

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

Complaint no.	3666 of 2021
Date of filing complaint	17.09.2021
First date of hearing	30.09.2021
Date of decision	17.08.2022

Nishtha D/o Shri. Subhash Wadhwa aged 43 years R/o: H.no. 12/538, Batra Colony, Near Subhash Park, Sonipat-131001, Haryana	Complainant
Versus	
M/s Lotus Realtech Private Limited R/o: BU-5, SFS Flats, Near Income Tax Colony, Outer Ring Road, Delhi-110034	Respondent

CORAM:	
Dr. KK Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Sh. S. Dutta (Advocate)	Complainant
Sh. Jagbir Singh (Advocate)	Respondent

ORDER

1. The present complaint 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 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 the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	Lotus Homz, Sector - 111, Gurugram, Haryana
2.	Nature of the project	Affordable Group Housing Colony
3.	Unit No.	702,7 th floor, Tower- H (As per on page 13 of complaint)
4.	Carpet Area	605.55 sq.ft.
5.	DTCP license no. and validity status	47 of 2014 18.06.2014 valid up to 31.05.2021
6.	Name of licensee	Ashok Kumar and 1 other
7.	RERA Registered/ not registered	214 OF 2017 DATED 18.09.2017
8.	Date of draw of lots	01.12.2015 (Page 26 of complaint)
9.	Date of builder buyer agreement	07.07.2017 (As per on page 28 of the complaint)

10.	Possession clause (taken from BBA that has been placed on record but not executed)	<p>3.1 Subject to force majeure circumstances, intervention of statutory authorities, receipt of OC and allottee having timely complied with all its obligations, formalities or documentation, as prescribed by developer and not being default under any part hereof and apartment buyer agreement, including but not limited to the timely payment of installments of the other charges as per the payment plan, stamp duty and registration charges, the developer proposes to offer possession of the said apartment to the allottee within a period of 4 (four) years from the date of approval of building plans or grant of environment clearance, (hereinafter referred to as the "commencement date") whichever is later.</p>		
11.	Date of Environment clearance	01.07.2016 30.06.2023	valid	till
12.	Date of Building Plans Approval	22.10.2014 21.10.2019	valid	till
13.	Due date of possession	<p>01.01.2021 01.07.2016 + 6 months (Calculated from the date of environment clearance plus six months as grace period) As per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion date on or after 25.03.2020.</p>		
14.	Total Consideration	<p>Rs. 26,32,348/- (As per final statement of account on page no. 71 of complaint)</p>		
15.	Amount Paid	<p>Rs. 26,00,955/-</p>		

		(As per final statement of account on page no. 71 of complaint)
16.	Occupation Certificate	Obtained dated 01.06.2021 (Page 11 of reply)
17.	Offer of Possession	07.06.2021 (Page 68 of complaint)

B. Facts of the complaint:

3. That in 2015, the complainant made an application bearing no. 0691 for booking an apartment in the project Lotus homes and paid the necessary booking amount. After lapse of considerable time, the respondent sent a letter dated 12.01.2017 demanding an amount of Rs. 3,46,327/-. Vide the said letter, the complainant was also informed that she was one of successful allottee in the draw of lots conducted on 01.12.2015 by the high-powered committee and was allotted unit no. 702, 7th floor, Tower- H, admeasuring 605.55 sq. ft.
4. That the respondent sent a letter to the complainant dated 20.05.2017 providing status of progress of the project. Vide the said letter, the complainant was informed that the work was being executed with full swing and the structure work was almost complete up to 6th floor level and the instalment of Rs. 6,41,518 were due and payable within 7 days of receipt of the letter.
5. The complainant received a demand letter dated 15.12.2017 towards 4th instalment of Rs. 3,33,096/-. The complainant paid the said instalment without GST and requested the respondent to

inform her about all the pending dues so that she is able to clear the dues. She also requested the respondent to calculate the GST amount due and payable and inform her so that payment can be made. The complainant sent a few reminder letters after that, however no reply was received to the copies of the letters dated 07.03.2018; 02.04.2018; 05.06.2018 sent by the complainant.

6. The respondent sent an offer of possession dated 07.06.2021 with respect to the allotted unit to the complainant. Vide the said letter, the complainant was informed that it has received occupancy certificate on 01.06.2021. The complainant was also informed that she can take possession after completing the possession formalities and payment of Rs. 1,98,787 /- within 30 days. From the annexure 1 & II enclosed with the offer of possession, the complainant realised that the respondent has levied various charges which are illegal such as external electrification charges, Interest on delayed payment and some charges were exorbitantly high such as administration/legal charges, Intercom charges etc.
7. The complainant tried to reach out to the respondent several times regarding the problems faced by her but to no avail. Hence, the complainant was left with no opportunity but to approach this Authority by filing the present complaint.

C. Relief sought by the complainant:

8. The complainant has sought following relief(s):

- i. Direct the respondent to give physical possession of the fully developed/constructed unit with all amenities during the pendency of complaint.
- ii. Direct the respondent to give the delayed possession interest @ 15% on amount paid by the complainant from promised date of delivery of 01.01.2021 till handing over of physical possession of the flat
- iii. To direct the respondent to waive of and refund the illegal charges such as EEC; interest on delayed payments; telephone/intercom charges; labour cess charges etc as included in the offer of possession letter dated 07.06.2021 till handing over of physical possession of the flat
- iv. To direct the respondent to not to levy holding charges on account of default on the part of the respondent
- v. To hold the respondent responsible for unfair trade practices and accordingly compensate the complainant.

C. Reply by respondent

9. That the respondent denied the facts stated by the complainant and further submitted that the complainant is bound to pay the registration charges of conveyance deed charges as per clause 9.4 of buyer's agreement. The stamp duty, registration charges, drafting, tying, attorney fees and any other incidental charges or dues required to be paid for due execution and registration of the sale/conveyance deed of the said unit or any other documents required to be executed pursuant to this agreement.

10. The respondent had demanded the legal charges from the complainant as per the terms and conditions of BBA over which she cannot agitate. As per BBA, *“the charges for providing external electrification, electric wiring in the said apartment, firefighting measures/ equipment in the common areas as prescribed in the existing firefighting code/regulations and power backup, shall be payable by the allottee in addition to the basic total cost as prescribed herein. If, however, due to any subsequent legislation, court order, govt order or directives or guidelines or if deemed necessary by the developer, additional electrification/fire safety charges, then the allottee shall be liable to pay proportionate charges as may be determined by the developer in its discretion”*.
11. Further, the telephone charges/Intercom charges are payable by the allottee as per clause 6.4 of BBA and thus these charges cannot be waived and labour cess charges are payable by the allottee as per clause 4.1 of BBA.
12. It was admitted to the extent that the complainant had paid the sum of Rs. 27,68,349 for the allotted flat. It is wrong to allege that the complainant had paid illegal charges.
13. It was further submitted that the respondent had already completed the project within time i.e., 4 years from the date of environment clearance after which offer of possession letter dated 07/06/2021 had already been issued to the complainant who had not taken the possession on payment

of the outstanding amount till date. Since the offer of possession letter dated 07/06/21 had already been issued on getting the part occupation certificate dated 01/06/2021, the complainant is not entitled to get any refund.

14. All other averments were denied in toto.
15. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

16. The plea of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I. Territorial jurisdiction

17. 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 completed territorial jurisdiction to deal with the present complaint.

E. 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.

F. Findings regarding relief sought by the complainant:

- F.1. Direct the respondent to give physical possession of the fully developed/constructed unit with all amenities during the pendency of complaint.**
- F.2. Direct the respondent to give the delayed possession interest @ 15% on amount paid by the complainant from promised date of delivery of 01.01.2021 till handing over of physical possession of the flat.**

20. Both the issues being interconnected are being taken up together. The complainant is admittedly an allottee of respondent in the project detailed above for a total sale consideration of Rs. 26,32,348/- under the affordable housing policy 2013. A buyers agreement dated 07.07.2017 was executed between the parties about the allotted unit setting out terms and conditions of allotment, the payment plan, the total sale consideration, dimensions of the allotted unit and due date of its possession. In pursuant to execution of that document, the allottee started paying the sale consideration to the builder and paid him a total sum of Rs. 26,00,955/- The promoter failed to complete the project by the due date and offer the possession of the allotted unit to the allottee. So she moved the authority seeking possession of the unit along with delay possession charges. The respondent has already obtained the occupation certificate on 01.06.2021 and offered the possession of the allotted unit to the complainant on 07.06.2021. The complainant intends to continue with the project and is 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

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.

21. Considering the above-mentioned facts, the authority calculated due date of possession according to clause 3.1 of the agreement i.e., of 4 (four) years from the date of approval of building plans or grant of environment clearance, (hereinafter referred to as the "commencement date") whichever is later.
22. The authority allows DPC w.e.f. 01.01.2021 till 07.06.2021 (date of offer of possession) plus two months which comes out to be 07.08.2021.
23. The authority allows DPC at the prescribed rate of interest and it has been prescribed under rule 15 of the rules. 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., 03.02.2022 is 8%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10%.
24. Accordingly, the complainant is entitled for delayed possession charges as per the proviso of section 18(1) of the Real Estate (Regulation and Development) Act, 2016 at the prescribed rate of interest i.e. 10% p.a. for every month of delay on the amount paid by the complainant to the respondent from the due date of possession i.e. 01.01.2021 till the offer of possession i.e. 07.06.2021 till the completion of 2 months from the date of offer of possession (07.06.2021) which comes out to be 07.08.2021
25. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the respondent applied for the occupation certificate and same has been received

from the competent authority on 01.06.2021. The respondent has offered the possession of the subject unit on 01.06.2021. Therefore, in the interest of natural justice, the complainant should be given two months' time from the date of offer of possession. This two month of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit, but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e. 01.01.2021 till offer of possession (07.06.2021) plus two months i.e. 07.08.2021.

26. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession at prescribed rate of interest i.e. 10% p.a. w.e.f. due date of possession i.e. 01.01.2021 till offer of possession (07.06.2021) plus two months i.e. 07.08.2021 as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act of 2016.

F-II Cancel, waive and refund of illegal charges such as electrification charges, interest on delayed payments, telephone/intercom charges, labour cess charges etc. included in offer of possession dated 07.06.2021 and not levy holding charges.

27. The complainant submitted that the respondent/builder has levied various charges which are illegal such as external electrification charges, interest on delayed payment and some charges such as administration/ legal charges, intercom charges etc. The respondent/builder has submitted that it has demanded the legal charges from the complainant as per the terms and conditions of buyers agreement over which she cannot agitate.
28. Holding charges shall also not be charged by the promoter at any point of time even after being part of agreement as per law settled by the Hon'ble Supreme Court in civil appeal no. 3864/2020 dated 14.12.2020.
29. According to the facts, the complainant is liable to pay the electricity electrification charges, interest on delayed payments and telephone intercom charges as per the builder buyer agreement. Though labour cess has been charged from the allottee by the builder while raising demand of Rs.10,520/- but legally that amount could have not been collected for the reason the neither the same is part of buyers agreement nor it is duty of allottee to pay the same. The builder is supposed to pay a cess for the welfare measures for building and other construction workers. So, the amount collected as labour cess from the allottee cannot be legally retained by the builder and is liable to be refunded to her.

H. Directions of the authority:

30. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act of 2016 to ensure

compliance of obligation cast upon the promoter as per the function entrusted to the authority under section 34(f) of the Act of 2016:

- i. The respondent is directed to pay the interest at the prescribed rate i.e. 10% per annum for every month of delay on the amount paid by the complainant from the due date of possession i.e. 01.01.2021 till offer of possession (07.06.2021) plus two months i.e. 07.08.2021. If any payment for delay in possession, has been paid or credited in the account of allottee, it would be adjusted in the amount of delayed possession charges to be paid as per above directions.
- ii. The arrears of such interest accrued from 01.01.2021 till the date of order by the authority shall be paid by the promoter to the allottee within a period of 90 days from date of this order.
- iii. The rate of interest chargeable from the complainant/allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delay possession charges as per section 2(za) of the Act.
- iv. The complainant is directed to pay the electrification charges, interest on delayed payments and telephone intercom charges as per the builder buyer agreement.
- v. The respondent shall not charge anything from the complainant which is not the part of buyer's agreement.

vi. The promoter shall not charge holding charges at any point of time even after being part of agreement as per law settled by the Hon'ble Supreme Court in civil appeal no. 3864/2020 dated 14.12.2020.

31. Complaint stands disposed of.

32. File be consigned to registry.


(Vijay Kumar Goyal)
Member


(Dr. KK Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 17.08.2022


HARERA
GURUGRAM

