

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

Complaint filed on: 06.10.2022  
Order reserved on: 09.01.2025  
Order pronounced on: 30.01.2025

Seema Sachdeva  
R/o: B-4/301, Aloha Apartment,  
Sector-57, Sushant Lok-3,  
Gurugram-122003

**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.

*12*

### 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:

S. No.	Particulars	Details
1.	Name of the project	ALOHA, Sector 57, Gurugram
2.	Nature of Project	Residential Complex
3.	Unit No.	301, 3 <sup>rd</sup> Floor, Tower-B4 (page no. 53 of the complaint)
4.	Unit area acc to BBA	2910 sq. ft. (page no. 55 of the complaint)
5.	Revised area of unit on basis of Annexure-12 of the complaint	3230 sq. ft (page 124 onwards of the complaint)
6.	Allotment Letter	09.10.2009 (page no. 50 of the complaint)
7.	Buyer Agreement between original allottee and the respondent	09.10.2009 (page no. 53 of the complaint)
8.	Buyer Agreement between original allottee and the complainant	17.07.2018 (page 89 of the complaint)
9.	Possession clause	<b>10. 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)
11.	Commencement construction	of 01.04.2006 (As per website)
12.	Due date of possession	01.04.2009 (As per possession clause of BBA)
13.	Sale consideration	Rs. 1,04,95,850/- (page no. 55 of the complaint)

A



14.	Amount paid by the complainant	Rs. 1,21,67,193.42 /- (As per SOA at page no. 84 of the complaint)
15.	Occupation certificate	Not Obtained
16.	Offer of possession to former allottee	17.07.2018 (Page 85 of complaint)

### B. Facts of the complaint

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

- a. That in Oct. 2009, Mr. Akash Atolia & Mrs Sabhyata D Gupta (hereinafter known as the previous owners) booked an apartment unit in high rise residential project named "ALOHA" in Sector 57, Gurugram, launched in 2005 by company called AEZ Infratech Pvt. Ltd. (M/s S.M. Towers Pvt. Ltd.).
- b. That it is brought to the kind notice of Hon'ble Court, that this company name "AEZ Infratech Pvt. Ltd." was further changed to "ADTL Communications Pvt." through office of registrar of companies, New Delhi with effect from 12<sup>th</sup> Sept. 2016.
- c. That the first buyer, booked a 4 BHK apartment unit with details as flat no. 301, tower no. b-4, with a super area of 2910 sq. feet by making initial payment (BSP) of Rs.97,68,850/- to the developer (i.e., to AEZ Infratech Pvt Ltd.)
- d. That after this a flat buyer's agreement (No. H639262) was executed between AEZ Infratech Private Limited, through authorized representative and Mr Akash Atolia & Sabhyata D Gupta (the First Buyer) on 9.10.2009, for unit no.301 -tower- B-4 for 4BHK apartment unit having super area 2910 sq. feet, with covered two car parking and PLC on basic sale price i.e. 1,04,95,850/- and the possession was due after 36 months i.e. 09.10.2012. as per the clause 10 on page no. 7 of BBA.
- e. That a letter of full and final payment of Rs.1,21,67,193/- dated 15.07.2015 was issued to the first buyer by the builder - AEZ Infratech Pvt. Ltd. on



15.07.2015 after making full and final payment clearing the additional charges under heading of revised area, electrical charges, fire righting, club membership, admin. charges, advance maintenance charges (for 6 months), sinking fund deposit, service tax.

- f. That in the year of 2018 the complainant Mrs. Seema Sachdev w/o Col Harsh Sachdev purchased the said unit from the first buyer by making full payment of Rs.1,50,00,000/-.
- g. That it may kindly be noted that out of the above final payment of Rs.1,50,00,000/- made by the complainant, out of which amount of Rs.11,54,543/- 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 flat is 2910 sq. ft. but at the time of possession the respondent had shown that head revised the area to 3230 sq. ft. and had charged Rs.11,54,543 /- for the revised area. But after buying the flat the complainant got it rechecked and realized that area was not revised at all and it is still 2910 sq. ft. For this wrong declaration/ cheating of 320 sq. ft, the respondent has charged Rs.11,54,543/- extra from the complainant.
- h. That it is pertinent to mention here that the grossly exaggerated amount collected by the respondent from the first buyer deceitfully under various headings before handing over possession and issuing "no dues certificate" which ultimately added in the cost of apartment bought by the complainant. This was a strong-arm tactic of this rogue builder to make the buyer cough up this fat sum by linking it to possession of the said apartment.
- i. 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.

- j. 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.
- k. 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.
- l. That the complainant has suffered great hardship and mental agony due to the acts of the respondent. 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.
- m. That 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.
- n. That 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.



- o. 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 other extra charges collected dubiously under various heads, along with interest from 17.01.2015 i.e., Rs.88,930.58/- charged towards service tax @ 3.708% and INR 8059.00 @ 12.36%, Rs.50,000/-collected as "club membership" charges. (Club is still not constructed/completed), Rs.20,000/- collected under Head "administration charges", Rs.16,150/- collected under the head sinking fund deposit.
- b. Direct the respondent to refund the maintenance amount taken fraudulently at the time of giving possession, maintenance security deposit i.e. Rs.1,45,500/-, maintenance advance of six months i.e., Rs.48,450/-.
- c. Direct the respondent to refund the amount along with interest Rs. 11,54,543/- collected unjustly under the garb of fake/bogus/forged increase of eleven per cent (11%) shown in Super Area at the time of giving possession, which was proved wrong, and can be verified by DOD, MCG property tax, and registered architect report.
- d. Direct the respondent to complete the requisite formalities for getting the Occupancy Certificate.
- e. 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 the basements etc. for the complainant and other buyers of the complex.
- f. Direct the respondent to prepare and execute a conveyance deed to convey the title of the flat in favour of the allottee/complainant.
- g. Direct the respondent to prepare and execute a conveyance deed to convey the title of the flat in favour of the allottee/complainant.
- h. 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.
- i. 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 [communicationsadtv@gmail.com](mailto:communicationsadtv@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 refund the other extra charges collected dubiously under various heads, along with interest from 17.01.2015 i.e., Rs.88,930.58/- charged towards service tax @ 3.708% and INR 8059.00 @ 12.36%, Rs.50,000/- collected as "club membership" charges. (Club is still not constructed/completed), Rs.20,000/- collected under Head "administration charges", Rs.16,150/- collected under the head sinking fund deposit.**
- F.II Direct the respondent to refund the maintenance amount taken fraudulently at the time of giving possession, maintenance security deposit i.e. Rs.1,45,500/-, maintenance advance of six months i.e., Rs.48,450/-.**
- F.III Direct the respondent to refund the amount along with interest Rs. 11,54,543/- collected unjustly under the garb of fake/bogus/forged increase of eleven per cent (11%) shown in Super Area at the time of giving possession, which was proved wrong, and can be verified by DOD, MCG property tax, and registered architect report.**
11. The complainant i.e. Mrs. Seema Sachdev, through instant complaint contended that she purchased a 4BHK apartment in the Aloha residential project in Gurugram from the original allottee in 2018 for Rs.1,50,00,000/-. However, she later discovered that she was wrongfully charged Rs.11,54,543/- under the pretence of a revised super area, which was falsely increased from 2910 sq. ft. to 3230 sq. ft. Furthermore, the project has significant deficiencies, including the absence of an occupation/completion certificate from the Directorate of Town & Country Planning (DTCP), Haryana, and lack of essential infrastructure such as water, sewage, waste management, and fire safety measures. Hence, refund of the excess amount paid, along with compensation and interest be allowed.

1a



12. Upon consideration of the documents available on record, the Authority observes that the complainant is a third-subsequent allottee. The original allottee, M/s G.S. Developers and Contractors Pvt. Ltd., was allotted a unit in the respondent's project, M/s ADTV Communication Pvt. Ltd. (formerly known as AEZ Aspirations), located in Sector 57, Gurugram, vide allotment letter dated 09.10.2009. A flat buyer agreement was subsequently executed between the original allottee and the respondent for a basic sale price of Rs.1,04,95,850/-. Thereafter, an endorsement for the subject unit was made in favor of second subsequent allottee i.e. Ms. Sabhyata Shingra Gupta and Mr. Akash Atolia on 23.03.2011 and possession was handed over to them on 15.07.2015. Subsequently, an agreement to sell was executed between second subsequent allottee and the complainant i.e. Mrs. Seema Sachdev (third subsequent allottee) on 17.07.2018 for the subject unit admeasuring approx. 3230 sq. ft. of super area. The complainant has been in possession of the unit since 17.07.2018, as evident from the possession letter annexed with the complaint (Annexure-7).
13. It is essential to recognize that the complainant entered into an agreement for the purchase of subject unit with the second subsequent allottee and not the respondent. All the payments in this regard were made by the complainant to the second subsequent allottee only. No agreement was ever executed between the complainant and the respondent. Further, the complainant is in peaceful possession of the unit since 17.07.2018 and earlier too the second subsequent allottee was in possession of the subject unit since 15.07.2015. It is important to note that the complainant did not raise any issues with respect to the charges or the property specifications during the initial four years (17.07.2018 - 06.10.2022) she was in possession. The complainant's delay in approaching the Authority is noticeable, as she remained silent on the matter for such a long period.





14. Although, the complainant qualifies as a subsequent allottee, this does not entitle her to seek compensation or refund from the respondent/promoter when the unit was already handed over to the second subsequent allottee. Any discrepancies or disputes regarding payments, charges, or the unit size should have been addressed by the complainant to the second subsequent allottee, not the respondent/promoter. Therefore, as there is no privity of contract between the complainant and the respondent/promoter, her claim for refund sought above is not maintainable.

**F.IV Direct the respondent to complete the requisite formalities for getting the Occupancy Certificate.**

**F.V 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 the basements etc. for the complainant and other buyers of the complex.**

15. Section 11(b) of the Act deals with duties of promoter to obtain the completion certificate/occupancy certificate from the competent Authority and the same is reproduced below:

*"(b) be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be."*

16. The authority observes that the Occupancy Certificate (OC) for the unit in question has not been obtained by the respondent/promoter from the competent authority, as required under the Act. Therefore, the respondent is directed to complete all the requisite formalities and obtain the OC and provide a copy of the same to the complainant.

**F.V Direct the respondent to prepare and execute a conveyance deed to convey the title of the flat in favour of the allottee/complainant.**

**F.III Direct the respondent to prepare and execute a conveyance deed to convey the title of the flat in favour of the allottee/complainant.**

17. Section 17 (1) of the Act deals with duties of promoter to get the conveyance deed executed and the same is reproduced below:

*"17. Transfer of title :- (1).*

*The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas*



*to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case, may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws. Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."*

18. The authority observes that OC with regard to unit in question has not been obtained by the respondent/promoter from the competent authority. The respondent/promoter is contractually and legally obligated to execute the conveyance deed upon receipt of the occupation certificate/completion certificate from the competent authority. Whereas as per Section 19(11) of the Act of 2016, the allottees are also obligated to participate towards registration of the conveyance deed of the unit in question. In view of above, the respondent shall execute the conveyance deed of the allotted unit within a period of three months after receiving occupation certificate from the competent authority.

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

19. The complainant is seeking above mentioned relief w.r.t. compensation and litigation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & 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 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. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.



**G. Directions of the authority**


20. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent is directed to complete all the requisite formalities and obtain the Occupation certificate from the competent Authority and provide a copy to the complainant in accordance with the Section 11(4)(b) of the Act, 2016.
- ii. The respondent shall execute the conveyance deed of the subject unit within a period of three months after receiving occupation certificate from the competent Authority.

21. Complaint stands disposed of.

22. File be consigned to registry.

**Dated: 30.01.2025**

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