

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

Complaint no.	:	7510 of 2022
First date of hearing:		21.04.2023
Date of decision	:	15.09.2023

Madhuri Mehta and Abhishek Mehta Both r/o: - C-2/901, Charmwood Village, SurajKund Road, Faridabad, Haryana - 121009	Complainant
Versus	
DSS Buildtech Pvt. Ltd., Regd. Office - 506, 5 TH Floor, Time Square Building, B-Block, Sushant Lok-1, Gurugram, Haryana - 122009	Respondent
CORAM:	Member
Shri Sanjeev Kumar Arora	
APPEARANCE:	
Mr. Harshit Batra	Advocate for the complainant
Ms. Manju Singh	AR of the respondent

ORDER

1. The present complaint dated 13.12.2022 has been filed by the complainants/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 there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name and location of the project	"The Melia", Sector-35, Sohna Road, Gurugram
2.	Project area	17.418 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	77 of 2013 dated 10.08.2013 valid upto 09.08.2024
5.	Name of the Licensee	Aarti Khandelwal
6.	RERA registered/ not registered and validity status	Registered Registered vide no. 288 of 2017 dated 10.10.2017 valid upto 25.10.2021 + 6 months extension 25.04.2022
7.	Allotment letter	30.07.2015 (Page 52 of reply)

8.	Unit no.	G-1403, 14 TH floor (Page 52 of reply)
9.	Unit area admeasuring	1350 sq. ft. (Page 52 of reply)
10.	Date of buyer agreement	08.09.2015 (Page 19 of complaint)
11.	Possession clause	<p>14.1 Completion and Possession of Apartment</p> <p><i>The company proposes to handover possession of the apartment within a period of 48 months from the date of receiving the last approvals required for commencement of construction of the project from the competent authority and or the date of signing of agreement whichever is later.</i></p>
12.	Date of commencement of construction (consent to establish)	12.11.2016 (Page 3 of reply)
13.	Date of last approval	15.09.2017 (Page 108 of reply)
14.	Due date of possession	15.03.2022 (15.09.2021 i.e., calculated from date of sanction of last approvals as stated in proceeding of the day dated

		15.09.2023 (being later) +6 months of COVID grace period) <i>{In proceeding of the day dated 15.09.2023 inadvertently the due date of possession has been mentioned as 15.09.2021 as the grace period of COVID has not been added.</i> <i>The same has been corrected and rightly mentioned above }</i>
15.	Total sale consideration	Rs. 79,34,850 /- (Page 16 of complaint)
16.	Amount paid by the complainants	Rs. 70,37,236 /- (Page 16 of complaint)
17.	Occupation certificate	Not obtained
18.	Offer of possession	Not offered

B. Facts of the complaint

- i. That relying on the representations, warranties, and assurances of the respondent No.1 about the timely delivery of possession, the Allottees, Madhuri Mehta & Abhishek Mehta booked an apartment no. G-1403 on 14th Floor in Tower G admeasuring 1350 sq. ft. Super Area ("Unit") in the real estate development of the Respondent, known under the name and style of "The MELIA" at Village Moahmdpur Ahir, Sector 35, Sohna Gurugram, Haryana ("Project"),

- vide an application along with a booking amount of Rs. 6,74,982/-.
- The said unit was allotted to the allottee vide an allotment letter No. DSS/TM/ALT/487 dated 30.07.2015 where, it was mentioned that the cost of the Unit will be Rs. 79,34,850.
- ii. That respondent, after the letter of allotment dt. 30.07.2015, sent a pre-printed Builder Buyer Agreement dated 06.08.2015 which they were reluctant to sign as the agreement contained many arbitrary clauses, however, the complainants after investing their hard-earned money and in apprehension of losing their already paid consideration against the total consideration, were coerced to sign the agreement on dotted lines and thus they signed the builder buyer agreement on 08.09.2015, as evident from the agreement.
- iii. That after the booking and even at the time of execution of the agreement, the respondent made false representations with respect to the timely delivery of the said project to them, all of which were proved to be false. It needs to be noted that the building plans of the said project were duly approved by the DTCP, Haryana on 21.04.2015. The builder buyer's agreement was signed between the parties on 08.09.2015. Computing the date from the date of signing of the Buyer's Agreement, the due date comes out to be 08.09.2019. That the Respondent has delayed by over 3 years in offering the possession of the said unit as is evident from the fact that till date, the valid and legal offer of possession has not been offered to the complainants. It needs to be categorically noted that no actual offer of possession has been given by the respondent to the complainant.
- iv. That even after 7 years of the booking of the unit, it has not been completed and possession has not been offered to the complainants.

- It is pertinent to mention here that the respondent has applied for the renewal of the said project twice and yet neither project has not been completed nor the part completion/completion certificate has been received for the said project.
- v. That with the dream of owning a house that was advertised to be a progressive and aesthetic property, the complainants took a housing loan for INR 62,00,000/- from the HDFC bank which was sanctioned Further a Tripartite agreement has been executed between the respondent and the complainants.
- vi. That despite the utter malafide of the respondent, the complainants have already paid more than 90% of the total sale consideration against the illegal demands raised by the respondent, believing their false representation and promises. That the amount being regarded as the total cost or grand total of the Unit is Rs. 79,34,850/- out of which, they have made a total payment of INR 70,37,236/- till date and same is evident from the Statement of Accounts dated 27.10.2022.
- vii. That however, despite the same, the malafide conduct and unlawful activities of the Respondent continues to be seen, as the valid legal possession of the said unit has not been offered till date which has consequently caused the complainants to go through mental agony and financial distress. It is pertinent to mention here that neither the Respondent has received the Occupation Certificate nor has he applied for the same, which clearly shows that the construction of the project is no way near the completion.
- viii. It is pertinent to highlight here that even though the respondent has demanded 90% of the total cost of the Unit, yet the offer of

possession has not been given till date. That the complainants hereby submits that such a malafide behavior of the respondent had led the complainants to utter disappointment and harassment. The complainants have also suffered a huge amount of financial loss as they have invested all their life savings in the project of the respondent, took loan from the Bank and paid EMIs for the same, despite which they did not receive their promised home. That now, being aggrieved by the actions of the respondent, the inordinate delay in the delivery of the Unit, the complainants have the right to claim delay possession charges from the respondent in respect of his liability.

- ix. The respondent has gravely violated Section 11 and 18 of the RERA Act. That the conduct of non-delivery of valid possession of the Unit by the respondent within the stipulated time is the sheer default on part of the respondent.
- x. That thereafter, the malafide conduct and unlawful activities of the respondent continued to be seen as the CC was not obtained and the possession of the said unit was not offered till date, even after a long period of more than 7 years of booking and has consequently caused the complainants to go through mental agony and financial distress. It is further submitted that taking advantage of dominant position and malafide intention had restored to unfair trade practices by harassing the complainants by way of delaying the project by diversion of the money from the innocent and gullible buyers.
- xi. In the present case, the mental agony and torture caused to the complainants are unquantifiable due to the deliberate illegal acts of the respondent carried with the sole intention to harass the

complainants and to gain illegal monetary benefits over the wrongful loss of the Complainant.

- xii. That moreover the RERA registration of the above-said project has already expired and strict penal actions must be taken against the respondent for violation of the Act and the Rules.
- xiii. That in light of the mala fide conduct of the respondent and delay in offering the possession of the unit, the respondent is clearly liable to pay the interest for every month of delay till date as per section 18 of the Act. It is the failure of the promoter to fulfil his obligations, responsibilities as per the agreement dated 08.09.2015, to hand over the possession within the stipulated period. 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 complainants are entitled to delayed possession at the prescribed rate of interest till the handover of possession as per provisions of section 18(1) of the Act read with rule 15 of the HARERA Rules.

C. Relief Sought

3. This Authority may direct the respondent as follows:

- Direct the respondent to provide the valid physical possession to the complainants after procuring the completion certificate along with the prescribed rate of interest on delay in handing over of possession of the unit from the due date of possession till the actual date of physical possession of the Unit;

- Direct the respondent to provide a copy of the completion certificate for of the project, as and when made available;
- Direct the respondent to pay Rs. 1,00,000/- towards litigation costs.
- Direct the respondent to pay Rs. 2,00,000/- towards mental and physical harassment of the complainants.

D. Reply by the respondent

4. The At the outset, respondent denies each & every content of the complaint unless & until those are admitted therein. That the complainants have approached the respondent and submitted an application dated 26.07.2014 for booking of a unit at the basic sale price of Rs. 4850/- per sq. ft. plus other statutory charges and taxes, as applicable, for the total sale consideration of Rs. 80,69,850/- and paid a sum of Rs. 6,74,982/- as booking amount. That the respondent obtained the sanction of building plan (BR-III) on 21.04.2015. It is pertinent to mention that clause 3 of the sanctioned plan stipulates that the developer shall obtain clearance/NOC from the Fire Department, Gurugram before starting the construction/execution of development works at site.
5. That a residential Unit No. G-1403 situated on the fourteenth floor of Tower-G in the above said project, was allotted to the complainants/allottees vide allotment letter dated 30.07.2015. It is relevant to state here that the builder buyer agreement was executed on dated 08.09.2015. As per clause 14.1, possession of the said unit in question was to be handed over to the allottee within a period of 4 years

from the date of receiving the last of Approvals required for commencement of construction of the Project from the Competent Authority and or the date of signing the agreement whichever is later. In the case at hand, the last of approvals required for commencement of construction is Consent to Establish which was duly obtained by the Respondent herein from the Haryana State Pollution Control Board under Air and Water Act on 12.11.2016. It is further relevant to mention that the aforesaid clause further contemplates a grace period of 180 days for handing over possession. It is to be noted that the construction was banned for 163 days in the state of Haryana, details of which are provided hereinafter.

6. The Fire Clearance/NOC was obtained by respondent on 09.02.2016 and the same was submitted to DTCP Haryana. That on 20.09.2016 respondent received the Environmental Clearance from State Environment Impact Assessment Authority (SEIAA).
7. Thereafter, in terms of the provisions of the environmental clearance dated 20.09.2016, the respondent herein applied for the 'Consent to Establish' from the Haryana State Pollution Control Board and was granted the same on 12.11.2016. That in spite of stay of construction by the National Green Tribunal at several instances, the construction work of the said Project is nearly completion and the internal and external development work of the said project is going on with full swing. That it is admitted that the complainants took a housing loan of Rs. 62,00,000/-

8. It is also an admitted fact that complainants have paid a total amount of Rs. 70,37,236/-. It is pertinent to mention here that the complainants have made payment of Rs. 70,37,236/- against the total consideration of Rs. 80,69,850/-. It apposite to mention herein that on 13.10.2022 the respondent has sent a letter to complainants regarding the update in the project and stated "As you are probably aware, SWAMIH INVESTMENT FUND - I ("Fund") has invested in "The Melia" Project. The fund is sponsored by the Government of India and managed by SBICAP Ventures Limited, to complete the construction of the residential projects" and shared the progress of the construction and it is very clear from the said letter that the project is in its final stages, with only the remaining internal and external finishing work left. This work is also progressing rapidly, and the unit's possession is expected to be handed over.
9. Copies of all the relevant documents have been duly 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 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.

E.I Territorial jurisdiction

10. 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

The 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 promoter, 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 Objection regarding force majeure conditions

12. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the Haryana State Pollution Control Board from 01.11.2018 to 10.11.2018, which further led to shortage of labour and orders passed by National Green Tribunal (hereinafter, referred as NGT). Further, the authority has gone through the possession clause of the agreement and observed that the respondent-developer proposes to handover the possession of the allotted unit within a period of 48 months from the date of receiving the last approval required for commencement of construction of the project from the competent authority or from the date of signing of agreement, whichever is later. In the present case, the date of consent to establish/commencement of construction is 12.11.2016, environment clearance is 20.09.2016 as mentioned in the reply and consent to establish from pollution angle has been obtained on 15.09.2017. The agreement has been signed on 08.09.2015. The due date is calculated from the date of consent to consent to establish from pollution angle being later, so, the due date of subject unit comes out to be 15.03.2022. **Further as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion/due date on or after**

25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainants is 15.09.2021 i.e., after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. So, in such case the due date for handing over of possession comes out to **15.03.2022.**

13. Further in the judgement of the Hon'ble Supreme Court of India in the case of *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (Civil Appeal no. 6745-6749 of 2021)*, it was observed

*25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that **if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed***

14. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the prescribed rate, 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.
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., 15.09.2023 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 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 14.1 of the agreement executed between the parties on 08.09.2015, the possession of the subject apartment was to be delivered within stipulated time i.e., by 15.03.2022. As far as grace period is concerned, the same is allowed for the reasons quoted above. The respondent has not obtained occupation certificate till date and subsequently delayed in offering the possession and the same has not been

offered till date. 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. 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 allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 15.03.2022 till date of offer of possession plus two months or handing over of possession whichever is earlier 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.

F.II Direct the respondent to award compensation of Rs. 3,00,000/-

20. The complainants are seeking relief w.r.t. compensation in the above-mentioned relief. *Hon'ble Supreme Court of India in civil appeal 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. Therefore, for claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainants may file a separate complaint before the Adjudicating

Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

G. Directions of the authority

21. 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 offer the possession of the allotted unit within 30 days after obtaining OC from the concerned authority. The complainants w.r.t. obligation conferred upon them under section 19(10) of Act of 2016, shall take the physical possession of the subject unit, within a period of two months of the occupancy certificate.
- ii. The respondent is directed pay to the complainants the delayed possession charges as per the proviso of section 18(1) of the Real Estate (Regulation and Development) act, 2016 at the prescribed rate of interest i.e., 10.75 %p.a. for every month of delay on the amount paid by them to the respondent from the due date of possession i.e., 15.03.2022 till date of offer of possession plus two months or handing over of possession whichever is earlier
- iii. The promoter shall not charge anything which is not a part of the BBA.
- iv. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- v. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.75% 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.

22. Complaint stands disposed of.
23. File be consigned to registry.


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 15.09.2023



HARERA
GURUGRAM