

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

Complaint no. : 437-2019
Date of filing complaint : 25.02.2019
Date of decision : 20.04.2023

Neha Gupta R/O: - A-691, Sushant Lok 1, Gurugram, Galleria DLF-IV, Farrukhnagar, Haryana- 122009	Complainant
Versus	
1. M/s BPTP Limited 2. Country Wide Promoters Regd. Office at: - 28, ECE House, First Floor, K.G Marg, New Delhi	Respondents

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Niloptal Shyam and Ms.
Shivali

Advocate for the complainant

Sh. Harshit Batra

Advocate for the respondents

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

ra

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:

CR/437/2019

Sr. No.	Particulars	Details
1.	Name of the project	'Mansions Park Prime', Sector 66, Gurugram, Haryana.
2.	Unit no.	MA3-601, 6th floor, tower-M (as per buyers agreement)
3.	Unit admeasuring	2764 sq. ft. (as per buyers agreement)
4.	Revised unit area (As per offer of possession)	3044 sq. ft.
5.	Date of booking	26.04.2010
6.	Date of execution of flat buyer's agreement	29.09.2010 (Page no. 24 of complaint)
7.	Possession clause	"3. POSSESSION

Ar

"3.1 Subject to Clause 10 hereinafter or any other circumstances not anticipated and beyond the reasonable control of the Seller/Confirming Party and any restraints/restrictions from any courts/authorities and subject to the Purchaser(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and having complied with all provisions, formalities, documentation etc. as prescribed by the Seller/Confirming Party, whether under this Agreement or otherwise, from time to time **the Seller/Confirming Party proposes to hand over the possession of the Flat to the Purchaser(s) within a period of 36 months from the date of booking/registration of the Flat.** The Purchaser(s) agrees and understands that the Seller/Confirming Party shall be entitled to a grace period of 180 days, after expiry of 36 months, for applying and obtaining the Occupation

12

		Certificate in respect of the Colony from the Authority....." (Emphasis supplied)
8.	Due date of delivery of possession	26.04.2013
9.	Total sale consideration	Rs 1,46,61,690/- (Vide statement of accounts on page no. 20 of amended application by the complainant)
10.	Total amount paid by the complainants	Rs 1,01,38,665/- (Vide statement of accounts on page no. 20 of amended application by the complainant)
10.	Occupation certificate	14.02.2020
11.	Offer of possession	13.03.2020 (as per amended application by the complainant)
12.	Grace period utilization	In the present case, the promoters are seeking a grace period of 180 days for applying and obtaining of occupancy certificate in respect of the colony from the authority. As a matter of fact, from the perusal of occupation certificate dated 14.02.2020 it is implied that the promoters applied for occupation certificate only on 17.05.2017

Ra

	<p>which is later than 180 days from the due date of possession i.e., 26.04.2013. The clause clearly implies that the grace period is asked for applying and obtaining the occupation certificate, therefore as the promoters applied for the occupation certificate much later than the statutory period of 180 days, they do not fulfil the criteria for grant of the grace period. Therefore, the grace period is not allowed, and the due date of possession comes out to be 26.04.2013.</p>
--	--

B. Facts of the complaint

The complainant has submitted as under: -

3. That the complainant booked a plot in the project BPTP 'Mansions Park Prime' being developed by the respondents in Sector 66 Gurgaon.
4. That the marketing staff of the respondents allured the complainant with the colourful brochure and proposed specification and assured for timely delivery of flat, on 25.05.2010, she was allotted unit no. MA3-601 proposed to be built at 1st Floor of Mansion Tower 3 in the impugned project. The said application form was submitted jointly by complainant along with her husband Mr. Amit Dinakar, to the respondent(s) and an amount of Rs. 917,717/- as booking amount was also paid to the respondent(s). The complainant had opted for construction linked payment plan.

A

5. That a flat buyer agreement w.r.t the allotted unit was executed between the parties on 29.09.2010 for the sale of said unit number MA3-601. That the respondent(s) in terms of the application of the complainant executed the agreement for sale and agreed to the terms and conditions as set forth under this agreement.
6. That the name of Mr. Amit Dinakar was removed from the buyers agreement and other documents once a joint requested in this regard was made to the respondent(s). The respondent(s) endorsed to the said deletion of name vide letter dated 13.04.2018 in accordance. with clause 26 of the FBA.
7. That the complainant in pursuant to the agreement for sale made a total payment of Rs.10,144,636/- by different modes as per the payment plan annexed to the agreement. Details of receipt of said payments are reflected in the statement of account issued by respondent(s). The complainant has paid almost 90% amount of the sale consideration towards the cost of the unit no. MA3-601 Mansions Tower M till December, 2012 including costs towards other facilities.
8. That even after continuous inquiry by the complainant about the completion of the construction of the unit, the respondent has not provided any final date for handing over the possession. Therefore, the respondent(s) seems to be a continuous and recurring defaulter in the habit of making false claims to dupe the hard-earned money of home-buyers like the complainant. in the recent conversation dated 23.01.2019, the respondent(s) intimated that they have applied for the occupancy certificate, however, there is no clarity on the fact that

A

whether the said application for grant of occupancy certificate was made in accordance with law with all the required particulars

9. That the complainant paid IDC/EDC charges of Rs. 8,69,197/- as per the prevailing rate at the time of entering into FBA. However, the said EDC/IDC charges were reduced by the state government subsequently in 2011. Therefore, the respondent company was under a legal obligation to refund the excess EDC/IDC charges in view of the said reduction, but the respondent company has not done so till now. henceforth, the respondent company shall reverse/return such excess EDC/IDC charges to the complainant at the earliest.
10. That there is more than 5 years of unexplained delay in handing over the possession by the Respondent(s) to the complainant without any sign of them meeting the future deadline as provided to the concerned authority in accordance with law. Therefore, the complainant has genuine grievance which require the intervention of the Hon'ble Authority in order to do justice with her.

C. Relief sought by the complainant:

- (i) Direct the respondent to pay interest at the prescribed rate for every month of delay from the due date of possession till the handing over the possession, on the paid amount.
- (ii) Direct the respondent to refund the excess amount of EDC/IDC paid by the complainant.
- (iii) Direct the respondent to refund the parking charges of Rs. 3,00,000/- paid by the complainant.

A

- (iv) Direct the respondent to refund the service tax/GST paid by the complainant.
- (v) Direct the respondent to pay cost of litigation.

11. On the date of hearing, the authority explained to the respondent/promoters 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 respondents.

The respondents have contested the complaint on the following grounds: -

12. That the complainant has approached this Hon'ble Authority for redressal of grievances with unclean hands, i.e by not disclosing material facts pertaining to the case at hand and also, by distorting and/or misrepresenting the actual factual situation with regard to several aspects. It is submitted that the Hon'ble Apex Court in plethora of decisions has laid down strictly, that a party approaching the court for any relief, must come with clean hands, without concealment and/or misrepresentation of material facts, as the same amounts to fraud not only against the respondents but also against the court and in such situation, the complaint is liable to be dismissed at the threshold without any further adjudication. In this regard, a reference may be made to the following instances which establish concealment /suppression /misrepresentation on the part of the complainant:

- That the complainant further concealed from this hon'ble authority that respondents provided the complainant an

A

inaugural discount of Rs.4,83,009.00/- and also an additional benefit in the form of timely payment discount (TPD) of Rs.3,75,830.38/- thereby reducing the cost of the unit purchased by the complainant.

- That the complainant further concealed from this hon'ble authority that complainant committed default in timely payment of VAT demand raised by the respondents vide demand letter dated 05.11.2016, however the complainant failed to pay the same within the stipulated time period, therefore, the respondents were constrained to send reminder letters dated 27.01.2017, 06.03.2017 and 11.04.2017, thereafter on payment of the same, receipt dated 17.04.2017 was issued by the respondents.
- That the complainant in the entire complaint concealed the fact that no updates regarding the status of the project were provided to them by the respondents. however, complainant was constantly provided construction updates by the respondents vide emails dated 15.03.2017, 24.04.2017, 24.05.2017, 25.05.2017, 23.06.2017, 08.04.2018, 07.05.2018, 15.06.2018, 08.11.2018, 21.12.2018, 19.01.2019, 23.02.2019, 22.03.2019, 19.04.2019 and 15.05.2019.

From the above, it is very well established, that the complainant has approached this Hon'ble Authority with unclean hands by distorting/ concealing/ misrepresenting the relevant facts pertaining to the case at hand. It is further submitted that the sole intention of the

A

complainant is to unjustly enrich themselves at the expense of the respondents by filing this frivolous complaint which is nothing but gross abuse of the due process of law. It is further submitted that in light of the law laid down by the Hon'ble Apex Court, the present complaint warrants dismissal without any further adjudication.

13. It is further submitted that, the above submission implies that while entering into the agreement, the complainant had the knowledge that there may arise a situation whereby the possession could not be granted to the complainant as per the commitment period and in order to protect and/or safeguard the interest of the complainant, the respondents have provided reasonable remedy under clause-3.3, and, the complainant having accepted to the same in totality, cannot claim anything beyond what has been reduced to in writing between the parties.
14. In view of the said understanding and agreement between the parties, the demand towards EDC/IDC was raised from the complainant which accordingly stands paid by her willingly and voluntarily, thereafter receipts dated 28.04.2011, 19.10.2011 and 02.07.2012 were issued by the respondents. However, with ulterior motives, such baseless allegations have been levied at this belated stage. It is further submitted that the complainant has made payment of the said demand as per the agreed terms of the agreement without any protest or demur, therefore, the question of objecting to the said demands at this stage, cannot and does not arise. It is further submitted that the complainant is estopped from raising such allegations at this belated stage.

A

15. It is pertinent to state that covered parking charges were specifically mentioned in the price list of the FBA signed by the complainant out of his own freewill and without any protest, however, is with ulterior motives, such baseless allegations have been levied at this belated stage. It is further submitted that the complainant has made payment of the said demand as per the agreed terms of the agreement without any protest or demur, therefore, the question of objecting to the said demands at this stage, cannot and does not arise. It is further submitted that the complainants are estopped from raising such allegations at this belated stage.
16. It is further submitted that having agreed to the above, at the stage of entering into the agreement, and raising vague allegations and seeking baseless reliefs beyond the ambit of the agreement, the complainant are blowing hot and cold at the same time which is not permissible under law as the same is in violation of the 'Doctrine of Aprobate & Reprobate'. In this regard, the respondents reserve their right to refer to and rely upon decisions of the Hon'ble Supreme Court at the time of arguments, if required.
17. All the averments made in the complaint were denied in toto.
18. 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.
19. Since, common issues with regard to super area, cost escalation, STP charges, electrification charges, taxes viz GST and VAT etc, advance maintenance charges, car parking charges, holding charges, club

A

membership charges, PLC, development location charges and utility connection charges, EDC/IDC charges, fire fighting/power backup charges were involved in this cases and others of this project as well as in other projects developed by the respondents, so vide orders dated 06.07.2021 and 17.08.2021, a committee headed by Sh. Manik Sonawane IAS (retired), Sh. Laxmi Kant Saini CA and Sh. R.K. Singh CTP (retired) was constituted and was asked to submit its report on the above mentioned issues. The representatives of the allottees were also associated with the committee. A report was submitted and the same along with annexures was uploaded on the website of the authority. Both the parties were given an option to file objections to that report if any. The complainant did not file any objection and the respondents/builders sought time to file the same but did not opt for the same despite time given in this regard.

E. Jurisdiction of the authority

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

F. I Territorial jurisdiction

21. 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

12

area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

F. II Subject matter jurisdiction

22. 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.

23. 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.

H. Findings on the relief sought by the complainant.

24. Relief sought by the complainant: The complainant has sought following relief(s):

A



- i. Direct the respondent to pay interest at the prescribed rate for every month of delay from the due date of possession till the handing over the possession, on the paid amount.
- ii. Direct the respondent to refund the excess amount of EDC/IDC paid by the complainant.
- iii. Direct the respondent to refund the parking charges of Rs. 3,00,000/- paid by the complainant.
- iv. Direct the respondent to refund the service tax/GST paid by the complainant.
- v. Direct the respondent to pay cost of litigation.
- vi. Direct the respondent to quash increase in super area.
- vii. Direct the respondent to quash the cost escalation charges.

I.I Delay Possession Charges

25. The complainant intends to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under: -

"Section 18: - Return of amount and compensation

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

.....

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

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

A

"Clause 3.1 Subject to Clause 10 herein or any other circumstances not anticipated and beyond the reasonable control of the Seller/Confirming Party and any restraints/restrictions from any courts/authorities and subject to the Purchaser(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and having complied with all provisions, formalities, documentation, etc, as prescribed by the Seller/Confirming Party, whether under this Agreement or otherwise, from time to time, the Seller/Confirming Party proposes to hand over the possession of the Flat to the Purchaser(s) within a period of 36 months from the date of booking/registration of the Flat. The Purchaser(s) agrees and understands that the Seller/Confirming Party shall be entitled to a grace period of 180 (One Hundred and Eighty) days, Colony from the Authority. The Seller / Confirming Party shall give Notice of Possession in writing to the Purchaser with regard to the handing over of possession, whereafter, within 30 days, the Purchaser(s) shall clear all his outstanding dues and complete documentary formalities and take physical possession of the Flat. In case, the Purchaser(s) raises any issue with respect to any demand, the same would not entitle to the Purchaser(s) for an extension of the time for taking over possession of the Flat.

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 allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee

A

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 builder/promoter and buyer/allottee are protected candidly. The flat agreement lays down the terms that govern the sale of different kinds of properties like residential, commercials etc. between the builder and the buyer. It is in the interest of both the parties to have a well-drafted buyer's agreement which would thereby protect the rights of both the builder and buyer 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 unit, plot or building, as the case may be and the right of the buyer/allottee in case of delay in possession of the unit.

29. **Admissibility of grace period:** The promoters proposed to hand over the possession of the said unit within period of 36 months from the date of booking i.e 26.04.2010. The period of 36 months from the date of booking /registration of flat expired on 26.04.2013. So, the due date for handing over possession of the allotted unit comes to 26.04.2013. However, there is no material on record that during the period of 180 days, the period sought as grace period, the promoters have applied to any authority for obtaining the necessary approvals with respect to this project. On perusal of the occupation certificate also, it is observed the promoters obtained occupation certificate only on 14.02.2020

A

when the period of 36 months had already expired. So, the promoters cannot claim the benefit of grace period of 180 days. Consequently, the authority has rightly determined the due date of possession. Thus, the grace period is not allowed, and the due date of possession comes out to be 26.04.2013.

30. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges. However, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoters, 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.

A

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., 20.04.2023 is 8.70%. 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—

(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;"

34. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 9.80% by the respondents/promoters which is the same as is being granted to them in case of delayed possession charges.

I-II Cost Escalation

35. The buyer's agreement duly accepted and signed between the parties, the cost escalation is to be borne by the allottees. The committee while deliberating on this issue took into consideration the estimated cost of

A

construction at the time of booking/agreement, absorption of 5% inflation by the developer, measurement of cost inflation based on CPWD Index and inflation benefits to be provided for the period up to the date of actual offer of possession or up to the date of committed date of offer of possession. So, taking into consideration all these factors and a certificate of chartered accountant, the committee allowed escalation cost of Rs. 309 per square feet instead of Rs. 723 as raised by the developer. The view taken by the committee in this regard is a reasonable one and the authority agrees to the same and allow the developer to charge cost of escalation of the allotted unit at Rs. 309 per square feet instead of Rs. 723 per sq. ft. from the allottees.

I-III Car Parking Charges

36. The complainant had already agreed to pay Car Parking Charges as per clause 8 of the Booking Form and clause 2.1 (e) of the duly executed flat buyer's agreement. The committee observes that the allottees are to pay INR 3, 00,000/- for car parking slot. However, the term car parking charges has been used. This gives an impression as allotted on lease basis, whereas the car parking slot is an inseparable part of the apartment meant for exclusive use of its owner for parking. Hence, the respondents are to be directed to include the term car parking slot along with its cost in the conveyance deed to be executed with the allottees of the project.

I-V GST

37. The allottees have also challenged the authority of the respondent-builders to raised demand by way of goods and services tax. It is pleaded by the complainant that while issuing offer of possession, the

A

respondents had raised a demand of Rs.4,98,650/- under the head GST which is illegal and is not liable to repeat to be paid by him.

38. Though the version of respondents is otherwise, but this issue was also referred to the committee and who after due deliberations and hearing the affected parties, submitted a report to the authority wherein it was observed that in case of late delivery by the promoter, only the difference between post GST and pre-GST should be borne by the promoter. The promoter is entitled to charge from the allottees the applicable combined rate of VAT and service tax. Though, specifically the committee did not deal with that issue but observed that its finding would be applicable as given under the heading **other projects**. The relevant extract of the report representing the amount to be refunded is as follows:

Particulars	Spacio	Park Generation	Astire Garden	Terra	Amstoria	Other Project
HVAT (after 31.03.2014) (A)	4.51%	4.51%	4.51%	4.51%	4.51%	4.51%
Service Tax (B)	4.50%	4.50%	4.50%	4.50%	4.50%	4.50%
Pre-GST Rate (C = A+B)	9.01%	9.01%	9.01%	9.01%	9.01%	9.01%
GST Rate (D)	12.00%	12.00%	12.00%	12.00%	12.00%	12.00%
Incremental Rate E= (D-C)	2.99%	2.99%	2.99%	2.99%	2.99%	2.99%
Less: Anti-Profitteering benefit passed if any	2.63%	2.46%	0.00%	2.58%	0.00%	0.00%

A

till March 2019 (F)						
Amount to be refund Only if greater than (E- F) (G)	0.36%	0.53%	2.99%	0.41%	2.99%	2.99%

39. In this present complaint, the due date of possession is prior to the date of coming into force of GST i.e. 01.07.2017. In view of the above, the authority is of the view that the respondent-promoters are not entitled to charge GST from the complainant/allottee as the liability of GST had not become due up to the due date of possession as per the flat buyer's agreement. The authority concurs with the findings of the committee on this issue and holds that the difference between post GST and pre-GST shall be borne by the promoter

G-III STP Charges

40. While issuing of offer of possession of the allotted unit, the respondent-builders demanded a sum of Rs. 2,48,086/- under the head electrification and STP charges. It is pleaded on behalf of complainant that she is not liable to pay that amount and demand for the same has been raised illegally. But the plea advanced in this regard is devoid of merit. The authority concurs with the recommendations made by the committee and Rs. 81.50 per sq ft. would be charged towards electrification & STP charges from the allottees.

G-IV Increased Super Area

41. It is contended that the respondents have increased the super area of the subject unit vide letter of offer of possession dated 13.03.2020



without giving any formal intimation, by taking any written consent from the allottees. The said fact has not been denied by the respondents in their reply. On perusal of record, the super area of the unit was 2764 sq. ft. as per the flat buyer's agreement and it was increased by 280 sq. ft. vide letter of offer of possession, resulting in total super area of 3044 sq. ft. The authority holds that the super area (saleable area) of the flat in this project has been increased and as found by the committee, the saleable area/specific area factor stands reduced from 1.352 to 1.338. Accordingly, the super area of the unit would be revised and reduced by the respondents, and they shall pass on this benefit to the complainant/allottee(s) as per the recommendations of the committee.

G-V External development charges and internal development charges

42. It is contended by the complainant that she already paid IDC/EDC charges of Rs. 8,69,197/- as prescribed in the buyer's agreement and further the respondent builder raised unnecessary demand of additional ED/IDC. The authority of its view that the promoter would be entitled to recover the actual charges paid to the concerned departments from the complainant/allottee on pro-rata basis on that account besides electricity connection, sewerage connection and water connection, etc., i.e., depending upon the area of the unit allotted to her vis-à-vis the area of all the units in the project. The complainant would also be entitled to proof of such payments to the concerned departments along with a computation proportionate to the allotted unit, before making payments under the aforesaid heads. The

A

respondent is directed to provide specific details with regards to these charges.

Compensation:

43. 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.

H. Directions of the authority

44. 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 respondents are 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., 26.04.2013 till the date of offer of possession i.e. 13.03.2020 plus two months i.e. 13.05.2020 to the complainant(s) as per section 19(10) of the Act.

A

- ii. The arrears of such interest accrued from due date of possession till its admissibility as per direction (i) above shall be paid by the promoters to the allottees within a period of 90 days from date of this order as per rule 16(2) of the rules.
- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period against their unit to be paid by the respondents.
- iv. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.70% by the respondents/promoters which is the same rate of interest which the promoters shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- v. **Club membership charges:** The authority in concurrence with the recommendations of committee decides that the club membership charges (CMC) shall be optional. The respondents shall refund the CMC if any request is received from the allottees. Provided that if an allottee opts out to avail this facility and later approaches the respondents for membership of the club, then he shall pay the club membership charges as may be decided by the respondents and shall not invoke the terms of flat buyer's agreement that limits CMC to Rs.1,00,000/-
- vi. **STP Charges and Electrification Charges:** The authority concurs with the recommendations made by the committee

12

that Rs. 81.50 per sq. ft. would be charged towards electrification & STP charges from the allottees

- vii. **GST** The due date of possession of the allotted unit is prior to the date of coming into force of GST i.e. 01.07.2017. The respondents/promoters are not entitled to charge GST from the complainant/allottee as the liability of GST had not become due up to the due date of possession as per the flat buyer's agreements. The authority concurs with the findings of the committee on this issue and holds that the difference between post GST and pre-GST shall be borne by the promoters. The promoters are entitled to charge from the allottees the applicable combined rate of VAT and service tax as detailed in para 38 of this order
- viii. **Cost escalation:** The authority is of the view that escalation cost would be charged only @ 309 per sq. ft. instead of Rs. 723 per sq. ft. as demanded by the developer
- ix. **Increase in area:** The authority holds that the super area (saleable area) of the flat in this project has been increased and as found by the committee, the saleable area/specific area factor stand reduced from 1.352 to 1.338 . Accordingly, the super area of the unit be revised and be reduced by the respondents and they shall pass on this benefit to the complainant/allottee as per the recommendations of the committee.
- x. The respondents shall not charge anything from the complainant(s) which is not part of the flat buyer's

A

agreement save and except in the manner as prescribed in this order. The holding charges shall not be recoverable from the allottees even being part of builder buyer agreement as per the directions of the Hon'ble Supreme Court in civil appeal nos. 3864-3899/2020 decided on 14.12.2020 (supra).

45. The complaint stand disposed off.

46. File be consigned to registry.



V.I - 3
(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Date: 20.04.2023

HARERA
GURUGRAM