

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

**Complaint no.** : 798 of 2021  
**Date of filing complaint:** 26.02.2021  
**First date of hearing** : 21.05.2021  
**Date of decision** : 10.03.2022

|   |                    |
|---|--------------------|
| DSS Buildtech Private Limited<br><b>Registered office at:</b> - 5 <sup>th</sup> floor, Time Square Building, Sushant lok-1, block- B, Gurugram, Haryana -122002 | <b>Complainant</b> |
| Versus  |                    |
| Mr. B.S. Chadha<br>Mrs. Harneet Chadha<br><b>Both RR/o:</b> - H-901 Pilot Court, Essel Tower, MG Road, Gurugram- 122002   | <b>Respondents</b> |
| <b>CORAM:</b>   |                    |
| Dr. K.K. Khandelwal   | <b>Chairman</b>    |
| Shri Vijay Kumar Goyal  | <b>Member</b>      |
| <b>APPEARANCE:</b>  |                    |
| Shri Suresh Rohilla & Ms. Shubhi Sharma<br>(Advocates)  | Complainant        |
| None  | Respondents        |

**EX-PARTE ORDER**

- The present complaint has been filed by the complainant/promoter against the 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 19(6), (7) and 13(1) of the Act wherein it is prescribed that the allottees shall make necessary payments in the manner and within time as specified in the agreement for sale and to pay interest, at such rate as may be prescribed, for any delay in payments.

**A. Unit and project related details**

2. The particulars of project, unit, sale consideration, the amount paid by the respondents, 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      | The Melia, Village Mohamadpur Gujjar, Sector-35, Sohna, Gurugram.  |
| 2.     | Project area                   | 17.41875 acres   |
| 3.     | Nature of the project          | Group housing project  |
| 4.     | DTCP license no.               | 77 of 2013 dated 10.08.2013  |
|        | License valid up to            | 09.08.2024   |
|        | Name of the licensee           | Aarti Khandelwal & others  |
| 5.     | RERA registered/not registered | <b>Registered</b>  |
|        | HAERA registration no.         | 288 of 2017 dated 10.10.2017   |
|        | Registration valid up to       | 25.10.2021   |
| 6.     | Unit no.                       | A- 1405, 14 <sup>th</sup> floor, tower- A<br>(Vide allotment letter annexed as annexure V on page 49 of complaint) |
| 7.     | Size of unit                   | 1750 sq. ft.<br>(vide allotment letter annexed   |

|     |  |  |
|-----|--|--|
|     |  | as annexure-V on page 49 of complaint)   |
| 8.  | Allotment letter                                 | 24.04.2015<br>(annexure-V on page 49 of complaint)   |
| 9.  | Date of execution of apartment buyer's agreement | Not executed   |
| 10. | Payment plan                                     | Cannot be ascertained  |
| 11. | Total sale consideration                         | Rs. 98,49,500/- (without tax but including IFMSD)<br>(vide statement of account annexed as annexure-VII on page 86 of complaint) |
| 12. | Total amount paid by the respondent              | Rs. 25,64,452/-<br>(vide statement of account annexed as annexure-VII on page 86 of complaint)                                   |
| 13. | Occupation certificate                           | Not obtained   |
| 14. | Offer of possession                              | Not offered  |

**B. Facts of the complaint: -**

3. That the present complaint is being filed by the complainant through its authorized signatory Mr. Paras Kumar Jain who is duly authorized vide board resolution dated 14.06.2019 passed by board of directors.
4. That the complainant is a company incorporated under the Companies Act, 1956 having its registered office at 506, 5th floor, time square building B - block, sushant lok-I, Gurugram, Haryana- 122002 and who is developing a residential group housing complex approximately over 17.418754 Acres of land situated in village Mohamadpur Gujjar, sector 35, Sohna Gurugram (Haryana), privately

named as "The Melia" (hereinafter referred as the 'said project'). The complainant has obtained a license from Director General, Town and Country Planning Department, Government of Haryana ("DTCP") for development of the project vide license no. 77 of 2013.

5. That the respondents/allottees are residing at H-901, Essel Tower, M.G. Road, Gurugram-122002, and are allottees of a residential unit no. A-1405 situated on the 14<sup>th</sup> floor of tower-A in of the said project, being developed by the complainant.
6. That the respondents/allottees booked a 3 BHK Flat, measuring 1750 sq. ft., in the subject project by way of application form, dated 15.11.2013 for a basic sale price (BSP) of Rs. 4753/- per sq. .ft. plus other statutory charges and taxes, as applicable, for the total sale consideration of Rs. 98,49,500/- plus taxes as applicable and paid Rs. 6,00,000/- as an initial booking amount. The respondents/allottees had opted for construction linked plan for making payments towards the flat sale consideration.
7. That the respondents/allottees paid a booking amount of Rs. 6,00,000/- towards initial booking amount and thereafter instalments were paid, total amounting to Rs.25,64,452/- against the total sale consideration of Rs. 98,49,500/- excluding service tax.
8. That the complainant sent a standard apartment buyers' agreement (hereinafter referred to as the "ABA") on 15.12.2015 and again on 01.09.2015 which was duly

received by the respondents but the respondents/allottees failed to execute the same. Therefore, to enforce the provision of legislation, necessary directions may kindly be issued by the authorities in their order while admitting the complaint as a travesty of justice and in absence of which would technically be a giving benefit to the respondents of their own wrong.

9. That on the date of filing the present complaint, the respondents/ allottees have paid only Rs. 25,64,452/- and a sum of Rs. 98,71,622/- (Principal Rs. 68,01,475/- & Interest Rs. 30,70,147/-) is outstanding against them on account of instalments and interest etc.
10. That the complainant has obtained all the approvals required for the development of the said project. The details of the approvals obtained are already on record. The development of the project is going on with full swing. The structural work of most of the towers in the said project, including tower-A in which the respondents/allottees have booked the said unit, is complete. The brickwork & other internal finishing works, is also going on with full swing and reached almost at completion of more than 51%. The photographs showing the current status of development of the project and particularly tower-A in which the said unit of the respondents/allottees are attached.
11. That the respondents/allottees have agreed, under the payment plan of application form signed by them to pay instalments on time and discharge their statutory obligations

as per application form and standard apartment buyer's agreement. However, the respondents/allottees have failed to make payments of their respective instalments as demanded by the complainant, from time to time.

12. That the complainant has duly complied with all applicable provisions of the Real Estate (Regulation And Development) Act, 2016 and rules made thereunder ("The Act" hereafter) and also that of agreement for sale qua the respondents and other allottees. Since starting the development of the said project, the complainant has been sending updates about the progress of the said project regularly from time to time mostly on monthly basis to all the buyers including the respondent. The customer care department of the complainant is also regularly in touch with the respondents and other buyers for giving updates on the progress of the said project and seeks leave of this authority to permit the complainant for not attaching all the updates sent to the respondents as the same are voluminous. The last four updates sent by the complainant to the respondents are placed on record for ready reference. However, as and when required by the authority, the complainant will submit remaining copies of updates sent by the complainant to flat buyers including the respondents. The respondents / allottees were updated on numbers of time, by e-mail and letters etc, on the progress of the project from time to time, and also invited to make a visit of the project.





13. That it is apposite to note of the above that respondents/allottees voluntarily and knowingly, failed to execute standard buyer agreement and also made default to pay instalments despite repeated demands and reminders etc. by the complainant. The complainant also informed the respondents/allottees, through various demand/payment request letters, that home loan facility was available by leading banks/NBFCs such as HDFC, ICICI, SBI, Central Bank of India, Reliance Home Finance Limited, Tata Capital Home Loan at a good rate of interest. Further, as a goodwill gesture, the complainant offered the respondents/allottees one-time settlement to waive off all the interest charges on the condition of payment of the entire principal amount at the earliest but in vain.
14. That in terms of standard apartment buyers' agreement read with the Real Estate (Regulation and Development) Act, 2016, the respondents/allottees are under statutory obligations to pay the instalments within the time agreed therein and also to bear 15% simple interest on dues. In terms of in terms of standard apartment buyers' agreement read with the Real Estate (Regulation and Development) Act, 2016, the clause 13.3 of ABA, the respondents/allottees have no right to withhold the due payments for any reason whatsoever. Further as per clause 14.1 of ABA, subject to other conditions thereof, the tentative timeline given was 48 months with a grace period of 180 days for the date of

receding the last approvals required for commencement of construction.

15. That the complainant had commenced the construction of the said project on 01.12.2016 after receiving the approval of 'Consent to Establish' dated 12.11.2016 from the Haryana State Pollution Control Board. The complainant is fully committed to hand over the possession of apartments/flats to the buyers well within the time-frame.
16. That the respondents/allottees have been continuously making defaults in making payments, voluntarily and knowingly, of their instalments and other dues. As per statement of account a sum of Rs. 68,01,475/- excluding GST is due and payable by the respondents. An amount of Rs. 30,70,147/- is also due and payable on account of interest on the previous outstanding instalments.
17. That is the given situation, since, the said project is registered under the Act of 2016, upon expiry of the time given under the ABA, if the said project is not completed that too without the fault of the complainant, it would be burdened with an additional cost of delay compensation or the refund to the allottees who paid in time. All this will ultimately push the complainant towards insolvency. It is submitted that the respondents/allottees are obligated to pay and complainant is entitled to recover the due amount along with interest agreed in terms of the ABA under section 19 (6) and (7) of the Act and rule 15 of the Rules.



18. The respondents have signed the application form which contained terms of payment and other essential conditions relating to allotment and interest etc and an allotment letter dated 25.04.2015 has also been issued to them . The Indian Contract Act defines it as "a person is deemed to have actual knowledge of the fact if she willingly abstains from acquiring the knowledge or is grossly negligent". Under section 19 (6) of the Act of 2016, every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any. In addition, sub section (7) provides that the allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6). Therefore, respondents are liable to pay instalment as well as interest accruing thereupon.
19. It is submitted that under section 31 (1) and section 71 (3) of the Act of 2016, the authority is empowered to adjudicate the present complaint being filed by the complainant as the promoter of the said project against the respondents/allottees being allottees of a said unit in the said project.

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

20. The complainant has sought following reliefs:
- i. Direct the respondents to execute the apartment buyer's agreement with the complainant.
  - ii. Direct the respondents to make payment of outstanding and their future instalments on time as per allotment letter/apartment buyer agreement i.e. Rs. 68, 01,475/-.
  - iii. Direct the respondents to make payment of outstanding interest i.e. Rs. 30, 70,147/-.
21. The authority issued a notice dated 23.04.2021 of the complaint to the respondents by speed post and also on the given email address at bschadha27@gmail.com. The delivery reports have been placed in the file. Thereafter, a reminder notice dated 11.10.2021 for filing reply was sent to the respondents on email address at bschadha27@gmail.com. Despite service of notice, the respondent have preferred neither to put in appearance nor file reply to the complaint within the stipulated period. Vide order dated 10.03.2022, on the request of the complainant, a public notice was ordered to be issued by the authority regarding this case at the cost of the complainant. Further, the registry of the authority issued a public notice in the newspapers, which were published on 23rd February on page no. 10 of 'The Tribune' and on 24th February, the same was published on page no. 13 of 'Dainik Jagran', but the respondents did not file the reply.

Accordingly, the authority is left with no other option but to decide the complaint ex-parte against the respondents.

22. 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 these undisputed documents.

**D. Jurisdiction of the authority**

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

**D.I Territorial jurisdiction**

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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.

**D. II Subject-matter jurisdiction**

The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the allottees as per provisions of section 19(6) and (7) of the Act leaving aside compensation which is to be decided by the

adjudicating officer if pursued by the complainant at a later stage.

**E. Findings of the authority**

**E.1 Issue: Whether the respondent have violated the provisions of section 19(6) read with section 19(7) of the Act?**

24. As per the observations of authority, the total consideration of the apartment is Rs. 98,49,500/- (without tax). The respondents/allottees have paid only Rs.25,64,452/- including tax. As per clause 11.1 of standard apartment buyer agreement (but not executed between the parties), it is the obligation of allottees to make timely payments for the total sale consideration. The clause 11.1 of apartment buyer agreement is reproduced as under:

***"11. TIME IS OF THE ESSENCE: BUYER'S OBLIGATIONS***

*11.1.1 Time is the essence with respect to the obligations of the Buyer to pay the Total Sale Consideration as provided in Schedule-III on or before the due date(s) as may be prescribed. It is clearly agreed and understood by the Buyer that except for a demand notice for payments, the Company shall not be required to remind the Buyer for payments due as per the Payment Plan on for performance of any other obligations of the Buyer in terms thereof."*

25. Therefore, authority is satisfied that the respondents are in contravention of section 19(6) and (7) of the Act. The relevant provision of the Act has been reproduced below:

***"19. Rights and duties of allottees:***

*(6) Every allottee, who has entered into an agreement or sale to take an apartment, plot or building as the*

*case may be, under Section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground, rent, and other charges, if any.*

*(7) The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under subsection(6)."*

That the Hon'ble High Court of Bombay in the matter titled **Neelkamal Realtors Suburban Pvt. Ltd. And Anr vs. Union of India** CWP 2737 of 2017 decided on 06.12.2017 has already held that RERA strikes the balance between the promoter and allottees, the relevant para of judgement is reproduced herein below:

*"In the case of Cellular Operations Association of India and ors. Vs. Telecom Regulatory Authority of India and ors. (Supra), the Supreme Court held that there cannot be any dispute in respect of settled principles governing provisions of Articles 14, 19(1)(g) read with Article 19(6). But a proper balance between the freedom guaranteed and the social control permitted by Article 19(6) must be struck in all cases. We find that RERA strikes balance between rights and obligations of promoter and allottees. It is a beneficial legislation in the larger public interest occupying the field of regulatory nature which was absent in this country so far."*

26. It is evident from the perusal of letter of allotment of the allotted unit that the same was booked for a total sale consideration of Rs. 98,49,500/- on the basis of letter of allotment dated 24.04.2015. A further perusal of statement of account on page no. 86 of the complaint shows that

against the total sale consideration of Rs. 98,49,500/- , the complainant has deposited Rs. 25,64,452/-. It has come on the record that the unit was booked under construction linked plan. Though no apartment buyer agreement was executed between the parties detailing the schedule of payments, dimension of area of allotted unit and due date of possession but the complainant - builder has already completed 51% of the project in which the unit of the allottee is situated. So as per the provision of 19(6) & (7) of the Act, it is obligatory for the allottee of unit to make necessary payments within the time as agreed upon. The allottees paid only a sum of Rs. 25,64,452/-. And the last payment of Rs. 16,975/- was made on 09.01.2016 as per the statement of account on page no. 86 of the complaint and thereafter failed to make any payment to the complainant.

27. The unit was admittedly booked under the construction linked plans. So in such a situation it was obligatory on the allottees to make the payment of remaining amount due on raising of further construction by the complainant/builder. Hence, it is proved that the allottees violated the provision of s.19(6) read with s.19(7) of the Act.

**E.2 Issue - What should be the rate of interest to be paid by the respondents/allottees?**

28. It has been contended by the complainant that as per standard apartment buyer agreement, the respondents/allottees are under statutory obligation to pay the instalments within the time agreed therein and also to



bear 15% simple interest on dues. The relevant clause 11.1.2 of standard apartment buyer agreement is reproduced below:

*"11.1.2 For any delay in making any payment in terms hereof, simple interest @15% shall be chargeable. The company shall also be within its rights to decline to execute the conveyance deed and refuse to transfer the apartment in the name of any other buyer unless all payments are fully paid."*

29. However, section 19(6) and (7) of the Act states that the allottees shall make necessary payments in the manner and within time as specified in the agreement for sale and to pay interest, at such rate as may be prescribed, for any delay in payments 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.*

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.

30. 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., 10.03.2022 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e. 9.30% per annum.

31. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, 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;"*

32. Therefore, the respondents shall be charged at the prescribed rate i.e., 9.30% per annum by the complainant/promoter which is the same as is being granted to complainant/promoter in case of delayed possession charges.

### **E.3 Issue – Execution of apartment buyer agreement**

33. The unit has been booked by the respondents through an application form dated 15.11.2013. The allotment letter was issued by the complainant/promoter to the respondents/allottees on 24.04.2015. The complainant has sent the standard apartment buyer agreement on 27.08.2015, However, the respondent/allottees failed to execute the same. Therefore, both the parties are directed to execute the builder buyer agreement.

34. On consideration of the documents available on record and submissions made by the complaint regarding contravention of provisions of the Act, the authority is satisfied that the respondents are in contravention of the section 19(6) and (7) of the Act. The respondent has paid only Rs. 25,64,452/- out of Rs.98,49,500/- which is the total sale consideration. The complainant and respondents are directed to execute the apartment buyer agreement as per section 13 (1) of the Act. Accordingly, it is the failure of the respondents/allottees to fulfil their obligations and responsibilities as per the agreement to make timely payments to the promoter, accordingly, the non-compliance of the mandate contained in section 19(6) and (7) of the Act on the part of the respondents is established.


### **F. Directions issued by the Authority**

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

compliance of obligations casted upon the allottees as per the functions entrusted to the authority under section 34(f):-

- I. The respondents/allottees shall make the requisite payments as per the provisions of section 19(6) and (7) of the Act.
  - II. The respondents/allottees shall be charged interest at the prescribed rate of interest i.e. at the rate 9.30% per annum by the complainant/promoter which is same as is being granted to the allottees in case of delayed possession.
  - III. Both the parties are directed to execute the apartment buyer agreement.
36. Complaint stands disposed of.
37. File be consigned to the registry.

  
**(Vijay Kumar Goyal)**  
Member

  
**(Dr. K.K. Khandelwal)**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Date: 10.03.2022