

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

Complaint no. : 6587 of 2022
Ordre reserved on: 06.01.2023
Order pronounced on: 15.03.2023

1. Mr. Dhanraj Kundu

2. Mrs. Anita Kundu

Both RR/o: -H. No. 341/1, Ghikara Road, Near Hariom
Ashram, Ghikara Road, Ward No. 20, Charkhi- Dadri,
Haryana - 123306

Complainants

Versus

M/s Bestech India Private Limited.

Regd. Office at: 5D, 5th Floor, Aria Signature Offices, JW
Marriott Hotel Delhi Aero City, Hospitality District, Near
IGI Airport, New Delhi - 110037

Corporate Office at: - Bestech House, 124, Sector-44,
Gurugram - 122002

Respondent

CORAM:

Shri Vijay Kumar Goyal

Shri Ashok Sangwan

Shri Sanjeev Kumar Arora

Member

Member

Member

APPEARANCE:

Sh. Ishwar Singh Sangwan (Advocate)

Sh. J.K. Dang (Advocate)

Complainants

Respondent

ORDER

1. The present complaint dated 07.10.2022 has been filed by the complainant/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in

short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S.No.	Heads	Information
1.	Project name and location	"Park View Ananda", Sector-81 Gurugram
2.	Project area	29.7 acres
3.	Nature of the project	Group housing complex
4.	DTCP license no. and validity status	112 of 2008 dated 31.05.2008 valid up to 30.05.2025 55 of 2009 dated 27.08.2009 valid up to 26.08.2024
5.	Name of licensee	Sh. Braham Parkash-Satya Parkash-Laxmi Narain Ss/o Maha Ram and others
6.	RERA Registered/ not registered	Not registered
7.	Unit no.	C- 301, 3 rd floor, Tower-C (Page no. 31 of the complaint)
8.	Unit measuring	1660 sq. ft. (Page no. 31 of the complaint)
9.	Date of allotment letter	31.03.2012



		(Page no. 23 of the complaint)
10.	Date of execution of tripartite agreement	12.09.2015 (Page no. 112 of the reply)
11.	Date of execution of apartment buyer agreement	12.07.2012 (Page no. 28 of the complaint)
12.	Possession clause	3. Possession a). Offer of possession: That subject to terms of this clause and subject to the APARTMENT ALLOTTEE(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 further subject to compliance with all provisions, formalities, registration of sale deed, documentation, payment of all amount due and payable to the Developer by the APARTMENT ALLOTTEE(S) under this agreement etc., as prescribed by the Developer, the Developer proposes to hand over the possession of the APARTMENT within a period of thirty (36) months (excluding a grace period of 6 months) from the date of approval of building plans or date of signing of this Agreement whichever is later. It is however understood between the parties that the possession of various Blocks/Towers comprised in the Complex as also the various common facilities planned therein shall be ready & completed in



		phases and will be handed over to the allottees of different Blocks/Towers as and when completed and in a phased manner.
13.	Due date of possession	12.01.2016 [Note: 36 months form the date of agreement to sell i.e., 12.07.2012 + 6 months grace period]
14.	Payment plan	Installment linked payment plan (Page no. 53 of the complaint)
15.	Total consideration	Rs.85,85,360/- (As per payment plan at page no. 53 of the complaint)
16.	Total amount paid by the complainants	Rs.91,82,990/- (As per alleged by the complainants)
17.	Delay in handing over possession w.e.f. 12.07.2016 (Due date of handing over possession) till 19.10.2015 i.e., date of offer of possession (19.08.2015) + 2 months	No delay
18.	Occupation certificate /Completion certificate	07.08.2015 (Page no. 100 of the reply)
19.	Offer of possession	19.08.2015 (Page no. 101 to 104 of the reply)
20.	Unit handover letter	07.05.2016 (Page no. 130 of the reply)
21.	Date of acceptance of possession letter	07.05.2016 (Page no. 131 of the reply)

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint: -



- I. That the complaint is being filed by the complainants against the respondent as it has, in a pre-planned manner, cheated and defrauded them of their hard-earned money and have rendered deficient services by not delivering possession of the residential apartment No. 301, 3rd floor, Block- C, measuring 1660 sq. ft. in the project known as "Park view Ananda", Sector 81, Gurugram along with one car parking purchased by them from the respondent.
- II. That the complainants were approached by the authorized marketing representatives and business agents of the respondent to purchase a residential unit from it. They claimed that the respondent had completed several real estate projects and that it is one of the most respected names in the real estate industry. They further stated that the respondent had all the requisite permissions for this particular residential project, launched under the name and style of the said residential apartment. The representatives assured the complainants that the respondent had already commenced the construction of the above-mentioned project and that the complainants could purchase a unit to ensure that they get possession within 36 months excluding a grace period of six months as per para no. 3 (a) of apartment buyer's agreement dated 12.07.2012.
- III. That on believing the assurance given by the respondent, the complainants in their meeting with the representatives and



authorized agents of the respondent agreed to purchase the said residential apartment, at the total cost of Rs. 85,85,360/-.

- IV. That on 31.03.2012, the complainants booked the above said apartment vide application dated 31.03.2012 by paying initial amount of Rs.6,82,427/- and till date, paid total amounting to Rs.91,82,990.27/- including interest as per demands of the respondent. The complainant availed loan of Rs 54,40,000/- @ 9.65% per annum interest variable from Axis Bank, Rohtak. Thereafter, the respondent has issued an allotment letter in respect of the above said apartment in favour of the complainant vide letter no. dated 31.03.2012.
- V. That the complainants gradually came to realize that the promises of timely possession of the above apartment were nothing but false assurances and misrepresentations on the parts of the respondent. There has been a situation where the respondent failed to deliver possession of the constructed apartment as per the schedule that had been promised by it within 3 years plus 6 months i.e., 42 months as mentioned in para no. 3(a) of apartment buyer's agreement.
- VI. That to provide an instance of the ground reality of the status of progress of construction at site, it is brought to the attention of this authority that the respondent demands raised were all promptly paid by the complainants as it reflected from the annexed receipts and other documents.



- VII. That it is abundantly clear by the act and conduct of the respondent that it has not only defrauded the complainants, but also have violated the terms of the builder buyer's agreement by not offering possession within three years and six months i.e., 42 months. The respondent has provided deficient services, is guilty of unfair trade practices, and has planned to fleece the complainants of their hard-earned money in a well-directed and pre-planned manner.
- VIII. That the actions of the respondent are violative of the principles of natural justice and the services rendered are deficient, malafide, unfair, unjust, and illegal as have been shown above. The said practices are against the tenants of ethical business and are liable to be severely deprecated by this authority.
- IX. That the complainant had already paid the entire sale consideration amounting to Rs.91,82,990.27/- along with interest and stamp duty Rs.3,32,000/- along with misc. charges amounting to Rs.42,365/- which is more than the actual sale price of the apartment. Despite receiving the said amount, the respondent has knowingly, intentionally, and deliberately not registered the conveyance deed of the said unit.
- X. That the act and conduct of the respondent amounts to grave deficiency in service and unfair trade practice of the highest degree. The respondent has caused great mental agony and physical harassment to the complainants. They have paid such a huge



amount after collecting their life's savings with hope to move into his own apartment in the NCR region.

- XI. That the respondent is guilty of deficiency in service as per Act. The complainants have suffered on account of deficiency in service by the respondent by not delivering the possession of the unit/apartment within time.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s).
- I. To direct the respondent to execute the conveyance deed in favour of the complainants.
 - II. To direct the respondent to pay the interest on the principal amount @ 18% per annum from the date of payment till realization.
 - III. To pay compensation for delayed possession.
 - IV. To purchase stamp paper for which complainant have already made the payment but which is arbitrarily adjusted against interest payment, which is against the provisions of law.
 - V. Cost of litigation of Rs. 2,00,000/-.
5. On the date of hearing, the authority explained to the respondent /promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

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



- a) That the complaint is not maintainable in law or on facts. The provisions of the Act, 2016 are not applicable to the project in question. The occupation certificate in respect of the apartment/tower in question was received on 07.08.2015, i.e., well before the notification of the Rules of 2017. Offer of possession was also made on 19.08.2015 and possession was handed over to the complainants on 07.05.2016 before the Act came into force. Thus, the project in question is not an "Ongoing Project" under Rule 2(1)(c) of the rules. Thus, the authority does not have the jurisdiction to entertain and decide the present complaint and is liable to be dismissed on this ground alone.
- b) That the complaint is barred by limitation and is liable to be dismissed on this ground as well. Possession of the unit was handed over to the complainants in accordance with the buyer's agreement on 07.05.2016 after they duly admitted and acknowledged that they did not have any claim of any nature whatsoever que the respondent and were fully satisfied with the apartment in all respects. The complaint has been filed after a delay of more than 6 years and is liable to be dismissed at the very threshold.
- c) That the present complaint raises issues of such a nature which cannot be decided by way of summary proceedings contemplated under the Act. The said issues require extensive evidence to be led by both the parties and examination and cross-examination of witnesses for proper adjudication. Therefore, the disputes raised in the present complaint are beyond the purview of the Act and can only be adjudicated by the civil courts. The present complaint deserves to be dismissed on this ground alone.



- d) That the respondent is a reputed and renowned real estate developer, enjoying an impeccable reputation in the real estate industry for the disciplined and time bound execution of projects undertaken by it. The projects implemented by the respondent are considered to be architectural landmarks. The respondent has successfully developed residential, commercial and IT projects in Gurgaon after obtaining necessary permissions and approvals from the competent authorities in accordance with law. The associate companies of the respondent have also constructed and made operational Radisson Hotels in Gurgaon, Indore (Madhya Pradesh), Mohali and at Nagpur. The respondent has promoted and developed "Bestech City" a duly approved residential colony in Dharuhera, District Rewari.
- e) That the complainants had approached respondent and evinced an interest in purchasing a residential unit in the duly licensed residential project promoted and developed by the respondent known as "Park View Ananda" located in Sector 81, Gurgaon, Haryana. Prior to making the booking, they had made elaborate and detailed enquiries with regard to the nature of sanctions /permissions obtained by the respondent for the purpose of undertaking the development/implementation of the residential project referred to above. The complainants took an independent and informed decision, uninfluenced in any manner by the respondent to book the apartment in question.
- f) That the complainant had approached the respondent through their property broker/dealer, Gangaur Realtech, after making independent enquiries and duly satisfying themselves regarding the



viability and suitability of the aforesaid project as per their needs and requirements as well as the capability of the respondent to undertake the project.

- g) That the complainants were provided with the application form containing the terms and conditions of provisional allotment and the complainants were given the opportunity to familiarize themselves with the same. Clause 9 of the terms and conditions of booking was specifically brought to the complainants notice which provided that timely payment of instalments/balance sale consideration/security deposits/charges, shall be the essence of the contract. It was specifically emphasized by the officials of the respondent that interest @ 18% per annum, compounded annually shall be levied on delayed payments and that in the event of delay in payment of outstanding amount along with interest, the allotment was liable to be cancelled and earnest money, interest accrued, and brokerage was liable to be forfeited.
- h) That the attention of the complainants was also drawn to clause 10 of the terms and conditions of booking that specifically provides that possession of the apartment was proposed to be offered by the respondent, within 42 months (including grace period of 6 months) from the date of approval of building plans or date of execution of the buyer's agreement, whichever is later, subject to timely payment of the sale price and other charges as per the payment plan. The terms and conditions as set out in the application form were accepted by the complainants and the complainants agreed and undertook to scrupulously comply with the same.



- i) That after fully satisfying themselves with regard to all aspects of the project including but not confined to the capacity/capability of the respondent to successfully undertake the construction, promotion, implementation of the residential project, the complainants had proceeded to book the property in question.
- j) That vide allotment letter dated 31.03.2012, the respondent allotted apartment bearing no C-301, admeasuring 1660 sq. ft. of super area (approx.), situated on the 3rd floor in tower C of the project. They had opted for a payment plan that was partly construction linked and, had agreed and undertaken to pay the instalments as and when demanded by the respondent. The complainants duly understood and accepted the terms and conditions of booking which were incorporated in the application form and undertook to be bound by the same. The payment plan was appended along with the allotment letter reflecting the total sale consideration payable by the complainants to be Rs.85,85,360/- (exclusive of applicable taxes and other charges payable at the time of possession).
- k) That buyer's agreement was executed by the complainants, willingly and consciously on 12.07.2012. Significantly no objection was raised by the complainants at that time regarding the execution date of buyer's agreement or the terms and conditions thereof.
- l) That right from the very beginning, the complainants were extremely irregular as far as payment of instalments was concerned. The respondent was compelled to issue demand notices, reminders etc, calling upon the complainants to make payment of outstanding amounts payable by the complainants under the payment plan opted by the complainants.



- m) That the complainants were always conscious and aware that they were liable to make complete payment of outstanding amount on or before the due date and that part payment would attract delayed payment interest on the unpaid amount.
- n) That vide letter dated 09.04.2015, the respondent informed the complainants that the project had been completed and that the respondent had made an application to the competent authority for issuance of the occupation certificate. Vide the said letter, the respondent also offered permissive possession of the unit to the complainants for the purposes of fit outs and interiors.
- o) That occupation certificate was received by the respondent on 07.08.2015. Upon receipt of the same, possession of the unit was offered to the complainants on 19.08.2015. They were called upon to make payment of balance amount as per the enclosed statement of account and to complete the necessary formalities /documentation to enable the respondent to hand over possession of the unit to the complainants.
- p) That however, the complainants have deliberately concealed and suppressed the material facts and documents from this authority that on receipt of offer of possession letter dated 19.08.2015, they knowingly did not come forward to take possession of the unit. Consequently, reminders for possession dated 20.10.2015 and final notice for possession dated 21.12.2015 were issued to the complainants. They were reminded that delayed payment charges as well as holding charges would have to be paid by the complainants for delaying taking possession of the unit.



- q) That Since after offer of possession vide letter dated 19.08.2015, the complainants were not having sufficient funds to make payment in terms of statement of account sent with offer of possession. So, the complainants availed a home loan from Axis Bank Loan related documents including the tripartite agreement dated 12.09.2015 executed between the complainants, respondent and the Bank are collectively.
- r) That due to the inordinate delay by the complainants in making payment of sale consideration and other amounts, under the buyer's agreement they became liable to pay interest amounting to Rs.5,68,319/-. The complainants are liable to pay interest on delayed payments in accordance with Clause 1.2(k) of the buyer's agreement. Accordingly, as per Clause 1.2(j) of the buyer's agreement, the complainants have agreed to adjustment of payment against the interest amount first and other amounts payable under the buyer's agreement and then against balance sale consideration. The complainants willingly and voluntarily made payment of Rs.3,32,000/- to the respondent towards part delay interest and receipt dated 19.03.2016 was issued by it acknowledging receipt of the same, which they have deliberately concealed to place on record before this authority. The said payment was made by the complainants in favour of the respondent and not in favour of "SBI stamp duty A/C- Dhan Raj Kundu" as mentioned in the offer of possession letter. Hence, there was no adjustment of amount paid towards stamp duty against interest of delayed payments as falsely alleged by the complainants. Moreover, as a gesture of goodwill, balance interest amounting to balance interest amount of



Rs.2,36,319.87/- was waived by the respondent. The complainants agreed and undertook to make payment of stamp duty and registration charges in a short span of time and proceeded to take possession of the unit. The statement of account reflecting the calculation of delayed interest payable by the complainants.

- s) That the complainants further have concealed the fact from this authority that on 07.05.2016, they unconditionally took possession of the unit after inspecting and being fully satisfied with the unit in all respects and after acknowledging that they did not have any claim against the respondent of any nature whatsoever. Undertaking and an affidavit, Hand over letter dated 07.05.2016 and acceptance of possession letter dated 07.05.2016 were signed by them.
- t) That the respondent, vide letter dated 19.05.2016 called upon the complainants to make payment of stamp duty and registration charges and to come forward for registration of the conveyance deed in their favour. Again, a reminder was sent to them on 08.07.2016 informing about decrease in the circle rates and to take advantage of the same to get the conveyance deed registered in their favour. However, the requests made by the respondent were ignored by the complainants.
- u) That vide email dated 30.05.2018, the complainants were called upon to collect their HVAT refund cheques from the office of the respondent. The complainants received an amount of Rs.2,29,868/- towards full and final settlement of HVAT refund. At that stage also, the respondent reminded the complainants that the conveyance deed was yet to be registered and that they ought to make payment



of stamp duty and registration charges so that the conveyance deed could be registered in their favour. The complainants ignored the request made by the respondent.

- v) That shockingly, after more than 6 years from taking possession of the unit, the complainants have proceeded to file the present false and frivolous complaint making false and baseless allegations against the respondent. The respondent has throughout acted in a fair and transparent manner with the complainants. The delay in execution and registration of the conveyance deed is solely attributable to the complainants and the respondent cannot be held liable for the same in any manner.
- w) That the respondent has duly fulfilled its obligations under the buyer's agreement by completing construction and offering possession of the unit within the timelines provided in the buyer's agreement. There is no default or lapse in so far as the respondent is concerned.
- x) That thus the allegations levelled by the complainants against the respondent are totally baseless and do not merit any consideration by the authority. As soon as the applicable stamp duty and registration charges are deposited by the complainants, the conveyance deed shall be registered in their favour. The project in question has been completed on time and there has been no delay on the part of the respondent in offering possession to the complainants. Moreover, it is submitted that the provisions of the Act 2016 are not applicable to the project in question.
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be



decided on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject-matter jurisdiction

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

Section 11(4)(a)

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

Section 34-Functions of the Authority:



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

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

G. Findings on the relief sought by the complainants.

G. I. To direct the respondent to pay the interest on the principal amount @ 18% per annum from the date of payment till realization.

G. II To pay compensation for delayed possession.

12. In the present complaint, the complainants intend 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."

13. Article 3(a) of the agreement to sell provides for handing over of possession and is reproduced below:

3. Possession

(a) Offer of possession

"That subject to terms of this clause and subject to the APARTMENT ALLOTTEE(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 further subject to compliance with all provisions, formalities, registration of sale deed, documentation, payment of all amount due and payable to the Developer by the



APARTMENT ALLOTTEE(S) under this agreement etc., as prescribed by the Developer, the Developer proposes to hand over the possession of the APARTMENT within a period of thirty (36) months (excluding a grace period of 6 months) from the date of approval of building plans or date of signing of this Agreement whichever is later. It is however understood between the parties that the possession of various Blocks/Towers comprised in the Complex as also the various common facilities planned therein shall be ready & completed in phases and will be handed over to the allottees of different Blocks/Towers as and when completed and in a phased manner."

14. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment within a period of 36 months (excluding a grace period of 6 months) from the date of approval of building plans or date of signing of this agreement whichever is later. The authority calculated due date of possession from the date of date of apartment buyer's agreement i.e., 12.07.2012. The period of 36 months with a grace period of 6 months expired on 12.01.2016. Since in the present matter the BBA incorporates unqualified reason for grace period/extended period in the possession clause. Accordingly, the authority allows this grace period of 6 months to the promoter at this stage.
15. On the basis of documents available on the record and submission made by both the parties, the apartment buyer's agreement was executed between the parties on 12.07.2012. As per clause 3(a) of the said agreement, the possession of the subject apartment was to be delivered within 36 months with a grace period of 6 months from the date of agreement to sell. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of



handing over possession comes out to be 12.01.2016. The respondent /promoter has obtained occupancy certificate on 07.08.2015 (page no. 99-100 of reply) and thereafter, issued offer of possession of the unit on 19.08.2015. Copies of the same have been placed on record i.e., before due date of possession which is 12.01.2016. In the present case, there is no delay on part of the respondent in handing over the possession of the allotted unit, and no case of DPC is made out.

G.III To direct the respondent to execute the conveyance deed in favour of the complainants.

16. The complainants are seeking relief of execution of conveyance deed. Clause 3 of apartment buyer's agreement provides for 'conveyance of the unit' and is reproduced below:

Clause 3. Possession:

C. Procedure of handing over of possession of the apartment:

- V. *That it is clearly understood by the APARTMENT ALLOTTEE(S) that the possession of the Apartment and execution of Conveyance Deed of the Apartment are subject to the APARTMENT ALLOTTEE(S) making all payments as per the notice/offer of possession letter issued by the Developer. The Developer shall prepare and execute the Conveyance Deed of the Apartment in favour of the APARTMENT ALLOTTEE(S) only after the APARTMENT ALLOTTEE(S) has cleared all dues towards stamp duty charges, registration charges, incidental expenses for registration, legal expenses for registration and all other dues as demanded by the Developer. The Parties agree that after the APARTMENT ALLOTTEE(S) have provided all the details, documents as provided in the written notice as stated in this clause and/ or other documents required for the purpose of registration of the Conveyance Deed, the Developer shall make all reasonable efforts to get the Conveyance Deed registered within a reasonable time. The APARTMENT ALLOTTEE(S) agrees and undertakes to make himself/herself available, if required, for the purpose of registration on the date(s) as informed by the Developer.*



- VI. *That is agreed and acknowledged by the APARTMENT ALLOTTEE(S) that proprietary rights in the Apartment shall vest with the APARTMENT ALLOTTEE(S) only upon **execution and registration of the Conveyance Deed in his/her favour and payments of all dues and outstandings payable under the agreement.** It is specifically made clear and understood by the APARTMENT ALLOTTEE(S) that till the execution of the Conveyance Deed, the Developer shall continue to be the owner of the Apartment and the Developer shall have the first lien and charge on the Apartment for all dues and the outstandings that may become due from the APARTMENT ALLOTTEE(S) to the Developer. That the APARTMENT ALLOTTEE(S) undertakes to remain **present before the Registering Authority at the time of Registration of the Conveyance Deed of the Apartment.***
- VI. *If the APARTMENT ALLOTTEE(S) is in default of any of the payments as aforesaid, the APARTMENT ALLOTTEE(S) authorizes the Developer to withhold registration of the Conveyance Deed in his/her favour till full and final settlement of all dues to the Developer is made by the APARTMENT ALLOTTEE(S). The APARTMENT ALLOTTEE(S) undertakes to execute Conveyance Deed within the time stipulated by the Developer in its written notice failing which the APARTMENT ALLOTTEE(S) authorizes the Developer to cancel the allotment and terminate this Agreement in terms of Clause 7 of this Agreement and to forfeit the EARNEST MONEY, processing fee, interest on delayed payment, any interest paid, due or payable, any other amount of a non-refundable nature and to refund the balance amount deposited by the APARTMENT ALLOTTEE(S) without any interest in the manner prescribed in clause 7."*
17. The authority has gone through the conveyance clause of the agreement and observes that the conveyance has been subjected to all kinds of terms and conditions of this agreement and the complainants not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoters. A reference to the provisions of sec. 17 (1) and proviso is also must and which provides as under:



"Section 17: - Transfer of title

17(1) *The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws: Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."*

18. The respondent is under an obligation as per section 17 of Act to get the conveyance deed executed in favour of the complainants. The said relief can only be given after obtaining occupation certificate from the competent authority. On successful procurement of it, offer a valid make of possession to the complainant and execute the conveyance deed within 3 months from the date of obtaining the completion certificate.

G. IV To purchase stamp paper for which complainant have already made the payment but which is arbitrarily adjusted against interest payment, which is against the provisions of law.

19. 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(z) of the Act.

G. V Cost of litigation of Rs. 2,00,000/-.

20. The complainants are seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-



6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of litigation expenses.

H. Directions of the authority

21. 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. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the complainants. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question.
 - ii. Since the possession of the subject unit has already been offered after obtaining occupation certificate on 07.08.2015, the



respondent is directed to get the conveyance deed executed within a period of 30 days from the date of this order.


iii. It is further directed that no stamp duty charges shall be payable by the complainants in case the same has already been paid to the respondent.

22. Complaint stands disposed of.


23. File be consigned to registry.


(Sanjeev Kumar Arora)

Member


(Ashok Sangwan)

Member


(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 15.03.2023