

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

**Complaint no.:** 2604 of 2023  
**Date of decision:-** 04.12.2024

M/s. Precision Infratech Private Limited  
**Regd. office** – 7/C-D, Suryarath Panchwati,  
Ellisbridge, Ahmedabad-380006, Gujarat.

**Complainant**

Versus

M/s. Anand Divine Developers Private Limited.  
**Regd. office:** 711/92, Deepali Nehru Place,  
New Delhi-110019.

**Respondent**

**CORAM:**

Shri Ashok Sangwan

**Member**

**APPEARANCE:**

Mr. Garvit Gupta (Advocate)

Complainant

Mr. Vinayak Gupta (Advocate)

Respondent

**HARERA**  
GURUGRAM  
**ORDER**

1. The present complaint dated 05.06.2023 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 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 as provided under the provision of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

**A. Unit and project related details**

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

S. N.	Particulars	Details
1.	Name of the project	"ATS Triumph"
2.	Nature of the project	Group Housing Colony
3.	RERA Registered/ not registered	Not registered
4.	DTCP License	License no. 63 of 2011 dated 16.07.2011 valid till 15.07.2019 License no. 10 of 2012 dated 03.02.2012 valid till 02.02.2020
5.	Unit no.	2202, Floor-20 <sup>th</sup> , Tower-2 + 2 parkings (As on page no. 22 of complaint)
6.	Unit area	2290 sq.ft. [Super-Area] (As on page no. 22 of complaint)



7.	Buyer's Agreement	31.03.2017 (As on page no. 30 of complaint)
8.	Possession clause	<b>Clause 18</b> <b>Time of Handing Over Possession</b> <i>Barring unforeseen circumstances and Force Majeure events as stipulated hereunder, the possession of the said Apartment is proposed to be, offered by the Company to the Allottee within a period of 36(Thirty Six) months from the date of Agreement in which the registration for allotment is made, such date shall hereinafter referred to as "Stipulated Date", subject always to timely payment of all amounts including the Basic Sale Price, EDC/IDC, IFMS, Stamp Duty, registration Fees and Other Charges as stipulated herein or as may be demanded by the Company from time to time in this regard.</i> [Emphasis supplied]
9.	Due date of delivery of possession	01.10.2020 [31.03.2020 + 6 months on account of Covid-19]
10.	Total sale consideration	Rs.1,50,27,000/- (As on page no. 34 of complaint)
11.	Amount paid by the complainant	Rs.1,70,79,604/- (As per payment receipts)
12.	Occupation certificate /Completion certificate	28.05.2019 (As on page no. 45 of reply)
13.	Offer of Possession	30.05.2019 (As on page no. 47 of reply)

		[An outstanding of Rs.26,28,604/-]
14.	Reminders sent by respondent	03.07.2019 02.08.2019 12.09.2019 18.10.2019 08.01.2020
15.	Reminder sent for registration of C.D and Deed of Apartment	Undated (As on page no. 76 of reply)

**B. Facts of the complaint:**

3. The complainant made the following submissions in the complaint:
- I. That the complainant booked a unit bearing no. 2202 in the project of the respondent namely "ATS Triumph" situated at Sector 104, Gurugram. The respondent sent a copy of the Builder Buyer's Agreement to the complainant and accordingly the Builder Buyer's Agreement was executed on 31.03.2017.
  - II. That as per Clause 18 read with Clause 19 of the said BBA, the due date to handover the possession of the unit was 3 years from the date of BBA. Since, the BBA was executed on 31.03.2017, the due date of handing over of possession lapsed on 31.03.2020.
  - III. That the complainant has paid a sum of Rs.1,44,50,897/- out of the total sale consideration of Rs.1,59,85,750/- prior to the offer of possession. The respondent offered the possession of the said allotted unit to the complainant on 30.05.2019. However, vide the said offer of possession, certain illegal demands amounting to Rs.26,28,604/- were raised by the respondent. Furthermore, it was



also stated in the Offer of possession that on receipt of entire payment, it would take 90 days to complete the apartment. Hence, the unit was not ready on the date of offer of possession.

- IV. However, the complainant paid the additional amount of Rs.26,28,604/- as demanded on 28.02.2020. Hence, total amount paid by the complainant is Rs.1,70,70,501/- out of the total sale consideration of Rs.1,59,85,750/- .
- V. That the complainant vide several communications such as email dated 01.03.2023 requested the respondent to handover the possession of the said unit in a habitable condition and to execute a Conveyance Deed.
- VI. That the respondent failed to handover the possession despite repeated requests and reminders and the said allotted unit is still incomplete and inhabitable as per the specifications of the Agreement.
- VII. That as per Clause 19 of the Agreement, it has been agreed that the liability of the respondent to pay interest to the complainant would continue till delivery of possession after its completion.
- VIII. That the respondent had admitted that the unit is not ready vide several communications dated 03.07.2019, 02.08.2019, 12.09.2019, 18.10.2019, 08.01.2020
- IX. Thus, in view of the facts and circumstances stated hereinabove, it is prayed that the reliefs of Delayed Possession charges from due date of possession till actual handing over of possession and handing over of possession as sought by the complainant be granted.

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

also stated in the Offer of possession that on receipt of entire payment, it would take 90 days to complete the apartment. Hence, the unit was not ready on the date of offer of possession.

- IV. However, the complainant paid the additional amount of Rs.26,28,604/- as demanded on 28.02.2020. Hence, total amount paid by the complainant is Rs.1,70,70,501/- out of the total sale consideration of Rs.1,59,85,750/- .
- V. That the complainant vide several communications such as email dated 01.03.2023 requested the respondent to handover the possession of the said unit in a habitable condition and to execute a Conveyance Deed.
- VI. That the respondent failed to handover the possession despite repeated requests and reminders and the said allotted unit is still incomplete and inhabitable as per the specifications of the Agreement.
- VII. That as per Clause 19 of the Agreement, it has been agreed that the liability of the respondent to pay interest to the complainant would continue till delivery of possession after its completion.
- VIII. That the respondent had admitted that the unit is not ready vide several communications dated 03.07.2019, 02.08.2019, 12.09.2019, 18.10.2019, 08.01.2020
- IX. Thus, in view of the facts and circumstances stated hereinabove, it is prayed that the reliefs of Delayed Possession charges from due date of possession till actual handing over of possession and handing over of possession as sought by the complainant be granted.

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

4. The reliefs sought by the complainant are as follows:

- I. Direct the respondent to provide possession along with all the amenities as prescribed in the Buyer's Agreement.
- II. Direct the respondent to pay the delayed charges alongwith interest till the handover of possession.
- III. Direct the respondent to pay Rs.75,000/- per month to the complainants on account of rent paid by the complainants from September 2020 to till date.

**D. Reply by respondent:**

5. The respondent by way of written reply made following submissions.
- I. That the complaint is not maintainable for the reason that the agreement contains an Arbitration Clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute i.e. Clause 39 of the Buyer's Agreement.
  - II. That the complainant, after checking the veracity of the project namely, 'ATS Triumph', Sector 104, Gurugram had applied for allotment of a residential unit and aged to be bound by the terms and conditions of the documents executed by the parties to the complaint. It is submitted that based on the application of the complainant, Unit No. 2202, 2<sup>nd</sup> Floor, Tower No.2 admeasuring 2290 Sq. Ft. was allotted to the complainant by the respondent.
  - III. That the Buyer's Agreement was executed on 31.03.2017. It is pertinent to mention herein that the Act, 2016 was not in force when the Agreement was entered into between the complainant and the respondent. The provisions of the Real Estate (Regulation



and Development) Act, 2016 thus cannot be enforced retrospectively.

- IV. That as per Clause 4 of the Buyer's Agreement, the consideration of Rs.1,50,27,000/- was exclusive of other costs, charges including but not limited to EDC/IDC Charges, Maintenance Deposit, Power Back up, Electricity Meter Charges, stamp duty and registration charges, service tax, proportionate taxes and proportionate charges for provision of any other items/facilities. As per Clause 12 of the Buyer's Agreement, timely payment by the complainant of the basic sale price and other charges as stipulated in the payment plan was to be the essence of the agreement.
- V. That the possession of the unit was supposed to be offered to the complainant in accordance with the agreed terms and conditions of the Buyer's Agreement. It is submitted that Clause 18 of the Buyer's Agreement clearly states that
- "Barring unforeseen circumstances and Force majeure events as stipulated hereunder, the possession of the said Apartment is proposed to be offered by the Company to the Allottee on or before **30 June 2019**, plus Three months of grace period from the date of this agreement, subject always to timely payment of all amounts including the Basic Sale Price\*, Stamp Duty, Registration Fees and Other Charges as stipulated herein or as may be demanded by the Company from time to time in this regard."*
- VI. That the implementation of the project was hampered due to non-payment of instalments by allottees on time and also due to the events and conditions which were beyond the control of the respondent and which have materially affected the construction and progress of the project. Some of the Force Majeure events/conditions which were beyond the control of the





respondent and affected the implementation of the project and are as under:

- I) Inability to undertake the construction for approx. 7-8 months due to Central Government's Notification with regard to Demonetization.
  - II) Orders Passed by National Green
  - III) Non-Payment of Instalments by Allottees
- VII. That immediately after receiving Occupation Certificate on 29.05.2019, the respondent offered possession of the unit to the complainant vide communication dated 30.05.2019 subject to clearing outstanding payable amount.
- VIII. That the complainant has already been offered possession by the respondent on 30.05.2019. The complainant did not come forward to take the possession of the unit after remitting the due amount. The complainant is bound to take the physical possession of the unit after making payment towards the due amount along with interest and holding charges. In fact beyond letters of demand as mentioned above, the respondent specifically vide letter dated 20.02.2020 called upon the complainant to execute Conveyance Deed and Deed of Apartment qua the allotted unit.
- IX. That thereafter, the unit was modified in name of "M/s. Precision Infratech Private Limited" instead of "M/s. Precision Infratech Private Limited" vide letter dated 19.08.2020.
- X. That the complainant is a real estate investor who has invested his money in the project of the respondent with an intention to make profit in a short span of time. However, his calculations have gone wrong on account of slump in the real estate market and they are



now deliberately trying to unnecessarily harass, pressurize and blackmail the respondent to submit to his unreasonable demands. Despite the illegal conduct of the complainant, the respondent submits that the unit is ready and the respondent is willing to execute Conveyance Deed with the complainant.

- XI. That the complainant was intimated to pay the outstanding amount as per Clause 12 of Builder Buyer Agreement dated 31.03.2017, on the failure of which the delay penalty amount would accrue. The complainant was not coming forward to take the possession of the unit after remitting the due amount. The complainant is bound to take the physical possession of the unit after making payment towards the due amount along with interest and holding charges.
6. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

**E. Jurisdiction of the authority:**

7. 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**

8. 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**

9. 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;*

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

**F. Findings on objections raised by the respondent**

**F.I Objection regarding delay due to force majeure circumstances**

11. The respondent-promoter has raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the National Green Tribunal, Environment Pollution (Prevention & Control) Authority,. Since there were circumstances beyond the control of respondent,



so taking into consideration the above-mentioned facts, the respondent be allowed the period during which his construction activities came to stand still, and the said period be excluded while calculating the due date. But the plea taken in this regard is not tenable as the restraining orders imposed by various authorities were for a short period of time and a series of events taking place every year. The due date for completion of project is calculated as per clause 18 of the Buyer's Agreement dated 31.03.2017 which comes out to be 31.03.2020. Further, an extension of 6 months is granted to the respondent in view of notification no. 9/3-2020 dated 26.05.2020, on account of outbreak of Covid-19 pandemic. Therefore, the due date of possession comes out to be 01.10.2020

**F.II Objection regarding complainant is in breach of agreement for non-invocation of arbitration.**

12. The respondent has raised an objection that the complainant has not invoked arbitration proceedings as per Buyer's Agreement which contains provisions regarding initiation of arbitration proceedings in case of breach of agreement. The following clause has been incorporated w.r.t arbitration in the buyer's agreement:

*"Clause 39.*

*All or any dispute arising out or touching upon or in relation to the terms of this Agreement or its termination, including the interpretation and validity thereof and the respective rights and obligations of the parties shall be settled amicably by mutual discussion, failing which the same shall be settled through arbitration. The arbitration proceedings shall be governed by the*



*Arbitration and Conciliation Act, 1996 as amended up to date. A sole arbitrator, who shall be nominated by the Board of Directors of the Company, shall hold the arbitration proceedings at the office of the Company at Noida. The allottee hereby confirms that he shall have no objection to this appointment, more particularly on the ground that the Sole Arbitrator, being appointed by the Board of Directors of the Company likely to be biased in favour of the Company. The Courts at NOIDA, Uttar Pradesh shall, to the specific exclusion of all other courts, have the exclusive jurisdiction in all matters arising out /touching and/or concerning this Agreement, regardless of the place of execution or subject matter of this Agreement. Both the parties in equal proportion shall pay the fee of the "Arbitrator".*

13. The respondent contented that as per the terms and conditions of the Builder's Agreement duly executed between the parties, it was specifically agreed that in the eventuality of any dispute, if any, with respect to the unit by the complainant, the same shall be adjudicated through arbitration mechanism. The Authority is of the opinion that the jurisdiction of the Authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the Authority puts reliance on catena of judgements of the Hon'ble Supreme Court, Particularly in **National Seeds Corporation Limited v. M.Madhusudhan Reddy & Anr. (2012) 2**



**SCC 506**, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to or not in derogation of the other laws in force, Consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause. Similarly, in **Aftab Singh and ors. V. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017**, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainant and builders could not circumscribe the jurisdiction of a consumer forum.

14. While considering the issue of maintainability of a complaint before a consumer forum/commission in the face of an existing arbitration clause in the builder buyer agreement, the Hon'ble Supreme Court in case titled as **M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017 decided on 10.12.2018** has upheld the aforesaid judgement of NCDRC. The relevant para of the judgement passed by the Supreme Court is reproduced below:

*"This court in the series of judgements as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration act, 1996 and laid down that complaint under Consumer Protection Act being a special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer*



*Protection act on the strength an arbitration agreement by Act,1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant have also been explained in Section 2© of the Act. the remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."*

15. Therefore, in view of the above judgements and considering the provisions of the Act, the Authority is of the view that the complainant is well within the right to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and RERA Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this Authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily

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

**G.I Direct the respondent to handover physical possession of the unit and pay interest on the delayed possession from the due date of possession till the actual handover of possession of the unit.**

12. In the present complaint, the complainant booked a unit in the project of the respondent namely "ATS Triumph" situated at Sector-104 , Gurugram. The allotment was made in favour of the respondent and the complainant was allotted unit bearing no. 2202 on 20th floor in Tower No.-2 admeasuring 2290 sq.ft. Thereafter, the Builder Buyer Agreement was executed between the complainant and the respondent on 31.03.2017. As per Clause 18 of the agreement, the respondent undertook to hand over



possession of the unit to the complainant within a period of 36 months from the date of execution of the. Thus, calculating 36 months from the date of execution of the agreement i.e., 31.03.2017 comes out to be 31.03.2020. Further, an extension of 6 months is granted to the respondent in view of notification no. 9/3-2020 dated 26.05.2020, on account of outbreak of Covid-19 pandemic. Therefore, the due date of possession comes out to be 01.10.2020.

13. In the present complaint, the complainants intends to continue with the project and ar seeking possession and delay possession charges along with interest on the amount paid. 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.

***"Section 18: - Return of amount and compensation***

*18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*

*.....  
Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

14. Clause 18 of the Buyer's Agreement provides for handing over of possession and is reproduced below:

**Clause 18**

*Barring unforeseen circumstances and Force majeure events as stipulated hereunder, the possession of the said Apartment is proposed to be, offered by the Company to the Allottee within a period of 36 (Thirty Six) months from the date of Agreement in which the registration for allotment is*





*made, such date shall hereinafter referred to as "Stipulated date", subject for allotment is made, subject always to timely payment of all amounts including the Basic Sale Price, EDC/IDC, IFMS, Stamp Duty, Registration Fees and Other Charges as stipulated herein or as may be demanded by the Company from time to time in this regard. The date of actual start of construction shall be the date on which the foundation of the particular Building in which the said Apartment is allotted shall be laid as per certification by the Company's Architect/Engineer-in-charge of the Complex and the said certification shall be final and binding on the Allottee.*

15. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the Authority is of the view that by virtue of clause 18 of the agreement executed between the parties on 31.03.2017, the possession of the subject apartment was to be delivered within 36 months from the date of execution. Due date of possession is calculated from the date of execution of buyer's agreement i.e., 31.03.2017. The period of 36 months expired on 31.03.2020. Further, an extension of 6 months is granted to the respondent in view of notification no. 9/3-2020 dated 26.05.2020, on account of outbreak of Covid-19 pandemic. Therefore, the due date of possession comes out to be 01.10.2020. The respondent has offered the possession of the subject apartment to the complainant on 30.05.2019 after receiving the occupation certificate from the concerned authorities on 28.05.2019, which is not beyond the due date of possession of the unit. Accordingly, no failure of the respondent/promoter is established to fulfil its obligations and responsibilities as per the agreement to offer possession of the unit as the respondent had offered the possession to the complainant

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within the stipulated time period as was agreed between the respondent and complainant.

16. The respondent is directed to handover the physical possession of the unit to the complainant within a period of 30 days from the date of this order. The complainant is duty bound to take possession of the unit within a period of 60 days after receipt of the Occupation Certificate by the respondent as per Section 19(10) of the Act, 2016. Further, the respondent is directed to execute conveyance deed in favour of the complainant in terms of Section-17(1) of the Act, 2016.

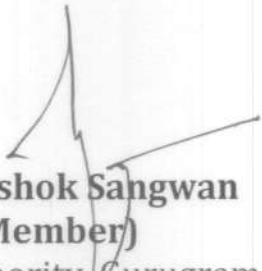
**G.II. Direct the respondent to pay Rs.75,000/- per month to the complainants on account of rent paid by the complainants from September 2020 to till date.**

17. The complainant is seeking the above mentioned reliefs w.r.t compensation. The Hon'ble Supreme Court of India in Civil Appeals no. 674445-679 of 2021 titled as **M/s Newtech Promoters and Developers Ltd. V/s State of UP (Supra)** has held that an allottee is entitled to claim compensation and litigation charges under Section 12, 14, 18 and Section 19 which is to be decided by the Adjudicating Officer as per Section 71 and the quantum of compensation and litigation charges shall be adjudicated by the adjudicating officer having due regards to the factors mentioned in Section 72. Therefore, the complainant may approach the adjudicating officer for seeking the relief of compensation.

**H. Directions of the authority**

18. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoters as per the functions entrusted to the authority under section 34(f):

- i. The respondent is directed to handover the physical possession of the unit to the complainant within a period of 30 days from the date of this order as per the terms of Section 19(10) of the Act, 2016.
  - ii. The respondent is directed to execute conveyance deed in favour of the complainant in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within 60 days from the date of this order.
  - iii. The respondent shall not charge anything from the complainant which is not the part of the agreement.
19. Complaint stands disposed of.
20. File be consigned to registry.

  
**Ashok Sangwan**  
**(Member)**  
Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 04.12.2024