

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

Complaint no.:	353 of 2019
First date of hearing:	06.09.2019
Date of decision:	06.04.2022

Sanjit Singh

R/o: - Flat no. 8, 253/3 Saidulajab, New Delhi-110030 Complainant

Versus

M/s ADTV Communication Pvt. Limited
Having Regd. office at: 8-B, Basement Floor, Jangpura,
Main Mathura Road, New Delhi-110014**Respondent****CORAM:**Dr. K.K. Khandelwal
Shri Vijay Kumar Goyal**Chairman
Member****APPEARANCE:**Sh. Karan Chahar (Advocate)
NoneComplainant
Respondent**EX-PARTE ORDER**

1. The present complaint dated 26.11.2019 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 as provided 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.	Heads	Information
1.	Project name and location	"Aloha", Sector 57, Gurugram
2.	Project area	4.50 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP license no. and validity status	34 of 1996 dated 21.03.1996 valid up to 20.03.2015
5.	Name of licensee	SM Towers Pvt. Ltd.
6.	RERA registration details	Not registered
7.	Unit no.	303, Tower D6, 3 rd floor [page 21 of complaint]
8.	Unit measuring	2244 sq. ft.
9.	Date of execution of buyer's agreement with original allottee	14.10.2005 [page 19 of complaint]
10.	Date of endorsement to subsequent allottee i.e., complainant	16.11.2011 [page 43 of complaint]
11.	Agreement to sell	04.11.2011 [page 50 of complaint]
12.	Payment plan	Construction link
13.	Basic sale price as per builder buyer's agreement dated 14.10.2005 at pg. 39	₹ 52,24,600/-



14.	Total amount paid by the complainant	₹ 80,00,000/- (According to agreement to sell executed between the original allottee and the complainant at pg. 51 of the complaint. Whereas, only ₹ 2,35,107/- is due as on 02.11.2011 to the respondent towards the total consideration of the unit which will be paid to the respondent as and when demanded on offer of possession)
15.	Due date of delivery of possession as per clause 10 of the flat buyer agreement; within 36 months from the date of the start of the construction of the tower in which the said flat is located or from the execution of this agreement whichever is later	16.11.2011 [Note: As already decided by the authority in complaint bearing no. 4031 of 2019 titled as <i>Varun Gupta V/s Emaar MGF Land Ltd</i> wherein the authority has held that in cases where subsequent allottee had stepped into the shoes of original allottee after the expiry of due date of handing over possession and before the coming into force of the Act, the subsequent allottee



			shall be entitled to delayed possession charges w.e.f. the date of entering into the shoes of original allottee i.e. nomination letter or date of endorsement on the builder buyer's agreement, whichever is earlier. Therefore, in the instant matter the complainant is the subsequent allottee endorsed dated 16.11.2011 i.e., after the expiry of the due date of possession accordingly, the subsequent allottee is entitled for DPC with effect from the date of endorsement i.e., 16.11.2011]
		[Page 25 of complaint]	
16.	Occupation certificate		Not yet obtained
17.	Final call letter for payment and for fit-out (Offer of possession for fit-out)		22.03.2018 [page 62 of complaint]
18.	Delay in handing over possession till the date of this order i.e., 06.04.2022		10 years 04 months 21 days

B. Facts of the complaint

3. The complainant has pleaded the complaint on the following facts:

- a) The builder against whom the present case is filed has in total changed its names 3 times till now as per my knowledge. At first it was known as S.M Towers Pvt. Ltd. Then its name was changed to

AEZ Infratech Pvt. Ltd. currently the builder is known as ADTV Communications Pvt Ltd.

- b) Mr. Pradeep Kumar (Original Allottee) executed the flat buyers agreement with S.M. Towers Pvt Ltd on 14.10.2005 for allotment of flat 303, tower D6 measuring 2244 sq. ft for basic sale price of Rs 52,24,600/- in ALOHA, Gurugram. On 04.01.2006, as per the request by the allottees, the builder changed their plan from construction linked to down payment plan whose base sale price was Rs 47,02,140/-.
- c) On 05.10.2005, original allottee paid Rs 2,00,000 to the builder. On 14.10.2005, further a sum of Rs 6,00,000/- was given and acknowledged. On 10.01.2006, Mr. Pradeep Kumar (original allottee) paid a sum of Rs 36,67,033/- to the said builder which was acknowledged as well. All the payments made were as per the prescribed payment plan.
- d) On 04.11.2011, Pradeep Kumar entered into an agreement to sell with Mr. Sanjit Singh (Complainant) for a sum of Rs. 82,35,107/- out of which cheque of Rs 80,00,000 was given to the original allottee and Rs 2,35,107 + other charges as per the agreement were due to be given to the builder at the time of offer of possession.
- e) In 2016, I decided to sell my flat to Mr Chaitanya Tiwari on 19.02.2016 for a sum of 13500000/- . He paid me a sum of 1 lakh as token amount and failed to honour the balance amount, for which the sum of 1 lakh got forfeited as written on the token receipt. I had approached him several times through his agent, but he showed no interest to go forward.



- f) Two months later I executed an agreement with Stupefy Realcon Pvt Ltd on 14.03.2016 for a sum of 13000000/- for which I received a sum of Rs 13,00,000/-. The date of final payment being 07.05.2016 was not honoured and thus amount was forfeited as per the terms agreed on the agreement to sell (clause 17 of the agreement). With several reminders I had no option but to send a notice to Stupefy Realcon Pvt Ltd through my lawyer Mr Rajiv Agnihotri. He sent it and received a reply from Apsa the lawyer of Stupefy Realcon Pvt Ltd which was then answered by my lawyer Mr Sankalp Bhatt. (The original executed agreement has been misplaced but I have placed the draft agreement to sell).
- g) In July 2017, the builder ADTV Communications private Ltd started giving possessions to other people but never offered the same to me. I approached him several times by emails and even had face to face meetings at the builder's office, but I was still not offered possession of the flat for which I have paid 95% of the total cost.
- h) All of sudden on 23/3/18, the builder offered me possession followed by three quick reminders. When I approached the builder, he still was still not willing to give me the possession of the said flat, thus in this context a notice was sent to the builder. The builder in his reply, malafidely increases the outstanding amount against the flat from 6,83,275/- to 18,65,112/- without any justification. My motive only was and still is to get the possession of the flat for which I have paid 95 % and am willing to pay the rest amount as per the agreement. In the reply to the last notice sent by lawyer Sankalp Bhatt, the builder wrongly states that he offered

possession to me two years ago. I was never offered possession in 2017.

- i) The builder itself started offering possession 2017 around July/August to other owners. For the first time, I was offered possession in March 2018. In the final letters of possession, the outstanding amount was 6,83,275/- plus interest which the builder was charging @ 24% p.a. which is not reasonable. I am willing to pay my outstanding amount as per the agreement.
- j) The builder in his reply to my final notice, malafidely increased the total outstanding amount to Rs 18,65,112/-, which clearly indicates the bad intention of the builder in order to harass the buyers after receiving 95% of the amount of the flat.
- k) The promoter was put to notice by the Hon'ble Authority vide order dated 30.01.2019 in which 15 days' time was granted for filing its response. Instead of complying with the order of the Hon'ble Authority the respondent in blatant and flagrant violation and in a brazen manner, in contempt of this Hon'ble Authority, instead of filing its response the respondent has sold the unit to a third person (as per the inquires made it has been sold to an army officer) who has started construction/ modification in the apartment and has even put up a new gate on the said apartment. This way the contemptuous act of the promoter has resulted in creating third party rights of illegal nature.
- l) In spite of receiving the order/ notice of the Hon'ble Authority dated 30.01.2019, the promoter deserves to be penalized for the failure to comply with the order of this Hon'ble Authority. It has not only failed in filing its response within 15 days but has deliberately

not filed its reply in spite of repeated indulgence having been given by the authority on numerous occasions from January 2019 till date wherein time was repeatedly extended for filing the response.

- m) The builder offered possession to me in 2018 whereas all other allottees in my tower were offered and handed over possession in 2017 itself. Moreover, the builder just offered by the possession without actually handing over the said unit to me. The Builder has played fraud with the complainant by first offering me possession later than other allottees and then by not physically handing over the said unit to the complainant even after collecting 99% of the total consideration and now the builder has gone to the extent of selling my said unit to a third-party during pendency of the present complaint.

C. Relief sought by the complainant:

4. The complainant has sought following reliefs:

- a) Direct the respondent to hand over possession of the said flat to the complainant along with prescribed interest for delay from the date of possession as per agreement till the date the possession is actually handed over.
- b) Direct the respondent to charge interest on outstanding dues if any, from the complainant as per the prescribed interest rather than 24% p.a.
- c) Direct the respondent to acquire the occupation certificate as well as the completion certificate before handing over the possession of the flat.

5. The present complaint was filed on **26.11.2019** and registered as **complaint no. 353 of 2019**. As per the registry, complainant has sent



copy of complaint along with annexures through speed post as well as through email. The tracking report of the same has been submitted by the complainant at page A of the complaint. The proof regarding the delivery of the complaint along with annexures made to the respondent, has been submitted by the complainant as available in the file. The registry of the authority sent a notice with a copy of the complaint along with annexures through speed post and the same returned unclaimed. The tracking report of the speed post is available in the file. Registry has also sent the notice along with a copy of the complaint through email and the mail was bounced back.

6. The registry also issued fresh notices to the respondent on new addresses, but they also returned unclaimed. The tracking for the same is also available in the file. Lastly, on 03.12.2021 the authority before proceeding ex-parte against the respondent ordered to issue public notice in the daily newspaper. But despite this the respondent failed to submit any reply till date therefore authority is left with no option but to proceed ex-parte against the respondent.
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submission made by the complainant.

D. Jurisdiction of the authority

8. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D.I. Territorial jurisdiction



9. 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.

D.II. Subject matter jurisdiction

10. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of Section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

E. Findings on the relief sought by the complainant

**E.I Interest for every month of delay at Prevailing rate of interest.
Rs 51,98,509 (From 14.10.2008 till November 2019).**

11. In the present complaint, the complainant intends to continue with the project and is seeking delayed possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under:

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

12. Clause 10 of the flat buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below: -

"10 SCHEDULE FOR POSSESSION OF THE SAID PREMISES:

The possession of the said premises is likely to be delivered by the Company to the Allottee within 36 months from the date of the start of the construction of the tower in which the said flat is located or from the execution of this agreement whichever is later, subject to force majeure circumstances, & on receipt of all payments punctually as per agreed terms and on receipt of complete payment of the basic sale price and other charges due and payable up to the date of possession according to the Payment Plan applicable to the Allottee. The company would pay penalty to its customers @ Rs 5/- per sq. ft. per month for handing over the flat beyond the committed period as stated herein above subject to punctual payment of instalment the allottee."

13. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoters. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favor of the promoters and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoters may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the flat buyer agreement by the promoters are just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.



14. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. As the respondent has offered possession for fit outs on 22.03.2018 and thereafter no valid offer of possession has been issued by the respondent. Also as reflected from the LC report dated 28.07.2021 the finishing works with respect to tower D6 are still pending.
15. The complainant on hearing dated 12.01.2022 informed the authority that the respondent has cancelled their unit and then sold it to Col. Rajesh Malik without the consent of the complainant. Since the authority has already proceeded ex-parte against the respondent and none on behalf of the respondent has appeared for any justification if any, therefore the authority directs the respondent to provide an alternate unit to the allottee/complainant. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the allottee is entitled for refund of the entire amount paid by him, to the promoter along with interest for every month of delay from due date of possession i.e., 16.11.2011 till the actual handing over of the physical possession of the said unit, at prescribed rate i.e., 9.30 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

F. Directions of the authority

16. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoters as per the functions entrusted to the authority under section 34(f):
- i. The respondent is directed to pay interest at the prescribed rate of 9.30% p.a. for every month of delay from the due date of possession i.e., 16.11.2011 till the actual handing over of possession of the said unit after receiving OC from the competent authority.
 - ii. The arrears of such interest accrued from 16.11.2011 till the date of this order shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottee before 10th of the subsequent month as per rule 16(2) of the rules.
 - iii. Since the unit allotted to the complainant has been sold by the respondent to another person without any justification therefore the authority directs the respondent to provide an alternate unit to the allottee/complainant.
 - iv. The respondent is directed to obtain occupation certificate from the competent authority and then make a valid and lawful offer of possession post that execution of conveyance deed be done within 3 months from the valid offer of possession as per provisions of section 17 of the Act, 2016
 - v. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

- vi. The rate of interest chargeable from the allottee by the promoters, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondents/promoters which is the same rate of interest which the promoters shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(z a) of the Act.
- vii. The respondents shall not charge anything from the complainant which is not the part of the agreement. However, holding charges shall not be charged by the promoters at any point of time even after being part of agreement as per law settled by hon'ble Supreme Court in civil appeal no. 3864-3889/2020.
17. Complaint stands disposed of.
18. File be consigned to registry.


(Vijay Kumar Goyal)
Member


(Dr. K.K Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 06.04.2022

HARERA
GURUGRAM