

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

Complaint no. : 6531 of 2022  
Date of filing of complaint: 10.10.2022  
Order reserved on : 22.05.2025

**1. Dinesh Narayan Bhardwaj**  
**2. Sneha Bhardwaj**  
Both R/o: 251, Lakhanpur Housing Society,  
Kanpur-208024, Uttar Pradesh  
**3. Naveen Gautam**  
R/o: 364, 2<sup>nd</sup> floor, Sant Nagar, New Delhi-  
110065

**Complainants**

**Versus**

**M/s Agrante Reality Limited**  
Regd. Office: 1st Floor, Office-122, Suncity  
Trade Tower, Palam Vihar, Sector-21,  
Gurgaon-122016, Haryana

**Respondent**

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**

Sh. Sanjeev Sharma (Advocate)

Sh. Tarun Biswas (Advocate)

Complainants  
Respondent

**ORDER**

1. The present complaint has been filed by the complainant/allottee 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 the

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promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

#### 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 proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name and location of the project	Beethoven's 8, Sector 107, Gurugram
2.	Nature of the project	Group Housing Complex
3.	Project area	18.0625 acres
4.	RERA Registered/ not registered	Not registered
5.	DTCP License no.	23 of 2012 dated 23.03.2012
6.	Booking form dated	28.04.2014 (Page 19 of complaint)
6.	Unit no.	Harmony-2/305, 3 <sup>rd</sup> floor (page 19 of complaint)
7.	Unit Area Admeasuring	1702 sq. ft (Page 19 of complaint)
8.	Allotment letter	Not provided on record
9.	Date of buyer's agreement	Not executed
10.	Possession clause	<b>Clause 19(a)</b> <i>Subject to terms other of this application/Agreement, including but not limited to timely payment of the Total Price, stamp duty and other charges by the Vendee(s), the Company shall endeavor to</i>



		<p>complete the construction of the Said Apartment <b>within 42 (Forty-two) months from the start of construction, which is not the same as date of this application.</b> The Company will offer possession of the said Apartment to the Vendee(s) as and when the Company receives the occupation certificate from the competent authority(ies). Any delay by the Vendee(s) in taking possession of the Said Apartment from the date of offer of possession, would attract holding charges @ Rs.05 (Five) per sq. ft. per month for any delay of full one month or any part thereof.</p> <p>[pg. 23 of complaint]</p>
11.	Due date of possession	28.10.2017 (due date calculated from 3 years from date of application i.e. 28.04.2014)
12.	Surrender request dated	09.07.2014, 14.07.2014, 29.07.2014 (As stated by the complainant at page 06 of complaint)
13.	Total Sale Consideration	Rs.1,08,71,570/- (Page 19 of complaint)
14.	Amount paid by the complainant	Rs.9,26,700/- (Page 25 of complaint)
15.	Cancellation letter dated	14.09.2016 (Page 12 of reply)
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered

### B. Facts of the complaint:

3. That the complainants have made following submissions:

- I. Upon the representation by the respondent and advertisement done in said behalf, the respondent was to construct a residential colony in the name and style of "BEETHOVEN'S 8", located at sector-107, Gurgaon, Haryana on parcel of land measuring 18.0625 acres.



- II. The respondent claimed and assured of having obtained proper approvals of the building plans and other requisite approvals which are required prior to commencing construction of the project for developing the residential colony launched in the name and style of Beethoven 8. The respondent obtained licence no. 23 dated 23.03.2012 for construction and development of the group housing complex from DTCP Haryana vide Memo no. 810/AD(RA)2013/28905 dated 17.01.2013.
- III. The complainants executed an application form dated 28.04.2014 whereby complainants made the payment of booking amount of Rs. 9,26,700.71/- and the complainant was allotted unit no. 305, 3 floor, Block/Tower- Harmony-2, at Sector-83, admeasuring 1702 sq. ft. as super area for a total consideration of Rs. 1,13,28,769/-.
- IV. Till the date of filing of the complainants, the respondent has not executed the buyer's agreement with the complainants but started raising demands for the payment of money vide demand letter dated 11.06.2014 for an amount of Rs. 27,80,102.29/- and the complainant had already requested for cancellation of the unit in question and requested for refund of the amount paid by the complainants from the respondent vide emails dated 09.07.2014, 14.07.2014 and 29.07.2014 but the respondent did not pay any heed towards the requests made by the complainants.
- V. Instead of refunding the amount paid by the complainants, the respondent issued a letter dated 13.07.2016 giving the complainants a final opportunity to retain the unit in question by making payment of an amount of Rs. 27,92,441/-.
- VI. The complainants wrote a letter dated 05.09.2016 to the respondent requesting for the issuance of the allotment letter along with the



buyer's agreement since the complainants had to avail housing loan in order to make the payments towards the unit in question but the respondent did not provide the complainants with any allotment letter or buyer's agreement.

- VII. Instead of complying with the requests made by the complainants, the respondent served the complainants with a cancellation letter dated 14.09.2016 by the respondents. It is submitted that the respondent has admitted that the complainants wrote various letters to the respondent requesting for documents and the same have not been provided till date.
- VIII. The complainants left with no option filed a complaint before confederation of Real Estate Developers' Associations of India-NCR on 25.09.2016 seeking refund of the amount of Rs. 9,26,700/-. That not only this, the complainants wrote a letter dated 09.10.2016 to the Prime Minister's Office regarding forfeiture of the amount of Rs. 9,26,700/-. The complainants also sent legal notices to the respondent vide notice dated 09.05.2017 but there has been no relief given by the respondent to the complainants till date.
- IX. The respondent from the complainants has taken the money in the year 2014 and the illegal cancellation was done in 2016 and till date i.e. 2025, the respondent is in illegal possession of the money which was paid by the complainant.

**C. Relief sought by the complainants:**

4. The complainants have sought following relief(s):
- Direct the respondent to refund the total amount of Rs.9,26,700/- received by the respondent to the complainant along with interest

from the date of actual payment by the complainant till the date of refund of the entire amount as per provision of the Act of 2016.

5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent:**

6. The respondent contested the complaint on the following grounds:

- I. At the very outset it is most respectfully submitted to this Hon'ble Forum that the answering respondent i.e., M/s Agrante Realty Ltd is a company incorporated under companies act and represented by its authorized representative Shri Satish Kumar duly authorized vide board resolution dated 09.01.23 to file the present reply to the complaint. The complaint admittedly pertains to the project "Beethoven's 8" located at Sector 107, Village Dharampur, Gurugram. It is pertinent to mention here that the answering respondent is not the "promoter" as defined under section 2 the Real Estate Regulatory Authority, 2016. The answering respondent company is not the entity who has or is developing the land for the said project. The answering respondent company is merely a sister company of the promoter company with its separate existence and is engaged in other projects. The complainant seems to inadvertently arrayed the answering respondent company in the present complaint. The complaint if allowed would bound the answering respondent to refund the amount it did not receive and also without being promoter of the project.



- II. The answering respondent being a sister company is however aware of the facts of the complaint and therefore without prejudice to the afore-said legal objection has replied to the said complaint. However, the answering respondent firmly objects and maintains that M/s Agrante Developers Pvt Ltd be impleaded as the proper and necessary party as it is the promoter of the project in question.
- III. The present case is one of cancellation and the complainant is a defaulter. The complainant has himself admitted in the complaint that his application was cancelled owing default in making payment of further instalments. It is pertinent to mention that after affording ample opportunity to the complainant to make further payments the promoter cancelled the complainant's application owing to default. As per the schedule of payment plan the complainant were liable to make the payment of first instalment within sixty days which was INR 27,80,102/- however despite several reminder the complainant defaulted in making the same.
- IV. The complainant's unit/application is cancelled and as per the terms of the application duly signed and executed by the complainant vide cancellation letter dated 14.09.2016 and the earnest money deposited by the complainant was forfeited. As per clause 15 (a) of the application for allotment as filed by the complainant himself along with the complaint expressly entitles the promoter to forfeit the said earnest money in view of withdrawal/cancellation of the application by the allottee.
- V. This complaint is not maintainable as there are a total of three applicants who have jointly applied for a unit in the project. The application for allotment bears signatures of all three applicant however the complaint has been filed by only two of them and the

third applicant namely Shri Naveen Gautam is missing neither the complainants have filed any power of attorney in their favour to file the present complaint on behalf of Shri Navin Gautam. Further, it is submitted that there is a conflict of interest as the filing counsel of the present complaint is engaged on behalf of the promoter as well and is representing before this Hon'ble Authority in Carbyne Infrastructure Vs Agrante Developers. Therefore, necessary directions be issued to address this conflict of interest of the said counsel i.e., Shri Sanjeev Kumar Sharma.

- VI. The statement of objects, reasons and preamble of the act makes it manifestly clear that it is not only the interest of the consumers of the real estate sector which the act seeks to protect and safeguard but also the promotion of the real estate with a view to ensure sale of plot, apartment etc. Therefore, this Hon'ble Authority should consider the said objective especially in light of preceding paragraphs. The Hon'ble Authority is empowered not only to monitor the projects but also to ensure their timely completion where projects are held up or stopped and to take steps so the same are completed in time and in the interest of the allottees who are awaiting possessions of the units in the project. That due to pending registration of the project with the Hon'ble Authority the promoter since the implementation of the act was unable to raise funds from its existing customers nor it could raise finance by selling unsold inventory. The shortage of funds to enable rapid construction had been a determining factor for the delay as it slowed down the pace of construction considerably. It is reiterated that the promoter is undertaking costs of constructions from its own pockets and is not demanding anything from the allottees, an act which is unprecedented by any other real estate



company and it is now for this authority to balance the interest of the consumers and the promoters harmoniously to achieve the maximum good and benefits. The promoter can upon interest of the complainant will be willing to offer a unit in Tower H and J which are ready and will be offered for possession shortly.

7. 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 parties.

**E. Jurisdiction of the authority:**

8. The respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E.I Territorial jurisdiction**

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by 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.II Subject matter jurisdiction**

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

**Section 11(4)(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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.*

11. So, in view of the provisions of the Act 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 complainant at a later stage.

**F. Findings on objections raised by the respondent:**

**F.1 Objection regarding non- impleadment of co-allottee.**

12. The respondent has objected to the maintainability of the complaint on the ground that the allotment application for the unit in question was jointly signed by three individuals, but the present complaint has been filed only by two of them without any power of attorney or authorization from the third applicant, Shri Naveen Gautam. However, the record shows that an application dated 19.01.2024 was filed by the complainants' counsel under Order I Rule X of the CPC read with Section 88 of the RERA Act, 2016, seeking to implead Shri Naveen Gautam as Complainant No. 3. Subsequently, Complainants No. 1 and 2 clarified through another application that Shri Naveen Gautam no longer has any relationship with them due to a mutual consent divorce and does not



claim any right, title, or interest whether movable or immovable in the unit. The relevant portion is re-iterated below for ready reference:

*It is agreed between us that the petitioner no.1 shall not have any claim whatsoever with regard to any movable or immovable property either in existence or acquired any time in future or anything inherited by petitioner no. 1.*

13. In order to address the matter, the Authority issued notices dated 04.04.2025 and 08.04.2025 to the complainant no. 3 through email and speed post. Additionally, the complainant caused a public notice to be published in the newspaper *News Nation* on 01.05.2025. Despite being afforded multiple opportunities to appear, complainant no. 3 failed to present himself before the Authority to pursue the case.
14. Furthermore, the documents submitted along with the application, including a statement of account, clearly show that all payments made towards the unit were by complainant no. 1, Shri Dinesh Narayan Bhardwaj. This substantiates that Shri Naveen Gautam has no financial or legal claim over the unit. Given that the application for impleadment along with the amended memo of parties is already on record, the objection raised by the respondent regarding the non-inclusion of Shri Naveen Gautam stands rendered infructuous and devoid of merit.

**F.II. Objection regarding respondent is not being promoter.**

15. The respondent has contended that it does not fall within the definition of "promoter" as provided under Section 2(zk) of the Real Estate (Regulation and Development) Act, 2016. It has been submitted that the respondent company is not the entity responsible for the development of the subject project or the land on which the project is being undertaken. According to the respondent, it is merely a sister concern of the promoter company, namely M/s Agrante Developers Pvt. Ltd., having a separate legal existence and engaged in distinct projects. The respondent has



further submitted that its impleadment in the present proceedings appears to be inadvertent on the part of the complainant.

16. However, upon examination of the application form, demand letters, and other documents annexed to the complaint, as well as the reply filed by the parties, it is evident that the booking for the subject unit was made in the name of Agrante Realty Limited. Furthermore, payment receipts were issued by the respondent company herein, i.e., Agrante Realty Limited, and subsequent demands towards the consideration amount were also raised by the said entity. These facts collectively demonstrate that the respondent was actively involved in the transaction and has represented itself as the entity dealing with the allottees. Therefore, the respondent cannot evade liability by merely asserting corporate distinction, and shall be deemed responsible for any default caused in respect of the said project.

**G. Findings on relief sought by the complainant:**

**G.I. Direct the respondent to refund the total amount of Rs.9,26,700/- received by the respondent to the complainant along with interest from the date of actual payment by the complainant till the date of refund of the entire amount as per provision of the Act of 2016.**

17. The complainants booked a unit on 28.04.2014 in the project of respondent namely "Beethoven's 8" in Sector-107, Gurugram for a total sale consideration of Rs.1,08,71,570/-. Though allotment letter qua the unit was never issued by the respondent neither buyer's agreement was executed between the parties. The complainants have paid a total sum of Rs.9,26,700/-.
18. The complainants submitted that they paid an amount of Rs.9,26,700/- through cheque dated 28.04.2014, for which receipt was also issued by the respondent on 05.05.2014. Vide email dated 09.07.2014 the complainants wrote to the respondent to return back the above-





mentioned cheque as they are no longer willing to invest in the project due to non-execution of buyer's agreement. Hence, the complainant requested the respondent for refund of the paid-up amount of Rs.9,26,700/- as soon as possible.

19. The counsel for the respondent in its reply stated that the unit was cancelled on account of non-payment after issuance of multiple reminders. On the other hand, the complainants stated that after remitting substantial amount towards the unit at the time of booking, neither allotment was given to the complainants nor buyer's agreement was executed and above all the respondent violating the law, started raising the demands for outstanding payment against the unit.
20. Upon perusal of the documents on record, the authority observes that the pleas raised by the respondent are not sustainable for the following reasons. **Firstly**, the complainant has made a payment of Rs. 9,26,700/- to the respondent towards booking amount and the respondent has also admitted payment of the same in the reply filed by the respondent. **Secondly**, the respondent upon receipt of the booking amount has failed to issue any allotment letter in favour of the complainant allotting a unit in the said project. The respondent has failed to state any reason as to why an allotment letter was not issued by respondent despite receiving the said amount from the complainants. **Thirdly**, the respondent has never shared any copy of agreement with the complainant and neither BBA was executed inter se parties. It is beyond the imagination of the authority as to why the respondent has forfeited the booking amount paid by the complainant without even fulfilling the obligations cast upon it and in absence of any application form/allotment letter/BBA.



21. Also, the Maharashtra Real Estate Appellate Tribunal in the case titled as **Mr. Dinesh R. Humane and Anr. Versus Piramal Estate Pvt. Ltd. dated 17.03.2021**, the following has been observed:

*In the instant case the transaction of sale and purchase of the flat is cancelled at initial stage. Allottees merely booked the flat and paid some amount towards booking and executed letter for request of reservation of the flat in printed form. Thereafter there is no progress in the transaction and neither allotment letter nor confirmation letter is issued by Promoter. Agreement for sale is not executed between the parties. Parties never reached to the stage of executing agreement for sale. There was no attempt to execute agreement on the part of either party. In such circumstances, Allottees cannot claim refund on the basis of binding effect at clause (18) of "model agreement" for sale under rules of RERA. In fact, claim of Allottees for refund cannot be supported by clause 18 of model agreement for sale under RERA rules. Refund of amount paid to promoter can be demanded as per Section 18 of RERA on the ground that promoter fails to give possession on agreed date or fails to complete the project as per terms and conditions of agreement for sale. Transaction in the instant case is not governed by Section 18 of RERA. **In this peculiar matter, though the claim of refund is not governed by any specific provision of RERA, it cannot be ignored that object of RERA is to protect interest of consumer. So, whatever amount is paid by home-buyer to the promoter should be refunded to the Allottee on his withdrawal from the project.***

22. In view of the reasons stated above and judgement quoted above, the respondent was not within its right to retain amounts received from the complainants. Thus, the complainants are entitled to get refund of the entire amount paid by them.

#### **H. Directions of the Authority:**

23. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i) The respondent/promoter is directed to refund the paid-up amount of Rs.9,26,700/- received by it from the complainant within 90 days from the date of this order. Failing which that amount



would be payable with interest @ 11.10% p.a. till the date of actual realization

- ii) A period of 90 days is given to the respondent-builder to comply with the directions given in this order and failing which legal consequences would follow.

24. Complaint stands disposed of.

25. File be consigned to the registry.

  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.05.2025

  
**HARERA**  
GURUGRAM