

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

Complaint no.: 775 of 2022
Date of filing : 02.03.2022
Date of decision : 28.09.2023

1. Dr. Renu Srivastava
2. Col. (Dr.) Ashvini Goel

Both RR/o: B-26, Westend Colony, Near Anand
Niketan, New Delhi - 110021

Complainants

Versus

Anand Divine Developers Private Limited

Regd. office: 711/92, Deepali Nehru Place, New Delhi
- 110019

Also At:- ATS Tower, Plot No 16, Sector 135, Noida -
201305

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Ms. Shilpa Gammnani (Advocate)

Ms. Sanju (proxy counsel)

Complainants
Respondent

ORDER

1. The present complaint has been filed by the complainant/allottees 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 allottees as per the agreement for sale executed inter-se them.

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A. Unit and Project related details:

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

S. No.	Heads	Information
1.	Name and location of the project	"ATS Triumph", Sector 104, Village-Dhanwapur, Gurugram
2.	Nature of the project	Group housing colony
3.	Project area	14.093 acres
4.	DTCP License	i. 63 of 2011 dated 16.07.2011 valid till 15.07.2019 ii. 10 of 2012 dated 03.02.2012 valid till 02.02.2020
	Name of the licensee	M/s Great Value HPL Infratech Private Limited M/s Kaanha Infrastructure private Limited
5.	HRERA registered/ not registered	Not registered
6.	Allotment letter dated	Not placed of record
7.	Date of execution of flat buyer's agreement	27.03.2018 (As per annexure- 4 at page no. 67 of the complaint)
8.	Unit no.	6031 on 3 rd floor, tower 6 (As per annexure- P4 on page no. 68 of the complaint)
9.	Super Area	3138 sq. ft. (As per annexure- P4 on page no. 68 of the complaint)
10.	Possession clause	18 Time of Handing Over Possession: Barring unforeseen circumstances and Force Majeure events as stipulated hereunder, the possession of the said Apartment is proposed to be, offered by the Company to the Allottee on or before 30 September 2018 , from the

		date of this agreement (hereinafter referred to as "the Stipulated : Date"), subject always to timely payment of all charges including the Basic Sale Price* Stamp Duty, Registration Fees and Other Charges as stipulated herein or as may be demanded by the Company from time to time in this regard.
11.	Due date of delivery of possession	30.09.2018
12.	Total consideration	Rs.1,99,30,519/- (As per payment plan on page no. 88 of the complaint)
13.	Total amount paid by the complainants	Rs.2,23,16,182/- (As alleged by the complainant on page no. 39 of complaint)
14.	Occupation Certificate	28.05.2019
15.	Offer of possession	10.01.2022 (Page no. 135 of the complaint)

B. Facts of the complaint

3. The complainants have made the following submissions: -

- I. That the complainants booked a flat bearing no. 6031, 3rd floor in Tower-6 of the project named "ATS Triumph" at Sector 104, Gurugram being constructed and developed by the respondent. Thereafter, a buyer agreement dated 27.03.2018 was executed between the parties for a total sale consideration of Rs.2,23,16,182/-.
- II. That as per clause 5 of the buyer's agreement, the possession of the unit was undertaken to be delivered to the complainants on or before 30.09.2018. Despite the lapse of more than three years from the promised date of possession, the respondent has failed to deliver the possession of the flat to the complainants which in contravention of

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the terms and conditions of the buyer's agreement as well as understanding between the parties.

- III. That the complainants availed a home loan from Punjab National Bank for assistance in purchase of the flat and a loan amount of Rs.1,56,48,167/- was directly deposited by the bank into the respondent's account on 31.03.2018 of which an amount of Rs.13,06,902/- was appropriated towards 75% of the sale consideration and Rs.26,64,676/- was appropriated towards GST. The aforesaid payment has been duly acknowledged by the respondent by way of receipts dated 15.05.2018 issued in the name of complainant no.1. Upon payment of the aforesaid amount, the payment obligations of the complainants prior to grant of possession, as provided under the agreement, stood satisfied. However, the respondent called upon the complainants to make payment of the balance 25% of the sale consideration. Accordingly, an amount of Rs.29,37,865/- was remitted by them through RTGS on 30.04.2018, of which an amount of Rs.3,14,771/- was paid towards GST.
- IV. Though the complainants made timely payments, the respondent has failed to deliver possession of the flat as per the promised timeline i.e., 31.07.2018 as per the respondent's email and 30.09.2018 as per the agreement. The complainants repeatedly followed up with the respondent's officials regarding the status of their flat and highlighted the additional expense in the form of monthly rent being incurred by them as retired pensioners. In response, they were merely given new timelines/delivery dates, which have not been met by the respondent. Thereafter, the complainants were called upon to make payment of the amounts required to be paid for external development charges, GST,

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power back-up, maintenance deposit, electricity meter, etc. Though the aforesaid amounts were due and payable only once the respondent had made an offer of possession, the complainants proceeded to make payment of an amount of Rs.15,73,636/- by way of cheque bearing no. 000145 dated 23.09.2019.

- V. That in February 2020, the respondent's representative reached out to complainant no.2, seeking documents including (i) No-objection certificate from Punjab National Bank who had funded the purchase of the flat; (ii) Loan closure letter, in case the loan had been paid off by the complainants; (iii) Running maintenance charges of Rs.60,000/- in favour of respondent's affiliate namely "ATS Triumph Maintenance Services Pvt Ltd Triumph"; and (iv) TDS of Rs.2,23,913/-. The complainants informed the respondent about the press release dated 13.05.2020 issued by the Ministry of Finance, whereby the TDS required to be deposited for acquisition of immovable property had been reduced from 1% to 0.75% for the period from 14.05.2020 to 31.03.2021, in view of the economic situation arising out of the COVID-19 pandemic. Accordingly, they informed the respondent that the TDS amount ought to be Rs.1,67,936/- instead of Rs.2,23,913/- which was acknowledged by the respondent over email. Thereafter, the complainants complied with the aforesaid requisitions, and cumulatively deposited TDS of Rs.1,67,936/- on behalf of the respondent.
- VI. That on 05.01.2022 i.e., more than 3 years after the promised date of delivery under the agreement, the respondent's representative Ms. Divya Negi addressed an email to the complainants, intimating them that the flat is ready for possession. The complainants, through



counsel, addressed a response dated 10.01.2022, requesting the respondent to arrange for inspection of the flat prior to possession. The complainants also highlighted that the offer for possession was delayed by a period of more than 3 years and brought attention to clause 19 of the agreement, which entitles the complainants to interest at the rate of 10% per annum on the amounts already paid under the agreement on account of any delay in handing over of possession. Upon the respondent's failure to respond, the complainants, through counsel, also addressed a reminder dated 24.01.2022, but the respondent neglected to respond to the complainants till date.

- VII. That it has also come to the complainants attention that the website of the respondent states that the occupation certificate (OC) for the project is not currently valid, and that the respondent has re-applied for OC in relation thereto and hence, the offer for possession made by the respondent cannot be considered as valid. Accordingly, the complainants are seeking interest and compensation for the delay in handing over possession.

C. Relief sought by the complainants:

4. The complainants have sought following relief:
- i. Direct the respondent to handover the possession of the said unit to the complainant just and reasonable terms and within such time as may be prescribed by this authority.
 - ii. Direct the respondent to make payment of an amount of Rs.73,00,142/- as interest in delay in handing over possession of the said unit calculated @ 10% per annum from the amount paid by the complainant.

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- iii. Direct the respondent to make payment of interest pendente lite on the amount of the Rs.2,23,16,182/- paid by the complainant to the respondent under this agreement.
 - iv. Direct the respondent to refund the amount of Rs.6,72,000/- paid by the complainants towards the common car parking.
5. The respondent/promoter put in appearance through his Advocate and marked attendance on 02.11.2022, 23.02.2023, 06.07.2023, and 28.09.2023. In the proceeding dated 28.09.2023, it was observed that, *"Despite specific directions the respondent has failed to comply with the orders of the authority. It shows that the respondent is intentionally delaying the procedure of the court by non-filing of written reply. Hence, it's defence was ordered to be struck off for not filing reply."*
6. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the complainants.

D. Jurisdiction of the authority

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

D. I Territorial jurisdiction

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

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Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

D. II Subject matter jurisdiction

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

Section 11(4)(a)

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

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

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

E. Findings regarding relief sought by the complainants.

E.I Direct the respondent to handover the possession of the said unit to the complainant just and reasonable terms and within such time as may be prescribed by this authority.

10. The respondent has offered the possession of the unit on 10.02.2022 after receiving the occupation certificate dated 28.05.2019 from the competent authority. The occupation certificate is granted by the competent authority to the promoter only after the completion of the building when

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the civic infrastructure is complete. Therefore, it is a valid offer of possession.

E.II Direct the respondent to make payment of an amount of Rs.73,00,142/- as interest in delay in handing over possession of the said unit calculated @ 10% per annum from the amount paid by the complainant.

E.III Direct the respondent to male payment of interest pendente lite on the amount of the Rs.2,23,16,182/- paid by the complainant to the respondent under this agreement.

11. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under:

Section 18: - Return of amount and compensation

If the promoter fails to complete or is unable to give possession of an apartment, plot or building, -

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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.

12. As per clause 18 of the buyer's agreement dated 27.03.2018, the possession of the subject unit was to be handed over by 30.09.2018. Clause 18 of the buyer's agreement provides for handover of possession and is reproduced below:

18. Time of handing over possession

"Barring unforeseen circumstances and Force Majeure events as stipulated hereunder, the possession of the said Apartment is proposed to be, offered by the Company to the Allottee on or before 30 September 2018, from the date of this agreement (hereinafter referred to as "the Stipulated : Date"), subject always to timely payment of all charges including the Basic Sale Price Stamp Duty, Registration Fees and Other Charges as stipulated herein or as may be demanded by the Company from time to time in this regard."*

13. The authority has gone through the possession clause and observes accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the apartment buyer's agreement to hand over the

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possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 30.09.2018 till offer of possession (10.01.2022) plus two months i.e., 10.03.2022 at the prescribed rate i.e., 10.75 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

14. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges as one of the reliefs. 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.

15. 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.

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16. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 28.09.2023 is **8.75%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.75%**.
17. 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;"*

18. 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 to the complainants in case of delayed possession charges
19. 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 18 of the buyer's agreement executed between the parties on 27.03.2018, and the due date of possession was specifically mentioned in the apartment buyer agreement

as 30.09.2018. Occupation certificate was granted by the concerned authority on 28.05.2019 and thereafter, the possession of the subject flat was offered to the complainant on 10.01.2022. 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 offer physical possession of the subject flat and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 27.03.2018 to hand over the possession within the stipulated period.

20. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 28.05.2019. The respondent offered the possession of the unit in question to the complainant only on 10.01.2022, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. These 2 months' of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically she has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. 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 (10.01.2022) which comes out to be 10.03.2022.
21. 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. 30.09.2018 till the expiry of 2 months from the date of offer of possession (10.01.2022) which comes out to be 10.03.2022 as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act.

E.IV Direct the respondent to refund the amount of Rs.6,72,000/- paid by the complainants towards the common car parking.

22. The complainant has booked the residential apartment in the project named as 'ATS Triump' situated at Sector 104, Village- Dhanwapur, Gurugram for a basic sale consideration of Rs.1,99,30,519/- (inclusive of 2 parking) out of which it has made payment of Rs.2,23,16,182/-. The buyer's agreement was executed in this regard on 27.03.2018, and the complainant was allotted a unit bearing no. 6031 on 3rd floor, in tower no. 06 having super area of 3138 sq. ft. which includes carpet area 2039 sq. ft. along with Terrace area 387 sq. ft. along with 2 car parking earned marked in the basement/open area to be identify and allotted by the company at the time of offer of possession of the apartment to the allottee. The relevant clause from the agreement is reproduced as under: -

9. Car parking

- 9.1 Along with the said Apartment, the Allottee has acquired exclusive usage right of car parking space(s) mentioned herein above. However, the car parking space shall be identified and allocated by the Company at the time of handing over the possession of the said Apartment to the Allottee subject to statutory rules and regulations.
- 9.2 That the car parking space(s) forming a part of the Apartment bundled with and deemed to be part and parcel of the said Apartment and the same shall not have an independent legal entity detached from the said Apartment. The Allottee undertakes not to sell/transfer/deal with or part with possession of the reserved parking space independent of the said Apartment and further undertakes that he shall not modify or make any changes or cover the car parking space(s) or divert the user of the said car parking space(s) in any manner whatsoever at any point of time. The Allottee undertakes to park his vehicle in the designated parking space allotted to him and not anywhere else in the Complex. The Allottee agrees and confirms that in the event of cancellation, surrender or resumption of the said Apartment under any of the provisions of this Agreement, the



reserved parking space(s) along with additionally allotted parking space(s), if any, to him shall automatically be cancelled or resumed as the case may be. No separate proceedings for cancellation or resumption of car parking space(s) shall be initiated or followed by the Company independently that of the said Apartment in any manner whatsoever.

9.3 The Company hereby clarifies that the Allottee shall not have any right, title or interest in the unreserved car parking spaces of the Building and the same shall be dealt with by the Company, at its own discretion, as it shall remain the absolute property of the Company. The Company, at its sole discretion, shall have absolute right to sell or assign its interest in the unreserved car parking area without any objection, of any nature what so ever from the Allottee.

23. That as per clause 9.1 of the buyer's agreement the car parking space shall be identified and allocated by the respondent/promoter at the time of handing over the possession of the said apartment to the allottee subject to statutory rules and regulations. In terms of the order passed by the authority in complaint titled as **Varun Gupta Versus Emaar MGF Land Ltd. (CR/4031/2019)** held that open parking spaces cannot be sold/charged by the promoter both before and after coming into force of the Act of 2016 since it is the part of basic sale price charged against the unit in question as a part of common areas. The promoter shall provide the car parking space in terms of the buyer's agreement.

F. Directions of the Authority

24. Hence, the authority hereby passes this order and issue 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 complainants against the paid-up amount 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., 30.09.2018 till 10.03.2022 i.e., expiry of 2 months from the date of offer of possession (10.01.2022). The arrears



of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per rule 16(2) of the rules.

- II. 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.
 - III. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period within 30 days and the respondent shall handover the possession in next 30 days to the complainants/allottees.
 - IV. The respondent is directed to execute the conveyance deed of the allotted unit executed in the favour of complainants in term of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable.
 - V. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.
25. Complaint stands disposed of.
26. File be consigned to registry.

Dated: 28.09.2023

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