

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

Complaint no. 5219 of 2023
Date of filing complaint 24.11.2023
First date of hearing 07.03.2024
Date of decision 29.10.2024

Mr. Raj Kumar & Mrs. Kamini Singh Both are R/o: U/23/23, first floor, behind tagore International School, Pink Town House, DLF City, DLF Colony Phase 3, Gurugram, Haryana-122002	Complainants
Versus	
St. Patricks Realty Private Limited Regd. office: 3 rd Floor, Tower- D, Global Business Park, MG Road, Gurugram, Haryana	Respondents
M/s Crystal Town Hospitality Limited Regd. Office: Central Park Floers Valley, Village Dhunela, ector 32-33, Sohna Road, Gurugram-122103.	

CORAM:

Shri Arun Kumar
Shri Vijay Kumar Goyal
Shri Ashok Sangwan

HARERA
GURUGRAM

Chairman
Member
Member

APPEARANCE:

Sh. Prashant Sheoran (Advocate)
Sh. Venket Rao and Gunjan Kumar (Advocate)

Complainants
Respondent

ORDER

1. The present complaint has been filed by the complainant/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.

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. No.	Particulars	Details
1.	Name and location of the project	Central Park Flower Valley, Lake front towers, Sector-32, Gurugram
2.	Project area	10.925 acres
3.	Nature of the project	Group housing colony
4.	Nature of the project DTCP license no. and validity status	Group housing colony 84 of 2014 dated 09.08.2014 valid up to 08.08.2024
5.	Name of the Licensee	Ravinder Singh-Balkaran-Vijay Raghav
6.	RERA registered/ not registered and validity status	Registered Registered vide no. 150 of 2017 dated 28.08.2017 Valid upto 31.07.2022
7.	Unit no.	G-001, Ground floor (as per BBA page 42 of complaint)
8.	Unit area admeasuring	2570 sq. ft. (as per BBA page 42 of complaint)
9.	Builder buyer agreement	30.06.2023 (page 38 of complaint)
10.	Possession Clause	7.1 Possession <i>The Company and Allotteesi agree and understand that timely payment of installments by the Allottees) as per Payment Plan and timely delivery of possession of the</i>

		<i>Unit alongwith parking fid applicable) to the Allottee(s) are the essence of the Agreement. The Company assures to hand over possession of the Unit alongwith parking (if applicable) as per agreed terms and conditions on or before 31-Jan-2026, however upon receiving the entire payment of Sale Price and other charges as per this Agreement unless there is delay due to "force majeure, Court orders, Government policy/guidelines, decisions, refusal or withdrawal or cancellation or withholding of grant of any necessary approvals by any authority for the said Project for any reason other than the noncompliance by the Company, non-availability of necessary infrastructure facilities viz. roads, water, power, sewer lines to be provided by government for carrying out development activities, strikes, lock out and industrial disputes affecting the regular development of the real estate project. If, however, the completion of the Project is delayed due to the above conditions then the Allottee(s) agrees that the Company shall be entitled to the extension of time for delivery of possession of the Unit.....</i>
11.	Due date of possession	On or before 31.01.2026 (As per clause 7.1 of buyer agreement)
12.	Total sale consideration	Rs.80,00,000/- (as per BBA page 43 of complaint)
13.	Amount paid by complainants	Rs.82,88,621/- (as alleged by complainants page 12 of complaint)
14.	Occupation certificate	13.01.2023
15.	Offer of possession	01.07.2023 (page 85 of complaint)

B. Facts of the complaint:

3. That complainants have applied for the allotment of an apartment in the project known as Aqua Front Tower being developed in Central Park Flower Valley, Village Dhunela, Sohna Road, Gurgaon and paid an amount of Rs. 5,00,000/-. In pursuance of said application, complainants had been allotted an apartment

bearing no. G-001 admeasuring carpet area of 122.35 square meters and super area of 238.76 square meters on ground floor in tower G, Aqua Front Tower, Central Park Flower Valley, Village Dhunela Sohna Road, Gurgaon.

4. That the total price for the said unit, was agreed as Rs. 80,00,000/- including the booking amount so paid. Complainants had booked the said unit directly with respondent and had opted for the down payment plan.
5. That the agreement for sale of the said unit was executed between parties on 30.06.2023 which was duly registered before the joint sub- registrar Sohna at vasika no.44077 dated 30-06-2023.
6. That the subsequent to the execution of the agreement of sale of the said unit, respondent no. 1 issued a letter of offer of possession for the said unit on 01.07.2023 to complainants wherein respondent no. 1 had acknowledged the receipt of the entire sale consideration from complainants. Accordingly, respondent no. 1 had offered the possession of the apartment bearing number G-001 in tower number G on ground floor in Aqua Front Tower at Central Park flower Valley, Sohna in pursuance of the executed agreement for sale.
7. That complainants also paid an amount of Rs 1,25,000/- as interest free maintenance non-refundable security deposit on 03.07.2023 through NEFT 318413081413. They had also made an advance payment of Rs. 160,121/- only towards the maintenance charges through MOB/TPFT/RAJKUMAR/917010021329067 on 04.07.2023.
8. That in an apparent act of cheating, fraud, and an act which is completely illegal and unheard of, respondent unilaterally and without the notice, knowledge and consent of complainants transferred an amount of Rs.80,00000/- in the bank account of complainants on 17.07.2023.

9. That apart from the above mentioned amount an amount of Rs.2,85,121/- was credited to the account of complainants from M/s Crystal Town Hospitality services pvt. Ltd. i.e., respondent no 2.
10. That facing above mentioned situation and not knowing why the amounts were credited to the account of complainants, emails were issued by complainants to respondent no.1 as well as to M/s Crystal town hospitality services private limited on 05.08.2023 with a request that explanation be offered as to why the amounts were credited to the accounts of complainants. Even though it was a longshot, yet the emails were bonafidely got issued by complainants. However, considering the unprofessional, illegal and dishonest conduct on respondents' part which has become apparent by the events stated in this complaint, no response was sent to the said emails. Thereafter complainants sought legal advice and the matter was thought over exhaustively and finally apparent act of fraud committed by respondent came to the fore, whereby it became apparent that a fraudulent act has been committed by respondent in trying to grab valuable property of complainants.
11. That complainants have always been ready and willing to perform their part of the agreement by getting the sale deed of the said property executed and registered in their favour and there was no reason or occasion for respondent to refund the amounts which had been paid by complainants towards the sale consideration of the said unit. The complainants had never made any request to refund the amounts. Furthermore, the agreement for sale was neither cancelled nor otherwise terminated.
12. That the agreement in question still subsists and still remains enforceable. There has not been a single oral or written communication between complainants and respondents in the form of messages et cetera whereby there may be any eventuality regarding the cancellation of the agreement and for

refund of the amounts which complainants had paid. Illegally and unilaterally respondents transferred the said amount with a motive of avoiding the performance of its part of the contract. Such act is completely against the law. Respondents have absolutely no authority or right to unilaterally transfer the amount in question under untenable premise of creating false evidence of cancellation of the agreement. The contract still subsists and can be enforced against respondents.

13. That by means of the present complaint, complainants request Authority to direct the respondent to perform its part of the contract and handover the actual physical possession of the said Unit to complainants, as well execute and get registered the sale deed of the said unit.
14. That the sale consideration which had been paid by complainants to respondents, which still holds good and which was illegally and unilaterally refunded by respondent, was sent by complainants to respondents vide following cheque along with a legal notice dated 02.09.2023, bearing no 000665 dated 01.09.2023. Said notice was duly received respondent. The original cheque is in custody and possession of the respondents. The complainants undertake to present new cheques of all amounts, in case the previous cheques lapse by time.
15. That even after receiving of said notice along with cheques of Rs 80,00,000/- neither of the respondents came forward to hand over possession nor for execution of sale deed.
16. That in view of the aforesaid facts, the complainants have been left with no other option but to approach the Authority for adjudication of the matter is in issue. Hence the complaint.

C. Relief sought by the complainants:

17. The complainants have sought the following relief(s):

- i. Direct the respondent to give possession of the unit in question along with delayed possession.
 - ii. Direct the respondent to execute sale deed in favour of complainants.
18. 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.

19. That the complainant-Mr. Raj Kumar was an employee of the respondent no. 1 company as president-project. Mr. Raj Kumar had applied for employment at the respondent no. 1 company in pursuance thereof an appointment letter dated 01.07.2021, was issued to the complainant. In due consideration of the services rendered by Mr. Raj Kumar substantial increments were provided by the answering respondent from time to time.
20. That in the financial year starting from April 2023, in consideration of continued services of the complainants, Mr. Raj Kumar, with the respondent no. 1 company and on the assurances by Mr. Raj Kumar to continue being associated with the respondent no. 1 company for another 3 years, the answering respondent offered a substantial hike amounting to approximately 50% of the CTC along with the offer to purchase an apartment bearing no. G-001 admeasuring tentative carpet area of 1317 sq. ft. at a huge one-time discount rate with the net total sale consideration of Rs. 80,00,000/-. The total sale consideration for the said unit offered to the complainants in pursuance of his assurances to continue his services with the respondent no. 1 was at a more than 50% discount on the sale price of the unit as the same is quite evident from the apartment buyer agreement for the unit adjacent to the said unit.
21. That at the time of allotment made in favour of the complainants, the prevailing market rates of the similar sized apartments in the same project sold by the respondent no. 1 was approximately at rupees two crores but, such huge one-

time discount and increment was offered to the Mr. Raj Kumar specifically on his assurances that he shall not resign and continue to be associated for further period of 3 years with the answering respondent company. The complainant no. 1 despite having his own house in Gurgaon accepted the offer of the respondent no. 1 company to avail the huge discount and take the said unit.

22. That even at the time of allotment the complainant-Mr. Raj Kumar was well aware that the allotment on such discounted rate was solely on the basis of the representation/assurances that the Mr. Raj Kumar shall continue to be associated with and/or render services to the respondent no. 1 and in case the complainant-Mr. Raj Kumar resigns or leaves the services of the respondent company collaterally the allotment of the said unit and subsequent apartment buyer agreement shall stand cancelled immediately, and all amounts whatsoever received against the said unit shall be refunded due to violation of the mutually agreed terms and conditions between the parties.
23. That since inception the complainant - Mr. Raj Kumar agreed to take the allotment of the said unit at such discounted prices with clear understanding that in case the complainant resigns and opts not to continue further with the answering respondent company, the allotment and agreement for sale shall stand terminated and all amounts paid shall be refunded back to the complainant.
24. That at the time of offer of the said unit by the respondent no. 1 in consideration the representations of the complainant-Mr. Raj Kumar as mentioned above, the complainant-Mr Raj Kumar was aware of the market rates of the said unit, which was around 2.5 times lesser than the prevailing market price and it is only for this reason that the complainants had accepted the offer to continue with his services and had entered into a understanding with respondent no. 1

that he shall continue his services with the answering respondent for next 3 years.

25. That the complainant-Mr. Raj Kumar being the employee of the respondent no. 1 company intentionally had jointly applied for booking of the said unit along with his wife and promptly paid the booking amount of Rs. 5,00,000/- on 25.05.2023. However, the respondent no. 1 company being unaware of *malafide* intention of the complainant-Mr. Raj Kumar that he would breach the mutual understanding arrived between them and would resign upon taking the allotment at such huge discounted price, affirmed the allotment of the complainants.
26. Thereafter, on 06.06.2023, respondent no. 1 post believing the assurances called upon the complainants for registration of the agreement for sale and upon receiving such intimation the complainants with an intent block the booking of the apartment at such discounted rates so as to unjustly enrich themselves, paid an amount of Rs. 30,00,000/- and Rs. 40,00,000/- respectively, on 13.06.2023 and further fixed 30.06.2023, date for registration of the agreement for sale. However, to the utter shock of the respondent no. 1, despite the respondent no. 1 having fulfilled and delivered on its end of the understanding, Mr. Raj Kumar after confirmation of the allotment of the unit and huge increment in the CTC and despite the clear mutual understanding between the parties, submitted resignation letter dated 14.06.2023.
27. That the nefarious intention of the complainant is evident from the abovementioned series of facts that they rushed to make all payments within a span of 15-30 days without any demand raised by the answering respondent no. 1. The complainants were attempting to ensure that they pay reasonably good amount prior to the eventual resignation of complainant no. 1 to ensure that they get undue advantage on the basis of their false representations and

assurances. Further, morally the complainant no. 1 himself should have surrendered the said unit and should not have paid further amounts even after his resignation from the services of respondent no. 1. The complainant no. 1 never informed to the CRM team about the terms of allotment of the said unit as agreed between the complainant no. 1 and the respondent no. 1 and induced the CRM team to issue the allotment letter in the routine manner being done by CRM team without mentioning the agreed terms of allotment of the said unit, being that the said allotment of the unit was a conditional one as narrated above.

28. That the complainant no. 1 in order take wrongful gain concealed the terms of the allotment of the said unit being conditional as mentioned hereinabove and did not disclose the factum of his resignation to the sales and CRM team and managed to get the agreement for sale executed and registered on 30.06.2023 after having submitted his resignation letter with the HR department of respondent no. 1. Similarly, the complainant with *malafide* intention immediately after getting the agreement registered approached the CRM team on 01.07.2023, got issued the offer of possession of the said unit by depositing the balance amount in the office of the CRM team of the answering respondent company without disclosing about the resignation to the CRM team and terms of the allotment of the said unit as agreed with the respondent no. 1 being that the said unit would stand cancelled in case he resigns without completing 3 years of his services with the respondent no. 1.
29. That the allotment made in favour of the complainants was made at a one-time discounted rate offered only on the basis of the assurances and representations that Mr. Raj Kumar was agreeable to continue employment with the answering respondent company for further 3 years. Despite being aware of the same the complainants intentionally to unjustly enrich themselves made false

- assurances and violated the terms, conditions and understanding for allotting the said unit.
30. That it is pertinent to note that even as per the apartment buyer agreement dated 30.06.2023, the company i.e. respondent no. 1 herein is entitled to cancel the allotment of the said unit if such allotment has been obtained through misrepresentation and concealment or suppression of any material fact.
 31. That upon receiving such abrupt resignation, the answering respondent company took time and after rounds of discussions with the complainant-Mr. Raj Kumar accepted his resignation on 15.07.2023 and consequently the said allotment stood cancelled since the allotment was made only on the basis of the representations of Mr. Raj Kumar which were no longer subsisting. In terms of the understanding between the parties, on account of the same the answering respondent company herein had already refunded entire amount received from the complainants immediately within 2 days i.e., on 17.07.2023 via RTGS in the bank accounts of the complainants and the agreement for sale stood terminated as per the understanding between the parties and as provisioned in clause 9.5 of the agreement. The complainants were thus left with no right, title or interest in the said unit.
 32. That in the instant case the relation between the respondent no. 1 and complainant namely Mr. Raj Kumar is that of an employer and employee and not a builder-allottee. As elucidated hereinabove in the brief background the allotment in favour of the complainant was made on account of the appraisal and benefits which the respondent no. 1 wished to grant to the complainant upon assurances of Mr. Raj Kumar being associated with the answering respondent company for next 3 years from 2023.
 33. That in case of any dispute arising between the respondent no. 1 and the complainants ought to have been adjudicated before the labour court and not

before this Ld. Authority. Moreover, even the Act of 2016, does not provide for any provision to adjudicate upon the dispute arising between an employer-employee and the Authority is not dressed with the powers to adjudicate upon the present complaint under reply.

34. That the complainant no. 1 herein in breach of the terms, mutual understanding and requisite conditions of allotment had resigned from the office of the respondent no. 1 on 14.06.2023. However, the resignation of the complainant no. 1 was accepted by the answering respondent company on 15.07.2023.
35. That immediately after accepting the resignation of the complainants, the respondent no. 1 herein had refunded the amount of Rs. 80,00,000/-, received from the complainant on 17.07.2023 as per the understanding between parties and clause 9.5 of the agreement.
36. That in view of the entire amount being refunded, the complainants no longer have any rights, title or interest to the said unit and the present complaint is not maintainable.
37. That the said unit had been cancelled and the amounts paid and duly received by complainants have been refunded and the agreement for sale stands terminated with the consent and understanding of complainants and the same had been agreed between the parties at the time of accepting the resignation of complainant no. 1. The complainants sent a legal notice dated 02.09.2023 to the respondent no. 1, which was a matter of shock and surprise that the legal notice has been served which is full of false, baseless allegations and misrepresentations.
38. That it is quite evident from the above facts and events that complainants have concealed the true facts. Further it is quite clear from the acts and conducts of complainants that they had not only made false assurances and representations to the respondent no. 1 but had since the inception proceeded under *malafide*

intent of cheating and defrauding the respondent no. 1 to unjustly enrich themselves by wrongful gains.

39. That the complainants herein, have suppressed the above stated facts and have raised this complaint under reply upon baseless, vague, wrong grounds and have misled the Authority for the reasons stated above. None of the reliefs as prayed for by the complainants are sustainable before the Authority and in the interest of justice.
40. Hence, the present complaint under reply is liable to be dismissed for wasting the precious time and resources of the Authority. The present complaint is an utter abuse of the process of law, and hence deserves to be dismissed.
41. All other averments made in the complaint were denied in toto.
42. 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 based on these undisputed documents made by both the parties.
43. The authority issued a notice dated 28.11.2023 to the respondents by speed post and also on the given email address at rajkumar.u23@gmail.com, customercare@centralpark.in. The delivery reports have been placed in the file. The counsel for the respondent no. 2 neither put in appearance nor filed a reply to the complaint within the stipulated period. Accordingly, the authority is left with no other option but to struck off the defence of the respondent no.2 and proceed ex-parte against the respondent no.2 and decide the complaint on the basis of documents and pleadings filed by the complainants and respondent no. 1.

E. Jurisdiction of the authority:

44. 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

45. 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

46. 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 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.

47. 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 relief sought by the complainants.

F.1 Direct the respondent to give possession of the unit in question along with delayed possession.

48. In the present complaint, the grievance of the complainants is that the respondent has failed to handover the physical possession and has refunded the paid-up amount through RTGS on 17.07.2023 without the consent of the

complainants and hereby through the present complaint the complainants are seeking physical possession of the subject unit and interest for delay in handing over possession.

49. The counsel for the respondent during the proceedings dated 20.08.2024 pleaded that the complainant Mr. Raj Kumar was an employee of the respondent no. 1 Company as president-project. In the financial year starting from April 2023, in consideration of continued services of the complainant, Mr. Raj Kumar, with the respondent no. 1 and on the assurances by Mr. Raj Kumar to continue being associated with the respondent no. 1 company for another 3 years, the answering respondent i.e., respondent no.1 offered a substantial hike amounting to approximately 50% of the CTC along with the offer to purchase an apartment bearing No. G-001 admeasuring tentative carpet area of 1317 sq. ft. at a huge one-time discount rate with the net total sale consideration of Rs. 80,00,000/-. Further the respondent took a plea that complainant-Mr. Raj Kumar was well aware that the allotment on such discounted rate was solely on the basis of the representation/assurances that Mr. Raj Kumar shall continue to be associated with and/or render services to the respondent no. 1 and in case the complainant-Mr. Raj Kumar resigns or leaves the services of the respondent company collaterally the allotment of the said unit and subsequent apartment buyer agreement (if executed) shall stand cancelled immediately, and all amounts whatsoever received against the said unit shall be refunded. The respondent after discussions with the complainant-Mr. Raj Kumar accepted his resignation on 15.07.2023 and consequently the said allotment stood cancelled and refunded entire amount received from the complainants immediately within 2 days i.e. on 17.07.2023 via RTGS in the bank accounts of the complainants and the agreement for sale stood terminated as per the understanding between the parties. Further stated that the due date of delivery

of possession is 31.1.2026 as per clause 7.1 of the BBA dated 30.6.2023 but the complainant has filed the present complaint on 24.11.2023 hence no cause of action arise yet and the complaint is pre-mature.

50. On contrary the counsel for the complainants' states that the complainants are the original allottee as per clause 2(d) of the Act, 2016. Further, buyer agreement was executed between the parties on 30.06.2023 and the respondent has allotted unit number G-001 ground floor, measuring 2570 sq. ft. for a consideration amount of Rs. 80,00,000/-. The complainants have already paid Rs.82,88,621/- to the respondent which is more than total consideration. Therefore, the plea of the counsel for the respondent is not true. He stated that the respondent cannot cancel the unit of the complainants when the BBA has been executed with the complainants and the full amount has already been paid. There were no terms and conditions in the BBA that the complainant no.1 was an employee of the respondent and the discount is being given only if he continue, in the services of the respondent. The amount remitted in bank account of the complainant through RTGS on 17.07.2023 was without consent of the complainants. Thereafter, the complainants filed the present complaint on 24.11.2023 seeking possession of the subject unit and delay possession charges and in such a way the present complaint is maintainable.
51. The Authority, after careful consideration of the documents placed by the parties and submissions made, finds that the builder buyer agreement was executed between the parties on 30.06.2023 and complainants were allotted a unit number G-001 ground floor, measuring 2570 sq. ft. against a sale consideration of Rs. 80,00,000/- and the complainants duly paid Rs. Rs.82,88,621/- to the respondent. Infact, the respondent sent a letter for offer the possession of the subject unit to the complainants on 01.07.2023 after

obtaining occupation certificate from the competent Authority on 13.01.2023. Subsequently, the respondent unilaterally remitted the amount paid by the complainants through RTGS on 17.07.2023 after certain deductions. However, no cancellation letter was issued by the respondent citing any default in payment or any breach of agreement by the complainants and no documents or pleading has been made by either party wherein the complainants sought refund of the paid-up amount.

52. So far as the pleadings made the respondent regarding the complainant no.1 being an employee of the respondent no. 1 as president-project who was offered a consideration of a substantial hike amounting to approximately 50% of the CTC along with the offer to purchase of the subject unit at a huge one-time discount rate with the net total sale consideration of Rs. 80,00,000/- for continuing the services with the respondent no. 1 and on the assurances by complainant no.1 to continue being associated with the respondent no. 1 for another 3 years are concerned no such documentary evidence/letter of assurance made by the complainants or any agreement executed between the parties for proving continuing services for another three years to the respondent no.1 has been placed on record by the respondent. Therefore, in view of the above findings the action of refunding the paid-up amount of the complainants without any cancellation letter, refund request smacks of abuse of the dominant position of the respondent. Hence, the 'cancellation/termination' is bad in eyes of law & is hereby set aside and unit is restored in favour of the complainant/allottees.
53. Lastly regarding for the delay possession charges sought by the complainants. As, per the clause 7.1 of apartment buyer's agreement the possession of the subject was to be hand over to the complainant/allottees on or before 31.01.2026. The said clause is reiterated below:



"Clause 7.1

*The Company and Allottees agree and understand that timely payment of installments by the Allottees) as per Payment Plan and timely delivery of possession of the Unit alongwith parking (if applicable) to the Allottees) are the essence of the Agreement. The Company assures to hand over possession of the Unit alongwith parking (if applicable) as per agreed terms and **conditions on or before 31-Jan-2026**, however upon receiving the entire payment of Sale Price and other charges as per this Agreement unless there is delay due to "force majeure, Court orders, Government policy/ guidelines, decisions, refusal or withdrawal or cancellation or withholding of grant of any necessary approvals by any authority for the said Project for any reason other than the noncompliance by the Company, non-availability of necessary infrastructure facilities viz. roads, water, power, sewer lines to be provided by government for carrying out development activities, strikes, lock out and industrial disputes affecting the regular development of the real estate project. If, however, the completion of the Project is delayed due to the above conditions then the Allottee(s) agrees that the Company shall be entitled to the extension of time for delivery of possession of the Unit....."*

54. By virtue of clause 7.1 of the buyer's agreement executed between the parties, the possession of the subject apartment was to be delivered on or before 31.01.2026. The authority is satisfied that the respondent has already obtained Occupation Certificate from the competent Authority in respect of the said unit on 13.01.2023 which is prior to the due date of handing over possession as per the terms of the buyer's agreement executed inter se parties and offer of possession (01.07.2023) was made much before the due date of possession. Therefore, keeping in view the aforesaid factual and legal provisions, since there is no delay on part of the respondent no.1 in handing over the possession of the allotted unit to the complainants, therefore, no case of delay possession charges is made out. Thus, no direction to this effect can be given at this stage.
55. The respondent no.1 has obtained the occupation certificate from the competent authority on 13.01.2023 and offered the possession of the allotted unit vide letter dated 01.07.2023. As per Section 19(10) of Act of 2016, the allottees are under an obligation to take possession of the subject unit within 2

months from the date of receipt of occupation certificate. The complainants are directed to take the possession of the allotted unit after making payment of outstanding dues if any alongwith the amount already refunded by the respondents i.e., Rs. 82,88,621/-, within a period of 2 months.

56. The respondent no.1 shall handover the possession of the allotted unit as per specification of the buyer's agreement entered into between the parties.

F.II Direct the respondent to execute the sale deed.

57. The complainants are seeking relief of execution of conveyance deed. Clause 10 of the buyer's agreement provides for 'Conveyance of the said unit/plot' and is reproduced below:

Clause 10. CONVEYANCE DEED:

"10.1 STAMP DUTY AND REGISTRATION CHARGES

The stamp duty, registration fee/charges and other expenses to be incurred at the time of execution of the Conveyance Deed in pursuance to this Agreement to Sell shall be borne by the Purchaser. The Purchaser shall be fully responsible for paying any deficient stamp duty and other charges to the government authorities. The Purchaser also undertakes to pay without demur any increase in stamp duty/registration charges as may be effected by the government even id such an increase takes place after the Purchaser has paid to the Seller all the dues/charges/fees etc. under this Agreement. Similarly, if there is any decrease in the stamp duty/registration charges, the same shall be paid by the Seller to the Purchaser."

58. The authority has gone through the conveyance clause of the agreement. A reference to the provisions of section 17 (1) of the Act is also must and it provides as under:

Section 17: - Transfer of title

17(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate


59. The respondent no.1 is under an obligation as per section 17 of Act to get the conveyance deed executed in favour of the complainants. As delineated hereinabove, the occupation certificate in respect of the said project was granted on 13.01.2023 by the competent authority. Thus, the respondent no.1 is directed to execute the conveyance deed upon payment of outstanding dues, if any in terms of BBA, and requisite stamp duty by the complainants as per norms of the state government as per section 17 of the Act failing which the complainants may approach the adjudicating officer for execution of order.
60. Upon perusal of the documents and pleadings made by the parties the Authority of the view that no cause of action arises against the respondent no. 2 and no relief has been sought against the respondent no. 2. Hence, in view of the above no findings and directions can be issued with respect to the respondent no.2.

G. Directions issued by the Authority:

61. Hence, the Authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under section 34(f) of the Act of 2016:
- The respondent is directed to restore the unit allotted to the complainants within 60 days and deliver the possession of the allotted unit to the complainants complete in all aspects as per specifications of buyer's agreement within 30 days after receiving the consideration amount already refunded by the respondents to the complainants i.e., Rs. 82,88,621/- as the occupation certificate in

respect of the project has already been obtained by it from the competent authority.

- ii. The respondent no.1 is directed to execute the conveyance deed upon payment of outstanding dues, if any in terms of the BBA and requisite stamp duty by the complainants as per norms of the state government as per section 17 of the Act with 3 months.
 - iii. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement.
62. Complaint stand disposed of.
63. Files be consigned to the Registry.


Ashok Sangwan
(Member)


Arun Kumar
(Chairman)


Vijay Kumar Goyal
(Member)

Haryana Real Estate Regulatory Authority, Gurugram
29.10.2024

HARERA
GURUGRAM