

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

Complaint no. : 1216 of 2021
First date of hearing: 12.04.2021
Date of decision : 22.04.2025

1. **Col. Laxmi Narayan**

2. **Mrs. Saroj Achra**

Regd. Address at: R/O D-258, Vijay Veer Awas,
Kargill Apartments Sector-18A Dwarka, New
Delhi-110078

Complainants

Versus

M/s VSR Infratech Pvt. Ltd.

Regd. office: A-22, Hill View Apartments,
Vasant Vihar New Delhi-110057

Respondents

CORAM:

Shri Arun Kumar

Shri Vijay Kumar Goyal

Shri. Ashok Sangwan

Chairperson
Member
Member

APPEARANCE:

Mr. K.K Kohli (Advocate)

Ms. Shriya Takkar (Advocate)

Counsel for Complainants
Counsel for Respondent

ORDER

1. The present complaint dated 08.03.2021 has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the



Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name of the project	"114 Avenue", Sector 114, Gurugram, Haryana
2.	Project area	2.968 acres
3.	Nature of the project	Commercial Colony
4.	DTCP license no. and validity status	72 of 2011 dated 21.07.2011 Valid up to 20.07.2024
5.	Name of licensee	AMD Estate and Developers Pvt. Ltd
6.	RERA Registered/ not registered	Registered vide no. 53 of 2017 dated 30.09.2019
7.	Date of allotment of unit	29.07.2012 (Page 83 of the complaint)
8.	Unit no.	7A-06, 7 th floor, Tower B (Page no. 88 of the complaint)
9.	Unit area admeasuring	784.70 sq. ft. (Super area) (Page no. 88 of the complaint)
10.	Date of execution of space buyer agreement	12.10.2012 (Page no. 87 of the complaint)
11.	Date of construction	15.03.2012 [Page 28 of written submissions filed by the complainant on 03.04.2023]
12.	Possession clause	32 Possession



		<i>The company shall give possession of the said unit within 36 months of signing of this agreement or within 36 months from the date of start of construction of the said building whichever is later.</i> <i>[Page 97 of complaint]</i>
13.	Due date of possession	12.10.2015 [Note: calculated from the date of execution of the agreement dated 12.10.2012 being later.]
14.	Total sale consideration	Rs.52,71,615/- (As per on page 90 of complaint)
15.	Amount paid by the complainants	Rs.49,82,464/- (As per SOA attached with offer of possession dated 17.02.2021 on page 157 of complaint)
16.	Occupation certificate /Completion certificate	17.02.2021 (On page 149 of reply)
17.	Offer of possession	17.02.2021 (On Page 152 of reply)

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:
 - a. That in the year 2011, the Complainant was searching for a suitable Commercial Unit as per his standard and budget. The agents of the Respondent Company told the Complainant about the moonshine reputation of the company and the agents of the Respondent Company made huge representations about their project namely '114 Avenue' at Sector 114 Gurugram, Haryana.



- b. That being caught in the web of false promises of the agents of the Respondent Company, the Complainants filed the application form and booked a service apartment and initially paid a total amount of Rs. 7,00,000.00 through 2 cheques being Cheque no. 482262 dated 05.10.2011 and Cheque no. 335664 dated 10.10.2011.
- c. That on 13.04.2012, the Complainants made a payment of Rs. 3,05,810.00 vide cheque no. 335671 dated 29.02.2012 and the same was acknowledged by the Respondent Company vide receipt no. 000825 dated 13.04.2012.
- d. That on 03.07.2012, the Complainants made a payment of Rs. 5,02,905.00 vide Cheque no. 335675 dated 05.06.2012 and the same was acknowledged by the Respondent Company vide receipt no. 000958 dated 03.02.2012.
- e. That the Complainants were allotted a Commercial Unit no. 106 vide a Provisional Allotment Letter dated 29.07.2012 in the project '114 Avenue' unit no. 7A - 06 (hereinafter referred to as 'unit) measuring 784.70 Sq. Ft. (super area) in the aforesaid project of the developer for a total sale consideration of Rs. 52,71,809.00 including basic price of Rs. 49,02,806.00. The Complainants had by then made a payment of Rs. 15,08,715.00 towards registration and for obtaining allotment of the unit being approximately 30% of the total sale consideration.
- f. That the Space Buyer's Agreement (hereinafter referred to as "SBA") was executed with the Complainants on 12.10.2012. The Complainants having dreams of their own service apartment signed the SBA in the hope that they shall be delivered the Service



Apartment within 36 months from the date of signing the Agreement i.e., on or before 12.10.2015 as per Clause 32 of the SBA. The Complainants were also handed over one detailed payment plan attached with the Agreement, which was a Development Linked plan. It is worth mentioning that the Agreement was signed and executed on 12.10.2012, which was 12 months after the payment for booking of the said unit was made. The Complainants observed that clause for delay in completion of project may be included in the agreement vide letter No.40345/square/per/2012 dated 29.10.2012. That the Complainants made a payment of Rs. 4,70,000/- vide Cash on 15.02.2013.

- g. That the Complainants sent letter to the Respondents stating that they paid a sum of Rs. 37,54,338 till 10.05.2017 and requesting to know the status of assured return of 10% assured by the Respondent Company after completion of commercial project in December 2015 and leasing to Royal Orchid Hotels Ltd. as per Clause 23 and 24 of the SBA. The Complainants at the time of signing the SBA had been promised returns on the completion and thereafter leasing of the project to the Royal Orchid Hotels Ltd. However, the same was never achieved which led to the Complainants having missed returns on the investment of Rs. 49, 82,464.00 as per all the demands raised by the Respondent.
- h. That the Complainants made a payment of Rs. 3,43,819.00 vide Cheque no. 366808 dated 22.01.2018 in response to the demand letter from Respondent Company dated 12.01.2018. That the Respondent Company sent another demand letter as per building

plan and total demand till final possession of Rs. 12,90,791.00 which included IFMS, power backup and other charges as applicable. That the Complainants paid an advance of Rs. 5,00,000 vide cheque no. 366809 dated 27.02.2018 on the assurance by Mrs. Neha Dhawan, a representative of the Respondent Company that 12% interest shall be paid on the same.

- i. That between 2011 to 2018, as per the demands raised by the Respondent Company, based on the payment plan, the Complainants paid a sum of Rs. 44,82,464.00 towards the above-mentioned Unit against total demands of Rs. 52,71,615.00 raised by the Respondent Company from 2011 till 2018.
- j. That the Complainants sent another letter dated 12.01.2021 requesting the Respondents to return the payment of Rs. 5,00,000 made vide cheque no. 366809 dated 27.02.2018, towards the advance payments made and enquiring about delay in completion of project by 6 made years, how delay will be compensated and reminded about permanent address which is not adhered to by the Respondent Company at several occasions. Unfortunately, on regularly visiting the site, it was realized by the Complainant that the construction on the site was not as per the construction plan.
- k. The Complainants contacted the Respondent Company on several occasions and was in touch with the Respondent Company on a regular basis. The Respondent Company neither provided any satisfactory response to the Complainants regarding the status of construction nor stated defined date about the revised delivery of possession.

- l. That by then it was realized by the Complainants that his dream of owning a Commercial Unit of his own as per the delivery schedule committed in the Agreement and monetary returns are shattered as the Respondent Company was nowhere near the completion of the flat and that the Respondent Company had left no stone unturned to cheat the Complainant and extract money from their pocket repeatedly assuring that the Unit would be delivered as promised.
- m. That the Respondent Company on 17.02.2021 sent an offer of possession for the Commercial Unit after a delay of more than 5.5 years for Unit No. 7A-06 in 114 Avenue, Sector-114, Gurgaon. The letter detailed a demand of Rs. 18,72,289.74 on the offer of possession including IFMS of Rs. 1,17,705.00, ECC of Rs. 58,853.00, PBC of Rs. 1,09,858.00, ACC of Rs. 1,56,940.00, Late Payment/Interest Charges/Bounce charges due of Rs. 79,927.18, Administrative charges of Rs. 15,000.00, Advance Maintenance Charges for 18 months for Rs. 1,69,495.00, CGST @ 6% on BSP others of Rs. 34,213.00, SGST 6% on BSP+ others of Rs. 34,213.00, CGST @ 9% on PLC+ ECC PBC + ACC +Maintenance Charges of Rs. 45,913.00 and SGST @9% on PLC+ ECC + PBC+ ACC + Maintenance Charges of Rs. 45,913.00.
- n. That after losing all hope from the Respondent Company in terms of getting the interest on the delay in delivery period of more than 5.5 years and in terms of refusal to withdraw illegal demands like Advanced Maintenance Charges, Contingency Charges, Late, GST, Administrative Charges, etc. and having shattered the dreams of a proper and timely delivery of the flat as per the Buyer's

Agreement and the details provided in the brochure at the time of offering the flat for sale, the Complainants approached this Hon'ble Authority for redressal of his grievance.

- o. That the Respondent deliberately and with a mischievous intent tricked the investors including the Complainants through false promises and forced into paying up huge amounts to the Respondent. Deliberately committing absolute breach of the agreement and the promises and projections at the time of booking even though it formed the essence of the contract. Complete failure to keep the promised schedule of completion and delay without any valid reason whatsoever. Cornering the Complainant into entering into a one-sided agreement with the sole intention to extract monies from the Complainants.
- p. That the present Complaint sets out the various deficiencies in services, unfair and/or restrictive trade practices adopted by the Respondent in sale of their Units and the provisions allied to it. There is no parity in the remedies available to the Complainants and the Respondent showing biased and unfair trade practices of the Respondent.
- q. That the Complainants had no option but to accept the terms of the SBA without any negotiation because of the assurance given by the Respondent that they will stick to their assurances and promises. However, evidently, the Respondent has miserably failed in keeping their promises and assurances causing irreparable losses and injury to the Complainants. That such one-sided buyer agreements have been held to constitute unfair trade.



- r. Further, without having completion certificate and even occupation certificate, the offer of possession is invalid and therefore, the charges mentioned therein are illegal and unjustified. That the Respondent has therefore, even illegally sought payment of Rs. 1,56,940 for the contingency charges which are refundable on receipt of completion certificate. This in itself evidences the fact that completion certificate also has not been received by the Respondent and yet the Offer of Possession has been asked to be taken within 30 days after the offer of possession cum demand letter of 17.02.2021. Therefore, this act of the Respondent amounts to unjust enrichment and unfair trade practices undertaken to exploit the consumers.
- s. As per clause 32 of the Agreement, details of which are attached, the possession of the said unit is supposed to be delivered within 36 months from the date of signing of the said Agreement. Thus, the possession date is 12.10.2015. Therefore, the possession has been delayed by more than 5.5 years.
- t. As the Respondent has failed to offer possession by the due date, which is in violation of obligation of the Respondent under Section 11(4) (a) of the RERA Act, thus the Respondent is liable to pay interest at the rate prescribed i.e. State Bank of India's highest marginal cost of lending rate plus 2% on the amount paid by the 'Allottees for every month of delay from the due date of delivery of possession as per Section 18(1) of the proviso of the Real Estate (Regulation & Development) Act, 2016 read with rule 15 of the Haryana Real Estate (Regulation & Development) Rules, 2017.



- u. The Respondent Company's demand for 18 months of advance maintenance charges amounting to Rs. 1,69,495 to be paid by the Complainants is illegal and unjustified. That the Respondent's demand for exorbitant advance maintenance charges from the Complainant, despite deplorable maintenance conditions is also illegal and amounts to unjust enrichment depriving the allottee of a huge loan of interest.
- v. The Respondent in the Offer of Possession dated 17.02.2021 has demanded CGST @ 6% on BSP + others of Rs. 34,213.00, SGST @ 6% on BSP + others of Rs. 34,213.00, CGST @ 9% on PLC + ECC + PBC + ACC + Maintenance Charges of Rs. 45,913.00 and SGST @ 9% on PLC+ ECC + PBC+ ACC + Maintenance Charges of Rs. 45,913.00 amounting to a total of Rs. 1,60,252. The GST came into force in the year 2017, therefore, it is a fresh tax. The possession of the floor was supposed to be delivered by October 2015, therefore, the tax which has come into existence after the deemed date of delivery should not be levied and is unjustified.
- w. That the Complainants are not at all at fault in this regard. For the inordinate delay by the Respondent in delivering the floors, the incidence of GST should be borne by the Respondent only.
- x. That the Respondent Company has illegally demanded the payment of administrative charges which the Complainants are not contractually bound to pay the same as per the Space Buyer's Agreement. The demand of the same is therefore illegal and unjustified. That the Respondent Company has illegally charged interest/late payment charges/bounce charges amounting to Rs. 79,927.18 as the same are not payable by the Complainants. The

Complainant being an officer in the Armed Forces has had to serve in border areas and ensured that the cheques towards instalments as per the demand letters of the Respondents reached them in time. However, the Respondent Company changed its offices several times during the course of years without any intimation to the Complainants. The letters dated 18.07.2012, 16.08.2012 and 18.09.2012 have been annexed.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s) vide application dated 22.10.2024
 - a. Direct the respondent to handover the physical possession of the unit in a habitable condition.
 - b. Direct the respondent to execute a proper sale deed in favor of the complainant.
 - c. Direct the respondent not to create any 3rd party rights till the disposal of the matter by this Hon'ble authority.
 - d. Direct the respondent not to cancel the unit till the disposal of this matter.
 - e. Direct the respondent to pay interest and the prescribed rate for every month of delay from the due date of possession till the actual handing over of possession.
 - f. Direct the respondent not to ask for anything which is not a part of the buyer's agreement and not demand any charges like HVAT, GST, holding charges.
 - g. Direct the respondent to pay the arrears till the date of actual handing over of possession and a habitable condition.



h. Direct the respondent not to charge maintenance charges till actual handing over of possession and a habitable condition.

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) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent has contested the complaint on the following grounds.

a. That in the present case as per Clause 32 of the Space Buyer Agreement dated 12.10.2012, the Respondent was supposed to hand over the possession within a period of 36 months from the date of the signing of agreement i.e. 12.10.2012 or within 36 months from the date of start of construction of the said building i.e. in the year 2012 whichever is later. It is submitted that the later date is the date of execution of the Agreement i.e. 12.10.2012 and the possession date comes out to be 12.10.2015. However, the said timeline was subject to force majeure conditions. That it is submitted that as per Clause 32 of the Space Buyer's Agreement which clearly states that Respondent shall be entitled to extension of time for delivery of possession of the said premises if such performance is prevented or delayed due to conditions as mentioned therein.

b. That it is pertinent to mention here that the project in question was launched in the year 2010 and is right on the Dwarka expressway, which was supposed to be completed by the State of Haryana by the end of 2012. That the star purpose of launching the project and object of the Complaints buying the project was



the connectivity of Dwarka expressway which was promised by the State Government to be completed in the year 2012. That it is reiterated that the only approach road to the project in this Dwarka Expressway which is still not complete and is likely to take another year or so. There being no approach road available it was initially not possible to make the heavy trucks carrying construction material to the project site and after a great difficulty and getting some kacha paths developed, materials could be supplied for the project to get completed which took a lot extra time. Even now the Govt has not developed and completed the basic infrastructure, despite the fact that EDC/IDC were both deposited with the State Government on time. That completion of Dwarka expressway which in turn affected the completion of the project in question was beyond the control of the Respondent. Thus, for just and fair adjudication of this complaint both State of Haryana and NHAI are necessary parties to the present proceedings for the purpose of causing the delay in the project and thus they are jointly and severally liable for the delay of the project and pay compensation to the Complainants.

- c. The Company has been facing the labor problem for last 3 years continuously which slowed down the overall progress of the project and in case the Company remains to face this problem in future, there is a probability of further delay of project. It took almost 9 months to resolve the issues with the contractor and to remobilize the site.
- d. The building plans were approved in January 2012 and the company had timely applied for environment clearances to



competent authorities, we only got the environmental clearance certificate on 28.05.2013 i.e. almost after a period of 17 months from the date of approval of building plans.

- e. The typical design of fifth floor slab casting took a period of more than 6 months to design the shutting plans by structural engineer which hampered the overall progress of work. The infrastructure facilities are yet to be created by a competent authority in this sector which is also a reason for delay in overall project. The drainage, sewerage and other facility work has not yet commenced by competent authority.
- f. That sand which is used as a mixture along with cement for the same construction activity was also not available in the abundance as is required since mining Department imposed serious restrictions against manufacturing of sand from Aravali region.
- g. That same further cost huge delay in project and stalling various parts and agencies at work in advanced stages, for now the Respondent had to redo, the said work causing huge financial burden on Respondent, which has never been transferred to complainants or any other customers of project. That in addition the current Govt. has on 8th Nov. 2016 declared demonetization which severely impacted the operations and project execution on the site.
- h. That after making sincere efforts despite the force majeure conditions, the Respondent completed the construction and thereafter applied for the Occupancy Certificate (OC) on 15.07.2020. However, it took considerable time in grant of OC and



was finally received by the Respondent on 17.02.2021 i.e. almost after a period of 7 months from the date of application for grant of OC.

- i. That the OC has been received by the Respondent Company on 17.02.2021. That immediately after the receipt of the OC on 17.02.2021, the Respondent Company sent a letter dated 17.02.2021 along with the statement of accounts requesting the Complainants to come forward and clear his dues and start the process of fit outs. It is submitted that the Complainants are in default of his obligation under Sec 19(10) of the RERA Act.
- j. That the Space Buyers Agreement was entered into between the parties and, as such, the parties are bound by the terms and conditions mentioned in the Said Agreement.
- k. That it is submitted that as per Clause 32 of the Space Buyer's Agreement which clearly states that Respondent shall be entitled to extension of time for delivery of possession of the said premises if such performance is prevented or delayed due to conditions as mentioned therein. In the present case, the complaint pertains to the alleged delay in delivery of possession. That the complainants are seeking refund of the Principal Amount, interest for delay in delivery of possession and Compensation. That the Complaint has been filed in total disregards to the terms of Space Buyers Agreement executed between parties. That the Respondent has been acting and performing its obligations as per the Agreement and all demands raised by the respondent are as per the Agreement that was willfully signed by the complainants. Thus the complaint is misconceived and not maintainable.



- l. It is submitted that the Complainants themselves have been a chronic defaulter and has delayed in making payments of instalments on most of the occasions despite several reminders. Hence, the Complainants are not entitled to any relief whatsoever from this Hon'ble Authority. It is the well settled law as held by the Hon'ble Supreme Court of India, a defaulter is not entitled to get any equitable relief. Thus, the complaint must fail.
- m. It is further submitted that this Hon'ble Regulatory Authority has vide its order dated 13.09.2018 in 'M/s Sunil Paul v. Parsvnath Developers Ltd.', bearing Complaint No. 29 of 2018 expressly stated that the Complainants were not entitled to refund of the amounts paid but was merely entitled to delay compensation.
- n. In view of aforementioned facts, it is submitted that the captioned Complaint is frivolous, vague and vexatious in nature. The captioned Complaint has been made to injure and damage the interest and reputation of the Respondent and the Complex and therefore, the instant Complaint is liable to be dismissed in limine.
- o. It is further submitted that once the project is complete and Occupation Certificate has been granted on 17.02.2021 then no case of refund is made out. It is further submitted that if refund is allowed, other buyers/ customers who have invested their hard-earned money in the Complex will suffer irreparable losses and the Complex will never be made fully occupied if such an approach continues. Thus, to protect the interest of one person, the Hon'ble Adjudicating Authority can't jeopardize the interest of others who are genuine purchasers and are not mere speculators.



- p. That, as already stated in the aforesaid paragraphs, the Complainants are not entitled to refund of the amount and the contents are reiterated herein and not repeated for the sake of brevity. That in addition it is further submitted that the Occupation Certificate has already been issued by the Competent Authorities after due inspection and verification on 17.02.2021 and thus the project is completed in all respect and any order of refund after the completion of project will gravely affect the Respondent.
- q. That the Complainants in the preset case had booked the unit in the year 2011 and thereafter demands as per the Space Buyers Agreement have been raised. That the payment plan was construction linked and the demands were raised as per the construction. That it is pertinent to mention here that each of the demand attracts the statutory deposits which included Service tax, VAT and GST as applicable. That the Respondent in compliance of the statutory obligations has already deposited all statutory dues in the State exchequer including with the service tax authority and GST Authority. Thus, in case this Authority is of the view that refund should be allowed, the same has to after deducting such statutory dues which the Respondent has already deposited before the Competent Authorities. It is submitted that an amount of Rs. 3,75,245.56/- has been deposited towards Service Tax and GST.
- r. That in addition it is further submitted that any order of refund will also lead to altering the records of DTCP and necessary



directions to DTCP is also required to be issued in order to safeguard the interest of the Respondent.

- s. That most importantly the Respondent would like to bring to the notice of the Hon'ble Adjudicating Authority that since OC has now been received no GST will be applicable on subsequent sale of the unit and any order for refund will automatically lead to cancellation of the unit which the Respondent will be entitled to resell the unit without GST. Thus, in view of the above the GST Authorities and DTCP are liable to be impleaded in the array of Respondents.
- t. It is submitted that the Complainants were allotted commercial unit bearing no. 7A-06 in 114 Avenue vide allotment letter dated 29.07.2012. The Space Buyers Agreement was executed between the parties on 12.10.2012. The price of the property as per the Agreement was Rs. 52,71,615/- plus IFMS, taxes, duties and levies. It is submitted that all the demands have been raised in accordance with the payment plan opted by the Complainants. It is submitted that the Complainants have been a chronic defaulter. That after making sincere efforts despite the force majeure conditions, the Applicant/Respondent completed the construction and thereafter applied for the Occupancy Certificate (OC) on 15.07.2020. That immediately after the receipt of the OC on 17.02.2021, the Respondent Company sent a letter dated 17.02.2021 along with the statement of accounts requesting the Complainants to come forward and clear his dues and start the process of fit outs and take possession of the unit in question. It is submitted that the present complaint is infructuous as the



possession stands offered to the Complainants. It is submitted that the present complaint has been filed by the Complainant to wriggle out of his contractual obligations.

7. 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.
8. The complainants & the respondent have filed the written submissions on 30.07.2024 & 29.07.2024 respectively which are taken on record. The authority has considered the same while deliberating upon the relief sought by the complainants.

E. Jurisdiction of the authority

9. The authority has complete territorial and 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, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

11. 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) The promoter shall-

(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 complainants at a later stage.

F. Findings on the objections raised by the respondent.

F.I. Objection regarding force majeure conditions

13. The respondent in the present matter has raised the contention in its reply, the reasons for the delay in the construction of the project for kind consideration of the authority to cover the said instance in force majeure clause and grant extension of time for calculating the due date of possession. The respondent stated that the project in question was launched in the year 2010 and is right on the Dwarka expressway, which was supposed to be completed by the State of Haryana by the end of 2012. That the star purpose of launching the project and object of the Complaints buying the project was the connectivity of Dwarka expressway which was promised by the State Government to be completed in the year 2012. The completion of Dwarka expressway, which in turn affected the completion of the project in question was beyond the control of the Respondent.



14. Although the term "force majeure" is not defined under the Act, 2016 or the Rules, 2017 but the literal meaning of force majeure includes an event that cannot be reasonably anticipated or controlled which may include Act of God, orders of court or any stay by government. The authority after due consideration is of the considerate view that the said situation such as demonetization etc. are all devoid of merits and cannot be considered as a force majeure as the same cannot be covered under any situation of Act of God or any stay order by court of Govt. Furthermore, it is incumbent upon the Respondent to duly take into account all relevant factors prior to determining and stipulating the due date for possession of the said project.

G. Findings on the relief sought by the complainants.

- G.I. Direct the respondent to handover the physical possession of the unit in a habitable condition.
- G.II. Direct the respondent not to create any 3rd party rights till the disposal of the matter by this Hon'ble authority.
- G.III. Direct the respondent not to cancel the unit till the disposal of this matter.
- G.IV. Direct the respondent to pay interest and the prescribed rate for every month of delay from the due date of possession till the actual handing over of possession.
- G.V. Direct the respondent to pay the arrears till the date of actual handing over of possession and a habitable condition.
15. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under:

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



16. Clause 32 of the buyer's agreement provides for time period for handing over of possession and is reproduced below:

"32. The company shall give possession of the said unit within 36 months of signing of this agreement or within 36 months from the date of start of construction of the said building whichever is later."

17. **Due date of possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within 36 months from the date of signing of agreement or date of commencement of construction whichever is later. The due date of possession is calculated from the date of agreement i.e., 12.10.2012 being later. The period of 36 months expired on 12.10.2015.
18. **Admissibility of delay possession charges at prescribed rate of interest:** The 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.
19. 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.
20. 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., 22.04.2025 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
21. **Rate of interest to be paid by complainant/allottee for delay in making payments:** 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.

22. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.
23. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 11(a) of the buyer's agreement executed between the parties, the possession of the said unit was to be delivered within a period of 36 months from the date of signing of agreement i.e., 12.10.2012 or date of commencement of construction i.e., 15.03.2012 whichever is later. Accordingly, the due date of handing over possession calculated from the date of agreement being later comes out to be 12.10.2015. In the present case, the complainant was offered possession by the respondent on 17.02.2021 after obtaining occupation certificate dated 17.02.2021 from the competent authority. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement annexed but not executed between the parties.
24. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation



certificate. In the present complaint, the occupation certificate was granted by the competent authority on 17.02.2021. Therefore, in the interest of natural justice, he should be given 2 months' time from the date of offer of possession. These 2 months of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession till the expiry of 2 months from the date of offer of possession.

25. 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 complainant is entitled to delay possession charges at prescribed rate of the interest @ 11.10% p.a. w.e.f. 12.10.2015 till 17.04.2021 as per provisions of section 18(1) of the Act read with rule 15 of the rules.

G.VI. Direct the respondent to execute a proper sale deed in favor of the complainant.

26. Section 17 (1) of the Act deals with duties of promoter to get the conveyance deed executed and the same is reproduced below:

"17. Transfer of title.-

(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."

27. The authority observes that OC in respect of the project where the subject unit is situated has not been obtained by the respondent promoter till date. As on date, conveyance deed cannot be executed in respect of the subject unit, however, the respondent promoter is contractually and legally obligated to execute the conveyance deed upon receipt of the occupation certificate/completion certificate from the competent authority. In view of above, the respondent shall execute the conveyance deed of the allotted unit within 3 months from the date of this order and upon payment of requisite stamp duty by the complainant as per norms of the state government.

G.VII. Direct the respondent not to ask for anything which is not a part of the buyer's agreement and not demand any charges like HVAT, GST, holding charges.

28. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.

G.VIII. Direct the respondent not to charge maintenance charges till actual handing over of possession and a habitable condition.

29. The authority observes that maintenance charges are applicable from the time a flat is occupied, its basic motive is to fund operations related to upkeep, maintenance, and upgrade of areas which are not directly under any individual's ownership. Accordingly, the respondent is right in demanding maintenance charges at the rate agreed in the BBA once the offer of possession is made to the complainants.

H. Directions of the authority



30. 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 function entrusted to the authority under section 34(f):

- a. The respondent is directed to pay the interest at the prescribed rate i.e. 11.10 % per annum for every month of delay on the amount paid by the complainant from the due date of possession i.e., 12.10.2015 till 17.04.2021 i.e., expiry of 2 months from the date of offer of possession (17.02.2021).
- b. The respondent is directed to hand over the actual physical possession of the unit to the complainant within 2 months from the date of this order after clearance of outstanding dues.
- c. 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.
- d. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- e. The respondents are directed to pay arrears of interest accrued within 90 days from the date of order of this order as per rule 16(2) of the rules.
- f. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.



- g. The respondent is directed to execute the conveyance deed of the allotted unit within 3 months from the date of this order upon payment of requisite stamp duty by the complainant as per norms of the state government.
- h. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.
31. Complaint stands disposed of.
32. File be consigned to registry.

(Ashok Sangwan)
Member

(Vijay Kumar Goyal)
Member

(Arun Kumar)
Chairperson

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.04.2025

HARERA
GURUGRAM