BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 5075 of 2021
First date of hearing: 22.02.2022
Date of decision : 07.09.2022

1. Anupama Joshi
R/O: Gurgaon One Apartments, Tower Gt-1,
Flat No.6A, Old Delhi Gurgaon Road,
Near Maruti Factory, Sector 22,
Mullahera (65), Gurgaon-122015, Haryana.

2. Purnima Agarwal
R/O: - First Floor, 108, New Rajdhani Enclave,
Vikas Marg, Delhi-110092 **Complainants**

Versus

Experion Developers Private Limited
Office address: F-9, First Floor, Manish Plaza 1,
Plot No.7, MLU, Sector 10, Dwarka,
New Delhi-110075. **Respondent**

CORAM:
Dr. K.K. Khandelwal **Chairman**
Shri Vijay Kumar Goyal **Member**
Shri Ashok Sangwan **Member**
Shri Sanjeev Kumar Arora **Member**

APPEARANCE:
Shri Saumyen Das Advocate for the complainants
Ms. Srijita Kundan Advocate for the respondent

ORDER

1. The present complaint dated 28.12.2021 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 Valid upto - 07.02.2020 ii.) 28 0f 2012 dated 07.04.2012 Valid upto - 06.04.2025
4.	RERA registered/ not registered	i.) **64 of 2017** dated 18.08.2017 Valid upto 17.08.2018 ii.) **73 of 2017** dated 21.08.2017 Valid upto 20.08.2019 iii.) **112 of 2017** dated 28.08.2017 Valid 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.	Application form	Duly signed and attached on annexure R3 page no. 28
8.	Allotment letter	07.08.2012 (Annexure R3 page no. 40 of reply)
9.	Unit no.	WT-04/0802. (Annexure R3 page no. 40 of reply)
10.	Super area	3525 sq. ft. (Annexure R3 page no. 40 of reply)
11.	Increase in area of the unit vide letter dated 04.10.2017 at page	3647 sq. ft. [increased amount Rs.8,80,949/-] (Annexure P4, page 75 of complaint)
12.	Apartment buyer agreement executed on	26.12.2012 (Annexure R4 page no. 47 of the reply)
13.	Possession clause	**10. project completion period** **10.1** 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 period 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 period as may be stipulated, the Company shall not be bound by such Commitment Period (Page 64 of reply)
14.	Due date of possession	27.06.2016

		(The due date has been calculated from the environment clearance date being later)
15.	Total sale consideration	Basic Sale Price – Rs. 2,21,66,932/- Total consideration including the taxes – **Rs.2,49,25,839/-** (Page 83, schedule V of the reply)
16.	Amount paid	Rs.2,65,86,173/- (As alleged by the complainants in the fact, page 10 of complaint)
17.	Occupation certificate	24.12.2018 (Page 88 of reply.)
18.	Offer of possession	27.12.2018 (Page 93 of reply)
19.	Conveyance deed executed on	19.10.2021 [Annexure R14, page 163 of reply]

B. Facts of the complaint

3. That the complainants had booked the said apartment (i.e. apartment bearing no. 0802 having carpet area of 202.46 square meters (equivalent to 2,179.28 square feet) and sale area of 327.48 square meter (equivalent to 3,525 square feet), on 8th Floor in Tower WT-04 in block Waving Teak, in the project known as "Windchants", in Sector 112, Gurugram) relying upon promise and undertakings in the

advertisements given by the respondent in various leading newspapers about their forthcoming project "Windchants" promising advantages like world class amenities and timely completion of the project, etc. It is relevant to mention here that the complainants had paid Rs.24,38,362/- which was around 10% of the sale consideration of the said apartment, but the apartment buyer agreement was executed by the respondent in favour of the complainants after four months' delay on 26.12.2012, such delay being totally on account of the respondent.

4. That the complainants found apartment buyer agreement dated 26.12.2012 consisting of very stringent and biased contractual terms which are illegal, arbitrary, unilateral, one sided and discriminatory in nature, because every clause of agreement is drafted in a one-sided way. When the complainants opposed the terms and conditions of the said apartment buyer agreement, the respondent clearly stated that this agreement is standard & final and no changes shall be entertained by the respondent. The complainants without having any choice and after having paid such a huge amount out of their hard-earned earnings as booking amount, signed the said apartment buyer agreement. It is relevant to note that as per the said agreement the respondent could charge interest on delayed payment @ 18% p.a., but company will

compensate only at the rate of Rs.7.50/- per sq. ft. per month in case of delay in possession of the said apartment by the company and that this is standard rule of company.

5. That as per clause 10.1 of the apartment buyer agreement dated 26.12.2012, the prospective date of delivery of possession was 42 months from the date of execution of the apartment buyer agreement. It is relevant to mention here that the said apartment was allotted by the respondent on 07.08.2012 after taking Rs.24,38,000/- which was around 10% of the sale consideration) and thereafter the respondent intentionally executed the buyer's agreement after delay of more than 4 months so that they could delay completion of the project without payment of delay possession charges to the complainants since the period of 42 months for handing possession of the said apartment was to be counted from the date of execution of the buyer's agreement i.e. 26.12.2012 as stated in the said clause.

6. That the respondent/promoter failed to pay Rs.53,92,451.96 to the complainants towards interest at the prescribed rate i.e. 10.45% for every month of delay from the due date of possession i.e. 27.06.2016 till the date of offer of possession i.e. 27.12.2018 as provided under the Act and the rules. The respondent only adjusted delay compensation @

Rs.7.50 per sq. ft. of sale area as per clause no. 13.1 of the buyer's agreement, which amounted to only Rs.5,83,520/- or 1.27% simple interest, whereas the respondent has charged interest @ 18% per annum on the delayed payments as per clause no.4.8 of the apartment buyer agreement. Hence, the delayed possession interest provided by the respondent being contrary to the Act and the rules is also grossly unfair.

7. That in addition to making payment of delay compensation at an illegally low rate, the respondent also arbitrarily excluded 90 days towards Force Majeure without citing any reason while taking total number of days for delay in handing over possession of the said apartment and illegally claimed grace period for the purpose of calculating the delay compensation charges. It is relevant to mention here that provisional allotment letter was given by the respondent on 07.08.2012 after taking Rs.24,38,000/- which was around 10% of sale consideration and the total time period taken by the respondent to nearly complete their construction of the said apartment and make their demand notice and offer for possession on 27.12.2018 comes to 76.5 months which is a huge delay from the completion in 42 months as promised in the apartment buyer agreement. It is further relevant to

mention here that the respondent had considered 180 days (i.e. 6 months) grace period of force majeure in computation of delay period while giving possession of the said apartment resulting in respondent paying penal interest for only 21 months of delay that too at 1.27% interest rate which is not only in violation of the Act and the rules but is grossly unfair, arbitrary, discriminatory, unilateral and one sided. It is relevant to mention here that the respondent did not bother to inform the complainants regarding inclusion of 90 days towards force majeure and taking benefit of grace period at the time of making payment of delay compensation at an illegally low rates and the said fact was intimated by respondent to the complainants vide email dated 08.11.2021 only after request from the complainants. Since sister-in-law of the complainants was not well and unfortunately, she passed away on 10.12.2021, the complainants were able to investigate the break-up of calculation/statement sent by respondent in detail only on 17.12.2021 and found the aforesaid illegal act of the respondent. Accordingly, the complainants immediately sent an email to the respondent on 17.12.2021 whereby the complainants sought delayed compensation as per the Act and Rules. But to the utter shock and surprise of the complainants, the respondent refused to pay the delay

compensation to them vide email dated 18.12.2021 which is not only in violation of the Act and the rules but is grossly unfair, arbitrary, discriminatory and, unilateral and the same has resulted in grave injustice to the complainants.

8. That the respondent unilaterally, arbitrarily and illegally increased the area of the allotted unit from 3,525 sq. ft. to 3,647 sq. ft. and accordingly a demand notice dated 27.09.2017 illegally demanding an amount of Rs.8,80,949.64 for the increased area was sent by the respondent to the complainants through email dated 04.10.2017. It is submitted that the complainants were neither informed nor their consent was obtained for enhancement of area. It is relevant to note that the area of the apartment was increased after the sanction of building plan and which building plans were sanctioned prior to the date of booking and allotment of the said apartment by the complainants. Thus, the alleged increase in area of the said apartment is clearly an after-thought, illegal and to simply put extortion by the respondent, as the complainants had paid huge amount out of their hard-earned money thus were left with no option but to accept the said increased area and pay the said illegal additional demand of Rs.8,80,949.64/-.

9. That the penalty clause of apartment buyer agreement for delay in delivery of possession is unjust and inequitable and contrary to the express provisions of the Act and the rules made thereunder.

10. The complainants had paid to the respondent an amount of Rs.2,21,11,093/- till the committed date of possession i.e., till 26.06.2016. Thereafter the complainants had paid to the respondent an amount of Rs.20,73,652/- from the committed date of possession till the date of offer of possession i.e., 27.12.2018. The balance amount of sale consideration was paid by the complainants to the respondent after 27.12.2018.

11. That the respondent also illegally recovered two years advance maintenance charges from the complainants instead of monthly advance maintenance charges.

12. That since the complainants had paid almost complete amount of the total sale consideration to the respondent, the complainants had no other option but were constrained to take possession of the said apartment. The complainants had cleared all the dues of the respondent and got the conveyance deed executed and registered on 19.10.2021.

13. That since the respondent failed to pay the delay possession charges under the Act and the rules, therefore the complainants are filing the

present complaint against the respondent M/s Experion Developers Private Limited on account of violation of clause no.10.1 of the apartment buyer agreement dated 26.12.2012 in respect of the said apartment for not handing over the possession of the said apartment by the due date (i.e. 26.06.2016) which is an obligation of the respondent as per the proviso to section 18(1) of the Real Estate (Regulation and Development) Act, 2016 read with rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017.

14. That the respondent i.e. M/s Experion Developers Private Limited is also liable to pay to the complainants interest on the aforesaid delay possession charges (i.e. Rs.53,92,451.96) @ 18% compounding quarterly from 28.12.2018 till actual date realization of the complete and full amount.

C. Relief sought by the complainants

15. The complainants are seeking the following reliefs:

    i. Direct the respondent to pay additional amount of Rs. 53,92,451/- to the complaint as delay possession charges @10.45 % for every month of delay after adjusting the amount for delay possession of Rs.5,83,520/- along with prescribed rate of interest as per the Act.

    ii. Cost of litigation

iii. Direct the respondent to not charge anything apart from buyers' agreement.

iv. Direct the respondent to refund Rs.8,80,949/- to complainants which was charged / recovered by the respondent for increased area of the said apartment along with interest 18%.

v. Direct the respondent to refund the excess amount received for two years advance maintenance charges.

D. Reply by the respondent

16. It is submitted that the complainants applied for allotment of an apartment in the project of the respondent by signing and submitting the booking application form dated 14.06.2012. Consequently, the complainants were allotted apartment / unit bearing no. WT-04/0802 in the group housing colony "WINDCHANTS" at Sector 112, Gurugram, Haryana for a total consideration of Rs.2,49,25,839/- by the respondent vide provisional allotment letter dated 07.08.2012. It is further submitted that the complainants also paid an amount of Rs.11,00,000/- towards the booking amount for the said apartment along with the submission of the application form.

17. The parties hereto had executed an apartment buyer agreement dated 26.12.2012. 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.

18. That clause 10.2 of the agreement provides that the respondent shall not be held responsible or liable for being unable to handover the apartment in time in case the performance under this agreement was prevented, obstructed, delayed or hindered by any force majeure event. The application form and clause 8.6 of the apartment buyer agreement clearly stipulates that there may be an increase/decrease in the total sale area of the apartment which shall be acceptable by the buyer if the

change in the sale area is within the agreed range of variation i.e., +/- 10% of the sale area of the apartment as per the agreement.

19. That upon the completion of the civil structure, the built-up areas to be included in the sale area of the said apartment as defined in the agreement were measured by the internal architects employed by the respondent and it was found that there is a variation in the sale area of the said apartment amounting to 122 sq. ft. i.e., an increase in sale area from 3525 sq. ft. to 3647 sq. ft. That this increase in the sale area is well within the limit of 10% variation as agreed to between the parties in the agreement and that this variation was duly informed to the complainants in writing vide letter dated 27.04.2017 as per clause 8.6 of the agreement. That the respondent has acted in accordance with the agreed terms of the agreement executed between the parties and as such the complainants were bound to accept such increase and make payment for the additional amount as requested by the respondent.

20. That clause 4.2 of the agreement clearly stipulates that the basic sale price of the apartment is exclusive of EDC and IDC and other statutory deposits and/or charges, including charges for connection and use of electricity, water, sewerage, sanitation and other amenities, utilities and facilities or any other charges required to be paid by the company

to the relevant authorities and shall be payable by the buyer at such rates as may then be applicable and in such proportion as the sale area of the apartment bears to the sale area of all the apartments in the project.

21. That the complainants, without there being any default on the part of the respondent, delayed in executing the conveyance deed and completed the process of taking possession of the said apartment after a delay of approximately 3 years and only after the respondent was constrained to send a Final Notice dated 05.01.2021 to the complainants for the execution and registration of the conveyance deed.

E. Jurisdiction of the authority

22. 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

23. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram

District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

24. Section 11(4)(a) of the Act 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.*

25. 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 relief sought by the complainants:

F.I Direct the respondent to pay additional amount of Rs. 53,92,451/- to the complainants as delay possession charges

@10.45 % for every month of delay after adjusting the amount for delay possession of Rs.5,83,520/- along with prescribed rate of interest as per the Act.

26. 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) of the Act 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."*

27. 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.*

28. **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.

29. **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.*

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

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., **10%** by the respondent /promoter which is the same as is being granted to the complainants in case of delayed possession charges.

34. 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 24.12.2018 and the possession of the subject unit was offered to the complainants on 27.12.2018. 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.

35. 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 24.12.2018. The respondent offered the possession of the unit in question to the complainants only on 27.12.2018, 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 (27.12.2018) which comes out to be 27.02.2019.

36. 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 (27.12.2018) which comes out to be 27.02.2019 as per provisions of section 18(1) of the Act read with rule 15 of the rules.

F.II Cost of litigation

37. The complainants are claiming compensation in the present relief. The authority is of the view that it is important to understand that the Act has clearly provided interest and compensation as separate entitlement/rights which the allottee can claim. For claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainants may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

F.III Direct the respondent to not charge anything apart from buyers agreement.

38. 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.

F.IV Direct the respondent to refund Rs.8,80,949/- to complainants which was charged / recovered by the respondent for increased area of the said apartment along with interest 18%.

39. In the present complaint, as per apartment buyer agreement dated 26.12.2012, the complainants were allotted the subject unit admeasuring 3525 sq. ft. which was later increased to 3647 sq. ft vide letter dated 04.10.2017. There is an increase of 122 sq. ft. which constitutes increase by 3.46 % of original area. As per statement of account on page no. 235 of reply, a total amount of Rs. 8,80,949.64/- was increased on account of such increase in area of the apartment.

40. 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."*

41. 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.

42. 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.

43. Considering the above-mentioned facts, the authority observes that the respondent has intimated the increase in super area vide letter dated 04.10.2017 wherein the super area of the unit was increased to 3647 sq. ft. from earlier area of 3525 sq. ft. The area of the said unit can be said to be increased by 122 sq. ft. In other word, the area of the said unit is increased by **3.46%.** The respondent, therefore, is entitled to charge for the same at the agreed rates since the increase in area is 122 sq. ft. which is less than **10%.** However, this remains subject to the conditions that the flats and other components of the super area on the project have been constructed in accordance with the plans approved by the competent authorities. The authority is of the opinion that each and every minute detail must be apprised, schooled and provided to the allottee regarding the increase in the super area and he should never be kept in dark or made to remain oblivious about such an important fact i.e., the exact super area till the receipt of the offer of possession letter in respect of the unit.

44. In view of the above discussion, the authority holds that the demand for extra payment on account of increase in super area from 3525 sq. ft. to 3647 sq. ft. is legal but subject to providing complete details of increase in super area to the complainants-allottees.

F.V Direct the respondent to refund the excess amount received for two years advance maintenance charges.

45. The respondent is right in demanding advance maintenance charges at the rates' prescribed in the builder buyer's agreement at the time of offer of possession. However, the respondent shall not demand the advance maintenance charges for more than one year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than a year.

G. Directions of the authority

46. 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 the due date of possession i.e.,

27.06.2016 till 27.02.2019 i.e. expiry of 2 months from the date of offer of possession (27.12.2018).

ii. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order.

iii. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement.

47. Complaint stands disposed of.

48. 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