

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

Complaint no. :	6619 of 2022
Date of complaint :	21.10.2022
Order pronounced on:	15.02.2024

Rajni Singh R/o: A-604, Garden Estate Apartment, Plot 5b, Sector-22, Dwarka, New Delhi-110077.	Complainant
Versus	
M/s Venetian LDF Projects LLP Registered office: 205, 2 nd Floor, Times Centre, Golf Course Road, Sector-54, Gurugram, Haryana-122001.	Respondent
CORAM:	
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Shri Nitin Jaspal, Advocate	Complainant
Shri Harshit Batra, Advocate	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 allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name and location of the project	"83 AVENUE", Sector-83, Gurgaon.
2.	Project area	2.3625 acres
3.	Nature of Project	Commercial Colony
4.	DTCP license no. and validity status	12 of 2013 dated 13.03.2013 Valid upto 12.03.2019
5.	Name of Licensee	M/s Real town properties Pvt. Ltd.
6.	Rera registered/ not registered and validity status	Registered Vide no. 4 of 2019 dated 16.01.2019 Valid upto 30.09.2020. Registered in the name of M/s Real town properties Pvt. Ltd.
7.	Unit No.	G-102, Ground Floor (page 23 of complaint)
8.	Unit area admeasuring (Super Area)	467.11 sq. ft. (page 23 of complaint)
9.	Application Form	15.07.2013 (page 31 of reply)
10.	Allotment letter	27.12.2013 (page 18 of complaint)
11.	Date of start of construction	13.12.2013 (page 40 of reply)
12.	Date of buyer agreement	30.07.2014 (page 21 of complaint)
13.	Possession clause	38. <i>The "DEVELOPER/LLP" will, based on its present plans and estimates, contemplates to offer possession of said unit to the Allottee(s) within</i>

		<i>36 months (refer cl.37 above) of Signing of this Agreement or within 36 months from the date of start of construction of the said Building whichever is later with a grace period of 3 months, subject to force majeure events or Governmental action/inaction. If the completion of the said Building is delayed by reason slow down, strike or due to a dispute with the construction agency employed by the "DEVELOPER/LLP", lock out or departmental delay or civil commotion or by reason of war or enemy action or terrorist action or earthquake or any act of God or any other reason ...</i> (Emphasis supplied)
14.	Due date of possession	30.10.2017 (Calculated from the date of execution of buyer's agreement i.e., 30.07.2014, as the construction was commenced on 13.12.2013, which is prior to the buyer's agreement, plus grace period of 3 months being qualified and unconditional)
15.	Total Sale Consideration	Rs.58,01,507/- (page 24 of complaint)
17.	Amount paid by complainant	Rs.25,81,283/- (page 59 of complaint)
18.	Occupation certificate	Not obtained
19.	Offer of possession	Not offered
20.	Final Notice for payment	20.12.2021 (page 77 of reply)
21.	Cancellation Letter	14.09.2022 (page 59 of complaint)
22.	Amount refunded by Respondent	Rs.20,24,222/- through RTGS (page 82 of reply)

B. Facts of the complaint:

3. The complainant has made the following submissions: -
 - I. That the respondent gave advertisement in various leading newspapers about their forthcoming project named "83 Avenue" from Venetian LDF Projects LLP at sector 83, Gurgaon promising various advantages, like



world class infrastructure, amenities and timely completion of the project etc. relying on the promise, complainant applied for a commercial shop and paid Rs.10,00,000/- for a total sale consideration of Rs.58,01,507/- on 15.12.2012 as registration amount. The developer initially made an allotment dated 27.12.2013 for commercial unit no. G-98, super built-up area 467.110 sq. ft. situated at ground floor in the project namely "83 Avenue" in sector 83, revenue estate Village Sihi, Tehsil Manesar, District Gurugram, Haryana.

- II. That the space buyer agreement (SBA) was executed on 30.07.2014 and as per SBA, respondent had allotted unit bearing no. G-102, Ground floor measuring super area 467.11 sq. ft. to the complainant. That as per para no. 38 of the agreement, the respondent had agreed and committed to deliver the possession of the shop by 30.10.2017 in a total of 3 years + grace period of 3 months from the date of agreement. However, possession has not been offered till date after delaying by over 5 years.
- III. That the complainant continued to make payment as per construction linked plan and paid Rs.25,81,283/- by 02.06.2016. That the complainant has put all hard-earned money in project with hope of timely possession. That the complainant had physically visited the site on 28.06.2017 and was shocked to see no construction activities at site and project work was completely abandoned. There was no representative of respondent at site to respond to queries. On enquiring with CRM team of respondent, it came to notice that construction work has put on hold due to internal management dispute.
- IV. That the complainant received lately a letter on 09.03.2019 from Mr. Deepak Sharma, CRM Manager, VLPL projects finally acknowledging



long stalled site work due to changes in management/promoters and intimating commencement of work. As a result of this, buyers and financial institutions lost the confidence in viability of project and most of the financial institutions black listed the project. It was evident that respondent had no intention to complete the project and trying to extort money by false assurances. The respondent has no locus standi in demanding interest charges for period when project was stalled due to internal management issues and subsequently due to extended delays in completion. It is pertinent to mention here that the demands raised by the builders totally illegal and not as per buyer agreement.

- V. That on the ground of parity and equality the respondent also be subjected to pay the same rate of interest on the amount of Rs.25,81,283/- paid by the complainant from the committed date of possession till the shop is actually delivered to the complainant as delayed penalty. It is pertinent to mention here that respondent has not included delayed possession charges in space buyer agreement violating section 11(5) of RERA act and respondent can't escape from delayed penalty at the rate used for computing interest on delayed payments.
- VI. That on 20.7.2021, a mail was sent by the respondent intimating the due instalments of Unit no. G-102 and a demand was raised for Rs.27,11,691/-. The complainant sent reply to the said mail on 19.12.2021 seeking clarity and status of the project and request to update new address for correspondence.
- VII. That on 20.12.2021, the respondent again sent notice dated 20.12.2021 regarding non-payment of dues-final notice to the complainant

demanding an amount of Rs.40,73,642/- as outstanding dues including late payment charges and it was stated in the said letter that the same amount was to be paid latest by 30.12.2021 failing which the allotment shall be cancelled by the respondent.

- VIII. That the complainant wrote another email on same day 20.12.2021 to the respondent again in response to their mail dated 20.07.2021, requesting progress update and revised schedule of completion. complainant had also requested to take up with financial institutions and white list project and restore credibility of project. This would enable buyers to avail loan facility.
- IX. That the respondent was not sending any clarifications on progress of project. The complainant rewrote another letter dated 30.12.2021 to the respondent regarding pending issues and no clarity on possession of commercial unit G-102, with "83 Avenue" project in Gurgaon and again requested to share complete details as requested in the said letter dated 30.12.2021 in order to bring transparency with buyers and regain trust and confidence on project and in order to enable the complainant to make all legitimate payments. The complainant also wrote mail dated 30.12.2021 in continuation to her previous mail dated 20.12.2021 attaching pending issues for clarification.
- X. That the complainant again sent mail dated 29.01.2022 reminding the respondent for her several mails for clarifications as mentioned in the mail dated 29.01.2022 itself. Further, the complainant sent mail to respondent on 28.02.2022 seeking update on the queries raised on 20.12.2021, 30.12.2021, 22.01.2022.



- XI. That the complainant decided to make one more effort and visit respondent office in person after failed to receive any response to multiple letters to respondent and visited respondent on 07.09.2022 and met with Mr. Som Nath Munjal (promotor) and Ms. Renu (CRM Manager) around 04:00 p.m. at VLPL, second floor, SCO 320, Sector 29 market, Gurugram, Haryana. However, respondent kept demanding unreasonably computed payment in totality without any assurance or commitment for possession.
- XII. That instead of providing clarifications to the multiple queries and issues raised by complainant, the respondent unilaterally and arbitrarily opted to cancel the allotment of the complainant and sent letter dated 14.9.2022 taking false and frivolous pleas and illegally forfeited the amount of Rs.5,57,061/- of complainant and intimated to the complainant that the refund of Rs.20,24,222/- has been processed through RTGS/ NEFT.
- XIII. That the respondent has violated the terms of agreement with respect to cancellation also it is against the Section 11 (5) of RERA act. Builder has sent final notice on 20.12.2021 to the complainant without issuing any pre-reminders. The complainant sent letters before due date on 30.12.2021 seeking clarifications on revised date of possession as project was delayed by more than 5 years.
- XIV. That the complainant has been periodically sending notices to the respondent seeking update on construction and revised date of possession on various dates 19.12.2021, 20.12.2021, 30.12.2021, 29.01.2022 and 28.02.2022 (before final cancellation notice from respondent) but respondent did not pay any heed to the notices and



requests from complainant and no response was received from the respondent/builder in respect to the above communications made by the complainant. The complainant had no option other than be more cautious in making further payment due to long stalled of construction activities as lately acknowledged by builder in letter dated 09.03.2019 and uncertainty of possession. And absolutely no response to any letter and completely non-committal from respondent. The complainant has also sent repeated communication to the respondent on revised date of possession for making payment but all the requests of the complainant fell into the deaf ears of the respondent. It is further important to mention here that as per SBA, commercial project was of 18 stories building. However, whole plan is changed by the respondent/ builder without any communication to the complainant. The unjustified act and conduct of the respondent have caused a lot of physical harassment, mental agony and huge financial loss to the complainant.

- XV. That there is an inordinate delay on part of the respondent in delivering the possession in violation of the terms and conditions of the apartment buyer's agreement amounts to deficiency in the services offered by the respondent. That as per section 18 & 19 of the Act, the respondent is liable to pay interest to the allottee of apartment, building or project for a delay or failure in handing over of such possession as per the terms and agreement of the sale.

C. Relief sought by the complainant:

4. The complainant has sought following relief:
- Seeking quashing of "cancellation notice" and reinstate ownership until discharge of petition. multiple communications from complainant shows



willingness to make payment provided builder make commitment of possession.

- ii. Review of interest calculation and minimise interest calculated by builder and deduction made.
- iii. Award delay possession charges to petitioner for every month of delay at prevailing rate of interest.
- iv. Direction to consider indefinite delays in possession (60 plus months).

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/builder.

6. The respondent has contested the complaint by filing reply on the following grounds: -

- I. That the present complaint, filed by the complainant, is bundle of lies and hence liable to be dismissed as it is filed without any cause of action. That the complainant is estopped by her own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint.
- II. That the complainant herein, have failed to provide the correct/complete facts and the same are reproduced hereunder for proper adjudication of the present matter. That the complainant is raising false, frivolous, misleading and baseless allegations against the respondent with intent to make unlawful gains.
- III. That the complainant is in default of her obligations under the buyer's agreement and as such she have disentitled herself from claiming any relief under the said agreement.



- IV. That the complainant has got no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the contractual terms and conditions between the parties as shall be evident from the submissions made in the following paragraphs of the present reply.
- V. That the complainant herein, upon learning about the real estate project launched by the respondent known under the name and style of "83 Avenue" (herein referred to as 'Project') situated at Sector 83, Village Sihi, Gurgaon, approached the respondent to know the details of the project. The complainant further inquired about the specification and veracity of the project, upon gaining of which, the complainant was completely and absolutely satisfied with every proposal deemed necessary for the development of the project.
- VI. That after having keen interest in the making investment in the project being constructed by the respondent, the complainant desired to book a unit in the project. It is important to note that the intention of the complainant, from the very beginning was to raise high returns from her investment. In lieu of the same, the complainant applied for the booking of a retail unit no. G-98, ground floor with the tentative super area of 467.110 sq. ft. ("old unit") vide application form dated 10.05.2013. It is pertinent to note that the complainant was aware of each and every term of the aforesaid application and only after being fully satisfied and categorically agreeing to all the terms and conditions of the application form, signed the application form without any protest any demur.



- VII. That clause 7 of the application form specifically sets out that the unit being allotted to the complainant is tentative and subject to change at any time before execution of sale deed. That it needs to be categorically noted that the said allotment letter mentioned that the allotment has been "provisionally identified". That thereafter, the Unit of the complainant underwent a change from G-98 to retail unit no. G-102 on ground floor admeasuring 467.110 super area ("Unit"), as it stands on date. That the said change in number of the said unit has been readily accepted by the complainant, who had willingly, voluntarily and freely assented to such allotment.
- VIII. That thereafter, the space buyer's agreement with respect to the unit No. G-102 was voluntarily executed between the parties and duly attested on 30.07.2014 ("Agreement"). That the relationship between the parties is contractual in nature and is governed by the agreement, the contents of which were willingly, voluntarily and categorically accepted between the parties. The rights and obligations of the parties flow directly from the agreement. At the outset, it must be noted that the complainant willingly consciously and voluntarily entered into all and every agreement after reading and understanding the contents thereof to her full satisfaction. That as per the agreement, the sale price of the said unit is Rs.58,01,507/- excluding the charges against tax and other charges as per clause 2 of the agreement.
- IX. That as per clause 38 of the agreement, the estimated and contemplated due date of offer of possession was 36 months of signing of this agreement (30.07.2014) or within 36 months from the date of start of construction of the said Building (30.01.2014) whichever is



later with a grace period of 3 months subject to other terms and conditions of the agreement. Accordingly, the proposed and estimated date comes out to be 30.10.2017 as per clause 38 of the agreement. However, the same was not absolute and was subject to force majeure events, governmental action/inaction and reasons beyond the control of the developer.

X. Delay in project due to reason beyond the control of the respondent:

- That the respondent was adversely affected by various construction bans, lack of availability of building material, regulation of the construction and development activities by the judicial authorities including NGT in NCR on account of the environmental conditions, restrictions on usage of ground water by the High Court of Punjab & Haryana, demonetization, adverse effects of covid etc. and other force majeure circumstances. It needs to be categorically noted that the construction activities were stopped on various occasions during the tenure of the construction of the project.
- In past few years, construction activities have also been hit by repeated bans by the Courts/Tribunals/Authorities to curb pollution in Delhi-NCR Region. In the recent past the Environmental Pollution (Prevention and Control) Authority, NCR (EPCA) vide its notification bearing no. EPCA-R/2019/L-49 dated 25.10.2019 banned construction activity in NCR during night hours (6 pm to 6 am) from 26.10.2019 to 30.10.2019 which was later on converted to complete ban from 1.11.2019 to 05.11.2019 by EPCA vide its notification bearing no. R/2019/L-53 dated 01.11.2019.
- The Hon'ble Supreme Court of India vide its order dated 04.11.2019 passed in writ petition bearing no. 13029/1985 titled as "MC Mehta vs. Union of India" completely banned all construction activities in Delhi-NCR which restriction was partly modified vide order dated 09.12.2019 and



was completely lifted by the Hon'ble Supreme Court vide its order dated 14.02.2020. These bans forced the migrant labourers to return to their native towns/states/villages creating an acute shortage of labourers in the NCR Region.

- Even before the normalcy could resume, the world was hit by the Covid-19 pandemic. Therefore, it is safely concluded that the said delay in the seamless execution of the Project was due to genuine force majeure circumstances and the said period shall not be added while computing the delay. That the current covid-19 pandemic resulted in serious challenges to the project with no available labourers, contractors etc. for the construction of the Project. The Ministry of Home Affairs, GOI vide notification dated March 24, 2020 bearing no. 40-3/2020-DM-I(A) recognised that India was threatened with the spread of Covid-19 pandemic and ordered a completed lockdown in the entire country for an initial period of 21 days which started on March 25, 2020. By virtue of various subsequent notifications, the Ministry of Home Affairs, GOI further extended the lockdown from time to time and till date the same continues in some or the other form to curb the pandemic. Various State Governments, including the Government of Haryana have also enforced various strict measures to prevent the pandemic including imposing curfew, lockdown, stopping all commercial activities, stopping all construction activities. Pursuant to the issuance of advisory by the GOI vide office memorandum dated May 13, 2020 regarding extension of registrations of real estate projects under the provisions of the RERA Act, 2016 due to "Force Majeure", the Haryana Real Estate Regulatory Authority has also extended the registration and completion date by 6 months for all real estate projects whose registration or completion date expired and or was supposed to expire on or after March 25, 2020.



- Despite, after above stated obstructions, the nation was yet again hit by the second wave of Covid-19 pandemic and again all the activities in the real estate sector were forced to stop. It is pertinent to mention, that considering the wide spread of Covid-19, firstly night curfew was imposed followed by weekend curfew and then complete curfew. That during the period from 12.04.2021 to 24.07.2021, each and every activity including the construction activity was banned in the State. This has been followed by the recent wave brought by the new covid variant in the country.
- That due to ban levied by the Competent Authorities, the migrant labourers were forced to return to their native towns/states/villages creating an acute shortage of labourers in the NCR Region. Despite, after lifting of ban by the Hon'ble Court the construction activity could not resume at full throttle due to such acute shortage.
- That the respondent is committed to complete the development of the project and deliver the units of the allottees as per the terms and conditions of the agreement. It is pertinent to apprise to the Hon'ble Authority that the developmental work of the said project was also slightly decelerated due to the reasons beyond the control of the respondent company due to the impact of Good and Services Act, 2017 [hereinafter referred to as '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 also had to undergo huge obstacle due to effect of demonetization and implementation of the GST.

XI. Non-payment of dues as per agreed payment schedule:

- In addition to the above, the respondent was severely affected due the delay caused by the allottees of the project in making payments/instalments on time. Due to the delay caused by the allottees,



the respondent had to arrange funds itself, which added to the delay. That the complainant has always delayed in making the payments against the unit, which has gravely, substantially and directly affected the development of the unit and the project as a whole. That it is important to note that the complainant have not made payments since June, 2016 and are still standing in default of demands raised. That the complainant has paid Rs. 25,81,283/- against the total sale consideration of the unit and stands in default of demand of the remaining payments, as is evident from the payment details of the unit.

- XII. That all these circumstances come within the purview of the force majeure circumstances beyond the control of the respondent developer and hence allow extension of time for delivery of possession to the respondent as per clause 38, reiterated above. Moreover, the complainant in the said agreement so signed and acknowledged agreed that he/she shall continue with this agreement and shall not obtain any specific performance in case the possession is delayed due to any government rules, orders or notification.
- XIII. That several allottees, including the complainant, have defaulted in timely remittance of payment of instalments which was an essential, crucial and an indispensable requirement for conceptualization and development of the project in question. Furthermore, when the proposed allottees default in their payments as per schedule agreed upon, the failure has a cascading effect on the operations and the cost for proper execution of the project increases exponentially whereas enormous business losses befall upon the respondent. The respondent, despite default of several allottees, has diligently and earnestly

pursued the development of the project in question and has constructed the project in question as expeditiously as possible. Therefore, there is no default or lapse on the part of the respondent and there is no equity in favour of the complainant. 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.

- XIV. That consequently, upon the continuing default of the complainant by not remitting the instalments, the said unit was terminated by the respondent on 14.09.2022. That the said termination was intimated to the complainant vide notice for cancellation dated 14.09.2022 thereby forfeiting the earnest money as per clause 23 of the buyer's agreement. Hence, the said unit was terminated leaving the complainant with no right, title, interest or lien over the said unit. That the complainant was intimated about the balance refundable amount against the said unit.
- XV. That furthermore, it is imperative to note that the complainant failed to abide by the terms and conditions of the agreement. That the complainant is a defaulting party who has failed to oblige the commitment to pay the instalments within the stipulated time. It is submitted that the respondent is suffering from double whammy. On one hand, the complainant failed to clear the outstanding dues pending against the said unit and on the other hand, the complainant has initiated the present complaint on sham and bogus facts against the respondent. That multiple requests were made to the complainant to



clear her outstanding dues but all requests of the respondent fell on deaf ears of the complainant.

XVI. That the complainant failed to perform her part of obligations which resulted in termination of allotment of the said unit. That the respondent had to move from pillar to post in order to get the instalments but the same was delayed on one pretext or the other despite issuance of multiple demand letters. That the complainant with malafide intention have been deliberately procrastinating from her responsibility and liability with the intent of evading the consequences as per the agreement. That without prejudice to the above-mentioned, That the total sale price of the Unit was Rs.58,01,507/- excluding the charges against tax and other charges. That it is submitted that the complainant is in default of Rs.32,20,224/- along with the delayed payment charges outstanding at her end which is one of the reasons for termination of the said unit. The allegations put forth by the complainant qua the respondent are absolutely illogical, irrational and irreconcilable in the facts and circumstances of the case.

XVII. That it must also be noted that the respondent had the right to suspend the construction of the project upon happening of circumstances beyond the control of the company, as per clause 38, reiterated above, however, despite all the hardships faced by the respondent, it did not suspend the construction and managed to keep the project afloat through all the adversities.

XVIII. That the present complaint is a frivolous attempt of the complainant to extract monies out of the respondent. That there exists no cause of action for the complainant to file the present complaint. That the

respondent has made good on all parts of its responsibilities and obligations as per the law, rules and regulations. That for the reason of non-existence of an existing cause of action, this complaint is liable to be dismissed on this ground alone.

- XIX. That, it is evident that the entire case of the complainant is nothing but a web of lies, false and frivolous allegations made against the respondent. That the complainant has not approached the Hon'ble Authority with clean hands and have herself violated the agreement and the section 19(6) and 19(7) of the Act and hence the present complaint deserves to be dismissed with heavy costs. That it is brought to the knowledge of the Hon'ble Authority that the complainant is guilty of placing untrue facts and are attempting to hide the true colour of intention of the complainant.
- XX. That the complainant herein, have suppressed the above stated facts and have raised this complaint under reply upon baseless, vague, wrong grounds and has misled this Hon'ble Authority, for the reasons stated above. That none of the reliefs as prayed for by the complainant are sustainable before this Hon'ble Authority and in the interest of justice.
- XXI. That the complainant with the wrongful intention is trying to wriggle out from her liabilities. Further, the complainant is liable to adhere to the terms and conditions of the agreement and as per the prevailing law. Therefore, the complainant is not entitled for any interest whatsoever.
- XXII. That the respondent has already refunded the money of the complainant after the termination of the unit, the respondent has

refunded the money on 14.09.2022 vide RTGS after deduction of the earnest monty and statutory dues as per clause 23 and 24 of the agreement executed between the parties.

XXIII. All the reliefs claimed by the complainant is false and frivolous and hence denied, and therefore the complainant is not entitled for any such reliefs.

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

E. Jurisdiction of the authority

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

8. 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 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

9. 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.

10. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the objections raised by the respondent.

F.I. Objection regarding the delay in payment

11. The objection raised by the respondent regarding delay in payment by many customers is totally invalid because the allottees have already paid an amount of Rs.25,81,283/- against the sale consideration of Rs.58,01,507/- i.e., more than 45% of the total amount and the balance amount is payable on demand by the respondent/developer. The fact cannot be ignored that there might be certain group of allottees were defaulted in making payments. But upon perusal of documents on record, it is observed that no default has been made by the complainants in the instant case. Section 19(6) of Act lays down an obligation on the allottee(s) to make timely payments towards consideration of allotted unit. As per documents available on record, the complainant has paid all the instalments as per payment plan duly agreed upon by them while signing the agreement. The respondent has not gone through the facts of the complaint carefully. Moreover, the interest of all the allottees cannot put

on stake on account of non-payment of due instalments by a group of allottees. Hence, the plea advanced by the respondent is rejected.

F. II Objection regarding delay in project due to force majeure circumstances over and above grace period of 3 months.: -

12. The respondent/promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as NGT in NCR on account of the environmental conditions, restrictions on usage of ground water by High court of Punjab and Haryana, demonetization, GST, adverse effects of covid etc. and others force majeure circumstances and non-payment of instalment by different allottees of the project but all the pleas advanced in this regard are devoid of merit. The space buyer's agreement was executed between the parties on 30.07.2014 and the events taking place such as orders of NGT in NCR on account of the environmental conditions, restrictions on usage of ground water by High court of Punjab and Haryana, demonetization, GST, adverse effects of covid etc. and others force majeure circumstances do not have any impact on the project being developed by the respondent. Though some allottees may not be regular in paying the amount due but the interest of all the stakeholders concerned in the said project cannot be put on hold due to fault of on hold due to fault of some of the allottees. Thus, the promoter/respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrongs.

G. Findings on the relief sought by the complainant.

- G.I Seeking quashing of "cancellation notice" and reinstate ownership until discharge of petition. multiple communications from complainant**

shows willingness to make payment provided builder make commitment of possession.

G.II Review of interest calculation and minimise interest calculated by builder and deduction made.

G.III Award delay possession charges to petitioner for every month of delay at prevailing rate of interest.

G.IV Direction to consider indefinite delays in possession (60 plus months).

13. 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.
14. In the present complaint, the complainant intends to continue with the project and is seeking setting aside of cancellation letter dated 14.09.2022 and to restore the originally allotted unit.
15. In the present case, vide letter of allotment dated 27.12.2013, the complainant was tentatively allotted a unit bearing no. G-0098 at ground floor admeasuring area of 467.110 sq. ft. However, the buyer's agreement was executed on 30.07.2014 inter-se parties for the unit bearing no. G-102 at ground floor admeasuring area of 467.110 sq. ft. for total sale consideration of Rs.58,01,507/- against which the complainant-allottee has paid an amount of Rs.25,81,283/- which constitutes around 45% of the sale consideration. The complainant has opted for construction linked payment plan. The respondent has raised various demands and reminder letters for making payment of outstanding dues but the complainant has not made the payment as per the demands and reminders and has raised various queries through mails which respondent has failed to answer. Thereafter, the respondent has cancelled the unit of the complainant vide cancellation letter dated 14.09.2022 and refunded the amount of Rs.20,24,222/- through RTGS on 14.09.2022 as per the buyer's agreement.

Now the question arises before the Authority whether the cancellation is valid or not, in the eyes of law?

16. On the consideration of documents available on the record and submissions made by both the parties, the authority observes that the project was long stalled and construction was again commenced by the respondent in the year of 2019 and the same was informed by the respondent to the complainant vide letter dated 09.03.2019. Relevant para of the letter is reproduced as hereunder:

*"With great pleasure and joy we bring to your attention **that our long stalled site work has already commenced and is picking up pace.** As we write this to you, we have a team of about 90 people working on the site. While some of our investors already are updated and the information is with them, we wanted to share this information and update with all our customers to keep you abreast of all that has happened over time.*

VLPL had two constituent partners' namely Venetian developers and ventures private limited and LDF INFRASTRUCTURES PRIVATE Limited. While LDF was merely a financial partner of 50 percent share without real estate experience, all project execution was managed and run by a company called V SQAURE development management company which was owned by Sh. Vivek Seth and Sh. Vijesh Goel who are also shareholders (thru their company) and directors of Venetian developer and Ventures private limited.

*V Square was not able to complete the project due to adverse market conditions, poor market sentiments and other policies, more money was required to execute the project and **Venetian partners were not able to raise money due to financial constraints. Our efforts to raise money from financial institutions alongside Venetian failed completely and the project was stalled.** LDF infrastructures did provide financial assistance from time to time but it wasn't sufficient to execute the project. Understanding the gravity of situation and to safeguard the interest and hard-earned money of Investors and our investment in the project, we took initiative to raise money through our friends and family against the balance area of the project and complete it anyhow."*

17. The respondent has raised various demands, reminders vide letter dated 12.04.2019, 19.07.2021, 02.09.2021, 01.10.2021, 03.11.2021 and thereafter, issued a notice for cancellation vide letter dated 14.09.2022

due to non-payment of outstanding dues and refunded an amount of Rs.20,24,222/- through RTGS after deduction of the earnest money and statutory dues as per clause 23 and 24 of the agreement executed between the parties.

18. The authority observes that the demands raised by the respondent were not as per the agreed payment plan. It is observed that the respondent has raised demand as per payment plan till the milestone "On casting of 9th floor slab". Thereafter, instead of raising demand for the next milestone on account of 'On casting of 12th floor slab', the respondent has raised the demand "on completion of super structure and on completion of services". Thus, it is evident from the above that the respondent has not raised the demands as per the agreed payment plan. The agreed payment plan is reproduced below for ready reference: -

Annexure-III
Schedule of payment

Plan-A	Instalment Payment Plan
Construction Schedule	All % payments are inclusive of BSP
At the time of booking	20% of BSP
On start of excavation	10% of BSP
On start of casting of foundation	10% of BSP
On casting of 2 nd basement floor slab	5% of BSP + 25% EDC & IDC
On casting of 1 st basement floor slab	5% of BSP + 25% EDC & IDC
On casting of ground floor slab	5% of BSP + 25% EDC & IDC
On casting of 3 rd floor slab	5% of BSP + 25% EDC & IDC
On casting of 6 th floor slab	5% of BSP
On casting of 9 th floor slab	5% of BSP + 25% car parking + 25 % of PLC charges
On casting of 12 th floor slab	5% of BSP + 25% car parking + 25 % of PLC charges
On casting of 15 th floor slab	5% of BSP + 25% car parking + 25 % of PLC charges
On casting of 18 th floor slab	5% of BSP + 25% car parking + 25 % of PLC charges
On installation of electrical/ plumbing	5% of BSP

On completion of internal plaster work	5% of BSP
At the time of offer of possession	5% of BSP + IFMS + Power backup + IFCRF + Registration charges + other charges as applicable

Moreover, on receipt of such demands, the complainant had raised various queries, asking the respondent to clarify the date of possession as due date of possession has been already lapsed, the status of the project and issue a fresh statement of account after adjustment of delay possession charges and delay payment charges, through various emails dated 19.12.2021, 20.12.2021, 30.12.2021, 29.01.2022 and 28.02.2022, but the respondent failed to reply the same. No response from the respondent call for an inference against the respondent.

19. Also, as per section 19 (2) of the Act, it is the right of the allottee to know the stage wise completion of the construction of the project by the promoter. The relevant para of section 19(2) of the Act is reproduced hereunder: -

"19 (2) The allottee shall be entitled to know stage-wise time schedule of completion of the project, including the provisions for water, sanitation, electricity and other amenities and services as agreed to between the promoter and the allottee in accordance with the terms and conditions of the agreement for sale."

20. Further, the authority observes that as per the quarterly progress report (QPR) no. 03 of 2019 for the period of 01.07.2019 to 30.09.2019 filed by the respondent-promoter before the authority, , as per the CA certificate uploaded on the web-site, the respondent has only completed 36.58% of the construction of the project. However, till 30.09.2019 the respondent has already raised the demands to the complainant, which constitute 65% of the sale consideration.

21. Also, as per clause 9.2 para (i) of Model Agreement for sale as prescribed in the rules, if the promoter defaulted in providing the possession or failed to complete the project within the stipulated time period, the allottee is entitled to stop making any further payment to the promoter, until the promoter corrects the situation by completing the construction. Relevant clause 9.2 (i) is reproduced hereunder: -

“9.2 (i) Stop making further payments to promoter as demanded by the promoter. if the allottee stops making payments, the promoter shall correct the situation by completing the construction/development milestones and only thereafter the allottee be required to make the next payment without any interest for the period of such delay; or”

22. In view of the reasons quoted above and documents placed on record, the authority is of the view that the cancellation of the allotment vide letter dated 14.09.2022 is not valid in the eyes of law and is hereby set aside and to restore the allotted unit of the complainant within 30 days from the date of this order.
23. **Due date of handing over possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within 36 months from the date of signing the agreement or date of start of construction whichever is later and has sought further extension of a period of 3 months (after the expiry of the said 36 months) subject to force majeure events or governmental action /inaction. The due date of possession was in the year 2017 and any situation or circumstances which could have a reason for not carrying out the construction activities in the project prior to this date due are allowing to be taken into consideration. While considering whether the situations or circumstances contested by respondent in its reply were in fact beyond the control of the respondent and hence, the respondent is entitled to force majeure, the authority takes

into consideration all the pleas taken by the respondent to plead the force majeure condition happened before 30.07.2017. Accordingly, authority allows 3 months of grace period and therefore, the due date for handing over of possession including grace period of 3 months comes out to be 30.10.2017.

24. During the proceedings dated 15.02.2024, the counsel for the respondent had stated that the application for grant of occupation certificate has been made to competent authority. However, it is observed that the occupation certificate of the project has not been obtained by the respondent from the competent authority till date.
25. 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 her in case of delayed possession charges.

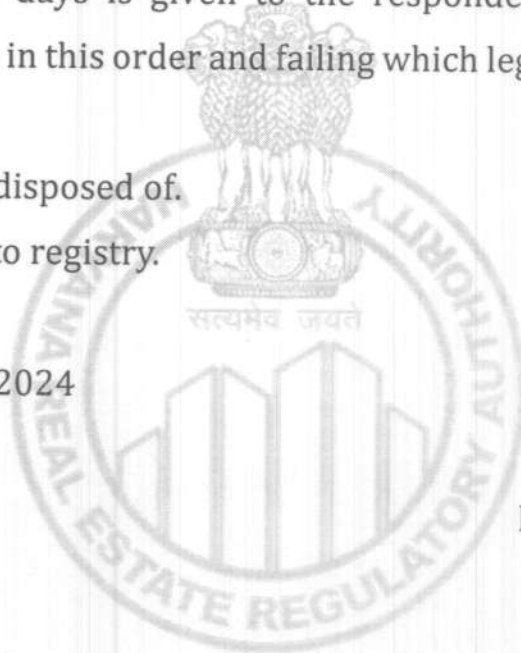
H. Directions of the authority

26. 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 cancellation letter dated 14.09.2022 is not valid and is bad in eyes of law and is hereby set aside, and the respondent-promoter is directed to restore the allotted unit of the complainant within 30 days from the date of this order.
 - ii. The respondent is directed to issue an updated statement of account as per the agreed payment plan. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the

prescribed rate i.e., 10.85% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

- iii. The respondent-promoter shall not charge anything from the complainant which is not the part of buyer's agreement.
 - iv. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
27. Complaint stands disposed of.
28. File be consigned to registry.

Dated:15.02.2024



v.1-3
(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM