

HARERA
GURUGRAM

; .,HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम

गृह सिविल लाईस गुरुग्राम हरियाणा

**BEFORE S.C. GOYAL, ADJUDICATING OFFICER,
HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM**

**Complaint No: 855/2019
Date of Decision : 04.03.2021**

**Archana Garg W/o Nikhil Garg,
152/14, Jacobpura,
Gurugram - 122001**

Complainant

V/s

**M/s Adani M2K Project LLP Ltd.
Adani House, Plot No.83, Institutional Area Sector 32,
Gurugram-122001**

Respondent

**Complaint under Section 31
of the Real Estate(Regulation
and Development) Act, 2016**

Argued by:

**For Complainant:
For Respondent:**

**Ms Surbhi Garg, Advocate
Shri Prashant Sheoran, Advocate**

ORDER

This is a complaint under Section 31 of the Real Estate(Regulation and Development) Act, 2016 (hereinafter referred to Act of 2016) read with rule

29 of the Haryana Real Estate(Regulation and Development) Rules, 2017
Sheoran
4/3/2021

(hereinafter referred as the Rules of 2017) filed by Smt Archana Garg seeking refund of Rs.32,10,240/- deposited with the respondent for booking a flat bearing No. A-1403, 14th floor measuring 1889 sq ft. in its project known as 'OYESTER GRANDE', situated in Sector 102, Gurugram besides taxes etc on account of violation of obligations of the respondents/promoters under section 11(4) of the Real Estate(Regulation & Development) Act, 2016. Before taking up the case of the complainant, the reproduction of the following details is must and which are as under:

Project related details		
I.	Name of the project	"OYESTER GRANDE" Sector 102, Gurugram
II.	Location of the project	-do-
III.	Nature of the project	Residential
Unit related details		
IV.	Unit No. / Plot No.	A-1403 14 th Floor
V.	Tower No. / Block No.	
VI	Size of the unit (super area)	Measuring 1889 sq ft
VII	Size of the unit (carpet area)	-DO-
VIII	Ratio of carpet area and super area	-DO-
IX	Category of the unit/ plot	Residential
X	Date of booking(original)	15.10.2012
XI	Date of provisional allotment(original)	01.01.2013
XII	Date of execution of FBA (copy of FBA be enclosed as annexure-B)	

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XIII	Due date of possession as per FBA	
XIV	Delay in handing over possession till date	
XV	Penalty to be paid by the respondent in case of delay of handing over possession as per the said ABA	Articles 5(A) @ Rs.10/- per sq ft of the super area for first six months and Rs.15/- per sq ft of the super area for further period of delay.
Payment details		
XVI	Total sale consideration	Rs. 1,28,18,354/-
XVII	Total amount paid by the complainants	Rs.32,10,240/-

2. Brief facts of the case can be detailed as under.

A project by the name of 'OYESTER GRANDE' situated in Sector 102, Gurugram was to be developed by the respondent. The complainant booked a unit measuring 1889 sq ft in its project known as 'OYESTER GRANDE' on 15.10.2012 for a sum of Rs. 1,28,18,354/- besides taxes etc. It is the case of the complainant that respondent was developing a project known 'OYESTER GRANDE' in Sector 102/102A, Gurugram. After coming to about that project, the complainant approached it on 15.10.2012 and was allotted Apartment bearing No. A 1403, 14th Floor on 01.01.2013 vide Annexures P/3, P/4 respectively. The Complainant deposited a sum of Rs.18,00,000/- on 15.10.2012 and 15.12.2012 respectively vide Annexures P/1, P/2 respectively. The allotment of the unit was made to the complainant under a construction linked plan and she paid a sum of Rs.32,10,240/- as per demand raised by the respondent vide Annexure P/6. An Apartment Buyer Agreement was to be executed with regard to the allotted unit and the complainant received a letter for its execution on 09.05.2013. But since it

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was containing unreasonable conditions, so she sought certain clarifications. So, in this way, the complainant deposited a total sum of Rs.32,10,240/- with the respondent-builder upto 02.05.2013 and did not pay the remaining amount due to slow pace of construction and unreasonable terms and conditions of Apartment Buyer Agreement. A number of calls were given to the respondent-builder to enquire about the status of the project but without any positive result. Even, she found that a 400 KV high-tension(HT) tower and live HT line ^{was} passing through the project compromising the safety and security of its residents. When she enquired about it, then it was clarified that the project is being constructed as per safety norms. It is further the case of the complainant that since the respondent failed to offer possession of the allotted unit to her even after four years of making payments, she purchased another house vide sale deed Annexure P/08. Now she does not require the unit in question and seeks refund of the amount deposited with the respondent besides interest and compensation.

3. But the case of the respondent-builder as set up in the written reply is otherwise wherein it was pleaded that unit in question was booked by the complainant through broker MNC Probuild Pvt Ltd. Though she deposited different amounts but it was denied that the apartment buyer agreement was containing any unreasonable clause. It was denied that the complainant raised any objection with regard to terms and conditions embodied in the apartment buyer agreement. In fact, the construction of the project in which the complainant was allotted a unit was to be completed within a period of 48 months with grace period of six months. After the allotment of the unit in question, a number of reminders as Annexure R-11, R-12 respectively were sent to the complainant, ~~apartment~~ ^{apartment buyer agreement} ~~buyer agreement~~. But neither she executed nor paid the remaining amount

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due against the allotted unit. It was further pleaded that in May 2014, the complainant submitted an affidavit Annexure R-13 with regard to loss of ABA. Though she made payment of Rs.32,10,240/- but did not pay the remaining amount and committed default in making payments. So, the same led to cancellation of the unit vide Annexure E/8 and R-9 and forfeiture of the amount deposited by her. It was denied that there was some issue with regard to safety norms of the project and some HT wires were passing over the construction site. Lastly, it was pleaded that the respondent has already obtained occupation certificate Annexure P/10 on 20.12.2017. So, the complaint filed by the complainant seeking refund is not maintainable.

4. I have heard learned counsel for both the parties and have gone through the case file.

4. Some of the admitted facts of the case are that the complainant booked a unit with the respondent in its project known as Oyester Grande, situated in Sector 102/102A, Gurugram for a total sum of Rs. 1,28,18,354/- plus taxes on 01.01.2013 and which led to issuance of welcome as well as provisional allotment letter Annexure P/3 and P/4 respectively. The complainant paid a total sum of Rs.32,10,240/- to the respondent upto 20.05.2013. The allotment of the unit was made in favour of the complainant under the construction linked plan. Though she was required to pay as per that plan but a dispute arose with regard to execution of ABA between the parties. Admittedly, after that the complainant did not make any payment, though a number reminder in this regard were issued vide Annexure R-11 and R-12 on 14.08.2013 and 25.10.2013 respectively. It is the case of the complainant that since she did not agree to certain terms and conditions of ABA, so she refused to sign that document. The contention of respondent-builder is other wise who took a plea by relying upon

affidavit(copy) R-13 that the ABA was misplaced from the complainant and she
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unnecessary raised the issue with regard to certain clauses of that document. Though after completion of the project, the respondent received an occupation certificate (copy) R-10 on 20.12.2017 but the unit in question was cancelled on 27.02.2015 vide Annexure R-9 after giving a notice of cancellation Annexure R-8 on 13.10.2014. So, it is pleaded on behalf of the respondent-builder that when cancellation of the allotted unit was done in the month of February, 2015, then any action on behalf of the complainant should have been initiated within the period of limitation and not beyond that. A reference in this regard has been made to the ratio of law laid down in case of Smt. Meera Madhubani Vs Ireo Grace Real Tech Pvt Ltd. in complaint case No.242/2016 decided on 05.09.2018 by the learned Authority and wherein it was held that when after cancellation of the unit, the complaint for refund was filed after a lapse of more three years, then the same is not maintainable and is barred by limitation. The contention of the learned counsel for the complainant is otherwise and who took a plea that though alleged cancellation of the allotted unit was made by the respondent on 27.02.2015 by sending an intimation on 28.02.2015 but there is nothing on record to show that letter sent in this regard was received by the complainant. So, it cannot be said that the complaint filed by the complainant seeking refund of the amount deposited with the respondent is barred by limitation. Then to check such type of cases, the Government of Haryana issued a Notification on 05.12.2018 titled as the Haryana Real Estate Regulatory Authority, Gurugram (Forfeiture of earnest money by the builder) Regulations, 2018 and which provides that forfeiture of the earnest money shall not exceed more than 10% of the consideration amount of the real estate i.e. apartment/building as the case may be. In all cases where the cancellation of the flat/unit/plot is made by the builder in a unilateral manner or the buyer intends to withdraw from the project, and any agreement containing any clause

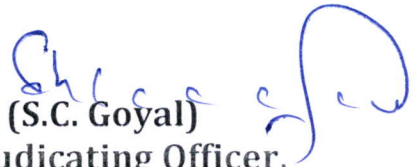
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contrary to the aforesaid regulations shall be void and not binding on the buyer. The complainant admittedly deposited a sum of Rs.32,10,240/- with the respondent upto May 2013 against total sale consideration of Rs.1,28,18,354/- plus taxes, if any. So, while cancelling the allotment of unit in question, the respondent-builder was required to retain some reasonable amount i.e. upto 10% of the total sale consideration of Rs. 1,28,18,354/- and return the remaining amount after cancellation of the unit. In cases of **Maula Bux Vs Union of India AIR 1970 SC,1955, Indian Oil Corporation Ltd Vs Nilofer Siddiqui & Ors Civil Appeal No.7255 of 2009 decided on 01.12.2015**, the Hon'ble Supreme Court of India held that only a reasonable amount should have been forfeited as earnest money in the event of default on behalf of the complainant/purchaser and it is not permissible under law to forfeit any amount beyond reasonable limit unless, it is shown and proved that the person forfeiting the said amount had actually suffered a loss to the extent of amount forfeited by him. So, the act of the respondent in forfeiting the total sum of Rs.32,10,240/- is unfair and is in violation of regulations framed by the learned Authority.

5. Thus, in view of the facts detailed above, the complaint is hereby accepted. Consequently, the respondent is directed to ^{refund a sum of Rs. 32,10,240 after} deduct ^{ing} 10% of the total sale consideration amount of Rs. 1,28,18,354/- besides interest @ 9.30% p.a. from the date of cancellation i.e. 27.02.2015 within a period of 90 days and failing which the legal consequences would follow.

6. File be consigned to the Registry.

04.03.2021


(S.C. Goyal)
Adjudicating Officer,
Haryana Real Estate Regulatory Authority
Gurugram
4/3/2021

