

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

Complaint no.:	5392 of 2022
Date of complaint:	01.08.2022
Date of decision:	31.01.2024

Ashish Dalal,
R/o 1809, Sector-17-A,
Gurugram, Haryana-122001.

Complainant

M/s Jasmine Buildmart Pvt. Ltd.
Office address: 201/202, 2nd Floor,
Elegance Tower, 8, Jasola District Centre,
New Delhi-110025.

Versus

Respondent

CORAM:

Ashok Sangwan

Member

APPEARANCE:

Ishaan Dang (Advocate)
Shivam Rajpal (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 as provided under the provision of the Act or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.



A. Unit and project related details

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

S. No.	Particulars	Details
1.	Name and location of the project	"Provence Estate (PH-1, Tower A & B)", Sector 2, Gurugram
2.	Unit no.	B-1001, 11 th floor, Tower- B [page 24 of complaint]
3.	Unit area admeasuring (Super area)	5800 sq. ft. [page 24 of complaint]
4.	Allotment Letter	21.09.2011 [pg. 24 of complaint]
5.	Date of buyer's agreement with original allottee	27.12.2011 [Page 27 of complaint]
6.	Possession Clause	3.1. <i>Subject to Clause 10 herein or any other circumstances not anticipated and beyond the reasonable control of the Seller and any restraints/restrictions from any courts/authorities and subject to the Purchaser(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and having complied with all provisions, formalities, documentation, etc. as prescribed by the Seller, whether under this Agreement or otherwise, from time to time, the Seller proposes to hand over the possession of the Apartment to the Purchaser(s) within a period of 36 (thirty six) months from the date of commencement of a construction or execution of this Agreement, whichever is later, subject to Force Majeure. The Purchaser(s) agrees and understands that the Seller shall be entitled to a grace</i>

		<i>period of 180 (one hundred eighty) business days, after the expiry of 36 (thirty-six) months, for applying and obtaining the occupation certificate in respect of the Project from the Authority. [pg. 36 of complaint]</i>
7.	Date of start of construction	28.09.2011 (Page 51 of reply)
8.	Due date of possession	27.11.2014 (Calculated as 36 months from date of execution of BBA as the same is later) Grace period is not allowed as application for OC was filed only on 13.05.2019
9.	Total sale consideration	Rs. 3,44,44,258/- (As per conveyance deed on page 94 of complaint)
10.	Amount paid	Rs. 3,44,44,258/- (As per conveyance deed on page 94 of complaint)
11.	Occupation certificate	23.10.2019 (Page 66 of reply)
12.	Offer of possession to original allottee	19.03.2020 (Page 75 of complaint)
13.	Possession Certificate to original allottee	06.09.2021 (Page 83 of complaint)
14.	Endorsement to complainant	07.01.2022 (Page 85 at annexure C9 of complaint)
15.	Conveyance Deed with complainant (subsequent allottee)	03.03.2022 (Page 88 of complaint)

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That the original allottee i.e., Sanjeev Pratap Singh was allotted a unit bearing no. B-1001, admeasuring 5800 sq. ft. on the 11th Floor of Tower-



B in project of the respondent named "Provence Estate" at Sector-02, Gurugram vide provisional allotment letter dated 21.09.2011. Thereafter, a buyer's agreement dated 27.12.2011 was executed between the original allottee and the respondent for a basic sale price of Rs.2,93,01,600/-.

- II. That as per clause 3.1 of the buyer's agreement the respondent shall endeavour to handover possession of the said unit within a period of 36 months from the date of commencement of construction or from the date of execution of the buyer's agreement whichever is later. Therefore, the due date of handing over of possession of the said unit as per the buyer's agreement was on or before 27.12.2015.
- III. That it had also been contained in the buyer's agreement that in case the respondent failed to offer possession within the stipulated time, then it would be liable to pay a penalty of only Rs.10/- per square feet per month on the super area of the said unit per month for the delayed period until the actual date of handing over of the possession.
- IV. That on the due date of possession, i.e. 27.12.2015, the original allottee contacted the respondent and enquired about delivery of possession. After some evasion and prevarication, the respondent confessed that the said unit was nowhere near completion and would not be in a position to deliver possession as per its promises and commitments.
- V. That despite the expiry of the stipulated time period mentioned in the buyer's agreement for handing over of possession of the said unit, the respondent kept issuing demand letters to the original allottee and was forced to make the payments to the respondent as the respondent had





- threatened to forfeit the entire amount paid by the original allottee in case he did not comply.
- VI. That after a long and excruciating wait by the original allottee, the respondent issued letter of offer of possession dated 19.03.2020 offering possession of the said unit subject to completion of payment of outstanding amount and other formalities. Thereafter, the original allottee made payment of the complete outstanding amount to the respondent and accordingly, a "no dues certificate" dated 06.09.2021 was issued to the original allottee and possession of the unit was handed over to him vide possession certificate dated 06.09.2021.
- VII. That on 07.01.2022, the respondent issued a letter to the complainant confirming the transfer/sell of the said unit to the complainant and accordingly, the name of the complainant was substituted in the records of the respondent. Moreover, endorsement confirmation dated 07.01.2022 was duly executed between the original allottee, complainant and authorised signatory of the respondent.
- VIII. That after endorsement of the buyer's agreement dated 27.12.2011 and other documents pertaining to the said unit in favour of the complainant, the complainant requested the respondent for payment of compensation for delayed possession as per the provisions of the Act, 2016 and also requested the respondent to supply confirmation from an architect of the super area and carpet area of the apartment, but to no avail. However, the respondent did not budge and in fact threatened the complainant with forfeiture of the entire amount paid by him/the original allottee in case the complainant did not proceed with the execution of the conveyance deed.

- IX. That accordingly, conveyance deed bearing vasika no. 18358 dated 03.03.2022 was executed by the respondent in favour of the complainant in respect of the said unit. Thus, the complainant was compelled to take possession of the said unit and get the conveyance deed executed without payment of compensation to which the complainant is entitled in law.
- X. That the complainant is aggrieved by the inordinate delay in delivering possession of the apartment in blatant violation of the buyer's agreement dated 27.12.2011 and the provisions of act.
- XI. That the offer of possession dated 19.03.2020 is not a valid offer of possession as it was accompanied by demands which are not payable by the complainant/original allottee under the buyer's agreement. The complainant is not liable to pay any charges, taxes, levies, fees, that became applicable upon the unit/project after the due date of possession. Consequently, all the taxes, levies, fees that have been recovered from the complainant after 27.12.2015 including GST, HVAT are liable to be refunded to him along with interest. Similarly, the electricity connection and meter are only recoverable as per actuals.

C. Relief sought by the complainant:

4. The complainant has sought following reliefs:
- Direct the respondent to pay interest on the amount paid to the respondent from the due date of possession till handing over of possession as per Act and Rules.
 - Direct the respondent to refund of amount not payable under the HVAT, GST, electrification charges and connection charges etc. alongwith interest.
 - Direct the respondent to provide Architect's confirmation of carpet area and super area of the apartment.
 - Cost of litigation.

5. On the date of hearing, the authority explained to the respondents/promoter about the contravention 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 has contested the complaint on the following grounds:
- i. That after conducting his own independent due diligence and being fully satisfied with the particulars of the project named "Provence Estate" at Sector-02, Gurugram, the original allottee in the month of August 2011 voluntarily approached the respondent and expressed his interest in purchasing an apartment in the said project being developed by the respondent. The respondent vide provisional allotment letter dated 21.09.2011 allotted apartment bearing no. 1001, Tower-B, 11" Floor in the said project to the original allottee. Thereafter, an apartment buyer's agreement dated 27.12.2012 was executed between the original allottee and the respondent for a total sale consideration Rs. 3,44,44,258/-.
 - ii. That the respondent has already completed the construction of the apartment of the complainant and has obtained occupation certificate dated 23.10.2019 for Tower B and EWS occupation certificate of the said project from the competent authority.
 - iii. That as per clause 3.1 the respondent was supposed to complete the construction of the said project within 36 months from the date of signing of the agreement i.e. 27.12.2011, unless there was delay due to a force majeure circumstance or due to other reasons mentioned therein.



- iv. That as there was an inordinate delay on part of government department/authorities in providing relevant permissions, licenses approvals and sanctions for project which resulted in inadvertent delay in the project which constitute a force majeure condition as anticipated in clause 11 of apartment buyers agreement, as delay caused in these permissions cannot be attributed to respondent, for very reason that respondent had been very prompt in making applications and replying to objections, if any raised for obtaining such permissions.
- v. That despite the best efforts by respondent to hand over timely possession within the proposed time period of said apartment booked by complainant, they could not do so due to circumstances beyond control of the respondent. Further, at the time of registration of the project under the mandatory provisions of the Act, 2016, the respondent duly informed this authority about the circumstances for non-delivery of the project in terms of the apartment buyer's agreement to the apartment buyers. After considering all the contention of the respondent, this Authority was pleased to issue extension of registration certificate to the respondent on 27.07.2018. As per the extension of registration certificate issued by this Authority, the respondent was to complete the development and handover the possession of the project to the apartment buyers on or before 30.03.2019. However, despite exercising diligence and continuous pursuance of project to be completed, the project of the respondent could not be completed due to problem faced in supply of water by orders of HUDA, orders passed by NGT, High Court and Supreme Court



regarding stay on construction, unavailability of construction workers in NCR region, increase in the cost of construction, active implementation of social schemes, lockdown due to pandemic of COVID-19, restrictions imposed by Ministry of Environment and Forest and the Ministry of Mines, acute shortage of sand, demonetization, introduction of Goods and Service Tax etc. Therefore, the project got delayed and proposed possession timelines could not be completed in addition to above.

- vi. That the respondent issued a notice of possession for the said apartment to the original allottee on 19.03.2020. Thereafter, the respondent vide letter 06.09.2021 issued "no due certificate" to the original allottee after receiving the full and final payment against the unit.
- vii. That after payment of the dues, the original allottee approached the respondent for name substitution in apartment no. B-1001 in the said project. Accordingly, the respondent vide letter dated 07.01.2022 issued a letter confirming substitution of name in the aforementioned apartment and the said apartment was transferred in the name of the complainant. Thereafter, a sale deed dated 03.03.2022 was executed and registered between the complainant and the respondent.
- viii. That the respondent had already completed the construction of the said apartment and has handed over possession of the same by executing sale deed dated 03.03.2022 in favour of the complainant. Therefore, the respondent is not entitled to pay the interest on delayed possession to the complainant as there is no failure on the part of the respondent in completing the construction of the apartment and



handing over the possession of the same to the complainant. Further, the respondent is not liable to pay/refund any amount to the complainant.

7. Copies of all the documents have been filed and placed on record. The authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents.

E. Jurisdiction of the authority

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

E.I. Territorial jurisdiction

9. 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

10. 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.

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

F. Findings on the objections raised by the respondent.

F.I. Objection regarding force majeure conditions.

12. The respondent-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/restrictions of the NGT as well as competent authorities, High Court and Supreme Court orders, demonetization, delay on part of govt. authorities in granting approvals and other formalities, shortage of labour force in the NCR region, ban on the use of underground water for construction purposes, heavy shortage of supply of construction material, spread of Covid-19 across worldwide etc. However, all the pleas advanced in this regard are devoid of merit. First of all, the possession of the unit in question was to be offered by 27.11.2014. Hence, events alleged by the respondent do not have any impact on the project being developed by the respondent. Moreover, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. Thus, the promoter respondent cannot be given



any leniency on based of aforesaid reasons and it is a well settled principle that a person cannot take benefit of his own wrong. Furthermore, as far as entitlement of grace period according to the clause mentioned in the BBA is concerned the clause requires grace period of 180 (one hundred eighty) business days after the expiry of 36 (thirty-six) months for applying and obtaining the occupation certificate in respect of the project from the authority. Since in the present matter the respondent applied for grant of occupation certificate in the competent authority on 13.05.2019 i.e., much later than the lapse of 36 months from the date of BBA. Accordingly, authority holds that the respondent is not entitled to invoke grace period clause for delay.

G. Findings on the relief sought by the complainant.

G.I. Direct the respondent to pay interest on the amount paid to the respondent from the due date of possession till handing over of possession.

13. The original allottee i.e., Sanjeev Pratap Singh was allotted a unit bearing no. B-1001, admeasuring 5800 sq. ft. on the 11th Floor of Tower-B in project of the respondent named "Provence Estate" at Sector-02, Gurugram vide provisional allotment letter dated 21.09.2011 and an apartment buyer's agreement was also executed between the original allottee and the respondent regarding the said allotment on 27.12.2011. The occupation certificate was received from the competent authority on 23.10.2019 and possession of the unit was offered to the original allottee vide offer of possession letter dated 19.03.2020. Further, the possession of the unit was handed over to the original allottee vide possession certificate dated 06.09.2021. Thereafter, the original allottee requested the respondent to transfer/sell the said unit to the



complainant. Accordingly, the respondent vide letter dated 07.01.2022 issued a letter confirming substitution of name in the aforementioned apartment and the said apartment was transferred/endorsed in the name of the complainant. Also, the conveyance deed bearing vasika no. 18358 dated 03.03.2022 was also executed by it in favour of the complainant in respect of the said unit.

14. Considering the above-mentioned facts, the authority is of the view that the complainant herein is a subsequent allottee who had purchased the apartment from the previous allottee on 07.01.2022 i.e., at such a time when the possession of the subject unit was already offered to the original allottee. It simply means that the ready to move-in property was offered to the complainant and he was well aware about the fact that the construction of the tower where the subject unit is situated has already been completed and the possession of the same has been handed over to the original allottee on 06.09.2021 after issuance of the occupation certificate by the concerned authority. Moreover, he has not suffered any delay as the subsequent allottee-complainant herein came into picture only on 07.01.2022 i.e., after offer of possession which was made on 19.03.2020 to the original allottee. It is pertinent to mention here that the present allottee never suffered any delay and also respondent builder had neither sent any payment demands to the complainant nor complainant paid any payment to the respondent. So, there is no equity in favour of the complainant. Hon'ble Apex Court has also categorically held in many judgements that the rules and procedure are handmaid of justice and not its mistress. Hence, in such an eventuality and in the interest of natural justice, delay possession charges cannot be granted



to the complainant as there is no infringement of any of his right (being subsequent allottee) by the respondent-promoter.

15. In the light of the facts mentioned above, the complainant herein who has become a subsequent allottee at such a later stage is not entitled to any delayed possession charges as he has not suffered any delay in the handing over of possession. Hence, the claim of the complainant w.r.t. delay possession charges is rejected being devoid of merits.

G.II. Direct the respondent to refund of amount not payable under the HVAT, GST, electrification charges and connection charges etc. alongwith interest.

16. The complainant has submitted that the offer of possession dated 19.03.2020 was not a valid offer of possession as it was accompanied by demands which were not payable by the original allottee under the buyer's agreement and is seeking refund of the same. However, the authority is of view that the claim with respect to refund of the charges paid by the original allottee cannot be raised by the subsequent allottee/complainant as these charges were paid by the original allottee without any protest. Further, the relief of the complainant w.r.t. refund of charges paid cannot be allowed in his favour at this belated stage i.e., after execution of conveyance deed.

G.III. Direct the respondent to provide Architect's confirmation of carpet area and super area of the apartment.

17. As per section 17(2) of the Act, after obtaining OC and handing over physical possession to the allottees in terms of sub section (1), it shall be the responsibility of the promoter to handover the necessary documents, plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws. Further, as per Section 19(1) of the Act, the allottee is entitled to



obtain information relating to sanctioned plans, layout plan along with specifications, approved by the competent authority and such other information as provided in this Act or rules and regulations made thereunder or the agreement for sale signed with the promoter. Therefore, in view of the same, the respondent is directed to provide details i.e., confirmation of carpet area and super area of the unit in question to the complainant within a period of 1 month from the date of this order.

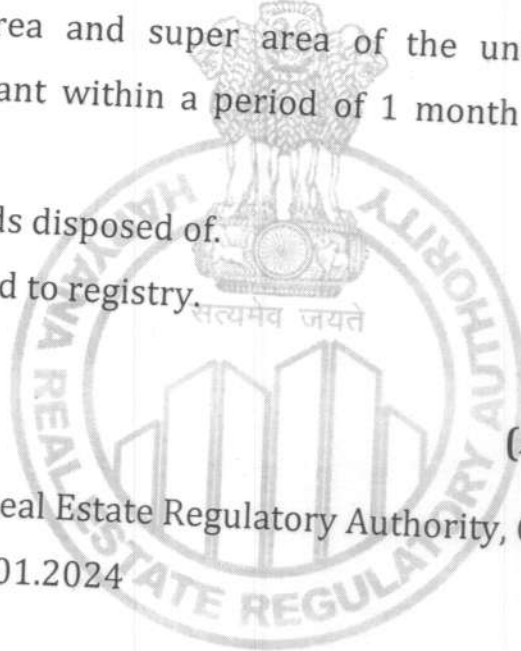
G.VII Direct the respondent to pay cost of litigation.

18. The complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. (supra)*, has held that an allottee is entitled to claim compensation and 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 and 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. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation and litigation expenses.

H. Directions of the authority

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

- i. The complainant is not entitled to the relief of delay possession charges as he has not suffered any delay in handing over of possession.
 - ii. The complainant/subsequent allottee is not entitled to the relief of refund w.r.t the charges paid by the original allottee and cannot be allowed at this belated stage.
 - iii. The respondent is directed to provide details i.e., confirmation of carpet area and super area of the unit in question to the complainant within a period of 1 month from the date of this order.
20. Complaint stands disposed of.
21. File be consigned to registry.



(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 31.01.2024

HARERA
GURUGRAM