

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

<b>Complaint filed on:</b>	<b>06.10.2022</b>
<b>Order reserved on:</b>	<b>09.01.2025</b>
<b>Order pronounced on:</b>	<b>30.01.2024</b>

**Dipin Behl**

R/o: H. No. 205, Sector-45 A, Chandigarh-160047

**Complainant**

**Versus**

**M/s ADTV Communications Pvt. Ltd.**

Regd. office: 8-B, Basement Floor, Jangpura, Main Mathura  
Road, New Delhi-110014

**Respondent**

**CORAM:**

**Shri Vijay Kumar Goyal**

**Member**

**APPEARANCE:**

Ms. Ritu Kapoor (Advocate)

None

**Complainant  
Respondent**

**ORDER**

1. The present complaint has been filed by the complainant/allottee in Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that promoter shall be responsible for all obligations, responsibilities and functions to the allottee as per the agreement for sale executed inter se them.

**A. Project and unit related details**

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

<b>S. N.</b>	<b>Particulars</b>	<b>Details</b>
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1.	Name of the project	ALOHA
2.	Project location	Sector 57, Gurugram
3.	Nature of Project	Residential Complex
4.	Unit No.	12A01, 13 <sup>th</sup> Floor, Tower-D5 [page no. 53 of the complaint]
5.	Unit Area acc to BBA	2491 sq. ft. [page no. 53 of the complaint]
6.	Revised area of unit of Annexure-06 of the complaint	2231 sq. ft [page no 74 onwards of complaint]
7.	Commencement of construction	01.04.2006 [As per website]
8.	Allotment Letter	11.05.2017 [page no. 49 of the complaint]
9.	Builder Buyer Agreement	11.05.2017 [page no. 52 of the complaint]
10.	Possession clause	<b>11. Schedule For Possession of the said Premises</b> <i>The possession of the said premises is likely to be delivered by the company to the Allottee within 36 months from the date of start of the construction of the tower in which the said flat is located or from the execution of this agreement whichever is later, subject to force majeure circumstances, &amp; on receipt of all payments punctually as per agreed terms and on receipt of complete payment of the basic sale price and other charges due and payable up to the date of possession according to the Payment Plan applicable to the Allottee</i> [page 59 of the complaint]
12.	Due date of possession	11.05.2020

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		[As per possession clause of BBA calculated from 36 months from execution of BBA i.e., 11.05.2017]
13.	Sale consideration	Rs. 1,15,00,000/- [page no. 53 of the complaint]
14.	Amount paid by the complainant	Rs.1,50,00,000 /- [as per receipts at page no. 69-70 of the complaint]
15.	Offer of possession	29.07.2017 [Page 71 of complaint]
16.	Handing Over-Taking Over of Possession	29.07.2017 [Page 71 of complaint]
17.	Occupation certificate	Not Obtained

### B. Facts of the Complaint

3. The complainant has made the following submissions in the complaint:

- a. That on 11.05.2017, Mr. Dipin Behl & Mrs. Triveni Dureja booked an apartment unit in an upcoming high rise residential project named "ALOHA" in sector 57, Gurugram, launched in 2005 with the company M/s ADTV Communications Pvt. Ltd.
- b. That Mr. Dipin Behl & Mrs. Triveni Dureja (original/first Buyer) booked a 3 BHK apartment unit with details as: - flat no. 12A01, tower no. D-5, floor-13<sup>th</sup> with a super area of 2491 sq. feet (as per the BBA) by making payment of booking amount of INR 1,00,000/- to the developer M/s ADTV Communications Pvt. Ltd. payment details for the same are: cheque no. 485543 dated 01.05.2017 for amount of INR 1 Lakh.
- c. That based on the booking amount as per above, allotment letter dated 11.05.2017 was issued to the complainants by the builder.





- d. That after this a builder buyer's agreement was executed between M/s ADTV Communications Pvt. Ltd. (formerly known as AEZ Infratech private Limited), and the complainants on 11.05.2017, in which unit no. 12A01-Tower- D-5 for 3BHK apartment unit having super area 2491 sq. feet at the rate of Rs. 4216.61/- per sq. ft. which comes to Rs. 1,05,00,000/- with covered 2 reserved car parking, maintenance advance of six months, firefighting, service charges, club membership, administration charges, sinking fund having a total consideration was quoted Rs. INR 1,15,00,000/- at the time of signing the BBA. It is also pertinent to mention here that in the BBA while signing it, total consideration of Rs. 1,15,00,000/- written under the heading of basic sale price but in actual as per the basic sale price it would have been Rs. 1,05,00,000/- in that case Rs. 10 lakh were wrongly added to the total consideration amount.
- e. That it may kindly be noted that out of the above final payment of INR 1,15,00,000/- made by the complainant, out of which amount of inr 10,96,160/- was unjustly charged under the head "wrong super area". The respondent at the time of signing the BBA declared that the super area of the said unit is 2491Sq.feet, but in reality, it is 2231 sq. feet. For this wrong declaration/ cheating of 260 sq. feet, the respondent has charged INR 10,96,160/- extra from the complainant.
- f. That further, it is humbly submitted to the Hon'ble Court that there have been gross anomalies by the builder M/s ADTV Communication Pvt. Ltd. in this project called ALOHA. It even failed to secure an occupation certificate/completion certificate from DTCP (Directorate of Town & Country Planning), Haryana till date which is a basic requirement on grounds multiple gross violations.
- g. That on the above grounds of not obtaining mandatory occupation certificate/completion certificate, and various other shortcomings in the

Project ranging from poor quality of construction to not providing even basic Internal Development facilities like water connection, sewerage connection, waste management, energy management, fire and safety and management of proper roads.

- h. That the respondents have committed breach of trust and have cheated the complainant. The complainant would not have made the payments of the said amount but for the reorientations and promises made by respondent and their directors and officers the complainant did the booking and thereafter made the payments.
- i. That the respondents are liable for acts and omissions and have misappropriated the said amount paid by the complainant and therefore, are liable to be prosecuted under the provisions of law.
- j. The complainant has suffered great hardship and mental agony due to the acts of the respondent. The respondent have used the money collected from the complainant for the purposes other than the construction of the project. The complainant is seeking adequate relief for being deprived of the money by the respondents, which was paid for the residential unit.
- k. The cause of action accrued in favour of the complainant who booked his unit based on the representations of the respondent. Since the refund of extra charged money has not been given to the complainant till date, the cause of action is still continuing.
- l. The project of the respondent fell under registration with the Haryana Real Estate Regulatory Authority hence the said complaint is amenable to the territorial jurisdiction of this Hon'ble Authority. The consideration paid by the complainant, along with the compensation and interest claimed falls within the pecuniary jurisdiction of this Hon'ble Authority.

m. That the complainants have not filed any other complaint before any other forum against the erring respondent and no other case is pending in any other court of law.

**C. Relief sought by the Complainant: -**

4. The complainant has sought following relief(s):

- a. Direct the respondent to refund the amount along with interest from 29.07.2017 i.e. Rs. 10,96,160/- collected unjustly under the garb of fake/bogus/forged wrong super area, wrong declaration/cheating of 260 sq. ft. shown in super area at the time of giving possession, which was proved and can be verified by DOD, MCG property tax and registered certificate of an architect.
- b. Direct the respondent to complete the requisite formalities for getting the occupancy certificate.
- c. Direct the respondent to complete the pending work of common areas infrastructural facilities and amenities like DG for full power backup, club, gymnasium, firefighting equipment, internal roads, solar system, lifts, sewerage and water connection, leakage and seepage treatment in basements etc. for the complainant and other buyers of the complex.
- d. Direct the respondent to pay a sum of Rs, 5,00,000/- to the complainant towards damages for deficiency in services, restrictive and unfair trade practices, and toward discomfort and undue hardship suffered by the complainant.
- e. Direct the respondent to pay a sum of Rs. 2,00,000/- towards the cost of litigation.

**D. Reply by the Respondent**

5. The present complaint has been filed on 06.10.2022 and the reply on behalf of the respondent has not been received till date. The authority issued a notice dated 16.11.2022 to the respondents by speed post and also on the given email address at [communicationsadv@gmail.com](mailto:communicationsadv@gmail.com). Despite the opportunities given to

the respondent dated 24.11.2022, 10.01.2023 and 06.07.2023, the counsel for the respondent neither put in appearance nor filed a reply to the complaint within the stipulated period. Accordingly, the authority is left with no other option but to struck off the defence of the respondent and proceed ex-parte against the respondents and decide the complaint on the basis of documents and pleadings filed by the complainant.

6. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the complainant.

#### **E. Jurisdiction of the Authority**

7. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

##### **E.I. Territorial jurisdiction**

8. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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. II. Subject-matter jurisdiction**

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

#### **Section 11**

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

**Section 34-Functions of the Authority:**

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

10. So, in view of the provisions of the Act of 2016 quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

**F. Findings on the relief sought by the Complainant.**

**F.I Direct the respondent to the amount along with interest from 29.07.2017 i.e. Rs. 10,96,160/- collected unjustly under the garb of fake/bogus/forged wrong super area, wrong declaration/cheating of 260 sq. ft. shown in super area at the time of giving possession, which was proved and can be verified by DOD, MCG property tax and registered certificate of an architect.**

**F.II Direct the respondent to complete the requisite formalities for getting the occupancy certificate.**

**F.III Direct the respondent to complete the pending work of common areas infrastructural facilities and amenities like DG for full power backup, club, gymnasium, firefighting equipment, internal roads, solar system, lifts, sewerage and water connection, leakage and seepage treatment in basements etc. for the complainant and other buyers of the complex.**

11. On consideration of the documents available on record, the authority observes that the complainant herein was allotted a unit bearing no. 12A01, 13<sup>th</sup> floor, in tower-D-5, admeasuring 2491 sq. ft., in project of the respondent named "ALOHA" situated at Sector-57, Gurugram vide allotment letter dated 11.05.2017 and an apartment buyer's agreement was also executed between the complainant herein and the respondent regarding the said allotment on 11.05.2017. The occupation certificate for the subject unit has been not obtained by the respondent promoter till date and the complainant is in possession of the unit 29.07.2017.
12. The complainant is seeking refund from the respondent for extra amount charged for super area of the unit. On the other hand, the complainant has been in settled possession of their unit since 2017 and the present complaint has been filed after 5 years of being in possession of the unit. The complainant has remained silent and had no grievances in this entire period of 5 years.



13. So far as the issue of limitation is concerned, the Authority is cognizant of the view that the law of limitation does not strictly apply to the Real Estate Regulation and Development Authority Act of 2016. However, the Authority under section 38 of the Act of 2016, is to be guided by the principle of natural justice. It is universally accepted maxim and the law assists those who are vigilant, not those who sleep over their rights. Therefore, to avoid opportunistic and frivolous litigation a reasonable period of time needs to be arrived at for a litigant to agitate his right. This Authority of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances.
14. No doubt, one of the purposes behind the enactment of the Act was to protect the interest of consumers. However, this cannot be stretched to an extent that basic principles of jurisprudence are to be ignored and are given a go by especially when the complainant/allottees have already availed aforesaid benefits as the complainant is in possession of the unit since 2017.
15. One such principle is that delay and laches are sufficient to defeat the apparent rights of a person. In fact, it is not that there is any period of limitation for the authority to exercise their powers under the section 37 read with section 35 of the Act nor it is that there can never be a case where the authority cannot interfere in a manner after a passage of a certain length of time but it would be a sound and wise exercise of discretion for the authority to refuse to exercise their extraordinary powers of natural justice provided under section 38(2) of the Act in case of persons who do not approach expeditiously for the relief and who stand by and allow things to happen and then approach the court to put forward stale claims. Even equality has to be claimed at the right juncture and not on expiry of reasonable time.
16. Further, as observed in the landmark case i.e. ***B.L. Sreedhar and Ors. V. K.M. Munireddy and Ors. [AIR 2003 SC 578]*** the Hon'ble Supreme Court held that

"Law assists those who are vigilant and not those who sleep over their rights." Law will not assist those who are careless of their rights. In order to claim one's right, one must be watchful of his rights. Only those persons, who are watchful and careful of using their rights, are entitled to the benefit of law. Moreover, the Authority in case bearing no. **2480 of 2023 titled as Mrs. Ritu Lal Vs M/s Emaar India Limited decided on 10.12.2024**, has also dismissed the complaint being barred by limitation on the ground that they have approached the Authority after unreasonable delay despite offer of possession and execution of conveyance deed.

17. In the light of the above stated facts and applying aforesaid principles, the authority is of the view that the present complaint is not maintainable after such a long period of time. The procedure of law cannot be allowed to be misused by the litigants. It is a principle of natural justice that nobody's right should be prejudiced for the sake of other's right, when a person remained dormant for such an unreasonable period of time without any just cause. In light of the above, the complaint is not maintainable and the same is declined.

**F.IV. Direct the respondent to pay a sum of Rs, 5,00,000/- to the complainant towards damages for deficiency in services, restrictive and unfair trade practices, and toward discomfort and undue hardship suffered by the complainant.**

**F.V. Direct the respondent to pay a sum of Rs. 2,00,000/- towards the cost of litigation.**


18. The complainant is seeking relief w.r.t. compensation in the above-mentioned reliefs. Hon'ble Supreme Court of India in case titled as **M/s Newtech Promoters and Respondents Pvt. Ltd. V/s State of Up & Ors. (2021-2022(1) RCR(C) 357)**, 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

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adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72 of the Act. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

19. Complaint, stands disposed off.
20. File be consigned to registry

**Dated: 30.01.2025**

  
**(Vijay Kumar Goyal)**  
Member  
Haryana Real Estate  
Regulatory Authority,  
Gurugram