BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.: 2296 of 2024
Date of complaint: 21.05.2024
Date of order: 04.07.2025

Mohammad Abid
R/o: H.No.32A, Empire Estate, M.G. Road, Sultanpur, South Delhi, Delhi-110030

Complainant

Versus

1. M/s Martial Buildcon Pvt. Ltd.
Regd. Office: Paras Twin Towers, Tower B, 6th Floor, Golf Course Road, Sector-54, Gurugram-122002.

2. M/s M3M India Pvt. Ltd.
Regd. Office: 41st Floor, Tower 1, M3M International Financial Center, Sector-66, Golf Course Road (Extn.), Gurugram-122101, Haryana, India.

Respondents

CORAM:
Shri Arun Kumar

Chairman

APPEARANCE:
Mr. Akhil Agarwal (Advocate) — Complainant
Ms. Shriya Takkar and Ms. Meenal Khanna (Advocates) — Respondents

ORDER

1. The present complaint has been filed by the complainant/allottee 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 provision of the Act or the Rules and regulations made thereunder or to the allottee 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project and location	M3M Urbana Premium, Sector-67, Gurugram, Haryana
2.	Nature of the project	Commercial colony
3.	DTCP license no.	89 of 2010 dated 28.10.2010
	Validity status	Valid up to 27.10.2022
	Licensed area	2.91 acres
4.	RERA Registered/ not registered	348 of 2017 dated 09.11.2017 amended on 05.12.2022
	Validity status	Valid up to 28.08.2024
	Registered area	2.9125 acres
5.	Booking date	10.08.2016 (Page 105 of complaint)
6.	Welcome letter	17.08.2016 (Page 36 of complaint)
7.	Allotment letter	17.08.2016 (Page 37 of complaint)
8.	Unit no.	MUP/R/Food Court/2L/001 (Page 105 of complaint)

9.	Unit area	1166.42 sq. ft. (super area) (Page 105 of complaint)
10.	Date of builder buyer agreement	05.04.2017 (Page 45 of complaint)
11.	Possession clause	**Clause 16.1 of BBA** *"The Company, based upon its present plans and estimates, and subject to all exceptions, proposes to handover possession of the Unit within a period of* ***Fifty Four (54) months from the date of commencement of construction*** *which shall mean laying of first plain cement concrete/ mud-mat slab of the block/ building in which the Unit is located or the date of execution of this Agreement, whichever is later ("Commitment Period"). Should the possession of the Unit not be given within the Commitment Period,* ***the Allottee agrees to an extension of One Hundred and Eighty (180) days ("Grace Period") after expiry of the Commitment Period for handing over the possession of the Unit****. In case of failure of the Allottee to make timely payments of any of the installments as per the Payment Plan, along with other charges and dues as applicable or otherwise payable in accordance with the Payment Plan or as per the demands raised by the Company from time to time in this respect, despite acceptance of delayed payment along with interest or any failure on the part of the Allottee to abide by any of the terms and conditions of this Agreement, the time periods mentioned in this clause shall not be binding upon the Company with respect to the handing over of the possession of the Unit."* *(Emphasis supplied)* (Page 79 of complaint)
12.	Date of commencement of construction	Not available
13.	Due date of possession	05.04.2022 (In absence of date of start of

		construction, the due date is calculated from dated of execution of BBA and Grace period is included.
14.	Total cost as per BBA	Rs.1,50,77,144/- (Page 105 of the complaint)
15.	Amount paid by the complainant	Rs. 1,52,10,490.52/- (As alleged by the complainant on page 13 of complaint)
16.	Occupation certificate	24.02.2021 (Page 99 of the reply)
17.	Notice of offer of possession	25.02.2021 [Page 102 of reply]
18.	Handover of possession documents	22.09.2021 (Page 128 of reply)
19.	Conveyance deed executed on	02.12.2021 (Page 131 of complaint)

B. Facts of the complaint:

3. The complainant has made the following submissions: -

i. That based on the tempting and magnificent claims, assurances and proposals of the Respondent No.2, the Complainant was lured into buying a unit in the Project and paid huge amount of Rs.10,00,000/- as booking amount at the time of booking in 2016.

ii. That the respondent no.2 issued the Allotment Letter to the complainant on 17.08.2016 and allotted Unit No. MUP/R/Food Court/2L/001 on 2nd floor of the retail block admeasuring 1166.42 sq. ft. for total sale consideration of Rs. 1,50,77,144.92/-. It is of utmost importance to note here that the respondent no.2 illegally and with malafide intension took more than 30% of the total sale consideration, i.e. Rs.46,46,041/- from

the Complainant even before signing and executing the Builder Buyer Agreement.

iii. That on 05.04.2017, the BBA was executed between the Complainant and the Respondent No.2. When the complainant became aware of the totally one sided and biased BBA, the complainant having already paid huge sum of money was left with no option but to sign on the dotted lines. As per clause 16.1 of the BBA, the time for complete construction was stipulated to be 54 months from the date of execution of BBA or date of start of construction, whichever is later. That since the construction had already started at the time of signing of BBA, the due date of possession was 28.03.2023. However, the Respondent No.2 has monumentally failed to complete the give possession of the unit to the complainants as per the BBA even after the lapse of more than two years.

iv. That the Complainant was shocked to receive the Offer of Possession letter dated 25.02.2021 from the Respondent No.2 vide which under the garb of offering possession, the Respondent No.2 has not just imposed an unjustified, extra-contractual and illegal demands and also demands of excess money under various heads but also offered the possession without even completing the Unit as per the terms of the BBA. That the Respondent also illegally collected payments from the Complainants which were due only at the time of valid offer of possession. Further, the Respondent No.2 has imposed completely illegal condition on the Complainant to sign and execute an "Indemnity Deed-cum-Undertaking" to deprive the Complainant of their statutory rights. Such a conduct of the Respondent No.2 is illegal and abundantly establishes the malpractices adopted by the Respondent No.2.

v. That soon after the issuance of the Offer of Possession, Respondent No.2 started threatening the Complainant of imposing excess charges of

maintenance and holding charges. The Respondent No.2 cornered the Complainant in lieu of imposing unfair and unjustified charges and under threats of the same, thereby, Respondent No.2 forced the Complainant to accept its illegal demands and also accept the paper possession and get the conveyance done. Respondent No.2 also assured that they have already been in talks with the leasing companies for food court and if possession and conveyance is not done as per the requirements of the Respondent No.2, Complainant will be excluded from any lease of the food court and will have to run from pillar to post as nobody will then be interested in the unit of the Complainant for any purpose.

vi. That that the Respondent No.2 has also failed to provide the Complainant a copy of the occupancy certificate even till date. Further, the possession was offered by the Respondent No.2 pre-maturely and remains a paper possession till date and has also get the conveyance done for incomplete unit. Despite objection of the Complainant about non-completion of the Project, Complainant was forced to take the possession by forcible signatures on dotted lines and the said documents were also not provided to the Complainant till date. Respondent No.2 has not provided even a single justification for such an illegal offer of possession. Despite the incomplete project, Complainant due to the above threats had succumbed to the same and had to execute the conveyance deed dated 02.12.2021.

vii. That the offer of possession has various illegalities and arbitrary demands by the Respondent such as Non-disclosure of carpet area; failed to provide breakup on Development Charges; imposition of GST, LabourC ess, service tax, Swatch Bharat Cess & Krishi Kalyan Cess; Pre-mature offer of possession; Holding Charges, Maintenance Charges and Admin Charges.

viii. That as per the definition clause of "food court" and "food court specific common area", the same includes common sitting and dining area. However, the same has not been completed/ finished till date. Specifications in Annexure-D of BBA specifically provide for building envelope aluminum glazing for air-conditioning in order to make the food court area usable. However, the same has not been provided till date. Specifications in Annexure-D of BBA also provide for suitable furniture for the dining hall and the same is also non-existent till date. The Offer of possession without completing the same, therefore, remains pre-mature and illegal.

ix. That furthermore, the said food court is also intrinsically linked to the Multiplex, retail and office spaces above and without the same there will be no foot-fall. That the entire decision-making process of buying a food court unit was linked to revenue associated with people coming to the Multiplex, retail and office spaces. However, till date the said Multiplex, retail and office spaces is not ready and the Respondent No.2 failed to fulfill its assurances and the same results into incomplete offer of possession as under no circumstance food court can be de-linked from the food court. Complainant has learnt that the Respondent has leased the Multiplexes to Wave Cinemas which is positioned significantly lower than PVR Gold. The same shall have severe impact on the resale value of the Unit as well as leasing bargaining power for the Unit as no top food brand will lease the food court linked with a downgraded range of Cinema.

x. That the Respondent No.2 has illegally obtained floor wise OC for the Project and the same is against the very essence of statutory provisions. The Project cannot be handed over to the Allottees when the construction work is still ongoing on the higher floors. Since it is one single building,

lack of fire and safety approvals on the higher floors has direct bearing on the Unit of the Complainant which form part of the same building and cannot be safely handed over or given possession of.

xi. That the Respondent no.2 has not provided complete and detailed statement of accounts to the Complainant till date and also not provided all the payment receipts to the Complainant and the Complainant reserve their right to raise additional grounds as and when the same is provided to the Complainants. In light of the facts and circumstances laid down above, the Complainant is helpless and having already paid the huge amount of money to Respondent is at their mercy. Complainant has been subjected to extreme mental agony and harassment by the Respondent No.2 and is therefore constrained to approach the Hon'ble Authority.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):

i. Direct the Respondent No.2 to give delay interest @18% on Rs.1,52,10,490.52/- for every month of delay from 25.02.2021 till legally valid possession is finally given to Complainants.

ii. Direct the Respondent No.2 to refund the excess amount paid by the Complainants (if any) along with interest @18% from the date of payment till the date of realisation.

iii. Direct the Respondent No.2 to give physical possession of the Unit with complete specifications to the Complainants along with all the common areas and facilities.

iv. Direct the Respondent No.2 to withdraw the illegal offer of possession dated 25.02.2021 and give a legally valid offer of possession to the Complainants as per terms of the contract and law.

v. Direct the Respondent No.2 to lease the food court to a food court operator as admitted by the Respondent in a time bound manner.

vi. Direct the excessive and unjustified GST & other taxes, interest and excessive and unjustified development charges demanded by the Respondent No.2 in offer of possession dated 25.02.2021 as illegal and order/direct the Respondents to withdraw the same and not charge the same from the Complainants.

vii. Direct the Respondent No.2 to not charge any maintenance charges including IFMS and holding charges till the actual possession as per terms of BBA and without any excessive charges and refund the same along with interest, if already collected.

viii. Direct the Respondent No.2 to pay loss of Rent to Complainants @Rs.50,000/- per month, along with interest @ 18% p.a. till the date of payment, from the due date of possession till the actual date of possession as per the terms of BBA.

ix. Transfer all the common areas and facilities to the association of allottees as per section 17 of the Act.

x. Direct the Respondent No.2 to form a RWA of Allottees and also transfer the maintenance of common areas to the RWA of Unit Owners after making Unit Owners as member and conducting elections as per the provisions of the Act.

xi. Direct the Respondent No.2 to pay damages of Rs.5,00,000/- arising due to downgrading of Multiplex and Rs.1,00,000/- towards legal expenses.

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 respondents.

6. The respondents have contested the complaint on the following grounds:

i. That the Complainant neither has any cause of action nor any *locus standi* to maintain the present Complaint against the Respondents, especially when the Complainant has taken gainful possession of the unit after executing a Conveyance Deed and duly inspecting the said unit and the complex structure at large, thus, the contractual obligations between the parties to each other stand discharged. However, now after over a 3-year period, the Complainant is seeking the complete amendment/ modification/ re-writing of the terms and conditions of the agreement/understanding between the parties. This is evident from the averments as well as the prayers sought in the Complaint. Since, the Conveyance Deed for the unit in question was executed on 02.12.2021 therefore the mutual obligations stand discharged. Thus, the present Complaint is liable to be dismissed at the very threshold.

ii. That the Complainant herein took possession of the unit on 22.09.2021 only after inspecting the unit and satisfying himself with all including its size, super area, dimensions, location, quality of construction and materials used, specifications, services provided, etc. The Conveyance Deed for the unit in question was executed on 02.12.2021. The Complainant by his own conduct has waived off the right to raise any issues. Thus, it does not lie in the mouth of the Complainant to raise issues at a belated stage and the Complainant is estopped from raising the same.

iii. That the Complainant by way of the present complaint has approached this Hon'ble Authority after a period of 3.5 years from the date of offer of possession, taking over the possession of the unit and getting the conveyance deed registered. The Complainant has approached this Hon'ble Authority allegedly seeking delayed interest, refund alleged excess amount along with interest and withdrawal of offer of possession. It is settled law that once conveyance deed is registered all contractual as well

financial obligations of the Promoter under the Buyers Agreement come to an end. The Complainant has filed the present complaint as an afterthought to extract and extort illegal benefits from the Respondent.

iv. That the Complainant herein being well aware of the Respondents' good standing and reputation in the market and further having conducted his own independent due diligence through his real estate broker Elite Landbase Pvt. Ltd. approached the Respondents expressing his interest in booking a Unit in the Food Court on the 2nd Floor level in the Retail Block so located in the Project, being part of M3M Urbana, containing commercial units for retail, office use and service apartments with suitable infrastructure facilities being developed in a planned and phased manner over a period of time referred to as the "Commercial Complex" submitted an Application form and paid an amount of Rs. 10,00,000/- on 25.07.2016 towards the booking of the Food Court Unit. In due consideration of the Complainant' commitment to make timely payments, Food Court Unit bearing no. MUP/R/FOOD COURT/2L/001 in the Project was allotted to the Complainant *vide* allotment letter dt. 17.08.2016. It is submitted that the cost of the food court unit for an area admeasuring 1166.42 sq. ft. (super area) was Rs. 1,50,77,144.92/- plus taxes and other charges.

v. That the BBA was executed between the parties on 05.04.2017. As per Clause 16.1 of the BBA the possession has to be offered within 54 months from the date of commencement of construction which shall mean the date of laying the first mud slab of the block/building in which the unit is located or date of execution of the BBA whichever is later. Further, the Respondent No. 2 is entitled to an extension of 6 months as grace period. It is submitted that the BBA was executed between the parties on 05.04.2017. Thus, the due date of possession is to be reckoned from the date of execution of execution of the BBA being the later date. Thus, the

due date of possession comes out to be 05.04.2022. Thus, no case under Section 18 of the Act is made out.

vi. That the Respondents as agreed, completed the construction and development of the retail component of the Complex well within time and the Respondent No. 2 applied to the Competent Authority for the grant of Occupation Certificate after complying with all the requisite formalities. The OC was granted by the Competent Authorities on 24.02.2021 after due verification and inspection that the building has been constructed in accordance with the approved layout plans. Thereafter, the Respondent No. 2 *vide* letter dt. 25.02.2021 offered possession of the food court unit to the Complainant and requested the Complainant to remit the outstanding amount towards the remaining sale price, service tax, cess, stamp duty charges etc. Thus, the Respondents had fulfilled their promise and constructed the said Food Court Unit of the Complainant way before the agreed the timeline i.e. 05.04.2022, and there was no delay in offering possession of the unit to the Complainant.

vii. The Complainant allegedly had issued a Legal Notice dated 22.03.2021 to the Respondent No.2 Company raising false issues against the super area of the unit. It is submitted that the Legal Notice issued by the Complainant was duly replied to by the Respondent Company vide reply dated 17.05.2021 which has been duly served upon by the Complainant. The Complainant made payments to the tune of Rs. 12,47,313/- on 23.03.2021 and Rs. 89,699/- on 25.08.2021 against the demands raised vide the offer of possession, which has been duly acknowledged by the Respondent Company. Subsequently the Complainant vide letter dated 18.09.2021 withdrew the Legal Notice sent under his instructions and informed the same to the Respondent No.2 company. In the said letter, the Complainant

undertook to not raise any further disputes with respect to the said commercial unit.

viii. That it is submitted that the Complainant visited the project site and after being satisfied with the unit, its location, dimensions, location, quality executed the Indemnity-cum-Declaration on their own free will and consent. The Complainant by executing the said document confirmed that the same are in accordance with the terms of the BBA. The Complainant further also agreed that they have no claims or demands of any nature whatsoever against the Company. That post clearance of all the dues and after the handover tour, after inspecting the common facilities and services provided in the project and ensuring that the same are in accordance with the plans and specifications that have been agreed under the BBA, the Respondents have handed over the physical possession of the unit in question to the Complainant on 22.09.2021. The deed of conveyance for the unit in question was executed on 02.12.2021 and hence the Complainant is estopped from raising such frivolous and false allegations at this later stage.

ix. That the Respondent despite adverse circumstances like orders passed by National Green Tribunal (NGT), COVID 19 pandemic completed the construction of the project and applied for the grant of OC on 03.11.2020. The OC was granted by the Competent Authorities on 24.02.2021 after due verification and inspection. The Respondent No. 2 offered possession to the Complainant for booked unit *vide* letter for offer of possession dt. 25.02.2021 and requested the Complainant to take possession of the unit which was ready and complete. Thus, there was no delay in offering possession of the unit in question to the Complainant.

x. Hence, the Complainant is not entitled to approach this Hon'ble Authority by filing instant Complaint. The filing of the present Complaint by the

Complainant is nothing but than an afterthought on part of Complainant to extract money on basis of false, frivolous and distorted facts. It is thus submitted that the Complainant herein, who has filed a malafide Complaint with false facts with sole intention to unjustly enrich himself, cannot be entitled to seek any relief sought from this Hon'ble Authority after 3.5 years from the date of offer and possession and execution of Conveyance Deed.

7. All other averments made in the complaint were denied in toto.

8. 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 on the basis of these undisputed documents and submissions made by the parties.

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, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject matter jurisdiction

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 complainant at a later stage.

F. Findings on application for dismissal of complaint being barred by limitation.

13. The counsel for the respondent states that the respondent has already offered the possession on 25.02.2021 after obtaining occupation certificate on 24.02.2021 and the complainant has taken over the physical possession of the unit on 22.09.2021 before due date which was 05.04.2022. Further the conveyance deed has already been executed in favor of the complainant on 17.12.2021. Hence, the present complaint is barred by limitation and the same be dismissed.

14. So far as the issue of limitation is concerned the Authority is cognizant of the view that the law of limitation does not strictly apply to the Real Estate Regulation and Development Act of 2016. However, the Authority under section 38 of the Act of 2016, is to be guided by the principle of natural Justice. It is a universally accepted maxim and the law assists those who are vigilant, not those who sleep over their rights. Therefore, to avoid opportunistic and frivolous litigation a reasonable period of time needs to be arrived at for a litigant to agitate his right. This Authority is of the view that three years is a

reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances. However, this shall not apply to the provisions of section 14 where a specific period has already been defined.

15. It is also observed that the Hon'ble Supreme Court in its order dated 10.01.2022 in MA NO. 21 of 2022 of Suo Moto Writ Petition Civil No. 3 of 2020 have held that the period from 15.03.2020 to 28.02.2022 shall stand excluded for purpose of limitation as maybe prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

16. The cause of action arose on 25.02.2021 when the offer of possession was made by the respondent to the complainant. The complainant has filed the present complaint on 21.05.2024 which is 3 years 2 months and 26 days from the date of cause of action. In the present matter the period of delay in filing of the case after taking into account the exclusion period as per order dated 10.01.2022 passed by Hon'ble Supreme Court would fall on 28.02.2025. In view of the above, the Authority is of the view that the present complaint has been filed within a reasonable period of delay and is not barred by limitation.

G. Findings on relief sought by the complainant

G.I Direct the Respondent No.2 to give delay interest @18% on Rs.1,52,10,490.52/- for every month of delay from 25.02.2021 till legally valid possession is finally given to Complainants.

G.II Direct the Respondent No.2 to withdraw the illegal offer of possession dated 25.02.2021 and give a legally valid offer of possession to the Complainants as per terms of the contract and law.

17. The brief facts are that an allotment letter dated 17.08.2016 was issued in favour of the complainant for the food court unit no. MUP/R/Food Court/2L/001. Thereafter, a builder buyer agreement dated 05.04.2017 was executed between the respondent and complainant for the subject unit for an agreed basic sale consideration of Rs. 1,50,77,144/- against which complainant has paid an amount of Rs. 1,52,10,490/-.

18. The complainant is seeking delayed possession charges with interest along with direction to the respondent no. 2 to withdraw illegal offer of possession dated 25.02.2021 and give a valid offer of possession to the complainants, to lease the food court to a food court operator as admitted by the respondent in a time bound manner and not to charge maintenance charges including IFMS and illegal GST.

19. The counsel for the respondent states that the respondent has already offered the possession on 25.02.2021 after obtaining occupation certificate on 24.02.2021 and the complainant has taken over the physical possession of the unit on 22.09.2021 before due date which was 05.04.2022. Further the conveyance deed has already been executed in favor of the complainant on 17.12.2021. Hence, the present complaint is barred by limitation and the same be dismissed.

20. 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. Section 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."*

(Emphasis supplied)

21. Clause 16.1 of the builder buyer agreement provides for handing over of possession and is reproduced below:

> *"**16.1** The Company, based upon its present plans and estimates, and subject to all exceptions, proposes to handover possession of the Unit within a period of **Fifty Four (54) months from the date of commencement of construction** which shall mean laying of first plain cement concrete/ mud-mat slab of the block/ building in which the Unit is located or the date of execution of this Agreement, whichever is later ("Commitment Period").*

Should the possession of the Unit not be given within the Commitment Period, ***the Allottee agrees to an extension of One Hundred and Eighty (180) days ("Grace Period") after expiry of the Commitment Period for handing over the possession of the Unit****. In case of failure of the Allottee to make timely payments of any of the installments as per the Payment Plan, along with other charges and dues as applicable or otherwise payable in accordance with the Payment Plan or as per the demands raised by the Company from time to time in this respect, despite acceptance of delayed payment along with interest or any failure on the part of the Allottee to abide by any of the terms and conditions of this Agreement, the time periods mentioned in this clause shall not be binding upon the Company with respect to the handing over of the possession of the Unit."*

(Emphasis supplied)

22. **Due date of handing over possession:** As per clause 16.1 of builder buyer's agreement, the respondent promoter has proposed to handover the possession of the subject unit within a period of 54 months from the date of commencement of construction or the date of execution of this Agreement, whichever is later. The BBA was executed on 05.04.2017 and, by the Respondent's own admission, the construction had already commenced prior to that. Therefore, the due date shall be calculated w.e.f. 05.04.2017 being later. In absence of date of start of construction, the due date is calculated from dated of execution of BBA i.e., 05.04.2017. Further, the grace period of 180 days is allowed being unqualified and unconditional and accordingly, the due date comes out to be 05.04.2022.

23. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is satisfied that the respondent has already obtained completion certificate in respect of the said project on 24.02.2021 and possession was offered by the Respondents on 25.02.2021. As delineated hereinabove, the due date of handing over possession as per clause 16.1 of the BBA is 05.04.2022. The respondent has obtained completion certificate prior to the due date of handing over possession as per the buyer's agreement. Moreover, 'Handover of Possession' document was executed inter se parties on 22.09.2021 and thereafter the

conveyance deed was executed inter se parties on 17.12.2021. Thus, no case for delayed possession charges is made out under section 11(4)(a) of the Act read with proviso to section 18(1) of the Act. Accordingly, no direction to this effect.

G.III Direct the Respondent No.2 to give physical possession of the Unit with complete specifications to the Complainants along with all the common areas and facilities

24. The Complainant seeks a direction to Respondent No.2 to hand over physical possession of the unit with complete specifications, as per the Builder Buyer Agreement (BBA), along with all common areas and facilities.

25. The Authority observes that the possession was stated to have been taken on 22.09.2021 and the conveyance deed was executed on 02.12.2021. However, the Complainant has contested the validity and completeness of this possession stating non-provision of specifications as per Annexure-D of the BBA, such as aluminium glazing for air conditioning, furniture in dining halls, and other fit-outs necessary for operational readiness of a food court unit. While the Respondent has submitted that possession has been handed over and the conveyance deed duly executed, it is important to note that, under the Act, the obligation of the promoter is considered fully discharged only when the unit is delivered in a manner that aligns with the agreed specifications and contractual terms as stipulated in BBA executed inter se parties.

26. Keeping in view the above, Authority directs Respondent No.2 to hand over physical possession of the unit ensuring that unit is completed in accordance with the specifications under Annexure-D of the BBA dated 05.04.2017 executed inter se parties.

G.IV Direct the Respondent No.2 to refund the excess amount paid by the Complainants (if any) alongwith interest @18% from the date of payment till the date of realisation.

G.V Direct the excessive and unjustified GST & other taxes, interest and excessive and unjustified development charges demanded by the

Respondent No.2 in offer of possession dated 25.02.2021 as illegal and order/direct the Respondents to withdraw the same and not charge the same from the Complainant.

G.VI Direct the Respondent No.2 to not charge any maintenance charges including IFMS and holding charges till the actual possession as per terms of BBA and without any excessive charges and refund the same alongwith interest, if already collected.

27. The above-mentioned relief no. G.IV, G.V and G.VI as sought by the complainant are being taken together.

28. In the above-mentioned relief sought by the complainant the Authority observes that the financial liabilities between the allottee and the promoter come to an end after the execution of the conveyance deed except for the statutory rights under the Act of 2016. The complainant could have asked for the claim before the conveyance deed got executed between the parties.

29. Moreover, the clause 4 of the conveyance deed dated 22.12.2021 is also relevant and reproduced hereunder for ready reference:

"4. That the Vendee has already taken the physical possession of the said Unit after having inspected and fully satisfied himself / herself / themself / itself and confirms that the construction of the said Unit as well as of the Project has been carried out on the said Land with clear title and in accordance with the sanctioned plans and the agreed specifications and are in good order and condition. The Vendee further confirms that before taking over physical possession of the said Unit the Vendee has inspected/checked and verified all material aspects and has no complaints/claims in this regard including but not limited to Super Area/Carpet Area of the said Unit, all amenities, quality of construction, workmanship, specifications of the said Unit and installations thereof, materials, fittings and fixtures used and / or provided there in and all services rendered and / or to be rendered and that the Vendee has no objection, complaint or claims with respect to same. The Vendee has independently satisfied himself/herself/themselves/itself that the construction as also various installations in the said Unit and the Project has / have been provided in accordance with the sanctioned drawings and specifications and are in good order and condition. Further, the Vendee confirms and agrees that he/she/they/it shall not claim any compensation or withhold the payment of any charges on the ground that the infrastructure required for the Project is not yet complete, and/or the construction of the permissible / permitted additional blocks are yet to be completed, or on any other ground whatsoever. The Vendee assures the Vendor that he/she/they/it shall not raise any objection or make any claim against the Vendor in respect of any item of work which may be alleged to have been and/or not have been carried out or completed and/or for any other reason whatsoever and such

claim and/or objection, if any, shall be deemed to have been waived off by the Vendee."

30. Therefore, after execution of the conveyance deed the complainant-allottee cannot seek any refund of charges other than statutory benefits if any pending. Once the conveyance deed is executed and accounts have been settled, no claims remain. So, no directions in this regard can be effectuated at this stage.

G.VII Direct the Respondent No.2 to lease the food court to a food court operator as admitted by the Respondent in a time bound manner.

31. The Complainant seeks a direction to the Respondent No.2 to lease the food court to a food court operator, as allegedly admitted by the Respondent, and to do so in a time-bound manner.

32. Upon perusal of the record, including the submissions made by both parties and the Builder Buyer Agreement (BBA), it is observed that no clause in the BBA or other contractual documents places a binding obligation on the Respondent to lease the entire food court area to a single food court operator or any third-party operator on behalf of the Complainant or other unit holders. The obligation to secure a lessee or operator is not contractually enforceable unless specifically agreed upon in writing. While the Complainant has alleged that the Respondent made verbal or informal assurances during regarding leasing to a reputed food court operator, such assurances, if not recorded in the BBA or any addendum thereto, cannot be enforced as binding contractual obligations under the provisions of the Act.

33. Therefore, in the absence of any specific contractual clause, the Authority finds no ground to issue a direction to the Respondents to lease the food court to an operator.

G.VIII Transfer all the common areas and facilities to the association of allottees as per section 17 of the Act.

G.IX Direct the Respondent No.2 to form a RWA of Allottees and also transfer the maintenance of common areas to the RWA of Unit

Owners after making Unit Owners as member and conducting elections as per the provisions of the Act

34. The above-mentioned relief no. G.VIII and G.IX as sought by the complainant are being taken together.

35. Upon consideration of the submissions, contractual documents, and applicable legal provisions, the Authority observes that section 17 of the Act is relevant and the same is reproduced below for ready reference:

> *"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.*
>
> ***(2)*** *After obtaining the occupancy certificate and handing over physical possession to the allottees in terms of sub-section (1), it shall be the responsibility of the promoter to handover the necessary documents and plans, including common areas, to the association of the allottees or the competent authority, as the case may be, as per the local laws:*
>
> *Provided that, in the absence of any local law, the promoter shall handover the necessary documents and plans, including common areas, the association of the allottees or the competent authority, as the case may be, within thirty days after obtaining the occupancy certificate."*

36. The Authority observes that section 17 of the Act provides that the promoter is duty-bound to execute a registered conveyance deed in favour of the association of allottees and transfer the title of the common areas, along with the proportionate share of each allottee. Further, Section 17(2) mandates the physical handover of common areas and facilities to the association of allottees upon obtaining the occupancy certificate. Further, under Section 11(4)(e) of the RERA Act, the promoter is required to enable the formation of an association or society or cooperative society of the allottees. Until the transfer of maintenance and control to the RWA, allottees remain dependent

on the promoter for essential services and incur charges without having effective participation in decision-making. This undermines the intent of the Act to promote transparency, self-governance, and accountability in real estate projects.

37. In view of the aforesaid provisions of the Act, the Respondent no.2 is directed to enable formation of the Association of Allottees and transfer the common areas and facilities to the duly formed RWA in compliance with sections 11(4)(e) and 17 of the Act.

G.X Direct the Respondent No.2 to pay loss of Rent to Complainants @Rs.50,000/- per month, alongwith interest @ 18% p.a. till the date of payment, from the due date of possession till the actual date of possession as per the terms of BBA.

G.XI Direct the Respondent No.2 to pay damages of Rs.5,00,000/- arising due to downgrading of Multiplex and Rs.1,00,000/- towards legal expenses.

38. The complainant is also seeking relief w.r.t compensation in the aforesaid reliefs. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as ***M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.*** (Civil Appeal no. 6745-6749 of 2021), has held that the adjudicating officer has exclusive jurisdiction to deal with the complaints for compensation under sections 12,14,18 and section 19 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72 of the Act. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation and litigation expenses.

H. Directions of the Authority

39. 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):

i. Respondent No.2 is directed to hand over physical possession of the unit ensuring that unit is completed in accordance with the specifications under Annexure-D of the BBA dated 05.04.2017 executed inter se parties.

ii. The respondent no. 2 is directed to enable formation of the Association of Allottees and transfer the common areas and facilities to the duly formed RWA in compliance with sections 11(4)(e) and 17 of the Act.

40. Complaint stands disposed of.

41. File be consigned to registry.

Dated: 04.07.2025

(Arun Kumar)
Member
Haryana Real Estate Regulatory Authority, Gurugram