

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

Complaint no. : 3782 of 2020
Date of filing complaint: 27.10.2020
First date of hearing : 08.12.2020
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	
Amit Makkar Address: 44/8, Primrose Vatika City, Sector-49, Sohna Road, Gurugram-122018	Respondent
CORAM:	
Dr. K.K. Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Shri Ashwarya Sinha & Ms. Shubhi Sharma (Advocates)	Complainant
Sh. Satyam Bhatia and Aman Madan (Advocates)	Respondent

ORDER

1. The present complaint has been filed by the complainant/promoter against the 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 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, Sector-35, Sohna, Gurgaon
2.	Project area	17.41875 acres
3.	Nature of the project	Group housing complex
4.	DTCP license no.	77 of 2013 dated 10.08.2013
	License valid up to	09.08.2024
	Licensee	Aarti Khandelwal & others
5.	RERA registered/not registered	Registered
	HARERA registration no.	288 of 2017 dated 10.10.2017
	Validity of registration	25.10.2021
6.	Unit no.	F-704, 7 th Floor Tower-F [Page no. 50 of complaint]

7.	Unit measuring	1350 sq. ft.
8.	Date of execution of apartment buyer's agreement	Not executed
9.	Allotment letter	24.04.2015 [Page 50 of complaint]
10.	Payment plan	Construction linked payment plan. [Page 44 of complaint]
11.	Date of commencement of construction of the project	01.02.2016 [Annexure-VII on page no. 88 of complaint] Note: The date has been mentioned in statement of account as "on start of excavation"
12.	Total consideration	Rs. 80,69,850/- (without tax but including IFMSD) [as per statement of account on page 88 of complaint]
13.	Total amount paid by the respondent	Rs. 20,17,963/- [as per statement of account on page 88 of complaint]

B. Facts of the complaint: -

3. The complainant has submitted that the respondent/allottee booked a 2 BHK flat, measuring 1350 sq. ft., in the project namely "The Melia" by way of application form dated 16.11.2013. The respondent has paid Rs.6,00,000/- as an initial booking amount.
4. A residential unit no. F-704 situated on the 7th floor of tower-F in the above said project, was allotted to

respondent/allottee vide allotment letter dated 24.04.2015. The complainant sent a standard apartment buyer's agreement to respondent/allottee on 26.08.2015 but the respondent/ allottee failed to execute the same.

5. That on the date of filing the present complaint, the respondent/ allottee has paid only Rs. 20,17,963/- and a sum of Rs. 77,28,490/- (i.e. instalment Rs.56,95,879/- and interest Rs.20,32,611/-) is outstanding against the respondent/allottee.
6. That the respondent/allottee had agreed and confirmed, to pay instalments on time and discharge his statutory obligations as per application form dated 14.12.2013 and standard apartment buyer's agreement. However, the respondent/allottee has failed to make payments of his respective instalments as demanded by the complainant, from time to time.
7. The respondent/allottee voluntarily and knowingly, failed to execute standard apartment buyer agreement and also made default to pay instalments despite repeated demands and reminders etc. by the complainant.
8. In terms of standard apartment buyer agreement, the respondent/allottee is under statutory obligations to pay the instalments within the time agreed therein and also to bear

15% simple interest on dues. In terms of clause 13.3 of apartment buyer agreement, the respondent/allottee has no right to withhold the due payments for any reason whatsoever. Further as per clause 14.1 of apartment buyer agreement, subject to other conditions thereof the tentative timeline given was 48 months with a grace period of 180 days from the date of receiving the last approvals required for commencement of construction. As per clause 14.2 of apartment buyer agreement, the aforesaid period of delivery of possession get extended on default in payment.

9. 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 promised time-period.
10. The respondent/allottee has been continuously making defaults in making payments, voluntarily and knowingly, of his instalments and other dues. As per the last payment request sent by the complainant to respondent/allottee a sum of Rs.77,28,490/- (i.e. instalment Rs.56,95,879/- and interest Rs.20,32,611/-) is outstanding against

respondent/allottee, on account of instalments and interest etc.

11. That the respondent/allottee is obligated to pay and complainant is entitled to recover the due amount along with interest agreed in terms of the apartment buyer agreement under section 19 (6) and (7) of the Act and rule 15 of the rules.
12. The complainant has duly complied with all applicable provisions of the Act & rules and also that of agreement for sale qua the respondent/allottee and other allottee. 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 respondent/allottee and also the customer care department of the complainant is regularly in touch with the respondent/allottee for giving updates on the progress of the project. The updates sent by the complainant to flat buyers including the respondent/allottee are already on record for ready reference. However, it is submitted that as and when required by the authority, the complainant will submit remaining copies of updates sent by it to flat buyers including the respondent/allottee.

13. That under section 31 (1) of the Act, this authority is empowered to adjudicate the present complaint being filed by the complainant as the promoter of the project against the respondent being allottee of a unit in the above said project.

C. Relief sought by the complainant: -

14. 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 the future instalments on time as agreed under the apartment buyer agreement.
- iii. Direct the respondent to make payment of outstanding interest.
- iv. The entitlement of compensation to the respondent in event of delay in handing over the possession of unit may kindly be struck off if he makes any delay in payment of instalment and interest as per apartment buyer agreement.

D. Reply by the respondent

15. The respondent has contested the complaint on following grounds:
- i. That somewhere in September 2013, agents of the complainant approached the respondent and showed its intentions of building a residential project in Gurugram, Haryana. The complainant showed a very

rosy picture of the intended project and induced the respondent into investing his hard earned for a residential apartment in the said Housing Complex. The complainant assured the respondent that the said housing project will have world class amenities with ultra-modern infrastructure and timely possession.

- ii. That intimated by the picture as portrayed by the complainant, the respondent decided to invest his hard-earned money in the residential housing project namely "The Melia" and booked a residential flat in the said project through application form dated 16.11.2013. That the total sale consideration agreed between the parties for the said flat amounted to Rs. 80,69,850/-
- iii. That further, it was represented by the complainant that unlike other projects, the intended to be built by the complainant will be deliver timely and as per the agreed periods in the apartment buyer's agreement. The complainant additionally stated that the construction of the said flat is almost begun, and all the necessary clearances have been obtained. That Rs. 6,00,000/- was paid by the respondent as the 'booking amount' to the complainant at the time of agreed upon

the application form dated 16.12.2013. That subsequently, after a gap of around 2 years, allotment letter dated 24.04.2015 was sent to the respondent who confirmed the same and consequently, the parties herein executed an apartment buyer's agreement on 26.08.2015. Again, the only condition laid out by the respondent towards the said allotment was that the flat be provided/delivered on time. That again, it was reassured by the complainant that the construction is in progress and the delivery will take place within 48 months from the date of execution of apartment buyer's agreement i.e. in 2019. Between, 2013 to 2015, the respondent paid a total sum of close to Rs.20,00,000/- to the complainant.

- iv. That somewhere in January 2016, the respondent having invested heavily in the residential flat in the project was desirous of seeing the progress in construction. But he was shocked to see that there was no construction at all and was worried at the stance taken by the complainant for the completion of construction vis-a-vis timely possession. On questioning the officials of the complainant, the respondent was informed that the construction will

begin shortly as some sanctions are yet to be procured by the complainant rest assuring that there will be no delay in handing over the possession. The respondent had no other alternative and stuck to the assurance as given by the complainant.

- v. That keeping in mind the contractual obligations towards the timely payment that needed to be made to the complainant, the respondent ran pillar to post to apply for a loan so that there arises no hurdle from his end. In the meanwhile, the respondent also questioned the complainant at all times regarding the status of construction but the request qua the progress of construction was always brushed aside by the complainant, giving vague and ambiguous answers.
- vi. That the respondent having no other alternative decided not to apply for a loan as the basic strength of the builder was to usurp money of innocent investors, whether be it hard earn money or loans obtained from financial institution without providing timely possession. In the present case too, the complainant never provided a clear-cut picture of progress of construction and measurably failed to acknowledge a

date/timeline as to when the construction would begin and accordingly possession would be handed over.

- vii. That admittedly, the complainant ultimately began construction of the project on 01.12.2016 after receiving the required sanction in the form of 'consent to establish' dated 12.11.2016. That it had almost been three years from the application form, executed on 16.11.2013, when the complainant finally decided to go ahead with the construction. That the said lapse of three years was neither informed nor told to the respondent while executing either the application form or apartment buyer's agreement. The said act on the complainant's end was fraudulent and mala-fide as it had taken money even without obtaining all the required sanctions and were playing the ploy of 'hit & trial' while asking homebuyers to invest their money. It is at this stage where in the respondent learnt that the construction of the flat will take even for the time, thereby losing the whole purpose of his investment as possession was nowhere in sight.
- viii. That consequently, the complainant began demanding amount at regular periods without any status of construction being provided to the respondent. The

respondent on many occasions protested at the said demeanour of the complainant wherein no construction progress was provided but the demands were sent as per the complainant's whims and fancies. The said unilateral actions on the complainant's part were uncalled for, smacking of malafide and totally unprofessional behaviour.

- ix. That the complainant again started to harass by addressing demand letters and threatened the respondent that booking of the said flat will be cancelled if the payments are not made accordingly. The respondent having no other option and falling prey to the one-sidedness of the agreement and its terms therein requested the complainant to amicably settle the payment options, convenient to both the complainant and the respondent. The respondent was in regular contact with the personnel of the complainant regarding the same. However, the complainant never acknowledges the same officially.
- x. That the respondent was still not made aware about the timeline as to when the construction would be finished as the same was happening at snail's pace. The complainant was progressing with the construction as

per its own whims and fancies but sending demand letters, allegedly as per the agreement whose terms are heavily skewed in its favour leaving the respondent to fend for himself. Basically, on one side, the complainant was not adhering to the agreement qua the construction but demanded money regularly.

- xi. That the respondent again made his intentions clear of paying whatever sums are due and payable provided that the complainant fulfils its promise of handing over the said flat timely. That admittedly, the construction of the project begin on 01.12.2016 and taking into consideration of 48 months for its completion, the flat should be ready for possession by or before 30.11.2021. Even for the sake of arguments taking the extension of 6 months due to covid-19 as provided by real estate regulatory authority, Gurugram, the said project would be given time till 30.03.2021. Speaking practically, it is near to impossible that the construction would be even complete or the flat would be provided by 30.03.2021 as per the complainant's own admission, the construction completion is at 51% done over a period of 7 years.

- xii. That it is submitted that parties to an agreement need to adhere to their obligations and not pick and choose the terms mentioned in the agreement. Firstly the complainant had not disclosed the tentative time of completion of the project but submitted in the agreement about 48 months' time for completion of the project. Secondly, the complainant never informed about the progress of construction, and it is only as late as august 2019, when the complainant informed the respondent about the developments. Hence, for a period of 3 years from the date of 'consent to establish' dated 12. 11.2016, the complainant did not feel the need to update the respondent with respect to construction. The said action shows how the complainant had miserably failed to establish its own obligations qua construction but burdened the respondent with malafide demand letters. If the payments were allegedly late, it was solely due to the fact that no response was ever heard from the complainant's end about the development as there was none, constraining the respondent to non-adhering to the agreement.

- xiii. That it is further averred that the complainant had not procured all the necessary sanctions and approval from the concerned authorities before launching the housing project. It is reiterated that application form was executed between the parties on 16.11.2013 and admittedly, the complainant only received the approval from the chief town Planner-Cum-Chairman, Building Plan Approval Committee, Town and Planning Department, Haryana on 21.04.2015. The lapse of 2 years has not been explained by the complainant which goes on to show how it was playing with its customers without actually obtaining the required authorisations.
- xiv. That to substantiate further, it is submitted that the complainant received the consent to establish only on 12.11.2016 from the Haryana State Pollution Control Board, approximately 3 years after the application form (dated 16.11.2013) and one year after the allotment letter (dated 26.08.2015). The conduct of the complainant thus shows its casual approach towards the housing project. The respondent, like other gullible home buyers, were kept in the dark and were made to wait indefinitely for handover of possession of their respective apartments. No explanation has been

provided by the complainant as to what took so much time in obtaining such approvals. The complainant has further not disclosed as to when it applied before the Haryana state pollution control board to obtain the consent to establish but received the same as late as 12.11.2016. Therefore, it can be deducted that the complainant only preferred an application before the Haryana State Pollution Control Board as late as the year 2016 and hence, again shows the mala-fide and ill intent it bestowed upon its investor like the respondent hearing.

- xv. That the complainant in the column "promised date of possession" has stated the date 21.10.2021 + 6 months due to covid-19. Before the last date of handing over the possession is on or before 20.04.2022. The hostile attitude of the complainant is again shown the light as it intends to provide possession of the flat approx. after 9 years from the date of application form (2013). A lapse of 9 years, and that too with no concrete confirmation, is unexplainable, highly misleading and amounts to deficiency of service and unfair trade practice. The complainant has not bothered to state as to how has it been provided time till 21.10.2021, as the

date of construction was 01.12.2016. Calculating 48 months + the 180 days grace period (which is totally untenable), the date on which the possession should be handed over is 30.05.2021. Hence, the timeline for providing the possession is decided by the complainant as per its whims and fancies whereas the respondent is left clueless. The said action by the complainant smacks of mala-fide and ill intent where in the complainant unilaterally acted upon the terms and conditions of the agreement but the respondent is dragged into litigation, like the present case at hand.

- xvi. That moreover, admittedly the complainant has mentioned under para 9 of the complaint, that the construction has only reached the half way stage as only 51% of construction is complete. In a span of 7 years, the complainant has only been able to reach 51% and has arbitrarily decided the date of possession to be somewhere in May, 2022. The whole purpose of booking of the flat by the respondent has been lost and even if taking the best case scenario, the complainant has approached this forum with utmost shamelessness as it is admitting 51% of construction.

xvii. That to further corroborate the unilateral act of one sidedness adopted by the complainant, on perusal of clause 16.1, the builder has conveniently let itself off lightly by having to pay a compensation @ Rs. 10/- per sq. ft. of super area. Furthermore, in clause 16.1, the period of 'delay compensation' has been fixed for a period of 12 months only. The aforementioned clauses amount to an unfair trade practice as the rate of compensation at the rate months, is minute and negligible (maximum of Rs.1,62,000/-), which is approximately amounting to 2% of the value of the apartment as compared to the exorbitant penalty imposed on the apartment owner(s)/allottees which is levied at the rate of 15% p.a. as per clause 11.1.2 of the agreement.

xviii. That in continuation to the above, clause 11 of the agreement is arbitrary and one sided clause as it only talks about the buyer's obligations in terms of time being essence but does not mention at all about the owners of the complainant/builder to adhere to timelines as per law. The basic notion of the complainant is that it will act as and when it wishes and would not be liable at all but would cause harassment if

a home buyer defaulted at any point. The incorporation of such one-sided clause in an agreement constitutes an unfair trade practice since it adopts unfair methods or practices for the purpose of selling the flats by the complainant/builder.

- xix. Information regarding approvals and sanctions from concerned authorities are material facts which ought to have been disclosed to the respondent/ buyer prior to the booking, however, the same was never brought to the notice of the respondent at the time of booking, payment, issuance of allotment letter and entering into the buyer's agreement. The concealment of such material facts and its consequences by the builder amounts to an unfair and deceptive trade practice resulting in agony to the respondent.
- xx. It is a set precedent that factors such as availability/ acquisition of land and sanctions and approvals from competent authorities are fundamental basic requirements of any housing project, are the primary responsibilities of the builder and not of the home buyers. The shelter of force majeure conditions cannot be taken by the complainant/builder as it did not take

requisite approvals/sanctions from the competent authorities before launching the project in question.

16. 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

17. 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

18. 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?

19. As per the observations of authority, the total consideration of the apartment is Rs.80,69,850/- (without tax but including IFMSD). The respondent/allottee has paid only Rs.20,17,963/- 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."

20. 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 prescribe, 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.

21. 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.80,69,850/- 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.80,69,850/-. The complainant has deposited Rs.20,17,963/- up to dated 28.05.2015. 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. 20,481 being due against the allottee. The allottee paid only a sum of Rs. 20,17,963/- up to 28.05.2015 and did not make the remaining payments as

evident from payment schedule on page number 88 of complaint.

22. 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?

23. 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."

24. 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.

25. 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.
26. 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;"*

27. 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.

28. 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

29. 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 26.08.2015, however, the respondent/allottee has failed to execute the same. Therefore, both the parties are directed to execute the builder buyer agreement.
30. 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.20,17,963/- out of Rs. 80,69,850/- 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

31. 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.

32. Complaint stands disposed of.

33. 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