

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

Complaint no.	:	2792 of 2020
Date of filing complaint:		28.09.2020
Date of decision	:	17.10.2023

1. Ashiana Housing Ltd. Regd. office at: Tower-1, 8th Floor, Vatika Business Park, Sector - 49, Sohna Road, Gurugram - 122001	Complainants
2. Universe Heights (India) Pvt. Ltd. Regd. office at: 5G/1 Everest 46/C Chowringhee Road, Kolkata , West Bengal- 700071	

Versus

1. Indira Mahlawat 2. Rajvir Mahlawat Both R/o: 84/7, Sector - 8, HIG flat, Pratap Nagar, Sanganer, Jaipur, Rajasthan - 302033	Respondent
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CORAM:

Shri Vijay Kumar Goyal **Member**

Shri Ashok Sangwan **Member**

Shri Sanjeev Kumar Arora **Member**

APPEARANCE:

Sh. Aman Verma (Advocate) **Complainants**

Sh. Shubham Chopra (Advocate) **Respondents**

ORDER

1. The present complaint has been filed by the complainant/promoters 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 19 (6) (7) and (10) of the Act wherein it is inter alia prescribed that the allottees



shall take physical possession of the unit, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said unit. It is also the obligation of all allottees to make necessary payments in the manner and within time as specified in the agreement for sale under section 19(6) and to pay interest, at such rate as may be prescribed, for any delay in payments as per section 19(7) of the Act.

A. Unit and project related details

2. The particulars of the project, the details of sale consideration, the amount paid by the respondent/allottee 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	"Ashiana Anmol", Sector- 33, Tehsil Sohna, Gurugram.
2.	Project area	13.3375 acres
3.	Nature of the project	Group housing project
4.	DTCP license no. and validity status	20 of 2014 dated 11.06.2014 valid till 10.06.2021
5.	Name of licensee	Universe Heights (India) Pvt. Ltd.
6.	RERA Registered/ not registered	Registration no. 26 of 2017 dated 28.07.2017 (area registered 3.80 acres)
7.	RERA registration valid up to	31.10.2019
8.	Extension applied on	Registration no. 01 of 2020 dated: 20.01.2020 (area registered 3.80 acres)
9.	RERA extension valid up to	31.10.2020



10.	Application dated	26.02.2015 [page 34 of complaint]
11.	Allotment dated	18.03.2015 [page 41 of complaint]
12.	Date of execution of flat buyer agreement	08.04.2015 [page 46 of complaint]
13.	Unit no.	M-209 [page 47 of complaint]
14.	Unit measuring	1275 sq. ft. [page 47 of complaint]
15.	Possession clause	Clause 6.1 <i>The Builder covenants with the buyer that the construction of the said building shall be completed within 36 months from start of construction with a grace period of six months Provided however that the time for completion shall be deemed to have been extended in the evening non-availability of building materials or delay in receipt of instalments of the consideration amount from the buyer or buyers of the other units and /Or delayed Due to any reason beyond the control of the builder i.e. "force-majeure" causes.</i>
16.	Commencement of construction	March 2016 [As alleged by the complainants on page 100]
17.	Due date of delivery of possession	September 2019 (36 months from the date of start of construction with a grace period of 6 months) [as OC was applied on 11.01.2019]
18.	Payment plan	Construction linked payment plan. [page 73 of complaint]
19.	Total consideration	Rs. 68,09,325/- [page no. 42 of complaint]

20.	Total amount paid by the respondent allottees as per statement of account dated: 01.02.2020	Rs. 58,18,043/- [page 108 of complaint]
21.	Occupation Certificate	19.06.2019 [page 91 of complaint]
22.	Request for termination by respondent/allottee to the complainant/promoter	09.08.2019 [page 97 of complaint]
23.	Date of offer of possession	19.08.2019 [page 101 of complaint]
24.	Tri-partite agreement dated	22.03.2016 [page 264 of reply]

B. Facts of the complaint:

3. That the complainant / promoters had planned and decided to develop a group housing complex known as 'Ashiana Anmol' in the revenue estates of Village Dhunela, Sector - 33, Sohna, District Gurugram, Haryana. The complainants were well and sufficiently entitled to develop, sale and deal with the residential units which were proposed to be constructed on the land measuring approximately 13.3375 acres and the requisite license was granted by the competent authority i.e. the DTCP, Haryana, Chandigarh vide license bearing no. 20 of 2014 dated 11.06.2014 in favour of complainant no. 2.

4. That the complainant no. 1 i.e. Ashiana Housing Limited and complainant no. 2 i.e. Universe Heights (India) Private Limited have entered into a registered development agreement dated 24.07.2014, whereby, it (license holder) has bestowed the development rights on the project land to the complainant no. 1 (Developer).



5. That the respondents/ allottees after taking into consideration the veracity of the said project and independent enquiry, on the basis of their own free will and understanding, had applied for allotment of an unit in the project by signing the expression of interest on 12.02.2015 and application form on 26.02.2015 and had agreed to be bound by the terms and conditions stipulated in the booking application form. Only after being fully satisfied with regard to all aspects of the project, including but not limited to the capacity/capability of the complainants to undertake conceptualization, promotion, development and construction of the project, the respondents took an independent decision and informed the decision to purchase an unit no. M-209, Block - B-3.

6. That based on the application for booking, complainant no.1 vide allotment offer letter dated 18.03.2015 allotted unit no. M - 209, Block - B-3 having tentative super area of 1275 sq. ft. for a total sale consideration of Rs. 68,09,325.00/- (excluding taxes). It was intimated to the respondents that the allotment of the unit shall be subject to fulfilment of the terms and conditions of the unit buyer's agreement. The buyer's agreement was executed between the parties on 08.04.2015 and the unit was purchased under the construction link payment plan.

7. That as per clause no. 6.1 of the buyer's agreement, the complainants undertook to complete the construction of said building within 36 months from start of construction with a grace period of six months. It is submitted that State Environment Impact Assessment Authority, Haryana, issued Environment Clearance for said project on 28.12.2015 and the complainants were issued a demand letter on stage "On Commencement of excavation" on 01.03.2016, therefore due date of possession with grace period was 01.09.2019.



8. That the complainant no.1 sent payment demands as per the terms of the allotment and mutually agreed payment plan. However, the respondents failed to abide by the commitment of making timely payments. The complainants had completed the project well within the timeline and accordingly applied for occupation certificate to the concerned department on 11.01.2019 and received the occupation certificate on 19.06.2019 and 17.10.2019. It is pertinent to mention here that occupation certificate for the concerned tower was received on 19.06.2019.

9. That the respondent no. 1 sent a letter to the complainant no. 1 for cancellation of agreement for Ashiana Anmol flat no. M-209 on 09.08.2019 stating that as per the terms and conditions of the agreement, the possession of the flat was to be delivered within 36 months from the date of the agreement by 08.04.2018 but as per the status on 09.08.2019, the company could not handover the unit in time and failed to comply with clause 6.1 of the agreement. The letter was replied by the complainant no. 1 on 16.09.2019 and a request was made to take the possession of unit after making the final payments.

10. That the complainant no. 1 after obtaining occupation certificate, had sent a letter of "Intimation for Possession" on 19.08.2019, and requested the respondents to take the possession of said unit after making the payment. It was specifically mentioned in letter that "the owner shall take possession of the said unit, within 30 days of issue of this letter, failing which he/she shall be liable to pay holding charges @ Rs. 5/- per sq. ft. plus taxes per month till possession is taken". Thereafter reminder letters/emails for "Intimation for Possession" on 14.11.2019, 15.11.2019, 07.01.2020 & 19.02.2020 were also sent by the complainants to the respondents. That the respondents have failed to complete the documentation formalities and make payments towards outstanding



amount despite reminders and did not come forward to take the possession of said unit.

11. That the due date of handover the possession of the unit as per the terms of the buyer's agreement was 01.09.2019 and the complainant no. 1 had raised the demand of Rs.9,73,185/- through demand letter dated 01.02.2020, as per agreed payment plan "one month before possession" on 01.05.2019 and had offered the possession on 19.08.2019. It is submitted that the project is ready for possession and many families had taken possession and living there.

12. That subject to the respondents complying with their obligations, the possession of the unit was supposed to be offered to them in accordance with the agreed terms and conditions of the buyer's agreement including force majeure events. Clause 6.1 of the buyer's agreement states that "the builder covenants with the buyer that the construction of the said building shall be completed within 36 months from start of construction with a grace period of six months. However, that the time for completion shall be deemed to have been extended in the event of non-availability of building materials or delay in respect of instalments of the consideration amount from the buyer or buyers of other units and delay due to any reasons beyond the control of the builder i.e. Force-Majeure". From the term of the buyer's agreement, it is evident that, the time for offer of possession was to be computed from the start of construction after the receipt of all requisite approvals. Even otherwise, the construction could not be raised in the absence of the necessary approvals. That State Environment Impact Assessment Authority, Haryana, issued Environment Clearance for said project on 28.12.2015 and the complainants commenced the construction on 01.03.2016. Therefore, due date of possession with grace period comes out 01.09.2019.



13. That it is pertinent to mention that the implementation of the said project was hampered due to non-payment of instalments by allottees including the respondents on time and due to the events and conditions which were beyond the control of the complainants. Even though the complainants completed the project on time and offered the possession as per terms of buyer's agreement.

14. That in last five successive years i.e. 2015-2016-2017-2018-2019, the Hon'ble National Green Tribunal has been passing orders to protect the environment of the country and especially for the NCR region. The Hon'ble NGT had passed orders governing the entry and exit of vehicles in NCR region. Also, the Hon'ble NGT has passed orders regarding phasing out the 10-year-old diesel vehicles from NCR. The pollution levels of NCR region have been quite high for the last couple of years at the time of change in weather in November every year. The contractor of complainants could not undertake construction for approximately 5-6 months in compliance of the orders of Hon'ble National Green Tribunal. There were frequent disturbances and disruptions in completion of construction activity at the spot causing delays which were unforeseen and absolutely beyond the power and control of the complainants.

15. That it is relevant to mention that the complainants/developers have already spent huge amount of money towards the due construction and development of the various blocks/ segments/ constituents/ parts/ phases of the group housing colony of which occupation certificate has been granted and the notice for offer for possession was sent to the respondents, thereby calling upon the respondents to pay the outstanding amount and clear all the possession related formalities and paperwork. Therefore, it is the complainants/developers who after having spent enormous sums of



money (including funds borrowed from banks and financial institutions and other entities) and having duly performed their obligations.

16. That the respondents in utter disregard of their responsibilities have left the complainants in the lurch and the complainants have been forced to chase the respondents for handing over the physical possession of the allotted unit for recovery of their dues along with interest on the period of delay in paying the instalments by the respondents. Thus, the complainants have no other option but to seek justice from this Hon'ble Authority. Thus, it is very much clear that despite finishing the construction of the unit of the respondents and offering possession to them, the respondents are not coming forward intentionally to do the needful. The respondents are wrongly and illegally withholding the dues of the complainants and are harassing them unnecessarily. The respondents are committing blatant breaches of the terms and conditions of booking and the buyer's agreement. Under the circumstances, it is expedient and in the interest of justice that the respondents be directed by this Hon'ble Authority to forthwith take possession of the unit in question and to pay their outstanding dues along with interest as per the possession letter dated 19.08.2019 already sent to the respondents.

17. That the cause of action for the present complaint is recurring one on account of the failure of the respondents to perform their obligations within the agreed time frame. The cause of action again arose in August, 2019 when the respondents failed to comply with the aforesaid possession letter and finally about a week ago when the respondents failed to take the physical possession of the unit and to make payment of the balance due amount, statutory charges and the interest accrued on the delayed payments.

C. Relief sought by the complainants:



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

- i. Direct the respondents to take the possession of the said unit which is ready and in the state of being occupied, after the completion of the requisite documentation formalities.
- ii. Direct the respondents to pay the balance sale consideration and delayed interest as per the flat buyer's agreement /Section 19 of the Real Estate (Regulation and Development) Act, 2016 to the complainants.
- iii. Direct the respondents to pay holding charges as per the terms and conditions of the flat buyer's agreement to the complainants as per HARERA norms.

D. Reply by respondent:

The respondent by way of written reply made the following submissions

19. That the respondent / allottee pray to this Authority that the complaint no. 2792 of 2020 required to be disposed of in lack of jurisdiction of this Authority and we maybe permitted to continue with the case file no. 190 of 2020 with Hon'ble Consumer Commission Saket having valid and exclusive jurisdiction.

20. That as per judgement of Hon'ble Bombay high court terms and conditions and specified date of handover i.e., Dec 2018 as per tripartite agreement dated 22.03.2016 cannot be changed or revised due to pre-RERA agreement dated 08.04.2015 which 100% confirmed that complainant/builder miserably failed in their commitments/obligations which is violation of the Act of 2016.



21. That the respondent/ allottees waited for a quite long time for the complainants/ promoters to offer a valid possession of the unit in time, but to no avail. The fact that the respondents / allottees have paid 90% amount on time. The last payment was made by us on 20.11.2018 which was confirmed and accepted by the complainants/ promoters through own letter dated 30.09.2019. However we were also ready to pay another 10%, but complainant/promoters miserably failed to handover the possession on the specified date i.e. Dec 2018.

22. That the respondents / allottees had already requested for surrender/cancellation on 09.08.2019. The complainant/promoters offered the possession after a very long delay on 19.08.2019 and even till offer the complainant/promoter did not inform us that the occupation certificate has been received. No update was given from the complainants/promoters regarding final progress even after such a long delay valid possession was not offered. There was lack of basic amenities like-water electricity gas line etc till date. Therefore, we have filed the case for refund with interest and compensation in the District Consumer Commission, South Delhi in case bearing no. 190 of 2020 against the complainants /builders on dated 05.10.2020. The case was filed against the complainant/builder for unfair trade practice, breach of obligations due to delay in possession by 16 months hence deficiency in services builder failed in his commitments. The respondents / allottees has filed the case with Hon'ble consumer commission on 05.10.2020 before we received the notice from Hon'ble RERA authority Gurugram on 13.10.2020.

23. That several problems has been repeatedly published in newspapers for Ashiana Anmol. The whole team of RWA are very upset. The same problem of lack of amenities hence deficiency in services has been published in newspaper for the project Ashiana AanganNeemrana as well as for Jaipur



and Bhiwadi project. Above deficiencies can be confirmed having since starting till date can be confirmed from the president of RWA and his team of Ashiana Anmol.

24. That furthermore, the present proceedings against the respondents are liable to be dismissed in view of the fact that the same are initiated with mischievous intentions of intimidating the respondents / allottees to submit to the unjustified demands of the complainant/ promoter.

25. That the complainant / promoter has not disclosed the fact that there has been gross negligence on their part in raising the construction timely over the said project even after collecting very heavy amount from the buyers and they have wilfully and intentionally delayed the said project only target to collect heavy money unfairly to increase the business which comes under unfair trade practice and violation of laws.

26. That the complainants / promoters have launched the project in Feb 2015 giving confirmation that all approval/clearances has been received. Further false information/commitment is made by complainants / promoters that they got all approvals by 31.01.2015. The terms of the agreement have been drafted mischievously by the builder are completely one sided.

27. That the flat bearing no. M-209 was forcefully imposed on us to resolve the issues of the faulty flat and further on the basis of various representation made by the complainants with respect to the project as well as commitment of the complainants qua quality as well as timely delivery of the flat.

28. That pursuant to the application made by us as per above commitments, we are allotted a unit no. M-209 admeasuring 1275 sq. ft. in Phase 1, at 'Ashiana Anmol', Sohna, Gurgaon, Haryana. During booking of the flat dated



20.02.2015 date of start was committed March/April 2015 and date of handover 36 months from start of construction that comes April 2018 as complainant builder committed that all approvals has been received by 31.01.2015.

29. That the complainants / promoters i.e Ashiana devised a standard form of apartment buyer's agreement and any person desirous of buying the apartment is required to accept the terms and conditions of the agreement in totally irrespective of how so ever onerous, one-sided, unfair, unreasonable and arbitrary the clauses of the agreement were to be voidable, which was strongly opposed by us but the complainant /promoter did not pay heed to our objections and asked us either to sign on the agreement on the spot or go out of the project no scope of negotiation which means, flat will be cancelled and 10% EMD amount will be forfeited more than that we have to go with the faulty flat and our heavy amount will be stuck with builder. The terms and conditions before signing the agreement dated 08.04.2015, flat M-209 are not discussed with us when no alternate is left with us then we signed on the dotted line of the agreement.

30. That we have been meeting all our obligations in time and had been paying our instalment on time regularly as confirmed by Ashiana vide letter 30.09.2019 Para 5. Third instalment was paid on 29th March 2016 as per demand letter after soft start of the project, as we have taken construction link plan due to shortage of fund. The balance payment was further made as per the agreed terms, Ashiana letter 30th Sep 2019 Para 5 refers.

31. That according to your letter 30.09.2019 the construction of the project was started on 01.03.2016 after a delay of 11 months from signing the agreement, which is self-explanatory and proves that Ashiana Housing Limited has totally failed in its commitments and only giving the false assurances, which is a serious breach of agreement as per Article 4 on page

6 of the agreement (essence of time, which must be met by both parties i.e. Builder and Buyer.

32. That we have also paid Rs.3,00,000/- on dated 28.11.2022 also paid Rs.2,00,000/- on dated 29.11.2022. Due to heavy financial pressure and threat to cancel the flat M-209 letter dated 06.10.2023 and refund the amount after heavy deduction whereas 100% default is from builder's end failed to handover the possession of the flat on specified date Dec 2018.

33. We have also paid more than Rs. 40, 00,000/- to SBI Bank as bank interest and principal amount against the housing loan, which we have taken for the above unit M-209. In fact, the complainant / promoter miserably failed repeatedly in their obligations to handover the possession of the flat as per timeline.

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

E. Jurisdiction of the authority:

35. The plea of the respondents regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

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

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

Section 11

.....

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

37. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Entitlement of the complainants for relief sought:

F.I Direct the respondents to take the possession of the said unit which is ready and in the state of being occupied, after the completion of the requisite documentation formalities.

F.II Direct the respondents to pay the balance sale consideration and delayed interest as per the flay buyer's agreement /Section 19 of the Real Estate (Regulation and Development) Act, 2016 to the complainants.

38. The present case was listed for hearing before the Authority and was disposed off on 20.07.2021 with the following directions

(i) That the respondent / allottees shall be charged interest at the prescribed rate of interest that is at the rate 9.30% per annum by the complainant / promoters which is the same as is being granted to the complainants/promoters in case of delayed possession.

(ii) The respondents/ allottees are directed to take the possession of the allotted unit as offered by the complainants.

(iii) The respondents/allottees shall make the requisite payments as per the provisions of section 19 (6) and (7) of the Act, within a period of 30 days.

39. An appeal was preferred by the respondent / allottees before the Appellate Tribunal and there they raised a plea that a proper opportunity of hearing was not afforded to them before decision was rendered by the Authority. Vide order dated 16.05.2023 the Hon'ble Tribunal has remanded back the said complaint to this Authority with a direction that "We are left with no option but to set aside the order. Matter is remitted to the same Authority for decision afresh after affording opportunity of hearing to both the parties".

40. The case in hand is that the respondent / allottee was allotted a unit in the project of the complainant / promoter on 18.03.2015. A buyer's agreement was executed between the parties on 08.04.2015. According to the possession clause 6.1 the construction of the said building shall be

completed within 36 months from start of construction within a grace period of six months. The commencement of construction took place in March 2016. Therefore, the due date of delivery of possession comes out to be September 2019. The occupation certificate was obtained on 19.06.2019 and the possession was offered to the respondent / allottee on 19.08.2019. The respondent / allottees requested for a surrender / termination on 09.08.2019.

41. However, the respondent / allottees filed a case of refund with interest and compensation in the District Consumer Commission, South Delhi in case bearing no. 190 of 2020 against the complainant / promoter on 05.10.2020. The case was filed against the complainant/builders for unfair trade practice, breach of obligations due to delay in possession by 16 months hence deficiency in services builder failed in his commitments. The respondent / allottees filed the case with Hon'ble consumer commission on 05.10.2020 before they received the notice from Hon'ble RERA authority Gurugram on 13.10.2020 and is pending before the District Consumer commission, South Delhi.

42. The complainant / promoters filed the present complaint on 28.09.2020 and an intimation with regard to the filing of the complaint was also sent by an email on 17.06.2020 to the respondent - allottees along with a soft copy of complaint. So the plea taken by the respondent - allottees that they have filed the case with consumer commission on 05.10.2020 before they received the notice from Hon'ble Rera Authority on 13.10.2020 is devoid of merit.

43. Though it pleaded on behalf of the respondents / allottees that the second complaint before the Authority on the same cause of action is barred and cannot proceed being hit by section 10 of Code of Civil Procedure but the plea advanced in this regard is devoid of merit. In case **EXPERION**

DEVELOPERS PVT. LTD. VERSUS SUSHMA ASHOK SHIROOR 2022
livelaw (SC) 352, a similar issue arose before the Hon'ble apex court of the land and wherein it was held that consumer protection Act and the RERA Act neither exclude nor contradict each other. They are concurrent remedies operating independently and without primacy. So, the complaint filed before the authority by the complainant/promoters is not liable to be stayed.

44. While filing the complaint, the complainant/promoters sought a direction from the authority to the allottees to take possession of the allotted unit after completion of the requisite formalities including documentations and pay the balance amount along with interest and other charges as per the buyers agreement. The version of the respondent/allottees is otherwise and who took a plea that the complainant/ builder failed to offer possession of the allotted unit by the due date and so they requested for its cancellation by way of surrender on 09.08.2019.

45. After considering the rival contentions advanced by the parties, it is evident that before the respondent / allottees approached the District Consumer Forum, New Delhi seeking refund of the paid up amount , the complainant / builder has already initiated the process for seeking a direction to the former to take possession of the allotted unit after making payment of the amount due and execute the necessary documents .The complainant / builder is seeking direction to the allottees from the Authority to make payment of the amount due against the allotted unit , execute the necessary documents and take possession thereof as per the terms and conditions mentioned in the buyer's agreement dated 08.04.2015. However since the allottees are not coming forward to comply

with those conditions, so the Authority can issue necessary directions in this regard and the complaint filed is maintainable.

46. As per the observations of authority, the total consideration of the unit is Rs. 68,09,325.00/- (excluding taxes). The respondents/allottees have paid only Rs.58,18,043/- and sum of Rs.9,57,039/- is still outstanding which in spite of the complainant's demand letters have not been paid by the respondent-allottees. As per clause 4.1 of flat buyer agreement, it is the obligation of allottee to make timely payments for the total sale consideration. Clause 4.1 of flat buyer agreement is reproduced as under:

CLAUSE 4.1: TIME IS THE ESSENCE:

4.1 Time is the essence with respect to buyer's obligations to pay the Total Sale Consideration as provided in Part-II of Schedule-"C" along with other payments such as applicable stamp duty, registration fee and other charges stipulated under this agreement to be paid on or before the due date or as and when demanded by the Builder as the case may be and also to perform or observe all other obligations of the buyer under this agreement.

47. In a judgement passed by Hon'ble Supreme Court of India in civil appeal no. 5785 of 2019 titled as **Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors.** wherein Hon'ble Apex Court has made two categories of allottees: firstly, where the allotment falls in respect of the towers where the developer has been granted occupation certificate and offer of possession has been made (Chart A allottees); and secondly, where the allotment falls in respect of the towers where the developer has not been granted occupation certificate so far (Chart B allottees). In respect of Chart A allottees, the Hon'ble Supreme Court of India while declining the relief of refund along with interest has held that chart A allottees are obligated to take possession, since the construction was completed, and possession was offered to the allottees after issuance of occupation certificate. The chart B allottees were held entitled to refund of the entire amount deposited by



them along with interest as occupation certificate was not available and it was held that the allottees cannot be made to wait indefinitely for possession of the apartments allotted to them nor can they be bound to take alternate apartment.

48. On consideration of the documents available on record and submissions made by the party regarding contravention of provisions of the Act, the authority is satisfied that the respondents are in contravention of the section 19(6) and (7) of the Act. By virtue of clause 4.1 of the agreement executed between the parties on 08.04.2015, it is the buyer's obligation to timely give payments for the total sale consideration. The respondents /allottee have paid only Rs.58, 18,043/- and a sum of Rs.9, 57,039/- on account of pending instalments & interest is outstanding. Accordingly, it is the failure of the respondents/allottees to fulfil their obligations and responsibilities as per the agreement to make timely payments to the promoter, accordingly, the non-compliance of the mandate contained in section 19(6) and (7) of the Act on the part of the respondent is established.

49. In case the respondent / allottee is still willing to take the possession then the respondent/ allottee may take the possession on payment of outstanding amount, if any, after adjustment of delay possession charges. No holding charges shall be levied and no demand for any amount which is not part of BBA shall be made. The respondent shall issue an updated revised account statement after adjustment of delay possession charge and thereafter the respondent /allottee may take the possession on payment of outstanding amount, if any remains, within next 4 weeks. However, if the respondent/ allottee is not interested in taking the possession and is seeking refund the same may be made in terms of the buyer's agreement subject to Regulations, 11(5) of 2018 alongwith interest at the prescribed rate of interest @ 10.75% p.a. (the State Bank of India highest marginal cost

of lending rate (MCLR) applicable as on date +2%) on the refundable amount, from the date of cancellation / termination i.e., 09.08.2019 requesting for refund of the amount till actual refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 ibid.

F.III Direct the respondents to pay holding charges as per the terms and conditions of the flat buyer's agreement to the complainants as per HRERA norms.

50. The holding charges shall not be charged by the promoter at any point of time even after being part of agreement as per law settled by Hon'ble Supreme Court in civil appeal no. 3864-3889/2020. Moreover, the respondent shall not charge anything which is not part of apartment buyer's agreement.

G. Directions of the Authority:

51. Hence, the authority hereby passes this order and issues the following directions:-

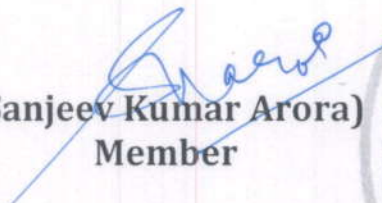
- i. The respondents/allottees may take the possession of the allotted unit as offered by the complainant / promoter after payment of outstanding amount along with prescribed rate of interest @10.75%. and shall issue an updated revised statement of account.
- ii. The respondents/allottees shall be charged interest at the prescribed rate of interest that is at the rate 10.75% per annum by the complainants/promoters which is the same as is being granted to the complainants/promoters in case of delayed possession.

Or

- iii. The respondents/allottees shall make the requisite payments as per the provisions of section 19(6) and (7) of the Act, within a period of 60 days failing which the complainant / promoter may proceed with cancellation/termination in terms of buyer's agreement subject to Regulations, 11(5) of 2018.

52. Complaint stands disposed of.

53. File be consigned to the registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 17.10.2023

HARERA
GURUGRAM