

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

Order pronounced on: 28.03.2023

NAME OF THE BUILDER		M/s Sana Realtors Pvt. Limited
PROJECT NAME:		APPEARANCE
Precision Soho Tower		
1	CR/1983/2019	Suresh Kumari and M/s Sana Realtors Pvt. Ltd.
		Sh. Gaurav Rawat Sh. Gaurav Raghav
2	CR/2383/2019	Garvesh Kumar Pal M/s Sana Realtors Pvt. Ltd.
		Sh. Gaurav Rawat Sh. Gaurav Raghav
3	CR/1474/2019	Sandeep Malhota M/s Sana Realtors Pvt. Ltd.
		Sh. Gaurav Rawat Sh. Gaurav Raghav
4	CR/2812/2019	Manu Bansal and Varsha Bansal and M/s Sana Realtors Pvt. Ltd.
		Sh. Gaurav Rawat Sh. Gaurav Raghav
5	CR/3281/2019	Ajit Mishra and Shalini Singh and M/s Sana Realtors Pvt. Ltd.
		Sh. Gaurav Rawat Sh. Gaurav Raghav
6	CR/5776/2019	Shekhar Saran M/s Sana Realtors Pvt. Ltd.
		Sh. Gaurav Rawat Sh. Gaurav Raghav
7	CR/5995/2019	Naresh Ahuja M/s Sana Realtors Pvt. Ltd.
		Sh. Gaurav Rawat Sh. Gaurav Raghav

CORAM:

Shri Vijay Kumar Goyal
Shri Ashok Sangwan
Shri Sanjeev Kumar Arora

Member
Member
Member



ORDER

1. This order shall dispose of all the 7 complaints titled as above filed before this authority in Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the projects, namely, 'Precision Soho Tower' being developed by the same respondent promoter i.e., M/s Sana Realtors Pvt. Ltd. The terms and conditions of the builder buyer's agreements that had been executed between the parties inter se are also almost similar. The fulcrum of the issues involved in all these cases pertains to failure on the part of the respondent/promoter to deliver the timely possession of the units in question, seeking award for delayed possession charges. In several complaints, the complainants have refuted various charges like increase in super area, decrease in super area, EDC/IDC, PLC, payment of assured return and holding charges.
3. The details of the complaints, reply status, unit no., date of agreement, date of environment clearance, date of sanction of building plans, due

date of possession, offer of possession and relief sought are given in the table below:

PROJECT NAME 'Precision Soho Tower'

Possession Clause 15: That the possession of the said premises is proposed to be delivered by the DEVELOPER to the ALLOTTEE(S) within Three years from the date of this Agreement. If the completion of the said Building is delayed by reason of non-availability of steel and/or cement or other building materials, or water supply or electric power or slow down, strike or due to a dispute with the construction agency employed by the DEVELOPER, lock out or civil commotion or by reason of war of enemy action or terrorist action or earthquake or any act of God or non-delivery of possession is as a result of any Act, Notice, Order, Rule or Notification of the Government and/or any other Public or Competent Authority or due to delay in action of building/zoning plans/grant of completion / occupation certificate by any Competent Authority or for any other reason beyond the control of the DEVELOPER, the DEVELOPER shall be entitled to extension of time for delivery of possession of the said premises. The DEVELOPER as a result of such a contingency arising, reserves the right to alter or vary the terms and conditions of this Agreement or if the circumstances beyond the control of the DEVELOPER so warrant, the DEVELOPER may suspend the Scheme for such period as it might consider expedient

Occupation Certificate: 18.07.2017

S.n	Com. No. Title DOF	Reply status	Apartment/ Unit No/plot no.	Date of Agreement	Due date of possession	Offer of possession	Relief Sought
1	2383/2018 Garvesh Kumar Pal V/S Sana Realtors P. Ltd D.O.F. 21.11.2019	Not received	Unit no. 608, 6 th floor Area: 525 sq. ft. (as per page 26 of complaint)	Not executed Date of allotment: 20.02.2010 (As per page no. 26 of complaint)	20.02.2013 (calculated from the date of allotment)	Not offered TC- Rs. 25,63,675/- AP-Rs. 29,01,008/-	-Direct the respondent to pay delay possession charge along with prescribed rate of interest.



Complaint no. 1983 and 6 others

2	1474/2019 Sandeep Malhotra V/S Sana Realtors pvt. Ltd. 12.12.2019	Not Received	Unit no 941, 9 th floor Area: 525 Sq. FT. (as per page 24 of complaint)	31.01.2011 as per page 22 of complaint	31.01.2014	Not offered TC- Rs. 25,88,250/- AP-Rs. 23,52,000/-	-DPC -Direct the respondent to quash the increase in super area - Direct the respondent to give possession of Unit no. 941.
3	1983/2019 Suresh Kumari V/S Sana Realtors Pvt. Ltd.. D.O.F. 03.05.2019	Not Received	Unit no 807, 8 th floor Area: 525 Sq. FT. (as per page 47 of complaint)	03.04.2010 as per page 46 of complaint	03.04.2013	Not offered TC- Rs. 24,15,000/- AP- Rs. 24,22,141/-	-DPC -Direct the respondent to quash the decrease in super area -Provide proper car parking and to provide the common toilet - refund the EDC/IDC.
4	2812/2019 Manu Bansal & Varsha Bansal V/S Sana Realtors Pvt. Ltd.. D.O.F. 12.12.2019	Not Received	Unit no 304, 3 rd , Tower-B floor Area: 350 Sq. FT. (As per page 20 of complaint)	MoU: 23.08.2011	24.08.2016.	Not offered TC- Rs. 18,86,500/- AP-19,35,078/-	-DPC - Direct the respondent to pay the assured return from June 2014 till actual possession.
5	3281/2019 Ajit Mishra & Shalini Singh V/S Sana Realtors Pvt. Ltd.. D.O.F. 05.08.2019	Not Received	Unit no 50-A, Ground Floor, Area: 263 Sq. FT. (As per page 19 of complaint)	11.11.2010 (as per page 18 of complaint)	11.11.2013	Not offered TC- Rs. 17,99,709/- AP-Rs. 13,30,305/-	-Possession -DPC - Quash the cost of increase in super area



Complaint no. 1983 and 6 others

6	5776/2019 Shekhar Saran Agarwal V/S Sana Realtors Pvt. Ltd.. D.O.F. 27.11.2019	Not received	Unit no 11, Ground Floor, Area: 476 Sq. FT. (As per page 30 of complaint)	07.06.2010 as per page 29 of complaint	07.06.2013	Not offered TC- Rs. 32,98,680/- AP- Rs. 30,45,648/-	-Possession -DPC -Quash the increase in super area
7	5995/2019 Naresh Ahuja V/S Sana Realtors Pvt. Ltd.. D.O.F. 10.12.2019	Not received	Unit no 415, 4 th Floor, Area: 525 Sq. FT. (As per page 58 of complaint)	23.03.2010 as per page 57 of complaint	23.03.2013	Not offered TC- Rs. 21,85,075/- AP-Rs. 20,39,610/-	-Possession -DPC -Holding Charges

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the builder buyer's agreement executed between the parties inter se in respect of said units for not handing over the possession by the due date. In some of the complaints, issues other than delay possession charges in addition or independent issues have been raised and consequential reliefs have been sought.
5. The delay possession charges to be paid by the promoter is positive obligation under proviso to section 18(1) of the Act in case of failure of the promoter to hand over possession by the due date as per builder buyer's agreement.
6. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast

upon the promoters, the allottees and the real estate agents under the Act, the rules and the regulations made thereunder.

7. The facts of all the complaints filed by the complainant/ allottees are also similar. Out of the above-mentioned cases, the particulars of lead case CR/1983/2019 titled as Suresh Kumari Vs. M/s Sana Realtors Pvt. Ltd. are being taken into consideration for determining the rights of the allottees qua delay possession charges, increase in super area, decrease in super area, EDC/IDC, holding charges and PLC.

Unit and project related details

8. 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:

CR/1983/2019

S.No.	Heads	Information
1.	Project name and location	"Precision SOHO Tower", sector 67, Gurugram, Haryana.
2.	Project area	2.456 acres
3.	Nature of the project	Commercial colony
4.	DTCP license no. and validity status	72 of 2009 dated 26.11.2009
5.	RERA Registered/ not registered	Not registered
6.	Unit no.	807, 8 th floor
7.	Unit measuring (super area)	525 sq. ft.
8.	Date of execution of flat buyer agreement	03.04.2010 (endorsed in the name of complainant on 11.04.2012)
9.	Payment plan	Construction linked payment plan

		plan
10.	Total consideration	<p>Rs.24,15,000/- (as per clause 1 of agreement) including EDC + IDC pg. 03)</p> <p>Rs. 26,33,025/- (as per payment demand letter dated 22.03.2015) Annexure C-15</p> <p>Note: total consideration of subject unit needs to be determined during course of proceedings</p>
11.	Total amount paid by the complainant	Rs. 22,36,053/- (as per SOA on pg. 76 of the complainant)
12.	Note: due date of delivery of possession as per clause 15 of flat buyer agreement 3 years from the date of execution of buyer agreement i.e. 03.04.2010	<p>03.04.2014</p> <p>(Grace period is not allowed)</p>
13.	Offer of possession to the complainant	Not offered
14.	Status of the project	Occupation Certificate of subject project was granted on 18.07.2017. (Taken from similar case file 371 of 2019)
15.	Details of Occupation Certificate	18.07.2017

Facts of the complaint

The complainant submitted as under: -

9. That the original allottee namely Ms. Chavi Singh approached the respondent for booking of a unit admeasuring 525 sq. ft. in project namely Precision Soho Tower, Sector-67, Gurugram. An "agreement to sell" dated 26.03.2012 was executed between the between them. A sum of Rs. 13,13,926/- was paid to the original allottee, in consideration of the whole amount paid by her to the respondent-builder till date. Thereafter the respondent-builder transferred all the rights of the office space i.e. unit no.- 807 on 8th floor in 'Precision Soho Tower' admeasuring 525 sq. ft. in the name of complainant on 11.04.2012, thereby putting her in the same legal position of the original allottee. The buyer's agreement was also endorsed in favour of the complainant. As per the terms and conditions of the buyer's agreement, the super area of the unit was 525 sq. ft. and the rate is 4170/- per sq. ft.+ EDC & IDC. So, the consideration amount was Rs. 21,89,250/- + Rs. 2,25,750/- for EDC & IDC, which comes out to be a total of Rs. 24,15,000/- all inclusive. The respondent-builder then issued new receipts in the name of complainant, for the amount already paid by the previous buyer to it.
10. It is pertinent to mention here that, it was assured by the respondent at the time of agreement of the office-space that possession would be handed over to the complainant within 36 months from the date of execution of that agreement with the original allottee i.e., by 4 April, 2013, fully completed in all aspects.

11. That as per the agreement, the respondent had allotted a super area of the unit as 525 sq. ft for the office space, but now the fact has come in the knowledge of the complainant that it is only allotting a carpet area of 275 sq. ft., against the law and the guidelines/ policy. The respondent can only reduce to the extent of 10 percent of the agreed area, and even after that reduction, the super area of the office space of the complainant would come around approx. 475 sq. ft. It is clear deception and cheating on the part of respondent as he has intentionally not mentioned in any of the paragraphs of the buyer's agreement that the final carpet area would be 275 sq. ft. However, the law does not differentiate between the super area and the carpet area. For this reason, the respondent has not mentioned in the buyer's agreement that while giving possession of the office space, it would be different from the committed area.
12. That even the respondent has not built the proper car parking space as per the Lay-out plan and sold out the space of common toilet to make the monetary profit. Even the area demarcated for the toilets is less than the sanctioned one and only half of the toilets are available on each floor. The record obtained by another buyer through RTI is attached herewith as ANNEXURE C-12. The required common toilets are not available presently within the complex as per the sanctioned plan. The selling of these toilet space by the respondent was highlighted in the newspapers at a large scale, but it still did not pay a heed to those complaints. It is a common practice adopted by the respondent as it had sold out the common toilets area in another commercial project, in

Sector-50, and which is under an enquiry by the Government authorities.

13. That the respondent has from the very beginning raised unnecessary demands of additional EDC/IDC/EEDC, Extra VAT, Service Tax, maintenance charges, IFMS charges, etc., and is forcing the complainant to execute bond thereby stating that no dispute would be raised by her in future in respect of size, area, quality of construction or other dues which is not tenable. It is pertinent to mention here that the respondent has failed to offer the possession to the complainant and to complete the project by the due date as it is still deficient of the basic amenities as committed by it in the advertisement and brochure and as per the assurances.
14. That keeping in view the snail pace of work at the construction site and half-hearted promises of the respondent, and tricks of extra more and more money from the complainant and others is evident from its irresponsible and desultory attitude and conduct injuring the interest of the buyers including the complainant who have spent their entire hard earned savings in order to buy the units and stand at a crossroads to nowhere. The inconsistent and lethargic manner, in which the respondent conducted the business and the lack of commitment in completing the project on time, has caused the complainant great financial and emotional loss and hence this complaint seeking possession of the unit besides delay possession charges and refund on account of decrease in area besides the amount taken in excess in the shape of EDC/IDC.

Relief sought by the complainant:

15. The complainant has sought following relief(s):

- i. Pass an order for delay interest charges along with prescribed rate of interest.
- ii. Direct the respondent to refund the excess amount taken for 200 sq.ft area.
- iii. Direct the respondent to refund the excess amount collected by it from the complainant in the shape of EDC/IDC.
- iv. Direct the respondent to provide proper car parking and common toilets as per layout plan.

16. 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.

17. Despite notice and due service, none of the respondents filed any written reply though oral arguments were advanced on behalf of respondent builder.

18. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties

Jurisdiction of the authority

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

F.I Territorial jurisdiction

20. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by the Town and Country Planning Department, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes with office 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 complaints.

F.II Subject matter jurisdiction

21. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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 of 2016 quoted above, the authority has complete jurisdiction to decide the complaints 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.

Findings on the relief sought by the complainant

Possession of the allotted unit along with delay possession charges

23. It is contended on behalf of the complaint that her predecessor Chhavi Singh was allotted the subject unit and the same was endorsed in her favour on 11.04.2012. The amount received from the original allottee was also endorsed in her favour and the same is evident from agreement to sell dated 03.04.2010 executed between the original allottee and the respondent, the possession of the allotted unit was to be offered on 03.04.2013. Though the complainant paid a sum of RS. 24,22,141/- to the respondent builder but it failed to complete the project and offer possession of the allotted unit. Even the respondent illegally raised demand of Rs. 4,44,292/- vide letter dated 22.03.2015, due at the time of possession without obtaining occupation certificate of the project. It also decreased the carpet area of the allotted unit in an illegal manner besides selling the area meant for common toilets and raising illegal demands in the shape of service tax, maintenance charges, IFMS, EDC/IDC etc, However, it is pleaded on behalf of the respondent builder that the change in the area of the allotted unit and additional demands were raised as per the terms and conditions of the space buyer agreement entered into with the allottee and the builder.

24. Though there are no pleading filed on behalf of the respondent builder to rebut the averments taken by the complainant in her complaint but from the documents placed on the file, the allotment of the subject unit, its price, area, the execution of buyer's agreement, the due date of possession, the dimensions of the unit are not disputed. First of all, the plea of complainant w.r.t. change in the area of the allotted unit cannot be accepted in the face of clause 14 of space buyer agreement providing as under

That the DEVELOPER shall, under normal conditions, complete the said Building as per the plans designs and specifications seen and accepted by the ALLOTTEE(S) with such additions, alterations, deletions and modifications in the layout and building plans including the number of floors as the DEVELOPER may consider necessary or may be required by any Competent Authority to be made in them or any of them while sanctioning the building plans or at any time thereafter. The ALLOTTEE(S) agrees that no future consent of the ALLOTTEE(S) shall be required for this purposes. Alterations may interalia involve all or any of the changes in the said premises such as change in position of the said premises, change in its dimensions, change in its area or change in its number or change in the height of the building. In order to implement all or any of the above changes, supplementary sale deed or deeds, if necessary will be got executed and registered by the DEVELOPER in case a sale deed has already been executed and registered in favour of the ALLOTTEE(S). If, as a result of the above mentioned alterations, there is either a reduction or increase in the super area of the said premises or its location, no claim monetary or otherwise will be raised or accepted except that the agreed rate per sq. meter and other charges will be applicable for the changed area i.e., at the same rate at which the said premises was allotted and accordingly, as a consequence of such reduction or increase in super area, the DEVELOPER shall be liable to refund without interest only the extra price and other pro-rata charges recovered or shall be entitled to recover from the ALLOTTEE(S) additional price and other proportionate charges without interest as the case may be. However, the ALLOTTEE(S) shall be liable to pay interest over the additional price once the period for payment of the same as communicated by the DEVELOPER has expired

25. A perusal of the above-mentioned facts shows that the allottee agreed for change in dimensions, area and number of the allotted unit and no prior consent for the same was required by the builder. It is not proved that the allottee executed the buyer's agreement under any pressure or inducement. So, in such a situation, the complainant being a subsequent allottee is required to take possession of the allotted unit with lessor area but subject to refund of the amount received in excess of decrease in the area. However, the demand for extra payment on account of increase in the super area by the respondent-promoter from the allottee(s) is legal but subject to condition that before raising such demand, details have to be given to the allottee(s) and without justification of increase in super area, any demand raised in this regard is liable to be quashed.
26. Further, the complainant raised an issue with regard to EDC/IDC i.e., the respondent builder raised unnecessary demand of additional EDC/IDC. The authority of its view that the promoter would be entitled to recover the actual charges paid to the concerned departments from the complainant/allottee on pro-rata basis on that account besides electricity connection, sewerage connection and water connection, etc., i.e., depending upon the area of the unit allotted to her vis-à-vis the area of all the units in the project. The complainant would also be entitled to proof of such payments to the concerned departments along with a computation proportionate to the allotted unit, before making payments under the aforesaid heads. The respondent is directed to provide specific details with regards to these charges.

27. Similarly, in complaints bearing no. **1474-2019** and **5774-2019** there is change of units from the allotted one. Though, that action of the respondent builder has been challenged being illegal and the consent having not being taken but the allottees agreed to the same while executing buyers' agreements and particularly clause 14 wherein no provision for obtaining consent of an allottee before effecting change of number of the allotted unit.
28. In complaint bearing no. **5995/2019**, the allottee has also challenged the authority of the respondent builder to raise demand by way of holding charges on the ground that since the project is incomplete and the offer of possession is not lawful. The authority is of view that the respondent is not entitled to claim holding charges from the complainant(s)/allottee(s) at any point of time even after being part of the builder buyer's agreement as per law settled by Hon'ble Supreme Court in Civil appeal nos. 3864-3889/2020 decided on 14.12.2020.
29. Further, in complaint bearing no. **5774-2019**, the complainant pleaded that the front portion of the unit was blocked by the builder, but later builder charged PLC of Rs. 1,36,800/- when he booked the unit as a corner facing. The authority observes that in such cases where the apartment/unit has ceased to be preferentially located, the amount charged for preferential location shall be refunded/adjusted. The same should be refunded to the allottee along with interest at the prescribed rate w.e.f. the date of payment made by the allottee till the amount is repaid/adjusted.

30. In complaint no. **2812-2019**, it is pleaded on behalf of complainants that they booked unit bearing no. 304, 3rd floor admeasuring 350 sq.ft. in tower B of the project for a sum of Rs. 18,86,500/- and paid Rs. 19,35,078/- to the respondent builder. Though, no buyers agreement w.r.t the allotted unit but there is Memorandum of Understanding dated 23.08.2011 executed between the parties setting out the terms and conditions of allotment, its area, the rate of payment of assured return w.e.f. June 2011, payments received terms and condition with regard to possession etc.,. It is evident from the pursual of MOU mentioned above that more than the sale consideration of the unit was received by the promoter, and it was required to start paying assured return w.e.f. June 2011 and the same were admittedly paid upto the year 2014 @ the rate of Rs. 19250/- per month. It is pleaded on behalf if the complainant that though the promoter was bound to complete the project and offer possession of the allotted unit by August 2016, but it failed to do so. So, as per the commitment, the respondent builder is liable to pay the amount of assured return till actual possession @ Rs. 19250/-.
31. There is no formal letter of allotment of the unit but a pursual of MoU dated 23.08.2018 makes the things clear w.r.t its price, area, the time upto which assured returns are to be paid at the fix rate and its duration. There is no rebuttal w.r.t. recitals of the MoU as the respondent did not choose to contest the complaint. So, it is evident that against the total sale price of Rs. 18,86,500/- the complainants paid the respondent builder a sum of Rs. 19,35,078/- and became entitled to the amount of assured return as per clause 2 of MoU dated 23.08.2011 w.e.f. June 2011

and that amount was to be given for a maximum period of 5 years i.e., upto 23.08.2016. The amount in this regard was admittedly paid to the complainants upto December 2014 and occupation certificate of the project was received on 18.07.2017. So, in such a situation the complainants are entitled to the amount of assured return @ Rs. 19250/- per month w.e.f. January 2015 to 23.08.2016 as agreed upon between the parties vide clause 2 of the MoU dated 23.08.2011. Secondly there is nothing on the record to show that after receipt of OC of the project on 18.07.2017, the allotted unit was either leased out by the developer in terms of clause 5 to 8 of the MoU dated 23.08.2011 or the amount of lease as agreed upon between the parties was sent to the lessors/allottees. A period of about 6 years is going to expire when occupation certificate of the project was received. So, in such a situation as per clause 9 of the MoU the developer is bound to offer possession of the allotted unit to the complainants and they would be entitled to delay possession charges w.e.f. 24.8.2016 till offer of possession plus 2 months or till the actual handover of the possession, whichever is earlier.

To provide toilets in the project as per the layout plan

32. While filing complaint a specific plea was taken by the complainant in para 3(k) of the complaint w.r.t. providing less area than the sanctioned one for toilets on each floor of the project and selling that area to make more profit. A reference in this regard has been made to documents C-12 and C-13 (page 75 & 76 of the complaint). Admittedly annexure C-13 dated 03.02.2017 relates to some other commercial project of

Parasavnath Exotica, Golf Course Gurugram and not to the project in question. Secondly, annexure C-3, stated to be obtained through Right to Information Act cannot be pressed into service unless supported by sanctioned site plan and as built drawings of the project. So, the plea advanced in this regard by the complainant is not sustainable.

Delay possession charges:

33. In all the complaints, the allottees intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Section 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."

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

"3. Possession

Clause 3- 3.1.....the seller/confirming party proposes to handover the physical possession of the said unit to the purchaser(s) within a period of 36 months from the date of execution of the Flat buyer agreement (commitment period). The purchaser(s) further agrees and understands that the seller/confirming party shall additionally be entitled to a period of 180 days after the expiry of said commitment period)

35. The authority has gone through the possession clause of the agreement. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the complainant not

being in default under any provision of this agreement and in compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottees that even a single default by the allottees in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning.

36. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both the builder/promoter and buyers/allottees are protected candidly. The space buyer's agreement lays down the terms that govern the sale of different kinds of properties like residential, commercials etc. between the buyer and builder. It is in the interest of both the parties to have a well-drafted flat buyer's agreement which would thereby protect the rights of both the builder and buyers in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the apartment, plot or building, as the case may be and the right of the buyers/allottees in case of delay in possession of the unit.
37. **Admissibility of grace period:** The promoter proposed to hand over the possession of the said unit within period of 36 months from the date

execution of buyer's agreement. It is further provided in the agreement that if the completion of the said building is delayed by reason of non-availability of steel and/or cement or other building materials, or water supply or electric power or slow down, strike or due to a dispute with the construction agency employed by the developer, lock out or civil commotion or by reason of war of enemy action or terrorist action or earthquake or any act of god or non-delivery of possession is as a result of any act, notice, order, rule or notification of the Government and/or any other public or competent authority or due to delay in action of building/zoning plans/grant of completion / occupation certificate by any competent authority or for any other reason beyond the control of the developer, the developer shall be entitled to extension of time for delivery of possession of the said premises. It is observed that the said clause is not only one sided and vague but also doesn't provide any specific period to be allowed as grace period in above mentioned exigencies. Therefore, grace period is not allowed.

38. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the prescribed rate of interest on the amount already paid by her. 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.

39. 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.
40. 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., 28.03.2023 is 8.7%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.
41. The definition of term 'interest' as defined under section 2(z) 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—

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 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;"

42. 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 her in case of delayed possession charges.
43. Now the question for consideration arises as to for how much period, the allottees are entitled for delay possession charges. As per the buyer's agreement entered between the parties on 03.04.2010 w.r.t. the allotted unit, the due date for completion of the project and offer of possession of the allotted unit was agreed upon as 03.04.2013. But the builder failed to honour its commitment and occupation certificate of the project was received only on 18.07.2017. Though there is no whisper in that letter w.r.t receipt of occupation certificate and offer of possession but the demand for the dues was raised against possession but after receipt of occupation certificate. It is pertinent to mention here that even after the reminders there is nothing on record that any amount against the demands so raised after receipt of occupation certificate on 18.07.2017 were met with by the allottees.
44. Moreover, the fact cannot be ignored that occupation certificate is public document as well as Section 19(10) of Act also conferred obligation over complainant-allottee to take the possession of the subject unit within two months from grant of occupation certificate. The relevant part of the Act of ,2016 is reproduced as below:

Every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be.

45. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. Therefore, in the interest of natural justice, the complainants should be given 2 months' time from the date of occupation certificate. This 2 month of reasonable time is to be given to the complainants keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit and other procedural documentations etc.
46. Therefore, in such a situation, the complainant-allottees are allowed delay possession charges against the allotted unit from the due date of possession i.e. 03.04.2010 till the date of receipt of occupation certificate i.e., 18.07.2017 plus two months i.e., 18.09.2017 as per the provisions of section 19(10) of the Act of,2016.

Litigation cost:

47. The complainant in the aforesaid relief is seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021), has held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by

the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensations.

Directions of the authority

48. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter 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 date of due date i.e., 03.04.2013 till the receipt occupation certificate i.e. 18.07.2017 plus 2 months i.e. 18.09.2017.
 - ii. The arrears of such interest accrued from due date of possession till its admissibility as per direction (i) above shall be paid by the promoter to the allottee within a period of 90 days.
 - iii. 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.
 - iv. The respondent is directed to handover the possession of the allotted unit to the complainants completes in all aspects as per

- specifications of buyer's agreement within two months from date of this order.
- v. The respondent-builder is directed not to charge anything which is not part of buyers' agreement.
- vi. The respondent builder would be liable to refund the amount received from the allottees w.r.t the size of decrease in area of their units. Similarly, in case of increase in the super area by the respondent-promoter from the allottee(s) is legal but subject to condition that before raising such demand, details have to be given to the allottee(s) and without justification of increase in super area, any demand raised in this regard is liable to be quashed.
- vii. The complainants in complaint no. **2812-2019** would be entitled to the arrears of assured return @ of Rs. 19250/- per month w.e.f. January 2015 to 23.08.2016 and thereafter the amount against delay possession charges w.e.f. 24.08.2016 to upto date at the prescribed rate of interest on the amount of Rs. 19,35,078/- received by the promoter in view of reasons given in para 31 of the order.
- viii. **Holding charges:** The respondent is not entitled to claim anything against holding charges from the complainant(s)/allottee(s) at any point of time even after being part of the buyer's agreement as per law settled by Hon'ble Supreme Court in Civil appeal nos. 3864-3889/2020 decided on 14.12.2020.
49. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.



HARERA
GURUGRAM

Complaint no. 1983 and 6 others

50. Complaints stands disposed off. True certified copy of this order shall be placed in the case file of each matter.
51. Files be consigned to registry.


Sanjeev Kumar Arora
Member


Ashok Sangwan
Member


Vijay Kumar Goyal
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 28.03.2023



HARERA
GURUGRAM