

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

Complaint no. : 575 of 2024
Complaint received on : 15.02.2024
Order pronounced on : 08.08.2024

1. Ms. Monika
2. Mr. Devendra Pal Gawri
Both R/o: H.No. 522, PLA Near GYM Khana Club Town Park,
Hisar, Haryana-125001

Complainants

Versus

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

Respondent

CORAM:
Shri Vijay Kumar Goyal

Member

APPEARANCE:
Shri Karan Govel (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	13.02.2013 (As per page no. 47 of the complaint)
6.	Date of apartment buyer agreement	12.02.2013 (As per page no. 15 of the complaint)
7.	Unit no.	626 on 6 th floor, tower- Rose (As per page no. 47 of the complaint)
8.	Unit area admeasuring	48 sq. mtrs. (Carpet area) (As per page no. 16 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 developer by the apartment allottee(s) under this agreement etc. as prescribed by the developer, the developer proposes to hand over the possession of the apartment within a period of 36 months with the grace period of six 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</i></p>

		<i>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>
10.	Date of commencement of construction of the project	CTE-02.12.2013 (As per page no. 52 of the reply)
11.	Due date of possession	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)
12.	Total sale consideration	Rs.16,00,000/- (As per page no. 16 of the complaint)
13.	Amount paid by the complainant	Rs.16,00,000/- (As per page no. 05 of the complaint)
14.	Occupation certificate	29.11.2019 and 24.02.2020 (As per page no. 31-35 of reply)
15.	Offer of possession	30.11.2019 (As per page no. 64 of the complaint)

B. Facts of the complaint:

3. The complainant after seeing advertisements of the Respondent/Builder herein, in the newspaper namely Times of India for launching the project namely "Our Homes situated at Village Garai-Khurd, Sector 37C, Gurugram, Haryana, came into contact with the executives of the respondent, who embarked upon the complainant with their sales team with various promises

of timely completion of project and swift delivery of possession on time. 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.

4. The complainant paid a sum of Rs. 4,12,360/- as demanded by the respondent on 07.09.2012 and booked a unit no. 626 on the 6th Floor, Tower Rose, in the name of the complainants. A buyer's agreement was also signed between the parties on 12.02.2013.
5. Thereafter, from time-to-time further payments were made to the Respondent by the complainant as per the demand letters. As per clause 3(a) of the buyer's agreement, the respondent agreed to handover possession of unit by within a period of 36 months with a grace period of 6 months from the date of commencement of construction of the complex.
6. The complainant has paid a sum of Rs. 16,00,000/-, since the date of booking, the complainant has been visiting at so called proposed site, where they find that the construction of the project is at lowest swing and there is no possibility in near future of its completion.
7. The complainant tried his level best to resolve the issue of the delayed possession but the respondent did not pay any heed to the said requests of the complainant. On the contrary the respondent kept on asking for illegal demand of payment to the complainant by adding delayed payment interest and other illegal charges like maintenance etc.
8. As per the BBA, the builder was required to give the possession of the unit by 11.08.2016. However, after much delay and harassments, the builder only gave the offer of possession on 30.11.2019.
9. The complainant, thereafter had tried his level best to reach the representatives of respondent to seek a satisfactory reply for delayed possession compensation as per the rules and provisions of the Real Estate

Regulatory Act in respect of the said dwelling unit but all in vain. The complainant had also informed the respondent about his financial hardship of paying monthly rent and extra interest on his home loan due to delay in getting possession of the said unit but respondent never cared to listen to his grievances and left them with more suffering and pain on account of default and negligence.

C. Relief sought by the complainants:

10. The complainants have sought the following relief(s):
 - i. Direct the respondent to pay delayed possession interest at prescribed rate of interest.
 - ii. Direct the respondent to pay for the harassment and mental agony of Rs. 5,00,000/- to the complainants.
11. 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:

12. The complainants, Monika and Devender Pal Gauri 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.
13. Thereafter, the complainants, vide an application form dated 07.09.2012 applied to the respondent for provisional allotment of the unit. Pursuant thereto, unit bearing no 626, located on the 6th Floor, Tower- Rose admeasuring 516.67 sq. ft. (tentative area) 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.

14. A buyer's agreement dated 12.02.2013 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.
15. As per clause 3(a) of the buyer's agreement dated 12.02.2013, the due date of possession of the unit in question was 36 months from date of commencement of construction i.e., 02.12.2013 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.
16. 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 completion 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.

17. 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*.
18. The *bonafide* of the respondent is imperative to note at this stage that in order to remind the complainants with regards to the payments of the outstanding dues, the respondent had sent various demand and reminder letters but to no avail. The complainants did not pay any heed to demands raised as per payment plan opted by them and willingly delayed payment of due instalments.
19. 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 and 24.02.2020. After receiving of the occupation certificate, the possession of the said unit was lawfully offered to

the complainants on 30.11.2019. Post offer, the possession of the unit to the complainants, belatedly after constant follow ups took the physical possession of the unit in February 2020 on fit out basis and is residing in the unit since then. It is now, after over 4 years 1 months and a day 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.

20. 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:

21. 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

22. 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

23. 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.

24. 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.1 Objections regarding Force Majeure.

25. 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).
26. 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

A

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.

27. 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.
28. It is also observed that Hon'ble Supreme Court in its order dated 10.01.2022 in **MA NO.21 of 2022 of Sua 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 may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.
29. In the present matter, the cause of action arose on 30.11.2019, when the respondent offered possession. The complainant subsequently filed the present complaint on 15.02.2024, i.e., after a period of 4 years, a month, and a day from the date of the cause of action. Notably, the period from 15.03.2020 to 28.02.2022, is to be excluded from this calculation. 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 at prescribed rate of interest.

29. As per documents available on record, the respondent has offered the possession of the allotted unit on 30.11.2019 after obtaining occupation certificate from competent authority on 24.02.2020. 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.

30. 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."*

31. **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.

32. 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.
33. 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%.
34. 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 12.02.2013, and the due date comes out as 02.06.2017. Occupation certificate was granted by the concerned authority on 24.02.2020 and thereafter, the possession of the subject flat was offered to the complainants on 30.11.2019. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer 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 12.02.2013 to hand over the physical possession within the stipulated period.
35. 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 24.02.2020. The respondent offered the possession of the unit in question to the complainant only on 30.11.2019, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. 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.

36. 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 for the harassment and mental agony of Rs. 5,00,000/- to the complainants.

37. 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 of the Act. 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:

38. 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., 30.12.2019 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.

39. Complaint stands disposed of.

40. File be consigned to the Registry.

Dated: 08.08.2024


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