

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

Complaint no. : 547 of 2022  
Date of filing complaint: 17.02.2022  
Date of order: 22.10.2024

Smt. Romi Sehgal  
R/O: H-No. 2016, Sector-4, Gurugram, Haryana - 122001 **Complainant**

Versus

Experion Developers Private Limited  
**Registered office at:** F-9, 1<sup>st</sup> Floor, Manish Plaza - I, Plot  
No. 7, MLU, Sector 10, Dwarka New Delhi 110075  
**Also at:-** 2<sup>nd</sup> Floor, Plot no. 18, Institutional Area, Sector-  
32, Gurugram, Haryana - 122001

**Respondent**

**CORAM:**

Shri Arun Kumar  
Shri Vijay Kumar Goyal  
Shri Ashok Sangwan

**Chairman**  
**Member**  
**Member**

**APPEARANCE:**

Sh. Geetansh Nagpal (Advocate)  
Sh. Venket Rao along with Smt. Gunjan (Advocates)

**Complainant**  
**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 allottees 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. No.	Heads	Information
1.	Name of the project	"Windchants" Sector- 112, Gurugram
2.	Nature of project	Group housing project
3.	RERA registered/not registered	64 of 2017 dated 18.08.2017      73 of 2017 dated 21.08.2017      112 of 2017 dated 28.08.2017
4.	Validity status	17.08.2018      20.08.2019      27.08.2019
5.	DTPC License no.	21 of 2008 dated 08.02.2008      28 of 2012 dated 07.04.2012
6.	Validity status	07.02.2020      06.04.2025
7.	Building plan approved	07.06.2012 (As alleged by the respondent in its reply at page no. 3 of the reply)
8.	Environment clearance	27.12.2012 (As alleged by the respondent in its reply at page no. 3 of the reply)
9.	Provisional allotment letter in favour of RN Yadav	28.07.2012 (Page no. 32 of the complainant)
10.	Date of execution of builder buyer's agreement in favour of Mr. Deepak Sehgal	26.12.2012 (Page No. 42 of the complaint)
11.	Date of endorsement Mr. Deepak Sehgal to Ms. Romi Sehgal	23.08.2017 (Page No. 39 of the complaint)
12.	Date of execution of Tripartite agreement	11.09.2017 (Page No. 92 of the complaint)
13.	Unit no.	WT-05/1201, in tower- WT-05 [As per allotment letter at page 32 of complaint]
14.	Unit area admeasuring	3575 sq. ft. [As per allotment letter at page 32 of complaint]
15.	Revised area	3685 sq. ft. [As per final statement of account annexed with offer of possession at page 97 of complaint]

16.	Possession clause	<b>10. PROJECT COMPLETION PERIOD</b> 10.1 Subject to Force Majeure, timely payment of the Total Sale consideration, and other provisions of this agreement, based upon the company's estimates as per present Project plans, the Company intends to hand over possession of the Apartment <i>within a period of 42 (forty two) months from the date of approval of the Building Plans or the date of receipt of the approval of the Ministry of Environment and Forests, Government of India for the Project or execution of this Agreement, whichever is later</i> ("Commitment Period"). The Buyer further agrees that the Company shall additionally be entitled to a time period of 180 (one hundred and eighty) days ("Grace Period") after expiry of the Commitment Period for unforeseen and unplanned Project realities. (Page no. 59 of the complaint)
17.	Due date of possession	27.12.2016 (Calculated from the date of EC being later i.e., 27.12.2012) <b>Note:</b> - Grace period of 180 days is allowed
18.	Total sale consideration As per customer ledger dated 31.03.2022 at page no. 171 of the reply	Rs.2,50,43,526/-
19.	Amount paid by the complainant as per customer ledger dated 31.03.2022 at page no. 171 of the reply	Rs.2,44,35,052/-
20.	Occupation certificate	24.12.2018 (Page no. 176 of the reply)
21.	Offer of possession	27.12.2018 (Page no. 96 of the complaint)
22.	Possession handover letter	05.02.2019 (Page no. 90 of the reply)
23.	Conveyance deed	05.02.2019 (Page no. 119 of the complainant)

**B. Facts of the complaints:**

3. The complainant has made the following submissions in the complaint:-
  - I. That the original allottee booked a unit in the project of the respondent called "Windchants" situated at Sector 112, Gurgaon for a total sale

- consideration of Rs.2,30,13,303/-. The original allottee made a payment of Rs.11,00,000/- towards the booking amount which was acknowledged by the respondent in their statement of account dated 02.01.2019. The original allottee got provisionally allotted unit no. WT/05/1201 admeasuring sale area of 332.13 sq. mt. in the above said group housing project on 28.07.2012.
- II. That the original allottee endorsed the said allotment in favour of Col. Deepak Sehgal after a sale agreement was executed between the original allottee and Col. Deepak Sehgal. The ownership in the said unit no. WT/05/1201 stood transferred to the Col. Deepak Sehgal.
  - III. That the apartment buyer's agreement for unit no. WT/05/1201 was executed with Col. Deepak Sehgal on 26.12.2012. According to clause 10.1 of the apartment buyer's agreement, the possession was required to be delivered within 42 months from the date of approval of building plan or Ministry of Environment and Forests Approval with an additional grace period of 180 days i.e., on or before 27.12.2016.
  - IV. That the respondent duly endorsed the builder buyer agreement in favour of the complainant on 23.08.2017.
  - V. That the complainant in order to fund her investment in the above said apartment had to borrow an amount of Rs.90,00,000/- as loan from HDFC and entered into tripartite agreements with HDFC and the respondent company.
  - VI. That after timely payment against each and every demand letter, the complainant was hoping that she will get possession of her unit as per the delivery date provided in the agreement. Unfortunately, on regularly visiting the site, it was realized by the complainant that the construction on the site was not as per the construction plan. This fact was brought to the knowledge of the respondent company repeatedly through personal

visits, letters, and mails but the respondent company, as usual, assured and then re-assured that the delivery of the unit would be given as per the dates specified in the agreement. However, despite several assurances, the respondent company failed/neglected to deliver the possession of the unit in time.

- VII. That the respondent company sent the notice of possession (increased sale area from 332.13 sq. mt. to 342.35 sq. mt.) with demand of Rs.32,52,972/- after a long delay of 2 years. The complainant vide this letter, was informed for the first time that the captioned unit area stood revised from 332.13 sq. mt. to 342.35 sq. mt. and accordingly more payment was sought from the complainant . Further, without any consultation with the complainant, the respondent company calculated delayed compensation amount at Rs.7.50/- per sq. ft. of the sale area amounting to Rs.5,89,600/- while charging an interest of 18% p.a. on delay in payments which is completely unfair and unjustified.
- VIII. That the complainant raised several issues regarding the notice of possession dated 27.12.2018 vide email dated 28.12.2018, inter alia, being that the respondent had not clearly adjusted the amount of Rs.12,038/- towards area alternation in the final statement of account, and had calculated the amount of delayed compensation unilaterally under the unfair terms of the buyer's agreement.
- IX. That after meeting with the respondents, the complainant received an unsatisfactory response to her queries raised in the email dated 28.12.2018 and replied vide email dated 03.01.2019 wherein for the first time informed the complainant of the applicability of the Force Majeure clause which led to the exclusion of 90 days from the period of delay in possession. The complainant met all the demands made by the

- respondent in a timely fashion and even paid all the delayed interest and other charges payable by them.
- X. That despite the fact that the project was not complete in all respects, the respondent company and the complainant executed the conveyance deed in respect of the above said unit on 05.02.2019.
- XI. That the present complaint is within limitation as the present complainant got their conveyance deed executed on 05.02.2019. The present complaint was filed in February 2022 and the first notice of the present complaint was dispatched on 24.02.2022, before the expiry period ending on 28.02.2022, thereafter the complainant is well within its right of limitation period. Also Limitation Act applies only to courts and does not apply to quasi-judicial bodies/proceedings/authorities /tribunals.

**C. Relief sought by the complainants:**

4. The complainant has filed the present complaint for seeking following reliefs:
- Direct the respondent to entire interest amount at the prescribed rate for every month of delay from the due date of possession till the date of actual possession.
  - Direct the respondent to remit the amounts charged against the increased area back to the complainant.
5. On the date of hearing, the authority explained to the respondent /promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act and to plead guilty or not to plead guilty.

**D. Reply by respondent:**

6. The respondent has raised certain preliminary objections and has contested the present complaint on the following grounds:-



- i. That unit bearing no. WT/05/1201 admeasuring 3685 sq. ft. sale area in the project "windchants" was allotted to the complainant by way of endorsement from the original allottee, pursuant to the execution of the apartment buyer agreement dated 26.12.2012. The present complainant is a subsequent allottee of the unit in question. That the said unit was endorsed to the complainant on 23.08.2017 which is much after the lapse of the alleged due date of handing over of possession to the original allottee i.e., 26.12.2016.
- ii. That accordingly, the complainant stepped into the shoes of the original allottee on 23.08.2017 i.e., after the due date of handing over of possession. It is further submitted that it was within the knowledge of the complainant that the due date of possession for handing over the unit as per the apartment's buyer agreement had already expired.
- iii. That the respondent received the occupancy certificate on 24.12.2018 and 3 days thereafter the respondent sent the notice of possession letter dated 27.12.2018. Both the parties then executed the conveyance deed on 05.02.2019 and the physical possession of the unit was handed over to the complainant on 05.02.2019. The complainant had already taken the physical possession of the unit after execution of the conveyance deed. That the complainant herein has also signed an indemnity bond dated 16.05.2017 wherein it was expressly agreed by the complainant that she will indemnify the respondent against all the claims, demand, action, proceeding, liens, damages etc., which may be brought as a command against the respondent.
- iv. That the present complaint is liable to be dismissed solely on the ground that the complainant herein is not an allottee but is the owner of the Unit therefore, has got no rights under the Act, 2016 to file the complaint before the Authority.



- v. That the project of the respondent got delayed due to force majeure situations beyond the control of the respondent. That some of the force majeure situations faced by the respondent which affected or led to stoppage of the work for brief amount of time is being reiterated herein for the sake of clarity:-
- I. **NGT Order:** The respondent stopped its development activities in compliance with the National Green Tribunal (NGT) order to stop construction in April, 2015 & November 2016 due to emission of dust. The NGT orders simply ordered to stop the construction activities as the pollution levels were unprecedented took time of a month or so.
  - II. **Demonetization of Rs.500/- and Rs.1000/- currency notes:** The Real Estate Industry is dependent on un- skilled/semi-skilled unregulated seasonal casual labour for all its development activities. The Respondent awards its contracts to contractors who further hire daily labour depending on their need. On 8th November 2016, the Government of India demonetized the currency notes of Rs. 500 and Rs. 1000 with immediate effect resulting into an unprecedented chaos which cannot be wished away by putting blame on respondent. Suddenly there was crunch of funds for the material and labour. The labour preferred to return to their native villages. The whole scenario slowly moved towards normalcy but development was delayed by at least 4-5 month.
  - III. **Jat Reservation Agitation:** The Jat Reservation agitation was a series of protests in February 2016 by Jat people of North India, especially those in the state of Haryana, which paralyzed the State including city of Gurgaon wherein the project of Respondent are situated for 8-10 days. The protesters sought inclusion of their caste in the Other Backward Class (OBC) category, which would make them eligible for affirmative action benefits. Besides Haryana, the protests also spread to the neighbouring states, such as Uttar Pradesh, Rajasthan, and also the National Capital Region. The instant stoppage of work on the fear of riots and remobilization of work force took considerable time of 3-4 months.



- IV. **Delay by Contractor:** The respondent had awarded the works of Civil (Structure, Finishing), mechanical, electrical, hvac and external development works, including provisional sum items on design and build basis for construction of the project in question to Larsen and Toubro Limited ("L&T") vide a work agreement dated 7.2.2013 ("Work Contract"). L&T is a well-known construction company with vast expertise in executing large scale infrastructure projects. However, L&T delayed the work thereby delaying the construction milestones and sought several extensions in order to complete completion. The delays in this regard were beyond the control of the respondent. The respondent has made huge investments in the project through the funds infused by its parent company.
- V. **Delay by the Competent Authorities in granting the occupation certificate:** It is submitted that the respondent from the very beginning was committed towards the timely completion of project. That due to the aforementioned force majeure situations the project got delayed. The respondent despite facing the force majeure situations, expedited and completed the construction activity at the project site through infusion of project finance of Rs.250 crores for the project, which the respondent repaid through its own resources, and applied for the occupation certificate vide application dated 09.02.2018. That the concerned authority has granted the occupation certificate on 24.12.2018. It is noteworthy to mention herein that the concerned authority has granted the occupation certificate after a delay of approximately 9 months. That the delay on part of the concerned authority in granting the occupation certificate does not amount to delay on part of the respondent. It is clear from the aforementioned submissions that the project was delayed due to Force Majeure situations beyond the control of the respondent. It is to be noted that the representatives of the respondent duly apprised the complainant in one of their visits to project site about the difficulties being faced by the respondent in completing the construction of the project due to aforementioned force majeure situations.
7. That it was also agreed between the complainant and the respondent that actual sale area will be determined after the completion of construction work

and after the issuance of occupation certificate. That after agreeing to the same the said understanding between the parties was recorded in clause 3.1 of the apartment buyer agreement.

8. That further, clause 8 of the agreement clearly lays down mutually agreed terms and conditions with respect to change and variation in sale area of the Unit for which the complainant has consented. For the purpose of this present complaint the relevant clauses are clause 8.2 and clause 8.6. That the original allottee duly received and acknowledged the letter date 27.04.2017, and never raised any queries or dispute regarding the change in total saleable area. Further, that the demand towards the amount payable due to the said variation in sale area was also sent to the complainant vide letter dated 27.09.2017, and hence the complainant herself was also aware of the same since 2017 and proceeded to make further payments and even got the conveyance deed executed without showing protest against the change in total sale area. In fact, when the unit was endorsed to the complainant on 23.08.2017, the increase in the saleable area of the unit was well within the knowledge of the complainant. Thus, the complainant has raised this issue before this Hon'ble Authority after a belated period of approximately 4 years only to gain the illegitimate monetary benefit from the respondent and as an after- thought.
9. That the respondent in order to prove the genuineness and justification for the increase in total sale area of the unit got an independent architect to measure and certify the areas of the units on 30.01.2018 as per terms of clause 3.1 of the agreement. On 23.09.2020 the respondent again appointed Knight Frank India Pvt. Ltd to provide their report/opinion on the total super built-up area of the project. This was done in order to clarify that the changes in total sale area was within the parameter as agreed in the apartment buyer agreement. Additionally, independent measurement and verification of the

built-up area of the apartments and common areas of the project was also again done by the idea architects.

10. That the respondent in order to provide individual justification for the increase in the area of the unit of the complainant is also attaching an affidavit by the senior general manager, design & architecture of the respondent company. The permissible limit in variation of the sale area as per the agreement was 10%. However, the variation in the sale area of the unit of the complainant is merely 3%. The respondent being a responsible developer and abiding by the terms and conditions recorded in the buyers agreement has already paid an amount of Rs.5,89,000/-
11. That since more than 3 years has elapsed, the present complaint is not maintainable before this Authority and this Authority may be pleased to dismiss such complaints initiated beyond the limitation period.
12. That the complainant during the hearing dated 21.11.2023, admittedly stated before the Id. Authority that the complainant did not wish to press any other reliefs except delay possession charges and accordingly voluntarily dropped all other such reliefs as claimed by the complainant while filing the instant complaint except the relief of delayed possession charges. Therefore, without prejudice and specifically admitting any thing, the complainant is not entitled any other relief as sought in the complaint.
13. That from a mere perusal of the supra-section, it is evident that as per Section 11 (4) (a) of the Act, 2016 all the obligations of the promoters under the act are basically till the stage of conveyance deed, the exception is structural defects. That once a conveyance deed is executed between a promoter and an allottee the contract stood discharged in its entirety and liabilities of the promoter under the agreement for sale are absolved.

14. 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.
15. The complainant and respondent have filed the written submissions on 20.02.2024 and 26.03.2024 respectively which are taken on record and has been considered by the authority while adjudicating upon the relief sought by the complainant.

**E. Jurisdiction of the authority:**

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

**E. I Territorial jurisdiction**

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

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.*

17. 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. Objections raised by the respondent:-**

**F.I Weather the complainants can claim delayed possession charges after execution of conveyance deed.**

18. It has been contended by the respondent that on execution of conveyance deed, the relationship between both the parties' stands concluded and no right or liabilities can be asserted by the respondent or the complainant against the other. Therefore, the complainants are estopped from claiming any interest in the facts and circumstances of the case.
19. It is important to look at the definition of the term 'deed' itself in order to understand the extent of the relationship between an allottee and promoter. A deed is a written document or an instrument that is sealed, signed and delivered by all the parties to the contract (buyer and seller). It is a contractual document that includes legally valid terms and is enforceable in a court of law. It is mandatory that a deed should be in writing and both the parties involved must sign the document. Thus, a conveyance deed is essentially one wherein the seller transfers all rights to legally own, keep and enjoy a particular asset, immovable or movable. In this case, the assets under consideration are immovable property. On signing a conveyance deed, the original owner transfers all legal rights over the property in question to the buyer, against a valid consideration (usually monetary). Therefore, a

'conveyance deed' or 'sale deed' implies that the seller signs a document stating that all authority and ownership of the property in question has been transferred to the buyer.

20. From the above, it is clear that on execution of a sale/ conveyance deed, only the title and interest in the said immovable property (herein the allotted unit) is transferred. However, the conveyance deed does not conclude the relationship or marks an end to the liabilities and obligations of the promoter towards the said unit whereby the right, title and interest has been transferred in the name of the allottee on execution of the conveyance deed.
21. The allottees have invested their hard-earned money and there is no doubt that the promoter has been enjoying benefits of and the next step is to get their title perfected by executing a conveyance deed which is the statutory right of the allottee. Also, the obligation of the developer – promoter does not end with the execution of a conveyance deed. The essence and purpose of the Act was to curb the menace created by the developer/promoter and safeguard the interests of the allottees by protecting them from being exploited by the dominant position of the developer which he thrusts on the innocent allottees. Therefore, in furtherance to the Hon'ble Apex Court judgement and the law laid down in case titled as ***Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. Vs. DLF Southern Homes Pvt. Ltd. (now Known as BEGUR OMR Homes Pvt. Ltd.) and Ors. (Civil appeal no. 6239 of 2019) dated 24.08.2020***, the relevant paras are reproduced herein below:

*"34 The developer has not disputed these communications. Though these are four communications issued by the developer, the appellants submitted that they are not isolated aberrations but fit into a pattern. The developer does not state that it was willing to offer the flat purchasers possession of their flats and the right to execute conveyance of the flats while reserving their claim for compensation for delay. On the contrary, the tenor of the communications indicates that while executing the Deeds of Conveyance, the flat buyers were informed that no form of protest or reservation would be acceptable. The flat buyers were essentially presented with an unfair choice of either retaining their right to pursue their claims (in which event they would not get*



possession or title in the meantime) or to forsake the claims in order to perfect their title to the flats for which they had paid valuable consideration. In this backdrop, the simple question which we need to address is whether a flat buyer who seeks to espouse a claim against the developer for delayed possession can as a consequence of doing so be compelled to defer the right to obtain a conveyance to perfect their title. It would, in our view, be manifestly unreasonable to expect that in order to pursue a claim for compensation for delayed handing over of possession, the purchaser must indefinitely defer obtaining a conveyance of the premises purchased or, if they seek to obtain a Deed of Conveyance to forsake the right to claim compensation. This basically is a position which the NCDRC has espoused. We cannot countenance that view.

35. *The flat purchasers invested hard earned money. It is only reasonable to presume that the next logical step is for the purchaser to perfect the title to the premises which have been allotted under the terms of the ABA. But the submission of the developer is that the purchaser forsakes the remedy before the consumer forum by seeking a Deed of Conveyance. To accept such a construction would lead to an absurd consequence of requiring the purchaser either to abandon a just claim as a condition for obtaining the conveyance or to indefinitely delay the execution of the Deed of Conveyance pending protracted consumer litigation.*
22. The authority has already taken a view in in **CR/4031/2019 and others tiled as Varun Gupta V/s Emaar MGF Land Limited and others** and observed that the execution of a conveyance deed does not conclude the relationship or marks an end to the liabilities and obligations of the promoter towards the subject unit and upon taking possession, and/or executing conveyance deed, the complainant never gave up his statutory right to seek delayed possession charges as per the provisions of the said Act.
23. After consideration of all the facts and circumstances, the authority holds that even after execution of the conveyance deed, the complainant/allottee cannot be precluded from his right to seek delay possession charges from the respondent/promoter.

#### **F.II Whether the complaint is barred by limitation or not?**

24. So far as the issue of limitation is concerned, the Authority is cognizant of the view that the law of limitation does not strictly apply to the Real Estate Regulation and Development Act of 2016 .However, the Authority under section 38 of the Act of 2016, is to be guided by the principle of natural justice.

It is a universally accepted maxim and the law assists those who are vigilant, not those who sleep over their rights. Therefore, to avoid opportunistic and frivolous litigation a reasonable period of time needs to be arrived at for a litigant to agitate his right. This Authority is of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances. However this shall not apply to the purpose of section 14 where specific period has already been defined.

25. It is also observed that the Hon'ble Supreme Court in its order dated 10.01.2022 in MA NO. 21 of 2022 of Suo Moto Writ Petition Civil No. 3 of 2020 have held that the period from 15.03.2020 to 28.02.2022 shall stand excluded for purpose of limitation as maybe prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.
26. In the present matter the cause of action arose on 27.12.2018 when the offer of possession was made by the respondent to the complainant. The complainant has filed the present complaint on 17.02.2022 which is 3 years 1 month and 21 days from the date of cause of action. In the present matter the three year period of delay in filing of the case also after taking into account the exclusion period from 15.03.2020 to 28.02.2022 would fall on 10.12.2023 In view of the above, the Authority is of the view that the present complaint has been filed within a reasonable period of delay and is not barred by limitation.

**F.III Where the subsequent allottee has stepped into the shoes of the original allottee after coming into force of the Act and after the registration of the project in question:**

27. There may be a situation where an allottee transferred his unit in favour of a subsequent allottee after the Act came into force and where the project has been registered under the Act by the respondent. It was argued by the promoter that in cases where the subsequent allottee came into picture after



the registration of the project under the provisions of the Act with the authority, then the date of completion of the project and handing over the possession shall be the date declared by the promoter under section 4(2)(1)(C) of the Act. The counsel of the respondent further argued that the while purchasing the unit, it is presumed that the allottee very well knew that the project would be completed by that specific declared date, therefore, the delayed possession charges shall not be allowed.

28. The authority is of the view that the time period for handing over the possession as committed by the builder as per the relevant clause of builder buyer's agreement and the commitment of the promoter regarding handing over of possession of the unit is taken accordingly. The new timeline indicated in respect of ongoing project by the promoter while making an application for registration of the project does not change the commitment of the promoter to hand over the possession by the due date as per the builder buyer's agreement and the promoter is liable for the consequences and obligations arising out of failure in handing over possession by the due date as committed by him in the builder buyer's agreement and is liable for the delayed possession charges as provided in proviso to section 18(1) of the Act. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. The same issue has been dealt by Hon'ble Bombay High Court in case titled as *Neelkamal Realtors Suburban Pvt. Ltd.* (supra) wherein it was held that the RERA Act does not contemplate rewriting of contract between the allottee and the promoter. The relevant para of the judgement is reproduced below:

*"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility*

*to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter..."*

29. However, complainants were well aware about the fact that the construction of the tower where the subject unit is situated has not been completed and occupation certificate qua that part of project is yet to be obtained. Further, they still chosen to proceed with execution of the agreement voluntarily which means that the complainant had accepted the factum of the delay. Moreover, they have not suffered any delay as the subsequent allottee/complainants herein came into picture only on 23.08.2017 when the subject unit was endorsed in his favour. Hence, in such an eventuality and in the interest of natural justice, delay possession charges can only be granted to the complainant from the date of endorsement letter dated 23.08.2017 i.e., date on which the complainant stepped into the shoes of the original allottee.

**F.IV Objection regarding force majeure conditions:**

30. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as NGT Order, Delay by the contractor, Demonetization, GST application, JAT Reservation Agitation but all the pleas advanced in this regard are devoid of merit. The subject unit was allotted to the complainants on 28.07.2012 and as per provisions of agreement, its possession was to be offered by 27.12.2016. The due date as per possession clause comes out to be 27.12.2016.
31. The events such as demonetization and various orders by NGT in view of weather condition of Delhi NCR region, were for a shorter duration of time and were not continuous whereas there is a delay of more than two years. Even after due date of handing over of possession. Whereas if it comes for GST, the GST was applicable from 01.07.2017 and JAT reservation was for only one or two months. Further, grace period of 6 months on account of force majeure has already been granted in this regard and thus, no period over and

above grace period of 6 months can be given to the respondent/promoter. Thus, the promoter/respondent cannot be given any leniency on basis of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

**G. Findings on the relief sought by the complainant**

**G.I Direct the respondent to entire interest amount at the prescribed rate for every month of delay from the due date of possession till the date of actual possession.**

32. In the present complaint, the original allottee was allotted a unit vide allotment letter dated 28.07.2012 and thereafter the original allottee sold the subject unit to the first subsequent allottee on 26.12.2012 following which the first subsequent allottee sold the subject unit to the second subsequent allottee being the complainants in the present case on 23.08.2017. Therefore, the complainant stepped into the shoes of original allottee on 23.08.2017.
33. In the present complaint, the complainant intend 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."***

34. Clause 10 of the buyer's agreement provides for handing over of possession and is reproduced below:

***Clause 10. PROJECT COMPLETION PERIOD***

***10.1 Subject to Force Majure, timely payment of the Total Sale consideration, and other provisions of this agreement, based upon the company's estimates as per present Project plans, the Company intends to hand over possession of the Apartment within a period of 42 (forty two) months from the date of approval of the Building Plans or the date of receipt of the approval of the Ministry of Environment and Forests, Government of India for the Project or execution of this Agreement, whichever is later ("Commitment Period"). The Buyer further agrees that the Company shall additionally be entitled to a time period of 180 (one***

*hundred and eighty) days ("Grace Period") after expiry of the Commitment Period for unforeseen and unplanned Project realities.*

35. At the outset, it is relevant to comment on the present 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 provisions of this agreement and 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 allottees that even a single default by him in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment time period for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottees of their right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottees is left with no option but to sign on the dotted lines.
36. **Admissibility of grace period:** As per clause 10.1 of buyer's agreement dated 26.12.2012, the respondent-promoter proposed to handover the possession of the said unit within a period of period of 42 months from the date of approval of building plans or the date of receipt of approval of environment clearance or execution of this agreement whichever is later. Therefore, as per clause 10.1 of the buyer's agreement dated 26.12.2012, the due date of possession comes out to be 24.12.2016 by allowing grace period being unqualified and being allowed in earlier case no. 530 of 2018.

37. **Admissibility of delay possession charges at prescribed rate of interest:**

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

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

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

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

38. 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.
39. 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., 22.10.2024 is @ 9.10 %. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
40. 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;”*

41. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoters which the same is as is being granted to them in case of delayed possession charges.
42. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the Authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 10.01 of buyer's agreement executed between the parties on 26.12.2012, the possession of the subject apartment was to be delivered within a period of period of 42 months from the date of approval of building plans or the date of receipt of approval of environment clearance or execution of this agreement whichever is later. The due date of possession is calculated from the date of environment clearance plus 180 days grace period which comes out to be 24.12.2016. The respondent has offered the possession of the allotted unit on 27.12.2018 after obtaining occupation certificate from competent Authority on 24.12.2018. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement executed between the parties.
43. In the present complaint, the original allottee was allotted a unit vide allotment letter dated 28.07.2012 and thereafter the original allottee sold the subject unit to the first subsequent allottee on 26.12.2012 following which

the first subsequent allottee sold the subject unit to the second subsequent allottee on 23.08.2017 and the same was acknowledged by the respondent vide endorsement on 23.08.2017. Therefore, the complainants stepped into the shoes of original allottee on 23.08.2017 i.e., after the due date. It simply means that the complainants were well aware about the fact that the construction of the tower where the subject unit is situated has not been completed and occupation certificate qua that part of project is yet to be obtained. However, he still chosen to proceed with execution of the agreement voluntarily which means that the complainant had accepted the factum of the delay. Moreover, they have not suffered any delay as the subsequent allottee/complainant herein came into picture only on 23.08.2017 when the subject unit was endorsed in his favour. Hence, in such an eventuality and in the interest of natural justice, delay possession charges can only be granted to the complainant from the date of nomination dated 23.08.2017 i.e., date on which the complainant stepped into the shoes of the original allottee. The Authority is of considered view that there is delay on the part of the respondents/promoter to offer of possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 26.12.2012. Accordingly, it is the failure of the respondent /promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.

44. 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 @11.10% p.a. w.e.f. from the date of endorsement letter i.e., 23.08.2017 till 05.02.2019 i.e., expiry of 2 months from the date of offer of possession (27.12.2018) or actual taking over of

possession (05.02.2019) whichever is earlier as per proviso to section 18(1) of the Act read with rule 15 of the rules.

**G.II Direct the respondent to remit the amounts charged against the increased area back to the complainant.**

45. In the present complaint the complainant has sought a relief of remit the amounts charged against the increased area back to the complainant. During proceeding dated 21.11.2023, the counsel for the complainant stated that the complainant does not wish to press for any other relief than delayed possession charges. Accordingly, no direction can be granted w.r.t. to the same.

**H. Directions of the Authority:**

46. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:
- The respondent/promoter is directed to pay interest at the prescribed rate i.e., 11.10% per annum for every month of delay on the amount paid by the complainant(s) from the date of endorsement letter i.e., 23.08.2017 till 05.02.2019 i.e., expiry of 2 months from the date of offer of possession (27.12.2018) or actual taking over of possession (05.02.2019) whichever is earlier as per proviso to section 18(1) of the Act read with rule 15 of the rules. The respondent is directed to pay arrears of interest accrued so far within 90 days from the date of order of this order as per rule 16(2) of the rules.
  - Also, the amount of compensation already paid by the respondent towards compensation for delay in handing over possession shall be




adjusted towards the delay possession charges to be paid by the respondent in terms of proviso to section 18(1) of the Act.

iii. The respondent is directed to not to charge anything which is not part of the buyer's agreement.

47. Complaint stands disposed of.

48. File be consigned to the registry.

  
**(Ashok Sangwan)**  
Member

  
**(Vijay Kumar Goyal)**  
Member

  
**(Arun Kumar)**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.10.2024

**HARERA**  
**GURUGRAM**