



HARERA
GURUGRAM

Complaint No. 3025 of 2020

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

Complaint no. : 3025 of 2020
First date of hearing: 24.11.2020
Date of decision : 10.12.2021

1. Mrs. Neelam Sachdeva
2. Mr. Pawan Kumar Sachdeva
Both RR/o: -C-803, Lovely Home
Apartment, Plot No. 5, Sector-5, Dwarka,
New Delhi- 110075

Complainants

Versus

1. M/s Tashee Land Developers.
2. M/s KNS Infracon Private Limited
Both having Regd. office at: 517, A
Narain Manzil, 23 Barakhamba Road,
Cannuaght Place, New Delhi- 110001

Respondents

CORAM:

Shri K.K Khandewal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Ms. Priyanka Aggarwal
Sh. Pankaj Chandola

Advocate for the complainants
Advocate for the respondents

ORDER

1. The present complaint dated 21.10.2020 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 as provided under the provision of the Act or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the 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	"Capital Gateway", Sector-111, Gurugram.
2.	Project area	10.462 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	34 of 2011 dated 16.04.2011 valid till 15.04.2024
5.	Name of licensee	KNS Infracon Pvt Ltd & 3 others
6.	RERA Registered/ not registered	Registered vide no. 12 of 2018 dated 10.01.2018
7.	RERA registration valid up to	31.12.2020 for phase-I (tower A to G) and 31.12.2021 for phase- II (tower H to J)
8.	Unit no.	Flat No. 802, 8th Floor, Tower-E [Page no.33 of complaint]
9.	Unit measuring	1695 sq. ft. (super area) [Page no. 33 of the complaint]
10.	Date of execution of Flat buyer agreement	21.12.2012 [Page no. 32 of complaint]

11.	Allotment letter	27.12.2012 [Page no. 18 of complaint]
12.	Payment plan	Construction linked payment plan [Page no.49of complaint]
13.	Total consideration	Rs.60,86,300/- [as stated by his brief fact page 16 of complaint]
14.	Total amount paid by the complainant	Rs.64,18,345/- (As stated by his brief fact page 16 of complaint)
15.	Due date of delivery of possession as per clause 2.1 of the flat buyer agreement 36 months from the date of sanction of building plan & a grace period of 180 days, after the expiry of 36 month, for applying and obtaining the occupation certificate. [Page 36of complaint]	07.06.2015 As per information obtained by planning branch building plan approved i.e. 07.06.2012. [Note- Grace period not allowed]
16.	Delay in handing over possession till the date of order i.e. 03.12.2021	6 years 5 months and 26 days
17.	Status of the project	On going

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint: -

- I. That the complainants are a law-abiding citizen and consumer who have been cheated by the malpractices adopted by the respondent is stated to be a builder and is allegedly carrying out real estate development. Since many years, the complainants being interested in the project because it was a housing project and the complainants had need an own home for his family.

- II. That the complainants were subjected to unethical trade practice as well as subject of harassment, flat buyer agreement clause of escalation cost, many hidden charges, building plan approval clause which will forcedly imposed on buyer at the time of possession as tactics and practice used by builder guise of a biased, arbitrary and one sided.
- III. That the based on promises and commitment made by the respondent, complainants booked a flat admeasuring 1695 sq. ft., along with one covered car parking in unit no. 802, tower-E in residential project "Capital Gateway", Sector 111 Gurugram, Haryana. The initial booking amount of Rs.300000/- (including tax) was paid through receipt no. TCG0466 dated 11.01.2011 **(more than 9 year back)**.
- IV. That the complainants were allotted the flat no. 802, 08th floor, tower -E admeasuring 1695 sq. ft. in Capital Gateway, Sector-111, Gurugram, Haryana.
- V. That the respondent to dupe the complainants in their nefarious net even executed flat buyer agreement signed between both the parties on dated 21.12.2012. Just to create a false belief that the project shall be completed in time bound manner and in the garb of this agreement persistently raised demands due to which they were able to extract huge amount of money from the complainants.



- VI. That the total cost of the said flat is Rs.60,86,300/- (as per clause 1.2 of buyer's agreement excluding taxes) and paid total amount of Rs.64,18,345/- (Including EDC, IDC, taxes, etc.) by the complainants in time bound manner.
- VII. That according to the statement and payment proofs the complainants paid a sum of Rs.64,18,345/- (Including EDC, IDC, taxes, etc) to the respondent till now and before this builder was demanded more than 95%of total sale consideration amount without doing appropriate work on the said project, which is illegal and arbitrary. So after extracting 95% amount which is illegal and arbitrary.
- VIII. That as per section 19 (6) the Real Estate (Regulation and Development) Act, 2016, complainants have fulfilled his responsibility in regard to making the necessary payments in the manner and within the time specified in the said agreement. Therefore the complainants herein are not in breach of any of its terms of the agreement.
- IX. That the complainants were sanctioned home loan of Rs.12,50,000/- from LIC Housing Finance Ltd which was taken for buying this flat, and EMI Created extra financial burden on complainants.
- X. That the builder was started construction work almost 8 year back still respondent want to more years to complete the project.



8-10 year long period make adverse effect on construction quality of project.

- XI. That as the delivery of the apartment was due on Jun 2015 which was prior to the coming into of force of the GST Act, 2016 i.e. 01.07.2017, it is submitted that the complainants are not liable to incur additional financial burden of GST due to the delay caused by the respondent. Therefore, the respondent should pay the GST on behalf of the complainants but just reversed builder collect the GST from complainants and enjoy the input credit as a bonus, this is also matter of investigation.
- XII. That the respondent has indulged in all kinds of tricks and blatant illegality in booking and drafting of buyer's agreement with a malicious and fraudulent intention and caused deliberate and intentional huge mental and physical harassment of the complainants and his family and cruelly been dashed the savored dreams, hopes and expectations of the complainant to the ground and the complainant is eminently justified in seeking return of the entire money with interest.
- XIII. That respondents have to charged interest on in delayed instalment @18% p.a. interest as per clause 1.12 of buyer's agreement and offer the delay penalty for himself is just Rs.5/per sq. ft. month as per clause no 2.3 is totally illegal arbitrary and unilateral.



XIV. That keeping in view the snail paced work at the construction site and half-hearted promises of the respondent, the chances of getting physical possession of the assured unit in near future seems bleak and that the same is evident of the irresponsible and desultory attitude and conduct of the respondent, consequently injuring the interest of the buyers including the complainants who have spent his entire hard earned savings in order to buy this home and stands at a crossroads to nowhere. The inconsistent and lethargic manner, in which the respondent conducted its business and their lack of commitment in completing the project on time, has caused the complainants great financial and emotional loss.

XV. That the cause of action to file the instant complaints has occurred within the jurisdiction of this authority as the apartment which is the subject matter of this complaint is situated in Sector 111, Gurugram which is within the jurisdiction of this authority.

C. Relief sought by the complainants

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

- I. Pass an order for delayed interest on paid amount of Rs.64,18,345/- from 07.06.2015 along with pendent lite and further interest till actual possession thereon @18% p.a.
- II. To restrain the respondents from raising any fresh demand and increasing the liability of the complainants.



- III. Direct the respondent to get the occupation certificate and immediately hand over the legal physical possession of the unit in habitable condition with all amenities mentioned in brochure.
- IV. Pass the order for forensic audit of builder because extracts more than 95% but the project still incomplete more than 70%.
- V. Pass an order for payment of GST amount levied upon the complainants and taken the benefit of input credit by builder.

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

D. Reply by respondent

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

- i. That the respondent is a leading and distinguished name in the real estate sector, is developing a residential group housing society by name "Capital Gateway" at sector 111, Gurugram, Haryana. The company KNS Infracon Private Limited is the land-owning company. It is developing the present project in furtherance of the license obtained vide license no. 34 of 2011 and all other requisite permits and approvals from the Directorate of Town and Country Planning Haryana and other regulatory authorities. The company Tashee Land Developers



Private Limited is doing the marketing and sale of the aforesaid project. All the responsibilities relating to sell, issue of demand and collection of the project.

- ii. That the complainant had booked the unit in the said project and made payment towards their said bookings which are duly acknowledged by the complainant vide receipts issued against the said payments. The project was launched by the respondent herein with a bonafide intention to complete the construction within the stipulated time frame and hand over the flats of good quality and facilities as advertised and committed to the respective allottees. It would be relevant to state that the construction at the project site is going on in full swing. The project is 90% complete and is nearing completion and ready for possession. The filing of present complaint at this belated stage for the relief sought is not maintainable and entertainable by this learned tribunal /authority and the respondent has already formally applied for the completion certificate and occupancy certificate (OC) with the Director Town and Country Planning (DTCP), Chandigarh, Haryana.
- iii. That the sub-structure (including the excavation, laying of foundation, basement, waterproofing of sub structure) and superstructure of the building (including the stilt, walls on floor, staircases, lift wells and lobbies) has been completed 100% far back. Further, the lifts have been now installed in all towers of



phase 1. Further the mechanical work, electricity including the wiring and plumbing work, internal plastering/painting of walls, external and internal wall tiling has also been finished for more than 90% and is nearing completion. Now, the doors and window panels are being installed and the internal entrance lobby is about to be finished.

iv. The complainant has made complaint before the authority on allegation of some delay in completion of project. It is submitted that the respondent company was faced with the unprecedented events which lead to the delay in the completion of the construction of this project. The respondent submits that any delays in the execution of works have been largely on account of force majeure/reasons beyond the respondent's control which could not have been avoided or prevented by exercise of reasonable diligence or despite the adoption of reasonable precautions and/ or alternative measures. In the performance of the terms in the agreement, i.e., the possession of the respective properties, the opposite parties were faced with the below listed unprecedented events which lead to the delay in the completion of the construction of this project.

v. The company had applied for environment clearance on 20.10.2011 but due to the unfortunate demise of the Chairman of Environmental Impact Assessment Committee in an unfortunate road accident. The post of chairman of EIA had been vacant for



long time owing to which the decision and issuance of certificate to the company remained in abeyance. The company finally got the environment clearance on 17.06.2013. Owing to this, the construction work of the project itself started late.

- vi. That the respondent company had applied for the revised building plan before the appropriate authority. However, for no fault of the respondent, the plans were approved by the department only after a delay of 2 years. Owing to this the construction of project could not be started in a timely manner.
- vii. The Indian real estate sector had already been going through a bad phase. The nation's real estate scenario had been rife with a large number of unsold units as well as unfinished projects. The reason being that unlike the period of 2006-2010, when there was massive investment activity, the phase of 2017-2020 has been sluggish. Due to this ongoing slow-down in the real estate industry, the sale and collection of the project heated very badly. The respondent company had not been able to sell its inventory and the cost of construction has increased many times which make it difficult to construct the project at fast pace.
- viii. There are very frequent and massive changes in the policies of Government like demonetization, etc. which has very much impacted the pace of Real Estate Development across the country.
- ix. When on 08.11.2016, the Government of India announced the demonetization of all Rs. 500 and INR 1,000 Bank currencies, the



same directly affected the liquidity to pay the construction workers. The unforeseen step adversely hit the productivity and brought the construction work at the site at a complete halt. This disabled the payments to the construction workers and discouraged the availability of materials and machinery for the continuation of the work at the site. When the work started again, there was acute shortage of workforce, which compounded the delay to the present situation.

- x. The Government has introduced rate of 12% on sale of under construction property, which are very high as compared to approx. 5% during the pre-GST period. This will badly impact the saleability of under construction project as 0% GST is in the Constructed property. So, people have started to prefer ready-to-move property.
- xi. Each year, in the winter season, the construction work gets marred by the directions of the Government so as to contain pollution in Gurgaon and neighbouring States owing to the alarming and unprecedented rise in the level of air pollution post Diwali. The demobilizing and remobilizing activity leads to a few months delay in the construction work. This disabled the payments to the construction workers and discouraged the availability of materials and machinery for the continuation of the work at the site. The unforeseen step brings the construction work at the site at a complete halt. When the work started again,

there was acute shortage of workforce and many times, due to non-availability of supply of construction water the construction work at site got held up which cause delay in the construction of the project.

- xii. In year 2020, when the project was ready and final touches were given to the apartments and towers, before the offer of possession was to be made, the work was obstructed by Covid-19 pandemic. Not only was the lockdown was put in force by the government, but there has also been a large-scale immigration of labours and workers back to their home states and towns. The supply of raw materials, machinery etc. was completely stopped from the source itself owing to non-plying of trucks and vehicles. This disabled the payments to the construction workers and discouraged the availability of materials and machinery for the continuation of the work at the site. When the work started again, there was acute shortage of workforce, which compounded the delay to the present situation.
- xiii. That it is germane to state that there is no deficiency in the services as rendered by the answering company and hence no occasion has occurred deeming the indulgence of this Hon'ble Tribunal, hence the present complainant is liable to be dismissed.
- xiv. That the completion of the project is going on in full swing and it is nearing completion. Further, even though the delay in the project has been for reasons beyond the control of the developer,



it is humbly submitted that whatever damages the petitioner/complainants are entitled to would have to be calculated and paid/ adjusted at the time of offer of possession since the same cannot be determined at any stage prior to that.

- xv. That the answering opposite party vehemently denies and rebuts the contents of the list of dates as contained in the present complaint under reply, with defenses and submissions as contained herein under.

E. Jurisdiction of the authority

The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

E. I Territorial jurisdiction

7. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. 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

8. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act leaving aside compensation

which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the objections raised by the respondents.

F1. Objection raised by the respondents regarding force majeure condition: -

9. The obligation to handover possession within a period of thirty-six months was not fulfilled. There is delay on the part of the respondents the actual date to handover the possession in the year 2015 and various reasons given by the respondents are totally null and void as the due date of possession was in the year 2015 and the NGT Order referred by the respondent pertaining to year 2015/2016 therefore the respondents cannot be allowed to take advantage of the delay on his part by claiming the delay in statutory approvals. The following reasons are given by the respondents: - (1) delay in approval by the state government (2) the slowdown in the real estate industry (3) Increase in cost of construction (4) change in Government policies (5) Impact of higher rate of GST on sale and collection (6) Stay on the construction work due to the orders of NGT (7) delay in construction work due to problem of construction water (8) Covid -19.
10. The due date of possession in the present case as per clause 2.1 is 07.06.2015, therefore any situation or circumstances which could have a reason prior to this date due to which the respondents could not carry out the construction activities in the project are allowing to be taken into consideration. While considering whether the said



situation or circumstances was in fact beyond the control of the respondents and hence the respondents are entitled to force majeure clause 9, however all the pleas taken by the respondents to plead the force majeure condition happened after 07.06.2015. The respondents has not given any specific details with regard to delay in payment of installments by many allottees or regarding the dispute with contractor or about the ban on extracting ground water by the High Court in Haryana. Even no date of any such order has been given. Similar is the position with regard to the alleged lack of infrastructure support by the state government. So far as Covid-19, NGT order and demonetization of Rs. 500/- and Rs. 1000/- currency notes are concerned these events are stated to have taken place in the year 2015 and 2016 i.e., the post due delivery of possession of the apartment to the complainants.

G. Findings on the relief sought by the complainants

G.1 Pass an order for delayed interest on paid amount of Rs.64,18,345/- from 07.06.2015 along with pendent lite and further interest till actual possession thereon @18%.

11. In the present complaint, the complainants intend to continue with the project and are 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."

12. Clause (2.1) of the flat buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below: -

2. POSSESSION OF UNIT: -

2.1. Subject to Clause 9 herein or any other circumstances not anticipated and beyond control of the first party/confirming party and any restraints/restrictions from any courts /authorities and subject to the purchaser having complied with all the terms and conditions of this agreement and not being in default under any of the provisions of this agreement including but not limited timely payment of total sale consideration and stamp duty and other charges and having complied with all provisions. Formalities, document, as prescribed by the first party/confirming party, whether under this agreement or otherwise, from time to time, the first party/confirming party proposes to hand over the possession of the flat to the purchaser within approximate period of 36 months from the date of sanction of the building plan of the said colony. The purchaser agrees and understands that the first Party/confirming party shall be entitled to a grace period of 180 (one hundred and eighty) days, after the expiry of 36 months, for applying and obtaining the occupation certificate in respect of the colony from the concerned authority. The first party/confirming party shall give notice of possession, and in the event the purchaser fails to accept and take the possession of the said flat within 30 days of, the purchaser shall be deemed to be custodian of the said flat from the date indicated in the notice of possession and the said flat shall remain at the risk and cost of the purchasers.

13. 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 application, 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 promoters. The drafting of this clause and incorporation of such conditions are not only vague and



uncertain but so heavily loaded in favour 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 promoters 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 flat buyer agreement by the promoters are just to evade the liability towards timely delivery of subject unit and to deprive the allottees of his 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.

14. **Admissibility of grace period:** The promoters have proposed to hand over the possession of the apartment within a period of 36 months from date of sanction of building plans and further provided in agreement that promoter shall be entitled to a grace period of 180 days for applying and obtaining occupation certificate in respect of group housing complex. As a matter of fact, the promoters have not applied for occupation certificate within the time limit prescribed in the flat buyer agreement. As per the settled law, one cannot be allowed to take advantage of his own wrong. Accordingly, this grace period of 180 days cannot be allowed to the promoters at this stage.
15. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges.



Proviso to section 18 provides that where an allottees does not intend to withdraw from the project, he shall be paid, by the promoters, 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.

16. 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.
17. 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., **10.12.2021** is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.
18. 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;"*

19. 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.
20. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, 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 clause 2.1 of the agreement executed between the parties on 21.12.2012, the possession of the subject apartment was to be delivered within 36 months from the date of sanction of building plans i.e. 07.06.2012. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession is 07.06.2015. The respondents have failed to handover possession of the subject

apartment till date of this order. Accordingly, it is the failure of the respondents /promoters to fulfil their obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondents is established. As such, the allottees shall, be paid, by the promoters, interest for every month of delay from due date of possession i.e., 07.06.2015 till the handing over of the possession, at prescribed rate i.e., 9.30 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

G.II To restrain the respondents from raising any fresh demand and increasing the liability of the complainants.

21. As on date, the cause of action has not arisen with regard to the aforesaid reliefs. The respondents have not raised any fresh demand and it is mere contingency that the respondents may or may not raise demand on account of subject unit. The respondent shall not charge anything from the complainants which is not the part of the flat buyer's agreement. Therefore, the complainants are advised to approach the authority as and when cause of action arises.

G.III Direct the respondent to get the occupation certificate and immediately hand over the legal physical possession of the unit in habitable condition with all amenities mentioned in brochure.

22. There is nothing on the record to show that the respondents have applied for OC or what is the status of the construction of the above-mentioned project. So, in such a situation no direction can be given to the respondent to handover the possession of the subject unit, as the



possession cannot be offered till the occupation certificate for the subject unit has been obtained.

G.IV. Pass an order for payment of GST amount levied upon the complainants and taken the benefit of input credit by builder.

23. The complainants have sought the relief that the respondents have credit the benefit on account of GST. The authority has observed that the GST had been levied strictly in accordance with the terms and conditions of the buyer's agreement.

The relevant clause from the agreement is reproduced as under: -

6. Statutory Taxes, Maintenance Charges, and other Dues:

6.1 The Purchaser shall from the date of execution of this agreement, always be responsible and liability for the payment of all External Development Work, Municipal Taxes, Property Tax, Infrastructure Development Tax, VAT, Service Tax, any fresh Incidence of tax to be levied by the competent authority, and any other statutory charges etc. including enhancement of such taxes by the government, even if they are retrospective in effect as may be levied on the said colony/land in the share proportionate to the super area of the said flat. in case any tax, charges cess, etc. is levied after the execution of the sale/Conveyance deed, the same shall be payable by the purchaser on pro rate basis."

24. As per the flat buyer's agreement, taxes shall be payable as per the government rules as applicable from time to time. Taxes are levied as per government norms and rules and are leviable in respect of real estate projects as per the government policies from time to time. Therefore, there is no substance in the plea of the complainants in regard to the illegality of the levying of the said taxes.
25. The authority has also perused the judgement dated 04.09.2018 in complaint no. 49/2018, titled as **Parkash Chand ArohiVs. M/s Pivotal Infrastructure Pvt. Ltd.** of the Haryana Real Estate



Regulatory Authority, Panchkula wherein it has been observed that the possession of the flat in term of buyer's agreement was required to be delivered on 07.06.2015 and the incidence of GST came into operation thereafter on 01.07.2017. So, the complainants cannot be burdened to discharge a liability which had accrued solely due to respondent's own fault in delivering timely possession of the flat. The relevant portion of the judgement is reproduced below:

"8. The complainant has then argued that the respondent's demand for GST/VAT charges is unjustified for two reason: (i) the GST liability has accrued because of respondent's own failure to handover the possession on time and (ii) the actual VAT rate is 1.05% instead of 4% being claimed by the respondent. The authority on this point will observe that the possession of the flat in term of buyer's agreement was required to be delivered on 1.10.2013 and the incidence of GST came into operation thereafter on 01.07.2017. So, the complainant cannot be burdened to discharge a liability which had accrued solely due to respondent's own fault in delivering timely possession of the flat. Regarding VAT, the Authority would advise that the respondent shall consult a service tax expert and will convey to the complainant the amount which he is liable to pay as per the actual rate of VAT fixed by the Government for the period extending upto the deemed date of offer of possession i.e., 10.10.2013."

26. The authority after hearing the parties at length is of the view that admittedly, the due date of possession of the unit was 07.06.2015. No doubt as per clause 6.1 of the flat buyer's agreement, the complainants/allottees has agreed to pay all the Government rates, tax on land, municipal property taxes and other taxes levied or leviable now or in future by Government, municipal authority, or any other government authority, but this liability shall be confined only up to the due date of possession i.e. 07.06.2015. With respect to the relief of



service tax, advice of service tax expert should be taken about the quantum of GST payable in given circumstances of the allottees up to the due date of offering of possession of the apartments. Accordingly, whatever GST is payable up to the due date of offer of possession shall be demanded by the promoters and will be paid by the allottees. The respondent shall not charge anything from the complainants which is not the part of the flat buyer agreement.

H. Directions of the authority

27. 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 at the prescribed rate of 9.30% p.a. for every month of delay from the due date of possession i.e. 07.06.2015 till the handing over of possession of the allotted unit after obtaining the occupation certificate from the competent authority.
- ii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period;
- iii. The arrears of such interest accrued from 07.06.2015 till the date of order by the authority shall be paid by the promoters to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoters



to the allottees before 10th of the subsequent month as per rule 16(2) of the rules;

- iv. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondents/promoter which is the same rate of interest which the promoter 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 shall not charge anything from the complainants which is not the part of the agreement to sell.
28. Complaint stands disposed of.
29. File be consigned to registry.

V.I - 
(Vijay Kumar Goyal)
Member


(Dr. KK Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 10.12.2021

Judgement uploaded on 25.01.2022