

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

Complaint no. : 4468 of 2023
Date of filing complaint : 22.09.2023
Date of decision : 22.11.2024

Atul Kumar Ninawat

R/o - B-336, Upper Ground Floor, Mohan Garden,
Uttam Nagar, Delhi -110059

Complainant

Versus

M/s Vatika Limited

Registered office at: 5th Floor, Vatika Triangle,
Sushant Lok, Phase-1, Gurgaon

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

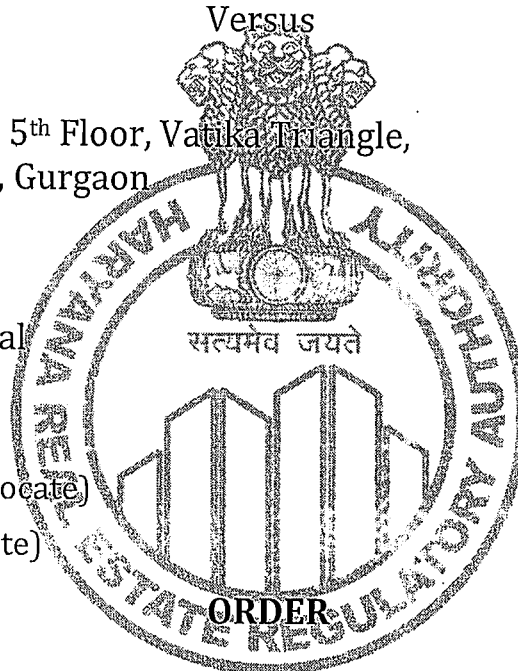
APPEARANCE:

Shri Alok K. Singh (Advocate)

Complainant

Shri Arjit Gaur (Advocate)

Respondent



1. The present complaint has been filed by the complainant 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 thereunder or to the allottees as per the agreement for sale executed inter se.

A. Unit and project related details

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

S.No.	Particulars	Details
1.	Name of the project	Seven elements, Sector-89A, Gurugram
2.	Nature of project	Retail
3.	RERA Registered/ Registered	Registered 53 of 2019 dated 24.09.2019 valid up to 31.12.2019. Registration expired
4.	DTPC License no.	41 of 2013 dated 06.06.2013
	Licensed area	14.30 Acre
5.	Unit no.	B-401, floor-third court, building-4 th [Page no. 68 of complaint]
6.	Unit measuring	2195 sq. ft. [Page no. 68 of complaint]
7.	Allotment letter	10.03.2014 (Page 36 of complaint)
8.	Date of builder buyer agreement	21.11.2014 Unexecuted (Page 74 of complaint)
9.	Possession clause	13. Possession <i>"The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/said Apartment within a period of 48 (forty months) months from the date of execution of the Agreement..."</i> [Page 75 of complaint]
10.	Due date of possession	21.11.2018 <i>[As per possession clause from the date of sending of builder buyer agreement by respondent for sign. & the same is alleged by complainant in his facts.]</i> <i>[inadvertently mentioned as 10.03.2017 in proceedings of the day dated 22.11.2024]</i>

11.	Total Consideration	Rs. 1,68,22,765/- (As per page no. 26 of complaint and as per SOA dated 21.12.2023)
12.	Total amount paid by the complainant	Rs. 51,76,742/- (As per page no. 26 of complaint and as per SOA dated 21.12.2023)
13.	Occupation certificate dated	Not obtained
14.	Possession	Not offered
15.	Various reminders were sent to complainant for execution of Floor buyer's agreement	09.03.2015, 06.07.2015, 19.08.2018, 13.10.2015, 10.12.2015 and 22.01.2016, 16.02.2016, 03.09.2018 [Pg 28-38 of reply] [Complainant did not executed BBA due to one-sided terms and moreover, due to slow speed of development, & the same issue vide email various emails were raised to respondent]

B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint:
- That the respondent launched the project namely "Seven Elements" (hereinafter referred as the 'said project'), a residential group housing complex situated in sector 89-A, Gurgaon, Haryana.
 - That in pursuant to the elaborate advertisements, assurances, representations and promises made by respondent in the brochure circulated by them about the timely completion of a premium project with impeccable facilities and believing the same to be correct and true, the complainant considered booking a unit in the said project.
 - That it was represented and assured by the respondent that the construction of the said project would be commencing within the agreed time frame and further, the same would be completed within the stipulated timelines along with the promised luxurious amenities and structure as agreed between the complainant and the respondent. That the complainant believing the said

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representations of the respondent, made a booking in the said project and was consequently allotted a unit bearing number B-401, admeasuring 2195 sq. ft. , after several discussions about change in the area of the unit to be allotted. The respondent vide its email dated 26.07.2013 assured the complainant that the payments made by the complainant shall be duly adjusted by the respondent as per the changed specifications of the Unit.

- iv. That the respondent further represented that the building plans for the project, have been duly approved by the Director, Town and Country Planning and that the State Environmental Impact Assessment Authority clearance has also been obtained by the respondent. That in order to lure the complainant in investing his money in the project, the respondent represented that it is a company of repute in the real estate business with great success rate of completing the projects on time.
- v. That pursuant to the elaborate advertisements and promises that were made by the respondent in the brochure that the project would be premium with impeccable facilities and amenities and would be completed within 48 months, the complainant herein considered booking a unit in the above said project.
- vi. That believing the said representations of the respondent, the complainant made booking in the said project of the respondent and made a payment of Rs.10,00,000/- as initial booking amount. That the complainant was allotted a unit bearing no. B-401 in the said project of the respondent admeasuring 2180 sq. ft. vide allotment letter dated 10.03.2014. The complainant till date has made a payment to the tune of Rs.50,03,010/- (approx. 30% of the total value). Thereafter, the complainant made several payments towards the instalments as and when raised by the respondent without any delay. However, the respondent shied away from its responsibilities in making

timely delivery of the unit. That the respondent also acknowledged the receipt of the said payments in its statement of accounts.

- vii. A tabulated chart indicating details of the payments made is reproduced hereinunder:

S. No.	Amount Paid (Rs.)	Date	Cheque No.
1.	10,00,000/-	07.05.2013	096210
2.	5,00,000/-	22.07.2013	096183
3.	5,00,000/-	22.07.2013	096182
4.	3,00,000/-	22.07.2013	096184
5.	3,40,044/-	22.07.2013	096185
6.	12,20,246.34/-	27.11.2014	096212
7.	7,95,689.54/-	07.02.2015	096213
8.	3,06,999.3/-	20.04.2015	184997

- viii. The details of the payments of TDS is reproduced below:

S.No.	TDS amount (Rs.)	Relevant document in support
1.	16,567/-	Vatika acknowledgement dated October 03, 2013 showing the receipt of payment of TDS
2.	12,326/-	Form 16B and Form 26Q dated November 27, 2014
3.	8,038/-	Form 16B and Form 26Q dated February 07, 2015
4.	3,102/-	Form 26Q dated April 20, 2015

- ix. That as per the account's ledger of the respondent on its portal, the total amount paid by the complainant herein is clearly reflected as Rs.51,76,742.71/-.

- x. It is submitted that despite the aforementioned amount being paid by the complainant herein, the builder buyer's agreement has not been executed in favor of the complainant post booking of the said unit. That a one-sided buyer's agreement was sent to the complainant for its execution in 2014, however, the same being heavily being lop sided in favour of the respondent, it was not signed by the complainant, and it was sought to be re-negotiated

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by the complainant. Even as per the said standard BBA sent by the respondent, the due date of handing over possession to the complainant was within a period of 48 months from the signing of the said agreement.

- xi. That the respondent with a malafide intention in order to circumvent from its liabilities has delayed the process of execution of the said agreement. It is pertinent to mention that the respondent despite repeated follow ups by the complainant for renegotiation of the terms and conditions of the said agreement, failed to come forward for the same.
- xii. That the complainant was never given an opportunity to negotiate on the said arbitrary clauses. Complainant even raised his objections to the arbitrary terms of the agreement, which was sent to the complainant for execution, but no heed was given to the objections raised by the complainant. That the respondent continued to abuse its dominant position in the real estate sector by defrauding the gullible buyers.
- xiii. That the complainant was never given a choice to negotiate on the terms and conditions of the said agreement and he was expected to sign on the dotted lines. There is a catena of judgments which have made the position of law clear that a party cannot be forced to sign on the dotted lines of the contract/undertaking and that the party must be given a chance to negotiate on the terms and conditions of the contract, otherwise it will be termed as an invalid contract. It is of utmost importance to state herein that while on one hand, the respondent did not execute the buyer's agreement with the complainant herein, on the other hand, it continued to made demands as per the schedule of payments and continued to issued receipts acknowledging the said payments.
- xiv. That as per clause 13 of the buyer's agreement dated 21.11.2014, the respondent was mandated to offer possession of the said unit within 48 months of signing of this agreement. Even from the aforesaid clause, it is

apparent that the due date of possession, even if it is taken from the date on which the respondent issued the same comes out to be 21.11.2018. That the respondent has failed to offer the possession of the said unit as per the agreed terms. That the complainant was in regular follow-up with the respondent but to no avail. That multiple emails correspondences were made with the respondent along with personal visits to the construction site and the office of the respondent but all in vain.

- xv. The complainant once again vide its email dated 16.06.2017, sought for the status of construction of the project, and to the utter shock of the complainant, the respondent vide its email dated 05.07.2017 unilaterally extended the time period of construction and indicated that only the First floor slab is complete and the project is likely to be completed by 2nd quarter of 2020. The aforementioned communication by the respondent makes it an admitted position that the construction of the project was running highly belated from its scheduled timelines.
- xvi. Much to the shock of the complainant herein, the respondent in 2018 issued an entirely fresh builder buyer agreement which did not even specify the due date of possession in concrete terms. Dissatisfied with the terms and conditions of the said agreement, the complainant on multiple occasions had visited the site of the respondent seeking clarification thereof, however, the same were never entertained by the respondent at any instance.
- xvii. That believing the representations of the respondent in the various demand letters that it had completed construction till a particular stage, the complainant duly made payments to the respondent towards the demands raised by it. That the complainant has always adhered to the terms and conditions of the agreement and never defaulted in remitting the instalments according to the demands raised by the respondent. That the complainant after duly complying with all the obligations and duties, waited for the

respondent to handover the possession of the said unit within the stipulated time and even enquired about the same on several occasions. However, the respondent failed to acknowledge the concerns of the complainant and instead turned a deaf ear towards them.

- xviii. It is worthwhile to mention that the complainant vide email dated 16.03.2022 specifically sought for an update on the status of construction, however, as a matter of record, the respondent till date has failed to complete construction of the project and handover possession to the complainant. It is reiterated that a period of about 10 years has passed since the complainant has made the booking application, and the respondent despite procuring over 30% of the total sale consideration, has grossly failed to fulfill its duties.
- xix. That the complainant never delayed in making payments to the respondent but on the other hand, the respondent has failed to maintain transparency with regard to the construction status of the project and the demands raised by it in lieu thereof. That the complainant himself went on-site to check the ground reality of the said project but was surprised that project will be significantly delayed and only excavation work has been executed by the respondent. Further, the complainant received no communication on construction progress from the respondent's end till 2020. That the complainant was kept in complete dark on the progress of construction of the said project.
- xx. Thereafter, no further demand notices have been received by the complainant herein because the project has come to a complete halt and the respondent has failed to achieve the construction milestones for requesting payment. That the complainant vide its email dated 16.03.2022 again sought for construction update about the project, however, he has not received any response from the respondent till date intimating the progress of the same.

- xxi. Till date the complainant has made a cumulative payment of Rs.51,76,742/- against the total sale consideration of the unit, however, even after 10 years since the date of booking application, the project is nowhere near completion. That thereafter, the complainant sought refund of the monies paid by him against the said unit in question, however, the respondent has been evading the complainant and refusing to refund the outstanding balance on one pretext or the other.
- xxii. That since the respondent has failed to adhere to the legitimate requests made by the complainant, it is evident and clear that the respondent is playing fraud with the complainant and has deceived and cheated him of his legitimate dues. The above acts of the respondent herein clearly manifest that it has fraudulently and dishonestly induced the complainant and thus caused financial damage and harm to him and enriched itself. Moreover, the respondent made wrongful gain to itself and cheated the complainant with the knowledge and intention that they are causing loss to the complainant whose interest in the transaction with the respondent was supposed to be protected.
- xxiii. That believing on the representations of the respondent in the demand notices that it had completed construction till a particular stage, the complainant duly made payments to the respondent towards the demand raised by the respondent. It is pertinent to mention that as on date, the complainant has made a total payment of Rs.51,76,742/- to the respondent as against a total sale consideration of Rs.1,68,22,765/- including EDC/IDC, PLC charges, electrical charges etc. Thus, around 30% of the cost of the said unit base price stood paid by the complainant. Despite paying such a huge amount to the respondent as per the schedule of payment, the respondent has even failed to execute the buyer's agreement.

- xxiv. That that the said unit till date is far from completion and the respondent herein till date despite receiving a considerable amount of sale consideration, have failed to even execute the builder buyer agreement with the complainant/allotee. That the complainant several times requested the respondent for the status of the construction of the said project and their unit but to the utter shock and dismay of the complainant, since then, the complainant have not received any updates on the status of construction and handing of possession of the said unit by the respondent. The said fact goes to show the lackadaisical approach of the respondent towards its work and maintain professional relationship with its customers.
- xxv. It is interesting to note that while all the payments have been made to respondent, the respondent unilaterally issued a fresh builder buyer agreement which was on behalf of the respondent which was never in the picture. The complainant did not execute the said agreement, since the same was nothing but an attempt on part of the respondent to wriggle out of its obligations and fasten the responsibility upon a sister concern, which is nothing but a shell company.
- xxvi. That the said agreement is a standard form of contract, which is prepared by the respondent, where the complainant had little or no opportunity to negotiate the terms. That the respondent cleverly get expert advice and introduce terms, in the printed forms, which are more favourable to the respondent.
- xxvii. That the respondent has been deliberately procrastinating from its responsibility and liability towards the complainant. Further, their actions are malafide and amount to breach of contract. That the same is evident from the fact that the respondent vide its email dated 05.07.2017 admitted the delay in the said project and averred that the possession would be offered by

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the second quarter of 2020, however, as on date, 6 years have passed since the said communication, and there is no sight of completion of the project.

xxviii. That it is pertinent to note that till date the construction of the said unit has not been completed, and the tower in question in the present complainant is merely at the excavation stage. That the said unit has not been complied with the specifications as agreed and mentioned in the buyer's agreement. Needless to state, the complainant has suffered for a period of over 10 years from booking the said unit in question and has yet not received the possession.

xxix. That the complainant reserves his right and seeks liberty from this Authority to approach the Hon'ble Adjudicating officer or any other forum for compensation and damages caused by the respondent in not handing over the possession of the said unit within the specified time.

xxx. That the complainant further declares that the matter regarding which this complaint has been made is not pending before any court of law or any other authority or any other Authority.

C. Relief sought by the complainant:

4. The request of the complainant for amendment of the relief was allowed vide order dated 05.04.2024, pursuant to which complainant filed an application for amendment of the relief dated 28.06.2024 for handover the possession of the unit and if respondent is not able to deliver the original allotted unit as booked by the complainant, then respondent to handover another unit of same size in the same project along with delayed possession charges or in the alternate refund the entire paid-up amount along with interest. The same was allowed by the Authority vide order dated 05.07.2024 and the respondent was directed to give possession after obtaining valid occupation certificate vide order dated 26.07.2024.



5. That pursuant to the amendment of relief application dated 28.06.2024 complainant has sought following relief(s):

- i. Direct the respondent to handover possession of the unit or in alternate direct that a similar unit available in the same project be allotted the due possession of the same be handed over to the complainant.
 - ii. Direct the respondent to pay delayed possession charges, as he is entitled for, at prescribed rate of interest i.e., 10.75% per annum as per the provision of the Act, 2016
 - iii. Thereafter, delayed possession interest be paid pro rata on monthly basis before the 10th of every month till the possession is handed over.
 - iv. Direct the respondent to pay Rs 50,000/- on account of legal expense.
6. 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.

C. Reply by respondent:

7. The respondent contested the complaint on the following grounds:
- i. That the present complaint, filed by the complainant, is bundle of lies and hence liable to be dismissed, as it is filed without any cause of action. Complainant herein, has failed to provide the correct/complete facts and the same are reproduced hereunder for proper adjudication of the present matter. That the complainant is raising false, frivolous, misleading and baseless allegations against the respondent with intent to make unlawful gains.
 - ii. That the complainant has not approached the Authority with clean hands and have suppressed relevant facts. It is submitted that the complaint under reply is devoid of merits and the same should be dismissed with cost.
 - iii. That in around the year 2013, the complainant herein, learned about the project launched by the respondent titled as 'Vatika Seven Elements' situated at Sector 89A, Gurgaon and approached the respondent repeatedly to know

the details of the said project. The complainant further inquired about the specification and veracity of the project and was satisfied with every proposal deemed necessary for the development of the project.

- iv. Thereafter, after having keen interest in the project constructed by the respondent the complainant desired to book a unit on 07.05.2013 and paid an amount of Rs.10,00,000/- for further registration. It is pertinent to note, that the complainant was aware of each and every terms of the aforesaid application and only after being fully satisfied agreed to sign without any protest any demur. Respondent vide allotment letter dated 10.03.2014, allotted a unit bearing no. B-401 admeasuring to 2180 sq. ft. in the aforesaid project.
- v. That thereafter the respondent sent a copy of flat buyer agreement on 14.01.2015 for execution to the complainants. But the complainants neglected and did not sign and deliver the agreements back. Various reminders were sent on 09.03.2015, 06.07.2015, 19.08.2015, 13.10.2015, 10.12.2015 and final reminder on 22.01.2016, 16.02.2016 and 03.09.2018 to the complainants for execution of floor buyer agreement. After some time, respondent again try level best by sending a copy of builder buyer again on 14.09.2018. Thus, the complainant has defaulted in their contractual obligations, and they are merely trying to wriggle out of the contract and attempting to make an unlawful gain.
- vi. Despite, being aware of the payments schedule and the fact that timely payment is essence for completion of the project. The complainant herein has failed to make the requisite payment of the instalment as and when demanded by the respondent in accordance with the payment schedule.

- vii. It is a matter of fact, that the complainant in the present matter have not paid the total sale consideration and still a substantial amount of money is due and payable on account of the complainant.
- viii. That the complainant in the present complaint have merely paid a partial amount against the total sale consideration and have failed to adhere to the payment schedule which was well known to the complainant. That the project in question tend to get affected due to non-payments of the instalments by various allottee(s) including the complainant.
- ix. Construction of project obstructed due to reason beyond the control of the respondent: The present complaint is filed by complainant on baseless and absurd grounds. That in the agreement, the respondent had inter alia represented that the performance by the company of its obligations under the agreement was contingent upon approval of the unit plans of the said complex by the Director, Town & Country Planning, Haryana, Chandigarh (DTCP) and any subsequent amendments/modifications in the unit plans as may be made from time to time by the Company & approved by DTCP.
- Subsequent to the booking and the signing of the Agreement, the company was facing umpteen roadblocks in construction and development works in projects in its licensed lands comprised of the Township owing to take over of land by the Government for making Highway. The concomitant cascading effects of such a colossal change necessitated realignment of the entire layout of the various projects, including plotted /Group Housing/Commercial/Institutional in the entire Township. This was further compounded with the non-removal or shifting of the defunct High-Tension lines passing through these lands, which also contributed to the inevitable change in the layout plans.
 - Unfortunately, owing to significant subsequent events and due to a host of extraneous reasons beyond the control of the company, company was unable to execute and carry out all the necessary work for the completion of the said project. These subsequent developments have

repeatedly marred and adversely impacted the progress of the company's projects. To further add to the woes of the company, in addition to the reasons stated above, non-acquisition of sector roads by HUDA to enable accessibility to the various corners of the project, forceful unauthorised occupation of certain parcels by some farmers coupled with other regular obstructions and impediments beyond the control of the company have resulted in the company being unable to deliver.

x. Apart from the above, the progress of the construction of the project was also affected due to various other unforeseen circumstances such as:

- a. Unexpected introduction of a new National Highway being NH 352 W (herein "NH 352 W") proposed to run through the project of the respondent. Under this new development NH 352 W was initially supposed to be developed as sector roads by Haryana Urban Development Authority (HUDA) which took around 3 years in completing the land acquisition process.
- b. The Haryana Government in alliance with the Town and Country Planning Department in exercise of power vested under Section 45 (1) of Gurugram Metropolitan Development Authority Act, 2017 (GMDA Act) vide its Notification dated 11.04.2018 makes the transfer scheme for transferring the properties falling within the ambit of NH 352 W acquired by the HUDA to GMDA for development and construction of NH 352 W.
- c. The GMDA vide its letter dated 08.09.2020 had handed over the possession of said properties for construction and development of NH 352 W to the National Highway Authority of India (NHAI). This is showing that still the construction of NH 352 W is under process resulting in unwanted delay in completion of project.
- d. Further, initially, when HUDA had acquired the sector road and started its construction, an area by 4 to 5 metres was uplifted. Before start of the acquisition and construction process, the respondent had already laid down the services according to the earlier sector road levels, however due to upliftment caused by the HUDA in NH 352 W the company has been constrained to raise and uplift the same within the

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- project, which not only result in deferment of construction of project but also attract costing to the respondent.
- e. Re-routing of high-tension lines passing through the lands resulting in inevitable change in the layout plans.
- xi. That the respondent is committed to complete the development of the project and deliver the units of the allottees as per the terms and conditions of the BBA. That the developmental work of the said project was slightly decelerated due to the reasons beyond the control of the respondent Company due to the impact of Good and Services Act, 2017 [GST] which came into force after the effect of demonetisation in last quarter of 2016 which stretches its adverse effect in various industrial, construction, business area even in 2019. The respondent had to undergo huge obstacle due to effect of demonetization and implementation of the GST.
- xii. In past few years construction activities have also been hit by repeated bans by the Courts/Tribunals/Authorities to curb pollution in Delhi-NCR Region. In the recent past the Environmental Pollution (Prevention and Control) Authority, NCR (EPCA) vide its notification bearing no. EPCA-R/2019/L-49 dated 25.10.2019 banned construction activity in NCR during night hours (6 pm to 6 am) from 26.10.2019 to 30.10.2019 which was later on converted to complete ban from 1.11.2019 to 05.11.2019 by EPCA vide its notification bearing no. R/2019/L-53 dated 01.11.2019.
- xiii. The Hon'ble Supreme Court of India vide its order dated 04.11.2019 passed in writ petition bearing no. 13029/1985 titled as "MC Mehta vs. Union of India" completely banned all construction activities in Delhi-NCR which restriction was partly modified vide order dated 09.12.2019 and was completely lifted by the Hon'ble Supreme Court vide its order dated 14.02.2020. These bans forced the migrant labourers to return to their native towns/states/villages creating an acute shortage of labourers in the NCR



Region. Due to the said shortage the construction activity could not resume at full throttle even after the lifting of ban by the Hon'ble Apex Court.

- xiv. Despite, after such obstacles in the construction activity and before the normalcy could resume the entire nation was hit by the World-wide Covid-19 pandemic. Therefore, it is safely concluded that the said delay in the seamless execution of the project was due to genuine force majeure circumstances and the period shall be excluded while computing the delay.
- xv. The covid-19 pandemic resulted in serious challenges to the project with no available labourers, contractors etc. for the construction of the Project. The Ministry of Home Affairs, GOI vide notification dated March 24, 2020, bearing no. 40-3/2020-DM-I(A) recognised that India was threatened with the spread of Covid-19 pandemic and ordered a completed lockdown in the entire country for an initial period of 21 days which started on March 25, 2020. By virtue of various subsequent notifications, the Ministry of Home Affairs, GOI further extended the lockdown from time to time and till date the same continues in some or the other form to curb the pandemic. Various State Governments, including the Government of Haryana have also enforced various strict measures to prevent the pandemic including imposing curfew, lockdown, stopping all commercial activities, stopping all construction activities. Pursuant to the issuance of advisory by the GOI vide office memorandum dated May 13, 2020 regarding extension of registrations of real estate projects under the provisions of the RERA Act, 2016 due to "Force Majeure", the Haryana Real Estate Regulatory Authority has also extended the registration and completion date by 6 months for all real estate projects whose registration or completion date expired and or was supposed to expire on or after March 25, 2020.
- xvi. Therefore, the present complaint is liable to be dismissed on this ground alone. That, it is evident that the entire case of the complainant is nothing but

a web of lies, false and frivolous allegations made against the respondent. That the complainant has not approached the Authority with clean hands hence the present complaint deserves to be dismissed with heavy costs. That it is brought to the knowledge of the Authority that the complainant is guilty of placing untrue facts and are attempting to hide the true colour of intention of the complainant.

xvii. Hence, the present complaint under reply is liable to be dismissed with cost for wasting the precious time and resources of the Authority. That the present complaint is an utter abuse of the process of law, and hence deserves to be dismissed.

8. 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:

9. 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

10. 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

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11. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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 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 of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

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

F. Findings on the objections raised by the respondents:

F.I Objection regarding delay in completion of construction of project due to force majeure conditions.

13. The respondents raised the contention that the construction of the project was delayed due to force majeure conditions such as the orders of the Hon'ble Environment Pollution (Prevention and Control Authority), Hon'ble Supreme Court prohibiting construction in and around Delhi and the Covid-19 pandemic among others, but all the pleas advanced in this regard are devoid of merit.
14. A space buyer's agreement dated 21.11.2014 for unit no. B-401, floor-third court, building-4th was issued by respondent to complainant but the same

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was not executed by the complainant claiming one sided terms and raised the issue to respondent but, was never resolved. So, the document/receipt/provisional allotment letter/ draft agreement so issued in favour of person can be termed as an agreement for sale. Therefore, the due date of handing over of possession is taken from the clause of the draft agreement and the delivery date stipulated from the delivery period in the agreement comes out to be 21.11.2018. The events such as the orders of the Hon'ble Environment Pollution (Prevention and Control Authority), Hon'ble Supreme Court prohibiting construction in and around Delhi and the Covid-19 pandemic among others were for a shorter duration of time and were not continuous as there is a delay of more than six years and even happening after due date of handing over of possession. There is nothing on record that the respondents have even made an application for grant of occupation certificate. Though some allottees may not be regular in paying the amount due but whether the interest of all the stakeholders concerned with the said project cannot be put on hold due to fault of some of the allottees. Thus, the promoter respondents cannot be granted any leniency for aforesaid reasons. It is well settled principle that a person cannot take benefit of his own wrongs.

15. As far as delay in construction due to outbreak of Covid-19 is concerned, Hon'ble Delhi High Court in case titled as M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M. P (I) (Comm.) no. 88/ 2020 and I. As 3696-3697/2020 dated 29.05.2020 has observed that:

69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself."

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16. The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by 21.11.2018 and the respondents are claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was prior to orders of court and the event of outbreak of Covid-19 pandemic. Therefore, the Authority is of the view that outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period is not excluded while calculating the delay in handing over possession.

G. Findings on the relief sought by the complainant:

G.I Direct the respondent to handover possession of the unit or in alternate direct that a similar unit available in the same project be allotted the due possession of the same be handed over to the complainant.

G.II Direct the respondent to pay delayed possession charges, as he is entitled for, at prescribed rate of interest i.e., 10.75% per annum as per the provision of the Act, 2016

G.III Thereafter, delayed possession interest be paid pro rata on monthly basis before the 10th of every month till the possession is handed over.

17. The above-mentioned relief no. F.I, F.II, F.III and F.IV are interrelated to each other. Accordingly, the same are being taken up together for adjudication.

18. The complainant was allotted unit no B-401, in the project "Seven Elements, Sector 89A, Gurugram" by the respondent builder for a total consideration of Rs. 1,68,22,765/- and he paid a sum of Rs.51,76,742/-.

19. On the contrary, the respondent-builder sent a letter dated 14.01.2015 for execution of flat buyers agreement to the complainant. But the complainants neglected and did not sign and deliver the agreements back. Various reminders were sent on 09.03.2015, 06.07.2015, 19.08.2015, 13.10.2015, 10.12.2015 and final reminder on 22.01.2016, 16.02.2016 and 03.09.2018 to the complainants for execution of buyer agreement. After some time, respondent again try level best by sending a copy of builder buyer again on

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14.09.2018 but the complainant did not sign the buyer agreement. The complainant states that a one-sided buyer's agreement was sent to the complainant for the execution in 2014. However, the same being heavily being lop sided in favor of the respondent, it was not signed by the complainant. Thereafter, in 2018, the respondent-builder issued an entirely fresh builder buyer agreement which did not specify the due date of possession.

20. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec 18(1) proviso reads as under:

"Section 18: - Return of amount and compensation

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

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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."

21. As per Clause 13 of the unexecuted buyer's agreement attached with the complaint provides for time period for handing over of possession and is reproduced below:

13. Schedule for Possession of the said apartment

The developer based on its present plans and estimates and subject to all just exception, contemplates to complete construction of the said building/said building/said apartment within a period of 48 months from the execution of this agreement unless there shall be delay or there shall be failure due to reasons mentioned in clause 14 to 17 & 37 or due to failure of allottee(s) ..."

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

The complainants are seeking delay possession charges at the prescribed rate. 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

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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.

23. The legislature in its wisdom in the subordinate legislation under the 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.
24. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 22.11.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
25. **Rate of interest to be paid by complainants/allottees for delay in making payments:** The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is

refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"

26. On consideration of the circumstances, the documents, submissions made by the parties and based on the findings of the authority regarding contravention as per provisions of rule 28(2), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 13 of the unexecuted buyer agreement dated 21.11.2014, the possession of the subject floor was to be delivered within 48 months from the date of execution of agreement. Therefore, the due date of handing over possession was 21.11.2018. The respondent has failed to handover possession of the subject apartment till date of this order. Accordingly, it is the failure of the respondent/ promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit. Further no OC/part OC has been granted to the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottees.
27. During proceedings dated 26.07.2024 and 27.09.2024 respectively, the counsel for the complainant clarifies that the refund has been sought only as an alternative and otherwise is willing to take the possession of the allotted unit or an alternate unit along with delayed possession charges by the respondent and the same relief was also being confirmed by the complainant present in person. The counsel for the respondent stated that they are ready to give the possession of the unit to the complainant.
28. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the allottees shall be paid, by the promoter, interest for

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every month of delay from due date of possession i.e., 21.11.2018 till valid offer of possession after obtaining occupation certificate from the competent Authority or 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.

F.IV. Direct the respondent to pay Rs.50,000/- on account of legal expense.

29. The complainant is seeking relief w.r.t litigation expenses. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.* (supra), 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.

H. Directions of the Authority:


30. 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 promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i. The respondent is directed to pay interest to complainant against the paid-up amount at the prescribed rate of interest i.e., 11.10% p.a. for every month of delay from the due date of possession 21.11.2018 till valid offer of possession after obtaining occupation certificate, plus two months or actual handing over of possession, whichever is earlier as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period. The respondent is directed



to offer the possession of the allotted unit or alternate unit if the allotted unit is not available within 30 days after obtaining occupation certificate from the competent authority. The complainant w.r.t. obligation conferred upon them under section 19(10) of Act of 2016, shall take the physical possession of the subject unit, within a period of two months of the occupancy certificate.

- iii. 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.
 - iv. The arrears of such interest accrued from due date of possession of each case till the date of this order by the authority shall be paid by the promoter to the allottees within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to allottee(s) before 10th of the subsequent month as per rule 16(2) of the rules.
 - v. The respondent-builder is directed to execute buyer agreement in favour of the complainant within 30 days from the date of this order.
31. Complaint stands disposed of.
 32. File be consigned to the registry.


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory
Authority, Gurugram
Dated: 22.11.2024