

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

Complaint no. : 1067 of 2024  
Date of filing complaint : 18.03.2024  
First date of hearing : 22.05.2024  
Date of decision : 14.05.2024

1.Vineet Gupta

2.Ritu Agarwal

**Both Residents of:** - Subhash Nagar, Edgah Road,  
Near P.A.C., Jwalapur, Haridwar, Uttarakhand-  
249407

**Complainants**

Versus

M/s Shine Buildcon Private Limited

**Registered office:** H-334, Ground Floor, New  
Rajinder Nagar, New Delhi

**Corporate office:** Plot No. 281, Udyog Vihar,  
Phase-II, Gurugram

**Respondent**

**CORAM:**

Shri Ashok Sangwan

**Member**

**APPEARANCE:**

Mr. Siddharth Karnawat (Advocate)

Mr. Manu Jain (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:

Sr. No.	Particulars	Details
1.	Name of the project	"70 Grandwalk", Sector 70, Gurugram
2.	Project area	2.893 acres
3.	Nature of the project	Commercial Complex
4.	DTCP license no. and validity status	34 of 2012 dated 15.04.2012 valid upto 14.04.2020
5.	Name of licensee	Shine Buildcon
6.	RERA Registered/ not registered	28 of 2017 dated 28.07.2017 valid upto 30.06.2022
7.	Allotment Letter	24.04.2015 (Page no. 29 of complaint)
8.	Date of execution of BBA	29.07.2015 (Page no. 32 of complaint)
9.	Date of approval of building plans	03.05.2013 (Taken from another file of same project i.e., 5702 of 2023 titled as "Anisha versus Shine Buildcon Private Limited")
	Date of approval of revised building plans	01.09.2016 (Page no. 109 of complaint)
10.	Unit no.	B-210, 2 <sup>nd</sup> Floor (Service Apartment) 371 Sq. Ft. (Super Area) (BBA at page no. 34 of complaint)
11.	Possession clause	<b>Clause 13. POSSESSION AND HOLDING CHARGES</b> (ii) Subject to Force Majeure, as defined herein and further subject to faithful discharge of obligations by the Allottee under the terms and conditions of this Agreement and not having defaulted under any provision(s) of this Agreement including but not to the timely payment of all dues and charges including the

		<p>total Sale Consideration, registration charges, stamp duty and other charges and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the Company proposes to offer the possession of the said Shop to the Allottee within a period of 42 months from the date of signing of this agreement or approval of the Building plans, whichever is later ("Commitment Period"). The Allottee further agrees and understands that the Company shall additionally be entitled to a period of 6 (Six month) ("Grace Period"), after the expiry of the said Commitment Period to allow for unforeseen delays beyond the reasonable control of the Company.</p> <p><b>[Emphasis supplied]</b></p> <p>(As per BBA at page no. 54 of complaint)</p>
12.	Due date of possession	<p>29.07.2019</p> <p>(Calculated to be 42 months from date of execution of buyer's agreement, being later plus an unqualified grace period of 6 months)</p>
13.	Total Sale Consideration	<p>Rs. 47,97,516/-</p> <p>(As per BBA at page no. 35 of complaint)</p>
14.	Amount paid by the complainants	<p>Rs. 17,04,297/-</p> <p>(Statement of accounts dated 23.04.2024 at page 34 of reply)</p>
15.	Occupation Certificate	<p>10.10.2023</p> <p>(Page 27 of reply)</p>
16.	Offer of Possession	<p>15.10.2023</p> <p>(Page 30 of reply)</p>

### B. Facts of the complaint:

3. The complainants have made the following submissions: -

- That in the year 2014-15, the respondent through various brochures and advertisements, widely promoted, marketed and advertised its commercial project named 'Tapasya 70 Grand Walk' located at Sector-70, Gurgaon, Haryana as a premium commercial space which was advertised to be the epicentre of shopping, eateries and various other attractions. The respondent assured timely construction of the project and widely

promoted that the possession of the shops/units in the project shall be delivered within 4 years i.e., by 2019-2020.

- b) That the complainants while believing on the said assurances and promises made by the respondent through various brochures and advertisements enquired and decided to purchase a commercial unit in the project. Thereafter, the complainants made payment of Rs. 3,16,142/- on 09.02.2015 & Rs. 3,16,664/- on 10.04.2015 towards booking of a unit in the project and subsequently, vide allotment letter dated 24.04.2015 the respondent allotted a commercial unit/shop to the complainants in the project bearing no. B-210 and having a super area of 371 sq. ft.
- c) That subsequently towards purchase of the Unit, a buyer's agreement dated 29.07.2015 was entered between the parties. The agreement was filled with one-sided clauses which directly favours the respondent and evidently puts the complainants at severe disadvantage. However, as the complainants by that time had already paid substantial amount of money towards the unit to the respondent, therefore, any dispute at that stage would have led to forfeiture of the hard-earned money of the complainants and hence, due to the aforesaid reason, the complainants were forced to sign on the dotted lines of the agreement.
- d) That the one-sided nature of the agreement wherein clauses which are highly favourable to the respondent can be evidenced from the fact that in case of delay in payment of instalments by the allottee, the complainants were imposed with the penalty as per clause 7 (iii) of the agreement which provides that *"the Allottee shall be liable to pay interest on every delayed payment, at the rate of 20% per annum compounded quarterly from the date that it is due for payment till the date of actual payment thereof"*. However, on the other hand, in case of delay in delivering the possession of the unit to the complainants, the respondent



is merely liable to pay a meagre amount of delay compensation as per clause 13(ii) of the agreement which provides that *"...if the Company fails to offer possession of the said Shop to the Allottee by the end of the Grace Period, it shall be liable to pay to the Allottee compensation calculated at the rate of Rs. 5 (Rupees Five Only) per sq. ft. of the Super Area ("Delay Compensation") for every month of delay until the actual date fixed by the Company for handing over of possession of the said Shop to the Allottee."* Further, it is also relevant to state herein that the above is just one of the instances and the agreement, which was craftily drafted by the respondent, is filled with such one-sided, arbitrary and unreasonable clauses which outrightly favour the respondent and put the complainants at a disadvantageous position.

- e) That the total consideration for the unit, as per Annexure – III of the agreement, is Rs. 32,85,669/- out of which, by September 2017, the complainants had already paid Rs. 21,53,221/- i.e. 65% of the total consideration to the respondent.
- f) That the respondent as per clause 13 (ii) of the agreement were obligated to complete the construction of the project and handover the possession of the unit to the complainants within 42 months from the date of the agreement or approval of the building plans, whichever is later. The agreement in the present case was executed between the complainants and the respondent on 29.07.2015. Further, as per the information available on the website of Directorate of Town and Country Planning (DTCP), the building plans for the project was first approved by the concerned authority vide Endorsement No. ZP-819/AD(RA)/2016/18521 dated 01.09.2016. Therefore, in accordance with the terms of the agreement, the promised date of possession by when the respondent was obligated to complete the construction of the

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project and deliver the possession of the unit to the complainants, was 42 months from 01.09.2016 (date of building plans approval) i.e. by 01.03.2020.

- g) That as per the terms of the agreement, the respondent was obligated to handover the possession of the unit to the complainants by 01.03.2020. However, it is an undeniable position that the respondent had offered possession of the unit to the complainants vide Offer of Possession letter dated 15.10.2023 i.e. after an apparent delay of 43.5 months from the promised/due date of possession as per the terms of the agreement entered between the parties.
- h) That despite delivering the possession of the unit after more than 43 months from the promised due date of possession, the respondent had merely offered 'Discount for Delay' of Rs. 70,490/- to the complainants as compensation which is very meagre when compared with the substantial delay of more than 43 months caused by the respondent in delivering the possession of the Unit, which was in contravention of the Act and Rules made thereunder.
- i) That along with the offer of possession letter dated 15.10.2023, the respondent also raised the demand of Rs. 16,21,196.56/- from the complainants and also raised certain frivolous charges which were never part of the agreement signed between the complainants and the respondent. The complainants were shocked to see that the respondent had only adjusted Rs. 70,490/- towards the 'Discount for Delay' which was totally arbitrary and was in total contravention to the Act & Rules made thereunder.
- j) That the complainants through email dated 26.10.2023 and vide various subsequent reminder email(s) dated 04.11.2023; 06.11.2023; 07.11.2023; 15.11.2023; 17.11.2023; 29.11.2023; 06.12.2023;

11.12.2023; 21.12.2023; 02.01.2024 and 04.01.2024 had contacted the respondent on its email id(s) i.e. customer70gw@gmail.com and 70gw@tapasyagroup.in and sought justification from the respondent for offering a meagre amount of Rs. 70,000/- against a delay of more than 43 months on the part of the respondent in handing over the possession of the unit. However, all the said email(s) of the complainants fell on deaf ears and the respondent have consistently failed to respond & address the genuine grievances of the complainants. Furthermore, the complainants also tried to contact one of the employees/authorized personnel of the respondent named 'Harpal Singh', however, the same was also to no avail.

- k) That the complainants issued a legal notice dated 06.01.2024 to the respondent and demanded delay penalty compensation towards the delay in handing over the possession of the unit allotted to the complainants in the project.
- l) That the respondent despite after receiving the said legal notice dated 06.01.2024 issued by the complainants neither paid the delay compensation amount demanded by the complainants nor issued any response to the said legal notice. Further, the respondent in sheer disregard to its statutory obligation under Section 18(1) of the Real Estate (Regulation and Development) Act, 2016 completely overlooked the demand for delay compensation made by the complainants and kept on demanding the due amount from the complainants.

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

- 4. The complainants have sought the following relief(s):
  - I. Direct the respondent to pay delay possession charges on the amount paid by the complainants at the prescribed rates from the due date of possession i.e., 01.03.2020 till 15.10.2023 i.e., the date when the actual physical possession is handed over by the respondent to the complainants.



- II. Direct the respondent to waive off and/or to not levy interest and/or penalty on the due amount payable by the complainants to the respondent promoter.
  - III. Direct the respondent not to charge any amount which is not part of the buyer's agreement dated 29.07.2015 entered between the complainants and the respondent.
5. 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.**

6. The respondent contested the complaint on the following grounds vide its reply dated 17.07.2024 and written submissions dated 15.04.2025:
- a. That the present complaint is not maintainable as the complainants have booked the shop in question and buyer's agreement dated 29.07.2015 was executed between the parties before coming into force of the relevant provision of the Real Estate (Regulation & Development) Act, 2016 and the Haryana Real Estate (Regulation & Development) Rules, 2017. The legal provisions have been authoritatively held to be prospective in operation and these do not apply retrospectively before coming into force w.e.f. 01.05.2017. Hence, no interest can be imposed upon the respondent under the provisions of Sections 12, 18 or 19 of the Act as the parties are bound by the terms and conditions agreed and contained in the Buyer's Agreement dated 29.07.2015 which was executed prior to coming into force of Sections 3-19 of the RERA Act/Rules. Hence the Hon'ble Authority has no jurisdiction to modify the terms and conditions of Buyer's Agreement dated 15.07.2015. This Hon'ble Authority has no power to re-write the contract between the parties.
  - b. That the complainants have no right to claim more than the amount for delayed possession as agreed between the parties as per Clause 13 (ii) of the buyer's agreement dated 29.07.2015.
  - c. That as per clause 13 (ii) of the buyer's agreement dated 29.07.2015, the complainants are entitled for compensation for delayed period, if any, @ Rs.



5 per sq. ft. of the super area for every month of delay until the actual date fixed by the company for handing over of possession of the shop to the complainants which was subject to force majeure.

- d. The total cost of the unit including taxes is Rs.38,16,802.56/- out of which the complainants have only paid an amount of Rs.21,95,606/- and Rs.16,21,196.56/- is still outstanding against the complainants. The respondent has already offered possession to the complainants.
- e. That as per Clause 13(iv) of buyer's agreement, the parties agreed that in case the completion of the said shop is delayed due to force majeure, then the commitment period, and/or grace period and/or extended delay period, as the case may be, shall be extended automatically to the extent of the delay.
- f. That the occupation certificate bearing memo no. ZP-819/JD(RA)/2023/33687 dated 10.10.2023 has been issued to the respondent by the competent authority. The complainants are under contractual obligation to clear their outstanding dues and take possession from the respondent.
- g. That the complaint filed by the complainants is bundle of lies and hence liable to be dismissed as it is filed without any cause of action. That the complainants had intentionally concealed the correct/complete facts from Authority. The complainants are raising false, frivolous, misleading and baseless allegations against the respondent with intent to make unlawful gains.
- h. That the respondent company launched a commercial project "70 GRANDWALK" situated Sector-70, Gurugram. The respondent owned the project land and had even obtained the license for the project under own name in due compliance in order and at par.
- i. That the respondent company with a good reputation had complied with all the statutory requirements and holds no litigations. The keeping in view the

interest of the allottee(s) at large the respondent had adopted customer centric policy and bears the cost escalations without sharing/passing the burden upon the allottees and had also refrained from making any such demands with respect to the cost escalations.

- j. That after being fully satisfied with specification and veracity of the project, the complainants applied for booking of commercial unit.
- k. That the respondent vide allotment letter dated 24.04.2015 was allotted a unit bearing no. B-210, second floor admeasuring super area of 371 sq. ft. (34.47 sq. mtr.) approximately.
- l. That as the development of the project was affected due to the Covid-19, and accordingly the respondent is entitled for a further extension of 6 months in due date of possession. The date of offering possession was to be calculated from the date of signing of the buyer's agreement and the respondent herein was entitled for extension for such period of delay caused due to force majeure being purely beyond the control of the respondent.
- m. That the respondent was committed to complete the construction of the project within the proposed timeline and till date had invested an amount approx. Rs.1,20,00,00,000/- towards completion of the project including both the land cost and construction related costs/expenditures. The respondent under bonafide had already paid EDC/IDC charges in full to the concerned department and on the contrary, the collection from the allottees of the project was only approximate Rs.45,00,00,000/-. The respondent has already spent more amount than collected from the allottees in completion of the project and even obtained occupation certificate from the concerned department which apparently proves that there was never any mala fide on the part of the respondent and there is no intentional delay in completion of the project. The respondent is not liable to pay any delayed charges to the complainants.

- n. That in accordance with the provisions of the real estate the respondent had even applied for registration of the said project with the Ld. Authority vide application dated 20.07.2017 and upon receiving the said application the Ld. Authority had granted registration to the respondent for the project in question vide registration no.28 of 2017 dated 28.07.2017 which was duly intimated to the complainant vide email dated 05.08.2017.
- o. That the respondent was committed to complete the development of the project and handover the possession within the proposed timelines. 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 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.
- p. That the development of project of the respondent was also adversely affected due to various orders of Hon'ble Supreme Court, National Green Tribunal, directions of Haryana State Pollution Control Board, Orders passed by Municipal Commissioner of Gurgaon, Environment Pollution (Prevention & Control) Authority for National Capital Region for varying period during the year 2017, 2018, 2019 and 2020. The various dates which affected the constructions of the project have been detailed as under:
- (i) The National Green Tribunal vide order dated 09.11.2017 completely prohibited the carrying on of construction by any person, any private or government authority in the entire NCR till the next date of hearing 17.11.2017 when the prohibition was lifted.
  - (ii) Haryana State Pollution Control Board, Panchkula had passed order dated 29.10.2018 in furtherance of directions of Environment Pollution (Prevention and Control) Authority dated 27.10.2018 whereby di-



recting all construction activities involving excavation, civil construction (excluding internal finishing/work where no construction material was used) to remain closed in Delhi and other NCR Districts from 1<sup>st</sup> to 10<sup>th</sup> November 2018.

- (iii) Commissioner, Municipal Corporation, Gurugram vide order dated 11.10.2019 prohibited construction activity from 11.10.2019 to 31.12.2019. On account of passing of the aforesaid order, no construction activity could have been legally carried out by the respondent and accordingly, construction activity had been completely stopped during this period.
- (iv) Again, Environment Pollution (Prevention & Control) Authority, for the National Capital Region vide its direction dated 01.11.2019 imposed complete ban on the construction activities in Delhi, Faridabad, Gurugram, Ghaziabad, Noida and Greater Noida until morning of 05.11.2019.
- (v) Hon'ble Supreme Court vide order dated 04.11.2019 in the W.P. (Civil) No. 13029/1985 M. C. Mehta vs Union of India & Ors.; directed for stoppage of all the constructions work till further order. The Hon'ble Supreme Court recalled the ban on construction work only vide order dated 14.02.2020.
- (vi) Ministry of Housing and Urban Affairs imposed Covid-19 Lockdown vide notification dated 28.05.2020 and complete 9 months extension had been granted.

- q. As per the calculations, the date to offer possession has to be extended by approximately 1.4 years. Subsequently in June, 2021, removal of the Covid-19 restrictions it took time for the workforce to commute back from their villages, which led to slow progress of the completion of project. Despite, facing shortage in workforce, materials and transportation, the respondent managed to continue with the construction work. The respondent also had to carry out the work of repair in the already constructed building and fixtures as the construction was left abandoned for more than 1 year due to Covid-19 lockdown. This led to further extension of the time period in construction of the Project.
- r. That while computing the date to offer possession, the grace period as agreed by the complainants under clause 13 shall also be considered. As the Hon'ble



Supreme Court in 'M/S Supertech Ltd. vs. Rajni Goyal, Civil Appeal No. 6649-50 of 2018', had rightly upheld that the grace period stated in the agreement shall also be considered.

- s. Thus, as per the agreement excluding the force majeure situations, the date to offer possession shall be 01.03.2020, after addition of the grace period as agreed by the complainants under Clause 13 (ii) of the agreement.
- t. That on 08.08.2022, after continuous efforts of respondent towards the completion of the project, the respondent informed the complainants that the mechanical, electrical, plumbing and other related services along with finishing work, trimix work and surface preparation in retail shops will be completed within 2-3 months. The respondent also stated that offer of possession will be provided within next 3-4 months and soon the complainants will be receiving the call letter for remittance of payment for the last instalment. The respondent also attached photographs showing the progress in the construction of the project.
- u. That the respondent had already issued and credited discounts of Rs.92,750/- and Rs.70,490/- to the allottees. If the complainants are entitled to any interest for the alleged delay in offer of possession, the said discounts amounting to Rs.1,63,240/- have to be adjusted in the same while calculating alleged delay possession charges.
- v. That the period for calculation of due date is to be reckoned w.e.f. 01.09.2016 that is w.e.f. approval of plans, as so admitted by the complainants in the complaint. Thus, the due date of possession comes out to be 01.09.2020 and not 01.03.2020 as being portrayed by the complainants.
- w. That the period w.e.f. 07.02.2023 till 10.10.2023 may be treated as zero period for calculation of delay, if any, as occupation certificate was applied on 10.10.2023 whereas same ought to have been received much earlier by

the department concerned. As such, delay is not on part of the respondent, but only on part of the concerned department.

7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submission made by the complainant.

**E. Jurisdiction of the authority:**

8. 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**

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be the entire Gurugram District for all purposes with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

**E. II Subject matter jurisdiction**

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

**Section 11(4)(a)**

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

**Section 34-Functions of the Authority:**

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

11. 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 the objections raised by the respondent:**

**F.I. Objection regarding jurisdiction of authority with respect to the buyer's agreement executed prior to coming into force of the Act.**

12. The respondent has contended that the authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the buyer's agreement executed between the parties prior to the enactment of the Act and the provision of the said Act cannot be applied retrospectively. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be rewritten after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)** decided on 06.12.2017 which provides as under:

"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project



*and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter.....*

122. *We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."*

13. Also, in appeal no. 173 of 2019 titled as **Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya**, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

14. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the agreements have been executed in the manner that there is no scope left to the allottees to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not



in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature. Hence, in the light of above-mentioned reasons, the contention of the respondent with respect to jurisdiction stands rejected.

**F.II Objections regarding force Majeure.**

15. The respondent-promoter has raised the contention that the construction of the unit of the complainants has been delayed due to force majeure circumstances such as orders passed by the Hon'ble NGT, Environment Protection Control Authority, and Hon'ble Supreme Court. The pleas of the respondent advanced in this regard are devoid of merit. The orders passed were for a very short period of time and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. Furthermore, the respondent should have foreseen such situations. Thus, the promoter respondent cannot be given any leniency on the basis of aforesaid reasons.
16. The respondent-promoter also raised the contention that, the Hon'ble Supreme Court vide order dated 04.11.2019, imposed a blanket stay on all construction activity in the Delhi- NCR region and the respondent was under the ambit of the stay order, and accordingly, there was next to no construction activity for a considerable period and other similar orders during the winter period 2017-2019. A complete ban on construction activity at site invariably results in a long-term halt in construction activities. As with a complete ban the concerned labours left the site and they went to their native villages and look out for work in other states, the resumption of work at site becomes a slow process and a steady pace of construction realized after long period of it. It is pertinent to mention here that buyer's agreement was executed between the parties on 29.07.2015 and as per the terms and conditions of the said agreement the due date of handing over of possession comes 29.07.2019 which is way before the abovementioned

orders. Thus, the promoter-respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

17. Further, the respondent-promoter has raised the contention that the construction of the project was delayed due to reasons beyond the control of the respondent such as COVID-19 outbreak, lockdown due to outbreak of such pandemic and shortage of labour on this account. The authority put reliance judgment of 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 which 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."*

18. In the present complaint also, the respondent was liable to complete the construction of the project in question and handover the possession of the said unit by 29.07.2019. The respondent is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to 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.

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

- G.I Direct the respondent to pay delay possession charges on the amount paid by the complainants at the prescribed rates from the due date of possession i.e., 01.03.2020 till 15.10.2023 i.e., the date when the actual physical possession is handed over by the respondent to the complainants.**

**G.II Direct the respondent to waive off and/or to not levy interest and/or penalty on the due amount payable by the complainants to the respondent promoter.**

**G.III Direct the respondent not to charge any amount which is not part of the buyer's agreement dated 29.07.2015 entered between the complainants and the respondent.**

19. All the above-mentioned reliefs sought by the complainants are being taken together as the findings in one relief will definitely affect the result of other relief and the same being interconnected.

20. In the present complaint, the complainants intend to continue with the project and are seeking possession of the subject unit and delay possession charges as provided under the provisions of Section 18(1) of the Act which 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,

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. Clause 13 of the apartment buyer agreement provides handing over of possession and is reproduced below:

"(ii) subject to Force Majeure, as defined herein and further subject to the Allottee having complied with all its obligations under the terms and conditions of this Agreement and not having defaulted under any provision(s) of this Agreement including but not limited to the timely payment of all dues and charges including the total sale Consideration, registration charges, stamp duty and other charges and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, **the Company proposes to offer the possession of the said Shop to the Allottee within a period of 42 months from the date of signing of this agreement or approval of the Building plans, whichever is later.** The Allottee further agrees and understands that the Company shall additionally be entitled to a period of 6 (six month) ("Grace period"), after the expiry of the said Commitment Period to allow for unforeseen delays beyond the reasonable control of the Company."

22. **Due date of possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within 42 months



from the date of execution of buyer's agreement and it is further provided in agreement that promoter shall be entitled to a grace period of six months. Therefore, the due date of possession comes out to be 29.07.2019 including grace period of six months being unqualified and unconditional.

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

The complainants are seeking delay possession charges. 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, *ibid*. 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]***

*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."*

24. The legislature in its wisdom in the subordinate legislation under the Rule 15 of the Rules, *ibid* 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.

25. 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., 14.05.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

26. The definition of term 'interest' as defined under Section 2(z) 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 —*

*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 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;"*

27. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 11.10 % by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.
28. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of buyer's agreement executed between the parties, the possession of the booked unit was to be delivered within 42 months with an additional grace period of 6 months from the date of execution of the agreement (29.07.2015) or date of approvals of building plans, whichever is later. Therefore, the date of execution of agreement being later, the due date of possession was calculated from the date of execution of agreement between the parties. Accordingly, the due date of possession comes out to be 29.07.2019. Occupation certificate was granted by the concerned authority on 10.10.2023 and thereafter, the possession of the subject unit was offered to the complainants on 15.10.2023. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject unit and there is

failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 29.07.2015 to hand over the possession within the stipulated period.

29. Section 19(10) of the Act obligates the allottees to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 10.10.2023. The respondent offered the possession of the unit in question to the complainants only on 15.10.2023, so it can be said that the complainants came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainants should be given 2 months' time from the date of offer of possession. These 2 month of reasonable time is being given to the complainants keeping in mind that even after intimation of possession practically they have to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession, i.e., 29.07.2019 till the expiry of 2 months from the date of offer of possession (15.10.2023) which comes out to be 15.12.2023.
30. It is pertinent to mention here that the respondent contended that it had provided discounts amounting to Rs.1,63,240/- (Rs.92,750/- + Rs.70,490/-) to the complainants and sought adjustment of this amount against any liability arising from delayed possession interest.
31. Upon perusal of the records and documents annexed with the complaint, it is observed that the discount of Rs.92,750/- was extended at the time of booking and forms part of the original payment plan, as seen at page 31 of the complaint. However, the discount of Rs.70,490/- is neither evident from

page 31 nor from page 112 of the complaint. Furthermore, neither of these discounts is shown to have been provided in lieu of delay compensation or as part of any specific agreement between the parties to offset delayed possession.

32. It is well established under the RERA framework that compensation or interest for delay in possession is a statutory liability imposed on the promoter under Section 18(1)(a) of the Act and is independent of any commercial discounts offered during booking. The discount granted as part of the purchase negotiation cannot be retrospectively adjusted against the statutory interest payable for delay in possession unless specifically agreed to by the allottees and recorded in writing.
33. Hence, the Authority is of the considered view that the respondent is not entitled to deduct or adjust the said discount amounts against the delayed possession interest payable to the complainants.
34. However, the rate of interest chargeable from the allottee 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 allottee, in case of default i.e., the delayed possession charges as per Section 2(zd) of the Act. The respondent is obligated not to charge anything from the complainants which is not the part of the buyer's agreement.
35. Further, the respondent is obligated to handover physical possession of the subject unit within 30 days from the date of this order as occupation certificate of the project has already been obtained by it from the competent authority.

**H. Directions issued by the Authority:**

36. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance with obligations




cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- I. The respondent is directed to pay delay possession charges to the complainants against the paid-up amount at the prescribed rate of 11.10% p.a. for every month of a delay from the due date of possession, i.e., 29.07.2019 till the date of offer of possession (15.10.2023) plus two months i.e., 15.12.2023, as per Section 18(1) of the Act of 2016 read with Rule 15 of the Rules, *ibid*. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per Rule 16(2) of the Rules, *ibid*.
- II. 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 allottee, in case of default i.e., the delayed possession charges as per Section 2(z a) of the Act.
- III. The respondent is directed to handover physical possession of the subject unit within 30 days from the date of this order as occupation certificate of the project has already been obtained by it from the competent authority.
- IV. The respondent is directed to issue a revised statement of account after adjustment of delayed possession charges, and other reliefs as per above within a period of 30 days from the date of this order. The complainants are directed to pay outstanding dues if any remains, after adjustment of delay possession charges within a period of next 30 days.
- V. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement.

37. Complaint stands disposed of.
38. File be consigned to the Registry.

Dated: 14.05.2025

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



**HARERA**  
**GURUGRAM**