

**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: Precision Soho Tower			APPEARANCE
1	CR/371/2019	Suresh Chandra and Alka Tiwari M/s Sana Realtors Pvt. Ltd.	Sh. Gaurav Rawat Sh. Gaurav Raghav
2	CR/384/2019	Rashmi Gautam M/s Sana Realtors Pvt. Ltd.	Sh. Gaurav Rawat Sh. Gaurav Raghav
3	CR/828/2019	Ratan Dev Garg M/s Sana Realtors Pvt. Ltd.	Sh. Gaurav Rawat Sh. Gaurav Raghav
4	CR/1147/2019	Pardeep Mathur M/s Sana Realtors Pvt. Ltd.	Sh. Gaurav Rawat Sh. Gaurav Raghav
5	CR/1277/2019	Sudeep Singh & Komal Singh and M/s Sana Realtors Pvt. Ltd.	Sh. Gaurav Rawat Sh. Gaurav Raghav
6	CR/2763/2019	Chanchal Verma and M/s Sana Realtors Pvt. Ltd.	Sh. Gaurav Rawat Sh. Gaurav Raghav
7	CR/5774/2019	Sunil Kumar V/s Sana Realtors Pvt. Ltd.	Sh. Gaurav Rawat Sh. Gaurav Raghav
8	CR/6529/2019	Ravinder V/s Sana Realtors Pvt. Ltd.	Sh. Gaurav Rawat Sh. Gaurav Raghav

**CORAM:**Shri Vijay Kumar Goyal  
Shri Ashok Sangwan  
Shri Sanjeev Kumar AroraMember  
Member  
Member**ORDER**

1. This order shall dispose of all the 8 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 and EDC/IDC.
3. The details of the complaints, reply to 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	371/2019 Suresh Chandra Tiwari and Alka Tiwari V/S Sana Realtors P. Ltd D.O.F. 21.11.2019	received	Unit no. 614, 6 <sup>th</sup> floor Area: 525 sq. ft. (as per page 28 of complaint )	28.04.2010 (As per page no. 26 of complaint)	28.04.2013	Not offered  TC- 25,63,675 AP-1718425	-DPC -Possession -Direct the respondent to give possession of the allotted unit 614
2	384/2019 Rashmi Gautam V/S Sana Realtors Pvt. Ltd. 21.11.2019	Received	Unit no 644, 6 <sup>th</sup> floor Area: 525 Sq. FT.  New Unit= 635 Area= 546	19.06.2010	19.06.2013	Not offered  TC- Rs. 22,99,500/- AP-Rs. 23,88,936/-	-DPC -Possession -Direct the respondent to give possession of the allotted unit 644
3	828/2019 Ratan Dev Garg V/S Sana Realtors Pvt. Ltd., D.O.F. 27.11.2019	Received	Unit no 432, 4 <sup>th</sup> floor Area: 525 Sq. FT. (as per page 25 of complaint )	14.05.2010 as per page 23 of complaint	14.05.2013	Not offered  TC- Rs. 22,37,025/- AP- Rs. 20,80,616/-	-DPC -Possession.



4	1147/2019 Pardeep Mathur V/S Sana Realtors Pvt. Ltd.. D.O.F. 10.04.2019	Received	Unit no 504, 5 <sup>th</sup> , Area: 525 Sq. FT. (As per page 45 of reply)	10.04.2010	10.04.2013	Not offered  TC- Rs. 22,99,500/- AP-19,35,078/-	-DPC - Possession -refund the amount of decrease area. - Provide car parking and toilet as per layout plan -EDC/IDC
5	1277/2019 Sudeep Singh and Komal Singh V/S Sana Realtors Pvt. Ltd.. D.O.F. 21.11.2019	Received	Unit no 343, 3rd Floor, Area: 525 Sq. FT. (As per page 30 of complaint )	31.03.2010 (as per page 28 of complaint)	31.03.2013	Not offered  TC- Rs. 20,74,300/- AP-Rs. 16,48,826/-	- Possession -DPC - Quash the cost of increase in super area -Give possession of the allotted unit 343.
6	2763/2019 Chanchal Verma V/S Sana Realtors Pvt. Ltd.. D.O.F. 21.11.2019	Received	Unit no 31, Ground Floor, Area: 466 Sq. FT. (As per page 36 of complaint )	26.05.2010 as per page 34 of complaint	26.05.2013	Not Offered  TC- Rs. 31,68,800/- AP-Rs. 23,444,50/-	- Possession -DPC - Quash Increase in demand.
7	5774/2019 Sunil Kumar V/s Sana Realtors Pvt. Ltd.	Received	Unit no 10, Ground Floor, Area: 456 Sq. FT. (As per page 57 of complaint )	20.05.2010 as per page 56 of complaint	20.05.2013	Not Offered  TC- Rs. 30,46,080/- AP-Rs. 27,74,869/-	- Possession -DPC - Direct the respondent to give possession of unit no.10. - Refund PLC. - Quash Increase in demand.
8	6529/2019 Ravinder V/S Sana Realtors Pvt. Ltd.. D.O.F. 10.12.2019	Received	SCO-3	12.07.2011 (as per page no. 35 of complaint)	12.07.2014	TC- 2,03,06,220 AP-1,49,97,885	Possession DPC



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 particular's of lead case CR/1277/2019 titled as Sudeep Singh & Komal Singh 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 and EDC/IDC.

**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/1277/2019**



1.	Name and location of the project	"Precision Soho Tower", Sector 67, Gurugram, Haryana.
2.	Nature of the project	Commercial colony
3.	Project area	2.456 acres
4.	Registered/not registered	Not registered
5.	DTCP license no.	72 of 2009 dated 26.11.2009
6.	License holder	M/s Sana Realtors Pvt. Ltd.
7.	Occupation certificate granted on	18.07.2017
8.	Date of execution of flat buyer agreement	31.03.2010 pg. 27 of complaint
9.	Office space/unit no. as per the said agreement	343, third floor
10.	Admeasuring area of the allotted office space	525sq. ft.
11.	No. Of new unit	334, Third floor
12.	Admeasuring area of the new allotted office space	546 sq. ft. as intimated vide letter dated 24.07.2017
13.	Payment plan	Construction linked payment plan
14.	Total consideration amount	Rs20,74,300/- as per agreement
15.	Total amount paid by the complainant till date	Rs 16,48,836/- as per receipt attached
16.	Letter of payment demand "at the time of possession"	01.08.2015
17.	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., 31.03.2010	31.03.2013 (Grace period is not allowed)
18.	Letter of payment demand "at the time of possession"	24.07.2017 Note: No formal offer of possession has been made. However, vide this letter, demand at time of

		possession was raised. Thereafter, on 04.12.2018, reminder was also sent.
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### **Facts of the complaint**

The complainants submitted as under:

9. The complainants booked a unit admeasuring 525 sq ft, unit No-343 in project "Precision SOHO Tower" at Sector 67, Gurugram. The initial booking amount of Rs 25000/- was paid through cheque dated 04/02/2010.
10. That a flat buyer agreement was executed signed between the parties on 31.03.2010, with a belief that the project shall be completed in a time bound manner. In the garb of that agreement the respondent persistently raised demands due to which it was able to extract huge amount of money from the complainant and left the column blank wherein mentioned date of building plan its approval unilateral &arbitrary.
11. That the complainants submit that the total value of unit is Rs 20,743,00/- as per flat buyer agreement out of which the respondent extracted total amount of Rs 16,48,836/- i.e. more than 80 % of total sales consideration before 11th March, 2013 and at that time, the project was 70 % incomplete.
12. That the complainants have repeatedly been seeking an update on the progress in the development of the project. However, there were never replied to, and the respondent was always vague and evasive to such requests.

13. That the respondent within a period of 37 months 04/02/2010 to 04/03/2013 raised the demand Rs 16,48,836/- to meet those huge demands, but did not carry any work on site, thus being illegal, arbitrary and unilateral.
14. That the complainants were offered possession of the unit on 01.08.2015 without obtaining occupancy certificate. Even they raised objections qua illegal possession, non-payment of delay penalty and increase in super area 525 to 546 sq ft on 06/08/2015 through letter but the builder did not reply to the same.
15. That the respondent sent a letter dated 24/07/2017 in which it changed the unit of complainants from 343 to 334 in the project. The complainants visited the office of respondent and requested for change of the unit to the earlier one but no reply to the same was given.
16. That the complainants have paid all the demands raised by respondent from time to time i.e. 80 % of the cost of the unit. However, respondent failed to meet its obligations and commitments. The undue delay in handing over the possession of the unit for more than 5 years from committed date as per agreement is not only a breach of trust but is also indicative of ill intentions of the respondent. This act on the part of respondent has caused undue financial loss and mental agony to the complainants and hence this complaint seeking possession of the allotted unit besides delay possession charges and compensations.

**Relief sought by the complainants:**

17. The complainants have sought following relief(s):
  - i. Direct the respondent to give the possession of allotted unit 343 and pay interest on paid-up amount of Rs 1648836/- qua delayed



period 31st April 2013 to till actual possession along with prescribed rate of interest.

- ii. Direct the respondent to quash the cost of increase in super area of the unit.

18. 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.

**Reply by the respondent**

The respondent by way of written reply dated 18.04.2019 made the following submissions:

19. That the present complaint filed is not maintainable as the occupancy certificate has already been issued and the complainants being offered possession of the subject unit. They were also intimated about the sale deed of the property in question is ready for execution, but they deliberately didn't come forward to take the possession and to get the same executed.
20. That as per the clauses 41 & 42 of the buyer agreement the complainants were liable to pay as and when demanded by the respondent i.e. the stamp duty, registration charges and other legal and incidental charges for execution and registration of conveyance deed. It is also submitted that the complainants are also liable to pay any loss or damages suffered by respondent for non-payment or delay in payment, non-performance of the terms and conditions of the agreement.
21. That as per clause 8 of the buyer's agreement "the time of payment of instalments as stated in schedule of payment and applicable stamp duty,

registration, fee, maintenance and other charges payable under this agreement as and when demanded is essence of that document”.

22. That as per clause 15 relied upon by the complainants, it provides for exemption if the delay, if any caused is beyond the control of the respondent, and the same shall be excluded from the time period so calculated. It is not out of place to mention here that the respondent has been diligent in constructing the project and the delay, if any, is due to the authorities or government actions and the same is well documented. It is worth to note here that initially, there were high tension wires passing through the project land and the work got delayed as the agencies did not remove the same within time promised as the work was involving risk of life. Even the respondent could not take any risk and waited for the cables to be removed by the electricity department and the project was delayed for almost two years at the start. Initially, there was a 66 KV Electricity Line which was located in the land and wherein the project was to be raised. Subsequently, an application was moved with the HVPNL for shifting of the said electricity line and it demanded a sum of Rs. 46,21,000/- for shifting the said electricity line. Lastly even after the deposit of the said amount, the HVPNL took about one and half years for shifting the said electricity line. It is pertinent to mention here that until the electricity line was shifted, the construction on the plots was not possible and hence, the construction was delayed for about two years. It is pertinent to note here that the diligence of the respondent to timely complete the project and live upto its reputation can be seen from the fact that it had applied for the removal of high-tension wires in the year 2008 i.e. a year even before the license was



- granted to it so that the time can be saved and project can be started on time.
23. It is further submitted that the contractor M/s Acme Techcon Private Limited was appointed on 08.07.2011 for development of the project and it started development on war scale footing. In the year 2012, pursuant to the Punjab and Haryana High Court order, the DC had ordered all the developers in the area for not using ground water and the ongoing projects in the entire area seized to progress as water was an essential requirement for the construction activities. This problem was also beyond the control of the respondent, which was duly noted by various media agencies and documented in the government department. Further the development process was taking lot of time and the contractor had to spend more money and time for the same amount of work, which in normal course would have been completed in almost a year. Due to the said problems and delay in the work, the contractor working at the site of the respondent also refused to work in December, 2012 and the dispute was settled by the respondent by paying more to the earlier contractor and thereafter appointing a new contractor M/s Sensys Infra Projects Pvt. Ltd. in January, 2013 to immediately to resume the work at the site without delay. Further, the project is complete since 2015 and the respondent has also applied for the occupancy certificate in May 2015. Lastly in July 2017 occupancy certificate was issued and the delay of two years was on account of the delay in compliances by the authorities and as such, the respondent is not responsible for any delay. The development and construction have been diligently done by the respondent and the obligations which it was to discharge have been onerously discharged without fail and the

reasons for delay are stated herein for the kind consideration of this Hon'ble Authority. It is submitted that the respondent has complied with its part of the obligation and the conditions were not in control of the respondent. The respondent could diligently do his part, which has been done and requisite documents to prove its diligence are annexed herewith. Therefore, no illegality as being alleged can be attributed to the respondent in any manner whatsoever.

24. The respondent submitted that the complainants deliberately are not taking the possession of the property in question and have filed the present complaint with the sole purpose to harass the respondent and to create undue pressure and to extort illegal money from it. Hence the complaint is not maintainable and is liable to be dismissed with heavy cost.
25. All other averments made in the complaint were denied in toto.
26. 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**

27. 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**

28. 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**

29. 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.*

30. 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 qua force majeure conditions as pleaded by the respondent.**

31. While filing written reply, a specific plea was taken by the respondent that there was delay of about 2 years in completion of the project due to non-removal of cables of 66KV of the powerlines from the project

land. Besides that, there were stay w.r.t. use of ground water for construction activities leading to escalation of cost and the contractor engaged earlier refusing to work at the previous rates and engaging a new one for further construction. Thirdly, after all its efforts, it was able to complete the construction of the project and applied for its occupation certificate in May 2015 but the same was issued only in the month of July 2017. Thus, all these factors were beyond the control of the respondent who complied with his obligations with due diligence. Thus, the time spent and detailed above be excluded while calculating the due date for completion of the project and offer of possession of the allotted unit. But all the pleas advanced in this regard are devoid of merit. No doubt, the respondent spent a considerable period in getting removed electric cables from the project land, a dispute with the contractor leading to escalation of project cost and non-issuance of occupancy certificate by the competent authority but no fault for the same can be found with the complainant who paid a substantial part of the sale consideration towards the allotted unit. Moreover, it was for the respondent to address all these issues and the complainants were not a party to either of the same transaction. Though there was a dispute of the respondent with the contractor, but it was for the former to settle the same and proceed with the construction of the project. There may be delay in issuances of occupation certificate of the project and the period obtained in this regard has been contended to be excluded and be treated as zero period. But again, the plea advanced in this regard is not tenable. It is for the competent authority to declare the period spent in obtaining occupation certificate as zero period and the authority cannot deliberate on that point

### **Findings on the relief sought by the complainants**

#### **Possession of the allotted unit along with delay possession charges**

32. It is contended on behalf of the complainants that they were allotted unit no. 343 third floor measuring 535 sq.ft. by total sale consideration of Rs. 20,74,300/- . A space buyer agreement in this regard was executed between the parties. In pursuant to that agreement, they paid a sum of Rs. 1648836/- as per the construction linked payment plan. The due date for completion of the project and offer of possession of the allotted unit was agreed upon as 31.03.2013 .But the construction of the project could not be completed though the respondent vide letter dated 01.08.2015 raised a demand due at the time of possession but all of a sudden after receipt of occupation certificate on 18.07.2017, the respondent again raised demand vide letter dated 24.07.2017 but against the changed unit besides increasing its area from 525 sq.ft. to 546 sq.ft. Thus, neither the respondent was competent to change the number of the allotted unit nor its area and the same being illegal are not sustainable and liable to be set aside.
33. But, the plea of respondent is otherwise and who took a plea that the number of the allotted unit and its area were changed as per space buyer agreement executed between the parties on 31.03.2010 and no prior consent in this regard of the allottees was necessary. Thus, the complainants are bound to take possession of the changed unit and pay for increase in its area besides interest for delayed payments.
34. The allotment of the subject unit in the project of the respondent, its number, area, price, execution of buyer's agreement and due date for completion for the project and handing over the unit are not disputed. It is fact that against total sale consideration of Rs. 2074300/- the

complainants paid a sum of Rs. 1648836/- to the respondent-builder at different times under the construction linked payment plan. Though vide letter dated 01.08.2015 the respondent raised a demand for Rs. 677261/- but the same was due at the time of possession. It is not disputed that the occupation certificate of the project was received only on 18.07.2017 and in pursuant to which the respondent raised demand for clearing the dues vide letter dated 24.07.2017 and asking the complainants to take possession and get the conveyance deed of the unit registered in their favor. It was also informed to the allottees about change of no. of the allotted unit from 343 to 334 besides increase in the area of the unit from 525 sq.ft. to 546 sq.ft. as evident from letter dated 06.08.2015 sent by the allottees to the developer. Though, it is contended that change of no. of the allotted unit and its area was made without the consent of the allottees 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*

35. Similarly, a perusal of the above-mentioned facts shows that in CR no. **371-2019, 384-2019, 1277-2019 and 5774-2019** the allottees 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. 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. So, in such a situation, the complainants being a subsequent allottees are required to take possession of the allotted unit with lesser 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.
36. Further, In CR no. **1147-2019**, 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.

37. 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.
38. In complaint bearing no. 1147-2019, it is pleaded by the complainant that though he is a subsequent allottee vide endorsement dated 22.03.2013, but the builder imposed a unilateral condition w.r.t. car parking as per condition 2 of space buyer agreement dated 10.04.2010. There is no provision for free car parking for the project and the unit which he purchased from the respondent. So, a direction be given in this regard to the builder for providing a dedicated car parking slot in the basement of the building. But the plea raised in this regard is devoid of

merit and against the terms and conditions of the agreement and particularly clause two providing as under:

*The provision of Basement in the said Building does not entitle the ALLOTTEE(S) to the facility of parking his/her car(s) therein unless he has acquired the right to use of car parking space in the Basement under a separate arrangement with the DEVELOPER. All amounts payable by the ALLOTTEE(S) in connection with the parking fee services availed from time to time shall be paid directly to the DEVELOPER and/or the operation and maintenance agency authorised by the DEVELOPER regularly by the ALLOTTEE(S). The ALLOTTEE(S) recognizes that the DEVELOPER shall have the absolute right to allot and/or assign the interest in the parking area alongwith the undivided proportionate share in PRECISION SOHO TOWER to any person(s) at its sole discretion. In case the DEVELOPER wants to provide Valet Service for parking of vehicles, the ALLOTTEE(S) undertakes to pay such charges as may be fixed by the DEVELOPER MAINTENANCE AGENCY for providing this facility.*

Thus, in view of the stipulations in the buyer's agreement detailed above, the builder is not obliged to provide car parking slot to the allottee but only as per the agreement entered into between the parties.

**To provide toilets in the project as per the layout plan**

39. 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-3 and C-4 (page 75 & 76 of the complaint). Admittedly annexure C-4 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:**

40. 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."*

41. 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)*

42. 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.

43. 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 residentials, 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.
44. **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.

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

46. 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.

47. 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%.
48. 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—  
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;"*
49. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.70% by the respondent/promoter who is the same as is being granted to them in case of delayed possession charges.
50. Now the question for consideration arises as to for how much period, the allottees are entitled for delay possession charges.

***Validity of offer of possession***

51. It is necessary to clarify this concept because after valid and lawful offer of possession, the liability of promoter for delayed offer of possession comes to an end. On the other hand, if the possession is not valid and lawful, the liability of promoter continues till valid offer is made and

allottee remains entitled to receive interest for the delay caused in handing over valid possession. The authority is of considered view that a valid offer of possession must have following components:

- i. Possession must be offered after obtaining occupation certificate;
- ii. The subject unit should be in a habitable condition;
- iii. The possession should not be accompanied by unreasonable additional demands.

52. It is observed that the respondent offered the possession of the subject unit on 01.08.2015 without obtaining occupation certificate as the same was obtained from the competent Authority on 18.07.2017. Hence, at the outset the said offer of possession failed to fulfil the first and foremost criteria of the valid offer of possession. Hence, the same cannot be regarded as a valid offer of possession.
53. As per the buyer's agreement entered between the parties on 31.03.2010 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 31.03.2013. But the builder failed to honour its commitment and occupation certificate of the project was received only on 18.07.2017, leading to raising demand for the amount due against the unit vide letter dated 24.07.2017. 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. The position in this regard was clarified in letters dated 09.07.2018 (reminder-I) and 04.12.2018 (reminder-II) respectively. 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.

54. 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.*

55. 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.
56. 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. 31.03.2013 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:**

57. The complainants in the aforesaid relief are 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**

58. 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 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 obtaining of occupation certificate i.e., 18.07.2017 plus 2 months i.e. 18.09.2017.
  - ii. The respondent is directed to adjust the amount of delay possession charges of the allotted unit as per directions detailed under para 58(i) of the order and refund the remaining amount, if any.
  - iii. 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.

- iv. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.70% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
  - v. 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.
  - vi. The respondent-builder is directed not to charge anything which is not part of buyers' agreement.
  - vii. 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.
  - 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.
59. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.

60. Complaints stands disposed off. True certified copy of this order shall be placed in the case file of each matter.
61. 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**