

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

Complaint no. : 3138 of 2021
Date of filing : 17.08.2021
First date of hearing : 29.09.2021
Date of decision : 24.02.2023

Amarpal S/o Ramcharan
R/o: -C-2, Plot no. 50, Gyan Khand-2, Indirapurm,
Ghaziabad,(UP)201014

Complainant

Versus

M/s Vatika Limited
Regd. Office at: A-002, INXT City Centre, ground floor,
block A, sector 83, Vatika India Next, Gurugram-122012,
Haryana.

Respondent

CORAM:

Shri Vijay Kumar Goyal
Shri Sanjeev Kumar Arora

**Member
Member**

APPEARANCE:

Sh. Anuj Chauhan proxy counsel
Ms. Ankur Berry

Complainant
Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 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 provision of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.



A. Unit and project related details

2. The particulars of 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 | Information |
|-------|--|--|
| 1. | Name and location of the project | "Vatika Town Square" at sector 82, Vatika India Next, Gurgaon, Haryana. |
| 2. | Nature of the project | Commercial complex |
| 3. | Project area | 1.60 acres |
| 4. | DTCP License | 113 of 2008 dated 01.06.2008 valid upto 31.05.2018 71 of 2010 dated 15.09.2010 valid upto 14.09.2018 62 of 2011 dated 02.07.2011 valid upto 0.07.2024 76 of 2011 dated 07.09.2011 valid upto 06.09.2017 |
| 5. | RERA registered/ not registered | 40 of 2021 |
| 6. | RERA Registration valid upto | 31.03.2022 |
| 2. | Date of booking | 01.01.2014 |
| 3. | Date of buyer agreement | 24.02.2016 (Page 21 of complaint) |
| 4. | Unit no. | 224, 1 st floor, block A admeasuring 615 sq.ft. (page 23 of complaint) |
| 5. | Area changed at the time of intimation of possession | 655 sq.ft. (page 26 of reply) |
| 6. | Possession clause | 17.Handing over possession of the commercial unit <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</i> |



| | | |
|-----|--------------------------------|--|
| | | <i>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> (Emphasis supplied) |
| 7. | Due date of possession | 24.02.2020 [Due date of possession calculated from the date of BBA] |
| 8. | Total sale consideration | Rs. 74,56,847/- as per SOA dated 07.09.2021 (page 24 of reply) |
| 9. | Amount paid by the complainant | Rs. 21,77,628/- as per SOA dated 07.09.2021 (page 24 of reply) (29.20 %) |
| 12. | Occupation certificate | 17.02.2022 |
| 13. | Intimation of possession | 15.02.2019 (page 26 of reply) <i>*Note: Invalid as the OC has not been obtained by the respondent till now.</i> |
| 14. | Notice for termination | 06.11.2020 (page 63 of complaint) |

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
- a. That the complainant booked a unit bearing no. 224 in block A admeasuring 615 sq.ft. in project "Vatika Town square-2, Sector 82, Gurugram, Haryana-122004 vide application form dated 01.01.2014. A builder buyer agreement was executed between the above-mentioned parties on 24.02.2016 for the purchase of the unit for a basic sale consideration of the said unit as Rs. 6,058,057.50/-. All the payments were made in accordance with the payment plan annexed with the builder buyer agreement.
 - b. That the complainant till now have paid amount to the tune of Rs. 2177628/- duly acknowledged by the respondent through the statement of account provided by it. As per clause 17 of the said agreement, possession of the said unit was to be given by i.e.,



- 24.02.2020 within 48 months from the date of the agreement, further clause 17 itself made it liable in case of delay in possession to pay compensation at the rate of Rupees. 5/- per sq. ft. of the super area per month for the period of delay till the time of actual possession.
- c. That to the utter shock, the respondent offered the said unit to the complainant on 03.06.2019 without the completion of the construction work. When he visited the project site, he found the project still under construction and underdeveloped. Furthermore, it offered the possession to him without obtaining the Occupancy certificate which is totally illegal. The respondent charged interest at the rate of 18% on the amount payable which as per Act, 2016 read with Rules, 2017 is illegal and cannot be charged.
- d. That the respondent has unreasonably charged preferential location charges of Rs. 6,55,000 without any prior intimation to the complainant whereas the location of the said unit is at the end corner which is not a preferential one. As per builder buyer agreement, the size of the property was 615 Sq. Ft., However the price has been charged unreasonably on the size of 655 sq. ft by it.
- e. That complainant tried to connect the respondent via email multiple times where he kept on asking for all the concerned issues i.e., possession without OC, unlawful demand of interest at the rate of 18% charged by it, unreasonable preferential location charges and the price charged unreasonably on the increased size but got no response for the same.
- f. That the respondent on 06.11.2020 sent a notice for termination of the booked unit and threatened the complainant to pay the



outstanding dues of Rs.71,18,156/- within 7 days of such notice. The complainant duly replied to that notice for termination by it keeping all the concerned objections. The respondent illegally kept on charging interest at the rate of 18% on the amount payable without completion of the project and offering possession without OC.

- g. That to the utter dismay of the complainant and despite of timely remittance of all demands, respondent miserably failed to complete the construction of the said unit and offer possession to the complainant along with occupancy certificate.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).

- I. Direct the respondent to handover the possession of the said unit to the complainant along with a copy of OC and all amenities along with delay possession interest as per HRERA Rules.
- II. Direct the respondent to waive off the interest at the rate of 18% charged illegally on the amount payable by the complainant.
- III. Direct the respondent to waive off the unreasonable preferential location charges (PLC) of Rs. 6,55,000/-.
- IV. Direct the respondent to waive of the extra price charged on the unreasonable increase in size of the said unit.

5. 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) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent contested the complaint on the following grounds: -

- a) That the complainant has got no locus standi or cause of action to file the complaint. The complaint is based on an erroneous



interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the buyers' agreement dated 24.02.2016 as shall be evident from the submissions made in the following paras of the reply.

- b) At the very outset, it is submitted that the complaint is not maintainable or tenable in the eyes of law. The complainant has misdirected himself in filing the above captioned complaint before this authority as the relief being claimed by him cannot be said to fall within the realm of jurisdiction of this authority. It pertinent to note that the primary prayer of the complainant is of possession. However, the complainant has failed to bring to the notice of this authority that due to non-payment of instalments and failure to abide by the terms and obligations of the buyer's agreement, his allotment has been long back terminated on 06.11.2020.
- c) The complainant has prayed for relief of compensation and whereas it has been time and again clarified by this authority that the jurisdiction to grant compensation lies with the adjudicating officer. Thus, the relief so claimed could not have been claimed from the authority and the complaint ought to be dismissed due to lack of jurisdiction of this authority to grant such relief.
- d) That the complainant had come before this authority with un-clean hands. The complaint has been filed just to harass the respondent and to gain unjust enrichment. The actual reason for filing of the complaint stems from the changed financial valuation of the real estate sector, in the past few years and the allottee malicious intention to earn some easy buck. The covid pandemic has given people to think beyond the basic legal way and to attempt to gain



financially at the cost of others. He had instituted the present false and vexatious complaint against the respondent company who has already fulfilled its obligation as defined under the buyer's agreement dated 24.02.2016. As per clause 17 of the buyer's agreement, the respondent was to complete construction of the building within a period of 48 months from the date of execution of the buyer's agreement. Thus, the due date of possession being 24.02.2020 and the respondent in view of its commitment, duly intimated the completion of the building on 15.02.2019. Further, the complainant has failed to pay the last instalment due at the time of offer of possession till date. It is pertinent to mention that the respondent on 03.06.2019, sent a letter of completion to the complainant of possession of the unit. Also, the unit had already been offered to the complainant on 15.02.2019 and due to non-payment of the instalment, the respondent had no choice but to terminate the booking of the complainant on 06.11.2020. It is pertinent to mention here that for the fair adjudication of grievance as alleged by the complainant, detailed deliberation by leading the evidence and cross examination is required. Thus, only the civil court has jurisdiction to deal with the cases requiring detailed evidence for proper and fair adjudication.

- e) The complainant has failed to bring to light that the complainant was aware from the time booking that the preferential location charges would be applicable to the unit and the same would be due as per the agreed payment plan. The charges for PLC have been clearly mentioned in the booking application as well as the buyer's agreement dated 24.02.2016. The unit of the complainant being



located on the first floor of the building, the respondent had duly charged for the PLC. The demand for the PLC by it was as per the terms of the buyers' agreement and also the booking application. Thus, the complainant cannot come at this belated stage and demand waiver of the said amount.

- f) It is submitted that the complainant entered into an agreement i.e., builder buyers' agreement dated 24.02.2016 owing to the name, good will and reputation of the respondent. The respondent in terms with the buyers' agreement, promised to deliver the possession the commercial unit within the time frame as defined under clause 10 the buyer's agreement. Accordingly, the possession was offered on 15.02.2019. Even though it repeatedly informed and reminded him about the offer of possession and payment of dues yet, the complainant delayed the same on one pretext or the other. The respondent diligently pursued the complainant and sent reminder notices on 05.03.2019 and 17.06.2019. Even after the respondent's efforts, the complainant failed to make payment of the instalment due at the time of offer of possession and thus the only option respondent had was to terminate his booking on 06.11.2020. The complaint thus, not having a speck of truth and genuineness ought to be dismissed and heavy cost be imposed upon him for wasting the precious time of this authority.
- g) The complaint had been filed on the basis of incorrect understanding of the object and reasons of enactment of the Act, 2016. The legislature in its great wisdom, understanding the catalytic role played by the real estate sector in fulfilling the needs and demands for housing and infrastructure in the country and the



absence of a regulatory body to provide professionalism and standardization to the said sector and to address all the concerns of both buyers and promoters in the real estate sector, drafted and notified the Act, 2016 aiming to gain a healthy and orderly growth of the industry. The Act has been enacted to balance the interest of consumers and promoter by imposing certain responsibilities on both.

- h) The complaint in the manner of its portrayal of facts and circumstances creates façade and attempts to hide the actual truth of the matter. It is humbly submitted that the respondent had sent letter dated 15.02.2019 intimating him to make the remaining of RS. 59,96,392/- by 26.02.2019. Yet, he failed to clear the dues and take the physical possession. The said position has already been admitted by the complainant. The complainant is attempting to seek an advantage of the slowdown in the real estate sector, and it is apparent from the facts of the present case that his main purpose is to harass the respondent by engaging and igniting frivolous issues with ulterior motive to pressurize the company. Thus, the complaint is without any basis and no cause of action has arisen till date in favour of the complainant and against the respondent. Hence, the complaint deserves to be dismissed.
- i) It is brought to the knowledge of this authority that the complaint is guilty of placing untrue facts and is attempting to hide the true colour of the intention of the complainant. Before signing the buyers' agreement, the complainant was well aware of the terms and conditions as imposed upon the parties under the buyer's agreement and only after thorough reading the said agreement



signed and executed. Further, the hurdles faced by the respondent in execution of the development activities were informed to the complainant and nothing was hidden by it.

j) That the various contentions raised by the complainant are fictitious, baseless, vague, wrong and created to misrepresent and mislead the authority, for the reasons stated above. It is further submitted that none of the reliefs as prayed for by the complainant are sustainable, in the eyes of law. Hence, the complaint is liable to be dismissed with imposition of exemplary cost for wasting the precious time and efforts of the authority. The present complaint is an utter abuse of the process of law, and hence deserves to be dismissed.

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

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

9. 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

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(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.

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

F. Findings on the relief sought by the complainant.

- F.1 Direct the respondent to handover the possession of the said unit to the complainant along with a copy of OC and all amenities along with delay possession interest as per Rules.**
12. The complainant was allotted the subject unit on the basis of application dated 01.01.2014 for a total sale consideration of Rs. 74,56,847/-. A builder buyer agreement was executed between the parties w.r.t that unit on 24.02.2016. The complainant stated depositing payments against that unit and paid a total sum of RS. 21,77,628/- i.e., 29.20% against 35% of the payment plan as evident from statement of account



dated 07.09.2021. The due date for completion of the project and offer of possession of the allotted unit was agreed upon between the parties as 24.02.2020. It is the case of complainant that the respondent/builder was unable to complete the project and offer possession of the allotted unit within the stipulated time. But the version of respondent is otherwise and who took a plea that after the completion of the project, it informed the allottee about the same on 15.02.2019, followed by an offer of possession of the allotted unit and payment of the amount due. But the allottee failed to pay that amount due leading to termination of allotment of the unit vide letter dated 06.11.2020. The respondent sent an intimation of possession of the allotted unit to the complainant vide letter dated 15.02.2019 but without obtaining occupation certificate and ultimately issuing conditional notice for termination of the unit vide letter dated 06.11.2020 which cannot be said to be legal and valid in the eyes of law. The respondent/builder failed to complete the project by the due date i.e., 24.02.2020. So, offering that unit for possession vide letter dated 15.02.2019 and later on cancelling the same vide letter dated 06.11.2020, are not sustainable in the eyes of law. Secondly, as per the payment plan attached with the buyer's agreement dated 24.02.2016, the allottee was required to pay 7.5%, 15%, 12.5% & 65% of BSP, at the time of booking, within 90 days or allotment whichever is later, within 6 months from the date of booking along with remaining of BSP + other charges on offer of possession respectively. The complainant had only paid a sum of Rs. 21,77,628/- against the BSP of Rs. 60,58,057/- which is about 29.20% of the sale consideration. No doubt the allottee was required to pay 35% of the basic sale price within 6 months of the date of booking but the fact cannot be ignored that



buyer's agreement was executed between the parties after a gap of more than 2 years i.e., 24.02.2016 and the booking date being 01.01.2014. The developer raised demands against the allotted unit vide letter dated 15.02.2019, terming it as "an intimation of possession" even without completing the project and receipt of occupation certificate. So, in such a situation, the demands raised against the allotted unit and notice of termination dated 15.02.2019 & 06.11.2020 respectively without valid offer of possession are not sustainable in the eyes of law and the same are hereby ordered to be set-aside. It is contented on behalf of the respondent that the allottee was required to pay 35% of the BSP within 6 months of the date of booking i.e., by 01.07.2014 but paid a sum of Rs. 21,77,628/- approx.... merely as per the payment plan and so the termination of the unit is not liable to be set aside. But the plea advanced in this regard is devoid of merit. No doubt, the allottee failed to comply with payment plan within the stipulated period but the respondent /builder also failed to adhere to the terms and conditions of buyer's agreement, i.e., to complete the project by the due date and offer possession of the allotted unit and illegally issuing offer of possession without receipt of occupation certificate. Thus, keeping in view all these facts, the notice of termination of the allotted unit issued vide letters dated 15.02.2019 and 06.11.2020 respectively is not sustainable and the allotted unit is ordered to be restored accordingly.

F.II Direct the respondent to waive of the extra price that has been charged on the unreasonable increase in size of the said unit

The authority observes that the respondent at the time of intimation of offer of possession had increased the super area of the flat from 615 sq.ft. to 655 sq.ft. without any prior intimation and justification. The



area of the said unit can be said to be increased by 40 sq.ft. In other word, the area of the said unit was increased by 6.50%. The respondent, therefore, is entitled to charge for the same at the agreed rates since the increase in area is 40 sq.ft. which is less than 10%. However, this remains subject to the condition that the units and other components of the super area on the project have been constructed in accordance with the plans approved by the competent authorities. In view of the above discussion, the authority holds that the demand for extra payment on account of increase in the super area from 615 sq.ft. to 655 sq.ft. by the promoter from the complainant is legal but subject to condition that before raising such demands, details have to be given to the allottee and without justification of increase in super area, any demand raised is quashed.

F.III PLC

13. The complainant has contended that the respondent has unreasonably charged preferential location charges of Rs. 6,55,000/- i.e., without any prior intimation to him whereas the location of the said unit is at the end corner which is not a preferential location.
14. The complainant has sought to waive of the unreasonable preferential location charges of Rs. 6,55,000/- the amount taken under the head of preferential location. It was pleaded by the complainant that he is not liable to pay that amount to the respondent charged illegally. However, the amount detailed above has been charged as per terms & conditions of BBA and payment plan signed by the complainant. A reference in this regard may be made to clause 1.2 of buyer's agreement dated 16.02.2012 providing as under:

"2. Sale Consideration



a) *Basic Sale Consideration of the Said Commercial Unit is Rs. 6058057.50/- (Rupees Sixty Lakhs Fifty Eight Thousand Fifty Seven & Fifty Paise only) @ of Rs. 9850.50/- per sq.ft. super area, **Preferential Location Charges (PLC) is Rs. 6,15,000/- (Rupees Six Lakhs Fifteen Thousand Only) @Rs. 1000/- per sq.ft. super area and External Development Charges (EDC) & Infrastructure Development Charges (IDC) Rs.2,76,750/- (Rupees Two Lakhs Seventy Six Thousand Seven Hundred Fifty Only) @ Rs. 450/- per sq.ft. super area. The Basic Sale Consideration/Price, PLC and EDC/IDC of the Said Unit shall be paid in the following manner:***

b) (i) *Down Payment Option:*

.....
.....
.....

It is not the case of complainant that he did not agree to pay PLC or the terms and conditions as agreed upon were not adhered to by the respondent. Even while signing agreement dated 24.02.2016, the complainant was informed about the liability to pay those charges. So, now he cannot wriggle out from that commitment and take a plea that he is not liable to any amount on account of PLC.

F.IV Delay possession charges

15. 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."

16. Clause 17 the agreement to sell provides for handing over of possession and is reproduced below:

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 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.*

At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to providing necessary infrastructure specially road, sewer & water in the sector by the government, but subject to force majeure conditions or any government/regulatory authority's action, inaction or omission and reasons beyond the control of the seller. The drafting of the clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in making payment as per the plan 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 agreement to sell 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.

17. Payment 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.

18. 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 rate is followed to award the interest, it will ensure uniform practice in all the cases.

19. 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., 24.02.2023 is **8.70%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.70%**.

20. 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—

- (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;"*

21. 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 the complainant in case of delayed possession charges.
22. Vide proceeding dated 28.10.2022, the respondent through its counsel stated at bar that the occupation certificate has already been received on 17.02.2022 and provided copy of the same to be placed on record.
23. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent-builder 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 clause 17 of the agreement executed between the parties on 24.02.2016, the possession of the subject unit was to be delivered within 48 months from the date of agreement to sell. Therefore, the due date of handing over possession was 24.02.2020. The respondent has failed to handover

possession of the subject unit 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. 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-builder is established. As such, the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 24.02.2020 till date of grant of OC i.e., 17.02.2022 plus two months (17.04.2022) 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.

24. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to delay possession charges at rate of the prescribed interest @ 10.70% p.a. w.e.f. 24.02.2020 till date of grant of OC i.e., 17.02.2022 plus two months (17.04.2022) 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. V litigation cost

25. 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.* (2021-2022(1) RCR(c),357, has held that an allottee is entitled to claim compensation & litigation charges under




sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of litigation expenses

G. Directions of the authority

26. 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 notice of termination dated 06.11.2020, of the allotted unit issued by the respondent to the complainant is hereby ordered to be set-aside with a direction for restoration of the subject unit.
- ii. The respondent is directed to pay interest at the prescribed rate of 10.70% p.a. for every month of delay from the due date of possession i.e., 24.02.2020 till date of grant of OC i.e., 17.02.2022 plus two months (17.04.2022) 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.

- iii. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order as per rule 16(2) of the rules.
 - iv. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - 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% 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 the buyer's agreement.
27. Complaint stands disposed of.
28. File be consigned to registry.


Sanjeev Kumar Arora
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.02.2023


Vijay Kumar Goyal
Member