limited	Adv. Sagar Chawla (Complainant) Adv. Deeptanshu Jain (Respondent)
16	CR/4778/2021	Dalmia Family Office Trust V/S Anand Divine Private Limited	Adv. Sagar Chawla (Complainant) Adv. Deeptanshu Jain (Respondent)
17	CR/4751/2021	Dalmia Family Office Trust V/S Anand Divine Private Limited	Adv. Sagar Chawla (Complainant) Adv. Deeptanshu Jain (Respondent)
18	CR/4749/2021	Dalmia Family Office Trust V/S Anand Divine Private Limited	Adv. Sagar Chawla (Complainant) Adv. Deeptanshu Jain (Respondent)
19	CR/4775/2021	Dalmia Family Office Trust V/S	Adv. Sagar Chawla (Complainant)

S. No.	Case No.	Case Title	Appearance
		Anand Divine Private Limited	Adv. Deeptanshu Jain (Respondent)

CORAM:

Shri Arun Kumar

Chairman

Shri Vijay Kumar Goyal

Member

Shri Ashok Sangwan

Member

Shri Sanjeev Kumar Arora

Member

ORDER

1. This order shall dispose off all the 19 complaints titled as *Dalmia Family Office Trust V/s Anand Divine Private Limited* 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 Anand Divine Private Limited*, so for the disposal of the same, the facts of complaint bearing no. CR/4812/2021 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 19 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/4812 /2021	Dalmia Family Office Trust V/S Anand Divine Private Limited	Loan Agreement dated 11.06.2015	11.06.2015	8042, 4 th Floor, in Tower- 8, 3150 sq. ft.	78,94,737/-
2	CR/4808 /2021	Dalmia Family Office Trust V/S Anand Divine Private Limited	Loan Agreement dated 11.06.2015	11.06.2015	6032, 3 rd Floor, in Tower- 6, 3150 sq. ft.	78,94,737/-
3	CR/4787 /2021	Dalmia Family Office Trust V/S Anand Divine Private Limited	Loan Agreement dated 11.06.2015	11.06.2015	5222, 22 nd Floor, in Tower- 5, 3150 sq. ft.	78,94,737/-
4	CR/4774 /2021	Dalmia Family Office Trust V/S Anand Divine Private Limited	Loan Agreement dated 11.06.2015	11.06.2015	5181, 18 th Floor, in Tower- 5, 3150 sq. ft.	78,94,734/-
5	CR/4789 /2021	Dalmia Family Office Trust V/S Anand Divine Private Limited	Loan Agreement dated 11.06.2015	11.06.2015	6012, 1 st Floor, in Tower- 6, 3150 sq. ft.	78,94,737/-
6	CR/4754 /2021	Dalmia Family Office Trust V/S Anand Divine Private Limited	Loan Agreement dated 11.06.2015	11.06.2015	5172, 17 th Floor, in Tower- 5, 3150 sq. ft.	78,94,737/-
7	CR/4803 /2021	Dalmia Family Office Trust V/S Anand Divine Private Limited	Loan Agreement dated 11.06.2015	11.06.2015	6021, 2 nd Floor, in Tower- 6, 3150 sq. ft.	78,94,737/-
8	CR/4804 /2021	Dalmia Family Office Trust V/S Anand Divine Private Limited	Loan Agreement dated 11.06.2015	11.06.2015	6022, 2 nd Floor, in Tower- 6, 3150 sq. ft.	78,94,737/-
9	CR/4805 /2021	Dalmia Family Office Trust V/S Anand Divine Private Limited	Loan Agreement dated 11.06.2015	11.06.2015	6031, 3 rd Floor, in Tower- 6, 3150 sq. ft.	78,94,737/-
10	CR/4810 /2021	Dalmia Family Office Trust V/S Anand Divine Private Limited	Loan Agreement	11.06.2015	7101, 10 th Floor, in	78,94,737/-

			dated 11.06.2015		Tower- 7, 3150 sq. ft.	
11	CR/4809 /2021	Dalmia Family Office Trust V/S Anand Divine Private Limited	Loan Agreement dated 11.06.2015	11.06.2015	6262, 26 th Floor, in Tower- 6, 3150 sq. ft.	78,94,737/-
12	CR/4776 /2021	Dalmia Family Office Trust V/S Anand Divine Private Limited	Loan Agreement dated 11.06.2015	11.06.2015	5211, 21 st Floor, in Tower- 5, 3150 sq. ft.	78,94,737/-
13	CR/4788 /2021	Dalmia Family Office Trust V/S Anand Divine Private Limited	Loan Agreement dated 11.06.2015	11.06.2015	6011, 1 st Floor, in Tower- 6, 3150 sq. ft.	78,94,737/-
14	CR/4777 /2021	Dalmia Family Office Trust V/S Anand Divine Private Limited	Loan Agreement dated 11.06.2015	11.06.2015	5212, 21 st Floor, in Tower- 5, 3150 sq. ft.	78,94,737/-
15	CR/4811 /2021	Dalmia Family Office Trust V/S Anand Divine Private Limited	Loan Agreement dated 11.06.2015	11.06.2015	8041, 4 th Floor, in Tower- 8, 3150 sq. ft.	78,94,737/-
16	CR/4778 /2021	Dalmia Family Office Trust V/S Anand Divine Private Limited	Loan Agreement dated 11.06.2015	11.06.2015	5221, 22 nd Floor, in Tower- 5, 3150 sq. ft.	78,94,737/-
17	CR/4751 /2021	Dalmia Family Office Trust V/S Anand Divine Private Limited	Loan Agreement dated 11.06.2015	11.06.2015	4261, 26 th Floor, in Tower- 4, 2290 sq. ft.	78,94,737/-
18	CR/4749 /2021	Dalmia Family Office Trust V/S Anand Divine Private Limited	Loan Agreement dated 11.06.2015	11.06.2015	5061, 6 th Floor, in Tower- 5, 3150 sq. ft.	78,94,737/-
19	CR/4775 /2021	Dalmia Family Office Trust V/S Anand Divine Private Limited	Loan Agreement dated 11.06.2015	11.06.2015	5202, 20 th Floor, in Tower- 5, 3150 sq. ft.	78,94,737/-
Total Investment						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 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 2015, the respondent company had approached the complainant and informed that the respondent company, is developing a residential group housing project under the name "**Triumph**" over a parcel of land admeasuring 14.093 acres in Sector-104, Gurugram, Haryana. 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. The promoter/director of the respondent company assured the complainant that the loan amount will be refunded by respondent company within a period of forty-two (42) months from the date of disbursement along with interest @20% per annum on the loan amount payable on a quarterly basis.
- VI. That based on the respondent company's representations, guarantees and assurances, the complainant agreed to disburse a sum amounting to Rs15,00,00,000/- as secured loan to respondent company. Accordingly, a



loan agreement dated 11.06.2015, was executed between respondent company and the complainant. The said loan agreement inter-alia stipulated the following mutually agreed terms between the respondent company and the complainant.

- As per clause 1.2 of the loan agreement, the complainant agreed to disburse the loan amount within a period of seven (7) days from the execution of the loan agreement.
- In terms of clause 2.1, as a security towards the loan amount, respondent company agreed to allot nineteen (19) flats with an aggregate area of 58,990 sq. ft., in the said project on fully paid basis to complainant. It was also agreed that individual allotment letters will be issued to the complainant. Details of the said flats were laid down in annexure- C to the loan agreement.
- Pertinently, under clause 2.4 of the loan agreement, it was clearly stipulated that respondent company shall not be entitled to create any third-party rights in the said flats prior to repayment of the loan amount along with repayment of other amounts due to the complainant in terms of the loan agreement.
- The nineteen (19) flats in the said project, with an aggregate area of 58,990 sq. ft., allotted to the claimant under the loan agreement are as follows:-

S. No	Unit No.	Area (sq. ft.)
1.	5061	3,150
2.	6031	3,150
3.	6032	3,150
4.	6021	3,150
5.	6022	3,150
6.	6011	3,150
7.	6012	3,150

8.	5202	3,150
9.	5212	3,150
10.	8041	3,150
11.	8042	3,150
12.	5211	3,150
13.	5221	3,150
14.	5222	3,150
15.	6262	3,150
16.	4261	2,290
17.	5181	3,150
18.	5172	3,150
19.	7101	3,150
Total		58,990 (approx)

- Under clauses 2.2 and 2.3 of the loan agreement, respondent company also agreed to deposit an undated cheque equivalent to the loan amount with the complainant. Further, respondent company undertook to simultaneously issue post-dated cheques in favour of the complainant for payment of interest on the loan amount payable in terms of the loan agreement as per the details set forth in annexure D thereof.
- Under Clause 2.1.2 of the loan agreement, the promoter/director of the respondent company agreed to give his personal guarantee in favour of the complainant.
- Under clauses 5.1 and 5.2 of the loan agreement, respondent company agreed to refund the loan amount within a period of forty-two (42) months from the date of disbursement of the loan amount along with interest calculated @ 20% per annum on the loan amount payable on a quarterly basis. It is further highlighted that as per Clause 5.3, the interest was to be paid by respondent company to the complainant on a quarterly basis, within two (2) days of close of every financial quarter and in case of delay in payment of interest on its due date, respondent

company was made liable to pay default interest @ 2% per month for the period of default on the amount so defaulted.

- Pertinently, under clause 17 of the loan agreement, it is categorically stated that no amendment or change hereof or addition hereto shall be effective or binding on the parties hereto unless set forth in writing and executed by the respective duly authorized representatives of each of the parties to the loan agreement

- VII. That in terms of clause 2.1.2 of the loan agreement, on 11.06.2015, the promoter/director of the respondent company executed a guarantee agreement in favour of the complainant, guaranteeing payment of the admitted loan amount along with interest and other amounts under the loan agreement. Accordingly, the complainant disbursed an amount of Rs.15,00,00,000/- as secured loan to respondent company through RTGS on 11.06.2015.
- VIII. However, it is submitted that while the respondent company remitted the agreed interest being calculated @ 20% per annum on the loan amount on quarterly basis only till 31.12.2017 (that too with interim delays), thereafter, the respondent company failed to pay any amount towards the interest component as well as the principal amount, despite the repayment having become due as per the terms of the loan agreement.
- IX. That at the expiry of forty-two (42) months, (i.e., 10 December 2018), instead of meeting the timelines for repayment under the loan agreement, the respondent company defaulted in the payments of interest as well as the principal amount and the respondent company approached the complainant with a request for an extension of time for



repayment of the admitted outstanding dues payable by the respondent company to the complainant under the loan agreement. Resultantly, based on the assurances and representations of the respondent company, the complainant and the respondent company executed a supplemental agreement to the loan agreement, dated 18.12.2018 ("Supplemental Agreement"), whereby the complainant agreed for an extension of time for repayment of the dues by respondent company under the loan agreement subject to the understanding that all other terms and conditions of the loan agreement shall remain the same except that interest shall now be levied @18.5% per annum on the loan amount payable on quarterly basis w.e.f. 15.12.2018. As per clause I of the said supplemental agreement, the date of repayment of the loan amount was extended till 30.06.2019 ("Modified Repayment Date").

- X. That the promoter/director of the respondent company executed a fresh guarantee agreement dated 20.12.2018 in favour of the complainant, in his capacity as personal guarantor, replacing and modifying the earlier guarantee agreement dated 11.06.2015.
- XI. However, even after the execution of the supplemental agreement, till date respondent company has only paid the agreed interest till March 2018 (that too with interim delays), and has been in continuous default in respect of its admitted and crystallized payment obligations thereafter under the loan agreement read with the supplemental agreement. Moreover, even after several requests and reminders, respondent company has failed to pay any interest on the loan amount. Be that as it may, even the extended time period as per the supplemental agreement till 30.06.2019 to refund the loan amount has also long expired and

- respondent company continues to be in default till date. Succinctly, even after repeated demands, respondent company has failed to repay the loan Amount with interest.
- XII. That multiple events of default have arisen as per clause 7 of the loan agreement, in view of respondent company's failure to repay the loan amount along with interest on or before the modified repayment date (30 June 2019). It is an admitted position that the respondent company in breach of their obligations failed and neglected to pay to the complainant, the entire admitted loan amount on 30.06.2019 or even thereafter, despite requests and reminders from the complainant. The respondent company also represented that upon the loan amount becoming due and payable, the complainant shall have the right to enforce the charge in the aforesaid apartments, by entering upon the apartments and taking possession of these apartments (Ref: Clause 7.16(ii)).
- XIII. That upon failing to meet their payment obligations even on the modified repayment date being 30.06.2019, the respondent company again approached the complainant with yet another request for extension of the dates for repayment of the amounts under the agreement(s) between the respondent company and the complainant.
- XIV. 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 company 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 respondent company, 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 company to the complainant.

- XV. That by virtue of the loan agreement, the respondent company executed various apartment buyer agreements (hereinafter referred as aba) in favor of the complainant. Similarly, the respondent company executed an apartment buyer agreement dated 11.06.2015 in favor of the complainant, wherein the complainant was allotted an apartment bearing no. 8042 on the 4th floor of Tower 8, having total area equivalent to 3150 sq. ft. in the residential group housing project "Triumph" situated in sector 104, Gurgaon, Haryana for a total consideration of Rs.78,94,737/-. The complainant till date, have paid the entire consideration, i.e. a sum of Rs.78,94,737/- (inclusive of all the other charges) for the said allotted residential unit as per the apartment buyer agreement.
- XVI. That the respondent company was granted occupation certificate for the said project dated 29.05.2019 from the competent authority.
- XVII. That as per the clause 18 of the buyer agreement 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 36 months with a grace period of 6 months from the date of start of the construction of the particular tower in which the registration of the allotment is made.



- XVIII. 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 11.12.2018. 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 3 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 money 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.
- XIX. 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.
- XX. That even after the expiry of almost 3 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 29.05.2019. 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 "Loan Agreement".

- XXI. 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 8042 on 4th floor of tower 8 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 15.06.2022 in Arbitration case bearing nos. 7, 8 and 9 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. 8 of 2021 arising out of same cause of action, i.e., the agreement/investment agreement dated 15.06.2015 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 15.06.2015. 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 allotted 19 (nineteen) units in the name of complainant including the unit mentioned in the captioned complaint as security. Simultaneously, the complainant and the respondent had executed separate apartment buyer's agreement for allotment of all 19 units mentioned on the annexure C of the loan agreement. Further, under the terms and conditions of the loan agreement, the complainant promised to surrender its allotment towards the said units in favour of the respondent upon repayment of the loan amount along with interest as per the loan agreement. It is respectfully submitted that on bare perusal of the loan agreement, it is aptly clear that the complainant had no intension 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 18.12.2018. 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 loan amount to 30.06.2019.
- viii. 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.
- ix. 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.

- x. 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 15.06.2022 and thereby, the Arbitral Tribunal has secured the rights of the complainant.
- xi. 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.
- xii. 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.

- xiii. 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 29.05.2019.
- xiv. 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 15.06.2022 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.

- xv. Moreover, it is crystal clear that the said apartment buyer agreement annexed along with the complaint was executed in pursuance of the loan agreement itself. That the said apartment buyer agreement does not create any separate right in favour of the complainant and instead it is to be read with the loan agreement in entirety. It is submitted that the complainant under the garb of apartment buyer agreement with malafide intent is trying to mislead this hon'ble authority when its rights are to be read in entirety with the loan agreement which have already been amended by the order dated 15.06.2022 passed the Ld. Sole Arbitrator. Therefore, the present complaint is liable to be dismissed in limine with exemplary cost upon the complainant.
- xvi. Without prejudice to the submissions made hereinabove, it is humbly submitted that no prejudice whatsoever would be caused to the complainant, if the captioned complaint is dismissed by this Hon'ble Authority as the interest of the complainant is already protected by the Ld. SOLE ARBITRATOR. On the contrary if the prayer sought by the complainant in the captioned complaint is allowed, grave and irreparable harm would be caused to the respondent.

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 loan agreement dated 11.06.2015, 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 11.06.2015. The respondent was obligated to repay the said amount within a period of 42 months from the date of disbursement of the loan amount and as a security of the loan amount, allotted 19 units for a total area admeasuring 58,990 sq. ft. in the proposed project of the respondent company namely "Triumph" situated in sector- 104 Gurugram vide separate buyer's agreement dated 11.06.2015. After the lapse of due date of repayment i.e., 10.12.2018, the parties again entered into a supplemental agreement dated 18.12.2018, for extension of period of repayment till 30.06.2019. In lieu of supplemental agreement dated 18.12.2018, a guarantee agreement was executed on 20.12.2018 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 "Triumph" situated in sector- 104 Gurugram. To secure the repayment of the aforementioned loan amount, an

agreement was executed between the parties on 11.06.2015 and a Guarantee Agreement was also executed on the same date and 19 buyer's agreement executed separately on i.e., 11.06.2015. 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 58,990 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 on 11.06.2015. Also, Mr. Getamber Anand executed a personal guarantee vide guarantee agreement dated 11.06.2015 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 18 of the buyer's agreement, it was agreed to complete the construction of the apartment within 36 months with a grace period of 6 months from the date of start of construction of the particular tower i.e., on or before 10.12.2018. Further, pursuant to clause II of the supplementary agreement 18.12.2018, respondent company issued a post-dated cheques to the lender for repayment of the principal amount and revised interest on the loan amount till the modified repayment date, as more particularly described in annexure I of this supplementary agreement. However, the respondent company failed to pay the agreed amount in agreed manner i.e., by 30.06.2019. In lieu of supplemental agreement dated 18.12.2018, a guarantee agreement was executed on 20.12.2018 between the parties i.e., complainant herein and "Mr. Getamber Anand" as "Guarantor. 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 agreement, the respondent company executed various apartment buyer's agreement (hereinafter referred as ABA) in favor of the complainant. In respect

of the lead case bearing no. 4812/2021, the respondent company executed apartment buyer's agreement dated 117.06.2015 in favor of the complainant, wherein an apartment bearing no. 8042 on the 4th floor of tower 8, having total area equivalent to 3150 sq. ft. in the residential group housing project "Triumph" situated in Sector 104, Gurgaon, Haryana for a total consideration of Rs.78,94,737/- 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 15.06.2022 in Arbitration cases bearing no. 7, 8 and 9 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. 8 of 2021 arising out of same cause of action, i.e., the apartment 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 15.06.2022 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