

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

**Complaint no.** : 5701 of 2023  
**Date of filing complaint:** 18.12.2023  
**First date of hearing** : 28.03.2024  
**Date of decision** : 25.07.2024

Sunil Kaushik

**Resident at:** H.no. 1132, Urban Estate-II,  
Hisar, Haryana-125001.

**Complainant**

Versus

M/s Pivotal Infrastructure Pvt. Ltd.

**Regd. Office at:** Unit no. 604, 6<sup>th</sup> Floor, DLF  
Galleria, DLF City Phase 4, Gurgaon,  
Haryana.

**Respondent**

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

**APPEARANCE:**

Sh. Garv Malhotra (Advocate)

Sh. Siddharth Sejwal (AR)

**Complainant  
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 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 allottees as per the agreement for sale executed *inter se*.

**A. Unit and project related details**

A

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

S.No.	Particulars	Details
1.	Name and location of the project	"Ridhi Sidhi" at sector 99, Gurgaon, Haryana
2.	Nature of the project	Affordable Group housing
3.	Project area	6.19375 acres
4.	DTCP license no.	86 of 2014 dated 09.08.2014 Valid up to 30.06.2023
5.	RERA Registered/ not registered	Registered vide no. 236 of 2017 dated 19.09.2017 valid upto 08.08.2019
6.	Registration extension vide no.	Harera/GGM/REP/RC/236/2017/EXT/177/2019 dated 30.12.2019 Valid upto 31.08.2020
7.	Unit no.	0607, 6th floor, Tower-T6 (As per page no. 31 of the complaint)
8.	Unit area admeasuring	487 sq. ft. (Carpet area) (As per page no. 31 of the complaint)
9.	Date of allotment	05.09.2015 (As per page no. 22 of the complaint)
10.	Date of builder buyer agreement	23.10.2015 (As per page no. 30 of the complaint)
11.	Date of building plan approval	17.10.2014 (As per page no. 19 of the reply)
12.	Environmental clearance dated	22.01.2016 (As per page no. 25 of the reply)
13.	Possession clause	<b>8.1 EXPECTED TIME FOR HANDING OVER POSSESSION</b> <i>"Except where any delay is caused on account of reasons expressly provided for under this Agreement and other situations beyond the reasonable control of the Company and subject to the Company having obtained the occupation/completion certificate from the competent authority(ies), the Company shall endeavour to complete the construction and handover the possession of the said Apartment within a period of 4 years from the date of</i>



		<p><i>grant of sanction of building plans for the Project or the date of receipt of all the environmental clearances necessary for the completion of the construction and development of the Project, whichever is later, subject to timely payment by the Allottee of all the amounts payable under this Agreement and performance by the Allottee of all other obligations hereunder."</i></p> <p><b>(Emphasis Supplied)</b>                  (As per page no. 40 of the complaint)</p>
14.	Due date of possession	22.01.2020 [Note* Due date of possession calculated from the date of environmental clearance dated 22.01.2016, being later]
15.	Total sale consideration	Rs.19,98,000/- (As per BBA at page no. 33 of the complaint)
16.	Amount paid by the complainant	Rs.21,44,386/- (As alleged by the complainant on page no. 11 of the complaint)
17.	Application for OC	22.12.2022 (As per page no. 38 of complaint)
18.	Occupation certificate	Not obtained
19.	Offer of fit out possession	24.06.2023 (As per page no. 66 of complaint)
20.	Offer of possession	Not offered

**B. Facts of the complaint:**

3. The complainant has made the following submissions in the complaint:

- I. That the respondent is a builder/developer and is a company incorporated under the Companies Act, 1956 having its registered office at 309, 3<sup>rd</sup> Floor, JMD Pacific Square, Sector-15, Part II, Gurgaon-122001, Haryana. That the respondent launched a new project called "Riddhi Siddhi" situated at, Village Kherki Majra Dhankot, Sector-99, Gurgaon now Gurugram, Haryana.
- II. That the complainant had vide application dated 05.11.2014, applied to book a unit in the respondent builder's project. That along with the

- application, the complainant paid an amount of Rs.1,00,000/- in favor of the respondent for the said booking, which was duly acknowledged by the respondent vide its acknowledgement dated 05.11.2014.
- III. That further, on 05.09.2015, the complainant received an allotment of a residential apartment in the proposed affordable group housing colony "Riddhi Siddhi" from the respondent company, in reference to the application No. 1439 dated 05.11.2014 confirming the complainant, of the booking of their unit in the respondent builder's abovementioned project. That the complainant was allotted a unit in the respondents abovementioned project bearing apartment no. T6-0607, having a carpet area of 487 sq. fts. on 6<sup>th</sup> floor in tower/building no. T6 as well as for the allotment of one two-wheeler parking site, admeasuring approximately 0.8m\*2.5m.
- IV. That the complainant and the respondent entered into a builder buyer agreement on 23.10.2015, wherein the complainant had booked a residential apartment bearing, apartment no. 607, located on the 6<sup>th</sup> floor, situated in the tower/block no. 6, having carpet area of 487 sq. fts. That the total sale consideration is Rs.19,98,000/-.
- V. That as per the clause 8.1 of the builder buyer agreement dated 23.10.2015, "*.... the Company shall endeavor to complete the construction and handover the possession of the said Apartment within a period of 4 years from the date of grant of sanction of building plans for the Project or the date of receipt of all the environmental clearances necessary for the completion of the construction and development of the Project, whichever is later, ....*". It is humbly submitted that as held in catena of judgments that the builder buyer agreements are standard contracts and one-sided agreements, whereby the complainant is made to sign on the dotted lines. Herein also, the respondent builder has arbitrarily kept the due date of



possession vague which is illegal, *malafide* as no person can take benefit of their own wrong, which is a settled principal of law. Therefore, the respondent builder cannot choose the due date of possession to his own benefit.

- VI. That the complainant on various occasions made payments in favor of the respondent vide its cheques dated 08.09.2015, 03.03.2016, 31.08.2016 transferring amounts of Rs.4,16,982/-, Rs.2,58,803/- & Rs.2,49,750/- for the consideration of the said unit. That further the complainant on 04.03.2017, 01.09.2017, 27.02.2018, 21.08.2018, and on 30.04.2019 has also deposited through RTGS/NEFT of Rs.2,49,750/-, Rs.2,79,720/-, Rs.2,69,730/-, Rs.2,69,730/- and Rs.49,921 /- in favor of the respondent. That the complainant in total paid an amount of Rs.21,44,386/- in favor of the respondent for the said unit till date. That all the receipts of the same was send by the respondent.
- VII. That vide its letter dated 25.06.2023 an illegal, arbitrary and malafide for demand of labor cess, legal charge, meter charge, upgradation electric charges, vat payable etc. was send by the respondent to the complainant followed by a Notice for offer of fit out Possession dated 24.06.2023 was sent by the respondent. An arbitrary, illegal, malafide intimation of possession, without having the occupation certificate of the project.
- VIII. That even after passing a period of near about 8 years from the date of booking. The respondent issued a formal demand of Rs.1,17,925/- on 25.06.2023. It is pertinent to mention here that there is no delay penalty is shown by the builder in account of later offering of possession.
- IX. That the respondent builder has also levied arbitrary charges of labor cess of Rs.6427/-, electricity and energy charges without any clear authority and legal sanction for the same and the same should be reimbursed with interest and waived off.

- X. That the respondent has failed to develop the project and is misusing the unilateral and one-sided terms of the agreement to sell to further harass the complainant-petitioner. Therefore, in terms of RERA, the complainant-petitioner is entitled to same rate of interest for delay period in handing over of the physical possession of the apartment as was stipulated to be charged by respondent.
- XI. That the respondent unlawfully grabs huge profits by cheating and harassing innocent customers after a handsome amount has been deposited by them to the respondent. This is unfair trade practice and deficiency in services on part of the respondent. That the respondent has failed to abide by the contractual terms stipulated in the buyer's agreement and they are in breach. The cause of action to file the complaint is continuing as the respondent has failed to deliver possession of developed residential flat.
- XII. That since the respondent could not develop the project in time and handover physical possession of the residential apartment with in time as stipulated in apartment buyer agreement i.e. upto 23.10.2019, thus the complainant-petitioner is entitled for delay possession interest as per rule 15 of RERA Rules, 2017 i.e. SBI MCLR + 2% w.e.f. 23rd Oct 2019 to actual physical possession of the residential apartment and directed the respondent to handover the possession of said apartment as soon as possible.
- XIII. That the complainant is still ready to take the possession of the said unit in case the respondent decides to handover the possession of the said unit. That it is humbly prayed before this Authority that the amount payable by the respondent to the complainant in form of the delayed possession interest may kindly be given.



- XIV. That the complainant has complied with all the terms and conditions of the various documents executed but the respondent has failed to meet up with their part of the contractual obligations and thus are liable for DPC and interest for every month of delay at prevailing rate of interest from the due date of possession till valid offer of possession and physical possession. But till date no amount has been paid back to the complainant and the respondent is enjoying the hard-earned money of the complainant for past more than 4 years approximately.
- XV. That it is pertinent to mention here that as respondent has not registered its project, with the concerned authority within the stipulated time period prescribed under the Central Act. Therefore, under Section 59 of Real Estate (Regulation and Development) Act, 2016, for Non-compliance with the said Act and for such violation, penalty must be imposed on respondent.
- XVI. That that the complainant has suffered great losses in terms of loss of rental income, opportunity to own and enjoy a property in Gurugram, as majority of their life's hard-earned money is stuck in this project. The respondent is liable to compensate the complainant for its above acts and deeds causing loss of time, opportunity, and resources of the complainant due to the malpractices of the respondents, the complainants suffered greatly on account of mental & physical agony, harassment and litigation charges. Thus, due to such hardship faced by the complainants by the act and misconduct of the respondents, the complainant is also reserving their rights to be adequately compensated by the learned Adjudicating officer.

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

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

- i. Interest as delayed possession charges on the total amount paid i.e., Rs.21,44,386/- by the complainant. Kindly allow delay possession charges interest for every month of delay at prevailing rate of interest from the due date of possession till actual handing over of complete and valid physical possession after occupation certificate.
  - ii. To direct the respondent to provide benefit of VAT rebate as well as GST Input Tax Credit as applicable to the complainant along with interest.
  - iii. To waive off the illegal and arbitrary interest charged by the respondent on the complainant.
  - iv. To direct the respondent to reimburse litigation cost of Rs.1,50,000/- to the complainant.
  - v. Any other relief as the Hon'ble Authority may deem fit.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent:**

6. The respondent has contested the complaint on the following grounds:
- a. That at the very outset it is submitted that the present complaint is not maintainable or tenable in the eyes of law. The complainant has misdirected themselves in filing the above captioned complaint before the Authority as the subject matter of the claim does not fall within the jurisdiction of the Authority.
  - b. That the respondent was granted a license bearing no. 86 of 2014 dated 09.08.2014 for the development of an affordable group housing residential colony on the land admeasuring area of 6.19375 acres situated in the revenue state of village Kherki-Marja Dhankot, Sector-99, Gurugram. The respondent thereafter, obtained all the relevant approvals



- and sanctions to commence the construction of the project. The respondent obtained the approvals of the building plans on 17.10.2014 and also obtained the environmental clearance on 22.01.2016.
- c. That it is clearly evident from the aforesaid approvals granted by the various authorities, the respondent was entitled to complete and build the project till 22.01.2020. However, due to the outbreak of the pandemic Covid-19 in March, 2020, a national lockdown was imposed as a result of which all the construction works were severely hampered. Keeping in view of the difficulties in completing the project by real estate developers, the Hon'ble Authority granted 6 months extension to all the under-construction projects vide order dated 26.05.2020. Thereafter due to the second covid-19 wave from January to May 2021 once again the construction activities came to a standstill. The pandemic led to severe shortage of labour which resulted in the delay in completing the construction of the project for which the time of 6 months granted by the Hon'ble Authority was not sufficient as the effect of labour shortage continued well beyond for more than 12 months after the covid-19 lockdown. Furthermore, the pandemic lockdown caused stagnation and sluggishness in the real estate sector and had put the respondent in a financial crunch, which was beyond the control of the respondent.
- d. That the construction of the project had been stopped/obstructed due to the stoppage of construction activities several times during this period with effect from 2016 as a result of the various orders and directions passed by Hon'ble National Green Tribunal, Environment Pollution (Control and Prevention) Authority, National Capital Region, Haryana State Pollution Control Board, Panchkula and various other authorities from time to time. The stoppage of construction activities abruptly had led to slowing down of the construction activities for months which also

- contributed in the delay in completing the project within the specified time period.
- e. That the delivery of the flat by the respondent within the agreed period of 4 years from the date of grant of building approvals or from the date of grant of environmental clearance whichever is later, was incumbent upon the complainants making timely payments. The complainants, in the present matter, have failed to make timely payments and there were substantial delays in making the payments of the due instalments as is evident from the demand letter.
- f. That the present project is an affordable group housing project being developed in accordance with the provision of the Affordable Housing Policy, 2013. The allotment price of the unit was fixed by the Government of Haryana and in terms of the policy, the respondent was paid the allotment price in instalments. Though, the allotment price was fixed by the Government of Haryana in the year 2013 but the same was not revised till date. Although the construction cost has increased the manifolds but the Government of Haryana had failed to increase the allotment price. The Government of Haryana had failed to take into account the increase in the construction cost since the policy in the year 2013. If by conservative estimates the construction cost is deemed to have increased by 10% every year then till date the construction costs have got doubled since the date of promulgation of Affordable Housing Policy, 2013. The license for the project was granted on 11.08.2014 and the respondent was permitted to sell the units at the allotment price of Rs.4000/- per sq. ft., the project is being constructed by the respondent and is near completion. The photographs of the project are attached herein which clearly proves that the project is ready to be handed over and the formalities of obtaining occupation certificate remains pending.



The respondent has applied for grant of occupation certificate vide application dated 22.12.2022 and the same is expected soon.

- g. That the project Riddhi Siddhi, Sector-99, Gurugram is an affordable group housing project being developed in accordance with the provisions of the Affordable Housing Policy, 2013, wherein the Government of Haryana has set a razor thin margin to make housing available for all. Thus, the grant of interest at the prescribed rate as per Rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 as applicable to other normal group housing real estate projects is wholly unreasonable and unjust, will impose unnecessary financial burden on the respondent and it shall have a cascading effect in the development and construction works of the project and in obtaining all other relevant approvals.
- h. That since the said project is located at a prime location near the Dwarka Expressway, Gurugram and there is huge premium in the open market on the flats situated in said project which would compensate the allottees of the project in more than adequate manner including any compensation for the delay in delivery of the project. This is further to note here that the respondent is not seeking any enhancement of price or payment other than what has been prescribed under the Affordable Housing Policy, 2013.
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 submissions made by the parties.

**E. Jurisdiction of the authority:**

8. The respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The objection of the

respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E.I Territorial jurisdiction**

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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**

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.*

9. 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 objections raised by the respondent:**

**F.I Objection regarding delay due to force majeure circumstances**

10. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as certain orders/restrictions of the NGT and other authorities in NCR region, increase in cost of construction material and shortage of labour, demonetization and implementation of GST and outbreak of Covid-19 pandemic, etc. All the pleas advanced in this regard are devoid of merit. Firstly, the events taking place such as orders of NGT in NCR region on account of the environmental conditions are for short duration, and thus, cannot be said to impact the respondent leading to such an inordinate delay in the completion. Secondly, the events of demonetization and the implementation of GST are in accordance with government policy and guidelines. Therefore, the respondent cannot categorize them as force majeure events. Thus, the same is devoid of merits and Lastly, the respondent is claiming benefit of lockdown in lieu of Covid-19, which came into effect on 23.03.2020 whereas the due date of completion was prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself. Therefore, it is nothing but obvious that the project of the respondent was already delayed as the possession of the unit in question was to be offered by 22.01.2020, and no extension can be given to the respondent in lieu of Covid-19, which is after the due date of completion. Thus, the promoter/respondent cannot be given any leniency based on aforesaid reasons, the plea advanced in this regard is untenable and it is well settled principle that a person cannot take benefit of its own wrong.

**G. Findings on the relief sought by the complainants:**

- G.I Direct the respondent to pay delayed possession charges on paid amount from due date of possession to till actual handing over of complete and valid physical possession after occupation certificate at the prevailing rate of interest.
- G.II To waive off the illegal and arbitrary interest charged by the respondent on the complainant.
- G.III Any other relief as this Hon'ble Authority may deem fits.

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

12. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

***"Section 18: - Return of amount and compensation***

*18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*

.....

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.*

*(Emphasis supplied)*

13. Clause 8.1 of the apartment buyer's agreement provides for handing over of possession and is reproduced below for ready reference:

***8. Handing over of possession***

***8.1 Expected Time for Handing over Possession***

*"Except where any delay is caused on account of reasons expressly provided for under this agreement and other situations beyond the reasonable control of the company and subject to the company having obtained the occupation/completion certificate from the competent authority(ies), the company shall endeavor to complete the construction and handover the possession of the said apartment within a period of 4 years from the date of grant of sanction of building plans for the project or the date of receipt of all the environmental clearances necessary for the completion of the construction and development of the project, whichever is later, subject to timely payment by the allottee of all the amounts payable under this agreement and performance by the allottee of all other obligations hereunder."*

*(Emphasis supplied)*



14. The due date of possession of the apartment as per clause 8.1 of the apartment buyer's agreement is to be calculated as 4 years from the date of environmental clearance i.e., 22.01.2016 being later. Therefore, the due date of possession comes out to be 22.01.2020.

**15. Admissibility of delay possession charges at prescribed rate of interest:**

The complainants are seeking delay possession charges at the prescribed rate as per the Act of 2016. Section 18 provides that where an allottee does not intend to withdraw from the project, she 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. Rule 15 has been reproduced as under:

***Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***

*(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.*

*Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*

16. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, 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.

17. 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., 25.07.2024 is **9%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11%**.

18. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11% by the respondent /promoter which

is the same as is being granted to the complainant in case of delayed possession charges.

19. The Authorized representative of the respondent during proceedings of the day dated 25.07.2024 stated that the construction is completed and an application for the grant of occupation certificate has already been made to the concerned authority on 22.12.2022 but occupation certificate is yet to be obtained.
20. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 8.1 of the buyer's agreement, the due date of handing over of possession of the unit in question is 22.01.2020 (calculated from the date of environmental clearance, being later). A document is placed on record by the respondent which shows that an application for grant of occupation certificate was made on 22.12.2022 which is yet to be approved by the competent authority. Therefore, the respondent has failed to handover possession of the subject apartment till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority is of the considered view that there is delay on the part of the respondent to offer the possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 23.10.2015 executed between the parties.
21. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of respondent is established. As such the allottees shall be paid, by the



promoter, interest for every month of delay from due date of possession i.e., 22.01.2020 till offer of possession of the said unit after obtaining the occupancy certificate from the concerned authority plus two months or actual handing over of possession, whichever is earlier, at prescribed rate i.e., 11% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

**G.IV Direct the respondent to provide benefit of VAT rebate as well as GST Input Tax Credit as applicable to the complainant along with interest.**

22. The respondent is directed to charge the GST as per rules and regulations and for the input tax credit, the attention of the authority was drawn to the fact that the legislature while framing the GST law specifically provided for anti-profiteering measures as a check and to maintain the balance in the inflation of cost on the product/services due to change in migration to a new tax regime i.e. GST, by incorporating section 171 in Central Goods and Services Tax Act, 2017/ Haryana Goods and Services Tax Act, 2017, the same is reproduced herein below:

*"Section 171. (1) Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices."*

23. The intention of the legislature was amply clear that the benefit of tax reduction or 'Input Tax Credit' is required to be passed onto the customers in view of section 171 of HGST/CGST Act, 2017. As per the above said provisions of the Act, it is mandatory for the respondent to pass on the benefits of 'Input Tax Credit' by way of commensurate reduction in price of the flat/unit. Accordingly, respondent should reduce the price of the unit/consideration to be realized from the buyer of the flats commensurate with the benefit of ITC received by him. The promoter shall submit the benefit given to the allottee as per section 171 of the HGST Act, 2017.

24. The builder has to pass the benefit of input tax credit to the buyer. In the event, the respondent-promoter has not passed the benefit of ITC to the buyers of the unit then it is in contravention to the provisions of section 171(1) of the HGST Act, 2017 and has thus committed an offence as per the provisions of section 171 (3A) of the above Act. The allottee shall be at liberty to approach the State Screening Committee Haryana for initiating proceedings under section 171 of the HGST Act against the respondent-promoter.

**G.V Direct the respondent to pay litigation cost of Rs.1,50,000/- to the complainant.**

25. The complainant is seeking above mentioned relief w.r.t. litigation cost. 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. (supra)*, has 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.

**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 respondent is directed to pay delay interest on the paid-up amount of Rs.21,44,386/- by the complainant at the prescribed rate of 11% p.a. for every month of delay from the due date of possession i.e., 22.01.2020 till offer of possession of the said unit after obtaining the occupancy



- certificate from the concerned authority plus two months or actual handing over of possession, whichever is earlier.
- ii. The arrears of such interest accrued from 22.01.2020 till the date of order by the authority shall be paid by the promoter to the allottee(s) within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottee(s) before 10<sup>th</sup> of the subsequent month as per rule 16(2) of the rules.
  - iii. The respondent is directed to issue a revised account statement after adjustment of delayed possession charges within 30 days and complainants are directed to pay outstanding dues, if any remains after adjustment of interest for the delayed period, the respondent shall handover the possession of the allotted unit after obtaining of occupation certificate.
  - iv. The respondent shall not charge anything from the complainants which is not the part of the builder buyer's agreement.
  - v. The rate of interest chargeable from the allottee(s) by the promoter, in case of default shall be charged at the prescribed rate i.e., 11% 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.
27. Complaint stands disposed of.
28. File be consigned to registry.

  
(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 25.07.2024