BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.:	**1135 of 2019**
First date of hearing:	**05.11.2019**
Date of decision:	**08.04.2022**

Jasbir Kaur Chhabra
R/o B-901, Suncity Heights Suncity, Sector-54,
Gurugram **Complainant**

Versus

M/s Anjali Promoters & Developers Pvt. Ltd.
Office address: M-11, Middle Circle, Connaught Place,
New Delhi **Respondent**

CORAM:
Dr. K. K. Khandelwal **Chairman**
Shri Vijay Kumar Goyal **Member**

APPEARANCE:
Sh. Sandeep Kumar Yadav (Advocate) Complainant
Sh. Venkat Rao (Advocate) Respondent

ORDER

1. The present complaint dated 05.04.2019 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 as provided 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	"CENTRA ONE", Sector-61, Gurugram
2.	Project area	3.675 acres
3.	Nature of the project	Commercial Complex
4.	DTCP license no. and validity status	277 of 2007 dated 17.12.2007 valid up to 16.12.2019
5.	Name of licensee	Saiexpo Overseas Pvt. Ltd.
6.	RERA registration details	Not Registered
7.	Unit no.	09-906, 9th floor [pg. 51 of complaint]
	Note: unit no. changed by the promoter to 08-806 admeasuring 1048 sq. ft. vide letter dated 06.05.2014	
8.	Unit measuring	1000 sq. ft. [pg. 51 of complaint]
9.	Date of allotment letter	21.12.2007 [pg. 34 of complaint]
10.	Date of execution of flat buyer agreement	20.12.2010 [page 50 of complaint]
11.	Possession clause	***Clause 2 Possession*** ***2.1*** *The possession of the said premises shall be endeavoured* ***to be delivered to the intending purchaser by 31st December 2011****, however, subject to clause 9 herein and strict adherence to the terms and conditions of this agreement by the intending purchaser. The intending seller shall give notice of possession to the*

			intending purchaser with regard to the date of handing over of possession, and in the event the intending purchaser fails to accept and take the possession of the said premises on such date specified in the notice to the intending purchaser shall be deemed to be custodian of the said premises from the date indicated in the notice of possession and the said premises shall remain at the risk and cost of the intending purchaser. ***2.2** The intending purchaser shall only be entitled to the possession of the said premises after making full payment of the consideration and other charges due and payable. Under no circumstances shall the possession of the said premises be given to the intending purchaser unless all the payments in full, along with interest due, if any, have been made by the intending purchaser to the intending seller. However, subject to full payment of consideration along with interest by the intending purchaser, if the intending seller fails to deliver the possession of the said premises to the **Intending Purchaser by June 2012**, however, subject to clause 9 herein and adherence to the terms and condition of this agreement by the intending purchaser, then the intending seller shall be liable to pay penalty to the intending purchaser @ Rs.15/- per sq. ft. per month up till the date of handing over of said premise by giving appropriate notice to the intending purchaser in this regard. If the intending seller has applied to DTCP/any other competent authority for issuance of occupation and/or completion certificate by 30 April 2012 and the delay, if any, in making offer of possession by June 2013 is attributable to any delay on part of DTCP/ competent authority, then the intending seller shall not be required to pay any penalty under this clause.* *(Emphasis supplied)* [pg. 53 and 54 of complaint]

12.	Due date of possession	30.06.2012 **[Note: Grace period included]**
13.	Total sale consideration as per statement of account annexed with offer of possession dated 26.11.2018	₹64,81,601/- [pg. 85(b) of complaint]
14.	Amount paid by the complainant as per statement of account annexed with offer of possession dated 26.11.2018	₹52,62,078/- [pg. 85(b) of complaint]
15.	Delay in handing over possession till the date of offer of possession plus two months i.e., 26.01.2019	6 years 6 months 27 days
16.	Occupation certificate	09.10.2018
17.	Offer of possession	26.11.2018 [pg. 84 of complaint]

B. Facts of the complaint

3. The complainant has pleaded the complaint on the following facts:

a. That the complainant no.1 is aged 76 years and complainant no.2 is aged about 75 years and senior citizen and in the year 2007 was looking for suitable shop/office space in commercial complex for developing of his business in rising city Gurugram. That the complainant on a visit to Gurugram decided to take a tour to new developing Gurugram area.

b. That the respondent demanded payment in lieu of allotment of commercial space/unit/office no.-09-906 measuring 1000 sq. ft. (92.90 sq. mtrs.) in "Centra One" Sector-61, Gurugram on dated

16.06.2008. Respondent issued demand letter cum allotment letter and demanded a payment of Rs. 16,27,250/ dated 16.06.2008. Complainant paid the amount by cheque no.-388495 dated 18.07.2008 of Rs. 8,00,000/- and cheque no. 413760 dated 18.07.2008 of Rs. 8,27,250/- and respondent issued payment receipt no. 1400000672 dated 29.07.2008 and receipt no.1400000673 dated 29.07.2008.

c. Respondent demanded payment vide demand letter dated 21.12.2007 and demand payment of Rs. 5,77.500/-. Complainant paid the amount of Rs. 5,77,500/- by cheque no.-413747 dated 30.12.2007 of Rs. 2,88,750/- and cheque no.388484 dated 30.12.2007 of Rs. 2,88,750/- and respondent issued payment receipt no.1400000543 & 1400000544 dated 30.12.2007.

d. That the space buyer's agreement executed between the complainant and respondent on dated 20.12.2010 and in this agreement clause no- 2.1 mention "as the possession of the said premises shall be endeavoured to be deliver to the intending purchaser by 31" December 2011" but the buyers agreement executed on dated 20.12.2010 and possession of the booked space not deliver by the respondent till date and the respondent agreed a sum of Rs.30/- per sq. ft. per month on the delayed possession meaning thereby the complainant is entitled for compensation from 31 December 2011 to till the date of possession. However the respondent not paid any single penny to the complainant toward compensation as committed by them and the same is pending from 31" December 2011 to till date and now the respondent linger on the matter and charged higher interest on the due payment and also adamant to recover the handling charges etc. and themself not

deliver the possession of the booked property as committed 31" December 2011 and thereafter a period of seven years has been passed but the project not completed by the respondent till date.

e. That the complainant received letter dated 06.05.2014 for relocation of the allotted unit i.e., 09-906 and assigned unit no-08-806 in the said project and after 06.05.2014 the complainant is the owner of the new unit no-08-806 in the said project.

f. That the respondent failed to complete the construction of the project within time as prescribed in the space buyer agreement or as committed by the respondent and thereafter a period of 8 years have been passed but till today the project of the respondent not completed and no offer of possession given by the respondent, the said act and conduct of the respondent is not bonafide and the respondent cheated with the complainant and grab the handsome hard earned money of the complainant.

C. Relief sought by the complainant:

4. The complainant has sought following reliefs:

a. Direct the respondent to deliver the possession of the booked unit/ shop/office bearing no. 08-806, Centra One Sector-61, Gurugram.

b. Direct the respondent to pay compensation of Rs.30/- per sq. ft. per month for delay of delivery of possession from 31.12.2011 to till the actual date of delivery of possession as committed and acknowledge by the respondent vide buyer's agreement dated 20.12.2010.

c. Direct the respondent not to charge any holding charges after 05.04.2013 on the subject unit of the complainant during pendency, if the respondent charged then the same may kindly be set aside.

d. Direct the respondent to pay compensation of Rs.10,00,000/- for mental pain and suffering by the complainant due to act and conduct of the respondent.

e. Direct the respondent to pay the legal expenses of Rs.1,00,000/- incurred by the complainant for inquest of justice against the respondent.

5. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The respondent has contested the complaint on the following grounds:

a. That the complainant has also concealed from this Hon'ble Authority that the complainant made several defaults in timely payment of instalments. It is submitted that as per the agreed payment plan, respondent issued demand letter dated on 11.10.2008 on achieving the milestone "within 4 months of booking for an amount of Rs. 3,33,750/- payable within 15 days. It is further submitted that vide reminder letters dated 14.10.2008 and 06.12.2008 and 15.05.2009, the respondent requested the complainants for payment of Rs. 5,00,625/- on immediate basis. However, the complainant failed to pay the same within the stipulated time.

b. 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 in light of the law laid down by the Hon'ble Apex Court, the present complaint warrants dismissal without any further adjudication.

c. That the complainant has alleged that the respondent have delayed the project and in terms of the SBA whereby the respondent had agreed to handover possession by 31.12.2011, there has been a huge delay. However, it is clarified that the possession timelines as per clause 2.1 of the SBA dated 20.12 2010 were subject to clause 9 and strict adherence to the terms and conditions of the agreement.

d. In this context, it is further submitted that the respondent with a view to create a world class commercial space, engaged renowned architects Cervera and Pioz of Spain for the said project. The respondent also engaged renowned contactor M/s Ahluwalia Contracts (P) Ltd. for the said project. The respondent launched the project with a vision of creating an iconic building and hence, engaged the best professionals in the field for the same who are well known for their timely commitment as well.

e. The respondent had conceived that the project would be deliverable by 31.12.2011 based on the assumed cash flows from the allottees of the project. However, it was not in the contemplation of the respondent that the allottees including the complainant herein would hugely default in making payments and hence, cause cash flow crunch in the project. The complainant was also aware that as per the SBA, timely payment of the instalments was the essence of the contract, however demand raise vide offer of possession is outstanding till date.

f. It is further submitted that the project 'Centra One' is a Greenfield project, located at Sector 61, Gurgaon. All customers including the complainant was well informed and conscious of the fact that timely payment of all the demands was of essence to the contract. Majority of customers opted for construction linked payment plan after

clearly understanding that and agreed upon to tender the payment as per the construction milestones. It is pertinent to mention here that, given the choice of payment plan and terms of the agreement, all the customers including the complainant specifically understood that a default in tendering timely payment by significant number of customers, would delay the construction activity. It is a matter of fact and record that the space/unit holders as a group have defaulted in making timely payment which has caused major set-back to the development work.

g. It is further submitted that the project 'Centra One' is a Greenfield project, located at Sector 61, Gurgaon. All customers including the complainant was well informed and conscious of the fact that timely payment of all the demands was of essence to the contract. Majority of customers opted for construction linked payment plan after clearly understanding that and agreed upon to tender the payment as per the construction milestones. It is pertinent to mention here that, given the choice of payment plan and terms of the agreement, all the customers including the complainant specifically understood that a default in tendering timely payment by significant number of customers, would delay the construction activity. It is a matter of fact and record that the space/unit holders as a group have defaulted in making timely payment which has caused major set-back to the development work.

7. Copies of all the documents have been filed and placed on record. The authenticity is not in dispute. Hence, the complaint can be decided on the basis of theses undisputed documents.

E. Jurisdiction of the authority

8. 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

9. 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

10. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the objections raised by the respondent

F.I. Objection raised by the respondent regarding force majeure condition

11. The respondent has submitted the following contentions to be taken into note by the authority for granting grace period on account of force majeure:

a. That the complainant is the allottee of a shop bearing no. 08-806 in the commercial project of the respondent company, Centra One, situated in Gurugram, Haryana. The complainant in the present complaint is inter alia seeking interest on account of delay in handing over possession. The project, Centra One, is a business

complex situated in Gurugram's sector 61, spread over an area of 3.675 acres. The said commercial complex has been developed by M/s Anjali Promoters Pvt. Ltd. in collaboration with M/s Saiexpo Overseas Pvt. Ltd. and M/s Countrywide Promoters Pvt. Ltd (collectively referred to as 'Company'). Subsequently, Department of Town and Country Planning, Haryana ("DTCP") has issued a license bearing no. 277 of 2007 to M/s Countrywide Promoters Pvt. Ltd. for developing a commercial complex on the said land.

b. That the timeline for possession as per the space buyer's agreement, was proposed to be by 31st December 2011 with a further grace period of 6 months. Thus, possession of the unit in question was proposed to be handed over by 30th June 2012. It is further submitted that the said timeline for possession was subject to force majeure and timely payment of installments by the complainant.

c. That it is pertinent to point out that both the parties as per the application form duly agreed that the respondent shall not be held responsible or liable for any failure or delay in performing any of its obligations or undertakings as provided for in the agreement, if such performance is prevented, delayed or hindered by delay on part of or intervention of statutory authorities like DTCP or the local authorities or any other cause not within the reasonable control of the respondent. In such cases, the period in question shall automatically stand extended for the period of disruption caused by such operation, occurrence or continuation of force majeure circumstance(s).

d. The possession timelines for the said project were subject to force majeure circumstances and timely payment of called installments

by the allottees. "Force Majeure", a French term equivalent to "Vis majeure', in Latin, means "superior force". A force majeure clause is defined under the Black's Law Dictionary as 'A contractual provision allocating the risk if performance becomes impossible or impracticable, especially as a result of an event or effect that the parties could not have anticipated or controlled.

e. That delay, if any, in handing over of possession of the units of the said project is due to reasons beyond the control of the company. In this regard it is pertinent to point out that on 29.05.2008, the company applied for grant of approval of building plans from the DTCP.

f. That on 21.07.2008, in the meeting of the building plan approval committee, the committee members concurred with the report of Superintending Engineer (HQ), HUDA and STP, Gurgaon who had reported that the building plans were in order. The said members also took note of the report of the STP (E&V)'s observation on the building plans. The members stated that the said observations were "minor in nature" and hence approved the building plans subject to corrections.

g. That DTCP vide letter dated 30.07.2008 approved the building plans of the company subject to certain rectification of deficiencies. There were in total 3 deficiencies which were asked to be corrected by the company, namely, NOC from AAI to be submitted, covered area not correct and lastly fire safety measures were not provided.

h. That in compliance with the directions issued by DTCP vide office memo no. ZP-345/6351 dated 30.07.2008, the company submitted revised building plans on 27.08.2008 vide letter dated 25.08.2008. It is pertinent to point out that since there were no further

objections conveyed to the company for the release of the building plans it was assumed that the building plans would be released automatically. Since no communication was received by the company for almost 5 months, the company on its own volition enquired the reasons for delay in release of the building plans by DTCP. To its astonishment, it came to the company's knowledge that the same was being withheld by DTCP on account of EDC dues. However, no formal communication qua the same was received by the company. Nonetheless, the company on 15.01.2009 and 16.01.2009 requested DTCP to release its building plans while submitting an undertaking to clear the EDC dues within a specified time period. It is pertinent to point out that there were no provisions in the Haryana Development and Regulation of Urban Areas Act, 1975 or the Haryana Development and Regulation of Urban Areas Rules, 1976 or any law prevalent at that time which permitted DTCP to withhold release of a building plan on account of dues towards EDC.

i. That DTCP on 27.02.2009 after a lapse of almost six months from the date of submission of the revised building plans, conveyed the company to clear EDC/IDC dues while clearly overlooking the undertakings given by the company.

j. That it is stated that the company, on 03.08.2010 deposited full EDC/IDC with the department. It is pertinent to mention herein that in terms of the license granted and the conditional approval of the building plans, the company had started developing the project. That to its surprise, the company received a notice by DTCP dated 19.03.2013 directing the company to deposit composition charges of Rs.7,37,15,792/- on account of alleged unauthorized

construction of over an area of 34238.64 sq. mtr. The said demand was questioned by the company officials in various meetings with DTCP officials. Various representations were made by the company on 04.09.2013, 22.10.2013, 11.11.2013, 02.12.2013, 14.03.2014, 15.04.2014, 07.07.2014, 13.11.2014, 09.02.2015, 07.04.2015. The company in its representation dated 05.06.2015 pointed out all the illegalities in the demand of composition charges of Rs.7.37 crores.

k. That instead of clarifying the issue, DTCP further issued a demand letter on 31.12.2015 directing the company to deposit Rs. 7.37 crores as composition charges, Rs. 54,72,889 as labour cess and Rs. 55,282 on account of administrative charges. That the company succumbed to the undue pressure and on 13.01.2016 deposited Rs. 7.37 crores with DTCP as composition charges and further requested for release of its building plans. The company on 13.01.2016 further deposited an amount of Rs.41,68,171/- towards the balance labour cess.

l. That even after clearing the dues of EDC/IDC and payment of composition charges, building plan was not released by DTCP, instead, the company was asked to apply for sanction of building plan again as per the new format. The same was duly done by the company on 16.06.2017. Further, the company, on completion of construction applied for grant of occupation certificate on 29.07.2017. That the company on the very next day i.e., 25.10.2017 replied to the DTCP justifying the concern while submitting the building plan again for approval. In the meantime, the company also paid composition charges to the tune of Rs.43,63,127/- for regularization of construction of the project.

m. That, finally on 12.01.2018 the building plan was approved for the Centra One, post approval of the same, the company on 21.05.2018, in continuation to its application dated 31.07.2017, again requested DTCP for grant of occupation certificate for its project. It is stated that occupation certificate was duly granted by DTCP on 09.10.2018. Thus, even after having paid the entire EDC dues in the year 2010 the building plans for the project in question was not released by DTCP. It is reiterated that release/approval of building plan at that point in time was not linked with payment of EDC.

n. It is pertinent to mention that in 2013 the company received a surprise demand of Rs.7.37 crores for composition towards unauthorized construction without considering the fact that construction at the project site was carried out by the company on the basis of approval of building plan in the meeting of the building plan approval committee on 21.07.2008. Even after payment of the composition charges, the building plan was not released by DTCP instead, the company was asked to apply for sanction of building plan again as per the new format. The same was duly done by the company on 16.06.2017. However, it is after almost a lapse of 10 years from the date of first application that the building plan was finally approved on 12.01.2018. Thus, the circumstances as mentioned hereinabove falls squarely into the definition and applicability of the concept of 'force majeure'.

o. That in addition to the above, the project also got delayed due to a complete ban on extraction of ground water for construction by the central ground water board. On 13.08.2011, the central ground water board declared the entire Gurgaon district as 'notified area' which in turn led to restriction on abstraction of ground water only

for drinking / domestic use. Hence, the developer/company had to use only treated water for construction and/or to buy water for construction.

p. That the ***Hon'ble Supreme Court recently in Puri Constructions Pvt. Ltd. Vs. Dr. Viresh Arora (Civil Appeal No. 3072 of 2020)*** on 3rd September 2020 while allowing the appeal preferred by the developer company against an order passed by the Ld. NCDRC directed the Ld. Commission to decide afresh on the matter in issue while taking into consideration the force majeure circumstances pleaded by the developer.

q. The Hon'ble Supreme Court conceded with the submissions made by the developer company that though the NCDRC noted that the developer pleaded force majeure on the ground that

   i. The construction of the flats could not proceed due to a stay granted by the National Green Tribunal on construction during the winter months; and

   ii. Demonetization affected the real estate industry resulting in delays in completion, the submission has not been dealt with

r. The second submission which was urged on behalf of the developer was that in similar other cases, the NCDRC has condoned the delay of the nature involved in the present case in handing over possession, having regard to the quantum of delay involved.

s. Thus, delay, if any, in handing over possession to allottees of Centra One has been due to reasons beyond control of the company and the same need to be taken into consideration by RERA in so awarding delay possession compensation while also giving the company an extension of 10 years so as to complete the project by 2018-19.

12. As far as this issue is concerned the authority the authority has already settled this issue in complaint bearing no. ***1567 of 2019*** titled as ***Shruti Chopra & anr. V/s Anjali Promoters & Developers Pvt. Ltd.*** wherein the authority is of the considered view that if there is lapse on the part of competent authority in granting the required sanctions within reasonable time and that the respondent was not at fault in fulfilling the conditions of obtaining required approvals then the respondent should approach the competent authority for getting this time period i.e., 31.12.2011 till 19.11.2018 be declared as "zero time period" for computing delay in completing the project. However, for the time being, the authority is not considering this time period as zero period and the respondent is liable for the delay in handing over possession as per provisions of the Act.

G. Findings on the relief sought by the complainant

G.I. Direct the respondent to pay compensation of Rs.30/- per sq. ft. per month for delay of delivery of possession from 31.12.2011 to till the actual date of delivery of possession as committed and acknowledge by the respondent vide buyer's agreement dated 20.12.2010.

13. In the present complaint, the complainant intends to continue with the project and is seeking delayed possession charges interest on the amount paid. Clause 2.1 & 2.2 of the buyer's agreement (in short, agreement) provides for handing over of possession and is reproduced below: -

> *"**2.1** The possession of the said Premises shall be endeavored **to be delivered to the intending Purchaser by 31st December 2011**, however, subject to clause 9 herein and strict adherence to the terms and conditions of this agreement by the Intending Purchaser. The intending Seller shall give Notice of possession to the Intending Purchaser with regard to the date of handing over of possession, and*

in the event the intending purchaser fails to accept and take the possession of the said Premises on such Date specified in the notice to the intending Purchaser shall be deemed to be custodian of the said Premises from the date indicated in the notice of possession and the said Premises shall remain at the risk and cost of the intending Purchaser

***2.2** The intending Purchaser shall only be entitled to the possession of the said Premises after making full payment of the Consideration and other charges due and payable. Under no circumstances shall the possession of the said premises be given to the intending Purchaser unless all the payments in full, along with interest due, if any, have been made by the intending purchaser to the intending seller. However, subject to full payment of consideration along with interest by the intending purchaser, if the Intending Seller fails to deliver the possession of the said Premises to the Intending Purchaser by **June 2012,** however, subject to clause 9 herein and adherence to the terms and condition of this agreement by the intending Purchaser, then the Intending Seller shall be liable to pay penalty to the intending Purchaser @ Rs.15/- per sq. ft. per month up till the date of handing over of said Premise by giving appropriate notice to the Intending Purchaser in this regard. If the intending seller has applied to DTCP/any other competent authority for issuance of occupation and/or completion certificate by 30 April 2012 and the delay, if any, in making offer of possession by June 2013 is attributable to any delay on part of DTCP/ competent authority, then the Intending Seller shall not be required to pay any penalty under this clause ....."*

14. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favor of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the flat buyer 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.

15. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment by 30.06.2012. Since in the present matter the allotment letter incorporates unqualified reason for grace period/extended period in the possession clause. Accordingly, the authority allows grace period of 6 months to the promoter being unqualified at this stage.

16. **Admissibility of delay possession charges at prescribed rate of interest:** Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

> ***Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***
> *(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.:*
> *Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public*

17. 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.

18. 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., **08.04.2022** is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.

19. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

> *"(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;"*

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

21. 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 2.1 of the buyer's agreement executed

between the parties on 20.12.2010, the possession of the subject apartment was to be delivered by 30.06.2012. As far as grace period is concerned, the same is allowed being unqualified and as far as force majeure note is concerned the authority has not considered that period as zero period accordingly the due date of possession remains the same. The respondent has offered the possession of the subject apartment on 26.11.2018. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.

22. 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 was granted by the competent authority on 09.10.2018. The respondent offered the possession of the unit in question to the complainant only on 26.11.2018, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. This 2 month of reasonable time is being given to the complainant keeping in mind that even after intimation of possession, practically they have to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit, but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 30.06.2012 till the expiry of 2 months from the date of offer of possession (26.11.2018) which comes out to be 26.01.2019.

23. 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 allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 30.06.2012 till the date of offer of the possession of the unit plus two months i.e., till 26.01.2019, at prescribed rate i.e., 9.30 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules

G.II. Direct the respondent to deliver the possession of the booked unit/ shop/office bearing no. 08-806, Centra One Sector-61, Gurugram.

24. The respondent has already offered the possession of the subject unit on 26.11.2018 after the grant of OC. Therefore, the complainant is directed to take the possession of the subject unit after clearing the instalments due if, any within 15 days from the date of this order.

G.III. Direct the respondent not to charge any holding charges after 05.04.2013 on the subject unit of the complainant during pendency, if the respondent charged then the same may kindly be set aside.

25. The authority has decided this in the complaint bearing no. ***4031 of 2019*** titled as ***Varun Gupta V/s Emaar MGF Land Ltd.*** wherein the authority has held that the respondent is not entitled to claim holding charges from the complainant/allottee at any point of time even after being part of the buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020. Therefore, in light of the above, the respondent shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed.

G.IV. Direct the respondent to pay compensation of Rs.10,00,000/- for mental pain and suffering by the complainant due to act and conduct of the respondent.

G.V. Direct the respondent to pay the legal expenses of Rs.1,00,000/- incurred by the complainant for inquest of justice against the respondent.

26. The complainant in the above reliefs is claiming compensation in the above-mentioned reliefs. The authority is of the view that it is important to understand that the Act has clearly provided interest and compensation as separate entitlement/rights which the allottee can claim. For claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainant may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

H. Directions of the authority

27. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoters as per the functions entrusted to the authority under section 34(f):

i. The respondent is directed to pay interest at the prescribed rate of 9.30% p.a. for every month of delay from the due date of possession i.e., 30.06.2012 till the date of offer of the possession plus two months i.e., 26.01.2019.

ii. The arrears of such interest accrued from 30.06.2012 till 26.01.2019 shall be paid by the promoter to the allottee within a period of 90 days from date of this order.

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

28. Complaint stands disposed of.

29. File be consigned to registry.

(Vijay Kumar Goyal)
Member

(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 08.04.2022