BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 1722 of 2021
First date of hearing : 27.04.2021
Date of decision : 25.08.2021

Sudha Monga
R/o: - H-501, Signature View Apartment,
Mukerji Nagar, Delhi- 110009 **Complainant**

Versus

M/s Revital Reality Private Limited.
Office at: 1114, 11th floor
Hamkunt Chambers, 89,
Nehru Place, New Delhi- 110019 **Respondent**

CORAM:
Shri Samir Kumar **Member**
Shri Vijay Kumar Goyal **Member**

APPEARANCE:
Sh. H.K Monga Advocate for the complainant
Ms. Ratna Diwedi Advocate for the respondent

ORDER

1. The present complaint dated 25.03.2021 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 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:

S.No.	Heads	Information
1.	Project name and location	"Basera", Sector- 79, 79B, Gurugram.
2.	Project area	12.10 acres
3.	Nature of the project	Affordable group housing project
4.	DTCP license no. and validity status	I. 163 of 2014 dated 12.09.2014 valid upto 11.09.2019 II. 164 of 2014 dated 12.09.2014 valid till 11.09.2019
5.	Name of licensee	Revital Realty private limited & others
6.	RERA Registered/ not registered	**Registered vide no. 108 of 2017 dated 24.08.2017.**
7.	RERA registration valid up to	31.01.2020
8.	RERA Extension no.	14 of 2020 dated 22.06.2020
9.	RERA Extension valid upto	31.01.2021
10.	Unit no.	R034T140007, ground floor, tower 14

		[Page no. 14 of complaint]
11.	Unit measuring	473 sq. ft. [Carpet area] 73 sq. ft. [Balcony area]
12.	Date of execution of flat buyer agreement	24.12.2015 [Page no. 13 of complaint]
13.	Payment plan	Time linked payment Plan [Page 15 of complaint]
14.	Total consideration	Rs.19,28,500/- [As per payment plan Page 16 of complaint]
15.	Total amount paid by the complainant	Rs.17,96,517/- [As per outstanding statement dated 01.11.2019 page no. 30 of complaint]
16.	Due date of delivery of possession as per clause 3.1 of the flat buyer's agreement within a period of 4 years from the date of approvals of building plans or grant of environment clearance, whichever is later. [Page 17 of complaint]	22.01.2020 [Note: - the due date of possession can be calculated by the receipt of environment clearance dated 22.01.2016]
17.	Delay in handing over possession till the date of order i.e. 25.08.2021	1 year 7 months and 3 days
18.	Occupation certificate	Not obtained
19.	Status of the project	Ongoing
20.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint: -

I. That the respondent is a developer and after taking license from Directorate General Town and Country Planning Haryana, Chandigarh on 12.09.2014 and after sanction of the building plan on 19.12.2014, started developing an affordable group housing society under name and style of "Basera" at Sectors 79, 79B Gurugram.

II. That the complainant applied for a flat on 20.04.2015 and she was allotted a flat no. 0007 in tower 14 having a carpet area of 473 sq ft. and balcony area of 73 sq ft. on the ground floor with two-wheeler parking in the respondent project known as Basera situated in Sectors 79,79 B Gurugram (Haryana).

III. That the total amount payment is Rs.19,28,500/- excluding tax and Rs.19,95,998/- inclusive of service tax and all other taxes. Thereafter, all the payments were regularly being made by the complainant well within the time and the has also collected few payments from M/s ICICI Bank which facilitated the home loan from its branch at Green Park New Delhi before the expiry of 36 months. That August 2019 the complainant visited the project to ascertain the status of her flat and project but was shocked to note that on only tower no. 1 to 13 were under construction and no construction was begin/seen for tower 14 and 15 in which the complainant has the

flat though only covered parking area of tower 14 in which the complainant was allotted the flat was noticed and left in between.

IV. That she was shocked with the status of construction, the complainant withholds the last payment of Rs.2,60,347.50/- but in order to show her bonafide, the complainant sent a cheque for a sum of Rs. 29,000/- in account after adjusting a sum of Rs.96,425/- paid by the two sisters in law of the complainant namely Lalita Monga and Rs. 96,425/- paid by another sister-in-law of the complainant namely Sushma Monga as despite writing so many times, the aforesaid amount was not adjusted/paid to them who are the other family members and also applied for flats in them respondent's project.

V. That in terms of clause 3 of the flats buyer agreement dated 24.12.2015, the respondent was bound to handover the possession of the said allotted flat No. 0007 in tower 14 within a period of 4 years from the date of approval of the building plans, the sanction plan was approved on 19.12.2014 and the environment clearance was also taken by the respondent before clearance of building plans which fact has been admitted by the respondent. The project is being developed by the

developer/respondent in accordance with the approval and sanction including environment clearances. This fact was acknowledged on 24.12.2015 while executing the flat buyer agreement which was allotted on 19.09.2015. The entire consideration amount was paid from time to time without any default on the part of the complainant.

VI. That on 20.07.2020 a mail was sent by respondent with photos of the tower. From the photo sent by the respondent on E-mail dated 20.07.2020 and visit of the complainant in August, 2019 clearly shows that tower 14 in which the complainant was allotted the flat was not even begin till August 2019 and only lantern on parking of ground floor was put in the tower having flat of the complainant building and the respondent cannot at-all handover the possession in any case in any case till December 2021 and therefore there would be a delay of almost 2 years in handing over the possession of the flat allotted to the complaint.

VII. That on one hand for making the payment towards the consideration of the aforesaid flat, a loan was taken by the ICICI Bank and the installment of the same are being regularly paid by the complainant besides making of the a huge consideration amount from the pocket of the complainant and on the other hand the respondent even

after taking the entire amount the respondent is not handing over the possession as the construction of the tower 14 has only begin in 2020 whereas the . even after taking the entire amount, the construction of the tower 14 has only begun in 2020 whereas the respondent was supposed to handover possession in December 2019 presuming the normal and natural construction time, the possession of the flat is not likely to be handed over till December 2021. has adapted unlawful trade practice so as to get and extract money from its consumer who innocently and bonafide have paid the entire consideration amount. In the e-mail sent on 20.07.2020 and even in earlier mails, the respondent clearly mentioned that they have started handing over the possession and the balance payment, if any should be made in time. So this statement itself has been made in order to defraud the complainant and for this reason, the complainant is alleging adaption of the illegal trade practice.

C. Relief sought by the complainant

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

(i) The respondent may be directed to pay damages/ compensation and interest @ 12 % per annum for delay

in handing over the possession of the allotted flat i.e. flat no. 0007 in tower 14 having a carpet area of 473 sq. ft. and balcony area of 73 Sq Ft. on the Ground Floor with Two Wheeler parking in project known as Basera situated in sector 79 and Sector 79 B Gurugram (Haryana) on the total amount deposited by the complainant with the respondent, till the possession of the flat allotted to the complainant is handed over by the respondent.

5. On the date of hearing, the Authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The respondent contested the complaint on the following grounds. The submission made therein, in brief is as under: -

   I. That the project "BASERA" located in sector-79, 79-B, Gurugram, Haryana. The complainant approached the respondent, making enquiries about the project and after complete information being provided to him, sought to book an apartment in the said project.

II. That the complainant booked an apartment bearing no. 0007, in tower- 14, having a super area of 473 sq. ft. (approx.) for a total consideration of Rs.19,28,500/-.

III. That consequentially, after fully understanding the various contractual stipulations and payment plans for the said apartment, the complainant executed the flat buyer agreement dated 24.12.2015. It is pertinent to mention that the relevant clause of the allotment agreement that the project is to be completed within 4 years from the date of approval of building plans or grant of environmental clearance, whichever is later. The environmental clearance for the project was received on 22.01.2016. However, the said date is to be extended due to covid- 19 and other force majeure event.

IV. That in interregnum, the pandemic of covid-19 has gripped the entire nation since March 2020. The Government of India has itself categorized the said event as a 'Force Majeure' condition, which automatically extends the timeline of handing over possession of the apartment to the complainant. Thereafter, it would be apposite to note that the construction of the project is in full swing, and the delay if at all, has been due to the government-imposed lockdowns which stalled any sort

of construction activity. Till date, there are several embargos qua construction at full operational level.

V. That the said project is registered with this authority vide registration no. 108 of 2017 dated 24.08.2017 and the completion date as per the said registration is 31.01.2020.

VI. That the delay if at all, has been beyond the control of the respondent and as such extraneous circumstances would be categorized as 'Force Majeure', and would extend the timeline of handing over the possession of the unit, and completion the project.

VII. The delay in construction was on account of reasons that cannot be attributed to the respondent. That the flat buyer agreement provides that in case the developer/ respondents delay in delivery of unit for reasons not attributed to the developer/respondent, then the developer/respondent shall be entitled to proportionate extension of time for completion of said project. The relevant clauses which relate to the time for completion offering possession extension to the said project are "Clause 3.1" under the heading "possession" of the "agreement". The respondents seek to rely on the relevant clauses of the agreement at the time of arguments.

VIII. The force majeure clause, it is clear that the occurrence of delay in case of delay beyond the control of the respondent, including but not limited to the dispute with the construction agencies employed by it for completion of the project is not a delay on account of the respondent for completion of the project.

IX. That the timeline stipulated under the flat buyer agreement was only tentative, subject to force majeure reasons which are beyond the control of the respondent. The respondent in an endeavor to finish the construction within the stipulated time, had from time to time obtained various licenses, approvals, sanctions, permits including extensions, as and when required. Evidently, the respondent had availed all the licenses and permits in time before starting the construction.

X. That apart from the defaults on the part of the allottee, like the complainant herein, the delay in completion of project was on account of the following reasons/ circumstances that were above and beyond the control of the respondent: -

- Shortage of labour/ workforce in the real estate market as the available labour had to return to their respective states due to guaranteed employment by

the Central/ State Government under NREGA and JNNURM schemes;

- that such acute shortage of labour, water and other raw materials or the additional permits, licenses, sanctions by different departments were not in control of the respondent and were not at all foreseeable at the time of launching of the project and commencement of construction of the complex. The respondent cannot be held solely responsible for things that are not in control of the respondent.

XI. The respondent has further submitted that the intention of the force majeure clause is to save the performing party from the consequences of anything over which he has no control. It is no more res integra that force majeure is intended to include risks beyond the reasonable control of a party, incurred not as a product or result of the *negligence or malfeasance* of a party, which have a materially adverse affect on the ability of such party to perform its obligations, as where non-performance is caused by the usual and natural consequences of external forces or where the intervening circumstances are specifically contemplated. Thus, in light of the aforementioned, it is most respectfully submitted that the delay in construction, if

any, is attributable to reasons beyond the control of the respondent and as such the respondent may be granted reasonable extension in terms of the allotment letter.

XII. It is public knowledge, and several courts and quasi-judicial forums have taken cognisance of the devastating impact of the demonetisation of the Indian economy, on the real estate sector. The real estate sector is highly dependent on cash flow, especially with respect to payments made to labourers and contractors. The advent of demonetisation led to systemic operational hindrances in the real estate sector, whereby the respondent could not effectively undertake construction of the project for a period of 4-6 months. Unfortunately, the real estate sector is still reeling from the aftereffects of demonetisation, which caused a delay in the completion of the project. The said delay would be well within the definition of 'Force Majeure', thereby extending the time period for completion of the project.

XIII. That the complainant has not come with clean hands before this authority and has suppressed the true and material facts from this authority. It would be apposite to note that the complainant is a mere speculative investor who has no interest in taking possession of the apartment. In fact a bare perusal of the complaint would

reflect that he has cited 'financial incapacity' as a reason, to seek compensation of the monies paid by him for the apartment. In view thereof, this complaint is liable to be dismissed at the threshold.

XIV. That the completion of the building is delayed by reason of non-availability of steel and/or cement or other building materials and/or water supply or electric power and/ or slow down strike as well as insufficiency of labour force which is beyond the control of respondent and if non-delivery of possession is as a result of any act and in the aforesaid events, the respondent shall be liable for a reasonable extension of time for delivery of possession of the said premises as per terms of the agreement executed by the complainant and the respondent. The respondent and its officials are trying to complete the said project as soon as possible and there is no malafide intention of the respondent to get the delivery of project, delayed, to the allottees. It is also pertinent to mention here that due to orders also passed by the Environment Pollution (Prevention & Control) Authority, the construction was/has been stopped for a considerable period day due to high rise in pollution in Delhi NCR.

XV. That the enactment of Real Estate (Regulation and Development) Act, 2016 is to provide housing facilities with modern development infrastructure and amenities to the allottees and to protect the interest of allottees in the real estate market sector. The main intension of the respondent is just to complect the project within stipulated time submitted before the HARERA authority. According to the terms of the builder buyer agreement also it is mentioned that all the amount of delay possession will be completely paid/adjusted to the complainant at the time final settlement on slab of offer of possession. The project is ongoing project and construction is going on.

XVI. That the respondent further submitted that the Central Government has also decided to help bonafide builders to complete the stalled projects which are not constructed due to scarcity of funds. The Central Government announced Rs.25,000 Crore to help the bonafide builders for completing the stalled/ unconstructed projects and deliver the homes to the homebuyers. It is submitted that the respondent/ promoter, being a bonafide builder, has also applied for realty stress funds for its Gurgaon based projects.

XVII. That compounding all these extraneous considerations, the ***Hon'ble Supreme Court vide order dated 04.11.2019***, imposed a blanket stay on all construction activity in the Delhi- NCR region. It would be apposite to note that the 'BASERA' project of the respondent was under the ambit of the stay order, and accordingly, there was next to no construction activity for a considerable period. It is pertinent to note that similar stay orders have been passed during winter period in the preceding years as well, i.e. 2017-2018 and 2018-2019. Further, a complete ban on construction activity at site invariably results in a long-term halt in construction activities. As with a complete ban the concerned labor was let off and they traveled to their native villages or look for work in other states, the resumption of work at site became a slow process and a steady pace of construction as realized after long period of time.

XVIII. The respondent has further submitted that graded response action plan targeting key sources of pollution has been implemented during the winters of 2017-18 and 2018-19, These short-term measures during smog episodes include shutting down power plant, industrial units, ban on construction, ban on brick kilns, action on waste burning and construction, mechanized cleaning of

road dust, etc. This also includes limited application of odd and even scheme.

XIX. That the pandemic of covid-19 has had devastating effect on the world-wide economy. However, unlike the agricultural and tertiary sector, the industrial sector has been severally hit by the pandemic. The real estate sector is primarily dependent on its labour force and consequentially the speed of construction. Due to government-imposed lockdowns, there has been a complete stoppage on all construction activities in the NCR Area till July 2020. In fact, the entire labour force employed by the respondent were forced to return to their hometowns, leaving a severe paucity of labour. Till date, there is shortage of labour, and as such, the respondent has not been able to employ the requisite labour necessary for completion of its projects. The Hon'ble Supreme Court in the seminal case of ***Gajendra Sharma v. UOI & Ors, as well Credai MCHI & Anr. V. UOI & Ors,*** has taken cognizance of the devastating conditions of the real estate sector, and has directed the UOI to come up with a comprehensive sector specific policy for the real estate sector. According to notification no. 9/3-2020 HARERA/GGM (Admn) dated 26.05.2020, passed by this authority, registration certificate upto 6

months has been extended by invoking clause of force majeure due to spread of corona virus pandemic in Nation, which beyond the control of respondent.

XX. This authority vide, its order dated 26.05.2020 had acknowledged the Covid-19 as a force majeure event and had granted extension of six months period to ongoing projects. Furthermore, it is of utmost importance to point out that vide notification dated 28.05.2020, the Ministry of Housing and Urban Affairs has allowed an extension of 9 months vis-a-vis all licenses, approvals, end completion dates of housing projects under construction which were expiring post 25.03.2020 in light of the force majeure nature of the Covid pandemic that has severely disrupted the workings of the real estate industry. That the pandemic is clearly a 'force majeure' event, which automatically extends the timeline for handing over possession of the apartment.

E. Jurisdiction of the authority

7. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act 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 objections raised by the respondent

F. I. Objection regarding the project being delayed because of force majeure circumstances and contending to invoke the force majeure clause.

8. From the bare reading of the possession clause of the flat buyer agreement, it becomes very clear that the possession of the apartment was to be delivered by **22.01.2020.** The respondent in his contribution pleaded the force majeure clause on the ground of Covid- 19. That in the High Court of Delhi in case no. ***O.M.P (I) (COMM.) No. 88/2020 & I.As. 3696-3697/2020 title as M/S HALLIBURTON OFFSHORE SERVICES INC VS VEDANTA LIMITED & ANR. 29.05.2020*** it was held that *the past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself.* Now this means that the respondent/promoter has to complete the construction of the apartment/building by 22.01.2020. The respondent/promoter has not given any reasonable explanation as to why the construction of the project is being delayed and why the possession has not been offered to the complainant/allottee by the promised/committed time. That

the lockdown due to pandemic in the country began on 25.03.2020. So the contention of the respondent/promoter to invoke the force majeure clause is to be rejected as it is a well settled law that ***"No one can take benefit out of his own wrong"***. Moreover there is nothing on record to show that the project is near completion, or the developer applied for obtaining occupation certificate. Thus, in such a situation the plea with regard to force majeure on ground of Covid- 19 is not sustainable.

F.II. Objection regarding entitlement of DPC on ground of complainant being investor.

9. The respondent has taken a stand that the complainant is the investor and not consumer, therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumer of the real estate sector. The authority observed that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that

any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the apartment buyer's agreement, it is revealed that the complainant is buyer and they have paid total price of **Rs.17,96,517/-**to the promoter towards purchase of an apartment in the project of the promoter. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

> *"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"*

10. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment buyer's agreement executed between promoter and complainant, it is crystal clear that the complainant is an allottee as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no.

0006000000010557 titled as ***M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.*** has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoters that the allottee being an investor is not entitled to protection of this Act also stands rejected.

G. Findings of the authority on the relief sought by the complainant

11. Relief sought by the complainant:

(a). To direct the respondent to pay damages/ compensation and interest @ 12 % per annum for delay in handing over the possession of the allotted unit along with two-wheeler parking in project known as Basera situated in sector 79 and Sector 79 B Gurugram (Haryana) on the total amount deposited by the complainant with the respondent, till the possession of the flat allotted to the complainant is handed over by the respondent.

12. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

13. Clause 3.1 of the flat buyer's agreement provides for handing over of possession and is reproduced below: -

3. POSSESSION

*3.1 Subject to Force Majeure circumstances, intervention of Statutory Authority, receipt of occupation certificate and Allottee/Buyer having timely complied with all its obligations, formalities or documentation, as prescribed by Developer and not being in default under any part hereof and Flat Buyer's Agreement, including but not limited to the timely payment of installments of the other charges as per payment plan; Stamp Duty and registration charges, the Developer proposes to offer possession of the Said Flat to the Allottee/Buyer within a period of 4 (four) years from the date of approvals of building plans or grant of environment clearance (hereinafter referred to as the **"Commencement Date")** whichever is later.*

14. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the rate of 12% p.a. however, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under: -

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.:
Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

15. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

16. Consequently, as per website of the State Bank of India i.e., https://sbi.co.in, the marginal cost of lending rate (in short, MCLR) as on date i.e. 25.08.2021 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.

17. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.
Explanation. —For the purpose of this clause—

(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;

(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"

18. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which the same is as is being granted to the complainant in case of delayed possession charges.

19. On consideration of the circumstances, the documents, submissions made by the parties and based on the findings of the authority regarding contravention as per provisions of rule 28(2), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 3.1 of the agreement executed between the parties on 24.12.2015, the possession of the subject apartment was to be delivered within stipulated time within 4 years from the date of approval of building plan i.e. (19.12.2014) or grant of environment clearance i.e. (22.01.2016) whichever is later. Therefore, the due date of handing over possession is calculated by the receipt of environment clearance dated 22.01.2016 which comes out to be 22.01.2020. The

respondents have failed to handover possession of the subject apartment till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority is of the considered view that there is delay on the part of the respondents to offer of possession of the allotted unit to the complainant as per the terms and conditions of the flat buyer agreement dated 24.12.2015 executed between the parties. Further no OC/part OC has been granted to the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottee.

20. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession charges at rate of the prescribed interest @ 9.30% p.a. w.e.f. 22.01.2020 till the handing over of possession as per provisions of section 18(1) of the Act read with rule 15 of the rules.

H. Directions of the authority

21. 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. The respondent is 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. 22.01.2020 till the handing over of possession of the allotted unit;

ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period;

iii. The arrears of such interest accrued from 22.01.2020 till the date of order by the authority shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottee before 10th of the subsequent month as per rule 16(2) of the rules;

iv. The rate of interest chargeable from the allottee by the promoters, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondent/ promoter which is the same rate of interest which the promoters shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

v. The respondent shall not charge anything from the complainant which is not the part of the flat buyer agreement. The respondent is also not entitled to claim holding charges from the complainants at any point of time even after being part of the builder buyer's agreement as per law settled by hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.

22. Complaint stands disposed of.

23. File be consigned to registry.

(Samir Kumar)
Member

(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 25.08.2021
Judgement uploaded on 24.10.2021