

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

Complaint no.: 5702 of 2023
Date of filing: 15.12.2023
Date of decision: 04.07.2024

1. Anisha
2. Neeraj Kumar

Both R/o: - House no.440/21, Om Nagar, near Shubham
Medical Hall, Sector-11, Khandsa road, Gurugram

Complainants

Versus

M/s Shine Buildcon Private Limited
Corporate office: Plot No. 281, Udyog Vihar, Phase-II,
Gurugram

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Ashish Budhiraja (Advocate)

Complainants

Shri Pankaj Chandola (Advocate)

Respondent

ORDER

1. The present complaint has been filed by the complainant/allottees 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 there under or to the allottee as per the agreement for sale executed inter se.

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A. Unit and project-related details

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

Sr. No.	Particulars	Details
1.	Name of the project	"70 Grandwalk", Sector 70, Gurugram
2.	Project area	2.893 acres
3.	Nature of the project	Commercial Complex
4.	DTCP license no. and validity status	34 of 2012 dated 15.04.2012 valid upto 14.04.2020
5.	Name of licensee	Shine Buildcon
6.	RERA Registered/ not registered	28 of 2017 dated 28.07.2017 valid upto 30.06.2022
7.	Unit no.	B-122, 1 st floor (Page no.34 of complaint)
8.	Unit area admeasuring	179 sq. ft. (Super Area) (Page no.34 of complaint)
9.	Allotment Letter	17.11.2014 (Page no. 27 of complaint)
10.	Date of execution of BBA	11.05.2015 (Page no. 32 of complaint)
11.	Building plan approval	03.05.2013 (submitted by respondent during proceedings dated 04.07.2024)
12.	Payment Plan	Possession linked plan (page 77 of complaint)
13.	Possession clause	Clause 13, POSSESSION AND HOLDING CHARGES "(ii) subject to Force Majeure, as defined herein and further subject to the Allottee having complied with all its obligations under the terms and conditions of this Agreement and not having defaulted under any provision(s) of this Agreement including but not limited to the timely payment of all dues and charges including the total sale Consideration, registration charges, stamp duty and other charges and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the Company proposes to offer the possession of the



		<p><i>said Shop to the Allottee within a period of 42 months from the date of signing of this agreement or approval of the Building plans, whichever is later. The Allottee further agrees and understands that the Company shall additionally be entitled to a period of 6 (six month) ("Grace period"), after the expiry of the said Commitment Period to allow for unforeseen delays beyond the reasonable control of the Company."</i></p> <p>(Page no. 80 of complaint)</p>
14.	Due date of possession	11.05.2019 (Calculated 42 months from the date of execution of BBA being later including grace period of 6 months being unqualified and unconditional)
15.	Total Sale consideration	Rs.18,75,025 /- (page no. 77 of complaint)
16.	Amount paid by the complainants	Rs. 12,53,645/- (As per SOA page 108 of complaint)
17.	Occupation certificate	10.10.2023 (page no. 31 of reply)
18.	Offer of possession	15.10.2023 (page no. 106 of complaint)

B. Facts of the complaint:

3. The complainants made the following submissions in the complaint:

- a) That the representatives of the respondent company visited the complainants and showed a promising image of a project "70GRANDWALK" by Tapasya, Sector 70, Gurugram, Haryana and assured that all the plans had been sanctioned and the construction has been started and would be completed on time.
- b) That the complainants being lured by the commitments of the respondent paid an advance amount of Rs.1,50,000/-to the respondent to get the booking confirmed for the shop admeasuring super area of 179 sq. ft. for the total sale consideration of Rs.18,75,025/-. The respondent issued a receipt against the said amount for booking on 03.09.2014 along with receipt against the cheque given for the booking amount and the complainants opted for the possession linked payment plan.



- c) That after more than the 2 months, respondent issued an allotment letter for unit no. B-122, 1st floor admeasuring super area of 179 sq. ft. specifying the payment details to be made by the complainants.
- d) Thereafter, a buyer's agreement was executed on 11.05.2015 between the parties for the subject unit. By that time, the complainants paid a total amount of Rs.5,51,465/-. The agreement contained one-sided terms and conditions favouring only the respondent.
- e) That the complainants made the payments from time to time upon as per the demands raised and call notices sent by the respondent. Also, the respondent issued receipts against the payments received from the complainants.
- f) That the complainants had paid a total sum of Rs.12,53,645/- against the subject unit. The complainants had not defaulted in any payment, and had made it as and when demands raised by the respondent.
- g) That the complainants visited the project site of the respondent from time to time and were shocked to see the state of affairs. Only a partial structure had been erected by the respondent. The complainants used to ask the respondent about the progress of the project, and the respondent always gave a false impression that the work is going on in full mode and accordingly asked for the payments, which the complainants made on time.
- h) That the complainants tried to approach the respondent to get the construction of the unit completed as soon as possible to avoid any further loss, but it had been of no use. Despite receiving more than 70% of the payments on time for all the demands raised by the respondent, repeated requests, reminders over phone calls and personal visits of the complainants, the respondent failed to deliver the possession of the subject unit within the stipulated period.
- i) That the construction of the project as promised by the respondent to deliver the subject unit by 11.01.2019 had not been completed within the time, which clearly

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shows the ulterior motive of the respondent to extract money from the allottees fraudulently.

- j) That due to the omission on the part of the respondent, the complainants had suffered from disruption in their working arrangement, mental torture, and agony, and had also continued to incur severe financial losses.
- k) That the respondent sent the offer of possession on 15.10.2023 to the complainants, stating that the occupation certificate had been received by them. The subject unit was offered after more than 4.5 years from the due date of possession wherein the respondent demanded unreasonable and uncalculative amounts.
- l) Moreover, the complainants had not been given possession of their unit by the respondent. The respondent had delayed the construction of the said project and caused undue hardships for the complainants.
- m) That the delivery of possession of the subject unit had been delayed due to non-completion of the said project by the respondent on time due to illegal misappropriation of the funds and callous attitude of the respondent. Also, the respondent failed to justify its actions and had been delaying the matter on one pretext or another and is trying to avoid payment of delayed possession charges.
- n) That the respondent company had utilized the deposited amount of the complainants for a sufficient time and is now liable to pay delayed possession charges.

C. Relief sought by the complainants:

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

- i. Direct the respondent pay delay possession charges till actual physical possession.
- ii. Direct the respondent to handover the possession.
- iii. Direct the respondent to execute conveyance deed
- iv. Direct the respondent not to charge anything not a part of agreement.
- v. Direct the respondent not to charge holding charges and maintenance charges till actual handover.
- vi. Direct the respondent not to charge EEC/EFC, charges and power backup charges.

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- vii. Direct the respondent to pay litigation cost of Rs.1,00,000/-.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent contested the complaint on the following grounds:
- a) That around September 2014, the complainants learned about the project and approached the respondent repeatedly to know the details of the project. The complainants further enquired about the specification and veracity of the project and were satisfied with every proposal deemed necessary for the development of the project.
 - b) That after being fully satisfied with the specification and veracity of the project the complainants applied for booking of a commercial unit vide application form. The complainants were aware of the terms of the application form and decided to sign upon the same after being fully satisfied, without any protest.
 - c) Thereafter, being fully satisfied with the specification and veracity of the project, the respondent issued an allotment letter dated 17.11.2014, allotting shop no.B-122, 1st floor admeasuring super area of 179 sq. ft. in favour of the complainants in the respondent's project.
 - d) Thereafter, on 11.05.2015, a buyer's agreement was executed between the parties pertaining to the subject unit having a basic sale price of Rs.15,93,100/- plus other charges. The sale consideration was stipulated under the possession linked payment plan.
 - e) That as per clause 13(ii) of the agreement, possession of the said unit was proposed to be offered within an estimated time period of 42 months from the date of signing of the agreement or approval of building plans whichever is later, along with a grace period of 6 months. The possession was subject to normal working conditions i.e., force majeure circumstances were exempted and the

allottee having complied with all its obligations under the terms and conditions of the agreement.

- f) That since starting the respondent was committed to complete the construction of the project with the proposed timeline and had invested an amount approx. to Rs.120,00,00,000/- towards the completion of the project including both the land cost and construction-related costs/expenditures. The respondent under bonafide had already paid EDC/IDC charges in full to the concerned department and on the contrary, the collection from the allottees of the project was only approximate Rs.45,00,00,000/-.
- g) As, per Clause 7(i) of the Agreement "payment of instalments" stipulates that the complainants shall remain responsible for discharging the amounts due as per the payment plan. However, the complainants failed to discharge the payments as per the payment schedule. The complainants have paid only an amount of Rs.12,53,645/-. The complainants were well aware of the terms and conditions of the agreement. Further, under section 19(6) and 19(7) of the Act, 2016, the complainants were obligated to make the necessary payments as specified in the agreement and were liable to pay interest for any delay in payment. Additionally, clause 7(iii) of the agreement entitles the respondent to charge interest on delayed payments and even cancel the allotment in case of a default beyond 60 days. However, the respondent has not terminated the agreement and is ready and willing to deliver possession of the subject unit, provided the complainants make the due payment along with the applicable interest.
- h) That the development work of the project was slightly decelerated due to the reasons beyond the control of the respondent due to the impact of GST which came into force after the effect of demonetisation in last quarter of 2016 which stretches its adverse effect in various industrial, construction, business area even in 2019. The respondent had to undergo huge obstacle due to effect of demonetization and implementation of the GST.

- i) That on 09.11.2017, the National Green Tribunal New Delhi passed a directions to prohibit all construction activities in the NCR region for certain periods. Similarly, there were various other orders passed by the courts and statutory authorities prohibiting construction activities for certain durations.
- j) That due to the above unforeseen circumstances and causes beyond the control of the respondent, the development of the project got decelerated. Such delays were not intentional. The respondent was bound to adhere with the order and notifications of the courts and the Government.
- k) That subsequently, upon removal of the Covid-19 restrictions it took time for the workforce to commute back from their villages, which led to slow progress of the completion of project. Despite, facing shortage in workforce, materials and transportation, the respondent continued with the construction work. The respondent also has to carry out the work of repair in the already constructed building and fixtures as the construction was left abandoned for more than 1 year due to Covid-19 lockdown which led to further extension of the time period in construction of the project.
- l) That the respondent has already obtained occupation certificate on 10.10.2023, from the DTCP, for the respective tower wherein, the unit of the complainants is situated. The respondent vide offer of possession letter dated 15.10.2023, offered possession to the complainants intimating that the respondent has obtained occupation certificate and invited the complainants to take the possession of the unit post clearing the outstanding dues.
- m) That the respondent upon considering the actual delay so caused has already granted a discount of Rs.36,695/- on account for the delayed period and the same was already adjusted/deducted from the total outstanding amount due upon offer of possession.
- n) That the complainants have filed the present complaint with the intention of making unlawful monetary gains, despite the respondent providing a discount

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on account of the delay and being ready to deliver possession upon payment of the outstanding dues. The complaint is based on false allegations and suppression of material facts, and that the present complaint is an abuse of the process of law, deserving to be dismissed with cost.

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 based on these undisputed documents and submission 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 the entire Gurugram District for all purposes 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 the agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

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

Section 34-Functions of the Authority:

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

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

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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 Objections regarding force Majeure.

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 demonetization, orders of the Hon'ble NGT prohibiting construction in and around Delhi, various other court orders and the Covid-19, pandemic among others, but all the pleas advanced in this regard are devoid of merit. The buyer's agreement was executed between the parties on 11.05.2015 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be 11.05.2019. The events such as demonetization and various orders by NGT in view of weather condition of Delhi NCR region, were for a shorter duration of time and were not continuous. Hence, in view of aforesaid circumstances, no period grace period can be allowed to the respondent/builder. Though some allottees may not be regular in paying the amount due but whether the interest of all the stakeholders concerned with the said project be put on hold due to fault of some of the allottees. Thus, the promoter-respondent cannot be granted any leniency for aforesaid reasons. It is well settled principle that a person cannot take benefit of his own wrongs.
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 LAs 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 11.05.2019 and is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period is not excluded while calculating the delay in handing over possession.

G. Findings on relief sought by the complainants.

G.I Direct the respondent pay delay possession charges till actual physical possession

15. In the present complaint, the complainants intend to continue with the project and are seeking possession of the subject unit and delay possession charges as provided under the provisions of section 18(1) of the Act which 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."

16. Clause 13 of the apartment buyer agreement provides for handing over of possession and is reproduced below:

"(ii) subject to Force Majeure, as defined herein and further subject to the Allottee having complied with all its obligations under the terms and conditions of this Agreement and not having defaulted under any provision(s) of this Agreement including but not limited to the timely payment of all dues and charges including the total sale Consideration, registration charges, stamp duty and other charges and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the Company proposes to offer the possession of the said Shop to the Allottee within a period of 42 months from the date of signing of this agreement or approval of the Building plans, whichever is later. The Allottee further agrees and understands that the Company shall additionally be entitled to a period of 6 (six month)

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("Grace period"), after the expiry of the said Commitment Period to allow for unforeseen delays beyond the reasonable control of the Company."

17. The authority has gone through the possession clause of the agreement. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the complainant not being in default under any provision of this agreement and in compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning.
18. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builder/promoter and buyer/allottee are protected candidly. The flat agreement lays down the terms that govern the sale of different kinds of properties like residentials, commercials etc. between the builder and the buyer. It is in the interest of both the parties to have a well-drafted buyer's agreement which would thereby protect the rights of both the builder and buyer in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the unit, plot or building, as the case may be and the right of the buyer/allottee in case of delay in possession of the unit.
19. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking 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]

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."

20. The legislature in its wisdom in the subordinate legislation under the 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.
21. 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., 04.07.2024 is 8.95%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.95%.
22. The definition of term 'interest' as defined under Section 2(z) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant Section is reproduced below:

"(z) "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 —

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 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;"

23. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.95 % by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.
24. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of buyer's agreement executed between the parties, the possession of the booked unit was to be delivered within 42 months with an additional grace period of 6 months from the date of execution of the agreement (11.05.2015) or date of approvals of building plans (03.05.2013), whichever is later. Therefore, the due date of handing over possession comes out to be 11.05.2019 calculated from the date of execution of buyer's agreement being later. Occupation certificate was granted by the concerned authority on 10.10.2023 and thereafter, the possession of the subject unit was offered to the complainants on 15.10.2023. Copies of the same have been placed on record. The authority is of the considered view that there is delay on part of the respondent to offer physical possession of the subject unit and there is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 11.05.2015 to hand over the possession within the stipulated period.
25. Section 19(10) of the Act obligates the allottees to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 10.10.2023. The respondent offered the possession of the unit in question to the complainants only on 15.10.2023, so it can be said that the complainants came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainants should be given 2 months' time from the date of offer of possession. These 2 month of reasonable time is being given to the complainants keeping in mind that even

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after intimation of possession practically they have to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession, i.e., 11.05.2019 till the expiry of 2 months from the date of offer of possession (15.10.2023) which comes out to be 15.12.2023.

G.II Direct the respondent to handover the possession.

26. The respondent has obtained the occupation certificate from the competent authority on 10.10.2023 and offered the possession of the allotted unit vide letter dated 15.10.2023. As per Section 19(10) of Act of 2016, the allottees are under an obligation to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. The complainants are directed to take the possession of the allotted unit after making payment of outstanding dues, if any within a period of 60 days of this order. The respondent shall handover the possession of the allotted unit as per specification of the buyer's agreement entered into between the parties.

G.III Direct the respondent to execute conveyance deed.

27. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under obligation to get the conveyance deed executed in favour of the complainants. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question.

28. Since the possession of the subject unit has already been offered after obtaining occupation certificate on 10.10.2023. The respondent is directed to get the conveyance deed executed within a period of three months as per the terms of Section 17 of the Act of 2016 from the date of this order. The respondent is further directed not to place any condition or ask the complainants to sign an indemnity of any nature whatsoever, which is prejudicial to their rights as has been decided by

the authority in complaint bearing no. **4031 of 2019** titled as **Varun Gupta V. Emaar MGF Land Ltd.**

G.IV Direct the respondent not to charge anything not a part of agreement.

G.V Direct the respondent not to charge holding charges and maintenance charges till actual handover.

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

30. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement. The respondent is also not entitled to claim holding charges from the complainants at any point of time even after being part of the builder buyer agreement as per law settled by **Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.**

• **Maintenance Charges**

31. This issue has already been dealt with by the Authority in complaint bearing no. 4031 of 2019 titled as **"Varun Gupta Vs. Emaar MGF Land Limited" decided on 12.08.2021**, wherein it was held that the respondent is right in demanding maintenance charges at the rates' prescribed in the builder buyer's agreement at the time of offer of possession. However, the respondent shall not demand the maintenance charges for more than one year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where the maintenance charges has been demanded for more than a year.

G.VI. Direct the respondent not to charge EEC/EFC, charges and power backup charges.

32. The counsel for the complainants during the course of proceedings dated 04.07.2024 submitted that they are not pressing for the abovementioned relief. Hence, in lieu of the submission made by the counsel for the complainants, the Authority cannot deliberate upon the said relief.

G.VII. Direct the respondent to pay litigation cost of Rs.1,00,000/-.

33. The complainant is seeking relief w.r.t compensation in the aforesaid relief, Hon'ble Supreme Court of India in civil appeal titled as **M/s Newtech Promoters and**

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Developers Pvt. Ltd. V/s State of UP & Ors. Supra held that an allottee is entitled to claim compensation 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 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.

H.Directions issued by the Authority:

34. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance with obligations cast upon the promoter as per the functions entrusted to the Authority under section 34(f) of the Act of 2016:

- i. The respondent is directed to pay interest to the complainants against the paid-up amount at the prescribed rate i.e., 10.95% per annum for every month of delay from due date of possession i.e., 11.05.2019 till expiry of 2 months from the date of offer of possession (15.10.2023) i.e., up to 15.12.2023 only or till actual handover of possession whichever is earlier. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per rule 16(2) of the rules. Also, an amount of Rs.36,395/- already adjusted by the respondent towards compensation for delay in handing over possession shall be deducted/adjusted towards the delay possession charges to be paid by the respondent in terms of proviso to section 18(1) of the Act.
- ii. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.95% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- iii. The complainants are directed to pay outstanding dues, if any, after adjustment of delay possession charges within a period of 30 days. The

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respondent is directed to handover the physical possession of the unit within 30 days to the complainant/allottees along with execution of conveyance deed within next 30 days after payment of stamp duty charges by the complainant.

- iv. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement. The respondent is also not entitled to claim holding charges from the complainant/allottees at any point of time even after being part of the builder buyer agreement as per law settled by *Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.*

35. Complaint stands disposed of.

36. File be consigned to the Registry.

Dated: 04.07.2024




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

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GURUGRAM