

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

Complaint no. : 3520 of 2021
First date of hearing: 29.09.2021
Date of decision : 28.10.2022

Atul Kumar Verma
R/o: -2-K-17, Shiv Bhawan Vaishali Nagar, Ajmer,
Rajasthan

Complainant

Versus

M/s Vatika Limited.
Regd. Office at: 7th floor, Vatika Triangle, Mehrauli-
Gurugram Road, Sushant lok, phase-I, Gurugram-
122002.

Respondent

CORAM:

Shri Vijay Kumar Goyal
Shri Sanjeev Kumar Arora

**Member
Member**

APPEARANCE:

Sh. Nipun Rao
Sh. Dhruv Dutt Sharma

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 01.09.2021 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 there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.No.	Heads	Information
1.	Name and location of the project	"Vatika India Next Primrose", Sector 82, 82A, 83,84,85
2.	Date of allotment	N/A
3.	Date of buyer agreement	24.09.2009 (page 21 of complaint) Date of buyer agreement
4.	Unit no.	115, first floor admeasuring 1094.21 sq.ft. (Page 24 of complaint)
	Changed unit no.	Primrose, FF/143 (page 72 of complaint)
	Finally allotted unit no.	5, first floor, ST, 83 E-9 admeasuring 1094.21 sq.ft. (page 75 of complaint)
5.	Possession clause	10.1 Schedule for possession of the said unit <i>The Company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said unit within a period of three years from the date of execution of this Agreement</i> (Emphasis supplied)
6.	Due date of possession	24.09.2012
7.	Total sale consideration	Rs. 35,01,305/- as per SOA dated 10.03.2016 (page 76 of complaint)
8.	Paid up amount	Rs. 33,46,335/- as per SOA dated 10.03.2016 (page 76 of complaint)
9.	Offer of possession	01.04.2016 (Page 68 of complaint)



		<i>Not valid as the OC of the project is not obtained by the respondent till now.</i>
10.	Occupation certificate/completion certificate	Not obtained
11.	Possession taken over	06.05.2016

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:-

- I. That somewhere around 2009, the Respondents gave advertisement in various leading Newspapers about their forthcoming project of independent dwelling units by name of "Primrose" in sector 84, Gurgaon promising various advantages, like world class amenities and timely completion/execution of the project etc.
- II. That believing the false assurances and misleading representations of the respondent, the complainants booked an independent dwelling unit on 28.07.2009 by paying Rs. 2,95,663/-.
- III. That after almost 2 months from the date of booking, an independent dwelling agreement was executed on 24.09.2009 between complainant and the respondent for the unit bearing number 115, Floor 1st, Sector 84 having built up area of 1094.21 sq. ft. for a total sale consideration of **Rs. 30,11,342/-**.
- IV. That on dated 8th October 2010, the respondent did re-allotment of the above said floor to the unit no. 5, Floor 1st, Street ST, 83, E-9, Sector 83E having built up area of 1094.21 sq. ft. and further



changed to floor no. 1st, 7, K-4.1, Vatika India Next, Gurugram-122004.

- V. That as per clause 11.5 of the said agreement dated 24.09.2009, the respondent proposed to complete the construction, apply and obtain Occupation Certificate from the Competent Authority and handover the possession of the unit in question within a period of 3 years from the date of execution of the said agreement, i.e., 24.09.2012. However, the respondent miserably failed in handing over possession in accordance with the said agreement.
- VI. That the complainant has paid a total sum of **Rs. 33,46,335/-** towards the aforesaid residential unit in the project from July 2009 till date as and when demanded by the respondent, as against a total sale consideration of **Rs. 30,11,342/-**.
- VII. That though the booking was made in 2009 and possession was supposed to be handed over in 2012 as per the agreement, till due date as per agreement, i.e., 24.09.2012, the project was nowhere nearing completion. Upon this, the complainant asked the respondent as to the date of handing over, but to no avail as no concrete reply was given by the said respondent. Thereafter, the complainant kept contacting the respondent on several occasions seeking an update on the construction status and if the requisite sanctions and approvals had been obtained and as to when occupation certificate will be received, but all went in vain.



- VIII. That it is submitted that throughout this period, the Complainant along with the other apartment owners regularly and repeatedly followed up with the representatives of the respondent and enquired about the status of the project. However, the representatives of the respondent on every occasion made false and vague assurances that the possession of the independent dwelling unit would be delivered soon and kept on prolonging the matter unjustifiably without any cogent reason thereby inflicting great mental agony and hardship upon the complainant.
- IX. That as per clause 8 of the agreement, upon delay in payments, the allottee could be made liable to the extent of paying 18% interest per annum, on the contrary as per clause 11.5, upon delay in handing over possession, the respondent company would be liable to pay compensation only to the extent of Rs. 5/- of the built-up area of the said unit for the period of delay. It is submitted that such clauses of the agreement are clearly unfair and arbitrary thus making the agreement one sided. Accordingly, the complaint pointed out these unfair clauses to the respondent, but no avail.
- X. That on dated 01.04.2016 the respondent offers the offer of possession to the complainant, upon which the complainant requested a copy of the Occupation Certificate issued by the concerned authority post which possession was to be offered in accordance with the clause 10.2 of the agreement. Later, the



respondent gave a vague response to the complainants that necessary Completion Certificate has been obtained from the Architect/Engineer who supervised the construction in accordance with law but the same cannot be shared with individual clients.

- XI. That from 2016, the complainant sends many e-mails to the respondent requesting the copy of Occupation Certificate and for the registry of the said unit, but only false assurance was given on behalf of the respondent. A copy of e-mail conversations between the parties has been annexed.
- XII. That since the taking over of possession in 2016 till date, the complainant had been painstakingly pursuing the respondent to register the conveyance deed for the unit in question in his favour, but all in vain. It was only videe-mail dated 13.06.2019 that the respondent said the registry shall be done by End-October to Mid-November 2019. Copy of mail dated 13.06.2019 has been annexed.
- XIII. That the aforesaid conduct of the respondent in delaying the registration of Conveyance deed was quite suspicious. Upon further inquires from other buyers of the project in question in order to find out the exact reason behind the evasive attitude of the respondent company regarding registration of conveyance deed, the complainants were startled to know that the



respondent failed to obtain the Occupation Certificate. This left the complainants devastated.

- XIV. That thereafter, the complainants immediately rushed to the respondent's office in order to inquire about the aforesaid misconduct and fraudulent act of theirs, to which the representatives of the respondent company simply said the Occupation Certificate for the unit in question shall be received soon. The complainants were completely taken aback by the said submission of the respondent.
- XV. That the possession of any residential unit cannot be offered without obtaining the Occupation Certificate (OC) from the concerned authorities as they said OC is a legal mandate of the fact that the premises is safe in all regards and is fit to occupy and reside and is in accordance with the requirements laid down and as per the sanctions approved by the said authorities. Accordingly, the aforementioned offer of possession dated 01.04.2016 is out rightly illegal and elucidates the fraud and conduct of the respondent.
- XVI. That having already invested almost all of their life saving in order to purchase the unit in question, the complainant had no other option but to believe the representations of the respondent regarding the veracity of the Offer of Possession and take possession.



- XVII. That the fact that the possession was being offered without obtaining Occupation Certificate was concealed from the complainants at the time of said offer. Rather, when the complainants orally enquired about the receipts of all the necessary sanctions of the unit in question the respondent very clearly submitted that all the approvals are in place. It was only upon conducting an inquiry for the reasons behind non execution of conveyance deed that the complainants came to know about this misconduct on the part of respondent company.
- XVIII. That the main rationale behind issuance of an Occupation Certificate is that such certificate is an assurance of the fact that the building has been constructed according to the permissible laws and all the local laws have been complied with and accordingly, the said building is fit to occupy. Further, it is only upon receipt of Occupation Certificate that the buildings become safe in all respect to reside and becomes a marketable property as well. Accordingly, by offering possession of a unit which is not fit to occupy, the respondent has not only duped the complainant to their hard-earned money and defrauded them but has risked the lives of the residents of such unit and eventually, the entire tower/building, which amount to serious misconduct on part of respondent company which made all claims and representations not only while booking, but even at the time of handing over possession.



- XIX. That by offering possession without obtaining occupation certificate, the respondent has violated the provision of their own agreement. It has been specifically laid down in the builder buyer's agreement dated 24.09.2009 that the offer of possession can be made only after obtaining occupation certificate. However, the respondent failed in adhering to the same.
- XX. That the fact of concealing the non-receipt of OC and offering possession without OC is not only a violation of the Builder buyer's agreement dated 24.09.2009 but is also a violation of Section 11(4)(b) of The Real Estate(Regulation and Development) Act, 2016. Accordingly, the respondent company must be penalized under Section 61 to the extent of 5% of the project cost on account of violation of Section 11(4)(b) of the said Act.
- XXI. That the complainant booked the flat with high hopes and dreams that they will be able to live in a safe environment along with their family and will be able to give their family secure and comfortable surroundings to live in. However, the respondent simply refrained from adhering to his commitments, though the respondent never failed in raising payment demands irrespective of the pace of construction, but when it came to completing construction and handing over possession after receipt of Occupation Certificate, they failed miserably.



- XXII. That the respondent had made representations and all claims that the project will be completed on time and will be handed over after all the necessary permissions and approvals are in place. On the contrary, the respondent has failed in adhering to the representations made by him and retained the hard earned money paid by the complainant for so many years thereby causing wrongful loss to the complainants and wrongful gain to the respondent.
- XXIII. That that the main rationale of the respondent behind offering possession hurriedly without obtaining the occupation certificate was to shorten the period of delay and eventually to minimise the delayed possession charges that the said respondents may be made liable for on account of delay in offering and handing over possession. The complainant did not even imagine that the respondent was planning to offer the position of a residential independent unit which had not received the OC, which was, and still is, a pre-requisite for a safe living. That the respondent company is an experienced company in the business of making residential apartments, this deliberate act of cheating its customer and at the same time, committing a gross misconduct of non-compliance of the rule is nothing short of criminal.
- XXIV. That the complainant was further agonised when he came to know that they cannot get his apartments/independent floors xinsured against natural calamities or other disasters because the



insurance company do not offer insurance coverage to such buildings which are inhabited without having obtain the OC. Non availability of any safety of insurance cover has robbed the complainants to their peace of mind and they live under constant fear. Multiple instances of earthquakes in recent months have shaken the complainant.

- XXV. That the respondent simply duped the complainant of his hard earned money and life savings. The aforesaid arbitrary and unlawful acts on the part of respondent have resulted into extreme kind of financial hardship, mental distress, pain and agony to the complainant.
- XXVI. That to add the misery of the complainant, due to lapse on part of respondent in not obtaining the Occupation Certificate, the registration of conveyance deed has not been done till date. Accordingly, the respondent must be directed to remove all the irregularities in the project and get the occupation certificate for the building/independent floors in question and post that, to register the conveyance deed in favour of the complainant.
- XXVII. That the present complaint has been filed in order to seek a direction to the respondent to obtain the Occupation Certificate and to get the registration of conveyance deed in favour of the Complainant along with the delayed possession charges from the actual date of delivery of the said independent floor/building i.e., 24.09.2012 to till date.



C. Relief sought by the complainants:

4. The complainants have sought following relief(s).
- I. Direct the Respondents to handover the possession along with Prescribed interest per annum from the promissory date of delivery i.e., 24.09.2012 of the independent floors/building in question till handing over/actually delivery of the said unit.
 - II. Direct the Respondents to obtain Occupation Certificate for the said Independent Floors/Building and issue fresh offer of possession letter to the complainant.
 - III. Direct the respondent to register the conveyance deed and transfer title in **favour** of the complainants upon receipt of Occupation Certificate, in accordance with Section 17 of RERA, 2016.
5. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent contested the complaint on the following grounds: -
- a) That the Complaint filed by the Complainant before the Ld. Authority, besides being misconceived and erroneous, is untenable in the eyes of law. The Complainant has misdirected himself in filing the above captioned Complaint before this Ld. Authority as the relief being claimed by the Complainant, besides being illegal, misconceived and erroneous, cannot be said to even fall within the realm of jurisdiction of this Ld. Authority.



- b) That further, without prejudice to the aforementioned, even if it was to be assumed though not admitting that the filing of the complaint is not without jurisdiction, even then the claim as raised cannot be said to be maintainable and is liable to be rejected for the reasons as ensuing.
- c) That the reliefs sought by the Complainant appear to be on misconceived and erroneous basis. Hence, the complainant is estopped from raising the pleas, as raised in respect thereof, besides the said pleas being illegal, misconceived and erroneous.
- d) That it is pertinent to mention here that the Respondent had already offered possession to the Complainant vide letter dated 01.04.2016 and the complainant after fully satisfying himself with regard to the measurements, specifications and fittings/ fixtures had taken possession vide Letter dated 06.05.2016. Further, the complainant accepted the terms and conditions while accepting the offer and relinquished its right for any claim on account thereof or any account in future. Copy of Letter dated 01.04.2016 and Letter dated 06.05.2016 are attached herewith as **Annexure R/2 and R/3** respectively. As per the Maintenance Agreement the complainant is liable to pay the Maintenance charges as agreed. In the present case the complainant is liable to pay the outstanding overdue maintenance charges amounting to Rs. 1,64,013/-/- as on 01.07.2022. It is pertinent to mention here that the complainant in order to escape his liability to pay the maintenance charges has filed this false and frivolous complaint.

7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the



complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

8. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject-matter jurisdiction

10. 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.

11. 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 handover the possession of the unit along with prescribed interest per annum from the promissory date of delivery till actual delivery of the unit in question.

12. 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. Sec. 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

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

.....

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

13. Clause 10.1 of the agreement provides for handing over of possession and is reproduced below:

10.1. Schedule for possession of the said unit

*The Company based on its present plans and estimates and subject to all just exceptions, contemplates to **complete construction of the said unit within a period of three years from the date of execution of this Agreement.**"*

14. An apartment buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builder/promoter and buyer/allottee are protected candidly. Apartment buyer's agreement lays down the terms that govern the sale of different kinds



of properties like residential, commercials etc. between the buyer and builder. It is in the interest of both the parties to have a well-drafted agreement which would thereby protect the rights of both the builder and buyer in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the apartment, plot or building, as the case may be and the right of the buyer/allottee in case of delay in possession of the unit.

15. The authority has gone through the possession clause of the agreement and observes that the possession has been subjected to all kinds of terms and conditions of this agreement. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single situation may make the possession clause irrelevant for the purpose of allottee and the committed date for handing over possession loses its meaning. If the said possession clause is read in entirety, the time period of handing over possession is only a tentative period for completion of the construction of the flat in question and the promoter is aiming to extend this time period indefinitely on one eventuality or the other. Moreover, the said clause is an inclusive clause wherein the numerous approvals and terms and conditions have been mentioned for commencement of construction and the said approvals



are sole liability of the promoter for which allottee cannot be allowed to suffer. The promoter must have mentioned that completion of which approval forms a part of the last statutory approval, of which the due date of possession is subjected to. It is quite clear that the possession clause is drafted in such a manner that it creates confusion in the mind of a person of normal prudence who reads it. The authority is of the view that it is a wrong trend followed by the promoter from long ago and it is their unethical behaviour and dominant position that needs to be struck down. It is settled proposition of law that one cannot get the advantage of his own fault. The incorporation of such clause in the apartment buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

16. 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.

17. 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.
18. 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., 28.10.2022 is **8.25%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.25%**.
19. 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;"*



20. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., **10.25%** by the respondent/promoter which is the same as is being granted her in case of delayed possession charges.
21. **Validity of offer of possession:** At this stage, the authority will clarify the concept of 'valid offer of possession'. It is necessary to clarify this concept because after valid and lawful offer of possession, liability of promoter for delayed offer of possession comes to an end. On the other hand, if the possession is not valid and lawful, liability of promoter continues till a valid offer is made and allottee remains entitled to receive interest for the delay caused in handing over valid possession. The authority after detailed consideration of the matter has arrived at the conclusion that a valid offer of possession must have following components:
- i. **Possession must be offered after obtaining occupation certificate-** The subject unit after its completion should have received occupation certificate from the concerned department certifying that all the basic infrastructural facilities have been laid and are operational. Such infrastructural facilities include water supply, sewerage system, storm water drainage, electricity supply, roads and street lighting.
 - ii. **The subject unit should be inhabitable condition-** The test of habitability is that the allottee should be able to live in the subject unit within 30 days of the offer of possession after carrying out basic cleaning works and getting electricity, water and sewer



connections, etc from the relevant authorities. In a habitable unit, all the common facilities like lifts, stairs, lobbies, etc should be functional or capable of being made functional within 30 days after completing prescribed formalities. The authority is further of the view that minor defects like little gaps in the windows or minor cracks in some of the tiles, or chipping plaster or chipping paint at some places or improper functioning of drawers of kitchen or cupboards etc. are minor defects which do not render an apartment uninhabitable. Such minor defects can be rectified later at the cost of the developers. The allottee should accept possession of an apartment with such minor defects under protest. This authority will award suitable relief or compensation for rectification of minor defects after taking over of possession under protest.

However, if the subject unit is not at all habitable because the plastering work is yet to be done, flooring works is yet to be done, common services like lift etc. are non-operational, infrastructural facilities are non-operational, then the subject unit shall be deemed as uninhabitable and offer of possession of an uninhabitable unit will not be considered a legally valid offer of possession.

- iii. Possession should not be accompanied by unreasonable additional demands-** In several cases, additional demands are made and sent along with the offer of possession. Such additional demands could be of minor nature or they could be significant and unreasonable which puts heavy burden upon the allottee. An offer accompanied with unreasonable demands beyond the scope of provisions of agreement should be termed an invalid offer of possession. Unreasonable demands itself would make an offer unsustainable in the eyes of law. The authority is of the view that if



the additional demands are made by the developer, the allottee may accept possession under protest or decline to take possession raising objection against unjustified demands.

22. Though in the light of the above-mentioned concept, the offer of possession dated 01.04.2017, by the promoter to the allottee is not valid, the same being made without obtaining occupation certificate but the allottee has already taken possession on the basis of offer of possession on 06.05.2016 and is continuing as such and enjoying the property. They are certainly entitled to delay possession charges but only from the due date 24.09.2012 upto 06.05.2016, the date on which possession of the allotted unit was taken on the basis of offer of possession 01.04.2016.
23. On consideration of the record and submissions made by the parties, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of buyer's agreement executed between the parties on 24.09.2009, the possession of the booked unit was to be delivered within 3 years from the date of execution of agreement and the due date comes out on 24.09.2012. The offer of possession made by the respondent/promoter on 01.04.2016 after a gap of more than 4 years is not a valid/lawful offer of possession due to non-receipt of OC.
24. The respondent sent a letter of offer of possession by inviting the complainant to take possession. Accordingly, on 06.05.2016 the possession was taken by the complainant herein after making final



payments due against unit in question. The complainants have also stated that they had taken an assurance from the respondent for obtaining OC and was kept in dark. The matter is being referred to director town and country planning Haryana, Chandigarh. There is violation of Haryana Building Code, as the builder has offered possession without obtaining OC. The director may initiate legal proceedings against the promoter. The DTCP is also advised to dispose of application of the promoter for grant of occupation certificate and after levying the compounding fees as per applicable from the promoter-respondent. The complainant has already taken over possession, accordingly from the date they have taken over possession, they cannot be allowed delayed possession charges. Although the possession has been offered wrongly by the respondent as mentioned above. However, the complainants shall be entitled for DPC from the due date of possession till actual taking over the possession.

F. II. Conveyance deed

25. The complainant is asking for the registration of conveyance deed and transfer of title in accordance with section 17 of the Act of 2016. The complainant in the present complaint has taken possession of the unit on 06.05.2016 on offering of the possession of the unit in question. Whereas the possession was offered by the respondent/promoter without obtaining the OC. the respondent/promoter clearly violated the section 11(4)(b) of the Act, 2016 as detailed in other reliefs in this judgement therefore, the respondent/promoter is under a mandatory obligation as per the statute and as per the BBA signed between the



mutual of consent of both parties for registration of conveyance deed after obtaining OC.

26. Clause 13 is reproduced below:

13. Conveyance of the said independent dwelling unit

"The Company, its Associates Companies, its Subsidiary Companies as stated earlier shall prepare and execute along with the Allottee a conveyance deed to convey the title of the Said Apartment in favour of Allottee but only after receiving full payment of the total price of the Apartment and the parking space allotted to him/her and payment of all securities including maintenance security deposits and charges for bulk supply of electrical energy, interest, penal interest etc. on delayed instalments stamp duty, registration charges, incidental expenses for registration, legal expenses for registration and all other dues as set forth in this Agreement or as demanded by the Company from time to time prior to the execution of the Conveyance Deed. If the Allottee is in default of any of the payments as set forth in this Agreement then the Allottee authorizes the Company to withhold registration of the Conveyance Deed in his/her favour till full and final settlement of all dues to the Company is made by the Allottee and agrees to bear the consequences. The Allottee undertakes to execute Conveyance Deed within the time stipulated by the Company in its written notice failing which the Allottee authorizes the Company to cancel the allotment and terminate this Agreement in terms of Clause (12) of this Agreement and to forfeit out of the amounts paid by him/her the earnest money, delayed payment of interest any interest paid, due or payable, any other amount of a non-refundable nature and to refund the balance amount without any interest in the manner prescribed in Clause (12) Supra. The Allottee shall be solely responsible and liable for compliance of the provisions of Indian Stamp Act 1899 including any actions taken or deficiencies/penalties imposed by the competent authority(ies). Any increase/decrease in the Stamp Duty charges during the period when the case for execution of the Conveyance Deed of the allotted flat is being processed by the Company Shall be borne by/refunded to the Allottee.

27. It should be further noted that Section 11(4)(f) provides for the obligation of respondent/promoter to execute a registered conveyance deed of the apartment along with the undivided proportionate title in common areas to the association of the allottees or competent authority as the case may be as provided under section 17 of the Act of 2016. As envisaged in the below mentioned section the respondent/promoter is in clear contravention of section 11(4)(f) of the Act of 2016 and shall get the conveyance deed done after obtaining OC.

28. As far as the relief of transfer of title is concerned the same can be clearly said to be the statutory right of the allottee as section 17(1) of the Act provide for transfer of title is reproduced below:

"Section 17: - Transfer of title.—

17(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws: Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.

Hence, in compliance of the above-mentioned provision of the Act of the 2016 the respondent/promoter shall transfer the title to the association of the allottee within 3 months from the date of issuance of occupation certificate

G. Directions of the authority

29. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent is directed to pay interest at the prescribed rate of 10.25% p.a. for every month of delay from the due date of possession i.e., 24.09.2012 till actual taking over the possession of the unit i.e., 06.05.2016.



- ii. As and when OC of the tower of the allotted unit is received by the respondent/builder, then it will be obligated for him to arrange execution of conveyance deed of the unit in favour of the complainant on her depositing necessary charges within 3 months and failing which legal consequences would follow.
 - iii. A direction is given to the respondent/builder to obtain occupation certificate of the project from the competent authority by completing all the formalities within a period of 3 months;
 - iv. The respondent shall not charge anything from the complainants which is not the part of the agreement.
30. Complaint stands disposed of.
31. File be consigned to registry.


(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 28.10.2022


(Vijay Kumar Goyal)

Member