BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 7434 of 2022
Order reserved on : 07.02.2024
Order pronounced on : 27.03.2024

Kawal Jain and Anshu Jain
Both R/o: House no. 620, Sector 37, Faridabad, Haryana-121003 **Complainants**

Versus

Wonder City Buildcon Private Limited
Regd. office: 3rd Floor, UM House, Tower B, Plot no. 35, Sector-44, Gurugram -122002, Haryana **Respondent**

CORAM:
Shri Ashok Sangwan **Member**

APPEARANCE:
Mr. Mohd. Irshad (Advocate) Complainants
Mr. Shantanu Parashar and Shaurya Chourasiya (Advocates) Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee 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 to the allottee as per the agreement for sale executed inter-se them.

A. Unit and Project related details:

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

S. No.	Particulars	Details
1.	Name of the project	"Godrej Aria, Sector-79, Village Naurangpur, Tehsil Manesar, District Gurugram, Haryana"
2.	Project area	14.59 acres
3.	Nature of the project	Residential Apartment
4.	RERA registration/not registered and validity status	**Registered** Registered vide no. 61 of 2017 dated 17.08.2017 Valid upto 28.02.2021
5.	DTCP license no. and validity status	47 of 2013 dated 06.06.2013 valid upto 13.08.2024
6.	Name of the license	Sterling Infrastructure Private Limited
7.	Unit no.	F0301, 3rd floor, Tower-F (as per BBA, at page 38 of complaint)
8.	Unit area	1351 sq. ft. (Super Area) 955 sq. ft. (Carpet Area) (as per BBA, at page 38 of complaint)
9.	Allotment Letter	24.02.2015 (page
10.	Builder buyer agreement	15.04.2015 (page 34 of complaint)
11.	Possession clause	**Clause 4.2** *"The developer shall endeavor to complete the*

		construction of the Apartment ***within 48 months from the date of issuance of Allotment Letter, along with a grace period of 12 months over and above this 48 months period*** *("Tentative Completion Time"). Upon the Apartment being ready for possession and occupation the Developer shall issue the Possession Notice to the Buyer of the Apartment....."* **(Emphasis supplied)** (as per BBA, at page 50 of complaint)
12.	Due date of possession	24.02.2020 (calculated from the date of allotment letter i.e., 24.02.2015)
13.	Total sale consideration	Rs.1,08,37,560/- (as per SOA, at page 48 of reply)
14.	Amount paid by the complainant	Rs. 1,13,34,662 /- (As per page 131 and 132 of complaint)
15.	Occupation certificate	01.10.2019 (page 82 of reply)
16.	Offer of possession	07.03.2020 (page 84 of complaint)

B. Facts of the complaint

3. The complainant has made the following submissions: -

I. That the complainants applied for booking of a residential unit in the project "GODREJ ARIA" situated at Sector-79, Village Naurangpur, Tehsil Manesar and district Gurugram on 12.09.2014. They were allotted a unit no. F0301 on 3rd floor in Tower F, having super built up area of 1351 sq. ft. and carpet area admeasuring 955 sq. ft. along with all easements, privileges, rights and benefits attached thereto, along with proportionate undivided interest in the Common area and exclusive right to use one designated covered car parking vide allotment letter dated 24.02.2015.

Thereafter, a builder buyer agreement dated 15.04.2015 was executed between the complainants and the respondent.

II. That the total sale consideration for the said unit was Rs.1,02,71,179/- (including BSP of Rs.84,42,399/-, PLC of Rs.4,39,075/-, EDC & IDC of Rs.4,45,830/-, Car parking allotment charges of Rs.3,75,000/- and other charges of Rs.5,68,875/-) and the Complainant had already paid a sum of Rs.1,13,34,662/- (Including stamp duty of Rs.3,56,000/-, CAM and common area electricity Charges till date) against the said sale consideration.

III. That in terms of clause 4.2 of the buyer's agreement, the possession of the unit was to be given by the respondent within 48 months from date of issuance of allotment letter along with a grace period of 12 months. Accordingly, the possession was to be handed over to the complainants by 23.02.2020.

IV. That in terms of clause 5.2 of the buyer's agreement, at the time of issuance of the possession notice by the respondent, the complainants were entitled to satisfy themselves with plumbing, electric, fixtures, locking, devices, doors, windows, tiles and other items in the unit as per the description and specifications stated in Schedule IV and any shortcomings were to be duly communicated to the respondent. Therefore, the complainants had to take possession of the unit only after being satisfied with the specification as stipulated in the agreement post physical inspection of the unit.

V. That the respondent delayed the project and deliberately offered the possession of the unit to the complainants at the start of Covid-19 pandemic in March, 2020 vide possession intimation letter dated

07.03.2020, which had been dispatched to them on 12.03.2020. That vide the said letter, complainants were called upon to inspect the unit for verification of the specifications and any defects within a period of 90 days. Further, the respondent also called upon the complainants to make payment of the CAM charges in advance for the period 04.06.2020 till 14.06.2021 within 60 days of receipt of the said letter.

VI. That the said inspection of the unit could not be done owing to the Covid-19 pandemic and the restrictions imposed by the Government of India in furtherance thereof, including the nationwide lockdown. Further, admittedly, the unit was not complete in terms of the agreement and the specifications agreed therein, and the said possession intimation letter was issued solely to avoid having to pay delay penalty to the complainants.

VII. That the complainants in terms of the said possession letter made payment of the entire demanded amount of Rs.7,43,664/- to the Respondent till 05.05.2020, without even inspecting the said unit. That the complainants also made further payment of the CAM and common area electricity charges as demanded by the respondent. Indeed the payment towards stamp duty of Rs.3,56,000/- had also been made by the complainants on 21.10.2020.

VIII. That the respondent vide its email dated 10.08.2021, again called upon the complainants to inspect and take possession of the said unit, however, upon physical inspection of the said unit, it was found out that the unit was not complete for handover as was represented by the respondent vide its letter dated 07.03.2020 and the following defects were noticed and duly notified to the Respondent:

(a) Stones in the balcony adjacent to the bedroom had major cracks which is clearly visible from a distance.

(b) Floor tiles in the balcony adjacent to the kitchen were of multiple shades and varied quality.

(c) The floor tiles in the kitchen and bathroom were of multiple quality and colour.

(d) The floor tiles were unlevelled and having poor finishing.

(e) There were cracks in the wall in the bedroom.

(f) Approach/link road as shown in the layout plan and the broachers, have not been constructed till date.

Apart from the aforesaid, the common facilities have also not been provided by the respondent to the complainants in as much as, lift of the building was not finished and the approach road was also not constructed.

IX. That the said defects were intimated to the respondent on several occasions orally upon physical visits to the office of the respondent, through phone calls and also vide various emails including the emails dated 08.03.2022, 22.03.2022, 29.04.2022, 18.07.2022, 28.07.2022, 30.07.2022, 17.08.2022 and 24.08.2022. The respondent despite having been notified of the defects and having undertaken to rectify the same, failed to do the same and kept on pressurizing the complainants to take possession of the unit on every occasion vide their emails dated 10.08.2021, 08.03.2022, 21.03.2022, 29.04.2022, 28.07.2022, 01.08.2022, 06.08.2022, 17.08.2022 and 29.08.2022.

X. That the defects observed and notified by the complainants had been closed by the respondent without ever rectifying them. Further, the

reasons for the said defects as being given by the respondent was due to ageing and non-maintenance, however, the said reasons does not stand on any footing inasmuch as neither, the tiles/stones/walls could be damaged/broken/be of different shades due to ageing or non-maintenance nor the poor/improper finishing of the tiles/floors and the common facilities could be attributed to the alleged reasons of ageing and non-maintenance.

XI. That under the aforesaid circumstances, the complainants are left with no alternative but to file the present complaint against the respondent seeking relief of possession of the unit allotted to the complainant along with the interest and compensation for the delay in offering of the possession in terms of the specifications of the agreement, within a reasonable time.

C. Relief sought by the complainant

4. The complainants have sought following reliefs:

   i. **Direct the respondent to pay compensation for delayed period in handing over of possession of the said unit in terms of RERA Act at the rate which this Authority deems fit and proper in the interest of justice.**
   ii. **Direct the respondent to handover the physical possession of the unit.**
   iii. **Direct the respondent to rectify all the defects as had been noticed and notified in the inspection and issue fresh possession letter to the complainants.**
   iv. **Direct the respondent not to levy holding charges upon the complainants.**
   v. **Direct the respondent to execute a registered sale deed in favor of the complainants.**
   vi. **Direct the respondent to make payment of Rs.50,000/- as litigation expenses to the complainants.**

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

6. The respondent contested the complaint on the following grounds: -

a. That the complainants approached the respondent for booking of a unit in the project after completely satisfying themselves with the project and vide application form dated 12.09.2014 applied for the allotment of a residential unit bearing no. FO301 on 3rd floor in Tower F for a total sale consideration of Rs.1,02,71,179/-, excluding the statutory charges. Subsequently, the respondent vide allotment letter dated 24.02.2015 allotted the unit in favour of the complainants.

b. That a builder buyer agreement dated 15.04.2015 was executed between the parties however, the complainants always failed to make the payments in terms of the opted payment plan. The delay on part of the complainants is detailed below-

Sr. No.	Demand raised	Amount demanded	Amount Paid and period of delay
1.	20.09.2014- Towards application money	Rs. 4,12,483/-	Rs.4,00,000/- and the remaining amount paid after a delay of 42 days
2.	22.01.2025- Towards the second milestone	Rs. 8,61,884.60/-	Complete payment made but after a delay of 39 days
3.	12.09.2019- On completion of 7th residential slab	Rs. 6,55,342/-	Complete payment made but after a delay of 12 days

That the complainants have purposefully failed to pay the statutory dues and consequently take possession of the unit.

c. That the respondent completed the construction of the unit and after obtaining all the relevant NOCs/sanctions from the concerned authorities, were granted the occupation certificate on 01.10.2019. That thereafter, the complainants offered possession on 07.03.2020 vide possession intimation letter dated 07.03.2020 along with invoice towards the said milestone capturing the stamp duty and advance common area maintenance & electricity charges (Adv. CAM and CAE charges) payment details.

d. That the respondent vide the said letter invited the complainants to inspect the unit and to take possession of the same within 90 days from the date of the issuance of the said letter. That it was made clear that if the complainants did not take possession of the said unit within 30 days from the possession notice expiry date, then they shall be liable to pay all the costs and expenses, along with the holding charges which may incur in relation to the maintenance of the said unit.

e. That the respondent vide email dated 14.09.2020 requested the complainants to clear the outstanding payments towards the CAM charges and stamp duty. That the unit was fit for possession since 07.03.2020 and a lot of time lapsed, the respondent informed the complainants that once the payment is made, they would process all the documents and will align the handover of unit after getting it ready on 25th September 2020.

f. That the complainants on the same day, i.e., vide e-mail dated 14.09.2020 informed the respondent that they are not in a hurry to take the possession and further asked the respondent that till when they can delay the possession without putting any financial implication on them. The narrative set in the complaint that the respondent had delayed in

offering possession is completely belied by this email sent by the complainants themselves.

g. That the respondent further vide email dated 14.09.2020 informed and assured the complainants that the unit will be ready for possession by 25.09.2020 and requested the complainants to visit the unit accordingly so that handover facilities can be completed on the same day. The respondent further informed that if the complainants will share any observations/defects in the unit, same would be rectified within a week.

h. That vide email dated 22.09.2020, the respondent again informed the complainants to make the outstanding payment of CAM charges of Rs. 77,861/- and also requested the complainants to clear their outstanding dues to avoid further delay in registration of conveyance deed and in taking the possession. Thereafter, the payment towards the said CAM charges was made on 29.09.2020 by the complainants.

i. That the complainants acting with malafide intent and in terms of their email dated 14.09.2020 avoided taking possession of the unit on one pretext or the other. That the complainants were aware that they are required to pay holding charges in terms of the agreement. Thereafter, the second covid wave, the respondent once again vide email dated 10.08.2021 requested the complainants to expedite the process of handover and to act in terms of the agreement. That the respondent also informed the complainants that as the stamp duty has been increased by 2% and the complainants are required to pay the same.

j. That after two months from the aforesaid email dated 10.08.2021, the complainants for the first time on 17.10.2021 inspected the unit and in pursuance of the same they raised some observations/ snags to the respondent and in response to the same the respondent informed that

the same has been occurred due to time lapse owing to covid and during periodic maintenance of the unit. Later, the observations which were raised by the complainants were rectified by the respondent.

k. That after rectifying all the minor snags shared by the complainants, the respondent informed them that their unit was ready for the handover and the observations which were shared have been closed. That afterwards, the complainants did not come forward to take the possession and execute the conveyance deed. That the respondent once again vide email dated 21.03.2022 informed the complainants that all the minor snags had been rectified and unit is ready for handover. Further, the respondent again requested the complainants to pay the outstanding CAM charges and the stamp duty to complete the registration process.

l. That the respondent was constrained to send a Reminder-Cum-Deemed Handover Letter dated 11.04.2022. That the complainants were informed that they were liable to pay holding charges amounting to Rs. 6,755/- per month (excluding taxes) and to avoid the same the complainants were requested to take the handover of the unit within 10 days.

m. That the complainants instead of taking possession, vide email dated 27.04.2022 shared a list of alleged defects with the respondent on whatsapp alleging vague and frivolous allegations. Further, the said allegations were shared way after the expiry of the 90 days period from the date of inspection i.e., 17.10.2021. That the respondent vide email dated 29.04.2022 again informed the complainants that the unit is ready for the handover and all the minor snags were rectified. Further, again requested the complainants to make the outstanding payment of CAM charges and stamp duty.

n. That the complainants, despite being informed by the respondent about the rectification of all the minor snags on various occasions i.e., vide various emails dated 28.07.2022, 01.08.2022, 06.08.2022, 17.08.2022 and 29.08.2022 instead of taking the possession upon paying the stamp duty, kept raising frivolous issues again and again. It is pertinent to mention that these alleged issues were raised after a delay of more than two year from the date of possession intimation letter way back in March 2020.

o. That even after providing multiple opportunities to inspect the unit and to take possession thereof, the complainants successfully derailed the said process for more than three years now. In view of the above-stated facts, it is clear that the respondent has not defaulted in any kind of service. The complainants initially delayed in making the payment and then delayed in paying the CAM charges and also delayed in executing the conveyance deed/ sale deed which is their statutory obligation to be performed on time and have not made any payment towards the stamp duty till date. That the complainants filed the frivolous complaint against the respondent on false and frivolous allegations. It is also clear that they are just trying to wriggle out from their obligations to make the payment towards the stamp duty and to execute the agreement.

7. All other averments made in the complaint were denied in toto.

8. 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 based on these undisputed documents made by both the parties.

E. Jurisdiction of the authority

9. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

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 allottees 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;*
> ***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 of 2016 quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside the compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings regarding relief sought by the complainant.

F. I Direct the respondent to pay compensation for delayed period in handing over of possession of the said unit in terms of RERA Act at the rate which this Authority deems fit and proper in the interest of justice.

11. In the present complaint, the complainants intends to continue with the project and are seeking delay possession charges as provided under the Proviso to Section 18(1) of the Act. Section 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."***

12. The factual matrix of the case is that the complainants were allotted unit no. F0301 on 3rd floor, tower F, admeasuring super built up area of 1351 sq. ft. and carpet area admeasuring 955 sq. ft. vide allotment letter dated 24.02.2015. Thereafter, a builder buyer agreement dated 15.04.2015 was executed between the complainants and the respondent.

13. Clause 4.2 of builder buyer's agreement provides for handing over of possession and is reproduced below:

> *"**Clause 4.2***
> ***The developer shall endeavor to complete the construction of the Apartment within 48 months from the date of issuance of Allotment Letter,** along with a grace period of 12 months over and above this 48 months period ("Tentative Completion Time"). Upon the Apartment being ready for possession and occupation the Developer shall issue the Possession Notice to the Buyer of the Apartment....."*

That the possession was to be handed over within a period of 48 months from the date of issuance of allotment letter along with a grace period of 12 months over and above this 48 months period. Accordingly, the due

date of handing over of possession comes out to be 25.02.2020, including the grace period of 12 months over and above this 48 months period.

14. The complainants received the occupation certificate on 01.10.2019 and thereafter, offered the possession of said unit on 07.03.2020. However, the complainants vide an e-mail dated 14.09.2020 informed the respondent that they are in no hurry to take the possession and asked till when can they hold the possession of their unit without any financial implication upon them. The e-mail dated 14.09.2020 sent by complainants to the respondent is reiterated as under-

> *"Dear madam*
> *As discussed,* ***I am not in a hurry to take possession, however, I just wanted the date till when you can delay the possession, without any financial implication on me.***
>
> ***I do not want to expose to the external environment due to Covid situation.*** *Hence, it shall work for both of us.*
>
> *You may please appreciate that I am not pressing for possession as of now and can easily wait for few months till the Covid issue settles. In case I am in need of the flat, will let you know, atleast a month in advance.*
>
> *Regards*
> *CA. Kawal Jain"*
>
> **(Emphasis supplied)**

15. Thereupon, the respondent reverted to the said e-mail on the same day, i.e., on 14.09.2020 informing the complainants that the unit would be ready for handover by 25.09.2020 further requesting them to plan their visit accordingly. The e-mail dated 14.09.2020 sent by respondent to the complainants is reiterated as under-

> *"Dear Respected Sir,*
>
> *Greetings from Godrej Properties !*
>
> ***We are assure that your unit will be ready by 25th Sep 2020 and you are requested to plan your visit accordingly so that the handover formalities can complete on the very same day.*** *However if you share any further observation with us then we will take a week time to give you the handover. This would be the last timeline from us post 25th Sep 2020.*

We thank you for being our valued customer.

Stay Safe and warm regards,
Geeta Sehgal"

(Emphasis supplied)

16. The affirmations made by the complainants vide e-mail dated 14.09.2020 that they are not in a hurry to take the possession and would further intimate the respondent one month in advance in case they would require the possession of the unit, clearly substantiates that the complainants were not prepared to take handover of the possession.

17. The contention of the complainants that the respondent's plea in its e-mail dated 14.09.2020 that the unit would be ready by 25.09.2020 amounts to admission on part of respondent that the unit was not ready on the date of offer of possession i.e., on 07.03.2020 is not acceptable in view of Section 19(10) of the Act which obligates the allottees to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. This 2 months' time is being given to the complainants in the interest of natural justice, keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit. Accordingly, it is clear that the delay possession charges shall be payable from the due date of possession, i.e., from 24.02.2020 till the date of offer of possession (07.03.2020) plus two months, i.e., till 07.05.2020 after obtaining occupation certificate.

18. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges. The 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.*

19. 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.

20. 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., 27.03.2024 is @ 8.85 %. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

21. 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;"*

22. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85 % by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.

23. 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 complainant are entitled to delay possession charges at prescribed rate of the interest @ 10.85 % p.a. w.e.f. 24.02.2020 till expiry of 2 months from the date of offer of possession (07.03.2020) i.e., up to 07.05.2020 as per provisions of section 18(1) of the Act read with Rule 15 of the Rules.

F.II Direct the respondent to handover the physical possession of the unit.

24. The respondent has obtained the OC from the competent authority on 01.10.2019 and offered the possession of the allotted unit vide letter dated 07.03.2020. Since the offer of possession is held to be valid, the complainants are directed to take the possession of the allotted unit after making payment of outstanding due if any.

25. The respondent shall handover the possession of the allotted unit as per specification of the buyer's agreement as entered into between the parties.

F.III Direct the respondent to rectify all the defects as had been noticed and notified in the inspection and issue fresh possession letter to the complainants.

26. The complainants inspected the subject unit for the very first time on 17.10.2021 and pointed out certain defects which are specified as under-

    a. Stones in the balcony adjacent to the bedroom had major cracks which is clearly visible from a distance.
    b. Floor tiles in the balcony adjacent to the kitchen were of multiple shades and varied quality.
    c. The floor tiles in the kitchen and bathroom were of multiple quality and colour.
    d. The floor tiles were unlevelled and having poor finishing.
    e. There were cracks in the wall in the bedroom.
    f. Approach/link road as shown in the layout plan and the broachers, have not been constructed till date.

27. The Authority is of the view that the defects pointed out by the complainants above are minor defects which do not render an apartment uninhabitable. However, the respondent is directed to rectify such minor defects pointed out by the complainants and others if any required to be completed while offering the possession within a period of one month from date of this order, failing which the complainants may approach the adjudicating officer for seeking the relief of compensation under Section 14(3) of the Act where it is prescribed that in case of any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement of sale relating to such development is brought to the notice of the promoter within a period of 5 years, from the date of handing over of possession, it shall be the duty of the promoter to rectify such defects. The above section is reproduced as under :-

> ***"Section-14(3). Adherence to sanctioned plans and project specifications by the promoter***
>
> *In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act."*

28. As far as construction of road is concerned, the Authority is not competent to adjudicate or give any directions to any other competent Authority. The complainants may approach the appropriate Authority for the relief regarding construction of roads.

F.IV Direct the respondent not to levy holding charges upon the complainants.

29. In the case of ***Varun Gupta vs Emaar MGF Land Limited, Complaint Case no. 4031 of 2019 decided on 12.08.2021***, the Hon'ble Authority had already decided that the respondent is not entitled to claim holding charges from the complainants at any point of time even after being part of the builder buyer agreement as per law settled by the ***Hon'ble Supreme Court in Civil Appeal nos. 3864-3899/2020 decided on 14.12.2020***. The relevant part of same is reiterated as under-

> *"134. As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the apartment. Therefore, the holding charges will not be payable to the developer.* ***Even in a case where the possession has been delayed on account of the allottee having not paid the entire sale consideration, the developer shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed."***

Therefore, in view of the above the respondent is directed not to levy any holding charges upon the complainants.

F.V Direct the respondent to execute a registered sale deed in favor of the complainants.

30. As per Section 11(4)(f) and Section 17(1) of the Act of 2016, the promoter is under obligation to get the conveyance deed executed in favor of the complainants. Whereas as per Section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question.

31. Since the possession of the subject unit has already been offered to the complainants after obtaining occupation certificate from the competent authority on 07.03.2020, the respondent is directed to get the conveyance deed executed within a period of thirty days from the date of this order.

F.VI Direct the respondent to make payment of Rs.50,000/- as litigation expenses to the complainants.

32. The complainants are seeking the above mentioned relief w.r.t. compensation. The Hon'ble Supreme Court of India in Civil Appeal nos. 6745-6749 of 2021 titled as **M/s Newtech Promoters and Developers Ltd. V/s State of UP & Ors.(supra)**, has held that an allottee is entitled to claim compensation and litigation charges under Sections 12, 14, 18 and Section 19 which is to be decided by the adjudicating officer as per Section 71 and the quantum of compensation and litigation expense shall be adjudged by the adjudicating officer having due regards to the factors mentioned in Section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation and legal expenses.

G. Directions of the Authority:

33. Hence, the authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the authority under Section 34(f) of the act of 2016:

i. The respondent is directed to pay interest to the complainants against the paid-up amount at the prescribed rate i.e., 10.85% per annum for every month of delay from due date of possession i.e., 24.02.2020 till offer of possession (07.03.2020) + 2 months i.e., up to 07.05.2020 after obtaining the occupation certificate. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order as per Rule 16(2) of the Rules.

ii. The respondent is directed to issue a revised statement of account after adjustment of delayed possession charges, and other reliefs as per above within a period of 15 days from the date of this order. The complainants are directed to pay outstanding dues if any remains, after adjustment of delay possession charges within a period of next 15 days.

iii. The rate of interest chargeable from the complainants 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 allottees, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act.

iv. The respondent is directed to rectify such minor defects pointed out by the complainants within a period of one month from date of this order, failing which the complainants may approach the adjudicating

officer for seeking the relief of compensation under Section 14(3) of the Act.

v. The respondent is directed to handover the physical possession of the allotted unit to the complainants complete in all aspects as per specifications of buyer's agreement and get the conveyance deed executed within a period of 60 days from the date of this order.

vi. The respondent shall not charge any holding charges from the complainants and anything which is not the part of the buyer's agreement.

34. Complaint stands disposed of.

35. File be consigned to registry.

Dated: 27.03.2024

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