



HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	1298 of 2023
Date of filing:	30.06.2023
First date of hearing:	02.08.2023
Date of decision:	09.01.2025

Jatin Bansal S/o Sh. Anand Kumar Bansal
R/o, # 207/3, Prem Nagar, Hisar
Haryana-125001

.....COMPLAINANT

Versus

- 1. M/s Aegis Value Homes Ltd**
Through its Managing Director, Sector 32-A
Near Noor Mahal Hotel, Karnal – 132001
- 2. Ms. Tulika, through Aegis Value Homes Ltd**
Sector 32-A Near Noor Mahal Hotel,
Karnal – 132001
- 3. Mr. Sumit Goyal, through Aegis Value Homes Ltd**
Sector 32-A Near Noor Mahal Hotel,
Karnal – 132001
- 4. Mr. Kapil Bansal, through Aegis Value Homes Ltd**
Sector 32-A Near Noor Mahal Hotel,
Karnal – 132001

.....RESPONDENTS

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CORAM:	Parneet Singh Sachdev	Chairman
	Nadim Akhtar	Member
	Dr. Geeta Rathee Singh	Member
	Chander Shekhar	Member

Present: - Mr. Sanchit Punia, Counsel for the complainant through VC.
Mr. Neeraj Goel, Counsel for the respondent through VC.

ORDER (PARNEET S SACHDEV-CHAIRMAN)

1. Present complaint has been filed on 30.06.2023 by complainant under Section 31 of the Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of the Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between them.

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A. UNIT AND PROJECT RELATED DETAILS

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of handing over of the possession, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name of the project	Smart Homes Karnal
2.	Name of the promoter	M/s Aegis Value Homes Ltd
3.	REERA registered/not registered	Registered
4.	Unit no.	Not allotted.
5.	Unit area	Not available.
6.	Date of Apartment Buyer Agreement	Not executed.
7.	Due date of offer of possession	Not available.
8.	Possession clause in BBA	Not available.
9.	Total sale consideration	Not available.
10.	Amount paid by complainant	₹1,50,000/-
11.	Offer of possession (fit-out)	No offer of possession given

B. FACTS OF THE COMPLAINT

3. That the respondent launched a residential project 'Smart Homes' in Sector-32 A, Karnal and published about said project through various

mode of publications. For reference cutting of Dainik Bhaskar newspaper dated 23.01.2022 is attached as Annexure C-1. The complainant relying upon the said advertisement called on the given mobile number. In response, one of authorised representative of respondent namely Ms. Tullika contacted the complainant and projected that huge demand is going on and only few applications are left. She further assured that application amount of Rs 50,000/- is refundable and asked the complainant to submit Rs 50,000/- online.

4. That Ms. Tullika shared 3-D images and videos of unit along with Account details on whatsapp of complainant. For reference, screenshot dated 08.02.2022, 11.02.2022, 12.02.2022 and 18.02.2022 of the whatsapp showing the communication between the complainant and Ms. Tullika is annexed as Annexure C-2 to C-5.
5. That complainant transferred amount of Rs 50,000/- through google pay in account of respondent on 21.02.2022. In support, screenshot of payment dated 21.02.2022 is annexed as Annexure C-6.
6. That on successful payment, complainant shared screenshot to Ms. Tullika and in response Ms. Tullika asked for address and shared the application number of complainant bearing no. 9376. Screenshot of said communication is annexed as Annexure C-7.

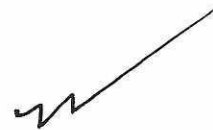


7. That it is relevant to point that one of relatives of complainant namely Mr. Naveen Kumar had also applied bearing application number 9368 by submitting Rs 50,000/- online.
8. That on 22.02.2022 Mr. Sumit Goyal contacted the complainant and asked to share the screenshot of payment as well as documents like Aadhaar card and Pan Card. Thereafter, Ms. Tullika shared a spam message for online draw on 01.03.2022 and asked the complainant to participate in online draw. On 03.03.2022 when complainant clicked on the link given in message, an error was reflected.
9. That Ms. Tullika called on 03.03.2022 for informing the complainant that he is not declared as successful allottee whereas Mr. Naveen is declared as successful. Further, she stated that in case, complainant wants to get successful, then he has to transfer Rs 1,00,000/- more.
10. That complainant relying upon the assurance given by respondent submitted Rs 1,00,000/- on 03.03.2022. On receipt of said payment, Ms. Tullika called the complainant and congratulated him on becoming successful applicant. Screenshot of said transaction is annexed as Annexure C-9.
11. That Ms. Tullika again created a hype and projected things in such a way that all smart homes having good location are booked by successful applicants and complainant will not get best location smart homes in case not submitted Rs 2,00,000/- forthwith. Said conduct of



the respondent created a doubt in the mind of the complainant and complainant refused to send more money. Further, on discussion with Naveen Kumar, complainant decided to visit the Smart Homes, Karnal physically on 05.03.2022.

12. Accordingly, complainant along with Naveen Kumar visited the site wherein he was personally attended by Ms. Tullika and Mr. Sumit Goyal. Complainant was astonished to see that the weed were not even removed, internal road, sewer line, water line was not even constructed yet. The land was full of weed, long grass was spread all over the land. Resultantly, complainant and Naveen Kumar refused to sign the documents and asked to refund the amount. On discussion, Mr. Sumit Goyal-Manager of respondent assured that amount will be refunded within a week.
13. Thereafter, complainant requested several times to the respondent to refund the amount but respondent never paid any heed to it. Relevant to point here that amount of Rs 50,000/- deposited by Naveen Kumar was refunded by the respondent. Feeling aggrieved, present complaint has been filed.



C. RELIEF SOUGHT

14. Complainant sought following reliefs :
- i. To give necessary directions to the respondent for refund of Rs 1,50,000/- along with the prescribed rate of interest as per the provisions of Section 18 and Section 19 (4) of RERA Act.
 - ii. To impose penalty upon the respondent as per the provisions of Section 60 of RERA Act for wilful default committed by them as well as discrimination.
 - iii. To impose penalty upon the respondent as per the provisions of Section 61 of RERA Act for contravention of Section 12, 13, 14 and 16 of RERA Act.
 - iv. To issue directions to make liable every officer concerned, i.e. Director, Manager, Secretary or any other officer of the respondent company at whose instance, connivance, acquiescence, neglect any of the offences has been committed as mention in Section 69 of RERA Act.
 - v. To recommend criminal action against the respondent for the criminal offence of cheating, fraud and criminal breach of trust under Section 420, 406 and 409 of the Indian Penal Code.
 - vi. To issue direction to pay the cost of litigation.



vii. Any other order or direction as this Hon'ble Authority may find reasonable in the facts and circumstances of instant case, may also be granted.

D. WRITTEN SUBMISSIONS ON BEHALF OF RESPONDENT
FILED IN REGISTRY ON 16.07.2024

15. That the complainant has no cause of action against the respondent and the alleged cause of action was false and frivolous. That the respondent had neither caused any violation of the provisions of the act nor caused any breach of agreed obligations as per the agreement between the parties. Hence, the present complaint is liable to be dismissed.
16. That the respondent submitted that the complainant cannot rely on the provisions of the RERA qua the agreements that were executed prior to the RERA Act coming into force. It is further submitted that for transactions entered into between the parties prior to RERA Act coming into force, the agreements entered into between the parties shall be binding on the parties and cannot be reopened.
17. That the respondent submitted that the present complaint is barred by limitation as the complaint has been filed after expiry of 3 years. Hence, the present complaint may be dismissed on this ground alone. Further, as per Article 55 of the schedule of The Limitation Act which provides that the time period to file such



complaints is 3 years and the time period to file such complaints begins to run from the date of breach of agreement which is much prior in time as per complainant himself.

18. That it is worthwhile to mention here that the construction of the project commenced in December 2015 and after that, construction of the Project was hampered due to force majeure situations beyond the control of the Respondent which are as follows: -

- Jat Reservation Agitation: The Jat Reservation agitation was a series of protests in February 2016 by Jat people of North India, especially those in the state of Haryana, which paralyzed the State including city of Gurgaon wherein the project of Respondent is situated for 8-10 days.
- Demonetization of Rs. 500 and Rs. 1000 currency notes: The Real Estate Industry is dependent on un- skilled/semi-skilled unregulated seasonal casual labour for all its development activities. The Respondent awards its contracts to contractors who further hire daily labour depending on their need. On 8th November 2016, the Government of India demonetized the currency notes of Rs. 500 and Rs. 1000 with immediate effect. Resulting into an unprecedented chaos which cannot be wished away by putting blame on Respondent.



- GST Implications: It is pertinent to apprise to the Hon'ble Adjudicating Officer that the developmental work of the said project was slightly decelerated due to the reasons beyond the control of the Respondent Company due to the impact of Good and Services Act, 2017 [hereinafter referred to as 'GST'] which came into force after the effect of demonetisation in last quarter of 2016.
- Directions/Prohibition by NGT: It is noteworthy that on 09.11.2017, in Vardhaman Kaushik vs Union of India & Ors, the National Green Tribunal New Delhi observed The Tribunal had passed a detailed judgment in the case of Vardhman Kaushik on 10th November, 2016 and had clearly postulated the steps that were required to be taken on long term and short-term basis keeping in view the precautionary principle to ensure that the ill-effects and adverse impact of polluted ambient air quality in the previous year is not repeated in the year 2017.
- Construction Ban: It is noteworthy that in past few years construction activities have also been hit by repeated bans by the Courts/Tribunals/Authorities to curb pollution in Delhi-NCR Region. In the recent past the Environmental Pollution (Prevention and Control) Authority, NCR (EPCA) vide its



notification bearing no. EPCA-R/2019/I.-49 dated 25.10.2019 banned construction activity in NCR during night hours (6 pm to 6 am) from 26.10.2019 to 30.10.2019 which was later on converted to complete ban from 01.11.2019 to 05.11.2019 by EPCA vide its notification bearing no. R/2019/I.-53 dated 01.11.2019.

- Covid-19 Pandemic: It is most humbly submitted that even before the normalcy could resume the world was hit by the Covid-19 pandemic. Therefore, it is safely concluded that the said delay in the seamless execution of the project was due to genuine force majeure circumstances and the said period shall not be added while computing the delay. It is most humbly submitted that current covid-19 pandemic resulted in serious challenges to the project with no available labourers, contractors etc. for the construction of the project.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENT

Id. counsels for both the parties reiterated their submissions as mentioned in the complaint and reply. Further, Id. Counsel for complainant submitted that payments proof of Rs 1,50,000/- available with allottee has been placed on record.



F. ISSUE FOR ADJUDICATION

19. Whether the complainant is entitled to the reliefs sought or not?

G. OBSERVATIONS AND DECISION OF AUTHORITY

20. Authority has gone through rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both the parties, Authority observes that crux of the matter is that complainant who was interested in having allotment of unit in respondent's project- Smart Homes, Karnal had paid an amount of Rs 50,000/- towards advance/registration on 21.02.2022. Proof (screenshot of google pay) of said amount is annexed as Annexure C-6. However, respondent through its representative demanded more amount in order to ensure allotment of unit in name of complainant. Accordingly, complainant paid another amount of Rs 1,00,000/- on 03.03.2022. Proof (NEFT receipt) is attached as Annexure C-9. But respondent after receipt of Rs 1,50,000/- in total from complainant did not allot any unit in particular to complainant. Thereafter, respondent through its representative had again raised demand of Rs 2,00,000/- for allotting a best locating unit to him. Thereafter, the complainant visited the site on 05.03.2022 and found that no construction activity was going on at project site. Therefore, the complainant has been requesting the respondent to refund the amount of Rs 1,50,000/-.



21. Complainant in its complaint has impleaded total 4 respondent. However, it is not clarified in the relief sought as to what reliefs are sought against each of them. This query was raised before the Id. counsel for complainant at time of arguments. To this, he replied that relief of refund be awarded against respondent no. 1 only and no other relief pertains to any other respondent. Accordingly, no direction is passed against respondent no. 2,3 and 4 in this order.
22. With regard to plea raised by the respondent that complaint is grossly barred by limitation, reference in this regard is made to the judgement of Apex court Civil Appeal no. 4367 of 2004 titled as M.P Steel Corporation v/s Commissioner of Central Excise wherein it was held that Limitation Act does not apply to quasi-judicial bodies. This judgement applies squarely to the RERA authority, being a quasi judicial body. Further, in this case the promoter has till date failed to fulfil his obligations because of which the cause of action is re-occurring.
23. Respondent has raised an objection that complainant cannot rely upon the builder buyer agreement executed prior to RERA Act,2016. It is pertinent to mention here that no allotment/builder buyer agreement has been executed in the case in hand.
24. It is the stand of respondent that force majeure conditions like-Jat Agitation of February 2016, Demonization in November 2016, GST



Act, 2017, Prohibitions by NGT in year 2017 and 2019 and COVID-19 Pandemic affected the project completion. It is relevant to point here that in present case, respondent has not allotted any unit nor promised any date of delivery of any unit. Complainant was not even declared as successful allottee. Therefore, this argument has no relevance to the issue.

25. Herein the grievance of complainant is that respondent has not refunded him the booking/advance amount of Rs 1,50,000/- despite his request. Respondent nowhere in its written as well as submissions has denied receipt of Rs 1,50,000/- in its account from the complainant. No justification has been provided by respondent for not refunding the amount till date. Said conduct of respondent implies that respondent is holding the money of complainant since year 2022, enjoying the benefit of it without having any intention to return it.
26. In this case, the first step of booking was carried out between the parties but it did not conclude towards allotment of unit for the reasons/factors discussed above. Hence, Authority finds it a fit case for awarding refund of paid amount with interest.
27. The definition of term 'interest' is defined under Section 2(z) of the Act which is as under:

(z) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.



Explanation.-For the purpose of this clause-

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;

28. Consequently, as per website of the state Bank of India i.e., <https://sbi.co.in>, the highest marginal cost of lending rate (in short MCLR) as on date i.e. 09.01.2025 is 9.10%. Accordingly, the prescribed rate of interest will be MCLR + 2% i.e., 11.10%.
29. Rule 15 of IRERA Rules, 2017 provides for prescribed rate of interest which is as under:
- “Rule 15. Prescribed rate of interest- (Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19] (1) For the purpose of proviso to section 12; section 18, and sub sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%: Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public”.*
30. From above discussion, it is proven on record that the complainant is entitled to seek refund of deposited amount along with interest. Thus, Authority deems it fit to award refund of paid amount with interest to complainant. Therefore, respondent will be liable to pay the



complainants interest from the date the amounts were paid till the actual realization of the amount. Authority directs respondent to refund to the complainant the paid amount of ₹1,50,000/- along with interest at the rate prescribed in Rule 15 of Haryana Real Estate (Regulation and Development) Rules, 2017 i.e. at the rate of SBI highest marginal cost of lending rate (MCLR)+ 2 % which as on date works out to 11.10% (9.10% + 2.00%) from the date amounts were paid till the actual realization of the amount. Authority has got calculated the total amount along with interest calculated at the rate of 11.10% till the date of this order and total amount works out to ₹1,97,7776/-as per detail given in the table below:

Sr.no.	Principal Amount	Date of payment	Interest Accrued till 09.01.2025
1.	50,000/-	21.02.2022	16,027/-
2.	1,00,000/-	03.03.2022	31,749/-
Total=	1,50,000/-		47,776/-
Total amount to be refunded to the complainant = ₹1,50,000/- + ₹47,776/- = ₹ 1,97,776/-			

31. Further, the complainant is seeking cost of litigation. It is observed that Hon'ble Supreme Court of India in Civil Appeal Nos. 6745-6749 of 2027 titled as "*M/s Newtech Promoters and Developers Pvt Ltd. V/s State of U.P. & ors.*" (supra,), has held that an allottee is entitled to

claim compensation & litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the learned Adjudicating Officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the learned Adjudicating Officer having due regard to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the Adjudicating Officer for seeking the relief of litigation expenses.

32. In respect of relief clause (ii), (iii), (iv) and (v), it is to mention here that complainant has neither argued nor pressed upon said reliefs at the time of arguments. So, no direction is passed against said relief clauses.

H. DIRECTIONS OF THE AUTHORITY

33. Hence, the Authority hereby passes this order and issues following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the Authority under Section 34(f) of the Act of 2016:

- (i) Respondent is directed to refund the entire amount of ₹1,50,000/- with interest of ₹47,776/- to the complainant. It is further clarified that respondent will remain liable to pay



interest to the complainant till the actual realization of the amount.

(ii) A period of 90 days is given to the respondent to comply with the directions given in this order as provided in Rule 16 of Haryana Real Estate (Regulation & Development) Rules, 2017 failing which legal consequences would follow.

34. **Disposed of.** File be consigned to record room after uploading on the website of the Authority.


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CHANDER SHEKHAR
[MEMBER]


.....
DR. GEETA RATHEE SINGH
[MEMBER]


.....
NADIM AKHTAR
[MEMBER]


.....
PARNEET S SACHDEV
[CHAIRMAN]