BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. :	7177/2022
Date of filing complaint:	21.11.2022
First date of hearing:	29.03.2023
Date of decision :	29.11.2023

	Mr. Srikanth Srinivasan & Mrs. Suman Srinivasan **Resident of**: EF-10B, Primanti Garden Estate, Sector- 72 Gurugram.	**Complainants**
	Versus	
	M/s TATA Housing Development Co. Ltd. **Regd. office**: GF-3 Naurang House, 21 Kasturba Gandhi Marg, New Delhi.	**Respondent**

CORAM:	
Shri Ashok Sangwan	**Member**
APPEARANCE:	
Shri Jagdeep Kumar Advocate	Complainants
Shri Sumesh Malhotra 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	"PRIMANTI" Sector- 72 Gurugram
2.	Project area	36.25 Acres
3.	Nature of the project	Residential Group housing colony
4.	DTCP license no. and validity status	155 of 2008 dated 14.08.2008 and 200 of 2008 dated 08.12.2008
5.	Name of licensee	Gurgaon Infratech Pvt Ltd, Landscape Structures Pvt Ltd, Ardent Properties Pvt Ltd
6.	RERA Registered/ not registered	**Registered** Registered vide no. 98 OF 2017 dated 28.08.2017
7.	Unit no.	Executive Floor no. B, EF 10 building, G+1 floor
8.	Unit area admeasuring	301.03. sq. mtrs.

9.	Date of execution of buyer agreement	3rd July 2012
10.	Possession clause	**4.2 Possession** *THDCL shall endeavor to give possession of the said Premises to the Purchaser(s) on or before 21/03/2014 and after providing necessary infrastructure in the sector by the Government but subject to force majeure circumstances and reasons beyond the control of THDCL. THDCL on obtaining the certificate for occupation and use by the Competent Authorities shall hand over the said Premises to the Purchaser(s) for his/her/their occupation and use and subject to the Purchaser(s) having complied with all the terms and conditions of this Agreement.*
11.	Compensation Clause	***Clause 4.2*** *In the event of his/her/their failure to take over and/ or occupy and use the said Premises provisionally and/ or finally allotted within thirty (30) days from the date of intimation in writing by THDCL, then the same shall lie at his/ her/their risk and cost and the Purchaser(s) shall be liable to pay compensation @ Rs. 5/- per sq. ft. per month for the Apartment/Executive Apartment and Rs. 8/- per sq. ft. per month of the Executive Floor/Villa of the salable built-up area as holding charges for the entire period of such delay. Similarly if THDCL fails to give possession of the said Premises as mentioned hereinabove, then THDCL*

		shall also be liable compensation as mentioned hereinabove for the entire period of such delay. The adjustment of compensation shall be done at the time of conveying the said Premises and not earlier. The said compensation shall be a distinct charge in addition to maintenance charges and not related to any other charges as provided in this Agreement. If there is any delay in payments/remittances by the Purchaser (s) or delay in order to comply with any specific request of the Purchaser(s) such as providing additional fitments in his/her/their said Premises, then the above-mentioned date of possession will automatically and correspondingly get extended by the period of such delay. However, it is clarified that THDCL shall send its intimation regarding the handing over of the possession to the Purchaser(s) at his/her address as mentioned in the recitals hereinabove unless modified/altered by way of registered A.D. letter and / or personal receipt of letter regarding the change of address before that at the office of THDCL mentioned herein.
12.	Due date of possession	21/03/2014 (As per BBA page no. 69)
13.	Total sale consideration	Rs. 2,74,81,250/- (As per the payment plan on page no. 90 of complaint)
15.	Amount paid by the complainants	Rs. 2,67,59,985/-

		(As per complainant on Page no. 122)
16.	Offer for possession.	23.03.2017 (As per Page no. 118 of the Complaint)
17.	Possession letter by respondent	11.05.2017 (PAGE NO. 31 of Reply)
18.	Occupation certificate	24.08.2016 (Page no. 118 of Complaint)
19.	Amount of Delay compensation paid by the respondent	Rs. 8,14,619/- (As per Page No. 121 of the complaint)
20.	Car Parking "Spaces"	11.05.2017 (As per Page No. 31 of the Reply)
20.	Car Parking "allotment"	02.02.2018 (As per Page no. 123 of the Complaint)
21.	Conveyance deed	26.08.2021 (Page no. 35 of Reply)

B. Facts of the complaint:

3. The respondent had advertised itself as a very ethical business group that lives on its commitment to delivering its housing projects as per promised quality standards and agreed timelines. The respondent while launching and advertising its new housing project always commits and promises to the targeted consumer that their dream home will be completed and delivered to them within the time agreed initially. They assured the complainants that

they had secured all the necessary sanctions and approvals from the appropriate authorities for the construction and completion of the real estate project sold by them to the consumers in general.

4. In the month of December 2010, the respondent through its business development associate approached the complainants with an offer to invest and buy a flat in the proposed project of the respondent namely "PRIMANTI" in Sector-72, Gurugram.

5. On 22/12/2010, the complainants had a meeting with the respondent at its branch office where it explained the project details and highlighted the amenities of the project with 80% of the property reserved for open spaces. It stated that the project had a state-of-the-art clubhouse, sporting zone, swimming pool, indoor temperature-controlled pool, etc.

6. The respondent represented to the complainants that it is a very ethical business house in the field of construction of residential and commercial projects and in case the complainants would buy the executive floor with 2 car parking space in the project of respondent then they would deliver the possession of proposed executive floor on the assured delivery date as per the best quality assured by it. The respondent further assured the complainants that it had already processed the file for all the necessary sanctions and approvals from the appropriate authorities for the development and completion of the said project on time with the promised quality and specification. The respondent assured that the allotment letter and builder buyer agreement for the said project would be issued to the complainant within one week of the booking to made by the complainant.

7. The complainants while relying upon those assurances and believing them to be true, booked a residential executive floor with 2 car parking space bearing No. EF-10B in the township to be developed by the respondent. Accordingly, the complainants paid Rs. 30,00,000/- as booking amount on 23/04/2011.

8. On 3rd June 2011, the respondent issued an allotment letter to the complainants.

9. After one year on 3rd July 2012, the respondent issued a buyers agreement which consisted of very stringent and biased contractual terms which are illegal, arbitrary, unilateral, and discriminatory in nature, because every clause of the agreement is drafted in a one-sided way and a single breach of unilateral terms of provisional allotment letter by the complainant, will cost him forfeiting of 15% of total consideration value of unit.

10. The respondent exorbitantly increased the net consideration value of flat by adding IBMS of Rs 3,50,000/- and when complainants opposed the unfair trade practices of the respondent they informed that IBMS is just the maintenance security and they are as per the standard rules of government and these are just approximate values which may come less at the end of the project and same can be proportionately adjusted on prorate basis and about the delay payment charges of 18% they said this is a standard rule of company and company will also compensate at the rate of Rs 8 per sq ft per month in case of delay in possession of flat by company. The complainants opposed these illegal, arbitrary, unilateral, and discriminatory terms of the buyer agreement but there is no other option left with the complainant because if the complainants stopped the further payment of installments then that case

respondent would have forfeited 15% of the total consideration value from the total amount paid by the complainants. On 3rd July 2012 builder buyer agreement was executed on similar illegal, arbitrary, unilateral, and discriminatory terms narrated by the respondent in the buyer's agreement.

11. As per clause 4.2 of the said buyer's agreement dated 3rd July 2012, the respondent had agreed and promised to complete the construction of the said premises by 21st March 2014. However, the respondent breached the terms of said buyer agreement as it failed to deliver possession of said flat within the agreed time frame of the builder-buyer agreement.

12. The respondent had raised various demands for the payment of installments on complainants towards the sale consideration of said flat and the complainants duly paid and satisfied all those demands as per the buyer agreement without any default or delay on their part and have also fulfilled otherwise also their part of obligations as agreed in the buyer's agreement.

13. As per Annexure A (payment plan) of the buyer's agreement, the sales consideration for said executive floor was Rs. 2,74,81,250/- (which includes the charges towards Basic Price – Rs 2,53,50,000/- , Govt Charges (EDC &IDC) – 10,56,250/-, IBMS – Rs 3,50,000/-, and Two Car Park – Rs 7,50,000/-) exclusive of Service Tax and GST, but later at the time of possession, the respondent added Rs 1,50,605/- in the name of other charges and Rs 119779/- in the name of Vat charges till March 2014 in sale consideration without any reason for the same, which is illegal, arbitrary, unilateral and unfair. The complainants opposed the increase in sales

consideration at the time of possession but the respondent did not pay any attention to the complainants.

14. The complainants have paid the entire sale consideration along with applicable taxes to the respondent for the said flat. As per the statement dated 25.08.2021 issued by the respondent, the complainants have already paid Rs. 2,84,58,391/- towards total sale consideration and applicable taxes now nothing is pending to be paid on the part of the complainants. Although the respondent charges Rs 1,50,605/- in the name of other charges and Rs 119779/- in the name of VAT charges till March 2014 extra from complainants.

15. The conduct of the respondent highlights that the respondent never ever had any intention to deliver the said flat on time as agreed. The respondent had made all those false, fake, wrongful, and fraudulent promises just to induce the complainants to buy the said flat on the basis of its false and frivolous promises, which it never intended to fulfill. The respondent in its advertisements had represented falsely regarding the delivery date of possession and resorted to all kinds of unfair trade practices while transacting with the complainants.

16. The offer of possession offered by the respondent through "Intimation of Possession" was not a valid offer of possession because the respondent offered the possession on 23rd March 2017 with the stringent conditions to pay certain amounts which were never a part of the agreement. Further, the respondent did not provide the possession of the car parking spaces which were an integral part of said premises. As of 23rd March 2017, the project was delayed by approx four years. The complainants opposed the

offer of possession offered by the respondent because the respondent didn't provide possession of the two-car parking slot as the construction work was going on in the car parking area. The respondent provided the possession of the two car parking slots through a letter dated 2nd Feb 2018, but at the time of completing the possession of said premises (Executive floor), the respondent did not adjust the penalty for delayed possession as per RERA Act 2016. The complainants reminded the respondent that the said premises are offered for possession on 2nd Feb 2018 and the respondent is liable to pay delay possession charges as per RERA Act 2016. As per clause- H of the buyer's agreement car parking space is an integral part of said premises.

17. The respondent also demanded an indemnity-cum-undertaking along with final payment, which is an illegal and unilateral demand. The respondent did not even allow the complainants to visit the property before clearing the final demand raised by the respondent along with the offer of possession. The respondent demanded one year advance maintenance charges from complainants which were never agreed upon under the buyer's agreement.

18. The respondent left no other option to the complainants but to clear all additional demands raised by the respondent along with the offer of possession.

19. The complainants repeatedly Informed the respondent by visiting its office from 2nd Feb 2018 till 25.08.2021 that it is creating an anomaly by not compensating the complainants for delay possession charges at the rate of interest specified in RERA Act 2016. The complainants made it clear to the respondent that, if the respondent did not compensate the complainant for delayed

possession interest then the complainants will approach the appropriate forum to get redressal.

C. **Relief sought by the complainants:**

20. The complainants have sought the following relief(s):
    i. Direct the respondent to pay interest at the rate of 18% on account of delay in offering possession on the amount paid by complainants from the date of payment till the date of delivery of possession.
    ii. Direct the respondent to return Rs 1,50,605/- unreasonably charged in the name of "other charges" after execution of the buyer's agreement.
    iii. Direct the respondent to return the Rs 1,19,779/- payment of HVAT until 31st March 2014.

D. **Reply by the respondent**

21. The respondent had obtained an occupation certificate on 24.08.2016 in respect of the project – Primanti and offered possession to the complainants vide offer of possession dated 23.03.2017 and the same was taken over by the complainants on 11.05.2017 vide possession Letter. All the above occurrences are prior to the application/publication of the RERA Act, 2016 being applied to the State of Haryana. The Haryana Real Estate (Regulation & Development) Authority Rules, 2017 came into effect on 28.07.2017 (HRERA Rules) and the Ld. Authority was constituted thereafter. Even otherwise in terms of HRERA rules the present project does not fall within the definition of an ongoing project over which the Ld. Authority may have jurisdiction.

22. The complainants had booked an executive floor no. B on the ground and first floor in tower EF-10B, admeasuring 3250 sq. ft. for

a total sale consideration of INR 2,74,81,250/- excluding taxes and other charges in the project 'Primanti' situated at sector 72 Gurugram and the said unit was allotted to the complainants vide allotment letter dated 03.06.2011

23. After the allotment of the said apartment, the apartment buyers' agreement (ABA) dated 03.07.2012 was executed with the complainants. As per the terms of the agreement, the respondent has endeavored to complete the construction of the towers and hand over possession to the allottees.

24. Abiding by its contractual obligations, the respondent obtained an occupation certificate on 24.08.2016 and offered possession to the complainants vide an offer of possession dated 23.03.2017. Upon bare perusal of the letter of offer of possession, it is apparent that the respondent has already paid delayed compensation charges as per clause 4.2 of the ABA and adjusted the compensation amount in the final payments outstanding towards the complainants. Further during the development, there was a downward revision in EDC/IDC charges (from INR 325/- to INR 231/-) and the respondent has fairly adjusted the surplus EDC/IDC amount in the final payments, lastly the respondent has clearly specified and explained in the letter of offer of possession that the government has charged Haryana Value Added Tax under the HVAT amnesty scheme to the complainants. As per clause 3.12 (b) & (c) of ABA and agreed terms between the parties any taxes, charges, etc. levied by the government shall be the responsibility of the complainants.

25. The complainants have concealed the material fact that the respondent has already adjusted delayed possession charges amounting to INR 8,14,619/- in the final payments outstanding

towards the complainants at the time of handing over the possession of the apartment to the complainants and this fact is clearly reflected in the possession letter dated 11.05.2017. Further, as per the agreed terms, the respondent also allotted two "slots" of car parking vide letter dated 02.02.2018. Further, the complainants were given 2 car parking "spaces" at the time of possession, and vide the above allocation letter the said allocation was formalized. It is submitted that RFID Nos. 64363 and 64366 for two cars of the complainants were handed over by the respondent at the time of possession. The complainants are trying to paint a picture that the car parking spaces being composite part of the allotment of apartments were given later, which in itself is a factually incorrect and absurd assertion. The complainants have been given only the right to use the car parking slots and no ownership of the said area has been given to the complainants. Given the same, all rights and privileges flowed with the transfer of possession of the apartment and the complainants cannot claim to have acquired the same at a later date.

26. The complainants misinterpreted the facts of the case to cause grave prejudice against the respondent by alleging that possession was offered on 02.02.2018, whereas it was only the parking slots letter, which was issued in February 2018. The possession was offered by the respondent on 23.03.2017 and the complainants took the possession on 11.05.2017 and also have been using the parking space available at the project. Hence the complainants have been sitting in possession of the said apartment since May 2017 and have filed the purported complaint to exploit the respondent to seek undue monetary benefits.

27. The complaint has been filed by the complainants with mala fide intent and as an afterthought after almost five years of taking possession to extort more money from the respondent under the garb of delayed possession compensation. The alleged cause of action of the complainants first arose on 23.03.2017 when the final demand letter along with the offer of possession was made to the complainants and subsequently arose on 11.05.2017 when possession was taken by the complainants, therefore it has been more than 5 years since possession has been taken by the complainants and they have been sitting on their alleged cause. In the entire purported complaint, the complainants have not given any reason for the said delay. There is not even a single communication between the parties whereby the complainants have addressed their grievance regarding the alleged delayed possession compensation to the respondent. Further, there was no subsisting grievance of the complainants at the time of taking possession. Therefore, the present complaint is not maintainable, time-barred, and is liable to be dismissed in limine.
28. The complainants have also executed a conveyance deed on 26.08.2021 which clearly highlights that there was no subsisting grievance of any nature between the parties and this fact has been duly captured in clause 4 of the conveyance deed also. The complainants have executed the conveyance deed with free will and after full satisfaction of their purported grievances
29. The complainants before taking possession of the apartment have made several requests to the respondent for change in specifications of the apartment viz. addition of polycarbonate sheets for shade outside the utility area, additional light points in

the courtyard, additional window in the master bedroom, creation of door in the MS fence in the backside garden, *etc*, and all these alterations and additions were done within the project cost itself. The respondent benevolently and as an exception had accommodated the complainants with additions and alterations in the apartment as per the requirement of the complainants without charging any additional costs. Hence, the complainants have sought unaccountable benefits from the respondent while taking possession of the apartment.

E. Jurisdiction of the authority:

30. 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.

31. 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.I Objection regarding jurisdiction of the complaint w.r.t the apartment buyer's agreement executed before coming into force of the Act.

32. The respondent submitted that the complaint is neither maintainable nor tenable and is liable to be outrightly dismissed as the flat buyer's agreement was executed between the parties before the enactment of the Act and the provision of the said Act cannot be applied retrospectively.

33. 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

agreements have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situations 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."*

34. 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 <u>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</u>. 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."

35. 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.

G. Prayer of the complainants regarding the actual date of the offer of possession.

36. The complainants contend that the offer of possession should be taken as the date of allotment of car parking i.e. 02.02.2018 as the car parking space is part of the unit and the complete possession shall be completed only when the possession of the unit premise as

well as the car parking space is provided. Further, they contend that since the possession was completed only on allotment of car parking spaces, hence the liability to pay delayed possession charges of the respondent ends on 02.02.2018 and not on 23.03.2017 when the possession of the unit premise was given. The respondent on the other hand contends that the complainants were provided "Car parking spaces" along with the offer of possession and the same is highlighted in the intimation dated 11.05.2017. Furthermore, it contends that the BBA dated 03.07.2012 and the allotment letter promises "car parking spaces" which had been duly provided and which have been in use by the complainants.

37. On perusal of the record brought before this Authority, the Authority observes that the complainants have been duly provided car parking spaces from the date of possession itself and that even before the formal allotment, the complainants have been using it. Furthermore, clause 3.3 of the BBA dated 03.07.2012 states that the allottees shall have the "Right to use" the car parking spaces and that they are not the owners of the said land. Furthermore, it states that the Car parking spaces are not part of common areas of residential apartments/executive apartments, etc. The said clause is reproduced below:

> *"3.3 The Purchaser(s) agree/s to pay additional sum of Rs. 7,50,000 for the right to use Car Parking space(s) for his/her/their exclusive use in the Complex, but the Purchaser(s) shall not have any ownership rights over the parking space allotted to him. However, the Purchaser(s) shall be entitled to purchase additional car parking space(s) at a price applicable at the time of allotment of additional car parking subject to availability and at the sole discretion of THDCL. "The Car Parking space would be used exclusively for parking of*

light motorized vehicles and would not be used as storage or put to any other use under any circumstances, inclusive of housing pets, cattle, animals etc. The car parking right shall be an integral part of the Residential Apartment/Executive Apartment/ Executive Floor / Villa and it cannot be detached from the Residential Apartment / Executive Apartment / Executive Floor / Villa. The Purchaser(s) shall not be entitled to sell / deal with the car parking space(s) independent of the Residential Apartment/Executive Apartment/Executive Floor/ Villa and it shall stand automatically transferred along with the transfer of the Residential Apartment/ Executive Apartment / Executive Floor / Villa. All clauses of this Apartment Buyer Agreement and Conveyance Deed, when executed pertaining to allotment, possession, cancellation etc. shall apply mutatis mutandis to the said parking space, wherever applicable. The Purchaser(s) agrees that all such reserved car parking spaces allotted to all occupants shall not form part of common areas of the Residential Apartment / Executive Apartment / Executive Floor / Villa building for the purpose of the declaration, which may be filed by THDCL under Haryana Apartment Ownership Act, 1983."

Therefore, in view of the above, the offer of possession made on 23.03.2017 was valid.

H. Findings on relief sought by the complainants.

H.I Direct the respondent to pay interest on account of delay in offering possession on the amount paid by complainants from the date of payment till the date of delivery of possession.

38. In the instant case, the builder-buyer agreement was executed between the complainants and the respondent on 3rd July 2012, and as per clause 4.2 of the said agreement, the possession was to be handed on or before 21.03.2014. The said clause is reproduced below:

> *"4.2 THDCL shall endeavor to give possession of the said Premises to the Purchaser(s) on or before **21/03/2014** and after providing necessary infrastructure in the sector by the Government but subject to force majeure circumstances and reasons beyond the control of THDCL. THDCL on obtaining the certificate for occupation and use by the Competent Authorities shall hand over the said Premises to the Purchaser(s) for his/her/their occupation and use and subject to the Purchaser(s) having complied with all the terms and conditions of this Agreement."*

39. However, the respondent obtained the occupation certificate only on 24.08.2016, and thereafter the offer of possession was made to the complainants on 23.03.2017. By virtue of the said offer of possession, the respondent raised several demands upon the complainants such as HVAT liability, other charges, EDC/IDC, etc. Furthermore, the respondent also provided delayed compensation to the complainants as per clause 4.2 of the agreement dated 03.07.2012. Thereafter, on 25.08.2021, both the parties executed the conveyance deed thereby settling all their claims and counterclaims.

40. In the instant case, the complainants have approached the Authority post conveyance deed seeking the relief of the delayed possession charge as per sec -18 of the Act of 2016. The respondent contends that since the conveyance deed has been duly executed, no claims remain. On perusal of the record put before this Authority, it is the view of the Authority that the delayed possession charge being a statutory right, the same is available to the allottee(s) even post conveyance deed. On execution of a sale/ conveyance deed, only the title and interest in the said immovable property (herein the allotted unit) is transferred. However, the conveyance deed does not mark an end to the liabilities of a

promoter since various sections of the Act provide for continuing liability and obligations of a promoter who may not under the garb of such contentions be able to avoid its responsibility. The relevant sections are reproduced hereunder:

> *"11. **Functions and duties of promoter.***
>
> *(1) xxx*
> *(2) xxx*
> *(3) xxx*
> *(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. Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.*
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> *(b) be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be;*
>
> *(c) be responsible to obtain the lease certificate, where the real estate project is developed on a leasehold land, specifying the period of lease, and certifying that all dues and charges in regard to the leasehold land has been paid, and to make the lease certificate available to the association of allottees;*
>
> *(d) be responsible for providing and maintaining the essential services, on*

reasonable charges, till the taking over of the maintenance of the project by the association of the allottees;

(e) enable the formation of an association or society or cooperative society, as the case may be, of the allottees, or a federation of the same, under the laws applicable: Provided that in the absence of local laws, the association of allottees, by whatever name called, shall be formed within a period of three months of the majority of allottees having booked their plot or apartment or building, as the case may be, in the project;

(f) execute a registered conveyance deed of the apartment, plot or building, as the case may be, in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees or competent authority, as the case may be, as provided under section 17 of this Act;

(g) pay all outgoings until he transfers the physical possession of the real estate project to the allottee or the associations of allottees, as the case may be, which he has collected from the allottees, for the payment of outgoings (including land cost, ground rent, municipal or other local taxes, charges for water or electricity, maintenance charges, including mortgage loan and interest on mortgages or other encumbrances and such other liabilities payable to competent authorities, banks and financial institutions, which are related to the project): Provided that where any promoter fails to pay all or any of the outgoings collected by him from the allottees or any liability, mortgage loan and interest thereon before transferring the real estate project to such allottees, or the association of the allottees, as the case may be, the promoter shall continue to be liable, even after the transfer of the property, to pay such outgoings and penal charges, if any, to the authority or person to whom they are payable and be liable for the cost of any legal proceedings which may be taken therefor by such authority or person;

> *(h) after he executes an agreement for sale for any apartment, plot or building, as the case may be, not mortgage or create a charge on such apartment, plot or building, as the case may be, and if any such mortgage or charge is made or created then notwithstanding anything contained in any other law for the time being in force, it shall not affect the right and interest of the allottee who has taken or agreed to take such apartment, plot or building, as the case may be;"*

Therefore, the authority observes that the execution of a conveyance deed does not conclude the relationship or mark an end to the liabilities and obligations of the promoter towards the said unit whereby the right, title, and interest have been transferred in the name of the allottee on the execution of the conveyance deed.

41. Furthermore, the same view was held in "CR/4031/2019 and others" in the case titled "Varun Gupta Vs Emmar Mgf Land Ltd." The Authority observed in para 51:

> *"51. The allottees have invested their hard-earned money and there is no doubt that the promoter has been enjoying benefits of and the next step is to get their title perfected by executing a conveyance deed which is the statutory right of the allottee. Also, the obligation of the developer – promoter does not end with the execution of a conveyance deed. The essence and purpose of the Act was to curb the menace created by the developer/promoter and safeguard the interests of the allottees by protecting them from being exploited by the dominant position of the developer which he thrusts on the innocent allottees. Therefore, in furtherance to the Hon'ble Apex Court judgement and the law laid down in the Wg. Cdr. Arifur Rahman (supra), this authority holds that even after execution of the conveyance deed, the complainant allottee cannot be precluded from his right to seek*

> *delay possession charges from the respondent-promoter."*

Hence, the right of delayed possession charge under section 18 is a statutory right that remains alive even post-conveyance deed.

42. In the instant case, the complainants have continued with the project and are 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."*

43. **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.*

44. 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.

45. 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%.**

46. 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;"*

47. 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.

48. 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 4.2 of the agreement executed between the parties on 03.07.2012, the possession of the subject unit was to be delivered on or before 21.03.2014. The respondent failed to hand over possession of the subject unit by that date. 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 03.07.2012 executed between the parties.

49. However, on perusal of records brought before this Authority, a certain amount in the form of delayed compensation has already been paid by the respondent to the complainants and the same has been duly received by the complainants. Therefore, the said amount shall be deducted by the respondent while paying the delayed possession charge as per sec- 18 of the Act of 2016.

50. Accordingly, it is the failure of the promoter to fulfill its obligations and responsibilities as per the agreement dated 03.07.2012 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 due date of possession i.e., 21.03.2014 till the date of the offer of possession i.e.

23.03.2017 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 after deducting the delayed compensation already paid by the respondent to the complainants as per the terms of the agreement to sale signed between them.

H.II Direct the respondent to return the amount unreasonably charged in the name of "other charges" after the execution of the buyer's agreement.

51. The complainants contend that the respondent while handing over the possession of the said unit, raised an unreasonable demand for "other charges" which was not as per BBA signed between the parties. On the other hand, the respondent contends that since the conveyance deed has been executed, no relief for the same lies. On perusal of the record brought before the Authority, the Authority is of the view that the conveyance deed is a final settlement of all the claims and counterclaims that exist between the parties except for the statutory rights. Furthermore, the litigation cannot be allowed to be carried ad infinitum. There is a need to differentiate the "claim of statutory rights" from the "claims of regular nature i.e. non-statutory rights", while the former has the protection of the legislature, whereas the latter does not have such protection. The legislature provides special remedies to protect statutory rights and such rights are above any form of settlement/agreement/contract agreed to by the parties. On the other hand, any claim of a regular nature i.e. non-statutory right is not protected by any legislative law, and they are dealt with by normal processes of trade, transactions, and applicable laws. In the instant case, the right to delayed possession charge is a statutory

relief that is provided by the legislature under the Act of 2016, and therefore the said relief supersedes any agreement/settlement entered into between the parties. Whereas, on the issue of the demand of "other charges", the same not being a statutory relief, it cannot be remedied now as the conveyance deed has been entered into with the free will of both parties. Hence, the demand for "other charges" shall not be quashed.

H.III Direct the respondent to return the payment of HVAT until 31st March 2014.

52. The complainants contend that HVAT liability was raised upon them till 31st March 2014 and that the same should be quashed. On the other hand, the respondent contends that the same has been charged as per Haryana Valued Added Tax, 2003, and has been charged only up till 31st March 2014. On perusal of the record brought before this Authority, the Authority observes that the said demand raised is justified as per the HVAT, 2003. The same view was held by this Authority in "CR/4031/2019 and others" in the case titled "Varun Gupta Vs Emmar Mgf Land Ltd." wherein it was observed that:

> *"The promoter is entitled to charge VAT from the allottee for the period up to 31.03.2014 @ 1.05% (one percent VAT + 5 percent surcharge on VAT) under the amnesty scheme. The promoter shall not charge any VAT from the allottees/prospective buyers during the period 01.04.2014 to 30.06.2017 since the same was to be borne by the promoter-developer only."*

I. Directions issued by the Authority:

53. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure

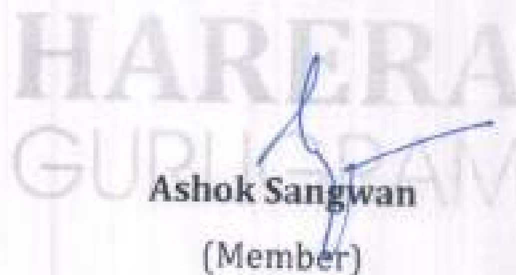
compliance with obligations cast upon the promoter as per the functions entrusted to the Authority under section 34(f) of the Act of 2016:

I. The respondent is directed to pay delayed possession charges to the complainants against the paid-up amount for every month of delay from the due date of possession i.e. 21.03.2014 till the offer of possession i.e. 23.03.2017 plus two 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 after deducting the delayed compensation already paid by the respondent to the complainants as per the terms of the agreement to sale signed between them.

II. 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.

54. Complaint stands disposed of.

55. File be consigned to the Registry.



Ashok Sangwan
(Member)
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 29.11.2023