

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

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| Complaint no. | : | 4958 of 2021 |
| Date of filing complaint | : | 20.12.2021 |
| First date of hearing | : | 10.02.2022 |
| Date of decision | : | 05.07.2022 |

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| 1. Sparsh Agarwal s/o Vinod Aggarwal 2. Bahuguna d/o Vinod Aggarwal Both RR/o: B-103, 2 nd floor, Sarvodaya Enclave, Near Malviya Nagar- 110017 | Complainants |
| Versus | |
| Assotech Moonshine Urban Developers Private Limited Regd. office: 148 F, Pocket IV, Mayapuri Vihar, Phase-I, Delhi 110091 | Respondent |
| CORAM: | |
| Dr. K.K. Khandelwal | Chairman |
| Shri Vijay Kumar Goyal | Member |
| APPEARANCE: | |
| Complainant in person | Complainants |
| None | Respondent |

ORDER

1. The present complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 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 allottees 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.No. | Heads | Information |
|-------|--------------------------------------|---|
| 1. | Project name and location | "Assotech Blith", Sector-99, District- Gurugram, Haryana |
| 2. | Project area | 12.062 acres |
| 3. | Nature of the project | Group Housing Project |
| 4. | DTCP license no. and validity status | 95 of 2011 dated 28.10.2011 Valid up to 27.10.2024 |
| 5. | Name of licensee | M/s Moonshine Urban Developers Private Limited M/s Uppal Housing Private Limited |
| 6. | HRERA registered/ not registered | Registered Vide registration no. 83 of 2017 dated 23.08.2017 Valid up to 22.08.2023 |
| 7. | Allotment letter dated | 10.12.2014 (As per page no. 13 of complaint) (No builder buyer agreement has been executed inter-se parties, but a similar document containing |

| | | |
|-----|---------------------------------------|---|
| | | rights and liabilities of both the parties has been placed on record) |
| 8. | Unit no. | B-201 on 2nd floor of tower B (As per page no. 15 of complaint) |
| 9. | Super area admeasuring | 2400 sq. ft. (As per page no. 15 of complaint) |
| 10. | Payment plan | Down payment plan (As per page 43 of complaint) |
| 11. | Total consideration | Rs.1,45,70,020/- (As per payment plan on page no. 43 of complaint) |
| 12. | Total amount paid by the complainants | Rs.1,26,20,000/- (As alleged by the complainants on page no. 07 of complaint) |
| 13. | Possession Clause | As per Clause 19(I) , <i>The possession of the apartment shall be delivered to the allottee(s) by the company within 24 months from the date of allotment subject to the force majeure, circumstances, regular and timely payments by the intending allottee(s), availability of building material, change of laws by governmental/ local authorities, etc</i> |
| 14. | Grace period clause | As per Clause 19(II) , <i>In case the Company is unable to construct the apartment within stipulated time for reasons other than as stated in sub-clause I, and further within a grace period of</i> |

| | | |
|-----|------------------------|---|
| | | <i>six months, the Company shall compensate the intending Allottee (s) for delayed period @Rs. 10/- per sq. ft. per month subject to regular and timely payments of all installments by the Allottee (s). No delayed charges shall be payable within the grace period. Such compensation shall be adjusted in the outstanding dues of the Allottee (s) at the time of handing over possession</i> |
| 15. | Due date of possession | 10.06.2017 (Calculated from date of allotment letter dated 10.12.2014 + 6 months grace period under clause 19(II)) Grace- period is allowed |
| 16. | Occupation certificate | Not obtained |
| 17. | Offer of possession | Not offered |

B. Facts of the complaint

3. That relying on the representations, warranties and assurances of the respondent about the timely delivery of possession, the complainants booked a 3-BHK apartment bearing no. B-201 in the project of the respondent, known under the name and style of "Assotech Blith" at Sector 99, Gurugram, Haryana (hereinafter, "the project") vide application dated 10.12.2014.
4. That apartment bearing no. B-201 on 2nd floor admeasuring 2400 sq. ft. was allotted to the complainants vide an allotment letter dated

10.12.2014 and the clauses of said allotment letter were binding on the parties.

5. That the complainants' dream of living in a peaceful possession was shattered by the respondent in a most unlawful and illegal manner. The complainants entered into an agreement by virtue of which the respondent was obligated to deliver the possession of the said unit within time prescribed under clause 19 of the agreement. However, the respondent miserably failed to comply with the said obligation.
6. That as per clause 19(I) of allotment letter, due date of handing over of possession was 24 months from the date of allotment letter i.e. 10.12.2014 which comes out to be 10.12.2016. The respondent has delayed in offering the possession of the said unit to the complainants by 5 years. The respondent has always been vague and ambiguous in updating about the status of development in the project.
7. That the complainants made a total payment amounting to Rs. 1,26,20,000/- till date towards consideration of allotted unit out of total consideration of Rs. 1,45,70,020/- as per the payment plan in the allotment letter and account sheet.
8. That thereafter, the malafide conduct and unlawful activities of the respondent continued to be seen as the offer of possession of the unit has not been done till date. Moreover, the occupation certificate has also not been received. The corresponding activities of the respondent

have consequently caused the complainants to go through mental agony and financial distress. It is further submitted that taking advantage of its dominant position and malafide intention restored to unfair trade practices by harassing the complainants by way of delaying the project and by diversion of the money from the innocent and gullible buyers.

9. That the authority in *G.V.S Sai Prasad and Ors, vs, Assotech Moonshine Urban Developers Pvt. Ltd. (19.06.2018 RERA Haryana) MANU/RR/0130/2018* with respect to the same project ordered the respondent to give interest as prescribed from the date of possession as per allotment letter till actual date of handing over possession
10. That the present case is a clear exploitation of innocence and belief of the complainants and an act of the respondent to retain their hard-earned money illegally.
11. That the respondent-promoter has failed to fulfil his obligations, responsibilities as per the allotment letter dated 10.12.2014 and to hand over the possession within the stipulated period. As such, the complainants are entitled to delayed possession charges at the prescribed rate of interest w.e.f. 10.12.2016 till the handover of possession as per provisions of section 18(1) of the Act read with rule 15 of the rules.

C. Relief sought by the complainants:

12. The complainants have sought following relief(s):
- (i) Direct the respondent to provide the possession of the subject unit along with prescribed rate of interest on the amount paid by the complainant from the due date of possession as per allotment letter till the actual date of handing over of possession.

13. 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

14. The respondent has contested the complaint on the following grounds.
- i. That the complainants have concealed the material facts from the authority. The complainants after going through all the pros and cons, booked a flat on 10.12.2014 bearing no. B-201 on 2nd floor in 'Assotech Blith' for a total sale consideration of Rs. 1,45,70,020/-. Thereafter, allotment letter containing terms and conditions was executed between the parties on 10.12.2014.
 - ii. That the superstructure of tower- 'B', in which the unit of complainants is situated, is nearing completion and work is in progress at a fast pace and the possession is expected to be handed over by December 2022. The respondent is making all possible efforts to deliver the unit at the earliest subject to the payment of the

- amount as agreed by the complainants by signing the allotment letter.
- iii. That clause 19(I) of the allotment letter states that the possession of the unit would be offered to the allottee(s) within 24 months from the date of allotment subject to the force majeure circumstances, regular and timely payments by the allottee(s), etc. It was clear from the aforesaid terms that the possession of the unit was proposed to be handed over within 24 months and the said possession period was extendable due to force majeure circumstances or other similar circumstances beyond the control of the developer. Hence, the developer was entitled for an extension of time for delivery of the possession.
- iv. That the relief sought by the complainants from this authority is not tenable in the eyes of law, as the delay in delivery of project is due to the force majeure circumstances beyond its control. The reasons attributable for delay in delivery of possession is mentioned herein under: -
- a. For developing the project including civil, internal and external electrical, plumbing, fire-fighting, common services and all external development along with internal development, the respondent awarded the project development contract to M/s. Assotech Ltd. (hereinafter referred as 'contractor company'), which is also a holding company of the respondent and to this effect a contract was executed between the respondent and the M/s. Assotech Ltd. (the contractor) on 03.04.2012. That after



awarding the project development contract, the construction work of the project was started by the 'contractor company' as per the terms and conditions of the 'contract'.

- b. In the mid of year 2015, the contractor company faced litigation in the Hon'ble Delhi High Court and on 08.02.2016, the contractor company/ holding company - M/s. Assotech Limited was unfortunately put on provisional liquidation by Hon'ble Delhi High Court by Co. Petition no. 357 of 2015. The Hon'ble High Court vide its order dated 08.02.2016, appointed a provisional official liquidator and the rights and authority of the board of directors of the 'contractor company' were taken away by the official liquidator. Now, the directors became ex- directors and Ex-management of the contractor company have to work under supervision of the official liquidator and the court commissioner - Mr. Justice N.K. Mody appointed by the Hon'ble Delhi High Court vide order dated 11.02.2019. Hence, due to the provisional liquidation of the contractor company, the construction work of the project in question got interrupted.
- c. Vide order dated 07.04.2015, the Hon'ble NGT in OA no. 95/2014, restricted construction activities in NCR due to rising air pollution. Apart from the above, the Hon'ble Supreme Court, Environment Pollution (Prevention & Control) Authority ("EPCA") for the National Capital Region and the Hon'ble National Green Tribunal ("NGT") had issued various orders/ directions/ guidelines from time to time since 2016 for complete ban on

- construction activities in National Capital Region, which includes the entire District Gurugram for the control of air pollution.
- d. In year 2016, the NGT passed an order in O.A. No.-21/2014 on 08 Nov' 2016 and banned all construction activities in NCR and same was lifted by passing the guidelines through order dated 23 Nov' 2016 in the same case. So, the construction work was stopped for 16 days.
- e. In the year 2017, NGT passed an order in O.A. No.-21/2014 on 09 Nov' 2017 and banned all construction activities in NCR and same was lifted by passing the guidelines through the order dated 17.11.2017 in same case. So, the construction work was again stopped for 09 days.
- f. In the year 2018, the EPCA released a press note on 31.10.2018 and banned all the construction activities in NCR from 01.11.2018 to 10.11.2018, resulting in stoppage of construction 10 days.
- g. In the year 2019, the EPCA issued guidelines on 01.11.2019 and banned all construction activities in NCR up to 05.11.2019. The same time, Hon'ble Supreme Court of India, passed an order in ***Writ Petition (Civil) NO.- 13029/1985, titled - M. C. Mehta Vs. Union of India & Ors.*** on 04.11.2019 and banned all construction activities in NCR and same was lifted by passing the order dated 09.12.2019 in same case. So, the construction work was again stopped for 39 days.

The summary of total stoppage of construction work in NCR is as following: -

| Year | Authority | Date of ban on construction activities | Date of lifting of ban on construction activities | No. of ban days |
|--|--------------------------------------|--|---|-----------------|
| 2016 | NGT | 08 Nov' 2016 | 23 Nov' 2016 | 16 |
| 2017 | NGT | 09 Nov' 2017 | 17 Nov' 2017 | 09 |
| 2018 | EPCA | 01 Nov' 2018 | 10 Nov' 2018 | 10 |
| 2019 | EPCA/ Hon'ble Supreme Court | 01 Nov' 2019 | 09 Dec' 2019 | 39 |
| Total Days Ban on Construction Activities | | | | 74 |

h. Due to sudden stoppage of the construction work, site staff, contractors, construction labour and machinery involved in construction work became idle. Once the construction work at site is stopped then it takes at least one to two months to start and gear up the work to achieve the stage on which, it was stopped. That due to the COVID-19 pandemic, the nationwide lockdown was imposed by the Government of India from 25.03.2020. During the

lockdown, a large number of labour moved to their native villages/home town from the NCR. In view of the situation, the Govt. of India *suo moto* extended the construction period of all projects by 9 months due to COVID 19 pandemic. After the unlock, time to time declared by the Govt., the Respondent started the construction activities at the project with few labour and material under the guidelines of the Government.

- i. The respondent-company, M/s. Assotech Limited and two investors- M/s. S.A. Mallika Ventures Ltd. and M/s. Mallika SA Investments LLC, on 20.01.2012, entered into an investment agreement and a project management agreement (PMA) dated 20.01.2012 for the development of residential group project in question. As per the investment agreement, the investment, made by the investors was to be utilized for construction and development of the project in question. In terms of PMA, the Assotech Limited was engaged as project manager who was to be responsible for execution, development, management, construction and supervision of the project inter-alia including day to day activities such as marketing, sales and financial management etc. The Assotech Ltd. was responsible for developing the project within committed timelines and guaranteed costs. The respondent and M/s. Assotech Ltd. also entered into construction contract agreement' dated 03.04.2012 whereby the Assotech Ltd., who was a promoter shareholder of the respondent-company and has invested Rs. 44.27 crore.

- j. That a logical corollary of the reasons enumerated above, clearly establishes that the entire delay in the completion of the project and the handing over of the possession of the flats to the respective customers is only attributable to the aforementioned reasons which were completely beyond the control of the respondent and were unforeseeable at the time when the construction schedule was finalized. Hence, the respondent was entitled to an extension of time for the delivery of the possession of the respective flats and there was no contributory negligence on the part of the respondent which in turn has led to a delay in the completion and hence, a delay in handing over the possession of the flats to the respective customers.
- v. That despite the above hurdles, the respondent has completed the construction of the tower/flat of the complainants and has already applied for completion certificate (CC) to the concerned authority.
- vi. That, however, despite all these problems faced by the respondent, it as part of ethical business practice is paying compensation to the customers for the delayed period @ Rs.10/- per sq. ft per month in terms of clause 19(II) of the allotment letter/agreement by way of adjustment at the time of offer of possession.
- vii. That the entire grievances and claims of the complainants arose out of delay in delivery of possession of apartment. It is submitted that such a situation was squarely covered by the provisions of the agreement wherein the parties have mutually agreed in clause 19(II)

that the allottee would be compensated with Rs.10/- per sq. ft per month for the period of delay. Once the parties have agreed under an agreement/ allotment letter as to how the party would be compensated in a particular situation, it is not open to the complainants to claim beyond what is agreed in the contract. It is a settled principle of law that the party who has suffered the breach, if any, can claim only that amount by way of damages or penalty which is stipulated for in the agreement or as is pre-estimated by the parties in their agreement. This law is also substantiated by and is laid down in various judgments of the Hon'ble Supreme Court of India. The parties never agreed that in case the possession is delayed, the respondent would pay any interest/damages on the amount paid towards the flat. In *Bharathi Knitting Company v. DHL Worldwide Express Courier Division of Airfreight Ltd. AIR1996 SC 2508* the Hon'ble Supreme Court of India affirmed the view that liability of a party should be limited to the extent undertaken in the Contract between the parties. The Courts cannot re-write the contract for the parties and the stipulations in the contract have to be adhered to and cannot be deviated. In *Secretary, Bhubaneswar Development Authority Versus Susanta Kumar Mishra* reported as *[V (2009) SLT, 242]*, the Hon'ble Supreme Court held that the parties are bound by the unchallenged terms of the contract. In *PUDA (Chief Administrator) and Another Versus Mrs. Shabnam Virk* reported as *II (2006) CPJ 1 (SC)*, it was held that an allottee would be bound by the terms and conditions contained in the allotment letter agreed

by him. Therefore, the complainant herein have no right to claim any amount (whether as rent or damages or interest) beyond the amount of compensation provided in the Agreement and to that extent, the prayers other than prayer (a) for possession are unsustainable. The reliefs claimed are clearly beyond the scope of the unchallenged terms and conditions of the Agreement entered into between the parties. On this ground, the complaint is liable to be dismissed.

- viii. That the terms of a contract are binding upon the parties and the same should be duly abided by and followed by the parties. It is a settled law that in case of any breach of any terms of the contract or any lapses committed by any of the parties to the contract, the terms of the contract to the extent of providing damages in case of such breach or lapses are binding upon the parties and the same have to be duly complied with. The Hon'ble Apex Court vide various judgments has been pleased to uphold the view that the terms of the contract are binding upon the parties. The Hon'ble Apex Court has laid down in the matter of *Bharathi Knitting Company v. DHL Worldwide Express Courier Division of Airfreight Ltd.* reported in *AIR1996 SC 2508*, the Hon'ble Apex Court has been pleased to observe:-

"...We are of the Opinion that the National Commission was right in limiting the liability undertaken in the contract entered into by the parties and in awarding the amount of deficiency in service to the extent of the liability undertaken by the respondent".

- ix. Furthermore, similarly in the matter of *Sir Chunilal V. Mehta and Sons Ltd. v. the Century Spinning and Manufacturing Co. Ltd.* reported in *AIR 1962 SC 1314*, the Hon'ble Apex Court has been pleased to hold,

"...Where the parties have deliberately specified the amount of liquidated damages there can be no presumption that they, at the same time, intended to allow the party who has suffered by the breach to give a go-by the sum specified and claim instead a sum of money which was not ascertained or ascertainable at the date of breach".

- x. In the matter of *Fateh Chand v. Balkishan Dass* reported in *AIR 1963 SC 1405* The Hon'ble Supreme Court of India has been pleased to observe,

".....The measure of damages in the case of breach of a stipulation by way of penalty is by Sec. 74 reasonable compensation not exceeding the penalty stipulated for. In assessing damages, the Court has, subject to the limit of the penalty stipulated, jurisdiction to award such compensation as it deems reasonable having regard to all the circumstances of the case. Jurisdiction of the Court to award compensation in case of breach of contract is unqualified except as to the maximum stipulated; but compensation has to be reasonable, and that imposes upon the Court duty to award compensation according to settled principles."

- xi. It is submitted that few other case laws upholding the same, such as *General Insurance Society vs Chandumull Jain (1966) 3 SCR 500*, In this case, constitution Bench of Supreme Court, in a case of an insurance contract, held:

"In interpreting documents relating to a contract for insurance, the duty of the court is to interpret the words in which the contract is expressed by the parties, because it is not for the court to make a new

contract, however reasonable, if the parties have not made it themselves."

- xii. The same analogy will apply to a real estate contract also. ***United India Insurance vs Harchand Rai (2004) 8 SCC 644*** In this case, the Supreme Court set aside the concurrent judgments of all the three consumer forums below who had disregarded the written terms of the contract between the parties. In ***PUDA Versus Mrs. Shabnam Virk II (2006) CPJ 1 (SC)***, it was held that an allottee would be bound by the terms and conditions contained in the allotment letter agreed by him.
- xiii. That the respondent has no deliberate or malafide intention not to hand over the possession of the unit to the complainants herein. The contributory negligence cannot be attributed to the respondent as the delay in handing over the possession of the unit to the complainant was only due to the various reasons which were beyond the control of the respondent. Further, it does not stand to gain anything by delaying completing the project and hand over the possession of the unit to the respective buyers. It is in the own interest of the respondent to complete and deliver the project at the earliest as the delay in doing the same is amounting to cost overrun thereby squeezing the profit margins of the respondent and is also adversely affecting the its reputation. Whereas, due to delay in delivery of possession, no loss is going to be caused to the complainants' as allotment made to them is cost escalation free and as possession of the unit would be handed over to them at a price, which was fixed in year 2014.

15. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

16. 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

17. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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 promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

18. So, in view of the provisions of the Act of 2016 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 objections raised by the respondent

F.1 Objection regarding passing of various force majeure conditions such as NGT orders, EPCA orders, appointment of official liquidator and Covid-19.

19. The respondent-promoter has raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the National Green Tribunal, Environment Pollution (Prevention & Control) Authority, institution of liquidation proceedings against the contractor-company i.e. Athena Limited and appointment of official liquidator, shortage of labour due to stoppage of work and lock down due to outbreak of Covid-19 pandemic. Since there were circumstances beyond the

control of respondent, so taking into consideration the above-mentioned facts, the respondent be allowed the period during which his construction activities came to stand still, and the said period be excluded while calculating the due date. But the plea taken in this regard is not tenable, the due date for completion of project as per clause 19 (I) & 19(II) of allotment letter dated 10.12.2014, comes to 10.06.2017 inclusive of grace period of 6 months. Though there has been various orders issued to curb the environment pollution, but these were for a short period of time. The respondent has also contended that there was outbreak of Covid-19 in 2019 that hampered the construction activities of the project. It is to be noted that there was outbreak of Covid-19 in February- March 2020 and the due date for completion of project & delivery of possession was 10.06.2017. So, the circumstances/ conditions after that period can't be taken into consideration for delay in completion of the project.

G. Findings on the relief sought by the complainants

Relief sought by the complainants:

- G.1 Direct the respondent to provide the possession of the subject unit along with prescribed rate of interest on the amount paid by the complainants from the due date of possession as per allotment letter till the actual date of handing over of possession.
20. As per documents available on record, the respondent (in reply filed by previous counsel) on page no. 44 filed a copy of application dated

12.04.2021 for grant of occupation certificate. However, on the last date of hearing, the counsel for the complainants raised a plea that such application for grant of occupation certificate does not pertain to the tower/block in which the unit of the complainants is situated. As such, the counsel for respondent was directed to clarify the position in this regard.

21. As per documents available on record, the due date of possession along with 6 months' grace period comes out to be 10.06.2017. As per section 19(3) of Act of 2016, the allottees have been entitled to claim the possession of the apartment, plot or building, as the case may be. In the present case, the respondent-builder has yet not obtained the occupation certificate from the competent authority. Therefore, the respondent is directed to offer the possession of the allotted unit within one month of the grant of occupation certificate.
22. In the present complaint, the complainants intend to continue with the project and are 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."

23. Clause 19(I) of the allotment dated 20.06.2012 provides for handing over of possession and is reproduced below:

"Clause 19(I).

The possession of the apartment shall be delivered to the allottee(s) by the company within 24 months from the date of allotment subject to the force majeure, circumstances, regular and timely payments by the intending allottee(s), availability of building material, change of laws by governmental/ local authorities, etc."

24. The authority has gone through the possession clause of the agreement and observes that the respondent-developer proposes to handover the possession of the allotted unit within a period of 24 months from the date of allotment. In the present case, the allotment was on 10.12.2014 as such the due date of handing over of possession comes out to be 10.06.2017.
25. **Admissibility of grace period:** As per clause 19(I) of allotment letter dated 10.12.2014, the respondent promoter has proposed to handover the possession the said unit within a period of 24 months. As per clause 19(II) of said allotment letter, the respondent-promoter shall be entitled for period of 6 months as grace period. The said clause of the allotment letter has been reproduced hereunder: -

"Clause 19(II)

*In case the Company is unable to construct the apartment within stipulated time for reasons other than as stated in sub-clause i, and **further within a grace period of six months**, the Company shall compensate the intending Allottee (s) for delayed period @Rs. 10/- per sq. ft. per month subject to regular and timely payments of all installments by the Allottee (s). No delayed charges shall be payable within the grace period. Such compensation shall be adjusted in the outstanding dues of the Allottee (s) at the time of handing over possession."*

26. The said clause is unconditional and provides that if the respondent is unable to complete the construction of the allotted unit within stipulated period of 24 months, then a grace period of 6 months shall be allowed to the respondent. Since there were situations beyond the control of respondent such as institution of liquidation proceedings against the contractor company, resulting in shortage of labour at project due to stoppage of work at the project site. Therefore, the authority is of view that the said grace period of 6 months shall be allowed to the respondent. Therefore, as per clause 19(I) & 19(II) of the allotment letter dated 10.12.2014, the due date of possession comes out to be 10.06.2016.
27. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges however, 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.

28. 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.
29. 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., 05.07.2022 is @ 7.50%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.50%.
30. The definition of term 'interest' as defined under section 2{za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) *the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default*
- (ii) *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

31. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 9.50% by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.
32. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, 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 clause 19(I) & 19(II) of the allotment letter executed between the parties on 10.12.2014, the possession of the subject apartment was to be delivered within a period of 24 months plus 6 months from date of execution of such allotment cum agreement. The due date of possession is calculated from the date of allotment letter i.e.; 10.12.2014, which comes out to be 10.06.2017.
33. Section 19(10) of the Act obligates the allottees 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 has yet not obtained by the respondent- builder and has applied for the grant

of occupation certificate vide letter dated 12.04.2021. The respondent shall offer the possession of the subject unit to the complainants after obtaining occupation certificate. So, it can be said that the complainants shall come to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainants should be given 2 months' time from the date of offer of possession. This 2 months' of reasonable time is to be given to the complainants keeping in mind that even after intimation of possession practically he has 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. 10.06.2017 till the expiry of 2 months from the date of offer of possession or till actual handing over of possession, whichever is earlier.

34. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the allotment letter dated 10.12.2014 to hand over the possession within the stipulated period. 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 delay from due date of possession i.e., 10.06.2017 till the date of actual handing over of possession or till offer of possession plus 2 months, whichever is earlier; at the


prescribed rate i.e., 9.50 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

H. Directions of the authority

35. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent shall pay interest at the prescribed rate i.e. 9.50% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e.; 10.06.2017 till the date of actual handing over of possession or till offer of possession plus 2 months after obtaining occupation certificate, whichever is earlier; as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- ii. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order of this order as per rule 16(2) of the rules and thereafter monthly payment of interest to be paid till date of handing over of possession shall be paid on or before the 10th of each succeeding month.
- iii. The respondent shall not charge anything from the complainants which is not the part of the flat buyer's agreement.
- iv. The respondent is directed to offer the possession of the allotted unit within one month of grant of occupation certificate.

- v. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- vi. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.50% 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.
36. Complaint stands disposed of.
37. File be consigned to registry.


(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 05.07.2022

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