

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

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| Complaint no. | : | 3186 of 2021 |
| Date of filing complaint: | | 02.09.2021 |
| First date of hearing: | | 26.10.2021 |
| Date of decision | : | 14.10.2022 |

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| 1. Anuj Mehra and 2. Ambar Mehra ss/o Sh. Ashok Mehra R/O: M-81, Greater Kailash-II, New Delhi-110048 | Complainants |
| Versus | |
| 1. Dhoot Infrastructure Projects Limited Regd. office: 904-907, Time Tower, M.G. Road, Sector-28, Gurugram 122001 2. RMG Developers Pvt Ltd Regd. office: SF06, Ninex City Mart, Sohna Road, Sector 49, Gurgaon 122018 | Respondents |

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| CORAM: | |
| Shri Vijay Kumar Goyal | Member |
| Shri Ashok Sangwan | Member |
| Shri Sanjeev Kumar Arora | Member |
| APPEARANCE: | |
| Sh. Eklavya Behl (Advocate) | Complainant |
| Sh. Mayank Sharma proxy counsel (Advocate) | Respondent |

ORDER

1. The present complaint has been filed by the complainant/allottees 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 allottees 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 | Time Arcade, Sector 37 C, Gurugram Haryana |
| 2. | Project Area | 4.0 acres |
| 3. | Nature of the project | Commercial Unit |
| 4. | DTCP License no. & validity status | 160 of 2008 13/08/2008 upto 12/08/2020 |
| 5. | Name of licensee | RMG Developers Pvt. Ltd. |
| 6. | RERA registered / not registered | Not Registered |
| 7. | Unit no. | GF-007 on ground floor (Annexure - C on page no. 30 of the complaint) |
| 8. | Unit admeasuring | 743 sq. ft. (Annexure - C on page no. 30 of the complaint) |
| 9. | Date of execution of unit buyer agreement | 04.01.2014 (Annexure - C on page no. 25 of the complaint) |



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| 10. | Termination Notice | 22.03.2016 (As per clause III(A) (4) mentioned in BBA) |
| 11. | Possession Cluse | VII.DELIVERY OF POSSESSION That, offer of possession will be made to the allottee, within 36 months from the date hereof , subject to force majeure circumstances , including any delay in approvals by competent authority beyond the stipulated / expected period. (Emphasis supplied). |
| 12. | Due date of delivery of possession | 04.01.2017 (Calculated from the date of execution of this agreement) |
| 13. | Total sale consideration | Rs 43,53,980 /- (Annexure C on page 30 of the complaint) |
| 14. | Total amount paid by the complainant | Rs 20,43,250 /- (Annexure C on page 30 of the complaint) (NOTE: - The allottee have paid that amount prior to the execution of the unit buyer's agreement, being the booking amount) |
| 15. | Occupation certificate | Not obtained |
| 16. | Offer of possession | Not offered |

B. Facts of the complaint:

3. A project by the name of "Time Arcade" situated in sector 37 C, Gurugram was being marketed and promoted by the respondents. The complainants were already looking for a commercial unit and coming to know about the same booked a unit in the project of the respondent for a



total sale consideration of Rs. 43,53,980/-It was assured to the complainants that the project would be completed within a period of 36 months of the booking.

4. That a buyer's agreement was executed between the parties on 04.01.2014 for allotment of commercial unit bearing No. GF-007 in the said project of the respondents. The complainants had already made a payment of Rs.20,43,250/- under the construction linked payment plan towards the booking amount for allotment of the unit out of the total sale consideration of Rs. 43,53,980/-.

5. That the respondents committed undue delay in constructing and completing the project which resulted in personal meeting between Mr. Janardhanan and the complainants. The respondents requested the complainants to bear for some more time and remain booked in the project with an assurance that the balance payment would only be taken at the time of handing over of possession and after obtaining the occupancy certificate. The complainants have paid under the construction linked payment plan.

6. That the respondents further promised to pay compensation for the delay in possession and assured the adjustment of the said compensation amount at the time of making the final payment by the complainants as per the terms and conditions of the buyer's agreement. The complainants accepted the said offer and believed the respondents of their representation and waited for offer of possession during all these years.

7. That the complainants have recently came to know that the respondents have now completed the project and obtained occupancy certificate seven months back. However, till date, they did not offer the handing over possession of the unit to them for reasons best known to them.

8. That the complainants are entitled to the possession of the unit on making the balance payment in terms of the buyer agreements which they have always been ready and willing to pay. The respondents are under a contractual and legal obligation to issue the final demand letter and to offer the handing over of possession.

9. That besides various verbal communications being exchanged in this regard, the complainants even issued a letter dated 25.12.2020 requesting the respondents to issue the final demand letter and to offer the handing of the possession so as to enable them to complete the deal at the earliest.

10. That the complainants before receiving the said reply had already sent a legal notice dated 19.01.2021 hereby calling upon the respondents to issue the final demand letter and to offer the handing over of possession of the unit within a period of 15 days from the receipt of the said notice. However, the respondents did not comply with the same.

11. That owing to the delay in handing over the possession of the unit, the complainants are entitled to interest on delayed possession from the respondents till the actual date of possession as per the agreement. Hence, complainants were left with no other alternative but to file the present complaint seeking delay possession charges and possession.

C. Relief sought by the complainants:

12. The complainants have sought following relief(s):

- i. Direct the respondent to handover the possession of the unit.
- ii. Direct the respondent to pay delay possession charges.
- iii. Direct the respondents to pay cost of litigation of Rs. 1,00,000/- in favour of complainant.

13. Respondent no. 2 failed to file any written reply despite due service.

D. Reply by respondent no. 1:

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

14. That the complainants were looking for a commercial unit and coming to know that the respondents were proceeding with the project "Time Arcade" sector 37 C, Gurugram and booked a unit.

15. A buyer's agreement was executed between the parties on 04.01.2014. The complainants had already made a payment of Rs20,43,250/- towards the booking amount for allotment of the unit out of the total sale consideration of Rs. 43,53,980/-. The payment plan was construction linked payment plan.

16. That according to the clause (vii) of the buyer's agreement, the offer of possession was to be made to the allottees, within 36 months from the date of execution of this agreement.

17. The complainants were under a dutiful obligation to deposit various amounts in a time bound manner. But they did not honour the commitment as envisaged under the impugned agreement and they did not make timely payments leading to termination of the said unit vide three separate notices dated 18.01.2016, 22.02.2016 and 22.03.2016 respectively.

18. That this fact is also evident from the reply to the legal notice dated 19.01.2021 issued by the answering respondent through its counsel vide letter dated 25.01.2021. The present action of the complainants is aimed at gross abuse of the process of law by trying to enforce a hopelessly time barred claim.

19. That complainants have not approached the authority with clean hands and jurisdiction to entertain their complaint cannot be invoked by approaching it for the desired relief.

20. That the complaint filed by the complainants is not maintainable being vexatious and is summarily liable to be dismissed

21. All the other averments made in the complaint were denied in total.

22. 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 these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority:

23. The plea of the respondents 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

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

24. 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.

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. Entitlement of the complainants for delay possession charges:

F. I Direct the respondents to handover the possession of the unit.

F. II Direct the respondents to pay delay possession charges.

26. In the instant case, the complainants booked a unit in the project of respondent's known as "Time Arcade" situated in sector 37 C Gurugram for a total sum of Rs. 43,53,980 /-. A buyer's agreement in this regard was executed between the parties on 04.01.2014. As per that agreement, the complainants had already paid Rs. 20,43,250/- to the respondents and the balance amount was to be paid as per the payment schedule

mentioned in annexure 2. As per clause (viii) of the buyer's agreement executed between the parties, the project was to be completed by the respondents within thirty-six months from the date of that agreement subject to force majeure conditions. So, the due date for completion of the project and offer of possession comes to 04.01.2017. It is pleaded by the complainants that as per the payment plan, they had already paid more than 50% of the sale consideration and the remaining was to be paid as per payment schedule. The environment clearance for the project was received vide letter dated 13.06.2016. So it means that before receipt of that document, the respondents did not initiate the process of construction. But even before adhering to the schedule of payment and construction thereof they allegedly issued notices dated 18.01.2016 and 22.02.2016 respectively raising further demands against the allotted unit. However, there is nothing on the record to show that the same were ever dispatched and received by the complainants. Even without waiting for receipt of those notices, the answering respondent vide letter dated 22.03.2016 terminated buyer's agreement and directed the complainants to collect the remaining sum of Rs. 16,07,852/- less the earnest money. So all this shows that even without starting construction, the answering respondent raised demands against the allotted unit to the complainants and later on terminated the same vide letter dated 22.03.2016. Thus, the same is held to be illegal and the unit allotted to the complainants is ordered to be restored.

27. Admissibility of delay possession charges at prescribed rate of interest: The complainants are seeking delay possession charges at the prescribed rate and 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.

28. 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.

29. 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., 14.10.2022 is 8%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10%.

30. The definition of term 'interest' as defined under section 2(z) 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:

"(z) "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;"*

31. Therefore, interest on delay payments from the complainant shall be charged at the prescribed rate i.e., 10% by the respondent/promoters which is the same as is being granted to the complainants in case of delayed possession charges.

32. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondents are 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 clause VII of the agreement executed between the parties on 04.01.2014, the possession of the subject unit was to be delivered within stipulated time i.e., by 04.01. 2017. The respondents delayed in offering the possession. Accordingly, it is the failure of the respondent/promoter to fulfil their obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the act on the part of the respondents is established. As such, the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 04.01.2017 till date of offer of possession plus two months after obtaining OC or date of actual handing over of possession whichever is earlier at prescribed rate

i.e., 10 % p.a. as per proviso to section 18(1) of the act read with rule 15 of the rules.

F.III Direct the respondents to pay cost of litigation of Rs. 1,00,000/- in favour of complainant.

33. The complainants are seeking above mentioned relief w.r.t. 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) RC (C) 35* 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.

G. Directions of the Authority:

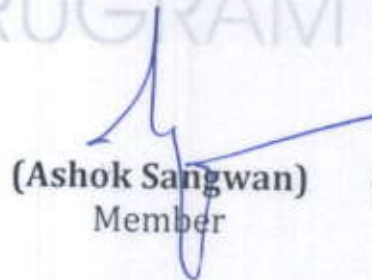
34. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i. The complainants are entitled for delayed possession charges as per the proviso of section 18(1) of the Real Estate (Regulation and Development) act, 2016 at the prescribed rate of interest i.e., 10%p.a. for every month of delay on the amount paid by them to the respondents from the due date of possession i.e., 04.01.2017 till the offer of possession after obtaining OC plus two months or date of actual handing over of possession whichever is earlier as per proviso to section 18(1) of the act read with rule 15 of the rules.



- ii. The respondents are also directed to offer the possession of the allotted unit within 30 days after obtaining OC from the concerned authority. The complainants obligation conferred upon them under section 19(10) of Act of 2016, is to take the physical possession of the allotted unit, within a period of two months after issuance of receipt of the occupancy certificate.
- iii. The complainants are directed to make payment of due installments towards consideration of allotted unit as per provision of Section 19(6) & (7) of Act of 2016. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(z) of the Act.
- iv. It was brought to the notice of the authority that the project is unregistered under the provisions of the Act of 2016. The respondent/promoter is in violation of section 3(1) of the Act 2016. The planning branch of the authority is directed to issue a show cause notice as to why penal proceedings should not be initiated against the respondent under section 59 for violation of section 3(1) of the Act ibid.
35. Complaint stands disposed of.
36. File be consigned to the registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.10.2022