

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

Complaint no.	:	1580 of 2022
Date of filing complaint:		25.04.2022
Date of decision		26.07.2024

Shakuntla R/O: House No.3101, Sector-23	Complainant
Versus	
M/S Magic Eye Developers Pvt. Ltd Regd. Office: Gf-09, Plaza M6, Jasola District Centre	Respondent

CORAM:	
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Tushar Behmani (Advocate)	Complainant
Sh. Gaurav Rawat (Advocate)	Respondent

ORDER

1. The present complaint has been filed by the complainant/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

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

Sr. No.	Particulars	Details
1.	Name and location of the project	The Plaza, Sector-106
2.	Nature of the project	Commercial
3.	DTCP license no.	65 of 2012 dated 21.06.2012 Valid till 21.06.2022
4.	Registered/not registered	Registered vide no. 72 of 2017 dated 21.08.2017 Valid till 31.12.2021
5.	Allotment Letter	16.11.2012 [pg. 13 of complaint]
6.	Unit no.	0909, B2, Block-09, 9 th floor [pg. 22 of complaint]
7.	Unit area admeasuring (Super area)	700 sq. ft. [pg. 22 of complaint]
8.	Date of buyer's agreement with original allottee	21.09.2013 [pg. 15 of complaint]
9.	Endorsement date	12.02.2014 [pg. 42 of reply]
10.	Possession Clause	9.1

		Three years from the date of execution of agreement with two grace periods of six months each.....
11.	Due date of possession	21.09.2017 (Grace period included being unqualified)
12.	Total sale consideration	Rs. 44,86,212/- as per the applicant ledger dated 11.04.2022 at page 64 of reply
13.	Amount paid by the complainant	Rs. 44,86,212/- as per the applicant ledger dated 11.04.2022 at page 64 of reply
14.	Occupation certificate	28.11.2019 [pg. 24 of reply]
15.	Offer of possession	30.11.2019 [pg. 26 of reply]
16.	Conveyance deed executed on	20.10.2020 [pg. 50 of complainant]

B. Facts of the complaint

The complainants have submitted as under:

- That the complainant were approached by the respondent through there lucrative advertisement promising world class amenities and safe commercial space in their commercial project named 'the plaza at 106' located in sector - 106 in Gurugram. The complainant after relying on the assurances of the officials of the respondent approached the original buyer of the unit in dispute namely one Mr. Parveen Kumar who originally executed the buyer's agreement with the respondent on 21.09.2013. The provisional allotment dated 16.11.2012 was issued in favor of the original allottee.
- That the complainant along with Ms. Archana bought the unit in dispute from the original allottee and the transfer of ownership was confirmed and endorsed by the respondent in the names of the complainant and Ms. Archana on 12.02.2014. The complainants are now in the shoes of the original allottee

after the transfer of the ownership of the unit in dispute was confirmed by the respondent on 12.02.2014 and hence all the clauses of the buyer's agreement dated 21.09.2013 were binding on both the complainants and the respondent and accordingly the complainant and Ms. Archana got allotted unit no.0909, tower-b2, floor-9th admeasuring 700 sq. ft. along with plc in the commercial project of the respondent.

5. That the clause 9.1 of the said buyer's agreement dated 21.09.2013 envisages the timeline for completion of the construction of the said commercial unit i.e. within a period of three years from the date of execution of the agreement, with two grace periods of six months each, .As per the said clause 9.1, the due date of handing over of the possession of the Unit in dispute was 21.09.2017. The total sale consideration of the unit in dispute was Rs.44,86,212/- and the complainant had paid the entire total sale consideration.
6. That on 12.02.2014, after the allotment was transferred in favor of the complainant, she has been rigorously following up with the respondent for timely handing over of physical possession of the booked commercial unit mentioned in the present complaint. The complainant was assured by the respondent that the construction of the said project is in full swing, and that the unit booked will be handed over to her in time and as per the terms and conditions mentioned in the buyer's agreement. The payments were made to the respondent as per the schedule of payment and without any delays.
7. That it pertinent to mention here that the buyer's agreement dated 21.09.2013 was signed and executed between the original allottee and 'Spire Developers Pvt. Ltd' but the 'Spire Developers Pvt. Ltd. was amalgamated with the respondent i.e., 'Magic Eye Developers Pvt. Ltd.'
8. That believing on representation and assurance of the respondent (earlier known as Spire Developers Pvt. Ltd), the complainants with much

expectations and desire of having a world class amenities commercial space to begin her source of income after investing her hard earned money with the respondent purchased the said unit in dispute.

9. That since 12.02.2014, the complainants were following up on status of completion of the project and her unit booked and time and again they were assured by the respondent that the unit will be handed over in time as per the terms and conditions of the buyer's agreement, but the respondent failed to deliver the possession of the unit in dispute on due date of possession i.e., on or before 21.09.2017.
10. That on 06.10.2020, the respondent executed an addendum to agreement dated 21.09.2013 by which the allottee No. 2, i.e., Ashok Kumar Jangra requested the respondent for name deletion of the rights in the unit in dispute in his favour. The respondent has agreed to the said request and consequently all name deletion documents were executed, and the respondent duly endorsed the said agreement in favour of the complainant only.
11. That after much delay of more than 2 years in handing over of the possession of the unit in dispute in the present complaint, the complainant received a letter dated 30.11.2019 citing 'intimation about receipt of occupation certificate and offer of possession' sent by the respondent. The said letter mentioned the date of offer of possession as 28.11.2019 which was communicated vide letter dated. 30.11.2019.
12. That the complainant even after several requests was not paid delayed possession charges at the time of execution of the conveyance deed but because the complainant was helpless and needed the possession of the unit in dispute took the possession after clearing all her dues and got executed the conveyance deed on 20.10.2020.

13. That the respondent assured leasing of the unit in dispute at the time of possession and an email dt.15.09.2020 was also sent to the complainant to that effect in which the respondent confirmed the leasing of the unit. The complainant on 16.09.2020 gave her confirmation to the leasing and the same was also acknowledged by the respondent through email dated. 16.09.2020.
14. That despite confirming the leasing of the unit in dispute on 16.09.2020, the respondent hopelessly failed to lease out the said unit as assured which resulted in loss of rent to the complainant for the more than a year and on 09.01.2021 the complainant withdraws her consent to lease out the unit in dispute. But the respondent vide email dated 11.01.2021 again assured the leasing out to the complainant at the earliest but till date the leasing out has not been done by the respondent. The email communication was made with the respondent till March 2022 but there was no heed paid to the concerns of the complainant regarding the leasing of the unit.
15. That the respondent has illegally raised falls and fictitious maintenance bills without application of mind to extort money from the innocent complainant.
16. That the complainant is entitled for interest on delayed possession as per the rules of RERA, 2016. Further, no holding charges, cam charges and any other charges which are not part of the buyer's agreement should be charged from complainant and if charged the same must be adjusted/refunded back to the complainant.

C. Relief sought by the complainant:

17. The complainants have sought following relief(s):
 - i. Direct the respondent to pay interest on delayed possession.
 - ii. Direct the respondent to refund the GST, and not to charge any holding charges till the disposal of complaint.

iii. Direct the respondent to refrain from charging CAM till disposal of the complaint.

iv. Direct the respondent to pay litigation charges of Rs. 1,00,000/-

18. On the date of hearing, the authority explained to the respondents/promoters about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

The respondent has contested the complaint on the following grounds:

19. That the instant complaint is filed after 5 years from the date of alleged cause of action and hence, is liable to be dismissed being filed beyond the period of Limitation. It is submitted that admittedly (*para 4 at pg.5 of the complaint*), possession was due to be offered by 20.09.2017. However, the instant Complaint has been filed in April 2022, i.e., after approx. 5 years of the due date of offer of possession as per the agreement.

20. That the original allottee Mr. Praveen Kumar took allotment of Unit bearing No. 0909 measuring 700 Sq. Ft. in Super Area, on Ninth (9th) floor of Tower B2 in the project "Plaza at 106-1" Sector-106, Gurugram developed by the respondent vide agreement dated 21.09.2013 for a total consideration of Rs.44,45,253/- . Vide clause 9.1 of the agreement, admittedly, respondent endeavored to offer possession of unit by 20.09.2017. The original allottee had opted for construction Linked payment plan and agreed that timely payment of the installments is essence of the transaction.

21. That the original allottee requested to transfer his unit to Mrs. Shakuntala, wife of Mr. Ashok Kumar Jangra and Mrs. Archana, wife of Mr. Joginder Singh and accordingly, agreement was endorsed in favour of Mrs. Shakuntala and Mrs. Archana on 12.02.2014.

22. That the complainant/erstwhile allottee(s) stepped into the shoes of original allottee and have till date made an actual payment of Rs. 43,53,427/- towards the Sale Consideration [i.e., Grand Total paid Rs.45,58,353/- (as reflected on last page of ledger) less Rs.91,825/- towards Rebate, Rs.8260/- towards CAM, Rs.32,700/- towards Admin charges and Rs.72,141/- towards Interest paid by complainant for delay in making payments of instalments]. It is pertinent to point out that Complainant(s) made the payment of demands with delay and as a goodwill gesture and upon their request, waiver of interest of Rs. 21,280/- was granted by the respondent.
23. That the respondent after completing the construction of project and after obtaining the occupation certificate on 28.11.2019 issued letter of intimation-cum-offer of possession dated 30.11.2019 to complainant(s) offering possession of their unit on 28.11.2019. The respondent, thereafter, vide email dated 26.12.2019 raised the demand due at the stage of offer of possession vide letter dated 20.12.2019. And as per the terms of the Agreement had also paid the compensation @ Rs.5/- per sq. ft. of super area per month from the date of possession as agreed under the agreement till the date of offer of possession to complainant(s) and adjustment of the same was given as rebate of Rs.91,825/- from the demands due at the time of offer of possession.
24. That after completion of construction of project, a brand named 'CoHo', approached the respondent and offered to take on lease the Tower A (Ground Floor till 4th Floor) and Tower B (2nd Floor till 23rd Floor) of the aforesaid project on revenue sharing basis. Though there was no obligation on respondent to lease out the unit as per agreement or to pay the rent, however in the larger benefit of its allottees, respondent sent the offer of COHO along with the broad terms to the allottees including the complainant(s) vide letter dated 23.12.2019.

25. That the complainant(s) had accepted the adjustment of compensation for delay, given as rebate amount and made the payment of Rs. 3,56,575/- without any protest, whatsoever after waiver of interest of Rs. 21,280/- on 24.01.2020 and gave consent for leasing out of the unit.
26. That after receipt of acceptance and consent from complainant(s) for leasing out their unit with COHO, the respondent entered a lease deed dated 04.05.2020 with COHO for leasing of units in the aforesaid project of respondent. It was further agreed that upon mutual consent more units may be added from time to time for leasing. The complainant(s) formally accepted the broad terms offered by brand COHO vide their consent email dated 16.09.2020. However, defer the signing of the possession Certificate as request was made by the erstwhile allottees on 10.02.2020 to transfer the subject unit in sole name of Mrs. Shakuntla-the complainant, as they wanted registry in respect of the unit to be done in the sole name of now the present complainant.
27. That pursuant to request of the erstwhile allottees, subject matter unit was transferred by respondent in the sole name of the Complainant on 06.10.2020. Thereafter, conveyance deed for subject matter unit was also executed and registered in favour of complainant on 20.10.2020. As a time of unprecedented uncertainty is prevailing due to spread of the COVID-19 pandemic, which vitiated overall business environment and its impact and delay on regular business activities including sales and leasing in the short to mid-term, the brand COHO was not able to operationalize the units and generate revenue while, it is pertinent to reiterate that the leasing of units was on revenue share basis and not for fixed rentals or minimum guarantee which terms were duly agreed upon by complainant(s).

28. That the complainant(s), therefore, vide email dated 09.01.2021 withdrew consent for leasing with COHO. However, as the complainant was interested in leasing the unit to COHO, she again consented to lease the Unit on 10.02.2021. The instant complaint has been filed in April 2022 with malafide and dishonest intentions to take an undue advantage of complainant's own wrongs. It is submitted that who he slept over his rights is not entitled to the benefits or relief under the law.
29. That the Act does not contemplate execution of any fresh Agreement and therefore, buyer's agreement dated 21.09.2013 cannot be affected by the provisions of Act and has to be implemented in toto and to be read and interpreted "as it is" without any external aid including without aid of subsequent enactment especially the enactment which do not especially require its aid to interpret agreements executed prior to commencement of such enactment. Hence, rights and liabilities of the parties including the consequence of default/default of any party have to be governed by buyer's agreement dated 21.09.2013 and not by the Act.
30. That the buyer's agreement dated 21.09.2013 executed between the complainant(s) and respondent is 'sacrosanct' and nothing can be added or deleted in the terms agreed thereupon. It is further submitted that respondent has already granted compensation and adjusted the same as rebate in the final dues payable by complainant(s) as per the terms of the agreement dated 21.09.2013 and hence, has discharged all its commitments under the aforesaid agreement.
31. All other averments made in the complaints were denied in toto.
32. Copies of all the relevant documents have been filed and placed on the record.

Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

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

E. I Territorial jurisdiction

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

E. II Subject-matter jurisdiction

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

Section 11(4)(a)

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

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

34. So, in view of the provisions of the Act quoted above, the authority has complete

jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Objections raised by the respondent:-

F.I Whether the complaint is barred by limitation or not?

35. 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 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 a 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 is of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances.
36. 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 maybe prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.
37. The cause of action arose on 28.11.2019 when the offer of possession was made by the respondent to the complainant. The complainant has filed the present complaint on 25.04.2022 which is 2 year 4 months and 28 days from the date of cause of action. In the present matter 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 would fall on 10.02.2024 In view of the above, the

Authority is of the view that the present complaint has been filed within a reasonable period of time and is not barred by the limitation.

F.II Where the subsequent allottee had stepped into the shoes of original allottee before the due date of handing over possession

38. The complainant/subsequent allottee had been acknowledged as an allottee by the respondent vide endorsement dated 12.02.2014. The authority has perused the endorsement where the promoter has confirmed the transfer of allotment in favour of subsequent allottee, Shakuntla (complainant) and Archana and the instalments paid by the original allottees, Mr. Praveen Kumar, are adjusted in the name of the subsequent allottee. The same builder buyer's agreement has been endorsed in favour of subsequent allottee. All the terms of builder buyer's agreement remain the same so it is quite clear that the subsequent allottee has stepped into the shoes of the original allottee.
39. Though the promised date of delivery was 21.09.2016 but the construction of the tower in question was not completed by the said date and it was offered by the respondent only on 28.11.2019 i.e. after delay of 3 years 2 months 7 days. If these facts are taken into consideration, the complainant/subsequent allottee had agreed to buy the unit in question with the expectation that the respondent/promoter would abide by the terms of the builder buyer's agreement and would deliver the subject unit by the said due date. At this juncture, the subsequent purchaser cannot be expected to have knowledge, by any stretch of imagination that the project will be delayed, and the possession would not be handed over within the stipulated period. So, the authority is of the view that in cases where the subsequent allottee had stepped into the shoes of original allottee before the due date of handing over possession, the delayed possession charges shall be granted w.e.f. due date of handing over possession

G. Findings on the relief sought by the complainants

G.I Direct the respondent to pay interest on delayed possession.

40. In the present case the original allottee was allotted a unit in the project of the respondent on 16.11.2012. The complainant purchased the said unit in the project from original allottees and subsequently the original allottee transfer the said flat in the Name of Mrs. Shakuntla and Mrs. Archana and "buyer's agreement" was endorsed in favor of them on 12.02.2014. Therefore the complainant became the 1st subsequent allottee and stepped into the shoes of an allottee on 12.02.2014.

41. The complainant intends to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

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

.....

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

42. Clause 9.1 of the floor buyer's agreement provides the time period of handing over possession and the same is reproduced below:

9.1 Schedule for possession of the said unit

The developer based on its present plans and estimates and subject to all just exceptions / force majeure / statutory prohibitions / court's order etc. contemplates to complete the construction of the said building / said unit within a period of three years from the date of execution of this agreement, with two grace periods of six months each, unless there is a delay for reasons mentioned in clause 10.1, 10.2 and clause 37 or due to failure of allottee (s) to pay in time the price of the said unit along with other charges and dues in accordance with schedule

of payments given in Annexure C or as per the demands raised by the developer from time to time or any failure on the part of the Allottee(s) to abide by ll or any of the terms or conditions of this Agreement.

43. Grace period –As per clause 9.1 of the buyer’s agreement the developer contemplates to complete the construction of the said building / said unit within a period of three years from the date of execution of this agreement, with two grace periods of six months each. The buyer’s agreement was executed on 21.09.2013 along with two grace period of six months each. The grace period is allowed being unqualified. Therefore the due date comes out to be 21.09.2017.

44. Admissibility of delay possession charges at prescribed rate of interest:

The complainant is seeking delay possession charges at the prescribed rate of interest on the amount already paid by him. However, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

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

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

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

45. 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.

46. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 26.07.2024 is 9.00%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11%.
47. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.
48. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the Authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 9.1 of the agreement, the possession of the subject apartment was to be delivered within three years from the date of execution of this agreement. For the reasons quoted above, the due date of possession is to be calculated from the date of execution of the buyer's agreement i.e., 21.09.2013 along with grace period of six months each, therefore due date of possession comes out to be 21.09.2017.
49. The respondent has obtained the occupation certificate on 28.11.2019. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 21.09.2013 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and

responsibilities as per the buyer's agreement dated 21.09.2013 to hand over the possession within the stipulated period.

50. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 28.11.2019. The respondent offered the possession of the unit in question to the complainant on 30.11.2019. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 21.09.2016 till the date of offer of possession plus two months i.e., till 30.01.2020.

51. Vide proceedings dated 05.07.2024 the counsel for the respondent stated that they have given a rebate of Rs. 91,825/- on account of delayed possession charges vide their letter dated 20.12.2019 which is R4 at page 28 of reply. The same amount may be adjusted as the same is paid towards delay in handing over of the possession of the unit to the complainant.

52. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession charges at rate of the prescribed interest @ 11% p.a. w.e.f. from the due date of possession i.e., 21.09.2017 till the date of offer of possession plus two months i.e., till 30.01.2020 per provisions of section 18(1) of the Act read with rule 15 of the Rules after deduction of the rebate already granted by the respondent.

G.II Direct the respondent to refund the GST, and not to charge any holding charges till the disposal of complaint.

G.III Direct the respondent from charging CAM till disposal of the complaint.

53. Above mentioned reliefs are being taken up together for adjudication. It is important to note that the conveyance deed was executed between the parties on 20.10.2020. The conveyance deed is a legal document that transfers the title of property from one party to another, signifying the completion of the property transaction especially regarding payments related to the purchase price, taxes, registration fees, and any other contractual financial commitments outlined in the agreement. However, despite the conclusion of the financial obligations, the statutory rights of the allottee persist if any provided under the relevant Act/Rules framed thereunder. Execution of conveyance deed is a sort of entering into a new agreement which inter alia signifies that both parties are satisfied with the considerations exchanged between them, and also that all other obligations have been duly discharged except the facts recorded in the conveyance deed. The said clause reproduced below as:

Vendor has already delivered the possession of said Unit to Vendee(s). Vendee(s) acknowledge that they have received the possession of said Unit to their complete satisfaction and have signed the Possession Certificate in respect thereof. Vendee(s) further assures that he/she/they shall have no claim, whatsoever against the Vendor including in respect of any defect or deficiency in construction or quality of materials used or on account of any delay, etc. and all such claim or objection, if any shall be deemed to have been waived off by the Vendee.

54. It is pertinent to mention here that complainant took the possession and got the conveyance deed executed, without any demur, protest or claim. The complainants have neither raised any grievance at the time of taking over the possession or at the time of execution of the conveyance deed, nor reserved any right in the covenants of the conveyance deed, to claim any refund of preferential location charges or any other charges. Also it is a matter of record

that no allegation has been levelled by the complainants that conveyance deed has been got executed under coercion or by any unfair means.

55. The Authority is of view that after the execution of the conveyance deed between the complainant and the respondent, all the financial liabilities between the parties come to an end except the statutory rights of the allottee including right to claim compensation for delayed handing over of possession and compensation under section 14 (3) and 18 of the RERA Act, 2016. In view of the above, the complainant cannot press for any other relief with respect to financial transaction between the parties after execution of conveyance deed except the statutory obligations specifically provided in the Act of 2016.

G.IV Direct the respondent to pay litigation charges of Rs. 1,00,000/-

56. The complainant is seeking above mentioned relief w.r.t. compensation. Hon'ble Supreme Court of India in case titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. 2021-2022(1) RCR (C), 357 held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

H. Directions of the authority

57. Based on above determination of the authority and acceptance of report of the committee, the authority hereby passes this order and issues the following directions under section 37 of the Act in respect all matter dealt

jointly to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent shall pay interest at the prescribed rate i.e., 11 % per annum for every month of delay on the amount paid by the complainant from due date of possession i.e., 21.09.2017 till the date of offer of possession i.e., 30.11.2019 plus two months i.e., till 30.01.2020 as per proviso to section 18(1) of the Act read with rule 15 of the rules. Also an amount which has already been given by the respondent as credit compensation shall be deducted / adjusted towards the delay possession charges to be paid by the respondent.
- ii. The respondent is directed to pay arrears of interest accrued within 90 days from the date of this order as per rule 16(2) of the rules.

58. Complaints stand disposed of.

59. Files be consigned to registry.

HARERA
GURUGRAM


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 26.07.2024