

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

Complaint no.:	2274 of 2019
First date of hearing:	26.11.2019
Date of decision:	05.07.2022

Sandeep Yadav  
R/o H No. A-152, Ridgewood Estate, Gurugram-122001 **Complainant**

Versus

1. M/s BPTP Ltd.  
**Office address:** M-11, 1<sup>st</sup> Floor, middle circle,  
Connaught place, New delhi-110001
2. M/s Anjali Promoters & Developers Pvt. Ltd.  
**Office address:** 7, Barakhamba Road, New Delhi-  
110001

**Respondents**

**CORAM:**

Dr. K. K. Khandelwal  
Shri Vijay Kumar Goyal

**Chairman  
Member**

**APPEARANCE:**

Shri. Sukhbir Yadav (Advocate)  
Shri. Venkat Rao (Advocate)

Complainant  
Respondents

**ORDER**

1. The present complaint dated 22.05.2019 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	"CENTRA ONE", Sector-61, Gurugram
2.	Project area	3.675 acres
3.	Nature of the project	Commercial Complex
4.	DTCP license no. and validity status	277 of 2007 dated 17.12.2007 valid up to 16.12.2019
5.	Name of licensee	Saixpo Overseas Pvt. Ltd.
6.	RERA registration details	Not Registered
7.	Unit no.	012-1211 [annexure P4, pg. 47 of complaint]
8.	Unit measuring	1000 sq. ft. [annexure P4, pg. 47 of complaint]
9.	Date of execution of flat buyer agreement	22.09.2018 [pg. 80 of complaint]
10.	Possession clause	<b>Clause 2.1</b> <i>The possession of the said Premises shall be endeavoured to be delivered to the Intending Purchaser by 31st December 2012, however, subject to clause 9 herein and strict adherence to the terms and conditions of this Agreement by the Intending Purchaser. The intending seller shall give notice of possession to the intending purchaser with regard to the date of handing over of possession, and in the event the intending purchaser fails to accept and take the possession of the said premises on such date specified in the</i>



		<p><i>notice to the intending purchaser shall be deemed to be custodian of the said premises from the date indicated in the notice of possession and the said premises shall remain at the risk and cost of the intending purchaser.</i></p> <p><i>2.2 The intending purchaser shall only be entitled to the possession of the said premises after making full payment of the consideration and other charges due and payable. Under no circumstances shall the possession of the said premises be given to the intending purchaser unless all the payments in full, along with interest due, if any, have been made by the intending purchaser to the intending seller. However, subject to full payment of consideration along with interest by the intending purchaser, if the intending seller fails to deliver the possession of the said premises to the <b>intending purchaser by 30th June 2013</b>, however, subject to clause 9 herein and adherence to the terms and condition of this agreement by the intending Purchaser, then the intending seller shall be liable to pay penalty to the intending purchaser @ Rs.15/- per sq. ft. per month up till the date of handing over of said premise by giving appropriate notice to the intending purchaser in this regard. If the intending seller has applied to DTCP/any other competent authority for issuance of occupation and/or completion certificate by 30th April 2012 and the delay, if any, in making offer of possession by 30th June 2012 is attributable to any delay on part of DTCP/ competent authority, then the Intending Seller shall not be required to pay any penalty under this clause.</i></p> <p><i>(Emphasis supplied) [pg. 85 of complaint]</i></p>
11.	Due date of possession	30.06.2013 <b>[Note: Grace period included]</b>
12.	Basic Sale consideration as per BBA dated 22.09.2018	₹ 57,75,000/-

		[pg. 82 of complaint]	
13.	Total sale consideration as per statement of account annexed with offer of possession dated 22.11.2018	₹ 89,73,657 /-  [Pg. 59 of complaint]	
14.	Amount paid by the complainant as per statement of account annexed with offer of possession dated 22.11.2018	₹ 72,36,670/-  [pg. 59 of complaint]	
15.	Delay in handing over possession till the date of offer of possession plus two months i.e., 22.01.2019	5 year 6 months 23 days	
16.	Occupation certificate	09.10.2018	
17.	Offer of possession	22.11.2018  [In respect of unit no. 014-1402 measuring 1110 sq. ft. and increase in area of unit by 110 sq. ft. (11% of agreed area)]  [annexure P10, pg. 57 of complaint]	

**B. Facts of the complaint**

3. The complainant has pleaded the complaint on the following facts:
  - a. That on 24.10.2006 & 26.10.2006, the complainant / petitioner Mr. Sandeep Yadav booked two office space admeasuring 1000 sq. ft. each in upcoming commercial project of the respondent namely "BPTP Centra One" situated at sector 61, Gurgaon and paid Rs. 11,55,000/- each vide cheque no. 926235 dated 24.10.20106 & cheque no. 926236 dated 26.10.2006 as booking amount and also signed two pre-printed application form. Office spaces were



- purchased under the construction link payment plan for basic sale consideration of Rs. 57,75,000/-.
- b. That on 02.01.2007, the respondent no. 1 raised two demands of Rs. 8,66,250/- against both units. The complainant paid the said demand on 13.02.2007, vide cheque no. 701801 drawn on ICICI Bank and vide cheque no. 926260 drawn on standard chartered bank and the respondent no. 1 issued payment receipts on 22.02.2007.
- c. That on 21.12.2007, the respondent no.2 sent a letter informing that "... the company is shortly going to allot the office space in the aforesaid project in the early next year to the customer who make the payment of 10% of the basic price as agreed as per payment schedule on or before 30th December, 2007...", and raised the demand of Rs. 5,77,500/- against both units. The demands were paid by the complainant on 30.12.2007 and on 10.01.2008. It is pertinent to mention here that complainant had already paid 40 % of total cost i.e., Rs. 25,98,750/- by 10.01.2008, against both units.
- d. That on 10.06.2008, the respondent no. 2 issued two allotment letter conforming office no. 012-1210 & 012-1211, measuring 1000 sq. ft. each, in project CENTRA ONE at sector-61, Gurgaon.
- e. That in the month of November 2008, the respondent no. 1 sent an invitation letter to the complainant for his presence for the "Bhoomi Pujan" of "Centra One" on Wednesday, 3rd December 2008, at the project site.
- f. That on 08.09.2011, the respondent no. 2 raised a demand of Rs. 3,63,059/- at construction stage "at the start of 10" floor slab". The complainant paid the said demand on 20.09.2011 vide RTGS No.

CITI2227 and respondent no. 2 issued a payment receipt on 23.09.2011. The respondent no. 2 sent a statement of account which shows that till date the respondent has called Rs. 64,87,559/- and the complainants had paid Rs. 61,24,500/-.

- g. That on 15.12.2016, the complainant sent a grievance email to the respondent for alleging delay in handing over the possession of office space and further asked for refund of money with interest.
- h. That on 19.12.2016, the respondent replied to the email quoting that "we would like to inform you that as per your visit in Gurgaon office as on 16.12.2016 please note your request has been already forwarded to the concerned team to initiate the process. Please allow us to audit your account and we shall get back to you with the outcome once reconciliation of the accounts and facts are done".
- i. That 04.04.2018, the complainants received a copy of space buyer's agreement dated 22.09.2018. As per clause no. 2.1 of space buyer's agreement, the respondent has to give the possession of unit by 31.12.2012 and the agreed total cost of office space was Rs. 65,27,680/- including, B.S.P., E.D.C., LD.C. and car parking. It is pertinent to mention here that stamp paper of space buyer's agreement was purchased in year 2011.
- j. That on 08.04.2019, the respondent sent a statement of account which shows that till date the complainant has already paid Rs. 72,36,670/- against the total original cost of Rs. 65,27,680/-. It is highly pertinent to mention here that in statement of account the respondent mentioned tentatively area of 1110 sq. ft. after obtaining O.C. also the respondent in not able to give accurate super area and carpet area of office space.



k. That as per the payment schedule of the builder buyer agreement, allottee has already paid the more than 100% amount i.e., Rs. 72,36,670/- along with car parking and other allied charges of actual purchase price, but when complainant observed that there is no progress in construction of subject office space for a long time, they raised their grievance to respondent(s). Though complainant was always ready and willing to pay the remaining instalments (in any) provided that there is progress in the construction of office space.

**C. Relief sought by the complainant:**

4. The complainant has sought following reliefs:

a. Pass an appropriate award directing the respondent(s) handover the possession of booked/original office space 012-1211 at 12th floor of building. If the respondent fails to give the possession of said unit, this hon'ble authority directs the respondent(s) to refund the paid money along with prescribed rate of interest.

OR

b. Pass an appropriate award directing the respondent(s) to pay interest at the prescribed rate for every month of delay from due date of possession i.e., December 2012 till the handing over the possession, on paid amount (complete in all respect) (as per section 18 of Real Estate (Regulation and Development) Act, 2016). (Justification: - Respondent failed to handover the possession after 12 years of booking).

c. Pass an appropriate award directing the respondent(s) rectify the final demand by removing Rs. 17,36,986/- (seventeen lakh thirty-

six thousand nine hundred and eighty-six) which is over and above cost mentioned in office space buyer agreement, i.e.,

1. Preferential Location Charges of Rs. 3,20,512.50/-
  2. Electrification and STP Charges Rs. 2,38,305.90/-
  3. Fire Fighting Charges Rs. 87,690/-
  4. Interest Rs. 7,74,902/-
  5. GST Rs. 1,90,462/-
- d. Pass an appropriate award directing the respondent(s) to refrain from demand of GST. (Justification: - respondent is solely responsible for delay in construction of project and if respondent delivered the project on time, GST would not be applicable).
- e. Pass an appropriate award directing the respondent(s) to refrain demand of electrification charges. (Justification: - respondent is solely responsible to provide the electricity in project).
- f. Pass an appropriate award directing the respondent(s) to provide detailed area calculation to ascertain the super area, carpet area and common area.
- g. Pass an appropriate award directing the respondent parties to refrain from demand of cost escalation (justification: - respondent is solely responsible for delay in construction of project).
- h. Respondent party may kindly be directed to refrain from giving effect to the unfair clauses unilaterally incorporated in the office space buyer agreement.
- i. Respondent party may kindly be directed to complete and seek necessary governmental clearances regarding infrastructural and other facilities including road, water, sewerage, electricity, environmental etc. before handing over the physical possession of the office spaces.





- j. Respondent party may kindly be directed to hand over the possession of office space to the allottee immediately, complete in all respects and execute all required documents for transferring/ conveying the ownership of the respective office spaces.
- k. Respondent party may kindly be directed to provide for third party audit to ascertain/measure accurate areas of the office spaces and facilities, more particularly, as to the "super area" and "carpet area".
5. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent**

6. The respondent has contested the complaint on the following grounds:
- a. That the project 'Centra One' is a Greenfield project, located at Sector 61, Gurgaon. All customers including the complainant was well informed and conscious of the fact that timely payment of all the demands was of essence to the contract. Majority of customers opted for construction linked payment plan after clearly understanding that and agreed upon to tender the payment as per the construction milestones. It is pertinent to mention here that, given the choice of payment plan and terms of the agreement, all the customers including the complainant specifically understood that a default in tendering timely payment by significant number of customers, would delay the construction activity. It is a matter of fact and record that the space/unit holders as a group have defaulted in making timely payment which has caused major set-back to the development work.

- b. That in the 1st year (FY 07) demands amounting to Rs.20.84 Crores were raised by the respondent in accordance with the payment plans chosen by customers, and only Rs.15.83 Crores was paid by the customers. Over 43% customers defaulted in making timely payment in FY 2007, and percentage of defaulting customers swelled to 56%, 40% and 68% in the FY 09, 10 and 11 respectively.
- c. It is submitted that the complainant has approached this hon'ble authority for redressal of his alleged grievances with unclean hands, i.e., by not disclosing material facts pertaining to the case at hand and also, by distorting and/or misrepresenting the actual factual situation with regard to several aspects. It is further submitted that the Hon'ble Apex Court in plethora of decisions has laid down strictly, that a party approaching the court for any relief, must come with clean hands, without concealment and/or misrepresentation of material facts, as the same amounts to fraud not only against the respondent but also against the court and in such situation, the complaint is liable to be dismissed at the threshold without any further adjudication.
- d. That the complainant has concealed from this hon'ble authority that with the motive to encourage the complainant to make payment of the dues within the stipulated time, the respondent also gave additional incentive in the form of timely payment discount (TPD) to the complainant for the amount of Rs 88855 50/-.
- e. The complainant has concealed from this hon'ble authority that the complainant has approached through a broker namely "Pearl real estate & building Pvt. Ltd" after due diligence and research invested in the said project.



- f. The complainant has concealed from this Hon'ble Authority that the complainant has already been offered possession by the respondents, and in lieu of the same, the respondents issued reminder letters dated 18.12.2018, 11.02.2019 and 21.05.2019, however the complainant failed to pay the outstanding dues till date.
- g. The complainant has concealed from this hon'ble authority that timely payment of each instalment was the essence of the contract it is further submitted that the complainant has defaulted in making of the payment of demands made by the respondent because of which respondent issued the reminder letters to the complainant on various dates, however the complainant failed to pay the outstanding dues till date.
- h. That the complainant has also concealed from this hon'ble authority that the respondent no. 1 being a customer centric company has always addressed the concerns of the complainant and had requested the complainant time and again to visit the office of the respondent in order to amicably resolve the concerns of the complainant. However, notwithstanding the several efforts made by the respondents to attend to the queries of the complainant to their complete satisfaction, the complainant deliberately proceeded to file the present complaint before this hon'ble authority against the respondent.
- i. Thus, it is further evident that the customers as a group defaulted in making timely payments, which obviously had a rippling effect on the development of the project and hence, the possession timelines also stood diluted accordingly. Further, in view of the same, the complainant is not liable to demand any delay penalty when he

himself has hugely defaulted in making timely payment. It is further submitted that in case the complainant wants to withdraw the booking of the unit in question, the same shall be governed by the duly agreed clauses of the agreement executed between both the parties.

j. It is however pertinent to point out that the construction of the project as well as the unit in question is complete. The respondent has already served the OOP letter dated 22.11.2018 to the complainant thereby requesting them to clear the outstanding dues and complete the documentation in order to initiate the process of physical handover of possession of the unit in question.

7. Copies of all the documents have been filed and placed on record. The authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents.

#### **E. 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.

#### **E.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.



**E.II. Subject matter jurisdiction**

10. 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*

11. 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 promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

**F. Findings on the objections raised by the respondent**

**F.I. Objection raised by the respondent regarding force majeure condition**

12. The respondent has submitted the following contentions to be taken into note by the authority for granting grace period on account of force majeure:
- a. That the complainant is the allottee of a shop bearing no. 14-1402 in the commercial project of the respondent company, Centra One, situated in Gurugram, Haryana. The complainant in the present complaint is inter alia seeking interest on account of delay in handing over possession. The project, Centra One, is a business complex situated in Gurugram's sector 61, spread over an area of 3.675 acres. The said commercial complex has been developed by M/s Anjali Promoters Pvt. Ltd. in collaboration with M/s Saiexpo

Overseas Pvt. Ltd. and M/s Countrywide Promoters Pvt. Ltd (collectively referred to as 'Company'). Subsequently, Department of Town and Country Planning, Haryana ("DTCP") has issued a license bearing no. 277 of 2007 to M/s Countrywide Promoters Pvt. Ltd. for developing a commercial complex on the said land.

- b. It is stated that the space buyer's agreement has not been executed and the reason for the same has been stated in reply submitted by the respondents and the contents thereof be read as part and parcel of this detailed note. Without prejudice to the above, it is submitted that timeline for possession as per the space buyer's agreement, was proposed to be by 31<sup>st</sup> December 2011 with a further grace period of 6 months. Thus, possession of the unit in question was proposed to be handed over by 30<sup>th</sup> June 2012. It is further submitted that the said timeline for possession was subject to force majeure and timely payment of installments by the complainant.
- c. That it is pertinent to point out that both the parties as per the application form duly agreed that the respondent shall not be held responsible or liable for any failure or delay in performing any of its obligations or undertakings as provided for in the agreement, if such performance is prevented, delayed or hindered by delay on part of or intervention of statutory authorities like DTCP or the local authorities or any other cause not within the reasonable control of the Respondent. In such cases, the period in question shall automatically stand extended for the period of disruption caused by such operation, occurrence or continuation of force majeure circumstance(s).



- d. The possession timelines for the said project were subject to force majeure circumstances and timely payment of called installments by the allottees. "Force Majeure", a French term equivalent to "Vis majeure", in Latin, means "superior force". A force majeure clause is defined under the Black's Law Dictionary as 'A contractual provision allocating the risk if performance becomes impossible or impracticable, especially as a result of an event or effect that the parties could not have anticipated or controlled.
- e. That delay, if any, in handing over of possession of the units of the said project is due to reasons beyond the control of the company. In this regard it is pertinent to point out that on 29.05.2008, the company applied for grant of approval of building plans from the DTCP.
- f. That on 21.07.2008, in the meeting of the building plan approval committee, the committee members concurred with the report of Superintending Engineer (HQ), HUDA and STP, Gurgaon who had reported that the building plans were in order. The said members also took note of the report of the STP (E&V)'s observation on the building plans. The members stated that the said observations were "minor in nature" and hence approved the building plans subject to corrections.
- g. That DTCP vide letter dated 30.07.2008 approved the building plans of the company subject to certain rectification of deficiencies. There were in total 3 deficiencies which were asked to be corrected by the company, namely, NOC from AAI to be submitted, covered area not correct and lastly fire safety measures were not provided.

h. That in compliance with the directions issued by DTCP vide office memo no. ZP-345/6351 dated 30.07.2008, the company submitted revised building plans on 27.08.2008 vide letter dated 25.08.2008. It is pertinent to point out that since there were no further objections conveyed to the company for the release of the building plans it was assumed that the building plans would be released automatically. Since no communication was received by the company for almost 5 months, the company on its own volition enquired the reasons for delay in release of the building plans by DTCP. To its astonishment, it came to the company's knowledge that the same was being withheld by DTCP on account of EDC dues. However, no formal communication qua the same was received by the company. Nonetheless, the company on 15.01.2009 and 16.01.2009 requested DTCP to release its building plans while submitting an undertaking to clear the EDC dues within a specified time period. It is pertinent to point out that there were no provisions in the Haryana Development and Regulation of Urban Areas Act, 1975 or the Haryana Development and Regulation of Urban Areas Rules, 1976 or any law prevalent at that time which permitted DTCP to withhold release of a building plan on account of dues towards EDC.

i. That DTCP on 27.02.2009 after a lapse of almost six months from the date of submission of the revised building plans, conveyed the company to clear EDC/IDC dues while clearly overlooking the undertakings given by the company.

j. That it is stated that the company, on 03.08.2010 deposited full EDC/IDC with the department. It is pertinent to mention herein





- that in terms of the license granted and the conditional approval of the building plans, the company had started developing the project. That to its surprise, the company received a notice by DTCP dated 19.03.2013 directing the company to deposit composition charges of Rs.7,37,15,792/- on account of alleged unauthorized construction of over an area of 34238.64 sq. mtr. The said demand was questioned by the company officials in various meetings with DTCP officials. Various representations were made by the company on 04.09.2013, 22.10.2013, 11.11.2013, 02.12.2013, 14.03.2014, 15.04.2014, 07.07.2014, 13.11.2014, 09.02.2015, 07.04.2015. The company in its representation dated 05.06.2015 pointed out all the illegalities in the demand of composition charges of Rs.7.37 crores.
- k. That instead of clarifying the issue, DTCP further issued a demand letter on 31.12.2015 directing the company to deposit Rs. 7.37 crores as composition charges, Rs. 54,72,889 as labour cess and Rs. 55,282 on account of administrative charges. That the company succumbed to the undue pressure and on 13.01.2016 deposited Rs. 7.37 crores with DTCP as composition charges and further requested for release of its building plans. The company on 13.01.2016 further deposited an amount of Rs.41,68,171/- towards the balance labour cess.
- l. That even after clearing the dues of EDC/IDC and payment of composition charges, building plan was not released by DTCP, instead, the company was asked to apply for sanction of building plan again as per the new format. The same was duly done by the company on 16.06.2017. Further, the company, on completion of construction applied for grant of occupation certificate on

29.07.2017. That the company on the very next day i.e., 25.10.2017 replied to the DTCP justifying the concern while submitting the building plan again for approval. In the meantime, the company also paid composition charges to the tune of Rs.43,63,127/- for regularization of construction of the project.

m. That, finally on 12.01.2018 the building plan was approved for the Centra One, post approval of the same, the company on 21.05.2018, in continuation to its application dated 31.07.2017, again requested DTCP for grant of occupation certificate for its project. It is stated that occupation certificate was duly granted by DTCP on 09.10.2018. Thus, even after having paid the entire EDC dues in the year 2010 the building plans for the project in question was not released by DTCP. It is reiterated that release/approval of building plan at that point in time was not linked with payment of EDC.

n. It is pertinent to mention that in 2013 the company received a surprise demand of Rs.7.37 crores for composition towards unauthorized construction without considering the fact that construction at the project site was carried out by the company on the basis of approval of building plan in the meeting of the building plan approval committee on 21.07.2008. Even after payment of the composition charges, the building plan was not released by DTCP instead, the company was asked to apply for sanction of building plan again as per the new format. The same was duly done by the company on 16.06.2017. However, it is after almost a lapse of 10 years from the date of first application that the building plan was finally approved on 12.01.2018. Thus, the circumstances as



mentioned hereinabove falls squarely into the definition and applicability of the concept of 'force majeure'.

- o. That in addition to the above, the project also got delayed due to a complete ban on extraction of ground water for construction by the Central Ground Water Board. On 13.08.2011, the Central Ground Water Board declared the entire Gurgaon district as 'notified area' which in turn led to restriction on abstraction of ground water only for drinking / domestic use. Hence, the developer/company had to use only treated water for construction and/or to buy water for construction.
- p. That the *Hon'ble Supreme Court recently in Puri Constructions Pvt. Ltd. Vs. Dr. Viresh Arora (Civil Appeal No. 3072 of 2020)* on 3rd September 2020 while allowing the appeal preferred by the Developer company against an order passed by the Ld. NCDRC directed the Ld. Commission to decide afresh on the matter in issue while taking into consideration the force majeure circumstances pleaded by the developer.
- q. The Hon'ble Supreme Court conceded with the submissions made by the Developer Company that though the NCDRC noted that the developer pleaded force majeure on the ground that
  - (i) the construction of the flats could not proceed due to a stay granted by the National Green Tribunal on construction during the winter months; and
  - (ii) demonetization affected the real estate industry resulting in delays in completion, the submission has not been dealt with
- r. The second submission which was urged on behalf of the developer was that in similar other cases, the NCDRC has condoned the delay

of the nature involved in the present case in handing over possession, having regard to the quantum of delay involved.

s. Thus, delay, if any, in handing over possession to allottees of Centra One has been due to reasons beyond control of the company and the same need to be taken into consideration by RERA in so awarding delay possession compensation while also giving the company an extension of 10 years so as to complete the project by 2018-19.

13. As far as this issue is concerned the authority the authority has already settled this issue in complaint bearing no. **1567 of 2019** titled as ***Shruti Chopra & anr. V/s Anjali Promoters & Developers Pvt. Ltd.*** wherein the authority is of the considered view that if there is lapse on the part of competent authority in granting the required sanctions within reasonable time and that the respondent was not at fault in fulfilling the conditions of obtaining required approvals then the respondent should approach the competent authority for getting this time period i.e., 31.12.2011 till 19.11.2018 be declared as "zero time period" for computing delay in completing the project. However, for the time being, the authority is not considering this time period as zero period and the respondent is liable for the delay in handing over possession as per provisions of the Act.

**G. Findings on the relief sought by the complainant**

**G.I. DPC and possession of the original unit or refund of entire amount.**

14. The complainant in its complaint submits that he was allotted two units vide allotment letter dated 10.06.2008. Vide email dated 14.07.2011 on request of complainant the units were merged into 012-1211 only. Then BBA w.r.t. the unit no. 012-1211 was signed between the



complainant and respondent on 19.09.2018 wherein the possession of the said unit was to be handed over by 30.06.2013. Thereafter on 22.11.2018 the respondent offered the possession of a different unit i.e., 014-1402.

15. On last date of hearing dated 27.05.2022 the counsel for the complainant pressed upon the fact that either his original unit bearing no. 012-1211 shall be handed over to him or the amount paid by him shall be refunded back along with interest under section 18(1) of the Act 2016. To give justification to this the counsel for the respondent requested for time to file written submissions but till date no documents have been received in the registry of the authority.
16. In line with aforesaid facts, the submissions made by the parties and the documents already placed on record, the main question which arise before the authority for the purpose of adjudication is that "whether the complainant is entitled for refund under section 18(1) of the Act 2016?"
17. As, the due date of possession was 30.06.2013 and the BBA was signed in 2018 therefore from the very instance it can be clearly interpreted that the buyer's agreement was executed between the parties after the lapse of due date of possession for more than 5 years and the promoter was at full liberty to extend the date of possession if construction activities were not completed even by the time the BBA was signed between the parties.
18. Thereafter on 22.11.2018 the possession of the unit was handed over to the complainant but with respect to unit different to that as promised according to the BBA and accordingly, the promoter is responsible for all obligations, responsibilities, and functions under the provisions of

the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a).

19. The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.
20. This is without prejudice to any other remedy available to the allottee including compensation for which allottee may file an application for adjudging compensation with the adjudicating officer under sections 71 & 72 read with section 31(1) of the Act of 2016.
21. The authority hereby directs the promoter to return the amount received by him i.e., Rs.72,36,670/- with interest at the rate of 9.50% (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 each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.
22. In view of the findings detailed above no other issue remains to be taken up.

#### **H. Directions of the authority**

23. 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 /promoter is directed to refund the amount i.e., Rs. 72,36,670/- received by it from the complainant along with interest at the rate of 9.50% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the deposited amount.
- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.

24. Complaint stands disposed of.

25. File be consigned to registry.

v.1 - 3  
(Vijay Kumar Goyal)

Member

(Dr. K.K. Khandelwal)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 05.07.2022

Judgement Uploaded on 17.08.2022