

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

Complaint no.	:	3417 of 2020
Date of filing complaint:	:	22.10.2020
First date of hearing	:	22.12.2020
Date of decision	:	05.07.2022

1. Dr. Subhas Mittal
2. Dr. Rieta Mittal
Both RR/o: 1600, Sector 13(p),
Hisar- 125005, Haryana

Complainants

Versus

M/s Vatika limited
R/o: Vatika triangle, 4th floor, Sushant Lok
phase-I, block- A, Mehrauli Gurgaon road,
Gurugram-122002, Haryana

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Surbhi Garg Bhardwaj & Gaurav Bhardwaj
Advocates for the complainants
Venket Rao
Advocate for the respondent

ORDER

1. The present complaint has been filed by the complainants/allottees 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 complainants, 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	"Gurgaon 21", Vatika India Next, Sector 83, Gurugram.
2.	Project area	19.131 acres
3.	Nature of the project	Residential township
4.	DTCP license no. and validity status	83 of 2009 dated 07.12.2009 valid up to 06.12.2024 84 of 2008 dated 11.04.2008 valid up to 10/04/2020
5.	Name of licensee	Growmore Buildtech Pvt. Ltd. & Mark Buildtech Pvt. Ltd.
6.	Unit no.	302, floor 3, block C4 (page 47 of complaint)
7.	Measurement of unit	1776.77 sq. ft
8.	Date of execution of apartment buyer's agreement	13.10.2010 (as per stamp on page 44 of complaint)
9.	Date of Allotment letter	16.07.2008 (Page 38 Annexure P/2 of complaint)
10.	Payment plan	Construction linked payment plan. [Page 72 of complaint]

11.	Total consideration	Rs.61,62,648.30/- (as per account statement annexure p/4 at page 86 of the complaint).
12.	Total amount paid by the complainants	Rs.63,81,189.50/- as per account statement annexure p/4 at page 86 of the complaint).
13.	Due date of delivery of possession as per clause 10.1 of apartment buyer's agreement - 3 years from the date of execution of the agreement [Page 54 of ABA]	13.10.2013
14.	Date of Offer of possession	18.07.2016 (page 93 of complaint)
15.	Possession take letter	17.08.2016 (page 94 of complaint)
16.	Date of Occupation certificate	Not received
17.	Delay in handing over of possession till date of decision i.e. 05.07.2022	8 years 8 months 22 days

B. Facts of the complaint

3. The complainants have submitted that somewhere around 2009-2010, the respondent advertised about its new residential group housing project namely "Gurgaon 21" located in Vatika India Next, Sector-83, Gurugram. The respondent painted a rosy picture of the project in their advertisement making tall claims and representing that the project aims at providing lush, landscaped greenery and contemporary architecture, claiming that Gurgaon 21 blends the dynamism of a cosmopolitan lifestyle with the serenity of a well-

- planned, premium neighbourhood. The tagline of the project as advertised by the respondent was *"living in the 21st century"*.
4. That believing the false assurances and misleading representations of the respondent, the complainants booked an apartment in the said project of the respondent company by filing an application form on 28.06.2010 and by paying an amount of Rs 6,00,000/- towards the said booking by way of 12 cheques of Rs 50,000/- each bearing instrument no. s' 087441 to 087452.
 5. That thereafter, an allotment letter was issued thereby allotting a unit bearing no C4-302 to the complainants. It is significant to mention here that the said allotment letter bears a wrong date. The date has been wrongly mentioned as 16.07.2008 while the booking was made in June 2010. After almost 4 months from the date of booking, an apartment buyer's agreement was executed on 13.10.2010 between the complainants and the respondent for the aforementioned unit bearing no. C4-302, located on 3rd floor, in tower 'C4' and admeasuring a super area of 1776.77 sq.ft. for a total sale consideration of Rs. 62,95,071/-.
 6. That as per clause 10.1 r/w clause 10.2 of the said apartment buyer's agreement dated 13.10.2010, the respondent proposed to complete construction, apply and obtain occupation certificate and handover the possession of the unit in question within a period of 3 years from the date of execution of said agreement, i.e. by 13.10.2013. However, the respondent miserably failed in handing

over possession in accordance with the said agreement. The complainants have paid a total sum of Rs 63,81,189.50/- towards the aforesaid residential flat in the project from June 2010 till date as and when demanded by the respondent, as against a total sale consideration of Rs 62,95,071/-

7. That though the booking was made in 2010 and possession was supposed to be handed over in 2013 as per agreement, till the due date as per agreement, i.e. 13.10.2013, the project was nowhere nearing completion. Upon this, the complainants asked the respondent as to the date of handing over, but to no avail as no concrete reply was given by the said respondent. Thereafter, the complainants kept contacting the respondent on several occasions seeking an update on the construction status and if the requisite sanctions and approvals had been obtained and as to when occupation certificate would be received, but all in vain. It is submitted that throughout this period, the complainants along with the other apartment owners regularly and repeatedly followed up with the representatives of the respondent and enquired about the status of the project. However, the representatives of the respondent on every occasion made false and vague assurances that the possession of the flat would be delivered soon and kept on prolonging the matter unjustifiably without any cogent reason thereby inflicting great mental agony and hardship upon the complainants.

8. That the complainants had asked the respondent to clarify about the unfair and one-sided clauses in the agreement, namely the stark contrast between the interest being charges by the respondent on the delayed payments and the delayed possession charges for which the complainants were entitled on account of delay in handing over possession in violation of the apartment buyer's agreement, to which the latter replied that the delayed payment interest, if any, would be charged on the basis of the agreement and the delay in handing over possession of the flat was beyond the control of respondent.
9. That as per clause 8 of the agreement, upon the delay payments, the allottee could be made liable to the extent of paying 18% interest per annum. On the contrary, as per clause 11.5, upon delay in handing over possession, the respondent company would be liable to pay compensation only to the extent of Rs 5/- per sq. ft. of the super area of the apartment for the period of delay. It is submitted that such clauses of the agreement are clearly unfair and arbitrary thus making the agreement one-sided. Accordingly, the complainants pointed out these unfair clauses to the respondent, but to no avail.
10. The complainants have submitted that they approached Hon'ble NCDRC in January 2016 for seeking relief of the possession along with delay possession. However, owing to some technicality, the case had to be withdrawn. Meanwhile, the respondent sent a letter

of intimation of possession dated 29.02.2016 to the complainants informing them about the possession formalities which were to be commenced after seeking payment of final instalment due '*at the time of possession*'. A copy of the intimation of possession letter dated 29.02.2016 sent by the respondent has been annexed herein and marked as annexure P/5.

11. That along with the intimation of possession letter dated 29.02.2016, the respondent sent an indemnity cum undertaking to be signed by the complainants and only then possession could be taken by them. It was laid down in the agreement that post signing it, the allottee would have no right against the builder and all the liabilities of the builder would cease henceforth. To this, the complainants took a serious note and conveyed to the respondent that they cannot sign such an unfair undertaking. Thereupon, the respondent said that failure to provide indemnity cum undertaking would attract simple interest per annum @15-18% on the balance sale consideration on account of delayed payment and holding charges of Rs 5/- per sq.ft. per month, along with maintenance charges of Rs 1.97/- per sq.ft. per month and the allotted apartment may be cancelled along with forfeiture of earnest money and other non-refundable amounts.
12. That being aggrieved by the aforesaid lapses on part of respondent and the inexplicable delay in handing over possession, the complainants filed a case before hon'ble State Consumer Disputes

Redressal commission, Panchkula in May 2016. That on the date of first hearing, the respondent offered possession before the hon'ble SCRDC and submitted that a formal offer of possession shall be made soon. Accordingly, the complainants amended their prayer clause removing the relief of handing over of possession.

13. The complainants have submitted that on 18.07.2016, while the case mentioned above before Hon'ble SCRDC was pending, the respondent sent a letter of offer of possession thereby inviting the complainants to take possession between 08.08.2016-23.08.2016. Accordingly, on 17.08.2016, the possession was taken by the complainants here after making final payments due against the unit in question. On 12.07.2017, the Hon'ble SCDRC disposed of the case filed by the complainants thereby awarding the relief of delayed possession charges @7% interest per annum from the due date of possession till actual handing over along with compensation @ Rs 5/ per sq. ft. for the period of delay and compensation for mental harassment.

14. The complainants have submitted that upon failure by the respondent in honouring the said order, the complainants filed an execution petition which was honoured in part and then again an execution petition was filed after which the respondent paid the awarded decree amount. Upon requesting the Hon'ble SCDRC to direct the respondent to execute the conveyance deed, the respondent sought two months' time for registration of conveyance

deed. The same forms a part of the execution order dated 13.12.2019 passed by SCDRC.

15. The complainants have submitted that since the taking over of possession in 2016 till date, the complainants have been painstakingly pursuing the respondent to register the conveyance deed for the unit in question in their favour, but all in vain.
16. That vide e-mail dated 07.09.2019, followed by reminder dated 10.09.2019, issued on 14.09.2019 and 16.09.2020, the complainants have been requesting the respondent to register the conveyance deed in their favour. However, the respondent paid no heed to the aforesaid request of the complainants despite the fact that the possession was offered before hon'ble SCDRC and the respondent had sought a time period of two months from the hon'ble SCDRC to register the conveyance deed in their favour and the same forms a part of the execution order dated 13.12.2019 annexed at annexure P/9.
17. The complainants have submitted that the aforesaid conduct of the respondent in delaying the registration of conveyance of residents of other towers in the project in question were already done. Upon further inquiries from other buyers of the project in question in order to find out the exact reason behind the evasive attitude of the respondent company regarding of conveyance deed, the complainants were startled to know that the respondent failed to obtain the occupation certificate for tower 'C4' i.e., the tower where

the unit in question is located and tower 'A'. This left the complainants devastated.

18. The complainants have submitted that they immediately rushed to the respondent's office in order to enquire about their aforesaid misconduct and fraudulent acts, to which the representatives of the respondent company simply said that the occupation certificate for the tower in question shall be received soon. The complainants were completely taken aback by the said submission of the respondent.
19. That having already invested almost all of their life savings in order to purchase the unit in question, the complainants had no other option but to believe the representations of the respondent regarding the veracity of offer of possession and take possession, especially when the said possession was made during the pendency of legal proceedings before hon'ble SCDRC.
20. That the fact that the possession was being offered without obtaining occupation certificate was concealed from the complainants at the time of said offer. Rather when the complainants orally enquired about receipt of all the necessary sanctions for the unit in question, the respondent very clearly submitted that all the approvals are in place and even the occupation certificate has been received for the project in question. It was only upon conducting an inquiry for the reasons behind non

execution of conveyance deed that the complainants came to know about this misconduct on the part of respondent.

21. That by concealing the aforesaid fact from the complainants, the respondent has inflicted great injustice upon the complainants and defrauded them by duping them of their hard-earned money. Further, the clauses of the apartment buyer's agreement dated 13.10.2010 are such that even if the fact of non-receipt of OC was in the knowledge of the complainants at the time of offer of possession, after spending almost all of their life savings, they would have been left with no option but to abide by the assertions of respondent. This can be highlighted from clause 10.3 of the agreement which clearly states that on failure of buyer to take possession, unit could be cancelled by the respondent and holding charges can also be levied.
22. That the main rationale behind issuance of an occupation certificate is that such certificate is an assurance of the fact that the building has been constructed according to permissible laws and all the local laws have been complied with and accordingly, the said building is fit to occupy. Further, it is only upon receipt of occupation certificate that the building becomes safe in all respects to reside and becomes a marketable property as well. Accordingly, by offering possession of a unit which is not fit to occupy, the respondent has not only duped the complainants of their hard-earned money and defrauded them but has risked the lives of the

residents of such unit and eventually, the entire tower/building, which amounts to a serious misconduct on part of respondent company which made tall claims and representations not only while booking, but even at the time of handing over possession.

23. That by offering possession without obtaining occupation certificate, the respondent has violated the provisions of their own agreement. It has been specifically laid down in the apartment buyer's agreement dated 13.10.2010 that the offer of possession can be made only after obtaining occupation certificate. However, the respondent failed in adhering to the same. The fact of concealing the non-receipt of OC and offering possession without OC is not only a violation of the apartment buyer's agreement dated 13.10.2010 but is also a violation of section 11(4)(b) of the Real estate (Regulation and Development) Act, 2016. Accordingly, the respondent company must be penalized under section 61 to the extent of 5% of the project cost on account of violation of section 11(4)(b) of the said Act.
24. That the complainants booked the flat with high hopes and dreams that they will be able to live in a safe environment along with their family and will be able to give their family secure and comfortable surroundings to live in. However, the respondent simply refrained from adhering to his commitments though the respondent never failed in raising payment demands irrespective of the pace of construction, but when it came to completing construction and

handing over possession after receipt of occupation certificate, they failed miserably.

25. That the main rationale of the respondent behind offering possession hurriedly without obtaining the occupation certificate was to shorten the period of delay and eventually to minimize the delayed possession charges that the said respondent may be made liable for on account of delay in offering and handing over possession. The complainants did not even imagine that the respondent was planning to offer the possession of a residential apartment which had still not received the OC, which was, and still is, a pre-requisite for a safe living. That the respondent company is an experienced company in the business of making residential apartments, this deliberate act of cheating its customers and at the same time, committing a gross misconduct or non-compliance of rules is nothing short of criminal.
26. That the complainants were further agonized when they came to know that they cannot get their apartment insured against natural calamities or other disasters because the insurance companies do not offer insurance coverage to such buildings which are inhabited without having obtained the OC. Non-availability of any safety of insurance cover has robbed the complainant of their peace of mind and they live under constant fear. Multiple instance of earthquake in recent months have shaken the complainants.

27. That as per clause 14.2 of the agreement dated 13.10.2010, the maintenance deposit taken by the respondent from the complainants was interest bearing, maintenance security deposit, i.e. IBMS. However, the respondent failed in paying the interest accrued on said deposit to the complainants, despite several intimations from them. The respondent simply duped the complainants of their hard-earned money and life savings. The aforesaid arbitrary and unlawful acts on the part of respondent have resulted into extreme kind of financial hardship, mental distress, pain and agony to the complainants.
28. That to add to the misery of the complainants, due to lapse on part of respondent in not obtaining the occupation certificate, the registration of conveyance deed has not been done till date. Accordingly, the respondent be directed to remove all the irregularities in the project and get the occupation certificate for the tower in question and post that, to register the conveyance deed in favour of the complainants, in accordance with section 17 of the Real Estate (Regulation and Development) Act, 2016 which clearly states that the conveyance deed in favour of the allottee shall be carried out by the promoter within three months from the date of issue of occupation certificate.
29. That the present complaint has been filed in order to seek a direction to the respondent to obtain the occupation certificate and to get the registration of conveyance deed in favour of the



complainants along with interest on the amount paid by them apart from the other reliefs as mentioned in the relief clause of the complaint. It is pertinent to mention here that the offer of possession dated 18.07.2016 made by the respondent was completely illegal and sans any legal sanctity and accordingly, it must be declared null and void and the complainants must be granted interest at the prescribed rate in accordance with RERA, 2016 and HRERA, 2017 from the date of taking over of possession, i.e. 17.08.2016 till the date of receipt of occupation certificate and offer of legal possession post that.

30. The complainants have submitted that as per section 11(4)(a) of the Act, the promoter is liable to pay delayed possession interest to the allottee of an apartment, building or project for delay or failure in handing over of such possession as per the terms of agreement of the sale. The relevant portion of section 11(4) is reproduced hereunder:

"11.4(a) the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulation 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 apartment, plots or building, 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:

Provided that the responsibility of the promoter, with respect to the structural defector any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed"

C. Relief sought by the complainants:

31. The complainants have sought following relief(s):

- (i) To direct the respondent to obtain occupation certificate for tower 'C4' and issue fresh offer of possession letter to the complainants.
- (ii) To direct the respondent to register the conveyance deed and transfer title in favour of the complainants upon receipt of occupation certificate in accordance with section 17 of RERA, 2016.
- (iii) To award delay interest at the prescribed rate for every month of delay from the date of handing over of possession, i.e., 17.08.2016 till offer of valid possession after receipt of occupation certificate.

D. Reply by the respondent

32. Respondent has contested the complaint and filed a reply which may be summed up as hereunder: -

- i. That at the very outset, it is stated that the instant complaint has been preferred by the complainants on frivolous and unsustainable grounds and they have not approached this learned authority with clean hands. The instant complaint is not maintainable in the eyes of law and is devoid of merit and is fit to be dismissed *in limine*.
- ii. That the present complaint is an abuse of the process of this authority and is not maintainable. The complainants are trying to suppress material facts relevant in the matter. The

complainants are making false, misleading, frivolous, baseless, unsubstantiated allegations against the respondent with malicious intent and sole purpose of extracting illegitimate gains from the respondent. That the complaint filed by the complainants before the Id. authority besides being misconceived and erroneous, is untenable in the eyes of law and liable to be rejected. The complainants have misdirected themselves in filing the above captioned complaint before this Id. authority as the reliefs being claimed by the complainants cannot be said to even fall within the realm of jurisdiction of this Id. authority. It is submitted that the present complainants had already approached different courts/commission/forums to redress their issues/grievances. It is pertinent to note that the complainants had already approached National Commission Disputes Redressal Commission by way of complaint case in January 2016 and which was withdrawn due to some technical issues as sated in the complaint. It is submitted that the complainant thereafter again on May 2016 had filed a complaint case on same cause of action before the hon'ble State Consumer Dispute Redressal Commission, Panchkula and the same was finally disposed off on 12.07.2017 by passing a direction to the respondent to compensate the complainants for delay of possession and mental harassment. Therefore, the respondent had duly compensated the complainants and they have acknowledged the receipt of the said compensation/amount vide email dated 21.01.2019.

- iii. It is humbly submitted that the complainants again filed an execution petition before the hon'ble SCDRC. It is submitted that the complainants had already proceeded before the hon'ble SCDRC for adjudicate upon the same issues/cause of action and so are forbidden as per *Rule of Res Judicata* to again approach another court/commission for adjudication of same cause of action. Therefore, it is submitted that the complainant with malicious intention had approached the authority without the jurisdiction and when an order passes without jurisdiction is a nullity.
- iv. Therefore, it would be pertinent to make reference to some of the provisions of the Code of Civil Procedure which clearly forbids the Ld. authority to proceed with the present complaint. It is a settled law principle that as per section 11 of Code of Civil Procedure, the courts cannot proceed with the subject matter which was already decided by the court of same or concurrent jurisdiction between the same parties and the parties litigating under the same title. It is submitted that the present complaint is not maintainable before the ld. authority under section 11 of Code of Civil Procedure i.e., principle of Res judicata, which is quoted as under: -

"No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court."

- v. That it is submitted that the complainants voluntarily with free will and consent has taken over the possession of the unit on 11.09.2016 after satisfying with all the terms and conditions of the handing over of possession letter dated 11.09.2016, which is already annexed by complainant with his complaint. The respondent submitted that the complainant executed the unit handover letter dated 11.09.2016 whereby the complainants took over peaceful and vacant physical possession of the unit in question after fully satisfying themselves with regard to its measurements, location, dimension, approvals and development etc. and enjoying the same at his disposal it was further explicitly stated by the complainants in the aforesaid letter that upon acceptance of possession they would not be entitled to raise any claim of any nature whatsoever regarding any variation in the size, dimension, area, location or legal status, delay in possession of the unit in question. The respondent relying upon the aforesaid representation had changed its position to its detriment and proceeded to deliver possession of the unit in question. Therefore, the instant complaint is barred by estoppel. The undertaking given by the complainant in the letter dated 17.08.2016 is reproduced herein for ready reference:

"It is certified that I/we have taken over the possession of the aforesaid unit number and the car parking space(if applicable) after fully satisfying myself/ourselves with regard to the measurements, specifications and fittings/fixtures installed therein and compliance by the developer of all other terms and conditions of the builder buyer agreement and I/we have no complaint/grievance/claim whatsoever in respect thereof. i/we certify that delay, if any, in the construction of the said unit has happened due to bonafide/force-majeure reasons which I/we fully understand and condone, and I/we shall not make any claim on account thereof or any other account in future."

It is not out of place to mention here that the complainant took the possession voluntarily with free will and post giving aforesaid representation. Hence, the present complaint is not maintainable as they are enjoying the peaceful possession of apartment since 2016. The complainants waived off the right to claim the delay interest charges way back in 2016 and therefore, the present complaint is nothing but just an afterthought to harass the respondent.

- vi. That the present complaint is filed with the oblique motive of harassing the respondent company and to extort illegitimate money while making absolutely false and baseless allegations against the respondent. That it is brought to the knowledge of the hon'ble authority that the complainants are guilty of placing untrue facts and are attempting to hide the true colour of the intention of the complainants.
- vii. That, it is evident that the entire case of the complainants is nothing but a web of lies. The false and frivolous allegations made against the respondent are nothing but an afterthought and a concocted story and hence the present complaint filed by the complainant deserves to be dismissed with heavy costs.
- viii. That the various contentions and claims as raised by the complainants are fictitious, baseless, vague, wrong and created to misrepresent and mislead this hon'ble authority, for the reasons stated above. That it is further submitted that none of the reliefs as prayed for by the complainants are sustainable before this hon'ble authority and in the eyes of law. Hence, the complaint is liable to be dismissed with imposition of exemplary

cost for wasting the precious complaint is an utter abuse of the process of law, and hence deserves to be dismissed.

33. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority:

E. I Subject matter jurisdiction

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(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;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

34. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoters leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings regarding relief sought by the complainant:

Relief sought by the complainant:

F.I Award delay interest at the prescribed rate for every month of delay, from the due date of handing over possession, i.e., 15.05.2012 till offer of valid possession after receipt of OC.

35. Admittedly, the possession of the allotted unit has already been offered to the complainants on 17.08.2016 and taken over by them 11.09.2016. So, now the question for consideration arises as to whether the complainants are entitled to delay possession charges from the due date of possession i.e., 13.01.2013 till actual handing over of possession after the receipt of occupation certificate.
36. It is not disputed that the complainants have already approached National Consumer Disputes Redressal Commission by way of filing complaint in January 2016 and which was later on withdraw due to some technical issues. It is also a fact that the complainants later on approached State Consumer Disputes Redressal commissions, Panchkula for the same relief i.e., delay possession charges and the complaint was finally disposed of on 12.07.2017 by observing as under:-

"As a sequel to above discussion when the O.P. did not deliver possession in time it is liable to pay compensation @Rs. 5/- per sq. feet after the expiry of the period of three years, agreed to delivery possession deposited amount for that period. The complainant is also entitled for Rs. 31,000/- as of mental harassment and physical harassment and Rs. 21,000/- as litigation expenses."

37. It has also come on record that the order passed by State Consumer Disputes Redressal Commission became final as an execution of the same was filed on 15.02.2019, and the same was disposed of on 13.12.2019 by observing that the entire decretal amount had been received by the decree holders. So, the same stands dismissed as

withdrawn. This is the third round of litigation w.r.t the same relief besides a direction for occupation certificate and execution of conveyance deed of the subject unit. First of all when the complainants have already been awarded and paid delay possession charges on the basis of orders by the competent authority, then the complaint on the same cause of action is not maintainable. A reference in the regard may be made to the ration of law laid down in case of Ireo Grace Realtech Pvt. Ltd. VS Abhishek Khanna (5785 of 2019) decided on 11.01.2021, and wherein the hon'ble Apex court of the land observed that the laws of the country do not permit forum shopping and an aggrieved can only approach one of the two for dispute settlement of the same matter. It was also observed that:

"An allottee may elect or opt for one out of the remedies provided by law for redressal of its injury or grievance. An election of remedies arises when two concurrent remedies are available, and the aggrieved party chooses to exercise one, in which event he loses the right to simultaneously exercise the other for the same cause of action."

38. So, in view of law laid down by the hon'ble Apex court of the land the complaint seeking delay possession charges before the authority is not maintainable. Though, the claimants are claiming delay possession charges till handing over of possession on the basis of occupation certificate, but they are admittedly in possession of the subject unit since 11.09.2016. So, if the promoter offered them possession illegally then, he can be proceeded under the law and penalty can be imposed for handing over possession to an allottee without receipt of occupation certificate.

F.II Direct the respondent to register the conveyance deed and transfer title in favour of the complainant upon receipt of occupation certificate, in accordance with section 17 of RERA,2016.

39. The complainants are asking for the registration of conveyance deed and transfer of title in accordance with section 17 of the Act of 2016. The complainant have taken possession of the unit on 11.09.2016 on offer of the possession of the unit in question. Whereas the possession was offered by the respondent/promoter without obtaining the OC. the respondent/promoter clearly violated the section 11(4)(b) of the Act, 2016 as detailed in this order therefore, the respondent/promoter is under a mandatory obligation as per the statue and as per the BBA signed with mutual of consent of both parties for registration of conveyance deed after obtaining OC.
40. Clause 13 is reproduced below:

13. Conveyance of the said Apartment

Clause 13.:

"The Company, its Associates Companies, its Subsidiary Companies as stated earlier shall prepare and execute along with the Allottee a conveyance deed to convey the title of the Said Apartment in favour of Allottee but only after receiving full payment of the total price of the Apartment and the parking space allotted to him/her and payment of all securities including maintenance security deposits and charges for bulk supply of electrical energy, interest, penal interest etc. on delayed instalments stamp duty, registration charges, incidental expenses for registration, legal expenses for registration and all other dues as set forth in this Agreement or as demanded by the Company from time to time prior to the execution of the Conveyance Deed. If the Allottee is in default of any of the payments as set forth in this Agreement then the Allottee authorizes the Company to withhold registration of the Conveyance Deed in his/her favour till full and final settlement of all dues to the Company is made by the Allottee and agrees to bear the



consequences. The Allottee undertakes to execute Conveyance Deed within the time stipulated by the Company in its written notice failing which the Allottee authorizes the Company to cancel the allotment and terminate this Agreement in terms of Clause (12) of this Agreement and to forfeit out of the amounts paid by him/her the earnest money, delayed payment of interest any interest paid, due or payable, any other amount of a non-refundable nature and to refund the balance amount without any interest in the manner prescribed in Clause (12) Supra. The Allottee shall be solely responsible and liable for compliance of the provisions of Indian Stamp Act 1899 including any actions taken or deficiencies/penalties imposed by the competent authority(ies). Any increase/decrease in the Stamp Duty charges during the period when the case for execution of the Conveyance Deed of the allotted flat is being processed by the Company Shall be borne by/refunded to the Allottee.

41. It is to be further noted that Section 11(4)(f) provides for the obligation of respondent/promoter to execute a registered conveyance deed of the apartment along with the undivided proportionate share in common areas to the association of the allottees or competent authority as the case may be as provided under section 17 of the Act of 2016. As envisaged in the below mentioned section the respondent/promoter is in clear contravention of section 11(4)(f) of the Act of 2016 and shall get the conveyance deed done after obtaining OC.
42. As far as the relief of transfer of title is concerned the same can be clearly said to be the statutory right of the allottee as section 17(1) of the Act provide for transfer of title is reproduced below:

"Section 17: - Transfer of title...

17(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in



a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws: Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.

43. Hence, in compliance of the above-mentioned provision of the Act of the 2016 the respondent/promoter shall transfer the title of common area to the association of the allottee within 3 months from the date of issuance of occupation certificate.

G. Directions of the authority:

44. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligation cast upon the promoters as per the function entrusted to the authority under section 34(f) of the Act of 2016:

- i. As the possession has already taken over by the complainant and have received delay possession charges on the basis of order passed by State Consumer Disputes Redressal commissions, Panchkula. So, no relief under this can be allowed.
- ii. A direction is given to the respondent/builder to obtain occupation certificate of the project from the competent authority by completing all the formalities within a period of 3 months.
- iii. As and when OC of the tower of the allotted unit is received by the respondent/builder, then it will be obligated for him to

arrange execution of conveyance deed of the unit in favour of the complainant on her depositing necessary charges within 3 months and failing which legal consequences would follow.

45. Complaint stands disposed of.
46. File be consigned to registry.


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 05.07.2022


(Dr. K.K. Khandelwal)
Chairman



HARERA
GURUGRAM