

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

Complaint no.: 5116 of 2021
Date of filing of complaint: 03.01.2022
Date of decision: 20.08.2024

1. Ms. Prem Lata Sethi
2. Hemant Sethi

R/O: Flat no. B-051, Tower Grace, AIPL, The Peaceful
Homes, Sector-70A, Gurugram-122101.

Complainants

Versus

Haamid Real Estates Private Limited

Regd. Office: The Masterpiece, Sector 54, Golf Course
Road, Gurugram

Respondent

CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Chairman
Member
Member

APPEARANCE:

Sh. Garv Malhotra (Advocate)
Sh. Harshit Batra (Advocate)

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

S. N.	Particulars	Details
1.	Name of the project	"The Peaceful Homes" Sector 70A, Gurugram, Haryana
2.	Project area	Not Mentioned
3.	Nature of the project	Group Housing Colony
4.	DTCP license no. and validity status	16 of 2009 dated 29.05.2009 valid upto 28.08.2024 73 of 2013 dated 30.07.2013 valid upto 09.07.2019
5.	Name of licensee	Haamid Real Estates Pvt. Ltd.
6.	RERA Registered/ not registered	63 of 2019 dated 22.10.2019
7.	RERA registration valid up to	31.12.2019
8.	Allotment of unit	09.05.2013 (As per page no. 62 of the reply)
9.	Unit no.	B-051, 5 th floor, Tower- B (As per page no. 62 of the reply)
10.	Unit Admeasuring	2150 sq. ft. (As per page no. 62 of the reply)
11.	Date of flat buyer's agreement	06.08.2014 (As per page no. 68 of the reply)
12.	Possession Clause	11 (a) Schedule for Possession of the Unit "The company endeavors to handover the possession of the Unit to the Allottee within a period of 36 (Thirty-Six) months from the date of commencement of construction of the Project, which shall mean the date of commencement of the excavation work at the Project land and this date shall be duly communicated to the Allottee ("commitment period"). The Allottee further agrees and understands that the Company shall additionally be entitled to



		<i>a period of 6 (six) months after the expiry of the said commitment period to allow for any contingencies or delays in construction including for obtaining occupation certificate of the Project from the Government Authorities.</i>
13.	Due Date	21.10.2017 (calculated from the date of excavation i.e. 21.04.2014 including grace period of 6 months) (inadvertently mentioned in POD dated 20.08.2024 as 20.04.2017)
14.	Total sale consideration	Rs.1,46,64,942/- (As alleged by the complainant in the facts on page 14 of complaint and on page 106 of complaint)
15.	Amount paid by the complainant	Rs.1,56,75,152/- (As alleged by the complainant in the facts on page 14 of complaint)
16.	Occupation certificate	29.10.2019 (As per annexure R-5-page no. 142 of the reply)
16.	Offer of possession	05.11.2019 (Annexure 4 page 102 of the complaint)
17.	Possession acceptance	29.02.2020 (As alleged by the respondent vide letter on annexure R-7-page no. 152 of the reply)

B. Facts of the complaint:

3. That on 29.05.2012 the booking application was signed between the complainants and the respondent promoter of the project, 'TPH' Homes. On 27.06.2012 & 21.08.2012 the promoter of the project, 'TPH' acknowledged the receipt of the amount of Rs. 10,00,000 and Rs. 11,50,000/- respectively for allotment of the apartment amount to a total of 21,50,000/-.
4. It is humbly submitted that on this day more than 10% of the total basic sale price was paid and thus the onus of registering a builder buyer agreement

as per section 13 of RERA was on the builder. Thus, the due date of possession is to be calculated from this date i.e. 21.08.2012 and thus the due date of possession comes out to be 21.04.2016.

5. That the complainants also repeatedly follow up with the respondents to execute a builder buyer agreement but all to no avail. This is a clear violation of section 13 of RERA act and the respondents were liable to execute a BBA after receiving more than 10% of total sale consideration. The respondent company, through its representatives and various employees, assured the complainants from time to time that the "Agreement to sell/BBA" is still under process and till date the respondent have not sent any documents related to unit.
6. That on 09.05.2013 an allotment letter was issued in favour of the complainant for a flat with unit no. B-051 on 5th Floor, Tower B with super area admeasuring 2150 sq. ft. (199.74 sq. mtrs) along with exclusive use of 2 car parking spaces for basic sale price of Rs 1,30,01,050/- i.e. @Rs 65,089.91/- per square meters along with PLC of Landscape facing @ Rs 2,152 per square meters or Rs 200/- per square feet amounting to total PLC of Rs 4,30,000/- and total sale consideration of Rs 1,46,64,942/- and total amount paid is Rs 1,56,75,152 till date through M/s Advance India Projects Ltd (AIPL) (later formed its subsidiary as M/s Haamid Real Estates Pvt. Ltd.), the promoter of the project, "The Peaceful Homes".
7. That respondent is the promoter/ developer/builder of the project. The respondent had launched a new residential project called "**THE PEACEFUL HOMES (TPH)**" in Sector 70A, Gurugram, Haryana & had published many advertisements for the project to attract the public at large. The respondent is a fully owned subsidiary company of AIPL and has, at all material points of time, been and is still engaged in the commercial business of developing and selling housing projects/flats/plots and other construction layouts to

various individuals and/or others in lieu of valuable considerations for profit being their primary objective.

8. That at the time of the booking, the respondent-builder had promised the complainant state-of-the-art residential spaces that are affordable yet modern and well-equipped residential project within a stipulated time period. One of the unique selling point (usp) of the project that was marketed was the 16/6 space i.e 06 towers in 16 acres of land with a lot of open area and lush green Landscape. But after taking the possession, the complainants realized that the respondent builder had made significant changes to the site plan wherein instead of making 06 towers in 16 acres he has now made 06 residential towers within 11.78 acres only including the club area. In addition, 'community building as per brochure of 2014' has been converted into a 'community building and tower e as per brochure of 2018' thereby increasing total no of units within the reduced area of 11.78 acres, thus effectively reducing the common area for all residents without passing any of these details to the allottees, thus leading to serious deficiencies in the project, which directly amount to unfair trade practice. Moreover, the site plan has also significantly changed in the brochures of 2014 and 2018 as a significant area comprising of two towers has been removed and the earlier single tower i.e. D has been changed to two new i.e. Towers Zen - 1 and Zen - 2 respectively. Moreover, the respondent Builder has made another tower illegally and arbitrarily over the club house in the name and style of club residences without the approval from the authorities and the allottees.
9. Moreover, at the time of booking in the year 2014, the complainants were told that the total number of units in the project would be 1256 only whereas since the year 2018 that number has been increased to 1430 without any corresponding change in area of the project. Similarly, the EWS



unit and servant quarters have increased from 223 to 252/253 and 130 to 143 respectively. Thus, collectively the population has increased from 6986 to 7940 or more i.e., a change in the population density of 34.729 per person.

10. The complainant was promised luxury apartment with high standard quality and a big 3BHK apartment of 2150 sq ft. But after possession was delivered the carpet area of only 1208 sq ft i.e. 56% of the super area.
11. That it is humbly submitted that after this revelation the complainants apprehended the builder time and again to provide the detailed break-up of the super area for which they have adequately paid as and when demanded so as to know how the super area being promised to them is being actually and physically being delivered. But till date the respondent has failed to provide any satisfactory reply. Moreover, it is clearer and from the above-mentioned increase in number of units that in no possibility the super area promised can be delivered as the portion of common area is now being divided in more allottees than before.
12. That the said practice by the respondents for directing the complainants to purchase two parking on mandatory grounds is illegal and arbitrary and the same was dissented by SUPREME COURT OF INDIA in NAHALCHAND LALOOCHAND PVT. LTD. V. PANCHALI CO-OPERATIVE HOUSING SOCIETY LTD, AIR 2010 SC 3607, in which it is specifically stated that parking spaces must be considered as a part of COMMON AREA and cannot be sold as separate entity. But in the present case the respondent has charged Rs.8.00 lacs from the complainant on the account of COVERED PARKING SPACE which was later on adjusted in BSP and the same was arbitrarily raised from Rs 6050 to Rs 6423 per square feet. Hence, such demands by the Respondent amount to **unfair trade practice** as the respondent is liable for indulging in fraudulent practices and charging huge amount of money from the



complainant on illegal & unfair account. **The promoter charged two car parking** of Rs. 8 lacs and to get rid of separate charges, he included it in the flat BSP (Basic Sale price) per sq. ft. while allotment of the unit. The unit BSP was Rs. 6050 per sq. ft. and total area of the flat was 2150 per sq feet. So, Rs 8lac/2150= Rs 373 increased in the BSP. New BSP= Rs 6050+Rs 373=6423 Rs per sq. ft.

13. That it is also pertinent to mention here that the complainant did not make any delay payment in regards to the construction linked plan opted and had paid all the instalments on time/ earlier than the due date.
14. That on 05.04.2013 & 17.12.2014, the complainants paid Rs 20,00,000/- and Rs 6,53,976/- respectively acknowledged by the respondent-builder. That during 2014-15 the promoter started the construction after 02 years of taking advance amount and demanded more money from the complainants for commencement of the project.
15. That on 05.11.2019 & 16.12.2019 the respondent builder intimation of possession and handover intimation letter respectively sent to the complainant's along with an arbitrary and illegal indemnity cum undertaking for taking possession.
16. That the complainants have complied with all the terms and conditions of the various documents executed but the respondents have failed to meet up with their part of the contractual obligations and thus are liable for dpc and interest for every month of delay at prevailing rate of interest from the due date of possession till valid offer of possession and physical possession. But till date no amount has been paid back to the complainants and the respondents are enjoying the hard-earned money of the complainants for past more than five years approximately.
17. That the main grievance of the complainants in the present complaint is that despite the complainants having paid more than 100% of the actual

amounts of flat but the respondent(s) party has failed to deliver the possession of flat as per schedule, specifications and amenities are shown in brochure and builder buyer agreement. Moreover, the respondent(s) charged extra amount under different heads i.e. EDC/IDC, registration charges. Also the respondent builder failed to provide proper sewage treatment facilities, inadequate power backup and improper road approach and access.

C. Relief sought by the complainant:

18. The complainant has sought following relief(s):

- i. Interest for every month of delay at prevailing rate of interest from 21.04.2016 (due date of possession) till date of actual/physical handing over of possession i.e., 29.02.2020.
- ii. To direct the respondent to charge the cost of flat the carpet area at 1208 square feet which is only 56% of the promised super area. Thus, the respondent to charge on carpet area as defined in the conveyance deed and prescribed in the RERA Act and not on the Super Area as described in the BBA/Conveyance Deed as the Super Area promised to be given has actually not been transferred and includes areas much above and beyond the scope of Super Area. Any excess amount deposited by Complainant be reimbursed with interest.
- iii. To direct the respondents to provide a detailed break-up of Super Area and common area applicable and allotted to the Complainants and whether it includes the area designated under two paid car parkings or not.
- iv. To direct that the development of two more towers namely zen 1 and zen 2 (without seeking approvals from the 2/3rd of the allottees and without creating essential services of piped water supply, 100% power back up, sewage disposal and treatment, reliable lifts road connectivity



and other amenities as promised for the existing allottees) be stayed and their construction be stopped till these essential services are provided to the existing residents and relevant approvals are taken from the Complainants and other allottees and till they are adequately compensated for false and illegal promises.

- v. The standard of tiles promised, and the tiles delivered actually is of low quality and thus need to be replaced and damages for the same be given to the Complainants.
- vi. To direct the respondents to make good the direct and continuous losses and damages due to cracks being developed on the walls due to poor quality of construction and inadequate cementing between the Big blocks of Bricks.
- vii. To order the respondents to waive off the arbitrarily and illegally levied interest free maintenance charges, club membership, excess VAT deductions other charges on various facilities and amenities as mentioned in the table of Complaint and provide delay interest on the same as per RERA Guidelines from date of Payment till date of actual availability of services/ Facilities.
- viii. The respondents be directed to reimburse the arbitrary VAT amount charges of Rs 5,63,872 with Interest.
- ix. The respondent be directed to immediately execute the conveyance deed without prejudice to any of the legal rights of the complainants. The complainants should be adequately reimbursed the burden of excess stamp duty charges due to increase in stamp duty because of delay in executing the conveyance deed by the respondents.
- x. That the Respondent Builder has Illegally and Arbitrarily charged more External Development Charges/Internal Development Charges (EDC/IDC) than what is sanctioned as per the prevailing norms and



rules of the government and the extra amount be directed to be deposited back to the Complainants.

xi. That the respondent Builder be directed to disclose all documents regarding available water and electricity infrastructure and units as well as the expenditure on the same, failing which an audit be done by an independent authority.

xii. To direct the Respondent to operate and start a direct water connection at once from the SPR, as per the orders of the GMDA in their letter of 30 Jul 2021.

xiii. To direct the respondent to charge on actuals as per the units consumed for electricity.

xiv. To direct the Respondent to pay for litigation charges to the tune of Rs 1,50,000/-.

xv. To direct the respondent to hand over all the maintenance, management and control to the association of Allottees at once and constitute a RWA.

D. Reply by respondent:

19. That the respondent entered into collaboration agreements in the year 2012 with Rapid Infracon Private Limited, Capital Heights Private Limited and Classic Infrasolutions Private Limited and transferred the development rights to these developers. After transferring the development rights, Respondent was left with the land admeasuring 11.785 acres.

20. That it is submitted that the respondent is a wholly owned subsidiary of the Advance India Projects Limited. The development of the residential group housing colony under the name of "The Peaceful Homes" situated at Sector-70A, Gurgaon, Haryana (**hereinafter referred to as "the said project"**) has been undertaken by the respondent. The said project is registered with the Hon'ble Authority vide registration number 63 of 2019 dated

22.10.2019 declaring the respondent as the promoter/license holder of the project. The said project is developed on a land admeasuring 8.38 acres and the same is mentioned on RERA registration certificate. The complainants wrongly contend through their proforma-b that the project known under the name and style of "The Peaceful Homes" at Sector 70A, Gurugram ("**Project**") is "un-registered". It is submitted that the project is registered vide registration no. 63 of 2019 dated 22.10.2019.

21. That the complainants, being interested in the project of the respondent tentatively applied for allotment of a unit vide application letter dated 01.04.2013 and were consequently allotted unit no. B-051 on 5th Floor in Tower B admeasuring super area 2150 sq. ft. along with 2 car parking ("**Unit**") vide allotment letter 09.05.2013 and consequently, the flat buyer agreement was executed between the respondent and the complainants on 06.08.2014.

22. That the possession was rightly given as per the agreement. It is a matter of fact that the respondent had faced force majeure circumstances, which give an extended time to the respondent under clauses 11(b), 11(c) and 46 of the Agreement. At this juncture, it is pertinent to note that the Respondent was adversely affected by various construction bans, lack of availability of building material, regulation of the construction and development activities by the judicial authorities including NGT in NCR on account of the environmental conditions, restrictions on usage of groundwater by the High Court of Punjab & Haryana, demonetization etc. and other force majeure circumstances, yet, the respondent completed the construction of the project diligently and timely, without imposing any cost implications of the aforementioned circumstances on the complainant and demanding the prices only as per the payment plan categorically and mutually agreed between the parties.

23. That furthermore, the complainants miserably failed in making the payments. As per Clause 1.4 of the Agreement, *the Allottee shall make the payment as per the payment plan set out in Annexure V to this Agreement,* however, the complainants miserably failed in making the payments. That the total demand raised against the unit is Rs. 1,71,30,139.44 and the complainant has paid Rs. 1,62,13,137.32 and a sum of Rs. 9,17,002.12 is outstanding and to be paid by the complainants.
24. That despite all the difficulties, the respondent completed the construction and rightly applied for occupation certificate on 18.03.2019, and consequently, the occupation certificate was obtained on 29.10.2019. Only after obtaining the occupation certificate, the respondent rightfully offered possession of the said unit to the complainants on 05.11.2019. The complainants were also allotted car parking no. 108[LB] and 109[LB] on 08.11.2019 and were thereafter requested to make the payment of stamp duty and registration charges vide letter dated 08.11.2019. That the complainants are chronic defaulters and were served with reminder and final reminder for payment on offer of possession dated 29.11.2019 and 28.01.2020.
25. Consequently, the handover intimation was given to the complainants on 16.12.2019 and the possession was taken by the complainants after having verified the unit and the project and being completely satisfied with the same. That no protest, demur of any sort whatsoever, was made by the complainants before taking possession. That an unconditional acceptance of possession was taken, leaving no claim against the respondent company, as evident from the possession letter dated 29.02.2020. That after being completely satisfied with the construction and specifications of the Unit, an indemnity cum undertaking was also executed on 31.01.2020.

26. That the project underwent three revisions – in 2014, 2017 and 2021, after complying with all the prerequisites. It is submitted that the respondent complied with all the pre-requisites, and invited objections from the complainants on 13.06.2014, and obtained the approval of the 2014 plan on 18.09.2014. Thereafter, the revision was made in 2017 for Towers Z1, Z2, E, CR-1, EWS, and Shops falling in the group housing colony, which was approved on 27.01.2017. It needs to be categorically noted that STP, Gurgaon had informed that no objection has been received in respect of the amendments made in the building plan, as is *ex facie* evident in the approval letter dated 27.01.2017.
27. Thereafter, revision of building plans of tower Z2 and 1 unit in EWS block falling in the group housing colony was approved on 22.03.2021 subject to issuance of public notice, which was issued by the Respondent on 27.03.2021 and was thereafter approved vide letter dated 18.05.2021, in which, no objection was noted, however, did not relate to the revision of building plan. In the approval letter dated 18.05.2021, it has been noted that ***“STP , Gurugram vide email dated 14.05.2021 reported that total green area is the same in the earlier approved building plan and in-principally approved building plan, which is as per the norms”***.
28. All other averments were denied in total.
29. 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:

30. 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

31. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by the Town and Country Planning Department, the jurisdiction of the 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

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

Section 11(4)(a)

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

Section 34-Functions of the Authority:

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

33. 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 relief sought by the complainant.

F.I To direct the respondent to pay delay possession charges along with prescribed rate of interest.

34. In the present complaint the complainant intends to continue with the project and is 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."

35. Clause 11(a) of the buyer's agreement provides the time period of handing over possession and the same is reproduced below:

"The company endeavors to handover the possession of the Unit to the Allottee within a period of 36 (Thirty-Six) months from the date of commencement of construction of the Project, which shall mean the date of commencement of the excavation work at the Project land and this date shall be duly communicated to the Allottee ("commitment period"). The Allottee further agrees and understands that the Company shall additionally be entitled to a period of 6 (six) months after the expiry of the said commitment period to allow for any contingencies or delays in construction including for obtaining occupation certificate of the Project from the Government Authorities....."

(Emphasis Supplied)

36. The authority has gone through the possession clause of the agreement. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the complainant not being in default under any provision of this agreement and in compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may

make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning.

37. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builder/promoter and buyer/allottee are protected candidly. The flat agreement lays down the terms that govern the sale of different kinds of properties like residentials, commercials etc. between the builder and the buyer. It is in the interest of both the parties to have a well-drafted buyer's agreement which would thereby protect the rights of both the builder and buyer in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the unit, plot or building, as the case may be and the right of the buyer/allottee in case of delay in possession of the unit.
38. **Due date of possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the unit within a period of **36 (Thirty-Six) months from the date of commencement of construction of the Project.** The due date of possession comes out to be 21.04.2017 as date of excavation is 21.04.2014. Further, it was provided in the buyer's agreement that promoter shall be to a period of 6 (six) months after the expiry of the said commitment period to allow for any contingencies or delays in construction including for obtaining occupation certificate of the Project from the Government Authorities.
39. The Authority put reliance on the judgement of the Hon'ble Appellate Tribunal in appeal no. 433 of 2022 tilted as Emaar MGF Land Limited Vs Babia Tiwari and Yogesh Tiwari, wherein it has been held that if the allottee wishes to continue with the project, he accepts the term of the agreement



regarding grace period of three months for applying and obtaining the occupation certificate. The relevant para is reproduced below:

As per section 18 of the Act, if the project of the promoter is delayed and if the allottee wishes to withdraw then he has the option to withdraw from the project and seek refund of the amount or if the allottee does not intend to withdraw from the project and wishes to continue with the project, the allottee is to be paid interest by the promoter for each month of the delay. In our opinion if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. So, in view of the above said circumstances, the appellant-promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the Occupation Certificate

40. Therefore, in view of the above judgement and considering the provisions of the Act, the authority is of the view that, the promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the occupation certificate. So, the due date of possession including grace period of 6 month for the reason stated above comes out 21.10.2017.

41. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges. However, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoters, 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.

42. 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.

43. 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., 20.08.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

44. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. — For the purpose of this clause—

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"

45. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 11.10% by the respondents/ promoters which is the same as is being granted to them in case of delayed possession charges.

46. On consideration of the documents available on record and submissions made by both the parties, 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 dated 06.08.2014. By virtue of clause 11(a) of the agreement, the possession of the subject



apartment was to be delivered within a period of 36 (Thirty-Six) months from the date of commencement of construction of the Project. For the reasons quoted above, the due date of possession is to be calculated from the commencement of construction of the particular tower i.e., 21.04.2014 and it is further provided in agreement that promoter is entitled for a grace period of 6 months. As far as grace period is concerned, the same is allowed. Therefore, the due date for handing over of possession comes out to be 21.10.2017. In the present complaint the complainant was offer the possession of the flat by the respondent on 05.11.2019 after receipt of the occupation certificate dated 29.10.2019 from the competent authority.

47. The respondent has obtained the occupation certificate on 29.10.2019. 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 possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 06.08.2014 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 06.08.2014 to hand over the possession within the stipulated period.
48. 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 29.10.2019. The respondent offered the possession of the unit in question to the complainant only on 05.11.2019. 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. This 2 months' of reasonable time is being given to the complainant keeping in mind that even after intimation

of possession practically he has 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. 21.10.2017 till the date of offer of possession (05.11.2019) plus two months i.e., 05.01.2020.

49. 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. 21.10.2017 till the date of offer of possession (05.11.2019) plus two months i.e., 05.01.2020; as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

F.II To direct that the development of two more towers namely zen 1 and zen 2 (without seeking approvals from the 2/3rd of the allottees and without creating essential services of piped water supply, 100% power back up, sewage disposal and treatment, reliable lifts road connectivity and other amenities as promised for the existing allottees) be stayed and their construction be stopped till these essential services are provided to the existing residents and relevant approvals are taken from the complainants and other allottees and till they are adequately compensated for false and illegal promises.

50. The present complaint was filed u/s 31 of the Act, 2016 wherein the complainants seek relief for stay of the construction of the project till essential services are provided to the existing residents. However, the relevant approvals are issued by the DTCP, Haryana for development of the project. The relief sought above pertains to the licencing Authorities (Director Town and Country Planning) and any relief in this regard may be sought from the competent Authority

F.III To direct the respondent to charge the cost of flat the carpet area at 1208 square feet which is only 56% of the promised super area. Thus, the respondent to charge on carpet area as defined in the conveyance deed and prescribed in the RERA Act and not on the Super Area as described in the BBA/Conveyance Deed as the Super Area promised to be given has actually not been transferred and includes areas much above and beyond the scope of Super Area. Any excess amount deposited by Complainant be reimbursed with interest.

F.IV To direct the respondents to provide a detailed break-up of Super Area and common area applicable and allotted to the Complainants and whether it includes the area designated under two paid car parkings or not.

51. The above-mentioned reliefs no. F.III and F.IV, as sought by the complainant is being taken together as the findings in one relief will definitely affect the result of the other reliefs and these reliefs are interconnected.

52. The complainant is seeking relief of disclosure all documents regarding detailed break-up of Super Area and common area applicable and allotted to the Complainants and whether it includes the area designated under two paid car parking's or not. It is important to note that as per Section 11(3)(a) of the RERA Act of 2016, developers are mandated to provide allottees with sanctioned plans, layout plans, and specifications (a clear schedule with dates for project completion, including infrastructure provisions such as water, sanitation, and electricity) at the time of booking and the issuance of the allotment letter. This disclosure ensures that homebuyers have comprehensive information about the proposed project from the outset. So, the respondent-builder is directed to provide all the necessary approvals obtained from the competent authority to the complainant.

F.V The respondent be directed to immediately execute the conveyance deed without prejudice to any of the legal rights of the complainants. The complainants should be adequately reimbursed the burden of excess stamp duty charges due to increase in stamp

duty because of delay in executing the conveyance deed by the respondents

53. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under obligation to get the conveyance deed executed in favour of the complainant. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question.

54. Since the possession of the subject unit has already been offered after obtaining occupation certificate on 29.10.2019. The respondent is directed to get the conveyance deed executed within a period of three months from the date of this order on payment of stamp duty and registration charges if not paid.

F.VI To direct the Respondent to operate and start a direct water connection at once from the SPR, as per the orders of the GMDA in their letter of 30 Jul 2021.

F.VII To direct the respondent to charge on actuals as per the units consumed for electricity

55. As per the condition stipulated in point 4 of the occupation certificate dated 29.10.2019, the respondent is hereby directed to ensure the provision of water supply. This obligation will continue until such time that the Haryana Shahari Vikas Pradhikaran (HSVP) or DHBVN any other competent authority makes these services available according to their established scheme.

F.VIII That the Respondent Builder has illegally and arbitrarily charged more External Development Charges/Internal Development Charges (EDC/IDC) than what is sanctioned as per the prevailing norms and rules of the government and the extra amount be directed to be deposited back to the Complainant

56. The complainant states that respondent builder has illegally and arbitrarily charged more External Development Charges/Internal Development Charges. On the contrary respondent builder states that the charges

towards EDC/IDC are levied by the government. The respondent-builder has presented a "no dues certificate" issued by the relevant authority, indicating a payment of Rs. 66 crore towards EDC and IDC. Hence, the Authority cannot accede with the above relief sought

F.IX To direct the respondent to hand over all the maintenance, management and control to the association of Allottees at once and constitute a RWA.

57. The above said relief was not pressed by the complainant counsel during the arguments in the course of hearing. Also the complainant failed to provide or describe any information related to the above mentioned relief sought. The authority is of the view that the complainant counsel does not intend to peruse the relief sought by the complainant. Hence, the authority has not returned any findings with regard to the above mentioned relief.

F.X To direct the Respondent to pay for litigation charges to the tune of Rs 1,50,000/-.

58. The complainant in the aforesaid relief is seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.* (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021), has held that an allottee is entitled to claim compensation 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 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.

F.XI To order the respondents to waive off the arbitrarily and illegally levied interest free maintenance charges, club membership, excess VAT deductions other charges on various facilities and amenities as mentioned in the table of Complaint and provide

delay interest on the same as per RERA Guidelines from date of Payment till date of actual availability of services/ Facilities.

F.XII The respondents be directed to reimburse the arbitrary VAT amount charges of Rs 5,63,872 with Interest.

59. It is contended on behalf of complainants that the respondent raised an illegal and unjustified demand towards VAT. It is pleaded that the liability to pay VAT is on the builder and not on the allottee. But the version of respondent is otherwise and took a plea that while booking the unit as well as entering into flat buyer agreement, the allottee agreed to pay any tax/ charges including any fresh incident of tax even if applicable retrospectively. The promoter shall charge VAT from the allottees **where the same was leviable**, at the applicable rate, if they have not opted for composition scheme. However, if composition scheme has been availed, no VAT is liveable. Further, the promoter shall charge actual VAT from the allottees/prospective buyers paid by the promoter to the concerned department/authority on pro-rata basis i.e. depending upon the area of the flat allotted to the complainant vis- à-vis the total area of the particular project. However, the complainant(s) would also be entitled to proof of such payments to the concerned department along with a computation proportionate to the allotted unit, before making payment under the aforesaid heads.

F.XIII The standard of tiles promised, and the tiles delivered actually is of low quality and thus need to be replaced and damages for the same be given to the Complainants.

F.XIV To direct the respondents to make good the direct and continuous losses and damages due to cracks being developed on the walls due to poor quality of construction and inadequate cementing between the Big blocks of Bricks

60. The above said reliefs were not pressed by the complainant counsel during the arguments in the course of hearing. Also, the complainant failed to provide or describe any information related to the above-mentioned relief

sought. The authority is of the view that the complainant counsel does not intend to peruse the relief sought by the complainant. Hence, the authority has not returned any findings with regard to the above-mentioned relief.

H. Directions of the Authority:

61. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f).
- I. The respondent is directed to pay delayed possession interest at the prescribed rate i.e., 11.10% per annum for every month of delay on the amount paid by the complainant from the due date of possession i.e., 21.10.2017 (*inadvertently mentioned in POD dated 20.08.2024 as 20.04.2017*) till offer of possession i.e., 05.11.2019 till plus two months i.e., 05.01.2020 as per proviso to section 18(1) of the Act read with rule 15 of the rules.
 - II. The arrears of such interest accrued from 21.10.2017 till date of this order shall be paid by the promoter to the allottee within a period of 90 days from date of this order as per rule 16(2) of the rules and any amount towards the delay possession interest already paid or credited in account of allottee shall be adjusted/deducted from such payable amount, if any.
 - III. 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.

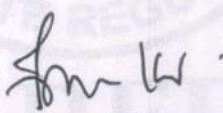


- IV. The respondent-builder is directed to provide all the necessary approvals obtained from the competent authority to the complainant.
- V. The respondent builder is further directed to execute the conveyance deed in favour of the complainant within a period of 3 months from the date of this order on payment of stamp duty and registration charges if not paid.
- VI. The respondent shall not charge anything from the complainant which is not the part of the apartment buyer's agreement. No holding charges shall be levied as per law settled by **Hon'ble Supreme Court in Civil Appeal no. 3864-3889/2020 decided on 14.12.2020**

62. Complaint stands disposed of.

63. File be consigned to the registry.


(Ashok Sangwan)
Member


(Arun Kumar)
Chairman


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 20.08.2024