

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

Complaint no. : 4965 of 2021
Date of filing : 16.12.2021
Date of decision : 02.01.2024

Pulak Mukherjee
R/o: B – 304, Chittaranjan Park,
New Delhi - 110019

Complainant

Versus

M/s Vatika Ltd.
Regd. Office: Unit-A-002, ground floor, Block-A
Vatika INXT City Center, Sector-83, Gurugram,
Haryana-122012

Respondent

CORAM:

Shri Vijay Kumar Goyal
Shri Ashok Sangwan
Shri Sanjeev Kumar Arora

Member
Member
Member

APPEARANCE:

Shri K.K. Kohli along with Kanish Bangia Advocates for the complainant
Shri Venket Rao Advocate for the respondent
Shri Uma Sharma AR for the respondent

ORDER

1. The present complaint has been filed by the complainant/allottee in Form CRA 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. Project and unit 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 tabular form:

| S. No. | Particulars | Details |
|--------|--|---|
| 1. | Name and location of the project | Signature 2 Villa (Formerly known as "Bellevue Villa/residencies") at Vatika India Next, Sector 82, 82A, 83, 84 and 85, Gurugram, Haryana |
| 2. | Date of allotment | 16.06.2009 (Page 47 of complaint) |
| 3. | Buyer agreement executed between the complainant and the respondent on | 22.09.2009 (Page 53 of complaint) |
| 4. | Villa no. (As per buyer's agreement) | 65/240/Simplex/BR admeasuring 1527 sq. ft. built-up area to be constructed on plot measuring 240 sq. yards (Page 56 of complaint) |
| 5. | Villa no. as per addendum dated 30.01.2012 to the buyer's agreement dated 22.09.2009 | 3/240/Simplex/ST 82 D1-9 (Page 99 of complaint) |
| 6. | Possession clause | 11.1 Schedule for possession of the said unit <i>The company based on its present plans and estimates and subject to all just</i> |



| | | |
|-----|--------------------------------|--|
| | | <p>exceptions, contemplates to complete construction of the said unit within a period of three years from the date of execution of this Agreement. However, in case the Company is not able to adhere to the said time frame, it shall be entitled to reasonable extension of time for completing the construction, unless there shall be delay or there shall be failure due to reasons mentioned in clause (12.1)(12.2)(12.3) and clause (38) or due to failure of Applicant(s) to pay in time the price of the said Unit along with all other charges and dues in accordance with the schedule of payments given herein in annexure III or as per the demands raised by the Company from time to time or any failure on the part of the Applicant(s) to abide by any of the terms or conditions of this Agreement. (Emphasis supplied) [Page 60 of complaint]</p> |
| 7. | Due date of possession | 22.09.2012 |
| 8. | Total sale consideration | Rs. 85,46,005/- [As per statement of account dated 22.10.2021, page 100 of complaint] |
| 9. | Amount paid by the complainant | Rs. 24,01,422/- [As per statement of account dated 22.10.2021 at page 100 of complaint and as confirmed by the respondent during proceeding dated 21.03.2023] |
| 10. | Occupation certificate | Not obtained |
| 11. | Offer of possession | Not offered |

| | | |
|-----|------------------------|----------------------------------|
| 12. | Notice for termination | 08.12.2021 (page 28 of reply) |
|-----|------------------------|----------------------------------|

B. Facts of the complaint

3. The complainant made the following submissions in the complaint:

- i. That in 2009, the respondent company issued an advertisement announcing a residential project called 'Bellevue Residences' having its project office at Sector-82, Gurugram, Haryana and thereby invited applications from prospective buyers for the purchase of allotments in the said project.
- ii. That on 15.05.2009, the complainant signed the application form for one unit and opted for Home Loan Linked Plan which was subsequently changed to construction linked plan in 2012. The complainant paid an initial amount of Rs. 5,00,000/- on 15.05.2009 and were allotted one unit S65/240/Simplex/BR in the above said project.
- iii. That on 22.09.2009, the complainant executed a builder buyer agreement dated 22.09.2009 for the unit bearing no. S65/240/Simplex/BR. Thereafter, an addendum was executed between the parties on 30.01.2012 and the complainant was allotted a new unit **Signature 2 Villa** bearing no. 3/240/SIMPLEX/ST.82 D1-9 **(S-5.5)** by the respondent company. As per clause 11.1 of the buyer's agreement, which was signed on 22.09.2009, the possession of the unit bearing no.

3/240/SIMPLEX/ST.82 D1-9 was supposed to be delivered within thirty-six months from the date of execution of buyers agreement i.e., by 22.09.2009.

- iv. That clause 9 of the buyer's agreement, upon delay of payment by the allottee, the respondent can charge 18% simple interest per annum, however, on account of delay in handing over possession by the respondent, he is liable to pay merely Rs. 5.00/-per sq. ft. of the built-up area, per month for the period of delay as per clause 12.5 of the said agreement. It is submitted that such clauses are unjust, arbitrary, and amount to unfair trade practice as held by the Hon'ble NCDRC in the case titled *Shri Satish Kumar Pandey & Anr. v/s M.s Unitech Ltd. (14.07.2015)* as also in the judgment of Hon'ble Supreme Court in *Neelkamal Realtors Suburban Pvt Ltd Vs. UOI and Ors. (W.P 2737 of 2017)*.
- v. That during 2012-2021, the complainant met the respondent's representatives regularly seeking clarity concerning the status of the project and the delivery date, however, the respondent's representatives kept issuing vague reasons however was unable to hand over possession to the complainant.
- vi. That after losing all hope from the respondent company and having shattered and scattered dreams of owning a unit and also losing a considerable amount of time and money (as per the buyer's agreement dated 22.09.2009), the complainant never received the

letter of possession and till now the area looks far from complete and habitable.

- vii. That as per section 11 (4) of the Act, the promoter is liable to abide by the terms and agreement of the sale. As per section 18 of the Act, the respondent is liable to pay interest to the allottees of an apartment, building, or project for a delay or failure in handing over of such possession as per the terms and agreement of sale. Accordingly, the complainant is entitled to get interest on the paid amount along with interest at the rate as prescribed by the hon'ble authority per annum from the due date of possession as per flat buyer agreement till the date of handing over of possession.
- viii. That the complainant has been diligently making the payments as per the demands of the respondent company, hoping that the possession will be ultimately delivered to them soon. But their hopes have been completely shattered as the respondent has failed to intimate the complainant of any date of delivery of possession of the plot. That perturbed by the lingering silence on the part of the respondent, the complainant has preferred the present complaint before the hon'ble authority to issue necessary directions to the respondent to immediately handover the possession of the plot / villa to the complainant along with relevant compensation for delay. Hence, this complaint.



C. Relief sought by the complainant

4. The complainant has filed the present compliant for seeking following relief:
- i. Direct the respondent to immediately grant the physical habitable and peaceful possession of the allotted unit no. 3/240/SIMPLEX/ST.82 D1-9 (S - 5.5) along with interest for the delay caused.
 - ii. Direct the respondent to execute a conveyance deed in favour of the complainant.
 - iii. Direct the respondent to pay the balance amount due to the complainant from the respondent on account of the interest as per the guidelines laid in the Act.
 - iv. Direct the respondent to issue a valid offer of possession for the said villa.
 - v. Direct the respondent not to ask for any charges which is not as per the buyer agreement.
 - vi. To pass any other relief(s) which this hon'ble authority thinks fit in the interest of justice and in favour of the complainant.
5. On the date of hearing, the authority explained to the respondent/promoter about the contravention 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 has contested the present complaint on the following grounds:

- i. That the complainant herein learned about the project launched by the respondent titled as 'Bellevue Residences - India Next City' situated at Sector 82, Gurgaon and approached the respondent repeatedly to know the details of the said project. After having keen interest in the project constructed by the respondent, the complainant herein booked a villa on a plot vide application form dated 18.05.2009 upon his own judgement & investigation and paid a booking amount of Rs. 5,00,000/- at the time of booking for further registration.
- ii. That on 22.09.2009, a BBA was executed between the complainant and the respondent wherein unit no. 65/240/Simplex/BR admeasuring 1527 sq. ft. for a total sale consideration of ₹ 93,52,000/- in the said project of the respondent.
- iii. That further on 30.01.2012, an addendum was executed between the complainant and the respondent for the said villa and re-allotted a new villa bearing no. 3/240/Simplex/ST 82 D1-9 in the project Signature 2 Villa. It is pertinent to mention here that the complainant is well aware of the re-allotment and accepted the same after being fully satisfied without any protest or demur.



- iv. That the complainant had requested to the respondent for change in payment plan from Special Home Loan Linked to Construction linked payment plan. The respondent had approved request of the complainant and changed the payment plan of the said villa. Due to change in the payment plan, the total sale consideration of the said villa has also changed from Rs.93,52,000/- to Rs.85,46,005/-. That as on date only partial payment of Rs.24,01,422/- has been received from the complainant towards the agreed total sale consideration and still a substantial amount of money was due and payable on account of the complainant.
- v. That the delay in the project is due to reasons beyond the control of the respondent company. Clause 12 of the BBA provides that in case of any unforeseen circumstances faced by the respondent in mid-way of development of the subject project, then extension time would be granted for completion of the project and had also agreed that they shall not be liable for any amount of compensation for such extension which is caused either due to act or notice or notification issued by the Government or Public or Competent Authority. Further, as per clause 31 of the BBA, the complainant was well aware that the respondent shall not be liable for not fulfilling the obligation under the agreement if such obligations are delayed due to any reasons mentioned under 'Force Majeure'.



vi. That since the starting the respondent was committed to complete the project and has invested each and every amount so received from the complainant towards the agreed total sale consideration. The project was hindered due to reasons beyond the control of the respondent:

- *Laying of GAIL Pipe Line and loss of land in ROU Alignment of GAIL corridor-* That the respondent has planned the whole township prior to the GAIL notification which came during the year 2009 and after this the respondent gave detailed representation to the GAIL authorities and HUDA administration for re-routing the GAIL pipeline since the respondent has received license in the township and had sold villas to third parties based on approved lay-out plans. Meanwhile, during the pendency of granting project license, GAIL had granted permission for reducing ROU from 30 mtrs. To 20 mtrs. Vide its letter dated 04.03.2011 that passes through the project land. Although GAIL had reduced the ROU by 10 mtrs., but since they had denied the re-routing of the GAIL corridor, the respondent not only lost the number of plots & villas but had to re-design the project land that consumed the money and time. Hence, the construction of the project got delayed.



- *Acquisition of sector road land parcels in the township-* The delay in acquisition of sector roads and subsequently various patches of sector road coming under litigation along with no policy acquisition of 24 mtrs. Road has resulted in massive delay in laying of services, thus impacting development.
 - *Acquisition of sector roads by government notifications and orders-* Since, the 24m road / sectoral plan roads function as sub-arterial roads of the development and also serves as Infrastructure conduits for connecting independent licensed colonies / projects located within the sector with External Services Network i.e., water supply, sewerages, drainage, electricity etc., it is important to have the same in the township. Two sector roads are falling in the project land and due to non-acquisition of the same, the respondent has totally lost the road connectivity and supply of construction materials etc. to the project land has become a big challenge.
- vii. That as per clause 12.5 of the BBA, in case the respondent is not in position to deliver or handover the possession of the project then in that case the liability of the respondent shall be limited and restricted to the refund of the amount paid by the complainant along with simple interest of 6%. That the construction of the villa in question was interrupted due to reasons which were beyond the control of the respondent as stated above. It is pertinent to mention



here that the respondent had issued termination letter of the said villa on 08.12.2021 and offered refund of principal amount along with 6% simple interest per annum to the complainant. In the interest of justice, the respondent herein cannot be forced to handover the possession of the villa allotted to the complainant in case the construction of the said project is hindered due to many reasons pertaining to force majeure. And the respondent herein has already offered to initiate refund of the amount paid by the complainant along with prescribed rate of interest.

- viii. That the respondent was committed to complete the project and has invested each and every amount towards the construction of the same. However, due to the reasons beyond the control of the respondent as stated above, it has become impossible for the respondent to fulfil the contractual obligations as promised under the agreement and the said agreement has become void in nature. The agreement between the complainant and the respondent has been frustrated as it is impossible for the respondent to provide the possession of the subject villa. As per doctrine of frustration as enshrined under section 56 of the Act, where the performance of the contract has been frustrated and the performance of it has become impossible to perform due to any unavoidable reason or condition, the remedy is compensation in case of breach of



contract. The respondent herein has already offered to provide refund of the amount paid along with rate of interest.

7. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

8. 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

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana 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

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



Section 11

.....

(4) The promoter shall-

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

Section 34-Functions of the Authority:

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

11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act 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 relief sought by the complainant

F.I Possession and delay possession charges

12. **Reliefs sought by the complainant:** The below-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected:

- i. Direct the respondent to immediately grant the physical habitable and peaceful possession of the allotted unit no. 3/240/SIMPLEX/ST.82 D1-9 (S - 5.5) along with interest for the delay caused.
- ii. Direct the respondent to issue a valid offer of possession for the said villa.



iii. Direct the respondent to pay the balance amount due to the complainant from the respondent on account of the interest as per the guidelines laid in the Act.

13. 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."

14. Clause 11.1 of the builder buyer's agreement provides for time period for handing over of possession and is reproduced below:

"11.1. Schedule for Possession of the said Unit

*The Company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Unit/ said Unit within a period of **three from the date of execution of this Agreement**. However, in case the Company is not able to adhere to the said time frame, it shall be entitled to reasonable extension of time for completing the construction, unless there shall be delay or there shall be failure due to reasons mentioned in Clauses (12.1), (12.2), (12.3) and Clause (38) or due to failure of Applicant(s) to pay in time the price of the said Unit along with all other charges and dues in accordance with the schedule of payments given herein in Annexure-III or as per the demands raised by the Company from time to time or any failure on the part of the Applicant(s) to abide by the terms or conditions of this Agreement."*

(Emphasis supplied)

15. **Due date of handing over possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within 3 years from the date of execution of the builder buyer

agreement. In the present complaint, the builder buyer agreement was executed on 22.09.2009. Therefore, the due date of handing over possession as per the buyer's agreement comes out to be 22.09.2012.

16. The authority observes that the aforesaid builder buyer agreement dated 22.09.2009 was executed between complainant and the respondent in respect of unit bearing no. 65/240/Simplex/BR admeasuring 1527 sq. ft. built-up area to be constructed on plot measuring 240 sq. yards in the project namely 'Bellevue Residences'. Thereafter, an Addendum to Signature 2 Villa (Formerly known as Bellevue Villa) Builder Buyer Agreement was executed by the original allottee on 30.01.2012 in respect of Plot no. 3/240/Simplex/ST 82 D1-9 Signature 2 Villa on 240 sq. yds. having built-up area of 1527 sq. ft. The addendum dated 30.01.2012 states that '*all other terms and conditions of the Builder Buyer's Agreement dated 22nd Sept'09 shall remain unaltered and effective*'. The complainant has filed the present complaint on 16.12.2021 seeking possession of villa/unit bearing no. 3/240/Simplex/ST 82 D1-9 Signature 2 Villa, Vatika India Next and delay possession charges as per proviso to section 18 (1) of the Act.

17. The case of the respondent is that due to change in the alignment of the GAIL pipeline, the villa/unit in question is not available and in view of the same an offer for refund to the complainant was made vide termination letter dated 08.12.2021. However, the counsel for the complainant stated that the letter dated 08.12.2021 was never received



by him and it has come to his notice when the reply was filed by the respondent. Further, it was stated that the villas have been constructed both in front and left and right side of the allotted villa and it is not understandable as to how a major pipe line can affect only his allotted unit. Thus, vide order dated 28.10.2022, the respondent was directed to submit the detailed copies of plan at the time of allotment and subsequent changes, variations which have led to the omission of the plot along with detailed justification within 2 weeks.

18. However, the respondent failed to place on record the aforesaid requisite documents and thus, vide order dated 13.01.2023, the respondent was again directed to file the above information within 15 days. Also, the respondent was restrained from creation of any third party rights on the above unit till further orders, since the promoter has issued a notice for cancellation inspite of assurance by the counsel for the respondent that the cancellation or termination notice shall not be initiated. Further, Local commission was also appointed to visit the site to ascertain the facts and submit its report.
19. The Local Commission submitted its report on 13.02.2023 and the relevant finding are reproduced as under:

"Conclusion:

A. The present site conditions clearly show that the said plot (Plot no. 3, ST-5.5(1-9), Signature Simplex Villa, Vatika India Next, Sector 82) has not been clearly demarked at site. The vacant space is available on ground for development of captioned pocket/plot/Villa and the captioned plot area has not been affected by any GAIL pipeline. The captioned plot/villa area falls within the licensed land area and is the part and parcel of site plan as approved by DTCP, Haryana and the



same is earmarked in attached plan (Copy Attached as Annexed "E"). Presently, on that area (in an area of 1.0 Acres appx.) a temporary boundary wall (folding type) had been erected and the said plot/villa area is captured in that boundary. As on date all services i.e. road/water supply/sewer/electricity etc. are functional/operational at the captioned project site. As on date no construction activity has been started by respondent promoter on the captioned plot/site. Nobody on behalf of respondent promoter was present during site visit to show that the captioned plot or the area measuring appx.1.0 acre having a temporary boundary wall is affected by GAIL corridor which is far-away from that site in the southern direction touching Sector-81.

B. The photographs captured from the captioned site are attached herewith which clearly shows the present position/ condition of the captioned site. (Attached as Annexed "F")"

20. Thereafter, during proceedings on 25.07.2023, the respondent has filed objections to the report of the local commission stating that the representative of the respondent company was not present during the course of inspection due to unavoidable personal reasons. Further it was submitted that the villa could not be developed as the locals residing around the plots did not let the respondent company develop the villa. It is barricaded by the locals by constructing walls and they do not allow the respondent company to enter the site to develop the villa.
21. Vide order dated 25.07.2023, it was recorded by the authority as under:

"The counsel for the respondent further states that even an alternate villa or plot as per the affidavit already filed is not available and only an alternate constructed unit can be offered to the allottee at this stage as the land under plot, although licenced but still is under unauthorized and physical possession of the farmers/landowners and hence, the villa is not available and the respondent is ready to refund the amount alongwith interest.

However the counsel for the complainant and the complainant present in person are very categorical that the land is still available at the site and is willing to wait till the allotment and possession of the unit BBA is



handed over as per BBA and till then DPC may be allowed till offer of possession."

22. On consideration of the above-mentioned facts, the authority observes that the respondent vide written reply filed on 21.07.2022, has contended that the subject villa/unit is not available due to GAIL Pipeline and reasons beyond the control of the respondent. Vide orders dated 28.10.2022 and 13.01.2023, the respondent was directed to place on record layout plan at the time of allotment and subsequent changes and variations leading to omission of subject villa plot/unit. However, in utter disregard to the directions of the authority, the respondent failed to place the requisite documents on the record. Also, vide order dated 13.01.2023, a Local Commission was appointed to ascertain the status of the subject unit and as per the report of the Local commission, the pocket of land where the subject unit not affected by any GAIL pipeline. However, the said pocket has temporary boundary wall and all services i.e., road/water supply/sewer/electricity etc. are functional/operational at the captioned project site.
23. It is to be noted that on one hand the respondent is contending that the subject villa/plot/unit has ceased to exist due to GAIL Pipeline and reasons beyond the control of the respondent, thus in view of the same, the possession has not been handed over to the complainant and on the other hand, while filing objection to the local commission report, the respondent has submitted that the subject plot has not been handed over and possession has been delayed due to unauthorised



encroachment on the said land. The respondent cannot blow hot and cold at the same time.

24. As far as the contention of the respondent is concerned that possession could not be handed over due to unauthorized encroachment (i.e, locals residing near the plot), this contention is not tenable as the same is not corroborative by the circumstances narrated herein above and the documents available on record. If that would have been the position and the factual matrix, then the factum of such encroachment should have been disclosed by the respondent while filing of reply or during the pendency of the complaint. Further, this fact of barricading/boundary walls was brought before the authority through the report of local commission and only thereafter, the respondent has admitted the same vide objections during proceedings on 25.07.2023. So, the plea of the respondent w.r.t. not developing the subject unit due to obstruction by the locals residing near the subject plot is nothing but ploy to defeat the legitimate claim of the complainant-allottee and deprived him of his valuable rights in that property. It is also pertinent to note that the respondent has never issued any letter against the subject unit nor has ever communicated such difficulties to the complainant. Further, authority observes that the respondent has neither availed any appropriate legal measure to remove such encroachment nor has approach competent court/forum/authority for redressal of their grievance against the encroachment. In view of the above, the



respondent is obligated to remove the encroachment on the subject unit/project and develop the same in terms of the said builder buyer agreement and handover the possession of the subject unit to the complainant after receiving occupation certificate or completion certificate from the competent authority.

25. **Admissibility of delay possession charges at prescribed rate of interest:** Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) *For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.*

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

26. The legislature in its wisdom in the subordinate legislation under the 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.
27. 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., 02.01.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

28. 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;"*

29. 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.
30. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the builder buyer agreement. The builder buyer agreement dated 22.09.2009 was executed between the complainant



and the respondent in respect of unit bearing no. 65/240/Simplex/BR in the project namely 'Bellevue Residences'. Thereafter, an Addendum to Signature 2 Villa (Formerly known as Bellevue Villa) Builder Buyer Agreement was executed by the complainant on 30.01.2012 in respect of Plot no. 3/240/Simplex/ST 82 D1-9 Signature 2 Villa on 240 sq. yds. having built-up area of 1527 sq. ft. i.e, the unit in question. By virtue of clause 11.1 of the builder buyer agreement executed between the parties on 22.09.2009, the possession of the said unit was to be delivered within a period of 3 years from the date of execution of the builder buyer agreement. Therefore, the due date of handing over possession comes out to be 22.09.2012. The respondent has failed to handover possession of the subject unit till date of this order. Accordingly, it is the failure on the part of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.

31. The complainant is also seeking relief of possession. The authority is of the considered view that there is delay on the part of the respondent to offer possession of the allotted unit to the complainant as per the terms and conditions of the builder buyer agreement dated 22.09.2009 executed between the parties.
32. It is observed that the occupation certificate/part occupation certificate or completion certificate/part completion certificate has not been obtained by the respondent so far from the competent authority. 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.

33. Thus, the respondent is liable to handover the possession of the subject unit to the complainant after obtaining of occupation certificate/ CC/part CC from the competent authority as per obligations under section 11(4) (b) read with section 17 of the Act, 2016 and thereafter, the complainant is obligated to take the possession within 2 months as per Section 19 (10) of the Act, 2016. In case the respondent is not able to provide possession of the subject unit to the complainant, the respondent shall provide alternative similar situated plot/unit to the complainant as per specifications of original BBA dated 22.09.2009 at the same rate at which the unit was earlier purchased and on a similar location. The rationale behind the same that the allottee booked the unit/villa in the project way back in 2009 and paid the demanded amount in a hope to get the possession.
34. 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 the interest @ 10.85 % p.a. w.e.f. due date of possession i.e., 22.09.2012 till actual handing over of possession or offer of possession plus two months, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.



F.II Conveyance deed

Relief sought by the complainant: Direct the respondent to execute a conveyance deed in favour of the complainant.

35. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the complainant. 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. However, there is nothing on the record to show that the respondent has applied for CC/part CC or what is the status of the development of the above-mentioned project. Hence, the respondent is directed to execute the sale deed in favour of the complainant on payment of stamp duty and registration charges within 60 days after obtaining CC/part CC from the competent authority.

F.III Compensation

Relief sought by the complainant: Compensation for the delay caused.

36. The complainant is also seeking relief w.r.t. litigation expenses. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.* 2021-2022(1) RCR(c),357 has held that an allottee is entitled to claim compensation & 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 & litigation expense shall



be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of litigation expenses.

G. Directions of the authority

37. 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 liable to handover the possession of the subject unit to the complainant after obtaining of occupation certificate/ CC/part CC from the competent authority as per obligations under section 11(4) (b) read with section 17 of the Act, 2016 and thereafter, the complainant is obligated to take the possession within 2 months as per Section 19 (10) of the Act, 2016. In case the respondent is not able to provide possession of the subject unit to the complainant, the respondent shall provide alternative and similarly situated plot/unit to the complainant as per specifications of original BBA dated 22.09.2009 at the same rate at which the unit was earlier purchased and on a similar location.
- ii. The respondent is directed to pay the interest at the prescribed rate i.e. 10.85 % p.a. w.e.f. due date of possession i.e., 22.09.2012



till actual handing over of possession or offer of possession plus two months, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

- iii. The arrears of such interest accrued from due date of possession till the date of this order 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 respondent-promoter to the allottees before 10th of the subsequent month as per rule 16(2) of the rules.
- iv. The complainant w.r.t. obligation conferred upon him under section 19(10) of Act of 2016, shall take the physical possession of the subject plot/unit, within a period of two months of the offer of possession by the respondent after obtaining completion certificate or occupation certificate from the competent authority.
- v. The respondent shall not charge anything from the complainant which is not the part of the builder buyer agreement.
- vi. The complainant is directed to pay outstanding dues, if any, after adjustment of delay possession charges/interest for the period the possession is delayed. The rate of interest chargeable from the complainant-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 delay possession charges as per section 2(za) of the Act.

38. Complaint stands disposed of.
39. File be consigned to registry.

Sanjeev
(Sanjeev Kumar Arora)

Member

Ashok
(Ashok Sangwan)

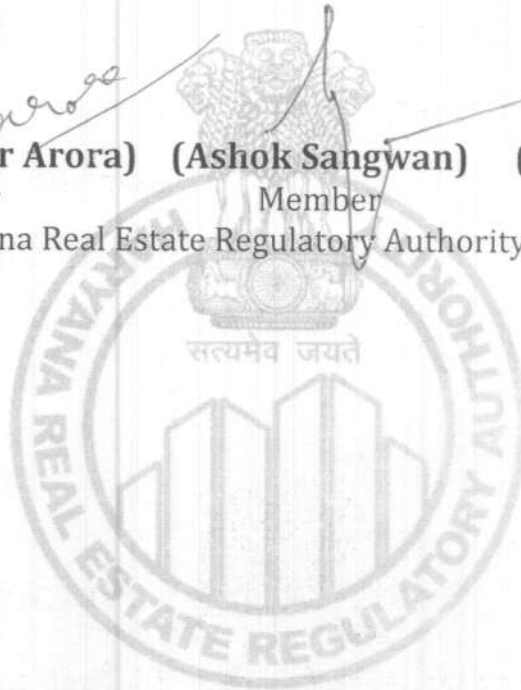
Member

Vijay
(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 02.01.2024



HARERA
GURUGRAM