

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

Complaint no. : 3163 of 2023
Date of decision : 10.07.2024

Shri. Sanjay Gupta

R/o: -H.No-B-27, Dev Nagra, Tonk Road,
Jaipur, Lalkothi, Gandhiu Nagar, Rajasthan.

Complainant

Versus

M/s ADTV Communications Pvt. Ltd.

Office at: 8-B Basement Floor, Jangpura,
Main Mathura Road, New Delhi-110014.

Respondent

CORAM:

Shri.Ashok Sangwan

Member

APPEARANCE:

Sh. Siddhant Sharma

None

For the complainant

For the respondent

ORDER

1. The present complaint 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 under the provision of the Act or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S.No	Particulars	Details
1.	Name of the project	"Aloha", Sector 57 , Gurugram
2.	Project type	4.50 acres
3.	Area of project	Group housing colony
4.	RERA registered	Not registered
5.	DTCP license no.	34 of 1996 dated 21.03.1996 valid upto 20.03.2015
6.	Name of the licensee	SM Towers Pvt. Ltd.
7.	Date of execution of BBA	31.08.2006 (As on page no. 9 of complaint)
8.	Unit no.	P-2, 16 th & 17 th floor, Tower-D-6 (As on page no. 11 of complaint)
9.	Unit area admeasuring	6285 sq. ft. (As on page no. 11 of complaint)
10.	Possession clause as per BBA	<p>Clause 10 SCHEDULE FOR POSSESSION OF THE SAID PREMISES:</p> <p><i>The possession of the said premises is likely to be delivered by the Company to the Allottee within 36 months from the date of start of construction of the tower in which the said flat is located or from the date of execution of this agreement whichever is later, subject to force majeure circumstances, & on receipt of all payments punctually as per agreed terms and on receipt of complete payment of the basic sale price and</i></p>

		<i>other charges due and payable up to the date of possession according to the Payment Plan applicable to the Allottee. The company would pay</i>
11	Due date of possession	31.08.2009 [Due date of possession is calculated from the date of agreement]
12	Sale consideration	Rs. 2,20,83,250/- (As on page 11 of the complaint)
13	Amount paid by the complainants	Rs. 2,09,79,088/-
14	Confirmation of ownership dated	26.04.2017
15	Occupation certificate	Not available
16	Offer of possession	Not offered
17	Last and final opportunity for payment of penthouse dated	14.11.2019 [Page 47 of the complaint]
18.	Endorsement in favour of complainant	27.04.2017

B. Facts of the complaint

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

- I. That the complainant purchased a pent house bearing no. 2 in tower-D-6 at Aloha, Gurgaon, Sector-57 from the original allottee i.e., Mr. Rajesh J Aeran.
- II. That the respondent is a company registered with the registrar of companies under the Companies Act, 1956 and is involved in the

business of construction and development of residential and commercial projects.

- III. That on 31.08.2006, the original allottee was issued an allotment letter by the company allotting a penthouse in Tower-D-6, Floor-16th and 17th bearing no.-P-2 having a super-area of 6285 sq.ft.
- IV. That the flat buyer's agreement was registered with the initial allottee of the property on 31.08.2006 wherein the Basic Sale Price was Rs.2,20,83,250/-
- V. That in terms of clause 10 of the Flat Buyer Agreement the respondent were to hand over the possession of the said unit within 36 months from the date of start of construction of the tower or from the execution of this agreement. The verbatim of the said clause is mentioned below:

"The possession of the said premises is likely to be delivered by the company to the allottee within 36 months from the date of the start of the construction of the tower in which the said flat is located or from the execution of this agreement whichever is later, subject to force measure circumstances and on receipt of complete payment of the basic sale price and other charges due and payable up to the date of position according to the payment plan applicable to the allottee. The company would pay penalty to its customer at Rs.5 per square feet per month for handing over the flat beyond the committed period as stated herein above subject to punctual payment of instalment of the allottee."

- VI. That subsequently, the original allottee sold the said property to the complainant on 26.04.2017. It is further submitted that on 27.04.2017, the respondent also confirmed the same by issuing a letter confirming the transfer of the ownership from the original allottee to the complainant.
- VII. That vide agreement to sell, the complainant paid the entire sale consideration to the initial allottee and became the sole owner of the said property. That this Authority in complaint no. 4031/2019

titled as Varun Gupta vs. Emaar MGF Land Ltd. held that in cases where subsequent allottee had stepped into the shoes of original allottee after the expiry of due date of handing over possession before the coming into force of the act, the subsequent allottee shall be entitled to delayed possession charges with effect of the date of entering into shoes of original allottee...". The respondent sent a last and final opportunity letter on 14.11.2019.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
 - I. Direct the respondent to pay delayed possession charges.
 - II. Direct the respondent to handover physical possession of the unit and execute conveyance deed in favor of the complainant.
5. The respondent failed to comply the orders of the Authority dated 22.11.2023 and did not file reply in the present complaint. Thus, the defence of the respondent was struck off vide order dated 22.11.2023 and was proceeded ex-parte.
6. Copies of all the relevant documents have been filed and placed on record. The authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents.

D. 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.

D.I Territorial jurisdiction

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

Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

D.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 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;

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 complainants at a later stage.

E. Findings on the relief sought by the complainant.

E. I. Direct the respondent to pay delayed possession charges.

11. The complainant, being a subsequent allottee, acquired the unit from the original allottee, Mr. Rajesh J Aeran. The original allottee purchased a duplex penthouse with terrace and servant room numbered 2 on Tower D-6, spanning the 16th and 17th floors, in the "Aloha" project located at Sector-57, Gurugram, Haryana, for a total sale consideration of Rs. 2,20,83,250. A flat buyer's agreement was entered into between the respondent and the original allottee on 31.03.2006. According to this agreement, the original allottee made an



initial payment of Rs. 59,79,088, approximately 27% of the total sale consideration, at the time of booking the penthouse. The remaining payments were scheduled as per Annexure-I of the agreement: Rs. 1,50,00,000 was to be paid within 45 days of booking, and Rs. 11,04,162 was due at the time of offer of possession.

12. As per clause 10 of the flat buyer's agreement, the respondent was obligated to deliver possession of the unit to the allottee within 36 months from either the commencement date of construction of the tower or the execution date of the agreement, whichever is later. Since the commencement date of construction is unspecified, the due date is computed from the agreement execution date, i.e., 36 months from 31.08.2006, resulting in 31.08.2009 as the due date of handing over possession of the penthouse.
13. Subsequently, the original allottee sold the unit to the complainant on 26.04.2017 and the transaction was confirmed by the respondent through a confirmation of ownership letter dated 27.04.2017. This letter explicitly stated that there were no pending dues against the unit at that time. As per the endorsement letter dated 27.04.2017, the respondent endorsed the subject unit in the favour of the complainant on the payment of administrative charges of **Rs NIL..... and all other pending dues, of Rs. NIL till date, by the complainant to the respondent.** The relevant portion of the said endorsement letter is reproduced below:

" The Allottee of the Unit No.P-2, area 6285 sq.feet ., on 15 & 16 floor in residential complex called "Aloha", P-2, Tower-D-6, 16th and 17th Floor, Sector-57, Village-Tigra, tehsil and District-Gurgaon, Haryana do hereby transfer /assign this advance registration from Mr.Rajesh J Aeren to Sh. Sanjay Gupta S/o Gyan Chan Agarwal R/o B-27, Dev Nagar, Tonk Road Jaipur, LAL KOTHI, Gandhi Nagar, Jaipur, Rajasthan-302015, and the Developer, ADTV COMMUNICATIONS PRIVATE LIMITED (Formely known as AEZ Infratech

Private Limited) hereby endorses the said apartment in the name of above said Assignee/Transferee on the payment of the administrative charges of Rs. NIL and all other pending dues, of Rs. NIL (Rs. NIL) till date, by the Assignee/Transferee to the Developer.

14. As per the payment plan annexed with the Flat Buyer Agreement dated 31.03.2006, the unit was purchased on "Down Payment Plan" and the complainant had to pay to the respondent in three stages. The said payment plan is reproduced below:

Plan (A) : Down Payment Plan

At the time of registration -27% - Rs.59,79,088/-

Within 45 days of registration-68%-Rs. 1,50,00,000/-

At the time of offer for possession-05%-Rs.11,04,162/-

[Emphasis supplied]

15. It is amply clear from the perusal of the payment plan that the payment was to be released in three instalments i.e., at the time of registration, within 45 days of registration and on the offer of possession. On the date of endorsement of the unit in the favour of the complainant, it's been clearly mentioned in the endorsement letter that no outstanding dues are pending till the time of the said endorsement i.e., 27.04.2017. Thus, the complainant has paid Rs.2,09,79,088 to the respondent till date.
16. In the present complaint, the complainant intends to continue with the project and is seeking possession and 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:** The complainant is seeking delay possession charges however, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under: -

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

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

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

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., 10.07.2024 is 8.95%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.95%.

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 complainant shall be charged at the prescribed rate i.e., 10.95% by the respondent/promoter which is the same as is being granted to the complainant 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 not handing over possession by the due date as per the flat buyer' agreement. Due date of possession is



mentioned specifically in clause 10 of the agreement dated 31.08.2006 . As per the said clause, the respondent was to handover the possession of the unit to the complainant within 36 months from the date of start of construction of the tower in which the said flat is located or from the execution of the agreement whichever is later. The agreement was executed on 31.08.2006, if we calculate 36 months from 31.08.2006, it comes out to be 31.08.2009. Therefore, the due date of handing over possession is 31.08.2009. The respondent has not offered possession of the unit to the complainant till date. The project is not registered with the Authority and there is no update regarding the status of the occupation certificate.

23. The Authority has already taken a view in **Varun Gupta Vs Emaar MGF Land Ltd.**, that in cases where the complainant/subsequent allottee had purchased the unit after expiry of the due date of handing over possession, the authority is of the view that the subsequent allottee cannot be expected to wait for any uncertain length of time to take possession. Even such allottees are waiting for their promised flats and surely, they would be entitled to all the reliefs under this Act. It would no doubt be fair to assume that the subsequent allottee had knowledge of delay, however, to attribute knowledge that such delay would continue indefinitely, based on priori assumption, would not be justified. Therefore, in light of *Laureate Buildwell judgment (supra)*, the Authority holds that in cases where subsequent allottee had stepped into the shoes of original allottee after the expiry of due date of handing over possession and before the coming into force of the Act, the subsequent allottee shall be entitled to delayed possession charges w.e.f. the date of entering into the shoes of original allottee i.e.



nomination letter or date of endorsement on the builder buyer's agreement, whichever is earlier.

24. 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 date of endorsement letter issued in favour of the complainant i/e 27.04.2017 till offer of possession plus two months or actual handover, after obtaining the occupation certificate from the competent authorities, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

E.II. Direct the respondent to handover possession of the unit to the complainant after obtaining the occupation certificate and execute conveyance deed.

25. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the complainant. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question. However, there is nothing on the record to show that the respondent has applied for occupation certificate or what is the status of the development of the above-mentioned project. Hence, the respondent is directed to deliver the possession on payment of outstanding dues if any and to execute the sale deed in favour of the complainant on payment of stamp duty and registration charges within 60 days after obtaining occupation certificate from the competent authority.

H. Directions of the authority

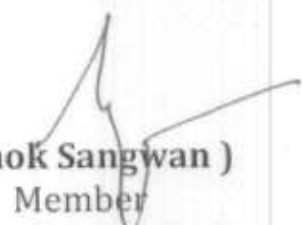
11. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- i. The respondent is directed to pay interest for every month of delay from date of endorsement letter issued in favour of the complainant i/e 27.04.2017 till offer of possession plus two months or actual handover, whichever is earlier, after obtaining the occupation certificate from the competent authorities.
 - ii. The arrears of such interest accrued from 27.04.2017 till the date of order by the Authority shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottee before 10th of the subsequent month as per rule 16(2) of the rules.
 - iii. The respondent is directed to deliver the possession on payment of outstanding dues if any and to execute the sale deed in favour of the complainant on payment of stamp duty and registration charges within 60 days after obtaining occupation certificate from the competent authority.
 - iv. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - v. The rate of interest chargeable from the allottees/complainant by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.95% by the respondent/promoter which

is the same rate of interest which the promoters shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

vi. The respondent shall not charge anything from the complainant which is not the part of the agreement of sale

12. Complaint stands disposed of.

13. File be consigned to registry.



(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 10.07.2024