BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 898 of 2023
Order pronounced on : 09.08.2024

Complainant

Vikas Taneja
R/O: A-506, Shakti Apartment, Plot no. 18, Sector – 5, Dwarka, New Delhi - 110075

Versus

Respondent

Almond Infrabuild Pvt. Ltd.
R/O: -711/92, Deepali, Nehru Place, New Delhi-110019.

CORAM: **Member**
Shri Sanjeev Kumar Arora

APPEARANCE:
Shri K.K. Jain (Advocate) Complainant
Shri Vivek Gupta (Advocate) Respondent

ORDER

1. The present complaint dated 01.03.2023 has been filed by the complainant/allottee in Form CRA 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 to the allottees as per the agreement for sale executed inter se them.

A. Project and unit related details

2. The particulars of the project, the details of 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.	Heads	Information
1.	Name of the project	"ATS Tourmaline", Sector- 109, Gurgaon
2.	Nature of project	Group housing project
3.	DTPC License no.	250 of 2007 dated 02.11.2007 Valid till 01.11.2019 Licensed area 19.768 acres Name of licensee Raj Kiran & 2 others
4.	RERA registered/not registered	Registered vide registration no. 41 of 2017 dated 10.08.2017
	Validity status	10.08.2023
5.	Tri-partite agreement dated	24.04.2014 [As per page no. 60 of complaint-HDFC]
6.	Unit no.	3182 on 18th floor of tower 03 [As per page no. 29 of complaint]
7.	Unit area admeasuring	2150 sq. ft. – super area 1797 sq. ft. [carpet area] [As per page no. 29 of complaint] Area details at the time of CD

		2150 sq. ft.– super area 1347 sq. ft. [carpet area] [As per page no. 80 of complaint] Reduced area – 450 sq. ft.
8.	Date of apartment buyer agreement	24.03.2014 [As per page no. 25 of complaint]
9.	Payment plan	Subvention payment plan [As per page no. 59 of complaint]
10.	Total sale consideration	Rs. 1,81,11,250/- [As per payment plan annexed as schedule IV on page no. 59 of complaint]
11.	Amount paid by the complainant	Rs. 1,81,11,250/- [As alleged by the complainant on page no. 14 of complaint]
12.	Possession clause	**Clause 6.2** *The Developer endeavour to complete the construction of the apartment **within 42 months from the date of this agreement** (completion date). The company will send possession notice and offer possession of the Apartment to the applicant as and when the company receives the occupation certificate from the competent authority.*
13.	Due date of possession	24.09.2017

		[Calculated from the date of agreement i.e., 24.03.2014]
14.	Occupation certificate	09.08.2019 [As per page no. 15-16 of reply]
15.	Offer of possession	09.08.2019 [As per page no. 67 of complaint]
16.	Conveyance deed	16.01.2023 [As per page no. 72 of complaint]

B. Facts of the complaint

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

I. That believing upon the assurances and promises made by the agent/ representative of the respondent, the complainant booked a flat bearing no. C-3182 , Tower No. 3, 18th Floor, ad-measuring 2150 sq. ft. super area (1797 sq. ft. in Carpet Area) against a total consideration of Rs. 1,81,11,250/- on 24/03/2014. An apartment buyer agreement was executed inter se the parties on 24/03/2014. The complainant then secured/is sanctioned a loan of Rs. 1,37,00,000/- from HDFC bank and a tripartite agreement is executed between complainant, respondent and HDFC bank on 14.04.2014.

II. That it is an admitted fact that the complainant has paid the entire sales consideration amount as per the demand and

requirements of the respondent. In this way, the complainant has paid a total sum of Rs. 1,81,11,250/- .

III. That the respondent has miserably failed to handover the physical possession of the flat as agreed by the respondent within in a stipulated time period from the date of booking.

IV. That the complainant many a times contacted the respondent in order to resolve the matter but till date nothing fruitful came out. That as per assurance given by the officials of the respondent the physical possession of the said flat was supposed to be handover to the complainant by 24-09-2017 from the date of booking.

V. Thereafter the respondent sent to the complainant an offer of possession on 09.08.2019 stating that the respondent had received the occupancy certificate from the Statutory Authorities and that the complainant should take the possession of the said flat by paying a demanded amount of Rs. 1,97,500/- all inclusive.

VI. That however in compliance of the said demand , the complainant then duly paid a cumulative amount totaling to 1,97,500/- to the respondent, which is an admitted fact. The said amount was paid under protest as many charges as demanded by the respondent, were outside the scope of settled terms.

VII. That it is a settled law and in catena of judgments, the Hon'ble courts have opined that the allottee of a real estate property is legally entitled to seek refund of the amount already deposited besides interest and compensation if the builder fails to honour its commitment to complete the project in time. Once the promised date of delivery of possession is exhausted, it is the

discretion of the complainant to exercise his choice to either take refund or wait for the delivery. That in view of the delay in giving possession to the complainant; complainant wants to seek the relief of applicable interest as per RERA on the delayed possession as there has been a delay of 43 months in provision of possession. That as per section 12 of RERA, the respondent have provided false information on the prospectus/Brochure and under the same section the complainant is entitled to get the interest on delayed possession along with compensation.

C. Reliefs sought by the complainant

4. The complainant is seeking the following relief:

a) Direct the respondent to pay the interest on the amount paid by the complainant to the respondent at the prescribed rate of HRERA for the delay in provision of possession of 43 months.

b) Direct the respondent to refund the extra amount paid by the complainant towards loss of area, in respect of the above said unit/space along with interest @ 24% per annum from the date of deposit till the realization of the amount.

c) Direct the respondent to pay the interest paid by complainant to HDFC bank for the loan taken on the above said flat.

d) Direct the respondent to pay the compound interest till date incurred by complainant qua the bank interest for the loan amount taken on the above said flat.

e) Direct the respondent to pay litigation charges of Rs. 5,00,000/-.

5. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.

C. Reply by the respondent

6. The respondent has contested the complaint on the following grounds:

I. The present complaint is neither maintainable nor tenable before the Authority and is liable to be out rightly dismissed. The agreement in question was executed between the complainant and the respondent prior to the enactment of RERA,2016.

II. That the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute.

III. That the respondent is a reputed real estate developer having immense goodwill comprise of law abiding and peace loving always believed best services to its customers including the complainant.

IV. That the complainant, after checking the veracity of the project namely, "ATS Tourmaline", Sector-109, Gurugram had applied for allotment of a residential unit. it is submitted that based on the application of the complainant, unit no. 3183, Tower no. 3 was allotted to the complainant by the respondent.

V. That the buyer's agreement was executed on 24.03.2014. It is pertinent to mention that the RERA Act, 2016 was not in force when

the agreement was entered into. The provisions of the RERA Act, 2016 thus cannot be enforced retrospectively.

VI. That total sale consideration of the unit was Rs. 1,81,11,250/-. That the possession of the unit was supposed to be offered in accordance with the agreed terms and conditions of the Buyer's agreement. The possession of the unit was subject to the occurrence of the force majeure events. The relevant Clause 6.2 of the Agreement pertaining to force majeure event clearly states that-

"notwithstanding the same, the Developer shall be entitled to an extension of time from the expiry of the Completion of construction is delayed on account of any of the following reasons-

- ***a.*** *Non-availability of steel, cement, other building materials, water or electric supply or labour, or*
- ***b.*** *Any change in the Applicable Law or existence of any injunction, stay order, prohibitory order or dircetions passed by any Court, tribunal, body or Competent Authority; or*
- ***c.*** --------
- ***d.*** *Force Majeure Event or any other reason (not limited to the reasons mentioned above) beyond the control of or unforeseen by the Developer, which may prevent or delay the Developer in performing its obligations as specified in this Agreement."*

VII. That it is pertinent to mention here that the implementation of the said project was hampered due to non-payment of instalments by allottees on time and also due to the events and conditions which are beyond the control of the respondent and which have affected the materially affected the construction and progress of the project. Some of the Force majeure events/conditions which were beyond the control of the respondent and affected the implementation of the project and are as under:

I) **Inability to undertake the construction for approx. 7-8 months due to Central Government's Notification w.r.t Demonetization:** [Only happened second tiem in 71 years of independence haence beyond control and could not be forseen]. The respondent had awarded the construction of the project to one of the leading construxtion companied in India. The said contractor/company could not implement the entire project for approx.. 7-8 months w.e.f 9-10 November 2016 the day when the Central Government issued notification w.r.t demonetization. During this period, the contractor could not make payment to the labour in cash and as majority of casual labour force engaged in construction activities in India do not have bank accounts and are paid in cash on a daily basis. During demonetization the cash withdrawal limit for companies was capped at Rs.24,000 per week initially wheres cash payments to labour on a site of the magnitude of the project in question are Rs.3-4 lakhs per day and the work at site got almost halted for 7-8 months as bulk of the labour being unpaid went to their hometowns, which resulted into shortage of the labour.

That in view of the above, the said event of demonetization was beyond the control of the respondent, hence the time period for offer of possession should be deemed to be extended for 6 months on account of the above.

II) **Orders Passed by National Green Tribunal:** In last four successive years i.e. 215-2016-2017-2018, Hon'ble NGT has been

passing orders to protect the environment of the country and especially the NCR region. The Hon'ble NGT had passed orders governing the entry and the exit of vehicles in NCR region. Also the Hon'ble NGT has passed orders w.r.t phasing out the 10 years old diesel vehicles from NCR. The Contractor of Respondnet could not undertake construction for 3-4 months in compliance of the orders of Hon'ble NGT. Due to following, there was a delay of 3-4 months as labour went back to their hometowns, which resulted in shortageof labour in April-May 2015, November-December 2016 and November-December 2017.

III) **Non-payment of Instalments by Allottees:** Several other allottees were in default of the agreed payment plan, and the payment of construction linked instalments was delayed or not made resulting in badly impacting and delaying the implementation of the entire project.

IV) **Inclement Weather Conditions viz. Gurugram**:Due to heavy rainfall in Gurugram in the year 2016 and unfavourable weather conditions, all the construction activities were badly affected as the whole town was waterlogged and gridlocked as a result of which the implementation of the project in question was delayed for many weeks.

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.

D. Jurisdiction of the authority

8. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

D.I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

D.II Subject-matter jurisdiction

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

Section 11(4)(a)
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;

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

which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

E. Findings on the objections raised by the respondent

E.I. Objection regarding jurisdiction of the Authority after the implementation of the RERA Act, 2016.

12. The respondent has raised an objection that the authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the buyer's agreement as the same was executed between the parties prior to the enactment of the Act, 2016. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situations in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of ***Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)*** decided on 06.12.2017 which provides as under:

> *"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4.*

The RERA does not contemplate rewriting the contract between the flat purchaser and the promoter.....

122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

13. Also, in appeal no. 173 of 2019 titled as ***Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya***,in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

14. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same

are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

F.II Objection regarding agreement containing an arbitration clause referring to the dispute resolution mentioned in the agreement.

15. The respondent has raised the objection that the complainant has not invoked arbitration proceedings as per the provisions of the buyer's agreement which contains provisions regarding initiation of arbitration proceedings in case of breach of agreement. The relevant clause incorporated w.r.t arbitration in the buyer's agreement:

> *"21.1 All or any dispute that may arise with respect to the terms and conditions of this Agreement, including the interpretation and validity of the provisions hereof and the respective rights and obligations of the parties shall be first settled through mutual discussion and amicable settlement, failing which the same shall be settled through arbitration. The arbitration proceedings shall be under the Arbitration and Conciliation Act, 1996 and any statutory amendments/modifications thereto by a sole arbitrator who shall be mutually appointed by the parties or if unable to be mutually appointed, then to be appointed by the Court. The decision of the Arbitrator shall be final and binding on the parties."*

14. The respondent contended that as per the buyer's agreement duly executed between the parties, it was specifically agreed that in the eventuality of any dispute, if any, with respect to the unit booked by the complainant, the same shall be adjudicated through arbitration mechanism. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause

in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about the matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitral seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

15. Therefore, the authority is of the view that the complainant is well within the rights to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and RERA Act, 2016 instead of going in for arbitration. Hence, this Authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily.

G. Findings on the relief sought by the complainant:

G.I Direct the respondent to pay the interest on the amount paid by the complainant to the respondent at the prescribed rate of HRERA for the delay in provision of possession of 43 months.

16. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the provisions of section 18(1) of the Act which reads as under.

"Section 18: - Return of amount and compensation

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

.....

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

17. In the instant case, the flat buyer agreement was executed between the complainant and the respondent on 24.03.2014, and as per clause 6.2 of the said agreement, the unit was to be completed within 42 months from the date of the signing of agreement. The said clause is reproduced below:

> *"Clause 6.2*
> *The Developer endeavour to complete the construction of the apartment within 42 months from the date of this agreement (completion date). The company will send possession notice and offer possession of the Apartment to the applicant as and when the company receives the occupation certificate from the competent authority.*

18. Therefore, the due date of possession comes out to be 24.09.2017. The complainant-allottee has paid Rs. 1,81,11,250/- against the sale consideration of Rs. 1,81,11,250/- for the unit in question to the respondent.

19. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement, and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this

clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottees that even a single default by him in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment time period for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottees of their right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottees is left with no option but to sign on the dotted lines.

20. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges. However, proviso to section 18 provides that where an allottee(s) 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.

21. The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest.

22. 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., 09.08.2024 is 9%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11%.

23. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"

24. 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 by the due date as per the agreement. By virtue of clause 6.2 of the buyer's agreement executed between the parties, the unit endeavoured to be completed within 42 months from the date of the signing of agreement. As such the due date of handing over of possession comes out to be 24.09.2017.

25. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the apartment buyer's agreement to hand over the possession within the stipulated period. 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 the 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., 24.09.2017 till offer of possession plus two months (i.e., 09.10.2019), at the 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.II. Direct the respondent to refund the extra amount paid by the complainant towards loss of area, in respect of the above said unit/space along with interest @ 24% per annum from the date of deposit till the realization of the amount.

26. Vide proceeding dated 12.07.2024, the counsel for the respondent stated that the area delivered is as per the BBA and they are also in the process of getting third party report/inspection got conducted and shall be filing the report of that third party expert within 3 weeks. The counsel for the complainant had filed copy of order of authority dated 01.05.2024 in *CR No.1045 of 2022 case titled as Indu Dhir V. Almond Infrabuild Pvt. Ltd.* in which at para No.26, the LC of the authority has clearly stated that there is a gap as per his report and as per BBA and hence, the same should be considered while drawing opinion about this particular case

27. The complainant is seeking refund of the amount paid by him in excess as the built-up area of the unit has been reduced. It has been observed that super area as mentioned at the time of execution of agreement was 2150 sq. ft. which is same exactly same as was mentioned in conveyance deed on the contrary the carpet area was mentioned to be 1797 sq. ft. at the time of agreement which is reduced to 1347 sq. ft. at the time of conveyance deed. Thus, the authority is of the view that there has been a reduction in the built up area of the unit. Thus, the complainant is at liberty to seek compensation for the reduced built up area before the Adjudicating Officer.

G.III. Direct the respondent to pay the interest paid by complainant to HDFC bank for the loan taken on the above said flat.

G.IV Direct the respondent to pay the compound interest till date incurred by complainant qua the bank interest for the loan amount taken on the above said flat.

28. In the present complaint, the complainant is seeking the above-mentioned reliefs. However, no details w.r.t the same has been provided by the complainant. In view of the above, the said relief is declined being devoid of merits.

G.V Direct the respondent to pay litigation charges of Rs. 5,00,000/- .

29. The complainant is seeking above mentioned reliefs w.r.t. compensation. Hon'ble Supreme Court of India in case titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. 2021-2022(1) RCR (C), 357 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

29. 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 delayed possession charges at the prescribed rate of interest i.e., 11% p.a. for every month of delay on the amount paid by the complainant to it from the due date of possession i.e., 24.09.2017 till offer of possession i.e., 09.08.2019 plus two months i.e., up to 09.10.2019 as per proviso to section 18(1) of the Act read with rule 15 of the rules.

ii. The relief of refund under various head as discussed above in G.II to G.IV are declined for the detailed reasons mentioned above.

iii. The complainant is at liberty to seek compensation for the reduced built up area from the Adjudicating Officer.

30. Complaint stands disposed of.

31. File be consigned to registry.

(Sanjeev Kumar Arora)
Member
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 09.08.2024