

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

Complaint no. :	4301 of 2021
Date of filing complaint:	02.11.2021
First date of hearing:	30.11.2021
Date of decision :	18.10.2022

Ravi Gupta s/o Shankar Gupta R/O: U-11/29, U Block, DLF Phase -3, Gurugram, Haryana	Complainant
Versus	
1. Forever Buildtech Pvt. Ltd. Regd. office: 12 th Floor, Dr. Gopal Das Bhawan, 28 Barakhamba Road, New Delhi-110001 2. Ninety-Nine Estate Pvt. Ltd. Regd. office: H115, Sushant Arcade, Sushant Lok-1 , B Block , Gurugram , Haryana	Respondents

CORAM:	
Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Ankur Sharma Proxy Counsel (Advocate)	Complainant
Ms. Pooja Sareen (Advocate)	Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations,



responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name of the project	Signum, Situated at village Wazirpur Sector 95-A, Gurugram, Haryana.
2.	Project Area	8.034 Acres
3.	Nature of the project	Affordable Group Housing Flats
4.	DTCP License no. & validity status	13 of 2016 26.09.2016 upto 25.09.2021
5.	Name of licensee	Forever Buildtech Pvt. Ltd.
6.	RERA registered / not registered	Registered 05 of 2017 20.06.2017 upto 17.05.2021
7.	Allotment Letter	16.02.2019 (Annexure A page 38 of complaint)
8.	Tripartite Agreement	23.03.2019 (Annexure G page 111)
9.	Shop no.	LG21 (Page 30 of complaint)
10.	Unit admeasuring	311 sq. ft. (Page 30 of complaint)



11.	Date of Building plan	09 .01.2017 (Taken from another file of the same project)
12.	Date of Environment clearance	The detail has not been placed on record
13.	Date of Builder Buyer Agreement	20.02.2019 (Annexure C page 41 of the complaint)
14.	Possession Clause	1(iv) The developer shall offer possession of the said flat to the allottee(s) within a period of 4 years from the date of approval of building plans or grant of environment clearance whichever is later (Taken from the affordable group housing policy) (Emphasis supplied).
15.	Due date of delivery of possession as per clause 5.1 of the flat buyer's agreement	09.07.2021 (The due date taken is taken from the affordable policy as the possession clause mentioned in the bba of the current project is not mentioning the clear date for the due date and six months of grace period being allowed due to covid 19)
16.	Total sale consideration	Rs. 39,36,932/- (As alleged by the complainants in the facts)
17.	Total amount paid by the complainant	Rs.18,92,679/- (As alleged by the complainants in the facts)



18.	Occupation certificate	Not obtained
19.	Offer of possession	Not offered

B. Facts of the complaint:

3. A project by the name of Signum-95A" situated in village Wazirpur sector 95 A, Gurugram was being developed by respondent - builder. The complainant coming to know about the same booked a unit in it. Pursuant to the booking of the unit made by the complainant and was provisionally allotted Shop No. LG21 ad measuring super area 311.34 sq. ft @ Rs. 11,950.00/- Per Sq Ft. in the above-mentioned project SIGNUM 95A for a total consideration of Rs. 39,36,932.00/-.
4. That the complainant paid a sum of Rs. 8,76,679/- vide cheque no. 075333 and 075336 as booking amount being part payment toward the total price of the unit. In pursuant to the provisional allotment letter, a buyer's agreement was executed between the parties i.e the allottee and the respondent-builder on 20.02.2019.
5. That as per clause 8.1 of the buyer's agreement, the complainant was supposed to get the peaceful and vacant possession of his unit within a period of 4 years from the date of approval of building plans or grant of environment clearance whichever was later. But to his utter dismay, the respondent-builder failed to offer the possession of his unit in the stipulated time.
6. That the respondent-builder also persuaded the complainant to avail a loan specifically from IIFL Home Finance Limited in order to make timely payments for the unit in the project. Thus, on the basis of the high reputation and goodwill of the IIFL Home Finance Limited, the complainant availed a housing loan of Rs. 22,50,000/- vide loan

account number 878653 and the said amount was sanctioned by the financier vide sanction letter dated 29.05.2019.

7. That the financier disbursed an amount of Rs. 11,16,000/- on 29.05.2019. But to his utter dismay, the financier refused to disburse the loan further without giving any clear explanation. Due to that the complainant was not able to pay the remaining amount to the respondent-builder.
8. That the respondent -builder then issued permission to mortgage vide letter dated 23.05.2019 to the IIFL Home Finance Limited declaring that the said unit was allotted to the complainant and it has no objection if the unit was mortgaged with the financier against security of repayment of that loan.
9. That it is pertinent to mention that the unit booked by the complainant was under the subvention scheme. As per the subvention scheme, the builder has the liability to pay the Pre EMI interest for the subvention period i.e., from 29.05.2019 to 27.05.2021.
10. That due to the stoppage of loan disbursement by the IIFL Home Finance Limited, the complainant got transfer the loan drawn from that financier to the ICICI Bank Limited. The process of transfer of loan took a little time and due to which the complainant get delayed in paying the due amount to the respondent -builder.
11. That due to the improper and arbitrary disbursement of loan by IIFL, the payment supposed to be paid to the respondent-builder was delayed, leading to imposing an interest penalty on the due payments by the later.
12. That it is noteworthy to mention that the respondent no. 2 promised the complainant that unit booked through it was eligible for brokerage

discount of Rs. 3,00,000.00/-. Pursuant to the discount stated by it , two cheques vide no. 070528 and 070531 were issued to the complainant for Rs. 1,00,000/- and 1,85,000/-, respectively However, to his utter dismay, the above-mentioned cheques were dishonoured by the concerned bank on account of "fund insufficient".

13. That the complainant appalled by the conduct of respondent no. 2 tried to contact it on several occasions and was regularly in touch with him. It was never able to give satisfactory response to the complainant regarding the discount promised him. He has already paid a sum of Rs. 18,92,679.00/- to the respondent-builder.

14. That it is further submitted that due to the ongoing pandemic caused by the Covid-19, the complainant was going through a rough time financially, emotionally and mentally and the respondent -builder has been constantly harassing him by making repeated demands for interest penalty charge for not making timely payments. However, the complainant never intended to delay in making the payment regarding the unit purchased. It is pertinent to mention that IIFL was liable to disburse the amount in favour of the respondent -builder as per the tripartite agreement but failed to disburse the other half of the loan amount.

15. That the complainant on several occasions tried to contact the respondent- builder regarding the illegally imposed penalty charges on him. However, he was never able to give satisfactory response regarding the issues of interest penalty charge. Despite the complainant's regular mails, the respondent - builder never stopped harassing him by sending him the interest penalty charge every month.

16. That the complainant is suffering from double whammy, i.e., Rs. 18,92,679.00/- has already been paid to the respondent- builder and



the stipulated time has already expired . But the possession of the unit is nowhere in sight and on the other hand, the respondent no 2 also double-crossed the complainant by giving false hope of giving discount and handed over the cheque returned from the concerned bank due to insufficient balance. The complainant was shocked and appalled when he visited the project site, as the unit purchased by him was not at all according to the norms as prescribed to him by the respondent - builder. He contacted the respondent - builder on several occasions but was not able to get any satisfactory response regarding the status of the construction.

17. That despite knowing, that the complaint is pending before the Authority, the respondent - builder cancelled the unit by advertising it in the newspaper on 28.0.2022 due to non-payment of the outstanding amount.

18. That the complainant was left with no other alternative but to file the present complaint seeking to get the allotment of the unit restored and seeking peaceful and vacant possession of the same with delayed payment charges and mental harassment cost in lieu of the said unit/flat.

C. Relief sought by the complainant:

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

i. Direct the respondent- builder to handover the actual, physical, vacant possession of the LG21 in the above said project.

ii. Direct the respondent- builder to execute the sale deed of the above said unit in favour of the complainant.

iii. Direct the respondent- builder to pay the delay penalty charges as per the Builder-Buyer Agreement.

iv. Direct the respondent- builder to maintain and to deliver the same quality of the unit as mentioned in the buyer's agreement.

v. Direct the respondent- builder to deliver the unit admeasuring 311 sq. ft. as booked by the complainant and further the respondent- builder be directed not to offer the possession of the unit with an increased area to him as he is not liable to pay a single penny for the same.

vi. Direct the respondent- builder to waive off the interest penalty charges.

vii. Direct the respondent- builder to pay the booking discount amount as promised with the interest till the payment.

viii. Direct the respondent - builder to pay for the mental harassment cost to the complainant to the tune of Rs. 5,00,000/- and litigation cost of Rs. 2,00,000/-

20. Despite due service none turned up on behalf of respondent no. 2 and failed to file any written reply.

D. Reply by respondent no. 1:

The answering respondent by way of written reply made following submissions: -

21. That the complainant is an allottee of the above-mentioned unit for a total sale consideration of Rs. Rs. 39,36,932/-.

22. That after booking of the allotted unit, the buyer's agreement was executed between the complainant and answering respondent on 20.02. 2019. A letter dated 23.05.2019 was issued as per agreed terms and conditions of agreement just to facilitate purchase of the unit as requested by the allottee.

23. That there was no requirement either statutory or contractually to avail the loan to purchase the unit. The loan was availed by the complainant at his sole discretion. However, the payment was not made as per the agreed payment plan.
24. That a tripartite agreement took place on 23.03.2019 between complainant, respondent and the IIFL Home Finance Limited which mentioned that the later shall, at the request of the former, disbursed the balance sale consideration way of cheque drawn in favour of respondent - builder. So, it can be said that IIFL might stopped release of payment for the want of the request of the complainant to do the same. However, it is submitted that payment was not made in terms of duly agreed payment plan despite the fact that respondent - builder, has discharged all contractual liabilities as mentioned in the buyer's agreement.
25. That one of the terms and conditions of the agreement categorically says "... the disbursement getting delayed, due to any reason whatsoever, the payment to the developer, as per payment plan, shall be ensured by the allottee, and failing which, he shall be charged interest, as contemplated in the agreement ...". It was the sole responsibility of the complainant to ensure the payment to respondent - builder, as per payment plan to avoid interest liability in duly agreed terms.
26. That it is categorically denied that respondent - builder illegally imposed penalty charge on the complainant. Since he was admittedly a defaulter, so is not entitled to possession of the unit without making payment of outstanding amount. The construction of the project is almost complete.



27. That it is in public domain as widely reportedly that covid -19's second wave also hit badly "like a tsunami" not only in Haryana but also in rest of India and the world as well. The Government of Haryana imposed lockdown for different periods terming it as "Mahamari alert/ surakshit Haryana resulting slowdown of all activities of all offices within the state. It is pertinent to mention here that every phase of lockdown was not confined to the declared period and rather it also brings another two months delay in mobilization of construction activities at site once suspended due to certain reasons such as lack of human resources, availability of material etc. Despite all those hurdles, the occupation certificate of the project was issued on 20.04.2021. Thereafter the offer of possession was sent to all allottee in a phase wise manner to avoid outbreak of Covid-19. The offer of possession was sent to the complainant as admitted.

S. No.	Description	Period
1.	Agreed period	31.05.2021
2.	Six months extension from 31.05.2021 due to 1 st wave of covid -19 a force majeure	30.11.2021
3.	Extension due to 2 nd wave of covid -19 a force majeure and slowing down all activities	
4.	Extension due to 3 rd wave of covid -19 a force majeure and slowing down all activities	

28. Considering of the aforesaid, there is no delay in handing over possession as alleged.



29. All other averments made in the complaint were denied in toto.

30. Copies of all the relevant do have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority:

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

E.I Territorial jurisdiction

32. 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

33. 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) The promoter shall-

(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.

34. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Objection regarding force majeure conditions:

35. The respondent-promoter pleaded that though the due date for completion of the project and offer of possession of the allotted unit was fixed as 09.01.2021 as per buyer's agreement dated 20.02.2019 but due to outbreak of corona 19, there was complete lockdown during the period March 2020 to different periods. Even the Government of Haryana termed that as Mahamari alert / Surakshit Haryana resulting in slowdown of all the activities within the state even though the Hon'ble Authority granted six months general extension with effect from 25.03.2020 to 24.09.2020 considering it as a force majeure event. That decision was taken pursuant to the advisory issued by the State Government as well as The Government of India. Due to Covid 19, it took some time to mobilize the labour as well as the construction material. Despite all that the construction of the project was completed and its occupation certificate was received on 20.04.2021. So the respondent - builder be allowed extension in offer of possession of the



project. Though the request made in this regard is being opposed on behalf of the complainant but a judicial notice of the fact can be taken that due to Covid 19 , there was complete lockdown for a number of days resulting in the labour moving to their native places and the construction activities coming to a standstill . Even that facts was taken into consideration and the authority allowed extension of the ongoing projects for a period of six months. So keeping in view these facts, the due date for completion of the project and offer of possession of the allotted unit comes out to be 09.07.2021inadverdently mentioned as 09.01.2021 in the proceedings of the day.

G. Entitlement of the complainant for possession:

G.I Direct the respondent - builder to handover the actual, physical, vacant possession of the LG21 in the above said project.

G.II Direct the respondent - builder to execute the sale deed of the above said unit in favour of the complainant.

G.III Direct the respondent - builder to pay the delay penalty charges as per the Builder-Buyer Agreement.

G.IV Direct the respondent no. 1 to maintain and to deliver the same quality of the unit as mentioned in the buyer's agreement.

G.V Direct the respondent- builder to deliver the unit admeasuring 311 sq. ft. as booked by the complainant and further the respondent- builder be directed not to offer the possession of the unit with an increased area to him as he is not liable to pay a single penny for the same.

G.VI Direct the respondent - builder waive the interest penalty charge.

G.VII Direct the respondent - builder to pay the booking discount



amount as promised with the interest till the payment.

36. Since all the above-mentioned issues are interconnected, so the same are being taken together.
37. The complainant is admittedly an allottee of respondent - builder of a commercial unit on the basis of letter of allotment dated 16.02.2019 for a total consideration of Rs. 39,36,932/-. A buyer's agreement was executed between the parties in this regard on 20.02.2019. The due date for completion of the project and offer of possession of the allotted unit was fixed as 09.07.2021. It is also a fact that the complainant took a loan of Rs. 22,50,000/- from IIFL and a part of that amount was disbursed and paid to the respondent - builder. So, in this way, the complainant paid a total sum of Rs. 18,92,679/- against the allotted unit and failed to pay the leftover amount due to one reason or the other leading to issuance of notice of cancellation and ultimately cancelling that unit vide letter dated 28.09.2022. Though it was pleaded by the respondent - builder that after cancellation of the unit the loan amount received from the financier has already been paid to it but during the course of arguments it was pleaded that the occupation certificate of the project has been received but no document in this regard has been placed on the file. During the course of arguments, the complainant through his counsel made a request for withdrawal of the cancellation letter. The same was accepted by the respondent through its counsel if the payment of outstanding amount is made along with interest at prescribed rate i.e 10.25% per annum for the defaulted period and failing which the amount deposited by the allottee may be allowed to be refunded after deduction of 10% earnest money as per regulation of the authority along with interest from the date of cancellation till realization of amount by the complainant. So keeping



in view the offer made by the respondent – builder through its counsel , the cancellation of the unit of the complainant made vide letter dated 28.09.2022 is hereby ordered to be set aside but subject to the condition that he would pay the outstanding amount along with interest at the prescribed rate i.e 10.25% per annum for the defaulted period within a period of 90 days and failing which the respondent – builder would be entitled to keep the amount deposited by the allottee after retaining 10% of the sale consideration as earnest money .

38. It is observed by the authority that the due date of handing over of possession of the unit comes out to be 09.07.2021 (Inadvertently mentioned in the proceedings of the day as 09.01.2021) and the respondent after completion of the project obtained its occupation certificate on 20.04.2021 and offered the possession of the allotted units to other allottees and did not offer the same to the complainant. It is pleaded on behalf of the complainant that since the possession of the allotted unit was not offered to the complainant after receipt of occupation certificate, so he is entitled for delay possession charges as per section 18(1) of the Act. Bu the version of answering respondent I otherwise and who took a plea that the unit of the complainant was cancelled and the amount received from the financial institution was paid to it vide an account pay cheque dated 15.09.2021. But the plea raised in this regard is divide on merit. If any amount was sent to the financier of the complainant, the same might be done after cancellation of that allocated unit and not prior to the same. During the course of arguments, it was brought to the notice of the authority that the unit of the complainant was cancelled vide letter dated 28.09.2022. If that is the position, it shows that either the amount as pleaded was never sent to the financier of the complainant or the cancellation was made prior



to 15.09.2021 and not on 28.09.2022 as alleged. Whatever maybe the position, after completion of the project and receipt of occupation certificate, the possession of the allotted unit has not been offered to the complainant. So, on setting aside the cancellation of the unit, he would certainly be entitled to delay possession charges with effect from receipt to occupation certificate i.e 20.04.2021 plus two months. However, the interest in delay in offering possession after due date of handing over possession shall be adjusted while computing delay interest to be paid by the allottee at equitable rates.

G.VIII Direct the respondent – builder to pay the mental harassment cost to the complainant to the tune of Rs. 5,00,000/- and litigation cost of Rs. 2,00,000/-

39. The complainant is seeking above mentioned relief with regard to compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. 2021-2022 (1) RCR (c) 357*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of litigation expenses.

H. Directions of the Authority:

40. 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 functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- (i) The cancellation of the allotted unit issued vide letter dated 28.09.2022 by the respondent- builder is ordered to be set aside provided the complainant pays the amount due against the unit besides interest at the prescribed rate of 10.25% per annum for the defaulted period within a period 90 days.
- (ii) The respondent - builder is directed to offer possession of the allotted unit to the complainant on his paying the amount due besides interest up to date on the defaulting amount less the delay possession charges from the date of receipt of occupation certificate plus two months .
- (iii) In case the complainant fails to pay the amount due besides interest at the prescribed rate within the above-mentioned period, then the respondent - builder would be entitled to retain 10% of the sale consideration being the earnest money and refund the remaining amount to him.

41. Complaint stands disposed of.

42. File be consigned to the Registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 18.10.2022