

PROCEEDINGS OF THE DAY		15
Day and Date	Tuesday and 10.01.2023	
Complaint No.	CR/1734/2022 Case titled as Shreya Dinda Vs AGRANTE DEVELOPERS PRIVATE LIMITED	
Complainant	Shreya Dinda	
Represented through	Shri Sanyam Diwan Advocate	
Respondent	AGRANTE DEVELOPERS PRIVATE LIMITED	
Respondent Represented	Ms. Nishtha Jain proxy counsel with Shri Shubham Verma General Manager (legal) of the company	
Last date of hearing	15.09.2022	
Proceeding Recorded by	Naresh Kumari and HR Mehta	

Proceedings

The present complaint was received on 12.05.2022 and reply on behalf of respondent was filed on 22.09.2022.

Succinct facts of the case as per complaint and annexures are as under:

S. N.	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



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हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

4.	DTPC 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.	TD-116, tower D [as per allotment letter at page 21 of complaint]
6.	Unit area admeasuring	488.30 sq. ft. [as per allotment letter at page 21 of complaint]
7.	Application dated	04.02.2019 [page 20 of complaint]
8.	Allotment dated	01.07.2019 [page 21 of complaint]
9.	Total sale consideration	Rs. 19,93,060/- [as alleged by complainant at page 12 of complaint]
10.	Amount paid by the complainant	Rs. 4,98,266/- [as per receipts annexed by complainant]
11.	Possession clause	NA
12.	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.
13.	Building plan approved on	06.07.2018



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		[As per project details]
14.	Environment clearance	20.08.2019 [pg. 16 of reply]
15.	Due date of possession	20.08.2023 [calculated as 4 years from date of environmental clearance i.e., 20.08.2019 as the same is later]
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered
18.	Surrender	Vide email dated 25.07.2020 [pg. 24 of complaint]

Relief(s) sought by the complainant:

- To refund the amount deposited by complainant along with interest at prescribed rate.**

The complainant is an allottee in the project "Kavyam", an Affordable Group Housing Colony developed by the respondent. Vide letter dated 01.07.2019, the complainant was allotted unit bearing no. T116, tower-D. The due date of possession has been calculated as 20.08.2023 but the complainant even before expiry of the due date sent a mail for refund of the amount on 25.07.2020. Thus, this is a case of surrender of unit.

It is pertinent to mention clause 5(iii)(h) of Affordable Housing Policy, 2013 as amended by Notification dated 05.07.2019 which states as under:

"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;



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(bb)	Upto 1 year from the date of commencement of the project	1% of the cost of flat;
(cc)	Upto 2 years 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;

Note: The cost of the flat shall be the total cost as per the rate fixed by the Department in the policy as amended from time to time."

Since, the surrender of the unit by the complainant was done in 2020, hence the respondent is entitled to forfeit amount in accordance with amended section 5(iii)(h). 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.

The complainant, in this case, surrendered the unit in 2020 i.e., upto 1 year from the date of commencement of project. Hence, the respondent is entitled to forfeit 1% of the flat cost in addition to Rs. 25,000 as mandated by the Policy of 2013. The respondent is entitled to forfeit 1% of cost of flat in addition to Rs. 25,000/-. Thus, the respondent in total is entitled to forfeit the aforementioned amount and return the balance amount to the complainant along with interest at the rate 10.60% [the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%] as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of surrender i.e., 25.07.2020 till the date of actualisation within the timelines provided in rule 16 of the Haryana Rules 2017 (ibid). **The AR of the respondent company also states that refund as per above Policy after statutory deduction is being made within 90 days.**

2. Compensation and Litigation expenses

The complainant in the aforesaid head is seeking relief w.r.t compensation. Hon'ble Supreme Court of India, in case titled as *M/s Newtech Promoters and*



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Developers Pvt. Ltd. V/s State of UP & Ors. (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021), has held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of compensation.

Complaint stands disposed off. Detailed order will follow. File be consigned to the registry.

Ashok Sangwan
Member

V.I - 5
Vijay Kumar Goyal
Member
10.01.2023