



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

Complaint no. :	1777 of 2022
Date of filing complaint:	26.04.2022
Date of decision	26.07.2024

1. 2.	Vinod Kumar Sharma Subhadra Sharma R/O: H.No. J-88, First Floor, Mayfield Gardens, Sector-51	<b>Complainants</b>
Versus		
1. 2.	Clarion Properties Limited Regd. office : 129, Munish Plaza, 20 Ansari Road, Darya Ganj, New Delhi-110002  Ajanta Builder Pvt Ltd Regd Office :- 129, Munish Plaza, 20 Ansari Road, Darya Ganj, New Delhi-110002	<b>Respondents</b>

<b>CORAM:</b>	
Shri Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE:</b>	
Ms. Ankur Berry (Advocate)	Complainants
Sh. Rul Prakash (Advocate)	Respondents

**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 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section

11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

### A. Unit and project related details

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

Sr. No.	Particulars	Details
1.	Name of the project	"Element One", Sector-47/49, Gurugram Haryana
2.	Nature of the project	Commercial project
3.	DTCP license no.	86 of 2011 dated 20.09.2011 Valid till 10.09.2017
4.	Name of licensee	SH NARENDER KUMAR
5.	Registered/not	Not registered
6.	Unit No.	B 601 tower B floor 6 [Annexure C1 page 30 of complaint]
7.	Super area	671 sq. ft. [Annexure C1 page 30 of complaint]
8.	Date of allotment	N/A
9.	Application form	15.10.2012 (Page 32 of reply *)



10.	Date of builder buyer agreement	30.01.2014 [Annexure C-1 on page no. 27 of the complaint]
11.	Possession clause	<b>5.1. POSSESSION</b> That the Company shall, under normal circumstance, complete the construction of tower in which the said unit is to be located with a period of <b>3 years in addition to 6 months extension (grace period)</b> and subject to force majeure <b>from the date of execution of this Agreement or start of construction of the Tower wherein the Said Unit is located (whichever is later)</b> and accepted by the Allottee (with additional floors with Units if permissible) with such additions, deletions, alterations, modifications in the layout/tower plans, change in number, dimensions, height, size, area or change of entire scheme which the Company may consider or may be required by any competent authority to be made in them or any of them. (Emphasis supplied)
12.	Due date of possession	30.07.2017 (Calculated from the date of the execution of this agreement i.e, 30.01.2014 and start of construction of agreement is not available along with grace period of 6 months)



13.	Total sale consideration (BSP)	Rs. 76,19,735/-4[As alleged by the complainants in the facts]
14.	Amount paid	Rs. 76,19,735/- [As alleged by the complainants in the facts]
15.	Occupation certificate	03.11.2017 (Page 72 of reply of respondent no. 1)
16.	Offer of possession	The complainant states that they have not receive possession whereas on page 88 of reply of respondent no. 2 letter of possession is on date 01.02.2022 the respondent no. 2 handover the physical possession to the sub operator.
17.	Grace period utilization	Allowed
18.	Conveyance deed	20.08.2021 (Page 92 of reply)
19.	Deed of adherence	23.08.2021 (Page 78 of reply)

**B. Facts of the complaint**

The complainants have submitted as under:

3. That in the year of 2012, the complainants, came to know about the launch of the new commercial project of the respondents under the name and style of "element one" located in Sector-47/49, Gurugram. The complainants who were looking for investment for themselves in their old age immediately contacted the respondent company. The representatives of the respondent company assured several amenities and world class construction and assured

- monthly rent to the complainants. The respondent also assured that the serviced unit would be ready within 3 years of booking.
4. That the complainants believing the representation of the respondents and being lured by the brochures and catalogues shown by the agents/ broker/ officials/ representatives of the respondent company and decided to buy serviced unit bearing unit No. B-610 having super area of 671 sq. ft. on 6<sup>th</sup> Floor located at village Fatehpur, Sector-47/49 Gurgaon, Haryana in the project 'element one' of the respondent company.
  5. That thereafter on 30.01.2014 buyers agreement (managed pool) was signed and executed between the complainants and the respondent company. That vide the buyers agreement clause 5.1 the respondent company promised to deliver / hand over the possession of the commercial unit within a period of thirty-six plus six months grace period from the date of execution of the agreement. Thus, the complainants believed that the commercial unit booked by the complainants would be delivered by the respondent company by 30.01.2017.
  6. That to the utter dismay of the complainants, even though the complainants paid all installments, as and when demanded by the respondent company, yet the project was massively delayed.
  7. That as per the buyers agreement, the delivery of possession was to be made within 36 months, i.e on 30.01.2017. That the Complainants have been diligent and noticing that the project was delayed beyond time visited the project site. That upon visit in 2017 the complainants were astonished to see the status of the project, which was nowhere near completion. The respondent company has failed to adhere with the terms and conditions of buyers agreement clause 5.1 and have thus comes under purview of the

provisions of Section 18 of the RERA Act, 2016 as the respondent has failed to duly complete the project and give the possession of the unit in accordance with the terms of the buyers agreement.

8. That the complainants have paid all demand / installments to the respondent and yet the possession was delayed by the respondent company without even providing any reasons for such massive delays in the project. The complainants have fulfilled their obligation of making payments and the respondent was obligated to handover the possession of the unit by 30.01.2017.
9. That on 23.03.2020 the complainants finally received the final call letter intimating about the offer of possession of the unit. it is pertinent to submit that the said final call letter came along with statement of accounts which contained inflated amounts.
10. That upon going through the copy of the final call letter dated 23.03.2020, the complainants immediately sent email dated 26.03.2020 to the respondent promoter qua the delayed possession penalty which was to be adjusted at the time of final call letter. Other issues were also raised by the complainants however the respondent failed to respond to the said email thus, the complainants again shared a reminder email dated 06.04.2020.
11. Thereafter various emails were shared between the complainants and the respondent. But the respondent used the same as a delay tactic to offer possession as the complainants repeatedly requested for final calculation based upon which the complainants could make the final payment which was due upon offer of possession. Only on 15.10.2020 respondent shared a payment calculation wherein an amount of Rs. 2,19,864/- was calculated for

the delayed compensation, and the complainants under protest made payments of final demand/instalment.

12. That an email was sent by the complainants to the respondent no.1 stating that even though the entire payment was made way back in april, 2020 during the time of pandemic, as the respondents had promised that the rent would start from July/August 2020 yet till the sending of the letter the rent had not been paid at all. In response to the letter dated 08.06.2021, the respondent no. 1 vide email dated 17.07.2021 admitted to not paying the rent and gave fictitious ground of delay due to Covid. The respondent stated that the unit was in possession of the operator namely M/s Ajanta Builders yet the complainants had not received a penny. The complainant again sent email dated 20.07.2021 requesting payment of delayed compensation in lieu of non-payment of promised rent, since the unit was to compulsorily put on rent by the respondent.
13. That the respondent delayed the actual possession by not providing the actual calculations and thus the actual date of offer of possession ought to be calculated from the time when the The complainants were informed of the due payments to be made. Thus, the complainants deserve to receive the delayed possession charges till the day when final calculation were shared by the respondent.
14. That even though there was delay of over 3 years the respondent in the final calculation sent through email dated 15.10.2020, calculated a minimal amount of Rs. 2,19,864/- as delayed compensation.
15. That as per the final call letter further the respondent promoter had appointed M/S Ajanta Builders Pvt. Ltd. as an operator to manage, operate and run the service apartment. It is interesting to note that M/s Ajanta

Builder Pvt. Ltd. and respondent promoter have the same registered office and are rather differently named commonly owned entities. Perhaps the units were not complete and the respondent promoter with an intention to buy time simply made a false statement of appointing respondent no.2 as an operator. Further though respondent no.2 is a sister concern of the respondent promoter yet for some mysterious reason, the commercial unit which was sold as a serviced apartment/hotel use premises has yet not been made operational, thus causing severe financial hardship to the complainant who are retired old age couple.

16. That the respondent company has failed to honor the terms and conditions of the buyers agreement (managed pool) between the parties. The respondent company have failed to honor the terms of date of delivery of possession as per the buyers agreement (managed pool), thus the respondent company has to pay delayed possession charges on delayed period as per the RERA Act, 2016 and thus the present complaint has been instituted before this Hon'ble Authority for the relief delayed possession charges along with other reliefs.

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

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

- i. Direct the respondent to pay interest at the prescribed rate per annum on delay in handing over the possession.
- ii. Direct the respondent company to pay rentals at market rate from the date of offer of possession till the promised +-Hotel/serviced apartments are started.
- iii. Direct the respondent to commence the operation of hotel/serviced apartments.

18. On the date of hearing, the authority explained to the respondents/promoters about the contraventions as alleged to have been



committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent no. 1**

**The respondent has contested the complaint on the following grounds:**

19. That the respondent no. 1 has developed a commercial complex under the name and Style of "element one" in Sector - 47/49, Gurugram, Haryana. The respondent no. 1 had obtained the License dated 20.09.2011 from the Director, Town and Country Planning, Haryana for the construction and development of the complex.
20. That the respondent no. 1 after getting the buildings plans duly sanctioned vide letter dated 12.10.2012 by the Director General, Town and Country Planning, Haryana and after taking all the necessary approvals undertook the development and construction of the said project.
21. That the complainants approached the respondent company and expressed their desires/interests in purchasing a unit in the said serviced apartment and upon the complainant's request, the respondent company allowed the complainants to inspect the said lands, plans, ownership records of the said lands and other documents relating to the title, area and other relevant details and gave the complainant brochures, catalogues and other documents relating to the title, area and other relevant details so that the complainant can have an idea about the project "element one" located in Sector-47/49, Gurugram. It is pertinent to mention that after going through all the relevant documents and the terms and conditions, the complainants were fully satisfied and booked managed pool unit having super area of 671 sq. ft. in the Project "element one" of the respondent no. 1 on 15.10.2012 and deposited the booking amount of Rs. 13,75,012/- with the respondent no. 1.

22. That after accepting the application form the respondent company duly sent the two copies of the builder buyer's agreement allotting the unit in tower/block b, being unit no. b-610 on the 6<sup>th</sup> floor, measuring approx. 671 sq. feet of super area along with letter dated 07.01.2014 for the complainant to sign and return for further action within seven days from the date of the letter. The complainants were specifically requested to go through all the terms of the builder buyer's agreement and it was mentioned that only once the complainants have read and accepted the terms of the agreement, they were to return the agreement for the signatures. It was further stated that in case the complainants do not wish to go ahead with the execution of the agreement, then they had an option to withdraw from the scheme and were entitled to seek refund of their monies. This shows that since the very beginning the complainants were well aware about all the terms and conditions of the builder buyer's agreement dated 30.01.2014 and had opted to abide by the same by executing the buyer's agreement on 30.01.2014.
23. That it is clearly mentioned in the builder buyer's agreement dated 30.01.2014 that in case if the company fails to complete the construction of the tower in which the said unit is located, within a period of 36 months plus extended period of 6 months, both subject to force majeure, the company will pay penalty to the customer for the delayed period. However, on the part of the respondent company there was no delay in completing the construction of the said unit, the construction was duly completed in the stipulated time period. The respondent company had applied for occupation certificate on 27.03.2017 in the concerned authority. Thereafter, the permission for the occupation of the serviced apartment in the form of occupation certificate was received on 03.11.2017 by the respondent company.

24. Though there was no delay in completion of the construction by the respondent company, still the respondent company made an adjustment of Rs. 2,19,864 on account of delayed compensation on the insistence of the complainant. The delayed compensation was calculated at the rate of Rs. 10/- per sq. ft. per month. However nowhere in the agreement it is mentioned that the respondent company will pay interest at the prescribed rate per annum in addition to the penalty on the delay in handing over the possession to the complainant. The complainants cleared their dues in terms of the final call letter only on 19.10.2020, however the registration and stamp duty charges were paid at a belated stage in the month of August 2021 consequently delaying the registration of conveyance deed in favour of the complainants which was registered on 23.08.2021 due to delay caused by complainants themselves.
25. That pursuant to various discussions and deliberations the respondent no. 1 company executed and registered an operator agreement with M/s Ajanta Builder Private Limited (respondent no.2) on 04.01.2021 which was effective from 28.02.2020 in terms of clause 6.13 of the Builder Buyers Agreement dated 30.01.2014 .The Operator was appointed to manage, operate and run the managed pool serviced apartments by invoking clause 6.13 along with clause 6.14 and clause 6.15 of the builder buyers agreement.
26. That after appointing the operator, M/S Ajanta Builders for operating the managed pool units, the respondent company addressed a letter dated 23.03.2020 along with final call letter of even date informing the complainants that M/s. Ajanta Builders Pvt. Ltd. has been appointed as the operator which has in turn roped in M/s. Roya orchid hotels ltd as sub-operator to run, operate and manage the service apartments. In light of the

appointment of operator by the respondent company on 28.02.2020 in respect of project "element one", the respondent company had commenced the handing over the possession of the said unit. That vide the said letter, the complainants were informed that the possession of their unit shall be handed over to them within 30 days of submission of all the requisite documents of possession to the respondent and after payment of all the dues in terms of the enclosed statement of accounts. That vide the aforesaid letter, the complainants were called upon to pay the amounts of Rs. 11,14,906/- towards final payment due to the respondent. The respondent company attached a detailed statement of accounts with the said letter in order to clarify all the doubts, if any, with respect to the outstanding sum payable by the complainants.

27. That it is pertinent to bring to the attention of this Hon'ble Adjudicating Officer, the complainant had made a payment of Rs. 4,44,629.44 on 23.04.2020 due to the respondent company, after adjusting the delayed compensation amount of Rs. 2,19,864/-.
28. That it is clearly mentioned in the builder buyer's agreement dated 30.01.2014 that the respondent company will appoint the operator to manage the managed pool of units, more than this the company is not liable to do anything. The payment of monthly rental is supposed to be made by the operator directly to the complainant in terms of buyers agreement as well as operator agreement the terms of which are duly abided by he complaints by virtue of a deed of adherence dated 23.08.2020. It shall also be noted here that the complainant through deed of adherence dated 23.08.2021 had agreed, that till the time the force majeure event subsists and a period of 4 months thereafter, there shall not be any payment of the operator charges to the

buyer. The term "Force Majeure" in this clause includes certain events and COVID-19 Pandemic is one of the events in the description.

29. That the operation on the serviced apartments, including the said unit of the complainant, has already been started from 01.03.2022 by the sub-operator and the complainants have received a payment of monthly rent, from the operator M/s. Ajanta Builder Private Limited of Rs. 9,903/- on 12.04.2022 which is 50% of the total payable amount of operator charges. It is agreed in the operator agreement that for the first three months from the commencement date of the agreement, the operator shall be obligated to only pay 50% of the mg operator charges or revenue share whichever is greater as agreed upon in the clause 3.1 Of the operator agreement. Due to persistence of covid -19 pandemic for two consecutive years the operator shown its inability to take over the possession of the serviced apartment despite offered by the respondent no. 1 which was finally taken over by the operator on 01.02.2022 and therefore it started its commencement of operations from 01.03.2022.

30. That the allottee has entered into a Maintenance agreement dated 23.08.2022 with the maintenance agency appointed by the company under clause 6.3 of the builder buyer's agreement dated 30.01.2014. According to clause 6.7 of builder buyer's agreement dated 30.01.2014 the complainant undertakes to abide by the terms and conditions of the maintenance agreement and to promptly pay all demands irrespective of whether the allottee is/are in actual possession of the said unit or the unit is in possession of the operator..

31. That as far as maintenance charges are concerned the complainant is liable to pay maintenance charges to the maintenance agency who shall be

appointed by the respondent company by invoking clause 6.2 of the builder buyer's agreement dated 30.01.2014. It is clearly stated in Article 3.4 of the Maintenance Agreement Dated 23.08.2021 That the allottee shall pay maintenance charges on the monthly basis irrespective of the fact whether the said unit is occupied or not.

32. That it is pertinent to mention that after receiving the final payment from the complainants, the respondent company did not ask for any other payment from the complainant. However, the respondent company was ready to give the possession to the complainant and continuous reminders were sent to the complainant in order to proceed with the execution of conveyance deed but there was no active response from the side of the complainant.
33. That it is respectfully submitted that the complainant is raising absurd issues against respondent company, even after accepting the delayed compensation from the respondent company and executing the conveyance deed on 23.08.2021 the complainant is making baseless and frivolous complaint.
34. That according to clause 5.10 of the builder buyer's agreement dated 30.01.2014, after delivery of possession of the said unit to the operator by the respondent company, the complainant shall have no claim against the company for any reason.
35. That it is pertinent to bring to the attention of this Hon'ble Authority that the complainant has filed this complaint, after getting the delayed compensation charges adjusted during the final payment (as per the final calculation given by the respondent company to the complainant through email dated 15.10.2020), taking over the symbolic possession of the said unit on 23.08.2021, executing the conveyance deed in their favour dated 23.08.2021. aforesaid instance shows that the complainant is completely satisfied and the

agreement between the complainant and the respondent company stands concluded by accord and satisfaction.

36. That moreover, clause 5.10 of the builder buyers agreement dated 30.01.2014 explicitly states that after the delivery of the possession of the said unit to the operator by the respondent company, the complainant shall have no claim against the company. As far as monthly rentals are concerned, the operator is contractually liable to pay monthly rentals to the complainant in terms of operator agreement the terms of which are binding on the complainant by virtue of the deed of adherence signed by them.
37. That at the instant complaint has been preferred by the complainant on frivolous and unsustainable grounds against the respondent and the complainant has not approached this Hon'ble authority with clean hands. It is most respectfully submitted that the complaint filed by the complainant is not maintainable as the builder buyer agreement dated 30.01.2014 contains arbitration clause that mandates the invoking of arbitration proceedings in the event of a dispute between the parties which were duly invoked.
38. All other averments made in the complaints were denied in toto.
39. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions made by the parties.

**Reply filed by the respondent no. 2**

40. That the respondent no 2 is only contractually obligated to provide services related to operation of the serviced apartment. It is pertinent to mention here that there exists a difference between builder and the operator agency, therefore, the complaint is not maintainable under RERA.

41. That the respondent no 2 entered into operator agreement on 04.01.2021 which was effective from 28.02.2020, it is already an established fact that covid-19 pandemic had also started at that time. The existence of pandemic made it impossible for the operator to take the possession of the serviced apartment and run the units of the serviced apartment, when the entire nation was on lockdown and surrounded by numerous COVID related restrictions by the government and consequent disruption of supply chain and other economic circumstances Jurisdiction of the authority. It is pertinent to mention here that even in the Deed of Adherence, which is duly signed by the Complainant on 23.08.2021, it is explicitly mentioned that till the time the Force Majeure event subsists there shall not be any payment of Monthly rentals to the Complainant. Clause 5 of Deed of Adherence. It is important to note here that, Force Majeure clause is also mentioned under Clause 20 of the Operator Agreement dated 28.02.2020.
42. That it is most respectfully submitted that the complaint filed by the complainant is not maintainable as the operator agreement dated 04.01.2021 contains arbitration clause that mandates the invoking of arbitration proceedings in the event of a dispute between the parties which were duly invoked.
43. That the respondent Ajanta Builder Private Limited (herein after referred to as "Respondent No 2") is a Company incorporated under the provision of the Companies Act, 1956 and having its registered office at 129, Munish Plaza, 20 Ansari Road, Darya Ganj, New Delhi- 110002.
44. That the respondent no. 2 is a well reputed Operator which enjoys tremendous goodwill in the Operations/ Management/ Maintenance of the



business. It is well engaged in business of managing, operating and running the serviced apartments in Delhi/NCR and other parts of the country.

45. That the M/s Clarion Properties Limited (herein after referred to as "Respondent No 1") has developed a Commercial Unit under the name and Style of "ELEMENT ONE" in Sector - 47/49, Gurugram, Haryana (herein after referred to as "Serviced Apartment").
46. That the Respondent No 1 entered into 2 Agreements with the Respondent No 2, namely, Operator Agreement dated 04.01.2021 and Maintenance Agreement dated 23.08.2021
47. That as per the operator agreement, the respondent no 2 agreed for running, regulating, operating and managing the serviced apartment along with other areas in the said complex for hotel business under the terms and conditions set out in operator agreement.
48. That on 04.01.2021 the Royal Orchid Hotels Ltd. (herein after referred to as "Sub-Operator") was appointed by the Operator by invoking clause 21 of the operator agreement. The operator, according to clause 2.1 of the operator agreement, was required to generate first invoice in favor of the first customer within 2 months from the date of handing over the possession of the serviced apartment. due to persistence of COVID-19 pandemic for two consecutive years the respondent no 2 was not in the position to take over the possession of the serviced apartment despite offered by respondent no 1 which was finally could be taken over by the respondent no 2 on 01.02.2022, instead of taking it at the time of operator agreement. Moreover, it is pertinent to note here that, the hotel premises which consists the unit of the complainant, also consists more than 70-80 other units in the element one project and to commence its hotel business it was necessitated for the respondent no. 2 to

take possession of all units together forming part of hotel premises, however, just like complainant the other unit holders also did not get executed their conveyance deeds on time despite continuous efforts and follow ups by the respondent no.1, as a result of which the possession got delayed.

49. That the obligation of the payment of monthly rental by the Respondent No 2 ceases to exist when there occurs a situation of Force Majeure as per Clause 20 of the Operator Agreement dated 28.02.2020. It is important to mention here that, due to the occurrence of Force Majeure/COVID 19, the operator, although entered into the operator agreement on 04.01.2021 however, take the possession of the serviced apartment only on 01.02.2022 from the respondent no1.
50. That it shall also be noted here that the complainant by way of signing deed of adherence dated 23.08.2021 has agreed to abide by the terms of the operator agreement and it is explicitly mentioned in the deed of adherence that till the time the force majeure event subsists and a period of 4 months thereafter, there shall not be any payment of the operator charges to the buyer. The term "Force Majeure" in this clause includes certain events and COVID-19 Pandemic is one of the events in the description.
51. That COVID-19 has severely/majorly affected the hospitality industry and because of this reason the operator was not in the position to take over the possession of the serviced apartment which was finally could be taken over on 01.02.2022 and thereafter the operation of the hotel business commenced on the hotel premises including the said unit of the complainant only from 01.03.2022. the respondent no 2, via letter dated 18.01.2022, informed the complainant about the delay in commencing the operation on the serviced apartment because of the covid- 19 situation and also informed that the

respondent is analyzing the market situation and working on various modalities that shall be involved in the commencement of the operation. During the years 2020-2021 Nationwide lockdown and numerous restrictions by the government made it difficult for the operator to take the possession and to further handover the possession to the Sub-operator to commence the operation. it is pertinent to note here that the possession of the serviced apartment was handed over to the sub-operator on the same date when the respondent no 2 took the possession from the respondent no 1.

52. That the operation on the serviced apartment, including the said unit of the complainant, has already been started from 01.03.2022 by the sub-operator and the respondent no 2, via letter dated 17.03.2022, informed the complainant that the sub-operator has commenced its operation from 01.03.2022. It is also pertinent to note here that, not only the operation has commenced but the complainants have also received a payment of Monthly Rent for the month of March, from the Respondent No 2 of Rs. 9,903/- on 12.04.2022.

53. That according to clause 8 of the conveyance deed dated 23.08.2021 the complainant will strictly abide by the terms and conditions of the maintenance agreement. In Article 3.4 of the maintenance agreement, it is mentioned that the complainant shall pay maintenance charges on the monthly basis irrespective of the fact whether the said unit is occupied or not. Aforesaid point makes it clear that the complainant is contractually liable to pay maintenance charges to the respondent no. 2, irrespective of the fact whether the operation has commenced over it or not. It is also mentioned in the conveyance deed clause 6 (g) that the complainant is liable to pay monthly charges irrespective of the fact whether the unit is locked or not in use

### **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**

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)(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.

54. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be

decided by the adjudicating officer if pursued by the complainants at a later stage.

### **F. Findings on the relief sought by the complainants**

- i. Direct the respondent to pay interest at the prescribed rate per annum on delay in handing over the possession.**
- ii. Direct the respondent company to pay rentals at market rate from the date of offer of possession till the promised +- Hotel/serviced apartments are started.**
- iii. Direct the respondent to commence the operation of hotel/serviced apartments.**

**F.I Direct the respondent no. 1 to pay interest at the prescribed rate per annum on delay in handing over the possession.**

55. 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."*

56. Clause 5.1 of the floor buyer's agreement provides the time period for completion of construction and the same is reproduced below:

**5.1. POSSESSION**

*That the Company shall, under normal circumstance, complete the construction of tower in which the said unit is to be located with a period of 3 years in addition to 6 months extension (grace period) and subject to force majeure from the date of execution of this Agreement or start of construction of the Tower wherein*

*the Said Unit is located (whichever is later) and accepted by the Allottee (with additional floors with Units if permissible) with such additions, deletions, alterations, modifications in the layout/tower plans, change in number, dimensions, height, size, area or change of entire scheme which the Company may consider or may be required by any competent authority to be made in them or any of them.*

*(Emphasis supplied)*

**57. Admissibility of grace period:** The promoter has proposed to complete the construction of the unit within a period of 3 years from the date of execution of the buyer's agreement. Further, it was provided in the buyer's agreement that company shall be entitled to a grace period of six months, for the conditions of force majeure.

**58. Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the prescribed rate of interest on the amount already paid by him. However, 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. 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.

**59.** 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.

60. 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., 26.07.2024 is 9%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11%.

61. 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.

62. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the Authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession/completing the construction by the due date as per the agreement. By virtue of clause 5.1 of the agreement, the completion of subject unit was to be expected within 3 years from the date of execution of the buyer's agreement or from the date of start of construction. For the reasons quoted above, the due date of possession is to be calculated from the date of execution of the buyer's agreement i.e., 30.01.2017 and the said grace period of six months is allowed, therefore due date of possession comes out to be 30.07.2017.

63. Vide proceeding dated 25.08.2023, it was stated by the respondent no. 1 that the allottee had purchased a service apartment which was to be managed by an operator who had to manage all the units of that project and as per deed of adherence at page 87 and 88 the operator had to manage the units and after

deduction of his service charges, the remainder had to be distributed amongst the unit holders.

64. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent no. 1 is established. As such the complainant is entitled to delay possession charges at rate of the prescribed interest @ 11% p.a. w.e.f. from the due date of possession i.e., 30.07.2017 till the date of deed of adherence., 23.08.2021 after deduction of amount already paid as DPC (as agreed upon by complainants themselves in the complaint) as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

**F. II Direct the respondent company to pay rentals at market rate from the date of offer of possession till the promised +-Hotel/serviced apartments are started.**

**Direct the respondent to commence the operation of hotel/serviced apartments.**

65. There is no documents that has been placed on record which talks about rentals. Also, the said reliefs have not been pressed during the proceedings. So, no direction to this effect can be given

**G. Directions of the authority**

66. Based on above determination of the authority, 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 no. 1 shall pay interest at the prescribed rate i.e., 11 % per annum for every month of delay on the amount paid by the complainants from due date of possession i.e., 30.07.2017 till the date

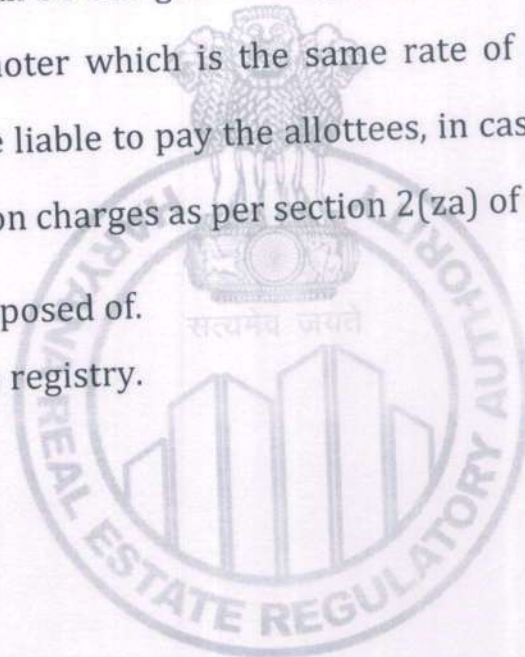


of deed of adherence., 23.08.2021 after deduction of amount already paid as DPC (as agreed upon by complainants themselves in the complaint) as per proviso to section 18(1) of the Act read with rule 15 of the rules.

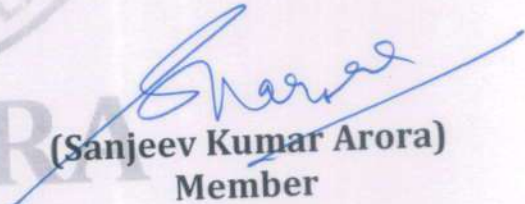
- ii. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 11 % by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

67. Complaints stand disposed of.

68. Files be consigned to registry.



**HARERA**  
GURUGRAM

  
(Sanjeev Kumar Arora)  
Member

**Haryana Real Estate Regulatory Authority, Gurugram**

**Dated: 26.07.2024**