

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

Complaint no. : 839 of 2022
Ordre reserved on: 31.08.2023
Order pronounced on: 28.09.2023

Dr. Arun Kumar Rai
R/o: 15, Southview, Grove, Bearsden, Glasgow G61, 4GZ, United Kingdom

Complainant

Versus

Anant Raj Limited
Regd. office: CP-01, Sector-8, IMT Manesar, Gurugram, Haryana-122051
Corporate Office: A.R.A., Center E-2, Jhandewalan Extension, New Delhi- 110055

Respondent

CORAM:
Shri Vijay Kumar Goyal

Member

APPEARANCE:
Shri Rajesh Yadav (Advocate)
Shri Rahul Bhardwaj (Advocate)

Complainant
Respondent

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 to the allottee as per the agreement for sale executed inter-se them.

A. Unit and Project related details:

2. The particulars of the project, the details of 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.	Particulars	Details	
1.	Name of the project	"Anant Raj Estate", Sector-63A, Gurgaon	
2.	Nature of project	Residential plotted colony	
3.	RERA registered/not registered	Registered vide registration no. 142 of 2017 dated 28.08.2017	
	Validity status	27.08.2022	
4.	DTPC License no.	119 of 2011 dated 28.12.2011	71 of 2014 dated 29.07.2014
	Validity status	27.12.2019	28.07.2024
	Licensed area	100.262 acres	7.8625 acres
	Name of licensee	M/s Rose Realty Pvt Ltd & others	M/s Glaze Properties Ltd & others
5.	Application letter dated	17.05.2015 [As per page no. 39 of complaint]	
6.	Provisional allotment letter	20.05.2012 [As per page no. 39 of complaint]	
7.	Final allotment letter	12.02.2013 [As per page no. 42 of complaint]	
8.	Independent floor no.	40-GF, pocket E [As per page no. 42 of complaint]	

9.	Unit area admeasuring	2113 sq. ft. (super area) [As per page no. 42 of complaint]
10.	Date of floor buyer agreement	27.05.2014 [As per page no. 46 of complaint]
11.	Total sale consideration	Rs. 1,39,37,026/- [As per payment plan on page no. 44 of complaint]
12.	Amount paid by the complainants	Rs. 1,21,56,478/- [As statement of account dated 21.02.2022 on page no. 83 of complaint]
13.	Possession clause	Clause 4.2 <i>The Developer shell endeavour to handover the possession of the floor unit within 36 months from the date of execution of the floor buyer's agreement with the grace period of 6 months ("tentative handover date"). Notwithstanding the same the developer shell at all the times we entitled to an extension of time from the tentative handover date, if the completion of the colony or the part /portion of the colony where the said floor unit is situated is delayed on account of any force major event.</i>
14.	Due date of possession	27.11.2017 (Calculated from date of agreement i.e., 27.05.2014) (Grace period of 6 months is allowed being unconditional)
15.	Reminder letter dated	22.07.2021, 11.11.2021

		[As per page no. 92 of complaint]
16.	Occupation certificate	15.02.2020 [As per page no. 85 of reply]
17.	Offer of possession	26.02.2021 [As per page no. 85 of complaint]

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That the respondent, is a company incorporated under the Companies Act, 1956, bearing CIN No - L45400HR1985PLC021622 being managed by its Chairman Mr. Ashok Sarin, Managing Director, Mr. Amit Sarin and others. The respondent, being Colonizer/Collaborator/ Builder/Developer came up with a group housing project namely 'Anant Raj Estate' located in Sector - 63(A), Gurugram, Haryana. Respondent claims that the said project is approved by DTCP under various Licenses and approvals.
- II. That the complainant is the bona fide purchaser of the unit no. 40 on Ground + Basement floor and is law abiding NRI and has made bona fide purchase in the project by self-arranged hard-earned money.
- III. That as per Section 2(d) of the Act, 2016 the complainant falls under the category of 'Allottee' and have rights and obligations under the Act.
- IV. That the complainant along with his family members visited the project site and marketing office of respondent when he was in India on vacations

in 2012. The office bearers of developer represented the brochure, payment plans and schemes and confirmed that the project will be complete by November 2014 and that it will be duly mentioned in buyer's agreement and that the respondent is obligated to his commitments.

- V. That after being assured of the quality construction and timely delivery in November 2015, as promised and committed by the respondent's office bearers, on 17.05.2012, the complainant applied for a ground floor with Basement of 2113 sq. ft super area, by filling an application form and paying Rs.10,00,000/- through cheque number - 217712 as registration amount to the respondent. Thereafter, the respondent issued a provisional allotment letter with payment plan for Unit no. - 40 in Pocket E with super area of 2113 sq. ft. to the complainant in its upcoming 'Anant Raj Estate' project for sale consideration of Rs. 1,35,00,000/-.
- VI. That after payment of approx. Rs. 48,34,220/- a pre-printed, arbitrary, unilateral buyer's agreement was presented to be signed by the complainant on 27.05.2014 for unit no. 40 located on Ground + basement floor admeasuring super area of 2113 sq. ft. The arbitrary 'floor buyer agreement' had various incorrect dates on it including revised delivery or possession date of the project/unit wherein it was further extended by 36 months i.e., 26.05.2017. The respondent approached with this one-sided agreement to the complainant saying either to sign and accept the agreement or otherwise the paid amount of Rs.48,34,220/- will be

forfeited, so after being trapped in the scandalous scheme of the respondent, and in order to save the hard-earned money, the complainant had no other option but to sign on the floor buyer agreement.

- VII. That the complainant paid as and when developer or respondent raised the demands for installments for the booked unit. And various payments were made as shown in table from 17.05.2012 to 03.10.2017.

Date	Description	A/c head	Amount
17.05.2012	at the time of booking	Basic	1000000
21.07.2012	Within 60 days from date of allotment	Basic	1699927
14.03.2013	On Commencement of construction	Basic	2024945
14.03.2013	On Commencement of construction	EDC & IDC	109348
29.07.2015	On Commencement of 1st Floor Roof Slab	Basic	2046748
29.07.2015	On Commencement of 1st Floor Roof Slab	EDC & IDC	131887
15.10.2015	On Commencement of 2nd Floor Roof Slab	Basic	2046748
15.10.2015	On Commencement of 2nd Floor Roof Slab	EDC & IDC	131887
08.06.2016	On Completion of Brickwork/Internal Plastering	Basic	1366463
08.06.2016	On Completion of Brickwork/ Internal Plastering	EDC & IDC	131885
03.10.2017	On Completion of Internal work and Services	Basic	1466640
Total Amount (Rs.)			12156478

That complainant has honored all the demands raised by the respondent till 03.10.2017, and paid respondent a total amount of Rs.1,21,56,478/- against the allotted unit.

- VIII. That after a complete silence of more than 3.5 years, on 26.02.2021, the respondent intimated about the 'Possession of the unit and settlement of final dues' via letter. Respondent without any prejudice and adjustment of 'the delayed possession charges' raised demand letter of Rs.35,41,065/- plus Rs.14962/- (Maintenance Charges). There is surprise increase in

basic amount, it was earlier Rs.1,30,95,000/- but now increased to Rs.1,38,51,431/-, ambiguous charges for Interest and other charges for different components, without any adjustment of DPC.

- IX. That a reminder letter dated 22.07.2021 was received from the respondent, wherein respondent scandalously raised his unjustified demand to Rs.36,69,084/-. And another reminder letter dated 11.11.2021 was received wherein amount was now increased to Rs.37,89,510/-, so the respondent was continuously charging interest on the balance amount at a very high rate of interest even during the period of pandemic.
- X. That the complainant was keen in taking the possession, but on his simple enquiry on the delayed possession charges, to the utter shock and surprise, the respondent's office bearers didn't give any heed to the complainant query and scandalously offered Rs.7/- per sq. ft. as compensation without any further clarification and justification. He was seeking an appointment to get solution to his problem and to take possession, but the respondent didn't give time/ appointment for meeting and eventually diluted the main purpose of the complainant coming to India from UK during the tough times of Covid, wasting all his time and money.
- XI. That the respondent gave fake assurances and incorrect and illegal quote of judgments and court proceedings, and scandalously narrated the complainant to write an email according to their legal requirement.

However, on the very next day, after realizing the eventful fraud and deceitful offer, the complainant nullified the respondent's offer by writing another email on 01.03.2022 wherein he denied and nullified their scandalous terms.

- XII. That due to above acts of the respondent, all his bogus promises and fake assurances made at the time of booking of the unit, and his denial on paying the delayed possession charges as committed/mentioned in 'floor buyer's agreement' @12% interest on total payment made, the complainant has been unnecessarily harassed mentally as well as financially, therefore the respondent is liable to compensate the complainant on account of the aforesaid act of unfair trade practice.
- XIII. That at the first-time cause of action for the present complaint arose in 2014 when respondent executed a biased, arbitrary, and unilateral BBA/floor buyer agreement with unclear terms/conditions. The cause of action arose in November 2015 when the builder/respondent failed to deliver the unit/project as promised at the time of booking of the unit, cause of action arose again in May 2017 when the respondent failed to deliver the project as promised in floor buyer agreement. The cause of action is still alive and continuing and will continue to subsist till such time as this authority restrains the Respondent party by an order of injunction and/or passes the necessary orders to give possession and compensate with delayed possession charges to the complainant.

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C. Relief sought by the complainant

4. The complainant has sought following relief:

- i. Direct the respondent to pay interest at the prescribed rate from the due date of possession until the physical possession of the flat as per section 18 of the Act, 2016.
 - ii. Direct the respondent to handover the physical possession of flat (complete in all aspects as per specification mentioned in buyer's agreement and brochure).
 - iii. Direct the respondent to pay an amount of Rs.5,00,000/- for deficiency in service.
 - iv. Direct to pay an amount of Rs. 1,50,000/- as litigation expenses.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

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

- a. The complainant has sought relief under section 18 of the Act 2016, but the said section is not applicable in the facts of the present case and as such the complaint deserves to be dismissed. It is submitted that the operation of section 18 is not retrospective in nature and the same cannot be applied to the transactions as they were entered prior to the Act of 2016 came into force. The parties while entering into the said transactions could not have possibly taken into account the provisions of the Act and as such cannot be

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burdened with the obligations created therein. In the present case also, the floor buyer agreement was executed much prior to the date when the Act of 2016 came into force and as such section 18 of the Act cannot be made applicable to the present case. Any other interpretation of the Act of 2016 will not only be against the settled principles of law as to retrospective operation of laws but will also lead to an anomalous situation and would render the very purpose of the Act nugatory. The complaint as such cannot be adjudicated under the provisions of Act of 2016.

- b. That the objection in the present case of agreement to sell executed prior to RERA coming into force, the dates for delivery of possession committed therein cannot be taken as trigger point for invocation of section 18 was not in picture and as such the drastic consequences provided under section 18 cannot be applied in the event of breach of committed date for possession given in such agreement. On this ground also the present complaint is not maintainable.
- c. That the present complaint, so preferred under the Act 2016, is not maintainable as the complainant has failed to disclose any maintainable as the complainant neither have any cause of action nor any *locus standi* to file or maintain the present complaint against the respondent, especially when he has breached the terms and conditions of the agreement and contract by defaulting in making timely payments and in the guise of the present complaint the complainant is seeking to amend/modify/re-write the terms

and conditions of the agreement/understanding between the parties in order to cause wrongful gain to themselves and wrongful loss to the respondent which is evident from the averments as well as the prayers sought in the Complaint.

- d. That the complainants had approached the respondent and expressed an interest in booking a unit in the commercial project developed by the respondent known as "**Anant Raj Estate**" developed by the respondent and located in the villages of Ullahwas (Hb No. 83), Kadarpur (Hb No. 84), and Maidawas (Hb No. 85), in Sector-63A, Gurgaon, Manesar Urban Complex, District Gurgaon, Haryana.
- e. That the complainant vide an application form dated 17.05.2012 applied to the respondent for the allotment of a unit in the project. The complainant, in pursuance of the aforesaid application form, were allotted a unit bearing no. 40 in Pocket E admeasuring 2113 sq. ft. vide a provisional allotment letter 20.05.2012. He consciously opted for a construction linked plan for remittance of the sale consideration for the unit in question and further represented to the respondent that he shall remit every installment on time as per the payment schedule. The respondent had no reason to suspect the *bona fide* of the complainant and proceeded to allot the unit in question in their favor.
- f. That the allotment letter dated 20.05.2012, being the initial document, was just an understanding document, executed between the parties, to be

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followed by the floor buyer agreement, to be executed between the parties. After the signing of the pre-printed application form both the parties fulfilled certain documentation and procedures and after fulfilling the same, a floor buyer agreement (FBA) dated 27.05.2014 was executed between the parties which contained the final understandings between the parties stipulating all the rights and obligations.

- g. That the complainant has no cause of action to file the present complaint as the present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the buyer agreement dated 27.05.2014. The complainant is investor and booked the unit in question to yield gainful returns by selling the same in the open market, however, due to the ongoing slump in the real estate market, he has filed the present purported complaint to enjoy wrongful gain from the agreement. The complainants do not come under the ambit and scope of the definition an allottee under section 2(d) of the Act, as the complainants are an investor and booked the unit in order to enjoy the good returns from the project. The complainant is not consumer and an end user since he had booked the unit in question purely for commercial purpose as a speculative investor and to make profits and gains. He has invested in the unit in question for commercial gains, i.e., to earn income by way of rent and/or re-sale of the property at an appreciated value and to earn premium thereon. Since the investment has been made

for the aforesaid purpose, it is for commercial purpose and as such the complainant is not consumer/end users. The complaint is liable to be dismissed on this ground alone.

- h. That the possession of the unit as per clause 4.2 of the SBA was to be handed over within 42 months (including a grace period of 6 months) from the date of the execution of the FBA within an extended period of three months subject to force majeure conditions as mentioned in the agreement. That the complainant, of his own free will and after fully understanding their obligations opted for the purchase of said flat on construction linked plan. Therefore, the date of completion of the project shall be constituted and calculated from the date of execution of the FBA and hence, the date of the completion of the project therefore comes out to be 27.11.2017 (Including the grace period of 6 months). The date of the completion of the project was further pushed due to the *force majeure* conditions i.e., due to the NGT orders and the lockdown imposed because of the worldwide Covid-19 pandemic, by which the construction work all over the NCR region came to halt. That DTCP, Haryana vide its notification no. 27 of 2021 dated 25.06.2021, gave a relaxation of 6 months to all the builders in view of the hurdles faced by them due to Covid-19. Further to be noted that the country again faced 2nd wave of Covid-19 because of which again a partial lockdown was imposed for a period of two (2) months by the state government which again led to the postponement in the completion of the project. In view of all the above

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submissions, it is pertinent to mention that the Respondent is on time to complete the said project and is almost on the verge of completion with fit-outs and the finishing of the project in due.

i. That it was not only on account of following reasons which led to the push in the proposed possession of the project but because of other several factors also as stated below for delay in the project:

- Time and again various orders passed by the NGT staying the construction.
- The sudden surge requirement of labour and then sudden removal has created a vacuum for labour in the NCR region. That the projects of not only the respondent but also of all the other developers have been suffering due to such shortage of labour and has resulted in delays in the project is beyond the control of any of the developers.
- Moreover, due to active implementation of social schemes like National Rural Employment Guarantee and Jawaharlal Nehru National Urban Renewal Mission, there was also more employment available for labours at their hometown even though the NCR region was itself facing a huge demand for labour to complete the projects.
- Even today in current scenario where innumerable projects are under construction all the developers in the NCR region are suffering from the after-effects of labour shortage on which the whole construction industry so largely depends and on which the respondent has no control whatsoever.
- Shortage of bricks in region has been continuing ever since and the respondent had to wait many months after placing order with concerned manufacturer who in fact also could not deliver on time resulting in a huge delay in project.
- In addition, the current government declared demonetization on 08.11.2016 which severely impacted the operations and project execution on the site as the labours in absence of having bank

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accounts were only being paid via cash by the sub-contractors of the company and on the declaration of the demonetization, there was a huge chaos which ensued and resulted in the labours not accepting demonetized currency after demonetization.

- In July 2017, the Government of India further introduced a new regime of taxation by the name of Goods and Service Tax which further created chaos and confusion owing to lack of clarity in its implementation. Ever since July 2017 since all the materials required for the project of the company were to be taxed under the new regime it was an uphill task of the vendors of building material along with all other necessary materials required for construction of the project wherein the auditors and CA's across the country were advising everyone to wait for clarities to be issued on various unclear subjects of this new regime of taxation which further resulted in delays of procurement of materials required for the completion of the project.
 - That there was a delay in the project on account of violations of the terms of the agreement by several allottees and because of the recession in the market most the allottees have defaulted in making timely payments and this accounted to shortage of money for the project which in turn also delayed the project.
 - Then the developers were struck hard by the two consecutive waves of the covid-19, because of which the construction work completely came to halt. Furthermore, there was shortage of labour as well as the capital flow in the market due to the sudden lockdown imposed by the government.
 - Lately, the work has been severely impacted by the ongoing farmers protest in the NCR as the farmers protest has caused huge blockade on the highway due to which ingress and egress of the commercial vehicles carrying the raw materials has been extremely difficult, thereby bringing the situation not in the control of the developers and thus, constitutes a part of the force majeure.
- j. Further, the respondent shall not be held responsible or liable for not performing of its obligations or undertaking mentioned in this agreement

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if such performance is prevented, delayed or hindered by act of God, fire flood, explosion, war, riot, terrorists-acts, earth quake, court orders Government orders, sabotage, inability to procure or general shortage of energy, labour, equipment, facilities, materials or supplies, failure of transportation, strikes, lock-outs action of labour unions or any other cause (whether similar or dissimilar to the foregoing) not within the reasonable control of the respondent.

- k. Moreover, the project at present date has been completed and the respondent have already obtained the occupation certificate dated 15.02.2022 from the competent authority. The respondent has already provided the possession certificate to the complainant dated 26.02.2021 and despite that the complainant has failed to obtain the possession of the unit in the project. Therefore, the question of delay possession charges does not arise in this scenario as the respondent is well within the stipulated period of time to finish the project and thus granting any interest for the delay possession charges would set up as a bad precedent. If the conditions of *force majeure* are excluded from the promised stipulated period of time, the respondent is well within the time schedule to complete the project. It is pertinent to note that granting of the delay possession charges to the complainant by the respondent at this crucial juncture would bring a bad name to the goodwill of the entire company and will lead to an array of similarly filed frivolous and vexatious complaints asking for a similar relief,

which will leave the respondent without any funds to carry on the completion of the project and would further go bankrupt. The respondent itself has infused huge sum of funds into the project so that the project could be completed at the earliest possible time. Despite force majeure conditions the respondent has made all the efforts in order to complete the project in time.

- l. Further, the prayer as sought for by the complainant is directly contrary to the binding inter-se agreement. In relation to this prayer, it is submitted that the same is fully envisaged and dealt with by way of detailed terms and conditions in the inter-se agreement itself. It is further submitted that the complainant is in default of their duty under section 19(6) of the Act and thus the respondent is also entitled to the prescribed interest under section 19(7) of the Act.
- m. That upon completion of the development, construction and other related works, the buyer will be entitled to take possession of the said flat only after all the amounts payable towards total sale consideration and other charges and dues or amounts payable under the agreement are paid and the conveyance deed in respect of the said flat is executed and duly registered on the terms and conditions of this agreement except those omitted by the promoter as unnecessary and the terms and conditions, if any, imposed by the authorities in this behalf with the Registrar/Sub-Registrar concerned.

12

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

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

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 promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

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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 the 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 maintainability of complaint on account of complainant being investor.

9. The respondent took a stand that the complainant is investor and not consumers and therefore, he is not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the allotment letter, it is revealed that the complainant is buyer's, and he has paid total price of Rs.1,21,56,478/- to the promoter towards purchase of unit in its project. 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;"

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In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between promoter and complainant, it is crystal clear that the complainant 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 investor are not entitled to protection of this Act also stands rejected.

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

10. The respondent submitted that the complaint is neither maintainable nor tenable and is liable to be outrightly dismissed as the buyer's agreement was executed between the parties prior to the enactment of the Act and the provision of the said Act cannot be applied retrospectively.
11. The authority is of the view that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. The Act nowhere provides, nor can be so construed, that all previous agreements would be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a

specific/particular manner, then that situation would be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. The numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017) decided on 06.12.2017** which provides as under:

"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter....."

122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

12. Also, in appeal no. 173 of 2019 titled **as Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya**, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the



agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

13. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

F.III Objections regarding force majeure.

14. The respondents-promoter has raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as orders passed by National Green Tribunal to stop construction, dispute with contractor, non-payment of instalment by allottees, GST, demonetization, shortage of labour, and Covid- 19. The plea of the respondent regarding various orders of the NGT and demonetisation and all the pleas advanced in this regard are devoid of merit. The orders passed by NGT banning construction in the NCR region was for a very short period of time and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. The plea regarding

19

demonetisation is also devoid of merit. Further, any contract and dispute between contractor and the builder cannot be considered as a ground for delayed completion of project as the allottee was not a party to any such contract. Also, there may be cases where allottees has not paid instalments regularly but all the allottees cannot be expected to suffer because of few allottees. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

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

15. 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."

16. 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 21.11.2017. 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 much before the

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

G. Findings regarding relief sought by the complainants.

G.1 Direct the respondent to pay interest at the prescribed rate from the due date of possession until the physical possession of the flat as per section 18 of the Act, 2016.

17. In the present complaint, 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

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."

18. Clause 4.2 of floor buyer's agreement provides for handing over of possession and is reproduced below:

"Clause 4.2

The developer shall endeavour to hand over the possession of the floor unit within 36 months from the date of execution of this plot buyer's agreement with a grace period of 6 months (Tentative handover date). Notwithstanding the same, the developer shall at all times be entitled to an extension of time from the tentative handover date, if the completion of the colony or the part / portion of the colony where the said floor unit is situated is delayed on account of any force majeure event.

19. **Admissibility of grace period:** As per clause 4.2 of floor buyer's agreement, the respondent-promoter proposed to handover the possession of the said unit within a period of 36 months with a further grace period of 6 months, from the

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date of execution of this floor buyer's agreement. The Authority is of view that the said grace period of six months shall be allowed to the respondent being unconditional. Therefore, as per clause 4.2 of the agreement, the due date of possession comes out to be 27.11.2017.

20. 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 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.

21. 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.

22. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 28.09.2023 is @

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

23. 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;"*

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

25. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of apartment buyer's agreement executed between the parties on 27.05.2014, the possession of the booked unit was to be delivered within 36 months from the date of execution of buyer's agreement (27.05.2014) which comes out to be 27.05.2017. The grace period of 180 days is allowed in the present complaint for the reasons mentioned above. Therefore, the due date of handing over possession comes

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out to be 27.11.2017. Occupation certificate was granted by the concerned authority on 15.02.2020 and thereafter, the possession of the subject flat was offered to the complainant on 26.02.2021. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject flat and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 27.05.2014 to hand over the possession within the stipulated period.

26. 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 15.02.2020. The respondent offered the possession of the unit in question to the complainant only on 26.02.2021, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. These 2 months' of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically she has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession till the expiry of 2 months from the date of offer of possession (26.02.2021) which comes out to be 26.04.2021.

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G. II Direct the respondent to handover the physical possession of flat (complete in all aspects as per specification mentioned in buyer's agreement and brochure).

27. The respondent has obtained the OC from the competent authority from 15.02.2020 and offered the possession of the allotted unit vide letter dated 26.02.2021. The complainants themselves stated that due to Covid-19, they were unable to take the possession of the allotted unit. As per section 19(10) of Act of 2016, the allottee is under an obligation to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. The complainants are directed to take the possession of the allotted unit after payment of dues within 2 months after payment of dues, if any.

28. The respondent shall handover the possession of the allotted unit as per specification of the buyer's agreement as entered into between the parties.

G. III Direct the respondent to pay Rs. 5,00,000/- for deficiency in service.

G. IV. Directed the respondent to pay an amount of Rs. 1,50,000/- as litigation expense.

29. The complainant is seeking relief w.r.t. compensation in the above-mentioned reliefs. *Hon'ble Supreme Court of India in case titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (2021-2022(1) RCR(C) 357)*, 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 Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

H. Directions of the authority:

30. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the authority under section 34(f) of the act of 2016:

- I. The respondent is directed to pay interest to the complainant against the paid-up amount at the prescribed rate i.e., 10.75% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e., 27.11.2017 till expiry of 2 months from the date of offer of possession (26.02.2021) i.e., upto 26.04.2021 only. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per rule 16(2) of the rules.
- II. The rate of interest chargeable from the 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(z) of the Act.
- III. The complainant is directed to pay outstanding dues, if any, after adjustment of delay possession charges within a period of 30 days.


- IV. The respondent is directed to handover the possession of the unit on payment of outstanding dues if any, within 30 days to the complainant /allottee and to get the conveyance deed of the allotted unit executed in his favour in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable.
- V. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.

31. Complaint stands disposed of.

32. File be consigned to registry.

Dated: 28.09.2023



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

HARERA
GURUGRAM