



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

Order pronounced on: 11.04.2023

NAME OF THE BUILDER			M/s Sana Realtors Pvt. Limited
PROJECT NAME:		Precision Soho Tower	APPEARANCE
1	CR/5664/2019	Satish Kumar Bhati V/S Sana Realtors Private Limited	Sh. Vikram Nagpal proxy counsel Sh. Gaurav Raghav
2	CR/5693/2019	Kamal Kumar Luthra V/S Sana Realtors Private Limited	Sh. Vikram Nagpal proxy counsel Sh. Gaurav Raghav
3	CR/5698/2019	Parveen Saluja V/S Sana Realtors Private Limited	Sh. Vikram Nagpal proxy counsel Sh. Gaurav Raghav
4	CR/5699/2019	Dajee Singh V/S Sana Realtors Private Limited	Sh. Vikram Nagpal proxy counsel Sh. Gaurav Raghav
5	CR/5984/2019	Rakesh Kumar V/S Sana Realtors Private Limited	Sh. Vikram Nagpal proxy counsel Sh. Gaurav Raghav
6	CR/6175/2019	Rakesh Kumar V/S Sana Realtors Private Limited	Sh. Vikram Nagpal proxy counsel Sh. Gaurav Raghav
7	CR/6218/2019	Anu Verma V/S Sana Realtors Private Limited	Sh. Gaurav Rawat Sh. Gaurav Raghav
8	CR/6222/2019	Mohini Govind V/S Sana Realtors Private Limited	Sh. Gaurav Rawat Sh. Gaurav Raghav
9	CR/6777/2019	Abhishek Sinha V/S Sana Realtors Private Limited	Sh. Gaurav Rawat Sh. Gaurav Raghav
10	CR/187/2020	Rahul Chawla V/S Sana Realtors Private Limited	Sh. Harshit Goyal Sh. Gaurav Raghav

11	CR/188/2020	Rahul Chawla V/S Sana Realtors Private Limited	Sh. Harshit Goyal Sh. Gaurav Raghav
12	CR/249/2020	Col. Arun Khanna V/S Sana Realtors Private Limited	Sh. Sanjeev Sharma Sh. Gaurav Raghav
13	CR/853/2020	Surender Singh Mathur V/S Sana Realtors Private Limited	Sh. Vikram Nagpal proxy counsel Sh. Gaurav Raghav
14	CR/854/2020	Salagram Babeja V/S Sana Realtors Private Limited	Sh. Vikram Nagpal proxy counsel Sh. Gaurav Raghav
15	CR/855/2020	Sharad Bhardwaj V/S Sana Realtors Private Limited	Sh. Vikram Nagpal proxy counsel Sh. Gaurav Raghav
16	CR/876/2020	Metro City Software Pvt. Ltd. V/S Sana Realtors Private Limited	Sh. Vikram Nagpal proxy counsel Sh. Gaurav Raghav
17	CR/878/2020	Metro City Software Pvt. Ltd. V/S Sana Realtors Private Limited	Sh. Vikram Nagpal proxy counsel Sh. Gaurav Raghav
18	CR/879/2020	Metro City Software Pvt. Ltd. V/S Sana Realtors Private Limited	Sh. Vikram Nagpal proxy counsel Sh. Gaurav Raghav
19	CR/892/2020	Metro City Software Pvt. Ltd. V/S Sana Realtors Private Limited	Sh. Vikram Nagpal proxy counsel Sh. Gaurav Raghav

CORAM:

Shri Vijay Kumar Goyal
 Shri Ashok Sangwan
 Shri Sanjeev Kumar Arora

Member
 Member
 Member

ORDER

1. This order shall dispose of all the 19 complaints titled as above filed before this authority in Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the projects, namely, 'Precision Soho Tower' being developed by the same respondent promoter i.e., M/s Sana Realtors Pvt. Ltd. The terms and conditions of the builder buyer's agreements that had been executed between the parties inter se are also almost similar. The fulcrum of the issues involved in all these cases pertains to failure on the part of the respondent/promoter to deliver the timely possession of the units in question and seeking award for delayed possession charges. In several complaints, the complainants have refuted various charges like possession of the subject unit, delay possession charges and holding charges.
3. The details of the complaints, reply to status, unit no., date of agreement, due date of possession, offer of possession and relief sought are given in the table below:

PROJECT NAME 'Precision Soho Tower'

Possession Clause 15: That the possession of the said premises is proposed to be delivered by the DEVELOPER to the ALLOTTEE(S) within Three years from the date of this Agreement. If the completion of the said Building is delayed by reason of non-availability of steel and/or cement or other building materials, or water supply or electric power or slow down, strike or due to a dispute with the construction agency employed by the DEVELOPER,



lock out or civil commotion or by reason of war of enemy action or terrorist action or earthquake or any act of God or non- delivery of possession is as a result of any Act, Notice, Order, Rule or Notification of the Government and/or any other Public or Competent Authority or due to delay in action of building/zoning plans/grant of completion / occupation certificate by any Competent Authority or for any other reason beyond the control of the DEVELOPER, the DEVELOPER shall be entitled to extension of time for delivery of possession of the said premises. The DEVELOPER as a result of such a contingency arising, reserves the right to alter or vary the terms and conditions of this Agreement or if the circumstances beyond the control of the DEVELOPER so warrant, the DEVELOPER may suspend the Scheme for such period as it might consider expedient

Occupation Certificate: 18.07.2017

S.n	Com. No. Title DOF	Reply status	Apartment/ Unit No/plot no.	Date of Agreement	Due date of possession	Offer of possession	Relief Sought
1	5664/2019 Satish Kumar Bhatt V/S Sana Realtors P. Ltd D.O.F. 10.12.2019	Not received	515, 5 th floor Area: 525 sq. ft. (as per page 57 of complaint)	04.12.2010 (As per page no. 54 of complaint)	04.12.2013	Not offered TC- Rs. 19,07,325/- AP-Rs. 19,25,706/-	-Possession -DPC -Execute conveyance deed -holding charges -Litigation cost
2	5693/2019 Kamal Kumar Luthra V/S Sana Realtors Ovt. Ltd. 10.12.2019	Not Received	404, 4 th floor Area: 525 Sq. FT. (as per page 64 of complaint)	17.02.2010	17.02.2013	Not offered TC- Rs. 23,52,287/- AP-Rs. 21,87,496/-	-Possession -DPC -Execute conveyance deed -holding charges -Litigation cost
3	5698/2019 Parveen Saluja V/S Sana Realtors Pvt. Ltd. D.O.F. 10.12.2019	Not Received	443, 4 th Ground floor Area: 525 Sq. FT. (as per page 68 of complaint)	12.04.2010 as per page 66 of complaint	12.04.2013	Not offered TC- Rs. 17,91,825/- AP- Rs. 18,31,796/-	-Possession -DPC -Execute conveyance deed -holding charges -litigation cost



4	5699/2019 Dejee Singh V/S Sana Realtors Pvt. Ltd.. D.O.F. 10.12.2019	Not Received	028, Ground floor Area: 404 Sq. FT. (as per page 64 of complaint)	20.05.2010 as per page 62 of complaint	20.05.2013	Not offered TC- Rs. 27,63,360/- AP-27,34,735/-	-Possession -DPC -Execute conveyance deed -holding Charges -ligation cost.
5	5984/2019 Rakesh Kumar V/S Sana Realtors Pvt. Ltd.. D.O.F. 10.12.2019	Not Received	304, 3rd Floor, Area: 525 Sq. FT. (As per page 64 of complaint)	17.02.2010 (as per page 61 of complaint)	17.02.2013	Not offered TC- Rs. 23,31,550/- AP- Rs. 21,99,872/-	-Possession -DPC -Execute conveyance deed -holding charges -ligation cost
6	6175/2019 Rakesh Kumar V/S Sana Realtors Pvt. Ltd.. D.O.F. 10.12.2019	Not received	303, 3rd Floor, Area: 525 Sq. FT. (As per page 63 of complaint)	17.02.2010 (as per page 61 of complaint)	17.02.2013	Not offered TC- Rs. 23,31,550/- AP- Rs. 21,99,872/-	-Possession -DPC -Execute conveyance deed -holding charges -ligation cost
7	6218/2019 Anu Verma V/S Sana Realtors Pvt. Ltd.. D.O.F. 12.12.2019	Not received	33, Ground Floor, Area: 476 Sq. FT. (As per page 25 of complaint)	20.09.2020 (as per page 23 of complaint)	20.09.2013	Not offered TC- Rs. 34,17,680/- AP- Rs. 28,05,541/-	-Possession -DPC
8	6222/2019 Mohini Govind V/S Sana Realtors Pvt. Ltd.. D.O.F. 12.12.2019	Not received	024, Ground Floor, Area: 404 Sq. FT. (As per page 32 of complaint)	05.02.2011 (as per page 30 of complaint)	05.02.2014	Not offered TC- Rs. 32,64,320/- AP- Rs. 30,19,581/-	-Possession -DPC



9	6777/2019 Abhishek Sinha & Prachi Shanilya V/S Sana Realtors Pvt. Ltd.. D.O.F. 03.01.2020	Not received	034, Ground Floor, Area: 476 Sq. FT. (As per page 34 of complaint)	14.02.2011 (as per page 30 of complaint)	14.02.2014	Not offered TC- Rs. 36,67,580/- AP- Rs. 32,65,206/-	-Possession _DPC
10	187/2019 Rahul chawla & Deepati chawla V/S Sana Realtors Pvt. Ltd.. D.O.F. 15.01.2020	Not received	301, third Floor, Area: 525 Sq. FT. (As per page 14 of complaint)	26.04.2010 (as per page no. 12 of complaint)	26.04.2013	Not offered TC: Rs. 22,99,500/- AP: Rs. 19,54,786/-	-Possession -DPC
11	188/2020 Rahul chawla & Deepati chawla V/S Sana Realtors Pvt. Ltd.. D.O.F. 15.01.2020	Not received	302, third Floor, Area: 525 Sq. FT. (As per page 14 of complaint)	26.04.2010 (as per page no. 12 of complaint)	26.04.2013	Not offered TC: Rs. 22,99,500/- AP: Rs. 19,55,094/-	-Possession -DPC
12	249/2020 Arun Khanna V/S Sana Realtors Pvt. Ltd.. D.O.F. 24.01.2020	Not received	507, 5 th Floor, Area: 525 Sq. FT. (As per page 14 of complaint)	18.02.2010 (as per page no. 16 of complaint)	18.02.2013	Not offered TC: Rs. 23,32,550/- AP: Rs. 21,50,321/-	-Possession DPC -VAT -Get Conveyance deed
13	853/2020 Surinder Singh Mathur V/s Sana Realtors Pvt. Ltd.. D.O.F. 03.03.2020	Not received	508, 5 th floor Area: 525 sq.ft.	18.02.2010 (as per page no. 60 of complaint)	18.02.2013	Not offered TC: 23,32,550/- AP: Rs.24,88,585/-	-Possession -DPC -Holding charges -Maintenance charges



14	854/2020 Salag Ram Baveja & Rohit Tanjea V/s Sana Realtors Pvt. Ltd. D.O.F. 03.03.2020	Not received	309, 3 rd floor Area: 525 sq.ft.	14.05.2010 (as per page no. 64 of complaint)	14.05.2013	Not offered TC: 24,14,500/- AP: Rs.19,99,619/-	-Possession -DPC -Holding charges -Maintenance charges -Get conveyance deed
15	855/2020 Sharad Bhardwaj & Mohan Bhardwaj V/s Sana Realtors Pvt. Ltd. D.O.F. 03.03.2020	Not received	817, 8 th floor Area: 525 sq.ft.	29.05.2010 (as per page no. 66 of complaint)	29.05.2013	Not offered TC: 23,35,200/- AP: Rs.21,63,356/-	-Possession -DPC -Holding Charges Conveyance deed
16	876/2020 Metrocity Software Pvt. Ltd. V/s Sana Realtors Pvt. Ltd. D.O.F. 03.03.2020	Not received	Space no. 317, 3 rd floor. Area: 525 sq.ft.	01.01.2010 (As pe page no. 56 of complaint)	01.01.2013	Not offered TC: Rs. 19,68,250/- AP: Rs. 18,05,500/-	-Possession -DPC -Holding charges -Maintenance charges
17	878/2020 Metrocity Software Pvt. Ltd. V/s Sana Realtors Pvt. Ltd. D.O.F. 03.03.2020	Not received	Space no. 318, 3 rd floor. Area: 525 sq.ft.	01.01.2010 (As pe page no. 58 of complaint)	01.01.2013	Not offered TC: Rs. 19,68,250/- AP: Rs. 18,05,500/-	-Possession -DPC -Holding charges -Maintenance charges
18	879/2020 Metrocity Software Pvt. Ltd. V/s Sana Realtors Pvt. Ltd. D.O.F. 03.03.2020	Not received	Space no. 319, 3 rd floor. Area: 525 sq.ft.	01.01.2010 (As pe page no. 58 of complaint)	01.01.2013	Not offered TC: Rs. 19,68,250/- AP: Rs. 18,05,500/-	-Possession -DPC -Holding charges -Maintenance charges



19	879/2020 Metrocity Software Pvt. Ltd. V/s Sana Realtors Pvt. Ltd. D.O.F. 03.03.2020	Not received	Space no. 320, 3 rd floor. Area: 525 sq.ft.	01.01.2010 (As pe page no. 58 of complaint)	01.01.2013	Not offered TC: Rs. 19,68,250/- AP: Rs. 18,05,500/-	- Possession -DPC -Holding charges -Maintenance charges
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4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the builder buyer's agreement executed between the parties inter se in respect of said units for not handing over the possession by the due date. In some of the complaints, issues other than delay possession charges in addition or independent issues have been raised and consequential reliefs have been sought.
5. The delay possession charges to be paid by the promoter is positive obligation under proviso to section 18(1) of the Act in case of failure of the promoter to hand over possession by the due date as per builder buyer's agreement.
6. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under the Act, the rules and the regulations made thereunder.
7. The facts of all the complaints filed by the complainant/ allottees are also similar. Out of the above-mentioned cases, the particulars of lead case CR/5699/2019 titled as Dejee Singh Vs. M/s Sana Realtors Pvt. Ltd. are being taken into consideration for determining the rights of the allottees qua possession of the unit, delay possession charges and holding charges.



A. Unit and project related details

8. 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:

CR/5699/2019

S.No.	Heads	Information
1.	Project name and location	"Precision SOHO Tower", sector 67, Gurugram, Haryana.
2.	Project area	2.456 acres
3.	Nature of the project	Commercial colony
4.	DTCP license no. and validity status	72 of 2009 dated 26.11.2009
5.	RERA Registered/ not registered	Not registered
6.	Unit no.	028, Ground floor
7.	Unit measuring (super area)	404 sq. ft.
8.	Date of execution of flat buyer agreement	20.05.2010
9.	Note: due date of delivery of possession as per clause 15 of flat buyer agreement 3 years from the date of execution of buyer agreement i.e. 20.05.2010	20.05.2013 (Grace period is not allowed)
10.	Total consideration	Rs.27,63,360/-
11.	Total amount paid by the complainant	Rs. 27,34,735/-
12.	Occupation Certificate	18.07.2017
13.	Offer of possession to the complainant	Not offered



B. Facts of the complaint

The complainant submitted as under:

9. That the complainant booked a unit no. 028, ground floor, admeasuring 404 sq. ft. in project namely Precision Soho Tower, Sector-67, Gurugram. An "agreement to sell" dated 20.05.2010 was executed between the between them. A sum of Rs. 27,34,735/- was paid against the total consideration of Rs. 27,63,360/-
10. It is pertinent to mention here that, it was assured by the respondent at the time of agreement of the office-space that possession would be handed over to the complainant within 36 months from the date of execution of that agreement i.e., by 20.05.2013, fully completed in all aspects.
11. That the respondent issued Letter dated 28.11.2011 and with the subject 'PROGRESS OF PRECISION SOHO TOWER' making a false declaration to the complainant that the construction of the project is progressing very fast, and the units have been constructed up to the 'ground floor. However, when the complainant in the year 2012 visited the site where the project is situated, the project was already lying in a raw, desolate state and in a state of utter neglect and abandonment. It appeared that there was very little possibility of any construction and that no construction work had started despite the license (license no. 72 of 2009) being issued to the respondent in the year 2009.
12. That the installment schedule' under which the complainant was required to make payment in lieu of the booked unit/space in the project, was construction linked and according to which the complainant had paid 90% of the entire consideration amount to the respondent in the year 2013. The respondent kept the complainant and others as similarly placed in dark about the status of construction of the

project, the units of which as per clause 15 of the FBA, were required to be delivered by the respondent by the year 2013.

13. That it is pertinent to mention that the respondent had collected external development charges (EDC)/infrastructure development charges (IDC) from the complainant and others as similarly placed which were not only wrongfully and exorbitantly charged but the respondent fraudulently recused itself from depositing entire such amount in the accounts of the competent authority i.e., The Town and Country Planning Department, Government of Haryana (hereinafter referred to as 'DTCP, Haryana) thereby causing wrongful gain to itself by misappropriating the money so collected in the name of EDC/IDC from the complainant. It is pertinent to mention here that the respondent has failed to offer the possession to the complainant and to complete the project by the due date as it is still deficient of the basic amenities as committed by it in the advertisement and brochure and as per the assurances
14. That further it is important to mention that the respondent advertised that there would be 46 units on each floor of the project (As per the brochure and website and whereas it was later discovered that the exact number of units on each floor were only 34 in number, It further came to the knowledge of the complainant that the respondent on being caught for defrauding the complainant and others as similarly placed converted toilets into units and handed over the same to similarly placed customers as the complainant.
15. That further it is pertinent to mention that the said Unit of the complainant lies in tower B against which the occupation certificate was obtained by the respondent on 10.10.2019. Thus, it was illegal on the part of the respondent to even demand final payment from the



complainant without obtaining occupation certificate from the concerned authority. At this juncture, it is submitted that the possession of the said unit was due to be delivered in the year 2013 and the respondent despite accepting 90% of the total consideration amount could only be able to procure conditional occupation certificate with respect to tower -B in the year 2019 resulting in utter harassment and financial loss of the complainant.

16. That keeping in view the snail pace of work at the construction site and half-hearted promises of the respondent, and tricks of extra more and more money from the complainant and the lack of commitment in completing the project on time, has caused him great financial and emotional loss and hence, this complaint seeking possession of the unit besides delay possession charges.

C. Relief sought by the complainant:

17. The complainant has sought following relief(s):
- i. Direct the respondent to handover the possession along with prescribed rate of interest and execute the conveyance deed in favour of the complainant.
 - ii. To restrain the respondent from raising any further demand of final payment with interest and holding charges from the complainant.
18. Despite notice and due service, the respondents failed to file any written reply though oral arguments were advanced on behalf of respondent builder.
19. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be

decided on the basis of those undisputed documents and submissions made by the parties

D. Jurisdiction of the authority

20. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaints for the reasons given below:

F.I Territorial jurisdiction

21. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by the Town and Country Planning Department, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes with office 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 complaints.

F.II Subject matter jurisdiction

22. 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)(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.

23. So, in view of the provisions of the Act of 2016 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.

E. Findings on the relief sought by the complainant

24. The complainant booked a unit no. 028, ground floor, admeasuring 404 sq. ft. in project namely Precision Soho Tower, Sector-67, Gurugram. An "agreement to sell" dated 20.05.2010 was executed between the between them. A sum of Rs. 27,34,735/- was paid against the total consideration of Rs. 27,63,360/-.The inconsistent and lethargic manner, in which the respondent conducted the business and the lack of commitment in completing the project on time, caused the complainant great financial and emotional loss and hence, this complaint seeking possession of the unit besides delay possession charges.

Delay possession charges:

25. In all the complaints, the allottees intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Section 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."

26. Clause 3 of the buyer's agreement provides the time period of handing over possession and the same is reproduced below:



"3. Possession

Clause 3- 3.1.....the seller/confirming party proposes to handover the physical possession of the said unit to the purchaser(s) within a period of 36 months from the date of execution of the Flat buyer agreement (commitment period). The purchaser(s) further agrees and understands that the seller/confirming party shall additionally be entitled to a period of 180 days after the expiry of said commitment period)

27. The authority has gone through the possession clause of the agreement. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the complainant not being in default under any provision of this agreement and in compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottees that even a single default by the allottees in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning.
28. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both the builder/promoter and buyers/allottees are protected candidly. The space buyer's agreement lays down the terms that govern the sale of different kinds of properties like residentials, commercials etc. between the buyer and builder. It is in the interest of both the parties to have a well-drafted flat buyer's agreement which would thereby protect the rights of both the builder and buyers in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time



of delivery of possession of the apartment, plot or building, as the case may be and the right of the buyers/allottees in case of delay in possession of the unit.

29. **Admissibility of grace period:** The promoter proposed to hand over the possession of the said unit within period of 36 months from the date execution of buyer's agreement. It is further provided in the agreement that if the completion of the said building is delayed by reason of non-availability of steel and/or cement or other building materials, or water supply or electric power or slow down, strike or due to a dispute with the construction agency employed by the developer, lock out or civil commotion or by reason of war of enemy action or terrorist action or earthquake or any act of god or non-delivery of possession is as a result of any act, notice, order, rule or notification of the Government and/or any other public or competent authority or due to delay in action of building/zoning plans/grant of completion / occupation certificate by any competent authority or for any other reason beyond the control of the developer, the developer shall be entitled to extension of time for delivery of possession of the said premises. It is observed that the said clause is not only one sided and vague but also doesn't provide any specific period to be allowed as grace period in above mentioned exigencies. Therefore, grace period is not allowed.
30. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the prescribed rate of interest on the amount already paid by her. However, 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.

31. 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.
32. 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., 11.04.2023 is 8.7%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.
33. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

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 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;"

34. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.70% by the respondent/promoter which is the same as is being granted to him in case of delayed possession charges.
35. Now, the question for consideration arises as to for how much period, the allottees are entitled for delay possession charges. As per the buyer's agreement entered between the parties on 20.05.2010 w.r.t. the allotted unit, the due date for completion of the project and offer of possession of the allotted unit was agreed upon as 20.05.2013. But the builder failed to honour its commitment and occupation certificate of the project was received only on 18.07.2017. It is pertinent to mention here that even after the reminders there is nothing on record that any amount against the demands so raised after receipt of occupation certificate on 18.07.2017 was paid by the allottees.
36. Moreover, the fact cannot be ignored that occupation certificate is public document as well as Section 19(10) of Act also conferred obligation over complainant-allottee to take the possession of the subject unit within two months from grant of occupation certificate. The relevant part of the Act of ,2016 is reproduced as below:

Every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be

37. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. Therefore, in the interest of natural justice, the complainants should be given 2 months' time from the date of occupation certificate.



This 2 month of reasonable time is to be given to them keeping in mind that even after intimation of possession practically, one has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit and other procedural documentations etc.

38. Therefore, in such a situation, the complainant-allottees are allowed delay possession charges against the allotted units from the due date of possession i.e. 20.05.2013 till the date of receipt of occupation certificate i.e., 18.07.2017 plus two months i.e. 18.09.2017 as per the provisions of section 19(10) of the Act of ,2016.
39. In complaint no. **Cr/249/2020**, the respondent-builder charged VAT @1% of the total amount against the Government Policy and notification issued in this regard. The authority is of view that the promoter is entitled to charge VAT from the allottee for the period up to 31.03.2014 @ 1.05% (one percent VAT + 5 percent surcharge on VAT). However, for the period w.e.f. 01.04.2014 till 30.06.2017, the promoter shall charge VAT from the allottees/prospective buyers at the rate of 4.51% as the promoter has not opted for composition scheme.

Holding charges:

40. The allottees have also challenged the authority of the respondent builder to raise demand by way of holding charges on the ground that since the project is incomplete and the offer of possession is not lawful. On the contrary, the respondent submitted that all the demands have been strictly raised as per the terms of the flat buyer's agreement.
41. The authority observes that this issue already stands settled by the Hon'ble Supreme Court vide judgment dated 14.12.2020 in civil appeal no. 3864-3889/202, whereby the Hon'ble Court had upheld the order



dated 03.01.2020 passed by NCDRC, which lays in unequivocal terms that no holding charges are payable by the allottee to the developer. The relevant para of the committee report is reproduced as under:

"F. Holding Charges: The Committee observes that the issue already stands settled by the Hon'ble Supreme Court vide judgement dated 14.12.2020 in civil appeal no. 3864-3889/2020, hereby the Hon'ble Court had upheld the order dated 03.01.2020 passed by NCDRC, which lays in unequivocal terms that no holding charges are payable by the allottee to the developer. The Hon'ble Authority may kindly issue directions accordingly."

42. As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the flat. Therefore, the holding charges will not be payable to the developer. Even in a case where the possession has been delayed on account of the allottee having not paid the entire sale consideration, the developer shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed.
43. In the light of the judgement of the Hon'ble NCDRC and Hon'ble Apex Court (supra), the authority decides that the respondent promoter cannot levy holding charges on a allottee(s) as it does not suffer any loss on account of the allottee(s) taking possession at a later date even due to an ongoing court case though it would be entitled to interest at the prescribed rate for the period the payment is delayed.

Maintenance Charges:

44. The issue w.r.t. the maintenance charges was referred to by the allottees. As far as issue regarding advance maintenance charges is concerned, where the said agreements have been entered into before coming into force the Act, the matter is to be dealt with as per the provisions of the builder buyer's agreement.

45. The authority observes that since maintenance charges are applicable from the time a flat is occupied, its basic motive is to fund operations related to upkeep, maintenance, and upgrade of areas which are not directly under any individual's ownership. RERA's provisions enjoin upon the developer to see that residents don't pay ad hoc charges. Also, there should be a declaration from the developer in the documents that they are acting in own self-interest and that they are not receiving any remuneration or kick-back commission. The same has been observed by the Telangana State Consumer Disputes Redressal Commission in its judgement dated 21.01.2021 while deciding an appeal filed by India Bulls Centrum Owners Welfare Cooperative Society, which maintains a gated community at lower Tank Bund, in Hyderabad.
46. Thus, the authority is of the view that the respondent is entitled to collect advance maintenance charges as per the builder buyer's agreement executed between the parties. However, the period for which maintenance charges levied should not be arbitrary and unjustified. Generally, maintenance charges are charged by the builder/developer for a period of 6 months to 2 years. The authority is of the view that the said period is required by the developer for making relevant logistics and facilities for the upkeep and maintenance of the project. Since, the developer has already received the OC/part OC and it is only a matter of time that the completion of the project shall be achieved; its ample time for a RWA to be formed for taking up the maintenance of the project and accordingly the maintenance charges is handed over to the RWA.
47. Keeping in view the facts above, the authority deems fit that the respondent is right in demanding advance maintenance charges at the rate prescribed therein at the time of offer of possession in view of the

judgements (supra). However, the respondent shall not demand the advance maintenance charges for more than one (1) year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where the maintenance charges has been demanded for more than a year.

Litigation cost:

48. The complainant in the aforesaid relief is seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021), has held that an allottee is entitled to claim compensation 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 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. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensations.

F. Directions of the authority


49. 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 respondent is directed to pay interest at the prescribed rate of 10.70% p.a. for every month of delay from the date of due date i.e., 20.05.2013 till the receipt occupation certificate i.e., 18.07.2017 plus 2 months i.e., 18.09.2017.



- ii. The respondent is directed to adjust the amount of delay possession charges of the allotted unit as per directions detailed under para 49(i) of the order and refund the remaining amount, if any.
- iii. The arrears of such interest accrued from due date of possession till its admissibility as per direction (i) above shall be paid by the promoter to the allottee within a period of 90 days.
- iv. 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 allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- v. The respondent is directed to handover the possession of the allotted unit to the complainant completes in all aspects as per specifications of buyer's agreement within two months from date of this order
- vi. The respondent-builder is directed not to charge anything which is not part of buyers' agreement.
- vii. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the complainant. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question. Since the respondent builder has obtained occupation certificate on 04.12.2019, so respondent is directed to get the conveyance deed executed within a period of three months from the date of this order.



- viii. **Holding charges:** The respondent is not entitled to claim anything against holding charges from the complainant(s)/allottee(s) at any point of time even after being part of the buyer's agreement as per law settled by Hon'ble Supreme Court in Civil appeal nos. 3864-3889/2020 decided on 14.12.2020.
50. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
51. Complaints stands disposed off. True certified copies of this order be placed in the case file of each matter.
52. Files be consigned to registry.


Sanjeev Kumar Arora
Member


Ashok Sangwan
Member


Vijay Kumar Goyal
Member

Dated: 11.04.2023