

**BEFORE THE HARYANA REAL ESTATE REGULATORY  
AUTHORITY, GURUGRAM****Date of Decision:****15.11.2023**

<b>NAME OF THE BUILDER</b>		Gatevida Developers Pvt Ltd. (Formerly known as Lemon Tree Land and Developers Pvt Ltd.)	
<b>PROJECT NAME</b>		"La Vida", Sector- 112& 113 Gurugram	
<b>S. No.</b>	<b>Case No.</b>	<b>Case title</b>	<b>Appearance</b>
1	CR/7299/2022	Sadhna Limited (Formerly known as Apadana Technologies Imports Limited) Vs. Gatevida Developers Pvt Ltd.	Shri Sukhbir Yadav (Advocate) Ms. Sudha & Pawan Bhardwaj (Advocate)
2	CR/7300/2022	Sadhna Limited (Formerly known as Apadana Technologies Imports Limited) Vs. Gatevida Developers Pvt Ltd.	Shri Sukhbir Yadav (Advocate) Ms. Sudha & Pawan Bhardwaj (Advocate)
<b>CORAM:</b>			
Shri Ashok Sangwan			<b>Member</b>

**ORDER**

1. This order shall dispose of both the complaints titled as above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.



2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "La Vida, Sector- 112& 113, Gurugram, being developed by the same respondent/promoter i.e., Gatevida Developers Pvt Ltd. (Formerly known as Lemon Tree Land and Developers Pvt Ltd). The terms and conditions of the buyer's agreements fulcrum of the issue involved in both the cases pertains to failure on the part of the promoter and seeking possession and delayed possession charges.
3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

<b>Project Name and Location</b>		"La Vida", Sector- 112& 113 Gurugram				
<b><u>Possession clause: - 5.2 Possession, Time and Compensation</u></b>						
<b><i>(a) The promoter shall endeavour to give possession of the said Apartment to the PURCHASER(S) on or before October 2020 and subject to provisions of sub-clauses (b), (c), (d) and (e) of this Article and also Force Majeure circumstances and reasons beyond the control of PROMOTER ("Date of Possession").</i></b>						
<b><i>(b) In the event, possession of the said Apartment is delayed beyond the date as agreed hereinabove inter alia for any reason, the PROMOTER shall be entitled to extension of 6 [Six] months ("Extended Duration") for giving possession of the said Apartment.</i></b>						
<b>(Emphasis supplied)</b>						
<b><u>Common details: -</u></b>						
<b>Occupation certificate- 28.10.2021</b>						
<b>Offer of possession- 31.10.2021</b>						
<b>Sr . no.</b>	<b>Complain t no/ title/date of filing</b>	<b>Date of executi on of agreem ent</b>	<b>Unit no. and area admeasuri ng</b>	<b>Due date of possessi on</b>	<b>Total Sale consideratio n and amount paid</b>	<b>Relief</b>
1.	CR/7299 /2022	10.02.20 17	B2-G01, Ground	April 2021	Rs. 1,57,73,667/-	1. To set aside the cancellation



			floor, Tower-B2 Area- 1089 sq. ft.			letter dated 07.11.22. 2. DPC 3. Direct the respondent to change the name of the complainant from Apadana Imports Limited to Sadhna Limited
2.	CR/7300 /2022	10.02.20 17	B2-G06, Ground floor, Tower-B2 Area- 1085 sq. ft.	April 2021	Rs. 1,53,16,087/-	1. To set aside the cancellation letter dated 07.11.22. 2. DPC 3. Direct the respondent to change the name of the complainant from Apadana Imports Limited to Sadhna Limited

4. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter /respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
5. The facts of both the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of **complaint case bearing no. 7299 of 2022 case titled as Sadhna Limited (Formerly known as Apadana Technologies Imports Limited) Vs. Gatevida Developers Pvt Ltd.** is being taken as a lead case in order to determine the rights of the allottee(s) qua delayed possession charges and Possession.



**A. Unit and project related details**

6. 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:

Sr. No.	Particulars	Details
1.	Name of the project	La Vida, Sector- 112& 113 Gurugram
2.	Total area of the project	21.04375 acres
3.	Nature of the project	Group housing project
4.	DTCP license no.	105 of 2011 dated 11.12.2011 valid upto 10.12.2021 85 of 2012 dated 29.08.2012 valid upto 28.08.2018 86 of 2012 dated 29.08.2012 valid upto 28.08.2025
5.	Name of licensee	1. ABAG Hi-Tech Education Pvt Ltd 2. CSN Estates Pvt Ltd 3. Om Parkash 4. Naveen S/o S.P. Gupta 5. A.N. Buildwell Pvt. Ltd. 6. Bhay Ram S/o Lakhmi Chand
6.	Registered/not registered	Registration no. 148 of 2017 dated 28.08.2017 valid upto 31.12.2022
7.	Date of allotment	29.08.2016 (Page 48 of the complaint)
8.	Unit no.	B2-G01, Ground floor, Tower-B2
9.	Area of the unit	1089 sq. ft.
10.	Date of execution of buyer's agreement	10.02.2017 (Page 75 of the complaint)

11.	Possession clause	<p><b>5.2 Possession, Time and Compensation</b></p> <p><i>(a) The promoter shall endeavour to give possession of the said Apartment to the PURCHASER(S) on or before October 2020 and subject to provisions of sub-clauses (b), (c), (d) and (e) of this Article and also Force Majeure circumstances and reasons beyond the control of PROMOTER ("Date of Possession").</i></p> <p><i>(b) In the event, possession of the said Apartment is delayed beyond the date as agreed hereinabove interalia for any reason, the PROMOTER shall be entitled to extension of 6 [Six] months ("Extended Duration") for giving possession of the said Apartment.</i></p>	
12.	Due date of possession	April 2021 (Grace period of 6 months allowed)	
13.	Basic sale consideration	Rs. 1,57,73,667/- (As per BBA page 80 of the complaint)	
14.	Total amount paid by the complainant	Rs. 49,83,840/-	
15.	Occupation certificate	28.10.2021 (Page 38 of the reply)	
16.	Offer of possession	31.10.2021 (Page 187 of the complaint)	
16	Reminders	1 <sup>st</sup> reminder	21.12.2021
		2 <sup>nd</sup> reminder	02.02.2022
		Last and final reminder	08.08.2022
17	Cancellation dated	07.11.2022 (Page 251 of complaint)	

18.	Request sent by the complainant to the respondent for the change the name of company i.e. Apandana Technologies imports limited to Sadhna Limited on	20.07.2021, 28.07.2022	13.08.2021	and
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**B. Facts of the complaint**

7. The complainant pleaded the complaint on the following facts:

- i. That in April 2016, the Chairman-cum-Managing Director of the Complainant i.e. Sadhna Limited (Formerly known as Apadana Technologies Imports Limited) received a marketing call from a real estate agent and the caller represented himself as an authorized agent of the Respondent and marketed an upcoming project under the flagship of "TATA HOUSING" by the name of "La Vida Sector 113". The project La Vida was jointly promoted by Sidhartha and Tata Housing. The marketing staff of the Respondent allured the Complainant with a glazy picture of the project and had propounded that the Project would consist of "Elegant and modern design, landscaped to create a peaceful living environment". The prime focus of such advertisements was placed on claims that the tower would be a 'Dream Abode', catering to the needs of discerning buyers, and that construction will be undertaken as per the highest industry standards, the possession will be given on time and the units therein shall be delivered to the complete satisfaction of the buyers, in compliance with the promises made.
- ii. That the complainant along with the real estate agent visited the local sales office of the respondent and the project site as well. There, the complainant meets with the marketing staff and other office bearers of the respondent. The marketing staff of the

respondent allured the complainant with the glazy advertisement for booking and assured that the project shall be one such creation that combines contemporary architecture and natural harmony. The elegance of architecture defined by super stylish design and impeccable luxury which is sure to raise your head high and heart filled with pride. It was also presented that the selected Flat is a garden and corner facing and the complainant will have direct access to the garden. The Marketing staff of the respondent also confirmed that possession of the flat will be handover to the complainant on or before October 2020.

- iii. That on 16.05.2016, the complainant i.e. Sadhna Limited (Formerly known as Apadana Technologies Imports Limited) believing in the representation of the Respondent booked a unit bearing No. G06, on the Ground Floor in Tower - B2 having a carpet area of 1085 sq. ft. and super area of 1573 sq. ft. in the project for a total sale consideration of Rs. 1,53,16,087/- under Possession link payment plan and paid Rs. 4,50,000/- on 16.05.2016 through a cheque drawn on HDFC Bank, Delhi and Rs. 50,000/- as booking amount through NEFT in favour of Respondent's given account. The respondent issued the payment receipts of both payments on 23.08.2016.
- iv. That on 29.08.2016, the Respondent issued an allotment letter and welcome letter for the apartment bearing no. B2-G06 in the name of the complainant i.e. M/s Apadana Technologies Imports Limited. That on 31.08.2016, the respondent issued a demand note and asked for the payment of Rs. 11,13,434/- and the complainant made a payment of Rs. 11,13,434/-) through cheque dated



- 30.08.2016 drawn on HDFC Bank, Delhi therefore, the respondent issue the receipt for the same on 03.09.2016.
- v. That on 01.09.2016, the complainant received another demand note for Rs. 8,06,717/- and the same was paid by the complainant on 28.09.2016 Rs. 7,83,743/- after deducting the TDS and the respondent issued the receipt for this payment on 29.09.2016. That the complainant, submitted Form 26 QB of Rs. 31,041/- along with challan on 05.10.2016 and the respondent issued the payment receipt for the same on 05.10.2016.
- vi. Thereafter, a demand note dated 01.11.2016 was issued by the respondent party and asked for a payment of Rs. 8,06,990/-. It is pertinent to mention here that said demand contains the interest due also which was not justifiable, therefore, the Complainant sent a letter dated 9.11.2016 to the respondent with payment details and asked for withdrawal of the levied interest and requested to correct the demand note of November 2016 to be paid on 30.11.2016 by crediting the excess amount paid by the complainant. It is further pertinent to mention here that the complainant has paid an excess amount of Rs. 33,660/-. It was also mentioned by the complainant that the demand raised by the respondent in the demand note dated 01.11.2016 will be paid only after correction. But the respondent did not correct the said demand, therefore, under protest, on 30.11.2016, the complainant paid Rs. 7,64,989/- against the demand note dated 01.11.2016 and the Respondent issued the payment receipt for the same.
- vii. That the complainant, submitted Form 26QB of Rs. 9295/- to the Respondent on 16.11.2016, and the respondent issued the



payment receipt for the same on 16.11.2016. That on 02.12.2016, the complainant received a demand note dated 02.12.2016 for Rs. 8,06,717/- and the complainant paid Rs. 7,99,058/- through cheque after deducting the TDS Rs. 7659/- and cheque and TDS details were submitted with the Respondent. The respondent issued the payment receipts for the said payment on 31.12.2016 & 02.01.2017 respectively.

- viii. That after a long follow-up on 10.02.2017, after payment of more than 30% of total sale consideration, a pre-printed, unilateral, arbitrary builder buyer agreement/flat buyer agreement ( hereinafter called the "BBA/FBA") for Unit No: GF-6 in tower-B2 at La Vida, Sec-113 was executed inter-se the Respondent and the complainant. As per clause 5.2(a) of the Flat Buyer Agreement, the Respondent was obligated to hand over possession of the Unit on or before October 2020. It is, therefore, submitted that the due date of possession was October 2020.
- ix. That on 22.11.2017, the complainant received an intimation letter sent by the respondent for the registration of the Apartment Buyer's Agreement for Unit No. GF-6 in tower-B2 at Project "La Vida, Sec-113" Gurgaon and asked for the payment of Rs 11601/-. It is pertinent to mention here that the builder-buyer agreement for the complainant's unit had already been executed on 10.12.2017. Despite that fact, the respondent sent a letter on 12.12.2017 and a reminder letter dated 21.02.2018.
- x. That on 20.07.2021, Pavan Sachdeva (Chairman-cum-MD of M/s Apadana Technologies Imports Limited) intimated the respondent via email that the name of M/s Apadana Technologies Imports

Limited has been changed to Sadhna Limited. In reference to the complainant's email dated 20.07.2021, the respondent (Tata Housing) sent an email on 09.08.2021 and asked the complainant to provide a request letter, GST number and PAN number in the new name of the company. It is pertinent to mention here that on 13.08.2021, the complainant Sadhna Limited (Formerly known as Apadana Technologies Imports Limited) provided all the required documents (Request Letter, Registration Certificate, PAN and Incorporation Certificate) for the name change process and on 15.08.2021, two emails were received by the complainant Sadhna Limited (Formerly known as Apadana Technologies Imports Limited) that the respondent acknowledged all the documents sent by the complainant in first mail and in second mail it was stated by the respondent that the request made by the complainant for the name change has been actioned by the relationship manager of the respondent. It is relevant to mention here that as per the respondent's statements the name change process was initiated on 15.08.2021 but the name M/s Apadana Technologies Imports Limited has not been changed to Sadhna Limited till now.

- xi. That on 31.10.2021, the respondent issued an Offer of Possession in the name of Apadana Technologies Imports Limited and asked for remittance of Rs. 1,16,65,599/- under different heads. It is pertinent to mention here that after being requested by the complainant the respondent did not change the name of "Apadana Technologies Imports Limited" to "Sadhna Limited" and issued the Offer of Possession in the same name as it was earlier. Therefore, the offer of possession issued by the respondent is not

acceptable and valid as well since the name of the company has been changed to Sadhna Limited. It is further highly pertinent to mention here that the due date for handing over possession was October 2020 and the respondent issued the offer of possession after 1 year from the due date. It is further pertinent to mention here that the project of the Respondent/builder is registered with HARERA vide registration No. 148 of 2017, therefore, the Respondent has to comply with the provision of the Act and the rules and regulations made thereunder, but despite of the that the Respondent/Builder not paid the delayed possession interest from the due date of possession till offer of possession.

- xii. That the Complainant kept chasing the Respondent for a change in the name of the Company, thereafter, on 25.11.2021, the Respondent sent an email stating "This is with reference to the mail in trail, we have already taken up your request internally for changing the company name, however kindly allow us some more time to get back to you on this matter". The respondent also asked to remit the dues as per the Offer of Possession letter. It is pertinent to mention here that the complainant made several requests for the name change and to send the updated offer of possession so that the dues mentioned in the offer of possession could be remitted but neither the name change process has been initiated nor the offer of possession is updated by the respondent till now. The complainant is willing to pay all the dues, however, the respondent's actions are not allowing the complainant to continue with the payments. It is further pertinent to mention here that

- there is a default on the part of the respondent from the very beginning.
- xiii. That on 21.12.2021, the respondent sent the Possession Reminder Letter to the complainant and asked to clear the dues as mentioned in the offer of possession letter. Thereafter, immediately CMD of the complainant visited the site and was surprised to see that the entire site was full of dust and construction was going on with the sales office of the respondent having a huge number of staff members of the respondent and prospective customers at the opposite of the allotted apartment which was found to be not habitable. Thereafter the complainant sent two emails dated 22.12.2021 and 24.12.2021 and a letter dated 27.12.2021 in revert to the Possession Reminder Letter.
- xiv. It is pertinent to mention here that on 27.12.2021, the complainant sent a letter to the Respondent and raised his grievance, moreover, the respondent failed to keep its promises as it was promised by the respondent at the time of booking that the complainant's Flat will have a garden and corner facing and the complainant will have direct access to the garden from its Flat. Not only this, it is highly germane to mention here that the respondent has established its commercial sales office in front of the residential flats which is illegal in the eye of the law. Apart from this, the Flat was not fully developed as the door fixing and other basic amenities were remaining and the flat was sealed when the complainant visited the project site.
- xv. That on 04.01.2022, the complainant sent a letter dated 04.01.2022 and on 06.01.2022, the Respondent sent an email to

the Complainant, but same was without reply to specific queries raised by the Complainant, therefore on 10.01.2022, the Complainant sent an email to the Respondent stating that "the reply received on 6.1.2022 is not resolving our grievance submitted to you. Please be specific pointwise to the grievance for not paying balance installments and for not taking possession". It is pertinent to mention here that the respondent kept on asking for the payment of the due balance but never listened to even a single request made by the complainant. It is further pertinent to mention here that the respondent always ignored the requests made by the complainant and till today has not taken any action toward the grievances raised by the complainant. The respondent party was doing all these things deliberately so that it could take benefit from the hard-earned money of the complainant. The intentions of the respondent were malafide from the initial stage.

- xvi. That on 02.02.2022, the Respondent sent Possession Reminder Letter-2 to Apadana Technologies Imports Limited through email, thereafter sent a hard copy of the same and asked to pay the amount as per the demand letter to which the complainant through email dated 04.02.2022 informed the respondent that for all purposes they are not ready to handover possession for the reasons given in the mail to which respondent replied through email dated 04.02.2022 without resolving out the grievances pointed out in email dated 04.02.2022.
- xvii. That on 18.02.2022, the complainant again sent an email to the respondent and requested to change the name of M/s Apadana Technologies Imports Limited to Sadhna Limited as the

- complainant submitted all the required documents for the name change on 13.08.2021.
- xviii. That on 17.03.2022, the respondent sent an email to the complainant stating that "your request 00683543 has been created and your relationship manager will respond to you within next 10 days." It is pertinent to mention here that it already has been more than 6 months since the complainant submitted the request for the name along with all the required documents and it is still pending on the respondent's part. That on 11.07.2022, the respondent sent an email to the Complainant for audit confirmation, that a balance of Rs. 45,94,825/- is advanced as on 31.3.2020 to which it was confirmed by the complainant that the company has been changed to "Sadhna Limited" as already informed.
- xix. That on 08.08.2022, the complainant received a "Last & Final Reminder Letter" sent by the respondent. It was stated by the respondent in the said letter that if the balance amount is not paid by the complainant then the respondent shall terminate the booking without any notice. It is pertinent to mention here that the above-said letter was also addressed to the former name, and it is difficult to pay the amount against any invoice raised in the name of M/s Apadana Technologies Imports Limited, moreover, the flat was not completed as per specifications given in the brochure and as promised by the Respondent at the time of receiving the booking amount. It is further pertinent to mention here that on 11.08.2022, the Complainant sent another grievance email to the Respondent.
- xx. That on 26.08.2022, a letter containing all the grievances of the complainant through speed post was sent by the complainant to



the respondent, and on 26.09.2022 an email was received from the respondent to confirm the advance amount Rs. 39,44,884/- as on 31.03.2022 to which the complainant informed that the balance shown is wrong and the correct amount advanced is Rs. 49,74,238/- and is in the name of "Sadhna Limited" to which no response was received which is deemed to be admitted by the respondent. That on 03.10.2022, an email was sent by the Complainant to the respondent to sort out the grievances before demanding the balance payment.

- xxi. That on 07.11.2022, a cancellation letter for Unit B2-0006 was sent to Apadana Technologies Imports Limited which was received on 10.11.2022, and the email was received on 9.11.2022 at 4.56 pm. It is pertinent to mention here that the respondent deliberately and intentionally did not consider any request of the complainant so that it could cancel the booking of the complainant's flat and get benefitted from the money deposited by the complainant under the head of forfeited money. Further, it is again pertinent to mention here that the said threatening of cancellation within 15 days from the date of the letter dated 7.11.2022 is illegal as per law.
- xxii. That the main grievance of the Complainant in the present complaint is that despite the Complainant having paid more than 30% of the actual amounts of the Unit in the year 2016-2017 and was ready and willing to pay the remaining amount (due if any), the Respondent has failed to deliver the possession of the Unit in a timely manner and as per the promises and representations, along with the proposed amenities. The respondent has also failed to change the name of the company from Apadana Technologies

Imports Limited to Sadhna Limited. The respondent has not provided a fully developed Flat with all amenities and also, the respondent has illegally threatened to cancel the booking of the complainant's Flat and forfeit the major amount.

- xxiii. That it was promised at the time of receiving the booking amount for the Unit that the possession of the fully constructed unit along with corner and garden facing which will have open access to the garden etc. as shown in the Brochure, would be handed over to the Complainant as soon as construction work is complete.

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

8. The complainant has sought following reliefs:

- i. Direct the respondent to set aside the cancellation letter dated 7.11.2022 and email dated 9.11.2022 of booking/set aside the cancellation if already done.
- ii. To get delayed possession charges from the due date of possession i.e. October 2020 till handing over the unit after making the flat habitable.
- iii. To get possession of a fully developed Unit along with all the basic amenities.
- iv. The respondent party may kindly be directed to change the name of the complainant from M/s Apadana Imports Limited to Sadhna Limited.

**D. Reply by the respondent/promoter**

9. The respondent has raised certain preliminary objections and has contested the present complaint on the following grounds:



- i. That the Complainant has approached the Authority with unclean hands and has tried to mislead the Authority by making incorrect and false averments and stating untrue and/or incomplete facts and, as such, is guilty of "suppression very and suggestio falsi". The Complainant has suppressed and/or mis-stated the facts and, as such, the Complaint apart from being wholly misconceived is rather the abuse of the process of law.
- ii. It has been admitted position that company formerly known as 'Apadana Technologies Imports Limited' had booked an Unit bearing no. G-01 (Tower-B2) on Ground Floor, admeasuring 1089 sq. ft. of carpet area (hereinafter referred to as the said 'Unit') for total sale consideration of Rs.1,57,73,667/- in the project 'La Vida' and the said unit was allotted to the Complainant vide allotment letter dated 29.08.2016. It is imperative to highlight here that the complainant had also booked another unit bearing no. G-06 (Tower-B2) on Ground Floor in the same project under the same possession-linked plan. It is apparent from the pleadings of the Complaint that they are speculative buyers and had invested in the booming real estate market of the time, to make quick gain from their investment however, due to slump in the prices of the property and overall downturn in the real estate market, the Complainant unable to realize anticipated gains from the real estate market, kept on avoiding the demands being raised by the Respondent in terms of the Apartment Buyer's Agreement and despite several reminders did not come forward to fructify the sale transaction and remained a silent spectator, as the Respondent cancelled the allotment of the unit to the Complainant, in terms of

the Buyers Agreement. Hence it is self- evident and clearly shows that the Complainant being a company admittedly purchased the units for earning profits.

- iii. After the booking and allotment of the said unit by the Complainant a Builder Buyer Agreement (BBA) was executed on 10.02.2017 between the parties. As per the agreed terms of the Apartment Buyer Agreement possession of the unit was due on or before October, 2020 along with 6 months of grace period subject of force majeure events and having regard to the same the Respondent offered possession on 31.10.2021 after receipt of occupation certificate on 28.10.2021. Despite that the Complainant had failed to fulfill their contractual obligations and did not clear the outstanding balance upon offer of possession. Pertinently vide letter of offer of possession the Respondent duly informed the Complainant regarding the outstanding dues via final demand letter and the outstanding dues were payable by on or before 30.11.2021. Further the Respondent has already adjusted and paid delayed possession compensation charges to the tune of Rs. 1,37,937/- as per the agreed terms of the BBA while offering possession to the Complainant. Hence the allegations leveled by the Complainant in the captioned complaint are baseless and the complaint has been filed with sole intent to extort money from the Respondent.
- iv. The Complainant is a chronic defaulter and has filed the instant complaint before the Authority with mala fide intent. As stated above, the Respondent had offered possession of the Unit to the Complainant vide letter dated 31.10.2021 after receipt of

Occupation Certificate dated 28.10.2021 and as per the agreed terms of payment plan the Complainant was under contractual obligation to make payment of outstanding balance which is the substantial component of the total sale consideration. Since at the time of booking Complainant had opted for possession linked plan whereby 70% of the total sale consideration was due at the time of offer of possession. After the receipt of offer of possession, the Complainant was not forthcoming with outstanding payments to take possession of the unit. The Respondent even sent reminder letters dated 21.12.2021, 02.02.2022 and 08.08.2022 to the Complainant calling for payment of outstanding balance. However, the Complainant did not make the payment despite several reminders. Pertinently, the Respondent completed the construction from its own money and capital for most part of the project and accordingly completed the project. Despite all that, the Complainant completely failed to make payment and take possession of the Unit and chose to file the instant complaint after the cancellation of the allotment, which was occasioned due to its deliberate and continuous defaults. The terms of payment plan are fair and consumer friendly and were in the explicit knowledge of the Complainant. Despite such fairness and consumer friendly terms, the Complainant filed the present complaint making false accusations with sole intention to cause loss to the Respondent.

- v. It is pertinent to mention here that due to complainant's default to make outstanding payments and accept possession, Respondent was constrained to cancel the allotment vide cancellation letter 07.11.2022. The complainant has adopted arbitrary and whimsical

conduct since the beginning and Respondent has suffered losses due to the mala fide intentions of the Complainant and deliberate delay in taking possession of the Unit. Hence the cancellation of the unit is justified, reasonable and due to defaults of the Complainant itself. Pertinently after the payment reminders were sent to the Complainant for outstanding dues against the Unit, the complainant came up with false, frivolous allegations which are duly captured in email dated 24.12.2021 (*annexed at page 205 of complaint*) whereby the complainant was implying that the Complainant will not make outstanding payments and take possession of the unit unless entire construction of the complex is not completed, whereas all the necessary approvals and Occupation certificate has already received by the Respondent. Therefore, the allegations made by the Complainant were ill founded with sole intent to wriggle out of its contractual obligation to clear outstanding amounts. The entire conduct of the Complainant only highlights mala fide intention. The Respondent is incurring losses in maintaining the unit after offer of possession due to Complainant's defaults in payments.

- vi. That in the entire complaint the Complainant has only casted false aspersions and allegations upon the Respondent that Respondent failed to change the name of the Complainant from 'Apadana Technologies Imports Limited' to "Sadhna limited". However, the process for change of name has been time and again informed and explained to the Complainant via written as well as telephonic communications, which the Complainant has failed to bring on record in the captioned complaint. When complainant kept on



levelling false accusations over email(s) particularly dated 26.08.2022 regarding invalid offer of possession and change of name, the Respondent sent a letter dated 04.10.2022 to the Complainant whereby categorically denying all the allegations and further informing that, *"As informed you time and again, as a process we cannot do any changes in the name of the allottee, unless the entire outstanding dues are cleared. As stated by you, in your letter under reply, if the name of the allottee has change, you may make the payment from the changed name and upon clearance of the dues, we will issue the receipt in the new name after changing our records.* Despite having categoric knowledge about the process of name change, the Complainant instead of following the process, opted to deliberately default in payments and file the captioned complaint with replete facts.

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

#### **E. Jurisdiction of the authority**

11. 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**

12. 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

13. 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)(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, plot or buildings, as the case may be, to the allottees are executed.*

### **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.*

14. 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 as per provisions of section 11(4)(a) of the Act 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 relief sought by the complainant

15. Relief sought by the complainant:

- F.I To set aside the cancellation letter dated 7.11.2022 and email dated 9.11.2022 of booking/set aside the cancellation if already done.
- F.II To get delayed possession charges from the due date of possession i.e. October 2020 till handing over the unit after making the flat habitable.
- F.III To get possession of a fully developed Unit along with all the basic amenities.
- F.IV The respondent party may kindly be directed to change the name of the complainant from M/s Apadana Imports Limited to Sadhna Limited.
16. The counsel for the complainant states that the subject unit was allotted on 29.08.2016 under the possession linked payment plan to the complainant. That the builder-buyer agreement for the complainant's unit had already been executed on 10.02.2017. That on 20.07.2021, Pavan Sachdeva (Chairman-cum-MD of M/s Apadana Technologies Imports Limited) intimated the respondent via email that the name of M/s Apadana Technologies Imports Limited has been changed to Sadhna Limited. Request letter is dated 13.08.2021. as per the respondent's statements the name change process was initiated on 15.08.2021 but the name M/s Apadana Technologies Imports Limited has not been changed to Sadhna Limited till now.
17. However, no heed was paid to the request by the respondent and the complainant is unable to proceed further to make payments or take possession of the allotted apartment being a limited company and presently under a new name. That on 31.10.2021, the respondent issued an Offer of Possession in the name of Apadana Technologies Imports Limited and asked for remittance of Rs. 1,16,65,599/- under different heads. The Respondent sent an email stating "*This is with*

reference to the mail in trail, we have already taken up your request internally for changing the company name, however kindly allow us some more time to get back to you on this matter". The unit of the complainant was cancelled by the respondent on 07.11.2022 on account of non-payment and the cancellation is invalid on grounds already stated above. The Complainant having paid more than 30% of the actual amounts of the Unit in the year 2016-2017 and was ready and willing to pay the remaining amount the Respondent has failed to deliver the possession of the Unit in a timely manner and as per the promises and representations, along with the proposed amenities. The respondent has also failed to change the name of the company from Apadana Technologies Imports Limited to Sadhna Limited.

18. On the other hand the counsel for the respondent states that the due date for offer of possession was October 2020. The respondent obtained occupation certificate from the concerned authorities and after Offer of possession was made on 31.10.2021. The complainant was required to pay balance 70% of the amount on offer of possession and is avoiding to pay the same on account of various excuses (page 205 of the complaint). So far as the request for change of name is concerned, the requirement was conveyed to the complainant several times and final letter was sent on 04.10.2022 (page 49 of the reply R4). The unit was finally cancelled after sending several reminders.
19. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges along with interest on the amount paid. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the

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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.

***"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."*

20. Clause 5.2 of the builder buyers agreement provides for handing over of possession and is reproduced below:

***"5.2 Possession, Time and Compensation***

***(a) The promoter shall endeavour to give possession of the said Apartment to the PURCHASER(S) on or before October 2020 and subject to provisions of sub-clauses (b), (c), (d) and (e) of this Article and also Force Majeure circumstances and reasons beyond the control of PROMOTER ("Date of Possession").***

***(b) In the event, possession of the said Apartment is delayed beyond the date as agreed hereinabove interalia for any reason, the PROMOTER shall be entitled to extension of 6 [Six] months ("Extended Duration") for giving possession of the said Apartment.***

21. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment on or before October 2020 plus 6 months for giving possession of the said Apartment. The authority calculated due date of possession according to clause 5.2 of the agreement dated 10.02.2017 i.e. on or before October 2020. Since in the present matter the BBA incorporates unqualified reason for grace period/extended period of 6 months in the possession clause subject to

force majeure circumstances. Accordingly, this grace period of 6 months shall be allowed to the promoter at this stage.

22. **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 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.”*

23. 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.
24. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., **15.11.2023** is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.
25. The definition of term ‘interest’ as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:



*"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*

*Explanation. —For the purpose of this clause—*

*(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.*

*(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

26. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., **10.75%** by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.
27. On the documents and submission made by the parties, the authority observes that the builder buyer agreement was executed between the parties on 10.02.2017 and the complainant was required to pay instalments as per the possession linked payment plan. That on 20.07.2021, Pavan Sachdeva (Chairman-cum-MD of M/s Apadana Technologies Imports Limited) intimated the respondent via email that the name of M/s Apadana Technologies Imports Limited has been changed to Sadhna Limited. Request letter is dated 13.08.2021. As per the respondent's statements the name change process was initiated on 15.08.2021 but the name M/s Apadana Technologies Imports Limited has not been changed to Sadhna Limited till now. Many reminders were sent by the complainant regarding the name change of the company. However, the respondent had not change the name and the complainant is unable to proceed further to make payments or take possession of the allotted apartment being a limited company and presently under a new name. That on 31.10.2021, the respondent issued an Offer of Possession after obtaining occupation certificate

dated 28.10.2021 in the name of Apadana Technologies Imports Limited and asked for outstanding payment of Rs. 1,16,65,599/-. That the respondent issued full and final reminder letter dated 08.08.2022 to the complainant thereafter, the unit was cancelled by the respondent on 07.11.2022 on account of non-payment. Therefore, there is no reason why the respondent did not change the name of the complainant after many requests made through emails by the complainant. Thus, the said cancellation letter dated 07.11.2022 cannot be held valid in the eyes of law. The termination made by the respondent vide letter dated 07.11.2022 is hereby set aside and respondent is directed to restore the allotted unit of the complainant within a period of 30 days from the date of this order in the name of Sadhna Limited and issue a fresh statement of account as per builder buyer's agreement with prescribed rate of interest i.e., 10.75% p.a. on the outstanding amount towards complainant/allottee as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017. It is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. By virtue of clause 5.2 of the flat buyer's agreement executed between the parties on 10.02.2017, possession of the booked unit was to be delivered on or before OCTOBER 2020 plus 6 months grace period which comes out to be April 2021. The complainant is directed to pay outstanding amount if any, after adjustment of delayed possession charges within a period of next 30 days.

28. The respondent-builder is further directed to handover the possession of the allotted unit complete in all aspects as per specification of buyer's agreement within 60 days from date this order failing which non-compliance of the mandate contained in section 11 (4)(a) of the Act on the part of the respondent shall be established and accordingly, the complainant shall be entitled for delayed possession charges @10.75% p.a. w.e.f from due date of possession i.e. April 2021 till offer of possession plus two months or actual handing over of possession, whichever is earlier as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

**G. Directions of the authority**

29. Hence, the authority hereby passes this order and issue 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):

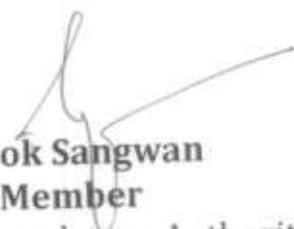
- i. The termination made by the respondent vide letter dated 07.11.2022 is hereby set aside and respondent is directed to restore the allotted unit of the complainant within a period of 30 days from the date of this order in the name of Sadhna Limited and issue a fresh statement of account as per builder buyer's agreement with prescribed rate of interest i.e., 10.75% p.a. on the outstanding amount towards complainant/allottee.
- ii. The respondent is directed to handover the possession of the allotted unit to the complainant complete in all aspects as per specifications of buyers agreement within 60 days from date of

this order, falling which non-compliance of mandated contained in section 11(4)(a) of the Act on the part of the respondent shall be established and accordingly, the complainants shall be entitled to delay possession charges @ 10.75% per annum w.e.f. from due date of possession i.e., April 2021 till actual handing over of possession whichever is earlier as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

- iii. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order and thereafter monthly payment of interest be paid till date of handing over of possession shall be paid on or before the 10<sup>th</sup> of each succeeding month.
- iv. The rate of interest chargeable from the allottees 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 allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- v. The respondent shall not charge anything from the complainants which is not part of the buyer's agreement.

30. Complaint stands disposed of.

31. File be consigned to the registry.

  
**Ashok Sangwan**  
**Member**

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 15.11.2023