

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

Complaint no. : 1045 of 2022
Order pronounced on : 01.05.2024

Indu Dhir

Address: H.No.-800, Sector-4,
Panchkula.

Complainant

Versus

Almond Infrabuild Pvt. Ltd.
Address: -711/92, Deepali,
Nehru Place, New Delhi-110019.

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Shri K.K. Jain (Advocate)
Shri Kunal Gaba (Advocate)

Complainant
Respondent

ORDER

1. The present complaint dated 29.03.2022 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 allottees as per the agreement for sale executed inter se them.

A. Project and unit related details

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

S. N.	Particulars	Details
1	Name of the project	"ATS Tourmaline", Sector- 109, Gurgaon
2	Nature of project	Group housing project
3.	DTPC License no.	250 of 2007 dated 02.11.2007
	Validity status	01.11.2019
	Licensed area	19.768 acres
	Name of licensee	Raj Kiran & 2 others
4	RERA registered/not registered	Registered vide registration no. 41 of 2017 dated 10.08.2017
	Validity status	10.08.2023
5	Application dated	16.06.2016 [As per page no. 51 of complaint]



6	Unit no.	2242 on 24 th floor of tower 02 [As per page no. 51 of complaint]
7	Unit area admeasuring	2585 sq. ft. [Super area] [As per page no. 51 of complaint]
8	Date of apartment buyer agreement	21.07.2016 [As per page no. 49 of complaint]
9	Payment plan	Subvention plan [As per page no. 81 of complaint]
10	Total sale consideration	Rs. 1,69,70,875/- [As per payment plan annexed as schedule IV on page no. 81 of complaint]
11	Amount paid by the complainant	Rs. 1,81,13,438/- [As alleged by the complainant on page no. 14 of complaint] Amount disbursed by bank Rs. 1,11,79,349/- [As per page no. 13 of complaint]
12	Possession clause	Clause 6.2 <i>The Developer endeavour to complete the construction of the apartment within 42 months from the date of this</i>

		<u>agreement</u> (completion date). The company will send possession notice and offer possession of the Apartment to the applicant as and when the company receives the occupation certificate from the competent authority.
13	Due date of possession	21.01.2020 [Calculated from the date of agreement i.e., 21.07.2016]
14	Tri-partite agreement	21.07.2016 [As per page no. 42 of complaint]
15	Occupation certificate	09.08.2019 [As per page no. 44 of reply]
16	Offer of possession	09.08.2019 [As per page no. 82 of complaint]
17	Discharge cum no dues certificate	20.11.2020 [As per page no. 46 of reply]
18	Legal notice	18.12.2021 [As per page no. 91 of complaint]
19	Conveyance deed executed on	02.11.2022

B. Facts of the complaint



3. The complainant has made the following submissions in the complaint:
- I. That the complainant is a law-abiding and peace-loving citizen and the respondent is a company incorporated under the Companies Act, 1956 and is engaged in the business of real estate and is a subsidiary of ATS Greens/ATS Infrastructure Ltd.
 - II. That in or around June 2016, the authorized representative of the respondent introduced the project namely under the name and style of "ATS Tourmaline" located in Sector - 109, Gurugram to the complainant.
 - III. That complainant visited the sales office and discussed the details of the said project wherein, the respondent have represented *inter alia*, to the effect that respondent have already secured all necessary approvals and permissions in respect of the project and are legally entitled to sell the flats. The respondent assured that the possession of the flat would be handed over within 42 months from the date of booking.
 - IV. That the complainant has purchased the unit under the "Subvention Scheme". The complainant was allotted unit no. 2242 on the 24th Floor, Tower No. 2 having builtup area of 195.09 square meter (equivalent to 2100 sq. ft) and having a super built up area of 240.15 Square Meter (equivalent to 2585 sq.ft.) for a total sale consideration of Rs.1,69,70,875/-.
 - V. On 19.07.2016, the complainant paid the earnest amount of Rs.22,65,834/- to the respondent and then secured a loan of



Rs.1,32,00,000/- from HDFC Bank and a Tripartite Agreement was executed between the complainant, the respondent and HDFC Bank on 21.07.2016.

- VI. That furthermore, an apartment buyer agreement was also executed between the complainant and the respondent on 21.07.2016. That on 29.07.2016, an amount of Rs.1,11,79,349/- was disbursed by HDFC bank directly to the respondent vide the tripartite agreement.
- VII. It is pertinent to mention here that the said purchase was made under the "Subvention Scheme" and the complainant was assured vide the Tripartite Agreement dated 21.07.2016 that for 36 months from the disbursement of the said loan or provision of occupancy certificate by the respondents whichever is earlier, the liability of payment of the Pre-EMI/EMI chargeable on loan disbursed to HDFC Bank, shall be exclusively of the respondent. However, despite of their irrevocable admitted liability on record, the respondent defaulted on payments to the HDFC Bank and hence the complainant and her husband's CIBIL scores were badly downgraded for no fault of theirs.
- VIII. That thereafter the respondent sent an offer of possession on 09.08.2019 stating that the respondent have received the occupancy certificate from the statutory authorities and that she should take the possession of the flat by paying the demand of Rs.20,78,087/-.



- IX. That on 14.08.2019 upon site inspection the complainant and her husband were shocked to discover that the entire project was in raw state and non-habitable. The complainant protested about the same and several other lapses on record to the respondent vide Email.
- X. That in compliance of the said demand, the complainant had duly paid a cumulative amount of Rs.20,78,087/- to the respondent, which is an admitted fact. The said amount was paid under protest as many charges as demanded by the respondent was outside the scope of settled terms.
- XI. That till date, a total payment of Rs.1,81,13,438/- has been directly paid against the total sale consideration as mentioned in the agreement.
- XII. That in a shocking turn of events despite of the fact that the complainant had been demanding possession of her apartment since a long time, the respondent refused to provide a fixed date for the same. The respondent deliberately refused to acknowledge her provided amounts and had to be reconfirmed about the same on several occasions.
- XIII. That it is further pertinent to mention here that on the date of issue of offer of possession i.e. 09.08.2019, the complainant's unit and it's surrounding apartments including the entire tower was in a raw, non - habitable state wherein no person can live without compromising his/her security , life & liberty. That even till this

current date, the apartment and the residential complex as such remains non-habitable and raw.

- XIV. That despite paying entire amount for the said apartment to the respondent the minimal construction activities being conducted by the respondent were moving at snail's pace. So, finding no other option but to conclude the remaining construction work herself, the complainant through her husband, Sh. Ravinder Kumar Dhir requested for an interim possession of the said apartment on 03.01.2020 from the respondent. However the respondent kept her request in pendency and started demanding various random amounts, including some non-liable amount of HVAT amounting to Rs.1,37,424/- which was not discussed or agreed upon at the time of buying the apartment and is neither mentioned anywhere in the executed documents inter se the parties.
- XV. That upon constant following up of the matter with the respondent, finally on 19.11.2020 , the respondent sent a set of documents which included a "Discharge cum No Dues Certificate" which basically restricted the complainant from raising any legitimate claims/complaint against the respondent, as a pre-condition to provide the interim possession.
- XVI. That the complainant had already paid the entire amount towards the said apartment to the respondent however the respondent with a malafide intent, coerced and pressurized the complainant to sign the said Discharge cum No Dues Certificate. That since the entire amount towards the said apartment already stood paid and the

ongoing EMI liability towards HDFC Bank was also running, the complainant had no option and signed the said document under protest on 20.11.2020.

- XVII. That thereafter on 20.11.2020 the interim possession was provided. The complainant & her husband were further shocked to discover a lot of civil discrepancies in her apartment including 2 level ceilings and other issues which were duly notified to the respondent.
- XVIII. That till date, the complainant has been constrained to spend around Rs.30,00,000 in completing the said apartment on the respondent's behalf, which is an admitted liability of the respondent towards completion of the said apartment as per Schedule II of the Apartment Buyer Agreement dated 21.07.2016.
- XIX. That it is further pertinent to mention here that more than five years have passed since the booking of the said apartment and the complainant has not received the full and final vacant possession of her apartment from the respondent (only an interim possession had been granted to the complainant to conclude the construction on the respondent's behalf). The complainant had no option but to further comply with all unjustified monetary demands being raised by the respondent including an arbitrary demand of an amount of Rs.1,40,916/- despite of previously paying an amount of Rs.50,000/- favoring the maintenance subsidiary company of the respondent and finally on 16.12.2021, the full and final vacant possession of the said apartment was provided to the complainant.



- XX. That moreover the complainant was pressurized to sign a separate maintenance agency agreement and second time signing of another second Discharge cum No Dues Certificate, identical to the one signed on 20.11.2020. Finding no other option, the complainant signed the said documents under protest.
- XXI. That furthermore the complainant has been demanding to get the conveyance deed registered but despite repeated requests, the respondent is not executing the conveyance deed in favour of the complainant.
- XXII. That it is further pertinent to mention here that the final possession was due to be given to the complainant within 90 days of request raised on 30.08.2019. But it was provided only on 16.12.2021. Therefore the complainant cannot be held liable for the provision of the Pre-EMI/EMI amounts from 1.09.2019 till the month of December 2021 as the purchase of the flat was made under the Subvention Scheme and the final vacant possession was provided only on 16.12.2021. Therefore the complainant was forced to pay the EMIs/Pre-EMIs towards the same to HDFC Bank even though the Final Possession was not provided by the respondent. The complainant has paid Rs.34,20,720/- towards EMIs to the HDFC bank.
- XXIII. That it is further pertinent to mention here that the respondent cannot charge Gst more than 5% if Input Tax Credit is not given to the complainant for the same. In case the respondent is charging Gst at the rate of 12% instead of 5% then it is the liability to give input





credits. Despite charging Gst@ 12%, the respondent refused to provide input tax credit to the complainant which amounts to cheating not only from an individual but also from a Government Department, which is a serious offence. In this manner, the respondent has siphoned off Rs. 1,47,397/- charged extra on pretext of GST , from the complainant.

XXIV. That finding no other option, the complainant was constrained to send a Legal Notice to the respondent. Hence, this complaint.

C. Reliefs sought by the complainant

4. The complainant is seeking the following relief:

- i. Direct the respondent to refund back the amount of Rs.11,42,563/- taken by the respondent by coercion from the complainant.
- ii. Direct the respondent to refund the amount of Rs.30,00,000/- spent by the complainant in order to complete the construction of the apartment.
- iii. Direct the respondent to refund back Rs.34,20,720/- paid by the complainant on account of Pre EMIs to the bank which was the liability of the respondent.
- iv. Direct the respondent to refund Rs.1,47,397/- paid by the complainant on account of Gst.
- v. Direct the respondent to pay delayed possession charges from 30.08.2019 to 16.12.2021.
- vi. Direct the respondent to refund Rs.44,12,428/- to the complainant on account of decrease in the committed built up area.
- vii. Direct the respondent to execute conveyance deed .

5. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.

C. Reply by the respondent

6. The respondent has contested the complaint on the following grounds:
- I. The present complaint is neither maintainable nor tenable before the Authority and is liable to be out rightly dismissed. The agreement in question was executed between the complainant and the respondent prior to the enactment of RERA,2016.
 - II. That the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute.
 - III. That the respondent is a reputed real estate developer having immense goodwill comprise of law abiding and peace loving always believed best services to its customers including the complainant.
 - IV. That the complainant, after checking the veracity of the project namely, "ATS Tourmaline", Sector-109, gurugram had applied for allotment of a residential unit. it is submitted that based on the application of the complainant, unit no. 2242, Tower no. 2 was allotted to the complainant by the respondent.



- V. That the buyer's agreement was executed on 21.07.2016. It is pertinent to mention that the RERA Act, 2016 was not in force when the agreement was entered into. The provisions of the RERA Act, 2016 thus cannot be enforced retrospectively.
- VI. That it is wrong that the total sale consideration of the unit was Rs.1,69,70,875/-. The sale consideration of Rs.1,69,70,875/- was exclusive of other costs, charges including but not limited to maintenance, stamp duty and registration charges, service tax, proportionate taxes and proportionate charges for provision of any other items/facilities.
- VII. That the possession of the unit was supposed to be offered in accordance with the agreed terms and conditions of the Buyer's agreement. The possession of the unit was subject to the occurrence of the force majeure events. The relevant Clause 6.2 of the Agreement pertaining to force majeure event clearly states that-
- "notwithstanding the same, the Developer shall be entitled to an extension of time from the expiry of the Completion of construction is delayed on account of any of the following reasons-*
- a. Non-availability of steel, cement, other building materials, water or electric supply or labour, or*
 - b. Any change in the Applicable Law or existence of any injunction, stay order, prohibitory order or dircetions passed by any Court, tribunal, body or Competent Authority; or*
 - c. -----*
 - d. Force Majeure Event or any other reason (not limited to the reasons mentioned above) beyond the control of or unforeseen by the Developer, which may prevent or delay the Developer in performing its obligations as specified in this Agreement."*

VIII. That it is pertinent to mention here that the implementation of the said project was hampered due to non-payment of instalments by allottees on time and also due to the events and conditions which are beyond the control of the respondent and which have affected the materially affected the construction and progress of the project. Some of the Force majeure events/conditions which were beyond the control of the respondent and affected the implementation of the project and are as under:

- 1) **Inability to undertake the construction for approx. 7-8 months due to Central Government's Notification w.r.t Demonetization:** [Only happened second time in 71 years of independence hence beyond control and could not be foreseen]. The respondent had awarded the construction of the project to one of the leading construction companies in India. The said contractor/company could not implement the entire project for approx.. 7-8 months w.e.f 9-10 November 2016 the day when the Central Government issued notification w.r.t demonetization. During this period, the contractor could not make payment to the labour in cash and as majority of casual labour force engaged in construction activities in India do not have bank accounts and are paid in cash on a daily basis. During demonetization the cash withdrawal limit for companies was capped at Rs.24,000 per week initially whereas cash payments to labour on a site of the magnitude of the project in question are Rs.3-4 lakhs per day and the work at site got almost halted for 7-8 months as bulk of the labour being



unpaid went to their hometowns, which resulted into shortage of the labour.

That in view of the above, the said event of demonetization was beyond the control of the respondent, hence the time period for offer of possession should be deemed to be extended for 6 months on account of the above.

II) **Orders Passed by National Green Tribunal:** In last four successive years i.e. 2015-2016-2017-2018, Hon'ble NGT has been passing orders to protect the environment of the country and especially the NCR region. The Hon'ble NGT had passed orders governing the entry and the exit of vehicles in NCR region. Also the Hon'ble NGT has passed orders w.r.t phasing out the 10 years old diesel vehicles from NCR. The Contractor of Respondent could not undertake construction for 3-4 months in compliance of the orders of Hon'ble NGT. Due to following, there was a delay of 3-4 months as labour went back to their hometowns, which resulted in shortage of labour in April-May 2015, November-December 2016 and November-December 2017.

III) **Non-payment of Instalments by Allottees:** Several other allottees were in default of the agreed payment plan, and the payment of construction linked instalments was delayed or not made resulting in badly impacting and delaying the implementation of the entire project.

IV) **Inclement Weather Conditions viz. Gurugram:** Due to heavy rainfall in Gurugram in the year 2016 and unfavourable weather





conditions, all the construction activities were badly affected as the whole town was waterlogged and gridlocked as a result of which the implementation of the project in question was delayed for many weeks.

IX. That the respondent after completing the construction of the unit in question, applied for the grant of the Occupation certificate on 19.03.2018 and the same was granted by the concerned authorities on 09.08.2019. The respondent offered the possession of the unit to the complainant vide letter dated 09.08.2019. The complainant was intimated to remit the outstanding amount on the failure of which the delay penalty amount would accrue. The complainant was bound to take the possession after making payment towards the due amount along with interest and holding charges.

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

D. Jurisdiction of the authority

8. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D.I Territorial jurisdiction

9. 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.

D.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)(a)

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;

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.

E. Findings on the objections raised by the respondent

E.I. Objection regarding jurisdiction of the Authority after the implementation of the RERA Act, 2016.



12. The respondent has raised an objection that the authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the buyer's agreement as the same was executed between the parties prior to the enactment of the Act, 2016. 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/situations 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)** decided on 06.12.2017 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 the 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."

13. 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."

14. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the 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.II Objection regarding agreement containing an arbitration clause referring to the dispute resolution mentioned in the agreement.

15. The respondent has raised the objection that the complainant has not invoked arbitration proceedings as per the provisions of the buyer's agreement which contains provisions regarding initiation of arbitration proceedings in case of breach of agreement. The relevant clause incorporated w.r.t arbitration in the buyer's agreement:

"21.1 All or any dispute that may arise with respect to the terms and conditions of this Agreement, including the interpretation and validity of the provisions hereof and the respective rights and obligations of the parties shall be first settled through mutual discussion and amicable settlement, failing which the same shall be settled through arbitration. The arbitration proceedings shall be under the Arbitration and Conciliation Act, 1996 and any statutory amendments/modifications thereto by a sole arbitrator who shall be mutually appointed by the parties or if unable to be mutually appointed, then to be appointed by the Court. The decision of the Arbitrator shall be final and binding on the parties."

14. The respondent contended that as per the buyer's agreement duly executed between the parties, it was specifically agreed that in the eventuality of any dispute, if any, with respect to the unit booked by the complainant, the same shall be adjudicated through arbitration mechanism. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about the matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal.



Thus, the intention to render such disputes as non-arbitral seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

15. Therefore, the authority is of the view that the complainant is well within the rights to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and RERA Act, 2016 instead of going in for arbitration. Hence, this Authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily.

G. Findings on the relief sought by the complainant:

G.I. Direct the respondent to refund back the amount of Rs.11,42,563/- taken by the respondent by coercion from the complainant.

16. In the present complaint, the complainant has alleged that an amount of Rs.11,42,563/- has been taken by coercion from the complainant. However, no details w.r.t the amount has been provided by the complainant. In view of the above, the said relief is declined being devoid of merits.

G.II Direct the respondent to refund the amount of Rs.30,00,000/- spent by the complainant in order to complete the construction of the apartment.



20. The complainant is seeking refund of Rs.30,00,000/- spent by her in order to complete the construction of the apartment. On the offer of possession, the complainant requested the respondent for interim possession in order to carry out the remaining work by herself. After getting possession from the respondent she hired an interior designer and the interior designer gave an estimate cost sheet citing that the total expenditure on the interiors would amount to Rs.30,00,000.

21. The authority is of the view that the complainant voluntarily expended the aforementioned sum without any prior agreement with the respondent. Consequently, the respondent cannot be held liable for the same and thus, the said relief is declined.

G.III. Direct the respondent to refund back Rs.34,20,720/- paid by the complainant on account of Pre EMIs to the bank which was the liability of the respondent

22. The complainant is seeking refund of Rs.34,20,720/- paid by the complainant on account of Pre-EMIs to the bank which accordingly was the liability of the respondent.

23. Following the allocation of the unit, the complainant obtained a loan of Rs.1,32,00,000/- from HDFC Bank, with a Tripartite agreement executed among the complainant, respondent, and HDFC Bank on 21.07.2016. On 29.07.2016, HDFC Bank disbursed Rs.1,11,79,349/- directly to the respondent, as outlined in the agreement. According to clause 3 of the tripartite agreement, the builder/promoter was obligated to make payments to the bank from the loan disbursement date for a period of 36 months or until the submission of the



occupation certificate application, whichever occurred earlier. The 36-month period from the loan disbursement date ended on 29.07.2018.

24. The authority deems the offer of possession as valid and lawful upon the acquisition of the occupation certificate. Pursuant to the Tripartite agreement dated 21.07.2016, the promoter/respondent's obligation extended for 36 months from the loan disbursement date or the application of the occupation certificate, whichever came first. The bank disbursed the loan on 29.07.2016, as asserted by the complainant, thereby setting the end of the 36-month period at 29.07.2019. The respondent obtained the occupation certificate on 09.08.2019, thus preceding the expiration of the 36-month period. Consequently, the promoter/respondent's responsibility to cover Pre-EMIs persisted until 29.07.2019, thereafter shifting to the complainant/allottee. Consequently, the relief sought by the complainant is denied.

G.IV Direct the respondent to refund Rs.1,47,397/- paid by the complainant on account of Gst.

25. The complainant is requesting refund of Rs.1,47,397/- paid towards GST. The authority acknowledges that GST became effective on 01.07.2017, while the possession due date was 21.07.2020. The respondent/promoter completed the project within the agreed-upon timeframe, coinciding with the implementation of GST. Therefore, no builder default is evident, and the GST demand is deemed legitimate. However, the promoter must transfer the benefit of input tax credit to



the buyer. For resolution of this matter, the complainant is advised to seek recourse from the appropriate authority.

G.V. Direct the respondent to refund Rs.44,12,428/- to the complainant on account of decrease in the committed built up area.

26. The complainant is seeking refund of the amount paid by her in excess as the built up area of the unit has been reduced. Vide proceedings dated 13.09.2023, on the request of the complainant, the authority had directed the planning branch to visit the site of the project and submit the status report w.r.t raising of unauthorized loan upon the project as well as deviations from the approved building plans by the respondent. Thereafter, Shri. Shashank Sharma was appointed as L.C by the Authority, he visited the site and submitted his report stating that: and the report submitted by the L.C it is concluded that:-

" a. Complainant had booked an apartment having built up area of 195.09 sqmtr(2100 sq.ft) and having a super built up area of 240.15 sqmtr (2585 sq.ft) as per the BBA executed between both the parties dated 11.07.2016.

b. As per the site visit of the unit in respect to deviations from the approved building plan, it is found that carpet area of the flat is near about 1555 sq.ft and built up area of the unit is near about 166.6197 sqmtr (1793.37 sq.ft) instead of 195.09 sqmtr (2100 sq.ft) mentioned in the BBA."

[Emphasis supplied]

27. Thus, the authority is of the view that there has been a reduction in the built up area of the unit. Thus, the complainant is at liberty to seek compensation for the reduced built up area before the Adjudicating Officer.

G.VI. Direct the respondent to execute conveyance deed

28. As the conveyance deed has already been executed between the complainant and the respondent on 01.11.2022, the said relief becomes redundant.

H. Directions of the authority

29. 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. No relief is made out w.r.t delayed possession charges as the possession was offered to the complainant before the due date of possession.
- ii. The relief of refund under various head as discussed above in G.I to G.IV are declined for the detailed reasons mentioned above.
- iii. The complainant is at liberty to seek compensation for the reduced built up area from the Adjudicating Officer.

30. Complaint stands disposed of.

31. File be consigned to registry.

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 01.05.2024