BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER, HARYANA REAL ESTATE REGULATORY AUHORITY, GURUGRAM

Complaint No. 4839-2023
Date of Decision: 14.05.2025

Dina Nath Goswami son of Sh. Lok Nath Goswami r/o Flat No. 399, Block-11, Aashiana Utsav Aasiana Village, Bhiwadi (Rajasthan)-301019

Complainant

Versus

1. Advance India Projects Ltd, registered and corporate office at AIPL Business Club, 5h Floor, Golf Course Extension Road, Maidawas, Sector-62, Gurugram and

Also, at AIPL, The masterpiece, Golf Course Road, Sector-54, Gurugram-122002.

2. M/s. Wellworth Project Developers Pvt Ltd through authorized representative Mr. Rakesh Kumar Gupta having registered office at 232-B, 4th Floor, Okhla Industrial Estate, Phase 111, New Delhi-110020.

Respondents

APPEARANCE

For Complainant: Mr. SC Sharma, Advocate
For Respondent Mr. Dhruv Rohatgi, Advocate

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ORDER

1. This is a complaint, filed by Dina Nath Goswami (allottee) under section 31 of the Real Estate (Regulation and Development), Act 2016 (in brief the Act) read with rule 29 (1) of The Haryana Real Estate (Regulation and Development) Rules 2017 (in brief, the rules), against ***M/s. Advance India Projects Ltd*** *and* ***M/s. Wellworth Project Developers Pvt Ltd*** (promoters).

2. According to complainant, he applied for allotment of a Commercial Colony Super Market Space bearing no. B01/004 having carpet area 21.38 sq. meter (230.14 sq. feet) on basement one floor in Tower N/A in the project under the name of "AIPL JOY CENTRAL" in Sector-65, Gurugram, Haryana being developed by the respondents and same was allotted to him (complainant) by the respondents.

3. That the respondents had the requisite license from the Department of Town and Country Planning, Haryana, Chandigarh vide license no. 249 of 2007 dated 02.11.2007, being valid upto 24.12.2018, vide which the promoters and collaborators were issued license to develop a commercial

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colony on 1.6111 Hectare (3.98125 acres or 16.111.54 sq. meter) of land falling in the revenue estate of village Badshapur, Sector-65, District Gurugram.

4. That he (complainant) executed an agreement to sell with respondents on 17.12.2021, which was duly registered before the Sub Registrar, Badshahpur vide registration No. 9896 dated 17.12.2021. He (complainant) made total payment amounting to Rs. 62,37,925.96. The respondents acknowledged said payment vide letter/intimation of termination dated 28.12.2021 which was issued just 11 days after the execution and registration of the agreement to sell.

5. That he (complainant) was assured that all the necessary approvals/sanctions are in place and he will be offered possession of said unit on or before 31.12.2022 as per Clause 5 of the Agreement date 17.12.2021. He has made payments of Rs. 62,37,925.96 out of total sale consideration of Rs. 77,00,000/- to the respondents and only balance amount of Rs. 14,62,075/- was left to be paid.

6. That the respondents instead of handing over physical possession of unit, terminated the allotment vide letter dated 28.12.2021. The respondents, who had agreed to pay assured

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rent vide letter of Addendum dated 08.12.2021, have not paid the full rent, rather in the letter dated 28.12.2021, the respondents have mentioned several deductions including earnest money, GST, marketing charges etc which amount to a total of Rs. 18,30,849.70 out of Rs. 62,37,925.96 and the respondents therein stated the refundable/recoverable amount to be of Rs. 44,07,076.26.

7. That upon an inquiry he (complainant) was informed that the management of said project has terminated the allotment and the respondents have allotted the same unit to some other allottee at the higher rate. He(complainant) was also allottee of another Unit No. 1067 in AIPL Joy Gallery at Sector 66 Gurugram under same respondents. He (complainant) paid a sum of Rs. 40,00,000/-. The allotment of this unit was also cancelled by the respondent no.1 illegally and arbitrarily, which is being assailed by him (complainant) before the Hon'ble Authority, in a separate complaint.

8. That the respondents never apprised him (complainant) that the occupation certificate was being issued from the competent authority. Payment of no balance amount could have been demanded by respondents till the completion of the

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project. He (complainant) had deposited 81% amount and only 19% was left to be paid before taking of possession.

9. That the respondents have received the occupation certificate only on 24.12.2021 and termination of the unit was done by the respondents just 4 days after receiving the occupation certificate. The respondents cannot take shelter of the clause 20 of the model agreement to sell as provided under the contract which provides that if a party does not come forward for registration of the agreement within 60 days of the notice for the same, then the promoter can terminate the same and refund the amount to the allottee (s) but in the present case, the termination of the agreement has not been done on that ground. Moreover, the termination of the agreement has been done for non-payment of instalments.

10. That even after having terminated the unit, the respondents have not made any communication to the complainant to facilitate the transfer of the refund amount.

11. Alleging all this, the complainant has sought following compensation from the respondents: -

i. Refund of the sale consideration paid by him along with interest @ MCLR +2%, which amounts to approximately 12%

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per annum from the date of payments having been made to the respondents.

ii. Compensation on account of non-payment of the assured rent by the respondents to the tune of Rs. 10,00,000/-.

iii. Compensation to the tune of Rs. 10,00,000/- towards severe harassment, agony and financial hardship caused to him.

iv. Litigation expenses to the tune of Rs. 1,00,000/- for engaging counsel.

12. The respondent No.1 contested the complaint by filing a written reply. It is averred that the present complaint is not maintainable and has no locus standi or cause of action to file it. It (the respondent) has already terminated the allotment of unit to the complainant, who had failed to honour the payment terms.

13. That the complainant is not "Allottee but investor who had booked the apartment in question as a speculative investment to earn rental income/profit from its resale. The complainant has not come before the Authority with clean hands.

14. That the complainant had approached the respondent no.1 and expressed an interest in booking a unit in the commercial colony developed by the respondent no.1 and

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applied for provisional allotment of a unit bearing No.B01/004 in the project.

15. That the booking was made by the complainant with an understanding of the same will be for leasing purposes and not for self-use as can be noted in clause 7 of the Agreement to Sell dated 17.12.2021. Additionally, clause 20 of the Agreement to sell also makes it clear that the physical possession of the Unit will not be given to the allottee.

16. That as can be noted from the clause 19, "Leasing Arrangement", the complainant had given unfettered right to the respondent no.1 to lease the Unit and had agreed not to object to the decision of leasing at any point in time. However, despite having booked the unit on these very terms, the complainant has malafidely filed the present complaint with the motive to seek wrongful gains from it (respondent no.1).

17. That the project underwent a change/modification and upon the same being done, objections/suggestions for approval of building plans were invited from the complainant on 21.11.2019. The complainant neither paid any heed to the requests of the respondent no.1 nor came forward with

objections, if any. The complainant chose to be mute spectator by not even replying to the said letter.

18. That the respondent no.1 was miserably affected by the ban on construction activities, orders by the NGT and EPCA, demobilization of labour etc being circumstances beyond the control of the respondent no.1 and force majeure circumstances that the payment of assured return was severally affected during this period and the same was rightfully intimated to the complainant by the letter dated 30.11.2019.

19. That the agreement between the parties was to transfer the constructive possession of the Unit and the same was categorically agreed between the parties in the application form and no protest in this regard had ever been raised by the complainant and the same was willing and voluntarily accepted by him (complainant).

20. That in terms of clause 5 of the Addendum to the Agreement to Sell, the respondent no.1 had agreed to pay Rs. 43,000/- per month by way of assured return to the complainant from 24.05.2019 or from the succeeding date of receipt and realization of Rs. 63,37,925.96 till the date of filing

of the Application for grant of Occupation Certificate. It was also made clear that the Assured return was due and payable to the Allottee subject to the Allottee making timely payments along with applicable taxes and cesses.

21. That it (respondent no.1), despite default of several allottees, has diligently and earnestly pursued the development of the project in question and has constructed the project in question as expeditiously as possible. When the payments were not forthcoming, the respondent was constrained to cancel the allotment of the complainant vide Termination Letter dated 28.12.2021 to the complainant. The project is registered with RERA and has been granted Registration Certificate bearing No. 183 of 2017 dated 14.09.2017.

22. That the possession was subject to the allottee adhering to the payment schedule. The occupation certificate was received for the project on 24.12.2021. Therefore, complainant is not entitled for any further compensation.

23. Both of parties filed affidavits in support of their claims.

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24. I have heard learned counsels for both of the parties and perused the record. Respondent No.2 did not opt to contest the claim.

25. Factual matrix of the case as claimed by the complainant did not remain in dispute. The complainant applied for allotment of a commercial unit bearing No. B01/004 in Tower N/A of project namely "APIL JOY CENTRAL", Sector 65 Gurugram being developed by the respondents. It was accepted by the respondents. An allotment letter in this regard was issued in favour of complainant dated 13.06.2019. An agreement to sell was entered between the parties on 17.12.2021. Sale consideration as agreed between the parties was Rs. 77.00 lacs, out of which complainant paid a sum of Rs. 62,37,925.96. As per agreement to sell, respondents were obliged to hand over possession of subject until till 31.12.2022. The respondents completed the construction and received occupancy certificate (OC) from the Government Agency on 24.12.2021. Same issued termination letter within 4 days of receiving occupation certificate. The only plea taken by respondent No.1 for cancellation of unit is that complainant

breached terms of the agreement to sell, by not remitting the outstanding amount of allotted unit within stipulated time.

26. Copy of agreement to sell has been put on file by the respondents as Annexure R5. Genuineness of copy of agreement to sell is not disputed on behalf of complainant, during deliberations. Clause 1.12 of this agreement clearly mentions that if allottee delays payment towards any amount which is payable to the promoters, the allottee shall be liable to pay interest at the rate prescribed in the Rule 15 of Rules of 2017. Detailing procedure for taking possession of unit, the agreement mentions that the promoters, upon grant of occupancy certificate in respect of the unit/project, shall offer in writing the possession of the unit within 3 months from the date of receipt of such approval to the allottee, in terms of this agreement. The allottee agreed that if he fails, ignores or neglects to take possession of the unit in accordance with the notice of offer of possession of unit sent by the promoters, the allottee besides payment of maintenance charges, shall be liable to pay holding charges per month as determined by the promoters. About the circumstance where allottee fails to take possession of the unit, clause 7.3 of the agreement says that

upon receiving a written information from the promoters as per clause 7.2, the allottee shall take possession of the unit within 30 days from the date of notice of offer of possession of the unit by executing necessary indemnities, undertakings and other documentation as may be prescribed by the promoters..... In case allottee fails to comply with the essential documentations, undertaking etc or fails to take possession within the time specified herein, the allottee shall continue to be liable to pay maintenance charges and holding charges as specified in para 7.2 with effect from the date of notice of offer of possession of the unit.

27. Clause 9.3 repeats similar provisions. Clause 9.3 (iii) authorises the promoters to cancel the allotment of unit in favour of the allottee, if allottee continues to default in payment of sale consideration for a period of 90 days, after notice from the promoters in this regard.

28. As mentioned above, according to respondents, the allottee-complainant failed to make payment as per schedule. Neither schedule of payment is provided by the respondents, according to which the allottee-complainant was obliged to make payment. As stated earlier, the respondents received

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occupancy certificate on 24.12.2021. There is nothing on record to establish that any notice was sent to allottee-complainant offering possession of allotted unit, after the respondents received occupancy certificate. Learned counsel for complainant denies to have received any such offer from the respondents. The allotment is stated to have been cancelled within 4 days of receipt of the occupancy certificate. It is not probable that notice of offer of the possession would have been served upon allottee-complainant within 4 days. Even otherwise, as per agreement to sell, allotment could not have been cancelled before 90 days, after service of notice by the promoters, asking the allottee to make payment.

29. Although promoters/respondents failed to prove that any default of payment was made by allottee-complainant, for the sake of arguments, even if it is presumed that complainant failed to make payment in time, the only remedy with the respondents was to charge interest or holding charges as per agreement, same could have cancelled the unit only after service of notice of demand, when allottee-complainant failed to make payment and that after 90 days. Cancellation of

allotment was thus apparently illegal and contradictory to the agreement entered between the parties.

30. The respondents have challenged maintainability of the present complaint. According to learned counsel for latter, this forum has no jurisdiction to allow refund of the amount, as claimed by the complainant.

31. As per section 71 of Act of 2016, complaints in respect of matters covered under section 12, 14, 18 and 19 of the Act are to be filed before the Adjudicating Officer, seeking the compensation. It is submitted by learned counsel for complainant that his case lies within the purview of section 18(3) of said Act. This provision provides that if promoters fail to discharge any other obligation (obligation other than which is mentioned in sub section 1) imposed upon him under this Act or the Rules or Regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottee, in the manner as provided under this Act. As discussed earlier, the act of respondents in cancellation of unit allotted to the complainant was clearly in violation of agreement of sale, entered between the parties and hence this forum

(Adjudicating Officer) has jurisdiction to entertain such complaint.

32. Although it is not necessary to decide the issue as to whether changes/modifications in building plans admittedly made by the respondents were legal or not. During deliberations, learned counsel for respondent contended that the project underwent changes/modifications. A letter seeking approval was sent to the complainant, but the latter did not pay any attention and hence changes were made.

33. Section 14 (2) (i) strictly prohibits the promoters from making any additions/alterations in the sanctioned plan in respect of apartment, plot or building, as the case may be, without previous consent of the person i.e. allottee. Although proviso added thereafter allows promoter to make such minor additions or alterations as may be required by the allottee or such minor changes or alterations as may be necessary due to architectural and structural reasons duly recommended and verified by the authorized architect or engineer, after proper declaration and intimation to the allottee. It is not plea of respondents even that the alterations made by the same were such minor additions or alterations as were required by the

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allottee or same were minor changes or these were verified by any authorized architect or engineer. The respondents were not authorized to make any such changes.

34. On the basis of above discussion, cancellation of allotment of unit as done by respondents was illegal, being contrary to agreement to sell. The complainant, who had already paid a sum of Rs. 62,37,925/- out of Rs. 77.00 lacs is entitled to compensation. On the other hand, having wrongly cancelled the unit, the respondents are liable to pay compensation. Simply to say that complainant was an investor to purchase unit in question to earn rent, does not make him ineligible to claim compensation.

35. The complainant has sought refund of the amount as compensation along with interest at rate of 12% per annum from the date of payment. As mandated by the Apex Court in para no. 75 of case titled as ***M/s. Newtech Promoters & Developers Pvt Ltd vs State of UP, Civil Appeal No. 6745-6749 of 2021*** that claim in respect of refund of amount under section 18 (1) and 19 (3) of Act of 2016 vests with the Authority. This forum has no jurisdiction to allow refund of amount.

36. As noted above, cancellation was illegal, promoters/respondents used money paid by the complainant, same are directed to compensate the complainant by paying interest at rate 12% per annum on entire amount paid by complainant from the date of each payment till possession of subject unit is handed over to the complainant, after recalling cancellation of unit or refund of amount, as the case may be.

37. Although complainant has sought compensation of assured rent to the tune of Rs. 10.00 lacs, when same are allowed compensation, as described above, no reason to allow payment of assured rent for same cause of action. Request in this regard is declined.

38. According to complainant, same is suffering from severe ailments which include paraplegia. Apparently, when the respondents cancelled the unit illegally, same caused severe harassment, mental and physical agony to the complainant, particularly when he is suffering from severe ailments. The complainant is awarded a sum of Rs. 5.00 lacs as compensation in this regard to be paid by the respondent.

39. Complainant has requested for litigation expenses to the tune of Rs. 1.00 lacs. Although no receipt of payment by his

counsel is put on file. It is apparent that complainant was represented by an Advocate during proceedings of this case. A sum of Rs. 50,000/- is awarded in favour of complainant as litigation expenses to be paid by the respondents.

40. The respondents are directed to pay amounts mentioned above along with interest at rate 12% per annum till realization of amount. Complaint is thus allowed. Parties to bear their own costs.

41. File be consigned to record room.

Announced in open court today i.e. on 14.05.2025.

(Rajender Kumar)
Adjudicating Officer,
Haryana Real Estate Regulatory Authority,
Gurugram.