

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

Complaint no.	:	2686 of 2021
Date of filing	:	03.08.2021
First date of hearing:		02.09.2021
Date of decision	:	23.02.2023

Sh. Mahendra Singh Payaal S/o Sh. Shoorveer Singh Payaal R/o: B - 801, Udyog Vihar CGHS, Plot No 12, Sector 22, Dwarka, New Delhi- 110077	<b>Complainant</b>
Versus	
Anand Divine Developers Private Limited Regd. office: ATS Tower, Plot No 16, Sector 135, Noida- 201305	<b>Respondent</b>
<b>CORAM:</b>	
Shri Vijay Kumar Goyal	<b>Member</b>
<b>APPEARANCE:</b>	
Complainant-in-person	<b>Complainant</b>
None	<b>Respondent</b>

**ORDER**

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

**A. Unit and Project related details:**

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

S.n.	Heads	Information
1.	Name and location of the project	"ATS Triump", Sector 104, Village-Dhanwapur, Gurugram
2.	Nature of the project	Group housing colony
3.	Project area	14.093 acres
4.	DTCP License	63 of 2011 dated 16.07.2011 valid till 15.07.2019 10 of 2012 dated 03.02.2012 valid till 02.02.2020
	Name of the licensee	M/s Great Value HPL Infratech Private Limited M/s Kaanha Infrastructure private Limited
5.	HRERA registered/ not registered	<b>Not registered</b>
6.	Date of execution of flat buyer's agreement	30.12.2019 (As per annexure- P3 on page no. 29 of the complaint)
7.	Unit no.	3121 on 12th floor, tower 03 (Block-C) (As per page no. 30 of the complaint)
8.	Super Area	2290 sq. ft. (As per page no. 30 of the complaint)
9.	Payment plan	Down payment plan (As per payment plan as annexure P3 on page no. 50 of complaint)
10.	Total consideration	Rs.1,63,98,690/- (As per payment plan as annexure P3 on page no. 50 of complaint)
11.	Total amount paid by the complainant	Rs. 1,63,98,690/- (As per subsidiary ledger as annexure P7 on page no. 62 of complaint)

12.	Possession Clause	<p><b>18. Time of handing over possession</b></p> <p><i>Barring unforeseen circumstances and force majeure events as stipulated hereunder, the possession of the said apartment is proposed to be, offered by the company to the allottee on or before 31 March 2020, plus Grace period of 3 Month from the date of this agreement (hereinafter referred to as "stipulated date"), subject always to timely payment of all charges including the basic sale price, stamp duty, registration fees and other charges as stipulated herein or as may be demanded by the company from time to time in this regard.</i></p>
13.	Due date of delivery of possession	<p><b>31.06.2020</b></p> <p>(Due date as per clause 18 i.e.; 31.03.2020 + 3 months grace period)</p>
14.	Occupation certificate	<p>28.05.2019</p> <p>(As per annexure R02 on page no. 37 of reply)</p>
15.	Offer of possession	<p>10.05.2020</p> <p>(As per annexure- P6 on page no. 61 of the complaint)</p>
16.	Certificate of possession	<p>15.01.2021</p> <p>(As per page no. 51 of the reply)</p>
17.	Email by complainant to the respondent enquiring about handing over of possession.	<p>29.06.2021</p> <p>(As per page no. 69 of complaint)</p>

### B. Facts of the complaint

3. That the complainant along with his wife booked a flat bearing no. 3121 in the project namely "ATS TRIUMPH", Sector 104, Gurugram with two car

parking on 01.12.2019 for sale consideration of Rs 1,63,98,690/- and paid booking amount of Rs. 16,40,000/-. The last payment was scheduled by 31.03.2020.

4. That a buyer builder agreement was executed between the parties on 30.12.2019. As per clause 18 of said agreement, it was provided that the subject unit would be handed over by 31.06.2020, along with a grace period of 3 months form date of this agreement i.e. 30.12.2019, subject to timely payments, as and when raised by the respondent-company. As per clause 19, in case of delay in possession, the company would pay compensation at the rate of 10% per annum.
5. The complainant and his wife took a loan of Rs 1, 22, 99,000/- from State Bank of India to make payment towards the subject unit and by 29.05.2020, made entire payment of Rs. 1,63,98,690/-.
6. That the respondent at various points of time, made various commitments to hand over the subject unit such as while executing buyer's agreement, it assured that the subject unit would be handed over by 30.03.2021 or 3 months from date of agreement i.e. 30.04.2021 and the same was affirmed vide e-mail dated 19.03.2020. Further, vide letter dated 10.05.2021, for bank, it assured to handover the house in 3 months' time from payment. It again mentioned about handing over of unit in 3 months in mail dated 02.06.2021, followed by emails dated 30.08.2021 & 06.01.2022. However, in the mails dated 23.03.2021, it showed indifferent and unjust attitude to the buyer by on one hand claiming that the handing over of flat will fall

- into force majeure situation, but it sees no reason to delay the payment schedule even if anticipates delayed handing over and never mentioned force majeure again but kept making unmet assurances.
7. That vide email dated 29.06.2021, the complainant requested the respondent to inform him with regard to handover of the subject unit, but no response was received. It has taken the full amount of Rs 1,63,98,690/- more than a year back and still failed to hand over the flat and inform any date for handover of subject unit.
  8. That the complainant suffered huge loss through sale of assets in March 2020, in middle of pandemic and first lockdown, just to make timely payments to the respondent. It has miserly failed to extend the date of payments knowing very well that the hand over would be delayed due to pandemic.
  9. That the complainant is having financial stress and is burdened to pay rent of Rs 34,000/- per month for the accommodation due to delay in handing over of possession and EMI ( Rs 1,25,000 earlier and Rs 56,500 now) on the loan which was taken for payment towards subject unit.
  10. That the amenities in the project like club house etc. are not ready and there is a fair possibility that the construction of same would also be delayed by the respondent-builder despite payment of full amount.
  11. That the complainant was left with no option but to approach the Authority. The respondent has failed to handover the possession of the allotted unit and a direction be issued to same to handover the subject unit

at the earliest along with all the amenities in the project ready by that time. As per clause 18 of agreement, the respondent would pay delay compensation charges to the complainant at the prescribed rate of interest from due date of handover of possession i.e.30.05.2021 on the amount paid by him. Further, additional penalty should be levied on the respondent-builder for the physical and mental agony caused by it to the buyers and possible delayed construction of amenities.

**C. Relief sought by the complainant:**

12. The complainant has sought following relief:
  - i. Direct the respondent to provide/inform the date by which the possession of the subject unit will be given to the buyer.
  - ii. Direct the respondent to pay compensation for delayed at rate of 14.5% per annum (% higher than SBI PLR of 12.15% as on 10.03.2021, at <https://sbi.co.in/web/interest-rates/interest-rates/benchmark-prime-lending-rate-historical-data>, as per HRERA rules, Clause 15) from 30.05.2021, next day from the date on which entire payment was done and in line with the clause 18 of BBA) till the date of this order immediately and for the balance period till actual possession of the flat, within 30 days of the date of the possession.
  - iii. Additional penalty of Rs 1,00,000 be levied on the respondent-builder for the physical and mental agony caused by it to the buyers.
  - iv. Direct the respondent to provide/inform the date by which the all the amenities in the project will be ready.

v. Direct the respondent to pay compensation for the time for which amenity completion is delayed from the day of the handover.

13. 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:**

14. That the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed. The complainant is estopped from filing the present complaint by their acts, omissions, admissions, acquiescence and laches.
15. That the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute as per clause 39 of the buyer's agreement.
16. That the complainant, after checking the veracity of the project namely, 'ATS Triumph', Sector 104, Gurugram applied for allotment of a residential unit and agreed to be bound by the terms and conditions of the document executed by the parties to the complaint. Based on the application of the complainant, the buyer's agreement was executed on 30.12.2019 for unit bearing no. 3121 on 12<sup>th</sup> floor in tower no. 3 having super area of 2290 sq. ft.
17. That as per clause 4 of the buyer's agreement, it was agreed that the sale consideration of Rs. 1,63,98,690/- was exclusive of other costs, charges

including but not limited to maintenance, stamp duty and registration charges, service tax, proportionate taxes and proportionate charges for provision of any other items/facilities.

18. That the possession of the unit was to be offered to the complainant in accordance with the agreed terms and conditions of the buyer's agreement. Clause 18 of the buyer's agreement clearly states that

*"Barring unforeseen circumstances and Force majeure events as stipulated hereunder, the possession of the said Apartment is proposed to be offered by the Company to the Allottee on or before 31 March, 2020 plus three months of grace period from the date of this agreement, subject always to timely payment of all charges including the Basic Sale price, Stamp duty, registration fees and other charges as stipulated herein or as may be demanded by the Company from time to time in this regard."*

19. That the respondent was granted occupation certificate by the concerned authorities on 28.05.2019 and it has already completed the construction of the tower in which the unit allotted to the complainant is located and the photographs of the same are attached. The respondent after the receipt of the occupation certificate offered the possession of the unit to the complainant vide offer of possession dated 10.05.2020.
20. That however, on account of the ban on construction activities by the Hon'ble Supreme Court and several authorities, the implementation of the finishing work of some of the units of the project was affected. Moreover, the outbreak of the deadly Covid-19 virus resulted in significant delay in completion of the construction of the projects in India and the real estate industry in NCR region has suffered tremendously. The outbreak resulted in not only disruption of the supply chain of the necessary materials but



also in shortage of the labour at the construction sites as several labourers have migrated to their respective hometowns. The Covid-19 outbreak which has been classified as 'pandemic' is an Act of God and the same is thus beyond the reasonable apprehension of the respondent. The same falls under the ambit of the definition of 'force majeure' as defined in clause 23 of the buyer's agreement and the respondent cannot be held accountable for the same. It was agreed vide the said clause that clause 23 of the buyer's agreement is reproduced hereunder:-

*"The company shall not be held liable or responsible for performing any of its obligations or undertakings provided in this Agreement is such performance is prevented, delayed or hindered by 'Force majeure events' such as non-availability of necessary infrastructure facilities being provided by the government for carrying development activities, non-availability or inadequate supply of steel and/or cement or other building materials or water or electric power or labor, slow down, strike or due to dispute with the construction agency employed by the company, lock-out or civil commotion, war or enemy action or by change of law, act, notification, prohibitory order, rule of Government..... and in such event, the company shall not be liable for any compensation or damages in any manner whatsoever."*

The time period covered by the above-mentioned force majeure events is required to be added to the time frame mentioned above. It is pertinent to mention herein that the Authority has also adopted the similar view and has provided extension of the completion date as per its order no. 9/3-2020 HARERA/ GGM (Admin) dated 26.05.2020.

21. That despite the implementation of the project being affected on account of the aforesaid events, the respondent completed the finishing work of the unit and offered the physical possession to the complainant and the same is evident from a bare perusal of the certificate of possession dated

15.01.2021. It is clearly stated in the certificate of possession that the respondent has handed over vacant and physical possession of the apartment to the complainant. It is also evident from a bare perusal of clause 7 of the said certificate that the complainant after due inspection of the site has taken the physical possession of the apartment after fully satisfying himself in all aspects in satisfactory condition and that he would have no claim against the respondent for any defect/shortcoming or deficiency.

22. However, despite being given the physical possession and undertaking by the complainant that he was completely satisfied with the services rendered by the respondent, he in order to illegally extract benefits from the respondent has asked it for improvement in the finishing work of the unit. Although there was no such obligation on the part of the respondent to do so as there was no such requirement on account of the complainant being handed over a complete unit, but it being a customer-oriented company has acceded to his request.
23. That the complainant is a real estate investor who has invested his money in the project of the respondent with an intention to make profit in a short span of time. However, his calculations have gone wrong on account of slump in the real estate market and he is now deliberately trying to unnecessarily harass, pressurize and blackmail the respondent to submit to his unreasonable demands. The complainant cannot be allowed to

succeed in his malafide motives and the present complaint is liable to be dismissed with heavy costs.

24. 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 based on these undisputed documents.

**E. Jurisdiction of the authority**

25. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

**E. I Territorial jurisdiction**

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

**E. II Subject matter jurisdiction**

26. 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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;*

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

So, in view of the provisions of the Act of 2016 quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

**F. Findings on the objections raised by the respondent:**

**F.I Objection regarding complainant is in breach of agreement for non-invocation of arbitration.**

27. The respondent has raised an objection that the complainant has not invoked the arbitration proceedings as per the provisions of flat buyer's agreement which contains provisions regarding initiation of arbitration proceedings in case of breach of agreement. The following clause has been incorporated w.r.t arbitration in the buyer's agreement:

*"Clause 39: All or any dispute arising out of or touching upon or in relation to the terms of this Agreement or its termination, including the interpretation and validity thereof and the respective rights and obligations of the Parties shall be settled amicably by mutual discussion, failing which the same shall be settled through arbitration. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 as amended up to date. A sole arbitrator who shall be nominated by the Board of Directors of the company shall hold the arbitration proceedings at the office of the Company at Noida. The allottee hereby confirms that he shall have no objection to this appointment, more particularly on the ground that the Sole Arbitrator being appointed by the Board of Directors of the company likely to be biased in favour of the company. The Courts at Noida, Uttar Pradesh shall to the specific exclusion of all other courts alone have the exclusive jurisdiction in all matters arising out of/touching and/or concerning this Agreement regardless of the place of execution or subject matter of this Agreement. Both the parties in equal proportion shall pay the fees of the Arbitrator"*

The respondent contended that as per the terms & conditions of the agreement dated 30.12.2019 duly executed between the parties, it was specifically agreed that in the eventuality of any dispute, if any, with respect to the provisional booked unit by the complainant, the same shall be adjudicated through arbitration mechanism. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in *National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506*, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause. Further, in *Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017*, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainant and builders could not circumscribe the jurisdiction of a consumer forum.

28. While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause

in the builder buyer agreement, the Hon'ble Supreme Court in case titled as *M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017 decided on 10.12.2018* has upheld the aforesaid judgement of NCDRC. The relevant para of the judgement passed by the Supreme Court is reproduced below:

*"25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being a special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength an arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."*

29. Therefore, in view of the above judgements and considering the provisions of the Act, the authority is of the view that complainant is well within the right to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and Act of 2016 instead of going in for an arbitration. Hence, there is no hesitation in holding that this authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily.

**F.II. Objection regarding delay due to force majeure events**

30. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as various

orders passed by Hon'ble Supreme Court and other Authorities to curb the pollution in NCR and outbreak of Covid-19 pandemic. It further requested that the said period be excluded while calculating due date for handing over of possession. The Authority observes that the respondent has placed reliance on orders dated 01.11.2019 and 04.11.2019 of Environment Pollution (Prevention & Control) Authority and Hon'ble Supreme Court of India to curb the pollution in the NCR. Further, in the instant complaint, as per clause 18 of agreement dated 30.12.2019 executed between the parties, the due date of handing over of possession was provided as 31.03.2020 along with grace period of 3 months; which comes out to be 30.06.2020. Grace period of 3 months is allowed being unconditional. The respondent-builder in the instant matter has already offered the possession of the allotted unit on 10.05.2020 i.e. before due date of handing over of possession (30.06.2020). Hence, the plea regarding admissibility of any further grace period on account of aforesaid circumstances is untenable and does not require any further explanation.

**F.III Objection regarding entitlement of DPC on ground of complainant being investor**

31. The respondent has taken a stand that the complainant is the investor and not consumers and therefore, is not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of

a statute and states main aims & objects of enacting a statute but at the same time the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the apartment buyer's agreement, it is revealed that the complainant is buyer and he has paid total price of Rs. 1,63,98,690/- to the promoter towards purchase of an apartment in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

*"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"*

32. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment buyer's agreement executed between promoter and complainant, it is crystal clear that they are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no.



0006000000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottee being an investor is not entitled to protection of this Act also stands rejected.

**G. Findings regarding relief sought by the complainant.**

**G.I Direct the respondent to provide/inform the date by which the possession of the subject unit will be given to the buyer.**

**G.II Direct the respondent to pay compensation for delayed at rate of 14.5% per annum (% higher than SBI PLR of 12.15% as on 10.03.2021, at <https://sbi.co.in/web/interest-rates/interest-rates/benchmark-prime-lending-rate-historical-data>, as per HRERA rules, Clause 15) from 30.05.2021, next day from the date on which entire payment was done and in line with the clause 18 of BBA) till the date of this order immediately and for the balance period till actual possession of the flat, within 30 days of the date of the possession.**

33. In the present case, the complainant was offered possession of allotted unit on 10.05.2020 after receipt of occupation certificate dated 28.05.2019 from the competent Authority. Moreover, it has placed on record a certificate for possession dated 15.01.2021 wherein acknowledging handover of vacant and peaceful physical possession to the complainant-allottee by the respondent-builder but to which it was submitted by the complainant that the possession has not been handed over to him and draws attention of the Authority to email dated 29.06.2021 wherein enquiring about the handing over of physical possession of the allotted unit. The complainant further stated that the subject unit is not complete and thus, despite offer of possession, the actual possession has not been handed over to him. In view of aforesaid circumstances, the Authority vide proceedings dated 08.10.2021, directed

appointment of Local commission to inspect the unit and find out the deficiencies pointed out by the complainant.

34. The complainant is seeking relief of delay possession charges in the instant complaint, but it is relevant to comment upon the validity of offer of possession dated 10.05.2020 to ascertain the liability of respondent-builder towards delay possession charges. As per obligation conferred upon the complainant-allottee under Section 19(10), he was under obligation to take the possession of the allotted unit within two months from date of occupation certificate. Although it is a case when the buyer's agreement inter-se parties was executed on 30.12.2019 i.e. after obtaining occupation certificate dated 28.05.2019, thus the unit must be in <sup>habitable</sup> ~~habitable~~ condition by the time of signing of agreement. Despite the fact, the complainant vide proceeding dated 08.10.2021 raised out certain deficiencies w.r.t offer of possession and the fact that the possession was not handed over to him by that date and the same is handed over on 19.02.2022 only. In view of aforesaid circumstances, the Authority vide proceedings of even dated i.e. 08.10.2021 directed appointment of Local commission consisting of Shri Sumeet Nain and Shri Nikhil Sharma.

#### ***Validity of offer of possession***

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.
35. In the present matter, the respondent has offered the possession of the allotted unit on 10.05.2020 i.e., after obtaining occupation certificate from the concerned department on 28.05.2019 without any unreasonable additional demands. Moreover, occupation certificate is issued keeping in view the habitability of unit only. Therefore, no doubt that the offer of possession was a valid offer of possession.
36. But the complainant raised the issue during the course of proceeding that the subject unit was not complete in all aspects as promised. The Authority is of considered view that mere habitability of subject unit is not a benchmark to check whether the unit is complete in all aspects or not, it must be as per the specifications detailed in buyer's agreement as it is the ultimately for which he has been charged for. To deliberate upon the issue the Authority directed appointed of local commission to visit the project site and submit its report w.r.t the status of the unit as well as the project and the same was submitted on 22.10.2021. Relevant part of the report is reproduced as under:

*"The site of project named "ATS Triumph" being developed by M/s Anand Divine developers Pvt Ltd has been inspected and the report is based upon the actual construction at site:*

*The promoter has completed the construction of all the four blocks/eight towers along with community building, EWS and obtained the occupation certificate vide memo No. ZP 760/AD/(RA)/2019/12813 dated 28.05.2019 for Block A, Block B, Block C, Block D, EWS Block, Community Building & Convenient Shopping from DTCP, Haryana. Further the construction of four villas out of nineteen villas in the project is progressing on site. Therefore, the complete project is registrable as the occupation certificate has been obtained after publication of the Haryana Real Estate (Regulation and Development) Rules, 2017.*

**The complainant unit was checked specifically, and it is submitted that all the works in the unit are complete including finishing works except the installation of wardrobes and automation of the HVAC unit. Thereafter, the unit is fit for possession except some minor works which need to be done by the promoter."**

37. Upon perusal of annexure II of buyer's agreement dated 30.12.2019, wherein providing specifications of subject unit, it provides- integrated automation system for HVAC & internal lighting; HVAC- VRV/VRF system and modular wardrobes in all bedrooms. Whereas as per report of Local commission said promised amenities are missing.
38. However, the issues w.r.t completion of subject unit as per specification of buyer's agreement needs to be deliberated to attain the clarity and maintain the balance between the rights of both the parties i.e. allottee and promoter. The Authority observes that minor defects like little gaps in the windows or minor cracks in some of the tiles, or chipping plaster or chipping paint at some places, pending fittings and fixtures such as kitchen or cupboards or improper functioning of its drawers etc. are minor defects which do not render unit incomplete. Such minor defects can be rectified later at the cost of the developer. The allottee should accept possession of the subject unit with such minor defects under protest. A suitable relief

for rectification of minor defects after taking over of possession under protest shall be provided. But if the unit is not complete at all due to circumstances such as the plastering work is yet to be done, flooring works is yet to be done, common services like lift etc. are non-operational, infrastructural facilities are non-operational then the subject unit shall be deemed as incomplete and offer of possession of an incomplete unit will not be considered a valid offer of possession. Moreover, a reasonable time of two months after offer of possession is given to fulfil two aspects- firstly keeping in mind that even after intimation of possession practically the allottee has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession. Secondly, there are some aspects in the finishing of the unit that are to be completed only after having confirmation of taking over of possession by the allottee such as but not limited to painting, installation of fixtures in semi/fully furnished units, etc depending upon specifications detailed in the buyer's agreement.

39. In the present case, as per specifications annexed with BBA dated 30.12.2019, various specifications were agreed upon by the parties. Upon perusal of documents on record and report of local commission, the following facts can be ascertained-

S.no	Specifications as per BBA	Pending work as per the report of LC
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1.	<u>Wood-work</u> Modular wardrobes in all bedrooms	Installation of wardrobes are pending
2.	<u>Home automation</u> Integrated automation system for HVAC & internal fittings & VRV/ VRF AC System in living room, dining, family room & bedrooms with integrated automation system.	Installation of automated HVAC unit is pending.

40. A perusal of the report of local commission dated 20.10.2021 shows that wood-work w.r.t installation of wardrobes and home automation work w.r.t installation of HVAC is pending. Though as per specifications of flat buyer's agreement dated 30.12.2019, these fixtures were to be provided at the time of possession. A period of 2 months is given to the builder to make the allotted unit fit for possession on the basis of offer of possession & the allottee depositing the remaining amount due. In this case, the unit was allotted to the complainant for a sum of Rs. 1,63,98,690/- and had already paid the complete amount of Rs. 1,63,98,690 till date. It is a fact that possession of the allotted unit has been offered to the complainant on 10.05.2020 on the basis of occupation certificate dated 28.05.2019 received from the competent authority and the same is not accompanied by any unreasonable demand. So, now the question arises as to whether the unit is fit to be occupied as per specifications given under FBA vis-à-vis the report of local commission dated 20.10.2021. The answer is positive, as the deficiencies pointed out above by the report of local commission are not such which may not take more than 2 months & which is usually given to the developer to complete the unit and make it fit for

possession after receiving payment of the amount due from the allottee. So, the plea of the complainant that the allotted unit is not as promised by the respondent-builder is not tenable and offer of possession dated 10.05.2020 is considered as a valid offer of possession.

**Delay possession charges**

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

***Section 18: - Return of amount and compensation***

*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*

42. As per clause 18 of the buyer's agreement dated 30.12.2019, the possession of the subject unit was to be handed over by of 30.06.2020. Clause 18 of the buyer's agreement provides for handover of possession and is reproduced below:

***As per clause 18 : Time of handing over of possession***

*Barring unforeseen circumstances and force majeure events as stipulated hereunder, the possession of the said apartment is proposed to be, offered by the company **to the allottee on or before 31 March 2020, plus Grace period of 3 Month from the date of this agreement** (hereinafter referred to as "stipulated date"), subject always to timely payment of all charges including the basic sale price, stamp duty, registration fees and other charges as stipulated herein or as may be demanded by the company from time to time in this regard.*

43. The authority has gone through the possession clause and observes that this is a matter very rare in nature where builder has specifically

mentioned the date of handing over possession rather than specifying period from some specific happening of an event such as signing of apartment buyer agreement, commencement of construction, approval of building plan etc. This is a welcome step, and the authority appreciates such firm commitment by the promoter regarding handing over of possession but subject to observations of the authority given below.

44. **Admissibility of grace period:** The respondent promoter has proposed to complete the construction of the said building/ unit by 31.03.2020. In the present case, the promoter is seeking 3 months' time as grace period. The said period of 3 months is allowed to the promoter being unconditional. Therefore, the due date of possession comes out to be 30.06.2020.
45. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges however, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

**Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]**

- (1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.:  
Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.



46. By virtue of clause 18 of the buyer's agreement executed between the parties on 30.12.2019, possession of the booked unit was to be delivered by 30.06.2020 and it has already offered the possession of the subject unit on 10.05.2020 i.e. before due date of handing over of possession i.e. 30.06.2020. Hence, no case of delay possession charges is made out.

**G.III Direct the respondent to provide/inform the date by which the all the amenities in the project will be ready.**

47. The complainant submitted that amenities in the project like club house etc. are not ready and there is a fair possibility that the construction of same would also be delayed by the respondent-builder despite payment of full amount. However, no arguments in this regard were addressed by the parties during the course of hearing(s). Hence, the said relief cannot be deliberated upon.

**G.IV Additional penalty of Rs 1,00,000 be levied on the respondent-builder for the physical and mental agony caused by it to the buyers.**

**G.V Direct the respondent to pay compensation for the time for which amenity completion is delayed from the day of the handover.**

48. The complainant is seeking relief w.r.t. compensation in the above-mentioned reliefs. *Hon'ble Supreme Court of India in case titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (2021-2022(1)RCR(Civil),357)*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal

expenses. Therefore, for claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainant may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

49. Thus, in view of the discussion and the findings returned above, no case of delay possession charges against the respondent is made out.
50. Complaint stands disposed of.
51. File be consigned to registry.



v.1 - 3  
(Vijay Kumar Goyal)  
Member  
Haryana Real Estate Regulatory Authority, Gurugram  
Dated:23.02.2023

**HARERA**  
**GURUGRAM**