

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

Complaint no. : 4261 of 2023
Date of decision : 28.11.2023

Vardhman Jain And Tripta Jain,
R/o: - C132 Second Floor ,Sushant Lok 1
,Sector 43

Complainants

Versus

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

Respondent 1

M/s M3M India Pvt Ltd
Regd. Office at: 41st Floor Tower 1 M3M
International Financial Center,
Sector66 Golf Course Road Extn

Respondent 2

CORAM:
Shri Arun Kumar

Chairman

APPEARANCE:
Sh. Akhil Aggarwal (Advocate)
Sh. Shriya Takkar (Advocate)

**Complainant
Respondent**

ORDER

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

responsibilities and functions under the provisions of the Act or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of 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 | M3M Urbana Premium, Sector-67, Gurugram, Haryana |
| 2. | Project area | 2.9125 acres |
| 3. | DTCP license no. and validity status | 89 of 2010 dated 28.10.2010 Valid up to 27.10.2022 |
| 4. | RERA Registered/ not registered | 348 of 2017 dated 09.11.2017 amended on 05.12.2022 Valid up to 28.08.2024 |
| 5. | Allotment letter dated | 01.12.2016 [Page 35 of complaint] |
| 6. | Unit no. | MUP/R/FOOD COURT/2L/007, 2 nd floor [Page 47 of complaint] |
| 7. | Unit area | 1003.52 sq. ft. (super area) [Page 47 of complaint] |
| 8. | Increase in area of the unit vide offer of possession dated 25.02.2021 | 1096.95 sq. ft. (super area) 9% increased |
| 9. | Date of builder buyer agreement | 03.02.2017 [Page 42 of complaint] |
| 10. | Possession clause as per BBA | 16. POSSESSION OF THE UNIT 16.1 The Company, based upon its present plans and estimates, and |

| | | |
|-----|--------------------------------|--|
| | | <p>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 Commitment Period for handing over the possession of the Unit.</p> <p>[Page 80 of complaint]</p> |
| 11. | Due date of possession | <p>03.02.2022</p> <p>Note: In absence of documents regarding commencement of construction, the due date is calculated as 54 months + 180 days from date of execution of BBA dated 03.02.2017</p> |
| 12. | Basic sale consideration | <p>Rs.86,81,451/-</p> <p>[As per BBA, page 59 of the complaint]</p> |
| 13. | Total cost | <p>Rs. 96,54,257/-</p> <p>[As per page 3 of application dated 09.05.2024 filed by the respondent]</p> |
| 14. | Amount paid by the complainant | <p>Rs. 91,12,813/-</p> <p>[As alleged on page 8 of complainant and as per the receipts from page 118-131 of complaint]</p> |

| | | |
|-----|---|--|
| 15. | Acknowledgement letter dated | 18.07.2020 [Page 88 of reply] |
| 16. | Clause of pre-handover amount as per Acknowledgement letter | <p><u>Clause 4</u></p> <p><i>You, the Allottee have been well informed and apprised by the Company and you acknowledge that the Project is currently in its development stage. In terms of the Payment Plan the Company has received an amount of ₹ 91,12,813/- (Rupees Ninety One Lakhs Twelve Thousand Eight Hundred Thirteen Only) including applicable taxes, ("Contribution") applicable to the Unit towards the part consideration for the Unit. In order to ensure you, the Allottee of the timely delivery of possession of the Unit and to provide you with comfort of our commitment, the Company shall pay to you, the Allottee a monthly amount which shall be based on the calculation set out in Schedule 1 ("<u>Pre-Handover Amount</u>"). You, the Allottee, hereby understands, agrees, and acknowledges that the <u>Company shall pay such Pre-Handover Amount from 15/May/2018 till the achievement of "On filing of application for grant of Occupation Certificate" ("Commitment Period")</u>. The Pre-Handover Amount will be paid by way of Post-Dated Cheques (PDCs) drawn in the name of the Allottee, subject to deduction of applicable taxes. Once the Commitment Period has expired, no further payments towards</i></p> |

| | | |
|-----|--|--|
| | | <p><i>the Pre-Handover Amount shall be made by the Company to you, the Allottee.</i></p> <p><i>[Page 89 of complaint]</i></p> <p>As per Schedule 1-</p> <p>a. <i>The Company, subject to the terms and conditions shall pay the Pre-Handover Amount to the Allottee @ ₹ 52.05/- per sq. ft. per month from 15 May 2018 till the achievement of "On Completion of 2nd Floor Roof Slab" and Rs.36.19/- per sq. ft. per month from 15 May 2018 till the achievement of "On filing of application for grant of Occupation Certificate".</i></p> <p><i>[Page 94 of complaint]</i></p> <p>Note: <i>The respondent has paid an amount of Rs.10,71,085/- (after deducting taxes) to the complainant as pre-handover amount w.e.f. 15.05.2018 till filing of application of OC.</i></p> <p><i>[Page 12 & 95-107 of reply]</i></p> |
| 17. | Occupation certificate | 24.02.2021 [Page 109 of reply] |
| 18. | Notice of offer of possession | 25.02.2021 [Page 112 of reply] |
| 19. | Reminder for taking possession and clearing dues | 30.03.2021 Dues amounting to Rs. 11,20,420/- [Page 119 of reply] |
| 20. | Pre-cancellation notice | 26.04.2021 Dues amounting to Rs. 11,28,088/- [Page 121 of reply] |

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 respondent no.2, the complainants were lured into buying a unit in the project. That the respondent no.2 made the complainants pay the huge amount of Rs.10,00,000/- as booking amount at the time of booking in 2016.
 - II. That the respondent no.2 finally and much belatedly issued the allotment letter to the complainants on 01.12.2016 towards allotment of unit No.MUP/R/Food Court/2L/007 located on 2nd Floor of the retail block admeasuring 1003.53 square feet super area at the basic sale price of Rs.8,000/- per square feet and therefore the total sale consideration amounted to Rs. 88,31,979.52/-. It is of utmost importance to note here that the respondent No.2 illegally and with malafide intension took Rs.19,00,000/- i.e. more than 20% of the total sale consideration from the complainant even before signing and executing the builder buyer agreement which was executed after a huge delay from the date of booking.
 - III. That it was only on 03.02.2017 that the bba was finally signed and executed between the complainants and the respondent no.2. It is of utmost importance to bring in the kind attention of Authority that at this stage 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.
 - IV. It is to be noted that the complainants paid more than the total sale consideration even before the payments as per the construction link payment plan. It is to be noted that as per above mentioned payment

receipts, the complainants have already paid the entire amount and in excess as stipulated in BBA by 2017 end.

- V. That 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 02.08.2021. 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.
- VI. That the complainants were shocked to have received 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 demand of excess money under various heads but also offered the possession without even completing the unit as per the terms of the BBA.
- VII. That before highlighting the illegality in the demand which has been sought by the respondent no.2 under different heads and illegal offer of possession without completing the unit, complainants would like to bring in the kind attention of the Authority that the respondent no.2 has imposed completely illegal condition on the complainant to sign and execute an "indemnity deed-cum-undertaking" to deprive the complainants 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.
- VIII. That it is further important to note that the respondent no.2 has failed to provide the complainants a copy of the occupancy certificate even till

date. Additionally, the complainant deny the offer of possession wholly and very clearly since the demands raised by the respondent no.2 in the offer of possession letter is illegal and extra-contractual and further, the possession was offered by the respondent no.2 pre-maturely. Further, the complainants cannot be liable to pay charges for not paying such an illegal demand raised by the respondent no.2 and also for not accepting the illegal offer of possession. Further, the said demands by the respondent no.2 are conditional on the fact that complainants sign and execute an "indemnity deed-cum-undertaking" which is prima-facie illegal and is an attempt by respondent no.2 to strip the complainants of their statutory rights which evidently proves malicious intentions and fraudulent practices of the respondent no.2.

- IX. That complainants would now like to bring out various illegalities in the above-mentioned illegal offer of possession. That the respondent no.2 has increased the super area of the property 1096.95 sq. ft. as against the allotted super area of 1003.52 sq. ft. resulting into increase in BSP from Rs.80,28,160/- to Rs.87,75,600/- i.e. in excess of Rs.7,47,440/-. The said increase in super area and a demand of excess price for the same is wholly illegal. That the respondent no.2 neither issued any notice nor took consent of the complainants while raising such a demand and increasing the super area. That the respondent No.2 never informed the complainants of any change in building plans leading to such a change in super area. That in absolute violation of the law respondent no.2 have till date not disclosed the break-up of area of the property as to what will be the carpet area and what will be the built-up area in the super area. Such a default is direct encroachment of rights of the complainants to a habitable property since such hidden



information leaves a lot of room in the hands of the respondent no.2 to play fraud on complainants by providing the carpet area which is much less than what is generally expected. Further that respondent no.2 has not informed the complainants how much carpet area has increased in the said increased super area. It is further submitted that one of the major component in the BSP is cost of land. Since the land comprising the project is the same, the respondent no.2 cannot in any manner raise a demand for increase in super area by multiplying it with the entire BSP.

- X. Respondent no.2 has illegally also sought development charges amounting to Rs.7,14,114/- instead of Rs.6,53,291.52/- subsequent to illegal increase in super area. It is to be noted that the development charges do not have any relation with the increase in area. respondent no.2 is obligated to provide breakup of such an increase as to the total expenditure incurred on development charges and how much complainants are obligated to pay on pro rata basis. However, the respondent no.2 has deliberately kept a grey area in this regard in order to unduly enrich itself by stripping the complainants of their hard-earned money for whom every single penny matters. It is therefore, the said demand raised by the respondent no.2 is illegal as the same is not just in violation of law but is also extra-contractual.
- XI. That the complainants most humbly submit that imposition of the above mentioned charges on complainants is entirely illegal and does not have any legal or contractual basis. That the said taxes as demanded by the respondent no.2 are without any justification. Respondent No.2 is bound to provide break-up of the same to the complainants and how the demands so demanded have been arrived at. It is pertinent to note

here that the above taxes also cannot be increased with the alleged increase in area mechanically, as the per square feet charges shall also reduce with an increase in area, if any.

- XII. That it is humbly submitted that the respondent no.2 has made an increased demand due to increase in area while not providing any breakup or proof of the same. Additionally, majority portion of the project is still not completed as a consequence of which expenditure maintenance of the project is excessive and complainants cannot be made to pay for the same till the entire building is completed by the respondent.
- XIII. It is most humbly submitted that respondent no.2 offered a pre-mature offer of possession, in other words the possession offered by the respondent no.2 remains a paper possession even till date as the respondent no.2 has abundantly failed to offer the possession in terms of the bba and the purpose of a food court shop remains defeated since even the paper possession was offered, the said unit cannot be brought into use by the complainants in any manner for breach of multiple contractual obligations by the respondent no.2. 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.
- XIV. That it is humbly submitted that unit just does not mean the four wall enclosure, as per the BBA and various advertisements by the respondent no.2, a unit in food court is incomplete till the time

amenities attached to the same are also provided by the respondent as without the same complainants cannot bring the said units in use for the purpose the said units were sold by the respondent.

XV. That a mere cursory look at clauses 4.8, 4.13 and 4.16 of the BBA would absolutely and without any doubt establish that the total consideration of the unit already included the specification and attached amenities. Respondent No.2 cannot force the possession by merely obtaining occupation certificate on the complainants and respondent no.2 is equally bound by the specifications as promised by it under BBA. In the present case at hand, where the specifications and attached amenities are so intrinsic to the unit where non-provision of the same renders the unit useless, possession under no circumstance can be linked with merely obtaining the occupancy certificate. The offer of possession without completing the same, therefore, remains pre-mature and illegal.

XVI. That it is pertinent to note here that after the afore-mentioned illegal offer of possession was received by the complainants, the complainants issued various emails to the respondent no.2 objecting to the same, however, the respondent no.2 is completely failed to address the queries raised by the Complainant and has not provided even a single justification for such an illegal offer of possession.

C. Relief sought by the complainant

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

- a) Order the respondent no.2 to give delay interest @18% on Rs. 91,12,813/- for every month of delay from 25.02.2021 till legally valid possession is finally given to complainants,

- b) Order the respondent no.2 to refund the excess amount paid by the complainants along with interest @18% from the date of payment till the date of realisation;
- c) Order 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;
- d) Order 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;
- e) Order the respondent no.2 to lease the food court to a food court operator as admitted by the respondent in a time bound manner;
- f) Order the excessive and unjustified GST & other taxes, increase in super area charges and excessive and unjustified development charges demanded by the respondent no.2 in offer of possession dated 25.02.2021 as illegal and order the respondents to withdraw the same and not charge the same from the complainants;
- g) Order 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;
- h) Order 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;
- i) Transfer all the common areas and facilities to the association of allottees as per section 17 of RERA.--
- j) 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 RERA.

- k) Order 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; and complaint.
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.

- i. That the present complaint has been fled with malafide intentions to wriggle out of contractual obligations as there is no cause of action for the relief sought has been made out in the present complaint. It is in the humble submission of the respondents that the complainants herein being well aware of the respondents' good standing and reputation in the market and further having conducted their own independent due diligence, through their real estate broker M/s. Elite Landbase Private Limited approached the respondent expressing their interest in booking a unit in the food court on the second floor level in the retail block so located in the project "M3M Urbana Premium" 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/- towards the booking of the food court unit.

- ii. That in due consideration of the complainant's commitment to make timely payments, food court unit bearing no. MUP/R/FOOD COURT/2L/007 in M3M Urbana Premium vide allotment letter dated 01.12.2016. It is submitted that the cost of the food court unit for an area admeasuring Rs. 1003.52 sq.ft. was Rs. 88,31,979.52/- plus taxes and other charges.
- iii. That vide demand letter dated 03.12.2016 the respondent raised the second demand due within 60 days of booking for an amount of Rs.8,08,542/-. The said demand was payable on or before 23.12.2016. Since, the complainants failed to make payments therefore the respondent issued reminder letter dated 02.01.2017 requesting them to clear their outstanding dues.
- iv. That vide demand letter dated 01.02.2017, the respondent raised the third demand due within 120 days for booking and asked the respondent to pay Rs.17,12,813/- on or before 21.02.2017. However, the complainants failed to clear their dues and thus were in default of their contractual obligations.
- v. The respondent company along with cover letter dated 02.02.2017 handed over two copies of the buyers agreement to the complainants for execution at their end. The buyers agreement was executed between the parties on 03.02.2017. The Buyers Agreement duly covers all the liabilities and rights of both the parties.
- vi. It is submitted that as per clause 16.1 of the buyers agreement the possession as 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 building in which the unit is located or date of execution of the buyers agreement whichever is later. Further, the

respondent company is entitled to an extension of 6 months as grace period. It is submitted that the buyers agreement was executed between the parties on 03.02.2017. Thus, the due date of possession is to be reckoned from the date of execution of execution of buyers agreement being the later date. Thus, the due date of possession comes out to be 03.02.2022.

- vii. That after constant follow ups the complainants made payment of Rs.8,08,542 and Rs.9,00,000/- towards their outstanding dues on 20.02.2017 and 28.02.2017. Accordingly, the respondent issued receipts dated 07.04.2017 and 28.02.2017. The respondent issued reminder letters dated 15.03.2017 and 17.04.2017 requesting the complainants to clear their pending dues.
- viii. The respondent informed the complainants about the revision in layout plans and accordingly, sought objections to the proposed revision of layout plan vide letter dated 25.09.2017. It is submitted that no objection was ever raised by the complainants to the revision of building plans.
- ix. That the respondents as agreed completed the construction and development of the retail component of the complex well within time and the respondent applied to the competent authority for the grant of occupation certificate on 03.11.2020 after complying with all the requisite formalities.
- x. I The occupation certificate was granted by the competent authorities on 24.02.2021 after due verification and inspection that the building has been constructed accordance with the approved layout plans. C The Respondent vide letter dated 25.02.2021 offered possession of the food court unit to the complainants and requested

the complainants 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 complainants way before the agreed the timeline i.e. 03.02.2022. Thus, there was no delay in offering possession of the unit to the complainants. It is submitted that post receipt of occupation certificate the super area of the unit was increased to 1096.95 sq.ft. and the price of the unit was increased to Rs. 96,54,257/- plus taxes and other charges as stated in the offer of possession. The increase in area of the unit is in accordance with clause 13.3 of the buyers agreement. That the complainants in violation of their agreed obligations failed to remit any amount towards the dues communicated vide the offer of possession, therefore the respondent issued reminder letter dated 30.03.2021, but to no avail. It is submitted that the complainants even after the issuance of the reminder letter failed to clear their outstanding dues and take the possession, therefore the respondent issued pre-cancellation notice dated 26.04.2021, asking the complainants to clear their pending dues and take the possession.

- xi. That the complainants herein, despite repeated requests, did not come forward to clear their dues and take possession of the unit which is ready and complete. It is submitted that the complainants defaulted in making payments and thus, are in default of their contractual obligations under the buyers agreement.
- xii. The complainants are liable to clear their pending dues as stated in the offer of possession along with delayed interest. Further the complainants are also liable to pay maintenance charges and holding

charges. The complainants are defaulters who did not clear their pending dues. It is submitted that the complainants are raising these frivolous issues as an afterthought in order to unjustly enrich themselves. Thus, the complainants are not entitled to get any reliefs as sought from this Authority. Failure on the part of the complainants to perform their contractual obligations disentitles them from any relief.

- xiii. That the respondent has fulfilled its contractual obligations under the buyers agreement however despite that the complainants have failed to clear the outstanding dues. The complainants are in default of their contractual obligations and are raising these frivolous issues in order to escape their liability cast upon them by the virtue of the buyers agreement and unjustly enrich themselves. Therefore, the complainants are not entitled to any relief whatsoever.
- xiv. It is submitted that as per clause 16.1 of the buyers agreement the possession as 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 buyers agreement whichever is later. Further, the respondent company is entitled to an extension of 6 months as grace period.
- xv. It is submitted that the buyers agreement was executed between the parties on 03.02.2017. Thus, the due date of possession is to be reckoned from the date of execution of buyers agreement being the later date. Thus, the due date of possession comes out to be 03.02.2022. It is submitted that the respondent despite adverse circumstances like NGT orders, COVID 19 pandemic completed the

construction of the project and applied for the grant of occupation certificate on 03.11.2020. The occupation certificate was granted by the competent authorities on 24.02.2021 after due verification and inspection. The respondents offered possession to the complainants for booked unit vide letter for offer of possession dated 25.02.2021 and requested the complainants to take possession of the unit which was ready and complete.

- xvi. That the buyers agreement dated 03.02.2017 was entered into between the parties and as such, the parties are bound by the terms and conditions mentioned in the said agreements. The said agreement was duly signed by complainants after properly understanding each and every clause contained in the agreement. The complainants were neither forced nor influenced by the respondents to sign the said agreements. It was complainants who after understanding the clauses signed the said agreements in their complete senses.
- xvii. That the complainants are not genuine consumers and end users since they had booked the said unit in question purely for commercial purpose as a speculative investor and to make profits and gains. Further, the complainants have invested in many projects of different companies which prove that the complainants are not consumers but only an investor. Thus, it is clear that the complainants have invested in the units in question for commercial gains, i.e. to earn income by way of rent and of the property at an appreciated value and to earn premium thereon. Since the investment has been made for the aforesaid purpose, it is for commercial purpose and as such the complainants are not consumers. The complaint is liable to be dismissed on this ground alone. under these circumstances, it is all the

more necessary for the complainants, on whom the burden lies, to show how the complainants are consumers.

- xviii. The complainants have not disclosed her financial position and the statement of income and assets for the last 5 (five) years prior to the date of booking of the above unit. It is necessary for the complainants to file copies of its income tax returns for the 5 (five) years prior to the date of booking.
- xix. Details of the total assets both moveable and immovable together with the value of each asset in the name of the complainants should also be disclosed, which would indicate whether the aforesaid booking was done, like other properties, for investment purposes.
- xx. It is reiterated herein that the complainants cannot be treated as a consumer and hence the captioned complaint is liable to be dismissed at threshold.
- xxi. It is submitted that as per the clauses of the buyer's agreement which are binding between the complainants and the respondents, both the parties to the complaint have agreed upon their respective obligations and consequences in case of breach of any of the conditions specified therein. In view of the above, the captioned complaint is not maintainable in law and is liable to be dismissed in limine.
6. 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

7. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

8. 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

9. 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.

10. 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 the relief sought by the complainant.



- F.I Order the respondent no.2 to give delay interest @18% on Rs. 91,12,813/- for every month of delay from 25.02.2021 till legally valid possession is finally given to complainants,**
- F.II Order the respondent no.2 to refund the excess amount paid by the complainants along with interest @18% from the date of payment till the date of realisation;**
- F.III Order 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;**
- F.IV Order 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;**
- F.V Order the respondent no.2 to lease the food court to a food court operator as admitted by the respondent in a time bound manner;**
- F.VI Order the excessive and unjustified GST & other taxes, increase in super area charges and excessive and unjustified development charges demanded by the respondent no.2 in offer of possession dated 25.02.2021 as illegal and order the respondents to withdraw the same and not charge the same from the complainants;**
- F.VII Order 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;**
- F.VIII Order 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;**
- F.IX Transfer all the common areas and facilities to the association of allottees as per section 17 of RERDA;**
- F.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 RERA.**
- F.XI Order 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; and complaint.**

11. On the above-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other reliefs.
12. The factual matrix of case reveals that the unit in question was allotted to the complainants vide allotment letter dated 01.12.2016, followed by execution of the builder buyer agreement dated 03.02.2017. As per clause 16.1 of the said agreement, the possession of the unit was to be offered within a period of 54 months from the date of commencement of construction or from the date of execution of the agreement, whichever is later, along with a grace period of 180 days. In the absence of any material on record to indicate the date of commencement of construction, the due date of possession has been computed from the date of execution of the agreement, which comes out to be 03.02.2022. [Calculated as per *fortune Infrastructure and Ors. Vs. Trevor D'Lima and Ors*, (12.03.2018 - SC); MANU/SC/0253/2018]
13. The respondent applied for grant of occupation certificate on 03.11.2020, the same was granted by the competent authority on 24.02.2021, and thereafter the offer of possession was issued to the complainants on 25.02.2021. Thus, it is evident that the offer of possession was made nearly one year prior to the stipulated due date of possession.
14. In view of the aforesaid factual position, this Authority finds that the possession of the unit was offered well within the contractual timeline. The entitlement to delay possession compensation under Section 18(1) of the Act arises only in cases where the promoter fails to hand over possession within the agreed period. In the present case, not only has the respondent adhered to the timeline, but possession has been offered

in advance. Consequently, no delay, as contemplated under the Act, is made out against the respondent, and the complainants are not entitled to any delay possession compensation.

15. The complainants have further prayed for handing over of physical possession of the unit along with complete amenities. In this regard, it is observed that the unit in question forms part of a commercial component, and the nature and manner of its use are governed by the terms and conditions of the builder buyer agreement. Relevant portion from the agreement has been reiterated below :-

*You, the Allottee, hereby confirm and acknowledge that by choosing the Payment Plan, you hereby give your explicit, unconditional and irrevocable consent to the Company to, either by itself or through its nominee group/ affiliate company, find a suitable tenant / lessee /licensee for the Unit booked by you, the Allottee, subject to the terms and conditions contained herein, **You, the Allottee, hereby authorize the Company (or its nominee), for the purposes of negotiating and finalizing the terms and conditions of such lease, license etc. including but not limited to the lease term/rentals/license fee thereof. You, the Allottee, as the case may be, agree to bear all the costs and expenses including the brokerage charges in relation to leasing/ renting of the Unit, stamp duty and registration charges for execution of the lease deed / license agreement/ other agreement and all other costs, charges and expenses related and incidental thereto.** A perusal of the aforesaid stipulation indicates that such units are not intended to be operated in the manner of independent physical possession akin to residential units, but are subject to the overall scheme of operation and leasing of the commercial complex. In view thereof, no separate direction, as sought by the complainants, for handing over of physical possession is warranted.*

16. The aforesaid stipulation clearly demonstrates that the possession and enjoyment of the unit is structured through a managed leasing model, wherein the operational control, tenant identification of the unit vest with the promoter or its nominee. The allottee, in such an arrangement, does not acquire right to independently occupy or use the unit, but is

bound by the agreed mechanism of leasing and operation of the commercial complex.

17. In view of the express terms of the agreement, which have been accepted by the complainants, no enforceable right to seek independent physical possession of the unit, beyond the agreed leasing structure, can be said to arise. The complainants, having consciously entered into such an arrangement, are bound by the same and cannot now seek a relief contrary to the contractual terms.
18. The complainants have further assailed the increase in super area from 1003.52 sq. ft. to 1096.95 sq. ft., as reflected in the offer of possession dated 25.02.2021. In this regard, it is observed that the increase in area is approximately 9%, which falls within the permissible variation limit of 10% as provided under the terms of the Builder Buyer Agreement dated 03.02.2017. Such variation, being within the contractually agreed threshold, cannot be said to be arbitrary or illegal. The complainants, having entered into the agreement with open eyes, are bound by the said terms, and no interference is called for on this count. Relevant portion from the agreement has been reiterated below :-
- 13.3 In the event that the revision (increase or decrease) In Unit Super Area due to such Changes, except in the case of Changes as stated in Clause 41.8 of this Agreement, exceeds Ten Percent (10%) of Unit Super Area mentioned herein at any time prior to the execution of Conveyance Deed and such revision is unacceptable to the Allottee, every attempt shall be made by the Company to offer the Allottee an alternate food court counter/ unit of a similar size within the Project subject to availability.*
19. The complainant has further sought to challenge the validity of the offer of possession dated 25.02.2021 and the challenge to the offer of possession on the ground of alleged illegality or prematurity is also devoid of merit. The record clearly establishes that the occupation certificate was granted on 24.02.2021, and the offer of possession was

issued immediately thereafter on 25.02.2021. Once an occupation certificate has been granted by the competent authority, the project is deemed to have been completed in accordance with the sanctioned plans and applicable laws. In the absence of any cogent material to the contrary, the offer of possession so issued cannot be termed as invalid or premature.

20. The complainant has sought the relief with regard to direct the respondent to charge the GST as per rules and regulations, the attention of the authority was drawn to the fact that the legislature while framing the GST law specifically provided for anti-profiteering measures as a check and to maintain the balance in the inflation of cost on the product/services due to change in migration to a new tax regime i.e. GST, by incorporating section 171 in Central Goods and Services Tax Act, 2017/Haryana Goods and Services Tax Act, 2017, the same is reproduced herein below:

"Section 171. (1) Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices."

21. As per the above provision, the benefit of tax reduction or 'Input Tax Credit' is required to be passed onto the customers in view of Section 171 of HGST/CGST Act, 2017. In the event, the respondent/promoter has not passed the benefit of ITC to the buyers of the unit in contravention to the provisions of Section 171(1) of the HGST Act, 2017. The allottee is at liberty to approach the State Screening Committee Haryana for initiating proceedings under Section 171 of the HGST Act against the respondent-promoter.
22. The respondent shall not charge the complainant any amount that is not included in the buyer's agreement. Further, relief with regard to not

charge IFMS is concerned, the payment plan attached to the Builder Buyer Agreement (Annexure-A), the total sale consideration includes the charges for Interest Free Maintenance Security. Therefore, the complainant is liable to pay the IFMS charges as part of the agreed payment terms.

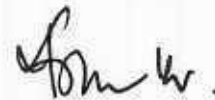
23. The complainant is seeking above mentioned relief w.r.t. compensation on loss of rent and litigation charges. Hon'ble Supreme Court of India in case titled as **M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors. 2021-2022(1) RCR (C), 357** held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaint in respect of compensation & legal expenses.

G. Directions of the authority

24. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:
- i. That the subject matter of the allotment pertains to virtual space, the said relief sought by the Complainant for physical possession is hereby declined.
 - ii. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement.

- iii. The respondent shall offer possession of the unit within 30 days and execute the conveyance deed of the allotted unit within a period of 3 months upon obtaining occupation certificate from the competent authority, upon payment of outstanding dues and requisite stamp duty by the complainant as per norms of the state government as per Section 17 of the Act, failing which the complainant may approach the adjudicating officer for execution of order.
- iv. The respondent is directed to charge the maintenance/use/utility charges from the complainant-allottees as per consumptions basis as has been clarified by the Directorate of Town and Country Planning, Haryana vide clarification dated 31.01.2024.
- v. A period of 90 days is granted to the respondent to comply with the above directions, failing which statutory consequences under the Act shall ensue.
25. Complaint as well as applications, if any, stand disposed of accordingly.
26. File be consigned to registry.

Dated: 28.11.2025



Arun Kumar
Chairman

Haryana Real Estate Regulatory
Authority, Gurugram