# BEFORE THE HON'BLE REGULATORY AUTHORITY, GURUGRAM, HARYANA

#### GRG/4461/2020

Shikha Sharma

...Complainant

**VERSUS** 

M/s T.S.Realtech Pvt. Ltd.

....Respondent

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THROUGH COUNSEL

Kamal Dahiya & Mukul Sawariya

For & On Behalf of:-

Juris Axis Legal Consultants, PKL

# 5302,GH 4A,Jalvayu Vihar,

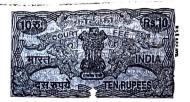
Sector-20, Panchkula (Hry.)

E-mail:-jurisaxisrera@gmail.com

Contact:- 91-9729902009

Date:- 12-10.2021

Place:- Gurugram





## BEFORETHE HON'BLE REGULATORY AUTHORITY, GURUGRAM, HARYANA

GRG/4461/2020

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M/s T.S.Realtech Pvt. Ltd.

....Respondent

## APPLICATION FOR REVIEW OF THE ORDER DATED 28.07.2021.

### Respectfully Showeth:-

- 1. That the complaint as titled herein above, was listed before Hon'ble Authority, Gurugram on 28<sup>th</sup> July, 2021 for Final Arguments, pertaining to which the Hon'ble Authority, passed directions to the respondent as under:
  - "i. The respondent is directed to pay interest at the prescribed rate i.e.9.30% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 10.03.2017 till 12.06.2019. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order as per rule 16(2) of the rules.
  - ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
  - the promoter, in case of default shall be charges at the prescribed rate i.e. 9.30% 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 delay possession charges as per section 2(za) of the Act.

- iv. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement. The respondent is debarred from claiming holding charges from the complainant/allottee 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. 3864-3889/2020 decided on 14.12.2020".
- 2. That the Hon' ble Authority did not take into consideration clause no. IV of the Space Buyer's Agreement that was executed between the parties on 02.04.2014 wherein it is clearly mentioned that the Company/respondent will complete the project by the end of 42 months from the date of receipt of all permissions and commencement of construction. As the Pollution Control Board grant permission, i.e Consent to Establish, on 25.08.2014, the due date for completion of the project and offer of possession as per the said clause IV of the space Buyer's Agreement comes to be 25.02.2018 however the Hon' ble Authority inadvertently overlooked the contents of said clause and considered 10.03.2017 as due date of possession. Copy of the Consent to Establish is annexed herewith as Annexure A-1
- 3. It is pertinent to mention here that the Hon' ble Authority in a similar matter against similar project i.e. in Complaint no. 1846 of 2019 titled "Vikash Chadha Vs T.S.Realtech" calculated the due date of possession from the date of consent to establish i.e. 25.08.2014 and considered 25.02.2018 as due date of possession. Hence the order dated 28.07.2021 needs to be revised and 25.02.2018 must be considered as due date of possession. The copy of order dated 19.02.2020 of Hon' ble Authority Gurugram in Complaint no. 1846 of 2019 titled "Vikash Chadha Vs T.S.Realtech" is annexed herewith as Annexure A-2.
- 4. That the Hon' ble Authority inadvertently overlooked that the complainant had been offered possession on 12.04.2019 after receipt of Occupation Certificate dated 29.03.2019. As the offer of possession on 12.04.2019 was valid offer of possession, the respondent cannot be held liable for payment of interest for the period beyond offer of possession.



However vide above stated order dated 28.07.2021, the Hon' ble Authority directed the respondent to pay delay possession interest till 12.06.2019 that is against the principles of law and also against provisions of RE(R&D) Act as the complainant are responsible for not taking possession after receipt of offer of possession and Occupation Certificate and hence the period for which delay interest is to be given to the complainant is completely wrong and needs to be revised. Copy of the Offer of Possession is annexed herewith as Annexure A-3

5. That the Hon'ble Authority erred in concluding that the provisions of RE(R&D) Act are applicable on respondent/promoters only as the Hon' ble Authority directed the respondent to pay delay possession interest to the complainant and the complainant to pay delay payment interest to the respondent, however the Hon' ble Authority did not take into consideration Section 19(10) of RE(R&D) Act, whereby, it becomes compulsory for the allottee to take possession within two month's of Certificate intimation of receipt of Occupation developer/respondent. As in the instant Lis, the complainant failed to take possession that was offered on 12.04.2019, the complainant deliberately choose to file this complaint after one and half year from offer of possession to avoid the liability of holding charges to the Respondent in which she has succeeded. However the Hon' ble Authority failed to direct the complainant to pay holding charges to the respondent, which the respondent is entitled for, as per RE(R&D) Act. Hence it can be safely concluded that the Hon' ble Authority has made directions in the Order dt. 28.07.2021 to respondent only, and failed to consider the duties/liabilities of the complainant as per RE(R&D), Act, as such the said order needs to be revised solely on this score.

It is therefore most respectfully prayed that this Hon'ble Authority may graciously be pleased to:

(a) Allow the instant application;

(b) Review, recall and/or modify the order dated 28.07.2021 to the extent that the due date of possession must be considered as 25.02.2018 and

B

not 10.03.2017 and interest for the period after offer of possession i.e. 12.04.2019 must be disallowed;

(c) Pass such other and further order or orders as this Hon'ble HRERA

Authority, Gurugram may deem fit and proper in the facts and
circumstances of the case.

Dated:-12.10.2021

Place:-Gurugram

THROUGH COUNSEL

Kamal Dahiya & Mukul Sanwariya

For & On Behalf of:-

Juris Axis Legal Consultants, PKL

# 5302,GH 4A,Jalvayu Vihar,

Sector-20, Panchkula (Hry.)

E-mail:-jurisaxisrera@gmail.com

Contact:- 91-9729902009



## BEFORETHE HON'BLE REGULATORY AUTHORITY, GURUGRAM, **HARYANA**

GRG/4461/2020

Shikha Sharma

...Complainant

**VERSUS** 

M/s T.S.Realtech Pvt. Ltd.

....Respondent

#### **AFFIDAVIT**

Affidavit of Goutam Patra, Authorized Representative of the Respondent, having its Registered Office at E-26, Panchsheel Park, New Delhi-110017.

I, the above named deponent, do hereby solemnly affirm and declare as under:

- That I am the Authorized Representative of the Respondent and being 1. well conversant with the facts of the case as borne out from the records of the Company, and having been fully authorized by the said company, I am competent to depose this affidavit.
- That the accompanying Application for Review of order has been drafted 2. by my counsel on my behalf and under my instructions. I have gone through the contents of the application and I depose that the facts stated therein are true and correct to my knowledge as per records maintained by the Company and as per legal information received from counsel and believed to be true. Annexures are

true copies of their original sectors me on 12-19-21 at Gurugran

by sh. .. UAU TAM

Verification:

Verified at Gurugram on 12 10 2021 that the contents of paras 1 to 2 of my above affidavit are true to my knowledge and belief and nothing material has been concealed therefrom.

sh Kuma





## HARYANA STATE POLLUTION CONTROL BOARD C-11. SECTOR-6, PANCHKULA

Website - www.hspcb.gov.in E-Mail - hspcb.pkl@sifymail.com Telephone No. - 0172-2577870-73

No. HSPCB/Consent/: 2821214GUSOCTE1160076

Dated:25/08/2014

M/s: M/S T.S. Realtech Private Limited

Sector 85-86 **GURGAON** 122001

Mg/8- A-1 (cm) 3/2019 0 Sub.: Issue of Consent to Establish from pollution angle

Please refer to your Consent to Establish application received in this office on the subject noted above. Under the Authority of the Haryana State Pollution Control Board vide its agenda Item No. 47.8 dated 28.04.83 sanction to the issue of,"Consent to Establish" with respect to pollution control of Water and Air is hereby accorded to the unit T S Realtech Private Limited, for manufacturing of Construction o commercial colony with the following terms and conditions:-

- 1. The industry has declared that the quantity of effluent shall be 115.87 KL/Day i.e OKL/Day for Trade Effluent, 0 KL/Day for Cooling, 115.87 KL/Day for Domestic and the same should not exceed.
- The above "Consent to Establish" is valid for 24 months from the date of its issue to be 2. extended for another one year at the discretion of the Board or till the time the unit starts its trial production whichever is earlier. The unit will have to set up the plant and obtain consent during this period.
- 3. The officer/official of the Board shall have the right to access and inspection of the industry in connection with the various processes and the treatment facilities being provided simultaneously with the construction of building/machinery. The effluent should conform the effluent standards as applicable
- That necessary arrangement shall be made by the industry for the control of Air Pollution before commissioning the plant. The emitted pollutants will meet the emission and other standards as laid/will be prescribed by the Board from time to time.
- The applicant will obtain consent under section 25/26 of the Water (Prevention & Control of Pollution) Act, 1974 and under section 21/22 of the Air (Prevention & Control of Pollution) Act,1981 as amended to-date-even before starting trial production
- The above Consent to Establish is further subject to the conditions that the unit complies 6. with all the laws/rules/decisions and competent directions of the Board/Government and its functionaries in all respects before commissioning of the operation and during its actual working strictly.
- 7 No in-process or post-process objectionable emission or the effluent will be allowed, if the scheme furnished by the unit turns out to be defective in any actual experience
- The Electricity Department will give only temporary connection and permanent connection 8. to the unit will be given after verifying the consent granted by the Board, both under Water Act and Air Act.
- Unit will raise the stack height of DG Set/Boiler as per Board's norms. 9.

Unit will maintain proper logbook of Water meter/sub meter before/after commissioning. 10.



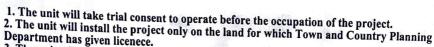
- 11. That in the case of an industry or any other process the activity is located in an area approved and that in case the activity is sited in an residential or institutional or commercial or agricultural area, the necessary permission for siting such industry and process in an residential or institutional or commercial or agricultural area or controlled area under Town and Country Planning laws CLU or Municipal laws has to be obtained from the competent Authority in law permitting this deviation and be submitted in original with the request for consent to operate.
- 12. That there is no discharge directly or indirectly from the unit or the process into any interstate river or Yamuna River or River Ghaggar.
- 2
- 13. That the industry or the unit concerned is not sited within any prohibited distances according to the Environmental Laws and Rules, Notification, Orders and Policies of Central Pollution control Board and Haryana State Pollution Control Board.
- 14. That of the unit is discharging its sewage or trade effluent into the public sewer meant to receive trade effluent from industries etc. then the permission of the Competent Authority owing and operating such public sewer giving permission letter to his unit shall be submitted at time of consent to operate.
- 15. That if at any time, there is adverse report from any adjoining neighbor or any other aggrieved party or Municipal Committee or Zila Parishad or any other public body against the unit's pollution; the Consent to Establish so granted shall be revoked.
- 16. That all the financial dues required under the rules and policies of the Board have been deposited in full by the unit for this Consent to Establish.
- 17. In case of change of name from previous Consent to Establish granted, fresh Consent to Establish fee shall be levied.
- 18. Industry should adopt water conservation measures to ensure minimum consumption of water in their Process. Ground water based proposals of new industries should get clearance from Central Ground Water Authority for scientific development of previous resource.
- That the unit will take all other clearances from concerned agencies, whenever required.
- That the unit will not change its process without the prior permission of the Board.
- That the Consent to Establish so granted will be invalid, if the unit falls in Aravali Area or non conforming area.
- 22. That the unit will comply with the Hazardous Waste Management Rules and will also make the non-leachate pit for storage of Hazardous waste and will undertake not to dispose off the same except for pit in their own premises or with the authorized disposal authority.
- 23. That the unit will submit an undertaking that it will comply with all the specific and general conditions as imposed in the above Consent to Establish within 30 days failing which Consent to Establish will be revoked.
- 24. That unit will obtain EIA from MoEF, if required at any stage.

F26.

 In case of unit does not comply with the above conditions within the stipulated period, Consent to Establish will be revoked.

**Specific Conditions** 

Other Conditions:



Department has given licenece.

3. The unit will comply all the terms and conditions of the Environmental Clearance granted by

4. Unit will obtain prior NOC/Permission from central Ground Water Authority in case under

ground water resource is used.

5. The unit will achieve Zero effluent Discharge as proposed by unit.

6. The NOC is valid only for such land within this project which is under ownership of project. proponent and for which report regarding Aravali area has been issued by DC, Gurgaon.

7. The unit will install adequate acoustic enclosures/chambers on their DG SETS with proper

stack height as per prescribed norms to meet the prescribed standards under EP Rules, 1986. 8. The unit will install the adequate sewage treatment plant to meet the standards prescribed under EP Rules 1986.

9. The NOC will become invalid in case the project is found violating the provisions of notification no. S.O.191(E) dt. 27.01.2010 issued by MoEF Government of India regarding Ecosensitive Zone of Sultanpur National park

Senior Environmental Engineer II, HQ For and on be'half of chairman Haryana State Pollution Control Board

---It is system generated certificate no signature is required---







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

Complaint no.

: 1846 of 2019

First date of hearing: 19.12.2019

Date of decision

19.02.2020

Shri Vikas Chadha R/O:- B1/281, Janakpuri, New Delhi-110058

Versus

M/s T.S. Realtech Pvt. Ltd.

Regd. Office:- E-26, L.G.F., Panchsheel Park, New Delhi-110017 Complainant

CORAM:

Shri Samir Kumar Shri Subhash Chander Kush Member Member

APPEARANCE:

Smt. Vridhi Sharma Shri Gautam Patra Shri Mukul Sanwariya

Advocate for the complainant AR of the respondent Advocate for the respondent

#### ORDER

1. present complaint has been 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)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions to the allottee as per the builder buyer unit agreement executed inter-se them.

Page 1 of 8



2. The particulars of the project, the details of 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	Information
1.	Project name and location	"Iris Broadway", Sector-85-86 Gurugram
2.	Project area	2.8 acres
3.	Nature of the project	Commercial Colony
4.	DTCP license no. and validity status	40 of 2012 dated 22.04.2012 valid upto 21.04.2020
5.	Name of licensee	T.S Realtech
6.	RERA Registered/ not registered	Registered vide registration no. 168 of 2017 dated 29.08.2017
7.	HRERA registration valid up to	31.12.2021
8.	Unit no.	A-308, 3rd Floor, Block-A
9.	Unit measuring (super area)	804 sq. ft.
10.	Date of execution of space buyer's agreement	20.08.2013
11.	Total sales consideration	Rs. 62,63,920/-
		(as per SOA dated 13.05.2019 on pg. 86 of the reply)
12.	Total amount paid by the	Rs. 59,98,600/-
<b>35</b> (5)	complainant	(as per SOA dated 13.05.2019 on pg. 86 of the reply)
13.	Due date of delivery of	25.02.2018
	possession as per recital IV of the space buyer's agreement- within a period of 42 months from the date of receipt of all permissions and	Note:- due date of handing over the possession is calculated from the date of consent to establish i.e.



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Complaint No. 1846 of 2019

1	commencement of construction	25.08.2014 which was place on record during hearing.	
14.	Status of the project	OC received on 29.03.2019 (annexed as Annexure R-5 on pg. 81 of the reply)	
15.	Date of offer of possession to the complainant	12.04.2019 (as per letter of offer of possession annexed as Annexure R-6 on pg. 83 of the reply)	
16.	Delay in handing over the possession till date of offer of possession i.e. 12.04.2019	1 year 1 month 18 days	
17.	Specific reliefs sought	i. Direct the respondent to grant immediate possession of the office space bearing no. A-308 along with prescribed rate of interest for the delay caused in handing over possession.	

3. As per recital IV of the space buyer's agreement, the possession of the subject unit was to be handed over within a period of 42 months from the date of receipt of all permissions and commencement of construction. The due date of handing over the possession is calculated from the date of consent to establish i.e. 25.08.2014 which comes out to be 25.02.2018. Recital IV of the space buyer's agreement is reproduced herein below:

"[IV] The Company intends to commence the development of the said Commercial Colony consisting of commercial spaces, office spaces and such other amenities, facilities as may be permissible under law in accordance with the Building Plans and utmost

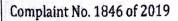
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endeavor will be made to complete the same by the end of 42 (Forty Two) Months from the date of receipt of all permissions and commencement of construction."

- 4. The possession of the subject commercial unit has been offered vide letter dated 12.04.2019 by the respondent. The complainant seeks delay interest as per section 18 of the Act. The complainant reserve their right to file a separate application for seeking compensation from the Adjudicating Officer on account of extreme delay and mental harassment caused to the complainant. Hence, this complaint for the reliefs as stated above.
  - 5. On the date of hearing, the Authority explained to the Respondent about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.
  - 6. The respondent contests the complaint on the following grounds:
    - i. The respondent submitted that the claim for the compensation would be adjudged by the Adjudicating Officer as appointed under Section 71 of 2016 Act and that too keeping in view the factors mentioned in Section 72 of 2016 Act. No complaint can be entertained much less before this Ld. Authority in respect of the matters to be adjudicated by the Adjudicating Officer.
    - ii. The respondent submitted that the 'Agreement for Sale', for the purposes of 2016 Act as well as 2017 Haryana Rules, is the one as laid down in Annexure-A, which is

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required to be executed inter-se the promoter and the allottee. It is a matter of record and rather a conceded position that no such agreement, as referred to under the provisions of 2016 Act and 2017 Haryana Rules, has been executed between the respondent company and the complainant. Rather, the agreement that has been referred to, for the purpose of getting the adjudication of the complaint, though without jurisdiction, is the Space Buyer's Agreement, executed much prior to coming into force of 2016 Act.

- iii. The respondent submitted that the project of the promoter is in four phases i.e. phase I, II, III & IV. The phase I of the project includes Block-A, phase II includes Block-B and phase III, IV includes Block C and Block D. In the present case, the complainant purchased one SOHO (Shop Office Home Office) Commercial Unit in the said project bearing No. 308, 3rd Floor, Block-A. That the unit of the complainant falls under phase I against which the OC has been received vide letter dated 29.03.2019. Moreover, the respondent has offered the possession to the complainant on 12th April 2019.
  - iv. The respondent submitted that the complainant has made payment of Rs. 59,98,600/- against unit no. A-308 i.e. 95% out of the total consideration. The respondent has raised the last demand on 12.04.2019 for the allotted unit, which has not been paid by the complainant till date. As the



(8)



complainant was defaulter in making the payments and has not complied with the terms and conditions of the Space Buyer's Agreement.

- 7. 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 and submissions of the complainant and the respondent during hearing.
- 8. The Authority, on the basis of information, explanation, other submissions made and the documents filed by the complainant and the respondent, is of considered view that there is no need of further hearing in the complaint.
- 9. Arguments heard.
- 10. On consideration of the circumstances, the evidence and other record, submissions made by the complainant and the respondent and based on the findings of the authority regarding contravention as per provisions of rule 28(2)(a), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of recital IV of the space buyer's agreement executed between the parties on 20.08.2013, possession of the booked unit was to be delivered within a period of 42 months from the date of receipt of all permissions and commencement of construction. As such the due date of delivery of possession is calculated from the date of consent to establish i.e. 25.08.2014 which comes out to be 25.02.2018. According to the reply filed by the respondent, the

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possession has been offered to the complainant on 12.04.2019 which has been delayed by 1 year 1 month and 18 days.

- 11. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the space buyer's agreement dated 20.08.2013 to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) of the Act on the part of the respondent is established. As such the complainant is entitled for delayed possession charges @10.20% p.a. w.e.f. 25.02.2018 till the date of offer of possession i.e. 12.04.2019 as per provisions of section 18(1) of the Act read with rule 15 of the Rules.
  - 12. Hence, the Authority hereby pass this order and issue the following directions under section 34(f) of the Act:
    - i. The respondent shall pay the interest at the prescribed rate i.e. 10.20% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. 25.02.2018 till the offer of possession i.e. 12.04.2019 within a period of 90 days from the date of this order.
    - The complainant is directed to pay outstanding payments, if any, after adjustment of interest for the delayed period.
    - iii. The interest on the due payments from the complainant shall be charged at the prescribed rate @10.20% by the promoter which is the same as is being granted to the complainant in case of delayed possession charges.

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- iv. The respondent shall not charge anything from the complainant which is not part of the space buyer's agreement.
- No holding charges shall be charged by the Respondent during the pendency of present complaint.
- 13. Complaint stands disposed of.

14. File be consigned to registry.

(Samir Kumar)

Member

(Subhash Chander Kush)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 19.02.2020

Judgement uploaded on 11.03.2020.



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# TS Realtech Private Limited

Regd. Office: E-25. L.G.F. Panchatila Perk, New Dehi - 1/00/17 Phote: +91-11-46540280, 4 Fax: +91-11-46540280, 4

Ane-123

Date: 12<sup>9</sup> April 2019

Our Reference No: TS/IRIS-BW/98 To, Ms. Shikha Sharma 58 C/2, 1st Fioor, Himayunpur Village New Delhi - 110029

Subject: Letter of Offer to possession in "Iris Broadway", Block-A, Sec-85-86, Village-Badha, Tehshil-Manesar, Dist-Gurugram, Haryana.

Ref: Unit no. 416, Block-A, Area 804.0sq.ft.

Dear Sir/Ma'am,

it gives us immense pleasure to inform you that the construction work of our project Iris Broadway Tower A situated at Sec-85-86, Village-Badha, Tehshil-Monesar, Dist-Gurugram - 122004, Haryana has been completed. In light of the same, your Unit SoHo - 416 in 'IRIS BROADWAY' is ready to be offered to you for the possession and Occupation Certificate (OC) of that part has been granted to us to the competent authority on dated 29.03.2019. The same will be handed over to you subject by the competent authority on dated 29.03.2019. The same will be handed over to you subject realization of all payments, completion of documentation and such other procedures and formalities as may be prescribed by the Company and as specified in the Space Buyers Agreement executed between you and M/s TS Realtech Pvt. Ltd. (Developer) on dated 2<sup>nd</sup> April 2014.

For any further assistance/Clarifications, you may please contact us during office hours from Monday to Saturday, or you can drop an e-mail at info@trehanbuilders.com.

You are further requested to take prior appointment in order to help us serve you better.

We thank you for your continuous support and encouragement and look forward to serving you the best of our ability, at all times.

Thanking You

For M/s TS Realtech Pvt. Ltd.

Please take note that Possession Letter will be issued only after receipt of the full & final payment.

TABHAN Site Add.: Iris Broedway, Village Badha, Sector-85 & 86, Ph.: 0124-4304747, 4384747