

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

Complaint no.: 1262 of 2022
First Date of Hearing: 10.08.2022
Order reserved on: 14.12.2023
Order Pronounced on: 08.02.2024

1. Smt. Prerna Sharma
2. Sh. Hemant Joshi

Complainants

Both R/o: 108, New Priyadarshini
Apartment, Plot no.-19, Sector-5, Dwarka,
Delhi- 110075

Versus

M/s New Look Builders and Developers Pvt.
Ltd. (Earlier known as M/s Ansal Phalak
Infrastructure Pvt. Ltd.)

Respondent

Regd. Office at: 115, Ansal Bhawan 16,
Kasturba Gandhi Marg, New Delhi-110001

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Sh. Manoj Goswami (Advocate)
Sh. Dhruv Gupta (Advocate)

Complainants
Respondent

ORDER

1. The present complaint dated 12.04.2022 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 provision 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. No.	Particulars	Details
1.	Name of the project	"Alba Esencia", Sector 67, Gurugram
2.	Nature of the project	Integrated Residential Colony including group housing
3.	DTCP license no. and validity status	21 of 2011 dated 24.03.2011 valid upto 23.03.2019
4.	Name of licensee	Bisram S/o Shera and 20 others
5.	RERA Registered/ not registered	336 of 2017 dated 27.10.2017 valid up to 31.12.2019
6.	Unit no.	E2214SF, ,sector/block E (As per page no. 49 of the complaint)
7.	Unit area admeasuring	1394 sq. ft. (As per page no.49 of the complaint)
8.	Allotment letter	31.05.2011 (As per page no. 34 of the complaint)
9.	Date of approval of building plan	31.10.2014 (As per page no. 3 of the reply)
10.	Date of Execution of FBA	30.08.2011 (As per page no. 45 of the complaint)
11.	Date of tri-partite agreement	08.07.2015 (As per page no. 86 of the complaint)
12.	Possession clause	5.1 <i>Subject to clause 5.2 and further subject to all the buyers of the dwelling units in the sovereign floors, Esencia, making timely payment, the company shall endeavor to complete the development of residential colony and the dwelling unit as far as possible within 30(thirty) months with an extended period of 6 months from the date of execution of this agreement or the date of sanction of the building plan whichever falls later.</i> (As per page no. 56 of the complaint)



13.	Due date of possession	31.10.2017 (Calculated as 30 months plus 6 months from date of sanction of building plans i.e., 31.10.2014 being later.) Note: Grace period is allowed as the same is unqualified (Inadvertently mentioned as 30.08.2014 in proceedings dated 14.12.2023)
14.	Total sale consideration	₹ 76,78,800/- (As per payment plan on page no. 37 of the complaint)
15.	Amount paid by the complainants	₹ 77,35,438/- (As per updated SOA submitted by the complainant during proceedings dated 26.10.2023)
16.	Occupation certificate /Completion certificate	17.11.2022 (As per page no. 66 of the reply)
17.	Offer of possession	09.12.2022 (As per page no. 68 of the reply)
18.	Legal Notice (for refund of the paid-up amount)	29.08.2019 (As per page no. 100 of the complaint)

B. Facts of the complaint:

3. The complainants has made the following submissions: -

- I. That in the year 2010, the respondent intended to develop a project known as sovereign floors at Alba, Escencia in sector-67, Gurugram. The respondent carried out sales promotion camps at various places of National Capital Region (NCR). During one of such sales promotion camps, the respondent came in contact with the complainants and persuaded them to buy a floor in the upcoming project of the respondent. Further while elaborating about the project, the respondent's marketing personnel had depicted that the project which is coming up in Gurugram is one of the best and most luxurious housing township.

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- II. That considering and believing the contentions of the respondent's marketing personnel, the complainants booked a dwelling unit bearing no. E-2214 SF, having an area of 1394 sq. ft. for a basic sale consideration of Rs.74,00,000/- and in this regard, an allotment letter dated 31.05.2011 along with payment schedule was issued by the respondent.
- III. That consequently, the complainants had made a payment of Rs.7,59,550/- as on date of issuance of allotment letter and further made a payment of Rs.5,00,000/- on 14.07.2011 and the same has been duly acknowledged by the respondent.
- IV. That on 30.08.2011, the respondent entered into a floor buyer's agreement with the complainants. As per clause 5.1, the possession of the dwelling unit of said sovereign floor was to be delivered by the respondent within a period of 30 months, which was further extendable by period of another 6 months, which was to be reckoned from the date of execution of this agreement or the date of sanction of building plan, whichever falls later.
- V. That as per FBA, the vacant peaceful possession of the floor in question was to be handed over by respondent till August, 2014. The complainants have been constantly making follow up with the respondent for delivering the possession of the dwelling unit in question. However, the respondent has been constantly maintaining and assuring that the construction is in progress and the possession shall be handed over to the complainants very soon.
- VI. That since the amount to be paid to the respondent was an exorbitant one, which was beyond the reach of the complainants, therefore, they have to raise a home loan from financial institution. Initially they took home loan from Indiabulls Housing Finance Limited and thereafter



from Axis Bank Limited. A total home loan of Rs.57,73,812/- was taken by the complainants. The loan raised from Indiabulls Housing Finance Limited was settled with the financial institution on 19.06.2015 and balance transfer was done with Axis Bank and all dues of Axis Bank were too cleared by the complainants on 10.12.2018.

- VII. That the complainants have been constantly pursuing with the respondent for delivery of possession of floor in question. On 21.02.2018, the respondent issued a letter whereby the respondent informed the complainants that the respondent will be offering possession in the month of September, 2018.
- VIII. That as the 'September 2018' timeline was about to complete, the complainants again approached the office of the respondent and enquired about the delivery of possession as promised by the respondent vide letter dated 21.02.2018 but the respondent again showed his inability to fulfil the promise without any cogent reason.
- IX. That an email was received from the respondent on 25.09.2018 whereby in lieu of the dwelling unit in question, the respondent came up with an offer that since he had not been able to develop the aforesaid project and delayed the possession beyond all permissible limits, therefore, the respondent offered the complainants a plot of 270 sq. yds. for a price of Rs.1,35,00,000/-. Further, along with the email, the respondent submitted a calculation sheet, wherein he has calculated the return on investments at the rate of 10% per annum which has been reckoned from 08.06.2011. The offer made by the respondent was not accepted by the complainants as it was beyond their financial reach and they insisted on refund along with interest.
- X. That vide email dated 10.04.2019, the respondent has given a calculation to the complainants about the account statement wherein



the date of delivery of possession has been depicted as 14.08.2014 and against the effective basic price of Rs.66,14,713/- and Rs.2,78,800/- towards EDC., Rs.30,000/- towards electric connection charges and Rs.1,39,400/- towards Escalation Charges, the total of which comes to Rs.70,62,913/- and the complainants have been shown to paid a sum of Rs.77,09,913/-.

- XI. That a period of almost 5 years had gone by and the respondent has made an inordinate delay in handing over of possession. Therefore, vide legal notice dated 29.08.2019, the complainants have sought refund of the principal amount along with interest amounting to Rs.1,11,89,329/- and the same has been delivered and received by the respondent. But despite the legal notice, the respondent neither made response to the same nor refunded the paid-up amount.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
- Direct the respondent to deliver the possession of the unit as per FBA dated 30.08.2011
 - Direct the respondent to pay interest at the prescribed rate of interest for every month of delay from due date of possession till handing over of possession.
 - To revoke the registration of the respondent under section 7 of the Act of 2016.
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.

D. Reply by the respondent:

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6. The respondent has contested the complaint on the following grounds:
- I. That at the outset, the respondent i.e., Ansal Phalak Infrastructure Pvt. Ltd. (Now Known as "New Look Builders And Developers Pvt. Ltd.") denies each and every assertion, averment, statement, allegation made in the complaint filed by the complainants as false, frivolous, vexatious and misleading, except for those which are matter of record or are specifically admitted. The present complaint is nothing more than an afterthought and has been made with sole purpose to wrongfully gain at the cost of the respondent and to malign its reputation in the market.
 - II. That the complainants were allotted a unit in the project vide allotment letter dated 31.05.2011 for a basic sale price of Rs.74,00,000/- and a floor buyer's agreement was executed on 30.08.2011.
 - III. That in terms of clause No. 5.1 of FBA, the respondent undertook to complete the construction of the unit and to deliver its possession to the complainants within thirty six (36) months from the date of execution of FBA i.e., 30.08.2011 or the date of receiving the approval of the building plan from the Department of Town and Country Planning i.e., 31.10.2014, whichever is later.
 - IV. That till date the complainants have paid Rs.73,83,165/- towards the basic sale price of the unit, Rs.2,76,012/- towards the External Development Charges and Rs.49,999/- towards the interest for delayed payment.
 - V. That the construction of the unit was completed by the respondent in February, 2022 thereafter the application for Occupancy Certificate of the unit was filed in the Department of District Town Planner, Gurugram in March, 2022. Subsequently, the Occupancy Certificate of

the unit was issued by the Department of District Town Planner, Gurugram on 17.11.2022.

- VI. That subsequent to the receipt of the Occupancy Certificate, the respondent vide email dated 07.12.2022 apprised the complainants about the receipt of the Occupancy Certificate and requested them to take possession of the unit, however the complainants had not replied to the said email.
- VII. That delay in handing over of project has been caused due to license granted for additional land, the layout plan of the housing project developed by the respondent was changed which led to delay in certain approvals from competent authorities and consequently caused delay in the overall construction of the said project. Many of the buyers who have booked the flats/villa in the project have defaulted in making the timely payment for which reason also the project was delayed.
- VIII. That non-payment of the instalments by the allottees is a 'force majeure' circumstance, as stated in clause 5.2 of the FBA. Furthermore, the other reasons for delay in project are stoppage of construction activities in NCR region by the orders of courts, non-availability of construction material and labour, demonetisation of currency and change of tax regime, implementation of GST, implementation of nationwide 'lockdown' to contain the spread of 'Covid-19', etc. Moreover, all these situations and adverse conditions is 'force majeure' circumstances which are beyond the control of the respondent.
- IX. That the said project of the respondent has been delayed because of 'force majeure' situation which is beyond the control of the respondent. Vide clause 5.2 of the FBA, the complainants have agreed

and duly acknowledged that in case the development of the said dwelling unit is delayed for any reasons beyond the control of the respondent, then no claim whatsoever by way of any compensation shall lie against the respondent. Therefore, the complainants in terms of the FBA have agreed and undertook to waive all their rights and claims in such situation.

X. That the delay in handing over the possession of the dwelling unit/ apartment has been caused due to the various reasons which were beyond the control of the respondent. Following important aspects are relevant which are submitted for the kind consideration of the Hon'ble Authority:

- a. **Non-booking of all floors/ units seriously affected the construction:** -It is submitted that the global recession badly hit the economy and particularly the real estate sector. The construction of project of the respondent is dependent on the amount of monies received from the bookings made and monies received henceforth, in form of instalments paid by the allottees. However, it is submitted that during the prolonged effect of the global recession, the number of bookings made by the prospective purchasers reduced drastically in comparison to the expected bookings anticipated by the respondent at the time of launch of the project. The reduced number of bookings along with the fact that several allottees of the project either defaulted in making payment of the instalment or cancelled booking in the project, resulted in less cash flow to the respondent, henceforth, causing delay in the construction work of the project.

b. **Other various challenges being faced by the respondent:** The following various problems which are beyond the control of the respondent seriously affected the construction;

- a) Lack of adequate sources of finance;
- b) Shortage of labor;
- c) Rising manpower and material costs;
- d) Approvals and procedural difficulties.

In addition to the aforesaid challenges the following factors also played major role in delaying the offer of possession;

- i. There was extreme shortage of water in the region which affected the construction works;
- ii. There was shortage of bricks due to restrictions imposed by Ministry of Environment and Forest on bricks kiln;
- iii. Unexpected sudden declaration of demonetization policy by the Central Government, affected the construction work of the respondent in a serious way for many months. Non-availability of cash-in-hand affected the availability of labor;
- iv. Recession in economy also resulted in availability of labour and raw materials becoming scarce;
- v. There was shortage of labour due to implementation of social schemes like National Rural Employment Guarantee Act (NREGA) and Jawaharlal Nehru Urban Renewal Mission (JNNURM);
- vi. Direction by the Hon'ble National Green Tribunal & Environmental authorities to stop the construction activities for some time on regular intervals to reduce air pollution in NCR region.

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- XI. That it is pertinent to mention here that the construction of the project was stopped several times during the year 2016, 2017, 2018 and 2019 by the order of EPCA, HSPCB, NGT and the Hon'ble Supreme Court of India. It is most respectfully submitted that due to the increase in the level of pollution in the NCR region, the Hon'ble Supreme Court vide its order dated 14.11.2019 passed in the matter of "MC Mehta Vs Union of India & Others" imposed complete ban on construction and excavation work across the NCR region from 04.11.2019, which was ultimately lifted on 14.02.2020. Ban on construction caused irreparable damage to the delivery timelines and the real estate developers' finances as the respondent was not able to undertake any construction work during the aforesaid period and the same was beyond the control of the respondent.
- XII. That it is submitted that in order to curb down the air pollution the Environment & Pollution (Prevention & Control) Authority, for National Capital Region, has reviewed the urgent action that needs to be taken for the implementation of the Graded Response Action Plan (GRAP) vide its notification dated EPCA-R/2020/L-38 dated 08.10.2020 and has imposed ban on the use of diesel generator set with effect from 15.10.2020, which has further led to delay in the construction being raised.
- XIII. That all the above stated problems are beyond the control of the respondent. It may be noted that the respondent had at many occasions orally communicated to the complainants that if the respondent is unable to construct the unit, the respondent shall offer another residential unit of a similar value for which the allottees shall not raise any objections. The respondent could not complete the said

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project due to certain unforeseen circumstances which are completely beyond the control of the developer.

- XIV. That it is submitted that the complainants have prayed for reliefs which otherwise have to be claimed in a suit for possession, damages and recovery of money, after paying appropriate court fee. That in order to avoid the payment of court fee, the complainants have not raised a dispute of a civil nature, which requires elaborate evidence to be led and which cannot be adjudicated upon under the summary jurisdiction of the Hon'ble Authority. In this view of the matter, the complaint is liable to be dismissed with costs.
- XV. That it is submitted that the floor buyer's agreement delineates the respective liabilities of the complainants as well as respondent in case of breach of any of the conditions specified therein. In this view of the matter, the complaint is not maintainable in law and is liable to be dismissed in limine.
- XVI. That it is submitted that the dispute between the parties involves complicated questions of facts and law, which necessarily entails leading of copious evidence. The issues raised by the complainants cannot be addressed before the Hon'ble Authority, which follows a summary procedure. In this view of the matter, the complaint is liable to be dismissed.
- XVII. That it is further submitted that the complainants have filed the frivolous complaint with false averments, only with a malafide intention to make illegal enrichment at the cost of respondent.
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 submission made by the parties.

8. The complainants have filed additional written submissions seeking directions for the respondent to complete the pending work without any delay i.e., concretization of the approach road, signage of the allotted and dedicated parking slot, furnishing and finishing of the terrace etc. or pay towards the completion of these pending works to the complainants which has been taken on record. The complainants through additional written submissions have requested to direct the respondent to complete the remaining finishing work failing which the complainants/allottees are at liberty to approach the Adjudicating Officer for the relief within the purview of Section 14 of the Act of 2016.

E. Jurisdiction of the authority:

9. The respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground 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 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



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.

10. 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.

F. Findings on objections raised by the respondent:

F.I Objection regarding delay due to force majeure circumstances

11. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the courts, non-availability of construction material and labour, demonetisation of currency and change of tax regime, implementation of GST, non-payment of instalment by different allottees of the project and lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour. But all the pleas advanced in this regard are devoid of merit. Further, the authority has gone through the possession clause of the agreement and observed that the respondent-developer proposes to handover the possession of the allotted unit within a period of 30 months plus grace period of six months from the date of



execution of agreement or date of approval of building plan, whichever is later. In the present case, the date of execution of agreement is 30.08.2011 and date of approval of building plan is 31.10.2014 as taken from the documents on record. The due date is calculated from the date of approval of building plan being later, so, the due date of subject unit comes out to be 31.10.2017. **Further as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion/due date on or after 25.03.2020.** The authority put reliance judgment of Hon'ble Delhi High Court in case titled as **M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and IAs 3696-3697/2020** dated 29.05.2020 which has observed that-

"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself."

12. The completion date of the aforesaid project in which the subject unit is being allotted to the complainants is 31.10.2017 i.e., before 25.03.2020. Therefore, an extension of 6 months is not to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. The due date of subject unit comes out to be 31.10.2017, prior to the occurrence of Covid-19 restrictions and hence, the respondent cannot be benefitted for his own wrong. The events taking place such as restriction on construction due to weather conditions were for a shorter period of time and are yearly one and do not impact on the project being developed by the respondent. Though some allottees may not be regular in paying the amount due but the interest of all the

stakeholders concerned with the said project cannot be put on hold due to fault of on hold due to fault of some of the allottees. Thus, the promoter/respondent cannot be given any leniency based on aforesaid reasons and the plea advanced in this regard is untenable.

G. Findings on the relief sought by the complainants:

G.I Direct the respondent to handover the possession and pay interest for every month of delay, on the amount paid so far, at the rate mandate by Act of 2016

13. The relief(s) sought by the complainants are taken together being inter-connected.

14. 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."

(Emphasis supplied)

15. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the prescribed rate as per the Act of 2016. 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%.

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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., 08.02.2024 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 to the complainants in case of delayed possession charges.
20. During the proceedings of the day dated 14.12.2023, the counsel for both the parties have confirmed that the possession of the unit has been handed

over after offer of possession made on 09.12.2022 and conveyance deed has also been executed. During the proceedings dated 08.02.2024, the counsel for the respondent stated that as per clause 5.1 of the FBA, the possession of the unit is to be handed over within 30 months with an extended period of 6 months from the execution of agreement or sanction of building plans, whichever falls later. The building plans of the unit was approved on 31.10.2014 and hence, the due date of possession comes out to be 31.10.2017 including 6 months unconditional grace period. The occupation certificate of the unit was received on 17.11.2022, but the unit was not offered to the complainants as the complaint was filed by the complainants on 12.04.2022 (inadvertently mentioned as March, 2022 in proceedings of the day dated 08.02.2024) seeking refund of the paid-up amount. Though the complainants have later amended the relief from refund to taking the possession and delayed possession charges 08.02.2023 (inadvertently mentioned as March, 2023 in proceedings of the day dated 08.02.2024) and the same was allowed and possession of the unit was handed over in July, 2023. The counsel for the respondent further mentioned that keeping in view the refund request of the complainants, the respondent did not go ahead for completing the finishing work of the unit leading to delay in obtaining occupation certificate. The counsel for the complainants stated that the FBA was executed on 30.08.2011 and as per possession clause, the unit was to be handed over within 3 years from the date of execution of FBA i.e., 30.08.2014 and there was an inordinate delay on the part of the respondent in taking approval of the building plans while the payments have been sought from 14.07.2011 onwards. But the counsel for the respondent clarified that the complainants have opted for the construction linked payment plan and as per the payment plan, the payment was

demanded on commencement of construction w.e.f 25.06.2015 i.e., only after approval of building plans.

21. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 5.1 of floor buyer's agreement executed between the parties on 30.08.2011, the possession of the subject unit was to be delivered by 31.10.2017.
22. 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 occupation certificate has been obtained by the respondent-builder and offered the possession of the subject unit on 09.12.2022 to the complainants after obtaining occupation certificate on 17.11.2022. So, it can be said that the complainants would come to know about the occupation certificate only upon the date of offer of possession. But the unit was not handed over as in view of delay in completion of the unit, the complainants have filed the complaint for refund of the paid amount which was later amended only on 08.02.2023 for possession of the unit and delayed possession charges. During proceedings of the day dated 08.02.2024, the counsel for the respondent stated that the occupation certificate for the unit was obtained on 17.11.2022 but respondent/promoter did not go ahead for completing the finishing work of the unit in view of the request of the complainants for refund of the paid-up amount and hence delay possession interest for the period after filing of above complaint is not maintainable as the complainants/allottee declared their wish to withdraw from the project and filed the present complaint for refund of the paid-up amount. In view

of the above, the delayed possession charges shall be payable from the due date of possession i.e., 31.10.2017 till filing of complaint i.e., 12.04.2022 as the delay in completion of the unit beyond the said period cannot be attributed solely on the respondent.

G.II To revoke the registration of the respondent under section 7 of the Act of 2016.

23. The project namely "Alba Escencia" was registered under section 5 of the Act of 2016 vide registration number 336 of 2017 dated 27.10.2017, which was valid up to 31.12.2019. As per the information available on the website of the Authority, it is a lapsed project and no application was made for extension of the said registration. The occupation certificate of the project has been received on 17.11.2022 i.e., after expiry of registration therefore, the promoter is liable to further extension of the said project. Accordingly, the planning branch is directed to take the necessary action as per provisions of the Act of 2016.

H. 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 delayed possession interest at the prescribed rate i.e., 10.85% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e., 30.10.2017 till date of filing of complaint i.e., 12.04.2022 as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- ii. A period of 90 days is given to the respondent-builder to comply with the directions given in this order and failing which legal consequences would follow.

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- iii. The cost of Rs.10,000/- imposed on respondent vide order dated 14.02.2023 shall be included in the decretal amount.
 - iv. The respondent shall not charge anything from the complainants which is not the part of the floor buyer's agreement.
 - v. The rate of interest chargeable from the allottee(s) by the 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.
 - vi. The respondent is directed to complete the remaining finishing work failing which the complainants/allottees are at liberty to approach the Adjudicating Officer for the relief within the purview of Section 14 of the Act of 2016.
25. Complaint stands disposed of.
26. File be consigned to registry.


(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 08.02.2024