BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	**7368 of 2022**
Date of filing of complaint	**06.12.2022**
Date of decision	**27.07.2023**

Priyanka Kataria
D/o Sh. Jagdish Singh Kataria
R/o: - House No. 39, Gali No. 4, Sheetla Colony, Opposite SCR Public School, Gurugram Haryana - 122001 **Complainant**

Versus

M/s Revital Reality Private Limited.
Regd. Office at: 1114, 11th Floor, Hemkunt Chamber, 89, Nehru Place, New Delhi- 110019 **Respondent**

CORAM:
Shri Vijay Kumar Goyal Member

APPEARANCE:
Sh. Gaurav Rawat (Advocate) Complainant
Ms. Bhrigu Dhami (Advocate) Respondent

ORDER

1. This complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act

or the Rules and regulations made thereunder or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of unit details, 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.	Particulars	Details	
1.	Name of the project	"Supertech Basera" sector- 79&79B, Gurugram	
2.	Project area	12.10 area	
3.	Nature of project	Affordable Group Housing Project	
4.	RERA registered/not registered	Registered vide no. 108 of 2017 dated 24.08.2017	
5.	RERA extension valid upto	31.01.2021	
6.	DTPC License no.	163 of 2014 dated 12.09.2014	164 of 2014 dated 12.09.2014
	Validity status	11.09.2019	11.09.2019
	Name of licensee	Revital Reality Private Limited and others	
7.	Date of approval of building plans	19.12.2014 [as per information obtained from the planning branch]	

8.	Date of grant of environment clearance	22.01.2016 [as per information obtained from the planning branch]	
9.	Unit no.	0910, 9th floor, tower/block- 2, (Page no. 37 of the complaint)	
10.	Unit measuring	473 sq. ft. (Carpet area)	73 sq. ft. (Balcony area)
11.	Allotment letter	31.03.2016 (Page no. 26 of the complaint)	
12.	Date of execution of flat buyer's agreement	30.04.2016 (Page no. 36 of the complaint)	
13.	Possession clause	**3.1 Possession** *Subject to force majeure circumstances, intervention of Statutory Authorities, receipt of occupation certificate and Allottee/Buyer having timely complied with all its obligations, formalities, or documentation, as prescribed by the Developer and not being in default under any part hereof and Flat Buyer's Agreement, including but not limited to the timely payment of installments of the other charges as per payment plan, Stamp Duty and registration charges, the Developers Proposes to offer possession of the said Flat to the Allottee/Buyer within a period of* ***4 (four) years from the date of approval of building plans or grant of environment clearance****, (hereinafter*	

		*referred to as the **"Commencement Date"**) , whichever is later. The Developer also agrees to compensate the Allottee/Buyer @ Rs.5.00/- (Five rupees only) per sq. ft. of the area of the flat per month for any delay in handing over possession of the Flat beyond the given promised **period plus the grace period of 6 months and upto offer letter of possession or actual physical possession whichever is earlier.*** (Page no. 40 of the complaint).
14.	Grace period	**Not allowed** The promoter has sought further extension of a period of 6 months (after the expiry of the said time period of 4 year) but there is no provision in relation to grace period in Affordable Group Housing Policy, 2013. As such in absence of any provision related to grace period, the said grace period of six months as sought by the respondent promoter is disallowed in the present case.
15.	Due date of possession	22.01.2020 [Note: - calculated from the date of environment clearance (22.01.2016) being later.]
16.	Total sale consideration	Rs.19,28,500/- (As per payment plan at page no. 39 of the complaint)

17.	Total amount paid by the complainant	Rs.20,33,758/- (As per SOA dated 20.11.2022 at page no. 33 of the complaint)
18.	Occupation certificate	Not obtained
19.	Offer of possession	Not yet offered and delay of more than 3 years 6 months

B. Facts of the complaint

3. The complainant has made the following submissions: -

I. That in 2014, the respondent company issued an advertisement announcing an affordable group housing Colony project "Basera" situated in the Sector-79 & 79B, Gurugram, Haryana under the license no. 163 of 2014 dated 12.09.2014, and 164 of 2014 dated 12.09.2014, issued by DTCP, Haryana, Chandigarh and thereby invited applications from prospective buyers for the purchase of unit in the said project. respondent confirmed that the projects had got building plan approval from the authority.

II. That the complainant while searching for a flat/accommodation was lured by such advertisements and calls from the brokers of the respondent for buying a flat in their project namely Basera.

III. That relying on various representations and assurances given by the respondent company and on belief of such assurances, she booked a unit in the project by paying an amount of Rs.96,425/-, the booking of

the said unit bearing no. 910, 9th floor, tower-2, in Sector 79 & 79B, having super area measuring 546 sq. ft. to the respondent dated 17.03.2016 and the same was acknowledged by the respondent.

IV. That the respondent sent allotment letter dated 31.03.2016 to complainant, confirming the booking of the unit dated 17.03.2016, allotted the said unit in the aforesaid project of the developer for a total sale consideration of the unit i.e., Rs.19,98,408/-, which includes basic price, plus EDC and IDC, and other specifications of the allotted unit and providing the time frame within which the next instalment was to be paid. Thereafter, a flat buyer's agreement was executed between both the parties on 30.04.2016.

V. That as per clause 3.1 of the flat buyer's agreement the respondent had to deliver the possession within a period of 4 months from the date of approval of building plan or grant of environment clearance, whichever is later. Therefore, the due date of possession is calculated from the date of agreement i.e., 30.04.2016. Hence, the due date of possession comes out to be 30.04.2020. Further, as per the demands raised by the respondent, based on the payment plan, the complainant to buy the captioned unit already paid a total sum of Rs.20,33,758/- towards the said unit against the total sale consideration of Rs.19,98,408/-.

VI. That though the payment to be made by her was to be made based on the payment plan but unfortunately the demands being raised were not corresponding to the factual construction situation on ground. That the

payment plan was designed in such a way to extract maximum payment from the buyers viz a viz or done/completed.

VII. That the complainant contacted the respondent on several occasions and were regularly in touch with the respondent. The respondent was never able to give any satisfactory response to her regarding the status of the construction and were never definite about the delivery of the possession. She kept pursuing the matter with the representatives of the respondent by visiting their office regularly as well as raising the matter to when will they deliver the project and why construction is going on at such a slow pace, but to no avail. Some or the other reason was being given in terms of shortage of labour etc. etc. Further, she approached in person to know the fate of the construction and offer of possession in terms of the said buyer's agreement, respondent misrepresented to complainants that the construction will get completed soon.

VIII. That the respondent has played a fraud upon the complainant and have cheated them fraudulently and dishonestly with a false promise to complete the construction over the project site within stipulated period. The respondent had further malafide failed to implement the buyer's agreement executed with the complainant. Hence, the complainant being aggrieved by the offending misconduct, fraudulent activities, deficiency and failure in service of the respondent is filing the present complaint.

IX. That the complainant has suffered a loss and damage in as much as they had deposited the money in the hope of getting the said unit for commercial purposes. They have not only been deprived of the timely possession of the said unit but the prospective return they could have got if they had invested in fixed deposit in bank. Therefore, the compensation in such cases would necessarily have to be higher than what is agreed in the buyer's agreement.

X. That the respondent is guilty of deficiency in service within the purview of provisions of the Act, 2016 and the provisions of the Rules, 2017. She has suffered on account of deficiency in service by the respondent and as such the respondent is fully liable to cure the deficiency as per the provisions of the Act, 2016 and the provisions of the Rules, 2017.

XI. That the complainant is entitled to get delay possession charges with interest at the prescribed rate from date of application/ payment to till the realization of money under section 18 & 19(4) of Act. The complainant is also entitled for any other relief which they are found entitled by this authority.

C. Relief sought by the complainant:

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

I. Direct the respondent to hand over the possession of the said unit with the amenities and specifications as promised in all completeness without any further delay and not to hold delivery of the possession for certain unwanted reasons much outside the scope of buyer's agreement.

II. Direct the respondent to pay the interest on the total amount paid by the complainant at the prescribed rate of interest as per the Act of 2016 from due date of possession till date of actual physical possession as the possession is being denied to the complainant by the respondent in spite of the fact that the complainant desires to take the possession.

III. Direct the respondent to pay the balance amount due to the complainant from the respondent on account of the interest, as per the guidelines laid in the Act of 2016, before signing the conveyance deed/ sale deed.

IV. Direct the respondent not to force the complainant to sign any Indemnity cum undertaking indemnifying the builder from anything legal as a precondition for signing the conveyance deed.

V. Direct the respondent not to charge anything which not the part of the payment plan as agreed upon.

VI. Direct the respondent to kindly handover the possession of the unit after completing in all aspect to the complainants and not to force to deliver an incomplete unit.

VII. Direct the respondent to provide the exact lay out plan of the said unit.

VIII. Pass such other or further order(s), which this authority may deem fit and proper in the facts and circumstances of the present case.

5. On the date of hearing, the authority explained to the respondent /promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

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

i. That the answering respondent is one of the leading real estate developers in the State of Haryana and NCR. It has several projects across the state, and such has built a great reputation for having the highest quality of real estate developments.

ii. That one of its marquee projects is the "Basera", located in sector 79&79-B, Gurugram, Haryana. The complainant approached the respondent, making enquiries about the project, and after thorough due diligence and complete information being provided to him, sought to book an apartment in the said project. The complainant submitted an application for allotment of a unit in the above noted project.

iii. That accordingly on 04.09.2015, she was allotted unit bearing no. 0910, 9th floor, tower – 2, having a carpet area of 473 sq. ft. (approx.) with balcony area of 73 sq. ft. for the total consideration of Rs.19,28,500/-.

iv. That consequentially, after fully understanding the various contractual stipulations and payment plans for the said apartment, the complainant executed the flat buyer's agreement dated 30.04.2016. It is pertinent to mention that the parties are bound by the agreement executed by them and its terms and conditions.

v. That as per clause 3.1, read as "subject to force majeure circumstances, intervention of statutory authorities, receipt of occupation certificate and allottee/buyer timely complied with all its obligations, formalities, or documentations, as prescribed by developer and not being in default under any part thereof and flat buyer agreement, included but not

limited to the timely payment of instalments of the other charges as per the payment plan stamp duty and registration charges, the developer proposes to offer the possession of the sad flat to the allottee/buyer's with in a period of 4 years from the date of approval of building plans and environment clearance, whichever is later.

vi. That in interregnum, the pandemic of covid-19 has gripped the entire nation since March 2020. The Government of India has itself categorized the said event as a 'Force Majeure' condition, which automatically extends the timeline of handing over possession of the apartment to the complainant. Thereafter, it would be apposite to note that the construction of the project is in full swing, and the delay if at all, has been due to the government-imposed lockdowns which stalled any sort of construction activity. The project is at full swing and the possession is proposed to be offered soon.

vii. The force majeure clause, it is clear that the occurrence of delay in case of delay beyond the control of the respondent, including but not limited to the dispute with the construction agencies employed by it for completion of the project and not a delay on account of the respondent for completion of the project.

viii. That the timeline stipulated for delivering the possession of the unit was on or before 4 years after obtaining the requisite approvals of the building plans and environment clearance, whichever. The respondent had endeavour to deliver the property within the stipulated time. The

respondent earnestly had endeavored to deliver the properties within the stipulated period but for reasons stated in the present reply could not complete the same.

ix. That the project "**Basera**" is registered under the authority vide registration certificate no. 108 of 2017 dated 24.08.2017. The registration is valid till 31.01.2020 and the respondent has already applied for due extension.

x. That the possession of the said premises was proposed to be delivered by the respondent to the apartment allottee by 21.01.2020 subject to force majeure conditions. The respondent and its officials are trying to complete the said project as soon as possible and there is no malafide intention of the respondent to get the delivery of project, delayed, to the allottees. Due to orders also passed by the Environment Pollution (Prevention & Control) Authority, the construction was/has been stopped for a considerable period day due to high rise in pollution in Delhi NCR.

xi. That compounding all these extraneous considerations, the ***Hon'ble Supreme Court vide order dated 04.11.2019***, imposed a blanket stay on all construction activity in the Delhi- NCR region. It would be apposite to note that the 'Basera' project of the respondent was under the ambit of the stay order, and accordingly, there was next to no construction activity for a considerable period. It is pertinent to note that similar stay orders have been passed during winter period in the preceding years as well,

i.e., 2017-2018 and 2018-2019. Further, a complete ban on construction activity at site invariably results in a long-term halt in construction activities. As with a complete ban the concerned labor was let off and they travelled to their native villages or look for work in other states, the resumption of work at site became a slow process and a steady pace of construction as realized after long period of time.

xii. That the pandemic of covid-19 has had devastating effect on the world-wide economy. However, unlike the agricultural and tertiary sector, the industrial sector has been severally hit by the pandemic. The real estate sector is primarily dependent on its labour force and consequentially the speed of construction. Due to government-imposed lockdowns, there has been a complete stoppage on all construction activities in the NCR Area till July 2020. In fact, the entire labour force employed by the respondent were forced to return to their hometowns, leaving a severe paucity of labour. Till date, there is shortage of labour, and as such, the respondent has not been able to employ the requisite labour necessary for completion of its projects. The Hon'ble Supreme Court in the seminal case of ***Gajendra Sharma v. UOI & Ors, as well Credai MCHI & Anr. V. UOI & Ors*** has taken cognizance of the devastating conditions of the real estate sector and has directed the UOI to come up with a comprehensive sector specific policy for the real estate sector. In view of the same, that the pandemic is clearly a 'Force Majeure' event, which automatically extends the timeline for handing over possession of the apartments.

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

E. Jurisdiction of the authority

8. The respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

9. 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

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

Section 11

.....

(4) The promoter shall-

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

Section 34-Functions of the Authority:

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

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

F. Findings on the objections raised by the respondent.

F. I Objection regarding force majeure conditions:

12. The respondent/promoter has raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as delay in shortage of labour, implementation of various social schemes by Government of India, demonetisation, lockdown due to covid-19 various orders passed by NGT, weather conditions in Gurugram and non-payment of instalment by different allottees of the project. But all the pleas advanced in this regard are devoid of merit. It is observed the plea advanced cannot be taken as the complainant was never a party to said contract and thus, there was no privy

of contract. Further, the respondent has taken a plea that there was a delay in construction of the project on account of NGT orders, orders by EPCA, orders by Hon'ble Supreme Court of India, etc but did not particularly specify for which period such orders has been made operative. Though some allottees may not be regular in paying the amount due but whether the interest of all the stakeholders concerned with the said project be put on hold due to fault of on hold due to fault of some of the allottees. Thus, the promoter/respondent cannot be given any leniency on based of aforesaid reasons. It is well settled principle that a person cannot take benefit of his own wrong.

F. II Objection regarding delay in completion of construction of project due to outbreak of Covid-19.

13. From the bare reading of the possession clause of the flat buyer agreement, it becomes very clear that the possession of the apartment was to be delivered by **22.01.2020.** The respondent in its reply pleaded the force majeure clause on the ground of Covid- 19. The High Court of Delhi in case no. ***O.M.P (I) (COMM.) No. 88/2020 & I.As. 3696-3697/2020 title as M/S HALLIBURTON OFFSHORE SERVICES INC VS VEDANTA LIMITED & ANR. 29.05.2020*** it was held that *the past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were*

much before the outbreak itself. Thus, this means that the respondent/promoter has to complete the construction of the apartment/building by 22.01.2020. The respondent/promoter has not given any reasonable explanation as to why the construction of the project is being delayed and why the possession has not been offered to the complainant/allottee by the promised/committed time. The lockdown due to pandemic in the country began on 25.03.2020. So, the contention of the respondent/promoter to invoke the force majeure clause is to be rejected as it is a well settled law that ***"No one can take benefit of his own wrong"***. Moreover, there is nothing on record to show that the project is near completion, or the developer applied for obtaining occupation certificate. Thus, in such a situation, the plea with regard to force majeure on ground of Covid- 19 is not sustainable.

G. Findings on the relief sought by the complainant

G. I Direct the respondent to hand over the possession of the said unit with the amenities and specifications as promised in all completeness without any further delay and not to hold delivery of the possession for certain unwanted reasons much outside the scope of buyer's agreement.

G. II Direct the respondent to pay the interest on the total amount paid by the complainant at the prescribed rate of interest as per the Act of 2016 from due date of possession till date of actual physical possession as the possession is being denied to the complainant by the respondent in spite of the fact that the complainant desires to take the possession.

G.III Direct the respondent to pay the balance amount due to the complainant from the respondent on account of the interest, as per the guidelines laid in the Act of 2016, before signing the conveyance deed/ sale deed.

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

> *"**Section 18: - Return of amount and compensation***
>
> *18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*
>
> .....
>
> *Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

15. As per clause 3.1 of the flat buyer agreement provides for handing over of possession and is reproduced below: -

> **3.1. POSSESSION**
>
> *"Subject to force majeure circumstances, intervention of Statutory Authorities, receipt of occupation certificate and Allottee/Buyer having timely complied with all its obligations, formalities, or documentation, as prescribed by the Developer and not being in default under any part hereof and Flat Buyer's Agreement, including but not limited to the timely payment of installments of the other charges as per payment plan, Stamp Duty and registration charges, the Developers **Proposes to offer possession of the said Flat to the Allottee/Buyer within a period of 4 (four) years from the date of approval of building plans or grant of environment clearance, (hereinafter referred to as the "Commencement Date") , whichever is later**. The Developer also agrees to compensate the Allottee/Buyer @ Rs.5.00/- (Five rupees only) per sq. ft. of the area of the flat per month for any delay in handing over possession of the Falt beyond the given promised **period plus the grace period of 6 months and upto offer letter of possession or actual physical possession whichever is earlier**".*

16. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainant not being in default under any provisions of this agreement and compliance with

all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee 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 allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer developer agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused its dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

17. **Due date of handing over possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the said flat within a period of 4 years from the date of approval of building plans (19.12.2014) or grant of environment clearance, (22.01.2016) (hereinafter referred to as the "Commencement Date"), whichever is later and has sought further extension of a period of 6 months (after the expiry of the said time period of 4 year) but there is no provision in relation to grace period in Affordable Group Housing Policy, 2013. As such in absence of any provision related to grace period, the said grace period of six months as sought by the respondent/promoter is disallowed in the present case.

18. **Admissibility of delay possession charges at prescribed rate of interest:** 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.*

19. 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.

20. 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., 27.07.2023 is **8.75%.** Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.75%.**

21. 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.

22. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., **10.75%** by the respondent /promoter which is the same as is being granted her in case of delayed possession charges.

23. On consideration of the circumstances, the documents, submissions and based on the findings of the authority regarding contraventions as per provisions of rule **28(1),** the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 3.1 of the agreement executed between the parties on 30.04.2016, the possession of the subject apartment was to be delivered within stipulated time within 4 years from the date of approval of building plan i.e. (19.12.2014) or grant of environment clearance i.e. (22.01.2016) whichever is later. Therefore, the due date of handing over possession is calculated by the receipt of environment clearance dated 22.01.2016 which comes out to be 22.01.2020. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession comes out to be 22.01.2020. (Mistaken by mentioned on 22.01.2022 in the proceeding of the day dated 27.07.2023 at para 2 which may be read as 22.01.2020.) The respondent has failed to handover possession of the subject unit till date of this order. Accordingly, it is the failure of the respondent /promoter to fulfil its obligations and responsibilities as per the agreement to hand over the

possession within the stipulated period. The authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit to the complainant as per the terms and conditions of the agreement to sell dated 30.04.2016 executed between the parties. It is pertinent to mention over here that even after a passage of more than 3.6 years neither the construction is complete nor an offer of possession of the allotted unit has been made to the allottee by the builder. Further, the authority observes that there is no document on record from which it can be ascertained as to whether the respondent has applied for occupation certificate/part occupation certificate or what is the status of construction of the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottees.

24. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to delay possession charges at rate of the prescribed interest @ 10.75% p.a. w.e.f. 22.01.2020 till actual handing over of possession or offer of possession plus two months, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

G. IV Direct the respondent not to force the complainant to sign any Indemnity cum undertaking indemnifying the builder from anything legal as a precondition for signing the conveyance deed.

25. The respondent is directed not to place any condition or ask the complainant to sign an indemnity of any nature whatsoever, which is prejudicial to their rights as has been decided by the authority in complaint bearing no. ***4031 of 2019 titled as Varun Gupta V. Emaar MGF Land Ltd.***

G.V. Direct the respondent not to charge anything which not the part of the payment plan as agreed upon.

26. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement.

G.VI. Direct the respondent to kindly handover the possession of the unit after completing in all aspect to the complainant and not to force to deliver an incomplete unit.

27. In the present matter, the allottee has already paid more than 100% of the sale consideration of the subject unit and the due date of the completion of the unit expired more than 3.6 years back. There may be some delay which can be explained but not such a long period. The project where the complainant was allotted the unit is still incomplete and OC of the same has not been received. The respondent is legally bound to meet the pre-requisites for obtaining an occupation certificate from the competent authority. The promoter is duty bound to obtain OC and hand over possession only after obtaining OC. So, the respondent is directed to complete the project and obtain occupation certificate and offered the possession of the subject unit to the complainant.

G.VII. Direct the respondent to provide the exact lay out plan of the said unit.

28. As per section 19(1) of Act of 2016, the allottee shall be entitled to obtain information relating to sanctioned plans, layout plans along with specifications approved by the competent authority or any such information

provided in this Act or the rules and regulations or any such information relating to the agreement for sale executed between the parties. Therefore, the respondent/promoter is directed to provide details of license and statutory approvals to the complainant within a period of 30 days.

H. Directions of the authority

29. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

i. The respondent is directed to pay interest to the complainant against the paid-up amount at the prescribed rate of 10.75% p.a. for every month of delay from the due date of possession i.e., 22.01.2020 till a valid offer of possession plus two months after obtaining occupation certificate from the competent authority, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

ii. The respondent shall not charge anything from the complainant which is not the part of the flat buyer's agreement.

iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period and after clearing all the outstanding dues, if any, the respondent shall handover the possession of the allotted unit.

iv. The respondent is directed to offer the possession of the allotted unit within 30 days after obtaining occupation certificate from the competent authority.

v. The arrears of such interest accrued from due date of possession i.e., 22.01.2020 till the date of order by the authority shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottees before 10th of the subsequent month as per rule 16(2) of the rules.

vi. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.75% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

30. Complaint stands disposed of.

31. File be consigned to registry.

Dated: 27.07.2023

(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram