

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

Complaint no. : 3726 of 2021
First date of hearing: 29.09.2021
Date of decision : 02.02.2022

Neeta Monga

R/o: A40, first floor CR Park New Delhi

Complainant

Versus

1.Vatika Limited

2.Mr. Gautam Bhalla

Both RR/o: Tower A, Vatika City Centre, 5th
floor, NH8, Near Kherki Daula Toll Plaza,
Sector 83, Gurugram, Haryana 122004

Respondents

CORAM:

Dr. K.K. Khandelwal

Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Ms. Ritu Bhalla

Sh. Pankaj Chandola

Advocate for complainant

Advocate for respondents

ORDER

1. The present complaint dated 14.09.2021 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(f) and section 17(1) of the Act wherein it is inter alia prescribed that the promoters shall be responsible for all

obligations, responsibilities and functions under the provision of the Act or the rules and regulations made thereunder 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Heads	Description
1.	Name of the project	City Homes in "Vatika India Next, Sector 83.
2.	Nature of the project	Group housing complex
3.	DTCP License no.	113 of 2008 dated 01.06.2008 Valid up to 31.05.2018 71 of 2010 dated 15.09.2010 Valid up to 14.09.2018
4.	Project area	182.796 acres
5.	Rera Registration no.	Not registered
6.	Date of execution of commercial premises buyer's agreement	21.09.2011 [page no. 43 of complaint]
7.	Payment plan	Construction linked payment plan [page no. 74 of complaint]
8.	Plot no.	Apartment no. 801, floor 8 th , block B7 admeasuring 1738.24 sq.ft. (page 46 of complaint)
9.	Total consideration	Rs.51,69,595/- as per statement of account dated 21.06.2021 (annexure Q, page 114 of complaint)
10.	Total amount payable by the Complainant	Rs.38,60,265/- as per statement of account dated

		21.06.2021 (annexure Q, page 114 of complaint)
11.	<p>Due date of delivery of possession (10.1 Schedule for possession of the said apartment) <i>The company based on its present plans and estimates and subject to all just exceptions contemplates to complete construction of the said Building/said Apartment within a period of 3 years from the date of execution of this agreement unless there shall be delay or there shall be failure due to reasons mentioned in clauses (11.1),(11.2),(11.3) and clause (39) or due to failure of allottee(s) to pay in time the price of the said apartment along with all other charges and dues in accordance with the schedule of payments given in annexure III or as per the demands raised by the Company from time to time or any failure on the part of the allottee(s) to abide by any of the terms or conditions of this agreement)</i></p>	<p>21.09.2014 Due date is calculated from the date of execution of the agreement.</p>
12.	Offer of possession	10.10.2015 [annexure-R3, page 49 of complaint]
13	Notice for termination	15.05.2021 [page 56 of reply]
	Letter of cancellation	15.06.2021 [annexure P, page 113 of complaint]
13.	Occupation certificate	OC is annexed in the paper book at page 47 of reply, but that OC is not for the unit which was allotted to the complainant.

B. Facts of the complaint

The complainant has submitted as under: -

3. That on the assurances given by the respondent as well as agents, she was much influenced through their wide publicity and she booked an independent floor in the said project "Vatika India Next" being developed & constructed by the respondent no. 1. It is pertinent to mention here that the complainant and her two friends namely Mrs. Kavita Khanna, her husband and Shirish Shorewala booked their individual floors together. Before booking the flats, she alongwith her friends met with the officials of the respondents and told that they want to purchase the independent floors on the same floor or if it's in a low-rise, then they want their floors in same tower/plot.
4. The officials of the respondent no. 1 told the complainant and her friends that there are two 03 BHK flats and one 2 BHK flat are available on the same floor. On this, the complainant gave their consents and booked their respective units with the respondents. The complainant booked her flat of 03 BHK at the rate of Rs. 2438/- per Sq. Ft. On dated 28.07.2008, the complainant and his friends booked three unit in their above said project and at the time of booking /registration, she paid an amount of Rs. 6,00,000/- against priority no. 3BR/209 for 03 BHK flat/floor vide cheque bearing no. 633845 dated 28-07-2008. At the time of booking of the flat, the officials of the respondents duly assured the complainant that the

respondents would deliver the physical possession of the above mentioned flat within 36 months i.e., three years.

5. The complainant the officials of the respondents and requested to execute buyer's agreement, but the officials of the respondents lingered on the matter on one pretext or the other till 2010. Thereafter, the respondents demanded the next installment of the above-mentioned unit/priority number, on this, the complainant requested to their officials to issue the allotment letter of their flat/unit, then she will pay the installments. In the month of July 2010, the respondents called her and offer a new unit bearing nos. B7-801, in "City Homes" situated at Sector-83, Gurugram, Haryana with extended the area of the flats without any prior consent or permission of the complainant and her friends.
6. That the complainant objected the same but the officials of the respondents forced her by saying that the plan has changed and she has to take the same. Having no other option, she gave their consent and agreed for the same. After repeated requests of her s, the respondents executed a builder buyer agreement dated 21.09.2011 in respect of the flat bearing no. B7-801 of her with increasing area from 1457 Sq. Ft. to 1738.24 Sq. Ft. She paid the installment as and when demanded by the respondents till the year, 2015. She paid a total sum of Rs. 38,60,265/- to the respondents in respect of the above said unit. It is pertinent to mention herein that at the time of booking of the unit, the total sale consideration of the said unit was Rs. 39,72,850/- and after re-allotment, the respondents increased

that amount to 49,29,019/- i.e. total sale consideration of the new unit by increasing the area of the flat.

7. That in the middle of October 2015, the complainant received a letter dated 10-10-2015 from the respondent and she was shocked to see that the respondents have again increased the unit area of her friend namely Shirish Shorewala from 1325 Sq. Ft. to 2315 Sq. Ft. and charged Rs. 6500/- per Sq. Ft. instead of 2443/- per Sq. Ft. without prior notice, intimation or consent of her and her friends. On this, she alongwith her friends, visited the office of the respondents on dated 19.11.2015 and asked about the same, and officials of the respondents told her that due to change in FSI, the particular unit no. 803 has been changed into duplex and of which they were supposed to provide them floor plan with all details and also offered her for alternative unit on first floor which the complainant denied as she and her friends want to take the flat on the same floor as she and her friends booked their units on the same condition and the officials of the respondents agreed for the same.
8. That when the complainant denied accepting the unit in different way, then the officials of the respondents assured her and her friends to resolve the matter within a short span of time i.e. 24 hours. She and her friends continuously enquired the officials of the respondents in order to clear the plan but the officials of the respondents delayed the matter on one pretext or the other and sent several e-mails to the respondents.

9. The complainant alongwith her friends again visited to the office of the respondents in order to meet their officials and to solve the matter. On this, the officials of the respondents further took some time to resolve their issues and on dated 12.12.2015, the complainant and her friends received an e-mail from the end of the respondents in which it was mentioned that a team of the respondents would clear all the matters and issues of the complainant and her friends and respond as soon as possible. The respondents further sent a demand letter dated 18.02.2016 to her and her friends. Upon which she and her friends visited the office of the respondents alongwith the cheque in order to clear the due amount but the officials of the respondents further took some more time in order to resolve the issues. She and her friends again insisted that they want all the three flats on a same floor as they booked theirs flats on their above said project only on those condition. On this, their officials assured her and her friends verbally that they fulfil this condition which they promised at the time of booking.
10. That the complainant and her friends sufficiently waited to resolve the matter, but the officials of the respondents did not give any positive response to her and her friends. When she did not get any satisfactory answer from the respondents then she and her friends sent a letter to the respondents in which it was mentioned to clear the status of their units. The officials of the respondents even did not bother to reply the above said letter sent by her and her friends and again sent a demand notice to her and her friends. The

respondents are not resolving the issues of her and her friends and are demanding the amount from them, illegally and unlawfully.

11. That on the same day, the complainant and her friends again visited the office of the respondents to clear the matter of the flat no. B7-803 of their friend namely Shirish Shorewala, by saying that if the respondents ready to give the possession of the flat no. 803 on the same rate i.e. Rs. 2443/- per sq.ft. as mentioned in the buyer agreement, then, they will be ready to take the possession of their respective floors immediately by clearing the entire dues, but again, the officials of the respondents did not pay any heed to the just and genuine requests of her and her friends. She and her friends again requested to the officials of the respondents to give the units on the same rates and to waive off the interests thereupon but no fruitful came out. Instead of resolving the matter of the her and her friends, the respondents sent a termination notice dated 15.05.2021 to her and her friends through e-mails in which it was mentioned that if the dues of her would not be cleared then the respondents would terminate the units of her and her friends while they were still ready to take the same on the rates as agreed by the respondents at the time of booking and after waiving off the interest. She and her friends visited to the office of the respondents in order for the redressal of their grievance but the requests of her and her friends fell on the deaf ears and the officials of the respondents flatly refused to do so.
12. That the respondents intentionally and wilfully wanted to usurp the hard-earned money of her in an unlawful and illegal manner.

Due to their above said acts and conducts she has to suffer a huge economic loss, mental pain, agony. The respondents knowingly, intentionally with ulterior motives and malafide intentions did not handover the physical possession of the unit to her which is categorical, default and deficiency in service on their part and attempted to cause loss to her which was being caused due to wilful default on the part of the respondents. The respondents are legally bound to entertain the just and legal claim of her in every aspects as she suffer from last more than 12 years because of you only. It is worthwhile to mention herein that at the time of booking of the flat, officials of the respondents had assured her that the actual physical possession of the unit will be deliver within a period of three years and as per terms and conditions of the buyer agreement dated 21-09-2011, in para no. 10.1. But the respondents delayed to handover the actual physical possession of the unit to the complainant and instead of handing over the physical possession within time, the respondents cancelled/terminate the booking of the complainant and her friends just to harass and humiliate them.

13. That after termination notice of the booking of the complainant, she visited the office of the respondents many times and asked about the termination of their bookings after receiving more than 90% amount from her, but the officials of the respondents lingered on the matter on one pretext or the other and finally in the month of July, 2021, the officials of the respondents refused to withdraw their termination notice and to restore the booking of her and to listen the legal and genuine request of her and demanded the

interest amount which was illegally charged by the respondents upon her. The terms and conditions of the buyer's agreement are one sided as the respondents have not fulfilled the terms and conditions of the agreement at any point of time.

14. It is pertinent to mention herein that after receiving a sum of Rs. 38,60,265/- from her, the respondent demanded a sum of Rs. 27,13,722/- from her as they have illegally charged in respect of interest on the due amount, but the respondents are not clearing the issues raised by her regarding increasing of area of the flat and rate which were enhanced by the respondents without giving any prior notice/information to her. The respondents have illegally charged the interest upon the dues which was not delayed by her but delayed by the respondents themselves in handing over the actual physical possession of the flat which is due from 2011 to till date. The complainant has already paid more than 90% amount of the total sale consideration of their flats but the respondents using the same on their personal uses and enjoying the same. It is pertinent to mention herein that due to the negligence or cheating on their part, she suffers a lot and due to this, she raised their voices against the respondents and only for which, the respondents have illegally and unlawfully terminated the booking of her, without any rhyme and reason, just to harass and humiliate them.
15. That it is pertinent to mention herein that she is always willing and ready to pay the remaining cost of the flat but the respondent refused to accept the same from her as they does not want to deliver the flat to her, intentionally and unlawfully.

C. Relief sought by the complainant:

The complainant has sought following relief(s):

- (i) Direct the respondent to handover the actual physical possession of the flat bearing unit no. B7-801, admeasuring 1738 sq.ft. on 8th floor in the project "City Homes" of the respondents situated at Sector 83, Gurugram, Haryana.
 - (ii) Direct the respondent to execute the conveyance deed/sale deed in favour of the complainant in respect of the said unit.
16. On the date of hearing, the authority explained to the respondents/promoters about the contravention as alleged to have been committed in relation to section 11(4) (f) and section 17(1) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

The respondents have contested the complaint on the following grounds: -

- i. It is imperative to note, that the complainant herein, learn about the project launched by the respondent titled as 'City Homes - Vatika India Next' situated at Sector 83, Gurgaon and approached the respondent repeatedly to know the details of the said project. The complainant further inquired about the specification and veracity of the project and was satisfied with every proposal deemed necessary for the development of the project. As per the application form, the area of the unit was 1457 sq.ft., which was tentative.

- ii. That after having keen interest in the project constructed by the respondent the complainant herein booked a unit bearing no. B7-801 situated at Sector-83 and paid an amount of Rs. 6,00,000/- through cheque dated 28.07.2008 for further registration.
- iii. The respondent vide welcome letter dated 08.11.2010, allotted a unit bearing no. B7-801 admeasuring to 1738 sq. ft. to the complainant. Thereafter, on 08.11.2010, the complainant at their free will paid an amount of Rs. 5,00,000/- through cheque towards the agreed sale consideration for the said Unit.
- iv. That after much pursuance of the respondent, on 21.09.2011, apartment buyer agreement was executed between the complainant and the respondent, wherein, a unit bearing no. B7-801 was allotted to the respondent in the said project for a total sale consideration of Rs. 49,29,020.03/-. It is to note, that as per the agreement the construction of the apartment was estimated to be completed within 36 months subject to clause(s) 11.1, 11.2, 11.3 & 39 of the agreement which states about the hindrances in the midway of construction beyond the control of the respondent.
- v. It is submitted that the complainant was aware of terms and conditions under the aforesaid agreement and post being satisfied with each and every term agreed to sign upon the same with free will and consent without any demur. Also, the complainant knew that in case the project was delayed due to any event/reason beyond the control then the respondent shall

- be entitled for extension of time period in handing over the possession.
- vi. That in spite after knowing that during the construction of the aforesaid project the respondent had faced several obstacles which were beyond the control and the construction of the project was ought to be interrupted due to the same. However, it is necessary to brought into the knowledge of the ld. authority that as on date the complainant has only paid one partial amount of the total sale consideration and the complainant while concealing such fact has filed this complaint with mala-fide intention.
- vii. It is to note, that the project in question was majorly dependent upon the timely payment as the same was an essence for its completion and despite after knowing the fact the complainant herein has failed to comply with the payment schedule as annexed along with the agreement. It is an admitted fact, that even at the time of offering possession an amount of Rs. 41,63,854/- which was due on account of the complainant towards the agreed sale consideration for the said unit.
- viii. Hence, it cannot be denied that the reasons for the delay in handing over the possession was firstly the delayed payment on account of the complainant and secondly due to the reasons beyond the control of the respondent and the same are explained in detail herein below.
- ix. on 10.10.2015, a Letter for offer of possession was offered to the complainant in compliance with clause 10.2 of the



agreement which evidently proves the fact that despite after obstructions in the midway of construction the respondent herein has managed to provide the said unit. But the complainant herein failed to accept the offer within the prescribed period as mentioned period under the agreement and moreover, the same was intimated in the contours of the letter for offer of possession.

- x. It is imperative to bring into the knowledge of the Id. authority that despite after calling upon the complainant to take over the possession and to clear the balance due. The complainant herein has neither taken over the possession nor has cleared a amount of Rs. 41,63,854/- which was due on account of the complainant towards the agreed sale consideration for the said unit.
- xi. As per the agreement in case the allottees failed to take-over the possession of the apartment within the specified time period as prescribed under the letter of possession then the unit shall lie at the risk and cost of the allottee, and the company shall have no liability or concern thereof. Therefore, the complainant has no right to raise the objection before the hon'ble authority when no obligations have been complied therewith as mentioned under the agreement.
- xii. The provisions of the RERA are prospective and not retrospective however, it is pertinent to mention that the retroactive application of the Act will equally applicable on the ongoing projects however, in our present complaint, the project in light is not on-going project since the OC has already been

obtained on 30.08.2016 for the project in question therefore, the procedure laid down under section 3 will not be applicable to our project.

- xiii. it is humbly asserted that complainant did not comply with the terms of the agreement and equally to the letter dated 10.10.2015. It is submitted that the agreement was executed on 21.09.2011, which is much prior to the implementation of the RERA Act, 2016, as the said act came into force on 01.05.2017. Therefore, in the light of the aforementioned facts wherein the facts become crystal clear that the sole purpose of the agreement was fulfilled much prior to the enforcement of the RERA. It is mentioned for the purpose of the law established in the circumference of the various judgements of the High Court wherein it has been established that RERA contains the retrospective effect to the ongoing projects which is prescribed under section 3 of the RERA Act which confers in the subsequent manner.
- xiv. It is submitted that the aforesaid provision specifically provides that the projects which are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued are subject to registration. It is a matter of fact, that in the present case the OC has already been issued much prior to the enforcement of the RERA Act.
- xv. Compensation has been sought in the present complaint: It is submitted that the complainant has sought reliefs which is in nature of compensation, therefore, the present complaint is not

- maintainable before the authority. Therefore, the present complaint is liable to be dismissed on this ground alone.
- xvi. That the complaint is pertaining to compensation under the provisions of the Real Estate (Regulation & Development) Act, 2016 are required to be filed before the adjudicating officer under Rule-29 of the Rules, 2017 read with section 31 and section 71 of the said Act and not before this Hon'ble Regulatory Authority under Rule-28.
- xvii. In the present case, the complaint pertains to the possession and compensation for which the complainant has filed the present complaint. The complaint, if any, is still required to be filed before the adjudicating officer and not before this hon'ble regulatory authority as this hon'ble regulatory authority has no jurisdiction whatsoever to entertain such complaint and such complaint is liable to be rejected.
- xviii. It is pertinent to mention before the Id. authority that the respondent was chasing the complainant to take over the possession of the unit and to clear the outstanding dues towards the allotted unit, however, the complainant never turned up and failed to take over the possession of the unit by paying the outstanding dues. It is submitted that as per the agreement so signed and acknowledged, the complainant herein knew that the respondent shall not be liable for any events beyond the control of the respondent and further extension time would be granted for completion of the project. It is further submitted that the complainant in the said agreement so signed and acknowledged

agreed that he/she shall continue with this agreement and shall not obtain any specific performance in case the possession is delayed due to any government rules, orders or notification. That it is evident that the respondent faced various problems and difficulties in carrying out the smooth development of the subject project where the allotted plot of complainant was situated. It is submitted that the respondent conveyed the obstruction/ unforeseen circumstances being faced by respondent which hampered the construction and development work of the said project through various telephonic conversations.

- xix. It is submitted that the time schedule for handing over the possession given under Clause 10.1 of the agreement was subject to other terms and conditions of the agreement such as timely payment of the instalments by the complainant and reasons of delay which are beyond control of the respondent. The main reasons behind the delay in project was due to the non-acquisition of sector roads by HUDA, initiation of GAIL corridor passing through the "Vatika India Next" project, non-shifting of high-tension lines passing through the project by DHBVN. It is submitted that the "Vatika India Next" is large township and respondent has already given possession more than approx. 5000 apartments in the past few years which includes plots, villas, independent floors, group housing flats and commercial. That due to extraneous reasons which is beyond control of the respondent, the respondent was unable to

execute and carry out all necessary work for completion in some part of the project. There was change in the master layout plan of the project by the concern govt. agencies because of which the entire plot cluster map changed, and due to this there was a delay in the handing over the possession.

- xx. It is to note, that the respondent committed to complete the development of the project and deliver the unit of the allottees as per the terms and conditions mentioned under the agreement. And has invested each and every amount so received from the complainant. It is pertinent to appraise the ld. authority that the developmental work of the said project was slightly delayed due to the reasons other than mentioned herein above which were beyond the control of the respondent company.
- xxi. That the complainant herein, has suppressed the above stated facts and has raised this complaint under reply upon baseless, vague, wrong grounds and has mislead this ld. authority, for the reasons stated above. It is further submitted that none of the reliefs as prayed for by the complainants are sustainable before this ld. authority and in the interest of justice.
- xxii. That, it is evident that the entire case of the complainant is nothing but a web of lies, false and frivolous allegations made against the respondent. That the complainant has not approached the ld. authority with clean hands hence the present complaint deserves to be dismissed with heavy costs. That it is brought to the knowledge of the ld. authority that the complainants are guilty of placing untrue facts and are

attempting to hide the true colour of intention of the complainant.

- xxiii. Hence, the present complaint under reply is liable to be dismissed with cost for wasting the precious time and resources of the Id. authority. That the present complaint is an utter abuse of the process of law, and hence deserves to be dismissed.
18. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submission made by the parties.

F. Jurisdiction of the authority

The respondents have raised objection regarding jurisdiction of authority to entertain the present complaint and the said objection stands rejected. The authority observed 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, 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.

F. II Subject matter jurisdiction

The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per section 11(4)(f) and section 17(1) of the Act of 2016. Leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

G. Findings on the relief sought by the complainant.

Relief sought by the complainant: The complainant has sought following relief(s):

- i. Direct the respondent to handover the actual physical possession of the flat bearing unit no. B7-801 admeasuring 1738 sq.ft. on 8th floor in the project "city homes" of the respondent situated at Sector 83, Gurgaon, Haryana.
 - ii. Direct the respondent to get the conveyance deed executed.
19. In the present complaint, the complainant is seeking relief of execution of conveyance deed as well as seeking relief of physical possession of the unit. Clause 16 of unit buyer's agreement (in short, agreement) provides for handing over of possession and is reproduced below:

"16. Conveyance of the said apartment

The company/its associates companied shall prepare and execute along with the allottee a conveyance deed to convey the title of the said Apartment in favour of allottee but only after receiving full payment of the total price of the apartment and the parking space allotted to him/her and payment of all securities including maintenance security deposits and charges for bulk supply of electrical energy, interest, penal interest etc. on delayed installments stamp duty, registration charges, incidental expenses for registration, legal expenses for

registration and all other dues as set forth in this agreement or as demanded by the company from time to time prior to the execution of the conveyance deed. If the allottee is in default of any of the payments as set forth in this agreement then the allottee authorizes the company to withhold registration of the conveyance deed in his/her favour till full and final settlement of all dues to the company is made by the allottee and agreed to bear the consequences. The allottee undertakes to execute conveyance deed within the time stipulated by the company in its written notice failing which the allottee authorizes the company to cancel the allotment and terminate this agreement in terms of clause (12) of this agreement and to forfeit out of the amounts paid by him/her the earnest money, delayed payment of interest any interest paid, due or payable, any other amount of a non-refundable nature and to refund the balance amount without any interest in the manner prescribed in clause (12) supra. The allottee shall be solely responsible and liable for compliance of the provision of Indian Stamp Act, 1899 or any amendments thereof including any actions taken or deficiencies/penalties imposed by the competent authority(ies). Any increase/decrease in the Stamp Duty charges during the period when the case for execution of the conveyance deed of the allotted flat is being processed by the company shall be borne by/refunded to the allottee.

Section 17 (1) of the Act deals with duty of promoter to get the conveyance deed executed and the same is reproduced below:

"17. Transfer of title. -

(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the

allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."

20. **Validity of offer of possession:** The authority in complaint bearing no. *5137 of 2019 titled as Dr. Ashok Kumar Vaid and anr. Versus Emaar MSG Land Ltd.*, has comprehensively dealt with the components of valid offer of possession and they are as follow:

- a. **Possession must be offered after obtaining OC/CC:** The subject unit after its completion should have received occupation certificate from the concerned department certifying that all the basic infrastructural facilities have been laid and are operational. Such infrastructural facilities include water supply, sewerage system, storm water drainage, electricity supply, roads and street lighting.
- b. **The subject plot/unit should be in habitable condition:** The test of habitability is that the allottee should be able to live in the subject unit within 30 days of the offer of possession after carrying out basic cleaning works and getting electricity, water and sewer connections, etc from the relevant authorities. In a habitable unit, all the common facilities like lifts, stairs, lobbies, etc should be functional or capable of being made functional within 30 days after completing prescribed formalities. The authority is further of the view that minor defects like little gaps in the windows or minor cracks in some of the tiles, or chipping plaster or chipping paint at some places or improper functioning of drawers of kitchen or cupboards etc. are minor defects which do not render an apartment uninhabitable. Such

minor defects can be rectified later at the cost of the developers. The allottee should accept possession of an apartment with such minor defects under protest. This authority will award suitable relief or compensation for rectification of minor defects after taking over of possession under protest.

However, if the subject unit is not at all habitable because the plastering work is yet to be done, flooring works is yet to be done, common services like lift etc. are non-operational, infrastructural facilities are non-operational, then the subject unit shall be deemed as uninhabitable and offer of possession of an uninhabitable unit will not be considered a legally valid offer of possession

- c. **Possession should not be accompanied by unreasonable additional demands:** In several cases, additional demands are made and sent along with the offer of possession. Such additional demands could be of minor nature or they could be significant and unreasonable which puts heavy burden upon the allottee. An offer accompanied with unreasonable demands beyond the scope of provisions of agreement should be termed an invalid offer of possession. Unreasonable demands itself would make an offer unsustainable in the eyes of law. The authority is of the view that if the additional demands are made by the developer, the allottee may accept possession under protest or decline to take possession raising objection against unjustified demands.

21. In light of the above-mentioned concept, the offer of possession dated 10.10.2015 made by the promoter in the present case is not a valid/lawful offer of possession as the same has been made before obtaining OC from the competent authority which is a necessary pre-requisite. The OC for the subject unit has not been obtained by the respondent till date.
22. On consideration of the above-mentioned facts, the authority observes that the respondent offered the possession vide letter dated 10.10.2015 but that offer of possession is not valid as the respondent has not obtained OC/CC of unit allotted to the complainant. So, in such situation the authority neither give the direction of execution of conveyance deed nor to handover the possession of the said plot.
23. The counsel for the complainant time and again pressed for relief being aggrieved by cancellation of the unit and impressed upon the authority that the said cancellation is not in accordance with terms and conditions of sale and it is unilateral and without any sufficient cause. In the relief, no such relief against cancellation of the unit has been sought. On the request of counsel for the complainant, liberty was granted to file separate complaint.
24. Complaint stands disposed of.
25. File be consigned to registry.

V. I. - 3
(Vijay Kumar Goyal)
Member

[Signature]
(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram



HARERA
GURUGRAM

Complaint No. 3726 of 2021

Dated: 02.02.2022



HARERA
GURUGRAM