

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

Complaint no. : 1244 of 2022
First date of hearing: 19.05.2022
Date of decision : 06.08.2024

**M/s Sixty Three Golf Drive Flat Buyers
Association Through its authorized
representative**

Ms. Deepika Sharma

**Regd. Address at: A1/39 Phase -5 Ayanagar
New Delhi -47**

Complainant

Versus

**M/S Sunrays Height Pvt Ltd
Regd office : 211 2nd Floor Ansal Bhavan
16 Kasturba Gandhi Marg
New Delhi -110001**

Respondent

CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan

**Chairman
Member
Member**

APPEARANCE:

Sh. Vijay Partap Singh (Advocate)
Sh. Harshit Batra (Advocate) with Sh. Vijay
Verma CEO of the company in person

Complainant

Respondent

ORDER

1. The present complaint dated 01.04.2022 has been filed by the complainant/association 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 provisions 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 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.N.	Particulars	Details
1.	Name of the project	Sixty three Golf Drive, sector-63-A, Gurugram
2.	Project area	2.38125 acres
3.	Nature of project	Group Housing colony
4.	RERA registered/not registered	Registered vide registration no. 249 of 2017 dated 26.09.2017
5.	DTPC License no.	82 of 2014 dated 08.08.2014
	Validity status	07.08.2024
	Name of licensee	P.G. Propmart. Pvt. Ltd. in collaboration with Bluejays Realtech Pvt. Ltd.
6.	Unit no.	A-22, Tower-A [at pg.33 of complaint]
7.	Unit measuring of A-22, Tower-A	Carpet area 605.10 sq. ft. and balcony area 94.94 sq. ft. [at pg.33 of complaint]



8.	Allotment Letter of unit no. A-22, Tower-A	19.06.2017 [at pg.33 of complaint]
9.	Date of execution of apartment agreement [ABA] buyer	27.01.2016 [at pg.19 of complaint]
10.	Possession clause	<p>4. POSSESSION</p> <p><i>4.1 The developer shall endeavor to handover possession of the said flat within a period of four years ie., 48 months from the date of commencement of project, subject to force majeure & timely payment by the allottee towards the sale consideration, in accordance with the terms as stipulated in the present agreement.</i></p> <p>Note: As per affordable housing policy 2013</p> <p><i>1(iv) All such projects shall be required to be necessarily completed within 4 years from the approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of this policy. The licenses shall not be renewed beyond the said 4 years period from the date of commencement of project.</i></p>
11.	Date of building plan approvals	10.03.2015 (page 112 of complaint)
12.	Date of environment clearance	16.09.2016 (taken from another file of the same project)
13.	Due date of possession	16.03.2021 (Calculated from date of environment clearances i.e., 16.09.2016 being later, which comes out to be 16.09.2020 + 6 months as per HARERA notification no.

		9/3-2020 dated 1 6.05.2020 for projects having completion date on or after 25.03.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic.)
14.	Total sale consideration	Rs.24,67,870/- [pg.19 of complaint]
15.	Total amount paid by the complainant	Rs.22,46,777/- [pg.19 of complaint]
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered
18.	Legal notices by complainant sent to respondent	27.03.2018, 07.08.2020

B. Facts of the complaint

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

- I. That the complainant is an Association of Buyers namely M/s Sixty Three Golf Drive Flat-Buyers Association duly registered at the Registrar of Societies, having its registered office at A1/39, ground floor phase -5, Ayanagar, New Delhi -47.
- II. That Mrs Deepika Sharma D/o Shri Suresh Kumar Tyagi R/o house no 338/18 ,first floor, Civil Lines ,Gurugram, Haryana vide Board Resolution dated 15.03.2022 is being duly authorised as the authorized representative on behalf of the **SIXTY-THREE GOLF DRIVE FLAT-BUYERS ASSOCIATION** to represent the aggrieved members of the association.



- III. Further the members of the association are a law abiding citizen and a consumer who are aggrieved allottees in the said project. The respondent is a company registered under the provisions of the Companies Act, 1956, having its registered office at 211 Ansal Bhawan, 16 Kasturba Gandhi Marg New Delhi, engaged in construction and sales of apartments.
- IV. That the complainant applied for booking a flat in affordable housing project under Government of Haryana affordable housing scheme in the project namely "Sixty Three Golf Drive" situated at sector 63-A, Gurugram via application form bearing no. A-22, in accordance with the Affordable Housing Policy 2013 issued by the Govt. of Haryana vide Town And Country Planning Department vide notification dated 19th Aug 2013 (herein referred to as the policy) and was allotted **2BHK -TYPE A** bearing flat no. A-22 in tower -A admeasuring carpet area of 605.10 sq.ft. and balcony area of 94.94 sq.ft. along with one two wheeler parking site as per the policy. Similarly other allottees were allotted their respective booked flat as per the list of members/allottees of the association along with the affidavit of the secretary of the association.
- V. The total sale price of the flat of the complainant was Rs.24,67,870/- and she has paid Rs.22,46,777/- to the respondent till date, as per the demand notice raised by it.
- VI. The apartment buyers agreement was executed between the parties on 27.01.2016. As per the agreement, the actual physical possession of the apartment was to be delivered to the complainant/allottee within a

period of 48 months from the date of commencement. However, the respondent/promoter failed to complete the project and to deliver the possession of the apartment to the complainant/allottee as per the time schedule stipulated in the agreement. The complainant states that the commencement date of the project namely "sixty-three golf drive" was 16.09.2016, thus as per the clause 4.1 of the agreement the actual physical possession of the allotted flat was supposed to be handed over to the complainant in habitable conditions in accordance with the brochure published and in accordance with approved building plans to the complainant latest by 16.09.2020. There is already delay of 18 months from the promised date by the respondent and there is no confirmation or commitment on behalf of the respondent with regard to the completion of the project and handover of the flats to the respective members of the association/allottee of the said project in future. The true copies of the allottee's allotment letter, apartment buyer agreement, the statement of account of the association members apart from the sample excel sheet are in the custody of the association secretary and same can be produced before the Authority as and when demanded. The undertaking to that effect is being sworn in and declared by the secretary of the M/s sixty-three golf drive flat buyers association in her affidavit.

- VII. The respondent issued a statement of account to the respective buyers/members of the association with regard to the payment made against the cost of the flat.

- VIII. The complainant, i.e. the buyers association served a legal notice due to the lethargic attitude of the respondent dated 27.03.2018 to which they replied that the project would be completed latest by Dec 2020. But when the respondent did not comply its own commitment and promise made another legal notice dated 07.08.2020 was served to the respondent, to which they never replied.
- IX. The complainant raised their grievances before the DTP Gurgaon office, with regard to not completing the project in time and for not maintaining the ESCROW bank account properly and diverting the fund to some other project. The same is violation under sec 4(2) (l) (d) of the Act 2016.
- X. The STP officials after the inspection of the project site have duly confirmed vide their letter memo no. STP(G)/2021/968 dated 13/04/2021, STP(G)/2021/3316 dated 23/07/2021, STP(G)/2021/3486 dated 29/07/2021, STP(G)/2021/3758 DATED 11/08/2021, STP(G)/2021/5719 dated 26/11/2021 the pace of construction in affordable housing projects of Sunrays (badarwal) licence no. 82/2014 sec 62 -A, is very slow and necessary action against the respondent is required.
- XI. That the maximum allottees being in service having a limited source of income also obtained the financial loan from bank (Home Loan) to meet the liability towards the subje flat. The financier is now imposing heavy penalty on the allottees due to non-disbursal of the sanctioned loan amount in time. The demand notices are being served to the allottees on pick and choose basis i.e. to few last demands even sent and too few not



- even 3rd demand is being sent, hence the respondent discriminatory attitude is highly condemnable.
- XII. That the respondent has indulged in all kinds of tricks and blatant illegality in booking and drafting of apartment buyer agreement with a malicious and fraudulent intention and caused deliberate and intentional huge mental and physical harassment of the complainants and his family has been rudely and cruelly dashed the savoured dreams, hopes and expectations of the complainants to the ground and the complainants are eminently justified in seeking possession of flat along with delayed penalty/interest.
- XIII. That keeping in view the half-hearted promises of the respondent, and trick to extract more and more money from complainants pocket seems normal for every builder now a days and that the same is evident from the irresponsible and desultory attitude and conduct of the respondent, consequently injuring the interest of the buyers including the complainants who has spent his entire hard earned savings in order to buy this home and stands at a crossroads to nowhere. The inconsistent and lethargic manner in which the respondent conducted its business and their lack of commitment in completing the project on time, has caused the complainants great financial and emotional loss.
- XIV. That due to the malafide intentions of the respondent and non-delivery of the flat unit the complainants have accrued huge losses on account of the career plans of their family member and themselves and the future of the complainants and their family are rendered dark as the planning



with which the complainants invested her hard-earned monies have resulted in subzero results and borne thorns instead of bearing fare ruts. Complainants also taken loan from SBI and paying EMI and due to delay in possession complainants had compulsion to stay in rented property. EMI and rent of house create extra financial burden on the complainants.

XV. It is submitted that the cause of action to file the instant complaint has occurred within the jurisdiction of this authority as the apartment which is the subject matter of this complaint is situated in Gurugram which is within the jurisdiction of this authority.

C. Relief sought by the complainant:

6. The complainant has sought following relief(s).

- I. Direct the respondent to give interest per month for delayed month and adjust the same in the last demand notice possession from the agreed date in the agreement.
- II. Appoint a local commissioner to inquire into the following irregularities and non-compliance:
 - To inspect the tower wise, floor wise and flat wise the status of construction and to draw a deed line for actual handing over of the booked flats to the allottees of the association.
 - To oversee the deviation from the actual approved layout plan as approved by the DTCP, Haryana.
 - To confirm as if the expired bank guarantee has been renewed by the respondent. The validity of the license has already been expired long time bank.
 - To take appropriate necessary action against the respondent after ascertaining the above deviation and the non-compliance of the prov. of the Haryana development and regulation of urban area Act 1975 and rules made there under and the terms and conditions of the LC-IV agreement, Bi-lateral agreement LC-IVA executed by the respondent with the DTCP Haryana as per the provision of the Act no 8 of 1975.
- III. Direct the respondent to quash the unilateral term of agreement.

7. On the date of hearing, the authority explained to the respondent/promoter 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

8. The respondent has contested the complaint on the following grounds.
- a. That at the very outset, it is submitted that the instant complaint is untenable both in facts and in law and is liable to be rejected on this ground alone.
 - b. That the complainant is estopped by their acts, conduct, acquiescence, laches, omissions, etc. from filing the present complaint.
 - c. That the complainant has not come before the Authority with clean hands and has suppressed vital and material facts from the Authority. The correct facts are set out in the succeeding paras of the present reply.
 - d. That the flat buyers forming part of the complainant association approached the respondent and expressed interest in booking of an apartment in the affordable group housing being developed by respondent known as "63 Golf Drive" situated in Sector 63, Gurugram, Haryana. Prior to the booking, the allottees forming part of the complainant association conducted extensive and independent enquiries with regard to the project and only after being fully satisfied on all aspects, that they took an independent and informed decision, uninfluenced in any manner by the respondent, to book the unit in question.



e. That the complainant is stated to have mentioned the list of complainants, said to be a part of the Association, who have filed the present complaint. However, a bare perusal of the said list shows multiple and repetitive entries. A list of the same is given hereunder:

AS PER COMPLAINANT		
S. No.	Flat No.	Repetitive Flats
1	D-31	
2	C-104	
3	D-73	
4	A-47	
5	E-117	
6	B-12	
7	A-24	
8	A-22	
9	D-83	
10	E-37	Item 10 and 29 are same
11	J-101	
12	B-92	
13	A-156	
14	F-33	Item 14 and 30 are same
15	F-58	
16	J-115	Item 16 and 32 are same
17	C-62	Item 17 and 23 are same
18	C-43	Item 18 and 22 are same
19	J-24	Item 19 and 21 are same
20	G-96	
21	J-24	Item 19 and 21 are same
22	C-43	Item 18 and 22 are same
23	C-62	Item 17 and 23 are same

24	F-58	
25	C-122	
26	B-74	
27	B-64	
28	B-68	
29	E-37	Item 10 and 29 are same
30	F-33	Item 14 and 30 are same
31	D-25	
32	J-115	Item 16 and 32 are same

- f. That, after removing the repetitive entries, only 26 flat buyers' names are left, out of which, during the pendency of the present complaint, one individual has fully and finally settled the matter with the respondent and 16 individuals have filed separate cases before the Authority, the details of which are as follows:

AFTER REMOVING REPETITIVE NUMBERS AND THEIR STATUS			
S. No.	Flat No.s	Filed separate complaints	STATUS
1.	C-62		SETTLED
2.	C-104	3329/2023	
3.	D-73	1470/2024	
4.	A-47	810/2023	
5.	E-117	1192/2024	
6.	B-12	899/2023	The Ld. Authority has passed final order on 30.05.2024
7.	D-31	2577/2023	
8.	A-22	904/2023	The Ld. Authority has passed final order on 30.05.2024



9.	D-25	1476/2024	
10.	E-37	5700/2023	
11.	A-156	1317/2024	
12.	F-33	1478/2024	
13.	F-58	1474/2024	
14.	C-43	243/2024	SETTLED
15.	J-24	5961/2023	
16.	G-96	2692/2023	
17.	F-58		
18.	C-122		
19.	B-74		
20.	B-64		
21.	B-68		
22.	A-24		
23.	J-101		
24.	B-92		
25.	D-83		
26.	J-115		

g. That noting the above the matter is already pending adjudication before the Authority along with all the individual complaints which are also pending before the Authority praying for similar relief. Thus, the present complaint is barred by the principle of *Res Sub Judice and Res Judictaa* with respect to aforementioned items 6 and 8, i.e., unit no. B-12 and A-22 respectively. The complainant has filed the present complaint and all the other individual complaints with the sole purpose of harassing the respondent. This leads to multiplicity of the proceedings and thus, wastes the precious time of the court.

- h. That to illustrate on the point it is to be noted that the two of the flat owners of the association who also filed individual cases namely Deepika Sharma vs. Sunrays (C. No. 904 of 2023) and Santosh Kumar Shrivastava vs Sunrays (C. No. 899 of 2023), the Authority has already disposed off the case vide order dated 30.05.2024 and the relief of DPC has been allowed. The complainant has prayed for the similar relief in the present case.
- i. That it is also crucial to note that the authorised representative of the complainant, Mrs. Deepika Sharma (C. No. 904 of 2023) has already received the relief from the Authority under her individual case. The present complaint is barred by the principle of res judicata. As per section 11 of the Civil Procedure Code, 1908, no court shall try any suit in which the matter in issue had already been directly and substantially decided in the former suit between the same parties. The complainant is seeking reliefs which has already been granted by the Authority and hence the present complaint is barred by the provision of Res-Judicata.
- j. That even though the aforesaid complaints under which the final order has been passed. Thus, the flat owners who have filed individual cases shall be removed from the array of association and their claim and contentions are liable to be dismissed.
- k. That as per clause 4.1 of the agreement, the due date of possession was subject to the allottee having complied with all the terms and conditions of the agreement. Being a contractual relationship, reciprocal promises are bound to be maintained. The rights and obligations of allottee as well



as the builder are completely and entirely determined by the covenants incorporated in the agreement which continues to be binding upon the parties thereto with full force and effect. As per clause 4.1 of the agreement the respondent endeavored to offer possession within a period of 4 years from the date of obtainment of all government sanctions and permissions including environment clearance (hereinafter referred to as the “**Commencement of Project**”), whichever is later. The possession clause of the agreement is with par with the clause 1(iv) of the Affordable Housing Policy 2013.

- l. That, the building plan of the project was approved on 10.03.2015 from DGTCP and the environment clearance of the project was received on 16.09.2016. Thus, the proposed due date of possession, as calculated from the date of EC, comes out to be 21.08.2021. The Authority vide notification no.9/3-2020 dated 26.05.2020 had allowed an extension of 6 months for the completion of the project the due of which expired on or after 25.03.2020, on account of unprecedented conditions due to outbreak of Covid-19. Hence, the proposed due date of possession comes out to be **16.03.2021**.
- m. That however, the offer of possession was also subject to the incidence of *force majeure* circumstances under clause 16 of the agreement. The construction and development of the project was deeply affected by such circumstances which are beyond the control of the respondent.
- n. That the respondent was faced with certain other *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. 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 of Punjab & Haryana 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 for 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 of the project continued without shifting any extra burden to the customer. The development and implementation of the said project have been hindered on account of several orders/directions passed by various authorities/forums/courts.

o. That additionally, even before the normalcy could resume, the world was hit by the Covid-19 pandemic. 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 March 24, 2020 bearing no. 40-3/2020-DM-I (A) recognized that India was threatened with the spread of Covid-19 pandemic and ordered a completed lockdown in the entire country for an initial period of 21 days which started on March 25, 2020. By virtue of

various subsequent notifications, the Ministry of Home Affairs, GOI further extended the lockdown from time to time. 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. Considering the wide spread of Covid-19, firstly night curfew was imposed followed by weekend curfew and then complete curfew. During the period from 12.04.2021 to 24.07.2021 (103 days), each and every activity including the construction activity was banned in the State. On the same principle, the Haryana Real Estate Regulatory Authority, Gurugram granted 6 months extension for all ongoing projects vide order/direction dated 26th of May, 2020 on account of 1st wave of COVID-19 pandemic. The said lockdown was imposed in March 2020 and continued for around three months. As such extension of only six months was granted against three months of lockdown.

- p. That as per license condition developer are required to complete these projects within a span of 4 years from the date of issuance of environmental clearance since they fall in the category of special time bound project under section 7B of The Haryana Development and Regulation of Urban Area Act 1975, it is needless to mention that for a normal group housing project there is no such condition applied hence it

is required that 4 years prescribed period for completion of construction of project shall be hindrance free and if any prohibitory order is passed by competent authority like National Green Tribunal or Hon'ble Supreme Court then the same period shall be excluded from the 4 years period or moratorium shall be given in respect of that period also. Section 7(2)(i) of the act itself recognizes the relaxation for renewal of license in case the delay in execution of development work was the reason beyond control of the colonizer, here also colonizers were estopped because of force majeure.

- q. Therefore, it is safely concluded that the said delay of 422 days 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. Thus, from the facts indicated above and documents appended, it is comprehensively established that a period of 422 days was consumed on account of circumstances beyond the power and control of the Respondent, owing to the passing of aforesaid Orders by the statutory authorities. All the circumstances stated hereinabove come within the meaning of *force majeure* in terms with the Agreement.
- r. That in a similar case where such orders were brought before the Ld. Authority was in the **Complaint No. 3890 of 2021 titled "Shuchi Sur and Anr. vs. M/s. Venetian LDF Projects LLP"** which was decided on **17.05.2022**, wherein the Hon'ble Authority was pleased to allow the grace period and hence, the benefit of the above affected 166 days need to be rightly given to the Respondent builder.



- s. That even the UPRERA Authority at Gautam Budh Nagar has provided benefit of 116 days to the developer on account of various orders of NGT and Hon'ble Supreme Court directing ban on construction activities in Delhi and NCR, 10 days for the period 01.11.2018 to 10.11.2018, 4 days for 26.70.2019 to 30.10.2019, 5 days for the period 04.11.2019 to 08.11.2019 and 102 days for the period 04.17.2019 to 74.02.2020. The Authority was also pleased to consider and provided benefit of 6 months to the developer on account of effect of COVID also.
- t. That the Hon'ble UP REAT at Lucknow while deciding ***appeal No. 541 of 2011 in the matter of Arun Chauhan Versus Gaur sons Hi- Tech Infrastructure Pvt Ltd vide order dated 02.11.2021*** has also granted the extension of 116 days to the Developer/Promoter on account of delay in completion of construction on account of restriction/ban imposed by the Environment Pollution (Prevention & Control) Authority as well vide order of Hon'ble Supreme Court Dated 14.11.2019.
- u. That Karnataka RERA vide notification no. K-RERA/Secy/04/2019-20 and No. RERA/SEC/CR-04/2019-20 has also granted 9 months extension in lieu of Covid-19 pandemic.
- v. Despite there being a number of defaulters in the project, the respondent had to infuse funds into the project and have diligently developed the project in question. It must be noted by the Authority that despite the default caused, as a gesture of goodwill, with good intent the respondent got sanctioned loan from SWAMIH fund of Rs. 44.30 crores to complete the project and has already invested Rs. 35 crores from the said loan



amount towards the project. Further the respondent has already received the FIRE NOC, LIFT NOC, the sanction letter for water connection and electrical inspection report.

- w. That the respondent has applied for occupation certificate on 08.12.2023. Once an application for grant of occupation certificate is submitted for approval in the office of the concerned statutory authority, respondent ceases to have any control over the same. The grant of sanction of the occupation certificate is the prerogative of the concerned statutory authority over which the respondent cannot exercise any influence. As far as the respondent is concerned, it has diligently and sincerely pursued the matter with the concerned statutory authority for obtaining of the occupation certificate. No fault or lapse can be attributed to the respondent in the facts and circumstances of the case. Therefore, the time period utilized by the statutory authority to grant occupation certificate to the respondent is necessarily required to be excluded from computation of the time period utilized for implementation and development of the project.
- x. That moreover, the aforementioned shows that the respondent has duly competed development of the project. However, it is of utmost importance to note that the complainant has sought the relief of delayed possession charges, however, it is important to note that this is an individual relief based upon the delayed/defaulted payment made by the individual allottee, adjustment of interest and various other factors. Thus, complainant as an association cannot seek relief of delayed



possession charges as it depends on facts and circumstances of each case.

The Authority in the case titled as *Privvya93 Owners Associations and Anr. Vs Spaze Towers Pvt. Ltd. (279 of 2018)* had dismissed the complaint noting that advised the allottees to seek relief of DPC separately.

- y. That moreover, the complainant has sought the relief of inspection of the site. However, the Authority, vide order dated 09.09.2022 appointed a local commissioner, the report of whom was also attained, as is recorded in order dated 04.05.2023. Moreover, the project extension proceedings are also going on whereunder, the Authority has directed the inspection of the project. The respondent had sent an invite for such inspection to all the existing allottees as well as the members of the Authority.
- z. That the complainant has further alleged that there have been deviations in the plan, which is vehemently denied. The complainant has raised allegations without having substantiating the same. As per Section 101 of the Indian Evidence Act, 1872, the onus to prove the allegations put forth, completely lies on the Complainant and cannot be shifted to the Respondent, in any manner whatsoever. Until this obligation/onus is completely discharged, the Respondent cannot be made asked to prove its case against it.
- aa. That an association can be said to file a case with a majority of the members representing a common cause, however, in the present case, there are 16 individual who have filed separate complaints for the allowed reliefs and after removing these individuals, there are only 10



individuals remaining in the present case. Hence, the maintainability of the matter is to be determined by the Authority.

- bb. That a number of allottees have been defaulters in the project due to which, the respondent has legally, after following the terms of the Affordable Housing Policy, 2013 has terminated the units of a number of complainants.
- cc. That moreover, in compliance with the order dated 23.04.2024, the respondent is hereby submitting the details of all the allottees forming part of association along with the status of their unit. In light of the bona fide conduct of the respondent and no delay for development of project as the respondent was severely affected by the force majeure circumstances and no cause of action to file the complaint this complaint is bound be dismissed in favor of the respondent.

9. All the other averments made in the complaint were denied in toto.
10. 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

11. The Authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

12. 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

13. 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) The promoter shall-

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

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.

14. 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.
15. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in *Newtech Promoters and Developers Private*

Limited Vs State of U.P. and Ors. 2021-2022 (1) RCR (Civil), 357 and reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022, wherein it has been laid down as under:

“86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like ‘refund’, ‘interest’, ‘penalty’ and ‘compensation’, a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016.”

16. Hence, in view of the authoritative pronouncement of the hon’ble Supreme court in the case mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Finding on objections raised by the respondent.

F.I Objection regarding force majeure conditions:

17. It is contended on behalf of respondent/builder that due to various circumstances beyond its control, it could not speed up the construction of the project, resulting in its delay such as various orders passed by NGT Hon’ble Supreme Court, introduction of new highway being NH-352W. But

all the pleas advanced in this regard are devoid of merit. The passing of various orders to control pollution in the NCR-region during the month of November is an annual feature and the respondent should have taken the same into consideration before fixing the due date. Similarly, the various orders passed by other Authorities cannot be taken as an excuse for delay.

18. It is observed that the respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by 16.09.2020 and is claiming benefit of lockdown amid covid-19. In view of notification no. 9/3-2020 dated 26.05.2020, the Authority has allowed six months relaxation due to covid-19 and thus with same relaxation, even if due date for this project is considered as 16.09.2020 + 6 months, possession was to be handed over by 16.03.2021, but the respondent has failed to handover possession even within this extended period. Moreover, the occupation certificate/part OC is not yet obtained by the respondent from the competent Authority.

G Findings on the relief sought by the complainants.

G.1 Direct the respondent to give interest per month for delayed month and adjust the same in the last demand notice possession from the agreed date in the agreement.

19. The complainant-association states that the respondent failed to complete the project and despite directions of the authority, it failed to deliver the possession of the apartment as per the time schedule stipulated in the agreement.
20. On the contrary, the respondent states that number of allottees who are members of the above association have already filed individual claims for

DPC and hence the complainant-association may be asked to amend the relief before further proceeding in the matter. Further, it states that that the relief of DPC is individual relief and cannot be granted to the association. It is important to note that the application made for grant of OC has been rejected by the order of the DTCP dated 28.03.2024 on account of deficiencies in the documents and renewal of licence. During the course of proceeding, the respondent clarifies that after above order, an application has been made to DTCP alongwith BG of Rs. 1.37 Cr and other deficient documents including renewal fee for the licence and is hopeful to get the OC shortly and thereafter possession shall be offered to the allottees. The respondent further clarifies that no third party rights have been created after cancellation made on account of non-payment of dues

21. In the present case, the complainant-association sought relief of delay possession charge along with prescribed rate of interest as prescribed under the RERA Act. It is important to note that Section 18 of RERA Act puts obligation on the promoter to return the amount along with compensating the buyer in case of default by the promoter in delivering possession of the unit or in case the promoter fails to discharge any other obligations mentioned in the act or the rules and regulations made thereunder. Section 18 of the Act, 2016 reproduced below as:

"18. Return of amount and compensation.—

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

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or



(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

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."

22. Under the Real Estate (Regulation and Development) Act, 2016 (RERA), Section 18 provides a mechanism for allottees to seek remedies in cases of delay in possession. It is pertinent to note that under the RERA (Real Estate Regulatory Authority) Act, the term "allottee" under Section 2(d) specifically refers to individuals or entities who receive a plot, apartment, or any unit in a real estate project from a developer, which reproduced below as:

(d) "allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent.

23. The Act aims to protect the rights of these allottees by ensuring transparency and accountability from builders. In contrast, an "association of allottees" is a collective body formed by these individual allottees, representing their common interests, particularly in matters concerning the maintenance of the project, addressing grievances, and participating in decision-making processes. However, the association itself does not hold the status of an allottee under the Act. For instance, while allottees can file complaints

against developers for delays or deficiencies, the association acts as a facilitator for collective issues but cannot file complaints in the same manner as individual allottees can. This delineation helps clarify the roles and responsibilities of both entities within the real estate ecosystem governed by RERA. The act delineates that the obligation to deliver possession is primarily between the builder and the individual allottee. Therefore, the association's claim of delay possession charge is dismissed on these ground as the association's grievances do not fall within the ambit of Section 18 of the Act of 2016. Hence, individual allottees may need to pursue their claims independently to seek redress for any contraventions of their rights as stipulated under RERA Act, 2016.

G.II Appoint a local commissioner to inquire into the following irregularities and non-compliance:

- To inspect the tower wise, floor wise and flat wise the status of construction and to draw a dead line for actual handing over of the booked flats to the allottees of the association.
- To oversee the deviation from the actual approved layout plan as approved by the DTCP, Haryana.
- To confirm as if the expired bank guarantee has been renewed by the respondent. The validity of the license has already been expired long time bank.
- To take appropriate necessary action against the respondent after ascertaining the above deviation and the non-compliance of the prov. of the Haryana development and regulation of urban area Act 1975 and rules made there under and the terms and conditions of the LC-IV agreement, Bi-lateral agreement LC-IVA executed by the respondent with the DTCP Haryana as per the provision of the Act no 8 of 1975.

24. The Authority has observed that a suo-moto complaint addressing the reliefs sought by the complainant-association —such as the appointment of a Local Commissioner for project inspection, verification of the renewal status of the bank guarantee, validation of the license, examination of the escrow account



as mandated by RERA, and assessment of construction quality etc. is pending before the Authority. As these reliefs fall within the ambit of ongoing regulatory oversight, they will be adjudicated as part of the existing suo-moto complaint. Therefore, no directions can be given in view of same.

25. Hence, in view of the factual as well as legal position detailed above, the complaint filed by the complainant/association seeking above reliefs against the respondents is decided in terms of paras 19 to 24 above. Ordered accordingly.
26. Complaint stands disposed of.
27. File be consigned to registry.

(Ashok Sangwan)
Member

(Arun Kumar)
Chairman

(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 06.08.2024

HARERA
GURUGRAM