

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

Complaint no. : 1015 of 2019
First date of hearing: 18.07.2022
Date of decision : 07.09.2022

1. Chander Shekhar Sachdeva
2. Amit Sachdeva
Through GPA Holder Shri Raj Kumar Sachdeva
R/O: - H.No.186, Vaishali, Pitampura, Delhi-110088.

Complainants

Versus

Experion Developers Pvt. Ltd.
Office address: - Plot no. 18, 2nd floor, Sector 32,
Gurugram, Haryana

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Vijay Kumar Goyal
Shri Ashok Sangwan
Shri Sanjeev Kumar Arora

Chairman
Member
Member
Member

APPEARANCE:

Mr. Sanchit Dhawan
Mr. Vishnu Kant

Advocate for the complainants
Advocate for the respondent

ORDER

1. The present complaint dated 25.03.2019 has been filed by the complainants/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 thereunder 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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.N.	Particulars	Details
1.	Name of the project	Windchants, Sector- 112 Gurugram, Haryana.
2.	Nature of the project	Group housing colony
3.	DTCP License no.	i.) 21 of 2008 dated 08.02.2008 upto 07.02.2020 ii.) 28 of 2012 dated 07.04.2012 upto 06.04.2025
4.	RERA registered/ not registered	i.) 64 of 2017 dated 18.08.2017 upto 17.08.2018 ii.) 73 of 2017 dated 21.08.2017 upto 20.08.2019 iii.) 112 of 2017 dated 28.08.2017 upto 27.08.2019
5.	Environment clearance	27.12.2012 (As per the project report of the project)
6.	Building plan	07.06.2012 (As per the project report of the project)
7.	Unit no.	WT - 02/1602



		(Page 106 of the complaint)
8.	Super area	4650 sq. ft. (Page 106 of the complaint)
9.	Increase in area of the unit vide letter of offer of possession dated 24.07.2018	4739 sq. ft. (Page 82 of reply)
10.	Apartment buyer agreement executed b/w M/s Orange Realtech Pvt. Ltd. And respondent herein on	26.12.2012 (Page 73 of complaint)
11.	Agreement to sell between M/s Orange Realtech Pvt. Ltd. and Chander Shekhar Sachdeva and Amit Sachdeva	01.05.2013 (Page 43 of complaint)
12.	Possession clause	Project completion period. 10.1. Possession Subject to Force Majeure, timely payment of the Total Sale Consideration and other provisions of this Agreement, based upon the Company's estimates as per present Project plans, the Company Intends to hand over possession of the Apartment within a period of 42 (forty two) months from the date of approval of the Building Plans or the date of receipt of the approval of the Ministry of Environment and Forests, Government of India for the Project or execution of this

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		<p>Agreement, whichever is later ("Commitment Period"). The Buyer further agrees that the Company shall additionally be entitled to a time of 180 (one hundred and eighty) days ("Grace Period") after expiry of the Commitment Period for unforeseen and unplanned Project realities. However, in case of any default under this Agreement that is not rectified or remedied by the Buyer within the time as may be stipulated, the Company shall not be bound by such Commitment Period.</p> <p>(Page 90 of the complaint)</p>
13.	Due date of possession	<p>27.06.2016</p> <p>(The due date has been calculated from the environment clearance date being later)</p>
14.	Total sale consideration	<p>Basic Sale Price – Rs.2,60,64,500/-</p> <p>Total consideration including the taxes – Rs. 3,10,88,716/-</p> <p>(Page 89 of the reply)</p>
15.	Amount paid	<p>Rs.3,20,01,994/-</p> <p>(Page 47 of the complaint)</p>
16.	Occupation certificate	<p>23.07.2018</p> <p>(Page 79 of the reply)</p>

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17.	Offer of possession	24.07.2018 (Page 81 of the reply)
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B. Facts of the complaint

3. That the complainants are law abiding citizens who has purchased a flat in the project of the respondent namely, "WINDCHANTS" located at Sector 112, Gurugram, Haryana. The complainants have been cheated by the malpractices adopted by the respondent being a developer and promoter of real estate, since long time. Based on the representations of representatives of the respondent and the brokers associated with the respondent, the complainants were lured into purchasing unit bearing no. WT-02/1602 in a project being developed by the respondent by the name "WINDCHANTS" in Sector 112, Gurugram, Haryana. The complainants were so influenced with the false representations of the representatives of the respondent that they agreed for the purchase of a unit which shall be made available through transfer and the complainant no.1 was informed that prospective unit no. WT-02/1602 is available and the same can be purchased by the complainants. That the respondent company has charged an amount of Rs.5,22,474/- as administrative charges to transfer the allotment and has failed to give any justification of such exorbitant charges on transfer.
4. That the complainant no.1 was introduced to the officials of M/s Orange Realtech Private Limited, who had agreed to transfer their allotment in favour of the complainants. That the complainant no.1 executed an



agreement to sell dated 01.05.2013 and made payment to M/s Orange Realtech Private Limited of the amount they had already given to the respondent and upon transfer of the allotment, stepped into the shoes of the original allottee and thus was entitled to the possession in terms of the builder buyer agreement.

5. That the respondent to dupe the complainants in their nefarious activities and to create a false belief that the project shall be completed in time bound manner and in the garb of the builder buyer agreement persistently raised demands due to which they were able to extract huge amount of money from the complainants. That the respondent in an endeavour to extract money from allottees devised a payment plan under which respondent citing milestone for construction progress stages, or development of the site, and after taking the same respondent has not bothered to committed development of the project in time bound manner. The respondent raised demands without complying with payment plan as per schedule VI of the builder buyer agreement dated 26.12.2012. That the respondent has received more payment than was agreed between the parties as per the payment schedule V and despite offering the possession of the unit, the respondent has failed to handover the vacant and peaceful physical possession of the unit till date. The respondent has thus indulged in unfair, unreasonable, trade practice from the inception.
6. That the respondent has arbitrarily increased the area of the unit and despite repeated reminders by the complainants, the respondent has



failed to give any explanation or working as to how the area has increased and whether the increase is only in the super area or the carpet area or both. The builder has provided a floor plan for the unit WT-02/1602 with the builder buyer agreement (schedule IV) and there are no details of any change in the said floor plan is provided by the respondent to justify the demand raised for alleged increase in area. In case there is no increase in actual carpet area, the alleged demand raised by the respondent is illegal and unjustified and thus the money paid by the complainants of Rs.5,48,240/- is liable to be refunded by the respondent along with penal interest as being charged from the complainants.

7. That the schedule V annexed to and forming part of the builder buyer agreement specifically states and provides that the total sale consideration shall only be affected in case there is any taxes, cess, levies, duties, VAT, service tax, fee, charges and impositions to be charged or imposed by the competent authority. It shall be paid by the buyer and the same are not included in the BSP and other than these statutory duties, taxes and charges there is no other amount payable by the buyer. That the complainants had challenged the illegal demands raised by the respondent and has asked for the details and breakup of the total sale consideration including all charges and alleged ad hoc charges being raised and demanded from the complainants, which till date has not been explained by the respondent and no explanation whatsoever including any breakup of the alleged demands has been



provided to the complainants and in this manner the respondent is causing wrongful loss to the complainants and is demanding illegal and arbitrary payments from the complainants which are otherwise never been agreed between the parties. The unit should have been delivered way back before December 2015. However, it is a matter of record that the respondent has failed to handover the possession of the unit till date and despite making payment of an amount more than the sale consideration, the respondent is demanding more money and thus pressuring and harassing the complainants to part with money over and above the agreed sale price of the unit. That admittedly the respondent has not made any communication regarding any unforeseen circumstance during the period of 42 months and even subsequent to the expiry of 42 months and as such the extension (grace period) of 180 days is of no avail to the respondent. That the respondent at no stage informed the complainants of the status and development of the project but kept on demanding payments in the garb of development which was never carried out. The complainants to meet huge demands raised by the respondent had to not only liquidate their investments but had to borrow money.

8. That the respondent has failed to meet the obligations and with mala fide intentions have collected huge amount of money from the complainants. This act on part of the respondent has not only caused huge financial losses but has also upset the family life. That the complainants with good intentions have paid all the demands raised by



respondent, however respondent has failed to meet their obligations and commitments. This undue delay in handing over the possession of the unit for more than 3 years from committed date as per agreement is not only a breach of trust but is also indicative of ill intentions of the respondent. The act on part of respondent has caused undue financial losses and mental agony to the complainants. That the delay in the delivery of the flat is solely due to the negligence of the respondent. That the respondent has never informed the complainants about any force majeure circumstances which have led to the halt in the construction.

9. That the complainants being aggrieved by the act of the respondent have filed the present complaint under section 31 of the Act with the authority for violation/contravention of provisions of the Act.

C. Relief Sought

10. The complainants are seeking the following relief(s):
- i. Direct the respondent to deliver the possession of the subject unit and to pay delay possession charges along with interest.
 - ii. Direct the respondent to refund anything which is not a part of buyer's agreement.
 - iii. Direct the respondent to refund the amount charged towards the alleged increase in area of the subject unit.
 - iv. Waive holding charges applied on the complainants since the delay is on the part of the respondent to provide appropriate details along with relevant documents.

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D. Reply by the respondent

11. That the complainants have booked the apartment in question (WT-02/1602) in respondent's project "Windchants". The said project is being developed in phases. After the enactment of the Act, each phase of a project is considered as a separate project. The apartment of the complainants falls in Phase-2 of the project. That after the enforcement of the Act, each developer was required to register its project if the same was an "ongoing project" and give the date of completion of the said ongoing project in terms of Section 4(2)(l)(c) of the Act. Accordingly, the respondent had registered the relevant phase of the said project, and as per extended date of completion, the same was liable to be completed on or before 17.08.2018. The respondent has duly registered the phase of the project in which the apartment in question is situated having registration no. 64 dated 18.08.2017.
12. The complaint is also liable to be dismissed because the apartment in question was sold and the apartment buyer's agreement was executed on 26.12.2012. The terms and conditions of the agreements executed prior to applicability of the Act and the Rules shall be binding between the parties and the delayed possession compensation shall be payable only as per the agreed terms of the said agreement and not as per the Act and the Rules, as claimed by the complainants. It is because it is settled law that the Act and Rules are not retrospective in nature. Therefore, the application of the sections/rules of the Act/Rules

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relating to refund, along with interest and compensation, cannot be made retrospectively.

13. That clause 10 of the agreement, which deals with the said issue, only prescribes an estimated time period for handing over of possession. The time mentioned therein of 48 months (inclusive of grace period of 6 months) is neither cast in stone nor fixed. It is only a tentative estimate provided by the respondent. More importantly, the same was subject to not only force majeure, but primarily on "timely payment" of all installments by the complainants.
14. Without prejudice to the aforesaid preliminary objections and the contention of the respondent that unless the question of maintainability is first decided, the respondent ought not to be called upon to file the reply on merits to the complaint, this reply is being filed by way of abundant caution, with liberty to file such further reply as may be necessary in case the complaint is held to be maintainable.
15. That on 23.07.2018, the respondent obtained occupation certificate for the apartment and issued a notice for possession dated 24.07.2018 to the complainants. The respondent has also credited a sum of Rs.5,90,006/- to the complainant's account on account of delay in handing over possession despite not being liable to give any compensation under the terms of the agreement entered into between the parties.
16. That instead of clearing dues and taking possession, the complainants started raising false and frivolous excuses alleging delay in completion



of construction. In terms of clause 10.1 of the apartment buyer agreement, the tentative date of completion of the apartment was 42 months from the date of approval of the Building Plans or the date of receipt of the approval of the Ministry of Environment and Forests for the project or execution of buyer's agreement, whichever is later ("Commitment Period") subject to a grace period of 180 days after the expiry of the commitment period in order to account for unforeseen and unplanned events ("Grace Period"). It is also pertinent to note that as per the clause 10.1 of the said agreement, this agreed time period for handing over possession of the apartment is subject to force majeure, timely payment of the Total sale consideration and the other provisions of the agreement. The respondent received the approval from the Ministry of Environment and Forests as on 27.12.2012, therefore, in terms of the application and apartment buyer agreement, the date of handing over of possession would be 27.12.2016. Since, the complainants failed to adhere to their only obligation under the agreement, i.e. of making timely payments and since the time period for handing over of possession was conditioned on timely payment of installments, in the present case, question cannot arise.

17. That in so far as the demand towards increase in area is concerned, it is submitted that the letter of allotment as well as clause 3.1 of apartment buyers agreement specifically provides that sale area of the apartment was tentative and liable to change. Clause 8 of the said agreement provides that in case of increase/decrease in sale area of the apartment,



there shall be corresponding increase/decrease in the sale consideration payable by the buyer. Furthermore, in case where the change in sale area is less than 10% of the tentative slae area at the time of allotment, consent of the buyer was not required to be taken.

E. Jurisdiction of the authority

18. 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

19. 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

20. 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 promoter, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

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

22. An objection has been raised the respondent that the authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the apartment buyers 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

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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. 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."

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

"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

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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."

24. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the 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.

G. Findings on the relief sought by the complainants

G.I. Direct the respondent to pay delay possession charges along with interest.

25. In the present complaint, 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. Section 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."



26. As per clause 10.1 of the apartment buyers agreement dated 26.12.2012 provides for handing over of possession and is reproduced below.

10.1. Possession

Subject to Force Majeure, timely payment of the Total Sale Consideration and other provisions of this Agreement, based upon the Company's estimates as per present Project plans, the Company Intends to hand over possession of the Apartment within a period of 42 (forty two) months from the date of approval of the Building Plans or the date of receipt of the approval of the Ministry of Environment and Forests, Government of India for the Project or execution of this Agreement, whichever is later ("Commitment Period"). The Buyer further agrees that the Company shall additionally be entitled to a time of 180 (one hundred and eighty) days ("Grace Period") after expiry of the Commitment Period for unforeseen and unplanned Project realities. However, in case of any default under this Agreement that is not rectified or remedied by the Buyer within the time as may be stipulated, the Company shall not be bound by such Commitment Period.

27. **Admissibility of grace period:** The promoter has proposed to handover the possession of the said unit with a period of 42 months from the date of approval of building plans or the date of receipt of the approval of the Ministry of Environment and Forests, Government of India for the project or execution of this agreement. It is further provided in agreement that promoter shall be entitled to a grace period of 180 days for unforeseen and unplanned project realities. In the present complaint, the buyer agreement was executed between the parties on 26.12.2012. The building plans and environmental clearance was granted by the competent authority on 07.06.2012 and 27.12.2012 respectively. The due date of possession has been calculated from date of environment clearance being later. Therefore, the due date of handing over possession comes out to be 27.06.2016. There is neither anything on record nor the same have been argued during the



proceeding of the court to show that any unforeseen and unplanned realities have occurred. Thus the grace period is disallowed.

28. Payment of delay possession charges at prescribed rate of interest:

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.

29. 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., 07.09.2022 is **8%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10%**.

31. The definition of term 'interest' as defined under section 2(z a) 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;"*

32. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., **10%** by the respondent /promoter which is the same as is being granted to the complainants in case of delayed possession charges.
33. On consideration of the circumstances, the documents, submissions made by the parties and based on the findings of the authority regarding contravention as per provisions of rule 28(2), the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 10.1 of the agreement executed between the parties on 26.12.2012, the due date of handing over possession of the subject apartment which comes out to be 27.06.2016 as decided in aforesaid paras of this order. Occupation certificate has been received by the respondent on 23.07.2018 and the possession of the subject unit was offered to the complainants on 24.07.2018. Copies of the same have been placed on record. The authority is of the considered view that



there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainants as per the terms and conditions of the buyer's agreement dated 26.12.2012 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and responsibilities as per the apartment buyers agreement dated 26.12.2012 to hand over the possession within the stipulated period.

34. 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 occupation certificate was granted by the competent authority on 23.07.2018. The respondent offered the possession of the unit in question to the complainants only on 24.07.2018, so it can be said that the complainants came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainants should be given 2 months' time from the date of offer of possession. This 2 month of reasonable time is being given to the complainants keeping in mind that even after intimation of possession, practically they have 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., 27.06.2016 till the expiry of 2 months from the date of offer of possession (24.07.2018) which comes out to be 24.09.2018.



35. 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 complainants are entitled to delay possession at prescribed rate of interest i.e., 10% p.a. w.e.f. 27.06.2016 till the expiry of 2 months from the date of offer of possession (24.07.2018) which comes out to be 24.09.2018 as per provisions of section 18(1) of the Act read with rule 15 of the rules.

G. II Direct the respondent to refund anything which is not a part of buyer's agreement.

36. The authority is of the view that the agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, 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 and are not in contravention of any Act, rules, statutes, directions issued thereunder and are not unreasonable or exorbitant in nature. The respondent shall not charge anything from the complainants which is not the part of buyer's agreement as per the directions of the authority.

G.III Direct the respondent to refund towards alleged increase area charged.

37. An apartment buyer agreement dated 26.12.2012, the complainants were allotted the subject unit of the complaint and the area of the

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subject unit was 4650 sq. ft. later increased to 4739 sq. ft. There is an increase of 89 sq. ft. which constituting less than 10% of original area.

38. The authority has gone through the relevant clauses of the agreement and the same is reproduced below for ready reference:

"8.6 While every attempt shall be made to adhere to the Sale Area, in case any Changes result in any revision in the Sale Area, the Company shall advise the Buyer in writing along with the commensurate increase/decrease in Total Sale Consideration based, however, upon the BSP as agreed herein. Subject otherwise to the terms and conditions of this Agreement, a maximum of 10% variation in the Sale Area and the commensurate variation In the Total Sale Consideration is agreed to be acceptable to the Buyer and the Buyer undertakes to be bound by such increase / decrease in the Sale Area and the commensurate increase/decrease in the Total Sale Consideration. For any increase/decrease in the Sale Area, the payment for the same shall be required to be adjusted at the time of Notice of Possession or immediately in case of any Transfer of the Apartment before the Notice of Possession or as otherwise advised by the Company."

39. The final super area of the subject unit was to be confirmed by the respondent only upon grant of occupation certificate by the competent authority after the completion of construction of the said building. As per clause 8.6 of the agreement, it is evident that the respondent has agreed to intimate the allottee in case of any major alteration/modification resulting in excess of +/- 10% change in the super area of the apartment.

40. In ***Varun Gupta Vs. Emaar MGF Land Limited 4031/2021***, the authority has held that the demand for extra payment on account of increase in the super area by the respondent-promoter from the allottee(s) is legal but subject to condition that before raising such demand, details have to be given to the allottee(s) and without



justification of increase in super area, any demand raised in this regard is liable to be quashed. offer of possession.

41. In view of the above discussion, the authority holds that the demand for extra payment on account of increase in super area from 4650 sq. ft. to 4739 sq. ft. is legal but subject to providing complete details of increase in super area to the complainants-allottees.

G.IV Direct the respondent company not to charge holding charges and additional charges.

42. The respondent shall not charge anything from the complainants which is not part of the apartment buyers 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 apartment buyer agreement as per the directions of the Hon'ble Supreme Court in **civil appeal nos. 3864-3899/2020** decided on 14.12.2020.

H. Directions of the authority

43. 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) of the Act:

- 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 complainants from due date of possession i.e., 27.06.2016 till 24.09.2018 i.e. expiry of 2 months from the date of offer of possession (24.07.2018).

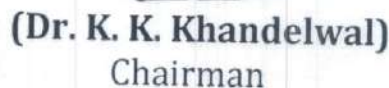


- ii. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order. The amount paid towards delayed possession shall be adjusted by the respondent promoter, if any.
- iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The rate of interest chargeable from the complainants /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.
- v. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement. The respondent is also not entitled to claim holding charges from the complainants/allottee at any point of time even after being part of apartment buyer's agreement as per law settled by hon'ble Supreme Court in civil appeal no. 3864-3889/2020 decided on 14.12.2020.
44. Complaint stands disposed of.
45. File be consigned to registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member


(Dr. K. K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 07.09.2022