

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

Complaint no.: 4190 of 2023
Date of filing: 13.09.2023
Order reserved on: 22.05.2024

1. Sanjay Dewan
2. Sukeshi Dewan

Both R/o :- C-6/6587, Near Police Station, Vasant Kunj,
Vasant Vihar, South West Delhi- 110070

Complainants

Versus

M/s Vatika Limited

Regd. Office at:- Flat no. 621A, 6th floor, Devika Towers 6,
Nehru Place, New Delhi

Corporate Office at:- 7th floor, Vatika Triangle, Mehrauli-
Gurgaon Road, Sushant Lok Phase-I, Gurugram- 122002

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Shri Sanjeev Kumar Sharma (Advocate)

Shri Pankaj Chandola (Advocate)

Complainants
Respondent

ORDER

1. This complaint has been filed by the complainants/allottee(s) 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 thereunder 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 complainants, 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 and location of the project	"Sovereign Next", Sector- 82A, Village Shikohpur, Gurugram
2.	Project area	8.53 acres
3.	Nature of the project	Group Housing Colony- Residential Apartment
4.	DTCP license no. and validity status	113 of 2008 dated 01.06.2008 valid upto 31.05.2018 71 of 2010 dated 15.09.2010 valid upto 14.09.2018 62 of 2011 dated 02.07.2011 valid upto 01.07.2024 76 of 2011 dated 07.09.2011 valid upto 06.09.2017
5.	Name of the Licensee	Spring Buildcon Pvt. Ltd. and 12 others
6.	RERA registered/ not registered and validity status	Registered Registered vide no. 280 of 2017 dated 09.10.2017 valid up-to 31.03.2021
7.	Old Unit no.'s	1601 and 1602, 16 th floor, tower A (BBA at page 21 of complaint)
8.	Re-allocated Unit no.	PE-02, 16 th floor, tower A (Addendum to BBA at page 52 of reply)
9.	Unit area admeasuring	3270 sq. ft. (super area) (page 20 of complaint)
10.	Date of buyer's agreement	31.05.2013 (page 18 of complaint)
11.	Possession clause	14. Schedule for Possession of the said Apartment "The Developer based on its present plans and estimates and subject to all just

		<p><i>exceptions contemplates to complete construction of the said Building/ said Apartment within a period of Four years Six months from the date of execution of this Agreement unless there shall be delay or the shall be failure due to reasons mentioned in Clauses 17, 18 & 42 or due to failure of Allottee(s) to pay in time the price of the said Apartment along with all other charges and dues in accordance with the schedule of payments given in Annexure-III or as per the demands raised by the Developer from time to time or any failure on the part of the Allottee(s) to abide by any of the terms or conditions of this agreement"</i></p> <p style="text-align: right;">(Emphasis Supplied)</p> <p>(BBA at page 27 of complaint)</p>
12.	Due date of possession	<p>31.11.2017 (calculated to be four years and six months from date of execution of builder buyer agreement dated 31.05.2013)</p>
13.	Addendum to buyer's agreement	<p>29.11.2018 (page 52 of reply)</p>
14.	Basic sale consideration	<p>Rs.2,28,90,000/- (BBA at page 20 of complaint)</p>
15.	Amount paid by the complainant	<p>Rs.3,48,33,885/- (as per SOA at page 48 of complaint)</p>
16.	Intimation of Possession	<p>31.05.2022 (page 56 of complaint)</p>
17.	Offer of possession	<p>26.07.2022 (page 49 of reply)</p>
18.	Possession Letter	<p>26.07.2022 (page 50 of reply)</p>

B. Facts of the complaint

3. The complainants have made the following submissions: -

- I. That the complainants showed their interest in purchasing two residential units with the respondent vide application bearing no. 13-03-0115308 dated 26.03.2013. Thus, the complainants were allotted unit no. 1601 and 1602, tower - A, having carpet area 3250 and 3270 sq. ft. respectively, @ Rs. 6100/- and Rs. 7000/- per sq. ft. respectively.

- II. That the builder buyer agreement with respect to both the units were executed on 31.05.2013, against the total sale consideration of Rs. 2,26,13,000/- and Rs. 2,56,90,080/- respectively.
- III. That as per clause 14 of the buyer's agreement, the possession of both these units was to be given within a period of 4 years and six months from the date of execution of buyer's agreement, i.e., upto 30.11.2017. As far as the construction of the said tower is concerned, it was constructed only upto 5th floor out of a total of 27 floors. Hence the project was far away from completion till 30.11.2017.
- IV. That it is pertinent to mention here that the complainants have made a total payment of Rs.2,15,40,308/- till 28.11.2018 with respect to both the units.
- V. That owing to slow progress of the project, the complainants approached the respondent and inquired about delivery schedule of the unit allotted to them. The respondent informed the complainants that it would take another 3 to 5 years for the project to be completed. However, the complainant learnt from outside sources that the respondent was offering possession of ready flats in other towers in the same project. But the respondent did not make such an offer to the complainants, who were allottees in another incomplete tower.
- VI. That the complainants again approached the respondent and after much persuasion they agreed to offer an alternative flat with a covered area of 5195 sq. ft. on 11th floor, tower E in the same project subject to receipt of 90% upfront payment since the flat was under finishing stages and was supposed to be ready in maximum 3 months for possession.
- VII. That in order to secure the amount already paid by the complainants and get the possession of the unit, the complainants accepted the offer of respondent. Thereafter, the complainants were allotted unit no. PE-

02, 11th floor, tower E in the project "Sovereign Next" with a covered area of 5195 sq. ft. vide addendum to the buyers agreement dated 29.11.2018 at a basic sales price of Rs.6,500/- sq. ft., with a total sale consideration of Rs.3,56,67,310/- plus GST in lieu of both the previously allotted units.

- VIII. That the respondent demanded 90% of the payment before re-allotting the new unit. The complainants surrendered unit no. 1601 in the name of S. Dewan, HUF and transferred the complete amount of Rs.1,13,92,376/- (payment already made till 28.11.2018) towards the new allotment and got offer for fit out possession of new unit, i.e., PE-02 on 26.07.2022.
- IX. That it is important to point out that the respondent had issued offer of possession to the complainants without obtaining occupation certificate from the concerned authority. The complainants have paid Rs.2,15,40,218/- to the respondent till reallocation. The complainants thereafter made complete payment of Rs.3,29,32,684/- till alleged offer of possession of the new unit.
- X. That despite making payment of the requisite amount, the complainants have not been offered possession of the unit in question and therefore, the complainants have approached the Authority and filed a complaint relating to issue handover the possession of said unit and along with delay possession charges, by invoking the jurisdiction of the Authority under Section 18 of the Act.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
- Direct the respondent to pay delayed possession charges till actual handover of possession of the unit.
 - Direct the respondent to remove the illegal charges being levied on the complainants.

iii. Direct the respondent to execute conveyance deed.

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) of the Act to plead guilty or not to plead guilty.

D. Reply by respondent:

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

- I. That in the year 2013, the complainants learned about the project of the respondent "Sovereign Next" which is part of the integrated township "Vatika India Next" situated at Sector 82A, Gurugram and visited the office of the respondent to know about the details of the project.
- II. That the complainants decided to book a unit vide application form dated 26.03.2013 and paid an amount of Rs. 25,00,000/- as booking amount for further registration in the project. Thereafter, the respondent allotted unit no. 1601, tower A, admeasuring 3270 sq. ft., in the project "Sovereign Next" to the complainants vide allotment letter dated 26.03.2013.
- III. That the respondent served two copies of the builder buyer agreement for execution upon the complainants on 17.04.2013 and requested to return the signed copy of the same for further execution within a period of 15 days. No response was received from the complainants. Therefore, the respondent issued a reminder letter dated 28.05.2013 to the complainants to send the signed agreement within a period of 15 days.
- IV. That on 31.05.2013, a builder buyer agreement was executed between the parties for the subject unit against total sale consideration of Rs. 2,56,90,080/-. As per Clause 6 of the Agreement, the super of the unit was tentative in nature and the increase or decrease in super area would also amount to additional payment or refund of the amount with respect to total sale consideration.

- V. That as per Clause 14 of the buyer's agreement, the possession was proposed to be handed over within a period of 4 years and 6 months from the date of execution of the agreement unless there shall be delay or there shall be failure due to reasons beyond the control of developer or due to government rules, orders etc. or due to failure of allottee(s) to pay in time the price of the unit along with all other charges and dues in accordance with the schedule of the payment.
- VI. That as per clause 17 of the buyer's agreement, if the respondent faces any unforeseen circumstances during the development of the subject project, then extension in time would be granted for the completion of the project and the complainants agreed to the same.
- VII. That the construction of the project was delayed due to the reasons beyond the control of the respondent including but not limiting to the due to the impact of Good and Services Act, 2017 which came into force after the effect of demonetisation in last quarter of 2016, stretching its adverse effect in various industrial, construction and business area, even in 2019. The respondent had to undergo huge obstacles because of demonetization and implementation of the GST.
- VIII. That the respondent was further bound to adhere with the order and notifications of the Courts and the government. The details of ban on construction activities vide various directions of NGT or statutory authorities, etc. are detailed as under-

Sr. No.	Courts, Authorities, etc. along with date of order	Relevant case laws	Duration of Ban being imposed by respective Court/Authority
1.	National Green Tribunal (08.11.2016 and 10.11.2016)	Vardhman Kaushik Vs.	08.11.2016 to 16.11.2016

		Union of India	(8 days)
2.	National Green Tribunal (09.11.2017)	Vardhman Kaushik Vs. Union of India	09.11.2017 – Ban was lifted after 10 days (10 days)
3.	National Green Tribunal (18.12.2017)	Vardhman Kaushik Vs. Union of India	18.12.2017 to 08.01.2018 (22 days)
4.	Delhi Pollution Control Committee (DPCC), Department of Environment, Government of NCT of Delhi (14.06.2018)	Order/Notification dated 14.06.2018	14.06.2018 to 17.06.2018 (3 days)
5.	Haryana State Pollution Control Board/ Environment Pollution (Prevention & Control Authority)-EPCA	Press Note – 29.10.2018 and later extended till 12.11.2018	01.11.2018 to 12.11.2018 (11 days)
6.	Hon'ble Supreme Court/ 23.12.2018	3 days Construction ban in Delhi/NCR	24.12.2018 to 26.12.2018 (3 days)
7.	Central Pollution Control Board		26.10.2019 to 30.10.2019 (5 days)
8.	Environment Pollution (Prevention & Control Authority)-EPCA- Dr. Bhure Lal, Chairman	Complete Ban	01.11.2019 to 05.11.2019 (5 days)
9.	Supreme Court – 04.11.2019	M. C. Mehta Vs. Union Of India W.P. (C)	04.11.2019 to 14.02.2020 (3 months and 11

		13029/1985	days)
10.	Ministry of Housing & Urban Affair, Government of India – Covid-19 Lockdown 2020	Notification dated 28.05.2020	Complete 9 months extension with effect from 25.03.2020 (9 months)
11.	Covid-19 Lockdown 2021		8 weeks
12.	Haryana Real Estate Regulatory Authority, Panchkula extension on Second Wave	Extract of the Resolution passed in the meeting dated 02.08.2021,	3 months
Total		1.7years (approximately)	

- IX. That the delay caused due to unforeseen circumstances shall be considered and calculated before determination of the date of offer of possession to the complainants and accordingly, the date of offer of possession should be extended by approximately 1.7 years.
- X. That it is not out of the place to mention here that the respondent is also entitled for the extension of 6 months' time period on account of the delay so caused due to worldwide spread of covid-19. It is also required to be considered that the Haryana Real Estate Regulatory Authority, Panchkula vide its resolution dated 09.08.2021 had considered the period affected from the second wave of Covid-19 between 01.04.2021 till 30.06.2021 as force majeure event and granted 3 months extension to all the promoters. Therefore, as the project of the respondent herein was also affected by the second wave of Covid-19, and therefore, the extension for a period of 3 months may be allowed.
- XI. That the complainants requested the respondent for re-allotment of the initially allotted unit as the complainants wanted a bigger apartment.

The respondent on the request of the complainants executed an addendum to builder buyer agreement on 29.11.2018 for the re-allotment of the unit. Therefore, the complainants were re-allotted new unit no. PE-02, Sovereign Next 2, Sovereign Avenue, admeasuring 5195 sq. ft. It is pertinent to mention herein that as per clause 6 of the agreement, as the area of the unit was increased to 5195 sq. ft from 3270 sq. ft., the total sales consideration also increased to Rs. 3,56,46,531/-. The said increase was in accordance with the terms and conditions of the agreement.

- XII. That after the are-allotment of the Unit to the Complainants, the Complainants had paid an amount of Rs.3,48,33,884/- against the total sales consideration of the subject Unit.
- XIII. That despite the above stated reasons, the respondent completed the construction of the project and offered possession to the complainants vide intimation of possession letter dated 31.05.2022, wherein the respondent intimated the complainants that the respondent is commencing the process of handover of possession and the complainants shall pay Rs. 41,56,439.45/- towards the final payment of the subject unit by 14.06.2022.
- XIV. That after completion of due formalities by the complainants, the respondent vide possession letter dated 26.07.2022, handed over a peaceful and vacant possession of the unit to the complainants.
- XV. That the complainants took over the peaceful and vacant possession of the allotted unit after being fully satisfied with the size, dimensions, structure and delay in possession. Also, the complainants were fully aware of the status of the occupation certificate while taking possession of the unit. Further, the complainants have also waived off their right to claim the delay possession charges in the possession letter dated

26.07.2022. Therefore, the present complaint is not maintainable and shall be dismissed.

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 based on these undisputed documents and submission 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, 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:

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)

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 objections raised by the respondent:

F.I Objections regarding force majeure.

12. The respondents-promoter has raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as orders passed by National Green Tribunal to stop construction, non-payment of instalment by allottees. The plea of the respondent regarding various orders of the NGT and other authorities advanced in this regard are devoid of merit. The orders passed by NGT banning construction in the NCR region was for a very short period and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. Also, there may be cases where allottees has not paid instalments regularly but all the allottees cannot be expected to suffer because of few allottees. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

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

13. 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 (1) (Comm.) no. 88/2020 and LAS 3696-3697/2020* dated 29.05.2020 has observed as under:

"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."

14. In the present case also, the respondents were liable to complete the construction of the project and handover the possession of the said unit by 31.11.2017. It is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. 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 cannot be excluded while calculating the delay in handing over possession.

F.III Objection regarding deleting the name of HDFC Bank Limited from the array of parties.

15. During the proceedings dated 20.03.2024, the respondent submitted that HDFC Bank Limited is not impleaded in performa-B of the complaint. The complainants in furtherance of the same submitted that they do not wish to proceed with respect to HDFC Bank Limited and the same may be dropped from the memo of parties. The Authority observes that HDFC Bank Limited was neither a party to complaint earlier nor was it impleaded as a party to the complaint at any later stage. Therefore, the name of HDFC Bank Limited is deleted from the array of parties.

G. Findings on the relief sought by the complainant.

G.I Direct the respondent to pay delayed possession charges till actual handover of possession of the unit.

G.II Direct the respondent to remove the illegal charges being levied on the complainants.

16. The above mentioned reliefs sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

17. In the present complaint, the complainant 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

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."

18. Clause 14 of buyer's agreement provides for handing over of possession and is reproduced below:

"The Developer based on its present plans and estimates and subject to all just exceptions contemplates to complete construction of the said Building/ said Apartment within a period of Four years Six months from the date of execution of this Agreement unless there shall be delay or the shall be failure due to reasons mentioned in Clauses 17, 18 & 42 or due to failure of Allottee(s) to pay in time the price of the said Apartment along with all other charges and dues in accordance with the schedule of payments given in Annexure-III or as per the demands raised by the Developer from time to time or any failure on the part of the Allottee(s) to abide by any of the terms or conditions of this agreement"

(Emphasis Supplied)

19. The authority has gone through the possession clause of the agreement. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the complainant not being in default under any provision of this agreement and in compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession

clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning.

20. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builder/promoter and buyer/allottee are protected candidly. The flat agreement lays down the terms that govern the sale of different kinds of properties like residentials, commercials etc. between the builder and the buyer. It is in the interest of both the parties to have a well-drafted buyer's 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 unit, plot or building, as the case may be and the right of the buyer/allottee in case of delay in possession of the unit.
21. **Due date of possession:** The promoter has proposed to hand over the possession of the said unit within a period of 4 years and 6 months from the date of execution of buyer's agreement. Therefore, the due date of possession comes out to be 31.11.2017.
22. **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, ibid. 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."

23. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, *ibid*, 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.

24. 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., 22.05.2024 is @ 8.85 %. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.

25. The definition of term 'interest' as defined under Section 2(z) 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;"*

26. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.85 % by the respondent/promoter ✓

which is the same as is being granted to them in case of delayed possession charges.

27. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 14 of the buyer's agreement executed between the parties on 31.05.2013, the possession of the said unit was to be delivered within a period 4 years and 6 months months from the date of execution of buyer's agreement. Therefore, the due date of handing over of possession comes out to be 31.11.2017. In the present complaint the complainants were offered possession by the respondent on 26.07.2022 without obtaining occupation certificate from the competent authority. Therefore, the offer of possession dated 26.07.2022 is invalid and hereby liable to be quashed.

28. However, it is significant to note that possession of the said unit had been duly handed over to the complainants on 26.07.2022 and since then the complainants are enjoying the vacant and peaceful possession of the unit. Further, the authority is of the view that there is a delay on the part of the respondent to offer physical possession of the allotted unit to the complainants as per the terms and conditions of the buyer's agreement dated 31.05.2013 executed between the parties.

29. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 31.11.2017 till the date of actual handover of possession (26.07.2022) since the offer of possession dated 26.07.2022 is invalid, being made before obtaining the occupation certificate from the competent authority.

30. 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 complainants are entitled to delay possession ✓

charges at prescribed rate of the interest @ 10.85 % p.a. w.e.f. 31.11.2017 till the date of actual handover of possession i.e., up to 26.07.2022 as per provisions of Section 18(1) of the Act read with Rule 15 of the Rules, ibid.

G.III Direct the respondent to execute conveyance deed.

31. Section 17 (1) of the Act deals with duties 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."

32. The authority observes that OC with regard to unit in question has not been obtained by the respondent/promoter from the competent authority. The respondent/promoter is contractually and legally obligated to execute the conveyance deed upon receipt of the occupation certificate/completion certificate from the competent authority. Whereas as per Section 19(11) of the Act of 2016, the allottees are also obligated to participate towards registration of the conveyance deed of the unit in question. In view of above, the respondent shall execute the conveyance deed of the allotted unit within a period of three months after receiving occupation certificate from the competent authority.

H. Directions of the authority

33. 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 complainants against the paid-up amount 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., i.e., 31.11.2017 till the date of actual handover of possession i.e., 26.07.2022. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order as per Rule 16(2) of the Rules, *ibid*.
- ii. 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.
- iii. The respondent is directed to issue a revised statement of account after adjustment of delayed possession charges, and other reliefs as per above within a period of 30 days from the date of this order. The complainant is directed to pay outstanding dues if any, after adjustment of delay possession charges within a period of next 30 days thereafter.
- iv. The respondent is directed to execute the conveyance deed of the allotted unit within a period of 3 months after receiving occupation certificate from the competent authority.
- v. The respondent shall not charge anything from the complainants which is not the part of the builder buyer agreement.

34. Complaint stands disposed of. ✓

35. File be consigned to registry.

Dated: 22.05.2024


(Ashok Sangwan)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram



HARERA
GURUGRAM