

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

Complaint no. : 206 of 2023
Date of complaint : 16.01.2023
Date of order : 15.05.2024

Deshdeep,
R/o: - Flat No. 3, 2nd Floor, Deepak Apartment,
Desu Road, Ward no. 1, Mehrouli, New Delhi-110030.

Complainant

Versus

M/s Lotus Realtech Private Limited.
Regd. Office at: BU-5, SFS Flat, Outer Ring Road,
Pitampura, Delhi-110034.
Also at: 501, Nirvana Courtyard,
Nirvana Country, Sector-50, Gurugram- 122018.

Respondent

CORAM:
Ashok Sangwan

Member

APPEARANCE:
Parshant Vaxish (Advocate)
Jagbir Singh (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 under the provisions 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:

S.No	Particulars	Details
1.	Name of the project	"Lotus Homz", Sector- 111, Gurugram
2.	Nature of project	Affordable Group Housing Colony
3.	RERA registered/not registered	214/2017 dated 18.09.2017 Valid upto 30.12.2021
4.	DTPC License no.	47 of 2014 dated 18.06.2014
	Validity status	31.05.2021
	Name of licensee	Ashok Kumar & 1 Other
	Licensed area	05.09 acres
5.	Unit no.	803, Tower/Block- A (1), 8 th floor [as per buyer's agreement on page 51 of complaint]
6.	Unit measuring	605.55 sq. ft. (carpet area) 90.35 sq. ft. (balcony area)s [as per buyer's agreement on page 51 of complaint]
7.	Date of execution of Apartment buyer's agreement	28.09.2018 (page 45 of complaint)
8.	Possession clause	7.1 The Promoter assures to hand over possession of the Unit/Apartment for Residential usage along with one two wheeler parking site as per agreed terms and conditions i.e. within a period of 4(Four) years from the date of approval of building plans or grant of environment clearance (hear in after referred to as the "Communication Date" whichever is later, unless there is delay due to "force majeure", Court orders, Government policy/guidelines,

		<i>decisions affecting the regular development of the real estate project. If, the completion of the Project is delayed due to the above conditions, then the Allottee agrees that the Promoter shall be entitled to the extension of time for delivery of possession of the Unit Apartment for Residential usage.</i>
9.	Approval of Building Plan	22.10.2014 (as per information obtained from planning branch)
10.	Environment clearance	01.07.2016 (as per information obtained from planning branch)
11.	Due date of possession	01.01.2021 (Calculated as 4 years from the date of grant of environment clearance i.e., 01.07.2016 as per policy, of 2013 + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020.)
12.	Total Sale Consideration	Rs.24,67,375/- + applicable taxes [as per buyer's agreement on page 52 of complaint]
13.	Total amount paid by the complainant	Rs.25,80,868/- (as per SOA on page no. 10 of reply)
14.	Occupation certificate	01.06.2021
15.	Offer of possession	07.06.2021 (page 9 of reply)

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That, the present complaint has been preferred by the complainant seeking possession and occupancy certificate of the unit bearing no. 803, Eighth Floor, Tower A in project of the respondent named Lotus Homz at Sector 111, Village-Choma, Gurugram, booked by the



- complainant, for which the complainant has already paid the initial considered amount.
- II. That the respondent has not only failed to adhere to the terms and conditions of builder buyer's agreement dated 28.09.2018 but also illegally demanded additional charges from the complainant by making false promises and assurance.
 - III. The complainant kept pursuing the concerns with the representatives of the respondent as to when they will deliver the project. The complainant after many requests and emails, received the offer of possession on 07.06.2021. Shockingly, the respondent raised a demand for the delay payment charges and other frivolous charges amounting to an exorbitant sum of Rs.5,02,062/- after which the respondent affirmed to give the possession and failing which another charge of holding will be applied on the complainant.
 - IV. That, as per the demands raised by the respondent, based on the payment plan, the complainant paid a sum of Rs.25,80,868/- towards the said apartment, whereas in the builder buyer agreement under clause 1.2 the total price of the said apartment was mentioned as Rs.24,67,375/-. Notably, the respondent without any substantiating or stand or reasoning hiked the total considered amount towards the allotted apartment in absolute arbitrary manner.
 - V. That the respondent still has not given the complainant, the interest, that he is eligible for in the intimation of possession letter dated 07.06.2021 which was already delayed for a long time.
 - VI. That offering possession by the respondent on payment of charges which the flat buyer is not contractually bound to pay, cannot be considered to be a valid offer of possession. The arbitrary demand that



has been put forth in the conditional offer of possession letter is another attempt to extort money.

- VII. That under clause 1.9(a) of the buyer's agreement, upon delay of payment by the allottee, the respondent can charge 15% interest per annum on account of delayed payments, however, on account of delay in handing over possession by the respondent in case of delay by the promoter no equal levy is put which is against the RERA prescribed law. The respondent has charged frivolous interest in the final statement of accounts, such acts of the respondent indicate illegal strategies to gain benefits and extort money from the complainant who has already put forth more than the initial quoted amount towards the apartment.
- VIII. That the respondent company while granting the offer for possession have put unjustified demands and costs, which have never been intimated by the respondent to the complainant anytime ever.
- IX. That after losing all hope from the respondent company and having shattered and scattered dreams of owning a flat and also losing considerable amount of money, the complainant is constrained to approach this Authority for redressal of his grievances.
- X. That the respondent has failed to offer possession by the due date to the complainant, which is in violation of obligation of the company under Section 11(4)(a) of the RERA 2016, thus, the Respondent is liable to pay interest at the prescribed rate.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
- i. To direct the respondent to handover possession of the unit and to pay delay possession charges at prescribed rate to the complainant.

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.

D. Reply by the respondent.

6. The respondent has contested the complaint vide its reply dated 31.01.2024 on following grounds: -

- i. That no additional charges were demanded from the complainant at any time as alleged. Further, the complainant did not pay the instalments on time and has committed default in the payment of installments as per the payment plan mentioned in BBA.
- ii. That the complainant had purchased the flat vide agreement to sell dated 28.09.2018 at the sale consideration of Rs.24,67,375/- plus Rs.1,29,705 being taxes (Total Rs.25,97,080/-), out of which he had paid the total sum of Rs.25,80,868/- till date and now the balance amount of Rs.16,212/- is payable by him on account of the balance sale price of the flat.
- iii. That the complainant is bound to pay the sum of Rs.16,212/- being balance sale price and Rs .2,15,029/- being interest till 31.12.2023 for delayed payment of installments. Apart from this amount, the complainant is liable to pay the possession charges of Rs.1,67,394/- as shown in the offer of possession letter. Thus, the sum of Rs.3,98,635/- is outstanding amount payable by the complainant at the time of taking the possession of the allotted flat.
- iv. That the complainant is bound to pay the afore-said interest amount as per clause 1.9(b) of the BBA. It is worthwhile to mention here that as per the BBA ,the respondent was entitled to charge @15% p.a for the period of delay , but the respondent, being a law-abiding company,



had charged interest @10.75% for the period of delay after considering the requests of allottee due to Covid 19 sufferings and thus, the complainant is legally bound to pay the outstanding interest amount at the time of taking the possession of the allotted flat.

- v. That as per clause 7.1 of the BBA, the possession of the allotted flat was to be given to the allottees after a period of 4 years from the date of approval of building plan or grant of environment clearance whichever is later. The environment clearance was given on 01.07.2016 and thus the possession was to be offered after 31.12.2020 after getting extension of 6 months by this authority due to COVID 2019.
 - vi. That the respondent had already completed the project within a period of 48 months to be calculated from 01.07.2016, the date on which environment clearance letter was issued by the competent authority, which fact had been clearly mentioned in the BBA.
 - vii. That the respondent had already issued the offer of possession letter dated 07.06.2021 containing the balance outstanding amount payable by the complainant at the time of taking the possession of the allotted flat, but the complainant is not taking the possession of the allotted flat on payment of the outstanding amount payable by him. There is no delay in the completion of the project and thus the complainant is not entitled to get any compensation in this regard.
7. 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 on the basis of these undisputed documents and submissions made by the parties.



E. Jurisdiction of the authority

8. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

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

E.II Subject-matter jurisdiction

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

Section 11.....

(4) The promoter shall-

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

Section 34-Functions of the Authority:

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

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

F. Findings on the relief sought by the complainant.

F. I Direct the respondent to handover possession of the unit and to pay delay possession charges at prescribed rate to the complainant.

12. 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."***

(Emphasis supplied)

13. Clause 7.1 of the agreement to sell dated 28.09.2018 provides for handing over of possession and is reproduced below.

7.1 "The Promoter assures to hand over possession of the Unit/Apartment for Residential usage along with one two wheeler parking site as per agreed terms and conditions i.e. within a period of 4(Four) years from the date of approval of building plans or grant of environment clearance (hear in after referred to as the "Communication Date" whichever is later, unless there is delay due to "force majeure", Court orders, Government policy/guidelines, decisions affecting the regular development of the real estate project. If, the completion of the Project is delayed due to the above conditions, then the Allottee agrees that the Promoter shall be entitled to the extension of time for delivery of possession of the Unit Apartment for Residential usage."

14. **Due date of handing over possession:** The respondent-promoter has proposed to handover the possession of the unit within a period of within 4 years from approval of building plans (22.10.2014) or from the date of environment clearance 01.07.2016, whichever is later, unless there is delay due to "force majeure" conditions. The due date of possession has been calculated from date of approval of environment clearance i.e., 01.07.2016, as per policy, of 2013. Further, vide HARERA notification no. 9/3-2020 dated 26.05.2020, the 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 01.07.2020 i.e., after 25.03.2020. Thus, 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. Therefore, the due date of handing over possession comes out to be 01.01.2021 (inadvertently grace period of 6 month as per HARERA notification dated 26.05.2020 was left to be added on proceedings dated 10.04.2024).

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

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

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

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

16. 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.



17. 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., 15.05.2024 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
18. 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;"*
19. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85% by the respondent /promoter which is the same as is being granted to the complainant in case of delayed possession charges.
20. On consideration of the documents available on record and submissions made by both the parties, 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 7.1 of the agreement to sell executed between the parties on 28.09.2018, the possession of the subject unit was to be delivered by 01.01.2021. The occupation certificate was granted by the concerned authority on 01.06.2021 and thereafter, the possession of the subject unit was



offered to the complainant vide letter dated 07.06.2021. 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 unit and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 28.09.2018 to hand over the possession within the stipulated period.

21. 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 01.06.2021. The respondent offered the possession of the unit in question to the complainant only on 07.06.2021, so it can be said that the complainants came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainants should be given 2 months time from the date of offer of possession. These 2 months of reasonable time is being given to the complainants keeping in mind that even after intimation of possession practically they have 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 (07.06.2021) which comes out to be 07.08.2021.
22. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to delay possession



charges at rate of the prescribed interest @10.85% p.a. w.e.f. 01.01.2021 till the expiry of 2 months from the date of offer of possession (07.06.2021) which comes out to be 07.08.2021 as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act.

G. Directions of the authority

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

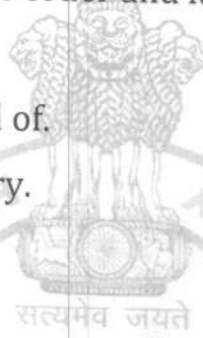
- i. The respondent is directed to pay interest to the complainant against the paid-up amount at the prescribed rate i.e., 10.85% per annum for every month of delay from due date of possession i.e., 01.01.2021 till the expiry of 2 months from the date of offer of possession (07.06.2021) i.e., upto 07.08.2021 only.
- ii. The respondent is directed to supply a copy of the updated statement of account after adjusting the delayed possession charges within a period of 15 days to the complainant.
- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of delay possession charges within a period of 30 days from the date of receipt of updated statement of account.
- iv. The respondent is directed to handover possession of the unit/flat in question to the complainant in terms of the agreement to sell dated 28.09.2018.
- v. The respondent shall not charge anything from the complainant which is not the part of the agreement to sell dated 28.09.2018 or provided under Affordable Housing Policy, 2013.



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- vi. 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.
- vii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
24. Complaint stands disposed of.
25. File be consigned to registry.



(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 15.05.2024

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