

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

Complaint no. : 4018 of 2021  
First date of hearing: 23.11.2021  
Date of decision : 07.03.2023

Vidya Sagar Sarpal  
R/o: F-208, Sector Beta-2, Greater Noida, UP-  
201308

**Complainant**

Versus

Vatika Limited  
R/o: Vatika Triangle, 4<sup>th</sup> floor, Sushant Lok,  
Phase-I, block A, Gurugram

**Respondent**

**CORAM:**

Shri Ashok Sangwan  
Shri Sanjeev Kumar Arora

**Member  
Member**

**APPEARANCE:**

Sh. Somesh Malhotra  
Sh. Venket Rao

Advocate for complainant  
Advocate for respondent

**ORDER**

1. The present complaint dated 08.10.2021 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 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(f) and section 17(1) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of

the Act or the rules and regulations made thereunder 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.No.	Heads	Description
1.	Name and location of the project	"Town Square-2" at Sector 82, Vatika India Next, Gurgaon, Haryana.
2.	Nature of the project	Commercial complex
3.	Project area	1.6 acres
4.	DTCP License	113 of 2008 dated 01.06.2008 valid up to 31.05.2018 71 of 2010 dated 15.09.2010 valid up to 14.09.2018 62 of 2011 dated 02.07.2011 valid up to 01.07.2024 76 of 2011 dated 07.09.2011 valid up to 06.09.2017 66 of 2014 dated 15.07.2014 valid up to 14.07.2019
5.	Name of licensee	Sh. Tej Pal
6.	RERA registered/ not registered	40 of 2021 dated 10.08.2021 valid upto 31.03.2022
7.	Date of application	27.12.2013 (page 42 of complaint)
8.	Date of allotment	08.09.2017 (Annexure R3, Page 27 of reply)

9.	Date of buyer agreement	16.04.2018 (Page 71 of complaint)
10.	Unit no.	135, Ground Floor, block A admeasuring 545 sq.ft. (Page 73 of complaint)
11.	Change in area as per intimation of possession	745 sq.ft. (page 29 of reply)
12.	Possession clause	<p><b>17.Handing over possession of the commercial unit</b></p> <p><i>The Developer 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 48 months from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in this agreement or due to failure of buyer(s) to pay in time the price of the said commercial unit along with all other charges and dues in accordance with the schedule of payments.</i></p> <p><b>(Emphasis supplied)</b></p>
13.	Due date of possession	16.04.2022 [Due date of possession calculated from the date of BBA]
14.	Total sale consideration	Rs. 1,22,99,166/- as per SOA dated 10.11.2021 (page 32 of reply)
15.	Amount paid by the complainant	Rs. 81,61,972/- as per SOA dated 10.11.2021 (page 32 of reply)
16.	Intimation of offer of possession	24.02.2020 (page 29 of reply.)

17.	Notice for termination	06.11.2020 (page 105 of complaint)
18.	Letter for cancellation	27.07.2021 (page 111 of complaint)
19.	Occupation certificate	17.02.2022 (page 5 of written submissions submitted by respondent).
20.	Third party rights	07.01.2023 (page 7 of written submission submitted by the respondent)

**B. Facts of the complaint**

The complainant has submitted as under: -

3. The complainant booked a unit admeasuring 545 sq.ft. of super area in a commercial complex being developed by the respondent in the name of "Town Square-2", by making payment of Rs 8,00,000/-. Subsequently on submission of the allotment/booking application dated 27.12.2013, an acknowledgement receipt dated 07.01.2014 was issued and unit no. RET-007-Level 1- A2-135 was allotted to him. He even agreed to pay preferential location charges owing to the location and viability of the area. The respondent kept on demanding instalments from him without executing the builder buyer's agreement. Relying upon its representations, he had already paid substantial booking amount and all the instalments as and when demanded by it to avoid unnecessary charges and interest on delayed payments. Till the month of May, 2015 i.e. on start of excavation of the project, he had paid a sum of Rs. 29,16,703/- to it in accordance with the construction linked payment plan as is evident from the summary of account statement generated as on 14.06.2015. On 30.11.2016. The respondent on

achieving another milestone in construction i.e., commencement of roof slab of first floor, again demanded another installment from the complainant and he duly paid that amount as is evident from the account statement summary generated on 16.12.2016. Thus, he has paid an amount of Rs. 44,84,292/- till 16.12.2016. Simultaneously, he kept on requesting the respondent to execute buyer's agreement and issue allotment letter to him but it did not do the needful even after repeated requests by him. Thereafter on commencement of construction of roof slab of second floor in January, 2017, the respondent again demanded payment of installment which the complainant made on time as is evident in the summary of account statement generated on 09.02.2017. Thus, as per the account statement itself, he paid an amount of Rs.59,43,304/- till 09.02.2017. Further on 09.05.2017, the complainant made another payment of Rs.11,39,655/- to it on completion of brickwork with plaster as per the payment schedule which comes out to be 86.41% approximately of the total sale consideration of the allotted unit. He paid the total amount of Rs.70,91,900/- by September 2017 as is duly reflected in the account statement summary generated as on 01.09.2017. Despite having obtained substantial amount of sale consideration i.e., 86.41% approximately of the total sale consideration and several requests made by him, it did not execute the builder buyer agreement. Therefore on 28.08.2017, he again wrote to it requesting for execution of the buyer's agreement and issuance of allotment letter.

4. After numerous requests and follow ups eventually when the complainant was forced to make all the payments against the arbitrary demands raised by it contrary to the provisions of the Act, it executed a standard form and one sided builder buyers' agreement on 16.04.2018 i.e. after a delay of more than 4 years of the commitment and representation made at the time of submission of allotment/booking application on 27.12.2013 and after extracting total basic sale consideration amount from the complainant. The executed buyer's agreement is in clear breach of RER Act and rules and is replete with numerous arbitrary, unfair and illegal clauses to serve only the interest of the respondent. Since he had already paid the entire basic sale consideration, he was left with no other alternative and power to protest or raise any objection, given the same respondent under coercion and pressure agreed to the biased terms and conditions of it and signed on the dotted lines. It is pertinent to mention here that the respondent had also unilaterally altered the agreed terms and conditions of the allotment/ booking application which formed the basis of the entire transaction between the parties. As agreed between the parties vide clause 9 of the application form, the earnest money for the purpose of the allotment application and the buyer's agreement would be 10% of the total sale consideration and at the time of any breach, the respondent would be entitled to forfeit 10% of earnest money only along with other deductibles whereas it at the time of execution of the buyer's agreement has arbitrarily altered clause 4 of that document and by hand amended and overwrote 30% as against the 10% originally printed and termed 30% of the total sale

- consideration to be treated as earnest money. Despite demur by the complainant, he was compelled him to sign on altered terms.
5. The buyer's agreement is highly prejudicial to the complainant as the respondent ascribed to itself further four more years in binding timeline of possession from the date of the execution of the buyer's agreement i.e., 16.04.2018 which is contrary to the basic understanding between the parties. As at the time of execution of the allotment application for the unit in question, the complainant was made to understand and promised delivery of the property in question within 48 months from the date of booking. The buyer's agreement is contradictory to the rights of the complainant especially when it has charged and demanded payments since 27.12.2013 i.e., date of allotment/booking application. Therefore, the date of possession is to be reckoned from the date of allotment/booking application. Pertinently, the buyer's agreement is not as per the Act, rules and regulations and the conduct of the respondent is unabashedly illegal even after the enforcement of the Act.
6. The complainant has been requesting the respondent to provide copy of the occupation certificate granted to it by the DGTCP (Haryana) allowing/permitting it to offer possession of the allotted unit. However, it raised the demand for last payment in February, 2020, without having received any occupation certificate for the said project to the best of knowledge of the complainant. However, in order to verify and ascertain the status of construction of the project in question, he visited the project site and was shocked that the project is nowhere near completion and was not fit for

habitation/occupation and was in a dilapidated condition. Therefore, the demand of payment raised by it vide intimation letter for possession was not maintainable. Hence, on 02.03.2020, he wrote to it via email that revised payment schedule/intimation of possession letter for possession may kindly be shared with him along with the occupancy and completion certificate and clearly highlighted in his email that the "complex is not fit for occupation as flooring, sanitary, electrical fittings etc. are not functional and further clarified that the complainant was willing to make the final payment and take possession of the allotted unit once all his concerns are addressed".

7. On 01.04.2020, the officials of the respondent replied to the complainant via email that all the milestones as per payment plan have been achieved and accordingly demand for payments have been made. It was further stated in the said email that all approvals are in place or have been applied and the same shall be informed as the same is completed. Pertinent to mention herein, that even after having offered possession of the unit to him, the respondent instead of coming forward with a copy of the occupation certificate granted in respect of the project in question and relevant to the unit in question, gave evasive reply and did not confirm the grant of any such certificate. However, it kept pressing the demand under the said false and frivolous offer of possession letter.
8. The respondent failed to provide the complainant with necessary approvals as assured via email dated 01.04.2020 and when he visited its office to sought redressal of his concerns on 02.05.2020, it was revealed to the complainant that there has been an increase



in area of the allotted unit. However, it did not provide him necessary layout plans, increased dimensions and roughly stated to him that the super area of the unit was arbitrarily increased from 545 sq.ft. to more than 745 sq.ft.. The respondent without any intimation and out of nowhere made arbitrary changes in the plan of the project to the extent of amending crucial representations and changed the area of the unit, substantially increasing it beyond his need and requirement. It did not even provide any justification/clarification for the increased area to him.

9. Despite repeated follow ups and communication with the respondent, it did not provide the complainant with necessary approvals. Instead it issued a notice of termination of the allotted unit vide its email along with an attachment dated 06.11.2020. Apposite to mention here that he already paid the entire amount as per the construction linked payment plan and final payment was due on offer of possession and the letter of intimation for possession was already disputed by him for lack of necessary approvals. The respondent vide its notice for termination has demanded an exorbitant and usurious amount of Rs. 62,43,378/- from the complainant and which is contrary to the agreed terms of allotment/ booking application and buyer's agreement. The respondent in blatant disregard to the rights of the Complainant demanded the entire payment within 7 days of receipt of notice otherwise threatened to cancel/terminate the unit. After receiving the notice for termination dated 06.11.2020, the complainant again wrote to it on 24.11.2020 seeking copy of necessary approvals viz. occupancy and completion certificate and again showed his

willingness to make the balance payment in accordance with the original terms of the allotment as agreed between the parties within 10 days once all the approvals are in place. However, the respondent kept demanding payment of installment as per the increased price as due on offer of possession without necessary approvals. The complainant duly responded to the emails sent by it and even raised concern vide his representation dated 24.11.2020 seeking occupancy certificate.

10. After several requests, the respondent provided the complainant with account statement summary as generated on 08.01.2021 and details mentioned in the account summary are preposterous and inconsistent with the previous account statement summaries as provided to him.
11. After due deliberations and negotiations over telephonic conversations with the concerned sales official of the respondent, who directed and instructed the complainant to pay the installment as due on offer of possession and clear the outstanding dues as per the agreed original terms of allotment to avoid unnecessary interest and charges on delayed payment and to avoid cancellation of the unit, with the assurance that the necessary correction in the account statement would be effected and for that he would have to raise the matter with the management. Having no other alternative but to act upon the assurances given by its representative especially when he had already paid Rs. 10,00,000/- in favour of it in addition to the previous payments. Thus, in this way, he has already paid a sum of Rs. 8<sup>0</sup>,91,900/ i.e., 98.7% against the allotted unit. But despite having paid the entire amount of total sale

consideration, the respondent vide its letter dated 27.07.2021, cancelled the allotment of the unit on the ludicrous ground of failure to clear the outstanding dues. It acted in complete disregard of the provisions of Act and established legal principles. Aggrieved by the letter of cancellation dated 27.07.2021, he again wrote to it vide email dated 03.08.2021, whereby he raised his objections and protested against the purported cancellation and sought clarification regarding increase in area and consequently increase in price of the allotted unit and sought redressal of his grievances but with no positive results leading to filing of the present complaint.

**C. Relief sought by the complainant:**

The complainant has sought following relief(s):

- (i) Direct the respondent to withdraw the cancellation letter dated 27.07.2021 and further direct it to not sell or allot the unit no. RET-007-level 1-A2-135, admeasuring 545 sq. ft. in project Town Square - 2 Sector -82-A, Gurugram to any subsequent buyer and create third party rights till the adjudication of the complaint.
- (ii) Quash or set aside or put a stay on the operation of the cancellation letter dated 27.07.2021, issued by it against unit no. RET-007-level 1-A2-135 admeasuring 545 sq. ft. in its project "Town Square - 2", Sector -82-A, Gurugram, thereby restraining the respondent from taking any action or disposing off the unit, before the conclusive or final adjudication of the instant complaint by the authority.



- (iii) Direct the respondent to obtain occupation certificate of its project, Town Square - 2 in Sector 82-A Gurugram provide copy of the occupation certificate and subsequently give an offer of possession in respect of unit no. RET-007-Level 1-A2-135 admeasuring 545 sq. ft., its project, Town Square - 2 in Sector -82-A Gurugram as allotted to the complainant vide allotment letter dated 27.12.2013 without levying any additional charges to the complainant.
- (iv) Direct the respondent to provide possession of the unit no. RET-007-Level 1-A2-135, admeasuring 545 sq. ft. in its project, Town Square - 2 Sector -82-A Gurugram in terms of the allotment letter dated 27.12.2013 for which payment of Rs. 80,91,900/- has been accepted by it till date and forthwith execute conveyance deed of the allotted unit in favour of the complainant.
- (v) Direct the respondent to pay interest on the delay in handing over the possession till realization of the same in view of the violation of section 18 of the Act, 2016.
- (vi) Direct the respondent company to withdraw all frivolous interests and charges, levied against the unit no. RET-007-Level 1-A2-135, admeasuring 545 sq. ft. and offer possession of the Unit as per the original area i.e., 545 Sq. ft. and not the arbitrarily increased area i.e., 745 Sq. ft.
- (vii) In alternate, if for any reason, possession of the unit no. RET-007-level 1-A2-135, admeasuring 545 sq. ft. in its project, Town Square - 2 in Sector 82-A Gurugram cannot be handed over, the authority may please direct the respondent to



provide possession of such other similarly placed unit, with similar specifications, size, location, attraction and unique selling point, as is acceptable to the complainant, in project Town Square - 2 in Sector -82-A Gurugram.

(viii) Direct the respondent to pay an amount of Rs. 1,50,000/- as litigation expenses.

12. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) and section 17(1) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent**

The respondent has contested the complaint on the following grounds: -

- i. That the complainant has not approached this authority with clean hands and has suppressed the relevant material facts. It is submitted that the complaint under reply is devoid of merit and the same is liable to be dismissed with cost.
- ii. It is an admitted fact that by no stretch of imagination, it can be concluded that the complainant is a "consumer". It is a matter of fact, that he is simply an investor who approached it for investment opportunities and for a steady rental income. The same was duly agreed between the parties in the said buyers' agreement.
- iii. That around December 2012, the complainant, learnt about the commercial project launched by the respondent titled as 'Town Square 2' situated at Sector 83, Gurgaon and repeatedly visited the office of it to know the more details of the said project. He

further inquired about the specifications and veracity of the commercial project and was satisfied with every proposal deemed necessary for the development.

- iv. That after having dire interest in the project constructed by the respondent, the complainant decided to make investment in the aforesaid project. On 27.12.2013, he vide application booked a unit admeasuring to area of 545 Sq. ft for a basic sale price of Rs. 70,31,045/- in the project and paid an amount of Rs. 8,00,000/- for further registration.
- v. It is submitted that the complainant was well aware of the terms and conditions mentioned under the application form and agreed to abide the same without any protest or demur. It is further submitted that he was aware of the payment obligation and was duty bound to remit the same as and when demanded by the respondent.
- vi. It is a matter of fact, the complainant was well aware of the exact status of the project. The respondent vide email dated 29.04.2015, duly intimated him about the exact status of the project and also assured that the payment towards the total sale consideration of the said commercial unit shall be demanded as per the progress in the aforesaid project.
- vii. It is pertinent to mention that the complainant was well aware of the fact that timely payment was essence for this agreement and despite after knowing that same has to be made as and when demanded by it towards the agreed sale consideration. Despite after knowing such payment obligation, he failed to pay the same on time. Inspite after knowing the payment obligation, he

- failed to make the instalment payment towards the agreed sale consideration of the commercial unit as and when demanded by it leading to issuance of reminders.
- viii. The respondent vide allotment letter dated 08.09.2017, allotted a commercial unit bearing no. A2 - 135, ground floor, block A, admeasuring to area of 545 Sq. ft in the said project. It is pertinent to bring into the knowledge of the authority that since starting, the respondent was committed to complete the project as per the milestone and has duly intimated him about the allotment of the said unit vide email dated 13.09.2017. It is to note, that he was well aware about the allotment of the said unit and despite after knowing the exact status of the project, he accepted the allotment at his free will without any protest or demur. Despite after having an option to deny/object the aforesaid allotment, the complainant evidently opted to take the said commercial unit.
- ix. It is imperative note that in the aforesaid allotment letter, the respondent has evidently intimated the complainant about the earnest money amount i.e., 30% of the total sale consideration and the same was duly accepted by him at his free will and consent.
- x. That on 16.04.2018, a buyer agreement was executed between the parties for the unit allotted in the said project. However, the complainant was well aware of terms and conditions under the aforesaid agreement and only being satisfied with each and every terms agreed to sign upon the same with free will and without any demur.



- xi. It is submitted that as per the agreement, the complainant was aware that it was entitled to increase/decrease the super area of the said commercial unit upto  $\pm 10\%$  and the same shall be deemed to be permissible and in case of major alteration, he was bound to object the same within 30 days from the date of notice or written intimation of such alteration.
- xii. That the respondent vide offer for possession letter dated 24.02.2020, called upon the complainant to take over the possession of the said unit after paying the balance due to him towards the agreed sale consideration and also intimated him about the modification/alteration in the super area.
- xiii. That as per the aforesaid provision of the agreement, the complainant was bound to provide written consent or objection within 30 days from the date of dispatch of such communication and, inspite after knowing the terms of the agreement, he failed to object the same. It is to be noted, that he was aware of the increase in the super area and even after having an option, the complainant did not objected the same.
- xiv. It is a matter of fact that as per clause 17 of the said agreement, the possession of the said commercial unit was to be delivered within forty-eight months i.e., 4 years from the date of execution of the agreement. It is an admitted fact, that the agreement was executed on 16.04.2018, and as per the terms agreed by him, the due date of the possession of the said commercial unit was on 16.04.2022. Therefore, the complaint being premature is liable to be dismissed on this ground alone.





- xv. That as per the said agreement so signed and acknowledged, the complainant was bound to make the instalment payment as and when demanded by it and, in case of any failure, the respondent was authorized and entitled by the agreement to cancel the said commercial unit.
- xvi. It is submitted that the respondent was committed to complete the project and duly intimated the complainant the exact status of the project. Vide email dated 16.11.2020, it again intimated and requested him to clear the dues and takeover the possession of the said unit. However, the same was left unanswered by him.
- xvii. That despite after reminding the complainant twice for taking possession of the said commercial unit after clearing the dues pending against him, the respondent was left with no alternative but to terminate the commercial unit on 27.07.2021, as per the terms agreed by him under the aforesaid agreement.
- xviii. It is imperative to mention herein that the complainant has only paid a partial amount of the total sale consideration and still a substantial amount is due towards the total sale consideration. It is to be noted, that still an amount of Rs. 60,30,259/- is due against the complainant on account of allotment of the unit.
- xix. That the complainant suppressed the above stated facts and has raised this complaint under reply upon baseless, vague, wrong grounds and has mislead this authority, for the reasons stated above. It is further submitted that none of the reliefs as prayed for by him are sustainable before this authority and in the interest of justice. Hence, the complaint under reply is liable to be dismissed with cost for wasting the precious time and



resources of the Id. authority. The complaint is an utter abuse of the process of law, and hence deserves to be dismissed.

13. All other averments made in the complaint were denied in toto.
14. 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 based on these undisputed documents and submissions made by the parties.

**F. Jurisdiction of the authority**

15. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**F. I Territorial jurisdiction**

16. 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.

**F. II Subject matter jurisdiction**

17. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per section 11(4)(a) and section 17(1) of the Act of 2016, leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

**G. Findings on the relief sought by the complainant.**



**Relief sought by the complainant:**

The complainant has sought following relief(s):

- i. Direct the respondent to withdraw the cancellation letter dated 27.07.2021 and further direct it to not sell or allot the unit no. RET-007-level 1-A2-135, admeasuring 545 sq. ft. in project Town Square - 2 Sector -82-A, Gurugram to any subsequent buyer and create third party rights till the adjudication of the complaint.
  - ii. Quash or set aside or put a stay on the operation of the cancellation letter dated 27.07.2021, issued by it against unit no. RET-007-level 1-A2-135 admeasuring 545 sq. ft. in its project "Town Square - 2", Sector -82-A, Gurugram, thereby restraining the respondent from taking any action or disposing off the unit, before the conclusive or final adjudication of the instant complaint by the authority.
  - iii. Direct the respondent to obtain occupation certificate of its project, Town Square - 2 in Sector 82-A Gurugram provide copy of the occupation certificate and subsequently give an offer of possession in respect of unit no. RET-007-Level 1-A2-135 admeasuring 545 sq. ft., its project, Town Square - 2 in Sector - 82-A Gurugram as allotted to the complainant vide allotment letter dated 27.12.2013 without levying any additional charges to the complainant.
  - iv. In alternate, if for any reason, possession of the unit no. RET-007-level 1-A2-135, admeasuring 545 sq. ft. in its project, Town Square - 2 in Sector 82-A Gurugram cannot be handed over, the authority may please direct the respondent to provide possession of such other similarly placed unit, with similar specifications, size, location, attraction and unique selling point, as is acceptable to the complainant, in project Town Square - 2 in Sector -82-A Gurugram.
18. All these issues being interconnected are being taken together.
19. Vide application dated 27.12.2013, the complainant applied for allotment of unit in the above noted commercial complex of respondent by paying a sum of Rs. 8,00,000/- vide an account payee cheque. Though no formal letter of allotment was issued but the respondent started raising various demands against the booking and the same were met by paying Rs. 6,58,238/-, 7,29,289/-,



7,29,176/-, 50,000/-, 1,5,17,589/- 14,59,012/- 8,941/-, 11,39,655/- vide RTGS transfers/account payee cheques dated 19.06.2014,25.08.2014,15.05.2015,04.08.2015,01.12.2016,07.02. 2017, 09.02.2017 & 15.05.2017 respectively. The allotment of the unit was formally made in favour of the complainant only vide letter dated 08.09.2017 leading to execution of buyer's agreement dated 16.04.2018. It is not disputed that up to that date, the respondent has received a sum of Rs. 71,91,900/- against the basic sale consideration of Rs. 70,31,045/-exclusive of other charges (later on increased to Rs. 1,06,44,149/-due to increase in area). Though, the allotment of the unit was made under construction linked payment plan but the respondent without formal letter of allotment and execution of buyer's agreement had already received the entire sale consideration as agreed upon at the time of execution of buyer's agreement. Though, 5% of the BSP and other charges were to be paid at the time of offer of possession of the allotted unit but the complainant had already pay more than 100% of the basic sale price to the respondent. Firstly raising any demand while sending an intimation of possession vide letter dated 24.02.2020 even without receipt of occupation certificate of the project was illegal and is not sustainable in the eyes of law. Secondly, it is an admitted fact that the occupation certificate of the project was received by the respondent 17.02.2022 i.e., during the pendency of the complaint. Only after receipt of that document, it could have raised further demand and that too as per the terms and conditions of the buyer's agreement entered into between the parties on 16.04.2018. Thus, the issuance of letter of cancellation of

the buyer's agreement and directing refund of the paid-up amount after certain deductions is not sustainable being against the agreement executed between the parties w.r.t the subject unit. Therefore, the action initiated in this regard by the respondent against the complainant qua the allotted unit is liable to be set-aside.

20. It is contended on behalf of the respondent that after cancellation of the allotted unit, it has been allotted to one Naresh Prasad vide letter of allotment dated 07.01.2022. Even if cancellation of the unit is being set-aside, the possession of the same cannot be given to the complainant on creating of third-party rights over the same. However, the plea of the complainant is that cancellation is illegal and the same was done on 27.07.2021. A complaint to challenge that action of the respondent was filed before the authority 08.10.2021 and at that time, there was no re-allotment of that unit.
21. While discussing above, it has been held that cancellation of the allotted unit is not valid and the same is liable to be set-aside. However, it has also come on record that after cancellation of allotment of the unit on 27.07.2021, the same was re-allotted to one Mr. Naresh Parasad vide letter dated 07.01.2022. Though there was no embargo for its re-allotment but the same was done during the pendency of the complaint. The complainant had already challenged the action of the respondent qua cancellation of the unit vide letter dated 27.07.2021. The person in whose favour re-allotment was done of the subject unit is not before the authority. So, in such a situation when the complainant has already paid more than 100% of the basic sale price of the subject unit, the respondent

is directed to allot him a unit of the size of subject unit, with same location and that too at the price, the original booking was done way back in the year 2013 on the basis of application dated 27.12.2013, leading to allotment on 08.09.2017 and entering into buyer's agreement dated 16.04.2018 within a period of one month from the date of order.

- v. Direct the respondent to provide possession of the unit no. RET-007-Level 1-A2-135, admeasuring 545 sq. ft. in its project, Town Square - 2 Sector -82-A Gurugram in terms of the allotment letter dated 27.12.2013 for which payment of Rs. 80,91,900/- has been accepted by it till date and forthwith execute conveyance deed of the allotted unit in favour of the complainant.
- vi. Direct the respondent company to withdraw all frivolous interests and charges, levied against the unit no. RET-007-Level 1-A2-135, admeasuring 545 sq. ft. and offer possession of the Unit as per the original area i.e., 545 Sq. ft. and not the arbitrarily increased area i.e., 745 Sq. ft.

In view of findings of the authority on issues no. 1,2,3 & 7, these issues become redundant, and no findings can be recorded on the same.

vii. Delay possession charges

20. In the present complaint, the complainant intends to continue with the project and is 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."*

Clause 17 of the buyer's agreement provides the time period of handing over possession and the same is reproduced below:

***“Clause 17- Handing over possession of the commercial unit***

*The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Unit/said Unit within a period of 48 (forty eight) from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in this agreement or due to failure of buyer(s) to pay in time the price of the said commercial unit along with all other charges and dues in accordance with the Schedule of Payments.....”*

21. At the inception, it is relevant to comment on the pre-set possession clause of the buyer's agreement wherein the possession has been subjected to in numerous terms and conditions, force majeure circumstances and in numerous terms and conditions. The drafting of this clause is not only vague but so heavily loaded in favour of the promoter that even a single default by the allottee in fulfilling obligations, formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the 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.
22. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges,



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.

23. 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.
24. 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., 07.03.2023 is 8.70% p.a. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70% p.a.
25. The definition of term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the





allottees, 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;"*

26. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.70% p.a. by the respondent/promoter which is the same as is being granted to him in case of delay possession charges.
27. On consideration of the circumstances, the evidence and other 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 16.04.2018, the possession of the booked unit was to be delivered within 48 months from the date of execution of this agreement. The due date of possession is calculated from the date of execution of buyer's agreement i.e., 16.04.2018 which comes out to be 16.04.2022. But before that due date, the respondent send a notice for termination of the unit on 06.11.2020 and ultimately leading to cancellation of that unit vide letter dated 27.07.2021 and its re-allotment to a third person vide

letter of allotment dated 07.01.2022 . While, discussing above it has been held that cancellation of the allotment in favour of the complainant is illegal and third-party rights have been created. So, in such a situation, the authority directs the respondent to allot a unit of the same size , in the same locality/project and on the same price as done in favour of the complainant within period of one month. It has also come on record that prior to receipt of occupation certificate though, an intimation of possession of the allotted unit was given to the complainant but that was not valid one. But after receipt of occupation certificate and since the allotted unit had already been cancelled, so no offer of possession of the same was ever issued in favour of the allottee. Thus, in such a situation, the complainant on re-allotment of the unit and its offer of possession, he would be entitled to delay possession charges from the due date of possession till offer of possession or actual handover whichever is earlier at the prescribed rates i.e., 10.70% p.a.

viii. Direct the respondent to pay an amount of Rs. 1,50,000/- as litigation expenses.

28. The complainant is also seeking relief w.r.t. litigation expenses & 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.* (supra), 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 complainant is advised to approach the adjudicating officer for seeking the relief of litigation expenses

**H. Directions of the authority**

19. 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 allot the complainant a unit of the size of subject unit, with same location and that too at the price, the original booking was done way back in the year 2013 on the basis of application dated 27.12.2013, leading to allotment on 08.09.2017 and entering into buyer's agreement dated 16.04.2018 within a period of one month from the date of order.
- ii. The respondent is directed to pay delay possession charges to the complainant on re-allotment of the unit from the due date of possession till offer of possession or actual handover of possession whichever is earlier at the prescribed rates i.e., 10.70% p.a.
- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The respondent is directed to provide the calculations of super area of the project as well as of the allotted unit within a period of 30 days.
- v. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e.,

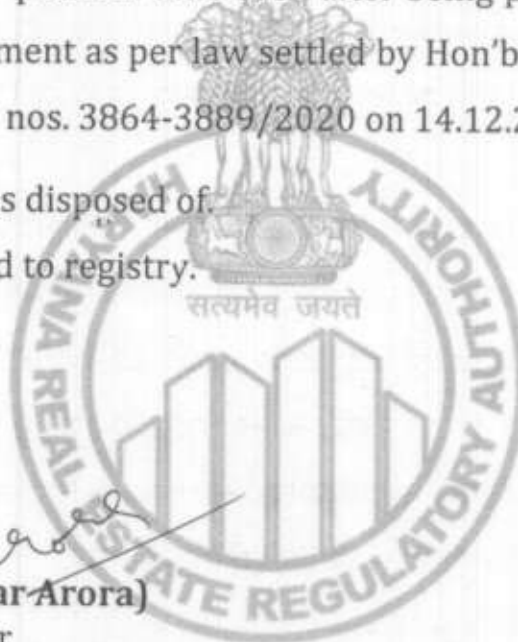


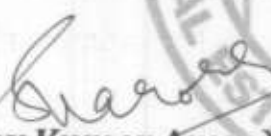
10.70% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

- vi. The respondent shall not charge anything from the complainant which is not the part of buyer's agreement. The respondent is not entitled to charge holding charges from the complainant/allottee at any point of time even after being part of the builder buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 on 14.12.2020.

29. Complaint stands disposed of.

30. File be consigned to registry.

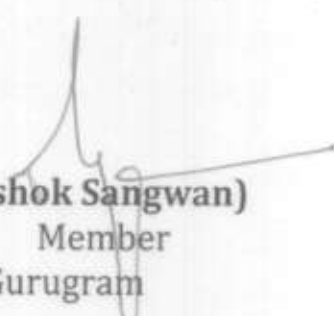


  
(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 07.03.2023

  
(Ashok Sangwan)

Member

**HARERA**  
**GURUGRAM**