

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

Complaint no. : 1693 of 2023
Date of first hearing: 08.09.2023
Date of decision : 01.03.2024

Rabinder Singh Sarna Address - BS Sarna Farm, Kh. No. 493-494, Opp. Air Force Station, Rajokri, Delhi-110038	Complainant
Versus	
M/s Chintels India Limited. Office: - A-11, Kailash Colony, New Delhi- 110048	Respondent
CORAM:	
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Shri Harshit Batra	Complainant
Shri Shubham Dayma	Respondent

ORDER

1. The present complaint dated 11.04.2023 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the act or the rules

and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

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

Sr. No.	Particulars	Details
1.	Name of the project	'Chintels Serenity', Sector 109, Gurugram, Haryana.
2.	Nature of the project	Group Housing
3.	Project area	20.169 acres
4.	Rera Registered/Not Registered	Registered Vide 125 of 2017 dated 28.08.2017 upto 31.12.2018
5.	DTCP License No.	50 of 2012 Dated 17.05.2012 valid upto 16.05.2025
	Name of Licensee	Chintels India Ltd.
6.	Allotment Letter	19.08.2013 (page no. 15 of reply)
7.	Date of execution of buyer's agreement	23.02.2015 (page no. 29 of complaint)
8.	Unit no.	D-802, 8 th Floor, Building D (page no. 32 of complaint)



9.	Unit admeasuring	2375 sq. ft. (page no. 32 of complaint)
10.	Possession clause	11. Time of Handing Over Possession <i>Barring unforeseen circumstances and Force Majeure events as stipulated hereunder, the possession of the said Apartment is proposed to be delivered by the Company to the Allottee within 36 months with grace period of six months from the date of actual start of construction of a particular tower Building in which the registration for allotment is made, subject to timely payment of all charges including the Basic Sale Price, Stamp Duty, Registration Fees and Other Charges as stipulated herein or as may be demanded by the Company from time to time in this regard.</i> (Emphasis supplied) [page 43 of complaint]
11.	Date of start of construction as per demand letter at page 69 of complaint	17.06.2014
12.	Due date of delivery of possession	17.12.2017 [Note: Grace period is included as unconditional]
13.	Total sale consideration	Rs. 1,85,71,875/- (As per payment plan annexed with the buyer's agreement)

14.	Total amount paid by the complainant	Rs.1,55,65,089/- (As per demand letter on page no. 73 of complaint)
15.	Occupation certificate	12.02.2019 [page no. 75 of complaint]
16.	Offer of possession	01.03.2019 [page no. 75 of complaint]
17.	Reminder Notices by respondent for payment	22.04.2019, 04.07.2019 (Page no. 81-82 of reply)
18.	Final Reminder Notice	30.01.2020 (Page no. 83 of reply)

B. Facts of the complaint

3. That believing the representations of the respondent the complainant made booking in the said project of the respondent. The complainant made a payment to the tune of Rs. 10,00,000/- and an amount of Rs. 15,25,576/- as booking amount to the respondent.
4. That the respondent then issued allotment letter on 19.08.2013 in favor of the complainant. The respondent arbitrarily increased the super area of the said unit without the consent of the complainant. The unit stands admeasuring 2375 sq. ft. The total sale consideration as per the payment schedule opted by the complainant is Rs. 1,85,71,875/-.
5. That the apartment buyer's agreement dated 23.02.2015 was executed between the parties which included all the details of the project such as amenities promised, site plan, payment schedule etc. under the said buyer's agreement.

6. That as per clause 11 of the buyer's agreement, the respondents shall complete the construction of the said project within 36 months from the date of start of construction with further extension/grace period of 6(six) months. That as per the statement of accounts and the demands raised by the respondent, the construction has started on 17.06.2014, hence, the due date of possession comes out to be 17.06.2017 (without grace) and the respondent shall accordingly hand over the possession of the said unit within the due time-period.
7. That until 2018, the complainant had made a total payment of Rs. 1,55,65,08/- to the respondent, as evident from demand letter dated 03.10.2019. However, even after having paid a substantial sum of money, no delay possession charges were given to the complainant and instead, illegal demands were raised.
8. That the complainant contacted the respondent on several occasions and was regularly in touch with the respondent. The respondent was never able to give satisfactory response to the complainant regarding the status of the construction and was never definite about the delivery of the possession. Some or the other reason was being given in terms of some dispute in regard to land or shortage of resources etc. The respondent has failed to offer the possession of the said unit as per the agreed terms. On 01.03.2019, after a delay of two years, respondent offered the possession of the said unit.
9. That the respondent had malafidely and unlawfully charged Rs. 2,27,266/- as "Deposit against HVAT Liability", which, under no circumstance, can be done. That it is a settled principle of law that the liability of payment of HVAT is of the builder/respondent.

10. That moreover, the due date of possession came out to be 17.06.2017, i.e., before the implementation of GST which was done on 01.07.2017. In such circumstance, the complainant cannot be made to make the payment of GST.
11. That in the year 2020, the whole nation was under a complete lockdown due to the peak of Covid-19 pandemic. That at that point in time also, the respondent kept on issuing reminders without even compensating the complainant for the delay in offering the possession of the said unit. A show cause notice dated 09.12.2020 threatening the complainant of cancellation of the said allotment without any default of the complainant.
12. That the respondent has illegally levied a hefty amount as delayed penalty charges without any default of the complainant. The demand letter dated 03.10.2019 shows the interest levied on the complainant of Rs. 13,67,547/-.
13. That as per the RERA certificate, the registration of the said project was valid for a period commencing from 28.08.2017 to 31.12.2018. The said registration has expired in 2018 but the respondent in disregard to the said expiration, has offered the possession to the complainant on 01.03.2019.

C. Relief sought by the complainant:

14. The complainant has sought following relief(s):
 - a) Direct the respondent to give possession of the unit to the complainant.
 - b) Direct the respondent to pay delay possession charges to the complainant at the prevailing rate of interest on the amount paid by the complainant till the date of actual handing over of possession of the unit.

- c) Direct the respondent to waive off the demand for HVAT of Rs. 2,27,266/-.
- d) Direct the respondent not to charge the GST as the due date comes to be before the implementation of the GST Act, 2017.
- e) Direct the respondent to execute conveyance deed in favour of the complainant.
- f) Direct the respondent to waive off interest of Rs. 13,67,547/- unilaterally charged by respondent.
- g) To give liberty to the complainant to file a complaint under section 71, 72 and 31 of the Rera Act.

D. Reply by the respondent

15. That complainant was provisionally allotted a unit bearing no. 802, measuring 2375.00 sq. ft. tower D, Chintels Serenity, sector 109, Gurgaon, Haryana vide allotment letter dated 19.08.2013. The complainant had opted for the "construction linked payment" to purchase the said unit.
16. That an apartment buyer agreement dated 23.02.2015 was executed between the complainant and respondent qua the said property for a "total price" amounting to Rs. 1,85,71,875/-. However, agreement specifically states that the above said 'total price' excludes all taxes including VAT, stamp duty, registration, other government levies/taxes, among others.
17. That the present complaint is not maintainable as the clause 31 of the said agreement provides that all or any dispute arising out of or touching upon or in relation to the terms of the said agreement shall be settled amicably by mutual discussion, failing which the same shall be settled through arbitration governed by the Arbitration and Conciliation Act, 1996.

18. That time was of the essence of the said agreement as the project was being executed.
19. That clause 11 of the said agreement states that the time of handing over possession of the said unit by the respondent to the complainant was 36 months (three years) with a grace period of six months from the date of actual start of construction of the particular tower building in which the registration for allotment is made, subject always to timely payment of all charges by the complainant. The complainant miserably failed to make the payment on time and further failed to clear the outstanding dues till date.
20. That the payment plan as provided in annexure-V of the said agreement was spread into fifteen (15) instalments. Further, all taxes, stamp duty, registration, among others, were excluded from the said payment plan. The respondent diligently adhered to the timeline as provided in the said and was diligently working towards the completion of the work and was raising the demand letter cum service invoice as per the said payment plan from time to time.
21. That the complainant on numerous occasions failed to make the payment due towards the respondent as per the said payment plan. The last payment made by the complainant was way back in 2017 and thereafter no effort was made on the part of complainant to clear the outstanding dues ever since.
22. That a reminder notice dated 22.04.2019 was sent to the complainant seeking payment of outstanding due towards the respondent amounting to Rs. 41,86,885/-. However, the complainant failed to clear the dues. The respondent was compelled to send another reminder notice dated 04.07.2019 to the complainant seeking payment of Rs. 46,59,147/-. The complainant failed to act upon the same and hence the dues remained

pending and the interest kept increasing with every delay attributable to the complainant. The respondent, out of bonafide, was inclined to send another reminder in the name of final reminder dated 30.01.2020 to the complainant seeking clearance of his dues amounting to Rs. 51,01,746/-. But the complainant never made even the slightest effort to act upon the same.

23. That even after multiple follow ups when the complainant failed to act upon clearing his legally arising debt, a show cause notice dated 30.01.2020 was sent to the complainant by the respondent seeking reasons as to why the said unit allotted in his name may not be cancelled for non-payment of the legally arising due amount. The complainant even failed to reply to the said show cause notice.
24. That through this complaint, the complainant is trying to wriggle out of his liability arising out of the said agreement to pay the outstanding amount due towards the complainant from time to time and to abuse the due process of law in order to mislead this Hon'ble Court in deciding the matter by not disclosing entire set of facts..
25. Copies of all the relevant documents have been duly filed and placed on the 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

26. 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

27. 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

28. The 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)(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.

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

F. Findings on the relief sought by the complainant.

Relief sought by the complainant: The complainant had sought following relief(s):

- i. **Direct the respondent to give possession of the unit to the complainant.**
 - ii. **Direct the respondent to pay delay possession charges to the complainant at the prevailing rate of interest on the amount paid by the complainant till the date of actual handing over of possession of the unit.**
30. 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."

31. Clause 11 of the buyer's agreement provides the time period of handing over possession and the same is reproduced below:

11. Time of Handing Over Possession

Barring unforeseen circumstances and Force Majeure events as stipulated hereunder, the possession of the said Apartment is proposed to be delivered by the Company to the Allottee within 36 months with grace period of six months from the date of actual start of construction of a particular tower Building in which the registration for allotment is made, subject to timely payment of all charges including the Basic Sale Price, Stamp Duty, Registration Fees and Other Charges

as stipulated herein or as may be demanded by the Company from time to time in this regard.”

32. At the inception, it is relevant to comment on the pre-set possession clause of the buyer’s agreement wherein the possession has been subjected to numerous terms and conditions and force majeure circumstances. The drafting of this clause is not only vague but so heavily loaded in favour of the promoters that even a single default by the allottee in fulfilling obligations, formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer’s agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused 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.
33. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the unit within a period of 36 months with a grace period of 6 months from the date of actual start of construction of particular tower. The date of actual start of construction is 17.06.2014 and the due date of possession comes out to be 17.06.2017. Further the respondent is entitled for a grace period of 6 months as it is unqualified.
34. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the prescribed rate of interest on the amount already paid by him. 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.

35. 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.
36. 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., 01.03.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
37. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, 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—

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 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;"

38. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85% by the respondents/promoters which the same is as is being granted to the complainant in case of delayed possession charges.
39. On consideration of the documents available on record and submissions made regarding contravention of 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 agreement. By virtue of clause 11 of the buyer's agreement executed between the parties, the possession of the subject unit was to be delivered within a period of 36 months with a grace period of 6 months from the date of actual start of construction of particular tower. The date of actual start of construction is 17.06.2014 and the due date of possession comes out to be 17.12.2017.
40. 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 12.02.2019. The respondent has offered the possession of the subject unit(s) to the respective complainant after obtaining occupation certificate from competent authority. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. This 2 months'

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 i.e., 17.12.2017 till the expiry of 2 months from the date of offer of possession (01.03.2019) plus two months (i.e., 01.05.2019).

41. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement to hand over the possession within the stipulated period. Accordingly, the 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, the allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 17.12.2017 till offer of possession plus two months (i.e., 01.05.2019), at the prescribed rate i.e., 10.85 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

F.III Direct the respondent to waive off the demand for HVAT of Rs. 2,27,266/-

42. The authority has decided this in the complaint bearing no. **4031 of 2019** titled as **Varun Gupta V/s Emaar MGF Land Ltd.** wherein the authority has held that the promoter is entitled to charge VAT from the allottee for the period up to 31.03.2014 @ 1.05% (one percent VAT + 5 percent surcharge on VAT). However, the promoter cannot charge any VAT from the allottees/prospective buyers for the period 01.04.2014 to 30.06.2017 as the same was to be borne by the promoter-developer only. The

respondent-promoter is bound to adjust the said amount, if charged from the allottee with the dues payable by him or refund the amount if no dues are payable by him.

F.IV Direct the respondent not to charge the GST as the due date comes to be before the implementation of the GST Act, 2017.

43. The authority has decided this issue in the complaint bearing no. 4031 of 2019 titled as **Varun Gupta V/s Emaar MGF Land Ltd.** wherein the authority has held that for the projects where the due date of possession was after 01.07.2017 i.e., date of coming into force of GST, the builder is entitled for charging GST but builder has to pass the benefit of input tax credit to the buyer. That in the event the respondent-promoter has not passed the benefit of ITC to the buyers of the unit which is in contravention to the provisions of section 171(1) of the HGST Act, 2017 and has thus committed an offence as per the provisions of section 171 (3A) of the above Act. The allottee shall be at liberty to approach the State Screening Committee Haryana for initiating proceedings under section 171 of the HGST Act against the respondent-promoter. The concerned SGST Commissioner is advised to take necessary action to ensure that the benefit of ITC is passed on to the allottee in future.

F.V Direct the respondent to execute conveyance deed in favour of the complainant.

44. Section 17 (1) of the Act deals with duty of promoter to get the conveyance deed executed and the same is reproduced below:

"17. Transfer of title.-

(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or

the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."

45. As OC of the unit has been obtained by the competent authority on 12.02.2019, therefore, conveyance deed can be executed with respect to the unit. Accordingly, the authority directs the respondent to execute the conveyance deed in favour of the complainant after settling the dues, if any within 90 days from the date of this order.

F.VI Direct the respondent to waive off interest of Rs. 13,67,547/- unilaterally charged by respondent.

46. As per section 2(za) of the Act, 2016 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.

F.VII To give liberty to the complainant to file a complaint under section 71, 72 and 31 of the Rera Act.

47. The complainant in the aforesaid relief is seeking relief w.r.t compensation. 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.** (Decided on 11.11.2021), has held that an

allottee is entitled to claim compensation 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 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. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation.


G. Directions of the Authority

48. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent is directed to pay interest at the prescribed rate of 10.85% p.a. for every month of delay from the due date of possession i.e., 17.12.2017 till offer of possession i.e., 01.03.2019 plus two months i.e., 01.05.2019 to the complainant(s) as per section 19(10) of the Act.
- ii. The arrears of such interest accrued from due date of possession shall be paid by the promoter to the allottees within a period of 90 days from date of this order as per rule 16(2) of the rules.
- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period against their unit to be paid by the respondent.
- iv. The rate of interest chargeable from the allottees by the promoters, in case of default shall be charged at the prescribed rate i.e., 10.85%

by the respondent/promoters which is the same rate of interest which the promoters would 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 is also directed not to charge anything which is not part of buyer's agreement.
49. Complaint stands disposed of.
50. File be consigned to registry.



(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 01.03.2024

HARERA
GURUGRAM