

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

Complaint no. : 6380 of 2022
Complaint received on : 30.05.2024
Order pronounced on : 08.08.2024

1. Mr. Vikas Jindal
2. Mrs. Jyoti Jindal
Both R/o: Apex Our Homes, Tulip 573, Sector 37C, Garoli
Khurd (106), Gurugram, Haryana-122006

Complainants

Versus

M/s Apex Buildwell Private Limited
Regd. office: 14A/36, W.E.A., KarolBagh, New Delhi-110005

Respondent

CORAM:
Shri Vijay Kumar Goyal

Member

APPEARANCE:
Shri Sunil Kumar (Advocate)
Shri Harshit Batra (Advocate)

**Complainants
Respondent**

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 under the provisions of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter-se them.

A. Unit and Project-related details:

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

S. N.	Particulars	Details
1.	Name of the project	Our Homes
2.	Project location	Sector 37C, Gurugram, Haryana
3.	Project type	Low-cost group housing project
4.	HRERA registered/ not registered	Registered vide no. 40 of 2019 dated 08.07.2019
	HRERA registration valid up to	01.12.2019
5.	Allotment letter dated	Not provided on record
6.	Date of apartment buyer agreement	01.01.2014 (As per page no. 17 of the complaint)
7.	Unit no.	573 on 5 th floor, tower- Tulip (As per page no. 20 of the complaint)
8.	Unit area admeasuring	48 sq. mtrs. (Carpet area) (As per page no. 20 of the complaint)
9.	Possession clause	<p>3(a) Offer of possession</p> <p><i>That subject to terms of this clause 3, and subject to the apartment allottee (s) having complied with all the terms and conditions of this agreement and not being in default under any of the provisions of this agreement and further subject to compliance with all provisions, formalities, registration of sale deed, documentation, payment of all amount due and payable to the respondent by the apartment allottee(s) under this agreement etc. as prescribed by the respondent, the respondent proposes to hand over the possession of the apartment within a period of 36 months with the grace period of six</i></p>

		<p><i>month from the date of commencement of construction of the complex upon the receipt of all project related approvals including sanction of building plans/ revised plans and approval of all concerned authorities including the fire service department, civil aviation department, traffic department, pollution control department etc. as may be required for commencing, carrying on and completing the said complex subject to force majeure, restraints or restrictions from any court/authorities. It is however understood between the parties that the possession of various blocks/towers comprised in the complex as also the various common facilities planned therein shall be ready and completed in phases and will be handed over to the allottees of different block/towers as and when completed and in a phased manner.</i></p>
10.	Date of commencement of construction of the project	<p>CTE-02.12.2013 (taken from the similar file being developed by the same promoter)</p>
11.	Due date of possession	<p>02.06.2017 [Calculated from the date of the consent to establish i.e., 02.12.2013 + 6 months grace period] (Grace period of 6 months is allowed)</p>
12.	Total sale consideration	<p>Rs.16,00,000/- (As per page no. 20 of the complaint)</p>
13.	Amount paid by the complainant	<p>Rs.18,81,960/- (As per demand letter on page no. 28 of reply)</p>
14.	Occupation certificate	<p>29.11.2019 (As per page no. 24 of reply)</p>
15.	Offer of possession	<p>20.03.2020 (As per page no. 26 of the complaint)</p>

16.	Possession certificate dated	05.04.2020 (As per page no. 47 of the complaint)
17.	Conveyance deed dated	15.10.2020 (As per page no. 31 of reply)

B. Facts of the complaint:

3. The complainants Mr. Vikas Jindal and Mrs. Jyoti Jindal booked a flat in the project named "OUR HOMES" in Sector 37 C, Gurugram. Accordingly, the complainants were allotted a flat bearing unit no. 573 on 5th Floor in Tower-Tulip.
4. On 01.01.2014, builder buyers' agreement was entered into between the parties wherein as per clause 3(a), the respondent should offer possession of unit within 42 months from the date of allotment of the said flat.
5. It is pertinent to note here that the complainant opted for time linked payment plan and the complainants timely fulfilled all the demands raised by the respondent and out of the total cost of the said unit, a sum of Rs. 18,81,690/- i.e., more than the total consideration amount has been paid by the complainants to the respondent.
6. As per the builder buyer agreement, the committed date of offering the possession was 02.06.2017 but even after payment of more than 100% of total consideration, the respondent was unable to handover the possession on due date.
7. The respondent issued an offer for possession of the apartment on 05.04.2020, which constitutes a significant delay of 5 years and 3 months beyond the agreed-upon due date. Notably, despite this substantial delay, the respondent has failed to provide any payment of delay possession interest to the buyer as mandated in the B.B.A.
8. The construction activities at the project site, indicating a lack of timely completion which is evident by the photographs dated 05.03.2022, which



demonstrate that the construction has not reached completion despite the extensive passage of time.

9. The ongoing delays and construction uncertainties have led to considerable distress and apprehension among home allottees, exacerbated by recent events such as the "Chantal's Incident," which highlighted potential safety and security concerns within the society. The fear among allottees regarding the status of their investments and living conditions necessitates urgent intervention.
10. In the light of the above circumstances, the complainant formally requests that the respondent be directed to clear all outstanding delay possession interest, as stipulated in the builder buyer agreement executed on 01.01.2014.
11. The complainant asserts that such interest payments are not only justified but also essential to uphold the terms of the agreement as the respondent has imposed higher interest rates on the complainant for delayed payments. The complainant seeks a fair resolution that mandates the respondent to apply consistent interest rates for both parties regarding any delay in payments.

C. Relief sought by the complainants:

12. The complainants have sought the following relief(s):
 - i. Direct the respondent to pay delayed possession interest as per the terms of the BBA.
 - ii. Direct the respondent to pay cost of litigation of Rs. 21,000/- to the complainants.
13. On the date of hearing, the authority explained to the respondent /promoter about the contraventions as alleged to have been committed in relation to section 11(4) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent:

14. The complainants, Vikas Jindal and Jyoti Jindal approached respondent and



expressed their interest in booking of an apartment in the Low Cost/Affordable Group Housing Project developed by respondent known as "Our Homes" situated in Sector 37C, Gurgaon. Prior to the booking, the complainants conducted extensive and independent enquiries with regard to the project and only after being fully satisfied on all aspects, they took an independent and informed decision, uninfluenced in any manner by the respondent, to book the unit in question.

15. Thereafter, the complainants, vide an application form dated 25.11.2013 applied to the respondent for provisional allotment of the unit. Pursuant thereto, unit bearing no 513, located on the 5th floor, tower- Tulip tentatively admeasuring 516.67 sq. ft. was allotted to the complainants. the respondent had no reason to suspect the *bonafide* of the complainants and proceeded to allot the unit in question in their favor.
16. A buyer's agreement dated 01.01.2014 was executed between the complainants and the respondent. It is pertinent to mention that the buyer's agreement was consciously and voluntarily executed between the parties and the terms and conditions of the same are binding on both the parties.
17. As per clause 3(a) of the buyer's agreement dated 01.01.2014, the due date of possession of the unit in question was 36 months from date of commencement of construction upon the receipts of all project related approvals along with a grace period of 6 months. It is pertinent to mention here that the due date/possession clause provided under clause 3 of the builder buyer agreement was subjective in nature and hence shall depend on the allottee/complainant complying all the terms and conditions of the agreement.
18. It is to be noted that the development and implementation of the said project have been hindered on account of several orders/directions passed by various

authorities/forums/courts, before passing of the subjective due date of offer of possession. The force majeure reasons are as below:

- The delay, if any, in delivery of possession was primarily caused due to orders passed by NGT for period of 07.04.2015 to 06.05.2015 vide which it was directed that old diesel vehicles (heavy or light) more than 10 years old would not be permitted to ply on the roads of NCR, Delhi. The order had completely hampered the construction activity for 30 days.
- Again on 19.07.2016 National Green Tribunal in O.A. No. 479/2016 had directed that no stone crushers be permitted to operate unless they operate consent from the State Pollution Control Board, no objection from the concerned authorities and have the Environment Clearance from the competent Authority. This reduced supply of gravels which directly affected the supply and price of ready-mix concrete required for construction activities for 30 days.
- On 08.11.2016, NGT had directed all the brick kilns operating in NCR, Delhi would be prohibited from working for a period of one week from the date of passing the order. It had also been directed that no construction activity would be permitted for a period of one week from the date of order.
- The project was also delayed for 90 days due to order passed by Environmental Pollution Prevention and Control Authority vide which it was directed to the closure of all brick kilns, stones crushers, hot mix plants, etc. with effect from 07.11.2017 till further notice.
- On 09.11.2017 and 17.11.2017, National Green Tribunal has passed the said order dated 9th Nov, 2017 completely prohibiting the carrying on of construction by any person, private, or government authority in NCR till the next date of hearing. (17th of Nov, 2017). By virtue of the said order, NGT had only permitted the competition of interior finishing/interior work of projects.



- Order passed by Haryana State Pollution Control Board, Panchkula has passed the order dated 29th October 2018 in furtherance of directions of Environmental Pollution (Prevention and Control) Authority dated 27th Oct 2018. By virtue of order dated 29th of October 2018 all the construction activities including the excavation, civil construction was directed to remain close in Delhi and other NCR Districts from 1st Nov to 10th Nov 2018.
 - NGT in O.A. no. 667/2019 & 679/2019 had again directed the immediate closure of all illegal stone crushers in Mahendergarh, Haryana who have not complied with the siting criteria, ambient, air quality, carrying capacity, and assessment of health impact. The tribunal further directed initiation of action by way of prosecution and recovery of compensation relatable to the cost of restoration consequently affected the pace of construction for 30 days.
 - The Commissioner, Municipal Corporation, Gurugram has passed an order dated 11.10.2019 whereby the construction activity has been prohibited from 11.10.2019 to 31.12.2019. It was specifically mentioned in the aforesaid order that construction activity would be completely stopped during this period causing delay of 81 days.
19. From the facts indicated above, it is comprehensively established that a period of 377 days was consumed on account of circumstances beyond the power and control of the respondent, owing to the passing of orders of various statutory authorities. It is well recognized that one day of hindrance in the construction industry leads to a gigantic delay and has a deep effect on the overall construction process of a real estate project. All the circumstances stated hereinabove come within the meaning of *force majeure*.
20. That despite innumerable hardships being faced by the respondent, the respondent completed the construction of the project and applied for the occupation application before the concerned authority and successfully attained the same on 29.11.2019. After receiving of the occupation certificate,

the possession of the said unit was lawfully offered to the complainants on 20.03.2020 and thereby the peaceful and vacant possession of the unit was handed over to the complainants on 05.04.2020. The physical possession was taken by the complainant without any demur. It is now, after over 3 years of taking over of the possession, the complainant has approached the Ld. Authority as an afterthought seeking delay possession charges with the sole intent of getting wrongful gains and causing wrongful loss to the respondent. Without prejudice to the contents of the respondent, it is submitted that the present complaint is barred by limitation as the cause of action if any, only arose till the receipt of occupancy certificate and not thereafter.

21. Furthermore, after giving the lawful possession of the unit to the complainant, the conveyance deed dated 15.10.2020 was also executed between the complainant and the respondent. It is submitted that after execution of the conveyance deed, the contractual relationship between the parties stands fully satisfied and comes to an end. That there remains no claim/ grievance of the complainant with respect to the agreement or any obligation of the parties thereunder.
22. 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 those undisputed documents and submissions made by the parties

E. Jurisdiction of the Authority:

23. 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

24. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be the entire Gurugram District for all purposes with offices situated in Gurugram. In the present case, the project in question

is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject-matter jurisdiction

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

Section 11(4)(a)

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

Section 34-Functions of the Authority:

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

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

F. Findings on the objections raised by the respondent:

F.I Objection on account of execution of Conveyance Deed

30. The respondent has raised an objection 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 complainant is estopped from claiming any interest in the facts and circumstances of the case.
31. 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.

32. 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 statutory 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.
33. The authority has already taken a view in **CR No. 4031/2019 and others tiled as Varun Gupta V/s Emaar MGF Land Limited and others** has observed as under:

47.the authority observes 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 said unit whereby the right, title and interest has been transferred in the name of the allottee on execution of the conveyance deed.

Therefore, 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.

34. 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 Objections regarding Force Majeure.

35. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by Environmental Pollution Prevention & Control Authority, NGT, and orders of other courts/authorities to curb the pollution in NCR. It further requested that the said period be excluded while calculating due date for handing over of possession. Further, in the instant complaint, as per clause 3(a) of BBA dated 01.01.2014, the due date of handing over of possession was provided as 02.06.2017 [grace period of 6 months is allowed being unconditional).
36. However, all the pleas advanced in this regard are devoid of merits. First of all, the possession of the unit in question was to be offered by 02.06.2017. Further, the time taken in governmental bans/guidelines cannot be attributed as reason for delay in project. Moreover, some of the events mentioned above are of routine in nature happening annually and are for very shorter period of time. The promoter is required to take the same into consideration while launching the project. Thus, the promoter-respondent cannot be given any leniency on based of aforesaid reasons and it is a well settled principle that a person cannot take benefit of his own wrong and the objection of the respondent that the project was delayed due to circumstances being force majeure stands rejected.

F.III Objection regarding complaint being barred by the limitation.

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37. As 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 Authority 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 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 of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances.
38. In the present matter, the cause of action arose on 05.04.2020, when the respondent issued possession certificate. The complainant subsequently filed the present complaint on 12.10.2022, i.e., after a period of 2 years, 5 months, and 07 days from the date of the cause of action. In light of these considerations, the Authority finds that the present complaint has been filed within a reasonable time frame and is therefore not barred by the statute of limitations.

G. Findings on relief sought by the complainants:

G.I Direct the respondent to pay to pay delayed possession interest as per the terms of the BBA

39. As per documents available on record, the respondent has offered the possession of the allotted unit on 20.03.2020 after obtaining occupation certificate from competent authority on 29.11.2019. The complainant took a plea that offer of possession was to be made in made in 2017, but the respondent has failed to handover the physical possession of the allotted unit within stipulated period of time.
40. 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

"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."

41. Admissibility of delay possession charges at prescribed rate of interest:

The complainant is continuing with the project and 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.

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., 08.08.2024 is **9%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11%**.
44. On consideration of the documents available on record and submissions made

by the parties regarding contravention as per 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 3(a) of the BBA dated 01.01.2014, and the due date comes out as 02.06.2017. Occupation certificate was granted by the concerned authority on 29.11.2019 and thereafter, the possession of the subject flat was offered to the complainants on 20.03.2020. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject unit and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the BBA dated 01.01.2014 to hand over the physical possession within the stipulated period.

45. 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 29.11.2019. The respondent offered the possession of the unit in question to the complainant only on 20.03.2020, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. These 2 months of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically she 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.
46. In view of the above, the complainants are entitled for delayed possession

at the prescribed rate of interest @ 11% per annum from the due date of possession till offer of possession i.e., plus two months after obtaining occupation certificate or till actual handing over of possession, whichever is earlier.

G.II Direct the respondent to pay sum of Rs. 21,000/- to the complainant towards the cost of the litigation.

47. The complainant is 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 Respondents 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.

H. Directions issued by the Authority:

48. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance with obligations cast upon the promoter as per the functions entrusted to the Authority under section 34(f) of the Act of 2016:
- I. The respondent is directed to pay delay possession charges at the prescribed rate of interest @ 11% per annum from the due date of possession i.e., 02.06.2017 till offer of possession i.e., 20.03.2020 plus two months after obtaining occupation certificate or till actual handing over of

possession, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

II. A period of 90 days is given to the respondent to comply with the directions given in this order failing which legal consequences would follow.

49. Complaint stands disposed of.

50. File be consigned to the Registry.

Dated: 08.08.2024



V.K. Goyal
(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram

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GURUGRAM