

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

Complaint no.	:	49 of 2021
Date of filing complaint:		28.01.2021
First date of hearing:		13.04.2021
Date of decision	:	31.05.2022

1. Mrs. Priya Saxena W/o Mr. Vinay Saxena 2. Mr. Vinay Saxena S/o Mr. N.C Saxena Both R/o: B-109, Pocket 6, Kendriya Vihar-II, Sector 82, Noida-203001, Uttar Pradesh	Complainants
Versus	
M/s Magic Eye Developers Private Limited R/o: 8/23, 3rd Floor, Satbharva School Marg, Wea Karol Bagh, New Delhi-110005	Respondent

CORAM:	
Dr. KK Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Sh. Prachi Darji (Advocate)	Complainants
Ms. Neelam Gupta (Advocate)	Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 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 the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S.No.	Heads	Information
1.	Project name and location	"The Plaza at 106", Sec 106, Gurgaon
2.	Project area	3.725 acres
3.	Nature of the project	Commercial colony
4.	DTCP License	65 of 2012 dated 21.06.2012 and valid up to 20.06.2020
5.	Name of the licensee	Magic Eye Developers
6.	RERA Registered/ not registered	Registered 72 of 2017 dated 21.08.2017
	RERA Registration valid up to	31.12.2021
7.	Unit no.	202, 2nd floor, Tower B2 [Annexure B at page 11 of the complaint]
8.	Unit measuring (carpet area)	700 sq. ft. [Annexure B at page 11 of the complaint]
9.	Date of provisional allotment	17.11.2012 [Annexure A at page no 8 of the complaint]
10.	Date of execution of builder buyer agreement	09.04.2013 [Annexure B at page 10 of the complaint]
		29.06.2015 [Annexure D at page 44 of the complaint]



		M/s Spire Developers Pvt. Ltd. amalgamated with M/s Magic Eye developers Pvt. Ltd. as per orders dated 21.07.2014 of Hon'ble High Court of Delhi and the respondent made the new agreement dated 29.06.2015
11.	Possession clause	9.1 The developer based on its present plans and estimates and subject to all just exceptions/force majeure/statutory prohibitions/court order etc. contemplates to complete the construction of the said building/said unit within a period of three years from the date of execution of this agreement with two grace periods of six months each unless there is a delay for reasons mentioned in clauses 10.1,10.2 and clause 37 or due to failure of allottee to pay in time the price of the said unit alongwith other charges and dues in accordance with the schedule of payments given in annexure C or as per the demands raised by the developer from time to time or any failure on the part of the allottees to abide by all or any of the terms or conditions of this agreement. (emphasis supplied)
12.	Due date of possession	29.06.2018 Calculated from the date of agreement i.e. 29.06.2015 Grace period is disallowed
13.	Total sale consideration	Rs.44,60,624/- [As per applicant ledger dated 16.02.2021 at page no.37 of the reply]
14.	Total amount paid by the complainants	Rs.29,82,545/- [As per applicant ledger dated

		16.02.2021 at page no.37 of the reply]
15.	Payment plan	Construction linked payment plan [Page 65 of the complaint]
16.	Occupation Certificate	28.11.2019 [Annexure R1 at page 18 of the reply]
17.	Offer of possession	30.11.2019 [Annexure R2 at page 20 of the reply]

B. Facts of the complaint:

3. That vide provisional allotment letter dated 17.11.2012, the complainants were allotted the commercial unit no. 0202, Tower B2 admeasuring 700 sq. ft. in the above detailed project for the total consideration amount of Rs. 41,91,000/- A builder-buyer agreement was executed between the parties on 09.04.2013, and the possession of the said unit was to be handed over in 03 years i.e., by 08.04.2016. It is the case of complainants that they paid a sum of Rs. 28,82,545/- (inclusive of a loan amounting to Rs. 13,70,363/- taken from ICICI Bank) from time to time on the basis of demands raised by the respondent and for which the payments receipts were issued.
4. However, the respondent failed to hand over the possession of the said unit within the stipulated time. Despite paying more than 70% of the total sale consideration. Thus, the completion of the project has been delayed by 03 years and 9 months without any reasonable justification.
5. That M/s Spire Developers Pvt Ltd. with whom the complainants have entered into buyer's agreement on 09.04.2013 amalgamated with M/s Magic Eye Developers Pvt Ltd. i.e. the respondent as per

the order dated 21.07.2014 of Hon'ble High Court of Delhi and which led to execution of the new agreement dated 29.06.2015 between the parties with regard to the subject unit.

6. That the total sale consideration as per the agreement dated 09.04.2013 was Rs. 41,91,000/- but as per the ledger account of respondent, it has unnecessary increased the amount and made the total sale consideration of Rs. 44,44,104/-
7. That the complainants wrote email dated 24.09.2019 to the respondent seeking an explanation for the delay in completion of the project and alteration of the total amount payable. However, there was no satisfactory response from the side of the respondent.

C. Relief sought by the complainants:

8. The complainants have sought following relief(s):
 - i. Direct the respondent to refund the amount of Rs. 29,82,545/- along with 18% interest from the date of each payment made.
 - ii. Direct the respondent to pay an amount of Rs. 10,00,000/- as compensation on account of physical harassment and mental agony caused to the complainants and the cost of litigation.

D. Reply by respondent:

The respondent builder by way of written reply made following submissions:

9. That it is submitted that the builder buyer agreement dated 09.04.2013 was never executed between the parties in respect to the unit/ space bearing no. 0202. Rather, it is only on 29.06.2015 that the builder buyer agreement was executed between the

parties. Be that as it may, in any event the agreement dated 29.06.2015 would supersede and continue to prevail and would be binding on the complainants by virtue of clause 30 'Entire Agreement' of the document dated 29.06.2015,

10. It is submitted that Spire Developers Pvt. Ltd., got amalgamated with M/s Magic Eye Developers vide orders dated 21.07.2014 of the Hon'ble High Court of Delhi and the information of the fact was sent to all the allottees including the complainants vide letter dated 04.11.2014.
11. It is submitted that buyer's agreement in respect of the aforesaid unit/ space was executed on 29.06.2015 and vide clause 9.1 of the aforesaid agreement, respondent contemplated to complete the project within 3 years from the date of execution of the said agreement plus grace period of 12 months after the expiry thereof, making the agreed date of offer of possession as 29.06.2019. It is submitted that the aforesaid date of offer of possession was subject to clauses 10.1, 10.2, 37 and the allottees making timely payments of the instalments due as per the payment plan opted by them.
12. It is further submitted that respondent has complied with all the obligations under the aforesaid agreement. The respondent has even credited the amount of penalty as per the agreement i.e., @ Rs.5 per sq. ft. per month amounting to Rs. 17,490/- in the form of rebate and adjusted the same from possession dues payable by complainants against the allotted unit.
13. It is reiterated that the said project is registered under HRERA and in terms thereof, respondent is entitled to complete the said

project on or before 31.12.2021. After obtaining the occupation certificate on 28.11.2019 from the competent authority, the respondent has already offered possession of unit to its respective allottees including the complainants on 30.11.2019.

14. It is pertinent to mention that complainants stopped making payment of the instalments due as per the construction linked payment plan w.e.f. May 2015 i.e., much prior to the agreed date of offer of possession under the pre-RERA agreement. After many reminders, the complainants vide letter dated 02.05.2017 informed the respondent of their inability to make payment of instalments due to certain unavoidable circumstances and requested to accept the payments without interest. The respondent as a goodwill gesture waived off the interest amounting to Rs.1,51,757/- accrued on due instalments. It was only on 04.05.2017 that the complainants paid the then balance dues in respect of the allotment of unit.
15. It is further pertinent to submit that complainants again defaulted in making payments of due instalment despite the receipt of the various demand letters and reminders dated 05.04.2018, 20.08.2018, 24.01.2019, 29.03.2019, 13.05.2019, 22.05.2019, 04.07.2019, 10.09.2019, 12.03.2020, 28.04.2020, 17.08.2020 and 05.11.2020 respectively. The last payment was made by complainants only on 04.05.2017 and therefore, they are themselves in material breach of the timely payment clause of the agreement.
16. That there is no delay in offer of possession by respondent viz-a-viz complainants. It is submitted that, the date of offer of

possession i.e., 30.11.2019 after taking into account the grace period of 12 months, as stipulated in clause 9.1 of the agreement, subject to clauses 10.1, 10.2, 37 and allottees making timely payment of the instalments as per the payment plan opted. As the complainants, themselves are at default in making timely payments, they cannot seek timely completion of construction and rather, the respondent is entitled to extension of date of offer of possession for the corresponding period of delay in making payment by complainants.

17. That the complainants had sought for the payment of delay penalty as reflected from the emails attached along with the complaint by the complainants dated 24.12.2019 and 20.08.2020.
18. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

19. The plea of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. 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, 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

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee 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 promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the objections raised by the respondent:

F.1 Objection regarding default in making payments due by the complainants:

The respondent has alleged that the complainants having breached the terms and conditions of the agreement and contract by defaulting in making timely payments. Further the above-mentioned contention is supported by the builder buyer agreement executed between the parties. Clause 7 provides those timely payments of the instalments and other charges as stated in the schedule of payment is essence of the agreement.

But the respondent cannot take advantage of this objection of timely payments being himself at wrong firstly by still not obtaining the occupation certificate and offering the possession of the unit despite being delay of 2 years and 7 months and the complainants have already paid more than 60% of the total sale consideration till date. Therefore, the respondent itself failed to complete its contractual and statutory obligations. Though there are certain demands/ reminders issued to the complainants to make remaining payments of the amount due but it also failed to take any action against the allottee as per the provisions of clause 2 and 11 of buyer's agreement dated 29.06.2015. Thus, the complainants being in default as evident from demands/reminders detailed in annexure R/4 (Page 22-32 of the reply), they would be liable to pay the amount due to the respondent along with prescribed rate of interest.

F.2 Objections regarding the complainants being investors:

20. It is pleaded on behalf of respondent that complainants are investors and not consumers. So, they are not entitled to any protection under the Act and the complaint filed by them under Section 31 of the Act, 2016 is not maintainable. It is pleaded that

the preamble of the Act, states that the Act is enacted to protect the interest of consumers of the real estate sector. The Authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that the preamble is an introduction of a statute and states the main aims and objects of enacting a statute but at the same time, the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the buyer's agreement, it is revealed that the complainants are buyers and paid considerable amount towards purchase of subject unit. At this stage, it is important to stress upon the definition of term allottee under the Act, and the same is reproduced below for ready reference:

"Z(d) 'allottee' in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold(whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent."

21. In view of above-mentioned definition of allottee as well as the terms and conditions of the buyer's agreement executed between the parties, it is crystal clear that the complainants are allottees as the subject unit allotted to them by the respondent/promoter. The concept of investor is not defined or referred in the Act of

2016. As per definition under section 2 of the Act, there will be 'promoter' and 'allottee' and there cannot be a party having a status of 'investor'. The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal No.0006000000010557 titled as **M/s Srushti Sangam Developers Pvt Ltd. Vs Sarvapriya Leasing (P) Ltd. and anr.** has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottees being investors are not entitled to protection of this Act also stands rejected.

G. Entitlement of the complainants for refund:

G.1 Direct the respondent to refund the amount of Rs. 29,82,545/- along with 18% interest from the date of each payment made.

22. Vide letter dated 17.11.2012, the complainants were allotted the subject unit by the respondent for a total sale consideration of Rs. 41,91,000/-. A buyer's agreement dated 09.04.2013 was executed between M/s Spire Developers Pvt. Ltd. and the complainants. The due date for delivery of the possession of the allotted unit was fixed as 08.04.2016 Though as per that agreement, the complainants started depositing various amounts as per the buyer's agreement but M/s Spire Developers Pvt Ltd. with whom they have entered into buyer's agreement on 09.04.2013 amalgamated with M/s Magic Eye Developers Pvt Ltd. i.e. the respondent as per the order dated 21.07.2014 of Hon'ble High Court of Delhi and which led to execution of the new agreement dated 29.06.2015 between the parties with regard to the subject unit. The due date of possession of the subject unit was

to be calculated as per clause 9.1 where the possession was to be handed over within a period of three years from the date of execution of the agreement with two grace periods of six months which comes out to be 29.06.2018. After signing of buyer's agreement, the complainants again started depositing various amounts against the allotted unit and paid a sum of Rs. 29,82,545/- as is evident from ledger dated 16.02.2021 at page no.37 of the reply.

23. Section 18(1) of the Act of 2016 is applicable only in the eventuality where the promoter fails to complete or unable to give possession of the unit in accordance with terms of agreement for sale or duly completed by the date specified therein. This is an eventuality where the promoter has offered possession of the unit after obtaining occupation certificate and on demand of due payment at the time of offer of possession, the allottee wishes to withdraw from the project and demand return of the amount received by the promoter in respect of the unit with interest at the prescribed rate.
24. It is not disputed that the complainants were allotted a unit by the predecessor- in- interest of the respondent on 17.12.2012 for a sum of Rs.41,91,000/-. It led to execution of buyer's agreement between them on 09.04.2013 and the possession of the allotted unit was to be offered within 3 years by 09.04.2016. Though the complainants made some payments against the allotted unit up to 30.08.2013 vide receipts dated 05.04.2012, 01.06.2012, 03.07.2012, 30.08.2013 but vide orders dated 21.07.2014 passed by the Hon'ble Delhi High Court M/s Spire Developers Private Limited amalgamated with the respondent. So, it led to execution

of new BBA between the parties on 29.06.2015 setting out some new terms and conditions including the due date for completion of the project and handing over of possession of the allotted unit to the complainants and which was fixed as 29.06.2018. The case of complainants is that the respondent failed to abide by the terms and conditions of sale, and which led to their writing email dated 24.09.2019 but with no positive response and ultimately led to their withdrawal from the project and seeking refund of the amount deposited. It is a fact that after completion of the project the respondent builder applied for occupation certificate on 21.06.2019 and the same was received by it on 28.11.2019 (annexure R/1 at page 18 of the reply). An intimation in this regard was given to the complainants on 30.11.2019 vide annexure R/2 and possession of the allotted unit was also offered to them. The complaint seeking refund of the deposited amount was filed before the authority on 28.01.2021. Though, there is email dated 24.09.2019 sent by the complainants to the respondent but that was with regard to increase in the price of the allotted unit, charge of interest for delayed payments and delayed possession charges and its duration to be paid by the builder. Thus, up to the date of offer of possession i.e., 30.11.2019, the complainants never moved to withdraw from the project and sought refund from the respondent builder. So, in such a situation whether the law permits, the answer is in the negative

25. The due date of possession as per agreement for sale as mentioned in the table above is 29.06.2018 and there is delay of 2 years 6 months 30 days on the date of filing of the complaint. The allottees in this case have filed this application/complaint

on 28.01.2021 after possession of the unit was offered to them after obtaining occupation certificate by the promoter. The allottees never earlier opted/wished to withdraw from the project even after the due date of possession and only when offer of possession was made to them and demand for due payment was raised, then only filed a complaint before the authority. The occupation certificate /part occupation certificate of the building/towers where allotted unit of the complainants is situated has been received. Section 18(1) gives two options to the allottee if the promoter fails to complete or is unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein:

- i) Allottee wishes to withdraw from the project; or
- ii) Allottee does not intend to withdraw from the project

26. The right under section 18(1)/19(4) accrues to the allottee on failure of the promoter to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale or duly completed by the date specified therein. If allottee has not exercised the right to withdraw from the project after the due date of possession is over till the offer of possession was made to him, it impliedly means that the allottee has tacitly wished to continue with the project. The promoter has already invested in the project to complete it and offered possession of the allotted unit. Although, for delay in handing over the unit by due date in accordance with the terms of the agreement for sale, the consequences provided in proviso to section 18(1) will come in

force as the promoter has to pay interest at the prescribed rate of every month of delay till the handing over of possession and allottee's interest for the money he has paid to the promoter are protected accordingly.

27. Further in the judgement of the Hon'ble Supreme Court of India in the cases of ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)*** reiterated in case of ***M/s Sana Realtors Private Limited & other Vs Union of India & others SLP*** (Civil) No. 13005 of 2020 decided on 12.05.2022. it was observed

25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed

28. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). This judgement of the Supreme Court of India recognized unqualified right of the allottee and liability of the promoter in case of failure to complete or unable to give possession of the unit in accordance with the terms of agreement for sale or duly completed by the date specified therein. But the allottees have failed to exercise this right although

it is unqualified one. They have to demand and make their intentions clear that the allottee wishes to withdraw from the project. Rather tacitly wished to continue with the project and thus made them entitle to receive interest for every month of delay till handing over of possession. It is observed by the authority that the allottee invest in the project for obtaining the allotted unit and on delay in completion of the project never wished to withdraw from the project and when unit is ready for possession, such withdrawal on considerations other than delay such as reduction in the market value of the property and investment purely on speculative basis will not be in the spirit of the section 18 which protects the right of the allottee in case of failure of promoter to give possession by due date either by way of refund if opted by the allottee or by way of delay possession charges at prescribed rate of interest for every month of delay.

29. In the case of ***Ireo Grace Realtech Pvt. Ltd. v/s Abhishek Khanna and Ors. Civil appeal no. 5785 of 2019 decided on 11.01.2021***, some of the allottees failed to take possession where the developer has been granted occupation certificate and offer of possession has been made. The Hon'ble Apex court took a view that those allottees are obligated to take the possession of the apartments since the construction was completed and possession was offered after issuance of occupation certificate. However, the developer was obligated to pay delay compensation for the period of delay occurred from the due date till the date of offer of possession was made to the allottees.

As per proviso to sec 18(1)

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 possession, at such as rate as may be prescribed.

30. In case allottee wishes to withdraw from the project, the promoter is **liable on demand** to the allottee return of the amount received by the promoter with interest at the prescribed rate if promoter fails to complete or unable to give possession of the unit in accordance with the terms of the agreement for sale. The words **liable on demand** need to be understood in the sense that allottee has to make his intentions clear to withdraw from the project and a positive action on his part to demand return of the amount with prescribed rate of interest if he has not made any such demand prior to receiving occupation certificate and unit is ready, then impliedly he has agreed to continue with the project i.e. he does not intend to withdraw from the project and this proviso to sec 18(1) automatically comes into operation and allottee shall be paid by the promoter interest at the prescribed rate for every month of delay. This view is supported by the judgement of Hon'ble Supreme Court of India in case of of *Ireo Grace Realtech Pvt. Ltd. v/s Abhishek Khanna and Ors.(Supra)* and also in consonance with the judgement of Hon'ble Supreme Court of India in case of *M/s Newtech Promoters and Developers Pvt Ltd Versus State of U.P. and Ors., .(Supra)*
31. The authority hereby directs that the allottees shall be paid by the promoter an interest for every month of delay till handing over of possession at prescribed rate i.e. the rate of 9.50% (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as

on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 within the timelines provided in rule 16(2) of the Haryana Rules 2017 *ibid*. Thus, the complainant-allottees are obligated to take the possession of the allotted unit after making outstanding payments along with prescribed rate of interest since its construction is complete and possession has been offered after obtaining of occupation certificate from the competent authority. However, the developer is obligated to pay delay compensation for the period of delay occurred from the due date of possession i.e., 29.06.2018 till the date of offer of possession (30.11.2019) plus two months i.e. 30.01.2020 was made to the allottees.

G.2 Legal expenses:

32. The complainants are claiming compensation under the present relief. 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(s) can claim. For claiming compensation under sections 12,14,18 and Section 19 of the Act, the complainants may file a separate complaint before the adjudicating officer under Section 31 read with Section 71 of the Act and rule 29 of the rules.

H. Directions of the Authority:

33. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under section 34(f) of the Act of 2016:



- i) The relief for the refund of the deposited amount made by the complainants with the respondent is declined. However, the complainant-allottees are obligated to take possession of the allotted unit after making outstanding payments along with prescribed rate of interest since its construction is complete and possession has been offered after obtaining of occupation certificate from the competent authority. The developer is also directed to pay delay compensation for the period of delay occurred from the due date of possession i.e., 29.06.2018 till the date of offer of possession (30.11.2019) plus two months i.e. 30.01.2020 made to the allottees.
- ii) The arrears of such interest accrued from 29.06.2018 till the date of order by the authority shall be paid by the promoter to the allottees within a period of 90 days from date of this order.
- iii) The rate of interest chargeable from the complainants/allottees by the promoter, in case of default shall be at the prescribed rate i.e., 9.50% which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delay possession charges as per section 2(za) of the Act.
- iv) The complainants are directed to take possession of the subject unit, within a period of two months after payment of outstanding dues, if any after adjustment of interest for the delayed period.
- v) The respondent would not charge anything which is not part of plot buyer's agreement. The 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.

34. Complaint stands disposed of.
35. File be consigned to the Registry.

V.I - g
(Vijay Kumar Goyal)
Member

Dr. KK Khandelwal
(Dr. KK Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 31.05.2022



HARERA
GURUGRAM