

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

Complaint no.: 6624 of 2022
Order reserved on: 16.04.2024
Order pronounced on: 03.09.2024

Mrs. Shagun Gupta
Mr. Vineet Harbhajanka
Mr. Piyush Gupta

All R/o: - House No. B-34, First Floor, CC Colony, Rana
Pratap Bagh, Malka Ganj, Delhi- 110007.

Complainants

Versus

M/s DLF Homes Developers Limited
Regd. office: 1st Floor, DLF Gateway Tower, "R" Block,
DLF City, Phase-III, Gurugram- 122002, Haryana

Respondent

CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan

Chairman
Member
Member

APPEARANCE:

Shri Abhey Jain and Rishabh Jain (Advovates)
Shri J.K. Dang (Advocate)

Complainants
Respondent

HARERA
ORDER

1. The present complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions to the allottee as per the agreement for sale executed inter-se them.

A. Unit and Project related details:

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

Sr. No.	Particulars	Details
1.	Name of the project	"Independent floors" DLF Alameda, Sector 73 , Gurugram
2.	Nature of the project	Residential plotted colony
3.	Project area	2.78 acres
4.	RERA Registered/ not registered	Registered 59 of 2021 dated 21.09.2021 Valid up to 24.11.2024
5.	Plot no.	D 6/4 A, in independent floor at first floor, in block- D (Page 35 and 36 of the compliant)
6.	Plot area admeasuring	2548 sq. ft. carpet area (As per allotment letter dated 22.11.2021, at page 35 and 36 of the compliant)
7.	Revised plot area	2148 sq. ft. (Informed vide letter dated 06.06.2022, at page no. 69 of complaint)
8.	Date of booking application form	13.11.2021
9.	Date of allotment letter	22.11.2021 (Page no. 35 of the compliant)
10.	Date of buyer's agreement	Buyer's agreement annexed but not executed between the parties
11.	Possession clause	7. POSSESSION OF THE SAID INDEPENDENT FLOOR FOR RESIDENTIAL USAGE: 7.1 Schedule for Possession of the Said Independent Floor <i>The Promoter agrees and understands that timely delivery of possession of the Said Independent Floor for residential use along with parking to the Allottee and the common areas to the association of allottees or the competent authority, as the case</i>

		<p>may be, as provided under Rule 2(1)(f) of Rules, 2017, is the essence of the Agreement.</p> <p>The Promoter assures to offer to hand over possession of the Said Independent Floor for residential usage along with parking as per agreed terms and conditions by 24/11/2024, unless there is delay due to "force majeure", Court orders, Government policy/guidelines, decisions effecting the regular development of the Project. If, the completion of the Project is delayed due to the above conditions, then the Allottee agrees that the Promoter shall be entitled to the extension of time for delivery of possession of the Said Independent Floor for residential usage.</p> <p>The Allottee agrees and confirms that, in the event it becomes impossible for the Promoter to implement the Project due to force majeure and above-mentioned conditions, then this allotment shall stand terminated and the Promoter shall refund to the Allottee the entire amount received by the Promoter from the Allottee within ninety days. The Promoter shall intimate the Allottee about such termination at least thirty days prior to such termination. After refund of the money paid by the Allottee, the Allottee agrees that he/she shall not have any rights, claims etc. against the Promoter and that the Promoter shall be released and discharged from all its obligations and liabilities under this Agreement.</p> <p>(Page no. 84 of the compliant)</p>
12.	Due date of delivery of possession	24.11.2024 (As per possession clause mentioned in the buyer's agreement)
13.	Total sale consideration	Rs.3,96,58,658/- (As per allotment letter on 37 page of the complaint for an area)
14.	Total amount paid by the complainant	Rs.39,65,865/- (As alleged by the complainant in the facts at page no. 12 of the complaint)
15.	Occupation certificate	06.12.2023
16.	Offer of possession	10.02.2024

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That the respondent published very attractive brochure, highlighting the Independent Residential Floors to be known as '*Independent Floors at DLF Alameda*' situated at Sector 73, Gurugram, and Haryana. The respondent claimed to be one of the best and finest in construction and one of the leading real estate developers of the country, in order to lure prospective customers including the complainants to buy independent residential floors from the respondent. There are fraudulent representations, incorrect and false statements in the brochure. The complainants invite attention of this Authority, Gurugram to violation of Section 12 of the Act, 2016 by the respondent.
- II. That complainants, were approached by the sale representatives of the respondent company, who made tall claims about the 'Independent Residential Floors at DLF Alameda' as the world class project. The complainants were invited to the sales office and were lavishly entertained and promises were made to them that the residential floor would be handed over in time including that of parking, common areas and other facilities. They were impressed by their oral statements and representations and ultimately booked a residential floor no. D - 6/4 A, at first floor in Block D, a 4 BHK + Study having a total carpet area of 236.746 square meter (2548 sq. ft.) at the rate of Rs.1,67,515.64/- per square meter (Rs.15,564.62 per sq. ft.) in Sector 73, Gurugram by paying Rs.10,00,000/- as booking amount via cheque no 000056 dated 08.11.2021. The respondent issued a receipt dated 13.11.2021 to the complainants and allotted customer code - S33551 to the complainants.
- III. That the respondent issued an allotment letter dated 22.11.2021 to the complainants and allotted residential floor no. D - 6/4 A at first floor, a 4

BHK + Study having a carpet area of 225.109 square meter (2423 sq. ft.) for first floor and 11.637 sq. meter (125 sq. ft.) for basement, thus total carpet area of 236.746 sq. meter (2548 sq. ft.), balcony area of 44 sq. meter and basement area of 21.699 sq. meter (not part of carpet area) along with parking no. D-6/4 A/SFP1, store no. STR1 and staff room no. SFR1. The allotted residential floor of total carpet area of 236.746 sq. meter (2548 sq. ft.) was sold by the respondent at a rate of Rs.1,67,515.64/- per square meter (Rs.15,564.62/- per sq. ft.), thus total consideration comes out to be Rs.3,96,58,658/- as mentioned in the allotment letter. The details of the allotted residential floor are as under:-

1.	Independent Residential Floor No. (4 BHK + Study)	D - 6/4 A at First Floor
2.	Carpet Areas (square meters)	a) First Floor - 225.109 square meter b) Basement - 11.637 square meter Total Carpet Area = 236.746 square meter
3.	Balcony Area (not part of the carpet area)	44 square meter
4.	Basement Area (not part of the carpet area)	21.699 square meter
5.	Rate of Carpet Area	Rs.1,67,515.64/- per square meter (Rs.15,564.62/- per square feet)
6.	Total Sale Consideration (inclusive of parking charges, taxes, fees, common areas)	Rs.3,96,58,658/-
7.	Parking No.	D-6/4 A/SFP1
8.	Store No.	STR1
9.	Staff Room No.	SFR1

- IV. The respondent issued a demand-cum-invoice summary dated 25.11.2021 and demand payment of Rs.29,65,865.12/- from the complainants for the allotted residential floor. Thereafter, the complainants made the payment of Rs.29,65,865/- via NEFT on 13.12.2021. The respondent acknowledged the payment made towards the allotted floor no. D-6/4 A having a carpet area of 2548 sq. ft. and issued a receipt dated 16.12.2021 to the complainants.

- V. That the complainants took a housing loan of Rs.2,60,00,000/- from Housing Board Finance Corporation Limited (HDFC Limited) for making payment of the sale consideration of the allotted residential floor. The HDFC Limited approved and sanctioned the housing loan via letter dated 03.03.2022.
- VI. That after receiving the approval for housing loan from HDFC Limited, the complainants sent a letter to the respondent on 27.04.2022 seeking demand letter for the next instalment as the funds were available for disbursement as soon as they receive the demand letter for the allotted floor. Also, HDFC Limited was offering early disbursement benefits to the complainants which they wanted to claim, and that was why, the complainants were willing to make the payment at the earliest. The relevant part of the letter dated 27.04.2022 sent by the complainants is as under -
- "b) I have not received any demand letter for the next instalment. Please send it as soon as it becomes due. I have a home loan sanctioned for this and funds are available for disbursement as soon as I receive the demand letter from DLF.*
- c) My home loan has offered some benefits for early disbursements. These will expire next month and increase by loan costs. I would like to pay any due amount right away. I have requested the above multiple times (both verbally and by email) to Mr. Chander (CRM Team) but nothing has been done for far."*
- VII. That the complainants sent various follow-up emails dated 03.05.2022, 14.05.2022 and 04.06.2022 to the respondent, requesting for demand letter for next instalment as they wanted to make the payment at the earliest and delaying the payment will increase their interest rate for home loan. But, the respondent did not bother to reply to their letters, emails and phone calls despite repetitive requests made by them.
- VIII. That the respondent sent a letter dated 06.06.2022 to the complainants wherein the respondent mentioned that due to certain errors/mistakes/

oversight in the allotment letter dated 22.11.2021, the carpet area mentioned was incorrect and informed the complainants that 2148.785 sq. ft. (199.647 sq. meter) is the new carpet area of the allotted floor at a total price including GST of Rs.3,94,42,567/-. The respondent, without giving any valid justification and reasoning of this major change in the carpet area (more than 15%) of the allotted floor, conveniently alleged it as an error/mistake/oversight in the allotment letter and no equivalent reduction was made in the rate of carpet area. On the contrary, the respondent increased the rate of carpet area of the allotted floor by around 18% (from Rs.1,67,515.64 per square meter to Rs.1,97,559.759 per sq. meter). That the above mentioned changes as been explained in the table below of easy understanding of the Authority –

S. No.	Particulars	As per Allotment Letter dated 22 nd November, 2022	As per Respondent's Letter dated 6 th June, 2022	Difference in values	Impact in percentage (%)
1.	Carpet Area	236.746 sq. mtr. (2548 sq. ft.)	199.647 sq. mtr. (2149 sq. ft.)	37.009 sq. mtr. (400 sq. ft.)	Reduced by more than 15%
2.	Total cost	Rs.3,96,58,658/-	Rs.3,94,42,567/-	Rs.2,16,091/-	Reduced by 0.5%
3.	Rate of carpet area	Rs.1,67,515.64/- per sq. mtr. (Rs.15,564.62 per sq. ft.)	Rs.1,97,559.76/- per sq. mtr. (Rs.18,353.92 per sq. ft.)	Rs.30,044.12/- per sq. mtr. (Rs.2,789.3 per sq. ft.)	Increased by around 18%

- IX. That as per clause 1.6 of the terms and conditions, mentioned at page no. 4 of the allotment letter states that *“the carpet area, balcony area and verandah area of the Independent Residential Floor are as per approved building plans. If there is any increase in the carpet area which is not more than 5% of the carpet area of the Independent Residential Floor allotted, the Promoter may demand that from the Allottee as per next milestone of*

the payment plan. All the monetary adjustment shall be made at the same rate per square meter as per agreement for sale."

The above clause makes it clear that when the area of the residential floor increases, the respondent will charge additional amount for that increase in area from the complainants. Similarly, based on the above clause, in case of decrease in area of the residential floor, the total cost of the residential floor will decrease and the respondent should charge equivalently less amount of the residential floor from the complainants. But contrary to its own terms and conditions, the respondent reduced the area of the allotted floor by more than 15% (from 236.746 sq. meter to 199.647 sq. meter) and illegally and fraudulently increased the rate of carpet area by around 18% (from Rs.1,67,515.64 per sq. meter to Rs.1,97,559.759 per sq. meter).

- X. That the complainants objected to the fraudulent and unlawful actions of the respondent and demanded for valid justification from the respondent. They made various phone calls and sent letters and emails to the respondent but the respondent did not replied to the concerns of the complainants.
- XI. That the respondent sent the agreement for sale on 09.09.2022 to the complainants for signatures on the agreement. The agreement was prepared for the allotted residential floor no. D- 6/4 A at first floor, having 2148.785 sq. ft. (199.647 sq. meter) as the new carpet area at a rate of Rs.18,353.92/- per sq. ft. (Rs.1,97,559.759/- per sq. meter) with the total price including GST of Rs.3,94,42,567/-.
- XII. That the complainants have approached the respondent on various occasions and requested to charge the total price of the allotted floor at

the same rate (Rs.1,67,515.64/- per sq. meter/Rs.15,564.62/- per sq. ft.) as mentioned in the allotment letter dated 22.11.2021 and also in the Receipt dated 16.12.2021, from the complainants. The respondent is responsible and accountable to the terms and conditions prescribed in the allotment letter. The respondent did not reply to the concerns and requests made by the complainants and even failed to provide a valid justification of alleged error/mistake/oversight about the carpet area mentioned in the allotment letter.

- XIII. That the respondent has cheated the complainants knowingly and has taken monies by deception, made fraudulent representations, given deliberate false written promises and committed to provide a residential floor of 236.746 sq. meter (2548 sq. ft.) at a rate of Rs.1,67,516/- per sq. meter (Rs.15,565/- per sq. ft.) and then significantly reduced the area. The respondent, in order to fetch more money from the complainants, increased the rate of carpet area by around 18%. This fraudulent behaviour of the respondent also attracts criminal liability under the Indian Criminal Dispensation System. The conduct of the respondent is suspect, wilfully unfair and arbitrary, deficient in every manner and scandalous. They have lost faith, confidence and trust in the respondent as the respondent is continuously deceptive and non-responsive to the requisitions made by the complainants.
- XIV. That the complainants hereby seek to redress the various forms of legal omissions and illegal commissions perpetuated by the respondent/seller /builder/promoter, which amount to unfair trade practices, breach of contract and are actionable under the Act, 2016. In the present circumstances, the complainants have been left with no other option but

approach and seek justice at the Haryana Real Estate Regulatory Authority at Gurugram, Haryana.

C. Relief sought by the complainants:

4. The complainants have sought following relief:

- i. Direct the respondent/developer to charge from the complainants at the rate of Rs.1,67,515.64/- per sq. meter (Rs.15,564.62/- per sq. ft.) as committed by the respondent in the allotment letter dated 22.11.2021 and also in payment receipt dated 16.12.2021 for the allotted residential floor, instead of Rs.1,97,559.759/- per sq. meter (Rs.18,353.92/- per sq. feet) calculated as per the revised carpet area of 2148.785 sq. ft. (199.647 sq. meter) mentioned in respondent's letter dated 06.06.2022.
- ii. Direct the respondent/developer to provide the same carpet area of 225.109 sq. meter for first floor and 11.637 sq. meter for basement, thus totalling carpet area of 236.746 sq. meter (2548 sq. ft.), balcony area of 44 sq. meter and basement area of 21.699 sq. meter to the complainants for the allotted residential floor for a total consideration of Rs.3,96,58,658/-, as committed by the respondent in the allotment letter dated 22.11.2021 and also in payment receipt dated 16.12.2021.
- iii. Direct the respondent/developer not to charge any interest on the delay payments as the complainants rather sought demand letter for next instalment from the respondent via letter dated 27.04.2022, when no payment was sought from the complainant/allottees.

- iv. Direct the respondent to execute the agreement for sale at the rate of Rs.1,67,515.64/- per sq. meter (Rs.15,564.62 per sq. ft.) as mentioned in the allotment letter dated 22.11.2021 and also in payment receipt dated 16.12.2021.
 - v. Direct the respondent to pay legal expenses of Rs.5,00,000/- incurred by the complainants.
5. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The respondent has contested the complaint on the following grounds:-
- I. That the respondent is a reputed and renowned real estate developer, enjoying an impeccable reputation in the real estate industry for the disciplined and time bound execution of projects undertaken by it. The projects implemented and executed by the respondent are considered to be architectural landmarks. The respondent, to a considerable extent can be legitimately credited for positioning Gurugram as the "Millennium City".
 - II. That the complainants, through their property dealer, had approached the respondent after making detailed and elaborate enquiries with regard to all aspects of the residential plotted colony known as "Alameda", Sector 73, and Gurugram" conceptualised and promoted by the respondent. After completely satisfying themselves with regard to the project, competence and capability of the respondent to successfully undertake the construction, development and

implementation of the said project, the complainants proceeded to book an independent floor in the said project.

- III. That the complainants were provisionally allotted floor no. D-6/4A, located on the first floor and constructed on a plot admeasuring 386.25 sq. meters/461.96 sq. yds. vide allotment letter dated 22.11.2021. Booking amount of Rs.10,00,000/- was paid by the complainants and receipt acknowledging the said payment as well as the schedule of payments to be followed by the complainants, were enclosed along with the allotment letter.
- IV. That inadvertently and due to a bona fide mistake, it was mentioned in the application form as well as the allotment letter that the carpet area of the unit allotted to the complainants had carpet area of 225.109 sq. meter plus basement (11.637 sq. meter), total admeasuring 236.746 sq. meter or 2548 sq. ft. Actually, the carpet area of the floor allotted to the complainants works out to be 199.627 sq. meter or 2148.785 sq. ft. However, it was inadvertently communicated to the complainants that the carpet area was 225.109 sq. meter. The rate per sq. meter of the carpet area was also incorrectly communicated to the complainants. The actual rate per sq. meter of similar units in the project were in the region of Rs.1.8 lakhs per sq. meter to Rs.2 lacs per sq. meter approx. while it was inadvertently communicated to the complainants that the rate was Rs1,67,515.04/- per sq. meter.
- V. That the respondent came to realise that the error in communicating the carpet area was not limited to the unit allotted to the complainants but to several other units in the same project. Accordingly, by letter dated 13.01.2022, received by this Authority on 14.01.2022, the

correct statement of carpet areas of 29 plots in the project, and was conveyed to this Authority. The respondent requested the Authority to take on record the correct statement of carpet areas and update the online A to H form and detailed project information Form of the project.

- VI. That the error was communicated to the complainants telephonically and also through the sales agent and again by letter dated 06.06.2022. The complainants were informed that the carpet area of the floor is 2148.785 sq. ft. and that the total price including GST is Rs3,94,42,567/-. By the said letter, the respondent apologised to the complainants for the inconvenience caused which has resulted due to an unintentional and bona fide error that had taken place due to sheer oversight. The complainants were informed that in case the allotment as per the carpet area and sale price as intimated through the letter dated 06.06.2022 was not acceptable to the complainants, the respondent would refund the amount paid by the complainants. Email dated 08.06.2022 from the respondent whereby it was clarified to the complainants that there was no change in the dimensions of the floor as given in the application form i.e., the room area etc. and in the usable area.
- VII. That since there was no response from the complainants accepting the allotment as per the terms and conditions communicated vide letter dated 06.06.2022, referred to above, the respondent dispatched the buyer's agreements to the complainants for execution under cover of letter dated 09.09.2022. However, the complainants have not executed

the buyer's agreement till date and have instead proceeded to file the present complaint.

- VIII. That a copy of the building plans considered by the Town and Country Planning Department under self-certification provision of the Haryana Building Code 2017. From a perusal of the same, it is evident that the FAR property area of the floor in question is 212.045 sq. meter. After deducting the areas under the external walls. The carpet area of the floor works out to 187.90 sq. meter and the 11.727 sq. meter in the basement after deducting the areas under the external walls, total admeasuring carpet area is 199.627 sq. meter or 2148.785 sq. ft. The building plans was approved before the booking of complainant's unit/floor however inadvertently the area was wrongly mentioned in the application form. There is no misrepresentation by the respondent and there is no decrease in carpet area as alleged by the complainants. The respondent has merely rectified the error in the application form and allotment letter that occurred due to a bona fide oversight and not on account of any misrepresentation or illegality on the part of the respondent. There is no illegality in so far as the respondent is concerned.
- IX. That thus the claim of the complainants that the respondent should be directed to charge from the complainants at the rate of Rs.15,564.62/- per sq. ft. or Rs.1,67,515.64/- per sq. meter or that the respondent should be directed to provide total carpet area of 236.746 sq. meter is misconceived and legally untenable. The respondent is bound to construct the floor in accordance with the duly sanctioned building plans. The respondent has already offered to refund the amount paid

by the complainants and is prepared to do the same if the complainants are not willing to accept the allotment as per the terms and conditions set out in the buyer's agreement forwarded to the complainants for execution. There is no merit in the false and frivolous complaint filed by the complainants and the same is liable to be dismissed with costs.

7. 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.
8. The complainants and respondent have filed the written submissions on 01.09.2023 and 28.09.2023 respectively which are taken on record and has been considered by the authority while adjudicating upon the relief sought by the complainants.

E. Jurisdiction of the authority

9. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

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

10. 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;

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

11. So, in view of the provisions of the Act of 2016 quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings regarding relief sought by the complainant.

- F.I** Direct the respondent/developer to charge from the complainants at the rate of Rs.1,67,515.64/- per sq. meter (Rs.15,564.62/- per sq. ft.) as committed by the respondent in the allotment letter dated 22.11.2021 and also in payment receipt dated 16.12.2021 for the allotted residential floor, instead of Rs.1,97,559.759/- per sq. meter (Rs.18,353.92/- per sq. feet) calculated as per the revised carpet area of 2148.785 sq. ft. (199.647 sq. meter) mentioned in respondent's letter dated 06.06.2022.
- F.II** Direct the respondent/developer to provide the same carpet area of 225.109 sq. meter for first floor and 11.637 sq. meter for basement, thus totalling carpet area of 236.746 sq. meter (2548 sq. ft.), balcony area of 44 sq. meter and basement area of 21.699 sq. meter to the complainants for the allotted residential floor for a total consideration of Rs.3,96,58,658/-, as committed by the respondent in the allotment letter dated 22.11.2021 and also in payment receipt dated 16.12.2021.
- F.III** Direct the respondent/developer not to charge any interest on the delay payments as the complainants rather sought demand letter for

next instalment from the respondent via letter dated 27.04.2022, when no payment was sought from the complainant/allottees.

F.IV Direct the respondent to execute the agreement for sale at the rate of Rs.1,67,515.64/- per sq. meter (Rs.15,564.62 per sq. ft.) as mentioned in the allotment letter dated 22.11.2021 and also in payment receipt dated 16.12.2021.

12. The above-mentioned relief sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.
13. On consideration of the documents available on record and submissions made by both the parties, the complainants were allotted a plot bearing no. D6/4A, first floor, in block-D, for an area admeasuring 2548 sq. ft. vide allotment letter dated 22.11.2021 for the total sale consideration of Rs.3,96,58,658/-. They have paid an amount of Rs.39,65,865/- against the total sale consideration. The copy of the buyer's agreement is annexed but the same has not been executed between the parties. As per clause 7.1 of the unexecuted agreement, the respondent was required to hand over possession of the unit 24.11.2024. That the respondent has obtained the occupation certificate in respect of the allotted unit of the complainant on 06.12.2023 and thereafter, HARERA possession on 10.02.2024.
14. During proceedings dated 31.05.2023, the counsel for the complainant stated that a unit admeasuring 225.109 sq. meters plus basement was allotted to the complainant at a total consideration of Rs.3,96,58,658/- on 22.11.2021 vide allotment letter of the same date. The details of allotment specifically mentioned the rate of Rs.1,67,515.64/- per sq. meter of the carpet area. The plot area on which the independent floor was to be constructed was mentioned as 386.25 sq. meters. However, vide letter dated 06.06.2022, the complainants were informed by the respondent that

the carpet area of the independent floor is in fact 2148.785 sq. ft. while the total price including GST would be Rs.3,94,42,567/-. The complainants were seeking the allotment of the original carpet area at the price mentioned against the same vide allotment letter dated 22.11.2021. The counsel for the respondent stated that the error on the part of the respondent w.r.t the carpet area and price was inadvertent and the similar error occurred not only in this specific matter but in 29 other cases the information of which was duly notified to HRERA Gurugram on 13.01.2022, for updating in the registration documents. It further stated that no BBA or agreement pursuant to the allotment letter has been signed between the parties and the error on the part of respondent is bona fide and the complainant cannot press for specific performance of the provisional allotment document at this stage.

15. During proceeding dated 16.04.2024, the counsel for the respondent stated that on 06.06.2022, carpet area mentioned in the allotment letter is incorrect and the correct carpet area is 2148 with a total sale consideration of Rs.3,94,42,566/-. By revising the carpet area and the total sale consideration, the respondent increased the rate of carpet area from Rs.1,67,515.64/- per sq. meter to Rs.1,97,559/- per sq. meter. The counsel for the complainant stated that the complainants are seeking allotment of the original carpet area at the price mentioned against the same allotment letter dated 22.11.2021. The counsel for the respondent had filed list of documents. Written submissions has already been filed by the respondent. It draws attention towards page 4 of the written submissions and stated that the all the four floors of this plot of land for the same carpet area i.e., 199.627 sq. meter and there is no unit, whose carpet area is around 236 sq.

meter. As per building plans approved by the DTCP, the property area of the floor in question is 212.405 sq. meter. After deducting the areas under external walls, the carpet area of the floor works out to 199.627 sq. meter, including 11.727 sq. meter of basement area. But inadvertently, the area was wrongly mentioned in the application form.

16. On realization, the said error, that was not limited to the unit allotted to the complainant but to several other units in the same project, a letter dated 13.01.2022 conveyed to this Authority intimating the correct statement of carpet areas of 29 plots in the project and also update online A to H form and detailed project information. He further stated that occupation certificate has already been obtained as the project has been completed and there is no decrease in carpet area as alleged by the complainants. The respondent has merely rectified the error in application form and allotment letter that occurred due to a bona fide oversight and not on account of any misrepresentation or illegality on the part of the respondent. In case the allotment as per the carpet area and sale price is not accepted by the complainants, the respondent would refund the amount paid by the complainants. No BBA or agreement has been signed between the parties. The counsel for the complainant stated that although no BBA is signed but the allotment letter issued by the respondent contain broad terms and conditions of allotment and same is signed by both the parties and hence is a binding contract between both the parties and now respondent cannot take any plea, which are beyond the terms and conditions of the allotment letter. Further the allottee wishes to continue in the project and is not interest in refund the paid up amount.

17. In light of the afore said circumstances, the authority observes that the dispute between the parties is with regard to decrease in carpet area and increase in amount. The complainants in their complaint have claimed possession of the plot in terms of allotment letter dated 22.11.2021. On the other hand the counsel for the respondent brought to the notice of the Authority that similar allotment letter was issued to 28 and others allottees in the said project, in which the area and the price of the plot was wrongly mentioned in the allotment letter and the said mistake was brought to the notice of the allottee(s) as well as this Authority and the respondent has also updated the same in the A to H form and the detailed project information..
18. After considering the above, the Authority is of the view that the said project is registered by this Authority as per *from of sanction under self-certification dated 05.08.2021*, vide registration no. 59 of 2021 dated 21.09.2021 and valid up to 24.11.2021, thereafter the respondent /promoter has requested before this Authority to change the carpet area in A to H form and the detailed project information on 14.01.2022. So, the contention of the respondent/promoter to request for correction of carpet area in A to H form and the detailed project information on 14.01.2022, is hereby rejected as it is a well settled law that ***"No one can take benefit out of his own wrong"***. Further, there is no provisions of the Act of 2016 and the Rules of 2017, which prescribes that after registering the project any changes/amendment can be done by the Authority. Moreover, the Authority cannot ignore that the respondent company has obtained the occupation certificate on 06.12.2023, and the offered the possession on 10.02.2024.
19. Further, during proceeding dated 03.09.2024, the counsel for the complainants stated that the complainants are willing to take possession of

the allotted unit as per offer of possession letter dated 10.02.2024, subject to the charging of price at the rate given in the allotment letter i.e., Rs.1,67,515/- *per Sq. Metre*.

20. After, considering the above said factual and legal circumstances of the case, the Authority hereby directs the respondent to handover the physical possession of the allotted plot to the complainants in terms of occupation certificate dated 06.12.2023 at the rate agreed between the parties vide allotment letter dated 22.11.2021 i.e., Rs.1,67,515.64/- *per Sq. Metre*. The respondent is further directed to issue a fresh statement of account at the above rate provided in the allotment letter with the carpet area as per occupation certificate of the allotted plot of the complainants within a period of 30 days from the date of this order.

F.V Direct the respondent to pay legal expenses of Rs.5,00,000/- incurred by the complainants.

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

the complainants may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

G. Directions of the Authority

22. 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 function entrusted to the authority under section 34(f):

- I. The respondent/promoter is directed to handover the physical possession of the allotted plot to the complainants in terms of occupation certificate dated 06.12.2023 at the rate agreed between the parties vide allotment letter dated 22.11.2021 i.e., Rs.1,67,515.64/- ^{per sq. meter.} The respondent is further directed to issue a fresh statement of account at the above rate provided in the allotment letter with the carpet area as per occupation certificate of the allotted plot of the complainants within a period of 30 days from the date of this order.
- II. The complainants are directed to pay the outstanding amount within next 60 days after issuing a fresh statement of account. After clearing all the outstanding dues, the respondent shall handover the physical possession of the allotted plot and to get the conveyance deed of the allotted unit executed in his favour in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable.
- III. The respondent is directed to execute the buyer's agreement within a period of 60 days in terms of agreement to sell specified in the Rules of 2017.

- IV. The rate of interest chargeable from the allottees 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 allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
23. Complaint as well as applications, if any, stands disposed off accordingly.
24. File be consigned to registry.


(Ashok Sangwan)
Member

v.1 - 3
(Vijay Kumar Goyal)
Member


(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 03.09.2024

HARERA
GURUGRAM