

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

**Complaint no.** 1944 of 2023  
**Date of complaint** 09.05.2023  
**Date of decision** 10.04.2024

Manish Aneja, S/o Pyare Lal Aneja,  
**R/o:** - H.No. C-4, Model Town, Mission Compound,  
Saharanpur, Uttar Pradesh-247001.

**Complainant**

**Versus**

M/s Revital Reality Private Limited  
**Regd. Office at:** 1114, 11<sup>th</sup> Floor, Hemkunt Chamber, 89,  
Nehru Place, New Delhi- 110019.

**Respondent**

**CORAM:**  
Ashok Sangwan

**Member**

**APPEARANCE:**  
Abhishek Verma (Advocate)  
Bhriugu Dhami (Advocate)

Complainant  
Respondent

**ORDER**

1. This 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 under the provision of the Act or the Rules and regulations made thereunder or to the allottee 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 complainant, 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	"Supertech Basera" sector- 79&79B, Gurugram	
2.	Project area	12.11 acres area	
3.	Nature of project	Affordable Group Housing Project	
4.	RERA registered/not registered	Registered vide no. 108 of 2017 dated 24.08.2017	
5.	RERA registration valid upto	31.01.2020	
6.	RERA extension no.	14 of 2020 dated 22.06.2020	
7.	RERA extension valid upto	31.01.2021	
8.	DTPC License no.	163 of 2014 dated 12.09.2014	164 of 2014 dated 12.09.2014
	Validity status	11.09.2019	11.09.2019
	Name of licensee	Revital Reality Private Limited and others	
9.	Unit no.	104, tower/block-7, 1 <sup>st</sup> floor (inadvertently mentioned as 4 <sup>th</sup> floor in proceedings dated 03.04.2024)  (Page no.28 of the complaint)	
10.	Unit measuring	473 sq. ft [carpet area] 73 sq. ft.	

11.	Date of execution of flat buyer's agreement	26.11.2015 (Page no. 27 of the complaint)
12.	Possession clause	<p><b>3.1 Possession</b></p> <p>Subject to force majeure circumstances, intervention of Statutory Authorities, receipt of occupation certificate and Allottee/Buyer having timely complied with all its obligations, formalities, or documentation, as prescribed by the Developer and not being in default under any part hereof and Flat Buyer's Agreement, including but not limited to the timely payment of installments of the other charges as per payment plan, Stamp Duty and registration charges, the Developers Proposes to offer possession of the said Flat to the Allottee/Buyer within a period of 4 (four) years from the date of approval of building plans or grant of environment clearance, (hereinafter referred to as the "<b>Commencement Date</b>") , whichever is later.</p> <p>(Page no. 31 of the complaint).</p>
13.	Date of approval of building plans	19.12.2014 [as per information obtained from the planning branch]
14.	Date of grant of environment clearance	22.01.2016 [Page no. 27 of the reply]
15.	Due date of possession	22.01.2020

		[Note: - The due date of possession is calculated from the date of environment clearance (22.01.2016) being later.]
16.	Total sale consideration	Rs.19,28,500/- (page no. 30 of the complaint)
17.	Total amount paid by the complainant	Rs.19,96,872/- (As per payment receipts annexed with the complaint on page 60-67)
18.	Occupation certificate	Not obtained
19.	Offer of possession	Not offered

**B. Facts of the complaint**

3. The complainant has made the following submissions: -

- I. That the complainant was allotted a residential unit bearing no. 104, Tower-7 admeasuring 546 sq.ft. under affordable group housing colony under the name and style of "Supertech Basera" at Sector 79, 79B of Gurugram vide allotment letter dated 19.09.2015.
- II. That pursuant to such allotment, the complainant and the respondent executed a builder buyers agreement dated 26.11.2015, whereby the terms and conditions of the allotment were stipulated. That in terms of the said agreement, a total consideration of Rs.19,28,500 (exclusive of taxes) was payable by the complainant.
- III. That the complainant in furtherance of clause 2.2 of the said agreement, duly made the payment without any default except 6th and 7th installment which was delayed due to the stall in the construction activities by the developer and complainant intimated the developer via emails about the same and it was also accepted by the developer and the last installment was

paid after deducting the discount money offered worth Rs.15,910/- in the scheme by the developer.

- IV. That the complainant has always been in full compliance of the terms of the said agreement, and the same is inter alia reflected by all the installments paid by the complainant to the respondent as and when demanded by the respondent. Thus far, undisputedly, the complainant has paid to the respondent the entire amount of Rs.19,96,962/- as the amount stipulated in the agreement exclusive of all taxes, towards the consideration of the said flat.
- V. That in terms of the agreement, the possession of the said flat was to be offered to the complainant by the respondent latest by 21.01.2020. However, due to the inordinate delay and defaults attributable solely to the respondent, the construction of the said flat has not been completed till date and possession of the same has not been offered to the complainant in breach of the terms and timelines specified in the said agreement. Accordingly, the complainant is entitled to get interest on the paid amount at the rate as prescribed per annum from due date of possession as per builder buyer agreement till the date of handing over of actual possession.
- VI. That the respondent has miserably failed in adhering to the terms and time limits mentioned in the agreement, as a result of which the complainant has suffered grave financial loss and mental harassment. In light of the aforesaid facts and circumstances, the respondent is also liable to pay compensation and interest to the complainant, to compensate the applicant for the financial loss suffered by him as well as the mental harassment and agony that the complainant has undergone at the behest of the respondent.

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

4. The complainant has sought following relief(s):

- I. Direct the respondent to handover the physical possession of the unit and to pay delay possession charges as prescribed under the Act, 2016.
  - II. Direct the respondent to restrain from charging electricity connection charges, water connection charges, maintenance charges and interest free security deposit.
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 no. 1 has contested the complaint on the following grounds:
- i. That on 04.09.2015, the complainant vide draw was allotted an apartment bearing no. 104, Tower-7, having a carpet area of 473 sq.ft.(approx.) and balcony area of 73 sq.ft. for a total consideration of Rs.19,28,500/-. Consequentially, after fully understanding the various contractual stipulations and payment plans for the said apartment, the complainant executed the builder buyer agreement dated 26.11.2015.
  - ii. That as per clause 2.3 of the buyer's agreement, it was agreed that an amount of Rs.25,000/- shall be treated as earnest money which shall be liable to be forfeited in the event of withdrawal of allotment by the allottee/ buyer and/or cancellation of allotment on account of default/ breach of the terms and conditions of allotment/transfer contained herein, including non-payment of instalments. In the eventuality of withdrawal/cancellation, the earnest money will stand forfeited and the balance amount paid, if any, will be refunded to the allottee/buyer, without any interest and such refund shall be made only when the said flat is re-allotted/sold to any other person(s) and a consideration exceeding the refund amount is received from the new allottee/ buyer.

- iii. That vide clause 2.6 of the agreement, the allottee/buyer understands, confirms and agrees that in case of delayed payment of any instalment, the payment so made by the allottee/buyer shall first be adjusted towards interest accrued or previous outstanding amounts and only thereafter the balance payments shall be adjusted towards the current outstanding principal amount. Clause 2.9 stipulates that the allottee/buyer shall make all payments from time to time in favour of the developer. Further, vide clause 3.5 of the agreement it was agreed that the developer shall endeavor to handover possession of the said flat within a period of four years from the commencement date, subject to timely payment of installments and other charges as per the payment plan by the allottee/buyer, as demanded in terms of this agreement. The time frame for possession provided hereinabove is tentative and shall be subject to force majeure and timely and prompt payment of all instalments and completion of formalities required.
- iv. That in interregnum, the pandemic of covid-19 has gripped the entire nation since March 2020. The Government of India has itself categorized the said event as a 'Force Majeure' condition, which automatically extends the timeline of handing over possession of the apartment to the complainant. Further, it would be apposite to note that the construction of the project is in full swing, and the delay if at all, has been due to the government-imposed lockdowns which stalled any sort of construction activity. The project is at full swing and the possession is proposed to be offered soon. The respondent has applied for the occupation certificate with the concerned government authority for the subject tower.
- v. The force majeure clause, it is clear that the occurrence of delay in case of delay beyond the control of the respondent, including but not limited

to the dispute with the construction agencies employed by it for completion of the project and not a delay on account of the respondent for completion of the project.

- vi. That the timeline stipulated for delivering the possession of the unit was on or before 4 years after obtaining the requisite approvals of the building plans and environment clearance, whichever. The respondent had endeavoured to deliver the property within the stipulated time. The respondent earnestly had endeavored to deliver the properties within the stipulated period but for reasons stated in the present reply could not complete the same.
- vii. That the possession of the said premises was proposed to be delivered by 21.01.2020. The respondent and its officials are trying to complete the said project as soon as possible and there is no malafide intention of the respondent to get the delivery of project, delayed, to the allottees. However, the project got delayed due to force majeure circumstances which were beyond the control of the respondent. Further, due to orders passed by the Environment Pollution (Prevention & Control) Authority, the construction was/has been stopped for a considerable period due to high rise in pollution in Delhi-NCR. Furthermore, the Hon'ble Supreme Court vide order dated 04.11.2019, imposed a blanket stay on all construction activity in the Delhi- NCR region. Moreover, shortage of labour, water and other raw materials and various stay orders issued by various courts, authorities, implementation of NREGA and JNNURM schemes, demonetization etc. caused delay in completion of the project. Unfortunately, circumstances have worsened for the respondent in the pandemic of Covid-19.



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 based on these undisputed documents and submission made by both the parties.
8. The respondent has brought to the notice of the authority on 04.10.2023, that the complainant has pleaded this complaint against the two respondents, i.e., respondent no. 1, as M/s Revital Reality Private Limited and respondent no. 2 as M/s Supertech Limited. The buyer's agreement with regard to the allotted unit was executed between the complainant and respondent no. 1 and all the payments were made by the complainant to respondent no.1. Thereafter, the counsel for the complainant made a request to amend the complaint and to remove the respondent no.2 from the array of parties. The said request was allowed vide order dated 04.10.2023. Accordingly, the complainant has amended the complaint on 10.10.2023 and deleted the name of respondent no.2 from the array of 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 for the reasons given below.

**E. I Territorial jurisdiction**

10. 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**

11. 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.

12. 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 complainant at a later stage.

## **F. Findings on the objections raised by the respondent.**

### **F. I Objection regarding force majeure conditions:**

13. The respondent/promoter has raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as shortage in supply of raw material, shortage of labour, implementation of various social schemes by the Government of India, various orders passed by NGT, EPCA, demonetisation, weather conditions in Gurugram, major spread of Covid-19 across worldwide, etc. But all the pleas advanced in this regard are devoid of merit. First of all, the possession of the unit in question was to be offered by 22.01.2020. Hence, events alleged by the respondent do not have any impact

on the project being developed by the respondent. Moreover, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. The respondent has taken a plea that there was a delay in construction of the project on account of NGT orders, orders by EPCA, etc but did not particularly specify for which period such orders has been made operative. Thus, the promoter/respondent cannot be given any leniency on based of aforesaid reasons. It is well settled principle that a person cannot take benefit of his own wrong.

**G. Findings on the relief sought by the complainant**

**G. I Direct the respondent to handover the physical possession of the unit and to pay delay possession charges as prescribed under the Act, 2016.**

14. In the present complaint, the complainant intends to continue with the project and is 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.”*

15. As per clause 3.1 of the flat buyer agreement provides for handing over of possession and is reproduced below: -

**3.1. POSSESSION**

*“Subject to force majeure circumstances, intervention of Statutory Authorities, receipt of occupation certificate and Allottee/Buyer having timely complied with all its obligations, formalities, or documentation, as prescribed by the Developer and not being in default under any part hereof and Flat Buyer’s Agreement, including but not limited to the timely payment of installments of the other charges as per payment plan, Stamp Duty and registration charges, the Developers Proposes to offer possession of the said Flat to the Allottee/Buyer within a period of 4 (four) years from the date of approval of building plans or grant of environment clearance, (hereinafter referred to as the “Commencement Date”), whichever is later.”*

16. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottees in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer developer agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused its dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.
17. **Due date of handing over possession:** The promoter has proposed to hand over the possession of the said flat within a period of 4 years from the date of approval of building plans (19.12.2014) or grant of environment clearance, (22.01.2016), whichever is later. Thus, the due date of possession has been calculated from the date of grant of environmental clearance i.e., 22.01.2016, being later. Therefore, the due date of possession comes out to be 22.01.2020.
18. **Admissibility of delay possession charges at prescribed rate of interest:** However, 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., 10.04.2024 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.
22. 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 him in case of delayed possession charges.
23. On consideration of the circumstances, the documents, submissions and based on the findings of the authority regarding contraventions as per

provisions of rule **28(1)**, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 3.1 of the agreement executed between the parties on 26.11.2015, the possession of the subject apartment was to be delivered within stipulated time within 4 years from the date of approval of building plan i.e. (19.12.2014) or grant of environment clearance i.e. (22.01.2016) whichever is later. Therefore, the due date of handing over possession is calculated from the date of receipt of environment clearance i.e., 22.01.2016 which comes out to be 22.01.2020. The respondent has failed to handover possession of the subject unit 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 unit to the complainant as per the terms and conditions of the agreement to sell dated 26.11.2015 executed between the parties. It is pertinent to mention over here that even after a passage of more than 4.2 years neither the construction is complete nor an offer of possession of the allotted unit has been made to the allottee 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 occupation certificate/part occupation 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.

24. 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 is entitled to delay possession charges

at prescribed rate of interest i.e., @10.85% p.a. w.e.f. 22.01.2020 till actual handing over of possession or offer of possession plus two months after obtaining occupation certificate from the competent authority, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

**G.II Direct the respondent to restrain from charging electricity connection charges, water connection charges, maintenance charges and interest free security deposit.**

25. **Electricity and water connection charges:** The promoter is entitled to charge the actual charges paid to the concerned departments from the complainant/allottee on pro-rata basis on account of electricity connection and water connection. The complainant would also be entitled to proof of such payments to the concerned departments along with a computation proportionate to the allotted units, before making payments under the aforesaid heads.

**Interest Free Security Deposit:** The said issue has already been dealt by this Authority in complaint bearing no. CR/4068/2021, wherein it was held that the promoter may be allowed to collect a reasonable amount from the allottees under the head "IFSD". However, the amount collected under the head of interest free security deposit is to be kept in a separate account which would be handed over to the association of allottees after the free maintenance period of the project.

**Maintenance charges:** The issue of maintenance charges have already been clarified by the office of DTCP, Haryana vide office order dated 31.01.2024 wherein it has categorically clarified the mandatory services to be provided by the colonizer/developer in Affordable Group Housing Colonies and services for which maintenance charges can be charged from the allottees as per consumption. According, the promoter can charge

maintenance/use/utility charges from the complainant-allottee as per consumption as prescribed in Category-II of the office order dated 31.01.2024.

**H. Directions of the authority**

26. 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 complainant against the paid-up amount at the prescribed rate of 10.85% p.a. for every month of delay from the due date of possession i.e., 22.01.2020 till actual handing over of possession or offer of possession plus two months after obtaining occupation certificate from the competent authority, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
- ii. The respondent shall not charge anything from the complainant which is not the part of the flat buyer's agreement.
- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period and after clearing all the outstanding dues, if any, the respondent shall handover the possession of the allotted unit.
- iv. The respondent is directed to offer the possession of the allotted unit within 30 days after obtaining occupation certificate from the competent authority.
- v. The arrears of such interest accrued from due date of possession i.e., 22.01.2020 till the date of order by the authority shall be paid by the promoter to the allottee within a period of 90 days from date of this





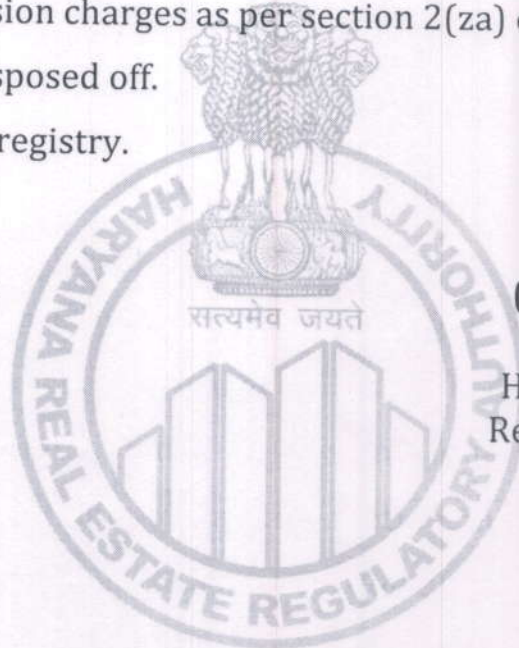
order and interest for every month of delay shall be paid by the promoter to the allottees before 10<sup>th</sup> of the subsequent month as per rule 16(2) of the rules.

- vi. The rate of interest chargeable from the allottee 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.

27. Complaint stands disposed off.

28. File be consigned to registry.

Dated: 10.04.2024



**(Ashok Sangwan)**

Member

Haryana Real Estate  
Regulatory Authority,  
Gurugram