

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

Complaint no. : 4461 of 2020
First date of hearing: 12.01.2021
Date of decision : 28.07.2021

Shikha Sharma
R/o – Tower 4/1103, Sunworld Vanalika,
Sector 107, Noida (U.P)

Complainant

Versus

M/s T.S. Realtech Pvt Ltd.
R/o – E- 26, LGF Panchsheel Park,
New Delhi- 110017

Respondent

CORAM:
Shri Samir Kumar
Shri Vijay Kumar Goyal

Member
Member

APPEARANCE:
Sh. Nitish Banka
Sh. Mukul Kumar Sanwariya

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 16.12.2020 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)(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 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 up to 21.04.2020
5.	Name of licensee	T.S. Realtech Private Limited
6.	RERA Registered/ not registered	168 of 2017 dated 29.08.2017
7.	RERA registration valid up to	31.12.2021
8.	Unit no.	SOHO 416, 4 th floor, block A [Page no. 19 of complaint]
9.	Unit measuring	804 Sq. Ft [Super area]
10.	Date of execution of space buyer's agreement	02.04.2014 [Page no. 16 of complaint]
11.	Payment plan	Construction linked payment plan [Page no. 37 of complaint]
12.	Total consideration	Rs.56,42,223/- [as per revised demand cum statement of account dated 09.03.2021 page no. 62 of reply]



13.	Total amount paid by the complainant	Rs.49,13,200/- [as per revised demand cum statement of account dated 09.03.2021 page no. 62 of reply]
14.	Due date of delivery of possession as per clause Iv of the space buyer agreement: 42 months from the date of receipt of all permission and commencement of construction [Page 19 of complaint]	10.03.2017 [Note: - Due date of possession can be calculated by the date of commencement of excavation i.e. 10.09.2013]
15.	Date of start of construction/ commencement of excavation	10.09.2013 [Page no. 60 of complaint]
16.	Occupation certificate	29.03.2019 [Page no. 54 of reply]
17.	Offer of possession	12.04.2019 [Page no. 56 of reply]
18.	Delay in handing over possession till 12.06.2019 i.e. date of offer possession (12.04.2019) + 2 months	2 years 3 months and 2 days

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:

- I. That the respondent who is primarily involved in development and marketing of the housing projects. The respondent offered services of giving peaceful and vacant possession of a unit booked by complainant as per the terms of space buyer's agreement, which was booked by the complainant for retail/office space purpose. That

respondent providing services related to building and construction of diversified product mix in real estate comprising of world class commercial complexes, integrated residential developments.

II. That on 08.01.2013 the complainant booked the flat in the respondent project i.e. "Iris Broadway" and the respondent company has allotted the unit number SOHO 416 comprising of 804 sq. ft. on 4th floor of block A in Iris Broadway Haryana. Thereafter, on 02.04.2014 the respondent had entered into a space buyer's agreement with the complainant and aggrieved to sell one-unit number 416-unit type SOHO in Iris Broadway project super area 804 sq. feet. The unit is situated at revenue estate of Village Badha, Tehsil Manesar and District Gurgaon along with other consideration amount of Rs.57,61,521/-.

III. That respondent has promised to the complainant that the possession of the said apartment to be delivered to the complainant within the period of 42 months from the date of application, the sanction plan of the project was issued in 2011 and in 2012 the respondent company obtained the license respectively thereby the 42 months period commences from date of the application that is



08.01.2013. The agreement was entered on 02.04.2014 is attached herewith this complaint.

- IV. That during tenure of agreement, she was duly complied with the consideration plan as proposed by respondent, and in instalments he paid all the due consideration in timely manner. The complainant had till now paid up the total consideration of Rs.51,61,730.61/-.
- V. That the complainant till date have not got the possession of the said apartment thereby there is a delay of more than 4 years now and still complainant is awaiting the possession of his apartment, even after paying all the due instalments in a timely manner thereby the conduct of respondent thus constitutes and tantamount to deficiency in service.
- VI. That in March 2018, the complainant visited the site and the registered office of them, and she was shocked to see that construction work was not even near 90% at their building and respondent did not have any reason to explain the complainant, that complainant till March 2016 have paid an amount 60% of the total consideration amount of them. The respondent unable to justify that on what basis he has collected consideration amount and has missed the 42 months deadline to finish the project and

practiced both unfair trade practices and deficiency in services.

VII. That the respondent had delivered the possession to the complainant via mail dated June 2020 and reminding the complainant to pay the balance amount of the allotted unit in the said project.

VIII. That the respondent has entered a completely one-sided agreement where in on delay in taking of the possession of them which charging huge interest @ 18% per annum and on the other hand giving delay compensation @ Rs.5/- per sq. feet other remedy but to approach the adjudicating officer.

IX. That the complainant has suffered serious damages because of delay in possession in the flat by them. Now the complainant wishes to be adequately delayed in handling over the possession along with the interest and penalty charges. She has also praise for a compulsion on losing an opportunity for owing a house which further lead to mental torture and agony to the allottee. That the respondent has no reasonable justification for the inordinate delay starting the construction of the project and none of the circumstances resulting in this delay, beyond its control.

- X. That the complainant has invested her hard-earned income and lifetime savings for their dream home and even after more than 4 years and the respondent has failed to hand over timely physical possession of the said unit to the complainant.
- XI. That the respondent is liable to pay delay charges along with interest and penalty charges and also along with compensation for losing an opportunity of owning a house which further lead to mental torture and agony to the complainant, that in addition to the financial loss caused on account of the respondent enjoying the complainant's money as interest free loan, the complainant has been suffering on account of the delay in the construction of the project.
- XII. That respondent has clearly guilty of breach of the agreement entered between both the parties and now the complainant is in dilemma that they would not be getting possession of aforesaid property in near future hence the respondent is clearly guilty for deficiency in service and is not able to offer peaceful possession of the allotted unit. That even now the construction work in the said project is not moving at all and hence even after the respondent own deadline which has been breached 4 years back and

still the respondent is unable to complete the timely construction of the allotted unit. It appears that the respondent has diverted the funds in some other projects or company, and inference can be drawn against the respondent has misappropriated the funds and failed to complete the construction and give timely possession of the unit.

C. Relief sought by the complainant

4. The complainant has sought following relief(s):

i. Direct the respondent to pay interest at the prescribed rate for every month of delay from the due date of possession till the actual handing over of the possession of the subject apartment to the complainant.

5. On the date of hearing, the authority explained to the respondent/promoter 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.

D. Reply by the respondent

6. The respondent contested the complaint on the following grounds. The submissions made therein, in brief are as under:-

I. That present reply to the complaint is filed by Mr. Goutam Patra, who is authorized by respondent vide board resolution dated 08.03.2021 and was fully conversant



with the facts and circumstances of the case on basis of knowledge derived from the available records maintained by respondent, in the normal course of its business/functioning, and is duly authorized and competent to file the present reply.

- II. It would be pertinent to make reference to some of the provisions of the Real Estate (Regulation and Development) Act and the Haryana Real Estate (Regulation and Development) Rules, 2017, made by the Government of Haryana in exercise of powers conferred by section 84(1)(2) of 2016 Act. Section 31 of 2016 Act provides for filing of complaints with this authority or the adjudicating officer, sub-section (1) thereof provides that any aggrieved person may file a complaint with the authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of 2016 Act or the rules and regulations made there under against any promoter, allottee or real estate agent, as the case may be. Sub-section (2) provides that the form, manner, and fees for filing complainant under sub section (1) shall be such as may be prescribed. Rule 28 of 2017 rules provides for filing of complaint with this authority, in reference to section 31 of 2016 Act. Sub clause (1) inter



alia, provides that any aggrieved person may file a complaint with the authority for any violation of the provision of 2016 Act or the rule and regulations made there under, save as those proved to be adjudicated by the adjudication officer, in Form 'CRA'. Significantly, reference to the authority, which is this authority in the present case and before the "adjudicating officer", is separate and distinct "adjudicating officer" as has been defined under section 2(a) to mean the adjudicating officer appointed under sub section (1) of the section 71, whereas the "authority" has been defined under section 2(i) to mean the real estate regulatory authority, established under section 20(1). Apparently, under section 71 the adjudicating officer shall be appointed by the authority in consultation with the appropriate Government for the purpose of adjudging compensation under sections 12, 14, 18 and section 19 of the 2016 Act and for holding an enquiry in the prescribed manner. A reference may also be made to section 72, which provides for factors to be taken into account by the adjudicating officer while adjudging the quantum of compensation and interest, as the case may be, under section 71 of 2016 Act. It would be pertinent to make reference to Section 18 of

2016 Act, which inter-alia, provides for return of amount and compensation.

- III. That the complaint is liable to be dismissed as it is barred by the principle of delay and laches. The complainant had booked unit on 02.04.2014 with the respondent. It is also pertinent to mention that the complainant had carried out inspection of the documents in respect of the said project and was duly informed about the completion date of the said unit and other obligations of the complainant at the time of making application for booking the said unit. The complainant now in 2021 after passage of 7 years from the date booking application form cannot be allowed to raise the flimsy and frivolous objections at such juncture where the construction of the units is complete in all respects.
- IV. That further, without prejudice to the, even if it is to be assumed though not admitting that the filing of the complaint is not without jurisdiction, even then the claim as raised cannot be said to be maintainable and is liable to be rejected for the reasons as ensuing.
- V. That from the perusal of the aforementioned provisions and/or the rules and conjoint reading of the same, it is evidence that the "agreement for sale" that has been



referred to under the provisions of 2016 Act and 2017 Haryana Rules, is the “agreement for sale” as prescribed in annexure-A of 2017 Haryana rules. Apparently, in terms of section 4(1), the promoter is required to fill an application to the ‘authority’ for registration of the real estate project in such form, manner, within such time and accompanied by such fee as may be prescribed. The term ‘prescribed’ has been defined under section 2(z)(i) to mean prescribed by rules made under the Act. Further section 4(2)(g) of 2016 Act provides that a promoter shall enclose, along with the application referred to in section 4(1), a performa of the allotment letter agreement for sale, and conveyance deed proposed to be signed with the allottees. Section 13(1) of 2016 Act inter-alia provides that a promoter shall not accept a sum more than 10% of the cost of the office space, plot or building as the case may be, as an advance payment or an application fee, from a person, without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force of section 13(2), inter alia provides that the agreement for sale referred to in sub section (1) shall be in such form as may be prescribed and shall specify certain particulars as



mentioned in the said sub section. Rule 8 of 2017 Haryana Rules categorically lays down that the agreement for sale shall be as per annexure-A. Suffice it is to mention that annexure-A forms part of the 2017 Haryana rules and is not being reproduced herein for the sake of brevity, though reliance is being placed upon the same.

VI. That 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 both the parties. 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. The adjudication of the complaint for compensation, as provided under section 12, 14, 18 and 19 of 2016 Act, has to be in reference to the agreement for sale executed in terms of 2016 Act and Haryana rules 2017 and no other agreement.

VII. That the respondent company has always obeyed the legal obligations and also complied with laws. The respondent company had registered the said project under this authority with registration no. 168 of 2017



which is valid up to 31.12.2021. It is pertinent to mention here that Real Estate (Regulation and Development) Act, 2016 came into force on 1st May 2016. The Haryana Real Estate (Regulation and Development) Rules, 2017 which have come to effect on 28/07/2017 and after coming of The Haryana Real Estate (Regulation and Development) Rules, 2017, respondent company registered their project "Iris Broadway". It shows that the respondent had since from its inception always acted as per the policy of law, as well as complied with the legal obligations.

- VIII. That the project is in two phases i.e. phase I, & II. The phase I of the project includes block-A, phase II includes block-B and block C respectively.
- IX. That the complainant purchased a Soho (shop office Home Office) commercial unit in the said project bearing no. 416 on 4th floor of block-A in Iris Broadway, Haryana. That the unit of the complainant falls under phase I against which the occupation certificate has been received vide letter dated 29.03.2019.
- X. That the respondent company had started the construction work after getting all the approvals from the concerned authorities. The said project had got NOC from Airport, NOC from MOEF environmental clearance, NOC



for fire, NOC for electricity, approval of sanction plan, approval of zoning plan and sanction load of electricity-DG-HT, etc. The license of the respondent i.e. licenses no. 40 of 2012 was also renewed by the DTCP dated 10.07.2018 which is now valid up to 21.04.2020 and renewal for further period has been applied on 29.09.2020.

XI. That there has been delay in handing over the possession due to sudden demise of the managing director (promoter) Sh. Jai Kumar Trehan on 30.12.2013, the construction work was stopped at that time for a certain period of time. There was another substantive reason for delay which was beyond the control of the respondent. That at the time of demonetization in the year 2016 i.e. since November 2016, the respondent company have suffered to arrange Labour for construction. Therefore, there was delay in handing over the possession. That the reasons stated were beyond the control of the respondent, thus, qualify for *Force Majure* clause of the agreement.

XII. That the said unit of the complainant falls under phase I which is complete in every respect. Further the respondent had got occupation certificate from the DTCP,



Haryana for block-A (phase I) of the said project vide letter dated 29.03.2019. The said phase is already complete in all respect. Moreover, the respondent has offered the possession to the complainant on 12.04.2019. However, the complainant is not interested to clear the outstanding dues for the said allotted unit, thus, the complainant is defaulting under the provisions of the Act, 2016.

XIII. That the complainant has failed to fulfil the obligations towards the payment against the said units. Despite so many reminders, the complainant has failed to make the payment on time. The complainant has made payment of Rs.49,49,986/- (after deduction of tax) against unit no. 416 i.e. 75% out of the total receivable. The respondent had raised the last demand on 20.05.2019 for the allotted unit and an intimation letter of increasing in super area by 17.03 sq. ft. on dated 10.06.2019, which has not been paid by the complainant till date.

XIV. That the complainant had also been informed vide letter date 10.06.2019 that the super area of the unit that was allotted to the complainant has found to be increased while taking final measurement of the said unit and as such the total area of the unit allotted to the complainant



is comprised of 821.03 sq. ft. instead of 804 sq. ft. that was allotted in the agreement dated 02.04.2014. Further the complainant had been requested to pay the final balance amount and take possession of her allotted unit. However the complainant neither turned to take possession nor cleared outstanding dues. It is also important to mention herein that the complainant did not mention about extra area of 17.03 sq. ft. in her complaint and concealed the said important fact from the authority. Hence the present complaint is liable to be dismissed being devoid of true facts.

XV. That the complainant is making such unreasonable claims at such a belated stage when the unit has been offered for possession. That such claims made by the complainant is mere counterblasts for their own breaches and defaults which is not attributable to the respondent. Further, it is submitted that the respondent has not adopted any unfair trade practice or even otherwise.

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 submission made by the parties.

E. Jurisdiction of the authority



8. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage. That hon'ble Real Estate Appellate Tribunal vide order dated Appeal No. 74 of 2018 titled as "*Ramprastha Promoters and Developers Pvt. Ltd. Vs. Ishwer Chand Garg*" decided on 29.07.2019, has categorically held that the hon'ble regulatory authority has the jurisdiction to deal with the complaints with respect to the grant of interest for delayed possession" and consequently the same legal analogy covers this complaint as well.

F. Findings on the objections raised by the respondent

F.I Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act

9. The respondent has raised an objection regarding that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the apartment buyer's agreement executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties. The authority is of the view that the Act nowhere



provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of ***Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others.*** (W.P 2737 of 2017) which provides as under:

"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter....."

122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing

Committee and Select Committee, which submitted its detailed reports."

10. Also, in appeal no. 173 of 2019 titled as ***Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya***, in order dated 17.12.2019 the Haryana real Estate Appellate Tribunal has observed-

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

11. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued under any statute, law,

Act applicable in India and are not unreasonable or exorbitant in nature.

G. Findings on the relief sought by the complainant

Relief sought by the complainant: Direct the respondent to pay interest at the prescribed rate for every month of delay from the due date of possession till the actual handing over of the possession of the subject apartment to the complainant.

12. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

13. Sub clause IV of the space buyer agreement provides for handing over of possession and is reproduced below: -

" 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 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."

14. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession



has been subjected to permissible under law in accordance with the building and all kinds of terms and conditions of this agreement and application, and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer developer agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused its dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

15. **Payment of delay possession charges at prescribed rate of interest:** Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid,



by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed 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.

16. 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. The Haryana Real Estate Appellate Tribunal in **Emaar MGF Land Ltd. vs. Simmi Sikka (Supra)** observed as under: -

"64. Taking the case from another angle, the allottee was only entitled to the delayed possession charges/interest only at the rate of Rs.15/- per sq. ft. per month as per clause 18 of the Buyer's Agreement for the period of such delay; whereas, the promoter was entitled to interest @ 24% per annum compounded at the time of every succeeding instalment for the delayed payments. The functions of the Authority/Tribunal are to safeguard the interest of the aggrieved person, may be the allottee or the promoter. The rights of the parties are to be balanced and must be equitable. The promoter cannot be allowed to take undue advantage of his dominate position and to exploit the needs of the home buyers. This Tribunal is duty bound to take into consideration the legislative intent i.e., to



protect the interest of the consumers/allottees in the real estate sector. The clauses of the Buyer's Agreement entered into between the parties are one-sided, unfair and unreasonable with respect to the grant of interest for delayed possession. There are various other clauses in the Buyer's Agreement which give sweeping powers to the promoter to cancel the allotment and forfeit the amount paid. Thus, the terms and conditions of the Buyer's Agreement dated 09.05.2014 are ex-facie one-sided, unfair and unreasonable, and the same shall constitute the unfair trade practice on the part of the promoter. These types of discriminatory terms and conditions of the Buyer's Agreement will not be final and binding."

17. 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., **28.07.2021** is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.
18. The definition of term 'interest' as defined under section 2(z) 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:

"(z) "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;"

19. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., **9.30%** by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.
20. On consideration of the documents available on record and submissions made by both the parties, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of sub clause IV of the space buyer's agreement executed between the parties on 02.04.2014, possession of the booked unit was to be delivered on or before 10.03.2017. Occupation Certificate has been received by the respondent on 29.03.2019 and the possession of the subject unit was offered to the complainant on 12.04.2019. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the space buyer's agreement dated 02.04.2014 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and responsibilities as per the

flat buyer's agreement dated 02.04.2014 to hand over the possession within the stipulated period.

21. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 29.03.2019. The respondent offered the possession of the unit in question to the complainant only on 12.04.2019, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. This 2 month of reasonable time is being given to the complainant keeping in mind that even after intimation of possession, practically they have to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit, but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e. 10.03.2017 till the expiry of 2 months from the date of offer of possession (12.04.2019) which comes out to be 12.06.2019.

22. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession at prescribed rate of interest i.e. 9.30% p.a. w.e.f. 10.03.2017 till 12.06.2019 as per provisions of section 18(1) of the Act read with rule 15 of the rules.

H. Direction of the authority

23. 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 pay the 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.
- iii. The rate of interest chargeable from the complainant /allottee by the promoter, in case of default shall be charged 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.

24. Complaint stands disposed of.

25. File be consigned to registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 03.08.2021

Judgement uploaded on 27.09.2021


(Vijay Kumar Goyal)

Member