

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

Complaint no. : 2539 of 2022
Order reserved on: 28.09.2023
Order pronounced on: 23.11.2023

1. Mrs. Nisha Gera
2. Mr. Rajeev Kumar

Both RR/o: House No. 7, Indira Nagar, New Forest,
Dehradun, Uttarakhand - 248006

Complainants

Versus

1. M/s Tashee Land Developers.
2. M/s KNS Infracon Private Limited

Both having Regd. office at: 517A, 5th Floor, Narain
Manzil, 23 Barakhamba Road, Cannought Place, New
Delhi- 110001

Respondents

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE WHEN ARGUED:

Sh. Rajan Kumar Hans (Advocate)

Complainants

Sh. Rishabh Jain (Advocate)

Respondents

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 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottees as per the agreement for sale executed inter se.

A. Unit and project related details

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

S. No.	Heads	Information
1.	Project name and location	"Capital Gateway", Sector- 111, Gurugram.
2.	Project area	10.462 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	34 of 2011 dated 16.04.2011 valid till 15.04.2024
5.	Name of licensee	KNS Infracon Pvt. Ltd. and 3 others
6.	RERA Registered/ not registered	Registered vide no. 12 of 2018 dated 10.01.2018
7.	RERA registration valid up to	31.12.2020 for phase-I (tower A to G) and 31.12.2021 for phase- II (tower H to J)
8.	Unit no.	903, 09 th floor, tower G [Page no. 29 of the complaint]
9.	Unit measuring	1760 sq. ft. [super area]
10.	Date of execution of flat buyer agreement	13.02.2013 (Page no. 27 of the complaint)
11.	Due date of delivery of possession as per clause 2.1 of the flat buyer agreement 36 months from the date of sanction of building plan & a grace period of 180 days, after the expiry of 36 month, for applying and obtaining the	07.06.2015 As per information obtained by planning branch building plan approved i.e., 07.06.2012. [Grace period is not allowed as neither OC applied nor obtained within the time limit prescribed by the promoter]

A



	occupation certificate [Page 78 of complaint]	in the apartment buyer's agreement.]
12.	Total consideration	Rs.69,17,640/- [as per alleged by his brief facts of complaint at page no. 11 of the complaint]
13.	Total amount paid by the complainants	Rs.78,25,971/- [as per alleged by his brief facts of complaint at page no. 11 and 12 of the complaint]
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainants have made the following submissions in the complaint: -
- I. That the respondent no. 2 is in absolute possession of land measuring approx. 10.462 Acres as on site situated in sector-111, Gurugram, Haryana and has a licence bearing no. 34 of 2011 from Director Town and Country Planning, Haryana (DTCP).
 - II. That on 30.07.2012, the said unit was transferred by Suman Luthra (Original applicant) to present complainants. The sum of Rs.13,13,625/- was transferred from the original applicant to the present complainants. Thereafter, on 04.08.2012 respondent No. 1 issued an acknowledgement that the said property has been transferred from the original applicant to the present complainants and the sum of

A



Rs.13,13,625/- stands transferred to the present complainants. Further, on 13.02.2013, a pre-printed, one-sided builder buyer agreement was executed between the parties.

- III. That as per clause 2.1 of the buyer's agreement executed between the parties, the respondent had to complete the construction of the flat and hand over the possession within 36 months from the date of sanction of the building plans and other government necessary approvals. Therefore, the due date of possession becomes on or before 13.02.2016.
- IV. That as per clause 1.2 of BBA, the cost of said unit arrived at Rs.69,17,640/- which further include other charges. That on demands raised by the respondents till date the amount of Rs.78,25,971/- has already been paid to the respondents.
- V. That the area of unit was increased by the respondents via notice dated 24.03.2017 from 1760 sq. ft. to 2049 sq. ft. and the main grievance of the complainants in the present complaint is that in spite of the complainants having paid all the payments of flat as per demands, still the respondent has failed to deliver the possession of flat, even after the passage of 6 long years.
- VI. That for the first-time cause of action for the present complaint arose on 13.02.2013, when a one-sided, arbitrary and unilateral flat buyer agreement was executed between the parties and on 28.04.2017 when the complainant paid the last instalment. Further, the cause of action arose on 13.02.2016, when the respondents failed to hand over the

A



possession of the flat as per the buyer agreement. Further, the cause of action arose when respondents had arbitrarily increased the size of the unit. The cause of action again arose on various occasions, till date, when protests were lodged with the respondents about its failure to deliver the project. The cause of action is alive and continuing and will continue to subsist till such time as this authority restrains the respondents by an order of injunction and/or passes the necessary orders.

C. Relief sought by the complainants:

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

- i. Direct the respondents to pay interest at prescribed rate on delayed possession since the due date of possession i.e., 13.02.2016 till the date of actual legal possession on the amount paid by the complainants.
- ii. Direct the respondents to complete and seek necessary governmental clearances regarding infrastructural and other facilities including road, water, sewerage, electricity, environmental, etc. before handing over of possession of the residential units, at the earliest as the project is already delayed over by 72 months.
- iii. To disallowed the demand of Rs.8,76,729/- in lieu of increase in super area (increased from 1760 sq. ft. to 2049 sq. ft.) which have already been paid, as it is not in conformity to the buyer's agreement executed between the parties, and direct the respondents not to charge anything above the settled amount as per buyer's agreement.

RA

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 respondent:

6. The respondents have contested the complaint on the following grounds:-
- i. That at the outset, it is most respectfully submitted that the instant complaint of the complainants is not maintainable on facts or in law and is as such liable to be dismissed/rejected. The complainant has obfuscated the provisions of the Act, 2016 and the rules, 2017 to their advantage, which is brazen misuse of law. The complainant has failed to provide the correct/complete facts and the same are reproduced hereunder for proper adjudication of the present matter. They have raised false, frivolous, misleading and baseless allegations against the respondents with intent to make unlawful gains.
 - ii. The respondents had applied for environment clearance on 20th October 2011. The developer finally got the environment clearance on 17th June 2013. The respondents had applied for the revision in building plans of the said project before the appropriate authority. However, for no fault of the respondents, the plans were approved by the Department only after a delay of 2 years. Owing to this, the construction of project could not be started in a timely manner. The complainants, having keen interest in the said project, approached the respondents for booking a unit in the said project.
 - iii. That, after being satisfied with the project in totality they expressed their willingness to book a unit in the project. It is thus apparent on the face of it, the complainants in the present case are not consumers

A ✓



rather 'investors' who falls outside the purview of the Act, 2016 more specifically in view of the preamble of the Act, 2016 which states to protect the interest of the consumers. In is to be considered that complainants are not consumers and thus they fall outside the purview of the Act, 2016 and the instant complaint is liable to be dismissed.

- iv. At present, it is a matter of record that the structure of the said project in question is complete, and few instalments are due and payable on account of the complainants. Moreover, it is pertinent to state that the respondents have applied from obtaining occupation certificate for Phase-I of the said project as all the construction and development activities are complete.
- v. After receipt of SWAMHI investment fund, the respondents were able to resume the construction activities at a very large scale in expeditious manner. The development at the project site is in full swing, in order to complete the project and handover the possession to the allottees at the earliest.
- vi. That the respondents have always made efforts for completion of the said project. Initially, the Interim RERA granted RERA registration on 10th January 2018 till 31.12.2020 for Phase I (Tower A to G) and 31.12.2021 for Phase II (Tower H to J). From time-to-time construction activities were impeded due to poor air quality in the Delhi NCR region.
- vii. The legal fraternity is respected for its novelty and highly educated professionals. The Hon'ble Supreme Court has allowed extension of limitation taking into consideration the impact of the novel corona virus over the world. Similarly, the real estate sector was impacted badly due to Covid-19 as the construction activities were halted for a

19



- long time. Moreover, the cost of construction kept on increasing with time.
- viii. The present complaint is devoid of any merit and has been preferred with the sole motive to harass the respondents. In fact, the present complaint is liable to be dismissed on the ground that the said claim of the complainants is unjustified, misconceived and without any basis and is against the respondents. The present complaint is baseless and flagrant abuse of process of law to harass the respondents.
- ix. In spite of the fact that the real estate market has gone down badly, the respondents have managed to carry on the works with certain delays caused due to various above mentioned reasons and the fact that various buyers, including the complainants of the project have defaulted in making timely payments towards their outstanding dues, resulting into inordinate delay in the construction activities, still the construction of the said project has never been stopped or abandoned and the project will be delivered soon.
- x. It is a respectful submission of the respondents that a bare perusal of the complaint will sufficiently elucidate that the complainants have miserably failed to make a case against the respondents. It is submitted that the complainants have merely alleged in the complaint about the delay on the part of the respondents in offering possession but has failed to substantiate the same. The fact is that the respondents have been acting in consonance with the registration of project with the Authority and no contravention in terms of the same can be projected on the respondents.
- xi. The Haryana Real Estate Regulatory Authority, Gurugram, does not have jurisdiction in the instant case as the subject-matter of the



complaint has to be decided as per the Act, 2016 and the Rules, 2017.

The complainant has erred in invoking the jurisdiction of the Authority, Gurugram, as the compensation can only be granted in cases where the Authority so directs.

xii. Thus, it is germane to state that there is no further deficiency as claimed by the complainants against the respondents and no occasion has occurred deeming indulgence of this authority. Hence, the present complaint is liable to be dismissed.

7. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority:

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

E. I Territorial jurisdiction

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

A

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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.

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.

F. Findings on the objections raised by the respondent:

F.I Objection regarding delay due to force majeure circumstances.

10. The respondent-promoter has raised a contention that the construction of the project was delayed due to force majeure conditions such as orders passed by the National Green Tribunal during October-November 2019 and other orders. But the plea taken by respondents is devoid of merit and hence, rejected. The authority is of considered view that as per clause 2.1 of apartment buyer's agreement, the due date of handing over of possession is to be calculated as 36 months from date of sanction of building plan. The date of sanction of building plan as stated by complainant is 07.06.2012. As the due date of handing over of possession come out to be 07.06.2015



which is way before from the conditions that respondents are taking plea of. The respondents were liable to complete the construction of the project and handover the possession of the said unit by 07.06.2015 and the respondents are claiming benefit of ban on construction by National green Tribunal laid in October-November 2019 whereas the due date of handing over of possession was much prior to the event. Therefore, the authority is of the view that ban on construction by NGT cannot be used as an excuse for non- performance of a contract for which the deadlines were much before such restriction, the said time period is not excluded while calculating the delay in handing over possession.

F.II Objection regarding delay in completion of construction of project due to outbreak of Covid-19

11. The Hon'ble Delhi High Court in case titled as M/s Halliburton *Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (1) (Comm.) no. 88/2020 and LAS 3696-3697/2020* dated 29.05.2020 has observed as under:

69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself."

In the present case also, the respondents were liable to complete the construction of the project and handover the possession of the said unit by 07.06.2015. It is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were

A



much before the outbreak itself and for the said reason, the said time period cannot be excluded while calculating the delay in handing over possession.

F.III Objection regarding entitlement of DPC on ground of complainant being investor.

12. The respondents have taken a stand that the complainants are the investors and not consumers, therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondents also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observed that the respondents are correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment buyer's agreement executed between

A

promoter and complainants, it is crystal clear that the complainants are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". Thus, the contention of promoter that the allottee being an investor is not entitled to protection of this Act also stands rejected.

G. Findings on the relief sought by the complainants:

G.I Direct the respondents to pay interest at prescribed rate on delayed possession since the due date of possession i.e., 13.02.2016 till the date of actual legal possession on the amount paid by the complainants.

13. In the present complaint, the complainant intends to continue with the project and is seeking possession of the subject unit and delay possession charges as provided under the provisions of section 18(1) of the Act which 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."

14. The apartment buyer's agreement was executed between the parties. As per clause 2.1 of the agreement, the possession was to be handed over within 36 months from the date of sanction of building plans along with a grace period of 6 months. The clause 2.1 of the buyer's agreement is reproduced below:

2.1 possession

Subject to clause 9 or any other circumstances not anticipated and beyond control of the first party/conforming party and any restraints/restrictions from any court/authorities and subject to the purchaser having complied with all the terms

A



*of this agreement including but not limited timely payment of total sale consideration and stamp duty and other charges and having complied with all provisions, formalities documentation etc. as prescribed by the first party/conforming party proposes to handover the possession of the flat to the purchaser **within approximate period of 36 months from the date of sanction of building plans of the said colony.** The purchaser agrees and understands that the first party/conforming party shall be entitled to a grace period of 180 days after the expiry of 36 months for applying and obtaining OC in respect of the colony from the concerned authority...*

(Emphasis supplied)

15. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement, and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions 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 him 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 time period for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottees of their right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottees is left with no option but to sign on the dotted lines.
16. **Admissibility of grace period:** As per clause 2.1 of buyer's agreement, the respondents/promoters have proposed to handover the possession the said unit within a period of 36 months from date of sanction of building plans. The said possession clause incorporates qualified reason for grace

A

period/extended period of 6 months. Since possession clause 2.1 of the BBA incorporates qualified reason which provides a pre-condition that the entitlement of said grace period of 6 months is dependent of the situation of respondent applying for or obtaining occupation certificate from the competent Authority but as per the given facts it has failed to apply for occupation certificate to the competent authority within the stipulated time. Accordingly, the authority literally interpreting the same and disallows this grace period of 6 months to the promoter at this stage. Therefore, grace period of six months as per clause 2.1 of buyer's agreement is disallowed and not included while calculating the due date of handing over of possession.

17. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges. However, proviso to section 18 provides that where an allottee(s) 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.

The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest.

18. 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., 23.11.2023

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

19. 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;"*

20. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is satisfied that the respondents are 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 2.1 of the buyer's agreement executed between the parties, the possession of the subject apartment was to be delivered within a period of 36 months from date of sanction of building plans. Date of sanction of building plan is taken from complaint as submitted by complainant in their complaint i.e., 07.06.2012. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession is 07.06.2015. The respondent has failed to handover possession of the subject unit till date of

A

this order. 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. The authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit to the complainant as per the terms and conditions of the agreement to sell dated 13.02.2013 executed between the parties. It is pertinent to mention over here that even after a passage of more than 8.5 years neither the construction is complete nor an offer of possession of the allotted unit has been made to the allottee by the builder. Further, the authority observes that there is no document on record from which it can be ascertained as to whether the respondent has applied for occupation certificate/part occupation certificate or what is the status of construction of the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottee.

21. 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 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 respondents 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., 07.06.2015 till actual handing over of



possession or offer of possession plus two months, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

G.II Direct the respondents to complete and seek necessary governmental clearances regarding infrastructural and other facilities including road, water, sewerage, electricity, environmental, etc. before handing over of possession of the residential units, at the earliest as the project is already delayed over by 72 months.

22. The respondent is legally bound to meet the pre-requisites for obtaining occupation certificate from the competent authority. It is unsatisfied that even after the lapse of more than 8.5 years from the due date of possession the respondent has failed to apply for occupation certificate to the competent authority. The promoter is duty bound to obtain occupation certificate and hand over possession only after obtaining occupation certificate.

G.III To disallowed the demand of Rs.8,76,729/- in lieu of increase in super area (increased from 1760 sq. ft. to 2049 sq. ft.) which have already been paid, as it is not in conformity to the buyer's agreement executed between the parties, and direct the respondents not to charge anything above the settled amount as per buyer's agreement.

23. An apartment buyer agreement dated 13.02.2013, the complainants were allotted the subject unit of the complaint i.e., C-903, 9th floor, and the area of the subject unit was 1760 sq. ft. which was later increased to 2049 sq. ft. There is an increase of 289 sq. ft. which constituting 16.42% of original area. As per intimation of due amount against the allotted unit on page no. 78 of complaint, a total amount of Rs.8,83,852/- was increased on account of such increase in area of the apartment.

24. As per clause 1.5(i) of said agreement, in case if alteration is $\pm 15\%$, in the agreed super area as contained in para 1.2 of the agreement, the allottee

A

shall be refunded with simple interest at the rate of 6% per annum after due execution of the documents. The said clause of the agreement is reproduced hereunder: -

- i. *Any increase or decrease in the super area of the said Flat shall be payable or refunded as the case may be without any interest thereon and at the same rate as agreed above. No other claim whatsoever, monetary or otherwise shall lie against the First Party/Confirming Party or be made by the Purchaser. **In case, there is a variation greater than $\pm 15\%$ in the agreed super area as contained in Para 1.2 above and the Purchaser is un-willing to accept the changed area, then the allotment shall be treated as terminated and the payments received against the **Consideration of the said Flat shall be refunded with simple interest at the rate of 6% per annum after due execution of the documents** as required by the First Party/Confirming Party and in this regard no other compensation of any nature whatsoever shall be demanded by the Purchaser from the First Party/Confirming Party",***

25. Considering the above-mentioned facts, the authority observes that the respondent has increased the super area of the flat from 1760 sq. ft. to 2049 sq. ft. without any prior intimation and justification. The respondent, therefore, is entitled to charge for the same at the agreed rates since the increase in area is 289 sq. ft. which is more than 15%. The authority has decided this issue in the complaint bearing no. **4031 of 2019** titled as **Varun Gupta V/s Emaar MGF Land Ltd.** the authority holds that the demand for extra payment on account of increase in the super area by the respondent-promoter from the allottee(s) is legal 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.

A ✓

26. However, this remain subject to the conditions that the flats and other components of the super area on the project have been constructed in accordance with the plans approved by the competent authorities.

H. Directions of the Authority:

27. 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 functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i. The respondent is directed to pay interest to the complainants against the paid-up amount at the prescribed rate of 10.75% p.a. for every month of delay from the due date of possession i.e., 07.06.2015 till actual handing over of possession or offer of possession plus two months, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
- ii. The respondents shall not charge anything from the complainants which is not the part of the flat buyer's agreement.
- iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period and the respondents shall handover the possession within a period of two month after receipt of occupation certificate from the competent authority.
- iv. The arrears of such interest accrued from due date of possession i.e., 07.06.2015 till the date of order by the authority shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottees before 10th of the subsequent month as per rule 16(2) of the rules.





HARERA
GURUGRAM

Complaint No. 2539 of 2022

- 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 respondents/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.

28. Complaint stands disposed of.

29. File be consigned to the registry.

Dated: 23.11.2023



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

HARERA
GURUGRAM