

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

Complaint no.: 3271 of 2024
Order pronounced on: 30.07.2025

1. Sarita
2. Ajmer Singh
Both R/o: - A-152, Plot No.29B,
Prabhavi Apartment, Sector-6, Dwarka,
South West Delhi, Delhi-110075.

Complainants

Versus

M/s Anand Divine Developers Private Limited.
Regd. office: ATS Tower, plot no.16,
Sector-135, Noida.

Respondent

CORAM:
Shri Ashok Sangwan

Member

APPEARANCE:
Raj Singh Phogat (Advocate)
Harshit Batra (Advocate)

**Complainants
Respondent**

ORDER

1. This complaint has been filed by the complainants/allottees 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 details

2. The particulars of unit, 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:

S. No.	Heads	Information
1.	Name of the project	"ATS Triumph"
1.	Location of the project	Sector 104, Village- Dhanwapur, Gurugram
2.	Nature of the project	Group Housing Colony
3.	Project area	14.093 acres
4.	DTCP License	63 of 2011 dated 16.07.2011 valid till 15.07.2019 10 of 2012 dated 03.02.2012 valid till 02.02.2020
	Name of the licensee	M/s Great Value HPL Infratech Private Limited M/s Kaanha Infrastructure private Limited

5.	HRERA registered/ not registered	Not registered
6.	Allotment letter in favor of original allottees	21.04.2014 (As on page no. 54 of complaint)
7.	Date of execution of Buyer's Agreement in favor of original allottees	21.04.2014 (As on page no. 27 of complaint)
8.	Unit no.	7112, Floor-11th, Tower/Building No.-7th (As on page no. 28 of complaint)
9.	Super Area	3150 sq.ft. (As on page no. 28 of complaint)
10.	Possession Clause	<p>As per clause 18 of the agreement: Time of handing over possession</p> <p><i>Barring unforeseen circumstances and force majeure events as stipulated hereunder, possession of the said apartment is proposed to be, offered by the company to the allottee within a period of 36 (Thirty Six) months with a grace period of 6 (six) months from the date of actual start of construction of the particular Tower Building in which the registration for allotment is made, such date shall hereinafter referred to as "Stipulated date", subject always to timely payment of all charges including the Basic Sale Price, Stamp Duty, Registration Fees and Other charges as stipulated herein or as may be demanded by the Company from time to time in this regard. The date of actual start of construction shall be the date on which the foundation of the particular Building in</i></p>

		<p><i>which the said Apartment is allotted shall be laid as per certification by the Company's Architect/Engineer-in-charge of the Complex, and the said certification shall be final and binding on the Allottee.</i></p> <p><i>[Emphasis supplied]</i></p> <p>(As on page no. 38 of complaint)</p>
11.	Due date of delivery of possession	<p>21.10.2017</p> <p>[Calculated 36 months from the date of execution of the Buyer's Agreement + 6 months grace period]</p>
12.	Total sales consideration	<p>Rs. 2,70,81,250/-</p> <p>(As on page no. 52 of complaint)</p>
13.	Total amount paid by the complainant	<p>Rs. 2,70,81,250/-</p>
14.	Tri-partite Agreement	<p>21.04.2014</p> <p>(As on page no.54 of complaint)</p>
15.	Sale certificate in favor of the complainants	<p>14.03.2024</p> <p>(As on page no. 25 of complaint)</p>
16.	Occupation Certificate	<p>28.05.2019</p> <p>(As on page no. of reply)</p>
17.	Offer of possession	<p>07.06.2019</p> <p>(As on page no. 55 of complaint)</p>
18.	Conveyance deed	<p>Not executed</p>

B. Fact of the complaint

3. The complainants have made the following submissions: -

- I. That the complainants are buyers of Flat No. 7112, 11 Floor, Tower -7, in the project ATS, Triumph, Sector 104, Gurugram under the sale certificate of the ICICI BANK under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002) under the exercise of power by ICICI BANK conferred under Section 13 read with Rule 12 of the Security Interest (Enforcement) Rules, 2002 in respect of the immovable property shown in the name of the Sunita Agrawal (Borrower), Shailendra Kumar Agarwal (Co-Borrower) .
- II. That the complainants have been issued sale certificate on dated 14.03.2024 by the ICICI BANK branch at ICICI BANK Limited, Plot No. 23, 3rd Floor, Sha1 Tower, New Rohtak Road, Karol Bagh, New Delhi 110005 and have now been in the same rights as has been accrued and entitled to the original buyers in accordance with the law and as per the Buyer Agreement executed on 21.04.2014.
- III. The complainants are the joint purchasers of the subject unit under the sale certificate of the ICICI BANK. Further the buyer comes into the shoes of the original allottee under the Section 2 (d) of the Act, 2016 after the sale certificate dated 14.03.2024 issued by Authorized officer in the public auction under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002).
- IV. That the Sale Certificate, in the law does not require registration under the Registration Act and the sale has become final as the same has never been challenged in accordance with the law. That the complainants have contacted the respondent several times on

Email/mobile for handing over of the possession of the ibid unit in the habitable state and for transfer of title deeds in favour of the complainants/for the executing conveyance deed in favour of the complainants in terms of the Act, 2016.

- V. That the complainants have approached the respondent several times with emails regarding legitimate balance dues dated 16.04.24, 24.04.24, 25.04.24, 30.04.24, 01.05.24, 06.05.24, 10.05.24, 13.05.24, 21.05.24, 29.05.24, 11.06.24, 21.06.24 and emails regarding documents endorsement dated 20.04.24, 22.04.24, 23.04.24, 26.04.24 and whatsapp chat dated- 16.03.24, 28.03.24, 04.04.24, 19.04.24 for taking over the possession of the flat and for transfer of title deeds/conveyance deed in favour of the complainants but the are orally demanding money without explaining any breakup of the amount to be paid in terms of the Buyer Agreement dated 21.04.2014 and without issuing demand cum formal possession letter.
- VI. That the complainants have visited the site on 25.04.2024 for inspection and found that the flat is inhabitable and is in the dilapidated state. The respondent is duty bound to furnish the furnished apartment in terms of the specifications under the buyer agreement dated 21.04.2014. It is trite that valid and lawful offer of possession must have the subject unit be in habitable condition and possession should not be accompanied by unreasonable additional demands. It is submitted that in the ibid unit to be occupied by the complainants has the main door broken, no electrical wiring along with accessories installed and fixed, no water tap fitted till date, no toilet closet commodes fitted, no flooring done, no tiles fitted in

bathrooms, no wooden flooring done, no plaster work done, no internal finishing works done such as internal doors, modular kitchen, wardrobes, sanitary wares in bathrooms, final coat of internal paint etc., no air conditioner VRV AC system fitted, no window glass fitted.

- VII. That the unit is not as per the specifications promised in BBA till date and is not in habitable state. The respondents are adamant in asking for unreasonable high amount before offering the possession not giving the breakup of the oral amount demand by them.
- VIII. That the complainants have on 12.06.2024, received a copy of email of respondents through the Asset Reconstruction Company (India) Limited "ARCIL" who is lender of respondents for project's receivables in which the respondents are demanding total amount of Rs.42,08,525/- (plus GST taxes & others Rs.5,94,060 and interest of Rs.17,32,922 by levying interest of 15 % on the amount payable at the time of possession with effect from June 2019 to Jan 2024 (56 months). The respondent cannot demand more than the amount fixed in the buyer agreement.
- IX. That the unit was sold for basic sale price Rs.2,58,00,000/- by the buyer agreement dated 21.04.2014. That it is submitted that the ICICI BANK has taken over the notional possession of the ibid unit in accordance with the law under the compliance of the Gurgaon court orders Case CNR No. HRGR 02-001917-2022 on. dated 04.07.2022 under the section 14 of the Securitisation and Reconstruction of Financial Asset and Enforcement of Security Interest Act, 2002 (In short SARFAESI Act 2002) and thereafter the complainant is the successful bidder in the public auction held under the SARFAESI Act



2002 on 23.02.2024 and is in the possession of the sale certificate dated 14.03.2024 issued by the authorized officer under the SARFAESI Act, 2002. It is stated that the physical possession of the Unit is to be handed over to the Complainant in accordance with the law. Further in terms of the buyer agreement dated 01.04.2014, the possession was to be handed over to the buyer up to the date 21.04.2017 in terms of the clause 19 of the buyer agreement. However, the Occupation Certificate was issued on 29.05.2019. The units in the Tower 7 were not furnished habitable although the occupation certificate was given in 29.05.2019. Thereafter, the letter of offer of possession was issued on 07.06.2019 to the original allottee with a demand note of Rs.22,04,703/-, which was not acted upon as the original borrower has defaulted in payments.

- X. That the ICICI BANK has taken over the notional possession of the ibid unit in accordance with the law under the compliance of the Gurgaon court orders in **CNR No. HRGR 02-001917-2022** dated **04.07.2022** under the section 14 of the Securitisation and Reconstruction of Financial Asset and Enforcement of Security Interest Act, 2002 (In short SARFAESI Act 2002) and thereafter the complainant is the successful bidder in the public auction held under the SARFAESI Act 2002 on dated 23.02.2024 and is in the possession of the sale certificate dated 14.03.2024 issued by the authorized officer under the SARFAESI Act, 2002. The physical possession of the unit is to be handed over to the complainant in accordance with the law.
- XI. That the complainants have handed over the original receipts, tripartite agreement, buyer agreement and original allotment letter

etc to the respondent's corporate office, ATS tower, plot 16, Sector 135, NOIDA, UP on 20.04.2024 for executing the necessary endorsements in favor of the complainants names on the demand of the respondent.

- XII. The complainants names are required to be endorsed in the documents and records prior to executing the Conveyance Deed in favor of the complainant. That on 20.06.2024, the respondents conveyed to the complainants and bankers that endorsements will be carried out only after full realization of demand; whereas no formal demand has been raised till date except the one email dated 12.06.2024 through the ARCIL.
- XIII. That the respondents are bound to provide the furnished flat/apartment in terms of the specifications of the Annexure II of the buyer agreement but the respondents are not providing the same. Additionally the respondents are bound to provide the two covered parking spaces for the exclusive use of the complainants in terms of the clause 3 of the buyer agreement dated 21.04.2014.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
- i. Direct the respondent for handing over the physical possession of the flat no. 7112, 11th floor, tower-7, ATS Triumph, Sector-104, Gurugram in terms of the Buyer Agreement without any additional charges and any interest rate as per the Act, 2016 and Rules, 2017.
 - ii. Direct the respondent to provide furnished inhabitable unit as per the Buyer's Agreement specimen Annexure-II.

- iii. Direct the respondent for transfer of title deeds/Conveyance Deed of the unit in favour of the complainants.
- iv. Direct the respondent for payment of compensation for delay in possession from 21.04.2017 to till date in terms of the buyer agreement.
- v. Direct the respondent to allot two covered car parking spaces and provide all other amenities as per the builder buyer agreement.

D. Reply filed by the respondent

5. The respondent has submitted the following by way of written reply:

- I. That in September 2014, the original allottee, Sunita and Shailendra Kumar Agarwal, being interested in the real estate development of the respondent under the name of "ATS Triumph" situated in Sector-104, Gurugram, Haryana applied for the allotment of the residential
- II. Thereafter vide allotment letter dated 21.04.2014 , unit bearing no. 7112, Tower No. 07, 7th Floor, admeasuring 3150 sq. ft. was tentatively allotted on the basis of the tentative layout plan.
- III. That subsequently, a Builder Buyer Agreement dated 21.04.2014 was executed between the complainant/allottee and the respondent. It is pertinent to mention that the Agreement was consciously and voluntarily executed between the parties and the terms and conditions of the same are binding on the parties.
- IV. That the complainants chose a subvention payment plan and a tripartite agreement between the complainant, respondent and the financial institution was executed on 21.04.2014.
- V. That a MOU dated 21.04.2014 was also executed between the respondent and the original allottees as per which the respondent gave an option of

Buy back to the allottees.

- VI. That the original allottee exercised the option of the buy back vide intimation letter dated 11.01.2017 citing financial restraints. The respondent informed the original allottee vide letter dated 28.11.2017 that there is no specific timeline for the refund of the amount. That the respondent has completely obliged by its responsibilities as per the said Agreement and there remains no non-compliance on part of the respondent. It is the complainants who have failed in fulfilling its obligations and have filed the present case frivolously. The respondent completed the project and received Occupation certificate on 28.05.2019. Thereafter, validly issued letter of possession along with the demand in favour of the complainants on 07.06.2019.
- VII. That the respondent has completely obliged with all its obligations and made complete payments as per subvention scheme. The respondent has made payment of Pre-EMI and gave credit to the complainants. Thereafter, due to default on the part of the original allottees to make the payment of the bank loan, Bank initiated SARFESI proceedings under Section 14 of the Act bearing case no. CIS: CR 293 of 2022, ACJ (SD), Gurugram, Haryana and the property was taken over by the Bank. That at present the Bank is in the symbolic possession of the unit.
- VIII. That the present complainants have brought the unit in ICICI bank public auction of the unit. The unit was sold by the bank in 'AS IS WHERE IS AND AS IS WHAT IS' basis. The complainant, after duly reading all the terms and conditions and after being aware of the status of the unit, chose to enter into the project.
- IX. Without prejudice to the contentions made above, the respondent submits

that the complainants have come into the shoes of the previous allottee and are deemed to have verified the unit in all aspects under the principle of caveat emptor. The unit was purchased by the complainants after verifying the entire unit and being satisfied from the same, took the physical possession and thereafter, made the bid for the unit.

- X. That the complainants won the bid and were liable to make the payment of total Rs. 2,43,90,000/- as letter of acceptance of bid. The unit was sold to the complainants as "As is where is and as is what is" basis. That the complainants were aware about the outstanding amount unpaid by the defendant and the interest thereon. The complainants were also aware about the terms of the allotment letter, BBA and the Offer of possession already made.
- XI. That when the unit was purchased was made by the complainants, the purchaser would have purchased only upon this complete satisfaction. It is a general principle of law that in all transaction of property. Without prejudice to the above made submissions, it is submitted that the subsequent purchaser received the rights in the unit from the date of purchase. That the complainants were aware regarding the construction and development of the project and after knowing the same has willingly and voluntarily bought the unit with open eyes. That such prior knowledge bought the unit, without any protest, amounts to acceptance of the existing circumstances and the complainants cannot be allowed to reap benefits by extracting monies from the respondent and forgoing their complete satisfaction against the unit. Hence, the complaints are liable to be dismissed with costs against the complainants
- XII. That the complainants have come into the shoes of the previous allottees

and are deemed to have verified the unit in all aspects under the principle of caveat emptor. The complainants have verified the unit in all aspects and applied for bid. The bin was won and unit sold on "As is where is and as is what is" basis. The complainants were aware about the outstanding amount unpaid by the previous allottee and the interest thereon.

- XIII. That as per clause 18 of the Agreement, the due date for the delivery of possession was subject to force majeure circumstances. The construction of the tower started on 20.07.2013 and thus, the due date comes out to be 20.01.2017 (inclusive of 6 months grace period).
- XIV. Despite facing various force majeure circumstances, the respondent applied Occupation Application before the concerned Authority and successfully attained the Occupation Certificate dated 28.05.2019. That once an application for grant of occupation certificate is submitted to the concerned statutory authority, the respondent ceases to have any control over the same. The grant of occupation certificate is the prerogative of the concerned statutory authority and the respondent does not exercise any influence in any manner whatsoever over the same.
6. Copies of all the relevant documents have been filed and placed on the record. The authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents as well as written submissions made by the complainants.

E. Jurisdiction of the authority

7. 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

8. 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

9. 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) 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.

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 complainants at a later stage.

F. Findings on the objections raised by the respondent:

F.1. Objection regarding the complainant is not an allottee with the respondent :

11. The respondent has contended that the complainant has stepped into the shoes of the original allottee and is, therefore, deemed to have inspected and accepted the unit in all respects, in accordance with the principle of *Caveat Emptor* (buyer beware). It is submitted that the complainant purchased the unit after being fully satisfied with its condition. Due to the original allottee's default in repaying the bank loan, proceedings under Section 14 of the SARFAESI Act were initiated by the Bank, resulting in the Bank taking over possession of the property. Presently, the Bank holds symbolic possession of the unit. The complainant acquired the unit through a public auction conducted by ICICI Bank, where the sale was made on an "as is where is" and "as is what is" basis. It is asserted that the complainant, having been fully aware of the condition and legal status of the unit, voluntarily proceeded with the purchase. A copy of the Sale Certificate and the Letter of Acceptance have been annexed with the respondent's reply.
13. The Authority observes that the complainants are purchasers of Unit No. 7112, located on the 11th floor of Tower-7 in the project titled "ATS Triumph," situated at Sector-104, Gurugram. The said unit was acquired by the complainants through a public auction conducted by ICICI Bank under the provisions of the SARFAESI Act, 2002. The unit was previously held in the name of Ms. Sunita Agrawal and Mr. Shailendra Kumar Agarwal.
14. Pursuant to orders passed by the Gurugram Court (CNR No. HRGR 02-001917-2022) dated 04.07.2022, ICICI Bank took possession of the unit in accordance with Section 14 of the SARFAESI Act, 2002. The complainants emerged as the successful bidders in the public auction

held on 23.02.2024. Consequently, a Sale Certificate was issued in their favour by the ICICI Bank on 14.03.2024, through its branch located at Plot No. 23, 3rd Floor, Shal Tower, New Rohtak Road, Karol Bagh, New Delhi-110005.

15. In accordance with Section 17(2)(xii) read with Section 89(4) of the Registration Act, 1908, the sale effected under the SARFAESI Act does not require compulsory registration. The transaction attains finality upon the issuance of the Sale Certificate. As per the legal framework, the Authorised Officer of the Bank is mandated to deliver the duly authenticated Sale Certificate to the auction-purchaser, with a copy forwarded to the registering authorities for recording in its books.
16. It is observed that the possession of the subject unit was taken over by the Bank from the respondent, and the complainants have subsequently purchased the unit from the Bank through public auction proceedings. There exists no privity of contract between the complainants and the respondent, save for the fact that the complainants have now acquired the status of allottees and, as such, are entitled to possession of the unit.
17. The complainants have asserted a claim for interest on account of delayed possession, contending that the delivery of possession was required to be made in accordance with the terms of the Agreement executed between the original allottees and the respondent. However, this contention is not sustainable. The contractual relationship between the original allottees and the respondent had already been terminated due to breaches on the part of the original allottees, which ultimately led to the initiation of recovery proceedings and sale of the unit by the Bank through public auction. Accordingly, the Agreement relied upon

by the complainants ceased to have any legal effect at the time of purchase of the unit. It is evident that the complainants, having inspected the unit and being fully satisfied with its condition and status, voluntarily participated in the auction process and submitted a bid, which was duly accepted by the Bank. The unit was sold to the complainants on an "**as is where is and as is what is**" basis. Having willingly accepted these terms, the complainants cannot now be permitted to resile from their own actions or seek to challenge the conditions under which the sale was concluded. The contents of the Sale Certificate are reiterated below:

Sale Certificate

Whereas

*The undersigned being the Authorised Officer of ICICI Bank Limited having office at ICICI Bank Limited, 3rd Floor Shal Tower, New Rohtak Road, Karol bagh, Delhi- 110005, under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002) and in exercise of the powers conferred under Section 13 read with Rules 12 of the Security Interest (Enforcement)- Rules, -2002, sold on behalf of ICICI Bank Limited in favour of Mrs. Sarita (Pan No.:BGGPS2334N) And Mr Ajmer Singh (Pan No.: APGPS4370C), the immovable property shown in the -schedule below, secured in favour of ICICI Bank Limited by Sunita Agrawal (Borrower), Shailendra Kumar Agarwal, Gaurav Agrawal (Co-Borrower) LBNOD00002082389) Of Gurgaon towards the financial facilities in the nature of Loan Facility of Rs.2,16,37,591 /-(Rupees Two Crore Sixteen Lakh Thirty Seven thousand five Hundred ninety One Only) vide Loan no LBNOD00002082389 offered by ICICI Bank Limited. The undersigned acknowledge the receipt of Rs.2,43,90,000/- (Rupees Two Crore Forty Three Lakh ninety Thousand Only) the sale price in full and handed over the delivery and possession of the scheduled property. The sale of the scheduled property was made on "**AS IS WHERE IS BASIS AND AS. IS WHAT-IS BASIS**" on deposit of the below money demanded by the undersigned and all the encumbrances in respect of the scheduled property shall be taken care by the purchaser.*

[Emphasis supplied]

18. The Authority is of the view that the complainants are entitled to possession of the unit in the terms of the Sale Certificate issued by the

Bank. However, the reliefs of D.P.C and execution of Conveyance Deed, claimed by the complainants against the respondent in the present complaint are not maintainable. Thus, the present complaint is dismissed with the above observation.

19. File be consigned to registry.

Dated: 30.07.2025

(Ashok Sangwan)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram

