

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

Complaint no. : 2264 of 2022
Complaint filed on : 24.05.2021
Date of decision : 31.08.2023

Akhil Gupta

R/o: 108, Banarsi Dass Estates, Timarpur, Delhi-
110054

Complainant

Versus

M/s TS Realtech Private Limited.
Registered Office at: - E-26, LGF, Panchsheel Park,
New Delhi - 110017

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE WHEN AGRUED:

Ms. Nidhi Jain

Advocate for the complainant

Shri Rajesh Kumar

Advocate for the respondent

ORDER

1. The present complaint has been filed by the complainant/allottee in 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. Project and unit 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:

Sr. No.	Particulars	Details
1.	Name of the project	"IRIS Broadways", Sector - 85-86, Gurugram
2.	Project area	2.8 acres
3.	Nature of the project	Commercial colony
4.	DTCP license no. and validity status	40 of 2012 dated 22.04.2012 valid up to 21.04.2025
5.	Name of licensee	T.S. Realtech
6.	RERA Registered/ not registered	Registered vide no. 168 of 2017 dated 29.08.2017
7.	RERA registration valid up to	31.12.2021
8.	Booking date	28.12.2012
9.	Unit no.	305, 3 rd floor
10.	Area of the unit (super area)	804 sq. ft
11.	Date of builder buyer agreement	17.09.2013
12.	Possession clause	11.1 Possession If for any reasons other than those given in clause 11.1, the company is unable to or fails to deliver possession of the said unit to the

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		<p>allottees within forty two months from the date of application or within extended period or periods under this agreement, then in such case, the allottees shall be entitled to give notice to the company, within ninety days from the expiry of said period of forty two months or such extended periods, as the case may be, for terminating this agreement.</p> <p>(Page no. 65 of the complaint)</p>
13.	Due date of possession	<p>17.06.2017</p> <p>(Calculated from the date of space buyer's agreement i.e., 17.09.2013 +90 days grace period)</p>
14.	Total sale consideration	Rs. 62,73,970/- (as per the statement of account dated 20.05.2019 at page 60 of reply)
15.	Total amount paid by the complainants	Rs. 64,31,036/- (as per the statement of account dated 20.05.2019 at page 60 of reply)
16.	Occupation certificate	<p>29.03.2019</p> <p>(Page no. 44 of the reply)</p>
17.	Letter for final demand/ offer of possession	20.05.2019 (page 59 of reply)

B. Facts of the complaint

3. The complainant has made following submissions in the complaint:

- i. That the respondent represented the general public that the respondent is in process of developing the colony IRIS Broadways, in village Badha, Sector 85-86, Gurgaon Manesar Urban Complex, Gurgaon, Haryana in terms of license dated 22.04.2012.

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- ii. That on the basis of representation and specifications, the respondent invited bookings of office space of various sizes in its aforesaid project.
- iii. That on the basis of representations and specifications of respondent, the complainant booked an office space bearing no. 305 having an approximate super area of 804 sq.ft. located at 3rd floor, in the block A, in building known as IRIS Broadway situated in revenue estate of village Badha, Sector 85-86, Gurgaon Manesar Urban Complex, Gurgaon, Haryana at BSP of Rs. 6,6000/- PSF.
- iv. That the buyer's agreement dated 17.09.2013 was executed with stipulations of deemed date of possession as 42 months from application i.e., latest until 28.06.2016.
- v. That the complainant had paid the amount as and when demanded by the respondent and till 15.03.2018, the complainant paid the amount of Rs.64,31,036/- + Rs. 4,42,200/- as statutory charges and total Rs.68,73,506/- as stated in the statement of account.
- vi. That despite lapse of about 10 years from the booking the respondent did not intimate the status of project and also failed to offer the possession. Hence, there is complete deficiency and illegality on part of respondent.

C. Relief sought by the complainant

4. The complainant has filed the present compliant for seeking following relief:

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- i. Direct the respondent party to pay the delayed possession interest from the due date of possession till handing over the possession of the unit.
 - ii. Direct the respondent party to hand over the possession of the unit.
 - iii. Direct the respondent to execute title deed.
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 and to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The respondent has raised certain preliminary objections and has contested the present complaint on the following grounds:
- i. That the complaint is liable to be dismissed as it is barred by the principles of delay and laches. The complainant had booked unit on 28.12.2012 with the respondent. He had carried out inspection of the documents in respect of the said project and were duly informed about the completion date of the said unit and other obligations of the complainants at the time of making application for booking the said unit. The complainant now in 2022 after passage of 9 years from the date booking application form cannot be allowed to raise the flimsy and frivolous objections at such juncture where the construction of the unit is completed.
 - ii. That from the perusal of the aforementioned provisions and/or the rules and conjoint reading of the same, it is evident that the "agreement for sale" that has been referred to under the provisions

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of 2016 Act and the rules of 2017, is the “agreement for sale” as prescribed in the rules of 2017. Apparently, in terms of section 4(1), promoter is required to fill an application to the ‘authority’ for registration of the real estate project in such form, manner, within such time and accompanied by such fee as may be prescribed. The term ‘prescribed’ has been defined under section 2(z)(i) to mean prescribed by rules made under the Act. Further Section 4(2)(g) of 2016 Act provides that a promoter shall enclose, along with the application referred to in section 4(1), a proforma of the allotment letter agreement for sale, and conveyance deed proposed to be signed with the allottees. Section 13(1) of 2016 Act inter-alia provides that a promoter shall not accept a sum more than 10% of the cost of the office space, plot or building as the case may be, as an advance payment or an application fee, from a person, without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force sub-section 2 of section 13, inter alia provides that the agreement for sale referred to in sub-section (1) shall be in such form as may be prescribed and shall specify certain particulars as mentioned in the said sub-section. Rule 8 of the rules of 2017 categorically lays down that the agreement for sale shall be as per Annexure-A.

- iii. That it is a matter of record and rather a conceded position that no such agreement, as referred to under the provisions of 2016 Act

and the rules of 2017, has been executed between the respondent company and the complainant. Rather, the agreement that has been referred to, for the purpose of getting the adjudication of the complaint, though without jurisdiction, is the space buyer's agreement, executed much prior to coming into force of 2016 Act. The adjudication of the complaint for compensation, as provided under Section-12,14, 18 and 19 of 2016 Act, has to be in reference to the agreement for sale executed in terms of 2016 Act and the rules of 2017 and no other agreement. This submission of the respondent inter alia, finds support from reading of the provisions of 2016 Act as well as rules of 2017, including the submissions.

- iv. That parties entered into the agreement to sale cum space buyer's agreement dated 17.09.2013, wherein the defendant agreed to sell the office space being unit bearing no. 305 having an approximate super area of 804 sq.ft. located on the third floor in block A in the building known as IRIS Broadway. In accordance with para 1.1 of the agreement, the basic sale price of the said unit was Rs.6,600/- per sq.ft. and there were other expenses in form of statutory obligations and other dues.
- v. That in terms of the understanding between the parties in accordance with the agreement dated 17.09.2013, the complainant had to make the payments of dues but the complainant miserably failed in doing so on the prescribed time. Further, in terms of para 8 of the said agreement, the complainant was liable to pay a penalty

- @24% per annum on a monthly compounding basis but the complainant also failed to make said payment with interest after admitting the same *vide* its email dated 12.03.2018.
- vi. That the respondent has due diligently completed the project following all the statutory and legal guidelines and adhering to all the deadlines and immediately obtained all the requisite permission and certificates with the respect to the project in the shortest possible time.
- vii. That pursuant to the completion of the project, the respondent company *vide* its letter dated 20.05.2019 and pursuant thereto *vide* its email dated 29.05.2019 has informed the complainant that the project has been completed and raised the demand notice upon the complainant and also called upon the complainant to takeover the possession of the unit.
- viii. That the respondent has also sent the statement of the account of the complainant and also called upon him to make the payment in accordance with the said statement of account but the same was not paid by him.
- ix. That the complainant also received the said statement of account and communicated to the respondent *vide* its email dated 15.07.2019 *inter alia* admitting that he is in receipt of said statement of account from the respondent company. It is however submitted that the complainant made a conditional offer of

payment of dues inconsistent with the agreement between the parties.

- x. That the complainant is making such unreasonable claims at such a belated stage when the unit has been offered for possession. Such claims made by the complainants are mere counterblasts for their own breaches and defaults which is not attributable to the respondent. Further, the respondent has not adopted any unfair trade practice or even otherwise.
 - xi. That despite being in the better position of seeking interest from the complainant in view of the abovementioned submission, the respondent conceded the request of the complainant made vide email dated 15.07.2019 and pursuant thereto the revised statement of account of the complainant was prepared wherein the complainant account was settled by the respondent and no demand whatsoever was made to the complainant. The said settlement was done on account of request made by the complainant vide email dated 15.07.2019 and hence same is settled terms between the parties. Therefore, the complaint is abuse of process of law and same has been filed to harass the respondent after settling the matter with the respondent.
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents.

E. Jurisdiction of the authority

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8. 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, Haryana, 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 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.

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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 as per provisions of section 11(4)(a) of the Act 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.1 Objection regarding jurisdiction of authority w.r.t. agreement for sale executed prior to coming into force of the Act.

12. The respondent has raised objection that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the booking application form executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark

judgment of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (Supra) decided on 06.12.2017 and** which provides as under:

"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter....

122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

13. Also, in appeal no. 173 of 2019 titled as **Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya**, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

14. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there

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is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

G. Findings on the reliefs sought by the complainant

G.1 Direct the respondent party to pay the delayed possession interest from the due date of possession till handing over the possession of the unit.

15. 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. Proviso to section 18(1) 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."

16. Clause IV & 11.1 of the space buyer's agreement provides for time period for handing over of possession and is reproduced below:

Clause iv *The Company intends to commence the development of the said commercial colony consisting of commercial spaces, office spaces and such other amenities, facilities as may be permissible under law in accordance with the building plans and utmost endeavor will be made to complete the same by the **end of 42 (Forty***

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two) Months from the date of receipt of all permissions and commencement of construction.

"11.1 Possession: *If for any reasons other than those given in clause 11.1, the company is unable to or fails to deliver possession of the said unit to the allottees within forty two months from the date of application or within extended period or periods under this agreement, then in such case, the allottees shall be entitled to give notice to the company, within ninety days from the expiry of said period of forty two months or such extended periods, as the case may be, for terminating this agreement.*

17. 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 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 allottee 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 time period for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottees of their right accruing after delay in possession. This is just to comment as to how the builder has misused his 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.



18. **Admissibility of grace period:** As per clause 11.1 of space buyer's agreement dated 17.09.2013, the respondent-promoter proposed to handover the possession of the said unit within a period of 42 months along with grace period 90 days as grace period. The said clause is unconditional and provides that if the respondent is unable to complete the construction of the allotted unit within stipulated period of 42 months, then a grace period of 90 days shall be allowed to the respondent. The authority is of view that the said grace period of 90 days shall be allowed to the respondent being unconditional. Therefore, as per clause 11.1 of the space buyer's agreement dated 17.09.2013, the due date of possession comes out to be 17.06.2017.
19. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the 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

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benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

20. The legislature in its wisdom in the subordinate legislation under 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.
21. Taking the case from another angle, the complainant-allottee was entitled to the delayed possession charges/interest only at the rate of Rs.5/- per sq. ft. per month of the super area as per clause 11.1 of the buyer's agreement for the period of such delay; whereas, as per clause 8 of the buyer's agreement, the promoter was entitled to interest @ 24% per annum at the time of every succeeding instalment from the due date of instalment till date of payment on account for the delayed payments by the allottee. The functions of the authority are to safeguard the interest of the aggrieved person, may be the allottees or the promoter. The rights of the parties are to be balanced and must be equitable. The promoter cannot be allowed to take undue advantage of his dominant position and to exploit the needs of the home buyer's. The authority is duty bound to take into consideration the legislative intent i.e., to protect the interest of the consumer/allottee in the real estate sector. The clauses of the buyer's agreement entered into between the parties are one-sided, unfair and unreasonable with respect to the grant of interest for delayed possession. There are various other clauses in the buyer's agreement which give sweeping powers to the promoter to



cancel the allotment and forfeit the amount paid. Thus, the terms and conditions of the buyer's agreement are ex-facie one-sided, unfair and unreasonable, and the same shall constitute the unfair trade practice on the part of the promoter. These type of discriminatory terms and conditions of the buyer's agreement will not be final and binding.

22. 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., 31.08.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.

23. **Rate of interest to be paid by the complainant in case of delay in making payments-** 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—

- (i) 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;*
- (ii) 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;"*

24. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.75% by the respondent/

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promoter which is the same as is being granted to the complainant in case of delayed possession charges.

25. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause IV & 11.1 of the space buyer's agreement executed between the parties on 17.09.2013, the possession of the subject unit was to be delivered within a period of 42 months from the date of receipt of application. The due date of possession calculated from the date of space buyer's agreement i.e., 17.09.2013 plus 90 days grace period which comes out to be 17.06.2017. The occupation certificate of the project was granted by the concerned authority on 29.03.2019 and thereafter, the possession of the subject unit was offered to the complainants on 20.05.2019. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to handover the physical possession of the subject unit and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 17.09.2013 to hand over the possession within the stipulated period.

26. The authority is of considered view that whereas per section 11(4)(b) of Act of 2016, when the said occupation certificate is received, the respondent-builder would be obligated to supply a copy of same to the



complainant individually. On the other hand, as per section 19(10) of Act of 2016, the allottee is under obligation to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. So technically, offer of possession acts as a vital document which acts a bridge between section 11(4)(b), where respondent-builder as per obligation conferred over him, shall supply the copy of occupation certificate to the complainant and on the other hand, the complainant therefore, as per section 19(10) would initiate its process for taking possession of the allotted unit. Therefore, this can be concluded that the fulfilment of obligation conferred over the allottee under section 19(10) of Act, is dependent over the fulfilment of obligation by the respondent under section 11(4)(b) and in the present case, the respondent has sent a letter on 20.05.2019 and raised demand as well as informed the complainant that the OC has been obtained on 29.03.2019. But the respondent failed to handover the physical possession till date. It is further clarified that the delay possession charges shall be payable from the due date of possession till the expiry of 2 months from the date of offer of possession (20.05.2019) which comes out to be 20.07.2019.

27. 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 delayed possession at prescribed rate of interest i.e., 10.75 % p.a. w.e.f. 17.06.2017 till 20.07.2019 i.e., expiry of 2 months from the date of offer

of possession (20.05.2019) as per provisions of section 18(1) of the Act read with rule 15 of the rules.

G. IV Direct the respondent to execute the title deed.

28. With respect to the title deed, the provision has been made under clause 13.1 of the buyer's agreement and the same is reproduced for ready reference:

"13.1 The Company as stated earlier shall prepare and execute conveyance deed to convey the title of the said Unit in favour of intending Allottee but only after receiving full payment of the total price of the said unit allotted to it and payment of all securities including interest free maintenance security, interest, penal interest etc. n delayed instalments, stamp duty, registration charges, incidental expenses for registration, legal expenses for registration and all other dues as set forth in this Agreement or as demanded by the Company from time to time prior to the execution....."

29. Section 17 (1) of the Act deals with duty of promoter to get the conveyance deed executed and the same is reproduced below:

"17. Transfer of title.-

(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."

30. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the complainant, whereas as per section 19(11) of the Act of 2016, the

allottee is also obligated to participate towards registration of the conveyance deed of the unit in question.

31. The possession of the subject unit has already been offered after obtaining occupation certificate on 20.05.2019. So, the respondent is directed to handover the physical possession and get the conveyance deed executed within a period of three months from the date of this order.

H. Directions of the authority

32. 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 the interest at the prescribed rate i.e., 10.75% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e., 17.06.2017 till 20.07.2019 i.e., expiry of 2 months from the date of offer of possession 20.05.2019.
- ii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period and to take the possession of the subject unit within two months from date of this order.
- iii. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order as per rule 16(2) of the rules.

- iv. 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 respondents/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.
 - v. The respondent shall not charge anything from the complainant which is not the part of the space buyer's agreement.
 - vi. The respondent shall execute the conveyance deed of the allotted unit within the 3 months from the date of this order.
 - vii. The respondent shall not charge anything from the complainant which is not the part of buyer's agreement. The respondent is not entitled to charge holding charges from the complainant/allottee at any point of time even after being part of the builder buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 on 14.12.2020.
30. Complaint stands disposed of.
31. File be consigned to registry.

V. I - G
(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 01.08.2023