BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. :	**1471 of 2022**
First date of hearing :	**20.05.2022**
Date of Decision :	**28.09.2023**

Mr. Satish Saigel Mrs. Nishi Saigel **Both RR/o:** 17/11 Close North Nirvana Country, Sector 50, Gurgaon.	**Complainants**
Versus	
M/s Sana Realtors Pvt. Ltd. **Office:** 12/15 East Patel Nagar, New Delhi-110008. **also at:** H-69, Upper ground floor, Connaught Circus, New Delhi-110001.	**Respondent**
CORAM: Shri Vijay Kumar Goyal	**Member**

APPEARANCE:	
Ms. Parghya Sharma & Nachiketa Goyal (Advocates)	**Complainants**
Sh. Gaurav Raghav (Advocate)	**Respondent**

ORDER

1. The present complaint dated 06.04.2022 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 under the provision of the

Act or the Rules and regulations made thereunder 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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	"Precision Soho Tower", Sector 67, Gurugram, Haryana
	Nature of the project	Commercial colony
2.	Project area	2.456 acres
3.	Registered/not registered	Not registered
4.	Nature of the project	Group housing complex
5.	DTCP license no.	72 of 2009 dated 26.11.2009
6.	License holder	M/s Sana Realtors Pvt. Ltd.
7.	Unit no.	632, 6th floor (BBA on page no. 37 of complaint)
8.	Unit admeasuring	525 sq. ft. (BBA on page no. 37 of complaint)
9.	Date of execution of flat buyer agreement	08.06.2010 (On page no. 35 of complaint)
10.	Possession clause	**15. Possession** **That the possession of the said premises is proposed to be delivered by the DEVELOPER to ALLOTTEE(S) within Three years from the date of this Agreement.** 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. The DEVELOPER as a result of such a contingency arising, reserves the right to alter or vary the terms and conditions of this Agreement or if the circumstances beyond the control of the DEVELOPER so warrant, the DEVELOPER may suspend the Scheme for such period as it might consider expedient. **(Emphasis supplied)**.
11.	Due date of offer of possession	**08.06.2013** **(Calculated from the date of agreement)**
12.	Total sale consideration	Rs. 19,99,725/- (As per page no. 37 of complaint)
13.	Total amount paid by the complainant	Rs. 23,42,475/- (As alleged by the complainant)
14.	Occupation Certificate	18.07.2017 (as admitted by the

		respondent, page 5 of reply)
15.	Offer of possession	24.07.2017 (as admitted by the respondent, page 5 of reply)

B. Facts of the complaint

3. The complainants have made the following submissions: -

I. That the complainant booked a unit in project "Precision SOHO Tower" at Sector 67, Gurugram. The initial booking amount of Rs. 4,00,000/- was paid to the respondent. Thereafter, a buyer agreement was executed between the parties on 08.06.2010 and allotted a unit no. 632 on 6th floor admeasuring 525 sq.ft. for a total sale consideration of Rs. 19,99,725/- against which they paid an amount of Rs. 23,42,475/-.

II. That as per clause 15 of the agreement, the possession of the said premises was proposed to be delivered by the respondent to the allottee within three years from the date of buyer agreement. Therefore, the complainants were entitled to the possession of the said unit by 08.06.2013, which because of delays on the part of the respondent, has not been handed over to the complainants even till date.

III. That on 22.03.2015, the respondent sent a letter demanding additional payment over and above the amount payable under the buyer agreement from the complainants labelling it as *"Payment demand at the time of possession"*. The said letter informed the complainants that the construction work of their block is going as per schedule and a payment of Rs. 4,87,53/- was due to be paid by the complainant no. 1 for the month of June 2015. This was the final payment asked by the respondent wherein the respondent had increased the amount

payable by Rs. 79,989/- on account of alleged increase in super area of the said premises, without giving any justification as to how the super area has been increased. Additionally, the respondent also demanded an amount of Rs. 2,19,600/- without offering possession even by then under the heads as mentioned below:

i. Maintenance Security amounting to Rs. 54,600/-

ii Electrification charges amounting to Rs. 50,000/-

iii Prepaid meter card depositor charges amounting to Rs. 10,000/-

iv Security against VAT @5% amounting to Rs. 1,05,000/-

IV. That all the above-mentioned amount charged by the respondent from the complainants were not pre-decided or agreed or even mentioned in the buyer agreement the parties had entered into. There was no justification given by the respondent in demanding all the above amounts in advance when clearly the subject of the letter stated, "Payment demand at the time of possession". Even though, the possession was not handed over to the complainants, still the respondent demanded all the payments to be made by 30.06.2015. thereafter the complainants made full payment including payment of increased super area and other items as per demand letters of th respondent, to avoid interest@18% per annum for any delayed payment.

V. That the complainants were perplexed that while the aforesaid demand letter mentioned office space number 632, the account statement annexed to the said letter mentioned office space number 632/623 (new). No information whatsoever was provided to the complainants that the respondent is changing the office space number

allotted to the complainants. However, the final receipt dated 26.06.2015 issued by the respondent mentioned the correct and original office space number 632.

VI. That the complainants sent e-mails to the respondent informing it about the delay in handing over the possession of the said premises to the complainants and requesting the respondent to give the possession of the premises in lieu of the full and final payments which had already been made by the complainants. Since the possession was not offered and the subsequent communications from the respondent mentioned office space number 632/623 (new), the complainant no. 1 visited the project to enquire about the new office number being mentioned in the letter from the respondent. The complainants were shocked to find that the complainants original office number 632 allotted to the complainants, for which the complainants had paid the entire consideration way back in 2015 had been unilaterally changed to office space number 623. On inspection of the said new office space, the complainants were shocked to note that it had two pillars in the space and the said office space was unusable and useless.

VII. That the complainants wrote a letter dated 04.06.2018 to the respondent bringing on record that they should be given possession of the original office space 632, and also mentioned that the new office space 623 has two pillars and is unusable. The complainants further requested the respondent for possession of office space and also informing the respondent about the payments the complainants had already made by then as per the demands of the respondent. In the same letter the complainant also requested the respondent to change the office space number to its original number 632 which the

complainants had initially booked. All this while there was no intimation from the respondent to the complainants regarding any delay on their part. Thereafter, the complainants sent another letter dated 29.01.2019 to the respondent again requesting for possession of office space and informing the respondent regarding payment of interest which the respondent was liable to give on payments made by the complainants till date, as they were not handed over the possession of the said premises even after so much of delay on the part of the respondent.

VIII. That the complainants received letter dated 01.08.2019 from the respondent demanding maintenance charges payable to the maintenance company which is in charge of maintenance facilities at the premises. The respondents stealthily again forced the complainants to pay undue amounts in the garb of maintenance charges through this letter, even though the complainants had no possession of the premises for which they were being forced to pay maintenance charges. The demand towards maintenance charges by respondent was totally uncalled for as respondent vide his letter dated 22.03.2015 clearly mentioned that the maintenance charges are payable only after possession.

IX. That the complainants sent a letter dated 06.11.2020 to the respondent demanding interest on delayed possession of the said premises, demanding a refund of additional amount taken for increased super area and change of office space number to original number 632 as requested by the complainants. In addition to the interest claimed above, an amount of Rs. 79,989/- charged for increase in super area and paid by the complainants is also refundable to the

complainants, as the same was charged wrongly by the respondent. Till date the complainants have no proof of increase in the super area for which they were charged exorbitantly.

X. That the complainants are not willing to accept any change of office space number and would accept only number 632 as had been allotted originally in the agreement dated 08.06.2010. Letters in this respect were sent on 04.06.2018, 29.01.2019, 27.08.2019.

XI. That the complainants were regularly writing to the respondent for possession of the said premises which was already delayed for a long time in spite of making all payments with respect to the premises. The complainants also requested for payment of interest on delayed payments, refund of excess amount paid on account of so called increased super area and change of office space number to original number as per the buyer's agreement. The respondent has not responded to any of complainants' communications till date. They have also sent an email dated 26.01.2022 to the respondent thereby requesting for payment of amount of Rs.17,61,390/- which is accumulated interest up till December 2021. In the same email the complainant also requested the respondent to refund an amount of Rs. 3,49,831/- charged for excess super area, maintenance security, electrification charges, pre-paid meter charges and security against VAT wrongfully charged in the final demand letter by the respondent.

XII. That the complainants are senior citizens who have been facing hardships and incurring losses because of the respondent as they have invested huge sums of money in buying the said premises and have not been given the possession of their property. The respondent has delayed in handing over the possession of the said premises for over 9

years because of which the complainants have faced a lot of hardships mentally, emotionally and financially. Hence, the complainants are approaching your lordship with great expectations.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):

I. Direct the respondent to pay delay possession charges along with prescribed rate of interest.

II. Direct the respondent to refund to the complainants an amount of Rs.79,989/- along with interest from the date of payment to the complainants which has been charged by the respondent from complainants for increase in alleged super area.

III. Directed to refund the amount of Rs. 2,19,600/- which were charged under the head of maintenance security, electrification charged, pre-paid meter card depositor and security against VAT @%5.

IV. Direct that the SOHO office space allotted to the complainants should not be changed and possession of office space number 632 as per the buyer agreement and final receipt be handed over to the complainant immediately.

V. Direct not to demand maintenance charges from the complainants till the possession is given.

VI. Direct to make payment towards litigation cost that has been incurred by the complainants in filing the present application.

VII. Direct to make payment of Rs. 10,00,000/- to the complainants towards mental agony and torture being faced by the complainants over the years for having to wait endlessly for possession of office space number 632 despite having made the entire payment way back in 2015.

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

D. Reply by the respondent.

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

i. That the complaint filed by the complainant is liable to be dismissed as the complainant has made wrong averments in the complaint and had made wrong allegations against the respondent without any substantial evidence, hence the present complaint is not maintainable and is liable to be dismissed with heavy cost.

ii. That the complaint filed by the complainant is not maintainable as the occupancy certificate is already issued and even the complainant is offered the possession of the property in question. Further the complainant was also intimated that the sale deed of the property in question is ready for execution, but the complainant is deliberately not coming forward to take the possession and to get the conveyance deed executed.

iii. That the complaint is not maintainable as the provision of section 19 (6) of 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 would be responsible to pay the necessary payments including registration charges, municipal taxes water and electricity charges, maintenance charges, ground rent 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.

iv. That as per the clauses 41 & 42 of the buyer agreement the complainant would 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. 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. Hence the present complaint is not maintainable and is liable to be dismissed.

v. That it is further submitted that the delay in the handing over the possession of the project was beyond the control of the respondent. 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 would 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 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.

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. 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. 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 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 in compliances by the authorities 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 the Hon'ble Commission. The respondent has complied with its part of the obligation and the conditions aforestated 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.

vi. That the complaint filed by the complainant is liable to be dismissed as in the projects wherein the occupation certificate is issued prior to the enactment of HRERA, hence the complaint is not maintainable. It is also submitted that Fire NOC for the project was issued on 09.09.2015 and an application for issuance of occupancy certificate was submitted with the DTCP on 18.05.2015 and lastly on account of administrative reasons the same was delayed for about two years and was lastly issued by DTCP vide memo No. ZP-589/SD (BS)/2017/17063 on 18.07.2017. There are number of other factors but as the matter/dispute of assured return is not within the preview of RERA, hence the respondent is reserving its right to agitate the same before the appropriate authority. Even the claim of the complainant is time barred.

vii. That the complaint filed by the complainant is liable to be dismissed as the possession was offered on 24.07.2017 and the complainant is attempting to take advantage of his own wrong. The project is complete and the possession was already offered. There is no act which is left to

be completed on the part of the respondent; hence the complaint is not maintainable.

viii. That the complaint before the authority is beyond the limitation period, hence the present complaint is liable to be dismissed. Referring to the provisions of Limitation Act the maximum period as per Article 113 of the Limitation Act is three years and the same has already elapsed.

ix. That the present complaint filed by the complainant is not maintainable as the occupancy certificate is already issued on 18.07.2017 i.e., prior to the commencement of the Rule and subsequently the possession was offered on 24.07.2017.

x. That the complainant has filed the complaint, after concealing material and true facts with sole aim to mislead the Hon'ble Authority and to harass the defendant, therefore the complainant is not entitled to get any relief from the Hon'ble Authority as the occupancy certificate had been issued by the concerned department and the delay in taking possession and registration process was done only by the complainants themselves hence it is liable to be dismissed.

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 and submission made by the parties.

E. Jurisdiction of the authority

8. The respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has

territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

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

E.II Subject matter jurisdiction

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

> ***Section 11***
>
> .....
>
> *(4) The promoter shall-*
>
> *(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*
>
> ***Section 34-Functions of the Authority:***
>
> *34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation

which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the objections raised by the respondent.

F.I Objections regarding an application made for grant of occupation certificate before coming into force of RERA.

12. The respondent-promoter has raised the contention that the said project of the respondent is a pre-RERA project as the respondent has already applied for obtaining occupation certificate from the competent authority in the year 2015 i.e., before the coming into force of the Act and the rules made thereunder. As per proviso to section 3 of Act of 2016, ongoing projects on the date of commencement of this Act i.e., 01.05.2017 and for which completion certificate has not been issued, the promoter shall make an application to the authority for registration of the said project within a period of three months from the date of commencement of this Act and the relevant part of the Act is reproduced hereunder:-

> *Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act.*

13. The legislation is very clear in this aspect that a project shall be regarded as an "ongoing project" until receipt of completion certificate. Since, no completion certificate has yet been obtained by the promoter-builder with regards to the concerned project, the plea advanced by it is hereby rejected.

F. II Findings qua force majeure conditions as pleaded by the respondent.

14. 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 power lines 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 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.

F.III Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act.

15. Another contention of the respondent is that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the flat buyer agreement 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.

16. 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.

17. 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.

18. 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 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 relief sought by the complainants

G.I Delay possession charges and handover the physical possession

19. 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*
>
> *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."*
> *(Emphasis supplied)*

20. Clause 15 of the buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below:

"15. POSSESSION

*That **the possession of the said premises is proposed to be delivered by the DEVELOPER to the ALLOTTEE(S) within Three years from the date of this Agreement.** 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. The DEVELOPER as a result of such a contingency arising, reserves the right to alter or vary the terms and conditions of this Agreement or if the circumstances beyond the control of the DEVELOPER so warrant, the DEVELOPER may suspend the Scheme for such period as it might consider expedient."*
(Emphasis Supplied)

21. 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 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 allottees that even a single default by the allottees in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its

meaning. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both the builder/promoter and buyers/allottees are protected candidly.

22. **Due date of handing over possession and admissibility of grace period:** The promoter proposed to hand over the possession of the said unit within period of 3 years from the date 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 or force majeure, 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.

23. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the prescribed rate of interest on the amount already paid by her. 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%.:

24. 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%.**

25. 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.

26. 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.

27. On consideration of the documents available on record and submissions made by both the parties regarding contravention of 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 15 of the said agreement executed between the parties on 08.06.2010, the possession of the subject apartment was to be delivered within 3 years from the date of execution of the buyer's agreement. Therefore, the due date of handing over possession comes out to be 08.06.2013. In the present complaint, the respondent has failed to handover possession of the subject unit within the stipulated time period. The occupation certificate was obtained on 18.07.2017 and the offer of

possession was made on 24.07.2017. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.

28. 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 18.07.2017. The respondent offered the possession of the unit in question to the complainant only on 24.07.2017. 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. This 2 months' of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he 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.

29. 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 complainant-allottee shall be paid, by the respondent-promoter, interest for every month of delay from due date of possession i.e., 08.06.2013 till the offer of possession (24.07.2017) plus 2 months i.e., 24.09.2017 at 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. Further, 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.

G. II Direct the respondent to refund an amount of Rs. 79,989/- along with interest from the payment to the complainants which has been charged by the respondent from complainants for increase in alleged super area

30. The counsel for the complainants stated that the promoter has revised the area of the unit from 525 sq.ft. to 546 sq.ft. vide statement of account at page 66, without any consent of the complainant-allottees. Further vide this statement, the unit number was also changed from 632 to 623 while in later unit there are two pillars in the unit at page 47 of the reply, the unit is now changed to unit number 622 which is otherwise acceptable to the complainant-allottee.

31. But the plea of respondent is otherwise and who took a plea that there is change in numbering plan only and no change of the unit has been made and is ready to handover the possession of unit number 622.

32. It is not disputed that the occupation certificate of the project was received only on 18.07.2017 and in pursuant to which the respondent raised demand for clearing the dues vide letter dated 24.07.2017 and asking the complainants to take possession and get the conveyance deed of the unit registered in their favour. It was also informed to the allottees about change of no. of the allotted unit from 632 to 622 as evident from letter dated 24.07.2017 sent by the allottees to the developer. Though, it is contended that change of no. of the allotted unit and its area was made without the consent of the allottees plea of complainant w.r.t. change in the area of the allotted unit cannot be

accepted in the face of clause 14 of space buyer agreement providing as under.

> *That the DEVELOPER shall, under normal conditions, complete the said Building as per the plans designs and specifications seen and accepted by the ALLOTTEE(S) with such additions, alterations, deletions and modifications in the layout and building plans including the number of floors as the DEVELOPER may consider necessary or may be required by any Competent Authority to be made in them or any of them while sanctioning the building plans or at any time thereafter. The ALLOTTEE(S) agrees that no future consent of the ALLOTTEE(S) shall be required for this purposes. Alterations may interalia involve all or any of the changes in the said premises such as change in position of the said premises, change in its dimensions, change in its area or change in its number or change in the height of the building. In order to implement all or any of the above changes, supplementary sale deed or deeds, if necessary will be got executed and registered by the DEVELOPER in case a sale deed has already been executed and registered in favour of the ALLOTTEE(S). If,* ***as a result of the above mentioned alterations, there is either a reduction or increase in the super area of the said premises or its location, no claim monetary or otherwise will be raised or accepted except that the agreed rate per sq. meter and other charges will be applicable for the changed area i.e., at the same rate at which the said premises was allotted and accordingly, as a consequence of such reduction or increase in super area, the DEVELOPER shall be liable to refund without interest only the extra price and other pro-rata charges recovered or shall be entitled to recover from the ALLOTTEE(S) additional price and other proportionate charges without interest as the case may be.*** *However, the ALLOTTEE(S) shall be liable to pay interest over the additional price once the period for payment of the same as communicated by the DEVELOPER has expired.*

33. Therefore, in view of the above provisions of BBA, the demand for extra payment on account of increase in the super area by the respondent-promoter from the allottee(s) can be made but subject to condition that before raising such demand, details have to be given to the allottee(s) and without justification of increase in super area, any demand raised in this regard is liable to be quashed.

G.III The respondent is directed to refund the amount of Rs. 2,19,600/- which were charged under the head of maintenance security, electrification charged, pre-paid meter card depositor and security against VAT @%5

- **Maintenance security:**

34. It is observed by the Authority that as per statement of account annexure A, provides that an amount of Rs. 54,600/- is payable against maintenance security. No doubt that any maintenance charges would

be payable at the time of valid offer of possession but issue w.r.t maintenance security should be dealt by respective agreement with the maintenance agency i.e., vortex facilities management private limited in this case. Generally such security is charged to meet the contingences arising due to non-payment of dues against maintenance charge. Generally, maintenance charges are paid in advance for the following month which barely leaves any scope for default or dues on part of the allottee. Still to cover the contingencies this practice is followed. Therefore, the Authority is of considered view that the said aspect of maintenance security would depend upon agreement of the allottee or developer with the maintenance agency. Thus, the respondent is right in charging amount against maintenance charges subject to providing details to the allottee and subject to transfer of such amount in favour of resident's welfare association.

- **Electrification charges & Pre-paid meter charges**

35. The Authority has already decided the issue in the complaint bearing no ***4031 of 2019 titled as Varun Gupta V/s Emaar MGF Land ltd.*** wherein it has held that the basic sale price of a unit includes electrification charges; such as street lighting is an integral part of internal development works. However, it is pertinent to mention herein that only actual charges paid to the concerned public department can be charged from the allottee that too subject to supplying details and receipts of their actual payment.

- **Security against VAT @ 5%.**

36. Security towards taxes are charged to meet the expected contingencies likely to get due, which is pending due to some ongoing litigation w.r.t such tax liability. It is a case where the VAT security has been charged

on 24.07.2017. By the date, the GST Act has replaced the existing tax regime. Still the contingencies could arise due to some previous pending litigation. However, it would be just and fair, that any such liability be charged when it actually became due and subject to providing details of actual amount paid towards such taxes on pro-rata basis of the super area of unit.

G.III Maintenance charges

37. 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 respondent can demand maintenance charges after the receipt of occupation certificate plus two months which would be applicable after 18.09.2017 that is the statutory period provided for taking possession of the subject unit by an allottee. However, the respondent shall not demand the maintenance charges for more than a period of one year from the allottee as has been decided by the authority in complaint bearing no. ***4031 of 2019 titled as Varun Gupta V. Emaar MGF Land Ltd.***

G. IV Litigation cost & Compensation.

39. The complainants are also seeking relief w.r.t. litigation expenses & compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as ***M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.*** (supra), has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation

expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

H. Directions of the authority

40. 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 i.e., 10.75% p.a. for every month of delay from the due date of possession i.e., 08.06.2013 till the date of offer of possession (24.07.2017) plus 2 months i.e., up to 24.09.2017.

ii. The respondent is directed to handover the physical possession of the unit to the complainant on payment of outstanding dues if any remains after adjustment of delay possession charges to be paid by the respondent.

iii. The arrears of such interest accrued from due date of possession till its admissibility as per direction (a) above shall be paid by the respondent to the complainant within a period of 90 days from the date of this order.

iv. The respondents shall not charge anything from the complainants which is not the part of the apartment buyer's agreement

v. 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/promoters 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.

41. Complaint stands disposed of.

42. File be consigned to registry.

(Vijay Kumar Goyal)
Member
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 28.09.2023