

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

Complaint no. : 1089 of 2024
First date of hearing: 22.03.2024
Date of decision : 19.08.2025

Jagbir Singh Dahiya

R/O: Hno. 140, Sector 31, Gurugram-

Complainant

Versus

M/s Almond Infrabuild Pvt. Ltd.

Regd. office: 711/92, Deepali, Nehru Place,
New Delhi-110019

Respondent

CORAM:

Shri Arun Kumar

Shri. Ashok Sangwan

**Chairperson
Member**

APPEARANCE:

Mr. Jagbir Singh Dahiya

Ms. Shivani Dang (Advocate)

**Counsel for Complainant
Counsel for Respondent**

ORDER

1. The present complaint has been filed by the complainant 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 promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

Sno.	Heads	Information	
1.	Project name and location	"Tourmaline", Sector-109, Gurugram	
2.	Project area	10.41875 acres	
3.	Nature of the project	Group housing colony	
4.	DTCP license no. and validity status	250 of 2007 dated 02.11.2007 valid up to 01.11.2019	
5.	Name of licensee	Raj kiran and ors. C/o Chintels India Ltd.	
6.	RERA registration details	41 of 2017 dated 10.08.2017 valid up to 6 years from EC	
7.	Unit no.	4072, 7 th floor Tower 4 [pg. 38 of complaint]	
8.	Unit measuring	2150 sq. ft. (super area)	
9.	Date of execution of flat buyer agreement	06.12.2013 [pg. 36 of complaint]	
10.	Payment plan	Construction link Plan	
11.	Total consideration	₹ 1,75,20,000/- (As per payment plan attached with BBA at pg. 68 of complaint)	
12.	Total amount paid by the complainants	₹1,71,07,200/- As alleged by the complainants	
13.	Due date of delivery of possession as per clause 6.2 of the flat buyer's agreement 42 months from the date of execution of agreement.	06.12.2016 (42 months from date of execution of builder buyer agreement i.e., 06.12.2013) [Page 48 of complaint]	
14.	Occupation certificate Taken from another complaint of same project	09.08.2019 Tower-1 Pocket-A, Tower-2 Pocket-A, Tower-3 Pocket A, Tower-4 Pocket-A,	12.02.2019 Tower-3 to 5, EWS Block etc.

		Tower-5 Pocket-A, EWS Block, Community Building, Convenient Shopping in Community Building, Lower and Upper Basement	
15.	Offer of possession	09.08.2019 [Pg. 75 of complaint]	
16.	Settlement deed	29.07.2021 [pg. 117 of complaint]	

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
 - a. That the complainant had booked a flat on 28.05.2013 in the project ATS Tourmaline in Sector 109, Gurgaon after which flat no 4072 measuring 2150 sq. ft. on 7th floor in Tower 4 was allotted to him. That, there-after, an apartment buyer agreement was executed between the parties on 06.12.2013. As per the terms and conditions mentioned in the agreement about payment schedule, the complainant had paid a total sum of ₹1,71,07,200/- in total from the date of booking the flat i.e., 28.05.2013 till 31.03.2017 to the opposite party about which there is no dispute.
 - b. That the opposite party vide their letter dated 18.07.2019 had confirmed the receipt of ₹1,71,07,200/- by them as shown in the statement of account. That as per clause 6.2 of the agreement, the time limit to hand over the possession was 42 months from the date of execution of the agreement dated 06.12.2013 which had expired on 05.06.2017, but the possession has not been given till date despite the fact that about 6 years and 9 months had already elapsed.

- c. That the opposite party with a malafide intention had issued the offer of possession letter dated 09.08.2019 to the complainant despite the fact that the construction in the allotted flat in the project was not complete at the spot as promised as per Schedule II as mentioned in clause 7.2 of the apartment buyer agreement dated 06.12.2013. Even today the inside remaining work has not been done as per schedule II of the buyer agreement as is clear from a perusal of the various photographs taken by the complainant himself. It is clear that the apartment which was offered for possession by the respondent was neither complete in all respect nor it was in a habitable condition on 05.06.2017 which was the last date for completion and delivery of possession to the complainant and on 09.08.2019 when the offer of possession letter was issued to the complainant.
- d. Not only this, even today, the respondent had not finished the construction inside the flat taken on 12.03.2024 which clearly shows that there is no flooring, no electrical fittings, no bath room fittings, no modular kitchen, no split AC, no paints /polish and other routine work. That the total cost of the flat as mentioned in the payment schedule of builder buyer agreement is ₹1,75,20,000/- out of which the complainant had already paid a sum of ₹1,71,07,200/- as shown in the statement of account issued by the respondent along-with their letter dated 18.07.2019 and thus the balance sum of ₹4,12,800/- was payable at the time of offer of possession, but the respondent had issued the offer of possession letter dated 09.08.2019 vide which the respondent had raised the illegal demand of ₹17,95,103/- for taking the possession of the unit after which the complainant wrote the letter dated 29.08.2019 seeking refund of the total deposited amount and when it was not paid,



the complainant filed a complaint before NCDRC New Delhi for refund with DPC being CC no 1957/2019 . Though the opposite party filed reply and both the parties adduced their respective evidence as well as written arguments, but somehow or the other the case is not being taken up for arguments. The complainant is a retired judicial officer and invested the amount received on his retirement for taking the allotted unit. He has already waited for about 12 years in getting possession of the unit but failed in this regard due to un-cooperative and in human attitude of the opposite party. The disposal of the complaint before NCDRC pending for 23.11.2024 may not be possible due to heavy pendency of the cases before the Commission and thus the complainant is seeking the alternate remedy by way of filing this complaint before this Hon'ble Authority seeking its early disposal and he being hardly hit to financial as well as personal needs.

- e. That during the pendency of the instant complaint before NCDRC New Delhi, a settlement deed dated 29.07.2021 was executed between the parties vide which the respondent waived the illegal possession demand amount of ₹17,95,103/-.
- f. 5. That after execution of this settlement agreement, the second party will take 90 days to complete the pending fit-out work as per the specifications mentioned in apartment buyer agreement and undertake to give the physical possession of complete flat with full responsibility within 90 days from the date of execution of this agreement i.e., 29.07.2021 which had expired on 29.10.2021 and it further strengthens the fact that the unit was not complete and in habitable condition on 09.08.2019 when offer of possession letter was issued to the complainant. It further shows that even after this settlement agreement,

- nothing has been done till date and thus the complainant is left with no other alternative except to file this complaint for seeking delay possession charges/ interest from due date till delivery of possession.
- g. It is worthwhile to mention here that for making the payment of ₹1,71,07,200/- to the opposite party ,the complainant had to apply for the loan of ₹40,00,000/- to the Housing Development Finance Corporation Ltd. and a Tripartite Agreement was signed between the complainant, Housing Development Finance Corporation Ltd. and the opposite party on 13.01.2017 and a loan of ₹40,00,000/- was sanctioned to the complainant and accordingly the said amount was paid to the opposite party directly by Housing Development Finance Corporation Ltd. and on this amount the complainant has paid the substantial amount as interest.
- h. That before taking the loan from the HDFC there was some outstanding amount pending against the complainant for which the opposite party has also demanded the interest which is more than ₹6 lakh and this interest amount was settled at ₹2,00,000/- and the complainant has also paid the said interest of ₹2,00,000/- and in this regard a certificate dated 16.02.2017 was also issued by the opposite party. That since the opposite party has not paid the compensation for the delay of possession and hence on 16.08.2019 the complainant has made the representation to the opposite party to pay the compensation as agreed in the agreement.
- i. That Complainant was duped to pay ₹1,71,07,200/- by the opposite party, as Opposite Party have made a promise to complete the project within 42 months as per agreement. The promise of completion of the project within 42 months as per agreement and under the said promise

duping Complainant to pay a huge amount of ₹1,71,07,200/-speaks for itself that the Opposite Party have committed the deficiency of service as it has failed to fulfilled the promise made and reduced in writing in the agreement.

- j. That even after the expiry of more than 6 years and 9 months of booking of the flat Opposite Party had not given the possession to Complainant and he is forced to make the payment without enjoying the flat for which Complainant has invested the huge amount, which amount to deficiency of the service. That the Opposite Party is liable to pay interest upon the deposited amount of ₹1,71,07,200/- as on 31.03.2017. The opposite Party is also liable to pay compensation of an amount of ₹10,00,000/- for the mental agony, harassment, increase in price of the similar flat in the market and for deficiency in service.
- k. That the opposite party has committed the deficiency of the service and it has failed to complete the project well within the time limit as agreed by the opposite party at the time of booking which amounts to unfair trade practice. The Complainant have been misled into purchasing the flat by making the false promises and the opposite party is acting against the promised and is grossly deficient in providing services to the Complainant as the delay in completion of the project and handing over the flat are not only against the promises and commitments but also fraudulent, unfair, unreasonable and arbitrary practices to trap the consumer first by making false and mischievous promises and then not respecting and fulfilling the promises and the undertakings. It seems that the Opposite Party has utilized the money of the complainant in some other project in order to avoid taking the loan from the bank which charges hefty interest for financing the project of the builder.

- l. That it also an admitted position that if the Complainant fails to make the payment on time, then the Complainant is required to pay compounding interest @ rate 18% per annum thus it is logical to claim interest @ 10% from the Opposite Party by the Complainant. Further if the promise for completion of the project within 42 months of the agreement could not have been made the Complainant would have looked for alternative accommodation instead of tying its funds with opposite party. The payment of interest is not only on account of loss of the opportunity but also on account of loss and erosion of the capital and payment of the interest to the HDFC against the loan amount.
- m. That the acts of the opposite party causing mental agony, harassment, mental torture amounts to deficiency in service beside the act of the Opposite Party are arbitrary, unjust and unwarranted without any just and sufficient cause, for which the opposite party is liable to pay compensation of Rs. 10 lacs to the complainant.
- n. That the Complainant has been left with no efficacious remedy except to approach this Hon'ble Authority for redressal of his grievances by way of filing the present complaint case. That the cause of action for filing the present complaint arose in favor of Complainant and against the Opposite Party when the Opposite Party failed to complete the project and hand over the possession of the flat after expiry of the agreed period of 42 months from the date of agreement , The cause of action again arose when the opposite party has demanded the extra money from the complainant, The Cause of action again arose when the legal notice was sent to the opposite party and reply was received, The cause of action is still subsisting as the opposite party had not given the possession till date.

- o. That the complainant is residing in Gurugram and the allotted flat is situated in Sector 109 Gurugram and thus this Hon'ble Authority has got jurisdiction to try and entertain the present complaint.

C. Relief sought by the complainant:

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

- a. To direct the opposite party to deliver the possession of the allotted flat to the complainant immediately within a time limit after doing the remaining pending work inside the flat and not to force an incomplete unit without any flooring, electrification, plumber work, fixtures of different types, modular kitchen, A. C's and the other required things as mentioned in the agreement.
- b. To direct the opposite party to pay interest upon the entire amount of ₹1,71,07,200/- paid by the complainant up to 31.03.2017 @ 10 % p.a. w.e.f. the date of the payments of money till realization.
- c. To Pay the damages ₹10,00,000/- for the highly negligent, deficient service, illegal and unlawful acts and for the harassment, humiliation, stress strain, mental agony caused to the complainant and also difference of the present market value of the flat with the value of the flat at the time of booking of the flat.
- d. To pay the cost of litigation to the complainant.

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. The respondent has filed an application for dismissal of complaint filed by the complainant on the following grounds:

- a. That the present complaint filed by the complainant before this Hon'ble Authority is absolutely baseless, false, untenable on the face of it and not

maintainable before this Hon'ble Authority as would be clear from the contents of the forthcoming paras. However, the respondent reserves its right to raise all legal and factual pleas at the appropriate stage and to take all steps necessary to safeguard its interest.

- b. That the present complaint has been filed by the complainant seeking several reliefs including possession; delayed possession charges and also damages in the sum of Rs. 10,00,000/-. It is pertinent to mention here that previously the complainant had filed complaint bearing no. 1957/2019 before National Consumer Disputes Redressal Commission, New Delhi (NCDRC) for refund. During the pendency of the said complaint, the respondent as well as complainant arrived at a settlement and a settlement deed dated 29.07.2021 was executed between the parties at Noida, Gautam Budh Nagar, Uttar Pradesh.
- c. That as per the said settlement deed dated 29.07.2021, it was categorically undertaken by the complainant that after the execution of the said settlement deed, all existing and future disputes with respect to any payment related to delay in possession of the aforesaid unit stand cancelled. Moreover, as per the settlement deed dated 29.07.2021, it was also agreed between the parties that in case of any dispute, the Noida Court at Gautam Budh Nagar, Uttar Pradesh and Hon'ble Allahabad High Court at Prayagraj shall have the exclusive jurisdiction to try and decide the same.
- d. That in the present complaint, the complainant has raised false disputes regarding the terms and conditions of the settlement agreement dated 29.07.2021. It is submitted that even if the complainant has any grievance regarding the performance of the settlement deed dated 29.07.2021, his remedy is certainly not before this Hon'ble Authority.

- e. The complainant has wrongly invoked the jurisdiction of this Hon'ble Authority with mala fide motives with a view to pressurize and overawe the respondent. That from a bare perusal of the said settlement deed dated 29.07.2021, it is clear that in the event of any disputes whatsoever between the parties, the same are triable exclusively by the Courts at Noida and Hon'ble Allahabad High Court. It is also pertinent to mention here that this clause regarding exclusive jurisdiction was consciously made by the parties because the respondent company is having its gut place of work and business at Noida. Hence it is respectfully submitted that this Hon'ble Authority lacks the jurisdiction to try and decide the present complaint.
- f. The complainant is estopped from filing the present complaint before this Hon'ble Authority by his own acts, conduct, omissions, admissions, acquiescence and laches. The complainant is very well aware that the complaint before this Hon'ble Authority is not at all maintainable and the same is liable to be returned/ dismissed out-rightly. It was the duty of the complainant to have approached the proper court but the complainant is wrongly and illegally misusing the process of this Hon'ble Authority.
- g. The question of granting any relief to the complainant does not arise at all. The present application is being filed without prejudice to the other rights and remedies of the respondent.
6. Copies of all the relevant documents have been filed and placed on 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

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 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 the relief sought by the complainant.

F.I. To direct the opposite party to deliver the possession of the allotted flat to the complainant immediately within a time limit after doing the remaining pending work inside the flat and not to force an incomplete unit without any flooring, electrification, plumber work, fixtures of different types, modular kitchen, A. C's and the other required things as mentioned in the agreement.

F.II. To direct the opposite party to pay interest upon the entire amount of ₹1,71,07,200/- paid by the complainant up to 31.03.2017 @ 10 % p.a. w.e.f. the date of the payments of money till realization.

11. In the present matter the complainant executed a BBA dated 06.12.2013 with respect to the unit bearing number 4072 on 7th floor tower 4 admeasuring 2150 sq. ft. with the respondent. The complainant has paid ₹1,71,07,200/- against the total sale consideration of the said unit. As per clause 6.2 of the BBA the possession of the unit was to be delivered within 42 months from the date of execution of BBA. Accordingly, the due date of possession comes out to be 06.12.2016. Thereafter, the respondent offered the possession of the unit on 09.08.2019 after receiving the OC from the competent authority on 09.08.2019. The authority observes that, the complainant had previously filed a complaint bearing no. 1957/2019 before National Consumer Disputes Redressal Commission, New Delhi (NCDRC) for refund. During the pendency of the said complaint, the respondent as well as complainant executed a settlement deed dated 29.07.2021. As per clause 'E' of the said deed, it was agreed between the parties that all the existing and future disputes with respect to delay in possession of the allotted unit stands cancelled (sic). Further, as per clause 'F' of the settlement deed the respondent company waived off an amount of ₹17,95,103/- to be paid by the complainant on possession. The said clause further mentions that the said settlement amount is full and final settlement.
12. Furthermore, as per clause 7 of the said deed it is clear that in the event of any disputes whatsoever between the parties, the same are triable exclusively by the Courts at Noida and Hon'ble Allahabad High Court. It is

also pertinent to mention here that this clause regarding exclusive jurisdiction was consciously made by the parties because the respondent company is having its gut place of work and business at Noida. Hence, this Hon'ble Authority lacks the jurisdiction to try and decide the present complaint.

13. Thereafter, the present complaint was filed by the complainant seeking delay possession charges and possession of the said unit.
14. As far as relief of possession is concerned it is observed that the Authority vide order dated 06.08.2024 directed the respondent to handover the physical possession of the said unit to the complainant. The said directions of the Authority were complied by the respondent who handed over the possession of the unit to the complainant on 08.08.2024 as also admitted by the complainant in his application dated 07.02.2025.
15. The Authority is of the considered view that the parties have mutually settled the matter vide settlement deed dated 29.07.2021 which clearly stated that the settlement was full and final. Further, in case of any dispute it was agreed between the parties that the same would be triable exclusively by the Courts at Noida and Hon'ble Allahabad High Court. In view of the above, the Authority finds that the complainant was estopped from filing the present complaint by his own admitted settlement deed. In case of any dispute, the parties may approach competent court of law.
F.III. To Pay the damages ₹10,00,000/- for the highly negligent, deficient service, illegal and unlawful acts and for the harassment, humiliation, stress strain, mental agony caused to the complainant and also difference of the present market value of the flat with the value of the flat at the time of booking of the flat.
F.IV. To pay the cost of litigation to the complainant.
16. The complainant is also seeking relief w.r.t litigation expenses. 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.

17. In view of the foregoing reasons, the Authority finds no merit in the present complaint and the same is accordingly dismissed. Pending applications, if any, also stand disposed of.
18. File be consigned to registry.

(Ashok Sangwan)
Member

(Arun Kumar)
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 19.08.2025