



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

Date of decision: 22.10.2024

S. No.	Case No.	Case Title	Appearance
1	CR/4741/2021	Dalmia Family Office Trust V/S Anand Divine Private Limited	Adv. Sagar Chawla (Complainant) Adv. Deeptanshu Jain (Respondent)
2	CR/4742/2021	Dalmia Family Office Trust V/S Anand Divine Private Limited	Adv. Sagar Chawla (Complainant) Adv. Deeptanshu Jain (Respondent)
3	CR/4743/2021	Dalmia Family Office Trust V/S Anand Divine Private Limited	Adv. Sagar Chawla (Complainant) Adv. Deeptanshu Jain (Respondent)
4	CR/4744/2021	Dalmia Family Office Trust V/S Anand Divine Private Limited	Adv. Sagar Chawla (Complainant) Adv. Deeptanshu Jain (Respondent)
5	CR/4745/2021	Dalmia Family Office Trust V/S Anand Divine Private Limited	Adv. Sagar Chawla (Complainant) Adv. Deeptanshu Jain (Respondent)
6	CR/4752/2021	Dalmia Family Office Trust V/S Anand Divine Private Limited	Adv. Sagar Chawla (Complainant) Adv. Deeptanshu Jain (Respondent)
7	CR/4753/2021	Dalmia Family Office Trust V/S Anand Divine Private Limited	Adv. Sagar Chawla (Complainant) Adv. Deeptanshu Jain (Respondent)

CORAM:

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

Chairman
Member
Member
Member

ORDER

1. This order shall dispose off all the 7 complaints titled as ***Dalmia Family Office Trust V/s 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 7 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/4741/2021 are considered. The fulcrum of the issue involved in all these cases pertains alleged to failure on the part of the respondent/promoter to deliver timely possession of the unit in question and consequent award for delay possession charges as per provisions of section 18 of the Real Estate (Regulation and Development) Act, 2016. The details of all the 7 case numbers, type of agreement, and date of execution of buyer's agreement, unit no., unit area and total sale consideration are given below in the tabular form.

S. No.	Case No.	Case Title	Type of Agreement and date	Date of execution of Flat Buyer's Agreement	Unit No. and Area admeasuring	Total sale consideration in (Rs. Crore)
1	CR/4741 /2021	Dalmia Family Office Trust V/S Anand Divine Private Limited	Buy Back Agreement dated 11.06.2015	11.06.2015	2031, 3 rd Floor, in Tower- 2, 2290 sq. ft.	1,42,85,714 /-

2	CR/4742 /2021	Dalmia Family Office Trust V/S Anand Divine Private Limited	Buy Back Agreement dated 11.06.2015	11.06.2015	2032, 3 rd Floor, in Tower- 2, 2290 sq. ft.	1,42,85,714 /-
3	CR/4743 /2021	Dalmia Family Office Trust V/S Anand Divine Private Limited	Buy Back Agreement dated 11.06.2015	11.06.2015	5011, 1 st Floor, in Tower- 5, 3150 sq. ft.	1,42,85,716 /-
4	CR/4744 /2021	Dalmia Family Office Trust V/S Anand Divine Private Limited	Buy Back Agreement dated 11.06.2015	11.06.2015	5021, 2 nd Floor, in Tower- 5, 3150 sq. ft.	1,42,85,714 /-
5	CR/4745 /2021	Dalmia Family Office Trust V/S Anand Divine Private Limited	Buy Back Agreement dated 11.06.2015	11.06.2015	5022, 2 nd Floor, in Tower- 5, 3150 sq. ft.	1,42,85,714 /-
6	CR/4752 /2021	Dalmia Family Office Trust V/S Anand Divine Private Limited	Buy Back Agreement dated 11.06.2015	11.06.2015	5032, 3 rd Floor, in Tower- 5, 3150 sq. ft.	1,42,85,714 /-
7	CR/4753 /2021	Dalmia Family Office Trust V/S Anand Divine Private Limited	Buy Back Agreement dated 11.06.2015	11.06.2015	5031, 3 rd Floor, in Tower- 5, 3150 sq. ft.	1,42,85,714 /-
Total Investment						10 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 respondent company is developing a residential group housing project under the name; "Triumph" over a plot of land admeasuring 14.093 acres in Sector 104, Gurugram, and Haryana. The respondent company through its promotor/director i.e., Mr. Getamber Anand requested the complainant for advancing a sum of Rs.10 crores in favour of the respondents for the purpose of development of the above-mentioned project.
- vi. That the complainant was assured by the respondent company that in order to secure the repayment of the aforementioned amount, a flat buyer agreement (hereinafter referred to as "FBA") and simultaneously a buyback agreement (hereinafter referred as "BBA") will be executed between the parties. The Promoter/Director of the respondent company had further assured the complainant that he would act as a surety and execute a personal 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's representations and assurances, a flat buyer agreement dated 15.06.2015 ("FBA") was executed by and between respondent company and the complainant. Pertinently, in terms of the said FBA, the respondent company agreed to sell and transfer in favour of the complainant, seven (7) numbers of fully developed flats in the subject project for an area aggregating 20,330 sq. ft. as detailed in Annexure B of the FBA. The consideration of the said transaction was fixed

- as Rs.10 crores ("Purchase Consideration"), which was agreed to be paid by the complainant within seven (7) days of the date of execution of FBA.
- viii. That simultaneously as per the mutual understanding, a buy back agreement dated 15.06.2015 (hereinafter referred as BBA) was executed by and between respondent company and the complainant, whereby respondent company agreed to acquire/ buy back the said flats (seven in number) including the complainant's rights, title and interests in the aforementioned seven (7) flats by paying a sum of Rs.20,96,60,000/- ("Buy Back Price") along with payment of interest and other amounts payable in terms of the BBA, on or before 10.12.2018.
- ix. That it is pertinent to note that vide a letter dated 15.06.2015, the respondent company categorically confirmed and undertook that the security furnished shall not be released in any manner whatsoever and shall be deemed to subsist and continue in full force, unless respondent company fulfils all its obligations under the FBA and BBA. Thereafter, on 17.06.2015, the complainant disbursed the Purchase Consideration, after deducting statutory TDS to the tune of Rs.10 Lakhs to the respondent company through RTGS. That the above-said sum amounting to Rs.10 Lakhs was deposited by the complainant towards T.D.S. with the concerned government department.
- x. That as per both the agreements i.e., FBA and BBA entered between the complainant and the respondent company, the complainant was allotted the said Flats, i.e., the seven (7) numbers of fully developed flats in the said project for an area aggregating 20,355 sq. ft., as detailed in Annexure B of the FBA and BBA, are listed below:

S. No	Flat No.	Area (sq. ft.)
1.	2031	2290



2.	2032	2290
3.	5031	3150
4.	5032	3150
5.	5021	3150
6.	5022	3150
7.	5011	3150
	TOTAL	20330 (approx.)

- xi. That as per clause 3 of the FBA, it was provided that the "Developer shall complete the construction and development of the project within 42 months from execution hereof and shall offer possession of the said flats to the buyer after obtaining the occupancy certificate from the concerned authorities within the said time period of 42 months."
- xii. That as per clause 4.1 of the FBA, it was agreed that in case the respondent company abandons the project or fails to complete the project within 42 months from the date of the FBA i.e., on or before 10.12.2018, the FBA 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/-. It was further agreed that the said amounts shall be payable by the respondent company to the complainant immediately upon expiry of the said 42 months, i.e., immediately after 10.12.2018. Clause 4.2 of the FBA provided that in case of such failure to pay as per clause 4.1, the respondent company shall be liable to pay the same along with interest @2% per month for the period of delay.
- xiii. That as per clause 5.3 of the BBA, it was agreed that the aforesaid security shall be released by the complainant only upon receipt of the buyback price from the respondent company, and that upon receipt of the entire buy back price, the complainant shall also release the individual allotment letter and the flat buyer agreements of the said flats in favour of the respondent company.



- xiv. That as per clauses 14 and 15 of the FBA and BBA respectively, it was categorically agreed that the said agreements constitute the entire agreement between the parties with respect to the subject matter thereof. It was also expressly declared that no variation, amendment, modification or addition to the said agreements shall be effective or binding on any party unless set forth in writing and duly authorized by the parties thereto.
- xv. Further, under clause 7 of the FBA and clause 9 of the BBA, the respondent company agreed and undertook that they shall hold harmless the complainant against any and all actions, claims, suits, proceedings, losses, liabilities, damages, costs, charges and expenses, including legal fees and disbursements in connection therewith, incurred by the complainant, arising from or in connection with or in relation to (a) any breach of any covenant in the FBA/BBA ; (b) any breach, inaccuracy or incorrectness of any representation or warranty or agreement made or failure to perform (whether in whole or in part) any obligation required to be performed by the respondent company pursuant to the FBA/BBA. It was further agreed by the respondent company that the Indemnification rights of the complainant under the FBA/BBA are independent of, and in addition to, other rights and remedies as the complainant at law or in equity or otherwise, including the right to seek specific performance or other injunctive relief, none of which rights or remedies shall be affected or diminished thereby.
- xvi. That as is clear from a bare perusal of the above and the terms of the FBA and the BBA, the respondent company had allotted and transferred the said flats on a fully paid up and down payment basis in favour of the complainant, and as per clause 5.3, it was expressly agreed that the complainant would release the individual allotment letters and the flat

buyer agreements of the security flats in favour of the respondent company, upon receipt of the buyback price. Admittedly, the respondent company defaulted in payment of the buyback price, and the said default continues till date.

- xvii. That in terms of clause 5.1 of the BBA, the respondent company's promoter/director i.e., 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 BBA. Further, pursuant to clause 5.2 of the BBA, respondent company issued a post-dated cheque dated 10.12.2018 in favour of the complainant, representing the buyback price, drawn on Kotak Mahindra Bank.
- xviii. That however on 10.12.2018, the respondent company defaulted in paying the buyback price and instead, the respondent company approached the complainant and requested for an extension of time for payment of the buyback price along with interest. Consequently, on 18.12.2018, post discussions and based on the assurances and representations of timely payment by the respondent company, the FBA was extended by way of executing a supplemental agreement ("First Supplemental Agreement to the FBA"), whereby it was agreed to provide an extension to respondent company for payment of requisite amount till 30.06.2019 ("modified repayment date"). Under clause I of the first supplemental agreement to the FBA, it was agreed that in the event respondent company fails to construct and develop the project till the modified repayment date, respondent company shall pay an additional sum amounting to Rs.13,17,30,179/- along with the purchase consideration ("modified



- repayment amount") to the complainant on or before the modified repayment date. Further, clause V of the first supplemental agreement to FBA provided that except as modified by the instant supplemental agreement, all other terms and conditions of the FBA shall remain the same and binding between the parties.
- xix. That in addition to the above, a supplemental agreement to the BBA, dated 18.12.2018 ("first supplemental agreement to the BBA"), was also executed between the respondent company and the complainant, by which respondent company agreed to pay a sum of Rs.23,17,30,179/- ("Modified buy back amount") to the applicant /claimant on or before the modified repayment date of 30.06.2019. Further, clause VII of the first supplemental agreement to BBA provided that except as modified by the instant supplemental agreement, all other terms and conditions of the BBA shall remain the same and binding between the parties.
- xx. That, accordingly, on 20.12.2018, vide a guarantee agreement in the complainant's favour, the promoter/director of the respondent company personally guaranteed the payment of modified buy back amount along with interest and other amounts payable in terms of BBA and supplemental agreement(s), to the complainant.
- xxi. That on 30.06.2019 (the modified repayment date as per the 1st supplemental agreement to the BBA), the respondent company yet again failed to remit the modified buy back amount to the complainant and instead, the respondent company through its promoter/director i.e., Mr. Getamber Anand once again approached the complainant seeking a further extension of time for repayment by respondent company of the said amount. Based on respondent company's promoter/director assurances and representations, another supplemental agreement to the



FBA, dated 22.10.2019 ("2nd supplemental agreement to the FBA"), was executed inter se parties, whereby it was agreed to provide an extension to respondent company for payment of requisite amount till 31.03.2020 ("extended modified repayment date"). Respondent company agreed to pay an additional sum of amounting to Rs.16,55,57,144/- along with the purchase consideration ("enhanced modified repayment amount") to the complainant on or before the extended modified repayment date i.e. 31.03.2020.

xxii. That, accordingly, in view of the above, another supplemental agreement to the BBA, dated 22.10.2019 ("second supplemental agreement to the BBA") was executed between the respondent company and the complainant. In terms of clause I of the second supplemental agreement to the BBA, the respondent company agreed to pay a sum amounting to Rs.26,55,57,144/- ("enhanced modified buy back amount") to the complainant on or before the extended modified repayment date, being 31.03.2020, towards buy back of the said flats.

xxiii. That, accordingly, on 22.10.2019, the promoter/director of the respondent company again executed a fresh personal guarantee agreement in favour of the present complainant, guaranteeing payment of the enhanced modified buy back amount along with interest and other amounts admittedly payable to the complainant in terms of the BBA and supplemental agreement(s) thereto.

xxiv. That it is submitted that there were oral discussions and email exchanges 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 present complainant. In furtherance



thereof, in one such phase of discussions in May 2020, a draft memorandum of understanding ("MOU") was also exchanged between the parties. Similarly, in July 2020, another proposal was put forth, however, despite efforts to amicably resolve the defaults on the part of the respondents, owing to a lack of consensus ad idem between the parties, the same were neither finalized nor signed by either of the parties, and the parties could not arrive at any agreement on further deferring the repayment of the amounts due and payable by the respondent company to the complainant. However, admittedly till date, the respondent company has not paid the admitted extended modified repayment amount to the complainant, nor has the respondent company discharged any other obligations including providing the possession of the said apartments/units as agreed in the flat buyer agreement read with supplemental agreements thereto. It is necessary to mention here that the respondent company was granted occupation certificate for the said project on 29.05.2019 from the competent authority.

- xxv. That by virtue of the flat buyer agreement, the respondent company executed various buyer's agreement in favour of the complainant. Similarly, the respondent company executed apartment buyer agreements dated 11.06.2015 in favor of the complainant, wherein the complainant was allotted an apartment bearing no. 2031 on the 3rd floor of tower 2, having total area equivalent to 2290 sq. ft. in the residential group housing project "Triumph" situated in sector 104, Gurgaon, Haryana for a total consideration of Rs.1,42,85,714/-. That the complainant has paid the entire consideration to the tune of Rs.1,42,85,714/- including statutory TDS of Rs.1,42,857/-, for the said allotted residential unit. That as per clause 18 of the buyer's agreement 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 36 months with the 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. Hence, the due date of possession comes out to be 11.12.2018. However, the respondent company even after receiving the OC dated 29.05.2019 from the competent authority 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 which is a violation of the provisions of the Act of 2016.

- xxvi. That as per proviso to section 18 of the Act of 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.
- xxvii. 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 2031 on 3rd floor of tower 2 having saleable area of 2290 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 12.11.2021 in Arbitration case bearing nos. 4, 5 and 6 of 2021?



- iii. That it is submitted that the respondent is not filing the reply to the captioned complaint in seriatim as the complaint is not maintainable being sub-judice before the Arbitral Tribunal. However, the respondent is seeking liberty of this Authority to raise additional objections/grounds before this Authority at a later stage with the permission of this Hon'ble Authority, if so warranted. It is submitted that the complainant in the para 7 of the complaint, has wrongly stated as under:

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

- iv. That it is submitted that the complainant has deliberately concealed the pendency of Arbitration proceedings before Mr. Justice Swatenter Kumar (Retd.) in the arbitration case bearing no. 5 of 2021 arising out of same cause of action, i.e., the flat buyer agreement and buy back agreement executed between the complainant and respondent. Therefore, the captioned complaint is liable to be dismissed solely on this ground alone for making wrongful declaration on oath before this Authority. Further, the respondent reserves its right to initiate appropriate legal actions against the complainant for wrongly deposing before this Authority.
- v. That as per the mutual understanding between the Dalmia Group and ATS Group, Dalmia Group had been investing in the projects being constructed by ATS Group and as such in the intervening period from year 2013 and 2015, Dalmia Group made various investments in the projects of ATS group through separate agreements. As a matter of fact, there are three broad categories of agreements executed between Dalmia Group and ATS Group:-
- Investment Agreement;
 - Flat Buyer Agreements and Buyback Agreements;



- Loan Agreements.
- vi. That in the present case, the complainant and the respondent executed a flat buyer agreement dated 11.06.2015 and buy back agreement dated 11.06.2015. It is submitted that in terms of the FBA, the complainant invested Rs.10,00,00,000/- in the project and as security of that amount, 7 units were allotted in the name of the complainant by the respondent including the unit mentioned in the captioned complaint. Simultaneously, BBA was executed between the parties wherein the respondent undertook to re-pay 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 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 buyback price from 10.12.2018 to 30.06.2019. 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.23,17,30,179/- on or before 30.06.2019.
- viii. That on 22.10.2019, both the parties once again mutually agreed to extend the date of re-payment of loan amount and executed second



supplementary agreement dated 22.10.2019. 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 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.26,55,57,144/- to the complainant.

- ix. 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.
- x. That as a matter of fact, on 22.03.2021, before expiry of modified date of payment of buy back price, the Government of India declared nation wide lockdown of all the business and government offices. It is submitted that due to the restrictions being imposed by the government, the real estate sector was affected the most. Since the respondent was incurring huge losses, the respondent thereafter approached the complainant seeking relaxation in repayment of the loan amount. Though the parties tried to amicably settle the disputes, however the same was not resolved. It is pertinent to mention herein that the parties arrived at a holistic settlement whereby ATS Group had handed over post dated cheques and 42 units as security towards repayment of all the amounts under the various agreements executed between the parties.



- xi. 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 12.11.2021 and thereby, the Arbitral Tribunal has secured the rights of the complainant.
- xii. 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 four (4) 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.
- xiii. 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 flat buyer agreement and buy back agreement is pending adjudication before the Ld. Sole Arbitrator. Therefore, the captioned complaint is not maintainable before this Authority.

- xiv. 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.
- xv. 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 12.11.2021 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 11.06.2015, invested an amount of Rs.10 crore with the respondent for construction and development of a project. In respect of the investment amount advanced by the complainant, the complainant herein and "Mr. Getamber Anand" (as "Guarantor") entered into a Guarantee Agreement dated 11.06.2015. The respondent was obligated to repay the said amount on or before 10.12.2018, and as a security of the loan amount, allotted 7 units for a total area admeasuring 20,330 sq. ft. in the proposed project of the respondent company namely "Triumph" situated in sector- 104 Gurugram vide separate flat 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. Thereafter, the second supplemental agreement dated 22.10.2019, for again extending the period of repayment till 31.03.2020 was executed. Also, on 20.12.2018 and 22.10.2019 respectively, guarantee agreement in lieu of supplemental agreement and second supplemental agreement was executed inter se 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 promoter/director Mr. Getamber Anand requested the complainant for advancing a sum of Rs.10 crores in favour of the respondents for the purpose of development of the subject project namely "Triumph" situated in sector- 104 Gurugram. To secure the repayment of the aforementioned investment amount, a buyback agreement was executed between the parties on 11.06.2015 and a Guarantee Agreement was also executed on the same date 7 flat buyer's agreement separately were issued on the same date i.e., 11.06.2015. Pertinently, vide said agreement, the respondent company agreed to sell and transfer in favour of the complainant, seven fully developed flats in the subject project for an area aggregating 20,330 sq. ft. The consideration of the said transaction was fixed as Rs. 10 crores which was agreed to be paid by the complainant to the respondent. Also, Mr. Getamber Anand executed a personal guarantee vide guarantee agreement dated 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 4.1 of the FBA, it was agreed that in case the respondent company abandons the project or fails to complete the project within 42 months from the date of the FBA i.e., on or before 15.12.2018, the FBA 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 5.2 of the buy back agreement, respondent company issued a post-dated cheque dated 15.12.2018 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 10.12.2018. Thereafter, a series of two supplemental agreements, supplemental

agreements to BBA 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 18.12.2018 and 22.10.2019 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 FBA, the respondent company executed various apartment buyer agreements (hereinafter referred as ABA) in favor of the complainant. In respect of the lead case bearing no. 4741 of 2021, the respondent company executed buyer's agreement dated 11.06.2015 in favor of the complainant, wherein an apartment bearing no. 2031 on the 3rd floor of tower 2, having total area equivalent to 2290 sq. ft. in the residential group housing project "Triumph" situated in Sector 104, Gurgaon, Haryana for a total consideration of Rs.1,42,85,714/- 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 12.11.2021 in Arbitration cases bearing no. 4, 5 and 6 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. 5 of 2021 arising out of same cause of action, i.e., the flat buyer agreement and buy back agreement executed between the complainant and respondent.
11. Vide order of this Authority dated 12.05.2023, both the counsels were directed to file written submissions with regard to maintainability issue within a period of 10 days with an advance copy to each other. Further, vide order of this Authority dated 13.10.2023, it was noted that in spite of the specific directions by this Authority vide its order dated 12.05.2023 w.r.t filing of written submissions with regard to maintainability but both the complainant and the respondent has failed to file the written submissions till date. Hence, the complainant was directed to file the written submissions within 2 weeks, with an advance copy to the respondent, along with penalty of Rs.50,000/- under section 67 of the Act, to be deposited with the Authority. However due to continued non-compliance by the complainant, it was decided during proceeding dated 05.01.2024 to impose a further penalty of Rs.5 Lakhs under section 67 of the Act, 2016 to be deposited within one week along with previously imposed penalty of Rs.50,000/- and last opportunity was given to file the written submissions w.r.t maintainability. However, the complainant

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

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

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

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

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

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

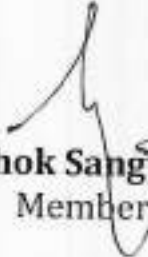
"An Act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating

mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto."

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

Sanjeev Kumar Arora retired and has since demitted office. Hence, rest of the presiding officers of the Authority have pronounced the said order.

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


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.10.2024

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