

PROCEEDINGS OF THE DAY		5
Day and Date	Wednesday and 12.01.2022	
Complaint No.	CR/84/2021 Case titled as JP Savlani VS ADTV Communication Pvt Ltd	
Complainant	JP Savlani	
Represented through	Shri Rishabh Jain Advocate	
Respondent	ADTV Communication Pvt Ltd	
Respondent Represented	None for the respondent	
Last date of hearing	03.12.2021	
Proceeding Recorded by	Naresh Kumari and HR Mehta	

### Proceedings through V.C

The present complaint has been received on 05.02.2021 and the reply has not been received till date.

Succinct facts of the case as per complaint and reply are as under:

Sr. No.	Particulars	Details
1.	Name of the project	Aloha, Sector 57, Gurugram, Haryana
2.	Unit no.	1401, Tower- D6, 14 <sup>th</sup> floor [annexure 02, page 40 of complaint]
3.	Super Area	2231 sq. ft.
4.	Date of execution of buyer's agreement	03.03.2006 [annexure 02, page 38 of complaint]
5.	Possession clause as per builder's agreement	10





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हरियाणा भू-संपदा विनियामक प्राधिकरण, गुरुग्राम  
*CRJ 81/2021*

New PWD Rest House, Civil Lines, Gurugram, Haryana

नया पी.डब्ल्यू.डी. विश्राम गृह, सिविल लाईंस, गुरुग्राम, हरियाणा

			<p><i>The possession of the said premises is likely to be delivered by the Company to the Allottee <b>within 36 months from the date of the start of the construction of the tower in which the said flat is located or from the execution of this agreement whichever is later</b>, subject to force majeure circumstances, &amp; on receipt of all payments punctually as per agreed terms and on receipt of complete payment of the basic sale price and other charges due and payable up to the date of possession according to the Payment Plan applicable to the Allottee. The company would pay penalty to its customers @ Rs 5/- per sq.ft. per month for handing over the flat beyond the committed period as stated herein above subject to punctual payment of installment the allottee.</i></p> <p>(Emphasis supplied)</p> <p>[page 44 of complaint]</p>
6.	Due date of possession		<p>03.03.2009</p> <p>[Note: Due date calculated from date of execution of agreement as the date on which demand on start of construction on basement roof slab is 23.01.2006 and start of construction will be prior to the same. Further this date is earlier to date of execution of BBA)</p>
7.	Total consideration as per calculation sheet dated 13.09.2017 at page 67 of complaint		₹ 60,40,621/-
8.	Total amount paid by the complainant as per calculation sheet dated 13.09.2017 at page 67 of complaint		₹ 45,76,851/-

An Authority constituted under section 20 the Real Estate (Regulation and Development) Act, 2016  
Act No. 16 of 2016 Passed by the Parliament

भू-संपदा (विनियमन और विकास) अधिनियम, 2016 की धारा 20 के अंतर्गत गठित प्राधिकरण  
भारत की संसद द्वारा पारित 2016 का अधिनियम संख्यांक 16



9.	Occupation certificate	Not yet obtained
10	Handing Over-Taking Over (Offer of possession for fit-out)	13.09.2017 [annexure 04, page 68 of complaint]

**Note:** The present complaint was filed on **05.02.2021** and registered as **complaint no. 84 of 2021**. As per the registry, complainant has sent copy of complaint along with annexures through speed post as well as through email. The tracking report of the same has been submitted by the complainant at page A of the complaint. The proof regarding the delivery of the complaint along with annexures made to the respondent, has been submitted by the complainant as available in the file. The registry of the authority sent a notice with a copy of the complaint along with annexures through speed post and the same returned unclaimed. The tracking report of the speed post is available in the file. Registry has also sent the notice along with a copy of the complaint through email and the mail was bounced back.

The registry also issued fresh noticed to the respondent on new addresses, but they also returned unclaimed. The tracking for the same is also available in the file.

Lastly, on 03.12.2021 the authority before proceeding ex-parte against the respondent ordered to issue public notice in the daily newspaper. But despite this the respondent fails to submit any reply till date therefore authority is left with no option but to proceed ex-parte against the respondent.

The complainant is seeking the following reliefs:

- 1. Direct the respondent to complete the requisite formalities for getting the occupation certificate and offer a legitimate and lawful possession of the flat to the aggrieved complainant.**

**The respondent is legally bound to meet the pre-requisites for obtaining occupation certificate from the competent authority. It is understood that the application for OC was made in the year 2013 to**





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the competent authority but so far promoter is unable to get OC may be on account of application not being complete, dues against the promoter, not meeting the pre-requisite for grant of OC etc. The promoter is duty bound to obtain OC and hand over possession only after obtaining OC. The department may take cognizance of the fact that large number of units have been given physical possession by offering possession for fit-outs without actually obtaining occupation certificate. The competent authority i.e. Director, Town and Country Planning may take requisite action as per law. Copy be endorsed to DTCP, Haryana Chandigarh.

2. Direct the respondent to complete the construction of common areas infrastructural facilities and amenities like club, lifts, sewerage treatment plants, solar system, electricity, firefighting equipment, internal roads, gymnasium, parks etc. for the complainant and other buyers of the complex.

As the respondent has offered possession for fit-outs on 13.09.2017 and thereafter no valid offer of possession has been issued by the respondent. Also as reflected from the LC report dated 28.07.2021 the finishing works with respect to tower D6 are still pending. The concluding paragraph of the LC report is reproduced as under: -

*"The site of project namely "Aloha" sector-57, Gurugram being developed M/s ADTV Communication Pvt. Ltd. has been inspected and it is concluded that:*

1. *The promoter has completed all the work in the four towers i.e., B3, B4, B5, D5 towers and handed over the possession to mostly allottees of respective towers. Further the primary works (ie., Structure work, brick works, plaster works, door frames, windows) are completed whereas balance finishing works (i.e., flooring, painting, electrical fitting, plumbing etc.) in the units of tower D6, are pending. The work in common area for tower D6 has been completed except out of three lifts only two lifts have been installed. The promoter has offered possession of units to the allottees on the fit-out basis in this particular tower.*





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2. *The internal development works in the projects i.e., internals roads, entrance gate, streetlights, boundary wall, landscaping, STP and WTP are completed and are operational. Further the works for the swimming pool and clubhouse are pending.*
3. *As per the information furnished by the residents of the project and available on the website of DTCP, Haryana no occupation certificate/ completion certificate has been received by the promoter for the project till date. Further as per status of the project recorded from site, it is clear that the project is incomplete. Therefore, the projects fall under the definition of ongoing project and the promoter is liable for registration of the project under the section 3 of the Real Estate (Regulation & Development) Act, 2016."*

Accordingly, it can be interpreted from the LC report that the construction works of the tower are still incomplete. Therefore, the authority directs the respondent to complete the pending construction works and then apply for a fresh occupation certificate with the competent authority and thereafter, offer a valid and lawful possession letter to the allottee.

3. **Direct the respondent to pay interest for every month of delay, since 3<sup>rd</sup> March 2009, for failing in offering legitimate and lawful possession of the flat to the complainant, at the prescribed rate as per the Act, 2016 till the respondent handovers the legitimate and lawful possession of the flat to the complainant.**

Considering the above-mentioned facts, the authority calculated due date of possession according to clause 10 of the agreement dated 03.03.2006 i.e., 36 months from the date of execution or start of construction whichever is later. Therefore, the authority allows DPC w.e.f. 03.03.2009. **It is a very interesting situation where allottee on one side is demanding completion of all requisite infrastructure and amenities and then offer physical possession in the name of legally valid physical possession whereas he has already taken over the physical possession on 13.09.2017 as confirmed by the counsel for the complainant although offer was for fit-out possession. The allottee is certainly entitled for delayed possession charges under proviso to section 18 (1) of the Act but only upto the date on which he has taken physical possession and allottee is enjoying the fruit of the property for which he has invested with the promoter. Although the promoter has given physical possession and allottee has accepted physical possession on the basis of offer for fit-out possession**





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**which may not be the legally valid offer of possession without obtaining occupation certificate. Both the promoter and the allottee have acted not as per the spirit of law but as per their own convenience. The promoter is liable for action for offering physical possession without obtaining OC and allottee cannot be allowed to take benefit of delay possession charges beyond the time he has taken physical possession.**

**4. Direct the respondent to prepare and execute a conveyance deed to convey the title of the flat in favour of the allottee/complainant.**

The respondent/promoter is directed to obtain occupation certificate from the competent authority and then make a valid and lawful offer of possession post that execution of conveyance deed be done within 3 months from the valid offer of possession as per the provisions of section 17 of the Act, 2016.

**5. Direct the respondent to withdraw/cancel/revoke charges on extra super area for increase in the super area which is around eleven per centum (11%) increase in the super area of the flat, as it was charged by the respondent illegally and unlawfully.**

The complainant in its complaint have annexed letter of allotment dated 17.02.2006 as per which the super area is 2231 sq. ft. Further as per the BBA dated 03.03.2006 also the super area is 2231 sq. ft. moreover in the calculation sheet dated 13.09.2017 no extra charges with regard to increase in area has been charged by the respondent whereas on letter dated 13.09.2017 at page 70, the super area of the said unit is 2476 sq. feet which is 11% more of the earlier super area. In light of the above-mentioned facts, there is no documents on record which shows that the respondent has not charged anything illegal or unlawful.

**6. Direct the respondent to pay legal expenses of Rs. 1,00,000/- incurred by the complainant.**

The complainants are claiming compensation in the above-mentioned reliefs. The authority is of the view that it is important to understand that the Act has clearly provided interest and compensation as separate entitlement/rights which the allottee can claim. For claiming





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CR/84/2021

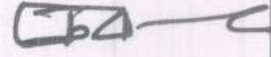
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compensation under sections 12, 14, 18 and section 19 of the Act, the complainants may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

The matter stands disposed of. Detailed order will follow. File be consigned to registry.

V.1-3  
Vijay Kumar Goyal  
Member

  
Dr. KK Khandelwal  
Chairman  
12.01.2022