

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

Complaint no. : 2062 of 2022
Date of complaint : 17.05.2022
Date of order : 06.03.2024

Late Mr. Ravinder Singh Thakran,
(Through Legal Heirs)
1. Mr. Pukhraj Singh Thakran,
2. Mrs. Pawan Thakran,
Both R/o: 335/18, Civil Lines, Gurugram-122001.

Complainants

Versus

M/s Revital Realtech Private Limited.
Regd. office: 1114, 11th Floor, Hemkunt Chamber,
89, Nehru Place, New Delhi- 110019.

Respondent

CORAM:
Ashok Sangwan

Member

APPEARANCE:
Gaurav Rawat (Advocate)
Bhrihu Dhani (Advocate)

Complainants
Respondent

ORDER

1. This complaint has been filed by the complainant/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 thereunder or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S.N.	Particulars	Details
1.	Name of the project	"Aadri", Sector- 79, Gurugram
2.	Project area	102.7 acres area
3.	Nature of project	Residential Plotted Colony
4.	RERA registered/not registered	Not Registered
5.	DTPC License no.	137 of 2014 dated 27.08.2014
6.	Validity status	26.08.2019
7.	Name of licensee	Revital Reality Private Limited and others
8.	Unit no.	R0020000E1P0001, Block-E-1, (as per allotment letter on page no. 25 of the complaint)
9.	Unit measuring	153 sq mt. (as per allotment letter on page no. 25 of the complaint)
10.	Allotment letter	10.04.2015 (page no. 24 of complaint)
11.	Date of execution of buyer's agreement	Not executed
12.	Possession clause	23. Possession of allotted plot The possession of the allotted plot shall be given by September 2017, with the extended grace period of 6 (six) months. (Page no. 31 of the complaint)
13.	Due date of possession	30.03.2018 [Calculated as per possession clause] (Grace period is allowed being unqualified)
14.	Total sale consideration	Rs.49,52,450/- (As per allotment letter on page no. 25 of the complaint)

15.	Total amount paid by the complainants	Rs.25,16,250/- (As per payment proof submitted by the complainants)
16.	Occupation certificate	Not yet obtained
17.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint: -
- I. That the first allottee namely Sh. Ravinder Singh Thakran died on 19.09.2018. Therefore, the present complainant has been filed by second allottee Mrs. Pawan Thakran and his respective legal heir namely Mr. Pukhraj Singh Thakran on behalf of the deceased.
 - II. That based upon the promises and commitment made by the respondent, the complainants booked a unit/plot admeasuring 153 sq.mt., in the project of the respondent named "Aadri", Sector 79, Gurugram. Thereafter, an allotment letter dated 10.04.2015 was executed between the parties vide which a unit bearing no. R0020000E1F0001, Block-E1, admeasuring 153 sq. mt. was allotted to them for a total sale consideration of Rs.49,52,450/- against which the complainants have paid an amount of Rs.25,16,250/- in all in a time bound manner.
 - III. That as per clause 3 of the allotment letter, if buyer fails to pay due instalments within stipulated period, the respondent could cancel the agreement and forfeit the earnest money, without giving any notice to buyer which in itself is perverse in nature. However, as per clause 23 of the allotment letter, the developer/respondent had very cleverly and specifically accepted a meagre liability to pay Rs.50/- per sq. ft. per month on the super area for the delay in offering of possession.
 - IV. That as per section 19 (6) of the Act, 2016, the complainants have fulfilled their responsibility in regard to making the necessary payments in the

manner and within the time specified in the said agreement. Therefore, the complainants are not in breach of any of its terms of the agreement.

V. That as per clause 23 of the allotment letter, the respondent/builder was obligated to give possession by 30.09.2017. However, the same has not been offered to the complaints within the prescribed period. Accordingly, the complainants visited the office of the respondent several times and project site regarding possession of the plot and delay interest, but the respondent did not reply till date.

VI. That keeping in view the snail paced work at the site and half-hearted promises of the respondent, the chances of getting physical possession of the assured plot in near future seems bleak and that the same is evident of the irresponsible and desultory attitude and conduct of the respondent, consequently injuring the interest of the buyers including the complainants who have spent his entire hard earned savings and taken interest bearing loan in order to buy this home and stands at a crossroads to nowhere.

C. Relief sought by the complainant:

4. The complainants have sought following relief(s).
 - i. Direct the respondent to hand over the possession of the unit and to pay delay possession charges.
 - ii. Pass an order for payment of GST amount levied upon the complainants and taken the benefit of input credit by builder.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.
6. The respondent/promoter put in appearance through its Advocate and marked attendance on 22.11.2022, 25.04.2023, 12.07.2023, 25.10.2023 and 10.01.2024 respectively. Despite specific directions vide order dated

22.11.2022, 25.04.2023, it failed to comply with the orders of the authority. It shows that the respondent was intentionally delaying the procedure of the court by avoiding filing of written reply. Therefore, in view of above, vide order dated 12.07.2023, the defence of the respondent was struck off.

7. Copies of all the relevant documents have been filed 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 complainants.

D. Jurisdiction of the authority

8. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D. I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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.

D. II Subject-matter jurisdiction

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

Section 11

.....

(4) The promoter shall-

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

or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

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

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

E. Findings on the relief sought by the complainants.

E. I Direct the respondent to hand over the possession of the unit and to pay delay possession charges.

12. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 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."

13. Clause 23 of the allotment letter dated 10.04.2015 provides for handing over of possession and is reproduced below:

23. Possession of the allotted

"The possession of the allotted plot shall be given by September 2017, with the extended grace period of 6 (six) months.."

14. **Admissibility of grace period:** As per clause 23 of the allotment letter, the possession of the allotted unit was supposed to be offered by September, 2017 i.e., 30.09.2017 with an extended grace period of 6 months. Since in the present matter the allotment letter incorporates unqualified reason for grace period/extended period in the possession clause. Accordingly, in the present

case, the grace period of 6 months is allowed. Therefore, the due date for handing over of possession comes out to be 30.03.2018.

15. **Payment of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the 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.

16. 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.
17. 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., 06.03.2024 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
18. The definition of term 'interest' as defined under section 2(z) 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;"*

19. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., **10.85%** by the respondent/promoter which is the same as is being granted her in case of delayed possession charges.
20. 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 23 of the allotment letter executed between the parties on 10.04.2015, the possession of the subject plot was to be delivered by 30.03.2018. The respondent has failed to handover possession of the subject plot till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil 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 delay on the part of the respondent to offer of possession of the allotted plot to the complainants as per the terms and conditions of the allotment letter dated 10.04.2015 executed between the parties. It is pertinent to mention over here that even after a passage of more than 5.11 years neither the construction is complete nor an offer of possession of the allotted plot has been made to the

allottees by the builder. Further, the authority observes that there is no document on record from which it can be ascertained as to whether the respondent has applied for completion certificate/part completion certificate or what is the status of construction of the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottees.

21. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the completion certificate is yet not obtained. The respondent shall offer the possession of the plot in question to the complainants after obtaining completion certificate and so, it can be said that the complainants shall come to know about the completion certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainants should be given two months time from the date of offer of possession. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 30.03.2018 till the expiry of 2 months from the date of offer of possession or actual handing over of possession and whichever is earlier.
22. 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. As such the complainants are entitled to delay possession charges at the prescribed rate of interest @10.85% p.a. w.e.f. 30.03.2018 till offer of possession plus 2 months after obtaining completion certificate/part completion certificate from the competent authority 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.

E. II. Pass an order for payment of GST amount levied upon the complainants and taken the benefit of input credit by builder.

23. The complainants are seeking payment of GST amount levied upon them by the respondent/promoter on which it has taken the benefit of input credit from the concerned authorities. However, as per record, neither any submissions have been made by the complainants in their complaint, nor any payment proof w.r.t. the amount paid by them to the respondent/promoter on account of GST has been submitted before the Authority. Therefore, no direction to the same.

F. Directions of the authority

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

- I. The respondent is directed to pay interest to the complainants against the paid-up amount of Rs.25,16,250/- at the prescribed rate of interest @10.85% p.a. for every month of delay from the due date of possession i.e., 30.03.2018 till offer of possession plus 2 months after obtaining completion certificate/part completion certificate from the competent authority 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.;
- II. The arrears of such interest accrued from 30.03.2018 till the date of order by the authority shall be paid by the respondent/promoter to the complainants within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the complainants before 10th of the subsequent month as per rule 16(2) of the rules.



- III. The respondent/promoter is directed to handover possession of the plot in question and execute conveyance deed in favour of the complainants on payment of stamp duty and registration charges within three months after obtaining completion/part completion certificate from the competent authority.
- IV. The respondent shall not charge anything from the complainants which is not the part of the allotment letter dated executed between the parties;
- V. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period;
- VI. The rate of interest chargeable from the complainants by the respondent/promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
25. Complaint stands disposed of.
26. File be consigned to registry.

Dated: 06.03.2024

HARERA
GURUGRAM

(Ashok Sangwan)

Member

Haryana Real Estate
Regulatory Authority,
Gurugram