



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

Complaint no. : 1894 of 2021
Date of filing complaint : 15.04.2021
Date of decision : 25.07.2022

1. Sushila Mallick 2. Salil Anand R/O: - C -4/10, Safdarganj Development Area, Hauz Khas, New Delhi-110016.	Complainants
Versus	
1. M/s BPTP Limited 2. Country Wide Promoters Regd. Office at: - OT-14, 3rd Floor, Next Door Parklands, Sector-76, Faridabad- 121004	Respondents

CORAM:

Dr. K.K. Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member

APPEARANCE:

Shri Sukhbir Yadav	Advocate for the complainants
Sh. Pankaj Chandola	Advocate for the respondents

ORDER

1. The present complaint has been filed by the complainant/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 allottees 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:

CR/1894/2021

S. No.	Heads	Description
1.	Name of the project	'Amstoria', Sector 102 & 102A, Gurugram, Haryana.
2.	Nature of the project	Residential
3.	Project area	108.07 acre
4.	DTCP license no. and validity status	58 of 2010 issued on 03.08.10 and valid upto 02.08.2025
5.	Name of the license holder	Shivanand Real Estate Pvt. Ltd.
6.	RERA registration number	Not registered
7.	Date of execution of floor buyer's agreement	02.02.2012 (page no. 47 of complaint)
8.	Unit no.	A-145-SF, Second Floor (on page no. 55 of complaint)

9.	Unit area admeasuring	1999 sq. ft. (on page no. 55 of complaint)
10	Revised unit area	2138 sq. ft. (as per offer of possession on page no. 157 of reply)
11.	Total consideration (Basic sale price)	Rs.1,04,00,457/- (vide statement of accounts of page no. 159 of reply)
12.	Total amount paid by the complainants	Rs. 78,63,991/- (vide statement of accounts of page no. 159 of reply)
13	Sanctioning of building plan	19.09.2012 (Taken from the similar case of same project)
14	Floor Buyer Agreement	02.02.2012 (as per page no. 49 of complaint)
13.	Possession Clause	<p>5.1 Possession Clause</p> <p>Subject to force majeure, as defined in clause 14 and further subject to the Purchaser(s) having complied with all its obligations under the terms and conditions of this Agreement and the Purchaser(s) not being in default under any part of this Agreement including but not limited to the timely payment of each and every installment of the total sale consideration</p>

		including DC, Stamp duty and other charges and also subject to the Purchaser(s) having complied all formalities or documentation as prescribed by the Seller/Confirming Party, the Seller/Confirming Party proposes to hand over the physical possession of the said unit to the Purchaser(s) within a period of 24 months from the date of sanctioning of the building plan or execution of Floor Buyers Agreement whichever is later ("Commitment Period") . The Purchaser(s) further agrees and understands that the Seller/Confirming Party shall additionally be entitled to a period of 180 days ("Grace Period) after the expiry of the said Commitment Period to allow for filing and pursuing the Occupancy Certificate etc from DTCP under the Act in respect of the entire colony
13.	Due date of delivery of possession	19.09.2014 (Calculated from the date of sanction of building plan as it being later)
14.	Occupation Certificate	24.09.2019 (on page no. 156 of reply)

15.	Offer of possession	07.10.2019 (on page no. 157 of reply)
16.	Grace period utilization	In the present case, the promoters are seeking a grace period of 180 days for filing and pursuing the occupation certificate etc, from DTCP under the Act in respect of the entire colony. The period of 24 months from the date of sanction of the building plan expired on 19.09.2014. But there is no material on record that during this period, the promoters have applied to any authority for obtaining the necessary approvals with respect to this project. On perusal of the part certificate also, it was observed the promoter applied for the issuance of occupation certificate only on 03.08.2019 when the period of 24 months had already expired. So, the promoter cannot claim the benefit of grace period of 180 days. Consequently, the learned authority has rightly determined the due date of possession. Therefore, the grace period is not allowed, and the due date of possession comes out to be 19.09.2014.

B. Facts of the complaint

The complainants have submitted as under: -

3. That the complainants booked a floor in the project BPTP Amstoria being developed by the respondents in sectors 102, & 102 A Gurgaon.



4. That in September 2010, the complainants received a marketing call from the office of the respondents for booking in a residential project being developed by the respondents by the name of "Amstoria", Sector – 102. The complainants visited the office of the respondent along with their family members. The marketing staff of the respondents allured the complainants with the colourful brochure and audio-video presentation. At the time of accepting the application money, the respondent assured for the delivery of the luxury project with several specifications i.e. heated indoor pool, outdoor pool, kids pool, jogging tracks, space for outdoor activities, gymnasium, multi-cuisine restaurant, conveniently located shopping center, business centre, table tennis, etc.
5. That the complainants herein, believing the representations of the respondents to be true, and having no reason to believe otherwise, decided to book an apartment bearing floor No. **A-145 on 2nd floor in tower A admeasuring 1999 sq. ft.** in the project "Amstoria", marketed and developed by the respondent(s) under construction link payment plan for a total sale consideration of Rs. 85,40,961/- including basic sales price, covered parking charges, development charges & IFMS, etc. & paid Rs. 10,00,000/- as the booking amount on 21.09.2010.
6. That on 22.12.2010, the respondent(s) issued an allotment cum demand letter in the name of Sushila Mallick confirming the allotment of unit No. A-145 on 2nd floor in tower A for size admeasuring 1999 sq. ft. and also raised a demand of Rs. 4,82,003/-

7. That on 07.10.2019, the respondent(s) issued an offer of possession letter and demanded various unreasonable demands & the said demand letter contains several unreasonable demands under various heads i.e. Rs. 6,56,173/- under the head "Cost Escalation", Rs. 1,68,264/- under the head "Electrification and STP Charges". Moreover, the respondents increased the super area of the floor by 139 sq. ft. without any justification .
8. That as per the statement of account issued by the respondent(s), the complainants have paid Rs. 1,04,00,457/- which includes the payment of unreasonable demands raised in the offer of possession letter which was paid by them under protest. That the respondent(s) acknowledged the delay in possession of the unit and credited Rs. 4,27,400/- as "COMPENSATION FOR DEFERRED PERFORMANCE".
9. That the complainants sent an email to the respondents on 11.10.2019 and asked for information pertaining to the unit and sent reminder emails on 14.10.2019 15.10.2019 and 16.10.2019, but there was no reply from the respondent side. On 18.10.2019, the complainants again sent an email to the respondents and forwarded minutes of telephonic conversation and further asked for delayed possession interest. That on 19.10.2019, the complainants sent an email to the respondents and refused the offer of a discount to the tune of Rs. 8,00,000/- (Eight Lakh) for delayed possession and alleged for not reply to the emails.
10. That in light of the above stated facts and circumstances, the complainants are eligible for payment of interest in terms of

section 18 read with section 36, 37, and 38 of RERA. The said interest was payable with the offer of possession and ought to have been adjusted with the last demand issued with the offer of possession. The interest is therefore; payable until the date it is actually paid to the complainants.

C. Relief sought by the complainants:

- (i) Direct the respondents to get possession of the fully developed/constructed floor/apartment with all amenities with prescribed amount of interest as per the agreement for delay in handing over of possession.
- (ii) To get an order in their favour by directing the respondent party to provide area calculation (Carpet area, loading & Super area)
- (iii) To get an order in their favour by restraining the respondent from charging cost escalation
- (iv) To get an order in their favour by restraining the respondents from charging Electrification & STP Charges
- (v) To get an order in their favour by directing the Respondents to provide the copy of the Completion Certificate/Occupation Certificate and BR-III of the unit.

11. On the date of hearing, the authority explained to the respondent/promoters about the contraventions 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 respondents.

The respondents have contested the complaint on the following grounds: -

12. It is submitted that the present complaint filed by the Complainants is frivolous, baseless and lacks merits and as such same is liable to be dismissed. It is submitted that the respondents have received the occupation certificate for the unit/tower in question on 24.09.2019 and accordingly, offer of possession has been sent to the complainants on 07.10.2019. It is further submitted that the complainants have failed to clear the called demand as per the offer of possession dated 07.10.2019 and have also failed to complete the process of documentation to take over possession of the unit in question. It is further submitted that the respondents had also offered delay possession compensation (DPC) to the complainants in form of 'Loyalty Bonus' to the tune of Rs.4,27,600/- in accordance with the terms of the agreement
13. That the complainants have approached this Hon'ble Authority for redressal of 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 respondents but also

against the court and in such situation, the complaint is liable to be dismissed at the threshold without any further adjudication. In this regard, reference may be made to the following instances which establish concealment/suppression/misrepresentation on the part of the complainant:

- i) That the complainants have concealed from this Authority that vide letter dated 07.10.2019 the possession has been duly offered by the respondents and they had also provided compensation in the form of loyalty bonus to the tune of Rs.4,27,600.00/- to the complainants.
- ii) That the complainants have concealed from this Authority that the respondents at the stage of booking, offered an inaugural discount on basic sale price (BSP) amounting to Rs.3,00,999/- Thus, the net BSP charged was less than the original amount of the unit.
- iii) That the complainants have falsely stated in the present complaint that the timely payments were made by them as and when demanded by the respondents. However, as detailed in the reply to list of dates, it is submitted that the complainants made default in making timely payments. It is also pointed out that the complainants have not paid even a single penny since 2017 and till date. The respondents have issued various reminders to the complainants, but to no avail.

14. It is pertinent to point out that the plans on the basis of which the project in question was launched were tentative, however, the occupation certificate has been received by the respondents and there is an increase in the super area of the unit in question. Moreover at the stage of booking itself, it was contemplated that there could be an increase or decrease in the super area clearly reflected from a bare reading of clause 19 of the Application Form for the unit in question.
15. It is clarified that while offering possession, the respondents vide Annexure "F" attached to the offer of possession dated 07.10.2019 duly explained the basis for calculation of the cost escalation. The respondents had considered the cost escalation for the period ending **till April 2015**, on the basis of clause 20.12 of the FBA and no further escalation has been charged beyond April 2015.
16. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions made by the parties.
17. Since, common issues with regard to super area, cost escalation, STP charges, electrification charges, taxes viz GST and VAT etc, advance maintenance charges, car parking charges, holding charges, club membership charges, PLC, development location charges and utility connection charges, EDC/IDC charges, fire fighting/power backup charges were

involved in all these cases and others in this project as well as in other projects developed by the respondents, so vide orders dated 06.07.2021 and 17.08.2021, a committee headed by Sh. Manik Sonawane IAS (retired), Sh. Laxmi Kant Saini CA and Sh. R.K. Singh CTP (retired) was constituted and was asked to submit its report on the above mentioned issues. The representatives of the allottees were also associated with the committee. A report was submitted and the same along with annexures was uploaded on the website of the authority. Both the parties were given an option to file objections to that report if any. The complainants did not file any objection and the respondents/ builders sought time to file the same but did not opt for the same despite time given in this regard.

E. Jurisdiction of the authority

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

F. I Territorial jurisdiction

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.

F. II Subject matter jurisdiction

18. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee 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.

19. 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 complainant at a later stage.

G. Findings on the objections raised by the respondents.

F-I Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act.

20. The other contention of the respondents is that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the apartment buyer's agreement executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. The numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of ***Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)*** decided on 06.12.2017 which provides as under:

"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter....."

122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

21. Even, in appeal no. 173 of 2019 titled as ***Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya***, vide order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal observed as under-

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

22. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein.

Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

H. Findings on the relief sought by the complainants.

23. Relief sought by the complainants: The complainants have sought following relief(s):

- i. Direct the respondents to get possession of the fully developed/constructed floor/apartment with all amenities with prescribed amount of interest as per the agreement for delay in handing over of possession.
- ii. To get an order in their favour by directing the respondent party to provide area calculation (Carpet area, loading & Super area)
- iii. To get an order in their favour by restraining the respondent from charging cost escalation
- iv. To get an order in their favour by restraining the respondents from charging Electrification & STP Charges

- v. To get an order in their favour by directing the Respondents to provide the copy of the Completion Certificate/Occupation Certificate and BR-III of the unit

G.I Delay Possession Charges

24. The complainants intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under: -

“Section 18: - Return of amount and compensation

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

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

25. Clause 5 of the floor buyer’s agreement provides the time period of handing over possession and the same is reproduced below:

“Clause 5- 5.1 Subject to force majeure, as defined in clause 14 and further subject to the Purchaser(s) having complied with all its obligations under the terms and conditions of this Agreement and the Purchaser(s) not being in default under any part of this Agreement including but not limited to the timely payment of each and every installment of the total sale consideration including DC, Stamp duty and other charges and also subject to the Purchaser(s) having complied all formalities or documentation as prescribed by the Seller/Confirming Party, the Seller/Confirming Party proposes to hand over the physical possession of the said unit to the Purchaser(s) within a period of 24 months from the date of sanctioning of the building plan or execution of Floor Buyers Agreement whichever is later (“Commitment Period”). The Purchaser(s) further agrees and understands that the Seller/Confirming Party shall additionally be entitled to a period of 180 days (“Grace

Period) after the expiry of the said Commitment Period to allow for filing and pursuing the Occupancy Certificate etc from DTCP under the Act in respect of the entire colony.

26. The authority has gone through the possession clause of the agreement. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the complainants not being in default under any provision of this agreement and in compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning.
27. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builder/promoter and buyer/allottee are protected candidly. The apartment buyer's agreement lays down the terms that govern the sale of different kinds of properties like residentials, commercials etc. between the builder and the buyer. It is in the interest of both the parties to have a well-drafted apartment buyer's agreement which would thereby protect the rights of both the builder and buyer in the unfortunate event of a

dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the apartment, plot or building, as the case may be and the right of the buyer/allottee in case of delay in possession of the unit.

28. Admissibility of grace period: The promoters proposed to hand over the possession of the said unit within period of 24 months from the date of sanctioning of building plan i.e 19.09.2012 or from the date of execution of floor buyer agreement i.e. 02.02.2012 whichever is later. The period of 24 months from the date of sanctioning of building plan expired on 19.09.2014 being the later. So, the due date for handing over possession of the allotted unit comes to 19.09.2014. However, there is no material on the record that during the period of 180 days, the period of sought as grace period, the promoters have applied to any authority for obtaining the necessary approvals with respect to this project. On perusal of the part completion certificate also, it was observed the promoters applied for the issuance of part OC only on 03.08.2019 when the period of 24 months had already expired. So, the promoters cannot claim the benefit of grace period of 180 days. Consequently, the authority has rightly determined the due date of possession. Thus, the grace period is not allowed and the due date of possession comes out to be 19.09.2014.

29. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant(s) are seeking delay possession charges. However, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

30. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

31. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 25.07.2022 is 7.80%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.80%.



32. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

33. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 9.80% by the respondents/promoters which is the same as is being granted to them in case of delayed possession charges.

G-II Cost Escalation

34. The buyers agreement duly accepted and signed between the parties, the cost escalation is to be borne by the allottees. The committee while deliberating on this issue took into consideration the estimated cost of construction at the time of booking/agreement, absorption of 5% inflation by the developer, measurement of cost inflation based on CPWD

Index and inflation benefits to be provided for the period up to the date of actual offer of possession or up to the date of committed date of offer of possession. So, taking into consideration all these factors and a certificate of chartered accountant, the committee allowed escalation cost of Rs. 233.46 per square feet instead of Rs. 306.91 paisa as raised by the developer. The view taken by the committee in this regard is a reasonable one and the authority agrees to the same and allow the developer to charge cost of escalation of the allotted unit at Rs. 233.46 per square feet instead of Rs. 306.91 paisa from the allottees.

G-III STP Charges

35. While issuing of offer of possession of the allotted unit , the respondent-builders demanded a sum of Rs. 1,68,264/- under the head electrification and STP charges. It is pleaded on behalf of complainants that they are not liable to pay that amount and demand for the same has been raised illegally. But the plea advanced in this regard is devoid of merit. While executing floor buyer agreement on 02.02.2012, the complainants under clause 2 of that document under the head 'Consideration and other Conditions' agreed to pay electrification charges not included in the total sale consideration and cost of construction/Erection of Sewerage Treatment Plant/Effluent Treatment Plant/ Pollution Control Devices. Even these charges have been mentioned separately in annexure D under the heading Total Sale Consideration. Though no specific

amount with regard to electrification and STP charges has been mentioned either in the FBA and the annexure D but details of the same have been given in statement of account annexure A (page 159 of the reply) attached with offer of possession dated 07.10.2019. Thus, the demand raised under these heads to the tune of Rs. 1,68,264/- cannot be said to be beyond the preview of FBA and the complainants are accordingly liable to pay the same to the respondents.

G-IV Increased Super Area

36. The authority holds that the respondent can demand for extra payment on account of increase in the super area as per buyers agreement but subject to condition that before raising such demand, details & justifications have to be given to the allottee(s)

G-V Direct the respondents to provide copy of completion certificate and BR-III of the unit

37. As per section 11(4)(b) of Act of 2016, the promoter is under obligation to supply a copy of the above documents to the complainants. Even otherwise, it being a public document, the allottees can have access to it from the website of DTCP, Haryana.

H. Directions of the authority

38. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure

compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondents are directed to pay interest at the prescribed rate of 9.80% p.a. for every month of delay from the due date of possession i.e. 19.09.2014 till the date of offer of possession i.e. 07.10.2019 plus two months i.e. 07.12.2019 to the complainant(s) as per section 19(10) of the Act.
- ii. The arrears of such interest accrued from due date of possession till its admissibility as per direction (i) above shall be paid by the promoter to the allottees respectively within a period of 90 days from date of this order as per rule 16(2) of the rules.
- iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period against their unit to be paid by the respondents.
- iv. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.80% by the respondents/promoters which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- v. The respondents shall not charge anything from the complainant(s) which is not part of the builder buyer's agreement save and except in the manner as prescribed

in this order. The holding charges shall not be recoverable from the allottees even being part of builder buyer agreement as per the directions of the Hon'ble Supreme Court in civil appeal nos. 3864-3899/2020 decided on 14.12.2020 (supra).

- vi. The developers are allowed to charge *cost escalation* of the allotted unit at Rs. 233.46 per square feet instead of Rs. 306.91 paisa and are directed to work out the total cost of the allotted unit and adjust accordingly.
- vii. The authority holds that the respondents can demand for extra payment on account of increase in the super area as per buyers agreement but subject to condition that before raising such demand, details & justifications have to be given to the allottee(s)

39. The complaint stand disposed off.

40. Files be consigned to registry.


(V.K Goyal)
Member


(Dr. K.K Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Date: 25.07.2022

