BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	:	**1108 of 2021**
Date of filing complaint:		**01.03.2021**
First date of hearing	:	**19.03.2021**
Date of decision	:	**26.10.2021**

1. 2.	Shri Piyush Garg Shri Ayush Garg Both R/O: - House No.- 21, Bank Street, Pataudi Road, Gurugram- 122011	**Complainants**
	Versus	
1. 2. 3.	M/s Capital Skyscraper Private Limited Regd. Office at: - C-96, Panchsheel Enclave, New Delhi -10017 M/s French Buildmart Private Limited Regd. Office at: - N-8 Ground Floor, Panchsheel Park, New Delhi -110017 Golden Bricks Worldwide LLP Regd. Office at: - Ground Floor, C-396, Sushant Lok, Phase-I, Gurugram, Haryana-122001	**Respondents**

CORAM:	
Dr. K.K. Khandelwal	**Chairman**
Shri Samir Kumar	**Member**
Shri Vijay Kumar Goyal	**Member**
APPEARANCE:	
Complainant in person with Sh. Harshit Batra (Advocate)	Complainants
Sh. J.K. Dang (Advocate) for respondent no.1 and no. 2 Sh. Dharminder Sehrawat (Advocate) for respondent no. 3	Respondents

ORDER

1. The present complaint has been filed by the complainants/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 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottees as per the agreement for sale executed inter se.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainants, 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 Cityscape", Sector-66, Village Maidawas, Gurugram.
2.	Project area	2.0229 acres
3.	Nature of the project	Commercial Complex
4.	DTCP license no.	43 of 2010 dated 08.06.2010
	License valid up to	07.06.2022
	Name of the licensee	French Buildmart Private Limited
5.	RERA registered/not registered	**Registered**
	HAERA registration no.	02 of 2018 dated 01.01.2018

	Registration valid up to	31.12.2018
6.	Building plan approved on	06.11.2018
7.	Unit no.	105, 1st Floor, Phase-I [annexure- P14 on page no. 75 of the complaint]
8.	Size of unit	491 sq. ft. [annexure- P14 on page no. 104 of the complaint]
9.	Allotment letter	15.06.2013 [annexure-R2 on page no. 48 of reply by the respondent no. 1 & 2]
10.	Date of execution of buyer's agreement	16.07.2014 [annexure- P14 on page no. 69 of the complaint]
11.	Date of commencement of construction of the project	16.12.2013 [vide annexure R5 at page no. 81 of the reply wherein the respondent had intimated the complainants with regard to the date of casting of the raft of the entire project as was promised by him in clause 7 (a) of the buyer's agreement]
12.	Payment plan	Construction Linked Payment Plan [Page no. 104 of the complaint]
13.	Due date of delivery of possession as per clause 7(a) & (b) i.e., within a period of 36 months from the date of commencement of construction of the project hereof, i.e. the date on which raft of the entire project must be casted	16.06.2017 [calculated from the date of the commencement of construction i.e. the date on which raft of the entire project is casted i.e., 16.12.2013] Note: Grace period of 180 days is allowed.

14.	Total consideration	Rs.39,64,825/- [as per applicant ledger dated 30.06.2021 at page 106 of reply by respondent no.1&2]
15.	Total amount paid by the complainants	Rs. 20,56,345/- [as per applicant ledger dated 30.06.2021 at page 106 of reply by respondent no.1&2]
16.	Occupation Certificate	Not received
17.	Offer of Possession	Not offered
18.	Delay in handing over the possession till the date of this order i.e., 26.10.2021	4 years 4 months 10 days

B. Facts of the complaint

3. That the complainants booked a commercial unit bearing no. 105 located on 1st floor (Hereinafter referred as the said 'unit') in the said project namely "The Cityscape", sector-66, village Maidawas, Gurugram by filling an application form dated 22.01.2012 and paid an amount of Rs. 3,00,000/- vide instrument no. 000027 dated 22.01.2012. The booking was made through respondent no.3/broker namely 'Golden Bricks Worldwide LLP'. The basic sale price (BSP) quoted in the application form was Rs.8,000/- per sq. ft. for 473 sq. ft. unit area to be allotted, the complainants were informed that they were supposed to pay an amount of Rs.1,000/- per sq. ft. (of BSP) amounting to Rs.4,73,000/- as cash for which the respondent no.3 had issued a receipt. Therefore, the complainants paid Rs.4,73,000/- in cash along with the above said Rs.3,00,000/-.

4. That at the time of allocation of unit, the respondent no.1 said that the super area of the unit shall be increased by 180

sq. ft. and final super area shall be 491 sq. ft. Accordingly, the BSP of the unit was reduced from Rs. 8,000 per sq. ft. to Rs. 7,600 per sq. ft. Accordingly, the complainants paid further partial amount of Rs.70,000/- (for the increased area) by way of cheque dated 09.03.2013 to the respondent no.3. The remaining cash amount out of the total BSP was waived off as per mutual agreement with the respondent no.3.

5. That the respondent no.1 raised demand of Rs.4,70,595/- on account of 'Bhoomi Pujan' and the same was paid vide instrument no. 561362 dated 01.05.2013. On excavation, the complainants made payment of Rs. 2,85,750/- on 18.10.2013.

6. That the payments made by the complainants were more than 10% of the total sale consideration without first entering into a written agreement is a clear violation of section 13 of the Act of 2016.

7. That after persistent requests and follow-ups by the complainants, the respondent no.1 sent an agreement for execution. However, the agreement bared some unfair clauses like the stark contrast between delayed payment charges and delayed possession charges, further the due date of handing over possession was supposedly calculated from the date of construction rather than the date of booking which would ultimately delay the due date by almost 2 years as the booking was made on 22.01.2012 while construction commenced on 18.10.2013. The same was pointed out to respondent no. 3 as well as the said conduct was completely contrary to the representations made by the respondents at

the time of booking. However, the respondents again assured the complainants that the agreement is a mere formality and the construction is going on in full swing and possession will be handed over very soon in accordance with the representations made at the time of booking.

8. That the respondent no.1 sent the demand letters and had already raised demand of Rs.24, 07,881/-(excluding cash and cheque paid to the respondent no. 3) by October 2015 but failed to send the agreement copy to the complainants.

9. That on 06.08.2016, the respondent no. 1 sent a copy of the executed buyer's agreement dated 16.07.2014 for said unit.

10. That as per clause 7(a) r/w clause 7(b) of the buyer's agreement dated 16.07.2014, the respondent no.1 had undertaken to complete the construction and offer possession within a period of 36 months from the commencement of construction (18.10.2013) with a further grace period of 180 days, i.e. by 18.04.2017. However, when the complainants visited the project site in January'2017, they were shocked to see that there was absolutely no construction work happening on the project site. Rather, the project site seemed completely abandoned as there were no workers present at the site. Upon further inquiry, the complainants came to know that the construction had stopped from mid-2016. The construction update till 2016 was sent by the respondent no.1 which clearly depicted the partial construction until ground floor structure in the tower where the unit in question was located whereas the

respondent had raised demand up to casting 2nd floor slab in October'2015.

11. That the complainants immediately rushed to the respondent no.1's office seeking an explanation over the stopped construction work but the respondent falsely assured that the construction work shall be resumed soon. Till 2018, only partial construction on various floors had been raised but the respondent no.1 raised demands as if entire work on said floors was complete, which was completely unjust keeping in view the construction linked plan as if the promoters/developers was allowed to raise demands and take payments for partial construction, then the entire purpose of choosing a construction linked plan will get defeated. The complainants vehemently objected to the said illegal practices of the respondent no.1 vide mails but to no avail as the respondent no.1 chose to simply sit over said emails.

12. That as per construction update email dated 03.01.2019 from the respondent no. 1, only the ground floor slab had been casted and first floor column steel binding, roof shuttering work and column casting work was under progress by Dec' 2018 in 'block A', in which the said unit is located, much against the demands raised by the respondent no. 1

13. That the complainants got to know that the respondent no.1 had applied for change in layout plan/building plan without seeking any permission from the allottees or informing them about the same. Upon much persuasion, the complainants came to know some facts which were never told to them

earlier, namely in Aug 2018, the respondent no.2, i.e. the licensee had applied to increase FAR from 175 to 350, and this permission was given to them in Feb 2019. In Oct 2019, they applied for revised/new building plan and got the in-principle approval in January 2020. After much persuasion, the builder shared partial layout of the new plan on 03.12.2020. However, a lot of details about the new plan, such as the following, have not been shared till date even after sending multiple reminders:

- Dimensions of the booked unit
- Revised super-area and its calculation
- Complete layout of the approved layout plan
- Floor plan/Layout of all floors in the project
- FAR area and Non-FAR on each floor

14. That by denying the said information to the complainants, the respondent no.1 committed violation of section 11(3) as well as section 19(1) of the Real Estate (Regulation and Development) Act, 2016.

15. That no consent of the complainants was taken before making changes to the building layout and the same is in grave violation of section 14(2) of the said Act.

16. That the complainants had asked the respondent no.1 to clarify about the above said one-sided and arbitrary revision of plans but to no avail. Rather, the revised building plan has not been put up on the site office in sector-66 and also has not been updated on the website of the respondent no.1 company. Rather, the respondent no.1 is still marketing the old layout plan through its website. Such mala-fide practices

are a violation of mandatory requirements under the in-principle approval of revised building plan dated 06.01.2020 and the guidelines of the authority.

17. That upon further inquiry with Haryana RERA on 19.01.2021, the complainants came to know that the RERA registration of the project in question also expired in 2018 and the same has not been renewed till date. Further, on its website the Hon'ble Haryana Real Estate Regulatory has also put-up notices sent to the builders/promoters for not registering with RERA and not filling Rep-I (Part A-H).

18. That the builder has significantly reduced the open area and added more floors to the structure in the revised layout plan (FAR increased from 175 to 350), the super-area of the unit in the revised layout plan will be significantly lower than the super-area in the old plan. It is also anticipated that the respondent no.1&2 will use all the covered parking area as common area to calculate super-area of the units. However, as a prevalent practice, some of the parking is sold separately and/or some part of covered parking is allotted to tenants of office complex as part of their lease in-written or verbally. This area must be excluded from the calculation of the common area and the respondent no.1 & 2 must give an undertaking that the covered parking area used for calculation will never be sold or allocated to a specific entity or sub-group within the commercial complex.

19. That based on the recent site visit by the complainants in December 2020, it is anticipate that the opposite sides of the unit in the revised layout plan are not parallel, which

significantly reduces the market value of the unit. However, the exact dimensions of the unit have not been shared by the promoters/builders till date even after multiple reminders.

20. That according to the license no. 43 of 2010 issued by Haryana Government Town and Country Planning Department, the respondent no. 2 cannot give any advertisement for sale of floor area in the project before the approval of layout plan/building plan. But the respondents advertised the project as well as received bookings before the approval of the layout plan, which was approved in 2013. That the layout plan was not licensed from the development authority, yet the advertisements were made with respect to the same which is a grave violation of the fundamental rules and purpose of the implementation of the development authority and adds more on the mala-fide practices of the respondents.

21. That in the year 2019, the respondent no. 1 & 2 constructed a significant part of tower A/block A of the project in which the said unit is located, without getting an approval on the revised building plan from the authorities. The approval on the revised building/layout plan was given in-principle to the respondent no. 2 in January 2020 but the construction update in email dated 31.10.2019 from respondent no. 1 already showed "terrace floor slab work in progress for block A". The respondents attempted to deceit the complainants by wrongfully raising demand for this construction even before the revised plan was approved by the authorities.

22. That the respondent no.1's representative shared a letter in Decemeber 2020 over whatsapp, seeking consent/NOC for changing the developer company M/s Capital Skyscraper Private Limited to M/s French Buildmart Private Limited, the licensee company, i.e. respondent no.2. In view of non-compliance with RERA regulations, this change of developer and transfer of rights seemed like a tactic to protect the developer company M/s Capital Skyscraper Private Limited and the licensee company M/s French Buildmart Private Limited from due process of law. Also, seeking NOC over whatsapp instead of sending a registered post or an official email was highly unprofessional and with mala-fide intentions. Consequently, in an email dated 22.01.2021 the complainant's raised objection to this change of developer /company, but to no avail.

23. That the complainants kept inquiring as to when the possession will be handed over to them, but again to no avail. The respondent no.1 kept delaying the handing over of possession thereby inflicting mental agony and financial hardship upon the complainants. The project was always running behind the schedule and the respondents had continuously demanded payments by misleading the allottees regarding the actual progress at the project site. That till date, the complainants have paid a sum of Rs. 25,99,345/- for purchasing the unit in question as against total sale consideration.

C. Relief sought by the complainants.

24. The complainants have sought following relief(s):

I. Direct the respondent no.1 to give a formal acknowledgment of cash payment made to respondent no. 3 and the same be counted towards payment made by the complainants.

II. Direct the respondent no.1&2 to provide complete details about the revised building plan and the unit.

III. Direct the respondent no. 1&2 to revise the agreement based on fair calculation of super-area as per the revised building plan.

IV. Direct the respondent no.1 to charge the complainants only on basis of super area as per revised plan.

V. Direct the respondent no. 1 to not levy any delayed payment charges for the demands which were unjustifiably raised when the actual stage of construction had not arisen.

VI. To impose penalty upon the respondent no.1&2 amounting to 5% of the project cost, under section 61 of Act of 2016 for contravention of section 13, 11(3), 14(2), and 19(1) of the said Act.

VII. Direct the respondent to pay delay interest at the prescribed rate for every month of delay on the payments made, from the due date of possession till the actual handing over of possession of the subject unit complete in all respect to the complainants.

D. Reply on behalf of respondent no.1 & no.2.

25. That the present complaint is not maintainable in law or on facts. The present complaint is not maintainable before this

authority. The complainants have filed the present complaint seeking, inter alia, interest and compensation for alleged delay in delivering possession of the unit purchased by the complainants. It is respectfully submitted that complaints pertaining to compensation and interest are to be decided by the adjudicating officer under section 71 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as "the Act" for short) read with the Haryana Real Estate (Regulation and Development) Rules, 2017, and not by this authority. The present complaint is liable to be dismissed on this ground alone. Moreover, it is respectfully submitted that the adjudicating officer derives his jurisdiction from the central act which cannot be negated by the rules made thereunder.

26. That the present complaint is not maintainable in law or on facts. The present complaint raises several such issues which cannot be decided in summary proceedings. The said issues require extensive evidence to be led by both the parties and examination and cross-examination of witnesses for proper adjudication. Therefore, the disputes raised in the present complaint are beyond the purview of this authority and can only be adjudicated by the adjudicating officer/civil court. The present complaint deserves to be dismissed on this ground alone.

27. That the complaint is barred by limitation. The cause of action has accrued in favour of the complainants prior to the Act. The false and frivolous complaint is liable to be dismissed on this ground.

28. That the complainants are not "allottees" but investors who have booked the unit in question as a speculative investment in order to earn rental income/profit from its resale. The unit in question has been booked by the complainants as a speculative investment and not for the purpose of self-use.

29. That the complainants had approached respondent no.1 sometime in the year 2012 for purchase of a unit in its upcoming project "The Cityscape" situated in sector-66, Gurugram. It is submitted that the complainants prior to approaching respondent no.1, had conducted extensive and independent enquiries regarding the project and it was only after the complainants were fully satisfied with regard to all aspects of the project, including but not limited to the capacity of respondent no.1 to undertake development of the same, that the complainants took an independent and informed decision to purchase the unit, un-influenced in any manner by respondent no.1.

30. That thereafter the complainants vide application form dated 04.02.2012 applied to respondent no.1 for provisional allotment of a unit in the project. The complainants, in pursuance of the aforesaid application, were allotted an independent unit bearing no. 105 located on the 1st floor in the said project vide provisional allotment letter dated 15.06.2013. The complainants had consciously and willfully opted for a construction linked plan for remittance of the sale consideration for the said unit and further represented to respondent no.1 that they shall remit every instalment on time as per the payment schedule.

31. That buyer's agreement was executed between the complainants and respondent no. 1 on 16.07.2014. It is pertinent to mention that the complainants had voluntarily executed the buyer's agreement with open eyes after carefully going through the terms and conditions mentioned therein.

32. That commencement of construction at the project site/casting of raft had taken place by 16.12.2013. That the "high street plan" as had been initially conceptualised by respondent no.1 would not have been conducive for commercial success for the said project. Therefore, certain modifications were necessary to be made in the building plans for the benefit of the allottees. It is submitted that the respondent no.2 had applied to the concerned statutory authority vide letters dated 15.12.2018 and 03.04.2019 for amendment/revision in building plans. The revised building plans for the said project had been sanctioned by the concerned statutory authority on 11.05.2020 vide Memo No. ZP-661/JD(RD)/2020/7824.

33. That the time consumed by the Government authorities in sanctioning the revised building plans is beyond the control of answering respondents and therefore, the said time period must not be construed as a delay. The respondent no.2 has duly complied with the requirements put forth by the concerned authorities in order to make the necessary amendment / changes in the building plans. Furthermore, respondent no.2 had also made payment of substantial amounts to the concerned authorities in order to avail the

transit-oriented development (TOD) benefits and get the approvals with respect to revised building plans.

34. That even though the complainants had always been kept informed about the change in building plans, the revised building plans had been sent again to the complainants vide email dated 03.12.2020 by respondent no.1.

35. That the respondent no.2 vide letter dated 06.07.2017 had applied to the Director, Town & Country Planning Department, Haryana, Chandigarh for increase in FAR from 175 to 350. The in principal approval for grant of benefit under TOD policy for enhancement of FAR had been granted to respondent no.2 vide memo bearing no. LC-2157-PA(B)-2018/10085 dated 22.03.2018. Subsequently, final permission with respect to benefit under TOD policy for enhancement of FAR had been granted to respondent no.2 by Directorate of Town & Country Planning, Haryana vide memo bearing no. LC-2157-JE(VA)/2019/3496 dated 06.02.2019. The respondent no.1 is an associate company of respondent no.2, which is the licensee company.

36. That the rights and obligations of the complainants as well as respondent are completely and entirely determined by the covenants incorporated in the buyer's agreement. As per clause 7 of the buyer's agreement, the possession of the said unit would be handed over to the complainants within a period of 36 months from the date of casting of the raft for the project (16.12.2013). Furthermore, respondent no.1 was also entitled to a cumulative grace period of 360 business days (grace period + additional grace period) over and above

the said period of 36 months for handing over of possession of the said unit to the complainants. The same was subject to multiple factors including but not limited to timely payment of consideration amount by the complainants, force majeure factors, any reason beyond the control of respondent no.1, any action of the Government etc.

37. That in the meantime, respondent no.1 had raised payment demands as per the construction linked payment plan. That no payments had been made by the complainants after October, 2013 till December, 2020. The payments made by the complainants have been duly mentioned in applicant ledger dated 25.11.2020 which had been sent to the complainants vide email dated 03.12.2020.

38. That the complainants had not made payment of the outstanding amount to respondent no.1 till date. As on date, outstanding payment of Rs. 20,18,628/- inclusive of taxes is liable to be made by the complainants to respondent no.1. That as on 30.06.2021, delayed payment charges/interest amounting to Rs. 10,66,651/- plus taxes as applicable were/are liable to be paid by the complainants to respondent no.1 on account of the delay made by the complainants in making timely payments.

39. That, moreover, vide email dated 04.03.2021 issued by the respondent no.1 to the complainants, the respondent no.1 had clarified all the doubts raised by the complainants pertaining to revision in building plans, justification of demands raised, RERA registration of the project etc.

40. That it is pertinent to mention that the said project had been registered with RERA vide registration number 02 of 2018 in favour of respondent no.1 which is an associate company of respondent no.2 (licensee company). An application for extension of RERA registration has been filed before this authority by respondent no. 1 vide letter dated 10.06.2019.

41. That the respondents had decided that without infringing upon the rights and interests of the existing allottees, the said project would now be developed and completed by respondent no.2. Accordingly, respondent no.2 had applied to Haryana Real Estate Regulatory Authority for reissuance/correction of RERA registration certificate in favour of respondent no.2 (licensee company) vide letter dated 24.09.2020. It had been duly mentioned in the aforesaid letter dated 24.09.2020 that respondent no.2 had already uploaded fresh A to H form vide project id: RERA-GRG-PROJ-745-2020 dated 16.09.2020. The same had been approved in principle by this authority. Subsequently, on account of Covid-19 pandemic the authority had been shut for several months. Due to the same, the RERA registration has not been granted to respondent no.2 till date. The answering respondents cannot be held liable for the delays occurring on account of functioning of statutory authorities/Government.

42. That, without admitting or acknowledging the truth or legality of the allegations advanced by the complainants and without prejudice to the contentions of answering respondents, it is respectfully submitted that the provisions

of the Act are not retrospective in nature. The provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act. It is further submitted that merely because the Act applies to ongoing projects which are registered with the Authority, the Act cannot be said to be operating retrospectively. The provisions of the Act relied upon by the complainants for seeking interest cannot be called in to aid in derogation and ignorance of the provisions of the buyer's agreement. The interest is compensatory in nature and cannot be granted in derogation and ignorance of the provisions of the buyer's agreement.

43. That it is further submitted that the interest for the alleged delay demanded by the complainants is beyond the scope of the buyer's agreement. The complainants cannot demand any interest or compensation beyond the terms and conditions incorporated in the buyer's agreement.

44. That without prejudice to the contentions of answering respondents, it is submitted that the allegations of the complainants that possession was to be given by 2017 are wrong, mala fide and result of afterthought in view of the fact that the complainants had made payments to respondent no.1 even after 2017. It would not be out of place to mention that respondent no.1 had issued final notice dated 20.04.2015, final notice dated 27.11.2020 and 20.03.2021 on account of the multiple defaults committed by the complainants. Thereafter, after satisfying themselves with respect to the status of the revised building plans & change in

the name of the developer company, the complainants had made a payment of Rs.10,00,000/- to respondent no.1 on 14.12.2020 vide RTGS out of outstanding amount of Rs. 30,18,628/- with a commitment to make the further payment at the earliest. It would not be out of place to mention that the aforesaid payment was due to be paid by 05.02.2015.

45. Furthermore, the complainants have consciously and voluntarily purchased the said unit in the year 2012. The complainants were conscious and aware of the status of the project at the relevant time and had independently and wilfully proceeded to purchase the unit in question. Therefore, the complainants are estopped from claiming any interest or compensation from answering respondents in the facts and circumstances of the case. The allegations put forth by the complainants qua answering respondents are absolutely illogical, irrational and irreconcilable in the facts and circumstances of the case.

46. That without prejudice to the contentions of answering respondents, it is submitted that the present complaint is barred by limitation. The complainants have alleged that the possession of the unit was to be given not later than 2017 and therefore cause of action, if any, accrued in favour of the complainants in 2017. Therefore, the complaints seeking compensation and interest as a form of indemnification for the alleged delay is barred by limitation.

47. That several allottees have defaulted in timely remittance of payment of instalments which was an essential, crucial and an indispensable requirement for conceptualisation and

development of the project in question. Furthermore, when the proposed allottees default in their payments as per schedule agreed upon, the failure has a cascading effect on the operations and the cost for proper execution of the project increases exponentially whereas enormous business losses befall upon the answering respondents. The answering respondents, despite default of several allottees, have diligently and earnestly pursued the development of the project in question. Therefore, there is no default or lapse on the part of the answering respondents and there in no equity in favour of the complainants. It is evident from the entire sequence of events, that no illegality can be attributed to the answering respondents. The allegations levelled by the complainants are totally baseless. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

E. Reply on behalf of respondent no.3

48. That the subject matter of the present complaint has arisen due to the alleged default on part of respondent no. 1 in timely construction and handover of the project. However, the complainants have decided to wrongly impleaded M/s Golden Bricks Worldwide LLP as respondent no. 3. The complainants have chosen to ignore the fact that the relationship of M/s Golden Bricks Worldwide LLP and the complainants have arisen out of the fact the respondent no. 3 merely helped the complainants to look for a property as a broker which has no correlation whatsoever with the builder and its capacity to complete and handover the property in

time. The domain of services provided by the respondent no. 3 is completely separate and independent of respondent no. 1 and hence the complainants ought to be dismissed as against respondent no.3 on account of lack of jurisdiction.

49. That in addition to this the complainants have failed to disclose any separate cause of action against the respondent no. 3. On the grounds as stated, the authority may be pleased to delete the respondent no. 3 from array of parties and/or dismiss the instant compliant as against respondent no.3.

50. That the present complaint suffers from the basic lacuna of mis-joinder or non-joinder of parties and M/s Golden Bricks Worldwide LLP has been wrongly made the party to the complaint because it is neither a necessary nor a proper party in this case. The present complaint may thus be dismissed only on this point. It is further submitted that the reply on all the issues raised in the present complaint has been given on behalf of M/s Golden Bricks Worldwide LLP as respondent no. 3.

51. That the respondent no. 3 is a law-abiding limited liability partnership firm and is registered with the registrar of companies. The respondent no. 3 provides the services of brokerage to its clients to help them find real estate best suited for them.

52. That the respondent no. 3 is nowhere related to the delay in the construction and handover of the property. The scope of work of respondent no. 3 is limited to help the clients look for properties that best suit then and once the allotment is done, the client and builder deal directly without any

interference by the respondent no. 3. In the present matter as well, the respondent no. 3 is not related to the construction of the building, the respondent no. 3 only helped the complainants look for properties to invest in.

53. Copies of all the relevant do have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

F. Jurisdiction of the authority

54. The respondent has 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.

F. 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.

F. II Subject-matter jurisdiction

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

The provision of assured returns is part of the builder buyer's agreement, as per clause 15 of the BBA dated..... Accordingly, the promoter is responsible for all obligations/responsibilities and functions including payment of assured returns as provided in Builder Buyer's Agreement.

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

G. Findings on the objection raised by the respondents.

G. I Objection regarding jurisdiction of authority w.r.t. the buyer's agreement executed prior to coming into force of the Act.

55. Another contention of the respondents is that in the present case the flat buyer's agreement was executed much prior to the date when the Act came into force and as such section 18 of the Act cannot be made applicable to the present case. The authority is of the view that the Act nowhere provides, nor

can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of ***Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)*** which provides as under:

> *"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter.....*
> *122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."*

56. Also, in appeal no. 173 of 2019 titled as ***Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya***, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

> *"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."*

57. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the flat buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement and are not in contravention of any other Act, rules, regulations made thereunder and are not unreasonable or exorbitant in nature.

G. II Objection regarding untimely payments done by the complainants.

58. The respondents have contended that the complainants had made defaults in making payments as a result thereof, the respondents had to issue reminder letters dated 22.06.2017, 11.12.2017, 07.03.2018, 09.04.2018, 31.07.2018 and only

after the reminders, the complainants came forward to clear the outstanding dues against the demand letter dated 25.05.2017, accordingly receipt dated 18.08.2018 was issued by the respondents. Clause 25(a) of the buyer's agreement wherein it is stated that timely payment of instalment is the essence of the transaction, and the relevant clause is reproduced below:

> *"25(a). TIMELY PAYMENT: THE ESSENCE OF THIS AGREEMENT, TERMINATION, AND FORFEITURE"*
>
> *Timely Payments of all the amount(s) as per this Agreement, payable by the Allottee(s) shall be the essence of this Agreement. If the Allottee(s) neglects, omits, ignore, or fails, for any reason whatsoever, to pay to the Company any of the installments or other amounts and charges due and payable by the Allottee(s) under the terms and conditions of this Agreement or by respective due dates thereof or if the Allottee(s) in any other way fails to perform, comply or observe any of the terms and conditions herein contained within the time stipulated or agreed to, the Company shall be entitled to cancel/terminate this Agreement forthwith and forfeit the booking amounts or amounts paid upto the Earnest Money, along with other dues of non- refundable nature and interest. The Company is not under any obligation to send reminders for the payments to be made by the Allottee(s), as per the Payment Plan and for the payments to be made as per the demand by the Company."*

59. At the outset it is relevant to comment on the said clause of the agreement i.e. *"25. TIMELY PAYMENT: THE ESSENCE OF AGREEMENT, TERMINATION, AND FORFEITURE"* wherein the payments to be made by the complainant had been subjected to all kinds of terms and conditions. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the

promoter and against the allottee that even a single default by the allottee in making timely payment as per the payment plan may result in termination of the said agreement and forfeiture of the earnest money. Moreover, the authority has observed that despite complainants being in default in making timely payments, the respondents have not exercised his discretion to terminate the buyer's agreement. The attention of authority was also drawn towards clause 25(c) of the flat buyer's agreement whereby the complainant shall be liable to pay the outstanding dues together with interest @ 21% p.a. However, after the enactment of the RERA Act, the position has changed. 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. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 9.30% by the respondents which is the same as is being granted to the complainant in case of delay possession charges.

H. Findings on the relief sought by the complainants.

H.I Direct the respondent no.1 to give a formal acknowledgment of cash payment made to respondent no. 3 and the same be counted towards payment made by the complainants.

60. The respondent no.1 submitted that it is not aware of any financial dealings between the complainants and respondent no. 3. The respondent no. 3 submitted that no payment was ever received in the name of the respondent no.3 from the

complainants. There is neither any document proof regarding the same nor admission by any of the respondents, therefore, this relief cannot be granted.

H.II Direct the respondent no.1&2 to provide complete details about the revised building plan and the unit.

61. The authority directs the respondents to provide a copy of the revised building plan of the unit to the complainants.

H.III Direct the respondent no. 1&2 to revise the agreement based on fair calculation of super-area as per the revised building plan.

62. The authority directs the respondents to provide details of the super area as per the revised plan along with comparison of the super area with the original building plan.

H.IV Direct the respondent no.1 to charge the complainants only on basis of super area as per revised plan.

63. The authority directs the respondents to charge on the basis of super area as per revised building plan and after submitting details of the super area calculation.

H.V Direct the respondent no. 1 to not levy any delayed payment charges for the demands which were unjustifiably raised when the actual stage of construction had not arisen.

64. The authority is of the view that no details have been provided in the complaint, even then the respondent should charge as per the construction linked payment plan ay the actual stage of construction.

H.VI To impose penalty upon the respondent no.1&2 amounting to 5% of the project cost, under section 61 of Act of 2016 for contravention of section 13, 11(3), 14(2), and 19(1) of the said Act.

65. The authority is of the view no specific details of violations post RERA have been provided. The allottees may make a separate complaint for initiating penal proceedings against

the promoter and real estate agent for violation of any provisions of the Act by providing specific details.

H.VII Delay possession charges.

Relief sought by the complainants: Direct the respondents to pay delay interest at the prescribed rate for every month of delay on the payments made, from the due date of possession till the actual handing over of possession of the subject unit complete in all respect to the complainants.

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

> ***"Section 18: - Return of amount and compensation***
>
> *18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*
>
> .....
>
> *Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

67. Clause 7(a) of the buyer's agreement, provides for handing over possession and the same is reproduced below:

> *"7. POSSESSION*
> *(a) The Excavation work has already began on the Project Land much before the date of excavation of this Agreement and the same must not be misunderstood with or shall be considered as the date of the commencement of construction of the Project. The Company endeavors to offer the possession of the Unit in the Commercial Complex to the Allottee(s) within a period of 36 (thirty six) months from the date of commencement of construction of the Project hereof, i.e. the date on which raft of the entire Project*

must be casted (the "Commencement of Construction"), and this date shall be duty communicated to the Allottee(s), subject to Force Majeure (defined hereinafter in Clause 26) and/or any other reason beyond the control of the Company, subject to the Allottee(s) having strictly complied with all the terms and conditions of this Agreement and not being in default under any provisions of the same, and all amounts due and payable by the Allottee(s) under this Agreement having been paid in time to the Company. The Company shall give notice to the Allottee(s) in writing, to take possession of the Unit for his fit outs and occupational use (the "Notice of Possession") on furnishing certain documents."

68. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the complainants not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favor of the promoters and against the allottees that even a single default by the allottees in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottees of their right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous

clause in the agreement and the allottees are left with no option but to sign on the dotted lines.

69. **Admissibility of grace period:** Upon perusal of the possession clause, the authority observed that there are two grace periods of 180 days each as demanded by the respondents/promoters in clause 7(b) of the buyer's agreement. Clause 7(b) of the buyer's agreement is as under:

> ***7. Possession***
>
> *(b) The allottee(s) understands and agrees that company shall be entitled to* ***an extension period of 180 business days over the said period of 36 months for handing over the possession of the unit to the allottee(s). If the possession of the unit gets further delayed due to any reason and/or conditions / events which are unforeseeable then the company shall be entitled to an additional grace period of 180 business days*** *over and above the said grace period.*

70. The authority allows the first grace period keeping in view the fact that this grace period of 180 days is unqualified/ unconditional and is sought for handing over of possession.

71. Another additional grace period of 180 days as demanded by the respondents/promoters on the eventuality of unforeseeable circumstances and conditions is hereby disallowed as no substantial evidence/document has been placed on record to corroborate that any such event, circumstances, condition has occurred which may have hampered the construction work.

72. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay

possession charges at prescribed rate. However, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under Rule 15 of the rules. Rule 15 has been reproduced as under:

> ***Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***
>
> *(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.:*
>
> *Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*

73. The legislature in its wisdom in the subordinate legislation under 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.

74. 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., 26.10.2021 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.

75. **Rate of interest to be paid by complainants for delay in making payments**: 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;"*

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

77. On consideration of the documents available on record and submissions made by both the parties, the authority is satisfied that the respondents are in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of 7 (a) of the builder buyer's agreement executed between the parties on 16.07.2014, the possession of the subject unit was to be delivered within a period of 36 months from the date of commencement of construction of the project hereof, i.e. the

date on which raft of the entire project must be casted (the "commencement of construction"), i.e., 16.12.2013. Therefore, the due date of handing over possession is 16.12.2016. As far as grace period is concerned, one grace period is allowed for the reasons quoted above. Therefore, the due date of handing over possession is 16.06.2017. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondents to offer physical possession of the allotted unit to the complainants as per the terms and conditions of the buyer's agreement dated 16.07.2014 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 16.07.2014 to hand over the possession within the stipulated period.

78. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. This 2 month of reasonable time is being given to the complainants keeping in mind that even after intimation of possession, practically they have to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit, but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. In the present complaint, neither the occupation certificate has been obtained nor the possession has been offered to the complainants by the respondents. It is further clarified that the delay possession charges shall be

payable from the due date of possession i.e., 16.06.2017 till the handing over of possession or offer of possession (after obtaining occupation certificate from the competent authority) plus 2 months, whichever is earlier.

79. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondents is established. As such the complainants are entitled to delay possession at prescribed rate of interest i.e., 9.30% p.a. w.e.f. 16.06.2017 till the handing over of possession or offer of possession (after obtaining occupation certificate from the competent authority) plus 2 months, whichever is earlier as per provisions of section 18(1) read with rule 15 of the rules and section 19 (10) of the Act.

H. Directions of the authority

80. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

i. The respondents are directed to pay interest to the complainants at the prescribed rate of 9.30% p.a. for every month of delay from the due date of possession i.e., 16.06.2017 till the handing over of possession or offer of possession (after obtaining occupation certificate from the competent authority) plus 2 months, whichever is earlier.

ii. The arrears of such interest accrued from 16.06.2017 till the handing over of possession or offer of possession (after obtaining occupation certificate from the competent authority) plus 2 months, whichever is earlier shall be paid by the promoters to the allottees within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoters to the allottees before 10th of the subsequent month as per rule 16(2) of the rules.

iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

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

v. The respondents are directed to provide a copy of the revised building plan and revised plan of the unit to the complainants.

vi. The respondents shall not charge anything from the complainants which is not the part of the agreement. However, holding charges shall also not be charged by the promoter at any point of time even after being part of agreement as per law settled by the Hon'ble Supreme

Court in civil appeal no. 3864-3889/2020 dated 14.12.2020.

81. Complaint stands disposed of.

82. File be consigned to registry.

(Samir Kumar)
Member

(Vijay Kumar Goyal)
Member

(Dr. K.K. Khandelwal)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 26.10.2021

Judgement uploaded on 08.12.2021