

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

Complaint no.: 6646 of 2022
Date of decision:- 28.08.2024

1. Mr. Jasbir Singh Jassal
 2. Mrs. Trilochan Kaur Jassal
- Both R/o:-**105, Miracle Drive,
Troy Michigan, 48084, U.S.A.

Through their S.P.A Mrs. Bhupinder Kaur
R/o- S-4/125, Old Mahavir Nagar,
Tilak Nagar, Delhi-110018.

Complainants

Versus

M/s. BPTP Limited
Regd. office:OT-14, floor-3rd, Next Door Parklands,
Sector-76, Faridabad, Haryana-121004.

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Sh. Vaibhav Mahajan (Advocate)

Complainants

Sh. Harshit Batra (Advocate)

Respondent

ORDER

1. The present complaint dated 14.10.2022 has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and



Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions 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 complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1	Name of the project	Terra, Sector-37D, Gurugram
2	Nature of the project	Group Housing Towers
3	Area of the project	19.74 acres
4	Hrera Registered	Registered 299 of 2017 Dated:- 13.10.2017
5	DTCP Licence	Licence no.-83 of 2008 and 94 of 2011.
6	Allotment letter	10.12.2012 (As on page no. 51 of complaint)
7	Date of execution BBA	30.04.2013 (As on page no. 37 of reply)
8	Unit no.	T23-1103, Floor-11 th , Tower-23 (As on page no. 46 of reply)

9	Super area	1998 sq. ft. [Super Built-up area] (As on page no. 46 of reply)
10	Possession clause	<p>Clause 5 POSSESSION AND HOLDING CHARGES</p> <p>5.1 <i>The Seller/confirming Party proposes to offer possession of the Unit to the Purchaser(s) within the Commitment Period. The Seller/Confirming Party shall be additionally entitled to a Grace Period of 180 days after the expiry of the said Commitment Period for making offer of possession of the said Unit.</i></p> <p>Clause 1 DEFINITIONS:</p> <p>1.6 <i>“Commitment Period” shall mean, subject to, Force Majeure circumstances; intervention of statutory authorities and Purchaser(s)having timely complied with all its obligations, formalities or documentation, as prescribed/requested by Seller/Confirming Party, under this Agreement and not being in default under any part of this Agreement, including but not limited to the timely payment of installments of the sale consideration as per the payment plan opted. Development Charges (DC), Stamp Duty and other charges, the Seller/Confirming Party shall offer the possession of the Unit to the Purchaser’s within a period of 42</i></p>

		<p>months from the date of sanction of the building plan or execution of Flat Buyer's Agreement, whichever is later.</p> <p><i>[Emphasis supplied]</i> <i>(As on page no. 44 of reply)</i></p>
11	Grace period	Grace period allowed
12	Date of sanction of building plan	21.09.2012
13	Due date of possession	30.04.2017 [Calculated 42 months from date of execution of BBA + 180 days]
14	Sale consideration as per statement of account	Rs. 1,66,63,008/- (As on page no. 109 of reply)
15	Total amount paid by the complainant	Rs. 1,27,41,565/- (As on page no. 109 of reply)
16	In principle Occupation certificate on	21.09.2023 (As on page no. 104 of reply)
17	Offer of possession	13.10.2023 (As on page no. 106 of reply)
18	Final occupation certificate	23.01.2024 (As on page no. 4 of written submissions on behalf of respondent filed on 21.08.2024)

B. Facts of the complaint:

3. The complainants made the following submissions in the complaint:
 - I. That the complainants are senior citizens and NRIs, permanently residing in U.S.A. In July-August 2012, while looking for a residential property in Delhi-NCR region and came to know about an upcoming group housing project launched by the respondent in the name of "Terra" which was proposed to be developed in Sector-37-D, Gurgaon.
 - II. Captivated by the misrepresentations and false promises made by the respondent, on 09.09.2012, the complainants applied for allotment of a 4 BHK residential flat of approx 1998 sq.ft. (Super Built-up area) at the basic sale price of Rs.5,250/- per sq.ft. and opted for a construction ;linked payment plan vide booking form dated 09.09.2012. The total net cost of the unit , including BSP, development charges, car parking charges, etc., in the sum of Rs.1,32,06,331.
 - III. Thereafter, the complainants also participated in the process of selection of units and selected unit no. T-23 – 1103 for allotment. Accordingly, on 28.10.2012, a confirmation letter was issued by the respondent in favour of the complainants, whereby, unit no. T-23 – 1103 was confirmed and it was stated that the allotment is subjected to the timely payment of the next instalment due as per the payment plan opted by the complainants.

- IV. On 27.11.2012, the complainants paid another installment amounting to Rs.14,41,098/- to the respondent, which was duly acknowledged vide a payment receipt.
- V. On 10.12.2012, the respondent allotted the aforesaid unit in the project in favour of the complainants by way of an allotment letter dated 10.12.2012. A payment schedule was also annexed with the allotment letter specifying the number and amount of instalments as consideration for the ultimate sale to be made/ completed, and the manner/stage of payment of the same.
- VI. From the period January 2013 till April 2014, the complainants duly complied with all the demands raised by the respondent by timely paying all the installments. The details of the payments made by the complainants from January 2013 till April 2015, along with corresponding payment receipts issued by the respondent in favour of the complainants, are mentioned hereinbelow:

Date	Receipt No.	Amount (₹)
09.01.2013	2012/1400036566	Rs.10,70,549.50/-
24.07.2013	2013/1400010968	Rs.10,00,000.00/-
31.07.2013	2013/1400011745	Rs.3,47,120.00/-
19.11.2013	2013/1400021640	Rs.13,47,120.00/-
12.04.2014	2014/1400000538	Rs.13,06,706.00/-

- VII. The aforesaid project ought to have been completed after the expiry of 36 months from the date of booking, i.e., by September

2015, in terms of the oral assurances by the respondent and time-line envisaged under the construction linked payment schedule annexed with the booking form dated 09.09.2012 as well as the allotment letter dated. 10.12.2012. However, unfortunately, the respondent miserably failed to complete the construction of the project within the time-limit and upon enquiry, cited multiple frivolous reasons to justify non-completion of the project, such as shortage of funds, etc.

- VIII. Further, the representatives of the respondent falsely assured the complainants that the project will be ready soon, and fervently pleaded the complainants to continue making regular payments towards the total sale consideration of the allotted unit to avoid the possibility of any further delay.
- IX. Believing the false assurances of the respondent to be true and with the hope that the construction of the project will be completed in the time-bound manner, the complainants continued discharging their obligation of paying installments towards the total sale consideration of the allotted unit in terms of the payment plan, despite utter failure on the part of the respondent to complete the construction of the project within the stipulated period.
- X. That from the period 2012 - 2018, the complainants have paid all the installments timely, which cumulatively amount to a sum of

Rs.1,26,00,644/- to the respondent, which is more than 95% of the total sale consideration of the unit.

- XI. That the respondent has not even executed a BBA in favour of the complainants till date. Therefore, committing a grave violation of Section 13 of the RERA Act which explicitly prohibits a promoter from accepting a sum more than 10% of the cost of the unit, as an advance payment from a person without entering into a registered written agreement for sale.
- XII. Unfortunately, despite payment of a hefty amount of money by the complainants, the respondent did not even bother to share the construction status of the project with the complainants. The complainants made several attempts to enquire about the status of the project by visiting the office of the respondent in person on several occasions during the period w.e.f. 2018 - 2019, however, could not solicit any plausible response. Thereafter, due to unprecedented circumstances on account of Covid-19, the complainants could not rigorously follow up with the respondent in the year 2020 - 2021.
- XIII. That through the website of the Authority, it has come into the knowledge of the complainants that the project is 100% completed and date of completion is 12.10.2020. However, despite completion, the complainants have not received possession of the unit till date.

- XIV. That the respondent had malicious and fraudulent intentions to cheat the complainants since the beginning. The respondent had deliberately devised a clever payment plan whereby the payment of more than 15% of the total cost of the unit was demanded in advance, and the rest of 80% amount was linked with the construction of super structure only. Merely 5% of the total cost of the unit is linked with offer of possession. As such, since payment of around 95% of the total cost of the unit is not depended or co-related to the finishing of flat and internal development of amenities. Therefore, the respondent deliberately did not bother to complete the remaining work and handover possession of the unit to the complainants.
- XV. That vide the payment schedule annexed with the booking form / allotment letter, the respondent unilaterally subjected the complainants to various charges over and above the BSP such as development charges, covered parking charges, fire fitting & power backup installation charges, interest free maintenance scheme, club membership charges, corner & club / park facing charges, etc. Further, the respondent has also incorporated a specific *note* in the payment schedule stating that
- "Other charges in terms of the agreement are payable as per the demand raised by the company .Service tax to be charged as applicable."*
- XVI. Such unilaterally imposed additional charges are prejudicial and reflect how the respondent has misused his dominant position by

incorporating such unreasonable, unfair, mischievous and one-sided clauses / payment terms.

- XVII. Although the respondent has not extended an offer of possession to the complainants yet, the complainants are anticipating that the respondent will demand additional unreasonable and arbitrary charges, as a pre-condition while extending offer of possession. In fact, the respondent is following such trend of demanding arbitrary charges from the other allottees of the project as well as other projects developed by the respondent. As such, multiple complaints were filed by several allottees against the respondent raising common issues regarding super area, cost escalation, STP charges, electrification charges, Taxes viz GST & VAT etc., advance maintenance charges, car parking charges, holding charges, club membership charges, preferential location charges, development location charges, utility connection charges, EDC/IDC charges, firefighting/power backup charges.
- XVIII. With an endeavour to resolve the aforesaid issues, a committee headed by Sh. Manik Sonawane IAS (retired), Sh. Laxmi Kant Saini CA and Sh. R.K. Singh CTP (retired) was constituted by this Hon'ble Authority vide orders dated 06.07.2021 and 17.08.2021, and the said committee was called upon to submit a report on the above-mentioned issues on the projects developed by the respondent, including project Park Generation Spacio and Terra.
- XIX. That the Committee made following recommendations:

"The OC of Tower 22 & 23 is still under consideration. Legally, the respondent company cannot offer possession to the allottees of the towers T-20, 21, 24 & 25. Hence, it will not be possible for the Committee to anticipate the demand likely to be raised by the respondent at the time of offer of possession. Notwithstanding that, the committee is of the view that the recommendations made in the cases of nominees of project Spacio and Park Generation on issues concerning super area, car parking charges, development charges, PLC, electrification charges, club membership charges, cost escalation, advance maintenance, GST & VAT etc. may be implemented in the case of the allottees / complainants of Terra project also and the respondent may be directed to comply with the same while offering possession."

- XX. There are a bunch of decisions, whereby the Authority has judiciously adjudicated the claims of other similarly situated allottees of the projects developed by the respondent, and granted interest for delayed possession and refrained the respondent from imposing unwarranted charges, while concurring with the recommendations issued by the committee.
- XXI. That the following decisions of the Authority may be referred in this context:
- I) Bunch of 37 complaints along with CR/No.1228 of 2021 decided on 10.05.2022.
 - II) Bunch of 46 complaints decided on 26.04.2022.
- XXII. Therefore, while extending an offer of possession, the respondent shall adhere to the recommendations of the Committee. By not handing over possession of the unit to the complainants by the due date of possession the respondent has contravened Section 11(4)(a) of the Act, 2016. That in the absence of the Builder Buyer Agreement, the terms of the payment schedule shall be resorted to which unerring lead to an inference

✓

that the construction of the project was to be completed in a time-bound manner, within a period of 36 months from the date of booking. Accordingly, as on date (01.09.2022), there is a delay of 6 years, 11 months, 24 days, calculated from the promised date of handing over possession 09.09.2015, till the date of filing the present complaint 01.09.2022.

XXIII. It is also pertinent to mention that although the project was registered with the Authority vide registration no. 299 of 2017 dated 13.10.2017, however, the registration was valid only up to 12.10.2020. Therefore, penalty for non-registration of the project under Section 59 of the RERA Act, shall also be imposed on the respondent.

C. Relief sought by the complainants:

4. The complainant has sought following relief(s):
 - i. Direct the respondent to handover physical possession of the unit to the complainants.
 - ii. Direct the respondent to pay delayed possession charges.
 - iii. Restrain the respondent from demanding any fresh additional, arbitrary and unreasonable charges/cost as a pre-condition for offering possession of the unit.
 - iv. Direct the respondent to comply with the recommendations issued by the committee headed by Shri. Manik Sonawane IAS(retired), on the issues concerning super-area, car-parking, development charges, PLC, electrification charges, club membership charges, cost escalation, advance maintenance, GST & VAT etc., at the time of offering possession of the unit.

D. Reply by respondent:

5. The respondent by way of written reply has made following submissions:
- I. That the complainants being interested in the group housing real estate development of the respondent known as "TERRA" located at Sector 37-D, Gurugram, Haryana booked a unit in the project. That the project has all the necessary approvals and permissions. It was granted license no. 83 of 2008 and 94 of 2011 from Director, Town and Country Planning, Haryana (DTCP) and is also registered with the Authority vide registration no. 299 of 2017 dated 13.10.2017.
 - II. That the complainants booked a unit vide an application form dated 09.09.2012 by paying a booking amount of Rs.7,00,000/- vide cheque no. 007329 dated 08.04.2012. Pursuant to booking, a letter dated 19.10.2012 was sent to the complainants in order to invite the complainants for the selection of the unit for allotment.
 - III. That subsequent to such invitation, a unit bearing number T-0023-1103, 11th Floor, Tower T23, tentatively admeasuring 1998 sq. ft. was selected as per the terms and conditions of the application form and a letter dated 28.10.2012 was thereby issued in favour of the complainant confirming the selection of

the unit and consequently, the allotment of the same took place vide allotment letter dated 10.12.2012.

- IV. That the complainants consciously and wilfully opted for Time/Construction Linked Payment Plan as per their choice for remittance of the sale consideration for the unit. That the respondent had no reason to suspect *bonafide* of the complainants.
- V. That at this stage, it is imperative to mention here that after the allotment of the unit in favour of the complainants, a Flat Buyer's Agreement dated 30.04.2013 was duly executed between the complainants and respondent which clearly substantiate that the complainants have imposed false allegations upon the respondent with regards to the non-execution of the agreement.
- VI. That both the parties were obligated to fulfil their respective obligations as set out under the Flat Buyer's Agreement. That the due date of offer of possession, as per clause 5.1 read with clause 1.6 of the agreement is 42 months from the date of sanction of the building plan or execution of Flat Buyer's Agreement, whichever is later with a grace period of 180 days, subject however, to the *force majeure* circumstances, intervention of statutory authorities and the purchaser(s) making all payments

within the stipulated period and complying with the terms and conditions of this agreement.

- VII. That the due date is calculated from the date of execution of Flat Buyer's Agreement being later as the building plan of the project was sanctioned on 21.09.2012. Thus, the *proposed* due date for offer of possession comes out to be 30.04.2017 (including the grace period).
- VIII. That the due date of delivery of the unit was subjective in nature and was dependent on the Force Majeure circumstances and the Purchaser/allottee complying with all the terms and conditions of the BBA along with timely payments of instalments of sale consideration.
- IX. That the construction of the unit was hampered due to and was subject to the happening of the *force majeure* and other circumstances beyond the control of the respondent, the benefit of which is bound to be given to the respondent no.1 in accordance with clause 10 r/w clause 1.17 of the Agreement, which is reiterated hereunder:

" 10.1 The Seller/Confirming Party shall not be held responsible or liable for not performing any of its obligations or undertakings provided for in this Agreement if such performance is prevented due to Force Majeure conditions, as defined in Clause 1 17 of this Agreement.



1.17 *Force Majeure*" means any event or combination of events or circumstances beyond the reasonable control of the Seller/Confirming Party which cannot (a) by the exercise of reasonable diligence, or (b) despite the adoption of reasonable precaution and/or alternative measures, be prevented, or caused to be prevented, and which adversely affects the Seller/Confirming Party's ability to perform, including but not limited to the following

(a) Act of God i.e. fire, draught, flood, earthquake, epidemics, natural disasters,

(b) Explosions or accidents, air crashes, act of terrorism:

(c) Strikes or lock outs. industrial disputes;

(d) Non-availability of cement, steel or other construction/raw material due to strikes of manufacturers, suppliers, transporters or other intermediaries or due to any reason whatsoever,

(e) War and hostilities of war, riots, bandh, act of terrorism or civil commotion:

(f) The promulgation of or amendment in any law, rule or regulation or the issue of any injunction, court order or direction from any governmental or statutory authority that prevents or restricts Seller/Confirming party from complying with any or all the terms and conditions as agreed in this Agreement, or

(g) Any legislation, order or rule or regulation made or issued by the Government or any other authority or if any competent authority(ies) refuses, delays, withholds, denies the grant of necessary approvals/certificates for the GH/Unit or if any matters, issues relating to such approvals, permissions, notices, notifications by the competent authority (ies) becomes subject matter of any suit / writ before a competent court or, for any reason whatsoever"

- X. That the respondent faced certain *force majeure* events including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities

by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. It is pertinent to state that the National Green Tribunal in several cases related to Punjab and Haryana had stayed mining operations including in O.A No. 171/2013, wherein vide Order dated 2.11.2015 mining activities by the newly allotted mining contracts by the state of Haryana was stayed on the Yamuna River bed. These orders in fact *inter-alia* continued till the year 2018. Similar orders staying the mining operations were also passed by the Hon'ble High Court and the National Green Tribunal in Punjab and Uttar Pradesh as well. The stopping of mining activity not only made procurement of material difficult but also raised the prices of sand/gravel exponentially. It was almost 2 years that the scarcity as detailed aforesaid continued, despite which all efforts were made and materials were procured at 3-4 times the rate and the construction continued without shifting any extra burden to the customer. The time taken by respondent no.1 to develop the project is the usual time taken to develop a project of such a large scale and despite all the *force majeure* circumstances, respondent no.1 completed the construction of the project diligently and timely, without

imposing any cost implications of the aforementioned circumstances on the complainants and demanding the prices only as and when the construction was being done. It is to be noted that the development and implementation of the project have been hindered on account of several orders/directions passed by various authorities/forums/courts, before passing of the subjective due date of offer of possession.

- XI. That the aforementioned circumstances are in addition to the partial ban on construction. In the recent past the Environmental Pollution (Prevention and Control) Authority, NCR (EPCA) vide its notification bearing no. EPCA-R/2019/L-49 dated 25.10.2019 banned construction activity in NCR during night hours (6pm-6am) from 26.10.2019 to 30.10.2019 which was later on converted to complete ban from 1.11.2019 to 05.11.2019 by EPCA vide its notification bearing no. R/2019/L-53 dated 01.11.2019.
- XII. That additionally, even before the normalcy could resume the world was hit by the covid-19 pandemic. That the covid-19 pandemic resulted in serious challenges to the project with no available labourers, contractors etc. for the construction of the project. The Ministry of Home Affairs, GOI vide notification dated

24.03.2020 bearing no. 40-3/2020-DM-I(A) recognized that India was threatened with the spread of Covid-19 pandemic and ordered a complete lockdown in the entire country for an initial period of 21 days which started on 25.03.2020. By virtue of various subsequent notifications, the Ministry of Home Affairs, GOI further extended the lockdown from time to time and till date the same continues in some or the other form to curb the pandemic. Various State Governments, including the Government of Haryana have also enforced various strict measures to prevent the pandemic including imposing curfew, lockdown, stopping all commercial activities, stopping all construction activities. Despite, after above stated obstructions, the nation was yet again hit by the second wave of Covid-19 pandemic and again all the activities in the real estate sector were forced to stop. It is pertinent to mention, that considering the wide spread of Covid-19, firstly night curfew was imposed followed by weekend curfew and then complete curfew. That during the period from 12.04.2021 to 24.07.2021, each and every activity including the construction activity was banned in the State. This has been followed by the recent wave brought by the new covid variant in the country. Therefore, it is safely concluded that the said delay in

the seamless execution of the project was due to genuine *force majeure* circumstances and the said period shall not be added while computing the delay.

- XIII. That from the facts indicated above and documents appended, it is comprehensively established that a period of 292 days was consumed on account of circumstances beyond the power and control of respondent no.1, owing to the passing of orders by the statutory authorities. All the circumstances stated hereinabove come within the meaning of *force majeure*, as stated above. Thus, the respondent has been prevented by circumstances beyond its power and control from undertaking the implementation of the project during the time period indicated above and therefore the same is not to be taken into reckoning while computing the period of 42 months as has been provided in the Agreement.
- XIV. That the project is largely dependent on the fulfilment of the allottees in timely clearing the dues. That the due date of offer of possession was also dependent on the timely payment by the complainants, which, the complainants failed to do. The demands were raised as per the agreed payment plan however, despite the same, the complainants have delayed the payment against the

unit. That the total sales consideration of the unit was Rs. 1,66,63,008.45/- out of which the complainants have only made payment of Rs.1,27,41,565.41/-

- XV. That it was the obligation of the complainants to make the payments as per the payment plan and agreed terms and conditions of the agreement. Various demand letters were raised as per the agreed payment plan however, the complainants continuously delayed in making the due payments, upon which, various payment request letters and reminder notices were served to the complainants from time to time.
- XVI. That the respondent had already received in-principle Occupation Certificate on 21.09.2023. As no objections were ever raised by the complainants/allottee thereby lawful possession was offered to the complainants on 13.10.2023.
- XVII. Hence, all the claims of the complainants are wrong and frivolous and hence the present complaint is liable to be dismissed.
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 the objections raised by the respondent:

F.I. Objection regarding Force Majeure conditions.

11. The respondent-promoter has raised a contention that the handover of the unit 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. But the plea taken in this regard is not tenable. The due date for completion of project is calculated as per clause 5.1 of the agreement dated 30.04.2013, which is prior to the coming of Covid-19. Though there have been various orders issued to curb the environment pollution, but these were for a short period of time. So, the circumstances/conditions after that period can't be taken into consideration for delay in completion of the project.

G. Findings on the relief sought by the complainants.

G.I Direct the respondent to handover physical possession of the unit.

G.II. Direct the respondent to pay delayed possession charges.

12. The aforementioned reliefs are interrelated and thus are being addressed together. In the present complaint, the complainants



acquired a unit numbered T23-1103 on the 11th floor of Tower-23, measuring 1998 sq. ft, for a total sale consideration of Rs. 1,66,63,008/- in the project "Terra" being developed by the respondent. The unit was allotted to the complainants via an allotment letter dated 10.12.2012, followed by the execution of a Builder Buyer's Agreement between the complainants and the respondent on 30.04.2013. According to clause 5.1 read with clause 1.6 of the aforementioned agreement dated 30.04.2013, the respondent committed to handing over possession of the unit to the complainants by 30.04.2017. The said clause is reproduced below:

"Clause 5 POSSESSION AND HOLDING CHARGES

5.1 The Seller/confirming Party proposes to offer possession of the Unit to the Purchaser(s) within the Commitment Period. The Seller/Confirming Party shall be additionally entitled to a Grace Period of 180 days after the expiry of the said Commitment Period for making offer of possession of the said Unit.

Clause 1 DEFINITIONS:

1.6 "Commitment Period" shall mean, subject to, Force Majeure circumstances; intervention of statutory authorities and Purchaser(s) having timely complied with all its obligations, formalities or documentation, as prescribed/requested by Seller/Confirming Party, under this Agreement and not being in default under any part of this Agreement, including but not limited to the timely payment of installments of the sale consideration as per the payment plan opted. Development Charges (DC), Stamp Duty and other charges, the Seller/Confirming Party shall offer the possession of the Unit to the Purchaser's within a period of 42 months from the date of sanction of the building plan or execution of Flat Buyer's Agreement, whichever is later.

[Emphasis supplied]

13. Therefore, the due date for handing over possession to the complainants was 30.04.2017. The respondent obtained in-principal approval for occupation certificate in respect of the subject tower no. 23 on 21.09.2023.. Subsequently, the respondent issued an offer

of possession along with a demand letter to the complainants on 13.10.2023.

14. During the proceedings held on July 3, 2024, the complainants' counsel asserted that the occupation certificate presented as annexure R3 on pages 104-105 of the reply is merely an "in-principal approval" and is subject to conditions imposed by the DTCP. Upon thorough examination, the Authority determines that the document at annexure R3 on pages 104-105 does not constitute the final occupation certificate. It is explicitly stated therein that the DTCP has identified several deviations from the approved building plans at site. The observations included:

" The request has been examined and observed that you have made the deviations at site during the construction from the approved building as under:-

1. *Tower 22 & 23 has been constructed up to Stilt/Ground Floor + 19th floor against Stilt/Ground Floor + 24th floor as sanctioned. Since, you have not raised the construction of 20th floor to 24th floor (5 floors) and constructed 152 nos. of dwelling units upto 19th floor against 181 nos of dwelling units.*
2. *Further, you have also constructed the Club with Swimming Pool over an area measuring 1052.23 sqm. (Stilt/Ground Floor to Mumty) without approval of building plans on some part of already OC granted podium".*

15. Also, it is explicitly stated that the in-principal approval for the occupation certificate was issued to facilitate the invitation of objections and suggestions from the allottees, and it was granted subject to specific conditions that the respondent was required to adhere to. Following conditions were imposed on the respondent:

- (i) That you shall **invite objections from each existing allottee** regarding the said amendemnet in the building plan through an advertisement to be issued at least in three national newspapers widely circulated in District, of which one should be in Hindi language, within a period of 10 days from the issuance of approval.*
- (ii) Each existing allottee shall be informed about the proposed revision through registered post with a copy endorsed to the Senior Town Planner, Gurugram in case*

of building plan within two days from the advertisement as per (a) above clearly indicating the last date for submission of objection. A certified list of all existing allottees shall also be submitted to the STP, Circle Office....."

16. It can be clearly concluded that the respondent was instructed to notify and solicit objections from the allottees concerning any modifications to the original building plans. However, the respondent acted contrary to this directive by issuing an offer of possession to the complainants, claiming that the in-principal approval for the occupation certificate had been received and that the unit was now ready for possession. In doing so, the respondent did not mention the revised building plans or the conditions imposed by the DTCP.
17. During the proceedings held on 22.05.2024, the Authority inquired of the respondent's counsel whether the final occupation certificate had been obtained, and directed the counsel to provide clarification on this matter. The respondent's counsel submitted written submissions on 21.08.2024, which included a copy of the final occupation certificate for the unit in question. The final occupation certificate was issued to the respondent on 23.01.2024.
18. In the present complaint, the complainants intend to continue with the project and are 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.

17. **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."

18. 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.
19. 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., 28.08.2024 is 9.10 %. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
20. 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;"

21. Therefore, interest on the delay payments from the complainants 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.
22. 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 failing to deliver possession by the agreed-upon date as per Clause 5.1 read with clause 1.6 of the agreement dated 30.04.2013. According to the agreement, the respondent was obligated to hand over possession of the unit to the complainants by 30.04.2017. The possession of the unit has not been handed over to the complainants till date. The respondent has failed to deliver possession of the unit to the complainants even after a delay of 7 years. Also, the offer of possession made by the

respondent on 13.10.2023 is not a valid offer and is bad in the eyes of law as the occupation certificate was not obtained at that time.

23. 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. In the interest of justice the Authority is of the view that the allottees, shall be paid by the promoter, interest for every month of delay from due date of possession i.e., 30.04.2017 till the offer of possession plus 2 months or actual handing over of possession after obtaining the occupation certificate on 23.02.2024, whichever is earlier as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

G.III. Restrain the respondent from demanding any fresh additional, arbitrary and unreasonable charges/cost as a pre-condition for offering possession of the unit.

G.IV Direct the respondent to comply with the recommendations issued by the committee headed by Shri. Manik Sonawane IAS(retired), on the issues concerning super-area, car-parking, development charges, PLC, electrification charges, club membership charges, cost escalation, advance maintenance, GST & VAT etc., at the time of offering possession of the unit.

24. Regarding the project "Terra," the committee chaired by Sh. Manik Sonawane, IAS (retired), Sh. Laxmi Kant Saini, CA, and Sh. R.K. Singh, CTP (retired), issued comprehensive recommendations. The respondent is directed to issue demands in accordance with the committee's recommendations, as these have been explicitly addressed in the report.

H. Directions of the Authority

✓

25. 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 offer possession of the unit to the complainants within 30 days of this order.
 - ii. The respondent is directed to pay interest for every month of delay from due date of possession i.e., 30.04.2017 till the offer of possession plus 2 months from obtaining the occupation certificate on 23.02.2024 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.
 - iii. The respondent shall not charge anything from the complainants which was not a part of the Committee report headed by Sh. Manik Sonawana IAS(retired) and shall make the demands as per the committee's report.
26. Complaint stands disposed of.
27. File be consigned to registry.

Ashok Sangwan
(Member)
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 28.08.2024