

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

**Complaint No. : 611 of 2018**  
**Date of Institution : 23.08.2018**  
**Date of Decision : 30.10.2018**

Mr. Gulshan Pruthi,  
R/o 1839, sector 39, HUDA, Bhiwani,  
Haryana -127021.

**Complainant**

Versus

M/s Adani M2K Projects LLP, having its  
registered office at: Ground Floor, Adani  
House, Plot no. 83, Institutional Area,  
Sector- 32, Gurugram, Haryana- 122001

**Respondent**

**CORAM:**

Dr. K.K. Khandelwal  
Shri Samir Kumar  
Shri Subhash Chander Kush

**Chairman**  
**Member**  
**Member**

**APPEARANCE:**

Achin Mittal  
Shri Ashwani Rao

Advocate for the complainant  
Advocate for the respondent

**ORDER**

1. A complaint dated 08.03.2018 was filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred to as HARERA) by the complainant Mr. Gulshan Pruthi, against the promoter M/s Adani M2K Projects LLP on account of



violation of clause 5(A) of the builder-buyer agreement executed on 06.11.2013 for unit no. C-1203A on 19<sup>th</sup> floor in the project “Oyster Grande” for not giving possession on the due date which is an obligation of the promoter under section 11 (4) (a) of the Act *ibid*.

2. The particulars of the complaint are as under: -

1.	Name and location of the project	Oyster Grande Sector-102, Gurugram
2.	Payment plan	Construction linked payment plan
3.	Nature of Project	Residential group housing complex
4.	Registered/ not registered	<b>Registered</b>
5.	Date of application for occupation certificate	28.06.2017
6.	Date of receipt of OC for tower C	20.12.2017
8.	Date of apartment buyer agreement	14.09.2013
9.	Unit no.	C-1203A on 12A floor
10.	Area of unit	1889 sq. ft.
11.	Total consideration	Rs. 1,22,32,953/-
12.	Total amount paid by the complainant	Rs. 45,30,240/-
13.	Date of delivery of possession. As per clause 5(A) – 48 months + 6 months grace from the date of execution or commencement of construction whichever is later	14.02.2018
14.	Delay in possession till date	8 months 7days



15.	Cancellation of allotment	27.02.2015
-----	---------------------------	------------

2. As per the details provided above, which have been checked as per record available in the case file provided by the complainant and respondent. A builder buyer agreement is available on record for C-1903 on 19th floor according to which the possession of the aforesaid unit was to be delivered somewhere around 13.02.2018. The promoter has failed to deliver the possession of the said unit to the complainant. Therefore, the promoter has not fulfilled his committed liability as on date.
3. Taking cognizance of the complaint, the authority issued notice to the respondent for filing reply and for appearance. Accordingly, the respondent appeared on 23.08.2018. the case came up for hearing on 25.09.2018. The reply has been filed on behalf of the respondent.



#### **FACTS OF THE CASE**

4. That the complainant had registered for allotment of a flat in the "Oyster Grande" project bearing no C-1203A admeasuring 1889 sq. ft.

5. That as per the agreement the respondent was required to handover the possession of the property within 48 months of the agreement or the start of construction whichever is later. The complainant had also deposited the initial instalment as per the terms of the agreement entered between the complainant and respondent on 14.09.2013. The flat was worth 1,22,32,953 and as per the information provided this stated price includes EDC, PLC and an open cark parking.
6. That thereafter, vide several instalments on the demand of the respondent claiming about the regular construction at the site, the complainant had deposited to the respondent a total of Rs 45,30,240 and the same has been received by the respondent in their accounts. That the amount deposited is more than the required sum according to the payment plan of the agreement. However the respondent has continuously raised demands for further payments which is against the said payment plan designed by the respondent itself.
7. Furthermore, even though there was no or little construction work happening are the project site, the respondent



continuously raised frivolous demands for the payments of installments

8. That due to the reasons stated above the complainant stopped making any further payments,

9. That however, vide letter dated 27.02.2015 the respondent arbitrarily cancelled the allotment of the complainants apartment for non-payment of such installments. Aggrieved by this, the complainant requested the respondent to grant a refund of the amount paid by him towards the said project. Surprisingly, instead of returning the amount, the complainant was intimated that he was liable to pay an amount of Rs 2 lakh over and above the amount that had already been paid by the complainant.

10. That seeing the mala fide conduct and intentions of the respondent, the complainant has resorted to legal process to reclaim the amount paid by him.

11. That the respondent despite being duly served of the demand made by the complainant has failed to refund the legitimate payment to him.



12. That the respondent has unilaterally without any cause cancelled the allotment and on the basis of one sided agreement which cannot be read against the complainant herein has imposed unjustified penalty for which the complainant was not liable.

**ISSUES RAISED BY THE COMPLAINANT:**

13. The following issues have been raised by the complainant:
- Whether or not the respondent has delayed in delivering possession of the said unit thereby violating the terms of the apartment buyer agreement?
  - Whether or not the respondent had without any cause or justification cancelled the allotment to the complainant herein violated 27.02.2015?



**RELIEF SOUGHT BY THE COMPLAINANT**

14. The following reliefs have been sought:
- Direct the respondent to refund a sum of Rs

45,30,240 along with interest @15% per annum from the date when payments were made till realization of the full amount.

- ii. Direct the respondents to pay a sum of Rs 50,000 towards the cost of litigation.
- iii. Pass any order which this hon'ble authority deem fit and proper to meet the ends of justice.

#### REPLY BY THE RESPONDENT

15. The respondent denies all such allegation leveled against him and the allegations are baseless.
16. The respondent submits that the present complaint is not maintainable as the complainant has failed to show any deficiency in services or unfair trade practice. The respondent submitted that the complainant approached the respondent though a real estate agent named "Basera Interiors and Builders Private Limited " and made an application dated 19.10.2012 for allotment of an apartment in the said project.



17. Thereafter the complainant was allotted apartment no 1203 on 13th floor of the said project vide provisional allotment letter dated 31.12.2012 on payment of Rs 18,00,000.
18. That as per agreement dated 14.09.2013, the said apartment had been allotted to the complainant for a total sale consideration of Rs 1,22,32,953 excluding all other charges and taxes.
19. The respondent submitted that the complainant had himself opted for a construction linked payment plan and has defaulted in payment of installments.
20. He submitted that after the intimation of cancellation of allotment was communicated to the complainant, he never approached the respondent to settle the dues and thus the respondent vide letter dated 27.02.2015 cancelled the allotment of apartment in the said project.





**DETERMINATION OF ISSUES:**

21. With respect to the first issue raised by the complainants, the authority came across that as per clause 5A of buyer's agreement, the possession of the said apartment was to be handed over within 48 months plus grace period of 6 months from the date of execution of the apartment buyers agreement or commencement of construction whichever is later. Date of execution of apartment buyers agreement is 14.09.2013. Therefore, the due date of possession shall be computed from 14.09.2013. The clause regarding the possession of the said unit is reproduced below:

*"5A: Possession of Apartment:*

*..the developer based on its present plans and estimates and subject to all just exceptions will endeavour to complete construction of the said apartment within a period of 48months from the date of execution or from the date of commencement of construction, whichever is later with a grace period of six months...."*

22. Accordingly, the due date of possession was 14.02.2018 and the possession has been delayed by 8 months and 7 days till the date of decision. The delay compensation payable by the respondent @ Rs 10/- per sq. ft. per month of the super area of the unit for the period of delay beyond 48 + 6 months and thereafter @ Rs 15 per month for the period of delay as per clause 5(B)(vii) of buyer's agreement is held to be very



nominal and unjust. The terms of the agreement have been drafted mischievously by the respondent and are completely one sided as also held in para 181 of ***Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)***, wherein the Bombay HC bench held that:

*“...Agreements entered into with individual purchasers were invariably one sided, standard-format agreements prepared by the builders/developers and which were overwhelmingly in their favour with unjust clauses on delayed delivery, time for conveyance to the society, obligations to obtain occupation/completion certificate etc. Individual purchasers had no scope or power to negotiate and had to accept these one-sided agreements.”*

23. In relation to **issue no 2**, the cancellation of provisional allotment is dated 27.02.2015 and up to the specified date the complainant has not defaulted in any of the payments which is reflected in the statement of account provided on record. Even though there has been a delay in making payments, yet it will be incorrect to call the complainant a defaulter. Delayed payment charges shall be paid at the prescribed rate



of interest. Thus the respondent has without any cause or justification cancelled the allotment to the complainant.

#### FINDINGS OF THE AUTHORITY:

24. The preliminary objections raised by the respondent regarding jurisdiction of the authority stands rejected. The authority has complete jurisdiction to decide the complaint in regard to non-compliance of obligations by the promoter as held in *Simmi Sikka V/s M/s EMAAR MGF Land Ltd.* leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

25. The complainant requested that necessary directions be issued by the authority under section 37 of the Act ibid to the promoter to comply with the provisions and fulfil obligations.

26. The complainant made a submission before the authority under section 34(f) to ensure compliance of the obligations cast upon promoter.



27. It has been stated by the counsel for respondent that complainant has not come before the authority with clean hands. Long back in the year 2015 the builder Adani M2K Project LLP had cancelled the flat of the complainant on account of being defaulter as he had stopped making payment. The Builder Buyer Agreement was CLP and respondent has left with no option but to cancel the allotment vide letter dated 27.02.2015. Respondent has asked the complainant to get back his balance earnest money but the complainant did not turn up to collect the same.

28. However, the complainant filed a complaint before the National Consumer Disputes Redressal Commission where he concealed these facts. When the matter w.r.t concealment of forfeiture and the earnest money came to the notice of the National Commission, he moved an application for withdrawal of complaint and finally withdrew the complaint, as a consequence of that lis remained pending/undecided that is how he has come before the RERA authority by filing this complaint. The complaint has been heard afresh. As per



Neel Kamal judgment of Maharashtra High Court wherein it has been specifically pointed out that an amount of Rs.45 lakhs paid by the complainant to the builder was not a gratuitous payment. However, the deductions made by the respondent are too heavy and harsh by way of forfeiting the earnest money along with interest wherein the buyer has got nothing and he is running from pillar to post for seeking justice.

### DECISION AND DIRECTIONS OF THE AUTHORITY

29. Thus, the authority exercising power under section 37 of Real Estate (Regulation and Development) Act, 2016 issue directions:

- i. The builder should not deduct more than 10% of the earnest money for failing to comply with the provisions of builder buyer agreement.
- ii. The respondent is directed to refund the balance of the amount deposited by the complainant by



deducting only 10% of the total consideration.

30. The order is pronounced.
31. Case file be consigned to the registry.

**(Samir Kumar)**

Member

**(Subhash Chander Kush)**

Member

Date: 30.10.2018



HARERA  
GURUGRAM



**PROCEEDINGS OF THE DAY**

Day and Date	Tuesday and 30.10.2018
Complaint No.	611/2018 Case Titled As Mr. Gulshan Pruthi V/s Adani M2k Projects LLP
Complainant	Mr. Gulshan Pruthi
Represented through	Complainant in person
Respondent	Adani M2k Projects LLP
Respondent Represented through	Shri Prashant Sheoran, Advocate for the respondent.
Last date of hearing	25.9.2018
Proceeding Recorded by	Naresh Kumari & S.L.Chanana

**Proceedings**

Arguments heard.

Certainly, piquant circumstances have been brought on record during arguments.

It has been stated by the counsel for respondent that complainant has not come before the authority with clean hands. Long back in the year 2015 the builder Adani M2K Project LLP had cancelled the flat of the complainant on account of being defaulter as he had stopped making payment. The Builder Buyer Agreement was CLP and respondent has left with no option but to cancel the allotment vide letter dated 27.02.2015. Respondent has asked the complainant to get back his balance earnest money but the complainant did not turn up to collect the same. However, the complainant filed a complaint before the National Consumer Disputes Redressal

Commission where he concealed these facts. When the matter w.r.t concealment of forfeiture and the earnest money came to the notice of the National Commission, he moved an application for withdrawal of complaint and finally withdrew the complaint, as a consequence of that lis remained pending/undecided that is how he has come before the RERA authority by filing this complaint. The complaint has been heard afresh. As per Neel Kamal judgment of Maharashtra High Court wherein it has been specifically pointed out that an amount of Rs.45 lakhs paid by the complainant to the builder was not a gratuitous payment. However, the deductions made by the respondent are too heavy and harsh by way of forfeiting the earnest money alongwith interest wherein the buyer has got nothing and he is running from pillar to post for seeking justice. The complainant is certainly a hapless creature at the moment. The portent of law should protect the interests of helpless and hapless buyer. As per the provisions of RERA Act, the builder should not deduct more than 10% of the earnest money for failing to comply with the provisions of BBA. Respondent, in such cases, always in a dominating position. Accordingly, the respondent is directed to refund the balance amount deposited by the complainant by deducting only 10% of the total consideration.

Complaint is disposed of accordingly. Detailed order will follow.

File be consigned to the registry.

Samir Kumar  
(Member)

Subhash Chander Kush  
(Member)