

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

**Complaint no.:** 603 of 2023  
**Date of complaint:** 02.03.2023  
**Order pronounced on:** 30.05.2024

Sanjeet Singh  
**R/o:** VPO Shikhopur, Gurugram, Haryana-122001

**Complainant**

Versus

Revital Reality Pvt. Ltd.  
**Registered office:** 1114, 11<sup>th</sup> floor, Hamkunt  
Chambers, 89, Nehru Place, New Delhi-110019.

**Respondent**

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**

Shri Piyush Goel (Advocate)  
Shri Bhriugu Dhami (Advocate)

Complainant  
Respondent

**ORDER**

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made 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.No.	Particulars	Details
1.	Name of the project	"Supertech Basera" sector- 79 and 79B, Gurugram
2.	Project area	12.10 acres
3.	Nature of the project	Affordable Group Housing Project
4.	DTPC License no. and validity	163 of 2014 dated 12.09.2014 valid up to 11.09.2019
5.	Name of licensee	Revital Reality Private Limited and others
6.	RERA registration details	Registered vide no. 108 of 2017 dated 24.08.2017 valid up to 31.01.2020
7.	Allotment letter	19.09.2015 (Page no. 18 of the complaint)
8.	Flat Buyer's agreement	NA
9.	Unit no.	0401, 7 <sup>th</sup> floor, tower -15, (Page no. 18 of the complaint)
10.	Unit area admeasuring	546 sq. ft. (Carpet area) (Page no. 18 of the complaint)
11.	Possession clause (Taken from another complaint of similar project)	<b>3.1 Possession</b> <i>Subject to force majeure circumstances, intervention of Statutory Authorities, receipt of occupation certificate and Allottee/Buyer having timely complied with all its obligations, formalities, or documentation, as prescribed by the Developer and not being in default under any part hereof and Flat Buyer's Agreement, including but not limited to the timely payment of instalments of the other charges as per payment plan, Stamp Duty and registration charges, the Developers Proposes to offer possession of the said Flat to the Allottee/Buyer within a period of 4 (four) years from the date of approval of building plans or grant of environment clearance, (hereinafter referred to as the "Commencement Date") , whichever is later. The Developer also agrees to compensate the Allottee/Buyer @ Rs.5.00/- (Five rupees only) per sq. ft. of the area of the flat per month for any delay in handing over possession of the Flat beyond the given promised period plus the grace period of 6 months</i>



		<i>and up to offer letter of possession or actual physical possession whichever is earlier.</i>
12.	Environmental Clearance	22.01.2016 (Page 23 of the reply)
13.	Building plan approval	19.12.2014 (as per information obtained by the planning branch)
14.	Date of tripartite agreement	20.10.2015 (Page 20 of the complaint)
15.	Due date of possession	22.01.2020 (calculated from approval of environment clearance being later)
16.	Total sale consideration	Rs.19,95,998/- (page 18 of the complaint)
17.	Amount paid by the complainant	Rs.17,58,747/- (as per the outstanding amount statement dated 17.08.2018 issued by the respondent page 34 of complaint)
18.	Occupation certificate	Not obtained
19.	Offer of possession	Not offered

**B. Facts of the complaint:**

3. The complainants have made the following submissions: -

I. That in May 2015, complainant relying on representation and assurances of the respondent and considering the goodwill of the respondent applied for allotment of a unit under the affordable Housing Policy, 2013 and on being found successful in the draw of lots was allotted an unit no. 401, tower 15 admeasuring 546 sq. ft. in the respondents project "Supertech Basera" Sector 79 and 79B, Gurugram for a total sale consideration of Rs.19,95,998/- including basic sale price, parking charges, development charges, cess, levies or assessment or EDC/IDC, etc.

II. That the respondent issued an offer of allotment of subject unit vide letter dated 19.09.2015. Further, the complainant made the initial payment for draw of lots of Rs.96425/-. On the basis of the offer of allotment both the parties entered into a tripartite agreement for ADF/CLP/FLEXI PAYMENT PLANS with DHFL and secured a loan for Rs.17,95,240/-.



- III. That the complainant made all the requisite payments as per the payment schedule to the respondent on time. Further, in the year 2018 the complainant visited the site of the project and found the construction was not yet started. The complainant contacted the respondent, instead of listening the respondent asked to deposit the outstanding amount of Rs.2,54,125/- which was to be paid at the time of the possession of the unit.
- IV. That as per the agreement the complainant has paid an amount Rs.17,58,747/- to the respondent out of the total sale consideration of Rs19,95,998/-.
- V. That the complainant contacted the respondent various times to know about the status of delivery of the possession of the aforesaid unit but no fruitful results were there. The project being developed under affordable group housing policy 2013, is to be implemented within four years from the date of grant building plans approval or environmental clearance, whichever is later. The due date of completion of project as declared by the promoter at the time of registration was 31.01.2020.
- VI. That, since 2018 the complainant is contacting the respondent telephonically and making efforts to get possession of the subject unit but all went in vain. Despite several telephonic conversations and personal site visits by the complainant, the respondent failed to give the complete offer of possession of the subject unit with all agreed amenities.
- VII. That the complainant made several attempts to follow up with the respondent by making phone calls and visiting their office, requesting them to complete the project as per the specifications and amenities mentioned in the brochure. However, the respondent failed to deliver possession of the unit.



- VIII. That the complainant has paid more than 90% of the actual cost of the unit. However, the respondent has failed to deliver the possession of the unit within promised timeframe.
- IX. That the work on other amenities, like external and internal services are also not completed. The complainant been harassed mentally and financially due to the acts of the respondent and the terms and conditions of the builder-buyer agreement, makes the respondent liable to compensate the complainant for its unfair trade practice.

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

4. The complainants have sought following relief(s):

- I. Direct the respondent to issue fresh offer of possession after obtaining occupation certificate from the concerned authority and further to revise the offer of possession by calculating the area of the unit as per builder buyer agreement.
- II. Direct the respondent to provide the possession of the unit.
- III. Direct the respondent to make the payment on account of delay possession charges as per prescribed rate as per RERA Act.
- IV. Direct the respondent to register the applicant's unit as per original allotment letter and BBA without any area increase.

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 raised certain preliminary objections and has contested the present complaint on the following grounds:

- I. That on 04.09.2015, the complainant was allotted unit no. 0401, tower-15 admeasuring carpet area of around 546 sq. ft. with a balcony, for a total consideration of Rs.19,95,998/-.
- II. That the complainant obtained a housing loan of Rs.17,95,240/- from DHFL, and a tri-partite agreement was executed between the complainant, the respondent, and DHFL.



- III. That the subject unit was allotted under the affordable housing scheme, 2013. As, per the buyer's agreement the unit was to be delivered within four years from the approval of building plan or environment clearance whichever is later.
- IV. That the possession of the said premises was proposed to be delivered by 21.01.2020. The respondent and its officials are trying to complete the said project as soon as possible and there is no malafide intention of the respondent to get the delivery of project, delayed, to the allottees. However, the project got delayed due to force majeure circumstances which were beyond the control of the respondent. Further, due to orders passed by the Environment Pollution (Prevention & Control) Authority, the construction was/has been stopped for a considerable period due to high rise in pollution in Delhi-NCR. Furthermore, the Hon'ble Supreme Court vide order dated 04.11.2019, imposed a blanket stay on all construction activity in the Delhi-NCR region. Moreover, shortage of labour, water and other raw materials and various stay orders issued by various courts, authorities, implementation of NREGA and JNNURM schemes etc. caused delay in completion of the project. Moreover, the covid-19 pandemic, which was declared as force majeure condition by the government, has extended the timeline for handing over possession
- V. That the complaint filed by the complainant is not maintainable in the present form and is filed on the false and frivolous grounds. The complaint does not disclose any cause of action in favour of the complainant and the present complaint has been filed with malafide intention to blackmail the respondent with this frivolous complaint.
- VI. Moreover, the complainant deems to be prima facie dismissed for non-joinder of necessary party. The complainant obtained loan from DHFL and in terms of tripartite agreement and initiating proceedings without prior



information and approval of the financier deems to be dismissed in limine for non-joinder of necessary parties.

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

**E. Jurisdiction of the authority**

8. 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 allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

**Section 11.... (4) The promoter shall-**

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

**Section 34-Functions of the Authority:**

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

11. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of



obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

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

**F.I Objection regarding delay in completion of construction of project due to force majeure conditions.**

12. The respondent-promoter alleged that grace period on account of force majeure conditions be allowed to it. It raised the contention that the construction of the project was delayed due to force majeure conditions such as the orders of the Environment Pollution (Prevention & Control) Authority prohibiting construction in and around Delhi, shortage of labour, water and other raw materials and various stay orders issued by various courts, authorities, implementation of NREGA and JNNURM schemes etc. and the Covid-19, pandemic others, but all the pleas advanced in this regard are devoid of merit. Following, the affordable housing policy, 2013 the due date of handing over of possession comes out to be 22.01.2020 (calculated from the date of environment clearance being later). Hence, events alleged by the respondent do not have any impact on the project being developed by the respondent. Moreover, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. Thus, the promoter respondent cannot be given any leniency on basis of aforesaid reasons and it is a well settled principle that a person cannot take benefit of his own wrong.
13. As far as delay in construction due to outbreak of Covid-19 is concerned, 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 (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020 dated 29.05.2020* has observed that:

*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. The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by 22.01.2020 and is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was 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 is not excluded while calculating the delay in handing over possession.

**F.II Objection regarding dismissal of complaint due to non-joinder of necessary party.**

15. The respondent raised an objection for dismissal of complainant on non-joinder of DHFL as necessary party. The complainant along with respondent entered into a tripartite agreement with DHFL (Dewan Housing Finance Corporation Ltd.) on 20.10.2015 for loan purpose. The complainant's intent is to continue with project and is seeking possession of the subject unit along with delay possession interest from the respondent. It was the respondent liability to hand over the possession in the agreed timeframe to the complainant which the respondent failed to do so. Based on the available documents and the submissions from both parties, no cause of action arises against DHFL, and no beneficial outcome would result from including DHFL as a party to this case. Consequently, the respondent's objection lacks merit and is dismissed.

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

**G.I Direct the respondent to issue fresh offer of possession after obtaining occupation certificate from the concerned authority and further to revise the offer of possession by calculating the area of the unit as per builder buyer agreement.**

**G.II Direct the respondent to provide the possession of the unit.**



**G.III Direct the respondent to make the payment on account of delay possession charges as per prescribed rate as per RERA Act.**

**G.IV Direct the respondent to register the applicant's unit as per original allotment letter and BBA without any area increase.**

16. The above-mentioned reliefs sought by the complainant 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 intends to continue with the project and is seeking delay possession charges as provided under the proviso to Section 18(1) of the Act. Section 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. Admissibility of delay possession charges at prescribed rate of interest:**

The complainant is seeking the relief of delay possession charges. 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."*





19. 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.
20. 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., 30.05.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
21. The definition of term 'interest' as defined under Section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:
- "(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
- Explanation. —For the purpose of this clause—*
- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*
22. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85 % by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.
23. The Authority notes that the complainant has not provided any buyer's agreement executed between the parties. However, the records include an allotment letter dated 19.09.2015 issued by respondent in favor of complainant which specifies the details and sale price of the allotted unit. The letter indicates that the project is being developed under the Affordable Housing Policy, 2013.



According to clause 1(iv) of Affordable Housing Policy, 2013, "*all such projects shall be required to be necessarily completed within 4 years from the approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of this policy*".

24. In the present case, the date of approval of building plans is 19.12.2014, and the date of environment clearance is 22.01.2016. The due date of handing over of possession is reckoned from the date of environment clearance being later. Therefore, the due date of handing over of possession comes out to be 22.01.2020. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the Section 11(4)(a) of the Act by not handing over possession by the due date as per the affordable housing policy, 2013.
25. It is the failure of the promoter to fulfil its obligations and responsibilities to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in Section 11(4)(a) read with Section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession charges at rate of the prescribed interest @ 10.85% p.a. w.e.f. 22.01.2020 till the actual handing over of possession or valid offer of possession plus 2 months, whichever is earlier as per provisions of Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*.
26. Further, as per Section 17(1) of the Act of 2016, the respondent is obligated to handover physical possession of the subject unit to the complainant. Therefore, the respondent shall handover the possession of the allotted unit as per specification of the allotment letter, after receiving occupation certificate from the competent authority.



### **H. Directions of the authority**

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

- I. The respondent is directed to pay interest to the complainant against the paid-up amount after adjustment of early bird discount if any at the prescribed rate of interest i.e., 10.85% p.a. for every month of delay from the due date of possession 22.01.2020 till actual handing over of possession or valid offer of possession plus two months after obtaining occupation certificate from the competent Authority, whichever is earlier as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- II. The arrears of such interest accrued from due date of possession till the date of this order by the authority shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to allottee before 10<sup>th</sup> of the subsequent month as per rule 16(2) of the rules.
- III. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- IV. The respondent is directed to offer the possession of the allotted unit within 30 days after obtaining occupation certificate from the competent authority. The complainant w.r.t. obligation conferred upon them under section 19(10) of Act of 2016, shall take the physical possession of the subject unit, within a period of two months of the occupancy certificate.
- V. 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.

VI. The respondent shall not charge anything from the complainant which is not the part of the allotment letter.

28. Complaint stands disposed of.

29. Files be consigned to registry.

**Dated: 30.05.2024**

  
**(Vijay Kumar Goyal)**  
**Member**  
Haryana Real Estate  
Regulatory Authority,  
Gurugram