

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

Complaint no. :	5678/2022
Date of filing complaint:	25.08.2022
First date of hearing:	23.11.2022
Date of decision :	22.11.2023

Krishna Kumar and Renu Bala Resident of: House no. M-19, Maha Laxmi Garden, Near Railway Station, Gurugram, Haryana-122001.	Complainants
Versus	
M/s Sana Realtors Pvt Ltd Regd. office: H-69, Uper Ground Floor, Cannaught Circus, Cannaught Place, New Delhi-110001.	Respondent
CORAM:	
Shri Ashok Sangwan	Member
APPEARANCE:	
Shri Gaurav Rawat Advocate	Complainants
Shri Gaurav Raghav Advocate	Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of

section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities, and functions under the provisions 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 the project, the details of sale consideration, the amount paid by the complainants, the date of proposed handing over of the possession, and the delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	"Precision SOHO Tower", Sector- 67, Gurugram-122102
2.	Project area	2.456 acres
3.	Nature of the project	Commercial colony
4.	DTCP license no. and validity status	72 of 2009 dated 26.11.2009 Valid upto 25.11.2019
5.	Name of licensee	Sh. Hari Singh
6.	RERA Registered/ not registered	Not Registered
7.	Unit no.	32, Ground floor (BBA on page no. 28 of complaint)
8.	Unit area measuring	446 sq. ft.

		(BBA on page no. 28 of complaint)
9.	Date of execution of Flat buyer agreement between original allottee and the respondent	20.05.2010 (On page no. 26 of complaint)
10.	Possession clause	<p>15. Possession</p> <p>That the possession of the said premises is proposed to be delivered by the DEVELOPER to ALLOTTEE(S) within Three years from the date of this Agreement. If the completion of the said Building is delayed by reason of non-availability of steel and/or cement or other building materials, or water supply or electric power or slow down, strike or due to a dispute with the construction agency employed by the DEVELOPER, lock out or civil commotion or by reason of war of enemy action or terrorist action or earthquake or any act of God or non-delivery of possession is as a result of any Act, Notice, Order, Rule or Notification of the Government and/or any other Public or Competent Authority or due to delay in action of building / zoning plans/grant of completion occupation certificate by any Competent Authority or for any other reason beyond the control of the DEVELOPER, the DEVELOPER</p>

		<p>shall be entitled to extension of time for delivery of possession of the said premises. The DEVELOPER as a result of such a contingency arising, reserves the right to alter or vary the terms and conditions of this Agreement or if the circumstances beyond the control of the DEVELOPER so warrant, the DEVELOPER may suspend the Scheme for such period as it might consider expedient.</p> <p>(Emphasis supplied).</p>
11.	Due date of possession	20.05.2013 (Calculated from the date of execution of agreement)
12.	Agreement to sell between original allottee and the present complainant	27.05.2013 (Page no. 56 of complaint)
13.	Total sale consideration	Rs. 31,08,620/- (As per page no. 28 of complaint)
14.	Amount paid by the complainants	Rs. 28,30,316/- (Page no. 38 of reply)
16.	Offer of possession.	17.10.2019 (Page no. 38 of reply)
16.	Occupation certificate /Completion certificate	18.07.2017 (As per page 17 of reply)

B. Facts of the complaint:

3. The project "Precision SOHO Tower" is concept based project and all amenity mention in brochure are integral part of this project. The respondent company under the guise of being a reputed builder and developer has perfected a system through organized tools and techniques to cheat and defraud the unsuspecting, innocent and gullible public at large.
4. Based on promises and commitment made by the respondent, the previous allottee Sh. Nitin Arora booked a unit admeasuring 446 sq ft, Unit No-32 in the respondent's project.
5. The respondent to dupe the allottee executed a flat buyer agreement signed between M/S Sana Realtors Pvt Ltd. and Sh. Nitin Arora on 20th May 2010, after that the respondent endorsed the said agreement in favour of Sh. Krishan Kumar and Smt. Renu Bala. The respondent created a false belief that the project shall be completed in time bound manner and in the garb of this agreement persistently raised demands to extract huge amount of money from the complainants.
6. The previous allottees paid all the installments timely. The respondent in an endeavour to extract money, and after taking the same, the respondent have not bothered to committed development of the project in time bound manner.
7. The complainants have paid more than 90% of the total consideration of the aforesaid unit. The complainants have repeatedly been seeking an update on the progress in the development of the project. However, the queries of the

Complainant were never replied to and the respondent was always vague and evasive to such requests.

8. As per term of flat buyer agreement, the builder had committed in the FBA clause no.15 and was accordingly obliged and liable to give possession of said unit within 36 months from execution of flat buyer agreement. Accordingly, the unit should have been delivered way back before 20th May, 2013, but the builder has still not handed over the physical possession, even though the construction is almost complete.
9. The respondent at no stage informed the complainant on the status and development of the project, but kept on demanding payments in the garb of development which was never carried out.
10. The complainant with good intentions has paid all demands raised by respondent, however respondent has failed to meet their obligations and commitments. This undue delay in handing over the possession of the unit for more than 9 years from committed date as per agreement is not only a breach of trust, but is also indicative of ill intentions of the respondent. The act on part of respondent has caused undue financial losses and mental agony to the complainants.

C. Relief sought by the complainants:

11. The complainants have sought the following relief(s):
 - i. Direct the respondent to handover possession of the aforesaid unit.

- ii. Direct the respondent to pay interest on delayed possession at the rate determined by this Hon'ble Authority for every month of delay from 20.05.2013 till actual possession.
- iii. Direct the respondent to quash the increased demand.

D. Reply by the respondent

12. The present complaint filed by the complainants is liable to be dismissed as the present project does not fall within the purview of RERA and the occupation certificate in respect of the present is already being issued by the competent authority. Further, vide memo No. ZP-589/SD (BS)/2017/17063 dated 18/07/2017 In Form BR-VII, DTCP had granted occupation certificate in respect of the two towers in the project.
13. The present complaint is not maintainable as the provision of Section 19 (6) of Real Estate (Regulation and Development) Act 2016 was not complied by the complainants, which says every allottee, who has entered into an agreement to take or sale the apartment, plot or building shall be responsible to pay the necessary payments including registration charges, municipal taxes water and electricity charges, maintenance charges, ground rent and other charges etc. But no necessary payments were made by the complainants after the completion of the project; hence the present complaint is not maintainable and is liable to be dismissed.
14. As per the clauses 41 & 42 of the buyer agreement, the complainants shall be liable to pay as and when demanded by the respondent the duty, registration charges and other legal and incidental charges for execution and registration of conveyance

deed. The complainants are also liable to pay any loss or damages suffered by respondent for non-payment or delay in payment, non-performance of the terms and conditions of the agreement; hence the present complaint is not maintainable and is liable to be dismissed.

15. The delay in the handing over the possession of the project was beyond the control of the respondent. Clause 15 provides for the exemption if the delay, if any caused is beyond the control of the respondent, the same shall be excluded from the time period so calculated. It is not out of place to mention here that the respondent has been diligent in constructing the project and the delay, if any, is due to the authorities or government actions and the same is well documented.
16. There were high tension wires passing through the project land and the work got delayed as the agencies did not remove the same within time promised and since the work was involving risk of life, and the respondent could not take any risk and waited for the cables to be removed by the electricity department and the project was delayed for almost two years at the start. That until the electricity line was shifted, the construction on the plots was not possible and hence the construction was delayed for about two years. The diligence of the respondent to timely complete the project and live upto its reputation can be seen from the fact that the respondent had applied for the of high tension wires in the year 2008 i.e. a year even before the license was granted to the

respondent so that the time can be saved and project can be started on time.

17. In the year 2012, pursuant to the Punjab and Haryana High Court order, the DC had ordered all the developers in the area for not using ground water and the ongoing projects in the entire area seized to progress as water was an essential requirement for the construction activities and this problem was also beyond the control of the respondent, which further was duly noted by various media agencies and documented in the government department. Further since the development process was taking lot of time and the contractor had to spend more money and time for the same amount of work, which in normal course would have been completed in almost a year, due to the said problems and delay in the work, the contractor working at the site of the respondent also refused to work in December, 2012.
 18. The project is complete since 2015 and the respondent has also applied occupancy certificate in May 2015. Lastly in July 2017 occupancy certificate was issued delay two years on account of the delay in compliances by the authorities and such respondent not responsible for any delay.
 19. The complainants are deliberately not taking the possession of the property in question and have filed the present complaint with the sole purpose to harass the respondent.
- E. Jurisdiction of the authority:**
20. The plea of the respondent regarding the rejection of the complaint on the grounds 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 the entire Gurugram District for all purposes 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 allottee as per the 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 with the obligations cast upon the promoters, the allottees, and the real estate agents under this Act and the rules and regulations made thereunder.

21. So, given 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. Findings on the objections raised by the respondent:

F.1 Objection regarding jurisdiction of the complaint w.r.t the apartment buyer's agreement executed before coming into force of the Act, and occupation certificate received before the coming into force of Act.

22. The respondent submitted that the complaint is neither maintainable nor tenable and is liable to be out rightly dismissed as the flat buyer's agreement was executed between the parties before the enactment of the Act, and OC was also received before the coming into force of Act and the provision of the said Act cannot be applied retrospectively.
23. The authority is of the view that the provisions of the Act are quasi-retroactive to some extent in operation and would apply to the agreements for sale entered into even prior to coming into operation of the Act where the transaction is 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 will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules.

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 and 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."

24. 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."

25. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer 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 and regulations made thereunder and are not unreasonable or exorbitant in nature. Hence, in the light of the above-mentioned reasons, the contention of the respondent w.r.t. jurisdiction stands rejected.

F.II Objections regarding force Majeure.

26. The respondent-promoter has raised the contention that the construction of the tower in which the unit of the complainants is situated, has been delayed due to force majeure circumstances such as orders passed by the district administration Gurugram, and delay in moving the high tension wires from the land of project, etc.

The pleas of the respondent advanced in this regard are devoid of merit. The orders passed were 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. Furthermore, the respondent should have foreseen such situations. Thus, the promoter respondent cannot be given any leniency on the basis of aforesaid reasons and it is a well-settled principle that a person cannot take benefit of his own wrong.

G. Findings on relief sought by the complainants.

G.1 Direct the respondent to hand over possession of the aforesaid unit.

27. In the instant case, the space buyer agreement was executed between the original allottee and the respondent on 20.05.2010, and as per clause 15 of the said agreement, the possession was to be handed over within 3 years from the date of the agreement. The said clause is reproduced below:

"That the possession of the said premises is proposed to be delivered by the DEVELOPER to ALLOTTEE(S) within Three years from the date of this Agreement."

Therefore the due date of possession comes out to be 20.05.2013.

28. The original allottee Shri Nitin Arora had transferred the unit in question to the complainants by an agreement to sell dated 27.05.2013. Therefore, in view of the Authority's finding in "Varun Gupta Vs Emmar Mgf Land Ltd.", the complainants became subsequent allottee and attained all the rights and liabilities of the original allottee under the agreement dated 20.05.2010 from the

date of transfer i.e. agreement to sell dated 27.05.2013. The relevant para 59(b) of the aforesaid judgment is produced below:

"59(b) In cases where the complainant/subsequent allottee had purchased the unit after expiry of the due date of handing over possession, the authority is of the view that the subsequent allottee cannot be expected to wait for any uncertain length of time to take possession. Even such allottees are waiting for their promised flats and surely, they would be entitled to all the reliefs under this Act. It would no doubt be fair to assume that the subsequent allottee had knowledge of delay, however, to attribute knowledge that such delay would continue indefinitely, based on priori assumption, would not be justified. Therefore, in light of Laureate Buildwell judgment (supra), the authority holds that in cases where subsequent allottee had stepped into the shoes of original allottee after the expiry of due date of handing over possession and before the coming into force of the Act, the subsequent allottee shall be entitled to delayed possession charges w.e.f. the date of entering into the shoes of original allottee i.e. nomination letter or date of endorsement on the builder buyer's agreement, whichever is earlier."

29. There has been a delay in obtaining the occupation certificate by the respondent, the said OC was obtained only on 18.07.2017. Thereafter the respondent issued an offer of possession on 17.10.2019 and a certain amount was yet to be paid by the complainant. After this, the complainant filed a complaint with this Authority on 25.08.2022.
30. As the occupation certificate has been obtained by the respondent, the offer of possession can be made by the respondent. As per section 19(10) of the Act, the complainant/allottee is duty-bound to take possession within two months of the occupancy certificate

issued for the said unit. Hence, it was the duty of the complainants to take possession of the said unit.

G.2 Direct the respondent to pay interest on delayed possession for every month of delay from the due date of possession.

31. In the instant case, the complainants wish to continue with the project and is seeking DPC as provided under the proviso to sec 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."*

32. In the instant case, the transfer of the unit to the complainants had taken place post the due date of possession i.e. on 27.05.2013. Since the complainants entered into the position of the original allottee on the date of said transfer, in the light of Varun Gupta's (Supra.) finding, the complainants shall be eligible for delayed possession charges from the date of transfer i.e. 27.05.2013.

33. **Admissibility of delay possession charges at prescribed rate of interest:** 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's 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.

34. 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.
35. Consequently, as per the website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as of the date i.e., 11.10.2023 is 8.75%. Accordingly, the prescribed rate of interest will be the marginal cost of lending rate +2% i.e., 10.75%.
36. The definition of the 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 that 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;"

37. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., **10.75%** by the respondent/ promoter which is the same as is being granted to it in case of delayed possession charges.
38. On consideration of the circumstances, the documents, submissions made by the parties, and based on the findings of the authority regarding contravention as per provisions of rule 28(2), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 15 of the agreement executed between the parties on 20.05.2010, the possession of the subject unit was to be delivered within 36 months from the date of the execution of the agreement. Therefore, the due date for handing over possession was 20.05.2013. Accordingly, it is the failure of the respondent/promoter to fulfill its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority is of the considered view that there is a delay on the part of the respondent to offer possession of the allotted unit to the complainants as per the terms and conditions of the buyer's agreement dated 20.05.2010 executed between the parties.

39. Accordingly, it is the failure of the promoter to fulfill its obligations and responsibilities as per the agreement dated 20.05.2010 to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4) (a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the allottees shall be paid, by the promoter, interest for every month of a delay from the date of transfer i.e. 27.05.2013 till the date of the offer of possession i.e. 17.10.2019 plus 2 months at the prescribed rate i.e., 10.75 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

G.3 Direct the respondent to quash the increased demand.

40. The complainants contend that the respondent has arbitrarily raised a demand for Rs. 4,16,300/- on the complainants. On perusal of the record put before the Authority, it is the view of the Authority that the said demand has illegal components. It is dealt with in succeeding paragraphs.
41. Regarding the demand of GST, the Authority made its view clear in "Varun Gupta Vs Emmar Mgf Land Ltd." wherein it was held that

"For the projects where the due date of possession was prior to 01.07.2017 (date of coming into force of GST), the respondent/promoter is not entitled to charge any amount towards GST from the complainant(s)/allottee(s) as the liability of that charge had not become due up to the due date of possession as per the builder buyer's agreements. For the projects where the due date of possession was/is after 01.07.2017 i.e., the date of coming into force of GST, the builder is entitled to charge GST, but it is obligated to pass the statutory

*benefits of that input tax credit to the allottee(s)
within a reasonable period."*

In view of the aforesaid finding of the Authority, the demand of GST is invalid as the due date of possession was 20.05.2013 which was before the coming into force of the GST. Hence, the respondent shall not charge any GST from the complainant.

42. Furthermore, the said offer of possession/demand letter wrongly states that the Total sales consideration of the unit is Rs. 32,13,220/-. The said total sales consideration is invalid as clause 1 of the agreement dated 20.05.2010 states the total sales consideration is 31,08,620/-. Therefore, the respondent is directed to state the right total sales consideration and demand accordingly.

43. In view of the above, the increased demands shall be quashed accordingly by the respondent.

H. Directions issued by the Authority:

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

- I. The Respondent is directed to pay interest to the complainants against the paid-up amount at the prescribed rate of 10.75% p.a. for every month of a delay from the date of "agreement to sell" dated 27.05.2013 between the original allottee and the complainant till the date of offer of possession i.e. 17.10.2019 plus two months, as per section 18(1) of the Act of 2016 read with rule 15 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(za) of the Act.
 - III. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - IV. The respondent shall not charge anything from the complainants which is not part of the buyer's agreement.
 - V. A period of 90 days is given to the respondent to comply with the directions given in this order failing which legal consequences would follow.
45. Complaint stands disposed of.
 46. File be consigned to the Registry.

Ashok Sangwan
(Member)

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 11.10.2023