

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

Complaint no. : 3953 of 2020  
Date of filing complaint : 09.11.2020  
Date of decision : 18.05.2023

Chander Mohan Kapila R/O: - Village P.O Box Kallerheri, Distt., Ambala, Tundla, Haryana.	<b>Complainant</b>
Versus	
M/s Sana Realtors Private Limited Regd. Office at: - H-69, Upper Ground Floor, Outer Circle, Connaught Place, New Delhi - 110001.	<b>Respondent</b>

<b>CORAM:</b>	
Shri Vijay Kumar Goyal	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Jagriti Dosi Proxy Cpunsel	Advocate for the complainant
Sh. Gaurav Raghav	Advocate for the respondent

**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 under the provision of the Act or the rules and regulations made there under or to the allottees 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. No.	Heads	Details
1.	Project name and location	Precision Soho Tower, Setor-67, Sohna Road, Gurgaon
2.	Project area	2.46 Acre
3.	Nature of project	Commercial
4.	RERA registered/not registered	<b>Not registered</b>
5.	DTPC license no. & validity status	72 of 2009 dated 26.11.2009 <b>Valid/renewed up to- 25.11.2019</b> Licensee- SH HARI SINGH
6.	Provisional allotment letter dated	-
7.	Date of execution of buyer agreement	16.06.2010 [Page 40 of complaint]
8.	Due date of delivery of possession as per clause 15 of the said agreement i.e., 3 years from the date of this agreement [Page 40 of complaint]	<b>16.06.2013</b>

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9.	<b>Occupation certificate</b>	18.07.2017
10.	<b>Offer of possession</b>	<b>Not on record</b>
11.	Unit no. as per the buyer's agreement	25, ground
12.	Unit measuring	404 sq. ft. [Page 42 of reply]
13.	Total consideration	Rs. 28,42,740/- (as per page no. 42 of complaint)
14.	Total amount paid by the complainant	Rs. 26,10,470/-
15.	Remarks, if any	

**B. Facts of the complaint**

The complainants have submitted as under: -

3. That the complainant was allotted a unit no. 25, Ground, admeasuring 404 sq.ft. the complainant was simply given the project unit, and the respondent never told him which tower it was in or mentioned it in the buyer's agreement.
4. That the buyer's agreement contained arbitrary, one-sided, and draconian clauses with no penalty or interest on the respondent in case of any default or violation of FBA clauses on its part, but exorbitant interest at 18% and holding charges in case the complainant defaults in making payment to the respondent.

5. The respondent violated clause 15 of the FBA by failing to provide the unit within three years after from the execution of FBA in 2010.
6. That the respondent accepted more than 90% of the total consideration amount from the complainant in 2013, the year of delivery of possession of the unit, as opposed to the construction linked payment plan proposed by the respondent, which required allottees to pay the instalment amount as the construction in the project progresses.
7. That the respondent first applied for the occupation certificate ("OC") in 2015 and only received it for Tower A (all floors) and Tower C (ground floor and first floor) on 18.07.2017 and for Tower B on 10.10.2019.
8. The respondent has repeatedly defrauded the complainant and others by making various misrepresentations about the project's construction status and obtaining necessary approvals from the concerned authority, demanding balance payments from them based on such misrepresentations and failing to provide possession of the units after the lapse of 10 years.
9. That to the utter astonishment of the complainant, the respondent sent a letter dated 17.10.2019 bearing subject 'payment demand at the time of possession' demanding exorbitant amount consisting of balance payment with interest in order to take the possession of the unit. Similar demand letter bearing subject 'payment demand on starting of flooring work' was issued to the complainant by the respondent on 25.02.2013 giving false representation that the flooring work has started and demanded the balance payment with interest. Further, in one such another concocted letter dated 25.04.2015 which was received by the

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complainant, the respondent misrepresented that the project is nearing completion and the respondent shall be sending the possession letter shortly. It is pertinent to submit that, in the said letters as aforesaid, the respondent made a false statement that the construction work is going on as per schedule, whereas for the matter of fact, the respondent had applied for the occupation certificate in the year 2015 and the due date of delivery of possession was in the year 2013 and as per the payment schedule, final payment was to be made at the time of offer of possession by the respondent, whereas the project was lying in a raw and desolate manner in the said year.

10. That the respondent had advertised of providing high-tech modern facilities and amenities such as CCTV backed high-tech security, high-tech elevators, air-conditioned complex etc. and promised the complainant of these amenities at the time of executing fba and while accepting earnest money payments from the complainant and that despite the lapse of more than 6 years not even an inch of sign of these amenities and facilities is to be seen from the current status of the project. That it is important to submit that it is a clear-cut case of cheating/fraud where a number of buyers including the complainant herein had been hoodwinked alluring them by showing dream units consisting features of home cum office spaces while printing very glossy brochure as well as the advertisements put on its website and on YouTube. The respondent has constructed only structure of the units by using inferior quality of raw materials and equipment and that no tangible development has taken place at the site, thus violating the

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obligation and responsibility imposed upon the respondent u/s 12 & 14 of the act regarding veracity of the advertisements based on which the complainant herein had booked the unit in the said project.

11. That in the light of the above submissions, it is submitted that the respondent has committed default and fraud upon the complainant of a repetitive nature, commenting from publishing/printing wrong information in its brochure/internet sites with respect to the facilities to be provided in the project making complainant enter into an abusive buyers agreement without obtaining the approved of building plan, failure to give timely possession, misrepresentation in regard to pace of construction of the project, conversion of toilets into units, delay in applying for occupation certificate, offering of possession without obtaining occupation certificate to sending false and concocted payment demand letters and letters pertaining to holding charges, maintenance charges and balance payment with exorbitant interest.

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

- (i) Direct the Respondent to give immediate possession of the unit of the above mentioned to Complainant along with prescribed interest per month from the date promised for delivery of possession till the actual possession is handed over to the Complainant of the unit in a habitable condition and/or alternatively.
- (ii) Direct the Respondent to provide with all the amenities and facilities as mentioned in its Brochure/advertisements and

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cure structural defects within 30 days from the final adjudication of the pre- sent complaint.

- (iii) To restrain the Respondent from raising any demand of maintenance before the actual delivery of possession and before the completion of one month after the actual delivery of possession of the unit
- (iv) To restrain the Respondent from raising any demand of final payment with interest and holding charges from the Complainant presently and in future.

**D. Reply by the respondents.**

The respondents have contested the complaint on the following grounds:

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- 12. That the present complaint filed by the complainant is liable to be dismissed as the present project does not fall within the purview of RERA. In this regard, it is most respectfully submitted that the respondent had way back on 18.05.2015 applied with the concerned authority i.e. DTCP for the grant of the occupation certificate and the concerned authority on 18.07.2017 prior to the commencement of the rules had granted the respondent with the occupation certificate. It is pertinent to state the said rules mentioned herein above were notified only on 28.07.2017 and therefore, cannot applied retrospectively to a project which stands completed before the rules coming into force.
- 13. That the present complaint filed by the complainant is liable to be dismissed as the project namely "Precision SOHO Tower" is a commercial complex and even prior to the implementation of HRERA, the occupation

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certificate was issued by the competent authority vide memo No. ZP-589/SD (BS)/2017/17063 dated 18/07/2017 In Form BR-VII, DTCP.

14. That the present complaint filed by the complainant is liable to be dismissed as the complaint have filed a false complaint and liable to be dismissed at threshold. The agreement between the developer and the customer is binding on the parties and the complainant who had preferred to make payments as per the construction linked plan, have failed to make the outstanding payments.
15. That the present complaint is not maintainable as the provision of Section 19 (6) of Real Estate (Regulation and Development) Act 2016 was not complied by the complainant, which says every allottee, who has entered into an agreement to take or sale the apartment, plot or building shall be responsible to pay the necessary payments at the time of offer of possession including registration charges, municipal taxes and other charges etc. But no necessary payments were made by the complainant after the completion of the project. hence the present complaint is not maintainable and is liable to be dismissed.
16. That as per the Clauses 41 & 42 of the buyer agreement the complainant shall be liable to pay as and when demanded by the respondent the stamp duty, registration charges and other legal and incidental charges for execution and registration of conveyance deed. It is also submitted that the complainant is also liable to pay any loss or damages suffered by respondent for non-payment or delay in payment, non-performance of the terms and conditions of the agreement. It is pertinent to mention here that clause 8 of the buyer agreement which incorporates that "the time

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of payment of instalments as stated in Schedule of Payment and applicable stamp duty, registration, fee, maintenance and other charges payable under this agreement as and when demanded is the essence of this agreement", hence the present complaint is not maintainable and is liable to be dismissed.

17. That it is further submitted that the delay in the handing over the possession of the project was beyond the control of the respondent. It is submitted that clause 15 relied upon by the complainant also provide for the exemption if the delay, if any caused is beyond the control of the Respondent, the same shall be excluded from the time period so calculated. It is not out of place to mention here that the respondent has been diligent in constructing the project and the delay, if any, is due to the authorities or government actions and the same is well documented. It is worth to note here that initially there were high tension wires passing through the project land and the work got delayed as the agencies did not remove the same within time promised and since the work was involving risk of life, even the respondent could not take any risk and waited for the cables to be removed by the electricity department and the project was delayed for almost two years at the start. Initially there was a 66 KV Electricity Line which was located in the land wherein the project was to be raised. Subsequently an application was moved with the HVPNL. for shifting of the said Electricity Line. HVPNL. subsequently demanded a sum of Rs. 46,21,000/- for shifting the said electricity line and lastly even after the deposit of the said amount HVPNL took about one and half years for shifting the said electricity line. It is

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pertinent to mention here that until the electricity line was shifted the construction on the plots was not possible and hence the construction was delayed for about two years. It is pertinent to note here that the diligence of the Respondent to timely complete the project and live upto its reputation can be seen from the fact that the respondent had applied for the removal of high-tension wires in the year 2008 i.e., a year even before the license was granted to the respondent so that the time can be saved, and project can be started on time. It is submitted that the contractor M/s Acme Techcon Private Limited was appointed on 08.07.2011 for development of the project and it started development on war scale footing. It is submitted that in the year 2012, pursuant to the Punjab and Haryana High Court order, the DC had ordered all the developers in the area for not using ground water and the ongoing projects in the entire area seized to progress as water was an essential requirement for the construction activities and this problem was also beyond the control of the respondent, which further was duly noted by various media agencies and documented in the government department. Further since the development process was taking lot of time and the contractor had to spend more money and time for the same amount of work, which in normal course would have been completed in almost a year, due to the said problems and delay in the work, the contractor working at the site of the respondent also refused to work in December, 2012 and the dispute was settled by the respondent by paying more to the earlier contractor and thereafter appointing a new contractor M/s Sensys Infra Projects Pvt. Ltd. in January, 2013 immediately to resume the work at the site without delay. Further, the project is complete since

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2015 and the Respondent has also applied for the Occupancy Certificate in May 2015. Lastly in July 2017 Occupancy Certificate was issued and the delay of two years was on account of the delay at the end of DTCP and as such the Respondent is not responsible for any delay. The development and construction have been diligently done by the Respondent and the obligations which the respondent was to discharge have been onerously discharged without fail and the reasons for delay are stated herein for the kind consideration of this Hon'ble Commission. It is submitted that the respondent has complied with its part of the obligation and the conditions aforesated were not in control of the respondent. The respondent could diligently do his part, which has been done and requisite documents to prove its diligence are annexed herewith, therefore no illegality as being alleged can be attributed to the respondent in any manner whatsoever.

18. All other averments made in the complaint were denied in toto.
19. 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 those undisputed documents and submissions made by the parties.

#### **E. Jurisdiction of the authority**

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

#### **F. I Territorial jurisdiction**

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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.

**F. II Subject matter jurisdiction**

20. 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 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.*

21. 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

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decided by the adjudicating officer if pursued by the complainants at a later stage.

**E.I Findings qua force majeure conditions as pleaded by the respondent:**

22. While filing written reply, a specific plea was taken by the respondent that there was delay of about 2 years in completion of the project due to non-removal of cables of 66KV of the powerlines from the project land. Besides that, there were stay w.r.t. use of ground water for construction activities leading to escalation of cost and the contractor engaged earlier refusing to work at the previous rates and engaging a new one for further construction. Thirdly, after all its efforts, it was able to complete the construction of the project and applied for its occupation certificate in May 2015 but the same was issued only in the month of July 2017. Thus, all these factors were beyond the control of the respondent who complied with his obligations with due diligence. Thus, the time spent and detailed above be excluded while calculating the due date for completion of the project and offer of possession of the allotted unit. But all the pleas advanced in this regard are devoid of merit. No doubt, the respondent spent a considerable period in getting removed electric cables from the project land, a dispute with the contractor leading to escalation of project cost and non-issuance of occupancy certificate by the competent authority but no fault for the same can be found with the complainant who paid a substantial part of the sale consideration towards the allotted unit. Moreover, it was for the respondent to address all these issues and the complainants were not a party to either of the

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same transaction. Though there was a dispute of the respondent with the contractor, but it was for the former to settle the same and proceed with the construction of the project. There may be delay in issuances of occupation certificate of the project and the period obtained in this regard has been contended to be excluded and be treated as zero period. But again, the plea advanced in this regard is not tenable. It is for the competent authority to declare the period spent in obtaining occupation certificate as zero period and the authority cannot deliberate on that point

23. .

24. As far as delay in construction due to outbreak of Covid-19 is concerned, Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020* dated 29.05.2020 observed as under-

*"69. 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."*

25. The respondents were liable to complete the construction of the project and the possession of the said unit was to be handed over by 07.07.2016 and are claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was

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much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that 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 and for the said reason, the said time period is not excluded while calculating the delay in handing over possession.

**H. Findings on the relief sought by the complainants.**

26. Relief sought by the complainant: The complainant sought following relief(s):

- i. Direct the respondent to give immediate possession of the unit of the above mentioned to complainant along with prescribed interest per month from the date promised for delivery of possession till the actual possession is handed over to the complainant of the unit in a habitable condition and/or alternatively.
- ii. Direct the respondent to provide with all the amenities and facilities as mentioned in its Brochure/advertisements and cure structural defects within 30 days from the final adjudication of the pre- sent complaint.
- iii. To restrain the respondent from raising any demand of maintenance before the actual delivery of possession and before the completion of one month after the actual delivery of possession of the unit.

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- iv. To restrain the Respondent from raising any demand of final payment with interest and holding charges from the Complainant presently and in future

### **Delay Possession Charges**

27. 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."*

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

***3. Possession***

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

29. The authority has gone through the possession clause of the agreement. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds

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of terms and conditions of this agreement and the complainant not being in default under any provision of this agreement and in compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the 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 date for handing over possession loses its meaning.

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

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

32. **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 promoters, 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]*

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(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.

33. 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.
34. 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., 18.05.2023 is 8.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.
35. 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*

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*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;"*

36. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.70% by the respondent/promoters which is the same as is being granted to them in case of delayed possession charges.

**Maintenance Charges:**

37. The issue w.r.t. the maintenance charges was referred to by the allottee. As far as issue regarding advance maintenance charges is concerned, where the said agreements have been entered into before coming into force the Act, the matter is to be dealt with as per the provisions of the builder buyer's agreement.
38. The authority observes that since maintenance charges are applicable from the time a flat is occupied, its basic motive is to fund operations related to upkeep, maintenance, and upgrade of areas which are not directly under any individual's ownership. RERA's provisions enjoin upon the developer to see that residents don't pay ad hoc charges. Also, there should be a declaration from the developer in the documents that they are acting in own self-interest and that they are not receiving any remuneration or kick-back commission. The same has been observed by the Telangana State Consumer Disputes Redressal Commission in its judgement dated 21.01.2021 while deciding an appeal filed by India Bulls Centrum Owners Welfare Cooperative Society, which maintains a gated community at lower Tank Bund, in Hyderabad.



39. Thus, the authority is of the view that the respondent is entitled to collect advance maintenance charges as per the builder buyer's agreement executed between the parties. However, the period for which maintenance charges levied should not be arbitrary and unjustified. Generally, maintenance charges are charged by the builder/developer for a period of 6 months to 2 years. The authority is of the view that the said period is required by the developer for making relevant logistics and facilities for the upkeep and maintenance of the project. Since, the developer has already received the OC/part OC and it is only a matter of time that the completion of the project shall be achieved; its ample time for a RWA to be formed for taking up the maintenance of the project and accordingly the maintenance charges is handed over to the RWA.
40. Keeping in view the facts above, the authority deems fit that the respondent is right in demanding advance maintenance charges at the rate prescribed therein at the time of offer of possession in view of the judgements (supra). However, the respondent shall not demand the advance maintenance charges for more than one (1) year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where the maintenance charges has been demanded for more than a year.

**Holding Charges:**

41. The allottees have also challenged the authority of the respondent builder to raise demand by way of holding charges on the ground that since the project is incomplete and the offer of possession is not lawful.

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On the contrary, the respondent submitted that all the demands have been strictly raised as per the terms of the flat buyer's agreement.

42. The authority observes that this issue already stands settled by the Hon'ble Supreme Court vide judgment dated 14.12.2020 in civil appeal no. 3864-3889/202, whereby the Hon'ble Court had upheld the order dated 03.01.2020 passed by NCDRC, which lays in unequivocal terms that no holding charges are payable by the allottee to the developer. The relevant para of the committee report is reproduced as under:

*"F. Holding Charges: The Committee observes that the issue already stands settled by the Hon'ble Supreme Court vide judgement dated 14.12.2020 in civil appeal no. 3864-3889/2020, hereby the Hon'ble Court had upheld the order dated 03.01.2020 passed by NCDRC, which lays in unequivocal terms that no holding charges are payable by the allottee to the developer. The Hon'ble Authority may kindly issue directions accordingly."*

43. As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the flat. Therefore, the holding charges will not be payable to the developer. Even in a case where the possession has been delayed on account of the allottee having not paid the entire sale consideration, the developer shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed.
44. In the light of the judgement of the Hon'ble NCDRC and Hon'ble Apex Court (supra), the authority decides that the respondent promoter cannot levy holding charges on a allottee(s) as it does not suffer any loss on account of the allottee(s) taking possession at a later date even due to

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an ongoing court case though it would be entitled to interest at the prescribed rate for the period the payment is delayed.

#### **H. Directions of the authority**

45. 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 at the prescribed rate of 10.70% p.a. for every month of delay from the date of due date i.e., 16.06.2013 till the receipt occupation certificate i.e., 18.07.2017 plus 2 months i.e., 18.09.2017.
- ii. The respondent is directed to adjust the amount of delay possession charges of the allotted unit as per directions detailed under para 45(i) of the order and refund the remaining amount, if any.
- iii. The arrears of such interest accrued from due date of possession till its admissibility as per direction (i) above shall be paid by the promoter to the allottee within a period of 90 days.
- iv. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.70% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.



- v. The respondent is directed to handover the possession of the allotted unit to the complainant completes in all aspects as per specifications of buyer's agreement within one month from date of this order.
- vi. The respondent builder is directed to provide all the amenities and facilities as per buyers agreement.
- vii. **Holding charges:** The respondent is not entitled to claim anything against holding charges from the complainant(s)/allottee(s) at any point of time even after being part of the buyer's agreement as per law settled by Hon'ble Supreme Court in Civil appeal nos. 3864-3889/2020 decided on 14.12.2020

46. The complaint stand disposed off.

47. File be consigned to registry.

HARERA  
GURUGRAM

v.1 - 3  
Vijay Kumar Goyal

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 18.05.2023