HARYANA REAL ESTATE REGULATORY AUTHORITY PANCHKULA

Website: www.haryanarera.gov.in

Complaint no.:	**999 of 2021**
Date of filing:	**04.10.2021**
Date of first hearing:	**16.11.2021**
Date of decision:	**05.10.2023**

Vinay Siwach S/o Sh. Vijay Singh Siwach
R/o Flat no. 1301, W-6, Kingsbury Apartment,
TDI City, Kundli, Sonipat, Haryana

....COMPLAINANT(S)

VERSUS

1. TDI Infrastructure Limited.
10, Shaheed Bhagar Singh Magar, Gole Market
New Delhi- 110001
2. Ravinder Taneja
9, Kasturba Gandhi Road, New Delhi-110001
3. Ved Prakash
10, Shaheed Bhagar Singh Magar, Gole Market
New Delhi- 110001

....RESPONDENT(S)

CORAM: **Dr. Geeta Rathee Singh** **Member**
Nadim Akhtar **Member**

Present: - Mr. Parveen Sehrawat, Counsel for the complainant through VC
Mr. Shubhnit Hans, Counsel for the respondent through VC.

ORDER (DR. GEETA RATHEE SINGH - MEMBER)

1. Present complaint was filed on 04.10.2021 by complainant under Section 31 of The Real Estate (Regulation & Development) Act, 2016 (for short Act of 2016) read with Rule 28 of The Haryana Real Estate (Regulation & Development) Rules, 2017 for violation or contravention of the provisions of the Act of 2016 or the Rules and Regulations made thereunder, wherein it is inter-alia prescribed that the promoter shall be responsible to fulfil all the obligations, responsibilities and functions towards the allottee as per the terms agreed between 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 the possession, delay period, if any, have been detailed in the following table:

S.No.	Particulars	Details
1.	Name of the project	Rodeo Drive Mall, TDI City, Kundli , Sonipat
2.	RERA registered/not registered	Not registered.
3.	DTCP License no.	101-144 of 2005.
	Licensed Area	6.558 acres
4.	Unit no.(shop)	GF-154

Rathee

5	Unit area	500 sq. fts.
6.	Date of allotment	31.08.2006
7.	Date of builder buyer agreement (executed with original allotees- Inderpal Singh, Gurminder Singh and Gurbachan Singh)	14.01.2019.
8.	Due date of offer of possession (30 months from date of sanctioning of building plans)- Date of building plans has not been specified in the written statement by respondent so taken 30 months from date of builder buyer agreement.	14.07.2021
9.	Possession clause (clause 4.1)	That, the seller shall try to devolve the ownership of the unit upon purchaser within twenty four months from the date of sanctioning of the Building Plans for the said complex, (Handing over Period) which handing over period can further be extended by another six months, which shall be treated as the grace period.
10.	Endorsement in favour of Complainant	17.01.2019
11.	Total sale consideration	₹ 27,50,000/-
12.	Amount paid by complainant	₹ 27,73,000/-
13.	Offer of possession	20.03.2019 alongwith additional demand of Rs 5,51,281.62/- annexed at page no. 51 of complaint.

14.	Date of Occupation certificate	12.06.2019

B. FACTS OF THE COMPLAINT

3. Facts of complaint are that original allottees Inderpal Singh, Gurminder Singh and Gurbachan Singh booked a shop in in the project- Rodeo Drive Mall, TDI City, Kundli, Sonipat on 09.05.2006 being developed by the respondent, by paying an amount of Rs 5,50,000/-. Thereafter, allotment letter of shop no. GF-154 having an area 500 sq. fts. was issued in favor of allottees. Following which builder buyer agreement dated 14.01.2019 was executed between the respondent and original allottees. Subsequently allotment rights were purchased by complainant on 17.01.2019 and endorsement to this effect has been attached at page no. 36 of the complaint.

4. As per the terms and conditions of clause 4.1 of the agreement, the respondent was supposed to handover possession of shop within 30 months, i.e., upto 14.07.2021. An amount of Rs 27,73,000/- has already been paid to the respondent against basic sale price of Rs 27,50,000/- which is admitted in statement of account annexed at page no. 60 of complaint.

5. That the 'possession of the showroom' was handed over to complainant in the month of February, 2019 and subsequently

complainant opened a showroom for retail sale of Daikin air conditioners on 15.02.2019. However, respondent had sent a letter of offer of possession dated 20.03.2019 which got received in month of May, 2019 alongwith additional demand of Rs 5,51,282/-. Out of said demand, complainant is disputing demand of Rs 2,32,650/- charged for increased area of 42.3 sq ft i.e. 500-542.3 sq ft. and demand of Rs 71,828.12/- charged in lieu of interest for delayed payment of installments.

6. That the building of the complex in which shop in question is situated was already lying complete at the time of execution of builder buyer agreement. So, there is no alteration/modification in specification of shop. Respondent without taking consent of complainant-allotee has acted unilaterally in raising demand for increased area. It is alleged that as per article 3.6 of the agreement area of the unit purchased is tentative and can be altered or revised but the same cannot be done in isolation without the approval and sanction of building plans of the complex by the concerned department.

7. That respondent has also demanded an amount of Rs 71,828.12/- from complainant in lieu of interest on delayed payment vide its possession/demand letter dated 20.03.2019. However, the same is not due from the complainant because the respondent neither demanded nor informed about any delayed payment/interest at the time of

transfer of unit on 14.01.2019 so demand of said amount is unjustified and illegal.

8. That a bare perusal of the terms and conditions of the flat buyer agreement would establish a fact that the respondent-developer was conscious that 'time' of performance of the obligations stipulated in the agreements particularly time for handing over the possession of the developed flat was essence of the allotment in question and therefore, after receiving considerable amount, the respondent was legally bound to handover the actual physical possession of the shop, free from all encumbrances by end of 2008. But possession was given in year 2019 so the respondent is liable to pay delay interest of 10 years delay in offering possession of unit.

9. That complainant has also served the respondents with legal notice dated 27.05.2019, annexed as Annexure P-3, to complaint but in vain. Therefore, complainant is left with no other option but to approach this Authority. Hence the present complaint has been filed.

C. RELIEF SOUGHT

10. Complainant in his complaint has sought following relief:

i. Provide relevant documents or allow the inspection to the complainant with respect to the following:-

- Increase in the area and also the documents of approval of such increase by the relevant authorities by revising/approval/sanction of the layout plans of the complex.
- Dimensions with respect to corresponding increase in the carpet and the built up area of the unit.
- Amount that civil contractor has been paid as per the increased area and what has been the revision in the layout plans provided to him for carrying out the construction.
- Documents(or allow the inspection) with respect to purchase of additional material to construct the additional area. Also share what was the variation from the initial estimates, documents (or allow the inspection) to ascertain that when was this increase in area discovered. When were the relevant authorities notified of the same? What were the observations of the relevant authorities about the same.
- Documents(or allow the inspection) that how has the increase in the area impacted the overall FAR of the project? If there has been an overall increase in the FAR, has the same been regularized by the relevant authorities.
- Provide documents(or allow the inspection) of completion certificate and occupation certificate.

ii. Withdraw the demand of increased area (including other related charges demanded in lieu of increased area) and delayed interest of Rs 71,828.12/-.

iii. Pay the damages/penalty for delay in the handing over of the possession of the unit @ Rs 5 per square feet per from 30th month from the sanction plan till the date of occupation certificate with interest @12% per annum.

D. REPLY SUBMITTED ON BEHALF OF RESPONDENT

Learned counsel for the respondents filed detailed reply on 22.12.2021 pleading therein:

11. That due to the reputation of the respondent company, the complainant had voluntarily invested in the project of the respondent company namely- Rodeo Drive Mall, TDI City at Kundli, Sonipat, Haryana.

12. That complaint is bad for misjoinder of parties as the complainant has impleaded the Chairperson and the Director of the respondent company in the captioned complaint whereas all the communications with the complainant were made by the respondent company which is respondent no. 1 and the agreement dated 02.05.2012 (incorrect date- no BBA of such date has been annexed with reply so correct date is 14.01.2019) was executed between the complainant and respondent company only. Therefore, it is prayed that name of respondent no. 2

and 3 must be deleted from the array of parties as the same are not necessary parties to the captioned complaint.

13. That when the respondent company commenced the construction of the said project, the RERA,Act 2016 was not in existence, therefore, the respondent company could not have contemplated any violations and penalties thereof, as per the provisions of the RERA Act, 2016. That the provisions of RERA Act are to be applied prospectively. Therefore, the present complaint is not maintainable and falls outside the purview of provisions of RERA Act.

14. That complainant herein as an investor has accordingly invested in the project of the respondent company for the sole reason of investing, earning profits and speculative gains, therefore, the captioned complaint is liable to be dismissed in limine.

15. That respondent company vide its letter dated 27.07.2017, annexed as Annexure R-2, had applied to DTCP for grant of occupation certificate of commercial project measuring 6.558 acres. Accordingly, the occupation certificate was granted on 12.06.2019. Copy of occupation certificate is annexed as Annexure R-6.

16. That no cause of action has arisen in favor of complainant to file captioned complaint as complainant has already been offered possession of the unit in question back in the year 2019 and the complainant has accepted the possession of the unit wherein he is

operating a retail showroom for the sale of Daikin air conditioners. Said fact is also admitted by complainant himself in para 1 of captioned complaint.

17. That the super area of the unit has always been tentative till the final construction of unit and the same is finally calculated only after the completion of the unit. Complainant was well aware about the said fact as is duly mentioned under clause 3.6 of the agreement executed between the parties. Fact remains that no protest was ever been raised by complainant at time of acceptance of actual physical possession of unit.

18. That no delay has been caused in offering possession to the complainant as the complainant purchased the unit in year 2019 and was simultaneously offered possession of the unit. In respect of increase in area, the respondent has denied the plea of complainant that the construction of complex was complete at time of execution of builder buyer agreement and there is no scope of any alteration in it. Further, in respect of amount of Rs 71,828/- it is submitted that respondent has charged all amounts in accordance with the agreed terms of the agreement so it is a legitimate demand on part of respondent to charge interest from the buyer of unit on account of delay in clearing payments and the same is calculated and charged in final statement of account.

E. ARGUMENTS OF LEARNED COUNSEL FOR COMPLAINANT AND RESPONDENTS

19. During oral arguments learned counsel for the complainant insisted upon quashing of demand for increased area of Rs 2,32,650/- and demand on account of delayed interest to the tune of Rs 71,828/-as no justification for either of charges has been provided by respondent till date. Further he pressed for delay interest for the delay caused of around 10 years in offering possession.

20. Ld. counsel for respondent submitted that increased area has been charged at the basic rate of allotment and as per clause provided in agreement. Demand for interest on account of delayed installments is well within the clause of agreement. So complainant is liable to pay the outstanding dues amount.

F. ISSUES FOR ADJUDICATION

21. Whether the demands raised by respondent on account of increased area and interest on account of delayed payment is justified or not?

22. Whether complainant is entitled for the relief of delay interest on account of delay in handing over of possession?

G. OBSERVATIONS AND DECISION OF THE AUTHORITY

23. The Authority has gone through the rival contentions. In light of the background of the matter as captured in this order and also the arguments submitted by both parties, Authority observes that

respondent has taken certain objections w.r.t maintainability of complaints. Findings/objections of Authority w.r.t maintainability issues are as follows:

(i) Respondent has raised an objection that provisions of RERA Act,2016 are applicable with prospective effect only and therefore same were not applicable as on 02.05.2012 (correct date of agreement is 14.01.2019) when the complainant was allotted shop no. GF-154, Rodeo Drive Mall, TDI City, Kundli, it is observed that issue regarding operation of RERA Act,2016 whether retrospective or retroactive has already been decided by Hon'ble Supreme Court in its judgment dated 11.11.2021 passed in ***Civil Appeal No. (s) 6745-6749 OF 2021 titled as Newtech Promoters and Developers Pvt. Ltd. versus State of Uttar Pradesh and others***, wherein Hon'ble Apex Court has held as under:-

> "41. *The clear and unambiguous language of the statute is retroactive in operation and by applying purposive interpretation rule of statutory construction, only one result is possible, i.e., the legislature consciously enacted a retroactive statute to ensure sale of plot, apartment or building, real estate project is done in an efficient and transparent manner so that the interest of consumers in the real estate sector is protected by all means and Sections 13, 18(1) and 19(4) are all beneficial provisions for safeguarding the pecuniary interest of the consumers/allottees. In the given circumstances, if the Act is held prospective then the adjudicatory mechanism under Section 31 would not be available to any of the allottee for an ongoing project. Thus, it negates the contention of the promoters regarding the contractual terms having an overriding*

effect over the retrospective applicability of the Act, even on facts of this case." "45. At the given time, there was no law regulating the real estate sector, development works/obligations of promoter and allottee, it was badly felt that such of the ongoing projects to which completion certificate has not been issued must be brought within the fold of the Act 2016 in securing the interests of allottees, promoters, real estate agents in its best possible way obviously, within the parameters of law. Merely because enactment as prayed is made retroactive in its operation, it cannot be said to be either violative of Articles 14 or 19(1)(g) of the Constitution of India. To the contrary, the Parliament indeed has the power to legislate even retrospectively to take into its fold the preexisting contract and rights executed between the parties in the larger public interest." 53. That even the terms of the agreement to sale or home buyers agreement invariably indicates the intention of the developer that any subsequent legislation, rules and regulations etc. issued by competent authorities will be binding on the parties. The clauses have imposed the applicability of subsequent legislations to be applicable and binding on the flat buyer/allottee and either of the parties, promoters/home buyers or allottees, cannot shirk from their responsibilities/liabilities under the Act and implies their challenge to the violation of the provisions of the Act and it negates the contention advanced by the appellants regarding contractual terms having an overriding effect to the retrospective applicability of the Authority under the provisions of the Act which is completely misplaced and deserves rejection.

54. From the scheme of the Act 2016, its application is retroactive in character and it can safely be observed that the projects already completed or to which the completion certificate has been granted are not under its fold and therefore, vested or accrued rights, if any, in no manner are affected. At the same time, it will apply after getting the ongoing projects and future projects registered under Section 3 to prospectively follow the mandate of the Act 2016."

The provisions of the Act are retroactive in nature and are applicable to an act or transaction in the process of completion.

Thus, the rule of retroactivity will make the provisions of the Act and the Rules applicable to the acts or transactions, which were in the process of the completion though the contract/ agreement might have taken place before the Act and the Rules became applicable. Hence, it cannot be stated that the provisions of the Act and the Rules made thereunder will only be prospective in nature and will not be applicable to the agreement for sale executed between the parties prior to the commencement of the Act.

(ii) The respondent in its reply has contended that the complainant is "speculative buyer" who has invested in the project for monetary returns and taking undue advantage of RERA Act, 2016 as a weapon during the present down side conditions in the real estate market and therefore he is not entitled to the protection of the Act of 2016. In this regard, Authority observes that "any aggrieved person" can file a complaint against a promoter if the promoter contravenes the provisions of the RERA Act, 2016 or the rules or regulations. In the present case, the complainant is an aggrieved person who has filed a complaint under Section 31 of the RERA Act, 2016 against the promoter for violation/contravention of the provisions of the RERA Act, 2016 and the Rules and Regulations made thereunder. Here, it is important to emphasize upon the

definition of term allottee under the RERA Act of 2016, reproduced below: -

Section 2(d) of the RERA Act:
(d) "allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;

In view of the above-mentioned definition of "allottee" as well as upon careful perusal of allotment letter dated 31.08.2006 and builder buyer agreement dated 14.01.2019, it is clear that complainant is an "allottee" as shop bearing no. GF-154 in the real estate project "Rodeo Drive Mall, TDI, City, Kundli", Sonipat was allotted to him by the respondent promoter. The concept/definition of investor is not provided or referred to in the RERA Act, 2016. As per the definitions provided under section 2 of the RERA Act, 2016, there will be "promoter" and "allottee" and there cannot be a party having a status of an investor. Further, the definition of "allottee" as provided under RERA Act, 2016 does not distinguish between an allottee who has been allotted a plot, apartment or building in a real estate project for self-consumption or for investment purpose. The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no.

0006000000010557 titled **as M/s Srushti Sangam Developers Ltd. Vs Sarvapriya Leasing (P)Ltd. And Anr.** had also held that the concept of investors not defined or referred to in the Act. Thus, the contention of promoter that allottees being investor are not entitled to protection of this Act also stands rejected.

(iii) Keeping in view the aforementioned observations, the complaint is maintainable and duly covered within ambit of RERA Act,2016. Thus, Authority is entrusted upon the power to adjudicate the same. Respondent in its written statement has prayed for deletion of name of respondent no. 2 and 3 from array of parties as they are not necessary parties to complaint. In this regard, Authority observes that on perusal of complaint and documents attached with it, it is clear that allotment letter, builder buyer agreement and receipt of payment; all important/necessary communications have been made only by respondent no. 1. Moreover, no specific relief has been sought against respondent no. 2 and 3 in the relief clause of complaint so they are not necessary parties to complaint and there is no need to pass any specific direction against respondent no. 2 and 3. It is made clear that in this order directions are only issued to respondent no. 1 which is TDI Infrastructure Ltd.

(iv) Authority observes that unit in question, i.e., Shop no. GF-154 was allotted to original allottees vide allotment letter dated 31.08.2006. Builder buyer agreement was executed between the original allottees and respondent on 14.01.2019. Thereafter, complainant in this case had purchased the booking rights qua the shop in question in the project of the respondent vide endorsement dated 17.01.2019 against which an amount of ₹27,73,000/- already stands paid to the respondent. Execution of builder buyer agreement dated 14.01.2019 and endorsement subsequent to said execution is admitted by both the parties. Further, it is admitted that actual physical possession has already been taken by complainant in year 2019 itself, which is also evident from the admission of fact by the complainant in its complaint that a retail showroom of Daikin air conditioners was inaugurated by complainant on 15.02.2019.

(v) Grievance of the complainant is that the respondent has issued possession cum demand letter dated 20.03.2019 post handing over possession and without receipt of occupation certificate accompanied with additional demand of Rs 5,51,282/-. Out of said demand complainant is disputing demand of Rs 2,32,650/- on account of increased area i.e. 500 sq ft to 542.3 sq ft and demand of Rs 71,828/- raised on account of interest on delayed

payments. Further, complainant is seeking delay interest for the delay caused of 10 years approximately which is from year 2008 to receipt of occupation certificate as possession was supposed to be handed over by respondent latest by end of year 2008 (2 years from date of allotment 31.08.2006).

(vi) In order to adjudicate the issue of illegal demands, Authority vide order dated 12.07.2023 directed respondent no. 1 was directed to file detailed justification of the increased area of the unit with a component wise chart of super area of the unit of the complainant and copy of earlier approved plan and revised approved plan of unit of complainant. Further, respondent no. 1 was directed to provide detailed calculation of Rs 71,828/- raised on account of interest on delayed payments in order to reveal that how said figure has been arrived at. Relevant part of order is reproduced below for reference:-

> *"Authority observes that the complainant is seeking quashing of demand of Rs 71,828/- raised on account of interest on delayed payments and demand of Rs 2,32,650/- raised on account of increased area from 500 sq ft to 542.3 sq ft alongwith detailed justification for the same. Respondent vide order dated 31.01.2023 was directed to file documents pertaining to increased area as mentioned in para 1 of this order but today ld. counsel for respondent sought more time to file the*

same. Respondent no. 1 is granted opportunity to file the requisite documents subject to imposition of cost of Rs 5,000/- payable to Authority and Rs 2,000/- payable to complainant. Further, respondent is directed to provide detailed calculation of Rs 71,828/- in order to reveal that how said figure has been arrived at.

Respondent should file the documents within next 3 weeks with advance copy supplied to complainant.

Case is adjourned to 05.10.2023."

(vii) It is pertinent to mention here that respondent has not filed any document in compliance of order dated 12.07.2023 in respect of demand for increased area and interest for delayed payment. Rather, it has been argued by ld. counsel for respondent that both demands have been raised in consonance with the clauses of builder buyer agreement. Plea of respondent in respect of demand for increased area is that area specified in builder buyer agreement is tentative and final area can only be ascertained after completion of construction work. Complainant is bound to pay for the increased area by virtue of clause 3.6 of the builder buyer agreement. Complainant's plea is that the construction of unit as well as complex was complete when the unit was endorsed in his favour on 17.01.2019 and said version can be adduced from the fact that physical possession was taken within one month and

showroom was inaugurated on 15.02.2019. On perusal of builder buyer agreement dated 14.01.2019 annexed as Annexure P-1, it is revealed that shop no. GF-154 having covered area 335 sq fts and super built up area 500 sq fts was allotted to original allottees. Thereafter, complainant stepped into shoes of original allottees on 17.01.2019 and took physical possession of shop on 15.02.2019. Demand for increased area has come into picture with possession cum demand letter dated 20.03.2019, it is at that point it come to the knowledge of complainant that there is increase in area from 500 sq ft to 542.3 sq ft.

(viii) Authority observes that as per clause 3.5 and 3.6 of the agreement, the final area of the unit can be determined only after completion of construction work which according to complainant was complete when unit was endorsed in his favour. Respondent in its reply has admitted that occupation certificate was applied in the year 2017. Question involved herein is that can respondent apply for grant of occupation certificate to DTCP vide application dated 27.07.2017 annexed as Annexure R-2 when the construction of the complex was not complete. In case, area got increased then why a builder buyer agreement dated 14.01.2019, that is after applying for occupation certificate on 27.07.2017 was signed only for 500 sq ft. and not the increased area. Another issue is that respondent has

not placed on record any document to justify the increased area even after specific directions by the Authority. It is not an acceptable proposition that respondent without completing the construction work enough to accurately measure the area of the shop applied for occupation certificate on 27.07.2017. Moreover, the fact remains that demand for increased area was raised in March,2019 and said demand cannot be said to be approved in consonance with the occupation certificate as it stands received on 12.06.2019. Further, Authority fails to understand that when respondent in its builder buyer agreement dated 14.01.2019 specified the area of the unit as 500 sq ft then how was the physical possession offered to complainant on 15.02.2019 without settlement of accounts of receivables and payables for increased area and interest on delayed payment, and if physical possession had already been handed over on 15.02.2019, then how can subsequent another offer of possession for the same shop was made on 20.03.2019. Hence, respondent has failed to establish the fact that it was rightful in issuing a letter of offer of possession dated 20.03.2019 subsequent to handover of actual physical possession on 15.02.2019. Respondent has also failed to establish/prove that area has been actually increased at site and complainant is duty bound to pay for the same.

(ix) With respect to demand of Rs 71,828/- raised on account of interest on delayed payments, respondent has neither provided any justification/break up of amount in its written statement nor has placed on record any demand letters against which complainant defaulted in making payment. Respondent failed to prove before the Authority that complainant defaulted in making payment which he was obliged to do by honouring legal demand letters. The proceedings before the Authority are of summary nature and as such in absence of documentary evidence the respondent cannot be allowed to recover the amount of Rs 71,828/- from complainant.

(x) Authority observes that the complainant is also seeking delay interest for the delay of 10 years approximately in handing over of possession i.e. from year 2008 to receipt of occupation certificate as possession was supposed to be handed over by respondent latest by end of year 2008 (2 years from date of allotment 31.08.2006). Vide allotment letter dated 31.08.2006, the respondent had allotted shop No. GF-154, 500 sq. ft. to the original allottees but the detailed terms and conditions like total sale consideration, timelines for and possession, payment plan, earnest money, cancellation of agreement are specified in builder buyer agreement only. So, execution of builder buyer agreement is a formal step for establishing the relation of allotee and promoter for

a unit specified therein. In the present case, the builder buyer agreement got executed in year 2019 that is after 13 years from date of allotment but neither of the party to it i.e. original allotee and respondent, has objected to execution of said builder buyer agreement. Complainant stepped into shoes of original allotee by way of endorsement subsequent to signing of builder buyer agreement. Therefore, it is only the original allottee who could object to delay in signing of builder buyer agreement after an inordinate delay, which is not the case here. So, builder buyer agreement dated 14.01.2019 is the primary document governing the rights and obligations of the parties.

(xi) Authority observes that vide clause 4.1 of the builder buyer agreement dated 14.01.2019, the respondent was supposed to deliver possession within 30 months from date of sanction of building plans. Neither complainant nor respondent has provided date of sanction of building plan, accordingly taking 30 months from date of builder buyer agreement, the deemed date of possession works out to 14.07.2021. Be the case as it may be, the complainant in the meanwhile stepped into shoes of original allottees on 17.01.2019 and thereafter taken physical possession on 15.02.2019. This implies that within one month of execution of builder buyer agreement dated 14.01.2019, the complainant got

actual physical possession. It is pertinent to mention here that though possession was offered to the complainant without receiving occupation certificate, however there is nothing on record to show that the complainant was under any pressure or undue influence to accept the same. Further, as admitted by the complainant, he has opened his showroom in the shop and is enjoying the benefit from it. Meaning thereby it was original allotee who waited for 13 years for proper documentation pertaining to booked unit and not the complainant as complainant got possession of purchased unit within one month. Moreover, the delay interest is awarded to allotee for the delay caused by promoter/developer in handing over of possession but herein the complainant is in receipt of possession within one month of execution of builder buyer agreement. As a matter of fact, complainant is seeking delay interest from year 2008 (2 years from date of allotment, i.e., 31.08.2006) but the fact of execution of builder buyer agreement in 2019 cannot be ignored as it is a valid document executed by parties with consent, governing their rights and obligations with respect to subject matter which is unit in question shop no. GF-154. No arguments has been forwarded by ld. counsel for complainant questioning the legality of builder buyer agreement dated 14.01.2019. Furthermore, it is the original

allotee who could have raised questions upon execution of builder buyer agreement as complainant himself accepted all documents and purchased unit after completing formalities including endorsement. Transaction carried out between original allotees and respondent was duly accepted/validated by complainant without any objection. At this stage, complainant cannot take a plea of ignoring validly executed agreement of 2019 and awarding of delay interest prior to it. In terms of said builder buyer agreement, there is no delay caused on respondent in handling over possession of unit. Therefore, complainant is not entitled to delay interest.

(xii) In respect of relief clause (i) pertaining to inspection of documents, it is observed that said relief was neither argued by complainant counsel nor pressed upon at time of hearings. Further, it is observed that inspection of documents was sought in respect of justification of increased area whereas increased area and its charges are not being allowed to be recovered from complainant by respondent as no justification was provided by respondent for it. Thus, no specific direction for inspection of documents is required.

I. DIRECTIONS OF THE AUTHORITY

25. Hence, the Authority hereby passes this order and issues 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) Demand of Rs 2,32,650/- raised on account of increased area and amount of Rs 71,828/- raised on account of interest on delayed payment stands quashed and respondent is not entitled to recover the same from the complainant.

(ii) Complainant is not entitled to claim delay interest from respondent as no delay has been caused in delivery of possession of unit in question.

26. **Disposed of**. File be consigned to record room after uploading order on the website of the Authority.

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NADIM AKHTAR
MEMBER]

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DR. GEETA RATHEE SINGH
[MEMBER]