

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

Complaint no. : 6576 of 2019
Date of filing complaint : 19.12.2019
First date of hearing : 24.01.2020
Date of decision : 12.04.2022

Surender Sawhney R/o- A-156, Sainik Farms, Opp. New Country Club, New Delhi	Complainant
Versus	
1. BPTP Limited 2. Countrywide Promoters Pvt. Ltd. R/o- M-11, Middle circle, Connaught Circus, New Delhi-110001	Respondents

CORAM:	
Dr. K.K. Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Sh. Riju Mani	Advocate for the complainant
Sh. Venket Rao	Advocate for the respondents

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 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 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	'Park Terra', Sector 37-D, Gurugram, Haryana	
2.	Nature of the project	Residential plotted colony	
3.	a) DTCP license no.	83 of 2008 dated 05.04.2008	94 of 2011 dated 24.10.2011
	b) License valid up to	04.04.2025	23.10.2019
	c) Name of the licensee	super belts pvt. ltd and 4 others	countrywide promoters pvt. ltd. and 6 others
	d) Project area	23.18 acre	19.744 acre



4.	a) RERA registered/not registered	Registered 299 of 2017 dated 13.10.2017
5.	Unit no.	703, 7 th floor, tower- T22 (Annexure R-4 on page no.60 of reply)
6.	Unit admeasuring	1691 sq.ft. (annexure R-4 on page no. 60 of reply)
7.	Date of execution of the flat buyer's agreement	Not executed
8.	Total consideration	Rs. 1,10,84,084.50/- (Annexure C-4 vide statement of account on page no. 31 of complaint)
9.	Total amount paid by the complainant	Rs. 1,05,92,400.00/- (Annexure R-17 vide statement of account on page no. 31 of complaint)
10.	Date of building plan	21.09.2012 (vide project details received from planning branch of the authority)
11.	Date of booking	21.08.2012 (As per page no. 37 of reply)
12.	Possession clause	"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

		<p>Commitment Period for making offer of possession of the said unit.</p> <p>Clause 1.6 "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 42 months from the date of sanction of the building plan or execution of Flat Buyers Agreement, whichever is later." (Emphasis supplied)</p>
13.	Due date of delivery of possession	21.03.2016 (Calculated from the date of the sanction of building plan being later)



14.	Occupation certificate	Not Obtained
15.	Offer of possession	Not Offered
16.	Grace period utilization	grace period is not allowed in the present complaint

3. Facts of the complaint

3. That the complainant had booked a unit in the project of the respondents namely, "Terra" located at Sector 37-D, Gurgaon, Haryana. That the complainant is filing this complaint against the respondents seeking immediate possession of the unit booked along with delay compensation at prescribed rate of interest fixed by this HRERA Authority. It is submitted that initially the unit booked was in the name of Ms. Parul Sawhney wife of the complainant and allotment letter was also issued in the name of Ms. Parul Sawhney. Thereafter, the complainant/Surinder Sawhney made a request to the respondents for deletion of the name of Ms. Parul Sawhney and endorse his name and thus acquired all the rights and liabilities with regard the flat booked.
4. That lured by such representations, the original allottee made an application for allotment of a flat in the project of the respondents. That at the time of booking, the respondents assured that the project would be completed on time and the possession will be delivered by its scheduled time frame.



5. It is submitted that at the time of the transfer of the mentioned flat, the respondents had not disclosed anything regarding the delay in the construction; rather, they had assured the complainant that the respondents would follow the original timeline of the construction and the construction is in full swing and the possession will be delivered by its scheduled date.
6. That no flat buyer agreement was executed between the parties but as per the standard agreement, the possession of the said unit was to be handed over to the complainant within 42 months from the date of sanction of the building plan or execution of flat buyers agreement.
7. It is submitted that the complainant has till date made a payment of **Rs. 10,592,400.00** /- . That around 98% of the total consideration has been made towards the said allotment and surprisingly till date, no intimation regarding the possession has been made by the respondents herein.
8. That regardless of the stage of construction, the complainant was consistently getting demand letters from the respondents to make the payments. That perturbed by the same, the complainant made various inquiries from the respondents regarding the stage of construction and the date of delivery of the possession of the unit. That no response was given to the complainant from the respondents resulting into increased mental harassment of the complainant.

9. It is submitted that even on the bare perusal of various clauses of the standard agreement represents that the same is unilateral and arbitrary where the respondents have an upper-hand in the entire transaction. That as per that agreement the respondents had the authority to impose an exorbitant rate of interest on the complainant to the tune of *18% on delayed payments* whereas, the respondents were only liable to pay a meagre amount in case of delayed possession to the tune of *Rs. 5 per sq. ft.* of the super built-up area of the flat.
10. That the complainant has preferred the present complaint before the authority established especially to protect the interests of the consumers in the Real Estate Sector and to provide speedy dispute redressal in such cases. The respondents have moreover, failed to convey any reason for the delay or stage of construction to the complainant giving him strong reasons to make the present complaint. Thus, the complainant now seeks the intervention of the Hon'ble Authority to grant them the immediate possession of the flat along with delay compensation at a prescribed rate of interest fixed by this HRERA Authority.
11. It is submitted that the delay in the delivery of the possession is solely due to the negligence of the respondents . It is submitted that the respondents have never informed the complainant any force majeure circumstances which have



led to the halt in the construction. It is submitted that there is enough information in the public domain which suggest that the respondents have deliberately not completed the present project and have hoodwinked the money paid by the complainant in developing other projects.

12. The complainant cannot be expected to wait endlessly for the completion of the unit/flat Hence, the complainant has preferred the present complaint for immediate possession of the flat along with delay compensation at a prescribed rate of interest.

C. Relief Sought:

13. In view of the facts and circumstances mentioned in the complaint, the complainant pray that this Hon'ble Regulatory Authority may be pleased to pass the following orders:-
- i) Direct the respondents to make the payment of delay interest for the period of delay at the prescribed rate of interest and provide the immediate possession of the unit booked by the complainant.

D. Reply by the Respondents

14. It is submitted that the respondents had diligently applied for registration of the project in question i.e., "Terra" located at Sector-37D, Gurugram including towers-T-20 to T-25 & EWS before this Hon'ble Authority and accordingly, registration certificate dated 13.10.2017 was issued by this Hon'ble Authority



15. The complainant himself is a defaulter under section 19 (6) and 19 (7) of The Real Estate (Regulation and Development) Act, 2016 and not in compliance of these sections. The complainant cannot seek any relief under the provision of The Real Estate (Regulation and Development) Act, 2016 or rules frame thereunder. That the complainant has made several defaults and delays in making timely payment of installments, as is evident from the list of dates. The defaults were made by the complainant within the promised possession timelines and he expects the delivery of unit on time without making entire sale consideration
16. That the complainant approached this Hon'ble Authority for redressal of the alleged grievances with unclean hands, i.e. by not disclosing material facts pertaining to the case at hand and also, 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 decisions 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 respondents but also against the court and in such situation, the complaint is liable to be dismissed at the threshold without any further adjudication.



- i) That the complainant falsely stated that the timely payments were made by the complainant as and when demanded by respondents. However, as detailed in the reply to list of dates, it is submitted that the original allottee as well as the complainant made several defaults and delays in making timely payments as a result thereof, respondents had to issue reminder letters for payment of the outstanding amounts
- ii) That the complainant has concealed the fact and he himself committed defaults in making timely payments of various installments within the stipulated time despite having clearly agreeing that timely payments is the essence of the agreement between the parties.
- iii) That the complainant has concealed from this Hon'ble Authority that the respondents, vide letter dated 27.11.2012, sent two copies of flat buyer's agreement ("FBA") to be executed by the original allottee. As the original allottee failed to send back the FBA, the respondents vide letter dated 19.12.2013 again requested the original allottee to send back the FBA after signing the same. However, the original allottee failed to send back the FBA after signing the same. Finally, at the time of the name addition of the complainant to the unit, the said FBA was provided to the respondents.

iv) That the complainant has further concealed from this Hon'ble Authority that the respondents being a customer centric organization vide demand letters as well as numerous emails has kept updated and informed the complainant about the milestone achieved and progress in the developmental aspects of the project. The respondents vide emails have shared photographs of the project in question. However, it is evident that the respondents have always acted bonafidely towards its customers including the complainant, and thus, have always maintained a transparency in reference to the project. In addition to updating the complainant, the respondents on numerous occasions, on each and every issue/s and/or query/s updated in respect of the unit in question and always provided steady and efficient assistance. However, notwithstanding the several efforts made by the respondents to attend to the queries of the complainant to his complete satisfaction, the complainant erroneously proceeded to file the present vexatious complaint before this Hon'ble Authority against the respondents.

From the above, it is very well established, that the complainant has approached this Hon'ble Authority with unclean hands by distorting / concealing / misrepresenting the relevant facts pertaining to the case

at hand. It is further submitted that the sole intention of the complainant is to unjustly enrich himself at the expense of the respondents by filing this frivolous complaint which is nothing but defamation of the complainant.

E. Jurisdiction of the authority

The respondents have 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

E.1 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..

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.

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 promoters 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

17. The respondents have contended that the complainant has made defaults in making payments and as a result thereof, they had to issue reminder letters dated 19.12.2012, 05.01.2017, 19.12.2017 and 09.04.2018. The respondents have further submitted that the complainant has still not cleared the dues. The counsel for the respondents stressed



upon clause 7.1 of the standard 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..."

18. 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 favour of the promoter and against the



allottee that even a single default by the allottees 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 respondents have not exercised discretion to terminate the buyer's agreement. The attention of authority was also drawn towards clause 7.2 of the flat buyer's agreement whereby it is provided that 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 respondents have 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 respondents have already charged penalized 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 promoter, in case of default, shall be equal to the rate of interest which the promoter would be liable to pay the allottees, 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 respondents 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.

19. Another contention of the respondents 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 flat buyer's agreement said to be 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)*** 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."

20. 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."

21. 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:

- (i) Direct the respondents to make the payment of delay interest for the period of delay at the prescribed rate of interest and provide the immediate possession of the unit booked by the complainant.

22. 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."

23. Clause 5.1 read with clause 1.6 of the flat 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 1.6 "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 42 months from the date of sanction of building plan or execution of Flat Buyers Agreement."

24. At the inception, it is relevant to comment on the pre-set possession clause of the flat buyer's agreement wherein the possession has been subjected to innumerable terms and conditions, force majeure circumstances and innumerable terms and conditions. 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 allottees 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 allottees 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 allottees are left with no option but to sign on the dotted lines.

25. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment within a period of 42 months from the date of sanction of the building plan or execution of flat buyer's agreement, whichever is later. In the present complaint, the flat buyer's agreement was never executed between the parties and the date of sanction of building plan is 21.09.2012. So, the due date is calculated from the sanctioning of building plan which comes out to be 21.03.2016. Further, it was provided 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 respondents are 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 respondents-promoters had completed the said project within this span of 42 months and had started the process of issuing offer of possession after obtaining the occupation

certificate. As a matter of fact, the promoters have not offered the possession within the time limit prescribed in the agreement nor has the promoter offered the possession till date. 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 at this stage.

26. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the prescribed rate of interest on 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.

27. 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.
28. 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%.
29. 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;"

30. 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.

31. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondents are in contravention of the section 11(4)(a) of the Act by not handing over possession of the subject unit by the due date as per the terms and conditions of allotment mentioned in application dated 13.08.2012. A perusal of that document issued by the respondent builders to the original allottee under clause z titled as Possession, Delay Compensation and Holding Charges shows that the possession of the allotted unit was to be offered to the allottee within a period of 42 months from the date of sanction of the building plans or execution of flat buyer's agreement, whichever is later. There is no document in the shape of agreement of sale with regard to the subject



unit entered into between the parties. A copy of buyer's agreement dated 30.10.2012 having the signature of P.S Sawhney is available on the file at page 127 of reply but the same is not having signature of anyone on behalf of respondents. So, in such a situation the due date for completion of the project and offer of the possession of the allotted unit is to be taken from sanction of building plan of the project and which is 21.09.2012. Thus, the possession of the subject apartment was to be delivered within stipulated time i.e., by 21.03.2016. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession is 21.03.2016. The respondents have failed to handover possession of the subject apartment till date of this order. Accordingly, it is the failure of the respondents to fulfil obligations and responsibilities as per the terms and conditions of provisional allotment and standard flat buyer's agreement to hand over the possession within the stipulated period.

32. 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. These 2 months 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., 21.03.2016 till offer of possession of the subject flat 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.

33. 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 respondents is established. As such, the allottee shall be paid, by the promoters, interest for every month of delay from due date of possession i.e., 21.03.2016 till offer of possession of the subject flat 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

H. Directions of the authority

34. 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 respondents are 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., 21.03.2016 till offer of possession of the 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.
- ii. The arrears of such interest accrued from 21.03.2016 till date of this order shall be paid by the promoters to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be payable by the promoter to the allottee before 10th of the subsequent month as per rule 16(2) of the rules.
- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The rate of interest chargeable from the allottee, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondents/promoters which is the same rate of interest which the promoters shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- v. The respondents shall not charge anything from the complainant which is not the part of the standard agreement of sale of the project of the allotted unit.

However, holding charges shall also not be charged by the promoters at any point of time even after being part of that document as per law settled by the Hon'ble Supreme Court in civil appeal no. 3864-3889/2020 dated 14.12.2020.

35. Complaint stands disposed of.

36. File be consigned to registry.


(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 12.04.2022

HARERA
GURUGRAM