

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

Complaint no. : 1025 of 2023
Date of filing: 22.03.2023
Order pronounced on: 30.11.2023

Sumit Bhalla

R/o: House no. 29, Sector 30, Gurugram, Haryana

Complainant

Versus

St. Patricks Reality Private Limited

Regd. office: The Median, central Park Resorts,
Off Sohna Road, Sector-48, Gurugram -122018, Haryana

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Daljeet Singh (Advocate)

Shri Venkat Rao (Advocate)

Complainant
Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions to the allottee as per the agreement for sale executed inter-se them.

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A. Unit and Project related details:

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

S. No.	Particulars	Details
1.	Name of the project	"Central Park Flower Valley", Lake front towers
2.	Project area	10.925 acres
3.	Nature of the project	Group housing complex
4.	RERA registration/not registered and validity status	Registered Registered vide no. 150 of 2017 dated 28.08.2017 Valid upto 31.07.2022
5.	DTCP license no. and validity status	84 of 2014 dated 09.08.2014 valid upto 08.08.2024
6.	Name of the license	Ravinder Singh-Balkaran-Vijay Raghav
7.	Unit no.	303, tower-F, 3 rd -floor
8.	Unit area measuring	1789 sq. ft. (super area) (as per offer of possession page 88 of complaint)
9.	Builder agreement buyer	29.07.2017 (page 43 of complaint)
10.	Possession clause	7.1 Possession <i>The company shall endeavour to offer the possession of the said apartment to the Allottee(s) within a period of 36 months with a grace period of another 6 months from the date of execution of agreement subject to timely payment of the sale price</i>



11.	Due date of possession	29.01.2021 (calculated from the date of execution of BBA i.e., 29.07.2017 along with 6 months grace period in lieu of covid-19)
12.	Total consideration sale	Rs.90,30,970/- plus taxes and other charges as per payment plan at Annexure II of the BBA
13.	Amount paid by the complainant	Rs.88,43,189/- (As per SOA page 45 of complaint)
14.	Offer of possession	18.02.2023 (page 80 of complaint)
15.	Occupation certificate	13.01.2023 (page 83 of reply)

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That the complainant booked a 3BHK apartment in "LAKE FRONT TOWERS", Sector-32, Sohna, Gurugram on 03.04.2017. He was allotted a unit no. F303 admeasuring 1590 Sq. ft. @ Rs.4,725.56 sq. feet for a basic sale price of Rs.75,13,640/- with proposed luxury specification of a luxurious view inside out. However, the apartment is neither "lake front towers" nor having luxurious view inside out and was changed to "Aqua Front Towers" and a swimming pool, which was part of club replaced the lake which was not there.
- II. That the apartment buyer agreement was executed on 29.07.2017 with a confirmation to deliver the possession by Diwali, 2019. However, in the buyer agreement it was mentioned as 36+6 months i.e., 42 months from



the date of signing the agreement by which date comes 27.01.2021 (*sick 29.01.2021*)

- III. That the payment was on construction linked basis which was followed by the complainant on the basis of loan arrangements from the financial institutions. However, even for this slight delay the respondent charged the interest and adjusted the same against the payment made to them.
- IV. That the super area of the subject unit was increased from 1590 sq. ft. to 1790 sq. ft. without any prior intimation or consent of the 2/3rd allottees.
- V. That the respondent vide clause 23.6 agreed that if the Act of 2016 comes into force the agreement shall as per the Act only. The Act specifically in model annexure-A specifies that the prices are escalation free and only changes if any, in the government levies will be applicable.
- VI. The complainant seeks relief u/s 18 for possession of the allotted unit along with delay possession charges and not to charge anything which is not a part of buyer's agreement.

C. Relief sought by the complainant

4. The complainant has sought following relief:
 - i. Direct the respondent to handover the physical possession along with delay possession charges at prescribed rate of interest.
 - ii. Direct the respondent not to raise any illegal demands.
 - iii. Direct the respondent not to charge escalation charges
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.

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D. Reply by the respondent

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

- a. That in 2017, the complainant discovered the project namely 'Aqua Front Towers' residential project developed by the respondent on a 10.925 acre land in Gurugram, Haryana. After being content with the project's specifications, the complainant booked an apartment through a provisional allotment application dated 03.04.2017 and paid a booking amount of Rs.7,51,364/- based on their assessment for further registration.
- b. That the complainant had full understanding and acceptance of the charges related to the increase in apartment area and sale price due to cost escalation. The complainant agreed to the terms without protest and was well-informed about the booking terms. As per clause 2.9 of the application form for provisional booking dated 03.04.2017, it was acknowledged that the sale price was based on the apartment's area and was subject to change upon the project's final completion.
- c. That in 2017, the respondent provisionally allotted an apartment no. 303, tower -F, 3rd-floor to the complainant in the said project, with a super area of 1590 sq. ft. for a basic sale price of Rs.4,725.56/- per sq. ft. The agreement was served before the Haryana Real Estate Rules notification, and despite being aware of the rules at the time of signing, the complainant did not object and proceeded to sign voluntarily.
- d. That on 29.07.2017, the complainant voluntarily signed the apartment buyer agreement for the subject unit, with a total sale consideration of Rs.90,30,970/- excluding all other charges agreed upon. As per clause 7.1 of the agreement, the possession of the apartment was proposed to be

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offered within 36 months, with a grace period of 6 months from the date of the agreement, subject to other agreed terms and conditions, including timely payment of instalments and force majeure circumstance. Due to the impact of COVID-19 and the construction ban by NGT and EPCA until 2021, along with other reasons beyond the control of the respondent company, the possession of the apartment was to be offered on or before 05.10.2021, with a 6 month extension on account of Covid-19, and an additional 70-day extension when construction was banned by NGT and EPCA.

- e. That the complainant failed to inform about the payment reminder letters issued by the respondent upon non-payment of instalments as per the agreed schedule. Despite being aware of the payment schedule, the complainant delayed several instalments, leading to repeated reminders and intimation of payment due letters from the respondent. The complainant consistently failed to pay the outstanding amounts within the stipulated periods, resulting in a series of reminders and requests for payment from the respondent.
- f. That as per clause 1.3 of the agreement, the complainant agreed to pay additional charges such as club membership, club maintenance charges, IFMSD, EDC/IDC charges, and stamp duty charges, in addition to the basic sale price and preferential location charges. Furthermore, as per clause 8.2 of the agreement, the complainant voluntarily agreed to pay maintenance charges including water charges as per maintenance bills raised by the maintenance agency/company for maintaining the common areas and facilities from the date of offer of possession, regardless of whether the allottee had taken over possession of the apartment or not.



- The complainant initially acknowledged and agreed to the charges as per the agreement's terms but later refused to pay them on various grounds.
- g. That the complainant was fully aware of the escalation cost terms and the formula provided by the respondent in clause 1.13 of the agreement, agreeing to a maximum of 10% escalation cost as per the agreement. The respondent has adhered to charging for the cost escalation within the agreement's parameters, with no charges beyond what was agreed upon. The clause was duly consented to by the complainant, forming the basis for executing the agreement. Despite the respondent's justification of the cost escalation, the complainant failed to pay the dues.
- h. That during the adjudication of complaint *Mrs. Rashmi Budhiraj vs BPTP Limited, complaint no. 2221 of 2018*, Authority in Gurugram ordered the formation of a high-powered committee to address various issues, including the admissibility of increase in super area and cost escalation. The committee's report affirmed that the promoter is permitted to charge the cost escalation as agreed under the agreement, finding was upheld by this Authority, allowing the promoter to charge the cost escalation based on the committee's report. Consequently, the respondent is justified in charging the escalation cost as per the agreement, and the complainant is obligated to fulfil this without raising objections that were not raised at the time of executing the agreement.
- i. That the size of the apartment was subject to change upon final completion, and any associated costs were to be adjusted or paid by the complainant. In the agreement dated 29.07.2017, under clause 1.10, the complainant acknowledged and agreed that the super area of the apartment was tentative and subject to variation, either an increase or decrease, at the time of final completion or when obtaining the

occupation certificate. Further, as per clause 6.4 of the agreement, the respondent had the right to charge for any increase or decrease in the area of the apartment up to 12.5%. The respondent was required to inform the complainant if the increase in the super area exceeded 12.5%. Moreover, if the complainant had any dispute regarding changes in area, price, or other charges, it was necessary to raise the dispute within 30 days from the date of intimation of such changes.

- j. That as per clause 19 of the agreement, the respondent was entitled to an extension of the possession handover period for the delayed duration, and the complainant agreed not to claim any compensation for such delay. The respondent was committed to completing the project development and handing over possession within the proposed timelines. The development work of the project was slightly delayed due to reasons beyond the control of it, primarily due to the impact of goods and services act, 2017 which came into effect following demonetization in the last quarter of 2016 and continued to have adverse effects in various industrial, construction, and business areas, even in 2019. The respondent faced significant challenges due to the impact of demonetization and the implementation of GST.
- k. That the respondent has completed the project and has obtained the occupation certificate for the respective tower on 13.01.2023. Subsequently, the respondent issued an offer of possession letter dated 18.02.2023, offering possession to the complainant and requesting payment of the outstanding amount of Rs.17,34,938/- after adjusting the delayed possession interest owed to the complainant. The respondent has already adjusted an amount of Rs.10,40,661/- from the final demands raised for the delayed offer of possession. Despite, the complainant has



chosen not to take possession, leading the respondent to issue a reminder letter for overdue payment dated 05.04.2023, and a further request via email dated 23.05.2023 for completion of documentation formalities and payment of dues. However, the complainant has not responded to the requests.

1. That the present complaint is based on false and frivolous allegations, and requests the dismissal of the complaint with costs for wasting time and resources.
7. All other averments made in the complaint were denied in toto.
8. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents made by both the parties.

E. Jurisdiction of the authority

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

E. I Territorial jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction



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

Section 11(4)(a)

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

Section 34-Functions of the Authority:

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

10. So, in view of the provisions of the Act of 2016 quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside the compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the objections raised by the respondent:

F.1 Objections regarding force majeure.

11. The respondents-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 orders passed by National Green Tribunal and ECPA to stop the construction, non-payment of instalment by allottees, shortage of labour. The plea of the respondent regarding various orders of the NGT and demonetisation and all the pleas advanced in this regard are devoid of merit. The orders passed by NGT banning construction in the NCR region was for a very short period of time and thus, cannot be said to impact the respondent-



builder leading to such a delay in the completion. The plea regarding demonetisation is also devoid of merit. Further, there may be cases where allottee has not paid instalments regularly but all the allottee cannot be expected to suffer because of few allottee. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

F. II. Objection regarding delay in completion of construction of project due to outbreak of Covid-19.

12. In the present case also, the respondent was liable to complete the construction of the project and handover the possession of the said unit by 29.07.2020. It is claiming benefit of lockdown which came into effect on 23.03.2020. As per *HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion date on or after 25.03.2020*. The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 29.07.2020 i.e. after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. As such the due date for handing over of possession comes out to 29.01.2021.

F.III Objection regarding the relief sought by the complainant with regard to escalation charges to be adjudicate in terms of Complaint bearing No. 2221 of 2018 decided by the Authority

13. The respondent has raised another objection that the relief sought of the present complaint has already been deliberated in Complaint No. 2221 of 2018, where a committee was appointed to ascertain the various issues



raised before this Authority. The Authority while concurring with the opinion of committee report, has held that the promoter can charge the cost of escalation as agreed under the agreement.

14. The authority is view that present complaint cannot be adjudicated in terms of committee report submitted in complaint bearing no. 2221 of 2018, as the said committee was constituted for a different project and with regard to a promoter specifically and the buyer's agreement in those complaint was executed much prior to the enactment of the Act of 2016, whereas in the present complaint the BBA has been executed inter-se parties Post RERA i.e., after commencement of the Act of 2016. Hence, the plea raised by the respondent with regard to committee report stands dismissed.

G. Findings regarding relief sought by the complainant.

G.1 Direct the respondent to pay delay possession charges.

15. 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."*

16. Clause 7.1 of floor buyer's agreement provides for handing over of possession and is reproduced below:

"Clause 7.1

The company shall endeavour to offer the possession of the said apartment to the Allottee(s) within a period of 36 months with a



grace period of another 6 months from the date of execution of agreement subject to timely payment of the sale price, other charges as per Detail of payment (Annexure-1), payment plan (annexure-2) and all other payments as per the terms of this agreement including payment of interest by the allottees.....

17. **Admissibility of delay possession charges at prescribed rate of interest:** -The complainant is seeking delay possession charges 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.

18. 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.
19. 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., 30.11.2023 is @ 8.75 %. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.

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20. 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;"*

21. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.75 % by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.
22. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of buyer's agreement executed between the parties on 29.07.2017, the possession of the booked unit was to be delivered within 36 months from the date of execution of buyer's agreement (29.07.2017) which comes out to be 29.07.2020. The grace period of 6 months is in lieu of covid-19. Therefore, the due date of handing over possession comes out to be 29.01.2021 Occupation certificate was granted by the concerned authority on 13.01.2023 and thereafter, the possession of the subject flat

was offered to the complainant on 18.02.2023. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject flat and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 29.07.2017 to hand over the possession within the stipulated period.

23. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 13.01.2023. The respondent offered the possession of the unit in question to the complainant only on 18.02.2023, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. These 2 month of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession till the expiry of 2 months from the date of offer of possession (18.02.2023) which comes out to be 18.04.2023.

G. II Direct the respondent to handover the physical possession of flat.

24. The respondent has obtained the OC from the competent authority on 13.01.2023 and offered the possession of the allotted unit vide letter

dated 18.02.2023. As per section 19(10) of Act of 2016, the allottee is under an obligation to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. The complainants are directed to take the possession of the allotted unit after making payment of outstanding due if any within a period of 2 months.

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

G.III Direct the respondent not to charge escalation charges.

26. The complainant took a plea that the respondent-builder has arbitrarily imposed escalation cost at the time of offer of possession. The respondent-builder submits that cost of escalation was duly agreed by the complainant at the time of booking/agreement and the same was incorporated in the buyer agreement. The undertaking to pay the above-mentioned charge was comprehensively set out in the buyer agreement. The said clause of the agreement is reproduced hereunder: -

Clause 1.13

The Company shall make efforts to limit the escalation to a maximum of 10% (ten percent). In the event of escalation exceeding the said maximum limit, the Allottee may at its sole discretion, either accept the escalation beyond the maximum of 10% or withdraw from the Agreement. Upon such withdrawal, the total amount paid to the Company minus Earnest Money Deposit, Instalments paid, interest if any paid/ payable, brokerage and cost of any scheme or benefit given and non-refundable charges, shall be refunded to the Allottee without any interest.

27. In the present complaint the complainant wishes to continue with project. The above said clause deals with the escalation charges where the complainant is liable to pay the escalation cost to a maximum of 10%.
28. The Authority has observed that clause 23.6 of the buyer agreement states that if the Act of 2016 comes into force, the said agreement will

incorporate the term and conditions prescribed under the Act of 2016 and the rules of 2017. Considering the provisions as per Annexure-A of the model agreement for sale prescribed under the Haryana Real Estate (Regulation and Development) Rules, 2017 para-1.3, specifies that the total price is escalation free. Additionally, it is evident that the escalation charges should not be applicable, as the agreement was signed after the rules came into force and explicitly states that the prices are escalation free.

29. It is imperative to uphold the provisions of the buyer agreement and ensure compliance with the prevailing regulations at the time of execution. This serves to protect the rights and interests of both parties and ensures that contractual obligations are met in accordance with the applicable legislation. Furthermore, the delay was a result of the respondent failure to hand over the possession of the unit, leading to an increase in escalation cost. Therefore, it would be unjust to attribute the delay to the complainant. Hence, the imposition of escalation charges is not justified, and the same cannot be charged from the complainant.

Increase in Super Area

30. The complainant states that the area of the said unit was increased from 1590 sq. ft. to 1789 sq. ft. vide offer of possession dated 18.02.2023 without giving any prior intimation to, or by taking any written consent from the allottee. The respondent in its defence submitted that increase in super area was duly agreed by the complainant at the time of booking/agreement and the same was incorporated in the buyer agreement. Relevant clauses of the agreement is reproduced hereunder:

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Clause 6.4

*The alterations in the building plans may involve change in the number of floors in the building, position, location, size, number, dimension, direction / facing, numbering of the Apartment or super area of the said Apartment. If the change in super area of the said Apartment results up to 12.5% because of such alterations or for any other reason, the Allottee(s) shall pay to the Company the BSP and other applicable charges at the same rate and in the same manner as mentioned in the Details of Payment and Payment Plan. However, if the change in super area of the said Apartment after construction results **more than 12.5% because of such alterations or for any other reason the Company shall intimate in writing to the Allottee(s) after completion of construction the extent of such change/modification** in the super area of the said Apartment and the resultant change/ modification in the total Sale Price and other charges. The Allottee(s) agrees to inform the Company his/ her consent or objections to such change/ modification in the super area of the said Apartment and the change/modification in the total Sale Price and other charges within 30 days from the date of intimation by the Company failing which the Allottee(s) shall be deemed to have given his / her consent to such changes/modifications. The Allottee(s) further agrees that, any increase or decrease in the super area of the said Apartment shall be payable by the Allottee(s) or refundable by the Company at the same rate per square feet as mentioned in this Agreement. If the Allottee(s) objects in writing to such change in the super area of the said Apartment within a period of 30 days from the date of intimation by the Company, the allotment of the said Apartment to the Allottee(s) shall stand terminated/ cancelled and after deduction of the interest for delayed payment, brokerage, cost of any incentive or facility given and other charges of non-refundable nature and upon such refund the Company thereafter shall be free to deal with the said Apartment in any manner whatsoever at its sole discretion including re-allotment of the said Apartment to any other person.*

31. Considering the above-mentioned facts, the authority observes that the respondent has increased the super area of the flat from 1590 sq. ft. to 1789 sq. ft. vide offer of possession dated 18.02.2023 with increase in area of 199 sq. ft. i.e. 11.7% without any justification or prior intimation to the complainant



32. That in **NCDRC consumer case no. 285 of 2018 titled as Pawan Gupta Vs Experion Developers Private Limited**, it was held that the respondent is not entitled to charge any amount on account of increase in area. The relevant part of the order has been reproduced hereunder: -

The complaints have been filed mainly for two reasons. The first is that the opposite party has demanded extra money for excess area and second is the delay in handing over the possession. In respect of excess area, the complainant has made a point that without any basis the opposite party sent the demand for excess area and the certificate of the architect was sent to the complainant, which of a later date. The justification given by the party that on the basis of the internal report of the architect the demand was made for excess area is not acceptable because no such report or any other document has been filed by the opposite party to prove the excess area. Once the original plan is approved by the competent authority, the areas of residential unit as well as of the common spaces and common buildings are specified and super area cannot change until there is change in either the area of the flat or in the area of any of the common buildings or the total area of the project (plot area) is changed. The real test for excess area would be that the opposite party should provide a comparison of the areas of the original approved common spaces and the flats with finally approved common spaces/buildings and the flats. This has not been done. In fact, this is a common practice adopted by majority of builders/developers which is basically an unfair trade practice. This has become a means to extract extra money from the allottees at the time when allottee cannot leave the project as his substantial amount is locked in the project and he is about to take possession. There is no prevailing system when the competent authority which approves the plan issues some kind of certificate in respect of the extra super area at the final stage. There is no harm in communicating and charging for the extra area at the final stage but for the sake of transparency the must share the actual reason for increase in the super area based on the comparison of the originally approved buildings and finally approved buildings. Basically, the idea is that the opposite party allottee must know the change in the finally approved lay-out and areas of common spaces and the originally approved lay-out and areas. In my view, until this is done, the opposite party is not entitled to payment of any excess area. Though the Real Estate Regulation Act (RERA) 2016 has made it compulsory for the builders/developers to



indicate the carpet area of the flat, however the, problem of super area is not yet fully solved and further reforms are required.

33. In view of the above, the Authority has clear observation that there was an increase in a super area which was intimated to the complainant at the time of offer of possession and not before. Further, no justification and intimation was made to the complainant in respect of increase in area. Moreover the model builder buyer's agreement provides for sale of the subject unit on the basis of carpet area however no details given above are as per the carpet area and hence, are not admissible as per the Act of 2016 and the rules made there under. So, the respondent cannot charge any amount from the complainant merely on account of increase in the super area without providing proper justification and specific details regarding the increase in the super area/carpet area.

H. Directions of the Authority:

34. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the authority under section 34(f) of the act of 2016:
- I. The respondent is directed to pay interest to the complainant against the paid-up amount at the prescribed rate i.e., 10.75% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e., 27.01.2021 till expiry of 2 months from the date of offer of possession (18.02.2023) i.e., up to 18.04.2023 only. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per rule 16(2) of the rules.
 - II. Also, the amount of Rs.10,40,661/- paid by the respondent towards compensation for delay in handing over possession shall be adjusted

towards the delay possession charges to be paid by the respondent in terms of proviso to section 18(1) of the Act.

- III. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.75% 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.
 - IV. The respondent is directed to issue a revised statement of account after adjustment of delayed possession charges, and other reliefs as per above within a period of 30 days from the date of this order. The complainant is directed to pay outstanding dues if any remains, after adjustment of delay possession charges within a period of next 30 days.
 - V. The respondent is directed to handover the physical possession of the allotted unit to the complainant with completion in all aspects of buyer's agreement.
 - VI. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.
35. Complaint stands disposed of.
36. File be consigned to registry.

Dated: 30.11.2023

V.1 - 2/2
(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram