

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

Complaint no. : 2655 of 2024

Date of decision : 24.09.2025

Rajesh Kumar Sharma
R/o: - RZ B/2, Raghu Nagar, Sagarpur,
Nangal Rava, South West Delhi, 110046.

Complainant

Versus

M/s Agrante Realty Limited.
Regd. Office at: 522-524, DLF, Tower- A,
Jasola, New Delhi- 110025

Respondent

CORAM:
Ashok Sangwan

Member

APPEARANCE:
Sushil Yadav (Advocate)
Tarun Biswas (Advocate)

Complainant
Respondent

ORDER

1. The present complaint dated 11.08.2023 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 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 unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. no	Particulars	Details
1.	Name of the project	"Kavyam", Sector- 108, Gurgaon (Phase-1)
2.	Nature of project	Affordable group housing
3.	RERA registered/not registered	Registered vide registration no. 23 of 2018 dated 22.11.2018
	Validity status	5 acres
	Licensed area	31.11.2022
4.	DTCP License no.	101 of 2017 dated 30.11.2017
	Validity status	29.11.2022
	Name of licensee	Arvinder Singh & others
	Licensed area	5 acres
5.	Unit no.	TC-1206, Floor-12 th , Tower-C (As on page no. 17 of complaint)
6.	Unit area admeasuring	512.50sq.ft. [Carpet Area] (As on page no. 17 of complaint)
7.	Agreement For Sale	13.07.2020 (As on page no. 20 of complaint)
8.	Sale consideration	Rs.21,00,000/-

9.	Amount paid by the complainant	Rs.21,27,050/-
10.	Possession clause as per Affordable Housing Policy, 2013	1 (iv) All such projects shall be required to be necessarily completed within 4 years from the date of approval of building plans or grant of environmental clearance , whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of the policy.
11.	Building plan approved on	06.07.2018 [As per project details]
12.	Environment clearance	20.08.2019
13.	Due date of possession	20.02.2024 [Calculated as 4 years from date of environmental clearance i.e., 20.08.2019 as the same is later + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020]
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered
16.	Date of surrender	14.02.2023 (As on page no. 40 of complaint)

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That relying upon various promises, undertakings of the respondent, the complainant booked a unit in the Affordable Housing Project



namely "Kavyam" at Sector-108, Gurugram. Thereafter, a unit bearing no. TC-1206, on 12th Floor in Tower-C admeasuring 512.50 sq. ft. was allotted to him.

- II. That a Builder Buyer Agreement was executed between the complainant and the respondent on 13.07.2020. As per para no. 7.1 of the Buyer's Agreement dated 13.07.2020, the respondent agreed to deliver possession of the unit within four years from the date of start of construction.
- III. That the complainant used to telephonically ask the respondent about the progress of the project and the respondent always gave false impression that the work is going on in full swing and mode. On visiting the site, was shocked and surprised to see that the construction work was not going on and no one was present at the site to address the queries of the complainant.
- IV. That the respondent has not even started the construction of the tower in which the complainant's unit is situated. That by seeing this conduct of the respondent, the complainant asked for refund of the total amount paid by him but the respondent only refunded an amount of Rs.1,50,000/-.
- V. That despite receiving more than 100% payments on time for all the demands raised by the respondent and despite repeated requests and reminders over phone calls and personal visits of the complainant, the respondent has failed to deliver the possession of the unit to the complainant within stipulated time period.
- VI. That the construction of the block in which the complainant's is located was promised to be delivered by 20.02.2024 but was not completed within time for reasons best known to the respondents.

VII. That the complainant has requested the respondent several times by telephonic calls and also personally visiting the offices of the respondent to deliver possession of the unit, along with prescribed rate of interest on the amount paid by the complainant.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
- Direct the respondent to refund the entire amount along with interest.

D. Reply by the respondent:

5. The respondent by way of written reply has submitted as follows:
- That the complainant had booked the unit/flat bearing no. TA1-104, 1st floor, Tower No.- A1, having a Carpet Area of 512.5 sq. ft. in the project namely "KAVYAM", under the affordable housing policy 2013, situated at Village Dharampur, Sector 108, Gurugram for a total consideration amount of Rs.21,27,050/-.
 - That on 04.02.2019, the complainant paid an amount of Rs.1,05,758/- as a booking amount and the respondent had issued an acknowledgement receipt dated 04.02.2019 for the same.
 - That subsequently, an Allotment Letter dated 01.07.2019 was issued to the complainant by the respondent. Thereafter, an Apartment Buyer Agreement was executed on 13.07.2020 between the parties.
 - That the respondent issued Demand Letters as per the payment plan, and the complainant has made full payment against the total sale consideration of Rs. 21,27,050/-. The respondent had also transferred an amount of Rs.1.5 lakh in complainant's account after he had surrendered his unit.



- V. That the complainant also did not adhere to the payment schedule, as most of the payment made after the expiry of the due dates resulted in violation of the agreement in turn affecting the obligation of the respondent in terms of handing over the possession of the unit. It is pertinent to mention herein that the respondent sent numerous demand letters and reminders to pay the outstanding amounts. However, after sending multiple Demand Letters and reminders complainant paid every instalment after passing the due date.
- VI. That the complainant due to his personal reason, best known to him submitted a request to the respondent company to surrender his unit vide surrender letter dated 14.02.2023 and asked for refund after deduction as per the policy.
- VII. That the complainant had surrendered the unit through Affidavit/Undertaking dated 15.02.2023 and asked an advance amount of Rs.1,50,000/-, which was transferred by the respondent through RTGS from Axis Bank, RERA Account of the project "KAVYAM" after necessary documentation on 17.05.2023.
- VIII. That the respondent after the surrendering the allotment by the complainant was ready to pay the amount after the deduction as prescribed under rule 5(iii) h and amendment under the same and also paid Rs. 1.5 Lakh through RTGS. That as per the afore-mentioned policy, the respondent was always ready to pay the deposited amount after deductions as prescribed under the policy under rule 5(iii)h which clearly states that "On surrender of flat by any successful allottee, the amount that can be forfeited by the colonizer in addition to Rs.25,000/- shall not exceed 3% of the cost of flat upto 2 years from

the date of commencement of the project and the project commencement date is 20.08.2019.

- IX. That in light of the above-mentioned facts and rules, the complainant is only liable to get refund after deduction of 3% of the total cost of flat, in addition to Rs.25,000/- and the respondent is ready to pay the same but the complainant is not receiving the same since he received Rs.1.5 Lakh through RTGS and now making vague allegations just to save the amount deducted by the respondent as per Affordable Housing Policy 2013.
- X. That as per the terms, conditions and the rules of this policy, the complainant refund shall be Rs.19,96,050/- after deductions, the respondent paid Rs.1.5 Lakh through RTGS, but when respondent provided cheques for the left over amount, complainant declined the same.
- XI. That the complainant is adamant and wanted full refund without deduction as prescribed under the Affordable Housing Policy 2013. In view of the aforementioned facts and circumstances it is clear that it is the complainant who is not receiving his refund as per policy and respondent always ready to pay the same. Therefore, the present complaint is not maintainable, and liable to be dismissed.

E. Jurisdiction of the authority

6. The Authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

7. 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

8. 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;

9. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the Authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the relief sought by the complainant.

F.1 Direct the respondent to refund the entire paid up amount along with interest.

10. In the present complaint, the complainant was allotted unit no. TC-1206 on 12th floor in Tower-C in the project "Kavyam" by the respondent/builder for a total consideration of Rs.21,00,000/- under the Affordable Group Housing Policy 2013. The Agreement For Sale was executed between the parties on 13.07.2020. As per the Affordable Housing policy, 2013, the

possession of the unit was to be offered with 4 years from approval of building plans (06.07.2018) or from the date of environment clearance (20.08.2019) and whichever is later which comes out to be 20.08.2023. Further, as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 23.11.2020 i.e., after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. Therefore, the due date of handing over possession comes out to be 20.02.2024. The complainant paid a sum of Rs.21,27,050/- out of the total sale consideration of Rs.23,00,000/-. Further, the complainant vide letter dated 14.02.2023 surrendered the subject unit. The contents of the letter dated 14.02.2023 is reproduced as under for a ready reference: -

"To,
M/s Agrante Realty Ltd.
Office No. 122, 1st Floor, Suncity Trade Tower, Sector-21,
Gurugram, Haryana-122016.
Subject: Request to surrender the Unit no. TC-1206, Appl. No. 3491, Mr. Rajesh Kumar Sharma in Kavyam, Sector-108, Gurugram.
I, Rajesh Kumar Sharma have 2 BHK, Type-I unit in "Kavyam", Sector-108, Gurugram. Our application no. is 3491 and unit no. TC-1206 in TowerC. I want to surrender my unit due to some personal reason. Please accept my request & initiate the refund amount process."
[Emphasis supplied]

11. As per the clause 5 (iii)(h) of the Affordable Housing Policy, 2013 as amended by the State Government on 05.07.2019, the relevant provision is reproduced as under:

Clause 5(iii) (h) of the affordable housing policy

"A waiting list for a maximum of 25% of the total available number of flats available for allotment, may also be prepared during the draw of lots who can be offered the allotment in case some of the successful allottees are not able to remove the deficiencies in their application within the prescribed period of 15 days. [On surrender of flat by any successful

allottee, the amount that can be forfeited by the colonizer in addition to Rs.25,000/- shall not exceed the following: -

Sr. No.	Particulars	Amount to be forfeited
(aa)	In case of surrender of flat before commencement of project	Nil
(bb)	Upto 1 year from the date of commencement of the project	1% of the cost of flat
(cc)	Upto 2 year from the date of commencement of the project	3% of the cost of flat
(dd)	After 2 years from the date of commencement of the project	5% of the cost of flat

Such flats may be considered by the committee for offer to those applicants falling in the waiting list. However, non-removal of deficiencies by any successful applicant shall not be considered as surrender of flat, and no such deduction of Rs 25,000 shall be applicable on such cases. If any wait listed candidate does not want to continue in the waiting list, he may seek withdrawal and the licensee shall refund the booking amount within 30 days, without imposing any penalty. The waiting list shall be maintained for a period of 2 years, after which the booking amount shall be refunded back to the waitlisted applicants, without any interest. All non-successful applicants shall be refunded back the booking amount within 15 days of holding the draw of lots.

12. Since the surrender of the unit by the complainant was done after commencement of construction, hence the respondent is entitled to forfeit amount in accordance with as per the clause 5 (iii)(h) of the Affordable Housing Policy, 2013 as amended by the State Government on 05.07.2019. The date of commencement of project has been defined under clause 1(iv) to mean the date of approval of building plan or grant of environmental clearance, whichever is later. In the instant case, the date of grant of environment clearance i.e., 20.08.2019 is later and hence, the same would be considered as date of commencement of project.
13. The respondent/promoter is directed to refund the paid-up amount after deduction of 5% of the consideration money in addition to Rs.25,000/- as per clause 5(iii)(h) of the of Affordable Housing Policy 2013 as amended by the State Government on 05.07.2019, along with interest @10.85% per

annum from the date surrender/withdraw of allotment till the actual realization of the amount.

G. Directions of the authority


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

- i. The respondent/promoter is directed to refund the paid-up amount of Rs.21,27,050/- after deduction of 5% of the consideration money in addition to Rs.25,000/- as per clause 5(iii)(h) of the Affordable Housing Policy 2013 as amended by the State Government on 05.07.2019, along with interest @10.85% per annum from the date surrender/withdraw of allotment i.e., 14.02.2023 till the actual realization of the amount along with interest at the rate of 10.85% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.
- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

15. Complaint stands disposed of.

16. File be consigned to registry.

Dated: 24.09.2025


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