

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

**Date of decision: 25.04.2023**

NAME OF THE BUILDER		M/S REVITAL REALITY PRIVATE LIMITED.	
PROJECT NAME		"SUPERTECH BASERA"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/556/2022	Naresh Kumar V/s M/s Revital Reality Private Limited	Shri Gagan Raman Advocate and Shri Bhrigu Dhama Advocate
2.	CR/557/2022	Veena Sharma V/s M/s Revital Reality Private Limited	Shri Gagan Raman Advocate and Shri Bhrigu Dhama Advocate
3.	CR/558/2022	Neeraj Sharma V/s M/s Revital Reality Private Limited	Shri Gagan Raman Advocate and Shri Bhrigu Dhama Advocate
4.	CR/559/2022	Rohit Sharma V/s M/s Revital Reality Private Limited	Shri Gagan Raman Advocate and Shri Bhrigu Dhama Advocate
5.	CR/672/2022	Rohtash Rawat V/s M/s Revital Reality Private Limited	Shri Manish Yadav Advocate and Shri Bhrigu Dhama Advocate
6.	CR/3153/2022	Darshan Kaur V/s M/s Revital Reality Private Limited	Shri Darshan Kaur Complainant in person and Shri Bhrigu Dhama Advocate
7.	CR/5756/2022	Ankit Yadav V/s M/s Revital Reality Private Limited	Shri Gaurav Rawat Advocate and Shri Bhrigu Dhama Advocate

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

Shri Sanjeev Kumar Arora

**Member**

**ORDER**

1. This order shall dispose of all the 7 complaints titled as above filed before this authority 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 project, namely, "*Supertech Basera*" (Affordable Group Housing Project) being developed by the same respondent/promoter i.e., M/s Revital Reality Private Limited. The terms and conditions of the agreement to sell and allotment letter against the allotment of unit in the upcoming project of the respondent/builder and fulcrum of the issues involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, possession along with delayed possession charges along with interest and other.



3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location		"Supertech Basera" Sector- 79&79B, Gurugram Haryana.					
<b>Possession Clause: - 3.1 Possession</b>							
<i>"Subject to force majeure circumstances, intervention of Statutory Authorities, receipt of occupation certificate and Allottee/Buyer having timely complied with all its obligations, formalities, or documentation, as prescribed by the Developer and not being in default under any part hereof and Flat Buyer's Agreement, including but not limited to the timely payment of installments of the other charges as per payment plan, Stamp Duty and registration charges, the Developers Proposes to offer possession of the said Flat to the Allottee/Buyer <b>within a period of 4 (four) years from the date of approval of building plans or grant of environment clearance, (hereinafter referred to as the "Commencement Date"), whichever is later.</b> The Developer also agrees to compensate the Allottee/Buyer @ Rs.5.00/- (Five rupees only) per sq. ft. of the area of the flat per month for any delay in handing over possession of the Flat beyond the given promised period plus the grace period of 6 months and upto offer letter of possession or actual physical possession whichever is earlier".</i>							
Sr. No	Complaint No., Case Title, and Date of filing of complaint	Reply status	Unit No.	Date of execution of flat buyer's agreement	Due date of possession	Total Consideration/ Total Amount paid by the complainants (In Rs.)	Relief Sought
1.	CR/556/2022  Naresh Kumar V/s M/s Revital Reality Private Limited	Reply received on 26.04.2022	707, 7 <sup>th</sup> floor, tower /block - 3,  (Page no. 25 of the	22.03.2016  (Page no. 24 of the complaint)	<b>22.01.2020</b>  Note: - the due date of possession can be calculated from the date of environment	TSC: - 20,28,500/-  (As per payment plan page no. 26 of the complaint)	Possession along with interest after obtaining the OC



	Date of Filing of complaint 14.02.2022		compl aint)		clearance (22.01.2016)	AP: - 21,12,810/-  (As per receipt information page no. 20 &21, and 41 to 47 of the complaint)	
2.	CR/557/2022  Veena Sharma V/s M/s Revital Reality Private Limited  Date of Filing of complaint 14.02.2022	Reply received on 26.04.2022	1106, 11 <sup>th</sup> floor, tower /block - 3,  (Page no. 25 of the complaint)	22.03.2016  (Page no. 24 of the complaint)	<b>22.01.2020</b>  Note: - the due date of possession can be calculated from the date of environment clearance (22.01.2016)	TSC: - 20,28,500/-  (As per payment plan page no. 26 of the complaint)  AP: - 19,52,760/-  (As per receipt information page no. 20 &21, and 40 to 45 of the complaint)	Possessi on along with interest after obtainin g the OC
3.	CR/558/2022  Neeraj Kumar V/s M/s Revital Reality Private Limited  Date of Filing of complaint 14.02.2022	Reply received on 26.04.2022	0907, 9 <sup>th</sup> floor, tower /block - 3,  (Page no. 25 of the complaint)	22.03.2016  (Page no. 24 of the complaint)	<b>22.01.2020</b>  Note: - the due date of possession can be calculated from the date of environment clearance (22.01.2016)	TSC: - 20,28,500/-  (As per payment plan page no. 26 of the complaint)  AP: - 21,12,810/-  (As per receipt	Possessi on along with interest after obtainin g the OC



						information page no. 20 & 21, and 41 to 47 of the complaint)	
4.	CR/559/2022  Rohit Sharma V/s M/s Revital Reality Private Limited  Date of Filing of complaint 14.02.2022	Reply received on 26.04.2022	1207, 12 <sup>th</sup> floor, tower /block - 3,  (Page no. 49 of the complaint)	22.03.2016  (Page no. 24 of the complaint)	<b>22.01.2020</b>  Note: - the due date of possession can be calculated from the date of environment clearance (22.01.2016)	TSC: - 20,28,500/-  (As per payment plan page no. 27 of the complaint)  AP: - 19,52,760/-  (As per receipt information page 41 to 48 of the complaint)	Possession along with interest after obtaining the OC
5.	CR/672/2022  Rohtash Rawat V/s M/s Revital Reality Private Limited  Date of Filing of complaint 14.02.2022	Reply received on 26.04.2022	0206, 2 <sup>nd</sup> floor, tower /block - 14,  (Page no. 23 of the complaint)	30.04.2016  (Page no. 22 of the complaint)	<b>22.01.2020</b>  Note: - the due date of possession can be calculated from the date of environment clearance (22.01.2016)	TSC: - 19,28,500/-  (As per payment plan page no. 25 of the complaint)  AP: - 19,82,273/-  (As per statement of payment received dated 25.12.2021 page no. 37 of the complaint)	Possession along with interest



6.	CR/3153/2022  Darshan Kaur V/s M/s Revital Reality Private Limited  Date of Filing of complaint 01.06.2022	Reply received on 23.1.2022	0807, 8 <sup>th</sup> floor, tower /block - 1,  (Page no. 17 of the complaint)	28.04.2016  (Page no. 16 of the complaint)	22.01.2020  Note: - the due date of possession can be calculated from the date of environment clearance (22.01.2016)	TSC: - 19,28,500/- (As per payment plan page no. 18 of the complaint)  AP: - 19,29,899/- (As per outstanding statement dated 03.09.2019 at page no. 14 of the complaint)	Possession along with interest
7.	CR/5756/2022  Ankit Yadav V/s M/s Revital Reality Private Limited  Date of Filing of complaint 26.08.2022	Reply received on 23.11.2022	1007, 10 <sup>th</sup> floor, tower /block - 12,  (Page no. 41 of the complaint)	17.12.2015  (Page no. 40 of the complaint)	22.01.2020  Note: - the due date of possession can be calculated from the date of environment clearance (22.01.2016)	TSC: - 19,28,500/- (As per payment plan page no. 43 of the complaint)  AP: - 19,45,601/- (As per outstanding statement dated 17.08.2018 at page no. 30 of the complaint)	

**Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:**

**Abbreviation Full form**

TSC: - Total Sale consideration

AP: - Amount paid by the allottee(s)

4. The aforesaid complaints were filed against the promoter on account of violation of the agreement to sell and allotment letter against the allotment



of units in the upcoming project of the respondent/builder and for not handing over the possession by the due date, seeking award of possession along with delayed possession charges.

5. 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 allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case ***CR/556/2022 Naresh Kumar V/s M/s Revital Reality Private Limited*** are being taken into consideration for determining the rights of the allottee(s) qua delayed possession charges along with interest and others.

**A. Project and unit related details**

7. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

***CR/556/2022 Naresh Kumar V/s M/s Revital Reality Private Limited.***

S.N.	Particulars	Details
1.	Name of the project	"Supertech Basera" sector- 79&79B, Gurugram
2.	Project area	12.10 area



3.	Nature of project	Affordable Group Housing Project	
4.	RERA registered/not registered	Registered vide no. 108 of 2017 dated 24.08.2017	
5.	RERA registration valid upto	31.01.2020	
6.	RERA extension no.	14 of 2020 dated 22.06.2020	
7.	RERA extension valid upto	31.01.2021	
8.	DTPC License no.	163 of 2014 dated 12.09.2014	164 of 2014 dated 12.09.2014
	Validity status	11.09.2019	11.09.2019
	Name of licensee	Revital Reality Private Limited and others	
9.	Date of approval of building plans	19.12.2014 [as per information obtained by the planning branch]	
10.	Date of grant of environment clearance	22.01.2016 [as per information obtained by the planning branch]	
11.	Unit no.	707, 7 <sup>th</sup> floor, tower/block- 3, (Page no. 25 of the complaint)	
12.	Unit measuring	495 sq. ft. (Carpet area)	



		97 sq. ft. (Balcony area) (Page no. 25 of the complaint)
13.	Allotment letter	29.12.2015 (Page no. 22 of the complaint)
14.	Date of execution of flat buyer's agreement	22.03.2016 (Page no. 24 of the complaint)
15.	Possession clause	<p><b>3.1 Possession</b></p> <p><i>Subject to force majeure circumstances, intervention of Statutory Authorities, receipt of occupation certificate and Allottee /Buyer having timely complied with all its obligations, formalities, or documentation, as prescribed by the Developer and not being in default under any part hereof and Flat Buyer's Agreement, including but not limited to the timely payment of installments of the other charges as per payment plan, Stamp Duty and registration charges, the Developers Proposes to offer possession of the said Flat to the Allottee/Buyer within a period of <b>4 (four) years from the date of approval of building plans or grant of environment clearance, (hereinafter referred to as the "Commencement Date")</b>, whichever</i></p>



		<p><i>is later. The Developer also agrees to compensate the Allottee/Buyer @ Rs.5.00/- (Five rupees only) per sq. ft. of the area of the flat per month for any delay in handing over possession of the Flat beyond the given promised period plus the grace period of 6 months and upto offer letter of possession or actual physical possession whichever is earlier.</i></p> <p>(Page no. 28 of the complaint).</p>
16.	Grace period	<p><b>Not allowed</b></p> <p>The promoter has proposed to hand over the possession of the said flat within a period of 4 years from the date of approval of building plans (19.12.2014) or grant of environment clearance, (22.01.2016) (hereinafter referred to as the "<b>Commencement Date</b>"), whichever is later and has sought further extension of a period of 6 months (after the expiry of the said time period of 4 year) but there is no provision in relation to grace period in Affordable Group Housing Policy, 2013. As such in absence of any provision related to grace period, the said grace period of six months as sought by the respondent</p>

		promoter is disallowed in the present case.
17.	Due date of possession	22.01.2020 [Note: - the due date of possession can be calculated by the 4 years from the date of environment clearance (22.01.2016)]
18.	Total sale consideration	Rs.20,28,500/- (As per payment plan page no. 26 of the complaint)
19.	Total amount paid by the complainant	Rs.21,12,810/- (As per receipt information page no. 20&21, and 41 to 47 of the complaint)
20.	Occupation certificate	Applied but not yet obtained as stated by the counsel of respondent during proceeding.
21.	Delay in handing over possession till the date of order i.e., 25.04.2023	3 years 3 months and 3 days

### B. Facts of the complaint

8. The complainant has made the following submissions in the complaint: -
  - a. That the present complaint is being preferred by the complainant i.e., Mr. Naresh Kumar under section 31 of Act, 2016 for seeking direction against the unlawful actions of M/s. Revital Reality Pvt. Ltd. who

despite assuring the possession of the unit purchased by the complainant has failed to deliver the possession till date.

- b. That the complainant under the misrepresentation and false assurances made by the respondent and believing the same to be true & correct; applied for allotment of a unit in the project namely '**Supertech Basera**' which the respondent was developing at Sector-79, & 79B, Gurgaon, Haryana. Hence, the complainant filed an expression of interest in the said project & paid a sum of Rs. 2,63,400/- to the respondent. Thereafter, he paid a booking amount of Rs.1,01,425/- to the respondent. The same was acknowledged by the respondent vide acknowledgment letter. That based on the representations made by it, the complainant applied for allotment of a flat in the aforesaid project vide application no. 917 dated 30.12.2014.
- c. That vide offer of allotment letter dated 29.12.2015, respondent offered a residential unit bearing no. 707, 7<sup>th</sup> floor, tower-3 in the project. The total consideration for the purchase was Rs.20,99,498/- inclusive of tax.
- d. That despite the fact that the complainant paid booking amount in the year 2014, the respondent deliberately executed the flat buyer's agreement on a later date. That in view of the unit offered; a Flat buyer's agreement dated 22.03.2016 was executed between the parties. Where the complainant agreed to pay the total amount of Rs.20,99,498/- for the said unit, and the respondent assured that the delivery of possession of the said unit shall be within 4 years from the date on which the building plan gets approved.

- e. That the building plans got approved on 19.12.2014 as mentioned in the flat buyer's agreement. Hence, as per flat buyer's agreement the date of delivery of possession of the unit was supposed to be 19.12.2018. Further, as per clause 3.1, the respondent could have also utilized the grace period of 6 months in case the delivery of possession of the unit could not be delivered by 19.12.2018. Since the respondent miserably failed to hand over the possession of the unit by 19.12.2018, the grace period was utilized which led to the new date of possession i.e., 19.06.2019.
- f. The complainant in consonance to the unit purchased, paid a sum of Rs.21,12,810/- against which separate receipts were issued by it in acknowledgment of the payment.
- g. That the complainant kept on enquiring about his unit from the respondent who assured him that the delivery of the unit would be given as per the stipulated timeframe. However, the respondent failed to handover the possession of the unit despite availing the grace period i.e., by 19.06.2019. Thereafter, the complainant through repeated telephonic conversations with the officials of the respondent, asked the respondent to complete the project & provide delayed penalty as the respondent failed to deliver the possession as per the prescribed date in the agreement i.e., by 19.06.2019. However, the respondent not only avoided sharing the details of handing over of the unit with the complainant on one pretext or the other but also kept mum on the aspect of delayed penalty.

- h. That the respondent has delayed the project beyond reasonable time and despite that the respondent has not provided any delayed penalty to the complainant regarding the same
- i. That as per section 19(6) of the Act, 2016, he has fulfilled their responsibility in regard to making the necessary payments in the manner and within the time specified in the flat buyer's agreement. Therefore, the complainant herein has not breached any of the terms of the agreement dated 22.03.2016.
- j. That however to the utter dismay of the complainant, the respondent could not complete the said project & failed to deliver the possession of the unit by the due date as proposed in the flat buyer's agreement dated 22.03.2016 i.e., 19.06.2019 (including grace period of 6 months). The respondent owing to his dishonest intentions even after taking timely payments against the unit purchased has failed to deliver the possession of the unit, thereby infringing the rights of the innocent complainant who has spent their hard-earned life savings in the purchase of the said unit.
- k. That the inconsistent and lethargic manner in which the respondent has conducted his business and its lack of commitment in completing the project on time has caused the complainant great financial and emotional loss.
- l. That keeping in view the inability of the respondent in developing the project in time and in the light of the half-hearted promises made by the respondent, the chances of getting physical possession of the apartment as per the agreement in near future seems bleak and that



the same is evident of the irresponsible and desultory attitude and conduct of the respondent, consequently injuring the interest of the buyers including the complainant who has spent their entire hard earned savings in the purchase of the unit and now stands at a crossroad to nowhere.

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

9. The complainant has sought following relief(s)
  - a. Direct the respondent to pay delayed penalty due to delay in handing over of the possession @ 18% per annum, from the due date of possession till the date of actual possession of the unit is not handed over to the complainants, in favour of the complainant and against the respondent.
  - b. Direct the respondent for issuing offer of possession letter to the complainant after obtaining OC/CC from the relevant authority.
10. 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.**

11. The respondent contested the complaint on the following grounds: -
  - i. That the answering respondent is one of the leading real estate developers in the State of Haryana and NCR. It has several projects across the state, and such has built a great reputation for having the highest quality of real estate developments. The respondent has been

represented in the instant proceedings by its authorized representative, Ms. Isha Dang.

- ii. That one of its marquee projects is the “Basera”, located in sector 79, 79-B, Gurugram, Haryana. The complainant approached the respondent, making enquiries about the project, and after thorough due diligence and complete information being provided to him, sought to book an apartment in the said project. The complainant submitted an application for allotment of a unit in the above noted project.
- iii. That subsequently, vide allotment letter dated 29.12.2015 the respondent informed the complainant that vide draw of lots conducted on 04.09.2015 he was allotted unit bearing no. 707, 7<sup>th</sup> floor, tower – 3, in the said project. The payment plan for the remaining sale consideration was also detailed in the said letter.
- iv. That consequentially, after fully understanding the various contractual stipulations and payment plans for the said apartment, the complainant executed the flat buyer’s agreement dated 22.03.2016. It is pertinent to mention that the parties are bound by the agreement executed by them and its terms and conditions. The said agreement is in consonance with the Affordable Group Housing Policy, 2013 notified by the Government of Haryana.





- v. That the said policy and the terms of the agreement to sell the possession is to be handed over within 4 from the date of approval of building plans or grant of environmental clearance (EC). However, the same were subject to force majeure conditions which would hamper the development of the project. Further, in terms of clause 3.5 of the agreement the timely possession was subject to timely payments of sale consideration and the other charges. Further, it was mutually agreed that the time frame for possession was tentative and would depend upon force majeure conditions, timely payments, and completion of all required formalities. Clause "15" of the agreement details out the conditions which were agreed between the parties would constitute as "Force Majeure".
- vi. That the environmental clearance for the said project was obtained on 22.01.2016. Thus, the possession strictly as per the agreement was to be handed over by 21.01.2020.
- vii. That in interregnum, the pandemic of covid-19 has gripped the entire nation since March 2020. The Government of India has itself categorized the said event as a 'Force Majeure' condition, which automatically extends the timeline of handing over possession of the apartment to the complainant. Thereafter, it would be apposite to note that the construction of the project is in full swing, and the delay if at

all, has been due to the government-imposed lockdowns which stalled any sort of construction activity. Till date, there are several embargos qua construction at full operational level.

- viii. That the period of lockdown owing to the covid-19 first and second wave may be waived for the calculation of the DPC, if applicable to be paid by the respondent as no construction despite numerous efforts could be continued during the lockdown period.
- ix. That the delay if at all, has been beyond the control of the respondent and as such extraneous circumstances would be categorized as 'Force Majeure', and would extend the timeline of handing over the possession of the unit, and completion the project.
- x. The delay in construction was on account of reasons that cannot be attributed to the respondent. That the flat buyer agreement provides that in case of delays in delivery of unit for reasons not attributed to the developer/respondent, then it shall be entitled to proportionate extension of time for completion of said project. The relevant clauses which relate to the time for completion offering possession extension to the said project are "Clause 3" under the heading "possession" of the "agreement".
- xi. The force majeure clause, it is clear that the occurrence of delay in case of delay beyond the control of the respondent, including but not limited

to the dispute with the construction agencies employed by it for completion of the project and not a delay on account of the respondent for completion of the project.

- xii. That the timeline stipulated under the buyer's agreement was only tentative, subject to force majeure reasons which are beyond the control of the respondent. The respondent in an endeavour to finish the construction within the stipulated time, had from time to time obtained various licenses, approvals, sanctions, permits including extensions, as and when required. Evidently, the respondent had availed all the licenses and permits in time before starting the construction.
- xiii. That apart from the defaults on the part of the allottee, like the complainant herein, the delay in completion of project was on account of the following reasons/circumstances that were above and beyond the control of the respondents: -
- Shortage of labour/workforce in the real estate market as the available labour had to return to their respective states due to guaranteed employment by the Central/State Government under NREGA and JNNURM Schemes;
  - that such acute shortage of labour, water and other raw materials or the additional permits, licenses, sanctions by different

departments were not in control of the respondent and were not at all foreseeable at the time of launching of the project and commencement of construction of the complex. The respondent cannot be held solely responsible for things that are not in control of the respondent.

- xiv. The respondent has further submitted that the intention of the force majeure clause is to save the performing party from the consequences of anything over which he has no control. It is no more *res integra* that force majeure is intended to include risks beyond the reasonable control of a party, incurred not as a product or result of the *negligence or malfeasance* of a party, which have a materially adverse effect on the ability of such party to perform its obligations, as where non-performance is caused by the usual and natural consequences of external forces or where the intervening circumstances are specifically contemplated. Thus, in light of the aforementioned, it is submitted that the delay in construction, if any, is attributable to reasons beyond the control of the respondent and as such the respondent may be granted reasonable extension in terms of the allotment letter.
- xv. It is public knowledge, and several courts and quasi-judicial forums have taken cognisance of the devastating impact of the demonetisation of the Indian economy, on the real estate sector. The real estate sector

is highly dependent on cash flow, especially with respect to payments made to labourers and contractors. The advent of demonetisation led to systemic operational hindrances in the real estate sector and whereby the respondent could not effectively undertake construction of the project for a period of 4-6 months. Unfortunately, the real estate sector is still reeling from the aftereffects of demonetisation, which caused a delay in the completion of the project. The said delay would be well within the definition of 'Force Majeure', thereby extending the time period for completion of the project.

- xvi. That the complainant has not come with clean hands before this authority and has suppressed the true and material facts from this authority. It would be apposite to note that the complainant is a mere speculative investor who has no interest in taking possession of the apartment.
- xvii. That the project was registered under with the authority vide registration no. 108 of 2017 dated 24.08.2017 under the provisions of the Act of 2016.
- xviii. That the possession of the said premises was proposed to be delivered by the respondent to the allottee by 21.01.2020. The completion of the building is delayed by reason of non-availability of steel and/or cement or other building materials and/or water supply or electric power and/

or slow down strike as well as insufficiency of labor force which is beyond the control of respondent and if non-delivery of possession is as a result of any act and in the aforesaid events, the respondent shall be liable for a reasonable extension of time for delivery of possession of the said premises as per terms of the agreement executed by the complainant and the respondent. The respondent and its officials are trying to complete the said project as soon as possible and there is no malafide intention of the respondent to get the delivery of project, delayed, to the allottees. It is also pertinent to mention here that due to orders also passed by the Environment Pollution (Prevention & Control) Authority, the construction was/has been stopped for a considerable period day due to high rise in Pollution in Delhi NCR.

- xix. That the enactment of Real Estate (Regulation and Development) Act, 2016 is to provide housing facilities with modern development infrastructure and amenities to the allottees and to protect the interest of allottees in the real estate market sector. The main intention of the respondent is just to complete the project within stipulated time submitted before this authority. According to the terms of the builder buyer agreement also it is mentioned that all the amount of delay possession will be completely paid/adjusted to the complainant at the

time final settlement on slab of offer of possession. The project is ongoing project and construction is going on.

- xx. That the respondent further submitted that the Central Government has also decided to help bonafide builders to complete the stalled projects which are not constructed due to scarcity of funds. The Central Government announced Rs.25,000 Crore to help the bonafide builders for completing the stalled/ unconstructed projects and deliver the homes to the homebuyers. It is submitted that the respondent/ promoter, being a bonafide builder, has also applied for realty stress funds for its Gurgaon based projects.
- xxi. That compounding all these extraneous considerations, the ***Hon'ble Supreme Court vide order dated 04.11.2019***, imposed a blanket stay on all construction activity in the Delhi- NCR region. It would be apposite to note that the 'Basera' project of the respondent was under the ambit of the stay order, and accordingly, there was next to no construction activity for a considerable period. It is pertinent to note that similar stay orders have been passed during winter period in the preceding years as well, i.e., 2017-2018 and 2018-2019. Further, a complete ban on construction activity at site invariably results in a long-term halt in construction activities. As with a complete ban the concerned labor was let off and they travelled to their native villages

or look for work in other states, the resumption of work at site became a slow process and a steady pace of construction as realized after long period of time.

- xxii. The respondent has further submitted that graded response action plan targeting key sources of pollution has been implemented during the winters of 2017-18 and 2018-19, These short-term measures during smog episodes include shutting down power plant, industrial units, ban on construction, ban on brick kilns, action on waste burning and construction, mechanized cleaning of road dust, etc. This also includes limited application of odd and even scheme.
- xxiii. That the pandemic of covid-19 has had devastating effect on the world-wide economy. However, unlike the agricultural and tertiary sector, the industrial sector has been severally hit by the pandemic. The real estate sector is primarily dependent on its labour force and consequentially the speed of construction. Due to government-imposed lockdowns, there has been a complete stoppage on all construction activities in the NCR Area till July 2020. In fact, the entire labour force employed by the respondent were forced to return to their hometowns, leaving a severe paucity of labour. Till date, there is shortage of labour, and as such, the respondent has not been able to employ the requisite labour necessary for completion of its projects.



The Hon'ble Supreme Court in the seminal case of *Gajendra Sharma v. UOI & Ors, as well Credai MCHI & Anr. V. UOI & Ors* has taken cognizance of the devastating conditions of the real estate sector and has directed the UOI to come up with a comprehensive sector specific policy for the real estate sector. According to notification no. 9/3-2020 HARERA/GGM (Admn) dated 26.05.2020, passed by this authority, registration certificate upto 6 months has been extended by invoking clause of force majeure due to spread of corona virus pandemic in Nation, which beyond the control of respondent.

12. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submission made by the complainants.

**E. Jurisdiction of the authority**

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

**E. I Territorial jurisdiction**

14. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District.



Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

**E. II Subject matter jurisdiction**

15. 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.*

16. 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 objections raised by the respondent**

**F.I. Objections regarding the complainant being investor.**

17. The respondent has taken a stand that the complainant is the investor and not consumers, therefore, he is not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The

respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time, preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the apartment buyer's agreement, it is revealed that the complainant is buyer, and he has paid total price of **Rs.21,12,810/-** to the promoter towards purchase of an apartment in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

*"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"*

18. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment buyer's agreement executed between

promoter and complainants, it is crystal clear that the complainants are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottee being investor are not entitled to protection of this Act also stands rejected.

**F. II Objection regarding force majeure conditions:**

19. The respondent/promoter has raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as delay in shortage of labour, implementation of various social schemes by Government of India, demonetisation, lockdown due to covid-19 various orders passed by NGT, weather conditions in Gurugram and non-payment of instalment by different allottees of the project. But all the pleas advanced in this regard are devoid of merit. It is observed the plea advanced cannot be taken as the complainant was never a party to said contract and thus, there was no

privity of contract. Further, the respondent has taken a plea that there was a delay in construction of the project on account of NGT orders, orders by EPCA, orders by Hon'ble Supreme Court of India, etc but did not particularly specify for which period such orders has been made operative. Though some allottees may not be regular in paying the amount due but whether the interest of all the stakeholders concerned with the said project be put on hold due to fault of on hold due to fault of some of the allottees. Thus, the promoter/respondent cannot be given any leniency on based of aforesaid reasons. It is well settled principle that a person cannot take benefit of his own wrong.

**F. III Objection regarding delay in completion of construction of project due to outbreak of Covid-19**

20. From the bare reading of the possession clause of the flat buyer agreement, it becomes very clear that the possession of the apartment was to be delivered by **22.01.2020**. The respondent in its reply pleaded the force majeure clause on the ground of Covid- 19. The High Court of Delhi in case no. ***O.M.P (I) (COMM.) No. 88/2020 & I.As. 3696-3697/2020 title as M/S HALLIBURTON OFFSHORE SERVICES INC VS VEDANTA LIMITED & ANR. 29.05.2020*** it was held that *the past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the*



Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself. Thus, this means that the respondent/promoter has to complete the construction of the apartment/building by 22.01.2020. The respondent/promoter has not given any reasonable explanation as to why the construction of the project is being delayed and why the possession has not been offered to the complainant/allottee by the promised/committed time. The lockdown due to pandemic in the country began on 25.03.2020. So, the contention of the respondent/promoter to invoke the force majeure clause is to be rejected as it is a well settled law that ***"No one can take benefit of his own wrong"***. Moreover, there is nothing on record to show that the project is near completion, or the developer applied for obtaining occupation certificate. Thus, in such a situation, the plea with regard to force majeure on ground of Covid- 19 is not sustainable.

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

- G.I Direct the respondent to pay delayed penalty due to delay in handing over of the possession @ 18% per annum, from the due date of possession till the date of actual possession of the unit is not handed over to the complainants, in favour of the complainant and against the respondent.
- G.II Direct the respondent for issuing offer of possession letter to the complainant after obtaining OC/CC from the relevant authority.

21. 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."*

22. As per clause 3.1 of the flat buyer agreement provides for handing over of possession and is reproduced below: -

**3.1. POSSESSION**

*"Subject to force majeure circumstances, intervention of Statutory Authorities, receipt of occupation certificate and Allottee/Buyer having timely complied with all its obligations, formalities, or documentation, as prescribed by the Developer and not being in default under any part hereof and Flat Buyer's Agreement, including but not limited to the timely payment of installments of the other charges as per payment plan, Stamp Duty and registration charges, the Developers **Proposes to offer possession of the said Flat to the Allottee/Buyer within a period of 4 (four) years from the date of approval of building plans or grant of environment clearance, (hereinafter referred to as the "Commencement Date"), whichever is later.** The Developer also agrees to compensate the Allottee/Buyer @ Rs.5.00/- (Five rupees only) per sq. ft. of the area of the flat per month for any delay in handing over possession of the Flat beyond the given promised **period plus the grace period of 6 months and upto offer letter of possession or actual physical possession whichever is earlier"**.*

23. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of



terms and conditions of this agreement and application, and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this 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 allottees in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer developer agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused its 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.

**24. Due date of handing over possession and admissibility of grace period:**

The promoter has proposed to hand over the possession of the said flat within a period of 4 years from the date of approval of building plans (19.12.2014) or grant of environment clearance, (22.01.2016) (hereinafter referred to as the "Commencement Date"), whichever is later and has





sought further extension of a period of 6 months (after the expiry of the said time period of 4 year) but there is no provision in relation to grace period in Affordable Group Housing Policy, 2013. As such in absence of any provision related to grace period, the said grace period of six months as sought by the respondent/promoter is disallowed in the present case.

25. **Admissibility of delay possession charges at prescribed rate of interest:** 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.*

26. 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.



27. 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., 25.04.2023 is **8.70%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.70%**.
28. 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;"*
29. 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 her in case of delayed possession charges.
30. On consideration of the circumstances, the documents, submissions and based on the findings of the authority regarding contraventions as per provisions of rule **28(1)**, the authority is satisfied that the respondent is in

contravention of the provisions of the Act. By virtue of clause 3.1 of the agreement executed between the parties on 22.03.2016, the possession of the subject apartment was to be delivered within stipulated time within 4 years from the date of approval of building plan i.e. (19.12.2014) or grant of environment clearance i.e. (22.01.2016) whichever is later. Therefore, the due date of handing over possession is calculated by the receipt of environment clearance dated 22.01.2016 which comes out to be 22.01.2020. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession comes out to be 22.01.2020. 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. 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 complainant as per the terms and conditions of the agreement to sell dated 22.03.2016 executed between the parties. It is pertinent to mention over here that even after a passage of more than 3.3 years neither the construction is complete nor an offer of possession of the allotted unit has been made to the allottee by the builder. Further, the authority observes that there is no document on record from which it can be ascertained as to



whether the respondent has applied for occupation certificate/part occupation certificate or what is the status of construction of 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.

31. 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. 22.01.2020 till actual handing over of possession or offer of possession plus two months, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

**G.III Cost of litigations.**

32. The complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

#### **H. Directions of the authority**

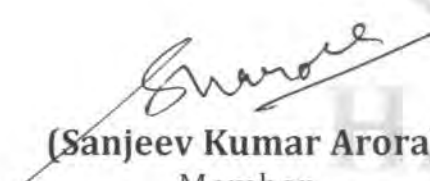
33. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent is directed to pay interest to the each of the complainant(s) 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., 22.01.2020 till a valid offer of possession plus two months after obtaining occupation certificate from the competent authority, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
- ii. The respondent shall not charge anything from the complainant(s) which is not the part of the flat buyer's agreement.
- iii. The complainant(s) are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period and after clearing all the outstanding dues, if any, the respondent shall handover the possession of the allotted unit.
- iv. The arrears of such interest accrued from due date of possession i.e., 22.01.2020 till the date of order by the authority shall be paid by the promoter to the allottee 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 10<sup>th</sup> of the subsequent month as per rule 16(2) of the rules.

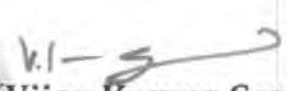
- v. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.70% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
34. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
35. Complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
36. File be consigned to registry.

  
(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 25.04.2023

  
(Vijay Kumar Goyal)

Member