

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

Complaint no.: 2411 of 2023
Date of decision:- 04.09.2024

Ms. Shalini
R/o:-509, Block-14, DGER Complex,
PWD Flats, Dwarka, Sector-3,
Delhi-110078.

Complainant

Versus

M/s. Apex Buildwell Pvt. Ltd.
Regd. office:14A/36, Wea Karol Bagh,
New Delhi-110053.

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Sh. Garurav Rawat

Sh. Harshit Batra

Complainant

Respondent

HARERA
GURUGRAM

ORDER

1. The present complaint dated 02.06.2023 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of



section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions as provided under the provision 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

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

S.No.	Heads	Information
1.	Name of project	"Our Homes", Sector-37, Gurugram, Haryana.
2.	Project area	10.144 acres.
3.	Nature of the project	Low cost/Affordable Group Housing
4.	Rera registered	Registered 40 of 2019 dated- 08.07.2019
5.	Allotment letter	11.02.2013 (As on page no. 88 of complaint)
6.	Unit no.	404, Floor-4 th , Block/Tower-Jasmine (As on page no. 33 of complaint)
7.	Unit measuring	516.67 sq.ft.. along with one car parking (As on page no. 33 of complaint)
8.	Date of execution of buyer's agreement	11.02.2013 (As on page no. 30 of complaint)



9.	Possession clause	POSSESSION (a) Offer of possession <i>Within a period of thirty (36) months, with a grace period of 6 month, from the date of commencement of construction of the Complex upon the receipt of all project related approvals including sanction of building plans/revised plan and approval of all concerned authorities including the Fire Service Department, Civil Aviation Department, Traffic Department, pollution Control Department etc., as may be required</i> [Emphasis supplied] (As on page no. 39 of complaint)
10.	Date of commencement of construction of the project/ consent to establish granted by the HSPCN on	02.12.2013
11.	Date of grant of Environmental Clearance	26.06.2013
12.	Due date of possession	02.12.2017 [Calculated 4 years from date of commencement of construction]
13.	Basic sale consideration	Rs.16,00,000/- (As on page no. 33 of complaint)
14.	Total amount paid by the complainant	Rs. 17,95,113/-
15.	Offer of possession	30.11.2019 (As on page no. 82 of complaint)

16.	Unit handover letter	05.11.2020 (As on page no. 87 of complaint)
17.	No dues certificate	05.11.2020 (As on page no. 89 of complaint)
18.	Conveyance deed	28.06.2021 (As on page no. 92 of complaint)

B. Facts of the complaint:

1. The complainant has made the following submissions in the complaint:
 - I. That the respondent launched an affordable group housing project called "Our Homes" at Sector - 37C, Gurugram, under the license no. 13 of 2012 dated 22.02.2012 issued by the DTCP, Haryana, Chandigarh.
 - II. That the complainant is a law abiding citizen. The respondent advertised about the project and painted a rosy picture of the project in its advertisements making tall claims.
 - III. In 2012, the respondent issued an advertisement and thereby invited applications from prospective buyers for the purchase of unit in the said project. The respondent confirmed that the building plan approvals have been obtained from the concerned authority.
 - IV. The complainant while searching for a flat/accommodation was lured by such advertisements and calls from the brokers of the respondent. Relying on the representations and assurances given by the respondent and on belief of such assurances, the



complainant booked a unit in the project by paying an amount of Rs.1,64,944/- on 28.01.2013, towards the booking of the said unit bearing no. 404 on 4th Floor in Tower-Jasmine having an area admeasuring 48 sq. mtrs. and the same was acknowledged by the respondent.

- V. That the respondent confirmed the booking of the unit to the allottee providing the details of the project and allotting unit no. 404 on 4th Floor in Tower-Jasmine in the project for a total sale consideration of Rs.16,00,000/- along with car parking and other specifications.
- VI. That a Buyer's Agreement was executed between the complainant and the respondent on 11.02.2013. As per annexure of the buyer's agreement the sale price of the said apartment was Rs.16,00,000 /- inclusive of basic sale price, EDC, IDC, preferential location charges and exclusive right to use the dedicated car parking.
- VII. Further, the complainant signed the agreement in the hope that the unit will be delivered on or before 11.02.2016. The complainant was also handed over one detailed payment plan which was construction linked plan.
- VIII. As per Clause-3(a) of the Apartment Buyer's Agreement, the respondent agreed to deliver the possession of the unit within period 36 months plus 6 months from the date of commencement of construction upon receipt of all project related approval. Due date of possession is calculated from the date of agreement i.e. 11.02.2013. Hence, the due date of possession comes out to be 11.02.2016.



- IX. As per the demands raised by the respondent, the complainant has paid a total sum of Rs.17,95,113.00, towards the said unit against total sale consideration of Rs.16,00,000 /-. That the payment plan was designed in such a way to extract maximum payment from the buyers viz a viz or done/completed.
- X. That the complainant approached the respondent and asked about the status of construction and also raised objections towards non-completion of the project. In terms of Clause 3(a) of the Buyer's Agreement, the respondent was under an obligation to complete the construction and to offer the possession on or before 11.02.2016. That the complainant approached the respondent in person to know the fate of the construction and offer possession in terms of the Buyer's Agreement, respondent misrepresented to the complainant that the construction would be completed soon.
- XI. That the complainant after many requests and emails received the demand on account of offer of possession on 30.11.2019. It is pertinent to mention here that along with the letter of offer of possession, the respondent raised several illegal demands which were actually not payable as per the Builder Buyer Agreement by the complainant.
- XII. That the respondent despite having made multiple tall representations to the complainant, the respondent has chosen deliberately and contemptuously not to act and fulfil the promises and have given a cold shoulder to the grievances raised by the allottees.

- XIII. That the respondent have played a fraud upon the complainant and have cheated her fraudulently and dishonestly with a false promise to complete the construction over the project site within stipulated period. The respondent had further malafidely failed to implement the terms and conditions as stipulated in the Buyer's Agreement.
- XIV. That the respondent making demands for electric meter charges and electrification charges from the complainant is absolutely illegal as the cost of the electric meter in the market is not more than Rs.2,500/- hence asking for such a huge amount, when the same is not a part of the Builder Buyer Agreement is unjustified and illegal and therefore needs to be withdrawn immediately.
- XV. That the complainant requested the respondent to show/inspect the unit after that only the complainant would pay any further amount and requested to provide the located car parking space number, but the respondent failed to reply.
- XVI. That the respondent asked the complainant to sign the indemnity bond as a perquisite condition for handing over of the possession. The complainant raised objection to the pre-requisite condition of the respondent as no delay possession charges was paid to the complainant and instead of paying the delay possession charges, the respondent clearly refused to handover to possession if the complainant does not sign the aforesaid indemnity bond. Further, the complainant was left with no other option instead of signing the same.
- XVII. That the complainant after many follow ups and reminders, and after clearing all the dues and fulfilling all one-sided demands and

formalities as and when demanded by the respondent issued the physical handover advice letter dated 05.11.2020 of the unit on account of handing over the physical possession of the unit.

- XVIII. That the conveyance deed had been executed after many follow ups, reminders, after clearing all the dues and fulfilling all one-sided demands and formalities as and when demanded by the respondent on 28.06.2021. While the sale deed acknowledges that the complainant has paid the total consideration of Rs.17,95,113/- , towards full and final consideration of the unit and applicable taxes etc, it makes no provision for compensating the complainant for the huge delay in handing over the unit. The complainant was not given any opportunity to negotiate the terms of the said sale deed.
- XIX. That no negotiations were permitted in relation to the buyer's agreement. The complainant was told that the sale deed will encompass all the relevant issues at hand. It is submitted that this agreement and various clauses therein amounts to an "*Unconscionable Agreement*" i.e., an agreement containing terms that are so extremely unjust, or overwhelmingly one-sided in favour of the party who has the superior bargaining power, that they are contrary to good conscience.
- XX. That the Buyer's Agreement stipulates payment of compensation on account of delay in handing over possession of the unit in the project. The so called compensation payable as per the said agreement is Rs. 5/- per sq. ft. per month. No compensation was provided to the complainant till date. It is respectfully submitted that the Hon'ble National Consumer Disputes Redressal



Commission, in a similar case, **Shri. Satish Kumar Pandey &Anr. v. M/s. Unitech Ltd.**, Consumer Case No. 427 of 2014, has noted that the payment of the aforesaid Rs.5/- as compensation is very less because the penalty payable by a home buyer in the event of default in making payments to the builder is much more. The Hon'ble Commission has also taken note of the fact that the home loan interest rates are very high and in the event the builder does not deliver the flats on time, it ought to pay reasonable equitable rate of compensation in lieu of such delay.

- XXI. Moreover, the said clause is also in clear contravention of the provisions of the Real Estate (Regulation and Development) Act, 2016 itself which has clarified the position that the interest payable by the Promoter in case of default shall be the same as the interest payable by the Allottees in case of any default made by them.
- XXII. That mere execution of the sale deed will not deprive the complainant of her rights to seek compensation. In this regard, the Hon'ble Supreme Court, has in **Wg. Cdr. Arifur Rahman Khan &Aleya Sultana and Ors. V. DLF Southern Homes Pvt. Ltd.**, Civil Appeal No. 6239/2019 (para. 34) held:

"...In this backdrop, the simple question which we need to address is whether a flat buyer who seeks to espouse a claim against the developer for delayed possession can as a consequence of doing so be compelled to defer the right to obtain a conveyance to perfect their title. It would, in our view, be manifestly unreasonable to expect that in order to pursue a claim for compensation for delayed handing over of possession, the purchaser must indefinitely defer obtaining a conveyance of the premises purchased or, if they seek to obtain a Deed of Conveyance to forsake the right to claim compensation. This basically is a position which the NCDRC has espoused. We cannot countenance that view..."

The Complainant is entitled to the refund of the illegal parking space charges paid by him.

XXIII. That the respondent is guilty of deficiency in services within the purview of provisions of the Act, 2016 and the provisions of Haryana Real Estate (Regulation and Development) Rules, 2017.

C. Relief sought by the complainant:

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

1. Direct the respondent to interest on the total amount paid by the complainant from the due date of possession till the date of actual physical possession.
2. Direct the respondent to refund the amount collected under different heads as per the letter of offer of possession which the complainant was not liable to pay as per the payment plan.
3. Direct the respondent to return the amount unreasonably charged by the respondent by increasing the sale price of the unit after execution of the Buyer's Agreement.
4. Set aside the one sided indemnity that was signed by the complainant under undue influence of the respondent.

D. Reply by respondent:

5. The respondent has made following submissions by way of reply:

1. That the complainant approached the respondent and expressed her interest in booking an apartment in the Low Cost/Affordable Group Housing Project developed by respondent known as "Our Homes" situated in Sector 37C, Gurgaon, Haryana. Prior to the booking, the complainant has conducted extensive and independent enquiries with regard to the project and only after being fully satisfied on all aspects, she took an independent and



informed decision, uninfluenced in any manner by the respondent, to book the unit in question.

- II. Thereafter, the complainant applied to the respondent for provisional allotment of the unit. Pursuant thereto, unit bearing no **404**, located on the 4th Floor, Tower- Jasmine admeasuring 516.67 sq. ft. (tentative area) along with One Car Parking was allotted to the complainant. The respondent had no reason to suspect the *bonafide* of the complainant and proceeded to allot the unit in question in her favour.
- III. Thereafter, a Buyer's Agreement dated 11.02.2013 was executed between the complainant and the respondent. It is pertinent to mention that the Buyer's Agreement was consciously and voluntarily executed between the parties and the terms and conditions of the same are binding on both the parties.
- IV. That as per Clause 3(a) of the Buyer's Agreement, the due date of possession of the unit in question was 36 months from date of commencement of construction upon the receipts of all project related approvals along with a grace period of 6 months. The relevant para is reiterated hereunder:

"The Developer proposes to handover the possession of the APARTMENT within a period of thirty six (36) months with a grace period of 6 months, from date of commencement of construction of the Complex upon the receipt of all project related approvals including sanction of building plans/ revised plan and approvals of all concerned authorities including the Fire Service Department, Civil Aviation Department....."

- V. At this stage, it is submitted that the benefit of grace has to be given as has also been considered by the Hon'ble Appellate Tribunal, Chandigarh in the case titled as Emaar MGF Land Ltd. vs



Laddi Praramjit Singh Appeal no. 122 of 2022 that if the grace period is mentioned in the clause, the benefit of the same is allowed.

- VI. That the due date/possession clause provided under clause 3 of the Builder Buyer Agreement was subjective in nature and hence shall depend on the Allottee/Complainant complying all the terms and conditions of the Agreement. Thus, the due date of offer of possession was subjected to the terms of Clause 3 (Force Majeure) and the complainant having complied with all the terms and conditions of the Builder Buyer Agreement. However, the complainant failed to fulfilled his obligation and had defaulted in making the outstanding payments.

Moreover, it is to be noted that the development and implementation of the project have been hindered on account of several orders passed by various authorities/forums/courts, before passing of the due date of offer of possession. They have been delineated hereinbelow:

S. no.	Date of Order	Directions	Period of Restriction	Days affected	Comments
1.	07.04.2015	National Green Tribunal had directed that old diesel vehicles (heavy or light) more than 10 years old would not be permitted to ply on the roads of NCR,	7 th of April, 2015 to 6 th of May, 2015	30 days	The aforesaid ban affected the supply of raw materials as most of the contractors/building material suppliers used diesel vehicles more than 10 years old. The order had



		<p>Delhi. It has further been directed by virtue of the aforesaid order that all the registration authorities in the State of Haryana, UP and NCT Delhi would not register any diesel vehicles more than 10 years old and would also file the list of vehicles before the tribunal and provide the same to the police and other concerned authorities.</p>			<p>abruptly stopped movement of diesel vehicles more than 10 years old which are commonly used in construction activity. The order had completely hampered the construction activity.</p>
2.	19th July 2016	<p>National Green Tribunal in O.A. No. 479/2016 had directed that no stone crushers be permitted to operate unless they operate consent from the State Pollution Control Board, no objection from the concerned authorities and have the Environment Clearance from the</p>	<p>Till date the order in force and no relaxation has been given to this effect.</p>	30 days	<p>The directions of NGT were a big blow to the real estate sector as the construction activity majorly requires gravel produced from the stone crushers. The reduced supply of gravels directly affected the supply and price of ready mix concrete required for construction activities.</p>

		competent Authority.			
	8th Nov, 2016	National Green Tribunal had directed all brick kilns operating in NCR, Delhi would be prohibited from working for a period of 2016 one week from the date of passing of the order. It had also been directed that no construction activity would be permitted for a period of one week from the date of order.	8 th Nov, 2016 to 15 th Nov, 2016	7 days	The bar imposed by Tribunal was absolute. The order had completely stopped construction activity.
•	7th Nov, 2017	Environment Pollution (Prevention and Control Authority) had directed to the closure of all brick kilns, stones crushers, hot mix plants, etc. with effect from 7 th Nov 2017 till further notice.	Till date the order has not been vacated	90 days	The bar for the closure of stone crushers simply put an end to the construction activity as in the absence of crushed stones and bricks carrying on of construction were simply not feasible. The respondent eventually ended up locating alternatives with the intent of expeditiously concluding

					<p>construction activities but the previous period of 90 days was consumed in doing so. The said period ought to be excluded while computing the alleged delay attributed to the Respondent by the Complainant. It is pertinent to mention that the aforesaid bar stands in force regarding brick kilns till date is evident from orders dated 21st Dec, 19 and 30th Jan, 20.</p>
9 th Nov 2017 and 17 th Nov, 2017	National Green Tribunal has passed the said order dated 9 th Nov, 2017 completely prohibiting the carrying on of construction by any person, private, or government authority in NCR till the next date of hearing. (17 th of Nov, 2017). By virtue of the said order, NGT had only permitted the			9 days	<p>On account of passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.</p>

		competition of interior finishing/interior work of projects. The order dated 9 th Nov, 17 was vacated vide order dated 17 th Nov, 17.			
29 th October 2018	Haryana State Pollution Control Board, Panchkula has passed the order dated 29 th October 2018 in furtherance of directions of Environmental Pollution (Prevention and Control) Authority dated 27 th Oct 2018. By virtue of order dated 29 th of October 2018 all the construction activities including the excavation, civil construction were directed to remain close in Delhi and other NCR Districts from 1 st Nov to 10 th Nov 2018.	1 st Nov to 10 th Nov, 2018	10 days	On account of the passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.	
24 th July, 2019	NGT in O.A. no. 667/2019 & 679/2019 had		30 days	Th directions of the NGT were again a setback for stone	

		<p>again directed the immediate closure of all illegal stone crushers in Mahendergarh Haryana who have not complied with the siting criteria, ambient, air quality, carrying capacity, and assessment of health impact. The tribunal further directed initiation of action by way of prosecution and recovery of compensation relatable to the cost of restoration.</p>			<p>crushers operators who have finally succeeded to obtain necessary permissions from the competent authority after the order passed by NGT on July 2017. Resultantly, coercive action was taken by the authorities against the stone crusher operators which again was a hit to the real estate sector as the supply of gravel reduced manifolds and there was a sharp increase in prices which consequently affected the pace of construction.</p>
11 th October 2019	<p>Commissioner, Municipal Corporation, Gurugram has passed an order dated 11th of Oct 2019 whereby the construction activity has been prohibited from 11th Oct 2019 to 31st Dec 2019. It was specifically mentioned in the aforesaid order</p>	<p>11th Oct 2019 to 31st Dec 2019</p>	<p>81 days</p>	<p>On account of the passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.</p>	



		again directed the immediate closure of all illegal stone crushers in Mahendergarh Haryana who have not complied with the siting criteria, ambient, air quality, carrying capacity, and assessment of health impact. The tribunal further directed initiation of action by way of prosecution and recovery of compensation relatable to the cost of restoration.			crushers operators who have finally succeeded to obtain necessary permissions from the competent authority after the order passed by NGT on July 2017. Resultantly, coercive action was taken by the authorities against the stone crusher operators which again was a hit to the real estate sector as the supply of gravel reduced manifolds and there was a sharp increase in prices which consequently affected the pace of construction.
	11 th October 2019	Commissioner, Municipal Corporation, Gurugram has passed an order dated 11 th of Oct 2019 whereby the construction activity has been prohibited from 11 th Oct 2019 to 31 st Dec 2019. It was specifically mentioned in the aforesaid order	11th Oct 2019 to 31st Dec 2019	81 days	On account of the passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.

		that construction activity would be completely stopped during this period.			
			Total days	377ys	

- VII. That from the facts indicated above, it is comprehensively established that a period of 377 days was consumed on account of circumstances beyond the power and control of the respondent, owing to the passing of orders of various statutory authorities and the Covid-19 pandemic. It is well recognized that one day of hindrance in the construction industry leads to a gigantic delay and has a deep effect on the overall construction process of a real estate project. All the circumstances stated hereinabove come within the meaning of *force majeure*, as stated above. However, despite all odds, the respondent was able to carry out construction/development at the project site and obtain the necessary approvals and sanctions and has ensured compliance under the Agreement, laws, and, rules and regulations.
- VIII. That despite such delay, earnestly fulfilled its obligation under the Buyer's Agreement and completed the project as expeditiously as possible. The various circumstances beyond the control of the respondent are the factors responsible for the delayed development of the project. The respondent cannot be penalized and held responsible for the default of its customers or due to force majeure circumstances. Thus, it is most respectfully

submitted that the present complaint deserves to be dismissed at the very threshold.

- IX. That the respondent has complied with all of its obligations, not only with respect to the Buyer's Agreement with the complainant but also as per the concerned laws, rules, and regulations thereunder and the local authorities. That despite innumerable hardships being faced by the respondent, the respondent completed the construction of the project and applied for the occupation certificate before the concerned Authority and successfully attained the Occupation Certificate dated 29.11.2019 and 24.02.2020.
- X. It is submitted that once an application for grant of occupation certificate is submitted to the concerned statutory authority, the respondent ceases to have any control over the same. The grant of occupation certificate is the prerogative of the concerned statutory authority and the respondent does not exercise any influence in any manner whatsoever over the same. Therefore, it is respectfully submitted that the time period utilised by the concerned statutory authority for granting the occupation certificate is liable to be excluded from the time period utilised for the implementation of the project.
- XI. That after receiving of the Occupation Certificate, the possession of the unit was lawfully offered to the complainant vide Offer of Possession dated 30.11.2019. That the physical possession was taken by the complainant without any demur and hence a possession certificate was thereby issued in favour of the complainant by the respondent. It is now, after over 3 years of the

offer of possession that the complainant has approached the Authority as an afterthought seeking delay possession charges with the sole intent of getting wrongful gains and causing wrongful loss to the respondent. Without prejudice to the contents of the respondent, it is submitted that the present complaint is barred by limitation as the cause of action if any, only arose till the receipt of occupancy certificate and not thereafter.

- XII. That after giving the lawful possession of the unit to the complainant, the Conveyance Deed dated 28.06.2021 was also executed between the complainant and the respondent. It is submitted that after execution of the Conveyance Deed, the contractual relationship between the parties stands fully satisfied and comes to an end. That there remains no claim/ grievance of the complainant with respect to the Agreement or any obligation of the parties thereunder.
- XIII. That after the execution of the Conveyance Deed, the parties are estopped from making any claims at this instance. In light of the *bona fide* conduct of the respondent, the peaceful possession having been taken by the complainant, non-existence of cause of action and the frivolous complaint filed by the complainant, this complaint is bound be dismissed with costs in favor of the respondent.
6. 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 these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

7. The Authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

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

E. II Subject matter jurisdiction

9. 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)

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

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

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

F. Findings on objections raised by the respondent

F.I Objection regarding delay due to force majeure circumstances

11. The respondent-promoter has raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the National Green Tribunal, Environment Pollution (Prevention & Control) Authority, shortage of labour and stoppage of work due to lock down due to outbreak of Covid-19 pandemic. Since there were circumstances beyond the control of respondent, so taking into consideration the above-mentioned facts, the respondent be allowed the period during which his construction activities came to stand still, and the said period be excluded while calculating the due date. The plea of the respondent regarding various orders of the authorities, all the pleas advanced in this regard are devoid of merit. The orders passed by authorities banning construction in the NCR region was for a very short period of time and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. In the present case, according to Clause 5(iii)(b) of the Affordable Housing Policy, 2013, the stipulated timeline for handing over possession of the unit in question is four years from either the date of sanction of building plans or the receipt of environmental clearance, whichever



occurs later. In this instance, the environmental clearance was granted on 26.06.2013. Calculating four years from this date results in 26.06.2017. The argument related to Covid-19 lacks merit since the pandemic began in March 2020, which is well after the due possession date. Therefore, leniency cannot be extended to the promoter/respondent based on these grounds. It is a fundamental principle that one cannot benefit from their own wrongdoing. Consequently, the Authority concludes that no relief can be granted to the respondent in this regard.

F.II. Objection regarding the complainant cannot claim delay possession charges after execution of the conveyance deed.

12. It had been contended by the respondent that on execution of the conveyance deed, the relationship between both the parties stands concluded and no right or liabilities can be asserted by the respondent or the complainant against the other. Therefore, the complainants are stopped from claiming any interest in the facts and circumstances of the case.
14. It is important to look at the definition of the term "deed" itself in order to understand the extent of the relationship between the allottee and the promoter. A deed is a written document or an instrument that is sealed, signed, delivered by all the parties to the contract i.e., buyer and seller. It is a contractual document that includes legally valid terms and is enforceable in a court of law. It is mandatory that a sale deed should be in writing and both the parties involved must sign the document. Thus, a conveyance deed is



essentially one wherein the seller transfers all rights to legally own, keep and enjoy a particular asset, immovable or movable. In this case, the assets under consideration are immovable property. On signing a conveyance deed, the original owner transfers all legal rights over the property in question to the buyer, against a valid consideration usually monetary. Therefore, a "conveyance deed" or "sale deed" implies that the seller signs a document stating that all authority and ownership of the property in question has been transferred to the buyer.

15. From the above it is clear that on execution of a sale/conveyance deed, only the title and interest in the said immovable property (herein the allotted unit) is transferred. However, the conveyance deed does not conclude the relationship or marks an end to the liabilities and obligations of the promoter towards the said unit whereby the right, title and interest has been transferred in the name of the allottees on execution of the conveyance deed.
16. The allottees have invested their hard-earned money and there is no doubt that the promoter has been enjoying benefits of and the next step is to get their title perfected by executing the conveyance deed which is the statutory right of the allottees. Also, the obligation of the developer-promoter does not end with the execution of a conveyance deed. Therefore, in furtherance to the Hon'ble Apex Court judgement and the law laid down in case titled as ***Wg.Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. Vs. DLF Southern Homes Pvt. Ltd. (now known as BEGUR OMR***



Homes Pvt. Ltd.) and Ors. (Civil appeal no. 6239 of 2019) dated 24.08.2020, the relevant paras are reproduced herein below:

"34 The developer has not disputed these communications. Though these are four communications issued by the developer, the appellants submitted that they are not isolated aberrations but fit into the pattern. The developer does not state that it was willing to offer the flat purchasers possession of their flats and the right to execute conveyance of the flats while reserving their claim for compensation for delay. On the contrary, the tenor of the communications indicates that while executing the Deeds of Conveyance, the flat buyers were informed that no form of protest or reservation would be acceptable. The flat buyers were essentially presented with an unfair choice of either retaining their rights to pursue their claims (in which event they would not get possession or title in the meantime) or to forsake the claims in order to perfect their titles to the flats for which they have paid valuable consideration. In this backdrop, the simple question which we need to address is whether a flat buyer who espouses a claim against the developer for delayed possession can as a consequence of doing so be compelled to defer the right to obtain a conveyance to perfect their title. It would, in our view, be manifestly unreasonable to expect that in order to pursue a claim for compensation for delayed handing over of possession, the purchaser must indefinitely defer obtaining a conveyance of the premises purchased or, if they seek to obtain a Deed of Conveyance to forsake the right to claim compensation. This basically is a position in which the NCDRC has espoused. We cannot countenance that view.

35. The flat purchasers invested their hard earned money. It is only reasonable to presume that the next logical step is for the purchaser to perfect the title to the premises which have been allotted under the terms of the ABA. But the submission of the developer is that the purchaser forsakes the remedy before the consumer forum by seeing a Deed of conveyance. To accept such a construction would lead to an absurd consequence of requiring the purchaser either to abandon a just claim as a condition for obtaining the conveyance or to indefinitely delay the execution of the Deed of Conveyance pending protracted consumer litigation."

17. The Authority has already taken a view in Cr. No. 4031/2019 and others titled as **Varun Gupta V/s Emaar MGF Land limited and others** and observed that the execution of a conveyance deed does not conclude the relationship or marks an end to the liabilities and obligations of the promoter towards the subject unit and upon taking possession, and/or executing conveyance deed, the complainant never gave up his statutory right to seek delayed possession charges as per the provisions of the said Act.

18. After consideration of all the facts and circumstances, the Authority holds that even after execution of the conveyance deed, the complainant/allottee cannot be precluded from her right to seek delay possession charges from the respondent-promoter.

F.III. Objection regarding complaint being barred by limitation

19. So far as the issue of limitation is concerned, the Authority is cognizant of the view that the law of limitation does not strictly apply to the Real Estate Regulation and Development Authority Act of 2016. However, the Authority under section 38 of the Act of 2016, is to be guided by the principle of natural justice. It is universally accepted maxim and the law assists those who are vigilant, not those who sleep over their rights. Therefore, to avoid opportunistic and frivolous litigation a reasonable period of time needs to be arrived at for a litigant to agitate his right. This Authority of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances.
20. It is also observed that the Hon'ble Supreme Court in its order dated 10.01.2022 in **MA NO.21 of 2022 of Suo Moto Writ Petition Civil No.3 of 2020** have held that the period from 15.03.2020 to 28.02.2022 shall stand excluded for purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.
21. In the present matter the cause of action arose on 30.11.2019 when the possession was handed over to the complainants by the respondent. The complainant has filed the present complaint on 02.06.2023 which is 3 years 6 months and 3 days from the date of



cause of action. In the present case the three year period of delay in filing of the case also after taking into account the exclusion period from 15.03.2020 to 28.02.2022. In view of the above, the Authority is of the view that the present complaint has been filed within a reasonable time period and is not barred by the limitation.

G. Findings on the relief sought by the complainant:

G.I Direct the respondent to pay delayed possession charges on the total amount paid from the due date of possession till the actual handover of possession.

22. The complainants booked a unit in the project "Our Home" located in Sector-37C, Gurugram, being developed by the respondent. They were allotted unit number 404 on the 4th floor of tower-Jasmine, with a super area of 516.67 sq.ft, as per the allotment letter dated 11.02.2013. Subsequently, the Buyer's Agreement was executed between the parties on 11.02.2013. According to Clause 5(iii)(b) of the Affordable Housing Policy 2013, possession of the unit was to be provided to the complainants within four years from either the date of obtaining building plan approvals or the grant of environmental clearance from the concerned authorities, whichever was later. The respondent obtained the environmental clearance on 26.06.2013. Calculating four years from this date, the due date for possession comes out to be 26.06.2017. The respondent obtained the occupation certificate on 29.11.2019, and the unit was handed over to the complainants on 05.11.2020. However, the offer of possession was made on 30.11.2019. The conveyance deed was executed on 28.06.2021.



23. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges along with interest on the amount paid. 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.

"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.*

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

25. 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.

26. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 04.09.2024 is 9.10 %. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
27. 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;"

28. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same as is being granted to the complainants in case of delayed possession charges.
29. 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. As per Clause 5 (iii)(b) of the Affordable Housing Policy 2013, the due date of possession of the unit in question is 4 years from the date of sanction of building plans or receipt of environmental clearance, whichever is later. The environmental clearance of the project was obtained by the respondent on 26.06.2013. Therefore, the due date of handing over possession is 26.06.2017.

30. The competent authorities granted the occupation certificate to the respondent on 29.11.2019, and the unit was subsequently handed over to the complainants on 05.11.2020. The offer of possession was made by the respondent on 30.11.2019. The deadline for handing over possession of the unit was 26.06.2017, and the delay on the part of the respondent is evident.
31. 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 allottee, shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 26.06.2017 till offer of possession plus two months after obtaining occupation certificate from the competent authority or actual handing over of possession whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

G.II. Direct the respondent to set aside the indemnity bond.

32. It is noteworthy that section 18 of the Act stipulates for the statutory right of the allottee against the obligation of the promoter to deliver the possession within stipulated timeframe. Therefore, the liability of the promoter continues even after the execution of indemnity-cum-undertaking at the time of possession. The Authority is of the

view that the aforesaid indemnity-cum-undertaking does not preclude the complainant-allottee from exercising her right to claim delay possession charges as per the provisions of the Act. Thus, the said the indemnity bond is hereby set-aside.

G.III. Direct the respondent to refund the amount collected under different heads alongwith offer of possession which the complainant was not liable to pay as per the payment plan.

G.IV. Direct the respondent to refund the amount unreasonably charged by the respondent by increasing the sale price after execution of the Buyer's Agreement.

33. The financial liabilities between the allottee and the promoter comes to an end after the execution of the conveyance deed. The complainant could have asked for the claim before the conveyance deed got executed between the parties. Therefore, after execution of the conveyance deed the complainant-allottee cannot seek refund of charges other than statutory benefits, if any pending. Once the conveyance deed is executed and accounts have been settled, no claims remains. So, no directions in this regard can be effectuated at this stage.

H. Directions of the authority

34. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoters as per the functions entrusted to the authority under section 34(f):

- i. The respondent is directed to pay the interest at the prescribed rate i.e., 11.10% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e., 26.06.2017 till offer of possession plus two months after



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obtaining occupation certificate from the competent authority or actual handover, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

35. Complaint stands disposed of.
36. File be consigned to registry.

Ashok Sangwan
(Member)

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 04.09.2024



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