

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

Complaint no. : 725 of 2021
Date of filing complaint: 26.02.2021
First date of hearing : 21.05.2021
Date of decision : 29.10.2021

DSS Buildtech Private Limited R/o: - 5 th floor, Time Square Building, Sushant lok-1, block- B, Gurugram, Haryana -122002	Complainant
Versus	
Vismay Singhal & Ors. R/o: Flat no. 303, Ivory Court-4 Essel Towers MG Road near IFFCO Chowk, Gurugram, Haryana-122001	Respondents
CORAM:	
Dr. K.K. Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Shri Ashwarya Sinha & Ms. Shubhi Sharma (Advocates)	Complainant
Respondent in person with Sh. M.K. Dang (Advocate)	Respondent

ORDER

1. The present complaint has been filed by the complainant/promoter against the allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real

Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 19(6), (7) and 13(1) of the Act wherein it is prescribed that the allottee shall make necessary payments in the manner and within time as specified in the agreement for sale and to pay interest, at such rate as may be prescribed, for any delay in payments.

A. Unit and project related details

2. The particulars of project, unit, sale consideration, the amount paid by the respondent, 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	The Melja, Village Mohamadpur Gujjar, Sector-35, Sohna, Gurugram.
2.	Project area	17.41875 acres
3.	Nature of the project	Group housing project
4.	DTCP license no.	77 of 2013 dated 10.08.2013
	License valid up to	09.08.2024
	Name of the licensee	Aarti Khandelwal & others
5.	RERA registered/not registered	Registered
	HAERA registration no.	288 of 2017 dated 10.10.2017
	Registration valid up to	25.10.2021
6.	Allotment letter	24.04.2015 [annexure- v on page no. 51 of the complaint]

7.	Unit no.	D-701, 7 th floor [annexure- v on page no. 51 of the complaint]
8.	Size of unit	1350 sq. ft. [annexure- v on page no. 51 of the complaint]
9.	Date of execution of buyer's agreement	Not executed
10.	Payment plan	Construction Linked Payment Plan (annexure- III on page 45 of complaint)
11.	Total sale consideration	Rs.79,34,850/- as per SOA [without tax but including IFMSD] (Annexure -vii on page 90 of complaint)
12.	Total amount paid by the respondent	Rs. 20,24,947/- as per SOA [without tax but including IFMSD] (Annexure -vii on page 90 of complaint)

B. Facts of the complaint: -

3. That, respondents/allottees booked a 2BHK flat, measuring 1350 sq. ft., in the project namely 'The Melia' by way of application form, dated 15.11.2013 for a basic sale price of Rs. 4850/- per sq. ft. plus other statutory charges and taxes, as applicable, for the total sale consideration of Rs. 79,34,850/- and paid Rs. 6,00,000/- as an initial booking amount. A residential unit no. D-701 situated on the seventh floor of tower-D in the above said project, was allotted to

respondents/allottees vide allotment letter dated 24.04.2015. The respondents/allottees had opted for construction linked plan for making payments towards the flat sale consideration.

4. That initially, the respondents/allottees paid a booking amount of Rs. 6,00,000/- towards initial booking amount and thereafter instalments were paid, total amounting to Rs. 20,24,946/- against the total sale consideration of Rs. 79,34,850/- excluding statutory tax.
5. That complainant sent a standard apartment buyers' agreement to the respondents/allottees on 27.07.2015 but the respondents/allottees failed to execute the same. Therefore, to enforce the provision of legislation, necessary directions may kindly be issued by the authorities in their order while admitting the complaint as a travesty of justice and in absence of which would technically be a giving benefit to the respondent of his own wrong. That, on the date of filing the present complaint, the respondents/ allottees have paid only Rs. 20,24,946/- and a sum of Rs.80,09,846/- is outstanding against the respondents/allottees, on account of instalments and interest etc.
6. The complainant has obtained all the approvals required for the development of the project. The details of the approvals

obtained are already on record. The development of the project is going on with full swing. The structural work of most of the towers in the project, including tower-D in which the respondents/allottees has booked the said flat, is completed. The brickwork & other internal finishing works is also going on with full swing and reached almost at completion of more than 51%.

7. The respondents/allottees have agreed, under the payment plan of application form signed by him to pay instalments on time and discharge his statutory obligations as per application form and standard apartment buyer's agreement. However, the respondents/allottees have failed to make payments of his respective instalments as demanded by the complainant, from time to time.
8. That, the complainant has duly complied with all applicable provisions of the Act, 2016 and rules and also that of agreement for sale qua the respondents and other allottees. Since starting the development of the project, the complainant has sent updates about the progress of the project regularly from time to time mostly on monthly basis to all the buyers including the respondents and also the customer care department of the complainant is regularly in touch with the respondent and other buyers for giving

updates on the progress of the project. The respondents/allottees were updated on numbers of time, by e-mail and letters etc, on the progress of the project from time to time, and also invited to make a visit of the project.

9. That respondents/allottees voluntarily and knowingly, failed to execute standard buyer agreement and also made default to pay instalments despite repeated demands and reminders etc. by the complainant. The complainant also informed the respondents/allottees, through various demand/payment request letters, that home loan facility was available by leading banks/NBFCs such as HDFC, ICICI, SBI, Central Bank of India, Reliance Home Finance Limited, Tata Capital Home Loan at a good rate of interest. Further, as a goodwill gesture, the complainant offered the respondents/allottees one-time settlement to waive off all the interest charges on the condition of payment of the entire principal amount at the earliest but in vain.
10. That, in terms of standard apartment buyers' agreement read with the Act of 2016, the respondents/allottees are under statutory obligations to pay the instalments within the time agreed therein and also to bear 15% simple interest on dues.
11. It is pertinent to note that in terms of in terms of standard apartment buyers' agreement read with the Act of 2016

clause 13.3 of ABA the respondents/allottees have no right to withhold the due payments for any reason whatsoever.

12. That, the complainant had commenced the construction of the said project on 01.12.2016 after receiving the approval of 'Consent to Establish" dated 12.11.2016 from the Haryana State Pollution Control Board. The complainant is fully committed to hand over the possession of apartments/Flats to the buyers well within the timeframe provided by the RERA.
13. The respondents/allottees have been continuously making defaults in making payments, voluntarily and knowingly, of his instalments and other dues and there is delay of 1807 days i.e. approx. 5 years. As per last payment request dated 01.02.2016 sent by the complainant to respondents/ allottees a sum of Rs.80,09,846/- is outstanding against the respondents/allottees, on account of instalments and interest on the previous outstanding instalments.
14. That is the given situation, since, the project is registered under the Act, upon expiry of the time given under the ABA, if the project is not completed that too without the fault of the complainant, the complainant would be burdened with an additional cost of delay compensation or the refund to the

allottee who paid in time. All this will ultimately push the complainant towards insolvency.

15. It is submitted that the respondents/allottees are obligated to pay, and complainant is entitled to recover the due amount along with interest agreed in terms of the ABA under section 19(6) and (7) of the Act and rule 15 of the rules.
16. That the complainant has duly complied with all applicable provisions of the Act of 2016, and rules and also that of agreement for sale qua the respondents/allottees and other allottees. Since starting the development of the project, the complainant has been sending updates about the progress of the project regularly from time to time mostly on monthly basis to all the buyers including the respondents/allottees and also the customer care department of the complainant is regularly in touch with the respondents/Allottees for giving updates on the progress of the project. The updates sent by the complainant to flat buyers including the respondents/allottees are already on record for ready reference. However, it is submitted that as and when required by the hon'ble authority, the complainant will submit remaining copies of updates sent by the complainant to flat buyers including the respondents/allottees.

17. That complainant sent a standard apartment buyers' agreement to the respondents/allottees on 27.07.2015 but the respondents/allottees failed to execute the same. However, the respondent has signed the application form which contained terms of payment and other essential conditions relating to allotment and interest etc. In addition, an allotment letter dated 24.04.2015 have also been issued to the respondent and they have been offered to sign the standard apartment buyer agreement on 27.07.2015. It is submitted that the RERA legislation is a welfare legislation for both the parties and accordingly effect of the provisions has to be given accordingly. The phrase "as the case may be" used in section 18(1) of the Act, is wide enough to cover the allotment letter dated 24.04.2015 and also the application form dated 15.11.2013.
18. That the standard apartment buyers' agreement was timely sent and received by the respondent. Therefore, it is presumed in law that the respondents/allottees have constructive knowledge of terms and condition of the standard buyer's agreement and is grossly negligent to honour the terms thereof. In addition to the above, various demands and reminders were sent and received by the respondent. The respondent has signed the application form

which contained terms of payment and other essential conditions relating to allotment and interest etc. and the allotment letter have also been issued to the respondents. The Indian Contract Act defines it as "a person is deemed to have actual knowledge of the fact if she willingly abstains from acquiring the knowledge or is grossly negligent". Under section 19 (6) of the Act, every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any. In addition, sub-section (7) provides that the allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6). Therefore, respondent is liable to pay instalment as well as interest accruing thereupon.

19. It is submitted that under section 31 (1) and section 71 (3) of the Act, the hon'ble authority is empowered to adjudicate the present complaint being filed by the complainant as the

promoter of the project against the respondents/Allottees being allottee of a unit in the above said project.

C. Relief sought by the complainant: -

20. The complainant has sought following reliefs:

- i. Direct the respondent to execute the apartment buyer agreement with the complainant/developer.
- ii. Direct the respondent to make payment of outstanding dues, interests, and make future payments in time so that the development of the project does not suffer owing to delay and the same is completed within the timeline given.

D. Reply by the respondent

21. The respondent has contested the complaint on following grounds:

- i. That the complaint was neither maintainable nor tenable and is liable to be out rightly dismissed.
- ii. That there was no cause of action to file the present complaint.
- iii. That the complainant has no locus standi to file the present complaint.
- iv. That the present complaint was bad for non-joinder of necessary parties. It is submitted that M/s. Silverglades Holdings Pvt. Ltd has to be arrayed as party to the present complaint.

- v. That this authority does not have the jurisdiction to try and decide the present complaint.
- vi. That the complainant was estopped from filing the present complaint by its own acts, conduct, omissions, admissions, acquiescence and laches.
- vii. That the complainant has not approached this authority with clean hands and has intentionally suppressed and concealed the material facts in the present complaint.
- viii. That the respondents received a marketing call from the office of the complainant in the month of June, 2013 for booking in its upcoming project situated at Sector 35, Sohna, District Gurugram, Haryana. The respondents had also been attracted towards the aforesaid project on account of publicity given by the complainant through various means like publishing various brochures, posters, advertisements etc. The respondents visited the sales gallery and consulted with the marketing staff of the complaint. The marketing staff of the complainant showed a very rosy picture of the project and made several representations with respect to the innumerable world class facilities to be provided by the complainant in its project. The

marketing staff of the complainant also assured timely delivery of the unit.

- ix. That the respondents induced by the assurances and representations made by the complainant, decided to book a residential unit in the project of the complainant as the respondents required the same in a time bound manner for their own use and occupation and for their family members. It is pertinent to mention here that on the basis of such representations, the complainant demanded the booking amount from the respondents and the respondents vide cheque No.827941 dated 21.7.2013 drawn on SBI Bank made payment of Rs. Six lacs. This fact is evident from a bare perusal of the receipt dated 24.10.2013 issued by the associate company of the complainant i.e. M/s. Silverglades Holdings Pvt. Ltd. The respondents signed several blank and printed papers including the Booking application form at the instance of the complainant on the ground that the same were required for completing the booking formalities.
- x. That the respondents were not given a chance to read or understand the said documents and they signed the documents and completed the formalities as desired by

the complainant. That after signing the said documents at the instance of the complainant, when the respondents went through booking application form in detail, they figured out that there were no detailed terms and conditions of the allotment mentioned in the said application form. This fact was intimated by the respondents to the complainant and the representatives of the complainant assured that the terms and conditions of the allotment would be shared with the respondents very shortly.

- xi. That the respondents kept on following up with the complainant to allot them a unit in the project of the complainant as the respondents had already deposited the booking amount and also to share with them the detailed terms of the allotment. However, instead of doing so, the complainant sent several demands to the respondents to make the part-payment towards the total sale consideration and the respondents in the hope that all the needful would be done deposited an amount of Rs.7,36,869/- vide cheque No.380555 dated 15.12.2013 drawn on SBI Bank; Rs.6,68,434/- vide cheque no.387572 dated 6.12.2014 drawn on SBI bank and an amount of Rs.19,643/- for which TDS receipt

No.000779 dated 18.3.2015 was issued by the complainant company. The respondents had made payment of Rs. 20,24,946/- towards the total sale consideration of the unit in question.

- xii. That it was only after a considerable delay of almost two years that the complainant issued an allotment letter dated 24.4.2015 and allotted unit bearing no. D-701 on 7th floor having approximate area of 1350 sq.ft. at the rate of Rs. 4850/- per sq. ft along with all other charges, service tax, levies and other charges. Even in the allotment offer letter, no terms and conditions were mentioned regarding the allotment made by the complainant to the respondents. The respondents yet again requested the complainant to share the terms and conditions of the allotment. The complainant brushing aside all the requisite norms and stipulations sent the copies of the agreement vide its letter dated 27.07.2015 i.e. after 20 months (1.5 years) from the date of signing of the booking application form. Ongoing through the contents of the said agreement, the respondents realized that the recitals contained in the said agreement were wholly one sided, unilateral, arbitrary, illegal, unfair and biased in favour of the

complainant and were totally unbalanced and unwarranted and that the said agreement was totally contrary to the picture and representations given to the respondents earlier when they were approached to book a unit in the said project. The respondents realized that the intentions of the complainant were not bonafide and genuine and that acceptance of such totally one-sided document would be highly harmful and injurious to the interest of the respondents. Hence the respondents did not accept the proposal sent by the complainant vide the said agreement and expressed their inability to execute the one-sided agreement in question. Therefore, no concluded contract between the parties ever came into existence.

- xiii. That while in the case of the respondents making the delay in payment of instalments, the complainant company was shown to be entitled to charge interest @ 15% p.a., the respondents are shown to be entitled to a meagre amount of Rs.10/- per sq.ft. per month of the super area of the apartment for the period of delay in offering the possession of the apartment and the period stated by the complainant.

xiv. That the respondents requested the complainant vide several emails dated 10.02.2016, 13.02.2016, 15.02.2016, 17.02.2016, 22.02.2016, 25.02.2016, 01.03.2016, 21.03.2016, 22.03.2016, 20.04.2016, 21.04.2016, 27.04.2016, 08.08.2016, 11.01.2017, 03.03.2017, 20.04.2017, 17.05.2017, 07.09.2017 and 30.01.2018 that they have issues with several clauses mentioned in the standard agreement sent by the complainant to the respondents and the respondents specifically gave clause wise explanation to the unilateral terms of the agreement vide the said emails. The respondents also requested the complainant to cancel the allotment of the unit and to refund the amount already paid by them towards the total sale consideration. On the basis of the said emails several meetings were held between the complainant and the respondents wherein the representatives of the complainant gave several false assurances that the terms of the agreement would be amended in consonance with the Model agreement as specified in the Haryana Real Estate Regulation and Development Rules 2017. Instead of accepting to the just and legal request of the respondents, the complainant started

sending wholly baseless and false emails making totally unwarranted and baseless demands as the sole intention of the complainant was to trap the respondents and to bind them with the obligations to which the respondents had never agreed.

- xv. That the complainant had demanded and had encashed the booking amount of the respondents prior to the issuance of the licence granted to it by the concerned authorities under the Haryana Development and Regulation of Urban Areas Act, 1975. The respondents were constrained to issue cheque no.827941 dated 21.7.2013 drawn on SBI bank for an amount of Rs. 6 lacs and the same was encashed by the complainant on 1.8.2013. However, the licence was granted by the concerned authorities to the complainant only on 10.8.2013. This act is in complete violation of section 7 of the Haryana Development and Regulation of Urban Areas Act, 1975 which states that no person without obtaining licence under section 3 of the Act could transfer or agree to transfer in any manner plots or making advertisements or receive any amount in respect thereof. However, the complainant acted in violation of the rules and regulations and is

deliberately trying to conceal its own wrongs and illegalities.

- xvi. That the above stated provisions of the apartment buyer's agreement besides other similar one-sided provisions are on the face of it highly illegal, absurd, unilateral, arbitrary, unconscionable and not valid. The compensation to be offered to the complainants, in case of default on the part of the respondent, has deliberately been formulated to the detriment of the respondents and the same is illegal and unsustainable. The legislature has promulgated the Act of 2016, to balance the bargaining power of the allottees who have been disadvantaged by the abuse of the dominant position of the developers. The agreement in the present case contains several clauses which are unacceptable without proper amendment as per the terms of the Model Builder-Buyer Agreement provided in Haryana Real Estate (Regulation and Development) Rules, 2017.
- xvii. That the complainant committed several other illegalities in raising payment demands from the respondents. The complainant had commenced the construction of the project only on 1.12.2016 and the

same has been admitted by the complainant itself in the present complaint. The complainant had commenced the construction when the consent to establish was granted by the concerned authorities. However, the demand for commencement of excavation was raised by the complainant prior to the grant of the consent to establish dated 12.11.2016. The said demand was sent by the complainant to the respondents vide its demand letter dated 01.02.2016. Moreover, it is evident from a bare perusal of the ledger sent by the complainant that demand for excavation was raised on 8.12.2015 i.e., almost a year before the commencement of the project on 1.12.2016 as admitted by the complainant itself. The complainant has indulged in gross dishonesty and illegality and specific directions are to be given by this authority to conduct a detailed enquiry about several defaults and violations committed by the complainant company.

- xviii. Moreover, when the respondents went to meet the representatives of the complainant at the project site, the respondents were shocked to see the construction status of the tower in question. No construction activity was going on at the project site and it seemed that the

work has been at standstill since several months. The actual ground reality at the construction site was way different than what the complainant had claimed to the respondents regarding the completion of the project. It is pertinent to mention here that the last payment demand 'On casting of internal plaster' was issued by the complainant to the respondents on 20.8.2019. Even otherwise there has been an inordinate delay in developing the project well beyond what was promised and assured to the respondents at the time of booking.

- xix. That it is pertinent to mention here that as per clause 2(h) of licence no.77 dated 10.8.2013, the complainant was to make arrangement of water supply, sewerage, drainage etc. and no such arrangement has been made by the complainant in the project in question till date. Even as per the terms of the agreement, the respondents are entitled to refund of the amount paid by them.
- xx. That the complainant has continuously been misleading the respondents by giving incorrect information and assurances that the agreement containing balanced and equal terms without any bias would be shared by the complainant with the respondents. The respondents

have withdrawn the allotment made in their favour by the complainant within some days of the knowledge of the terms and conditions of the allotment. The complainant has committed various acts of omission and commission by making incorrect and false statements in the advertisements and the assurances given by it at the time of booking. The complainant is enjoying the valuable amount of consideration paid by the respondents out of their hard-earned money.

- xxi. That the complainant kept on giving false assurances that they would either amend the terms of the agreement in question or would refund the amount back to the respondents. However, the complainant has deliberately, mischievously, fraudulently and with malafide motives cheated the respondents by not doing the needful. It is submitted that the terms of the agreement have deliberately been formulated to the detriment of the respondents and the same are illegal and unsustainable. The legislature has promulgated the RERA Act of 2016 to balance the bargaining powers of the allottees who have been disadvantaged by the abuse of the dominant position of the developers. The agreement in the present case contains several clauses

which are unacceptable without proper amendment as per the terms of the model builder buyer agreement provided in the Haryana Real Estate (Regulation and Development) Rules 2017. There has been deliberate lethargy, negligence and unfair trade practices by the complainant company. The highhandedness of the complainant is an illustration of how the complainant conducts its business which is only to maximize the profits with no concern towards the buyers.

- xxii. That as per section 12 of the RERA Act 2016, the complainant is liable to return the entire amount along with interest to the respondents for giving incorrect and false statements.
- xxiii. That it is a settled law that the allottees cannot be forced to execute an agreement containing unilateral, unfair, one sided and arbitrary terms and the said agreement if executed cannot be enforced against the allottees by the developer. The respondents have been duped off their hard-earned money paid to the complainant regarding the apartment in question. The respondents requested the complainant several times to refund the amount paid by them by cancelling the allotment but the complainant despite its assurances

has been dilly dallying the matter and has now filed the present baseless and false complaint against the respondents. The respondents have been running from pillar to post and even have been mentally and financially harassed by the conduct of the complainant.

- xxiv. That the project is a ongoing project and the respondents even believes that no occupation certificate has been issued for the project till date by the concerned authorities and nor the same has even been applied for by the complainant despite the lapse of the due date as per the terms of the agreement.
- xxv. That it is again reasserted that the project was pre-launched by the complainant and the complainant has been a consistent defaulter in adhering to the rules, regulations and the provisions laid down by law. The complainant in utter disregard of its responsibilities has left the respondents in the lurch and the respondents have been forced to chase the complainant for seeking relief for which the respondents have already filed a complaint before the Hon'ble Adjudicating Officer, Gurugram seeking refund of the amount paid by it on the basis of false assurances made by the complainant along with interest and

compensation. The present complaint has been filed with malafide motives and the same is liable to be dismissed with heavy costs payable by the complainant to the respondents.

22. 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.

E. Jurisdiction of the authority

23. The respondents have raised an objection regarding jurisdiction of authority to entertain the present complaint. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

24. 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

The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the allottee as per provisions of section 19(6) and (7) 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 of the authority

F.1 Issue: Whether the respondent has violated the provisions of section 19(6) read with section 19(7) of the Act?

25. As per the observations of authority, the total consideration of the apartment is Rs.79,34,850/- (without tax but including IFMSD). The respondent/allottee has paid only Rs.20,24,946/- including service tax. As per clause 11.1 of standard apartment buyer agreement (but not executed between the parties), it is the obligation of allottee to make timely payments for the total sale consideration. The clause 11.1 of apartment buyer agreement is reproduced as under:

11. TIME IS OF THE ESSENCE; BUYER'S OBLIGATIONS

"11.1.1 Time is the essence with respect to the obligations of the Buyer to pay the Total Sale Consideration as provided in Schedule-III on or before the due date(s) as may be prescribed. It is clearly agreed and understood by the Buyer that except for a demand notice for payments, the Company

shall not be required to remind the Buyer for payments due as per the Payment Plan on for performance of any other obligations of the Buyer in terms thereof."

26. Therefore, authority is satisfied that the respondent is in contravention of section 19(6) and (7) of the Act. The relevant provision of the Act has been reproduced below:

19. Rights and duties of allottees:

(6) Every allottee, who has entered into an agreement or sale to take an apartment, plot or building as the case may be, under Section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground, rent, and other charges, if any.

(7) The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section(6).

That the Hon'ble High Court of Bombay in the matter titled **Neelkamal Realtors Suburban Pvt. Ltd. And Anr vs. Union of India** has already held that RERA strikes the balance between the promoter and allottees, the relevant para of judgement is reproduced herein below:

"In the case of Cellular Operations Association of India and ors. Vs. Telecom Regulatory Authority of India and ors. (Supra), the Supreme Court held that there cannot be any dispute in respect of settled principles governing provisions of Articles 14, 19(1)(g) read with Article 19(6). But a proper balance between the freedom guaranteed and the social control permitted by Article 19(6) must be struck in all cases. We find that RERA strikes balance between rights and obligations of promoter and allottees. It is a beneficial legislation in the

larger public interest occupying the field of regulatory nature which was absent in this country so far.

27. It is evident from the persual of letter of allotment of the allotted unit that the same was booked for a total sale consideration of Rs.79,34,850/- on the basis of letter of allotment dated 24.04.2015. A further persual of statement of account dated shows that against the total sale consideration of Rs.79,34,850/-. The complainant has deposited Rs.20,24,946/- up to dated 18.03.2015. It has come on the record that the unit was booked under construction linked plan. Though no apartment buyer agreement was executed between the parties detailing the schedule of payments, dimension of area of allotted unit and due date of possession but the complainant builder has already completed 51% of the project in which the unit of the allottee is situated. So as per the provision of 19(6) & (7) of the Act, it is obligatory for allottee of unit to make necessary payment within the time as agreed upon. Though the letter of allotment dated 24.04.2015 is silent on this aspect, but the same shows a sum of Rs. 19,642 being due against the allottee. The allottee paid only a sum of Rs. 20,24,946/- up to 18.03.2015 and did not make the remaining payments as

evident from payment schedule on page number 90 of complaint.

28. The unit was admittedly booked under construction linked plans, so in such a situation it was obligatory on the allottee to make the payment of remaining amount due on raising of further construction by the complainant/builder. Hence, it is proved that the allottee violates the provision of s.19(6) read with s.19(7) of the Act.

F.2 Issue - What should be the rate of interest to be paid by the respondent/allottee?

29. It has been contended by the complainant that as per standard apartment buyer agreement, the respondent/allottee is under statutory obligation to pay the instalments within the time agreed therein and also to bear 15% simple interest on dues. The relevant clause 11.1.2 of standard apartment buyer agreement is reproduced below:

"11.1.2 For any delay in making any payment in terms hereof, simple interest @15% shall be chargeable. The company shall also be within its rights to decline to execute the conveyance deed and refuse to transfer the apartment in the name of any other buyer unless all payments are fully paid."

30. However, section 19(6) and (7) of the Act states that the allottee shall make necessary payments in the manner and within time as specified in the agreement for sale and to pay interest, at such rate as may be prescribed, for any delay in

payments 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.

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.

31. 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., 29.10.2021 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e. 9.30% per annum.
32. The definition of term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be

liable to pay the allottee, in case of default. 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;"*

33. Therefore, the respondent shall be charged at the prescribed rate i.e., 9.30% per annum by the complainant/promoter which is the same as is being granted to complainant/promoter in case of delayed possession charges.

34. The counsel for the complainant submitted that the developer is willing to consider reduction in the interest rate when mutually agreed as per provisions of section 19 (8) of the Act of 2016 between the promoter and the allottee. The developer/complainant has assured to sort out by mutual agreement if there is any other dispute that may arise further in giving effect to the decision in this case.

F.3 Issue – Execution of apartment buyer agreement

35. The unit has been booked by the respondent through an application form dated 15.11.2013. The allotment letter was issued by the complainant/promoter to the respondent/allottee on 24.04.2015. The complainant has sent the standard apartment buyer agreement on 27.07.2018, however, the respondent/allottee has failed to execute the same. Therefore, both the parties are directed to execute the builder buyer agreement.
36. On consideration of the documents available on record and submissions made by the party regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 19(6) and (7) of the Act. The respondent has paid only Rs. 20,24,946/- out of Rs.79,34,850/- which is the total sale consideration. The complainant and respondent are directed to execute the apartment buyer agreement as per section 13(1) of the Act. Accordingly, it is the failure of the respondent/allottee to fulfil his obligations and responsibilities as per the agreement to make timely payments to the promoter, accordingly, the non-compliance of the mandate contained in section 19(6) and (7) of the Act on the part of the respondent is established.

G. Directions issued by the Authority

37. Hence, the authority hereby passes this order and issues 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):-


a. The respondent/allottee shall make the requisite payments as per the provisions of section 19(6) and (7) of the Act.

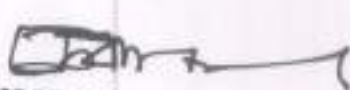
b. The respondent/allottee shall be charged interest at the prescribed rate of interest i.e. at the rate 9.30% per annum by the complainant/promoter which is same as is being granted to the allottee in case of delayed possession.

c. Both the parties are directed to execute the apartment buyer agreement.

38. Complaint stands disposed of.

39. File be consigned to the registry.


(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Date: 29.10.2021