

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

Complaint no. : 3031 of 2020
Date of filing complaint: 07.10.2020
Date of decision : 30.04.2024

Mr. Satyanand Shukla Mrs. Jaya Shukla R/O: B-1148, Gf, Iffco Colony, Sector-17 B, Sector-17, Gurugram	Complainants
Versus	
M/S Emaar India Ltd. Regd. Office: Emaar Mgf Business Park, Mehrauli Gurgaon Road, Sikandarpur Chowk, Sector-28, Gurugram, Haryana	Respondent
CORAM:	
Shri Arun Kumar	Chairman
Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member
APPEARANCE:	
Sh. Varun Chugh (Advocate)	Complainants
Sh. J.K Dang (Advocate)	Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 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 there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project details

2. The particulars of unit, 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.	Heads	Information
1.	Name of the project	Emerald floors at emerald hills Sector-65, Gurugram, Haryana
2.	Nature of the project	Residential
3.	DTCP License no. & validity status	10 of 2012 dated 21.05.2009
4.	RERA Registered / not registered	Registered vide no. 162 of 2017 dated 29.08.2017 Valid upto 28.08.2022.
5.	Unit no.	EHF - 267-A-SF-037 (Page 66 of complaint)
6.	Provisional allotment letter w.r.t original allottee	10.08.2009 (Annexure R 2 page 36 of reply)
7.	Date of execution of buyer's agreement w.r.t original allottee	26.02.2010 (Annexure C page 65 of complaint)
8.	Nomination Letter	07.06.2012 (Annexure R 20 , page 171 of reply)
9.	Possession clause	13. POSSESSION

		<p>(a) Time of handing over the possession Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this Agreement, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the Company, the Company proposes to hand over the possession of the independent floor within 27 months from the date of execution of this Agreement. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of 6 months, for applying and obtaining the occupation certificate in respect of the Independent Floor and/or the Project.</p> <p>(Emphasis supplied)</p> <p>[annexure C, page 80 of complaint]</p>
10.	Due date of possession	26.11.2012 [Grace period is included]
11.	Total consideration as per SOA dated 06.11.2020 at page 118 of reply	Rs. 56,92,991/-
12.	Total amount paid by the complainant as per SOA dated 06.11.2020 at page 119 of reply	Rs. 56,94,741/-
13.	Occupation certificate	09.05.2019 (Annexure R 16 , page 124 of reply)
14.	Offer of possession	10.06.2019 (Annexure R 17 , page 126 of reply)

15.	Handover Letter	04.09.2019 (Page 133 of reply)
16.	Conveyance deed	07.11.2019 (Annexure r 19 , page 138 of reply)

B. Fact of the complaint

3. That on 10.08.2009 Smt. Renu Kapoor was allotted a unit bearing no. EHF-267-A-SF-037 (Second Floor) admeasuring 267 Sq Yards, along-with car parking space in the project known as "Emerald Hills Floors" situated at Sector-65, Gurugram, Haryana. The builder buyer agreement was executed between the parties on on 26.02.2010.
4. That subsequent thereto, the complainant herein, entered into an agreement to sell with Smt. Renu Kapoor, with regard to the said property (Floor) and the property was later assigned to the complainant and his wife as co-applicant, by the respondent, by virtue of the assignment letter. On 07.06.2012 the nomination was confirmed being the first subsequent allottees.
5. That the complainants have preferred the present complaint against the respondent constrained by the malafide and deceitful acts and malpractices being followed by the respondent to dupe and cheat its innocent and bonafide buyers, by grossly violating the terms and conditions set forth in the buyer's agreement and layout plans and in blatant disregard to the provisions enshrined in The Real Estate (Regulation and Development) Act, 2016.

6. That the ground leading to the filing of the present complaint is that the complainants were misled by the respondent to believe that the project in question will be a gated residential community, with all security arrangements in place however, the said commitment was found to be false and misleading on the face of it when the possession of the property/floor was offered to the complainant.
7. That the property in question i.e. unit bearing no. EHF-267-A-SF-037 (Second Floor) admeasuring 267 Sq Yards, in the project of the respondent i.e. M/s Emaar MGF Land Limited, known as "Emaar Hills Floors" situated at Sector-65, Gurugram, Haryana was purchased by the complainant and his wife as co-applicant, in the year 2012.
8. That the physical possession of the property was handed over on 04.09.2019 and the title of the said floor was conveyed by the respondent, in favour of the complainant in December, 2019, in violation of the provisions of Section 14 (1) and (3) of the Act and despite registration of a strong protest by the complainant in the said regard.
9. That the possession of the floor was offered by the respondent on 10.06.2019 whereby the complainant was asked to make the requisite payments towards the final instalment, stamp duty charges for registration purposes, meter connection charges, power back up charges, common area maintenance charges, etc.
10. That pursuant to the receipt of the intimation of possession letter, the complainant visited the site/property to ensure whether the property is

ready for occupation and is in a habitable condition however was taken aback after noticing that the property/floor was not in a liveable condition as the finishing work was yet to be done, besides the fact that debris was lying in front of the property of the complainant and that the respondent has even compromised with the security of the home buyers by not erecting the entire boundary wall facing the floor of the complainant, apart from the other home buyers.

11. That the complainant in no time, brought this fact to the notice of the respondent via email dated 23.06.2019 and requested them to rectify the defects at first, so that the complainant could shift in the said property along with his family as in the absence of the bare minimum security arrangements, the complainant was apprehensive about his security as well as that of his family in view of the fact that it was a barren land facing the property of the complainant and any untoward event may take place in the absence of a proper boundary wall, fencing and desired security personnel.
12. That even in the buyer's agreement dated 26.02.2010 , and the layout of the project, the respondent had categorically stated that the project in question shall be a gated residential community, having impeccable security arrangements which includes boundary walls, fencing and round the clock surveillance by security guards and hence was induced by the representations of the respondent/promoter and thereby purchased the property in question.

13. That when no heed was paid to the request of the complainant, he was constrained to write a series of emails on different dates, besides visiting the corporate office of the respondent, for redressal of his genuine grievances by curing the defects so that the complainant may fulfil his obligations of making the payments as demanded by the respondent and get the title conveyed but yielded no results as the respondent opted not to respond to the emails of the complainant and left him in the middle of nowhere.
14. That having left with no other option, the complainant was forced to get the conveyance of the floor done and took the possession of the floor, by making the entire payment under protest as he was living in a rented accommodation and has been incurring meaningless expenditure on the rent despite having his own property i.e. the floor in question.
15. That even after the registration of the conveyance deed, the complainant kept on chasing the respondent for resolution of his problem and was assured every time that his concerns would be looked into at the earliest, but the respondent was reluctant to address the issues of the complainant. In fact, the respondent vide its email dated 21.11.2019 has acknowledged the factum of non-construction of the boundary wall and assured the complainant that they are working of the same and would erect it very soon .
16. That the complainant has a serious apprehension that due to the non-construction of the boundary wall on the side of the land belonging to

some other land owner, facing the front of the floor owned by the complainant, some shops are being constructed which will result into substantial value erosion of the property of the complainant in terms of price as well as rent thereby causing him huge financial loss.

17. That apart from the above stated issue, the buyer's agreement also finds mention of the fact that a separate sewage treatment plant would be set up for each block however, no such arrangements for separate STP (sewage treatment plant) has been made so far and the entire waste is being collected through trucks regularly, which in turn would dump it in the main sewer line and hence is a make shift arrangement only. Besides this, in accordance with the layout of the project, an access to 24 meter road through a connecting road for the amber block has been shown, which is yet to be constructed and where the complainant has the unit but the same has also not been made so far. Thus the handover of unit was clearly offered in violation of the provisions of the act.
18. That moreover, the respondent started levying maintenance charges upon the complainant since September, 2019 whereas the actual facilities as promised in the agreement has not been offered to the complainant till date. In fact, the entire exercise of handover of property to the complainant in September, 2019 itself was to make him liable to pay the monthly maintenance charges whereas the facilities as promised are yet to be offered to the complainant.
19. That the floors were sold by representing that the same will be luxurious

apartment however all such representations seem to have been made in order to lure the complainants to purchase the floor at extremely high prices. There are various deviations from the initial representations.

20. That the respondent has breached the fundamental term of the contract by not offering the promised amenities as stated in the buyer's agreement and the layout plan. The complainants were made to make advance deposit on the basis of information contained in the brochure, which is false on the face of it as is evident from the construction done at site so far.
21. That the respondent has committed various acts of omission and commission by making incorrect and false statement in the advertisement material as well as by committing other serious acts as mentioned in preceding paragraph.
22. That the respondent has not acknowledged the requests of the complainants. The promised amenities are missing. The complainant was made to make advance deposit on the basis of information contained in the brochure, which is false on the face of it as is evident from the construction done at site
23. That it is pertinent to mention here that with respect to the said property, the complainants had already filed a complaint before this Hon'ble Authority seeking delayed interest as the respondent has miserably failed to handover the possession of the floor, on time and hence the Hon'ble Authority, vide its order dated 04.02.2020 was pleased to pass the judgment in favour of the complainants thereby directing the respondent

to pay delayed possession interest to the complainant however, till date the respondent has not complied with the orders of the Hon'ble Authority.

C. Relief sought by the complainants:

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

- I. Direct the respondent to construct the boundary wall facing the front of the property/apartment of the complainants, in a time bound manner.
- II. Direct the respondent to pay penalty, towards delay in construction of the boundary wall.
- III. Direct the respondent to that in the alternative to shuffle the property/floor of the complainant with another property, having same size, specification, value in a similarly placed location of the said project.
- IV. Direct the respondent to waive / not levy the maintenance charges till the time actual facilities as promised with respect to the property is offered to the complainants.
- V. Direct the respondent to pay a sum of Rs. 50,000/- to the complainant towards the cost of litigation.

25. On the date of hearing, the authority explained to the respondent/promoters 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

26. The respondent has contested the complaint on the following grounds.

27. That it is pertinent to mention herein that the unit purchased by the

complainants forms part of a large project comprising of group housing, commercial spaces, plots, villas and independent floors. The entire project has been conceptualized as a gated project. Insofar as the amenities and facilities of the project are concerned, the time lines for development of the same are not concurrent with the timeline for delivery of possession of the unit. It is submitted that the respondent is committed to fulfilling the promises made by the respondent under the buyer's agreement and that the respondent is working towards development of the project as a whole within the time period/extended time period for which the project has been registered with this Honourable Authority.

28. That the complainants are not an allottee but an investor who has purchased the unit/floor in question as an investment and not with a view to reside in the same. The Complainant and co allottee have purchased in resale, another unit in the same project, in the same block, in respect of which complaint no 3050 /2020 has been filed before this Hon'ble Authority.
29. That Smt. Renu Kapoor and Mr Sahil Kapoor (hereinafter "the original allottees") had approached the respondent sometime in the year 2009 for purchase of an independent unit in its upcoming residential project "Emerald Floors, at Emerald Hills" situated in Sector 65, Gurgaon.
30. That thereafter the original allottees vide application form dated 24.07.2009 applied to the respondent for provisional allotment of a unit in the project. The original allottees, in pursuance of the aforesaid

application form, were allotted an independent unit bearing no EHF-267-A-SF-037, located on the 2nd Floor, in the project vide provisional allotment letter dated 10.08.2009. The original allottees consciously and willfully opted for a construction linked plan for remittance of the sale consideration for the unit in question and further represented to the respondent that the original allottees shall remit every installment on time as per the payment schedule. The buyer's agreement was executed between the respondent and the original allottees on 26.02.2010 subsequently, the name of Mrs Akanksha Kapoor was also added as a co allottee in respect of the unit in question.

31. That in the year 2012 the original allottees entered into an agreement to sell the unit in question in favour of the complainant. Transfer documents executed by the original allottees in favour of the complainant and his wife, Mrs Jaya Shukla.
32. That it is pertinent to mention herein that the complainant and co allottee, Mrs Jaya Shukla (who has not been impleaded as a party to the present complaint) purchased the unit in question from the original allottees and that the unit was transferred in the name of the complainant and co allottee and intimation to this effect was given to the complainant and co allottee on 07.06.2012.
33. That clause 13 of the buyer's agreement provided for delivery of possession within 27 months from the date of execution of the buyer's agreement subject to force majeure conditions, events beyond the control

of the respondent and timely compliance by the allottee(s) of all the terms and conditions of the buyer's agreement and not being in default of any provision thereof, including remittance of all amounts due and payable by the allottee(s) under the agreement as per the schedule of payment incorporated in the buyer's agreement. A grace period of 6 months was provided for applying and obtaining the occupation certificate. At the time of transfer of allotment in favour of the complainant and co allottee, the period of 27 months referred to in clause 13 of the buyer's agreement dated 26.02.2010 was already over.

34. That furthermore, it is also pertinent to mention herein that at the time of transfer of allotment construction of the unit in question had not even commenced. Thus, at the time of transfer of allotment in their favour, the complainant and co allottee were fully conscious and aware that construction of the unit had not yet started and that there was no definite time frame for commencing the same. In other words, by their acts and conduct, it is readily inferred that the complainant and co allottee had waived any stipulation of time bound delivery of the unit in question.
35. That without prejudice to the submissions made hereinabove, it is submitted that the original allottees as well as the complainant and co allottee have been irregular regarding the remittance of installments on time. The respondent was compelled to issue demand notices, reminders etc. calling upon the original allottees as well the complainant and co-

allottee to make payment of outstanding amounts payable by them under the payment plan/instalment plan opted by them.

36. That in the meanwhile, the project in question was registered under the Act. Registration certificate granted by the Haryana Real Estate Regulatory Authority vide memo no. HRERA-612/2017/816 dated 29.08.2017 .It is submitted that the registration of the project is valid till 28.08.2022.
37. That the respondent duly constructed the unit and applied for issuance of the occupation certificate on 04.04.2019. Occupation certificate was issued by the competent authority on 09.05.2019. By letter dated 10.06.2019 possession of the unit was offered to the complainant and co allottee and they were called upon to remit balance sale consideration and complete the formalities and documentation necessary to enable the respondent to hand over possession of the unit to the complainant and co allottee in accordance with the buyer's agreement. Thereafter, the complainants have taken possession and handover of the unit on 04.09.2019 after certifying that the complainant and co allottee do not have any claim of any nature whatsoever against the respondent. Thereafter the conveyance deed has also been registered in favour of the complainants on 07.11.2019.
38. That it is pertinent to mention herein that the Complainant and co allottee have also purchased, in resale, another floor in the very same project, in the same block being property no EHF-267-A-FF-053, in respect of which

complaint no 3050 of 2020 is pending before this Hon'ble Authority. It is further pertinent to mention herein that the second property, subject matter of complaint no 3050 of 2020 was purchased by the Complainant and co allottee on 10.06.2019, and the possession of this property was offered by the Respondent no 11.05.2019, i.e before possession of the floor in question in the present complaint, was offered to the Complainant. The Nomination letter dated 03.09.2019 confirming the transfer of property no EHF-267-A-FF-053, in favour of the Complainant and Co allottee. The Complainant and co allottee were obviously fully satisfied with the construction, facilities as well as amenities provided in the project and to such an extent that they decided to purchase another property in the very same block of the very same project.

39. That it is respectfully submitted that the rights and obligations of the complainants and the original allottees as well as the respondent are completely and entirely determined by the covenants incorporated in the buyer's agreement. It is submitted that the buyer's agreement only provides the time lines for delivery of possession of the unit in question and not for the provision of the facilities and amenities in the project.

40. That as has been submitted in the preceding paras of the present reply, the project has been registered under the Act till 28.08.2022. Subject to force majeure conditions and circumstances beyond the control of the respondent the respondent proposals to complete development of the project within the period of registration/extended registration, if any,

under the Act. There is no failure in so far as the respondent is concerned, in complying with the terms and conditions of the act or with the buyer's agreement. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. The allegations levelled by the complainant are totally baseless. thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

41. All other averments made in the complaint were denied in toto.
42. 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

43. 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

44. 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.
45. Therefore, this authority has complete territorial jurisdiction to deal

with the present complaint.

E. II Subject matter jurisdiction

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

Section 11

.....
(4) The promoter shall-

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

Section 34-Functions of the Authority:

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

47. 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. Objection regarding maintainability of complaint on account of complainants being investor.

48. The respondent took a stand that the complainant is investor and not consumers and 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. However, it is pertinent to note that any aggrieved person can file a

complaint against the promoter if he 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 allotment letter, it is revealed that the complainant is buyer's, and he has paid a total price of Rs. 56,94,741/- to the promoter towards purchase of a unit 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 sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

49. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between promoter and complainant, it is crystal clear that the complainant are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred to 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". Thus, the contention of the promoter that the allottee being investor are not entitled to protection of this Act also stands rejected.

G. Findings on the relief sought by the complainants

G.I Direct the respondent to construct the boundary wall facing the front of the property/apartment of the complainants, in a time bound manner.

G.II Direct the respondent to pay penalty, towards delay in construction of the boundary wall.

G.III Direct the respondent to that in the alternative to shuffle the property/floor of the complainant with another property, having same size, specification, value in a similarly placed location of the said project.

50. The above mentioned reliefs no. G.I TO G.III as sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other reliefs and these reliefs are interconnected.

51. Briefly, the facts of the case are that the unit bearing no. EHF-267-A-SF-037, was allotted in favour of Smt. Renu Kapoor and Mr Sahil Kapoor (hereinafter in short referred as 'Original allottees') by the respondent vide allotment letter dated 10.08.2009 and thereafter the buyer's agreement was executed between the original allottees and the respondent on 26.02.2010. Subsequently, the subject unit was transferred in favour of Satyanand Shukla and Jaya Shukla (hereinafter in short referred as "1st subsequent allottee") vide nomination letter dated 07.06.2012. Therefore, the complainant stepped into the shoes of original allottee on 07.06.2012.

52. The occupation certificate was obtained on 09.05.2019 and the possession was offered to the complainants on 10.06.2019. The complainant has wrote various email to the respondent stating that the unit is not ready for possession and there is no boundary wall. Vide proceeding dated 22.07.2021 the counsel for the complainant has stated at bar that the

respondent has offered the possession of the unit on 14.06.2019 but he has not taken the physical possession as the project is not habitable and there is no boundary wall. Therefore, Shri Sumit Nain , Engineer executive was appointed as local commission to visit the site and submit his report with regard to the discrepancies in the project. The report was submitted on 25.08.2021 and is as follows :

That there is other land in front of complainant's unit and the promoter have not constructed boundary wall separating the project area and other land which was supposed to be constructed as per the layout plan / bba. Further as on date the owners of that other land have developed two shops in the front of the complainant unit which is causing inconvenience to the complainant as well as his family

53. Vide proceeding dated 08.12.2022 the counsel for the respondent stated that inspite of best efforts made by the promoter for construction of boundary wall around the project and only a small portion of around 30 feet remains unconstructed due to presence of certain unauthorized shops for which the matter needs to be taken to the DTP (enforcement) Gurugram for removal of unauthorized construction so that the boundary wall is completed at site. A reference was made to DTP (enforcement) for intimating, the status of construction of above alleged unauthorized shops and action being taken for their removal. Various reminders dated 21.12.2022 , 13.03.2023 , 05.06.2023 , 06.06.2023 , 01.03.2024 , 04.03.2024 were sent to the DTP (enforcement) to file the status of

unauthorized shops and action being taken for the same. Dtp , Gurugram filed its report on 22.03.2024 stating the following :

On the subject cited above, it is informed that status of unauthorized shops near land of licensed colony (bearing no. 10 of 2009) Emaar Mgf Land ltd. has been sought vide order under reference regarding which, the site has been visited by the official of this office and found that the unauthorized shops (Photographs enclosed) in revenue estate of Medawas falls under jurisdiction of Municipal Corporation Gurugram and action is to be taken by MCG under MC Act.

Accordingly, The Commissioner Municipal Corporation Gurugram may requested to issue directions to the concerned officers for taking necessary action against the same. The copy of order being forwarded to Commissioner MCG for further necessary action please

54. The possession of the unit stands handed over to the complainants on 04.09.2019 following the conveyance deed is also executed between the parties on 07.11.2019. The present complaint is filed by the complainants for construction of boundary wall. Keeping in view the submissions made by the complainant and the respondent and the facts on record, the respondent is directed to complete the construction of the boundary wall in terms of the agreement executed with the complainants within 90 days failing which the complainant may approach the Adjudicating Officer in terms of Section 14 of the Act of 2016.

55. As per combined reading of section 11(4)(a) and 14 of RERA Act, 2016 :-

Section 11(4) (a)

The promoter shall 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:

Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.

"Section 14: Adherence to sanctioned plans and project specifications by the promoter

*(3) In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, **the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act.**"*

56. In the present case, the occupation certificate was received on 09.05.2019.

The complainants were offered the possession of the unit on 10.06.2019.

Following the same conveyance deed was executed between the complainants and the respondent on 07.11.2019. The Authority is of view that after the execution of the conveyance deed between the complainant and the respondent, all the financial liabilities between the parties come

to an end except the statutory rights of the allottee including right to claim compensation for delayed handing over of possession and compensation under section 14 (3) and 18 of the RERA Act, 2016. In view of the above, the complainants may claim compensation for non-adherence to the sanctioned plans and agreements executed with the complainant - allottees under section 14 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

G.IV Direct the respondent to waive / not levy the maintenance charges till the time actual facilities as promised with respect to the property is offered to the complainants.

57. The Act mandates under section 11 (4) (d) that the developer will be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees. Clause 20 of the buyer agreement provides the clause for maintenance charges and the complainant allottee is required to pay the maintenance charges to the respondent in terms of obligation of complainant allottee under section 19(6) of the Act of 2016 and the same is reproduced below:

19(6) Rights and duties of allottee

Every allottee, who has entered into an agreement or sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.

58. However, the respondent shall not demand the advance maintenance charges for more than one (1) year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than one (1) year.

G.V Direct the respondent to pay a sum of Rs. 50,000/- to the complainant towards the cost of litigation.

59. The complainants are seeking relief w.r.t. compensation in the above - mentioned relief. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors., held that an allottee is entitled to claim compensation & litigation charges under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, for claiming compensation under sections 12, 14, 18 and section 19 of the Act,

the complainants may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

H. Directions of the authority

60. 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):

1. The respondent is directed to complete the construction of the boundary wall in terms of the agreement executed with the complainants within 90 days failing which the complainants may approach the Adjudicating Officer in terms of Section 14 of the Act of 2016.

61. Complaint stands disposed of.

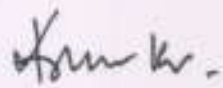
62. File be consigned to registry.



(Ashok Sangwan)
Member



(Vijay Kumar Goyal)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated:30.04.2024