

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

**Complaint no.** : 1102 of 2021  
**Date of filing complaint** : 25.02.2021  
**First date of hearing** : 06.04.2021  
**Date of decision** : 12.04.2022

Rajesh Kaul <b>R/O:</b> - F-23, Greenwood city, Sector 46, Gurugram -122003, Haryana	<b>Complainant</b>
Versus	
M/s BPTP Limited <b>Regd. Office at:</b> - 28 ECE House, First Floor , KG Marg, New Delhi -110001	<b>Respondent</b>

<b>CORAM:</b>	
Dr. K.K. Khandelwal	<b>Chairman</b>
Shri Vijay Kumar Goyal	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Rahul Bhardwaj	Advocate for the complainant
Sh. Venket Rao	Advocate for the respondent

**ORDER**

1. The present complaint 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	'Pedestal', Sector 70 A, Gurugram, Haryana.
2.	Nature of the project	Residential township
3.	a) DTCP license no	15of 2011 dated 07.03.2020
	b) License valid up to	06.03.2024
	c) Name of the licensee	Impartial Builders Developers Pvt Ltd and Others
	d) area	102.2 acre
4.	a) RERA registered/not registered	<b>Not Registered</b>
5.	Unit no.	C-77-TF (Annexure R-6 on page no. 82 of reply)
6.	Unit admeasuring	2207 sq. ft. (Annexure R-6 on page no. 82 of reply)
7.	Date of execution of the floor buyer's agreement	20.11.2013 (Annexure R-6 on page no. 77)



		of reply)
8.	Total consideration	Rs. 1,61,15,955.47 /- (Annexure R-10 vide statement of account on page no. 125 of reply)
9.	Total amount paid by the complainant	Rs. 55,41,997.40/- (Annexure R-10 vide statement of account on page no. 125 of reply)
10.	Possession clause	<p><b>Clause 5.1-</b> The Seller/Confirming Party proposes to offer possession of the unit to the Purchaser(s) within the Commitment period. The Seller/Confirming Party shall be additionally entitled to a Grace period of 180 days after the expiry of the said Commitment Period for making offer of possession of the said unit.</p> <p><b>Clause 1.4</b> "Commitment Period" shall mean, subject to Force Majeure circumstances; intervention of statutory authorities and Purchaser(s) having timely complied with all its obligations, formalities or documentation, as prescribed/requested by Seller/Confirming Party, under this Agreement and not being in default under any part of this Agreement, including but not limited to the timely payment of instalments of the sale consideration as per the payment plan opted, <b>the</b></p>



		<b>Seller/Confirming Party shall offer the possession of the Unit to the Purchaser(s) within a period of 36 months from the date of execution of Floor Buyers Agreement” (Emphasis supplied)</b>
11.	Due date of delivery of possession	20.11.2016 (Calculated from the date of execution of agreement as being later)
12.	Occupation certificate	16.10.2020 (Annexure R-9 on page no. 122 of reply)
13.	Offer of possession	31.10.2020 (Annexure R-10 on page no. 123 of reply)
14.	Grace period utilization	Grace period is not allowed in the present complaint.

**B. Facts of the complaint**

3. The complainant on the basis of the assurances made an application for the allotment of floor in respondent's project PEDESTAL at 70 A in Sectors-70 and 70 A, Gurgaon, Haryana. Based on the application made, the complainant received a letter for allotment dated 11.11.2013 wherein allotment of unit no. C-77-TF in project PEDESTAL @ 70 A was confirmed. The aforesaid unit is a three (3) bedroom floor with a servant quarter. The payment plan opted was construction linked and the tentative area of floor is 2,207.000 sq. ft at the basic sale price of Rs.12,259,463/-.

4. That the complainant on the basis of the allotment letter dated 11.11.2013 entered into a floor buyer's agreement dated 20.11.2013 (hereinafter referred to as the "the said Agreement") with BPTP Ltd i.e., respondent. As per the said agreement, the total consideration for the said unit(s) was Rs. 12.259,463 and the total net cost of Rs.1,35,11,573 including all the charges or enhanced charges, fee, infrastructure development charges and any other statutory charges etc. payable to the government department/ any other authorities. The complainant was under an obligation to pay the consideration at different stages as per the development work on the said project.
5. That it is submitted here that the complainant had duly complied with the schedule of payment and has made the payment of Rs. 55,41,997/- till date to the respondent.
6. It is submitted here that as per agreement, the respondent was under an obligation to handover the possession of the said unit(s) to the respondent on or before the year 2016. Furthermore, clause 6 of the said agreement provides that if the seller/confirming party fails to offer the possession of the said unit to purchaser(s) within the commitment period and after the expiry of the grace period thereof, it shall be liable to pay the purchaser(s) the compensation as indicated under

the clause ("delay compensation") for every month of delay until the offer of possession is made for the said unit to the purchaser(s)." It is submitted here that the respondent has failed to handover the plot(s) to the complainant and even till date. The respondent has also not made the payment for the compensation to the complainant with regard to the delay caused in completing the project and handing over the possession of the allotted unit.

7. That the complainant on several times has reminded the respondent of the obligations to handover the unit to him. It is pertinent to mention here that the complainant had written an e-mail dated 04.03.2020 to the respondent, wherein he had called upon it about the progress report with regard to the construction of the unit and delay in offer of possession but, no reply was received.
8. That the respondent, after a delay of four (4) years of handing over the possession of the Unit thereafter sent an offer of possession letter dated 31.10.2020 to complainant stating that Pedestal @70 A, Gurugram, Haryana is now ready for delivery and an occupation certificate dated 16.10.2020 for the concerned unit has been received and the same is ready for the possession upon submission of all



payments and documents. The respondent had demanded an amount of Rs.8,917,376/-from the complainant.

9. That the complainant on receipt of the letter dated 31.10.2020 from respondent visited the site and was disappointed with the quality of the construction. That on visit to the property, it was found the allotted unit which was booked primarily with the attraction of having terrace and for which the complainant had agreed to pay extra for the terrace area is nothing but a private area with multiple pipes laid on all the four sides for the entire block. The area had lost its utility as the laid-out pipes had not been placed properly and the terrace rights being shared by others. That there was a gross mis-selling and only three blocks had been erected and the same has been finished in hurry. There are just three blocks which has been constructed in hurry with some lamp post and greenery in front.
10. The pedestal was marketed on the basis of three solitaire blocks with a developed community living. The entrance was through Astaire gate, leaving the left the area as undeveloped patch of land with dust and strew all over the three blocks and the construction would be perpetual feature for few years till the place is brought into shape. That due to the ongoing construction, the place is not in a proper form to



live and the dust and continuous construction makes the unit unfit to live. The respondent offered possession of units constructed in isolated place without checking the surroundings and its location.

11. The complainant has thus refused to accept the offer of possession till the unit along with the terrace is delivered in the quality and for the use as promised by the respondent at the time of the booking. The same was communicated to the respondent vide letter dated 01.11.2020 by the complainant.
12. The respondent paid no heed to the above sent letter dated 01.11.2020. That being aggrieved by the arbitrary and mala fide conduct of the respondent, the complainant sent a reminder e-mail dated 12.01.2021 for response in regard to the clarity of the existing offer and the different status in regard to the unit when sold.
13. That the respondent has not bothered about any of the reminders sent by the complainant and only received an e-mail dated 15.02.2021 from the respondent's customer care department reiterating in respect to the letter dated 31.10.2020.
14. It is stated here that the respondent sent a letter dated 18.02.2021 for termination/ cancellation intimation letter in respect of booked unit in the project on account of the



demand made vide letter dated 31.10.2020 and not adhered to by the complainant. The respondent issued the abovementioned letter without paying any heed to the letter dated 01.11.2020 sent by the complainant to it and hence, this complaint for the relief as prayed above.

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

15. The complainant has sought following relief:

- (i) Direct the respondent to pay interest @24%p. a from the due date of handing over the possession of the allotted unit as promised i.e., 20.11.2016 till the actual handing over of the fully developed unit to the complainant and to handover the possession of the fully developed unit along with terrace in accordance with the plan presented during the unit of booking
- (ii) Direct the respondent to withdraw the termination letter dated 18.02.2021 sent by them, which is oppressive and cause of harassment to the complainant.

**D. Reply by the respondent.**

16. Upon completion of construction and upon getting occupancy certificate from competent authority on 16.10.2020, the respondent acted swiftly and issued the offer of possession letter cum final demand notice on 31.10.2020. As per the same, the complainant was asked to clear dues of



Rs.11,281,958.07/- by 01.12.2020 against said offer of possession. The respondent was constrained to issue reminder letter dated 11.01.2021. on non-payment by the complainant. After issuance of reminder letter, the respondent issued termination/ cancellation letter on 18.02.2021 whereby booking/allotment/ agreements in respect of unit stood cancelled/terminated. The delay in completion of project, if any, does not give any entitlement to the complainant to hold the due payments and seek possession of unit without making payment of entire sale consideration. This is an arm-twisting tactic adopted by the complainant to get the possession of unit without making due payments.

17. It is submitted that the complainant has approached this Authority for redressal of the alleged grievances with unclean hands, i.e., by not disclosing material facts pertaining to the case at hand and, by distorting and/or misrepresenting the actual factual situation with regard to several aspects. It is further submitted that the Hon'ble Apex Court in plethora of cases has laid down strictly, that a party approaching the court for any relief, must come with clean hands, without concealment and/or misrepresentation of material facts, as the same amounts to fraud not only against the respondent but also against the court and in such situation, the complaint is liable to be dismissed at the threshold without any further adjudication.



- That the complainant has concealed from this Authority that possession has been offered vide offer of possession letter dated 31.10.2020. However, due to non-payment of final demand after reminders, the respondent issued termination/cancellation letter on 18.02.2021 whereby booking/allotment/agreements in respect of unit stood cancelled/terminated.
- That the complainant has concealed from this Authority that with the motive to encourage him to make payment of the dues within the stipulated time, the respondent also gave additional incentive in the form of timely payment discount to him and in fact, till date, the complainant has availed timely payment discount of Rs.202,923/-and basic sale price discount of Rs 306,487/-
- That the complainant has further concealed from this Authority that the respondent being a customer centric organization vide demand letters as well as: numerous emails has kept updated and informed him about the milestone achieved and progress in the developmental aspects of the project. The respondent vide emails has shared photographs of the project in question. However, it is evident to say that the respondent has always acted bonafide towards its customers including the complainant,



and thus, has always maintained a transparency in reference to the project. In addition to updating the complainant, the respondent on numerous occasions, on each and every issue/s and/or query/s upraised in respect of the unit in question has always provided steady and efficient assistance. However, notwithstanding the several efforts made by the respondent to attend to the queries of the complainant to his complete satisfaction, he erroneously proceeded to file the present vexatious complaint before this Hon'ble Authority against the respondent.

- That the complainant has sought interest and compensation on the pretext that there is delay in possession and that there has been a financial loss caused to him. With respect to the alleged delay caused in offering possession of the unit in question, it is submitted that respondent, on 07.03.2011, obtained license no. 15 of 2011 for approximately 102 acres of land falling in sectors 70-70A, Gurgaon, Manesar Urban Complex, Gurgaon. The said license was taken for development of integrated township consisting of plots, villas, floors, shopping centers, community centre and schools etc. over the portion of the said land. The respondent is in the process of also developing certain plots under the name and style of one project/floor 'pedestal', situated in sector 70A, wherein the complainant applied for, and was allotted unit no C-77-TF. It is submitted that the

complainant conducted thorough due diligence and made investment in the property in question after being fully satisfied.

- It is submitted that after obtaining various approvals, inter alia, for Sectors 70-70A Colony' and after completing most of the internal development works, respondent vide various letters and representations requested DGTCP to approve building plans. In the interregnum, respondent carried out internal development works in and around Sectors 70-70A. For the purpose of developing sector roads, acquisition proceedings were initiated by Government of Haryana. It is not out of place to mention that respondent represented to the Government of Haryana to expedite the acquisition proceedings. However, the said proceedings were abysmally delayed which in turn delayed development of sector roads and services that are to be laid along with it i.e. master sewer lines, master storm water drains, master water lines and master electricity lines. Resultantly, it adversely affected the internal development works and construction work within the colony which was to be carried out by respondent. However, the occupancy certificate of the project was received on 16.10.2020 and the respondent offered possession of the allotted unit to the complainant vide offer of possession letter dated 31.10.2020. The complainant has failed to clear the demand of Rs. 11,281,958.07/- payable by 01.12.2020 and whereby

the respondent was constrained to issue reminder letter dated 11.01.2021 for non-payment of the dues .

- Even after issuance of reminder letter, the respondent issued termination/cancellation letter on 18.02.2021 whereby booking/allotment/agreements in respect of unit stood cancelled/terminated.

#### **E. Jurisdiction of the authority**

The respondent has raised an objection regarding jurisdiction of authority to entertain the present complaint. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

##### **E. I Territorial jurisdiction**

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

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

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.*

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

**F. Findings on the objections raised by the respondents.**

**F. I Objection regarding untimely payments done by the complainant.**

18. It is contended that the complainant has made defaults in making payments as a result thereof and so the respondent had to issue reminder letter dated 11.01.2021. The respondent has further submitted that the complainant has still not cleared the dues. The counsel for the respondent pointed towards clause 7.1 of the buyer's agreement wherein it is stated that timely payment of instalment is the essence of the transaction, and the relevant clause is reproduced below:

*"7. TIMELY PAYMENT ESSENCE OF CONTRACT.  
TERMINATION, CANCELLATION AND FORFEITURE"*

*7.1 The timely payment of each instalment of the Total Sale Consideration i.e., COP and other charges*

*as stated herein is the essence of this transaction/Agreement. In case the Purchaser(s) neglects, omits, ignores, defaults, delays or fails, for any reason whatsoever, to pay in time any of the instalments or other amounts and charges due and payable by the Purchaser(s) as per the payment schedule opted or if the Purchaser(s) in any other way fails to perform, comply or observe any of the terms and conditions on his/her part under this Agreement or commits any breach of the undertakings and covenants contained herein, the Seller/Confirming Party may at its sole discretion be entitled to terminate this Agreement forthwith and forfeit the amount of Earnest Money and Non-Refundable Amounts and other amounts of such nature..."*

19. At the outset, it is relevant to comment on the said clause of the agreement i.e., "7. **TIMELY PAYMENT ESSENCE OF CONTRACT. TERMINATION, CANCELLATION AND FORFEITURE**" wherein the payments to be made by the complainant has been subjected to all kinds of terms and conditions. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favor of the promoter and against the allottee that even a single default by the allottee in making timely payment as per the payment plan may result in termination of the said agreement and forfeiture of the earnest money. Moreover, the authority observes that despite complainant being in default in making timely payments, the respondent has not exercised discretion to terminate the buyer's agreement. The attention of authority was also drawn towards clause 7.2 of the floor buyer's agreement whereby the complainant would be liable to pay



the outstanding dues together with interest @ 18% p.a. compounded quarterly or such higher rate as may be mentioned in the notice for the period of delay in making payments. In fact, the respondent has charged delay payment interest as per clause 7.2 of the buyer's agreement and has not terminated the agreement in terms of clause 7.1 of the buyer's agreement. In other words, the respondent has already charged penal interest from the complainant on account of delay in making payments as per the payment schedule. However, after the enactment of the Act of 2016, the position has changed. Section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoters, in case of default, shall be equal to the rate of interest which the promoter would be liable to pay the allottee, in case of default. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 9.30% by the respondent which is the same as is being granted to the complainant in case of delay possession charges.

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

20. Another contention of the respondent is 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. The 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)*** decided on 06.12.2017 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 floor 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."*

21. Further, 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 as under-

*"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."*

22. 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 allottees 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 thereunder and are not unreasonable or exorbitant in nature.

**G. Findings on the relief sought by the complainant.**

**Relief sought by the complainant:** The complainant has sought following relief:

- Direct the respondent to withdraw the termination letter dated 18.02.2021 sent by it, which is oppressive and cause of harassment to the complainant.
- Direct the respondent to pay interest @24%p. a from the due date of handing over the possession of the allotted unit as promised i.e., 20.11.2016 till the possession of the fully developed unit along with terrace in accordance with the plan presented during the unit of booking.

**G.I. Termination of the allotted unit**

23. It is contended on behalf of respondent that despite issuance of reminders a number of times, the complainant failed to come forward and make payment of the amount due leading to issuance of letter of termination dated 18.02.2021. However, there is nothing on the record to show that the respondent-builder took any action against the allottee as per the provisions of 7.1 of FBA dated 20.11.2013. It is provided in that provision that in case the allottee fails to

make timely payments, then the respondent at its sole discretion may terminate the agreement forthwith and forfeit the amount of earnest money and non-refundable amounts and other amounts of such nature. But that was not done despite default in making payment as per the version of respondent, leading to issuance of a number of reminders detailed above. Admittedly, the complainant has paid more than 45% of the basic sale consideration. The respondent builder failed to take action against the complainant as per clause 7.1 of FBA and refund the remaining amount after deducting 10% of the basic sale price. The letter of termination of the unit was issued by the respondent on 18.02.2021 i.e., after coming into force the Act of 2016. So, as per the settled principles of law and regulation 11 of the Haryana Real Estate Regulatory Authority, it was mandatory for the respondent to send the remaining amount to the complainant after deduction of 10% of the basic sale price . since that procedure was not followed, so termination of the allotted unit is no sustainable in the eyes of law and is ordered to be set aside. Consequently, the respondent is directed to revoke the termination of the unit issued vide letter dated 18.02.2021 after receiving outstanding dues and the complainant shall further take possession of the allotted

unit as already offered to him by the respondent. The complainant is also directed to clear the outstanding dues at an equitable rate of interest as per section 2(za) of the Act of 2016.

### **G-II Delay Possession Charges**

24. 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."*

25. Clause 5.1 read with clause 1.4 of the floor buyer's agreement provides the time period of handing over possession and the same is reproduced below:

*"Clause 5.1- The Seller/Confirming Party proposes to offer possession of the unit to the Purchaser(s) within the Commitment period. The Seller/Confirming Party shall be additionally entitled to a Grace period of 180 days after the expiry of the said Commitment Period for making offer of possession of the said unit.*

*Clause 1.4 "FBA" "Commitment Period" shall mean, subject to Force Majeure circumstances; intervention of statutory authorities and Purchaser(s) having*

*timely complied with all its obligations, formalities or documentation, as prescribed/requested by Seller/Confirming Party, under this Agreement and not being in default under any part of this Agreement, including but not limited to the timely payment of instalments of the sale consideration as per the payment plan opted, Development Charges (DC), stamp duty and other charges, the Seller/Confirming Party shall offer the possession of the Unit to the Purchaser(s) within a period of 36 months from the date of execution of Floor Buyers Agreement."*

26. At the inception, it is relevant to comment on the pre-set possession clause of the floor buyer's agreement wherein the possession has been subjected to numerous terms and conditions and force majeure circumstances. The drafting of this clause is not only vague but so heavily loaded in favour of the promoter that even a single default by the allottee in fulfilling obligations, formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer's 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 his 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.
27. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the unit within a period of 36 months from the date of execution of floor buyer's

agreement. In the present complaint, the floor buyer's agreement was executed on 20.11.2013. So, the due date is calculated from the date of execution of floor buyer's agreement i.e. 20.11.2016. Further it was provided in the floor buyer's agreement that promoter shall be entitled to a grace period of 180 days after the expiry of the said committed period for making offer of possession of the said unit. In other words, the respondent is claiming this grace period of 180 days for making offer of possession of the said unit. There is no material evidence on record that the respondent-promoter had completed the said project within this span of 36 months and had started the process of issuing offer of possession after obtaining the occupation certificate. As a matter of fact, the promoter has not obtained the occupation certificate and offered the possession within the time limit prescribed by him in the floor buyer's agreement. As per the settled law, one cannot be allowed to take advantage of his own wrongs. Accordingly, this grace period of 180 days cannot be allowed to the promoter.

28. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the prescribed rate of interest on the amount already paid by him. 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.*

29. 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.
30. 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., 12.04.2022 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.
31. 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— 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 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;"*

32. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 9.30% by the respondents/promoters which is the same as is being granted to the complainant in case of delayed possession charges.

#### **H. Directions of the authority**

33. 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 revoke the termination of the allotted unit issued vide letter dated 18.02.2021 after receiving outstanding dues from the allottee. The complainant shall further take possession of the allotted

unit as already offered to him by the respondent after clearing the outstanding dues besides interest at an equitable rate of interest as per section 2(z) of the Act of 2016.

- II. The respondent is directed to pay interest to the complainant at the prescribed rate of 9.30% p.a. for every month of delay from the due date of possession i.e., 20.11.2016 till offer of possession of the subject unit after obtaining occupation certificate from the competent authority plus two months or handing over of possession whichever is earlier as per the provisions of section 19 (10) of the Act.
- III. The arrears of such interest accrued from 20.11.2016 till date of this order shall be paid by the promoter to the allottee within a period of 90 days from date of this order.
- IV. The rate of interest chargeable from the 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 delayed possession charges as per section 2(z) of the Act.



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V. The respondent shall not charge anything from the complainant which is not the part of the agreement. However, holding charges shall also not be charged by the promoter at any point of time even after being part of agreement as per law settled by the Hon'ble Supreme Court in civil appeal no. 3864-3889/2020 dated 14.12.2020.

34. Complaint stands disposed of.

35. File be consigned to registry.

V.1 - 3  
(Vijay Kumar Goyal)  
Member

(Dr. K.K. Khandelwal)  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 12.04.2022

**HARERA**  
**GURUGRAM**