

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

**Complaint no.** : 593 of 2021  
**Date of filing complaint:** 17.02.2021  
**First date of hearing** : 21.05.2021  
**Date of decision** : 10.03.2022

DSS Buildtech Private Limited <b>Registered office at:</b> - 5 <sup>th</sup> floor, Time Square Building, Sushant Lok-1, Block- B, Gurugram, Haryana -122002	<b>Complainant</b>
Versus	
1. Ms. Ekta Sehgal 2. Mr. Rishi Mehra <b>Both R/o:</b> - F-92, Rajouri Garden, New Delhi-110027	<b>Respondents</b>

<b>CORAM:</b>	
Dr. K.K. Khandelwal	<b>Chairman</b>
Shri Vijay Kumar Goyal	<b>Member</b>
<b>APPEARANCE:</b>	
Shri Suresh Rohilla & Ms. Shubhi Sharma (Advocates)	Complainant
None	Respondents

**EX-PARTE ORDER**

1. The present complaint has been filed by the complainant/promoter against the 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 19(6), (7) and 13(1) of the Act wherein it is prescribed that the allottee shall make necessary payments in the manner and within time as specified in the agreement for sale and to pay interest, at such rate as may be prescribed, for any delay in payments.

**A. Unit and project related details**

2. The particulars of project, unit, sale consideration, the amount paid by the respondents, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Heads	Information
1.	Project name and location	The Melia, Village Mohamadpur Gujjar, Sector-35, Sohna, Gurugram.
2.	Project area	17.41875 acres
3.	Nature of the project	Group housing project
4.	DTCP license no.	77 of 2013 dated 10.08.2013
	License valid up to	09.08.2024
	Name of the licensee	Aarti Khandelwal & others
5.	RERA registered/not registered	<b>Registered</b>
	HAERA registration no.	288 of 2017 dated 10.10.2017
	Registration valid up to	25.10.2021
6.	Unit no.	E-904, 9th floor, tower-E (vide allotment letter annexed as annexure-V on page 51 of complaint)
7.	Size of unit	1750 sq. ft. (vide allotment letter annexed as annexure-V on page 61 of





		complaint)
8.	Allotment letter	25.04.2015 (annexure-V on page 51 of complaint)
9.	Timely Payment Clause	<p><b>11. Time is the essence: Buyer's Obligation</b></p> <p><b>11.1.1.</b> Time is the essence with respect to the obligations of the Buyer to pay the Total Sale Consideration as provided in Schedule III on or before the due date(s) as may be prescribed. It is clearly agreed and understood by the Buyer that except for at demand notice for payments, the Company shall not be required to remind the Buyer for payments due as per the Payment Plan on for performance of any other obligations of the Buyer in terms thereof.</p> <p><b>11.1.2</b> For any delay in making any payment in terms thereof, simple interest @15% shall be chargeable. The Company shall also be within its rights to decline to execute the conveyance deed and refuse to transfer the apartment in the name of any other buyer unless all payments are fully paid.</p>
10.	Possession Clause	14. Completion and possession of the apartment Subject to the terms hereof and to the buyer having





		<p>complied with all the terms and conditions of this agreement, the company proposes to hand over possession of the apartment within a period of 48 from the date of receiving the last of approvals required for commencement of construction of the project from the competent authority and or the date of signing the agreement whichever is later and to this period to be added for the time taken in getting fire approvals and occupation certificate and other approvals required before handing over the possession of the apartment or for such other requirement/conditions as may be directed by the DGTCP. The resultant period will be called as "commitment period". However this committed period will automatically stand extended by for a further grace period of 180 days got issuing the possession notice and completing other required formalities ("Due Date of Possession") <b>(emphasis supplied)</b></p>
11.	Date of execution of buyer's agreement	05.05.2016 (annexure-VI on page no. 54 of complaint)
12.	Payment plan	Construction linked payment plan







		(annexure-VI on page 91 of complaint)
13.	Total sale consideration	Rs. 1,01,94,250/- (without tax but including IFMSD) (vide statement of account annexed as annexure-VII on page 88 of complaint)
14.	Total amount paid by the respondents	Rs. 43,62,871/- (vide statement of account annexed as annexure-VII on page 88 of complaint)
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered

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

3. That the respondents/allottees booked a 3BHK flat+ servant, measuring 1750 sq. ft., in the project namely 'The Melia' (hereinafter referred as the 'said project') by way of application form, dated 23.11.2013 for a basic sale price of Rs. 4750/- per sq. ft. plus other charges and taxes, as applicable, for the total sale consideration of Rs. 79,34,850/- and paid Rs. 6,00,000/- as an initial booking amount. The respondents/allottees had opted for a construction linked payment plan for making payments towards the subject unit's sale consideration.
4. That the respondents/allottees paid a booking amount of Rs. 6,00,000/- vide cheque no. 738707 dated 24.70.2013 drawn on Indian bank and other instalments total amounting to Rs. 43,62,871/- inclusive of service tax.





5. That a residential unit no. E-904 situated on the ninth floor of tower-E in the said project, was allotted to respondents/allottees vide allotment letter dated 25.04.2015. The respondents/allottees also executed an apartment buyer's agreement (hereinafter referred as the 'ABA') with the complainant on 05.05.2016.
6. That on the date of filing of complaint, the respondents/allottees have paid only Rs. 43,62,871/- including service tax and a sum of Rs. 67,08,545/- is outstanding against the respondents/allottees, on account of instalments and interest.
7. That the complainant has obtained all the approvals required for the development of the project. The details of the approvals obtained are already on record. The development of the project is going on with full swing. The structural work of most of the towers in the project, including tower-E in which the respondents/allottees have booked the said unit, is complete. The brickwork & other internal finishing works is also going on with full swing and reached almost at the completion stage.
8. That the respondents/allottees had agreed, under the payment plan signed by them to pay instalments on time and discharge their statutory obligations created under the said ABA. However, the respondents/allottees failed to make payment of due instalments as demanded by the complainant, from time to time.





9. That the complainant has duly complied with all applicable provisions of the Act, 2016 and rules and also that of agreement for sale qua the respondent and other allottees. Since starting the development of the said project, the complainant has been sending updates about the progress of the project regularly from time to time mostly on monthly basis to all the buyers including the respondents. The customer care department of the complainant is regularly in touch with the respondents and other buyers for giving updates on the progress of the project. The respondents/allottees were updated on a number of occasions, by e-mail and letters etc, on the progress of the project from time to time, and also invited to make a visit of the said project.
10. That the respondents/allottees voluntarily and knowingly, failed to pay instalments despite repeated demands and reminders etc. by the complainant. The complainant also informed the respondents/allottees through various demand/payment request letters, that home loan facility was available by leading banks/NBFCs such as HDFC, ICICI, SBI, Central Bank of India, Reliance Home Finance Limited, Tata Capital Home Loan at a good rate of interest. Further, as a goodwill gesture letter dated 01.05.2019, the complainant offered the respondents/allottees a one-time settlement to waive off all the interest charges on the condition of payment of the entire principal amount at the earliest but in vain.





11. That in terms of the ABA, the respondents/allottees are under statutory obligations to pay the instalments within the time agreed therein and also to bear 15% simple interest on dues. It is pertinent to note that in terms of clause 13.3 of the ABA, the respondents/allottees have no right to withhold the due payments for any reason whatsoever.
12. That the complainant had commenced the construction of the said project on 01.12.2016 after receiving the approval of 'Consent to Establish" dated 12.11.2016 from the Haryana State Pollution Control Board. The complainant is fully committed to hand over the possession of apartments/flats to the buyers well within the promised time-period.
13. That the development of the project is directly related to the funds received from the allottees including respondents/allottees and relying on the assurance of the allottees including respondents/allottees that they will make the payments on time, the construction of the project was started.
14. That the respondents/allottees have been continuously making defaults in making payments, voluntarily and knowingly, of their instalments and other dues. As per last payment request dated 20.08.2019 sent by the complainant to the respondents/allottees an amount of Rs. 53,40,899/- including GST was due and payable by the respondents, also an amount of Rs. 13,67,646/- was due and payable on account of interest on the previous outstanding instalments.







15. That non-payment of dues by the respondents/allottees are not only limited to delay in construction of the allotted unit but also hampering the entire project. If the complainant fails to complete the project due to defaults in payment by the respondents/allottees and other allottees like him, the complainant will suffer a huge loss, damage the good-will and also make vulnerable to huge penalties under the provision of law.
16. That given the situation, since, the project is registered under the Act, upon expiry of the time given under the ABA, if the project is not completed that too without the fault of the complainant, it would be burdened with an additional cost of delay compensation or the refund to the allottee who paid in time. All this will ultimately push the complainant towards insolvency.
17. That the respondents/allottees are obligated to pay, and complainant is entitled to recover the due amount along with interest agreed in terms of the ABA under section 19(6) and (7) of the Act and rule 15 of the rules.
18. That the complainant has duly complied with all applicable provisions of the Act of 2016, and rules and also that of agreement for sale qua the respondents/allottees and other allottees. Since starting the development of the project, the complainant has been sending updates about the progress of the project regularly from time to time mostly on monthly basis to all the buyers including the respondents/allottees





and also the customer care department of the complainant is regularly in touch with the respondents/allottees for giving updates on the progress of the project. The updates sent by the complainant to flat buyers including the respondents/allottees is already on record for ready reference. However, it is submitted that as and when required by the hon'ble authority, the complainant will submit remaining copies of updates sent by the complainant to flat buyers including the respondents/allottees.

19. That under section 31 (1) of the Act, the hon'ble authority is empowered to adjudicate the present complaint being filed by the complainant as a promoter of the project against the respondents/allottees being allottee of a unit in the said project.

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

20. The complainant has sought following relief:
- i. Direct the respondents/allottees to make payment of the outstanding interest and make payment of the future instalments on time as agreed under the ABA.
21. The authority issued a notice dated 02.11.2020 of the complaint to the respondents by speed post and also on the given email address at [pradeep.singh@colt.net](mailto:pradeep.singh@colt.net). The delivery reports have been placed in the file. Thereafter, a reminder notice dated 11.10.2021 for filing reply was sent to the respondents on email address at [pradeep.singh@colt.net](mailto:pradeep.singh@colt.net). Despite service of notice, the respondents have preferred





neither to put in appearance nor file reply to the complaint within the stipulated period. Vide order dated 29.10.2021, on the request of the complainant, a public notice was ordered to be issued by the authority regarding this case at the cost of the complainant. Further, the registry of the authority issued a public notice in the newspapers, which were published on 23rd February on page no. 10 of 'The Tribune' and on 24th February, the same was published on page no. 13 of 'Dainik Jagran', but the respondents did not file the reply. Accordingly, the authority is left with no other option but to decide the complaint ex-parte against the respondents.

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

**D. Jurisdiction of the authority**

23. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**D.I Territorial jurisdiction**

24. 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.

#### **D. II Subject-matter jurisdiction**

The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the allottees as per provisions of section 19(6) and (7) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

#### **E. Findings of the authority**

##### **E.1 Issue: Whether the respondents have violated the provisions of section 19(6) read with section 19(7) of the Act?**

25. As per the observations of authority, the total consideration of the apartment is Rs. 1,01,94,250/- (without tax but including IFMSD). The respondents/allottees have paid only Rs. 43,62,871/- including service tax. As per clause 11.1 of the apartment buyer's agreement it is the obligation of allottee to make timely payments for the total sale consideration. The clause 11.1.1 of the apartment buyer's agreement is reproduced as under:

##### **11. TIME IS OF THE ESSENCE: BUYER'S OBLIGATIONS**

*"11.1.1 Time is the essence with respect to the obligations of the Buyer to pay the Total Sale Consideration as provided in Schedule-III on or before the due date(s) as may be prescribed. It is clearly agreed and understood by the Buyer that except for a*







*demand notice for payments, the Company shall not be required to remind the Buyer for payments due as per the Payment Plan on for performance of any other obligations of the Buyer in terms thereof."*

26. Therefore, authority is satisfied that the respondents are in contravention of section 19(6) and (7) of the Act. The relevant provision of the Act has been reproduced below:

**19. Rights and duties of allottees:**

(6) Every allottee, who has entered into an agreement or sale to take an apartment, plot or building as the case may be, under Section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground, rent, and other charges, if any.

(7) The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section(6).

That the Hon'ble High Court of Bombay in the matter titled **Neelkamal Realtors Suburban Pvt. Ltd. And Anr vs. Union of India** has already held that RERA strikes the balance between the promoter and allottees, the relevant para of judgement is reproduced herein below:

*"In the case of Cellular Operations Association of India and ors. Vs. Telecom Regulatory Authority of India and ors. (Supra), the Supreme Court held that there cannot be any dispute in respect of settled principles governing provisions of Articles 14, 19(1)(g) read with Article 19(6). But a proper balance between the freedom guaranteed and the social control permitted by Article 19(6) must be struck in all cases.*





*We find that RERA strikes balance between rights and obligations of promoter and allottees. It is a beneficial legislation in the larger public interest occupying the field of regulatory nature which was absent in this country so far.*

27. It is evident from the perusal of the statement of account on page no. 88 of the complaint, that the allotted unit was booked for a total sale consideration of Rs. 1,01,94,250/- (without tax but including IFMSD). A further perusal of statement of account shows that against the total sale consideration of Rs. 1,01,94,250/-, the respondents have deposited Rs. 43,62,871/- up to 30.06.2017. It has come on the record that the unit was booked under construction linked plan. The apartment buyer's agreement was executed between the parties on 05.05.2016 detailing the schedule of payments, dimensions of area of allotted unit and the due date of possession. So as per the provision of 19(6) & (7) of the Act, it is obligatory for the allottee of unit to make necessary payments within the time as agreed upon. The allottees paid only a sum of Rs. 43,62,871/-. The allottees have made last payment of Rs. 10,70,707/- on 30.07.2017 as per the statement of account on page no. 88 of the complaint and thereafter failed to make any payment to the complainant.
28. The unit was admittedly booked under construction linked plans. So, in such a situation it was obligatory on the allottees to make the payment of remaining amount due on raising of further construction by the complainant/builder. Hence, it is



proved that the allottees violated the provisions of section 19(6) read with section 19(7) of the Act.

**E.2 Issue – What should be the rate of interest to be paid by the respondents/allottees?**

29. It has been contended by the complainant that as per the apartment buyer's agreement, the respondents/allotter are under statutory obligation to pay the instalments within the time agreed therein and also to bear 15% simple interest on dues. The relevant clause 11.1.2 of standard apartment buyer agreement is reproduced below:

*"11.1.2 For any delay in making any payment in terms hereof, simple interest @15% shall be chargeable. The company shall also be within its rights to decline to execute the conveyance deed and refuse to transfer the apartment in the name of any other buyer unless all payments are fully paid."*

30. However, section 19(6) and (7) of the Act states that the allottee shall make necessary payments in the manner and within time as specified in the agreement for sale and to pay interest, at such rate as may be prescribed, for any delay in payments and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

***Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***

- (1) *For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.*

*Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates*





*which the State Bank of India may fix from time to time for lending to the general public.*

The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.

31. 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., 10.03.2022 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30% per annum.
32. 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;"*

33. Therefore, the respondents shall be charged interest at the prescribed rate i.e., 9.30% per annum by the complainant/promoter which is the same as is being granted to complainant/promoter in case of delayed possession charges.
34. On consideration of the documents available on record and submissions made by the party regarding contravention of provisions of the Act, the authority is satisfied that the respondents/allottees are in contravention of the section 19(6) and (7) of the Act. The respondents have paid only Rs. 43,62,871 out of Rs. 1,01,94,250/- which is the total sale consideration. So, accordingly, it is the failure of the respondents/allottees to fulfil their obligations and responsibilities as per the agreement to make timely payments to the promoter, accordingly, the non-compliance of the mandate contained in section 19(6) and (7) of the Act on the part of the respondents are established.

**F. Directions issued by the Authority**

35. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations casted upon the respondents/allottees as per the functions entrusted to the authority under section 34(f):-





- I. The respondents/allottees shall make the requisite payments as per the provisions of section 19(6) and (7) of the Act of 2016 and clause 11.1.1 of the apartment buyer's agreement.
  - II. The respondents/allottees shall make the requisite payments at the prescribed interest as per section (za) and rule 15 of the rules i.e., MCLR+2% which comes out to be 9.3% p.a.
36. Complaint stands disposed of.
37. File be consigned to the registry.

v.i-3  
(Vijay Kumar Goyal)  
Member

(Dr. K.K. Khandelwal)  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Date: 10.03.2022

