

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

Complaint no. : 1985 of 2022
Date of filing complaint : 16.05.2022
Date of decision : 17.08.2023

	Archana Sachdeva Through Power of Attorney Holder Amrit Lal Sachdeva R/O: - L-49D, L Block, Saket, New Delhi, 110017.	Complainant
Versus		
1 2	M/s BPTP Limited M/s Countrywide Promoters Private Limited Regd. Office at: - M-11, Middle Circle, Connaught Circus, New Delhi-110001.	Respondents

CORAM:	
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Sh. Nilotpal Shyam	Advocate for the complainant
Sh. Harshit Batra	Advocate for the respondents

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all



obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottees as per the agreement for sale executed inter se.

B. Unit and project related details

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

S. No.	Heads	Description
1.	Name of the project	"Spacio", Sector 37D, Gurugram, Haryana
2.	Project area	43.588 acres
3.	DTCP license no.	83 of 2008 issued on 05.04.2008
	Validity of license	04.04.2025
	Name of the license holder of 83 of 2008	M/s Super Belts and 4 others
	Licensed area	23.814 acres
4.	RERA registration number	300 of 2017 dated 13.10.2017
	Validity of registration certificate	w.e.f. 13.10.2017 till 12.10.2020
5.	Date of execution of flat buyer's agreement	23.07.2012 (on page no. 37 of complaint)
6.	Date of allotment Letter	25.07.2011 (page no. 28 of complaint)
7.	Booking application	10.05.2011 (page no. 56 of reply)
8.	Unit no.	N-1405, 14 th floor, Tower-N

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		(page no. 44 of complaint)
9.	Unit area admeasuring	1800 sq. ft. (on page no. 37 of complaint)
10.	Revised unit area	1865 sq. ft. (a on page no. 172 of reply)
11.	Total consideration	Rs 95,64,347/- on page no. 174 of reply)
12.	Total amount paid by the complainant	Rs. 71,43,211/- (page no. 174 of reply)
13.	Due date of delivery of possession as per clause 3.1 of the flat buyer's agreement i.e., within a period of 36 months from the date of booking/registration of flat and the promoter has claimed grace period of 180 days after the expiry of 36 months, for applying and obtaining the occupation certificate in respect of the colony from the authority.	10.05.2014 Note: Grace period is not included
14.	Occupation certificate date	30.07.2020 (on page no. 169 of reply)
15.	Offer of possession	05.08.2020 (page no. 172 of reply)

C. Facts of the complaint

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3. That the complainant(s) submitted an application for allotment of unit no. N-1405 proposed to be built at 14th floor of N- Tower in the impugned project. The said application form was submitted to the respondents and an amount of Rs. 6,00,063/- as booking amount was also paid to the respondents.
4. That the parties entered into agreement i.e., flat buyer's agreement (hereinafter referred to as "FBA") dated July 23, 2012, for the sale of said unit number N-1405. Accordingly, the respondents executed the agreement to sale with the complainants subsequent to the allotment of the impugned unit.
5. That as per FBA, the respondent company agreed to sell/ convey/ transfer the **flat no. N-1405, 14th Floor, Tower - N** in the complex with basic sale price for an amount of Rs. **56,16,000/-** (calculated at **Rs. 3,250/- per sq.ft.** In addition to this, the complainant agreed to pay the following charges:
- a) Development Charges @ Rs. 362/- per sq. ft,
 - b) Car Parking Charges @ Rs. 2,80,000/- per car parking slot,
 - c) Preferential Location Charges
 - i. Corner Flat @ Rs. 100/- per sq. ft.
 - ii. Corner + Club facing/Park facing Flat @ 150/- per sq. ft.
 - iii. Park Facing Flat @ Rs. 100 /- per sq. ft.
 - iv. Ground Floor Flat @ Rs. 150 /- per sq. ft.
 - v. First Floor Flat @ Rs. 100/- per sq. ft.
 - vi. Second/Third/Fourth Floor Flat @ 75/- per sq. ft.
 - vii. Interest Free Maintenance Security @ Rs. 50 /- per sq. ft.
 - viii. Club membership Charges @ Rs. 1,00,000/- per Flat,

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Electricity connection charges + Fire Fighting Charges + Power back-up installation charges: Rs. 100 /- per sq. ft. All these charges shall be payable as per payment plan annexed to the agreement as Annexure "D", plus applicable taxes

6. That the complainants in pursuant to the payment term annexed with the FBA, made a total payment of Rs. 71,43,211/- by different modes as per the payment plan annexed to the agreement. Details of receipt of said payments are reflected in the statement of account issued by respondents.
7. That the Complainant(s) have paid more than 100% of the basic sale consideration towards the cost of the impugned unit No. N-1405 including costs towards other facilities. However, the offer of possession of the impugned unit was made on 05.08.2020. Demand of Rs. 28,28,136/- was raised along with the offer of possession letter. The demand raised is total unreasonable. It can be summed up as follows:
 - a) It is also shocking to see the total basic sale price mentioned in the annexure-a of the offer of possession letter is mentioned as Rs.58,27,250/- contrary to Rs. 56,16,000/- as mentioned in clause 2.1 of the FBA. Therefore, it is most astonishing and illegal to see the increase in basic sale price by Rs.2,34,000/- with regard to amount as mentioned in the FBA and in the demand, letter raised by the respondents. The same is ex facie illegal which exposes respondents malafide intention to harass the complainants.
 - b) With regard to cost escalation charges of Rs. 10,96,260/- i.e., roughly 20% of basic sale price, it is noteworthy to mention

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that there is admitted delay of almost 5 years in handing over the possession of the impugned unit is because of the fault of the respondents. Therefore, the escalation charges would amount to taking benefit of your own wrong which is not allowed under law. Accordingly, the Clause 12.11 of FBA is one sided, biased and not binding on me in view of law laid down by Hon'ble Supreme Court as discussed above. Therefore, the said escalation charges are illegal and be set aside.

c) That the demand letter surprisingly shows Rs.1,49,200/- towards electrification & STP charges and Rs.1,86,500/- towards firefighting and backup charges i.e. cumulative of Rs. 3,35,700/-. At the contrary, the FBA clearly mentions under Clause 2.1(f) that the cumulative charges for electricity connection charges, firefighting charges and power backup installation charges shall be Rs. 100 per square feet which comes around Rs.1,80,000/- even for the inflated area and Rs.1,86,500/- as per the area mentioned in FBA. Therefore, the additional amount of Rs.1,55,700/-(Rs.1,49,200/-) has been malafidely sought without any rational and accordingly the same needs to be dropped forthwith. It is noteworthy that the STP is essential and intrinsic part of the impugned project as per the relevant law so the respondents now cannot seek further charges for the same. Therefore, the demand of Rs.1,86,500/- under electrification and STP Charges is liable to be set aside.

d) That the respondent company also claim to charge Rs. 63,180/- towards security as VAT without any reason/basis. Therefore,

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the same is ax facie illegal and hence liable to be set aside. It is noteworthy that the said demand cannot be raised as the construction ought to have been completed as per the FBA before the enhanced VAT rate came in to force, therefore, the complainants cannot be punished for the wrongdoing of the respondents.

- e) That the respondent company made it a pre-condition for the complainant to sign on two indemnity deed cum undertaking (Annexure-C and Annexure-D of offer of possession letter 05.08.2020). The essence of both the undertaking is that the complainant shall have no further claim with regard size, quality, charges with regard to the impugned unit and also barred from raising any dispute against the respondents.
8. That the respondents failed to deliver the possession in agreed timeframe for reasons best known to them and the respondents never bothered to intimate rhymes and reasoning for the delay to the complainant(s). Therefore, the respondent company has breached the sanctity of the agreement to sell i.e., FBA.
9. That there is almost 5 years of unexplained delay in handing over the possession by the respondent company to the complainant(s) without any sign of them meeting the future deadline as provided to the concerned authority in accordance with law. Therefore, the complainant is having genuine grievance which require the intervention of the Hon'ble Authority in order to do justice with them

D. Relief sought by the complainants:

The complainants have sought the following relief:

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- Direct the respondent company to immediately deliver the possession of flat No. N-1405 in the impugned project on the date provided in the RERA registration certificate along with 18% per annum interest for the delayed period of handing over the possession calculated from the date of delivery of possession as mentioned in the FBA).
- Direct respondent company to pay a cost of Rs.1,00,000 towards the cost of the litigation

E. Reply by the respondent

The respondent by way of written reply made the following submissions.

10. It is submitted that the complainant has approached this hon'ble authority for redressal of her alleged grievances with unclean hands, i.e., by not disclosing material facts pertaining to the case at hand and also, by distorting and/or misrepresenting the actual factual situation with regard to several aspects. The Hon'ble Apex Court in plethora of cases has laid down strictly, that a party approaching the court for any relief, must come with clean hands, without concealment and/or misrepresentation of material facts, as the same amounts to fraud not only against the respondent but also against the court and in such situation, the complaint is liable to be dismissed at the threshold without any further adjudication.

- i. That the complainant with malafide intention has misrepresented the facts before this hon'ble authority by disengaging the annexures in a distorting manner. It is imperative to point that annexure 2 of the present complaint at page 71 is an integral

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part of the offer of possession dated 05.08.2020 annexed as annexure 3 at page no. 101 of the complaint. However, being aware of the said fact the complainant in order to mislead authority has arranged the annexures in the manner suitable to his own case.

- ii. That the complainant has concealed from Authority that with the motive to encourage the complainant to make payment of the dues within the stipulated time, the respondents gave additional incentive in the form of timely payment discount to the complainant and in fact, till date. It is further submitted that the respondent also provided BSP discount to the complainant on the basic sale price.
- iii. That the complainant falsely stated that the timely payments were made by the complainant as and when demanded by the respondent, however, as detailed in the reply to list of dates, it is submitted that the complainant made several defaults in making timely payments as a result thereof, the respondent had to issue several reminder letters such as reminder dated 10.08.2016, 19.09.2016, 26.10.2016, 18.08.2020, 11.01.2021, and 15.03.2021 respectively. However, complainant failed to pay the outstanding dues. Thereafter, the Respondent was constrained to issue last and final opportunity letter dated 17.02.2017 and 24.08.2018 to the complainant. Despite that the complainant chose to remit the part payment towards the outstanding dues.
- iv. The respondent on 05.08.2020 offered possession of the unit in question to the complainant, however, the complainant failed to

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clear the demand raised therein, therefore, constrained by which the respondent sent reminder letters dated 18.08.2020, 11.01.2021 and 15.03.2021 requesting the complainant for payment of dues, however the complainant failed to clear the same till date and to take over the physical handover of possession.

- 11.** From the above, it is very well established, that the complainant has approached this hon'ble authority with unclean hands by distorting/ concealing/ misrepresenting the relevant facts pertaining to the case at hand. The sole intention of the complainant is to unjustly enrich themselves at the expense of the respondent by filing this frivolous complaint which is nothing but gross abuse of the due process of law. That in light of the law laid down by the Hon'ble Apex Court, the present complaint warrants dismissal without any further adjudication.
- 12.** It is submitted that as per Clause-2 of the agreement titled as "sale consideration and other conditions" specifically provided that in addition to basic sales price (BSP), various other cost components such as development charges (including EDC, IDC and EEDC), preferential location charges (PLC), club membership charges (CMC), car parking charges, power back-up installation charges (PBIC), VAT, service tax and any fresh incidence of tax (i.e. GST), electrification charges (EC), charges for installing sewerage treatment plant (STP), administrative charges, interest free maintenance security (IFMS), etc. shall also be payable by the complainant.
- 13.** The construction of tower in which the unit is located has been completed and the occupation certificate for the same has also been

received where after, the respondent has already offered possession to the complainant vide letter dated 05.08.2020. However, the complainant, being investor do not wish to take possession as the real estate market is down and there are no sales in secondary market, thus has initiated the present frivolous litigation.

14. All the averments made in the complaint were denied in toto.
15. 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

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

F. E. I Territorial jurisdiction

17. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

18. 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)

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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.

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.

E. Findings on the relief sought by the complainants.

- Direct the respondent company to immediately deliver the possession of flat No. N-1405 in the impugned project on the date provided in the RERA registration certificate along with 18% per annum interest for the delayed period of handing over the possession calculated from the date of delivery of possession as mentioned in the FBA).
- Direct respondent company to pay a cost of Rs.1,00,000 towards the cost of the litigation.

I.I Delay Possession Charges

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19. The complainant was allotted a unit no. N-1405, 14th floor, Tower-N and a buyers agreement was executed between the parties on 23rd July, 2012. The complainant took a plea that the respondents builder offered possession of the unit on 05.08.2020 and raised unreasonable demands w.r.t the super area, cost escalation, electrification and STP charges and VAT charges. Since, common issues with regard to super area, cost escalation, STP charges, electrification charges, taxes viz GST and VAT etc, advance maintenance charges, car parking charges, holding charges, club membership charges, PLC, development location charges and utility connection charges, EDC/IDC charges, firefighting/power backup charges were involved in this cases and others of this project as well as in other projects developed by the respondents, so vide orders dated 06.07.2021 and 17.08.2021, a committee headed by Sh. Manik Sonawane IAS (retired), Sh. Laxmi Kant Saini CA and Sh. R.K. Singh CTP (retired) was constituted and was asked to submit its report on the above mentioned issues. The representatives of the allottees were also associated with the committee. A report was submitted and the same along with annexures was uploaded on the website of the authority. The authority is of view that as per the report of the committee the following issues deal with accordingly:

- I. **Increase in area:** The authority holds that the super area (saleable area) of the flat in this project has been increased and as found by the committee, the saleable area/specific area factor stands reduce from 1.30 to 1.2905. Accordingly, the super area of the unit be revised and reduced by the respondents and shall pass on this benefit to the

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complainant/allottee(s) as per the recommendations of the committee.

- II. **Cost escalation:** The authority is of the view that escalation cost can be charged only upto Rs. 374.76 per sq. ft. instead of Rs. 588 per sq. ft. as demanded by the developer.
- III. **VAT Charges:** The promoter is entitled to charge VAT from the allottee for the period up to 31.03.2014 @ 1.05% (one percent VAT + 5 percent surcharge on VAT). However, for the period w.e.f. 01.04.2014 till 30.06.2017, the promoter shall charge any VAT from the allottees/prospective buyers at the rate of 4.51% as the promoter has not opted for composition scheme.
- IV. **STP charges, electrification, firefighting and power backup charges:** The authority in concurrence with the recommendations of committee decides that the term electrification charges, clubbed with STP charges, used in the statement of accounts-cum-invoice be deleted, and only STP charges be demanded from the allottees of Spacio @ Rs.8.85 sq. ft. Further, the term ECC be clubbed with FFC+PBIC in the statement of accounts-cum-invoice attached with the letter of possession of the allottees of Spacio be charged @ Rs.100 per sq. ft. in terms of the provisions of 2.1 (f) at par with the allottees of Park Generation. The statement of accounts-cum-invoice shall be amended to that extent accordingly

20. The complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under: -

"Section 18: - Return of amount and compensation

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18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

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Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

21. Clause 3.1 of the buyer's agreement provides the time period of handing over possession and the same is reproduced below:

"Due date of delivery of possession as per clause 3.1 of the flat buyer's agreement i.e. within a period of 36 months from the date of booking/registration of flat and the promoter has claimed grace period of 180 days after the expiry of 36 months, for applying and obtaining the occupation certificate in respect of the colony from the authority.

22. 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 complainants not being in default under any provision of this agreement and in compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning.

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

24. **Admissibility of grace period:** The promoters proposed to hand over the possession of the said unit within period of 36 months from the date of booking i.e., 10.05.2011. The period of 36 months from the date of booking /registration of flat expired on 10.05.2014. However, there is no material on record that during the period of 180 days, the period sought as grace period, the promoters have applied to any authority for obtaining the necessary approvals with respect to this project. On perusal of the occupation certificate also, it is observed the promoters applied for the issuance of occupation certificate only on 21.01.2020 when the period of 36 months had already expired. So, the promoters cannot claim the benefit of grace period of 180 days. Consequently, the authority has rightly determined the due date of

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possession. Thus, the grace period is not allowed, and the due date of possession comes out to be 10.05.2014.

25. Admissibility of delay possession charges at prescribed rate of interest: The complainant(s) is seeking delay possession charges. However, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoters, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(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.

26. 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.

27. 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., 17.05.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.

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28. 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;"

29. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.75% by the respondents/promoters which is the same as is being granted to them in case of delayed possession charges.

30. On consideration of the documents available on record and submissions made by both the parties, 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 8 of the agreement, the possession of the subject apartment was to be delivered within 36 months from the date of execution of agreement. For the reasons quoted above, the due date of possession is to be calculated from the date of booking/registration of flat i.e., 10.05.2011 and the said time period of 36 months has not been extended by any competent authority. Therefore, the due date of

possession is calculated from the date of execution of buyer's agreement and the said time period of 36 months expired on 10.05.2014. 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 10.05.2014.

31. The respondent has obtained the occupation certificate on 30.07.2020. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 23.07.2012 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 23.07.2012 to hand over the possession within the stipulated period.
32. 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 30.07.2020. The respondent offered the possession of the unit in question to the complainant only on 05.08.2020. 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. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 10.05.2014 till the date of offer of possession (05.08.2020) plus two months i.e., 05.10.2020. The complainant is further directed to take possession of the allotted unit after clearing all the dues within a period of 2 months and failing which legal consequences as per the provisions of the Act will follow.

33. 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 delay possession charges at rate of the prescribed interest @ 10.75% p.a. w.e.f. 10.05.2014 till the date of offer of possession i.e., 05.08.2020 plus two months i.e., 05.10.2020; as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

Litigation Cost:

34. The complainant in the aforesaid relief is seeking relief w.r.t compensation. 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. (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021), has held that an allottee is entitled to claim compensation 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 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. Therefore, the complainant is advised to

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approach the adjudicating officer for seeking the relief of compensation.

F. Directions of the Authority:

35. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- The respondents are directed to pay interest on the paid-up amount by the complainant at the prescribed rate of 10.75% p.a. for every month of delay from the due date of possession i.e., 10.05.2014 till the offer of possession made on 05.08.2020 plus two months i.e., up to 05.10.2020 to the complainant(s).
- The arrears of such interest accrued from due date of possession till its admissibility as per direction (i) above shall be paid by the promoters to the allottee within a period of 90 days from date of this order as per rule 16(2) of the rules.
- The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period against his unit to be paid by the respondents.
- The respondents are directed to handover the possession of the allotted unit to the complainants completes in all aspects as per specification of buyer's agreement.
- 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/promoters which is the same rate of interest which the promoter shall be liable to pay

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the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

- The respondents are directed not to charge anything which is not part of buyer's agreement or has been specifically debarred in the recommendation of the high-powered committee constituted by the authority and it's finding as accepted by the authority are available on official website.

36. Complaint stands disposed of.

37. File be consigned to the Registry.



v.l-3
(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 17.08.2023

HARERA
GURUGRAM