BEFORE RAJENDER KUMAR, ADJUDICATING OFFICER, HARYANA REAL ESTATE REGULATORY AUHORITY, GURUGRAM

Complaint No. 753-2023
Date of Decision: 30.10.2025

Sharddha Pandey W/o Sanjeev Pathak, R/o 32 Mangalpuri Ismail Gang Chinhat Lucknow- 227105.

.....Complainant.

Versus

M/s. Silver-glades Infrastructure Pvt. Ltd., R/o C-8/1A, Vasant Vihar, New Delhi- 110057.

.....Respondent

APPEARANCE

For Complainant: **Mr. Kuldeep Kumar Kohli, Advocate**
For Respondent: **Mr. Harshit Batra & Ms. Tanya, Advocates.**

ORDER

1. This is a complaint filed by Ms. Sharddha Pandey (allottee), under section 31 of The Real Estate (Regulation and Development), Act 2016 (in brief Act of 2016) R/W Rule 28 of The Haryana Real Estate (Regulation and Development), Rules 2017 against M/s. Silver-glades Infrastructure Pvt. Ltd. (promoter), as per section 2 (zk) of Act 2016.

2. According to complainant, she purchased a shop i.e. Unit No. FF-08, first floor, admeasuring 579 sq. ft. (super area) from

respondent in its project namely "The Merchant Plaza", Sector-88, Gurugram, on 15.03.2013, for a sale consideration of Rs.53,44,216/- under construction linked plan. A builder's buyer agreement (BBA) was executed between the parties on 14.03.2015. The due date of possession as per BBA was 30.05.2017. The promised date of handing over possession was 30.05.2017. The respondent failed to complete the construction in agreed time and there occurred delay in handing over possession till date of filing complaint, of more than five years and two months. The total amount paid by the allottee till date was Rs.48,40,330/-, out of Rs.53,44,216/-.

3. Now, the complainant by filing present complaint, has prayed for compensation on following grounds: -

i. That the respondent is in 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 provision of this Act or the Rules and regulations made thereunder to the allottee as per the agreement for sale executed inter se.

ii. That the respondent company has resorted to unfair practices by way of making incorrect, false and misleading statements over the possession and thereby violated provisions of Section 12 of The Real Estate (Regulation and Development) Act, 2016.

iii. That the respondent has failed to provide the requisite facilities, amenities and services as agreed at the time of booking and has violated the provision of Section 12 of Real Estate (Regulation and Development) Act, 2016.

iv. That the respondent by using its dominant position is dictating its unreasonable demands to the complainant without showcasing any proficient progress.

v. That as per Section 11 (4) (f) and Section 17 (1) of RERA, the respondent is under an obligation to execute a conveyance deed in favour of the complainants within 3 months of the receipt of occupancy certificate. Despite regular follow-up by the complainant, respondent failed to execute conveyance deed for the unit within stipulated time.

vi. That the respondent had substantially failed to discharge its obligations imposed them under the Real Estate (Regulation and Development) Act, 2016 and rules and regulations made thereunder.

4. Contending all this, complainant prayed for compensation of Rs.5,00,000/- towards mental and physical agony as well as emotional trauma, resulting to complainant by behaviour of respondent, Rs.3,00,000/- as compensation to pursue the case before the Authority as well as before the Adjudicating Officer and Rs.10,00,000/- as compensation for appreciation value.

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5. The respondent contested the complaint by filing a written reply. Following is averred by the respondent: -

6. That on 14.03.2015, BBA was executed between the parties with their free will and without any undue coercion or undue influence, therefore the same is binding upon the parties. In terms of BBA and upon receipt of the Occupancy Certificate dated 11.02.2020, the possession letter dated 17.02.2020 was issued to the complainant herein. However, till date, the complainant has failed to take possession of the said unit. The complainant has concealed some material facts from this Court and filed this complaint on frivolous grounds.

7. That by filing a complaint bearing no. 3084/2021 titled as Shraddha Pandey Vs. Silver-glades Infrastructure Pvt. Ltd., the complainant had already approached the Hon'ble Authority under section 31 of the Act, seeking delayed possession charges (DPC). Vide order dated 28.09.2021, the Hon'ble Authority was pleased to allow the DPC to the complainant at prescribed rate i.e. the State Bank of India highest marginal cost of lending rate (MCLR) + 2% as provided under rule 15 of the Haryana Real Estate (Regulations and Development) Rules, 2017.

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8. That it (respondent) filed an appeal bearing no. 291/2022 titled Silver-glades Infrastructure Pvt. Ltd. vs. Shraddha Pandey, before the Appellate Tribunal against the order dated 28.09.2021 passed by the Authority and the same is pending for adjudication before the Hon'ble Appellate Tribunal. That the complainant has already appeared in said appeal through her counsel but she has chosen to conceal this fact from this Court.

9. That the complainant in this complaint has mentioned that the respondent illegally demanded monthly maintenance charges. Vide order dated 28.09.2021 the Authority has already dealt with this issue and held that respondent is right in demanding advance maintenance charges at the rate prescribed at the time of possession.

10. Stating all this, respondent prayed for dismissal of complaint.

11. Both of the parties filed affidavits in support of their claims.

12. I have heard learned counsels appearing for both of parties and perused the record.

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13. Admittedly present complainant had filed a complaint before the Authority seeking delay possession compensation (DPC) alleging delay in handing over possession. Said complaint has been allowed by the Authority vide order dated 28.09.2021. The respondent has been directed to pay interest at the prescribed rate of 9.30% p.a. for every month of delay from the due date of possession i.e. 30.05.2017 till 17.04.2020 i.e. date of offer of possession (17.02.2020) + 2 months.

14. It is contended by learned counsel for complainant that his client has suffered more loss, awarding of interest as allowed by the Authority is not sufficient to compensate him. Further, the Authority allowed interest till date of offer of possession plus 2 months.

15. According to learned counsel for respondent, when complainant has already been allowed interest by the Authority, due to delay in handing over of the possession, same is not entitled to any compensation on this ground. Learned counsel relied upon following precedents in support of his plea: - (i) an order passed by Uttar Pradesh Real Estate Appellate Tribunal in case **"Greater Noida Industrial Development Authority vs. Ranjan Misra", Appeal No.**

70 of 2023; (ii) a case titled as "**Neelkamal Realtors Suburban Pvt. Ltd. and Ors. Vs. Union of India and Ors". Writ Petition No. 2737 of 2017** decided by Bombay High Court and (iii) another case titled as **"DLF Homes Panchkula Pvt. Ltd. & Anr. Vs. Sudesh Goyal etc. CA Nos. 4942-4945/2019 decided by the Supreme Court of India"**.

16. According to Section 18 (1) of The Real Estate (Regulation and Development) Act 2016, if the promoter fails to complete or is unable to give possession of an apartment, plot or building, -

> (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein or--------,
>
> (b) ---------.
>
> he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot or building, as the case may be, with interest------, **including compensation, in the manner as provided under this Act.**
>
> Proviso added to this Section makes it clear 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.

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17. A bare perusal of this provision makes it clear that when an allottee does not intend to withdraw from the project, same is entitled for interest for every month of delay till handing over of possession, if he makes demand in this regard. Unlike an allottee, who withdraws from the project. Such (latter category of) allottee is entitled for refund of the amount, along with interest as well as compensation, in the manner as provided under this Act.

18. Uttar Pradesh Real Estate Appellate Tribunal in Appeal No. 70 of 2023 (supra) held as follows: -

> *"13.9. If we closely examine the above two provisions, it comes out that in a case where the Allottee exits the projects, the Act expressly provides INTEREST AND COMPENATION both, but in cases where the Allottee tends to stay in the project the Allottee is only entitled for interest of every month till the handing over of the possession. Thus, the intention of the legislature was to provide Compensation only to those Allottees who exit the project and not to those who tends to stay in the project.*

19. Similarly, Bombay High Court in Neelkamal Realtors Suburban Pvt. Ltd. and Ors.'s case (supra) clarified that if the allottee does not intend to withdraw from the project, he shall be paid by the promoter interest for every month of delay till handing over of the

possession. The requirement to pay interest is not a penalty as the payment of interest is compensatory in nature in the light of the delay suffered by the allottee, who has paid for his apartment but has not received possession of it.

20. The Apex Court in DLF Homes Panchkula Pvt. Ltd. & Anr.'s case (supra) mandated clearly that the amount of interest is the compensation to the beneficiary deprived of the use of the investment made by him and therefore such interest takes into its ambit the consequences of delay is not handing over his possession.

21. Considering above discussion, when complainant has already been allowed interest by the Authority for delay in handing over possession, same is not entitled for further compensation on this count.

22. Apart from delay in handing over of possession, the complainant sought compensation alleging that despite receipt of occupation certificate (OC) the promoter failed to execute conveyance deed in favour of his client within 3 months of issuing occupation certificate and hence his client is entitled for compensation.

23. True, Section 11 (4) (f) of the Act casts a duty upon the promoter to execute a registered conveyance deed of the apartment,

plot or building as the case may be in favour of allottee as provided under section 17 of this Act. Section 17 (1) of the Act provides for transfer of title. Proviso added to it says that in the absence of any local law, conveyance deed in favour of allottee shall be carried out by the promoter within three months from the date of issue of occupancy certificate.

24. As per Section 71 of the Act, the Adjudicating Officer has been empowered to adjudge compensation under sections 12, 14, 18 and 19 of the Act and this provision is clarified by the Apex Court in case ***M/s. New-tech Promoters and Developers Pvt. Ltd. vs State of UP and others, Civil Appeal No. 6745-6749 of 2021***. As stated earlier, the promoter is obliged to execute conveyance deed in view of Section 11 (4) and 17 of the Act. Being out of the jurisdiction, this Forum cannot grant compensation for violation of those provisions i.e. Section 11 (4) or 17 of the Act. If the complainant has any grievance in this regard, same may approach the Authority.

25. Although the complainant has blamed the respondent for not providing necessary amenities like electricity etc. During deliberations, it was contended by learned counsel for respondent that all agreed facilities have already been provided to all allottees

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including present complainant. This fact was not denied by learned counsel for complainant, during arguments.

26. On the basis of above discussion, no case is made out in favour of complainant, to grant any compensation. Present complaint is thus, dismissed.

27. File be consigned to record room.

Announced in open court today i.e. on 30.10.2025

(Rajender Kumar)
Adjudicating Officer,
Haryana Real Estate Regulatory Authority, Gurugram.