

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

Complaint no. : 2820 of 2021
First date of hearing: 14.09.2021
Date of decision : 07.03.2023

1. Vinod Ahuja, S/o Late Sh. S.N. Ahuja
R/o: E-105/I, Naraina Vihar,
New Delhi-110028.
2. Deepali Jetley, W/o Hemant Jetley
3. Hemant Jetley, S/o B.D Jetley
both R/o: 001, Tower7,
Emaar Palm Terraces Select,
Sector 66, Golf Course Extension Road,
Gurugram-122018.

Complainants

Versus

M/s Parkwood Infrastructure Pvt. Ltd.
Regd. Office at: Khewat/Khalla no. 107/115,
Village Mewka, Sector 82, Gurugram,
Haryana-122001.

Respondent

CORAM:

Shri Vijay Kumar Goyal
Shri Sanjeev Kumar Arora

**Member
Member**

APPEARANCE:

Sh. Kuldeep Kumar Kohli (Advocate)
None

**Complainants
Respondent**

ORDER

1. The present complaint dated 15.07.2021 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 28 of the



Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S.N.	Particulars	Details
1.	Name and location of the project	"Parkwood Westend", Sector-92, Gurugram
2.	Nature of the project	Group Housing colony
3.	Project area	14.125 acres
4.	DTCP license no.	53 of 2010 dated 10.07.2010 valid up to 09.07.2018
5.	Name of licensee	Smt. Devki and 4 others
6.	RERA Registered/ not registered	Registered Vide no. 16 of 2018 issued on 19.01.2018 valid up to 31.12.2019
7.	Unit no.	E-1001, 10 th floor, block E [as per applicant ledger on page 114 of complaint]
8.	Unit admeasuring area	1675 sq. ft. of super area [as per applicant ledger on page 114 of complaint]
9.	Date of flat buyer agreement	20.06.2012 (page 76 of complaint)
10.	Possession clause	28. Possession a) Time of handing over the Possession <i>That subject to terms of this clause and subject to the FLAT ALLOTTEE(S)</i>



		<i>having complied with all the terms and conditions of this agreement and not compliance with all provision of this Agreement and further subject to compliance with all provisions, formalities, registration of sale deed, documentation, payment of all amount due and payable to the DEVELOPER by the FLAT ALLOTTEE(S) under this agreement etc, as prescribed by the DEVELOPER the DEVELOPER proposes to handover the possession of the FLAT within a period of thirty six (36) months from the date of signing of this Agreement..... emphasis supplied.</i>
11.	Due date of possession	20.06.2015 (calculated from the date of execution of buyer's agreement)
12.	Total sale price	Rs.39,39,375/- [as per applicant ledger on page 115 of complaint]
13.	Total amount paid by the complainant	Rs.33,22,735/- (as per applicant ledger on page 115 of complaint)
14.	Occupation certificate	Not yet obtained
15.	Offer of possession	N.A.

B. Facts of the complaint:

3. The complainants have made the following submissions in the complaint:

- I. That the respondent issued an advertisement announcing a residential group housing project named 'PARKWOOD WESTEND" at Sector 92, Gurugram (Haryana) and thereby invited applications from the prospective buyers for the purchase of floors in the said project.



- II. That initially a unit bearing no. E-1001, admeasuring 1495 sq.ft., 10th floor, block E was provisionally allotted to Mr. Som Nath Munjal who subsequently transferred the allotment in favour of Mr. Vinod Ahuja and Mrs. Deepali Jetley vide endorsement letter dated 06.08.2012.
- III. That upon the request of the complainants, respondent-builder added the name of Mr. Hemant Jetley to the unit vide endorsement letter dated 23.09.2013 and issued a credit voucher bearing no. 00506 amounting Rs.8,97,096/- in their favour which was paid by initial allottee.
- IV. That a tripartite agreement dated 30.09.2013 was executed between the parties and Axis bank for the purchase of said unit and the bank has disbursed a sum of Rs.25,96,872/- to it.
- V. That the total sale consideration of said unit was Rs.39,39,375/- and against which they had paid a sum of Rs.33,22,725/- till date as evident from the applicant ledger dated 24.05.2021.
- VI. That the respondent illegally increased the area of the said unit from 1495 sq.ft. to 1675 sq.ft. vide letter dated 27.09.2017 which is not in conformity with the Act & the Rules framed thereunder of RERA, 2016.
- VII. That the respondent vide demand letter dated 18.05.2021 illegally raised a demand of Rs.3,12,945/- for internal painting but as per the payment plan Rs.1,45,763/- were paid for the same. On visiting the site, it was observed by the complainants that it has not even finished the internal flooring for which the payment was made long back and was nowhere near to start the internal painting. Hence, they refused to pay the amount towards internal painting.

VIII. That the complainants contacted the respondent on several occasions regarding the status of the construction and it was never definite about the delivery of its possession. So, left at the mercy of the unscrupulous practices of the respondent, the complainants have come before this Authority to seek redressal of their grievances.

C. Relief sought by the complainants:

4. The complainants sought following relief(s).

- I. **Direct the respondent to handover physical possession of the subject unit along with delayed possession charges at the prescribed interest from the promise date of delivery till actual delivery of the unit in question.**
- II. **Direct the respondent to not to charge anything on increase in super area of the unit.**
- III. **Direct the respondent to not to charge anything towards GST and HVAT.**

5. The authority issued a notice dated 27.07.2021 of the complaint to the respondent by speed post and also on the given email address at mail@parkwoodgroup.in. The delivery reports have been placed in the file. Despite service of notice and multiple opportunities granted, neither the respondent preferred to put in appearance nor filed any reply to the complaint within the stipulated period. Accordingly, the authority was left with no other option except to proceed ex parte against it on 07.03.2023.

6. Copies of all the relevant documents 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 submission made by the complainants.



E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

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

E.II Subject-matter jurisdiction

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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.

10. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation



which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the relief sought by the complainants.

F. I Direct the respondent to handover physical possession of the subject unit along with delayed possession charges at the prescribed interest from the promissory date of delivery till actual delivery of the unit in question.

11. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

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

.....

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

12. Clause 28(a) of the buyer's agreement provides for handing over of possession and is reproduced below:

28. Possession:

a) Time of handing over the Possession

That subject to terms of this clause and subject to the FLAT ALLOTTEE (S) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and further subject to compliance with all provisions, formalities, registration of sale deed documentation, payment of all amount due and payable to the DEVELOPER by the FLAT ALLOTTEE(S) under this agreement etc., as prescribed by the DEVELOPER, the DEVELOPER proposes to hand over the possession of the FLAT within a period of thirty six (36) months from the date of signing of this Agreement. If however understood between the parties that the possession of various Block Towers comprised in the complex as also the various common facilities planned therein shall be ready & complete in phases and will be handed over to the Allottee of different Block/Towers as and when completed."

13. **Admissibility of delay possession charges at prescribed rate of interest:** Proviso to section 18 provides that where an allottee does



not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

14. 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.
15. 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%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.70%**.
16. 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:

"(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;"*

17. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., **10.70%** by the respondent/promoter which is the same as is being granted to it in case of delayed possession charges.

18. On consideration of the circumstances, the documents, submissions made by the parties and based on the findings of the authority regarding contravention as per provisions of rule 28(2), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 28(a) of the agreement executed between the parties on 20.06.2012, the possession of the subject apartment was to be delivered within 36 months from the date of execution of buyer's agreement. Therefore, the due date of handing over possession was 20.06.2015. The respondent has failed to handover possession of the subject apartment till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit to the complainants as per the terms and conditions of the buyer's agreement dated 20.06.2012 executed between the parties. Further, no OC/part OC has been granted to the project. Hence, this project is to



be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottees.

19. The respondent/promoter is under an obligation as per section 17 of Act to get the conveyance deed executed in favour of the complainants. The said relief can only be given after obtaining occupation certificate from the competent authority. Hence, respondent is directed to execute the conveyance deed in favour of complainants within three months from the date of issuance of occupation certificate.
20. Section 19(10) of the Act obligates the allottees to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate is yet not obtained. The respondent shall offer the possession of the unit in question to the complainant after obtaining occupation certificate, so it can be said that the complainants shall come to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainants should be given 2 months time from the date of offer of possession. This two months of reasonable time is being given to the complainants keeping in mind that even after intimation of possession practically they have to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 20.06.2015 till the expiry of 2 months from the date of offer of possession or actual handing over of possession, whichever is earlier.

21. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the agreement dated 20.06.2012 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 respondent is established. As such the allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 20.06.2015 till the date of offer of possession plus 2 months or actual handing over of possession, whichever is earlier; at prescribed rate i.e., 10.70 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

F.II Direct the respondent to not to charge anything on increase in super area of the unit.

22. The authority is of the considered opinion that each and every minute detail must be apprised, schooled and provided to the allottees regarding the increase/decrease in the super area and they should never be kept in dark or made to remain oblivious about such an important fact i.e., the exact super area till the receipt of the offer of possession letter in respect of the unit. And accordingly, the area of the unit shall vary due to any increase and decrease in the super area of the unit which is also mentioned in clause 1.2(d) of the buyer's agreement dated 20.06.2012. Relevant portion of clause 1.2(d) is reiterated as under:

1.2 d) Super Area

It is made clear that the super area of the Flat as defined in Annexure-II is tentative and subject to change till the construction of the GROUP HOUSING COMPLEX is complete. The Sale Price payable shall be recalculated upon confirmation by the DEVELOPER of the final super area of the said Flat and any increase or reduction in the super area of the said FLAT shall be payable or refundable without any interest, at the same



rate per square feet as agreed herein above. If there shall be an increase in super area, the FLAT ALLOTTEE (S) agrees and undertakes to pay for the increase in super area immediately on demand by the DEVELOPER and if there shall be a reduction in the super area, then the refundable amount due to the FLAT ALLOTTEE (S) shall be adjusted by the DEVELOPER from the final installment as set forth in the schedule of payments appended in Annexure I.

23. However, respondent vide letter dated 27.09.2017 duly intimated the complainants regarding revision of the super area which was made on recommendations from the architects vide certificate dated 25.04.2017 and the same was in final conformity with the information submitted by it to the concerned authorities under the Act of 2016. Hence, the complainants are liable to pay the amount for increased area at the same rate at which booking was made by them.

F.III Direct the respondent to not to charge anything towards GST.

24. For the projects where the due date of possession was prior to 01.07.2017 (date of coming into force of GST), the respondent/promoter is not entitled to charge any amount towards GST from the complainant/allottees as the liability of that charge had not become due up to the due date of possession as per the builder buyer's agreements.

F.IV Direct the respondent to not to charge anything towards HVAT.

28. The promoter is entitled to charge VAT from the allottees for the period up to 31.03.2014 @ 1.05% (one percent VAT + 5 percent surcharge on VAT) under the amnesty scheme. However, if the respondent opted for composition levy, then also, the incidence of such taxes shall be borne by the respondent only and if composition scheme is not availed, VAT may be charged on proportionate basis



subject to furnishing of proof of having its actual payment to the concerned taxation Authority.

F. Directions of the authority

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

- i. The respondent is directed to pay interest to the complainants against the paid-up amount at the prescribed rate of 10.70% p.a. for every month of delay from the due date of possession i.e., 20.06.2015 till actual handing over of possession or valid offer of possession after obtaining occupancy certificate plus two months, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
- ii. The complainants are directed to pay outstanding dues if any after adjustment of interest for the delayed period;
- iii. The arrears of such interest accrued from 20.06.2015 till the date of order by the authority shall be paid by the promoter to the allottees within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottees before 10th of the subsequent month as per rule 16(2) of the rules;
- iv. The rate of interest chargeable from the allottees 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.



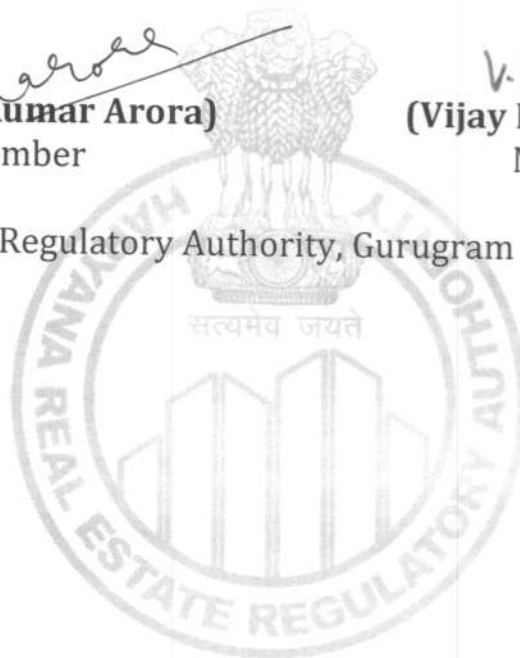
- v. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement.
- vi. The respondent is directed to execute the conveyance deed in favour of complainants within three months from the date of issuance of occupation certificate.
30. Complaint stands disposed of.
31. File be consigned to registry.


(Sanjeev Kumar Arora)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 07.03.2023



HARERA
GURUGRAM