

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

|                                    |                     |
|------------------------------------|---------------------|
| <b>Complaint no.</b>               | <b>4144 of 2021</b> |
| <b>Date of filing of complaint</b> | <b>22.10.2021</b>   |
| <b>First date of hearing</b>       | <b>22.12.2021</b>   |
| <b>Date of decision</b>            | <b>17.05.2023</b>   |

|  |                     |
|--|---------------------|
| 1. Sh. Arvind Oberoi<br>2. Sh. Rahul Oberoi<br>R/O: Flat No 7153, Sector B10, Vasant Kunj, New Delhi | <b>Complainants</b> |
| Versus   |                     |
| Conscient Infrastructure Private Limited<br>Regd. Office: K1, Green Park Main, New Delhi             | <b>Respondent</b>   |

**CORAM:**

Shri Ashok Sangwan

**Member****APPEARANCE:**

Sh. Garv Malhotra (Advocate)

**Complainants**

Ms. Namita Mathews (Advocate)

Sh. Pralabh Bhardwaj (Advocate)

Sh. Shayon Chakrabarti (Advocate)

**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 29 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 allottee 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 of the project                | "Conscient One", Sector 109, Gurugram Haryana             |  |   |
| 2.    | Project Area                       | Not Mentioned   |  |   |
| 3.    | Nature of the project              | Commercial Retail Unit                                    |  |   |
| 4.    | DTCP License no. & validity status | 102 of 2008 dated 15.05.2008 upto 14.5.2022               | 83 of 2014 dated 09.08.2014 upto 08.08.201 | 25 of 2019 dated 25.02.2019 upto 24.02.2022 |
| 5.    | Name of Licensee                   | Shri maya Buildcon Pvt. Ltd and 5 others                  | Shiv Shakti Estate Pvt. Ltd.               | Shri maya Buildcon Pvt. Ltd.                |
| 6.    | Acres                              | 8.24  | 0.16                                       | 0.2764                                      |
| 7.    | RERA Registered / not registered   | GGM/308/40/2019/02 Dated 16.01.2019 Valid till 30.04.2021 |  |   |
| 8.    | Unit no.                           | BG 067 Block B<br>(Page no. 26 of complaint)              |  |   |



|     |  |  |
|-----|--|--|
| 9.  | Unit admeasuring                       | 640sq.ft.<br>(Page no. 26 of complaint)  |
| 10. | Conveyance Deed                        | 22.01.2021<br>(Annexure 4 of page no. 66 of complaint)   |
| 11. | Date of execution of buyer's agreement | 20.12.2014   |
| 12. | Possession clause                      | <b>8</b><br><b>8.1</b> That the Company shall, under normal circumstances, complete the construction of Block in which the Said Space is to be located within a period of <b>42 months with the grace period of 6 months and subject to force majeure from the date of execution of this. Agreement or start of construction of the Block wherein the Said Space is located (whichever is later)</b> in accordance with the said Approved Plans and specifications seen and accepted by the Allottee <b>(Emphasis supplied).</b> |
| 13. | Due date of delivery of possession     | 27.04.2019<br>(Calculated from the date of start of excavation 27.04.2015 plus 6 months)   |
| 14. | Total sale consideration               | Rs. 76,35,840/-<br>(Schedule of payments on page 54 of complainant and the same is alleged by the respondent in his facts)   |
| 15. | Total amount paid by the complainant   | Rs. 94,22,257<br>(As per statement of account on page 119 of reply)  |
| 16. | Occupation certificate                 | 01.09.2020   |

|     |                     |   |
|-----|---------------------|---|
|     |                     | (As alleged by the respondent in the facts and no annexure is placed in the file) |
| 17. | Offer of possession | 03.11.2020<br>(Page 64 of complaint)  |

**B. Facts of the complaint**

3. That the complainant – allottees booked a unit namely in the project "The Conscient One" in Sector 109, Gurugram, Haryana. The complainants were allotted unit no. BG 067 in Block - B, having super area of 640 Sq. Ft. (covered Area of 336 sq Ft.) on ground floor.
4. That till date the complainants have paid Rs. 1,03,09,135 as per the applicant ledger dated 03.10.2020 towards the payment as the total sale consideration for a retail unit.
5. That on 08.07.2013 the Initial booking amount of Rs 7,00,000/- was paid by the complainants to the respondent and almost 30% of the total sale consideration was paid within the next 90 days.
6. That the buyer's agreement was signed after, a delay of more than 1 year. That builder collected initial money and started construction only when BBA was signed. When the complainant visited site several times, they lied construction will start soon even though all drawings were approved not a stone was moved at the site. Thus, this is a violation of the section 13 of RERA Act, 2016 as the respondent failed to enter into a written agreement for sale and to register the said agreement for sale. Thereafter, the builders failed to comply with section 14 of the RERA Act, 2016 because failed to adhere to sanctioned plans, layout plans and project specifications for the



project. Thus, for all intents and purposes the due date of possession should be calculated from 21.08.2013.

7. The buyer's agreement was executed between the parties on 20.14.2012.

The possession was to be handed over within 42 months with the grace period of 6 months and subject to force majeure from the date of execution of this agreement or start of construction of the Block wherein the said space is located (whichever is later) Therefore the due date is calculated from the date of start of excavation 27.04.2015 plus 6 months and it comes out to be 27.04.2019.

8. That the project drawings were approved on 15.05.2012, yet the respondent did not start the construction of the project. The intentions of the builder was dishonest and was waiting for higher FAR and increased price. That on 18.03.2019 the revised project drawings where FAR was increased, and height of towers increased from 16 floors to 24 floors, ground coverage increased from 40 % to 60.%, car parking increased 1161 cars to 1186 cars plus 127 surface car parks. The main objective of the respondent builder was to delay project to rake in enormous profits at expense of buyers. All this is clearly marked on the plans so he cannot deny.

9. That the promoter also collected 30 % of the cost of unit and still did not start construction and started excavation for nearly after 2 years even though he had all clearances. The complainants had enquired several times when the respondent will start project and they replied they are waiting for some approvals. At the time of booking the respondent builder did not show the complainants the original plan, despite the fact that they had all

approvals but were deliberately delaying, waiting for price rise and increased in FAR . This is an unfair trade practice and also a clear case of cheating.

10. That the original buyers had opted for construction linked plan of payment .The possession of the said flat is delayed by more than almost 1 and half years despite facing serious hardship on account of the delay, the complainants do not wish to withdraw from the project but should be paid delayed possession charges/ interest as prescribed under the Act as the delay interest offered by the respondent builder is grossly inadequate. That the complainants had complied with all the terms and conditions of the builders buyers agreement but the respondent failed to meet up with their part of the contractual obligations and thus are liable for compensation for delayed possession from the due date of possession till date. It is pertinent to mention here that the complainants did not default in any payment from the very beginning but the respondents have not honored their part of commitment. Till date no adequate amount has been paid back to the complainants and the respondents are enjoying the hard-earned money of the complainants for past many years.

11. That the respondent Builder had already collected 90 percent of project cost in 2018 and yet they amended/changed the project specifications and new drawings were submitted in 2019. One can study the drawings to note that the FAR is increased by 12 per cent and ground coverage of the project is changed from 40 per cent to 60 percent. All this was done to make huge profits by the respondent Builder at the expense of the allottees. It is



pertinent to note that no approval was taken any of the existing allottees. From the new approval it was clear the builder had achieved his grand objective.

12. That the FAR of the project is increased by 25 per cent , ground coverage increased from 40 per cent to 60 per cent meaning more retail units which could be sold at higher prices. , height of the towers increased from 16 floors to 24 flodrs. , car parking increased from 1161 cars to 1186 in the basement and 127 surface cars. The open areas were reduced due to more ground coverage and car parks.

13. That this is a serious, clear and a direct Violation of Section 14 of The RERA Act, 2016 and also an Unfair Trade Practices because of change of sanction plan/ Layout Plan without taking necessary approvals from the concerned authority and 2/3rd of the allottees.

14. That on 05.10.2020 a performa invoice and a final call letter was issued by the respondent for offer of possession followed by a pre-possession letter dated 23.10.2020 was signed between the parties, but actual physical possession and possession certificate was taken on 03.11.2020 by the complainants from the respondent and the conveyance deed was executed between the parties on 22.01.2021.

15. That despite multiple attempts at getting the respondent builder to execute the conveyance deed, the respondent builder refused to execute the conveyance deed till the time an indemnity bond cum undertaking wasn't executed by the complainants. The complainants had protested against the meagre compensation given by the builder and also against the signing of

illegal and arbitrary indemnity bond. The respondent builder has offered compensation which is not even 0.2 % interest whereas he has charged 18 % interest on delayed instalment. Moreover, the complainant is a senior citizen who invested his life savings in the project to earn some income in old age. He is put to great financial stress and loss due to delay in project .

16. That the complainants should be adequately reimbursed as the burden of excess stamp duty charges due to increase in stamp duty on account of the delay on part of the builder in executing the conveyance deed, falls on the complainants and thus, the builder should reimburse the same.

17. That the respondent builder has also levied arbitrary charges of labour cess of Rs 15000, electricity and energy charges without any clear authority and legal sanction for the same and the same should be reimbursed with interest and waived off. That the Hon'ble Authority has ordered for Removal of Labour cess as per HRERA judgement 2094 of 2019, titled Ms Ishwar Devi Chabra vs Ansal Housing & Construction Ltd.

18. That it is pertinent to mention here that respondent by deceiving the complainants has delivered lesser area to the complainants but has charged for the higher area. The respondent has defaulted as well committed various violations of the sanctioned plans, approved layout plans and specifications as per the agreement/brochure and government rules and regulations in the said project. The shop area booked was 640 sq feet but they reduced to 600 sq feet due to change in structure plan and then unilaterally made adjustment in final invoice and charged for 600 square feet. But the complainant had no other option but to accept this arbitrary change.





19. That a huge amount has been fraudulently charged by the builder in the name of other charges as mentioned below for the basis amenities / utilities:

| Head of charge                                    | Amount(Rs) | Status  |
|---|------------|---|
| Common area Energy charges                        | 6,992.     | Should be part of EDC/IDC charges ,           |
| Electricity Infrastructure and Connection charges | 1,62,840   | Should be part of EDC/IDC                     |
| Labour cess                                       | 5000       | not as per law and charged as per arbitrarily |

20. That these were in the scope of developer only and was neither mentioned at the time of the agreement nor any consent of the allottees was taken in these regards. When the complainant raised the query about the same, the respondent was not ready to give the basis on which they have charged such amount or provide the breakup of the same.

21. That there is a increase in ground coverage & reduction in green area . due to change in the site's layout plan, without approval due to which there is a violation of norms of building bylaws.

22. That not disclosing the electricity allocation charges and arbitrary charging of electricity. energy, administrative, labour cess maintenance, etc: the electricity charges allocation and applicable rates by the respondent builder and the maintenance agency are arbitrary and much more than the prescribed guidelines. Thus, the respondent be directed to charge on actual bills received and fixed price of KW charges. Moreover, the respondent

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Builder is not sharing the account statement and its analysis on the total electricity audit.

23. That in the present project the respondents have charged the complainant based on super built up area whereas as per the HRERA 2016 Act, the basic sale price is liable to be paid based on the carpet area only. This is a clear and blatant violation of the provisions, rules and object of the Act. Especially when the carpet area delivered is less than 50 % of the super area.
24. That the complainants have complied with all the terms and conditions of the various documents executed but the respondent had failed to meet up with their part of the contractual obligations and thus are liable for payment of interest and penalty for delayed possession from the due date of possession till date. But till date no amount has been paid back to the complainants and the respondent is enjoying the hard-earned money of the complainants for past many years.
25. That the Complainants had approached the Respondents time and again seeking the information and status of the project and date of completion of all development works for handing over the complete physical possession of the said premises. After repeated reminders the respondent assured that they will handover of complete physical possession soon. Yet no such offer has been made till now. Moreover, the respondent represented and assured that they will hand over the possession very soon.
26. That The complainants have not been able to buy another unit in Gurugram as majority of their life's hard-earned money is stuck in this project. The complainant continues to travel from pillar to post to safeguard

their hard-earned money in seek of justice. The respondent is liable to compensate the Complainant for its above acts and deeds causing loss of time, opportunity and resources of the complainants due to the malpractices of the respondents, the complainant suffered greatly on account of mental & physical agony, harassment and litigation charges.

27. That the complainants have approached the respondent- builder for delayed possession charges and extra arbitrary charges taken by the builder and leading to filing this complaint seeking delay possession charges.

### **C. Relief Sought**

**This Authority may be pleased to direct the respondent as follows:**

- I. Direct the respondent to pay delay penalty interest on the amount paid**
- II. Direct the respondent to reimburse the arbitrary charges with interest of common area energy charges, electricity infrastructure and connection charges, labour cess**
- III. Direct the respondent to charge the complainant on the basis of carpet area only, in accordance with the new HRERA Act 2016, and not on the super built up area. As the carpet area of unit is only 52 % of super area therefore undue loading has been done and payment collected against super area.**
- IV. Direct the respondent to reimburse the arbitrary car parking charges as basement included in common areas and it is not an exclusive and enclosed garage.**
- V. Direct the respondent to provide a detailed break up of super area and common area applicable and allotted to the complainants**

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and whether it includes the area designated under one paid car parking or not.

- VI. Direct the respondent to disclose all documents and expenditures regarding available water and electricity infrastructure and units as well as the expenditure on the same, failing which an audit be done by the Authority.
- VII. Direct the respondent builder deposit back the extra amount that they have charged illegally more EDC and IDC than what is sanctioned as per the prevailing norms and rules of the government.
- VIII. Direct the respondent to reimburse the burden of excess stamp duty charges due to increase in stamp duty because of delay in executing the conveyance deed by the respondent.
- IX. Direct the respondent to provide compensation for change in super area and carpet area of 40 sq. ft and Rs. 1,50,000/- for litigation charges, mental harassment.

**D. Reply by the respondent**

That the respondent has contested the complaint on the following grounds:

28. That the complainants, desirous of purchasing a unit in the said complex, applied for the same vide application form dated 03.07.2013. In pursuance to the application made by the complainants, the respondent issued reservation letter dated 08.07.2013 reserving retail unit no. BG 067 in the said complex in favour of the complainants, subject to the execution of the buyer's agreement by the complainants.

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29. That in terms of the payment schedule agreed to by the complainants, the respondent issued the instalment call letter dated 15.07.2013, liable to be issued "Within 45 days of booking", calling upon the complainants to make a payment of Rs. 8,83,795/- towards the said unit on or before 22.08.2013. Upon receipt of the said instalment call letter, the complainants proceeded to make payment towards the same.
30. That in terms of the reservation of the said retail unit in favour of the complainants, the respondent, duly provided the relevant documents including the receipt, reservation letter, payment schedule and demand notice to the complainants and intimated the same to the complainants vide email dated 23.07.2013.
31. That the respondent thereafter, in terms of the payment schedule agreed to by the complainants, issued installment call letter dated 12.09.2013, liable to be issued "Within 90 days of booking" calling upon the complainants to pay a sum of Rs. 7,91,898/- towards the said retail unit on or before 06.10.2013. The respondent, thereafter, vide email dated 15.12.2014, intimated the complainants that the respondent had dispatched the buyer's agreement with respect to the said retail unit to the complainants for necessary execution. It is stated that in terms of the aforementioned email, the parties duly executed the buyer's agreement dated 20.12.2014 with respect to the said retail unit ad-measuring 336 sq. ft. (covered area) and having a super area of 640 sq. ft. for a total basic sale price of Rs.76,35,840/- .The respondent thereafter informed the complainants of the dispatch of the duly executed said agreement vide email dated 03.02.2015.



32. That upon the start of the excavation, in terms of the payment schedule duly agreed to between the parties, the respondent issued instalment call letter dated 09.04.2015, calling upon the complainants to pay a sum of Rs. 3,95,949/- towards the said retail unit on or before 27.04.2015. The respondent thereafter issued instalment call letter dated 06.04.2016 to the complainants, upon "commencement of basement roof slab", calling upon the Complainants to make payment of Rs. 8,72,640/- including EDC and IDC, on or before 21.04.2016. The respondent thereafter issued instalment call letter dated 03.10.2016 to the Complainants, upon "commencement of ground floor roof slab", calling upon the complainants to make payment of Rs. 8,69,826/- including EDC and IDC and the previous outstanding dues of the Complainants of Rs. 3,959/- . The respondent thereafter issued instalment call letter dated 03.04.2017 to the complainants, upon "commencement of 1st floor roof slab", calling upon the complainants to make payment of Rs. 8,73,785/- including EDC and IDC, on or before 24.04.2017 and another Instalment Call Letter dated 01.11.2017 was issued to the complainants, upon "commencement of 2nd floor roof slab", calling upon the complainants to make payment of Rs. 9,31,053/-

33. The complainants, thereafter, vide email dated 14.01.2018, provided the respondent with the TDS Certificate qua the payments made by the complainants and also informed the respondent that the Complainant had paid a sum of Rs. 9,310/- The complainants, vide the said email requested the respondent to provide a confirmation of the receipt. The respondent, vide email dated 15.01.2018, duly confirmed the receipt of Form 16B.



34. The respondent thereafter issued instalment call letter dated 06.07.2018 to the complainants, upon "commencement of internal plaster", calling upon the complainants to make payment of Rs. 13,06,243/- on or before 23.07.2018. The complainants, thereafter, vide email dated 08.09.2018, provided the respondent with the TDS certificate qua the payments made by the complainants and also informed the respondent that the complainant had paid a sum of Rs. 13,062.43/- .The complainants, vide the said email requested the respondent to provide a confirmation of the receipt and also requested the respondent to provide the update ledger account to the complainants. The respondent, vide email dated 11.09.2018, duly confirmed the receipt and provided the statement of account qua the said retail unit to the complainants.

35. That the respondent thereafter issued instalment call letter dated 08.10.2018 to the complainants, upon "commencement of external plaster", calling upon the complainants to make payment of Rs.13,06,245/- including EDC and IDC, on or before 26.10.2018. The complainants, thereafter, vide email dated 26.10.2018 informed the respondent that the complainants had remitted a payment of Rs. 12,93,182/- after the deduction of TDS, towards the said retail unit, which payment was confirmed by the respondent vide email dated 27.10.2018. The respondent thereafter issued instalment call letter dated 17.01.2019 to the complainants, upon "commencement of flooring", calling upon the complainants to make payment of Rs. 4,27,606/- on or before 04.02.2019. The complainants, thereafter, vide email dated 05.02.2019 informed the respondent that the complainants had remitted a

payment of Rs. 4,23,330/- towards the said retail unit, which payment was confirmed by the respondent vide email dated 07.02.2019.

36. That thereafter, the respondent revised the layout plans for the said complex and had issued a public notice, in widely circulated newspapers, stating therein that there has been a revision in plan of the tower within which the said retail unit is situated and further, called upon the public at large to raise any objection qua such revision of plans. It is pertinent to note herein that the complainants had at the relevant time failed to raise any objection qua the revision in plan and now at a belated stage, cannot raise such issues before this Hon'ble Court. It is relevant to state that the revision in the building plan was done with the approval of the Director of Town and Country Planning, Haryana.

37. The respondent, upon receipt of the occupation certificate qua the block within which the said retail unit is located and in terms of the said agreement, thereafter issued final call letter dated 05.10.2020 calling upon the complainants to take possession of the said retail unit upon clearance of their outstanding dues amounting to Rs. 1,58,677/- on or before 05.11.2020 excluding interest amounting to Rs. 391/-

38. That The complainants, upon receipt of the final call letter dated 05.10.2020, issued emails dated 23.10.2020 and 27.10.2020, raising certain concerns with respect to the said retail unit. The respondent, upon receipt of the said emails duly replied to the same vide email dated 27.10.2020 requesting the complainants to visit the office of the respondent to amicably resolve the issues raised by the complainants. The complainants, in reply to



the above email, vide email dated 28.10.2020 informed the respondent, that owing to the ongoing pandemic, the complainants would prefer a virtual meeting. The respondent, upon becoming aware of the alleged concerns of the complainants qua the said unit, duly satisfied the same and it was only thereafter that the complainants, vide possession certificate dated 03.11.2020 took possession of the said retail unit. It is pertinent to state that the complainant, at the time of taking possession of the said retail unit, raised no alleged concerns qua the same and instead duly executed the said possession certificate. It is also pertinent to state that admittedly, the complainants duly executed the conveyance deed on 22.01.2021.

39. That the conveyance deed of the said retail unit duly provides that the complainants are fully satisfied with all aspects of the said retail unit, including the construction of the said retail unit. The conveyance deed in fact clearly states that the complainants are satisfied that the construction of the said retail unit has been undertaken in accordance with the drawings, designs, plans and specifications as agreed between the complainants and the respondent vide the said agreement and have also verified and satisfied themselves with all other aspects/promises/assurances made in respect of the said retail unit by the respondent, more specifically provided in the said agreement. It is therefore evident that the complainants were fully satisfied with the said retail unit, with the same being in complete consonance with the said agreement and the present complaint is nothing but an afterthought on the part of the complainants to extract monies that are neither due nor payable by the respondent.



40. That the complainants thereafter addressed email dated 04.11.2020 stating that owing to financial constraints, the complainants had taken the possession of the said retail unit. The complainants vide the said email also stated that the possession of the said retail unit had been taken under protest by the complainant since the alleged delayed penalty under RERA had not been settled. The complainants also alleged that at the time of taking possession, allegedly, a representative of the respondent insisted that the complainants had to sign the no dues certificate and allegedly no comment or remark would be accepted on the above certificate. The complainants in the said email alleged that the complainants had allegedly signed the said document under duress and coercion. It is stated that the respondent had duly addressed all alleged issues and concerns raised by the complainants and it was only thereafter that the complainants proceeded to take possession of the said retail unit. It is stated that the said email dated 04.11.2020 was nothing but an attempt on the part of the complainants to illegally extract monies that are neither due nor payable to the complainants. The respondent, upon receipt of the said email from the complainants, replied to the same vide letter dated 24.11.2020 duly clarifying that the complainants had taken possession of the said retail unit only after meeting the representatives of the respondent and satisfying themselves with respect to all their grievances. The respondent also informed the complainants that the complainants had been duly granted compensation in terms of the said agreement and the said possession certificate had been executed by the complainants after being completely satisfied in all respects.



41. That the respondent has always acted in consonance of the said agreement. It is stated that on a conjoint reading of Clause 8.1 and 8.3 of the said agreement, the respondent was required to complete the construction of the block in which the said retail unit is located within a period of 42 months with the grace period of 6 months subject to force majeure circumstances from the date of execution of the agreement or start of the construction of the block. It is stated therefore, that under the abovementioned clause of the said agreement, the respondent was liable to only complete the construction of the said retail unit within a period of 48 months, including the grace period of 6 subject to force majeure conditions. It is apposite to state that the respondent had successfully completed the construction of the block within which the said retail unit was situated, pursuant to which, the respondent, in order to handover the possession of the said retail unit, applied for occupation certification on 23.07.2019. In turn, the occupation certification for the said block was duly received on 01.09.2020. It is stated that under the said agreement, the Respondent was liable to complete the construction of the said retail unit by 20.12.2018, including the grace period of 6 months, subject to force majeure conditions. Needless to state that despite the respondent facing harsh force majeure circumstances in completing the construction of the block within which the said retail unit was located, the respondent as a goodwill gesture proceeded to grant compensation to the tune of Rs. 28,918/- . It is stated that the respondent had endeavoured to complete the construction of the said complex within the time period as stipulated under the said Agreement,

however, owing to force majeure circumstances, there had been a slight delay in the construction of the said Complex, which reasons are detailed hereinbelow.

- A.** Order dated 08.11.2016 passed by the Hon'ble National Green Tribunal: The Hon'ble National Green Tribunal vide Order dated 08.11.2016 in Original Application No. 21/2014 titled "Vardhaman Kaushik v. Union of India & Ors." banned the usage of any stone crusher in Delhi NCR, transportation of all construction material in Delhi NCR and also banned all construction activity in Delhi NCR for a period of one week. It is submitted on behalf of the respondent that the stoppage of all construction activities in Delhi NCR vide the said Order resulted in the labour engaged at site to abandon the site due to such stoppage and the Respondent was able to re-mobilize the labour for construction at the site of the said complex after approximately 30 (Thirty days from the lifting of the ban.
- B.** Order dated 09.11.2017 passed by the Hon'ble National Green Tribunal: The Hon'ble National Green Tribunal vide Order dated 09.11.2017 in Original Application No. 95/2014 titled "Vardhaman Kaushik v. Union of India & Ors." once again banned all construction (structural) activity of any kind in the entire NCR till 14.11.2017 and also banned any digging on construction sites till 14.11.2017. As has already been stated hereinabove, such a ban by the Hon'ble National Green Tribunal on construction activities, though only for a short duration caused large delays in the construction of the said Complex



as with each ban, the labour present on the site of the said Complex abandoned the site and it took the Respondent at least 15 to 30 days after the lifting of the ban imposed by the Hon'ble National Green Tribunal to re-mobilize the labour at the site of the said complex.

- C.** Notice dated 21.09.2017 issued by the Superintendent (DMC) For the Additional Chief Secretary & Financial Commissioner to Govt. of Haryana, Revenue and Disaster Management Department: It is submitted that an Alert/Warning for Heavy Rainfall was issued by the Superintendent (DMC) for the Additional Chief Secretary & Financial Commissioner to the Govt. of Haryana, Revenue and Disaster Management Department stating that heavy rainfall warnings had been issued from 21.09.2017 to 23.09.2017 for the districts of Panchkula, Ambala, Yamunanagar, Kurukshetra, Kaithal, Karnal, Panipat, Sonipat, Gurugram, Faridabad, Palwal, Mewat and adjoining areas. It is submitted that upon the issuance of the abovementioned Alert/Warning, the construction at the site of the said complex again came to stoppage due to the said alert for a period of 3 days, once again causing delay in the said complex.

- D.** Direction dated 27.10.2018 bearing No. EPCA-R/2018/L-91 issued by the Environment Pollution (Prevention & Control)

Authority for the National Capital Region: It is stated that a Direction was issued by the Environment Pollution (Prevention & Control) Authority for the National Capital Region dated 27.10.2018 bearing No. EPCA-R/2018/L-91 wherein the said Authority had directed

stoppage of all construction activity involving excavation, civil construction (excluding internal finishing/work where no construction material is used) in Delhi and the NCR districts from 01.11.2018 to 10.11.2018. Hereto annexed and marked as Annexure R-29 is a copy of the Direction dated 27.10.2018 bearing No. EPCA-R/2018/L-91 issued by the Environment Pollution (Prevention & Control) Authority for the National Capital Region.

E. Direction dated 24.12.2018 bearing No. EPCA-R/2018/L-113 issued by the Environment Pollution (Prevention & Control) Authority for the National Capital Region: It is submitted that another Direction dated 24.12.2018 bearing No. EPCA-R/2018/L-113 was issued by the Environment Pollution (Prevention & Control) Authority for the National Capital Region wherein once again the said Authority gave the direction to stop construction activities in Delhi, Faridabad, Gurugram, Ghaziabad and Noida till 26.12.2018.

F. That it is submitted on behalf of the respondent, as has been reiterated above, with each stoppage of construction by the Hon'ble National Green Tribunal and/or any other Authority as stated above, irrespective of the duration of the such ban, the labour at the site would abandon the site of the said Complex, thereby causing hardship to the Respondent in re-mobilization of such labours as the same would take at least 15 (Fifteen) to 30 (Thirty) days each time to engage the labours again for the construction at the site of the said Complex. It is submitted on behalf of the Respondent that such Orders and/or

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Directions as passed by the Hon'ble National Green Tribunal and/or other Statutory Authorities were clearly beyond the control of the Respondent herein and the Respondent upon the expiry of each such Order and/or Direction promptly and immediately attempted to re-mobilize the labours at the site of the said Complex in order to ensure that no delay would be caused in the construction of the said Complex.

- G.** Shortage of treated sewage water at construction sites owing to the ban of usage of Ground Water by the Hon'ble High Court of Punjab & Haryana: The Hon'ble High Court of Punjab & Haryana had vide Order dated 16.07.2012 directed that all builders to use recycled sewage water at the construction site, however, there was immense shortage of such treated sewage water at the construction site, which was far beyond the control of the Respondent, which shortage once again caused delay due to such force majeure condition, in the construction of the said Complex.
- H.** Imposition of Lockdown by the Govt. of India from 25.03.2020 till 31.05.2020: The Govt. of India in view of the COVID-19 Pandemic, had imposed a nationwide lockdown from 23.03.2020, owing to which all activities, including construction activities were stopped across the country. During the said period of lockdown, only essential services were allowed to operate and construction of real estate projects, was not included in the realm of "essential services" allowed to function during the said period of lockdown. Therefore, the respondent was

unable to undertake any construction on the site of the said complex during such period and all activities at the site of the said complex came to a standstill. Furthermore, even though the Govt. had begun to lift the lockdown from on 01.06.2020, owing the large scale and wide spread migration of labour across the country, the respondent, despite best efforts, was also unable to employ labour to carry out the construction at the site of the said complex. It is stated that despite the respondent continuously attempting, to the best of its capabilities, to find labour to work on the said site since the lifting of the lockdown as imposed by the Govt. of India, it is only post July, 2020 that the respondent was able to effectively employ and deploy labour at the said complex to continue with the remaining work at the said complex and thereafter, proceeded to diligently and expeditiously completed the construction of the said block in which the said Retail Unit is located and proceeded to apply for the part occupation certificate for the same on 23.07.2019, which part occupation certificate was received on 01.09.2020.

42. That it is therefore clear that any alleged delay in the construction of the said retail unit, in terms of the said agreement is solely on account of the force majeure conditions faced by the Respondent, which conditions were beyond the control of the respondent. It is submitted on behalf of the respondent herein that as has been stated hereinabove, there were numerous force majeure circumstances which were far beyond the control of the respondent herein that have caused a short delay in the construction

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of the said complex and the respondent herein, under the terms of the said agreement cannot be held liable for such a delay having been caused due to such force majeure conditions. It is submitted that despite having faced such adversities, the respondent herein has always ensured that the construction of the said Complex has continued as far as possible, though there were stoppages and slowdowns.

43. All the other averments made in the complaint were denied in toto.

44. Copies of all the relevant do have been filed and placed on 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**

45. 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**

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**

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46. 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) The promoter shall-*

*(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

**Section 34-Functions of the Authority:**

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

47. 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 objections raised by the respondent**

**F.1 Objection regarding delay due to force majeure**

48. The respondent-builder raised the contention that the construction of the project was delayed due to conditions beyond the control of the respondent - builder such as banned the usage of any stone crusher in Delhi NCR , banned construction , ban of the labour , ban of usage of groundwater and

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covid but all the pleas advanced in this regard are devoid of merit. The agreement to sale was executed between the parties on 20.12.2014 and as per terms and conditions of the said agreement for sale the due date of handing over of possession was 27.04.2019. The events such as construction ban and various orders by NGT were for a shorter duration of time and were not continuous whereas there is a delay of more than three years. Even after due date of handing over of possession. 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.

49. The respondent-promoter has raised the contention that the construction of the project was delayed due to reasons beyond the control of the respondent such as COVID-19 outbreak, lockdown due to outbreak of such pandemic and shortage of labour on this account. The authority put reliance judgment of Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020* dated 29.05.2020 which has observed that-

*"69. 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."*

50. In the present complaint also, the respondent was liable to complete the construction of the project in question and handover the possession of the said unit by 27.04.2019. The respondent is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that 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 and for the said reason the said time period is not excluded while calculating the delay in handing over possession.

**G. Findings on the relief sought by the complainant:**

**G.1 Direct the respondent to pay delay penalty interest on the amount paid**

51. The complainants are admittedly the allottees of respondent - builder of a commercial unit for a total sum of Rs. 76,35,840/-. A buyer's agreement was executed between the parties in this regard on 20.12.2014. The due date for completion of the project was fixed as 27.04.2019 So, in this way, the complainant paid a total sum of Rs. /- Rs. 94,22,257 /- against the allotted unit. The occupation certificate of the project was received on 01.09.2020 and the possession was offered to the complainants on 03.11.2020.

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52. In the present complaint, the complainants 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."

53. Clause 23 of the buyer's agreement (in short, agreement) provides for handing over of possession and is reproduced below:

**27. POSSESSION OF THE UNIT**

The Company based on its present plans and estimates and subject to all exceptions shall endeavor to complete the construction of the said Project within 36 (thirty six) months (plus 6 months grace period) from the date of start of the stilt / ground floor roof slab of the particular tower in which the booking is made, subject to timely payment by the Allottee(s) of sale price and other charges due and payable according to the Payment Plan applicable to him/her/them and/or as demanded by the Company and subject to force majeure circumstances including but not limited to clauses 27 and 28. The possession of the Said Unit(s) shall, however, be offered only after grant of completion/occupation certificate from the Competent Authority.

54. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are 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 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.

55. 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.

56. 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., 17.05.2023 is @8.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.

57. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default. The relevant section is reproduced below:

*"(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;"*

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

59. The 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 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 8.1 of the agreement executed between the parties on 20.12.2014, the possession of the subject apartment was to be delivered within stipulated time i.e., by 27.04.2019. Therefore, the due date of handing over possession is 27.04.2019. The respondent has delayed in offering the possession and the same is offered on i.e. 03.11.2020. 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 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., 27.04.2019 till offer of possession i.e. 03.11.2020

plus two months which comes to 03.01.2021 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.

60. The complainant through its counsel stated at bar that a compensation/penalty amount has already been refunded to the complainants. Therefore, out of amount so assessed on account of delay possession charges, the respondent is entitled to deduct the amount already paid towards DPC. The conveyance deed was also executed on 22.01.2021. However the complainant was forced to sign the NOC so they had no choice but to sign on the dotted lines.

**G.II Direct the respondent to reimburse the arbitrary charges with interest of common area energy charges , electricity infrastructure and connection charges , labour cess .**

61. The complainant has stated that the respondent has charged common area energy charges of Rs. 16,992/- , electricity infrastructure of Rs. 1,62,840/- , and labour cess of Rs. 15,000 was charged by the respondent from the complainant. The other arbitrary charges charged by the respondent are beyond BBA. As such labour cess imposed by the respondent are not as per provisions of law which cannot be charged from the complainants. The respondent is directed not to charge anything from the complainants which is not a part of the buyer's agreement.

**G.III Direct the respondent to charge the complainant on the basis of carpet area only , in accordance with the new HRERA Act 2016 , and not on the super built up area . As the carpet area of unit is only 52 % of**





**super area therefore undue loading has been done and payment collected against super area .**

62. No arguments in this regard has been advanced by either of the parties during the course of proceedings. Hence, in such as a situation the aforesaid issue cannot be deliberated upon by the Authority. As per section 19(1) of Act of 2016, the allottee shall be entitled to obtain information relating to sanctioned plans, layout plans along with specifications approved by the competent authority or any such information provided in this Act or the rules and regulations or any such information relating to the agreement for sale executed between the parties. Therefore, the respondent promoter is directed to provide the area calculation relating to super area, loading and carpet area to the complainant.

**G.IV Direct the respondent to reimburse the arbitrary car parking charges as basement included in common areas and it is not an exclusive and enclosed garage.**

63. The respondent has already charged ₹4,00,000 on account of car parking charges and the same is already included in the total sale consideration. The respondent cannot charge beyond this.

**G.V Direct the respondent to provide a detailed break up of super area and common area applicable and allotted to the complainants and whether it includes the area designated under one paid car parking or not.**

**G.VI Direct the respondent to disclose all documents and expenditures regarding available water and electricity infrastructure and units as**

*[Handwritten signature]*

well as the expenditure on the same , failing which an audit be done by the Authority.

64. That according to clause 19(1) of the Act of 2016 states that

*The allottee shall be entitled to obtain the information relating to sanctioned plans, layout plans along with the specifications, approved by the competent authority and such other information as provided in this Act or the rules and regulations made thereunder or the agreement for sale signed with the promoter.*

65. The respondent is hereby directed to provide the same to the complainants.

**G.VII Direct the respondent builder deposit back the extra amount that they have charged illegally more EDC and IDC than what is sanctioned as per the prevailing norms and rules of the government.**

66. The promoter would be entitled to recover the actual charges paid to the concerned departments from the complainant/allottee on pro-rata basis on account of EDC, IDC., i.e., depending upon the area of the flat allotted to the complainant vis-à-vis the area of all the flats in this particular 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 respondent is directed to provide specific details with regards to these charges.

**G.VIII Direct the respondent to reimburse the burden of excess stamp duty charges due to increase in stamp duty because delay in executing the conveyance deed by the respondent.**

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**G. IX Direct the respondent to provide compensation for change in super area and carpet area of 40 sq. ft and Rs. 1,50,000/- for litigation charges , mental harassment .**

67. The the complainant is seeking above mentioned relief with regard to 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 complainants are advised to approach the adjudicating officer for seeking the relief of litigation expenses.

**H. Directions of the authority**

68. 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 complainant is entitled for delayed possession charges as per the proviso of section 18(1) of the Real Estate (Regulation and Development) act, 2016 at the prescribed rate of interest i.e., 10.70%p.a. for every month of delay on the amount paid by the

complainant to the respondent from the due date of possession i.e., 27.04.2019 till the offer of possession i.e., 03.11.2020 plus two months which comes out to be 03.01.2021.

ii. Out of amount so assessed, the respondent is entitled to deduct the amount already paid towards DPC.

iii. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.

iv. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.70% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

69. Complaint stands disposed of.

70. File be consigned to registry.



  
(Ashok Sangwan)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 17.05.2023**