

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

**Complaint no.** : 7931 of 2022  
**Date of order** : 29.05.2024

Neha Kumari  
**R/o:** F-1/4, Plot No.-6, Ground Floor,  
Prime Rose, Sector-82, Gurugram.

**Complainant**

Versus

M/s Chirag Buildtech Private Limited  
**Office at:** - Building no.-80, Sector-44,  
Gurugram-122003.

**Respondent**

**CORAM:**  
Shri. Ashok Sangwan

**Member**

**APPEARANCE:**  
Shri. Gaurav Bhardwaj (Advocate)  
Shri. Garvit Gupta (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 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 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	"ROF Ananda", Sector 95, Gurugram
2.	Nature of the project	Affordable
3.	RERA Registered/ not registered	184 of 2017 dated 14.09.2017
4.	RERA registration valid up to	13.09.2021
6.	Unit no.	C 207 type D 2 <sup>nd</sup> floor (Page 28 of the complaint)
7.	Unit area admeasuring	645 sq. ft ( carpet area)
8.	Environment clearance	09.10.2017 (page 38 of reply)
9.	Space Buyer's Agreement	11.09.2018
10.	Possession clause	7.1. <i>Within 3 months from the date of issuance of occupation certificate, the promoter shall offer the possession of the said flat to the allottee. Subject to Force Majeure circumstances, receipt of Occupancy certificate and Allottee having timely complied with all its obligations, formalities or</i>

		<p><i>documentation, as prescribed by the Promoter in terms of this Agreement and not being in default under any part hereof including but not limited to the timely payment of installments as per the Payment Plan, stamp duty and registration charges, the Promoter shall offer possession of the Said Flat to the Allottee within a period of 4 years from the date of approval of building plans or grant of environmental clearance, whichever is later ("<b>Commitment Period</b>")</i></p> <p><i>[Emphasis supplied]</i></p> <p><i>(As on page no. 34 of complaint)</i></p>
11.	Due date of possession	<p>09.10.2021</p> <p>4 years from the date of approval of building plans or grant of environment clearance whichever is later.</p>
12.	Total sale consideration	<p>Rs. 26,67,658/-</p> <p>(As per S.O.A dated 09.09.2022 on page no. 49 of complaint))</p>
13.	Amount paid by the complainants	<p>Rs. 28,02,525/-</p> <p>(As per S.O.A dated 09.09.2022 on page no. 49 of complaint))</p>
14.	Occupation certificate /Completion certificate	22.02.2022
15.	Offer of Possession	<p>23.02.2022</p> <p>(As on page no. 67 of the complaint)</p>

**B. Facts of the complaint**

3. The complainant has made the following submission: -

- I. That the complainant is an allottee within the meaning of Act, 2016. The respondent company i.e., Chirag Buildtech Private Limited is a private limited company incorporated under the Companies Act, 1956 and is *inter alia* engaged in the business of providing real estate services.
- II. That somewhere around 2017, the respondent advertised about its new project namely "ROF Ananda" in Sector-95, Gurgaon. The respondent painted a rosy picture of the project in their advertisement making tall claims and representing that the project aims at providing exclusive luxury homes featuring highest design standards and premium amenities.
- III. That believing the representations of the respondent, the complainant booked a unit in the project by making a payment of Rs. 1,45,204/- on 27.12.2017 for unit no C-207 on 2<sup>nd</sup> Floor, Tower-C ad measuring 641.71 sq.ft. Subsequently the complainant and the respondent entered into an Agreement to sell.
- IV. Thereafter, the complainant contacted the respondent on several occasions regarding some unfair and arbitrary clauses in the agreement. Also, a clarification was sought on the development of project and the date of delivery. However, no satisfactory answer was received from the respondent.
- V. That believing on the representation of the respondent, the complainant kept on making payment as and when demanded by the respondents. Till date the complainant has paid a total sum of Rs.28,02,525/- towards the unit in question, as and when demanded, as against a total sale consideration of Rs.26,67,658/-.

- VI. That as per clause 7.1 of the agreement, the respondent proposed to handover the possession of the unit in question within a period of 4 years from the date of environment clearance or the date of sanction of building plans, whichever is later. However, the respondent failed in handing over possession in accordance with the said agreement. The complainant had paid a total sum of Rs.28,02,525/- towards the total sale consideration of Rs.26,67,658/- . However, the respondent failed in handing over possession in accordance with the said agreement.
- VII. That the complainant on 15.10.2021 contacted the respondent in order to enquire about the date of handing over of possession but to the utter shock of the complainant, the project was nowhere near completion. The complainant due to the delay in handing over of possession requested the respondent to make the payment of delay possession charges on account of delay in offer of possession but to no avail.
- VIII. That the respondent during the kept on demanding money and the same was demanded without attaining the stage of construction as per the payment plan but the complainant was left with no other option but to make the payment on time as per the demands raised.
- IX. That on 23.02.2022, the offer of possession was issued by the respondent. The respondent fraudulently kept the money of the complainant for so long and never paid any interest for delay possession charges. The complainant after receiving the offer of possession approached the respondent to take the possession but the project was nowhere near completion and was full of irregularities such as seepage and other irregularities in the unit. It is further to note that the respondent even demanded Rs.6,17,597/- on account of delay payment charges, however no calculation of the same has been provided by till date despite several requests.

- X. That, the complainant time and again contacted the respondent expressing his concern over the delay in handing over of possession and seeking an explanation from the respondent for the same, but to no avail.
- XI. That lately it has been transpired to the complainant that the project is having lot many significant and staggering deficiencies that have irrevocably impacted the living quality of the complainant and community living in ROF Ananda.
- XII. That the aforesaid irregularities clearly elucidate the misconduct on the part of respondent The respondent highlighted and communicated that it will deliver the unit to the complainant after completing with specifications and building/site layouts as mentioned in Brochure, Buyer's Agreement, Building/site layout plans etc. well within 4 years the date of approval of building plans or grant of environment clearance whichever is later but there was an inordinate delay in handing over the possession of the said unit.
- XIII. That the respondent has failed to complete the project on time, resulting in extreme kind of financial hardship, mental distress, pain and agony to the complainant along with the delay in handing over the possession of the unit, the respondent failed in providing the amenities, services as promised at the time of execution of the Agreement. It is further to note that the unit in question has not been handed over to the complainant after removing the irregularities till date and on the other side the respondent is threatening the complainant to impose holding charges for not taking possession.

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

4. The complainant has sought following relief(s):

- i. Direct the respondent to handover physical possession of the unit along with delayed possession charges.
  - ii. Direct the respondent not to charge holding charges.
  - iii. Direct the respondent to charge equitable rate of interest on the amount of delay payments.
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 on the following grounds: -
- I. That the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed. That the Authority has no jurisdiction to adjudicate upon the present complaint.
  - II. That the complaint is not maintainable for the reason that the agreement contains a dispute resolution clause which refers to the mechanism to be adopted by the parties in the event of any dispute i.e. Clause 38 of the Buyer's Agreement, which is reproduced for the ready reference-  
*"Clause 38-All or any disputes arising out or touching upon in relation to the terms of this Agreement including the interpretation and validity of the terms thereof and the respective rights and obligations of the parties shall be settled through the adjudicating officer appointed under the Act".*
  - III. That it is submitted that the complainant is a real estate investor who had booked the unit in question with a view to earn quick profit in a short span of time. However, it appears that her calculations have gone wrong on account of severe slump in the real estate market and the complainant now wants to somehow illegally extract benefits from the respondent. Such malafide tactics of the complainant cannot be allowed to succeed.

- IV. That the respondent is the sole, absolute and lawful owner of the land parcel situated in the revenue estate of Village Dhorka, Sector 95, Tehsil and District Gurugram, Haryana. The respondent had obtained the approval/sanction to develop a project known as 'ROF Ananda'.
- V. That the respondent had obtained the approval on the building plans from DTCP on 07.12.2016 and the environment clearance on 09.10.2017 from for the project. That after checking the veracity of the said project, the complainant had applied for allotment of an apartment vide her Booking Application Form No. 7430 dated 27.12.2017. The complainant was aware that all the payment demands towards the total sale consideration were to be demanded by the respondent strictly as per the said Affordable Housing policy and only after being completely satisfied about the same, had made the booking with the respondent.
- VI. That the first draw was conducted on 02.05.2018 and the complainant was intimated of being a successful applicant of a unit bearing no. C-207 having carpet area of 645.29 sq ft. and balcony area of 86.20 sq ft. along with a two-wheeler parking space. Vide intimation letter dated 02.05.2018, a demand of Rs.5,77,549/- was raised by the respondent as per the payment plan to be remitted on or before 15.05.2018. The complainant failed to remit the said amount until 14.06.2018, where the complainant made part payment of Rs.1,31,000/- against the said demand.
- VII. That the complainant intimated to the respondent that she was suffering from financial constraints and that she would accordingly approach a financial institution for loan. The complainant requested the respondent to issue a No-objection certificate if the unit in question and allotted to the complainant could be mortgaged to the said financial institution. Accordingly, the complainant approached a financial institution named



Capri Global Housing Finance Limited to avail loan facility and to make payments.

- VIII. That the Agreement for Sale was signed between the parties on 11.09.2019. Since, the complainant had already got the loan sanctioned, she approached the respondent and requested to execute a Tripartite agreement with Capri Global Pvt Ltd. On the basis of the request, a Tripartite agreement dated 22.09.2018 was executed and the respondent issued the permission to mortgage to Capri Global Pvt. Ltd. on 04.10.2018.
- IX. The complainant was aware that as per clauses 2.5 of the agreement, timely payment of the instalment amount was the essence of the allotment. Despite being aware of the terms and conditions, the complainant failed to remit the payments on time for the reasons best known to her.
- X. That vide demand letter dated 01.10.2018, the respondent demanded the net payable amount of Rs.8,00,829/- inclusive of the previously unpaid demands. The due date of payment as per the said demand letter was 02.11.2018. However, yet again, the complainant failed to remit the payment on time and made only a part-payment.
- XI. That vide demand letter dated 05.04.2019 the respondent demanded Rs.7,61,441/- from the complainant, which was to be paid till 02.05.2019. However, despite availing loan facility, the complainant again failed to pay. Again a reminder dated 18.07.2019 was issued to the complainant. However, yet again, the complainant made only part-payment out of the total sale consideration. A demand letter dated 03.10.2019 was sent to the respondent to pay a sum of Rs.7,28,551/-. The complainant failed to honour the same. The said demand letter was again sent to the on 03.02.2020 against which the complainant yet again chose to make part-

payment out of the total demanded amount. A demand letter dated 13.03.2020 was issued by the respondent for an amount of Rs.4,00,718/- The complainant failed to remit the said demand and the same was adjusted in the next instalment demand dated 27.07.2020 as arrears. However, again the complainant failed to make payment towards the said demand.

- XII. That as per the mutually agreed terms of the allotment, the respondent yet again demanded Rs. 11,68,939/- vide demand letter dated 30.09.2020. The complainant failed to remit the said amount despite respondent resending the said demand vide its demand letter dated 27.10.2020. On account of blatant defaults on the part of the complainant in remitting the demanded amount, the respondent was constrained to issue a final opportunity letter dated 04.11.2020 to the complainant.
- XIII. That vide demand dated 19.01.2021, the respondent demanded Rs.15,06,518/-. However, the complainant failed to remit the amount and the same was adjusted and demanded in the next installment demand dated 07.07.2021. However, the complainant chose not to make the payment despite reminders dated 07.07.2021, 16.09.2021 and 16.10.2021.
- XIV. That as per Clause 7.1 of the Agreement, the respondent was to handover the physical possession of the unit to the complainant within a period of 4 years from the date of approval of the environment clearance. However, as per the said clause, the due date to handover the possession of the unit was subject to force majeure conditions and timely payment of installment by the allottee. It was further agreed vide Clause 7.3 of the Agreement that if the implementation of the project was affected on account of force majeure conditions, then the respondent would be

entitled to extension of time. Clauses 7.1 and 7.3 of the Agreement are reproduced hereunder:-

*"7.1. Within 3 months from the date of issuance of Occupancy Certificate, the Promoter shall offer for possession of the said flat to the Allottee. Subject to Force Majeure Circumstances, receipt of Occupancy Certificate and Allottee having timely complied with all its obligations, formalities or documentation, as prescribed by the Promoter in terms of this Agreement and not being in default under any part hereof including but not limited to the timely payment....the Promoter shall offer possession of the said flat to the allottee within a period of 4 years from the date of approval of building plans or grant of environment clearance."*

*"7.3...If the Completion of the project is delayed due to any of the above conditions, then the Allottee agrees that the promoter shall be entitled to extension of time for delivery of possession of the said Flat.."*

- XV. That on account of outbreak of Covid-19 pandemic, the implementation of the entire project was affected. The due date of possession as per the terms of the agreement without taking into consideration the force majeure conditions would have been 09.10.2021. The fact that outbreak of pandemic event was a force majeure condition and was beyond the reasonable control of the developers including the respondent was acknowledged by this Hon'ble Authority wherein the completion date, revised completion date and extended completion date was automatically extended by 6 months. Thereafter on account of second wave of COVID-19 pandemic Haryana Real Estate Regulatory Authority, Panchkula by way of resolution in its meeting held on 2nd of August 2021 ordered for extension of 3 months from 1st April 2021 to 30th of June 2021. It was observed that the second wave of COVID-19 pandemic has adversely hit all sections of the society and it being a case of natural calamity, the authority pursuant to section 37 of the RERA Act, 2016 had decided to grant the said extensions. It was further directed that no fee/ penalty

shall be paid/Payable by the developer on account of delay as the same was beyond its reasonable control and apprehension.

- XVI. That despite such event, the respondent completed the construction of the tower in which the unit allotted to the complainant is located and offered the possession of the unit vide letter dated 23.02.2022. However, the complainant has till date not taken the possession nor has made the payment towards the balance sale consideration.
- XVII. That as per the interest ledger as on 22.06.2023, an amount of Rs.6,26,738/- has been accrued and the same is payable by the complainant to the respondent on account of continuous defaults on her part.
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 submission made by the parties.

**E. Jurisdiction of the authority**

8. The respondent has raised a preliminary objection/submission that the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of the complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

**E. I Territorial jurisdiction**

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;*

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.

## **F. Findings on the objections raised by the respondent.**

### **F. I Objection regarding the complainant being an investor.**

12. The respondent has taken a stand that the complainant is an investor and not consumer, therefore, he is not entitled to the protection of the Act and thereby not entitled to file the complaint under section-31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a

statute and states main aims & objects of enacting a statute but at the same time, preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the agreement to sell dated 11.09.2018, it is revealed that the complainant is a buyer, and he has paid total price of Rs.26,67,658/- to the promoter towards purchase of an apartment in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

*"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sole, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given an rent"*

13. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the agreement to sell executed between promoter and complainant, it is crystal clear that the complainant is an allottee as the subject unit was allotted to her by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.07.2019 in appeal no. **000600000010557 titled as M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.** has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottee being investor is not entitled to protection of this Act also stands rejected.

**F. II Objection regarding non-invocation of arbitration clause referring to the dispute resolution mentioned in the agreement.**

14. The respondent submitted 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.
15. 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 any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable 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. Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in *National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506*, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause. Therefore, by applying same analogy the presence of arbitration clause could not be construed to take away the jurisdiction of the authority.
16. Further, in *Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017*, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainants and

builders could not circumscribe the jurisdiction of a consumer. The relevant paras are reproduced below:

*"49. Support to the above view is also lent by Section 79 of the recently enacted Real Estate (Regulation and Development) Act, 2016 (for short "the Real Estate Act"). Section 79 of the said Act reads as follows: -*

*"79. Bar of jurisdiction - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."*

*It can thus, be seen that the said provision expressly ousts the jurisdiction of the Civil Court in respect of any matter which the Real Estate Regulatory Authority, established under Sub-section (1) of Section 20 or the Adjudicating Officer, appointed under Sub-section (1) of Section 71 or the Real Estate Appellate Tribunal established under Section 43 of the Real Estate Act, is empowered to determine. Hence, in view of the binding dictum of the Hon'ble Supreme Court in A. Ayyaswamy (supra), the matters/disputes, which the Authorities under the Real Estate Act are empowered to decide, are non-arbitrable, notwithstanding an Arbitration Agreement between the parties to such matters, which, to a large extent, are similar to the disputes falling for resolution under the Consumer Act.*

*...  
56. Consequently, we unhesitatingly reject the arguments on behalf of the Builder and hold that an Arbitration Clause in the afore-stated kind of Agreements between the Complainants and the Builder cannot circumscribe the jurisdiction of a Consumer Fora, notwithstanding the amendments made to Section 8 of the Arbitration Act."*

17. While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the builder buyer agreement, the hon'ble Supreme Court **in case titled as M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017 decided on 10.12.2018** has upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view. The relevant paras are of the judgement passed by the Supreme Court is reproduced below:



*"25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being a special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength an arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."*

18. Therefore, in view of the above judgements and considering the provision of the Act, the authority is of the view that complainant is well within his 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 an arbitration. Hence, we have no hesitation in holding that this authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily.

**F. III Objection regarding force majeure conditions.**

19. The respondent-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 Covid-19. The Authority vide notification no. 9/3-2020 dated 26.05.2020 have provided an extension of 6 months for projects having completion date on or after 25.05.2020, on account of force majeure conditions due to the outbreak of Covid-19 pandemic.

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

**G. I Direct the respondent to handover physical possession of the unit along with delayed possession charges.**

20. In the present complaint, the complainant intends to continue with the project and is seeking possession of the unit and delayed possession charges as per section 18(1) of the Act and the same is reproduced below for ready reference:

***"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.-*

*(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or*

*(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,*

*he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:*

*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)*

21. The complainant was allotted an apartment bearing no. C-207 on 2<sup>nd</sup> Floor, Tower-C admeasuring 641.71 sq. ft. in the project of the respondent named "Rof Ananda" situated at Sector 95, Gurugram vide apartment buyer's agreement dated 11.09.2018 for a sale consideration of Rs.26,67,658/- against which the complainant has paid an amount of Rs.28,02,525./- in all.
22. Clause 7.1 of the builder buyer's agreement (in short, the agreement) dated 11.09.2018, provides for handing over possession and the same is reproduced below:

7.1

***Possession of the said flat***

*"7.1 Within 3 months from the date of issuance of Occupancy Certificate, the Promoter shall offer the possession of the Said Flat to the Allottee. Subject to Force Majeure circumstances, receipt of Occupancy Certificate and Allottee*

*having timely complied with all its obligations, formalities or documentation, as prescribed by the Promoter in terms of this Agreement and not being in default under any part hereof including but not limited to the timely payment of instalments as per the Payment Plan, stamp duty and registration charges, the Promoter shall offer possession of the Said Flat to the Allottee **within a period of 4 years from the date of approval of building plans or grant of environmental clearance, whichever is later.**"*

23. The promoter/respondent was obligated to deliver possession of the specified apartment within a timeframe of four years from either the date of approval of building plans or the date of receiving environmental clearance, whichever occurs later. Consequently, building plans were approved on 07.12.2016, while environmental clearance for the project was obtained on 09.10.2017. As the latter date falls later, the four-year period will be calculated from 09.10.2017, culminating on 09.10.2021. The Authority vide notification no. 9/3-2020 dated 26.05.2020 have provided an extension of 6 months for projects having completion date on or after 25.05.2020, on account of force majeure conditions due to the outbreak of Covid-19 pandemic. Therefore, the due date of possession comes out to be 09.04.2022

24. On consideration of documents available on record and submissions made by both the parties, the authority is of the view that by virtue of Clause 7.1 of the agreement executed between the parties on 11.09.2018, the possession of the subject unit was to be delivered within 4 years from the date of approval of the building plans or grant of environmental clearance, whichever is later. The date of grant of environmental clearance falls later thus 4 years will be taken into account from the date of obtaining the environmental clearance i.e., 09.10.2021. As per the notification of the

Authority in view of covid-19 an extension of 6 months is granted and thus 09.10.2021 plus 6 months comes out to be 09.04.2022. The due date of handing over possession of the unit was 09.04.2022. The respondent/promoter has obtained the occupation certificate from the concerned authorities on 22.02.2022 and offered possession to the complainant on 23.02.2022. Therefore, there is no reason why this benefit cannot be allowed to the complainant/allottee who is duly affected during above such adverse eventualities and hence a relief of 6 months will be given equally to both the complainant/allottee and the respondent and no interest shall be chargeable on either party, during the COVID period i.e., from 01.03.2020 to 01.09.2020.

25. Thus, the authority is of the view that there has been no delay on the part of the respondent in completing the project. The respondent has completed and offered the possession of the unit to the complainant as the agreement, within the agreed timelines. Hence, the relief of the complainant regarding delayed possession charges does not hold any substance and is hereby declined.

**G.II. Direct the respondent not to charge holding charges.**

26. The term holding charges or also synonymously referred to as non-occupancy charges become payable or applicable to be paid if the possession has been offered by the builder to the owner/allottee and physical possession of the unit not taken over by allottee but the flat/unit is lying vacant even when it is in a ready-to-move condition. Therefore, it can be inferred that holding charges is something which an allottee has to pay

for his own unit for which he has already paid the consideration just because he has not physically occupied or moved in the said unit.

27. The Hon'ble NCDRC in its order dated 03.01.2020 in case titled as ***Capital Greens Flat Buyer Association and Ors. Vs. DLF Universal Ltd., Consumer case no. 351 of 2015*** held as under:

*"36. It transpired during the course of arguments that the OP has demanded holding charges and maintenance charges from the allottees. As far as maintenance charges are concerned, the same should be paid by the allottee from the date the possession is offered to him unless he was prevented from taking possession solely on account of the OP insisting upon execution of the Indemnity-cumUndertaking in the format prescribed by it for the purpose. If maintenance charges for a particular period have been waived by the developer, the allottee shall also be entitled to such a waiver. As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the apartment. Therefore, the holding charges will not be payable to the developer. Even in a case where the possession has been delayed on account of the allottee having not paid the entire sale consideration, the developer shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed."*

*(Emphasis supplied)*

28. The said judgment of Hon'ble NCDRC was also upheld by the Hon'ble Supreme Court vide its judgement dated 14.12.2020 passed in the civil appeal filed by DLF against the order of Hon'ble NCDRC (supra).
29. As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the apartment. Therefore, the holding charges will not be payable to the developer. Even in a case where the possession has been delayed on account of the allottee having not paid the entire sale consideration, the developer shall not be entitled to

any holding charges though it would be entitled to interest for the period the payment is delayed.

30. The respondent/promoter is not entitled to holding charges from the complainant/allottee at any point of time even after being part of the builder buyer's agreement as per law settled by the Hon'ble Supreme Court in civil appeals no. 3864-3889/2020 on 14.12.2020.

**G.III. Direct the respondent to charge equitable rate of interest on the amount of delay payments**

31. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter. The benefit of six months grace period on account of Covid-19 shall be applicable to both the parties in the manner detailed herein above and no interest to be charged for the period of 01.03.2020 to 01.09.2020 from the complainants or to be paid by the respondent on account of delay for the covid period, as above mentioned.

**H. Directions of the authority: -**

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


- i. The respondent/promoter is directed to provide a copy of updated Statement of Accounts to the complainant/allottee within a period of 15 days from the date of this order.

- ii. The complainant/allottee is directed to pay the outstanding dues, if any within a period of 30 days from the date of receipt of updated statement of accounts.
- iii. The respondent is directed to handover the possession of the unit on payment of outstanding dues, if any to the complainant/allottee.
- iv. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay to the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- v. The respondent/promoter is not entitled to holding charges from the complainant/allottee at any point of time even after being part of the builder buyer's agreement as per law settled by the Hon'ble Supreme Court in civil appeals no. 3864-3889/2020 on 14.12.2020.
- vi. The respondent shall not charge anything from the complainant which is not the part of the apartment buyer's agreement
- vii. The benefit of six months grace period on account of Covid-19 shall be applicable to both the parties in the manner detailed herein above and no interest to be charged for the period of 01.03.2020 to 01.09.2020 from the complainants or to be paid by the respondent on account of delay for the above said covid period.

✓

33. Complaint stands disposed of.
34. File be consigned to the registry.

Dated: 29.05.2024

  
**(Ashok Sangwan)**  
Member

Haryana Real Estate  
Regulatory Authority,  
Gurugram



**HARERA**  
GURUGRAM