

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

Complaint no.	:	5462 of 2023
Date of filing complaint	:	04.12.2023
Date of decision	:	20.09.2024

Kapil Tandon s/o Baldev Kumar Tandon Resident of: - House no. A-27, Vishnu Garden, Behind Sheetla Temple, New Delhi - 110018	Complainant
Versus	
M/s Shine Buildcon Private Limited Registered office: H-334, Ground Floor, New Rajinder Nagar, New Delhi Corporate office: Plot No. 281, Udyog Vihar, Phase-II, Gurugram	Respondent

CORAM:	
Shri Ashok Sangwan	Member
APPEARANCE:	
Mr. Shashi Kant Sharma(Advocate)	Complainant
Mr. Venkat Rao(Advocate)	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

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

Sr. No.	Particulars	Details
1.	Name of the project	"70 Grandwalk", Sector 70, Gurugram
2.	Project area	2.893 acres
3.	Nature of the project	Commercial Complex
4.	DTCP license no. and validity status	34 of 2012 dated 15.04.2012 valid upto 14.04.2020
5.	Name of licensee	Shine Buildcon
6.	RERA Registered/ not registered	28 of 2017 dated 28.07.2017 valid upto 30.06.2022
7.	Unit no.	B-010, Ground Floor (Page no. 29 of complaint)
8.	Unit area admeasuring	386 Sq. Ft. (Super Area) (Page no. 29 of complaint)
9.	Date of execution of buyer agreement for shop	16.06.2015 (Page no. 27 of complaint)
10.	Possession clause	Clause 13. POSSESSION AND HOLDING CHARGES <i>"(ii) subject to Force Majeure, as defined herein and further subject to the Allottee having complied with all its obligations under the terms and conditions of this Agreement and not having defaulted under</i>



		<p>any provision(s) of this Agreement including but not limited to the timely payment of all dues and charges including the total sale Consideration, registration charges, stamp duty and other charges and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the Company proposes to offer the possession of the said Shop to the Allottee within a period of 42 months from the date of signing of this agreement or approval of the Building plans, whichever is later. The Allottee further agrees and understands that the Company shall additionally be entitled to a period of 6 (six month) ("Grace period"), after the expiry of the said Commitment Period to allow for unforeseen delays beyond the reasonable control of the Company."</p> <p style="text-align: right;">(Emphasis supplied)</p> <p>(As per buyer agreement at page no. 49 of complaint)</p>
11.	Due date of possession	16.06.2019 (Calculated to be 42 months from the date of execution of buyer agreement + Grace period of 6 months being unqualified and unconditional)
12.	Basic Sale Price	Rs. 45,16,200/- (As per buyer agreement at page no. 71 of complaint)
13.	Amount paid by the complainant	Rs. 36,80,327/- (As per SOA annexed by complainant and admitted by respondent at page 6 of reply)
14.	Occupation certificate	10.10.2023 (Page no. 29 of reply)

15.	Offer of possession	15.10.2023 (Page no. 32 of reply)
-----	---------------------	--------------------------------------

B. Facts of the complaint:

- I. That complainant after going through the inducement of respondent's project wherein the respondent has given huge advertisement and offers on the project shown their willingness to book/purchase a shop bearing B-010 on ground floor at 70 Grandwalk, Sector-70, Gurugram admeasuring 386 Sq. ft (35.86 Sq. Meter) at sale consideration of Rs. 11,050 per Sq. Ft. The said shop was booked on 25.09.2014 and thereafter the allotment letter was issued by the respondent on 17.11.2014 & builder buyer's agreement was also executed between the parties on 16.06.2015.
- II. That as per terms and conditions & clause 13 (ii) of the buyer's agreement, respondent was supposed to handover the shop by May 2019. It is respectfully submitted that the complainant has made a total sum of Rs. 36,80,327/- till date.
- III. That the complainant paid the amount from time to time as and when such demands were raised by respondent. That on 15.10.2023 the respondent very kindly issued a letter of offer of possession, wherein the respondent demanded a sum of Rs. 13,80,857/- and instructed to clear the outstanding on or before 15.12.2023. That from 15.10.2023 the complainant along with family members visit regarding to complete the furnishing work and handing over the shop but on each and every visit the respondent continuously gave the answer that the finishing work is going on and the possession of the commercial shop would be delivered very shortly.

C. Relief sought by the complainant:

3. The complainant has sought the following relief(s):

- I. Direct the respondent to pay interest @ 10.75% per annum on the amount already paid by the complainant i.e., Rs. 36,80,327/- from May 2019 till actual physical handover of the physical possession.
- II. Direct the respondent send a fresh offer of possession after completion of the unit.
- III. Direct the respondent that after payment of the above amount of delayed interest, the possession should be handed over to the complainant within the stipulated time period.

4. 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) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

5. The respondent contested the complaint on the following grounds:

- a. That after being fully satisfied with the specification and veracity of the project, the respondent applied for booking of a commercial unit vide application form. Thereafter, the respondent issued an allotment letter dated 17.11.2014, allotting the unit bearing no. B-010, ground floor admeasuring super area of 386 sq. ft. in favor of the complainant in the aforesaid project.
- b. That on 15.05.2015, a buyer's agreement, was executed between the parties pertaining to the said shop having a basic sale price of Rs. 45,16,200/-. The said sale consideration is stipulated under the construction linked payment plan. However, till date has paid an amount of Rs. 36,80,327/- as per the statement of account annexed as annexure C-7 of the complaint. In accordance with clause 13(ii) of the agreement possession of the said unit was proposed to be offered within an estimated

time period of 42 months from the date of signing of the agreement or approval of building plans whichever is later, along with a "grace period" of 6 months. However, the possession was subject to normal working conditions i.e., force majeure circumstances were exempted and the allottee having complied with all its obligations under the terms and conditions of the agreement. Further, the delay caused by the respondent in offering possession was due to bonafide reasons outside the control of the respondent, which also qualify as *force majeure* circumstances. It is pertinent to apprise to the authority that the development work of the said project was slightly decelerated due to the reasons beyond the control of the respondent due to the impact of Goods and Services Act, 2017 which came into force after the effect of demonetisation in last quarter of 2016 which stretches its adverse effect in various industrial, construction, business area even in 2019. The respondent had to undergo huge obstacle due to effect of demonetization and implementation of the GST.

- c. That on 18.12.2017, in ***Vardhaman Kaushik vs Union of India &Ors.*** the National Green Tribunal, New Delhi observed, that due to above unforeseen circumstances and causes beyond the control of the respondent, the development of the project got decelerated. That the delay in the completion of the project, as explained hereunder, was due to events like the implementation of a new tax regime, directions of NGT to halt ongoing construction activities, the National Lockdown declared by the Central and state governments during COVID-19 pandemic etc. all of which are factors completely out of the control of the respondent and no amount of care or diligence from respondent could have prevented the delay caused due to these.

- d. That while computing the date to offer possession the grace period as agreed by the Complainant under Clause 13 shall also be considered. As the Hon'ble Supreme Court in '*M/S Supertech Ltd. vs. Rajni Goyal, Civil Appeal No. 6649-50 of 2018*', had rightly upheld that the grace period stated in the Agreement shall also be considered. Despite, after facing various hindrances in mid-way of the construction of the Project the Respondent herein had managed to complete the construction of the said Unit. It is further submitted that the construction of the project wherein the unit/shop of the Complainant is situated has been completed and the Respondent has applied for part occupation certificate on 07.02.2023, with the concerned department.
- e. Subsequently, the respondent had obtained occupation certificate on 10.10.2023, from the Directorate of Town and Country Planning Haryana (DTCP), for the respective tower wherein, the shop of the complainant was situated. The upon receiving the occupation certificate the respondent vide offer of possession letter dated 15.10.2023, had offered possession to the complainant intimating that the respondent has obtained occupation certificate and invited him to take the possession of the unit post clearing the outstanding dues. However, the complainant failed to come ahead to take the possession of the respective unit after clearing the dues outstanding as per the payment schedule.
- f. That vide same offer of possession letter dated 15.10.2023, the respondent even called upon the complainant to pay the balance outstanding amount of Rs. 13,80,857/- due upon offer of possession after adjusting the discount for delayed possession. It is pertinent to mention, that the respondent herein upon considering the actual delay so caused has already granted/provided a discount of Rs. 79,130/- on account for the delayed

period and the same has already been adjusted/deducted from the total outstanding amount due upon offer of possession.

- g. That inspite after providing discount on account of delay and deducting the same from the outstanding dues, the respondent herein vide offer of possession letter dated 15.10.2023, had invited the complainant to take the possession but he instead of taking possession has preferred to file the present complaint under reply to make illegal monetary gains.
6. 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 based on these undisputed documents and submission made by the complainant.

E. Jurisdiction of the authority:

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

E. I Territorial jurisdiction

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

E. II Subject matter jurisdiction

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per the 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.

10. So, in view of the provisions of the Act quoted above, the Authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the objections raised by the respondent:

F.I Objections regarding force Majeure.

11. The respondent-promoter has raised the contention that the construction of the unit of the complainant has been delayed due to force majeure circumstances such as orders passed by the Hon'ble NGT, Environment Protection Control Authority, and Hon'ble Supreme Court. The pleas of the respondent advanced in this regard are devoid of merit. The orders passed were for a very short period of time and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. Furthermore, the respondent should have foreseen such situations. Thus, the promoter respondent cannot be given any leniency on the basis of aforesaid reasons.
12. The respondent-promoter also raised the contention that, the Hon'ble Supreme Court vide order dated 04.11.2019, imposed a blanket stay on all construction activity in the Delhi- NCR region and the respondent was under the ambit of the stay order, and accordingly, there was next to no construction activity for a considerable period and other similar orders

during the winter period 2017-2019. A complete ban on construction activity at site invariably results in a long-term halt in construction activities. As with a complete ban the concerned labours left the site and they went to their native villages and look out for work in other states, the resumption of work at site becomes a slow process and a steady pace of construction realized after long period of it. It is pertinent to mention here that flat buyer's agreement was executed between the parties on 16.06.2015 and as per the terms and conditions of the said agreement the due date of handing over of possession comes 16.06.2019 which is way before the abovementioned orders. Thus, the promoter-respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

13. Further, the respondent-promoter has raised the contention that the construction of the project was delayed due to reasons beyond the control of the respondent such as COVID-19 outbreak, lockdown due to outbreak of such pandemic and shortage of labour on this account. The authority put reliance judgment of Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and IAs 3696-3697/2020* dated 29.05.2020 which has observed that-

"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself."

14. In the present complaint also, the respondent was liable to complete the construction of the project in question and handover the possession of the said unit by 16.06.2019. The respondent is claiming benefit of lockdown

which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself and for the said reason the said time

G. Findings on relief sought by the complainant.

G.I Direct the respondent to pay interest @ 10.75% per annum on the amount already paid by the complainant i.e., Rs. 36,80,327/- from May 2019 till actual physical handover of the physical possession.

II. Direct the respondent send a fresh offer of possession after completion of the unit.

III. Direct the respondent that after payment of the above amount of delayed interest, the possession should be handed over to the complainant within the stipulated time period.

15. All the above-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of other relief and the same being interconnected.

16. In the present complaint, the complainant intends to continue with the project and are seeking possession of the subject unit and delay possession charges as provided under the provisions of Section 18(1) of the Act which 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."***

17. Clause 13 of the buyer agreement for shop provides handing over of possession and is reproduced below:

"(ii) subject to Force Majeure, as defined herein and further subject to the Allottee having complied with all its obligations under the terms and conditions of this Agreement and not having defaulted under any provision(s) of this Agreement including but not limited to the timely payment of all dues and charges including the total sale Consideration, registration charges, stamp duty and other charges and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the Company proposes to offer the possession of the said Shop to the Allottee within a period of 42 months from the date of signing of this agreement or approval of the Building plans, whichever is later. The Allottee further agrees and understands that the Company shall additionally be entitled to a period of 6 (six month) ("Grace period"), after the expiry of the said Commitment Period to allow for unforeseen delays beyond the reasonable control of the Company."

18. **Due date of possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within 42 months from the date of commencement of construction and it is further provided in agreement that promoter shall be entitled to a grace period of six months. Therefore, the due date of possession comes out to be 16.06.2019 including grace period of six months being unqualified and unconditional.
19. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges. Proviso to Section 18 provides that where an allottee does not intends 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, *ibid*. 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]

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."

20. The legislature in its wisdom in the subordinate legislation under the Rule 15 of the Rules, ibid 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.
21. 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., 20.09.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
22. The definition of term 'interest' as defined under Section 2(z a) 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 — 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 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;"*

23. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10 % by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.
24. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of buyer's agreement executed between the parties, the possession of the

booked shop was to be delivered within 42 months with an additional grace period of 6 months from the date of execution of the agreement (16.06.2015) or date of approvals of building plans, whichever is later. Therefore, the date of execution of agreement being later, the due date of possession was calculated from the date of execution of agreement between the parties. Accordingly, the due date of possession comes out to be 16.06.2019. The occupation certificate was granted by the concerned authority on 10.10.2023 and thereafter, the possession of the subject flat was offered to the complainant on 15.10.2023. 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 subject unit and there is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 16.06.2015 to hand over the possession within the stipulated period.

25. Section 19(10) of the Act obligates the allottees 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 10.10.2023. The respondent offered the possession of the unit in question to the complainant only on 15.10.2023, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. These 2 month of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically they have to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession

is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession, i.e., 12.05.2019 till the expiry of 2 months from the date of offer of possession (15.10.2023) which comes out to be 15.12.2023. Also, an amount of Rs. 79,130/- already adjusted by the respondent towards compensation for delay in handing over possession shall be deducted/adjusted towards the delayed possession charges to be paid by the respondent.

26. The respondent is further directed that it shall not charge anything from the complainant which is not the part of the buyer's agreement.

H. Directions issued by the Authority:

27. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance with obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- I. The respondent is directed to pay interest to the complainant against the paid-up amount at the prescribed rate of 11.10% p.a. for every month of delay from the due date of possession, i.e., 16.06.2019 till the date of offer of possession (15.10.2023) plus two months i.e., 15.12.2023, as per Section 18(1) of the Act of 2016 read with Rule 15 of the Rules, *ibid*. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per Rule 16(2) of the Rules, *ibid*. Also, an amount of Rs. 79,130/- already adjusted by the respondent towards compensation for delay in handing over possession shall be deducted/adjusted towards the delayed possession charges to be paid by the respondent in terms of proviso to section 18(1) of the Act.

- II. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per Section 2(za) of the Act.
- III. The respondent is directed to issue a revised statement of account after adjustment of delayed possession charges, and other reliefs as per above within a period of 30 days from the date of this order. The complainant is directed to pay outstanding dues if any remains, after adjustment of delay possession charges within a period of next 30 days.
- IV. The respondent shall handover the possession of the subject unit within two weeks of the payment, if any due, having been made by the complainant.
- V. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.
28. Complaint stands disposed of.
29. File be consigned to the Registry.

Dated: 20.09.2024

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