

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

Complaint no. : 577 of 2021  
First date of hearing : 31.03.2021  
Date of decision : 05.10.2021

**DSS Buildtech Private Limited**

Address: 506, 5<sup>th</sup> Floor, Time Square Building,  
Sushant Lok-1, B-Block,  
Gurugram, Haryana-122002

**Complainant**

Versus

**1. Udaypal Singh Rawat**

**2. Arti Rawat**

Both R/o : EU-16A, Near Vishaka Enclave -I  
Pitampura, New Delhi-110034

**Respondents**

**CORAM**

Shri Samir Kumar  
Shri V.K. Goyal

**Member  
Member**

**APPEARANCE**

Shri Suresh Rohilla

Advocate for the complainant

Shri Prince Arora

Advocate for the respondents

**HARERA**  
**ORDER**  
**GURUGRAM**

1. The present complaint dated 29.01.2021 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) and (7) 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 respondents, 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 Melia, 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.	E-204, 2 <sup>nd</sup> Floor Tower-E [Page no. 66 of complaint]
7.	Unit measuring	1750 sq. ft.
8.	Date of execution of apartment buyer's agreement	21.09.2015 [Page no. 68 of complaint]



9.	Allotment letter	13.05.2015 [Page 66 of complaint]
10.	Payment plan	Construction linked payment plan. [Page 95 of complaint]
11.	Total consideration	<b>Rs. 1,03,30,750/-</b> (without tax but including IFMSD)  [As per statement of account on page no. 102 of complaint]
12.	Total amount paid by the respondent	<b>Rs. 68,68,978/-</b>  [As per statement of account on page no. 102 of complaint]

**B. Facts of the complaint: -**

3. The complainants have submitted that the respondents/allottees booked a 3 BHK flat, measuring 1750 sq. ft., in the project namely "The Melia" by way of application form dated 14.01.2014. The basic sale price (BSP) of unit is Rs. 4753/- per sq. ft. plus other charges and taxes. The respondents have paid Rs.6,00,000/- as an initial booking amount. The respondents/allottees had opted for construction linked plan for making payments towards the flat sale consideration.
4. The respondents/allottees paid a booking amount of Rs. 6,00,000/- towards initial booking amount and thereafter only few instalments were paid, total amounting to Rs.68,68,978/-



against the total sale consideration of Rs. 1,03,30,750 including service tax. A residential unit no. E-204 situated on the 2<sup>nd</sup> floor of tower- E in the above said project was allotted to respondent/allottee vide allotment letter dated 13.05.2015. The complainant sent a standard apartment buyer's agreement to respondents/allottees and the same was executed on 21.09.2015.

5. That upto the date of filing the present complaint, the respondents/allottees has paid only Rs. 68,68,978/- and a sum of Rs. 30,23,640/- is outstanding against him.
6. That the respondents/allottees had agreed, under the payment plan of application form dated 14.01.2014 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 has failed to make payments of his respective instalments as demanded by the complainant, from time to time.
7. The respondents/allottees voluntarily and knowingly, also made default to pay instalments despite repeated demands and reminders etc. by the complainant.
8. In terms of standard apartment buyer agreement, 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. In terms of clause 11.1.2 of

apartment buyer agreement, the respondents/allottees have no right to withhold the due payments for any reason whatsoever. Further as per clause 14.1 of standard apartment buyer agreement, subject to other conditions thereof the tentative timeline given was 48 months with a grace period of 180 days for the date of receiving the last approvals required for commencement of construction. As per clause 14.2 of standard apartment buyer agreement, the aforesaid period of delivery of possession gets 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 respondents/allottees have been continuously making default in payments, voluntarily and knowingly, of his instalments and other dues.
11. It was submitted that the respondent/allottee is obligated to pay and the complainant is entitled to recover the due amount along with interest agreed in terms of the standard 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 respondents/allottees 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 respondents/allottees. 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 authority, the complainant will submit remaining copies of updates sent by it to flat buyers including the respondents/allottees.

13. It is submitted 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 respondents being allottees of a unit in the above said project.

**C. Relief sought by the complainant: -**

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

- i. Direct the respondents to make payment of the current outstanding and future instalments on time as agreed under the apartment buyer agreement.
- ii. Direct the respondents to make payment of outstanding interest.
- iii. The entitlement of compensation to the respondents 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 respondents**

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

- i. That the respondents/allottees are resident of EU-16A Near Vishakha Enclave, Pitampura, New Delhi, and are allottees of a residential unit in the above said residential project, being purposed to be developed by the complainant.
- ii. That the respondents/allottees booked a 3 BHK Flat, measuring 1750 sq. ft. in the project namely 'The Melia' apartment bearing no. E-204 and had paid Rs.6,00,000/- vide receipt No.163 dated 24.10.2013 as initial booking amount via Cheque No.826919 dated 05.08.2013 drawn on ICICI Bank. The complainant in para no.4 of his complaint had mentioned that it was a 2 BHK Flat

whereas it is a 3 BHK flat. The seriousness of the complainant regarding the facts of the case and project could be visualized from the fact that he has changed the dimension/area of the flat as per his will and whims.

- iii. That till today the respondents have paid total a sum of Rs.68,68,818/- to the complainant and the respondents have adopted for construction linked plan, that the terms of the agreement are one sided extremely partial to the complainant and against the interest of present respondents. That there are some clauses of apartment buyer agreement which are completely partial and totally favouring builder such as paras no.14, 15, 16, 17, 18, 26, 30, 31, 32, 33, 34 etc. but when more than 20% of the money was deposited there was no option left to execute the agreement as sword of forfeiture was swinging on the head of the respondents.
- iv. That the possession of the said flat has not been given to the respondents at the due promised date. Respondents have suffered substantial loss for the huge delay in possession. It was promised that the possession will be given after the 48 months from the date of the booking amount. However, it is already biased clause because the initial payments upto the tune of Rs.25,00,000/- were received by the complainant before the execution of the



apartment buyer agreement which is totally against the norms stipulated in the act itself. Six months' time is a grace period which can be provided by the tribunal in case of any emergency but the complainant by the way of incorporating certain arbitrary clauses had already extended the said period at his discretions and ironically that period has also been elapsed.

- v. That the complaint filed by the complainant is highly misplaced, misconceived and is not at all maintainable before the authority under the facts and circumstances mentioned above. It is a settled law as per chapter-iii section 13 clause 1 of the law that a promoter shall not accept a sum more than 10% of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person, without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force."
- vi. That the complaint is not maintainable specially in the wake of clause 42 of the agreement related to appointment of arbitrator in case of any dispute arose between the parties.

- vii. That the present complaint is filed in order to cover the misdeeds on the part of the complainant itself and to harass the respondents.
- viii. That by way of this reply the respondents are seeking refund of their money in the wake of breach of the clause related to handing over the possession in a time bound manner.
- ix. That this authority has no jurisdiction to entertain present complaint as the project has yet not received the registration certificate under RERA.
- x. That the no cause of action arose against the respondent as in terms of RERA Act has the complainant has changed the completion dates and has undertaken to complete the project after 2022. Hence, on this ground alone the respondent is seeking a dismissal of this complaint.
- xi. That the complaint is not at all maintainable and the same is liable to be dismissed on the ground that the complainant is seeking arbitrary interest and other charges which falls under the ambit of adjudicating officer (under RERA) and not before the authority despite of being in breach of the agreement himself. In order to cover the misdeeds regarding delay in



possession without any justification he had filed the present suit/complaint.

- xii. That no proper court fee has been paid by the complainant hence the complaint is liable to be dismissed.
- xiii. That the complainant has undertaken to complete the project on or before 2017 but till today there are no signs of a completing the project for next two years.
- xiv. That the complainant unduly and whimsically kept delayed the execution of the agreement, the respondents cannot be penalized by the complainant by endlessly prolonging the dates ahead as per his own conveniences coupled with the fact that execution of the agreement was also done at his choices after receiving the booking more than 20% of the booking amount. This clearly amounts to cheating and unfair trade practice by the complainant.
- xv. That the respondents despite constant follow up with the builder and asking for a copy of the buyer agreement, was never shared with the same. The respondents were kept in the dark about the terms and conditions of the agreement that they were to get into the complainant including the fact that the booking amount paid by the respondents shall be forfeited fully in the event that the

buyer refuses to execute the agreement. Thus, the date of the agreement and hence the 48 months for date of physical possession can only be counted from the date of the payment of the booking money by the respondents to the complainant. The bare perusal of the agreement and excel sheet/received issued by the respondents are also reflecting that the first payment was made by the respondents in 2013 and the agreement is shown to be executed in 2015.

- xvi. That as per the rules under the contract law, no agreement can be entered into between any parties to an agreement unless the terms of that agreement have clearly been gone through and understood by all the parties concerned who will be signatory to the terms of the agreement. As per the prevailing industry practice and norms too, the execution of the booking agreement should have been completed within 10-14 days maximum of receiving the booking amount by the respondents. It could not have been endlessly deferred by the complainant and that too whimsically. The complainant has put the buyer under undue pressure and duress that compelled the respondents to execute the agreement despite the huge delay, because if the

respondents have refused, they would have to lose the entire booking amount paid to the complainant.

xvii. That unsuspectingly and taking the false commitments as truth, the respondents fell prey to the falsity of the respondent's time and again and kept paying huge amounts of money in this project, sold by the complainant. The respondents always trusted and hoped that they would have the possession within the agreed time frame, least realizing that despite elapsing of more than for years now and since they paid the booking amounts to the complainant, no possession would come through to them or to any other buyer while trusting and putting in their hard-earned money with the complainant. The respondents were in Qatar for his professional obligation and had blindly trusted the complainant about the construction mile stone he had claimed through his emails but when the respondents came to India and had actually seen the stalled building they were in shock and when confronted the complainant about the claims he had made they were further encountered a payment raised by the complainant. In 2018 when the respondents have written a letter to the complainant for granting extension of time in payment till that time, they had not

seen the actual progress of the project. The payments were stopped by the respondents on account of breach of promise made by the complainant.

16. The respondents have reproduced same facts in the written submissions as stated in reply.
17. 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**

18. 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**

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 on the objections raised by the respondent**

**F.I Objection regarding format of the compliant**

19. The respondents have further raised contention that the present complaint is not maintainable as the complainants have filed the present complaint before the adjudicating officer and the same is not in amended CRA format. The reply is patently wrong as the complaint has been addressed to the authority and not to the adjudicating officer. The authority has no hesitation in saying that the respondent is trying to mislead the authority by saying that the said complainant is filed before adjudicating officer. There is a prescribed proforma for filing complaint before the authority under section 31 of the Act in form CRA. There are 9 different headings in this form (i) particulars of the complainant has been provided in the complaint (ii) particulars of the respondent- have been provided in the complaint (iii)is regarding jurisdiction of the authority- that has been also mentioned in para 14 of the



complaint (iv) facts of the case have been given at page no. 5 to 8 (v) relief sought that has also been given at page 10 of complaint (vi) no interim order has been prayed for (vii) declaration regarding complaint not pending with any other court- has been mentioned in para 15 at page 8 of complaint (viii) particulars of the fees already given on the file (ix) list of enclosures that have already been available on the file. Signatures and verification part is also complete. Although complaint should have been strictly filed in proforma CRA but in this complaint all the necessary details as required under CRA have been furnished along with necessary enclosures. Reply has also been filed. At this stage, asking complainant to file complaint in form CRA strictly will serve no purpose and it will not vitiate the proceedings of the authority or can be said to be disturbing/violating any of the established principle of natural justice, rather getting into technicalities will delay justice in the matter. Therefore, the said plea of the respondent w.r.t rejection of complaint on this ground is also rejected and the authority has decided to proceed with this complaint as such.

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

20. For the adjudication of present complaint, several issues arises, and they are dealt in the succeeding paras of this order.



**G.I Issue: Whether the respondents have violated the provisions of section 19(6) read with section 19(7) of the Act?**

21. As per the observations of authority, the total consideration of the apartment is Rs.1,03,30,750 without tax but including IFMSD). The respondents/allottees have paid only Rs. 68,68,978/-. As per clause 11.1 of apartment buyer agreement, it is the obligation of allottees to make timely payments for the total sale consideration. 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.*

22. Therefore, authority is satisfied that the respondents are 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 ne 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 paragraph 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.*

**D.II Issue - What should be the rate of interest to be paid by the respondents/allottees?**

23. It has been contended by the complainant that as per apartment buyer agreement, 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. 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., 05.10.2021 is 7.30%. Accordingly, the

prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.

26. 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;"*

27. Therefore, the respondents 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. 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 respondents are in contravention of the section 19(6) and (7)

of the Act. By virtue of clause 11.1 of the apartment buyer's agreement, it is the buyer's obligation to timely give payments for the total sale consideration. The respondents have paid only Rs.68,68,978/- out of Rs.1,03,30,750/- which is the total sale consideration. Accordingly, it is the failure of the respondents/allottees to fulfil its 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 respondents is established.

**H. Directions issued by the Authority**

29. 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 or allottees as per the function entrusted to the authority under section 34(f): -

- a. The respondents/allottees shall make the requisite payments as per the provisions of section 19(6) and (7) of the Act.
- b. The respondents/allottees shall be charged interest at the prescribed rate of interest that is at the rate 9.30% per annum by the complainant/promoter which is same

as is being granted to the complainant/promoter in case of delayed possession.

30. Complaint stands disposed of.
31. File be consigned to the registry.

  
**(Samir Kumar)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 05.10.2021

JUDGMENT UPLOADED ON 08.12.2021

  
**(Vijay Kumar Goyal)**

Member