

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

Complaint no. :	6726 of 2022
Date of filing complaint:	11.10.2022
First date of hearing:	25.11.2022
Date of decision :	13.04.2023

Anil Shankar
Sangita Shankkar
R/o: 91, Nunirka Enclave, New Delhi-110067

Complainants

Versus

M/s Vatika Limited
Office : Vatika Triangle, 4th floor, Sushant Lok, Ph-1,
block-A, Mehrauli Gurugram Road, Gurugram-122002

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Sh. Sukhbir Yadav & Ms. Sabina

Advocate for the complainants

Sh. Harshit Batra

Advocate for the respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the rules and regulations made thereunder or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name and location of the project	"Vatika Express City" at sector 88A & 88B, Gurgaon, Haryana
2.	Nature of the project	Residential plotted colony
3.	Project area	100.785 acres
4.	DTCP license no.	94 of 2013 dated 31.10.2013 valid upto 30.10.2019
5.	Name of licensee	M/s Malvina Developers Pvt. Ltd. & others
6.	RERA Registered/ not registered	Registered vide no. 271 of 2017 dated 09.10.2017 valid upto 08.10.2022
7.	Plot no.	23, G-17 admeasuring 300 sq. yd. (page no. 53 of complaint)
9.	Date of allotment	24.11.2014 (page 53 of complaint)
10.	Date of builder buyer agreement	27.10.2014 (page 32 of complaint)
11.	Possession clause	<p>9 SCHEDULE FOR POSSESSION OF THE SAID RESIDENTIAL PLOT</p> <p><i>The Developer based on its present plans and estimates and subject to all just exceptions, force majeure and delays due to reasons beyond the control of the Company contemplates to complete development of the said Residential floor within a period of 48 (forty-eight) months from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in other Clauses herein.....</i></p>

		<i>Emphasis supplied [page 39 of complaint]</i>
12.	Due date of possession	27.10.2018 [Due date of possession calculated from the date of execution of agreement]
13.	Total sale consideration	Rs. 2,27,09,860/- [as per SOA dated 11.04.2023, page 19 of reply]
14.	Amount paid by the complainant	Rs. 82,70,143/- [as per SOA dated 11.04.2023, page 19 of reply]
15.	Intimation of possession	13.09.2022 (page 4 of application)
16.	Occupation certificate	Not obtained

B. Facts of the complaint:

3. That in January 2014, **the complainant** received a marketing call from the office of the respondent for booking a residential plot in the proposed project **Vatika Express City**, the caller represented himself as a manager of the respondent, and marketed the project situated at Sector – 88 B, Gurgaon and offered a plot admeasuring 301.39 Sq. Yd. The complainants visited its Gurugram office and project site. There the complainants met with the marketing staff and office bearers of the respondent and got information about the project. The Marketing staff of the respondent allured them by elaborating all the specifications of the said project and assured of timely delivery of the plot.
4. That, believing in the representation and assurance of the respondent, the complainants booked a plot bearing no. 23 in street no. G -17, admeasuring 301.39 Sq. Yd. in the project Vatika Express City, Sector – 88B, Gurgaon, and made a payment of Rs. 11,00,000/- through cheque as booking

amount on 18.01.2014. M The plot was booked under the development link payment plan for a sale consideration of Rs. 2,27,09,860/-. The payment plan is annexed on page no. 21 of the buyer's agreement, as per said payment plan the complainants has to pay 40% sale consideration within 12 months from the date of booking, and the balance 60% sale consideration is payable on the offer of possession.

5. Thereafter on 15.04.2014, the complainants made a payment of Rs. 9,37,420/- to the respondent as part of the payment of the sale consideration, and on 21.04.2014, it issued a payment receipt. On 18.06.2014, the complainants paid Rs. 20,580/-, and thereafter, on 22.08.2014 another payment was made by the complainants of Rs. 20,56,300/- to the respondent and it issued payment receipts on 18.06.2014 and 22.08.2014.
6. That after a long follow-up, on 27.10.2014, a pre-printed, unilateral, one-sided, arbitrary, and ex-facie buyer's agreement was executed inter-se the parties. As per para 9 of the buyer's agreement, the builder has to give possession of the plot within 48 months from the date of execution of this agreement. The agreement was executed on 27.10.2014. Therefore, the due date of possession was 27.10.2018.
7. That on 24.11.2014, the respondent issued an allotment letter in favour of the complainants of plot bearing no. 23, in street no. G-17, situated in Sector -88B for an area admeasuring 301.39 sq. yd in the project "Vatika Express City", Gurgaon. On 23.12.2014, 16.01.2015, and 27.01.2015, the complainants made further payments of Rs. 20,676/-, Rs. 20,46,860/- and 20,676/- to the respondent as per demands raised by it.
8. That on 16.09.2022, an intimation of possession letter dated 13.09.2022 for unit no. 23, G-17, Vatika India Next 2 Plots, Gurugram was received by

the complainants sent by the respondent. The respondent in his email asked to remit Rs. 1,43,59,717/- towards the final payment due for the said unit in order to enable them to start the process of handing over the possession of the unit. On 17.09.2022, the complainant served a letter to the respondent in response to the letter of Intimation of possession. On 17.09.2022, after receipt of the above-mentioned letter, the respondent sent an email to the complainants and asked to clear the alleged due amount in favour of Vatika Limited. The respondent did not mention anything about the occupancy certificate in its email rather it was threatened by the respondent that "in case, dues are not cleared as per the due dates, the company reserves the right to consider your booking cancelled". On 19.09.2022, the respondent again sent an email stating to be "offer of possession final opportunity letter".

9. That on 21.09.2022, an email was sent by the complainants to the respondent for completing the pending work expeditiously and to provide the occupancy certificate to enable the complainants to make payment of outstanding dues, if any, and take possession of the aforesaid plot. As per the statement of account dated 19.09.2022, the complainants have paid Rs. 8270143/-. As per the statement of account on 09.03.2015, there was a credit balance of Rs. 4.40/-. On 20.08.2021 the respondent send sent an email to the complainants and apprised that possession of plot would be handed over by 1st quarter of 2022. Thereafter, on by email dated 01.03.2022, the respondent shift the date of handing over the possession to fourth quarter of 2022.

- A 10. That, the complainants are regularly visiting the office of the respondent, as well as on the construction site, and making efforts to get possession of the allotted plot, but all in vain. Despite several visits and requests by the

complainants to the respondent, it has never been able to present/show the occupancy certificate of the project. Till today the said plot is not developed completely with all the basic amenities. The respondent kept the complainants in dark and never tell that when they would give physical possession of the allotted unit.

11. That the main grievance of the complainants in the present complaint is that despite the complainants have paid Rs 82,70,143/- i.e. 40% of the basic cost of the plot, out of the actual cost of the plot and ready and willing to pay the remaining amount, the respondent party has failed to deliver the possession of plot on promised time and till today. The facts and circumstances as enumerated above would lead to the only conclusion that there is a deficiency of service on the part of the respondent party and as such, he is liable to be punished and compensate the complainants.
12. That there are a clear unfair trade practice and breach of contract and deficiency in the services of the respondent party and much more a smell of playing fraud with the complainants and others and is prima facie clear on the part of the respondent which makes them liable to answer the Authority.
13. That the first-time cause of action for the present complaint arose in **October 2014**, when the buyer agreement containing unfair and unreasonable terms was, for the first time, forced upon the allottee. The cause of action for the present complaint further arose in or **around October 2018** when the respondent failed to hand over the physical possession as per the terms of buyer's agreement. The cause of action further arose **in 2022**, when the respondent sent an email to raise demand without having a completion certificate and threatened to cancel the allotment. The cause of action again arose on various occasions, including

in a) December 2018; b) July 2019, c) March 2020, d) December 2021, e) August 2022, and on many times till date, when the protests were lodged with the respondent about its failure to deliver the project and the assurances were given by it that the possession would be delivered by a certain time. The cause of action is alive and continuing and would continue to subsist till such time as the Authority restrains the respondent by an order of injunction and/or passes the necessary orders.

C. Relief sought by the complainant:

14. The complainant has sought following relief(s):
 - i. Direct the respondent to give physical possession.
 - ii. Direct the respondent to pay delayed possession interest @ prescribed rate from the due date of possession i.e., 27.10.2018 as per buyer's agreement till the actual date of possession.
 - iii. Direct the respondent no to take any coercive action by cancelling allotment of plot or creating any third-party rights.

D. Reply by respondent:

15. That, the complainant has no locus standi or cause of action to file the present complaint. The complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the contractual terms and conditions, as shall be evident from the submissions made in the following paragraphs of the present reply.
16. That the complainants being interested in the real estate development of the respondent under the name and style of "Vatika Express City", situated at Sector 88A & B, Gurugram Haryana tentatively booked a plot in the project of the respondent on 18.01.2014 bearing no. 23 on street no. G-17, block G, Sector 88B, having an area admeasuring 301.39 Sq. ft. for a total

sale consideration of **Rs. 2,26,29,860**. The project is duly registered with Haryana RERA with registration no. 271 of 2018 dated 09.10.2017. Thereafter, the buyer's was executed on **27.10.2014** between the parties.

17. That according to Clause 9 of the buyer's agreement, the delivery of possession of the unit was proposed to be within 48 months from the date of execution of the agreement, however, it was specifically mentioned that the same is subject to force majeure events or there shall be failure due to the reasons mentioned in the clauses or due to failure of the allottee(s) to pay in time. The due date of delivery of possession was subject to *force majeure*. It is pertinent to note that the project of the respondent has been gravely hit by the various *force majeure* conditions which are directly consequential to the timely completion of the construction of the project.
18. That it is also pertinent to mention here that subsequent to the booking and signing of the agreement, the company was facing umpteen roadblocks in construction and development works in projects in its licensed lands comprised of the township owning to the initiation of the unexpected introduction of a new National Highway being NH 352 W (Herein "NH 352 W") proposed to run through the project of the respondent. Initially HUDA has to develop the major sector roads for the connectivity of projects on the licensed land. But no development for connectivity and movement across the sectors, for ingress or egress was done by HUDA for long time. Later on, due to the change in master plan for the development of Gurugram, the Haryana Government had decided to make an alternative highway passing through between sector 87 and 88 and further Haryana Government had transferred the land new highway 352W. Thereafter in a process of developing the said highway 352 W, the land was uplifted by 4 to 5 meters. It is pertinent to mention here that the

respondent had already laid down its facilities before such upliftment. As a result, respondent was constrained to uplift the project land and re-align the facilities. Thereafter the GMDA handed over the possession of the land properties/land falling in NH 352W to NHAI for construction and development of NH 352 W. All this process has caused considerable amount of delay, and this hampered the project in question which are beyond the control and ambit of the developer.

19. That from the facts indicated above and documents appended, it is comprehensively established that a period of 176 days was consumed on account of circumstances beyond the power and control of the respondent, owing to the passing of orders by the statutory Authorities. All the circumstances stated hereinabove come within the meaning of *force majeure*, as stated above. Thus, the respondent has been prevented by circumstances beyond its power and control from undertaking the implementation of the project during the time period indicated above and therefore the same is not to be taken into reckoning while computing the period of 48 months including the grace period of 6 months subject to *force majeure*, as has been provided in the agreement. In a similar case where such orders were brought before the Authority in the **Complaint No. 3890 of 2021 titled Shuchi Sur and Anr vs. M/S Venetian LDF Projects LLP decided on 17.05.2022**, the Authority was pleased to allow the grace period. Hence, the benefit of the above affected 176 days over and above the grace period of 6 months need to be rightly given to the respondent/builder. It is most vehemently submitted that there is no intentional delay on part of the respondent in adhering to the terms and conditions of the agreement. As noted above, the due date comes out to be 27.10.2018. However, due to force majeure conditions and events outside

the power of the respondent, are the cause of the present delay. There arose no cause of action whatsoever, in the present instance. The respondent has not defaulted the agreement or the Act, in any manner whatsoever as the respondent is not in control of the force majeure conditions.

20. That despite all the hindrances, the respondent completed the project and offered the possession of the unit on 13.09.2022. Along with the same, a demand of Rs. 1,43,59,722/-, i.e., the balance total sale price was also made. However, the same was not paid by the complainants.
21. That it needs to be categorically noted that the complainant is bound to make the payment as per section 19(6) and 19(7) of the Act and cannot escape the same. Accordingly, the complainants are bound to make the payment of interest till the complete payment is made.
22. That the instant complaint has been preferred on absolutely baseless, unfounded, and legally and factually unsustainable surmises which can never inspire the confidence of the Authority. The accusations levelled up by the complainant are completely void and baseless and devoid of merits. Thus, the instant complaint needs/deserves to be dismissed.
23. Copies of all the relevant documents 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 submission made by the parties.

E. Jurisdiction of the authority:

24. 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

25. 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

21. 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.

22. 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.

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23. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the **Hon'ble Apex Court in Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.**" SCC Online SC 1044 decided on 11.11.2021 wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

24. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the matter of **M/s Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)**, the authority has the jurisdiction to entertain a complaint seeking refund of the amount paid by allottee along with interest at the prescribed rate.

F. Findings on the objections raised by the respondent.

F.I Objection w.r.t. force majeure.

-  25. The respondent-promoter alleged that grace period on account of force majeure conditions be allowed to it. It raised the contention that the construction of the project was delayed due to force majeure conditions

such as shortage of labour, various orders passed by NGT and weather conditions in Gurugram and non-payment of instalment by different allottees of the project but all the pleas advanced in this regard are devoid of merit. The flat buyer's agreement was executed between the parties on 27.10.2014 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be 27.10.2018. The events such as and various orders by NGT in view of weather condition of Delhi NCR region, were for a shorter duration of time and were not continuous as there is a delay of more than three years and even some happening after due date of handing over of possession. There is nothing on record that the respondent has even made an application for grant of occupation certificate. Hence, in view of aforesaid circumstances, no period grace period can be allowed to the respondent- builder. 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 wrongs.

26. As far as delay in construction due to outbreak of Covid-19 is concerned, 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 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."

27. The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by 27.10.2018 and 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 give physical possession.

G. 2 Direct the respondent to pay interest for every month of delay at prevailing rate of interest per month.

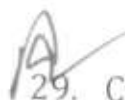
28. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

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

.....

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

 29. Clause 9 of the buyer's agreement 27.10.2014 provides for handing over of possession and is reproduced below:

Clause 9

*The Developer based on its present plans and estimates and subject to all just exceptions, force majeure and delays due to reasons beyond the control of the Company contemplates to complete development of the said Residential floor **within a period of 48 (forty-eight) months from the date of execution of this Agreement** unless there shall be delay or there shall be failure due to reasons mentioned in other Clauses herein....*

30. As per aforesaid clause of agreement, the due date of handing over of possession is to be calculated as 48 months from date of execution of this agreement. The buyer's agreement has been executed inter-se parties on 27.10.2014, as such due date of handing over of possession comes out to be 27.10.2018.

31. **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 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.

32. 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.

33. 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., 13.04.2023 is @ 8.70 %. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.
34. 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;"*
35. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.70 % by the respondent/promoters which is the same as is being granted to them in case of delayed possession charges.
36. On consideration of the circumstances, the documents, submissions made by the parties and based on the findings of the authority regarding contravention as per provisions of rule 28(2), the Authority is satisfied

that the respondent is in contravention of the provisions of the Act. By virtue of clause 9 of the agreement executed between the parties on 27.10.2014, the possession of the subject apartment was to be delivered within three years from the date of execution of agreement. Therefore, the due date of handing over possession was 27.10.2018. The respondent has failed to handover possession of the subject apartment till date of this order. Accordingly, it is the failure of the respondent/ promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit to the complainants as per the terms and conditions of the agreement dated 27.10.2014 executed between the parties. Further no OC/part OC has been granted to the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottees.

37. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 27.10.2014 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., 27.10.2018 till the actual handing over of possession or offer of possession + 2 months, whichever is earlier as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

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38. As far as relief of possession is concerned. No completion/part completion certificate has been obtained from the competent Authority by the respondent. In view of aforesaid circumstances, the respondent is directed to offer the possession of the allotted unit within 30 days after obtaining completion/part completion certificate from the competent authority.

G.3 Direct the respondent not to take any coercive action by cancelling allotment of plot or creating any third-party rights

39. Upon perusal of documents on record, it is observed that no cancellation has been done by the respondent. Hence, no directions to this effect.

G. Directions of the Authority:

40. 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 promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i. The respondent is directed to pay interest at the prescribed rate of 10.70% p.a. for every month of delay from the due date of possession i.e., 27.10.2018 till the actual handing over of possession or offer of possession + 2 months, whichever is earlier.
- ii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iii. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.70% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

- iv. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement.
- v. The respondent is directed to offer the possession of the allotted unit within 30 days after obtaining completion/part completion certificate from the competent authority.
- vi. The arrears of such interest accrued from 27.10.2018 till the date of order by the authority shall be paid by the promoter to the allottees within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottees before 10th of the subsequent month as per rule 16(2) of the rules.
41. Complaint stands disposed of.
42. File be consigned to the Registry.

v.j- 5
(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.04.2023