

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

Complaint no. : 2521 of 2023

Date of first hearing: 10.11.2023

Date of decision : 12.07.2024

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| Satakshi Gupta Jyoti Gupta R/o: 643, 2 nd street Chandra Bhawan, Rajendra Nagar, Lucknow, Uttar Pradesh- 226004. | Complainants |
| Versus | |
| M/S Chirag Buildtec Pvt. Ltd. Office: - M-18, Third Floor, Greater Kailash- II, South Delhi, New Delhi-110048. | Respondent |

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| CORAM: | |
| Shri Sanjeev Kumar Arora | Member |
| APPEARANCE: | |
| Ms. Ankur Berry | Complainants |
| Shri Garvit Gupta | Respondent |

ORDER

1. The present complaint dated 09.06.2023 has been filed by the complainants/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)(a) of the act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the act or the rules

and regulations made there under or to the 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.n | Particulars | Details |
|-----|---------------------------------------|--|
| 1. | Name of the project | "ROF Ananda", Sector-95, Gurgaon |
| 2. | Nature of the project | Affordable Group Housing |
| 3. | RERA registered/not registered | Registered vide no. 184 of 2017 dated 14.09.2017 valid upto 13.09.2021 |
| 4. | DTPC License no. | 17 of 2016 dated 25.10.2016 |
| | Validity status | 28.02.2022 |
| | Licensed area | 5.04 acres |
| | Name of licensee | Narayan Singh and 4 others |
| 5. | Date of Agreement to sell | 18.07.2019 [page no. 31 of complaint] |
| 6. | Unit No./Office Space | 205, 2 nd floor, Tower C [page no. 33 of complaint] |
| 7. | Area admeasuring | 549.17 sq. ft. (carpet area) 100 sq. ft. (balcony area) [page no. 33 of complaint] |

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|-----|-------------------------------|---|
| 8. | Approval of Building Plans | 07.12.2016 (as per project details) |
| 9. | Date of environment clearance | 09.10.2017 (as per project details) |
| 10. | Tripartite agreement | 26.07.2019 (page no. 58 of complaint) |
| 11. | Possession clause | <p><i>7.Possession of the said flat</i></p> <p><i>Within 3 months from the date of issuance of Occupancy Certificate, the Promoter shall offer the possession of the Said Flat to the Allottee, Subject to Force Majeure circumstances, receipt of Occupancy Certificate and Allottee having timely complied with all obligations, formalities or documentation as prescribed by the Promoter in terms of this Agreement and not being in default under any part hereof including but not limited to the timely payment of instalments as per the Payment Plan, stamp duty and registration charges, the Promoter shall offer possession of the Said Flat to the Allottee within a period of 4 years from the date of approval of building plans or grant of environment clearance, whichever is later.</i></p> |
| 12. | Due date of possession | 09.04.2022 |

| | | |
|-----|--------------------------------------|---|
| | | <i>(calculated from the date of environment clearance as it is later + 6 months on account of Covid-19)</i> |
| 13. | Total sale consideration | Rs. 24,96,264/- (As per SOA dated 14.12.2023 on page no. 107 of reply) |
| 14. | Total amount paid by the complainant | Rs. 24,96,264/- (As per SOA dated 14.12.2023 on page no. 107 of reply) |
| 15. | Occupation certificate | 22.02.2022 (page no. 94 of complaint) |
| 16. | Offer of possession | 23.02.2022 (page no. 100 of reply) |

B. Facts of the complaint

3. That the complainants after believing the representations of the respondent company booked a unit in the project of respondent on 02.06.2019 and made a payment of Rs. 1,12,334/- against the said.
4. That the complainants approached the respondent company for execution of the BBA and the BBA was executed on 19.07.2019. As per the BBA the total sale consideration of the unit was Rs. 22,46,680/- and the unit no. C-205, Tower-C, on 2nd Floor, having carpet area of 549.17 sq. ft. and balcony area of 100 sq. ft was allotted to the complainants. As per the clause E of the buyer's agreement, the respondent company has obtained environmental clearance on 09.10.2017. As per the clause 7.1 of the said buyer's agreement and clause 5 (iii)(b) of Affordable Housing Policy, 2013, the promoter/respondent was to offer possession of the said unit to the

- allottee within a period of 4 years from the date of approval of building plans or grant of environmental clearance, whichever is later thus making the due date of possession to 08.10.2021.
5. That the complainants along with the respondent company and HDFC entered into a tripartite agreement for availing loan facility for the said unit on 26.07.2021. A loan of Rs. 20,22,000/- was issued by the HDFC in favour of the complainants. In terms of the tripartite agreements the demands as raised by the respondent were to be paid directly by HDFC bank in favour of the respondent without there being any control of the complainants.
 6. That complainants sent an e-mail to HDFC on 14.08.2019 regarding disbursement of loan and consequently an e-mail dated 12.09.2019 was sent by the representative of HDFC stating that 'Due to technical reasons, all the cases of this builder are on hold for the time being. We will proceed as soon as we get the approval. Same has been discussed with the channel.' The above e-mail sent by the representative of HDFC explicitly depicts that there was default on part of the respondent company resulting in loan be held off by the bank.
 7. That the respondent company being a full fledged corporate entity with deep pockets and expert legal team to assist the respondent company on prevalent laws, failed to recognize the implications of Notification No. 03/2019 CT (Rate) published by the Ministry of Finance on 29.03.2019, regarding reduction of the GST on Affordable Housing. The Government of India, while acknowledging the need for Affordable Housing and to assist the homebuyers amended the GST on Affordable housing and reduced it to 1% but the respondent company continued to charge a hefty amount by imposing 8% GST on all demands from the complainants without even

considering that the complainants booked the said unit in the month of June 2019, which was after publication of the said notification. The respondent illegally charged 8% GST from the complainants since the booking of the said unit and when the complainants raised the said issue with the respondent company, they turned a deaf ear.

8. That the respondent company never issued offer of possession to the complainants even after many follow ups by the complainants. The respondent company did not even bother to update the complainants upon the new developments regarding the said unit. The complainants also visited the site to know the exact construction update by the guards turned down their request and upon several request they showed some other flat which did not belong to the complainants and rudely said that no one is allowed to visit the site as per the orders of the authority of the respondent company.
9. That the respondent company on 19.12.2022 issued an email on header of ROF Ananda stating that the holding charges are also applicable from May 2022 onwards since the payment was not made by the complainants.
10. That when the complainants enquired regarding the above-mentioned mail it was stated by the officials of the respondent company that they have already sent a copy of offer of possession and occupational certificate through professional couriers. That upon pressing on this issue the respondent company gave a tracking ID no. GGN11154187 to the complainants. The complainants tried to get in touch with the professional courier regarding delivery of such courier, and the complainants were shocked to know that the courier was returned to the respondent company due to incomplete address and no contact number mentioned on envelope.

11. That further the complainants also visited the Director, Town and Country planning office to know the status of the occupation certificate of the project there upon the complainants received a copy of the OC.
12. That the respondent company is just trying to gain illegal enrichment through unfair means and are trying to harass the complainants by raising illegal demands which were not a part of buyer's agreement. As per Annexure-B payment plan of the buyer's agreement no charges in respect to RWA Fees, and BOCW Cess Charge were mentioned.
13. That the respondent company raised several demand letters on various occasions and on one such demand letter dated 15.04.2023, the respondent company swiftly increased the carpet area of the said unit without the consent of the complainants. Further a brief look of the OC dated 22.02.2022 shows that the FAR achieved was less than the FAR sanction thus there could not be any increase in the size of the residential unit.

C. Relief sought by the complainants:

14. The complainants have sought following relief(s):
 1. Direct the respondent to handover physical possession of the unit to the complainants without imposing any illegal or unlawful conditions.
 2. Direct the respondent to pay interest at the prescribed rate per annum on the delay in handing over the possession from the due date of possession i.e., 09.10.2021 till actual possession.
 3. Direct the respondent to waive off illegal interest being charged to the complainants.
 4. Direct the respondent company to refund the GST amount charged @ 8% from the complainants in view of the notification released by Ministry of Finance dated 29.03.2019.

5. Direct the respondent company not to charge holding charges in view of Civil Appeal No. 3864-3889/2020 passed by the Hon'ble Supreme Court of India.
6. Direct the respondent to refund all the illegal amounts charged on account of RWA fee and BOCW cess charge which were not part of buyer's agreement.
7. Direct the respondent company to show the increase of carpet area from 249.17 sq. ft. to 554.77 sq. ft. resulting increase of sale consideration.
8. Direct the respondent to execute conveyance deed in favour of complainant.

D. Reply by the respondent

15. That the complainants after checking the veracity of the said project had applied for allotment of an apartment vide their booking application form dated 02.06.2019. The complainants agreed to be bound by the terms and conditions of the booking application form. The complainants were aware that all the payment demands towards the total sale consideration were to be demanded by the respondent strictly as per the affordable housing policy and only after being completely satisfied about the same, had made the booking with the respondent.
16. That the complainants intimated to the respondent that they were suffering from financial constraints and that they would accordingly approach a financial institution for loan. Accordingly, the complainants approached a financial institution named Housing Development Finance Corporation Limited (herein after referred as **HDFC**), to avail loan facility and to make payments against the said Unit.
17. That on the basis of the application, an agreement in respect of unit C-205 on 2nd Floor in Tower -C having a carpet area of 549.17 sq. ft. and balcony

area of 100 sq. ft. was sent by the respondent to the complainants. The agreement for sale was signed between the complainants and the respondent on 19.07.2019.

18. That since, the complainants had already got a loan sanctioned, they approached the respondent and requested it to executed a Tripartite agreement with HDFC. On the basis of the request of complainants, the respondent executed a tripartite agreement dated 20.07.2019 in order to enable it to financially assist the complainants in making payment towards the total sale consideration of the unit.
19. When the complainants specifically assured the respondent that they would abide by their contractual obligations of making timely payment, the respondent issued its permission to mortgage the unit in the favour of HDFC vide letter dated 26.07.2019.
20. That the complainants were aware that as per clause 2.1 and clause 5 of the agreement for sale, timely payment of the installment amount was the essence of the allotment. It was understood vide the said clauses of the agreement for sale and as per clause 5(iii)(b) of the Affordable Scheme Policy, 2013, that if the allottees fail to remit the payment demanded by the respondent on time, then they would be bound to make payment towards interest @15% per annum.
21. That vide demand letter dated 27.07.2019, the respondent demanded the net payable amount of Rs. 17,07,996/-. The due date for payment was 23.08.2019. However, the complainants failed to remit the payment on time and made only part-payment and the remaining amount was adjusted in the next installment demand as arrears. Thereafter, on 09.10.2019, the respondent sent another demand letter demanding Rs

- 15,77,688. The complainants made only part payment and failed to remit any further payment without any justification or reasoning.
22. That the respondent has throughout acted in conformity with the Affordable Housing Policy, 2013 and has demanded amounts from the complainants strictly as per the payment plan emphasized in the said policy and in accordance with the same the respondent sent the demand letter dated 19.01.2021 for a net payable amount of Rs 6,30,309/-. Only part-payment was made by the complainants and the remaining amount was accordingly adjusted in the next installment demand as arrears. The respondent was even constrained to issue a reminder dated 16.09.2021 towards the unpaid amount.
23. That as per clause 7.1 of the agreement, the respondent was to handover the physical possession of the unit to the complainants within a period of 4 years from the date of approval of the environment clearance. However, as per the said clause, the due date to handover the possession of the unit was subject to force majeure conditions and timely payment of installment by the allottee. It was further agreed vide clause 7.3 of the agreement that if the implementation of the project was affected on account of force majeure conditions, then the respondent would be entitled to extension of time.
24. That on account of outbreak of Covid-19 pandemic, the implementation of the entire project was affected. The due date of possession as per the terms of the agreement without taking into consideration the force majeure conditions would have been 09.10.2021. The fact that outbreak of pandemic event was a force majeure condition and was beyond the reasonable control of the developers including the respondent was acknowledged by this Hon'ble Authority wherein the completion date,

revised completion date and extended completion date was automatically extended by 6 months. Thereafter on account of second wave of COVID-19 pandemic Haryana Real Estate Regulatory Authority, Panchkula by way of resolution in its meeting held on 2nd of August 2021 ordered for extension of 3 months from 1st April 2021 to 30th of June 2021. It was observed that the second wave of COVID-19 pandemic has adversely hit all sections of the society and it being a case of natural calamity, the authority pursuant to section 37 of the RERA Act, 2016 had decided to grant the said extensions. It was further directed that no fee/ penalty shall be paid/Payable by the developer on account of delay as the same was beyond its reasonable control and apprehension.

25. That despite such event, the respondent completed the construction of the tower in which the unit allotted to the complainants is located and offered the possession of the unit vide letter dated 23.02.2022. The respondent accordingly at the time of offer of possession sent demand letters dated 23.02.2022 and 15.04.2023 wherein the respondent demanded the remaining amount as per the terms of the agreement. As on date, the complainants are bound to make payment of Rs.3,22,763/- towards the total sale consideration of the unit. Thus, it is very safe to say that there is no delay on the part of the respondent in completing the construction of the unit and offering the possession to the complainants although the complainants have throughout been at default. As per clause 7.6 of the agreement and clause 19 of the RERA Act, 2016, upon receiving a written intimation from the builder to take the possession, the complainants were to take the possession by executing necessary undertakings, formalities and documentation and after making payment of the due amount.

However, the complainants have till date not taken the possession nor has made the payment towards the balance sale consideration.

26. That as per the interest ledger as on 14.12.2023, an amount of Rs.3,22,763/- has been accrued and the same is payable by the complainants to the respondent on account of continuous defaults on their part. The complainants are trying to unilaterally extract benefits from the respondent which they are not entitled to and they cannot be allowed to succeed in their illegal motives.
27. Copies of all the relevant documents have been duly filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

29. 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

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

Section 11(4)(a)

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

Section 34-Functions of the Authority:

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

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

F. Findings on the objections raised by the respondent

F.I Objections regarding force majeure

32. The respondents-promoter has raised the contention that the construction of the tower in which the unit of the complainants is situated, has been delayed due to force majeure circumstances such as Covid-19. The authority has gone through the possession clause of the agreement and observed that the respondent-developer proposes to handover the possession of the allotted unit within a period of four years from the date of approval of building plan or from the date of grant of environment

clearance, whichever is later. In the present case, the date of approval of building plan is 07.12.2016 and environment clearance is 09.10.2017 as taken from the project details. The due date is calculated from the date of environment clearance being later, so, the due date of subject unit comes out to be 09.10.2021. ***Further as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion/due date on or after 25.03.2020.*** The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 09.10.2021 i.e., after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. So, in such case the due date for handing over of possession comes out to 09.04.2022.

G. Findings on the relief sought by the complainants.

G. I Direct the respondent to handover physical possession of the unit to the complainants without imposing any illegal or unlawful conditions.

33. The respondent has obtained the OC from the competent authority from 22.02.2022 and offered the possession of the allotted unit vide letter dated 23.02.2022. As per section 19(10) of Act of 2016, the allottee is under an obligation to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. The complainants are directed to take the possession of the allotted unit after payment of dues within 2 months after payment of dues, if any.
34. The respondent shall handover the possession of the allotted unit as per specification of the buyer's agreement as entered into between the parties.

G.II Direct the respondent to pay interest at the prescribed rate per annum on the delay in handing over the possession from the due date of possession i.e., 09.10.2021 till actual possession.

35. The complainant was allotted a residential unit no.- 205 on 2nd floor in Tower-C admeasuring a carpet area of 549.17 sq. ft. and balcony area of 100 sq. ft. in the project of respondent company namely, ROF Ananda situated at sector-95, Gurugram. Thereafter, the respondent and the complainant entered into a registered agreement for sale on 18.07.2019 and as per clause 7.1 of the said agreement the respondent undertook to deliver the possession of the unit to the complainant within 4 years from the date of approval of building plans or grant of environment clearance, whichever is later. The building plans from the concerned authorities was granted on 07.12.2016 and the environmental clearance was obtained on 09.10.2017. The environmental clearance was obtained later on and thus, the 4 years of due date of possession would be calculated from the date of obtaining the environmental clearance i.e., 09.10.2017. So, the due date of handing over possession of the unit comes to be 09.10.2021. The respondent has stated in it reply that the construction of the project was affected due to the outbreak of the Covid-19 pandemic and the fact that the outbreak of covid-19 was a force majeure condition and was beyond the reasonable control of the respondent. The Authority vide notification no. 9/3-2020 dated 26.05.2020 have provided an extension of 6 months for projects having completion date on or after 25.05.2020, on account of force majeure conditions due to the outbreak of Covid-19 pandemic. Thus, after adding the 6 months of extension on account of covid-9, the due date of possession comes out to be 09.10.2021 + 6 months i.e., 09.04.2022.

36. The occupancy certificate for the aforementioned project was issued by the relevant government authority on February 22, 2022, and the respondent offered possession of the unit to the complainant on February 23, 2022. During the proceedings, the complainant asserted that they did not receive the letter offering possession. They have submitted a delivery status report from the courier company dated May 12, 2023 (Annexure C-8), indicating that the document could not be delivered due to an incomplete address and lack of contact number on the envelope. Consequently, the authority finds that the offer of possession was not properly delivered to the complainant.
37. Furthermore, the possession offer letter dated February 23, 2022, includes unreasonable demands by the respondent company. Therefore, it is necessary to first understand the concept of a valid offer of possession.

Validity of offer of possession

38. It is necessary to clarify this concept because after valid and lawful offer of possession, the liability of promoter for delayed offer of possession comes to an end. On the other hand, if the possession is not valid and lawful, the liability of promoter continues till valid offer is made and allottee remains entitled to receive interest for the delay caused in handing over valid possession. The authority is of considered view that a valid offer of possession must have following components:

- i. Possession must be offered after obtaining occupation certificate;*
- ii. The subject unit should be in a habitable condition;*
- iii. The possession should not be accompanied by unreasonable additional demands.*

39. In the present matter, the respondent has offered the possession of the allotted unit on 23.02.2022 i.e., after obtaining occupation certificate from the concerned department along with alleged additional demand. Therefore, no doubt that the offer of possession has been sent to the complainants but the same is accompanied with unreasonable additional demands. Thus, the offer of possession is not a valid offer of possession as it triggers (iii) component of the above-mentioned definition.
40. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities. 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 respondent is established. As such, the allottees shall be paid, by the promoter, interest for every month of a delay from the due date of possession i.e., 09.04.2022 till the date of the actual handover of possession at the prescribed rate i.e., 10.95 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

G.III Direct the respondent to waive off illegal interest being charged by the complainants.

41. As per section 2(za) of the Act, 2016 the rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.95% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges.
42. The Authority as per notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020, has already allowed the grace period of 6 months from 01.03.2020 to 01.09.2020. Therefore, there is no reason why this benefit cannot be allowed to the complainant/allottee who is duly affected during above such adverse

eventualities and hence a relief of 6 months will be given equally to both the complainant/allottee, and the respondent and no interest shall be charged by either party, during the COVID period i.e., from 01.03.2020 to 01.09.2020.

G.IV Direct the respondent company to refund the GST amount charged @ 8% from the complainants in view of the notification released by Ministry of Finance dated 29.03.2019.

43. The respondent is directed to charge the Gst as per rules and regulations and for the input tax credit, the attention of the authority was drawn to the fact that the legislature while framing the GST law specifically provided for anti-profiteering measures as a check and to maintain the balance in the inflation of cost on the product/services due to change in migration to a new tax regime i.e. GST, by incorporating section 171 in Central Goods and Services Tax Act, 2017/ Haryana Goods and Services Tax Act, 2017, the same is reproduced herein below:

"Section 171. (1) Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices."

44. The intention of the legislature was amply clear that the benefit of tax reduction or 'Input Tax Credit' is required to be passed onto the customers in view of section 171 of HGST/CGST Act, 2017. As per the above said provisions of the Act, it is mandatory for the respondent to pass on the benefits of 'Input Tax Credit' by way of commensurate reduction in price of the flat/unit. Accordingly, respondent should reduce the price of the unit/consideration to be realized from the buyer of the flats commensurate with the benefit of ITC received by him. The promoter shall submit the benefit given to the allottee as per section 171 of the HGST Act, 2017.

45. The builder has to pass the benefit of input tax credit to the buyer. In the event, the respondent-promoter has not passed the benefit of ITC to the buyers of the unit then it is in contravention to the provisions of section 171(1) of the HGST Act, 2017 and has thus committed an offence as per the provisions of section 171 (3A) of the above Act. The allottee shall be at liberty to approach the State Screening Committee Haryana for initiating proceedings under section 171 of the HGST Act against the respondent-promoter.

G.V Direct the respondent company not to charge holding charges in view of Civil Appeal No. 3864-3889/2020 passed by the Hon'ble Supreme Court of India.

46. The respondent is debarred from claiming holding charges from the complainants /allottees at any point of time even after being part of apartment buyer's agreement as per law settled by hon'ble Supreme Court in civil appeal no. 3864-3899/2020 decided on 14.12.2020.

G.VI Direct the respondent to refund all the illegal amounts charged on account of RWA fee and BOCW cess charge which were not part of buyer's agreement.

47. The respondent shall not charge anything from the complainants which is not part of the builder buyer agreement.

G.VII Direct the respondent company to show the increase of carpet area from 249.17 sq. ft. to 554.77 sq. ft. resulting increase of sale consideration.

48. The authority is of the view that as per section 19(1) of the Real Estate (Regulation and Development) Act 2016, the allottee shall be entitled to obtain the information relating to sanctioned plans, layout plans along

with the specifications, approved by the competent authority and such other information as provided in this Act or the rules and regulations made thereunder or the agreement for sale signed with the promoter.

49. In view of the same, the respondent/promoter is directed to show the increase in carpet area or to provide the area calculation of the subject unit to the complainant's/allottees.

G.VIII Direct the respondent to execute conveyance deed in favour of complainant.

50. 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."

51. As OC of the unit has been obtained by the competent authority on 22.02.2022, therefore, conveyance deed can be executed with respect to the unit. Accordingly, the authority directs the respondent to execute the conveyance deed in favour of the complainants after settling the dues, if any within 90 days from the date of this order.

H. Directions of the authority

52. 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 respondent is directed to handover physical possession of the subject unit within 60 days from the date of this order as occupation certificate of the project has already been obtained by it from the competent authority.
- ii. The respondent is directed to pay delayed possession charges at the prescribed rate of interest i.e., 10.95% p.a. for every month of delay on the amount paid by the complainants to the respondent from the due date of possession 09.04.2022 till the date of actual handover of possession at the prescribed rate 10.95% p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- iii. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.95% by the respondent/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.
- iv. The respondent shall not charge anything from the complainants which is not the part of the flat buyer's agreement. However, holding charges shall not be charged by promoter at any point of time even after being a part of the agreement as per Law settled by Hon'ble Supreme Court in Civil Appeal no. 3864-3889/2020 dated 14.12.2020.
- v. The benefit of six months grace period on account of Covid-19 shall be applicable to both the parties in the manner detailed herein above



and no interest to be charged for the period of 01.03.2020 to 01.09.2020 from the complainants or to be paid by the respondent on account of delay for the above said covid period.

vi. The respondent is directed to execute the conveyance deed in favour of the complainant within 90 months from the date of this order.

53. Complaint stands disposed of.

54. File be consigned to registry.



(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.07.2024