

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

**Complaint no.** : 2099 of 2022  
**Date of pronouncement** 02.02.2024  
**of order** :

Krishan Lal Arora

**R/o:** F-2, Mehrawali Apartments, Plot no. 1043/2,  
ward no. 8, Dadabari Jain Mandir Road, Mehrauli, New  
Delhi - 110030

Sohan Lal

**R/o:** 1055-4, Ward no. 7, Mehrauli, New Delhi -  
110030

**Complainants**

Versus

M/s Shree Vardhman Buildprop Pvt. Ltd.

**Regd. office:** 301, 3rd floor, Indra Prakash Building,  
21-Barakhamba Road, New Delhi-110001

**Respondent**

**CORAM:**

Shri Sanjeev Kumar Arora

**Member**

**APPEARANCE:**

Shri Rishi Sehgal

Advocate for the complainants

Shri Gaurav Rawat

Advocates for the respondent

**ORDER**

1. The present complaint dated 13.05.2022 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. 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 tabular form:

S. No.	Heads	Information
1.	Name and location of the project	"Shree Vardhman Mantra", Village - Badshapur, Sector-67, Gurugram
2.	Project area	11.262 acres
3.	Nature of the project	Group housing colony - Affordable housing
4.	DTCP license no. and validity status	69 of 2010 dated 11.09.2010 valid upto 30.04.2022
5.	Name of the Licensee	Dharambir and 8 others
6.	RERA registered/ not registered and validity status	<b>Registered</b> Registered vide no. 50 of 2022 dated 13.06.2022 Valid upto 31.12.2024
7.	Unit no.	A/506, Tower - A (Page 36 of complaint)



8.	Unit admeasuring	520 sq. ft. (Page 36 of complaint)
9.	Date of flat buyer's agreement	01.11.2011 (Page 33 of complaint)
10.	Payment plan	Time linked payment plan (Page 53 of complaint)
11.	Total consideration	Rs. 19,80,175/- (Page 62 of reply) Inadvertently it is mentioned as Rs. 19,18,175/- in the proceeding of the day dated 15.12.2023
12.	Total amount paid by the complainants	Rs. 17,00,216/- (Page 64 of the reply) Rs. 15,61,612/- + Rs. 1,38,604/- (additional interest) = Rs. 17,00,216/- (As stated by complainants at page 27 of complaint)
13.	Date of commencement of construction	03.05.2012 (Page 8 of the reply)
14.	Possession clause	<b>9(a)</b> <i>The construction of the flat is likely to be completed <b>within a period of thirty-six (36) months from the date of start of foundation of the particular tower in which the flat is located</b> with a grace period of 6 months, on receipts of sanction of building plans/revised building plans and all approvals of all concerned authorities including the fire</i>

		service deptt. Civil aviation deptt., pollution control deptt., as may be required for commencing and carrying on construction subject to force majeure, restraints or restrictions from any courts/authorities, non-availability of building materials, disputes with contractors/work force etc. and circumstances beyond the control of the company and subject to timely payments by the flat buyer(s). <b>(Emphasis supplied)</b>
15.	Due date of delivery of possession	03.11.2015 (Calculated from the date of foundation of tower i.e., 03.05.2012 + 6 months of grace period)
16.	Occupation certificate	Obtained as on 23.07.2021 (Page 42 of reply)
17.	Possession hand over letter	16.09.2023
18.	Reminder notices	10.01.2022, 25.01.2022, 11.02.2022 and 26.02.2022 (Page 50-53)
19.	Grace period utilization	Grace period is allowed in the present complaint.

### B. Facts of the complaint

- That the Complainants are the allottee of the residential flat bearing no. A- 506, on 5<sup>th</sup> Floor of Tower A, having an approximate Carpet Area of 520 Sq. Ft., in the housing project "Shree Vardhman Mantra" of the Respondent.



4. That the Complainants made booking for purchase of a residential flat in the Project after making the required advance payments and was allotted a residential flat bearing no. A-506, on 5<sup>th</sup> Floor of Tower A of the Project That the said Flat was purchased by the Complainants under the 'time linked plan' at a consideration price of 19,80,175/- That a Flat Buyer's Agreement (hereinafter referred to as "**Agreement**") was executed between the Complainants and Respondent on 01.11.2011. The Agreement, *inter alia*, contained the terms and conditions governing the purchase and allotment of Flat. The Agreement explicitly recorded that an amount of INR 4,00,000/- had already been paid by the Complainants as advance towards basic price of the Flat.
5. That as per clause 9(a) of the Agreement, the construction of the Flat was to be completed within a period of 36 (thirty) months from the date of start of foundation of particular tower in which Flat is located, that is, 'Tower A' in the instant case. Additionally, a grace period of 6 (six) months is available with the Respondent to complete the construction of Flat.
6. That in the absence of any communication with respect to the start of foundation of the particular tower, that is, Tower A, and in view of the various previous judgements passed by this Hon'ble Authority, the due date of possession of Flat shall be calculated from the date of signing of Agreement, that is, 01.11.2011. Accordingly, Respondent was required to complete the construction of Flat by 30.04.2015 (being expiry of 42 months as inclusive of grace period of 6 months) (hereinafter referred to as the "**Due Date**") and consequently was required to make a final call notice, and handover the possession of Flat within next 30 (thirty) days, that is, before 30.05.2015.
7. That the Respondent failed miserably to complete the construction of Flat in a time bound manner, the delay of which continues till this day and the Respondent is yet to issue the final call notice. That as on date a total sum of INR 15,61,612/-



inclusive of applicable taxes stands paid to the Respondent by the Complainants, which includes 95% (Ninety-five percent) of basic price of Flat. Additionally, an amount of INR 1,38,604/- have been paid by Complainants to Respondent towards Interest on delay in payment. That the amount constituting remaining of the basic price of Flat and other charges remains to be paid. The same is not due as yet and is supposed to be paid by the Complainants only at the stage of offering possession of Flat and registration thereof.

8. That recently the Respondent send an email dated 10.11.2021 to Complainants with payment and charges summary with ambiguous reference to registration of the Flat. No clear dates with respect to offering of possession and registration is set forth therein, which in turn, reflects malafide intention of the Respondent and an act to further create ambiguity in the minds of Complainants. Since the said email dated 10.11.2021, the representatives of the Respondent, have been threatening the Complainants to either make the remaining payment or forfeit their property and the total consideration paid till date i.e. 95% of the total sale consideration; both will stand forfeited.
9. That, as per the terms of the Agreement, the penal interest that may be charged by the Respondent at its discretion is at the rate of 24% per annum for delay in payment of the Consideration of the Flat by Complainants. Accordingly, the same principle shall also be applicable on Respondent for the delay caused in handing over the possession. Thus, the Respondent is liable to pay interest calculated at the rate of 24% p.a. compounded annually on the amount of INR 15,61,612/- (Rupees Fifteen Lakhs Sixty-One Thousand Six Hundred and Twelve) which stands paid by the Complainants to the Respondent. It is also submitted that the Respondent have illegally been withholding the said amount and have neglected to even deliver the possession of Flat after more than 6.5 (six and a half) years from the Due Date which shows the fraudulent intent of the Respondent. Thus, an amount of INR 69,14,166/- (Rupees Sixty Nine Lakhs Fourteen Thousand



One Hundred and Sixty Six) is payable by the Respondent as interest on amount paid by the Complainants to Respondent, for the period of delay starting May 2015 till March 2022 (aggregating to 83 months) in handing over possession of flat in question, which is increasing day by day. That the Respondent is also liable to continue to pay interest @ 24% per annum compounded annually till such time the vacant and physical possession of the Flat is given by the Respondent to the Complainants.

10. Thus as on date of filing of present complaint, there is no amount due or payable by the Complainants to the Respondent with respect to basic price of Flat. In fact, the aforesaid interest amount of INR 64,35,751/- (Rupees Sixty Four Lakhs Thirty Five Thousand Seven Hundred and Fifty One) is due and payable by the Respondent to the Complainants as interest for the period of delay in handing over possession of the Flat in question as calculated till the date of filing of present Complaint, and which shall be increased further till the time of the actual vacant physical possession of the Flat is handed over to the Complainants by the Respondent.
11. That on the date agreed for the delivery of possession i.e., 30.04.2015 (that is, the Due Date) of said Flat as per date of execution of Agreement, the Complainants had approached the Respondent and its officers inquiring the status of delivery of possession but none had bothered to provide any satisfactory answer to the Complainants about the completion and delivery of the Flat. The Complainants, thereafter kept running from pillar to post asking for the delivery of the said Flat but could not succeed as the Respondent was reluctant to provide subjective timelines, and the Respondent has still not delivered the completed possession of said Flat. That the Respondent by committing delay in delivering of the possession of the aforesaid Flat has violated the terms and conditions of the Agreement and promises made at the time of booking and selling of said Flat to the Complainants.



12. That the cause of action accrued in favor of the Complainants and against the Respondent on the date of the booking of the Flat, and on 01.11.2011 when the Agreement was executed between Complainants and Respondent, and again on 30.04.2015, that is the Due Date by when the when Respondent failed /neglected to construct the Flat and deliver the said Flat to Complainants. The cause of action further arose since the email dated 10.11.2021, when the representatives of the Respondent, started threatening the Complainants to either make the remaining payment or forget their property and the total consideration paid till date i.e. 95% of the total sale consideration; both will stand forfeited; without any adjustment of amount payable by the Respondent to the Complaint on account of delay in handing over of the possession, by blackmailing and arm twisting the Complainants. The cause of action is continuing and is still subsisting on day-to-day basis, as the Respondent has still not paid the interest for the delayed possession to the Complainants.

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

13. The complainants have sought following relief:

- i. Direct the respondent to handover the physical possession of the residential unit complete in all respects.
- ii. Direct the respondent to pay to the Complainants at an interest for delay in handing over the vacant and physical possession of the Flat at the rate of 24% per annum on the total consideration paid till date by Complainants, from agreed due date till date of actual handing over of possession, calculated to an amount of INR 69,14,166/- .



- iii. Direct the respondent to immediately apply for registration of Project with the RERA Authority under the statutory provisions of RERA.
  - iv. Pass an order directing the promoters to disclose, by way of an affidavit, the status of license, litigation, status of occupation certificate, status of payment of EDC and other similar charges with the relevant and the timeline in which the possession of the Flat shall be handed over.
  - v. To appoint an independent Chartered Accountant Firm, at the cost of Respondent, to undertake forensic audit of the Project & the promoters to determine the commercial health of the Project & the Promoters and to identify the actual amount of money collected, actual money spent, money misused and balance investment required to complete the Project.
  - vi. Direct the Respondent to pay an amount of 2,00,000/- to the Complainants towards cost of litigation.
14. 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:**

15. That the complainants have sought reliefs under section 18 of the Act of 2016 but the said section is not applicable in the facts of the present case and as such the complaint deserves to be dismissed. It is submitted that the operation of section 18 is not retrospective in nature and the same cannot be applied to the transactions that were entered prior to the RERA Act came

into force. The parties while entering into the said transactions could not have possibly taken into account the provisions of the Act and as such cannot be burdened with the obligations created therein. In the present case also the flat buyer agreement (hereinafter "FBA") was executed much prior to the date when the Act of 2016 came into force and as such section 18 of the Act cannot be made applicable to the present case. Any other interpretation of the Act will not only be against the settled principles of law as to retrospective operation of laws but will also lead to an anomalous situation and would render the very purpose of the Act nugatory. The expression "agreement to sell" occurring in section 18 (1)(a) of the Act covers within its folds only those agreements to sell that have been executed after Act came into force and the FBA executed in the present case is not covered under the said expression, the same having been executed prior to the date the Act came into force.

16. That the complainants cannot be allowed to seek any relief which is in conflict with the said terms and conditions of the FBA. The complainants signed the agreement only after having read and understood the terms and conditions mentioned therein and without any duress, pressure or protest and as such the terms thereof are fully binding upon the complainant. The said agreement was executed much prior to RERA Act coming into force and the same has not been declared and cannot possibly be declared as void or not binding between the parties.



17. That the FBA executed in the present case did not provide any definite date or time frame for handing over of possession of the apartment to the complainants and on this ground alone the refund and/or compensation and/or interest cannot be sought under RERA Act. Even the Clause 9 (a) of the FBA merely provided a tentative/estimated period for completion of construction of the flat and filing of application for occupancy certificate with the concerned authority. After completion of construction the respondent was to make an application for grant of Occupation Certificate (OC) and after obtaining the OC, the possession of the flat was to be handed over.
18. That the residential group housing project in question i.e., "Shree Vardhman Mantra" Sector-67, Gurugram, Haryana (hereinafter said "Project") has been developed by the respondent on a piece of land measuring 11.262 acres situated at village Badshahpur, Sector-67, Gurugram, Haryana under a license No. 69 of 2010 dated 11.09.2010 granted by the Town and Country Planning Department, Haryana under the provisions of the Haryana Development and Regularization of Urban Areas Act, 1975 under the Policy of Govt. of Haryana for low cost/affordable housing project. The license has been granted to M/s DSS Infrastructure Limited and the respondent company has developed/constructed the project under an agreement with the licensee company.
19. That the construction of the phase of the project wherein the apartment of the complainants is situated has already been completed and awaiting the

grant of occupancy certificate from the Director General, Town and Country Planning (DTCP), Haryana. The occupancy certificate has already been applied by the licensee vide application dated 28.07.2017 to concerned authority for grant of occupancy certificate. However, till date no occupancy certificate has been granted by the concerned authority despite follow up. The grant of such occupancy certificate is a condition precedent for occupation of the flats and habitation of the project.

20. That in fact the office of the Director General, Town and Country Planning, Haryana is unnecessarily withholding grant of occupation certificate and other requisite approvals for the project, despite having approved and obtained concurrence of the Government of Haryana. It is submitted that in terms of order dated 01.11.2017 passed by the Hon'ble Supreme Court of India in Civil Appeal No.8977/2014 titled as **Jai Narayan @ Jai Bhagwan & Ors. vs. State of Haryana & Ors.**, the CBI is conducting an inquiry in release of land from acquisition in Sector 58 to 63 and Sector 65 to 67 in Gurugram, Haryana. Due to pendency of the said inquiry, the office of the DTCP, Haryana has withheld, albeit illegally, grant of approvals and sanctions in the projects falling within the said sectors. Aggrieved by the situation created by the illegal and unreasonable stand of the DTCP, a CWP No. 22750 of 2019 titled as **DSS Infrastructure Private Limited Vs Government of Haryana** and others had been filed by the licensee before the Hon'ble High Court of Punjab and Haryana for reliefs of direction to the office of DTCP to grant requisite



approvals to the project in question. The said CWP has been disposed of vide order dated 06.03.2020 in view of the statements made by DTCP that they were ready to grant OC and other approvals. However, despite the same, the grants of approvals were pending despite continuous efforts being made by the licensee/respondent.

21. That in the meantime, as the flats were ready, various allottees of the project in question approached the respondent with the request for handover of temporary possession of their respective flats to enable them to carry out the fit out/furnishing work in their flats. Considering the difficulties being faced by the allottees due to non-grant of occupancy certificate by the department in question, the respondent acceded to their request and has handed over possession of their respective flats to them for the limited purpose of fit out.
22. That after various efforts and representations made by the respondent before the DTCP, the occupation certificate regarding the project in question was issued on 23.07.2021.
23. That in the FBA no definite period for handing over possession of the apartment was given or agreed to. In the FBA only a tentative period for completion of the construction of the flat in question and for submission of application for grant of occupancy certificate was given. Thus, the period indicated in clause 9(a) of FBA was the period within which the respondent was to complete the construction and was to apply for the grant of

occupancy certificate to the concerned authority. It is clearly recorded in the said clause itself that the date of submitting an application for grant of occupancy certificate shall be treated as the date of completion of flat for the purpose of the said clause. Since the possession could be handed over to the complainants after grant of OC by DTCP Haryana and the time likely to be taken by DTCP in grant of OC was unknown to the parties, hence the period/date for handing over possession of the apartment was not agreed and not given in the FBA. The respondent completed the construction of the flat in question and applied for grant of occupancy certificate on 27.07.2017 and as such the said date is to be taken as the date for completion of construction of the flat in question. It is submitted without prejudice; that in view of the said fact the respondent cannot otherwise be held liable to pay any interest or compensation to the complainants for the period beyond 28.07.2017.

24. That as per the FBA the tentative period given for completion of construction was to be counted from the date of receipt of sanction of the building plans/revised plans and all other approvals and commencement of construction on receipt of such approvals. The last approval being consent to establish was granted by the Haryana State Pollution Control Board on 01.05.2015 and as such the period mentioned in clause 9(a) shall start counting from 02.05.2015 only.



25. It is submitted, without prejudice to the fact that the respondent completed the construction of the flat within the time indicated in the FBA, that even as per clause 9(a), the obligation of the respondent to complete the construction within the time tentative time frame mentioned in said clause was subject to timely payments of all the installments by the complainants and other allottees of the project. As various allottees and even the complainants failed to make payments of the installments as per the agreed payment plan, the complainants cannot be allowed to seek compensation or interest on the ground that the respondent failed to complete the construction within time given in the said clause. The obligation of the respondent to complete the construction within the time frame mentioned in FBA was subject to and dependent upon time payment of the installment by the complainants and other allottees.
26. That the tentative period as indicated in FBA for completion of construction was not only subject to force majeure conditions, but also other conditions beyond the control of respondent. The non-grant of OC and other approvals including renewal of license by the DTCP Haryana is beyond the control of the respondent. The DTCP Haryana accorded it's in principal approval and obtained the concurrence from the Government of Haryana on 02.02.2018. It did not grant the pending approvals including the renewal of license and OC due to pendency of a CBI investigation ordered by Hon'ble Supreme Court of India. The said approvals have not been granted so far despite the fact that

the state counsel assured to the Hon'ble High Court of Punjab and Haryana to grant approvals/OC as aforesaid. The unprecedented situation created by the Covid-19 pandemic presented yet another force majeure event that brought to halt all activities related to the project including construction of remaining phase, processing of approval files etc. The Ministry of Home Affairs, GOI vide notification dated March 24, 2020 bearing no. 40-3/2020-DM-I(A) recognised that India was threatened with the spread of Covid-19 epidemic and ordered a complete lockdown in the entire country for an initial period of 21 days which started from March 25, 2020. By virtue of various subsequent notifications, the Ministry of Home Affairs, GOI further extended the lockdown from time to time and till date the lockdown has not been completely lifted. Various state governments, including the Government of Haryana have also enforced several strict measures to prevent the spread of Covid-19 pandemic including imposing curfew, lockdown, stopping all commercial, construction activity. Pursuant to issuance of advisory by the GOI vide office memorandum dated May 13, 2020, regarding extension of registrations of real estate projects under the provisions of the Real Estate (Regulation and Development) Act, 2016 due to 'force majeure', the Haryana Real Estate Regulatory Authority has also extended the registration and completion date by 6 months for all real estate projects whose registration or completion date expired and, or, was supposed to expire on or after March 25, 2020.



27. 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.

**E. Jurisdiction of the authority**

28. 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**

31. 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 promoter, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

32. 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 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. I Objection regarding maintainability of the complaint.**

33. The respondent contended that the present complaint filed under section 31 of the Act is not maintainable as the respondent have not violated any provision of the Act.

34. The authority, in the succeeding paras of the order, has observed that the respondent is in contravention of the section 11(4)(a) read with proviso to section 18(1) of the Act by not handing over possession by the due date as per the agreement. Therefore, the complaint is maintainable.

**F. II Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act.**

35. Another contention of the respondent is that in the present case the flat buyer's agreement was executed much prior to the date when the Act came into force and as such section 18 of the Act cannot be made applicable to the present case.
36. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has



provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)** which provides as under:

- "119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter....."
122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

37. Also, in appeal no. 173 of 2019 titled as **Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya**, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule



*15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."*

38. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

### **F.III Objection regarding format of the compliant**

39. The respondent has further raised contention that the present complaint has not been filed as per the format prescribed under the rules and is liable to be dismissed on this ground alone. There is a prescribed proforma for filing complaint before the authority under section 31 of the Act in form CRA. There are 9 different headings in this form (i) particulars of the complainants have been provided in the complaint (ii) particulars of the respondent- have been provided in the complaint (iii)is regarding jurisdiction of the authority- that has been also mentioned in para 14 of the complaint (iv) facts of the case have been given at page no. 5 to 8 (v)relief sought that has also been given at page 10 of complaint (vi)no interim order has been prayed for (vii) declaration regarding complaint not pending with any other court- has been mentioned in para 15 at page 8 of complaint (viii) particulars of the fees already given on the file (ix)list of enclosures that have already been



available on the file. Signatures and verification part are also complete. Although complaint should have been strictly filed in proforma CRA but in this complaint all the necessary details as required under CRA have been furnished along with necessary enclosures. Reply has also been filed. At this stage, asking complainants to file complaint in form CRA strictly will serve no purpose and it will not vitiate the proceedings of the authority or can be said to be disturbing/violating any of the established principle of natural justice, rather getting into technicalities will delay justice in the matter. Therefore, the said plea of the respondent w.r.t rejection of complaint on this ground is also rejected and the authority has decided to proceed with this complaint as such.

**F.IV Objection of the respondent w.r.t reasons for the delay in handing over of possession.**

40. The respondent submitted that the period consumed in the force majeure events or the situations beyond control of the respondent have to be excluded while computing delay in handing over possession.
- a. *The respondent submitted that non-grant of OC and other approvals including renewal of license by the DTCP Haryana is beyond the control of the respondent and the said approvals have not been granted so far despite the fact that the State Counsel assured to the hon'ble High Court of Punjab and Haryana to grant approvals/OC.*
41. As far as the aforesaid reason is concerned, the authority observed that the Hon'ble High Court of Punjab and Haryana vide its order dated 06.03.2020 in CWP-22750-2019 (O&M) has held as under:

*"Learned State counsel, at the outset, submits that it has been decided to grant occupation certificate to the petitioner subject to fulfillment of other conditions/ formalities and rectification of any deficiency which are pointed out by the authority. He further submits that in case the petitioner makes a representation regarding exclusion of renewal fee and*



*interest on EDC/IDC for the period from 25.07.2017 till date, same shall be considered by respondent no.2 as per law and fresh order shall be passed. Learned State counsel further assures that as soon as the representation is received, necessary steps shall be taken and the entire exercise shall be completed at the earliest, in any case, not later than two months.*

*In view of the above, no further direction is necessary. Present petition is hereby disposed of."*

42. In view of aforesaid order of Hon'ble High Court of Punjab and Haryana, an office order of the DTCP, Haryana, Chandigarh dated 03.03.2021 has been issued. The para 4 of the said order states that "Government has accorded approval to consider the period i.e., 01.11.2017 to 30.09.2020 as 'Zero Period' where the approvals were withheld by the department within the said period in view of the legal opinion and also gave relaxations as mentioned in para 3". Accordingly, the authority is of the considered view that this period should be excluded while calculating the delay on the part of the respondent to deliver the subject flat.
- b. ***Unprecedented situation created by Covid-19 pandemic and lockdown for approx. 6 months starting from 25.03.2020.***
43. The Hon'ble Delhi High Court in case titled as M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/2020 and I.As 3696-3697/2020 dated 29.05.2020 has observed that-

*"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself."*



44. In the present complaint also, the respondent was liable to complete the construction of the project in question and handover the possession of the said unit by 11.11.2014 and the respondent are claiming benefit of lockdown which came into effect on 23.03.2020. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself and for the said reason the said time period is not excluded while calculating the delay in handing over possession.

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

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

- i. Direct the respondent to handover the physical possession of the residential unit complete in all respects,
- ii. Direct the respondent to pay to the Complainants at an interest for delay in handing over the vacant and physical possession of the Flat at the rate of 24% per annum on the total consideration paid till date by Complainants, from agreed due date till date of actual handing over of possession.

**G.I The above mentioned reliefs are interconnected so they are being taken together.**

47. In the present complaint, the complainants intend 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***

*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*

48. As per clause 9(a) of the flat buyer's agreement dated 01.11.2011 provides for handover of possession and is reproduced below:

*As per clause 9(a): The Construction of the Flat is likely to be completed within a period of thirty six(36) months from the date of start of foundation of the particular tower in which the Flat is located with a grace period of six(6) months, on receipt of sanction of the building plans/revised building plans and approvals of all concerned authorities including the fire service department, civil aviation department, traffic department, pollution control department as may be required for commencing and carrying of the construction subject to force majeure restrains or restrictions from any courts/ authorities, non-availability of building materials or dispute with contractors/workforce etc. and circumstances beyond the control of company and subject to timely payments by the flat buyer(s). No claims by way of damages/compensation shall lie against the Company in case of delay in handing over the possession on account of any of such reasons and the period of construction shall be deemed to be correspondingly extended. The date of submitting application to the concerned authorities for the issue of completion/part completion/occupancy/part occupancy certificate of the Complex shall be treated as the date of completion of the flat for the purpose of this clause/agreement.*

49. A flat buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builders/promoter and buyers/allottees are protected candidly. Flat buyer's agreement lays down the terms that govern the sale of different kinds of properties like residentials, commercials etc. between the buyer and builder. It is in the interest of both the parties to have a well-drafted agreement which would thereby protect the rights of both the builder and buyer in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational





background. It should contain a provision with regard to stipulated time of delivery of possession of the apartment, plot or building, as the case may be and the right of the buyers/allottees in case of delay in possession of the unit.

50. The authority has gone through the possession clause of the agreement and observed that the possession has been subjected to all kinds of terms and conditions of this agreement. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single situation may make the possession clause irrelevant for the purpose of allottee and the committed date for handing over possession loses its meaning. If the said possession clause is read in entirety, the time period of handing over possession is only a tentative period for completion of the construction of the flat in question and the promoter is aiming to extend this time period indefinitely on one eventuality or the other. Moreover, the said clause is an inclusive clause wherein the numerous approvals and terms and conditions have been mentioned for commencement of construction and the said approvals are sole liability of the promoter for which allottees cannot be allowed to suffer. The promoter must have mentioned that completion of which approval forms a part of the last statutory approval, of which the due date of possession is subjected to. It is quite clear that the possession clause is drafted in such a manner that it creates confusion in the mind of a person of normal prudence who reads it. The authority is of the view that it is a

wrong trend followed by the promoter from long ago and it is this unethical behaviour and dominant position that needs to be struck down. It is settled proposition of law that one cannot get the advantage of his own fault. The incorporation of such clause in the flat buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottees of their right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

51. The respondent promoter has proposed to handover the possession of the subject apartment within a period of 36 months from the date of start of foundation of the particular tower in which the flat is located with a grace period of 6 months, on receipt of sanction of the building plans/revised plans and approvals of all concerned authorities including the fire service department, civil aviation department, traffic department, pollution control department as may be required for commencing and carrying of the construction subject to force majeure restrains or restrictions from any courts/ authorities, non-availability of building materials or dispute with contractors/workforce etc. and circumstances beyond the control of company and subject to timely payments by the flat buyer(s).
52. The authority observed that in the present case, the respondent has not kept the reasonable balance between his own rights and the rights of the



complainant-allottees. The respondent has acted in a pre-determined, preordained, highly discriminatory and arbitrary manner. The unit in question was booked by the complainants and the flat buyer's agreement was executed between the respondent and the complainants on 01.11.2011. The authority is of the considered view that as 'date of start of foundation of the subject tower in which the flat is located' is 03.05.2012 so, the due date shall be computed from the said date only.

53. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the said flat within 36 months from the date of start of foundation of the particular tower in which the flat is located and has sought further extension of a period of 6 months, on receipt of sanction of the building plans/revised plans and approvals of all concerned authorities including the fire service department, civil aviation department, traffic department, pollution control department as may be required for commencing and carrying of the construction subject to force majeure restrains or restrictions from any courts/ authorities, non-availability of building materials or dispute with contractors/workforce etc. and circumstances beyond the control of company and subject to timely payments by the flat buyer(s). The clause is being unconditional. In the light of the above, the grace period of 6 months is allowed in the present case.

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

55. 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.
56. 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., 02.02.2024 is @ 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
57. 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;"*

Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same as is being granted to the complainants in case of delayed possession charges.

58. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the authority is satisfied that the respondent are in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. It is pertinent to mention over here that as per the office order of the DTCP, Haryana, Chandigarh dated 03.03.2021, the para 4 of the said order has mentioned that "Government has accorded approval to consider the period i.e., 01.11.2017 to 30.09.2020 as 'Zero Period' where the approvals were withheld by the department within the said period in view of the legal opinion and also gave relaxations as mentioned in para 3". Accordingly, the authority is of the considered view that this period should be excluded while calculating the delay on the part of the respondent to deliver the subject flat. It is a matter of fact that the date of start of foundation of the subject tower, where the flat in question is situated IS 03.05.2012. Hence, the due date of



possession is calculated from the said date. By virtue of flat buyer's agreement executed between the parties on 01.11.2011, the possession of the booked unit was to be delivered within 36 months from the date of start of foundation of the particular tower in which the subject flat is located, which is 03.05.2012. Hence, the due date of possession is calculated from the date of start of foundation of the subject tower which comes out to be 03.05.2015 and a grace period of 6 months which is allowed in the present case for the reasons quoted above. So, the due date comes out to be 03.11.2015.

59. 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. These 2 months' of reasonable time is being given to the complainants 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 i.e., 03.11.2015 till the date of handing over of the possession of the unit or up to two months from the date of valid offer of possession if possession is not taken by the complainant, whichever is earlier (excluding 'Zero period' w.e.f. 01.11.2017 till 30.09.2020) as per the provisions of section 19(10) of the Act.





60. Accordingly, non-compliance of the mandate contained in section 11(4) (a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such complainants are entitled to delayed possession charges at the prescribed rate of interest i.e., 10.85% p.a. for every month of delay on the amount paid by the complainants to the respondent from the due date of possession i.e., 03.11.2015 till the date of handing over of the possession of the unit i.e., 16.09.2023 (excluding 'Zero period' w.e.f. 01.11.2017 till 30.09.2020) as per the provisions of section 18(1) of the Act read with rule 15 of the rules and section 19 (10) of the Act.
61. No direction w.r.t. relief seeking registration of the project can be given as the project is already registered and the details of which are mentioned in the above-mentioned table.
62. Relief no. (iii) and (iv) cannot be deliberated upon as the parties have not pressed the issue during proceedings.
63. The complainants are seeking relief w.r.t. compensation in the above-mentioned relief. Hon'ble Supreme Court of India in civil appeal titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.(supra)*, 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, for claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainants may file a separate complaint before the Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

#### H. Directions of the authority:

64. Hence, the authority hereby passes this order and issue 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 shall pay interest at the prescribed rate i.e. 10.85% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 03.11.2015 till actual handing over of possession i.e., 16.09.2023 (excluding 'Zero period' w.e.f. 01.11.2017 till 30.09.2020), as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
  - ii. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order and thereafter monthly payment of interest to be paid till date of handing over of possession shall be paid on or before the 10<sup>th</sup> of each succeeding month as per rule 16(2) of the rules.
  - iii. The complainant is directed to make payment of due amount against subject unit, if any, after adjustment of delay possession charges.
  - iv. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by



the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

- v. The respondent shall not charge anything from the complainants which is not the part of buyer's agreement.

65. Complaint stands disposed of.

66. File be consigned to registry.



*(Signature)*  
(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated:02.02.2024**

**HARERA**  
**GURUGRAM**

10/10/2010

BAJAJ FINSERV  
BANGALORE

The respondent shall not charge anything from the complainant  
which is not the part of buyer's agreement.  
The delayed processing charge as per section 5(a) of the Act  
the amount shall be borne by payee in case of default.  
the respondent/processor - which is the same part of interest which

Respondent stands disposed of  
to be assigned to registry

Member  
National Regulatory Authority  
Dated: 02.02.2010



BAJAJ FINSERV  
BANGALORE