



HARERA
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HARYANA REAL ESTATE REGULATORY AUTHORITY
GURUGRAM

हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

PROCEEDINGS OF THE DAY

32

Day and Date	Thursday and 07.07.2022
Complaint No.	CR/5618/2019 Case titled as Ambarian Tanveer Vs TS Realtech Private Limited
Complainant	Ambarian Tanveer
Represented through	Complainant in person with Shri Gaurav Puri proxy counsel for Shri Abhimanyu Dhawan Advocate
Respondent	TS Realtech Private Limited
Respondent Represented through	S/Shri J.K. Dang and Ishaan Dang Advocates
Last date of hearing	20.05.2022
Proceeding Recorded by	Naresh Kumari and HR Mehta

Proceedings

The present complaint has been received on 15.11.2019 and the reply on behalf of respondent was received on 19.02.2020.

File has been received from the adjudicating officer in view of the judgment dated 11.11.2021 passed by the Apex Court in case titled as *M/s Newtech Promoters and Developers Pvt Ltd Versus State of U.P. and Ors., (2021-22(1) RCR(Civil) 357*) and wherein it was held that the matters regarding refund and interest under sec. 18(1) are to be decided by the authority and matters regarding adjudging compensation to be decided by the adjudicating officer.

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

S. N.	Particulars	Details
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CR/5618/2019

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1.	Name of the project	"Iris Broadway", Sector 85-86, Gurugram, Haryana
2.	Nature of the project	Commercial Colony
3.	DTCP license no. and validity status	40 of 2012 dated 22.04.2012 valid up to 21.04.2025
4.	Name of licensee	TS Realtech Pvt. Ltd.
5.	RERA Registered/ not registered	Registered vide no. 168 OF 2017 DATED 29.08.2017
6.	RERA registration valid up to	31.12.2021 + 6 months COVID= 30.06.2022
7.	Unit no.	Initial unit:-301 ,3 rd Floor (Page no. 18 of complaint) Revised unit:-301- A and 301-B, 3 rd Floor, Block A (Page no. 59 and 84 of reply)
8.	Unit area admeasuring	Initial unit:- 1107 sq.ft. (Page no. 18 of complaint) Revised unit:-301-A- 565.7 sq. ft. 301-B-526 sq. ft. (Page no. 59 and 84 of reply)
9.	Possession clause	11.1 Possession Time and Compensation <i>"If for any reasons other than those given in clauses 11.1, the Company is unable to or fails to deliver possession of the said unit to the Allottees within forty two (42) months from the date of Application or within extended period or periods under this Agreement, then in</i>

An Authority constituted under section 20 the Real Estate (Regulation and Development) Act, 2016
Act No. 16 of 2016 Passed by the Parliament

भू-संपदा (विनियमन और विकास) अधिनियम, 2016 की धारा 20 के अंतर्गत गठित प्राधिकरण

भारत की संसद द्वारा पारित 2016 का अधिनियम संख्यांक 16



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CR/5218/2019

New PWD Rest House, Civil Lines, Gurugram, Haryana

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		<i>such case, the Allottees shall be entitled to give notice to the company, within ninety (90) days from expiry of said period of forty two months or such extended periods, as the case may be, for terminating this Agreement".</i> (Page 21 of the complaint).
10.	Date of Application for booking	01.05. 2013 (Page 12 of the complaint)
11.	Date of Execution of Space buyer agreement	Initial unit:-20.08.2013 (As per on page 13 of complaint) Revised unit:-26.12.2017- For both revised unit (As per on page 55 and 80 of reply)
12.	Due date of possession	01.11.2016 (Calculated from the date of application form dated 01.05.2013) Note: Possession clause's of both the SBA executed inter-se parties are identical.
13.	Total sale consideration	Rs. 87,40,190/- (SOA at Pgs. 52 & 53 of the Reply to the Complaint)
14.	Amount paid by the complainant	Rs. 84,40,960.33/- (Pg. 09 of the Complaint)
15.	Occupation certificate /Completion certificate	29.03.2019 (Page 47 of Reply to the Complaint)
16.	Offer of possession	Unit-301-A:-19.04.2019

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हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम, 26/8/2019

New PWD Rest House, Civil Lines, Gurugram, Haryana

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(Page 48 of the Complaint)

Unit-301-B:- Not offered

The authority observes that there has been two buyer's agreement executed inter-se parties. The first SBA was executed on 20.08.2013 for unit bearing no. 301 admeasuring 1107 sq. ft. Later on second SBA was executed on 26.12.2017 in respect of unit bearing no. 301-a and 301-b admeasuring 565.7 sq. ft. and 526 sq. ft.

The Doctrine of Waiver finds its place under Section 63 of the Contract Act, 1872 which provides for relinquishment of rights between the parties. Rights that may be relinquished include obligations as well as claims that has been earlier consented to be performed and exercised by the parties. Thus, the waiver of right under Section 63 of the Contract Act has to be a matter of mutual consensus. It is an act of surrender of benefit or privilege. The waiver of right requires a prior-knowledge of an existing right by the person who seeking waiver of such right. As decided in Manak Lal v. Dr. Prem Chand Singhvi AIR 1957 SC 425, a person is required to be fully cognizant of his rights before waiving off such rights. In the present case, the complainant has voluntarily waived the his contractual rights as soon as a new agreement (SBA 2) is signed by him. Therefore, the due date of handing over of possession shall be calculated as per the terms of new SBA executed inter-se parties on 26.12.2017.

The complainant has sought following relief:

- 1. To direct the respondent to pay interest for the time period of 2 years and to give possession of the unit within 30 days from the date of first appearance;**

301- A unit:

In the present case, the complainant was offered possession by the respondent on 19.04.2019 in respect of unit no. 301-A, 3rd Floor, Block A after receipt of OC dated 29.03.2019. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainants as per the terms and conditions of the space buyer's agreement dated 26.12.2017 executed between the parties.



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CRJ 3618/2019

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Considering the above-mentioned facts, the authority calculated due date of possession as per clause 11 of BBA i.e., within the period of 42 months from the date of application i.e. 01.05.2013 As such the due date of possession comes out to be 01.11.2016.

Accordingly, the complainant is entitled for delayed possession charges as per the proviso of section 18(1) of the Real Estate (Regulation and Development) Act, 2016 at the prescribed rate of interest i.e. 9.50% p.a. for every month of delay on the amount paid by the complainant to the respondent from the due date of possession i.e., 01.11.2016 till offer of possession (19.06.2019) plus 2 months i.e. 19.06.2019.

301- B unit:

*Although OC for the subject unit has been obtained on 29.03.2019 from the competent authority but no offer of possession has been made to the complainant. Offer of possession acts as a vital document which acts a bridge between section 11(4)(b), where respondent-builder as per obligation conferred over him, shall supply the copy of occupation certificate to the complainant and on the other hand, the complainant therefore, as per section 19(10) would initiate it's process for taking possession of the allotted unit. Hence, the liability of respondent continuous till offer of possession.

Accordingly, the complainant i entitled for delayed possession charges as per the proviso of section 18(1) of the Real Estate (Regulation and Development) Act, 2016 at the prescribed rate of interest i.e. 9.50% p.a. for every month of delay on the amount paid by the complainants to the respondents from the due date of possession i.e., 01.11.2016 till the offer of possession plus 2 months.

2. Compensation on account of mental agony and tremendous stress.

The complainant is claiming compensation in the present relief. The authority is of the view that it is important to understand that the Act has clearly provided interest and compensation as separate entitlement/rights which the allottee can claim. For claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainant may file a separate complaint before the adjudicating officer under section 31 read with section 71 of the Act and rule 29 of the rules.



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3. That if the Developer cannot comply with the order of the authority, then he should refund the entire principle amount with 18% interest.

The authority has allowed the delayed possession charges, refund cannot be allowed.

Complaint stand disposed of. Detailed order will follow. File consigned to the registry.


Vijay Kumar Goyal
Member


Dr. KK Khandelwal
Chairman
07.07.2022