

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

Complaint no. : 313 of 2022
Date of filing complaint : 09.02.2022
First date of hearing : 10.03.2022
Date of decision : 19.05.2021

1. Mrs. Ruchi Chauhan 2. Mr. Vikram Singh Mandhotra Both R/O: - C-1103, Sispal Vihar, AWHO Complex, Sector 49, Sohna Road, Gurugram	Complainants
Versus	
M/s DSS Buildtech Pvt. Ltd. Regd. Office at: - 506, 5th floor, Time Square Building, B-block, Sushant Lok-1, Gurugram	Respondent

CORAM:	
Dr. K.K. Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Sh. Rishab Jain	Advocate for the complainants
None	Advocate for the respondent

ORDER

1. The present complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and

Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottees as per the agreement for sale executed inter se.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.no.	Heads	Information
1.	Project name and location	"The melia", Sector 35, Sohna, Gurugram, Haryana.
2.	Project area	17.42 Acre
3.	Nature of the project	Group Housing complex
4.	a) DTCP license no.	77 of 2013 dated 10.08.2013
	b) License valid up to	09.08.2024
	c) Name of the licensee	Smt. Arti Khandelwal and 2 others
5.	a) RERA registered/not registered	Registered
	b) Registration certificate no.	288 of 2017 dated 10.10.2017
6.	Unit no.	E-1002, 10th floor (As per page no. 43 of complaint)
7.	Unit admeasuring	1750 sq. ft. (As per page no. 43 of



		complaint)
8.	Date of execution of the apartment buyer's agreement	22.12.2015 (page no. 37 of complaint)
9.	Allotment letter	27.11.2015 (on page 35 of complaint)
10.	Date of commencement of construction	01.02.2016 (As per page 71 of complaint)
11.	Payment plan	Construction linked payment plan (page 71 of complaint)
12.	Total consideration	Rs. 99,39,625/- (without tax but including IFMSD) (vide statement of account on page 71 of complaint)
13.	Total amount paid by the complainants	Rs. 81,52,904/- (vide statement of account on page 71 of complaint)
14.	Timely payment clause	11. Time is the essence: Buyer's Obligation 11.1.1 Time is the essence with respect to the obligations of the Buyer to pay the Total Sale Consideration as provided in Schedule-III on or before the due date(s) as may be prescribed. It is clearly agreed and understood by the Buyer that except for a demand notice for payments, the Company shall not be required to remind the Buyer for payments due as per the Payment Plan on for performance of any other obligations of the Buyer in terms thereof. 11.1.2 For any delay in making any payment in terms thereof,



		<p>simple interest @15% shall be chargeable. The Company shall also be within its rights to decline to execute the conveyance deed and refuse to transfer the apartment in the name of any other buyer unless all payments are fully paid.</p>
15.	Possession clause	<p>14. Completion and possession of the apartment</p> <p>Subject to the terms hereof and to the buyer having complied with all the terms and conditions of this agreement, the company proposes to hand over possession of the apartment within a period of 48 months from the date of receiving the last of approvals required for commencement of construction of the project from the competent authority and or the date of signing the agreement whichever is later and to this period to be added for the time taken in getting fire approvals and occupation certificate and other approvals required before handing</p>

		<p>over the possession of the apartment or for such other requirement/conditions as may be directed by the DGTCP. The resultant period will be called as "commitment period". However this committed period will automatically stand extended by for a further grace period of 180 days got issuing the possession notice and completing other required formalities ("Due Date of Possession")</p> <p>(emphasis supplied)</p>
16.	Due date of delivery of possession	22.06.2020 (including grace period) (calculated from the date of execution of BBA)
17.	Occupation certificate	Not obtained
18.	Offer of possession	Not offered
19.	Grace period utilization	In the present case, grace period is allowed

B. Facts of the complaint

- That the complainants believing upon the representations of the respondent of timely completion and standardized construction of the project booked a apartment no.E-1002, floor -10 measuring super area of 1750 square feet in project "The Melia" situated at village Mohamadpur Gujjar, Sector - 35, Sohna, Gurugram, Haryana.

4. That the complainants entered into a apartment buyer's agreement (hereinafter referred as the 'ABA') dated 22.12.2015 with the respondent. The payment plan was agreed to be a construction linked payment plan.
5. That the complainants were invited to the sales office and were lavishly entertained and promises were made to them that the possession of their apartment would be handed over in time including parking, horticulture, club and other common areas. The complainants were impressed by the oral statements and representations of the respondent and ultimately lured to pay a total of Rs.4,11,728/- as booking amount.
6. That the respondent collected a huge amount from the complainants and promised them to hand over the possession of the apartment by 22nd December, 2019 as per the apartment buyer agreement. They paid total sum of Rs.81,52,904/- as demanded by the respondent.
7. That the complainants approached the respondent and pleaded for delivery of possession of their apartment as per the apartment buyer agreement on various occasions but respondent did not reply to their letters, emails, personal visits, telephone calls, seeking information about the status of the project but with no results.
8. That the complainants have suffered immense mental, physical, and financial agony at the hands of the respondent company. It is further submitted that the complainants have requested the respondent company several times for the

redressal of their grievances, but it has never responded to their requests to deliver the possession of the unit and hence this complaint.

C. Relief sought by the complainants.

9. The complainants have sought following relief:

- (i) Direct the respondent to complete the development of the apartment along with all facilities and amenities like water, electricity, roads, parks, club, etc. immediately.
- (ii) Direct the respondent to handover the legal and rightful possession of the apartment to the complainants, after receiving all the required permissions and approvals from the competent authorities
- (iii) Direct the respondent to pay interest for every month of delay in handing over the possession of the apartment since 22nd December, 2019 to the complainants, on the amount taken from the complainants towards sale consideration and other charges for the aforesaid apartment, with interest at the prescribed rate as per the act, 2016, till the respondent hands over the legal and rightful possession of the apartment to the complainants.
- (iv) Direct the respondent to provide a definite and fixed date of delivery of possession, as the

complainants cannot be made to wait till eternity for enjoying the rights over the apartment, with liberty to the complainants to seek appropriate remedy if the respondent fails to handover the possession on the date mentioned before the Haryana Real Estate Regulatory Authority, Gurugram.

(v) Direct the respondent to pay legal expenses of Rs. 1,00,000/- incurred by the complainants for filing and pursuing the instant case.

D. Reply by the respondent.

10. That the complainants themselves are defaulters under section 19 (6), 19 (7) and 19 (10) of the Real Estate (Regulation and Development) Act, 2016 and not in compliance of these sections. The complainants cannot seek any relief under the provision of the Act of 2016 or rules frame thereunder.
11. That the complainants approached the respondent and submitted an application dated 28.04.2014 for booking a 3BHK apartment admeasuring 1750 sq. ft. at the basic sale price of Rs. 4704.50/- per sq. ft. in the aforesaid project and paid a sum of Rs. 4,11,728/- as booking amount. They had agreed and signed the payment plan for payment of instalments dues as per construction linked plan.
12. Thereafter on 22.12.2015 the complainants executed apartment buyer's agreement for the said unit no E-1002

admeasuring 1750 sq. ft. with the respondent. Both the parties being signatory to a duly documented ABA executed by the complainants out of their own free will and without any undue influence or coercion are bound by the terms and conditions so agreed between them.

13. It is submitted that the complainants agreed under the payment plan signed by them, to pay the instalments on time. They failed to make payment of their respective instalments as per agreed payment plan despite repeated reminders.
14. That aggrieved by the refusal on part of the complainants to make the payment as stipulated under the buyer's agreement, the respondent herein filed complaint bearing RERA-GRG-3854-2020 against them before the Haryana Real Estate Regulatory Authority, Gurugram. On 31.03.2021, the Authority passed an order in the favour of respondent directing the complainants to clear the outstanding dues as per section 19(7) and 19(8) of the Act alongwith at the rate of 9.3% p.a. for delay in payment of outstanding dues.
15. That the aforesaid order was uploaded on the website of HARERA on 08.12.2021. Thereafter on 23.12.2021, the respondent herein served a notice to the complainants for clearance of outstanding dues amounting to Rs. 12,55,850/- alongwith interest @9.3% p.a., as ordered by the authority. But the complainants herein failed to comply with the directions of the Authority and have filed this false complaint just to waste the precious time of the Authority

16. It is submitted that the complainants have been continuously defaulting in making payments of the instalment's dues. As per last payment request sent to the complainants an amount of Rs. 12,55,850/- plus interest was due and payable to the respondent.
17. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

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

E. I Territorial jurisdiction

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

E. II Subject-matter jurisdiction

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

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 jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act.

18. The contention of the respondent is that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the apartment buyer's

agreement executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. The numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)** decided on 06.12.2017 which provides as under:

"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the 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."

19. Further, in appeal no. 173 of 2019 titled as ***Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya***, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

"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."

20. 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 allottee 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.

F. II Objection regarding untimely payments done by the complainants.

21. The respondent has contended that the complainants have made default in making payments as a result thereof, it had to issue reminder letter dated. Clause 11.1 of the buyer's agreement provides that timely payment of instalment is the essence of the transaction, and the relevant clause is reproduced below:

"11. TIME OF THE ESSENCE: BUYER'S OBLIGATIONS

11.1.1 Time is the essence with respect to the obligations of the Buyer to pay the Total Sale Consideration as provided in Schedule-III on or before the due date(s) as may be prescribed. It is clearly agreed and understood by the Buyer that except for a demand notice for payments, the Company shall not be required to remind the Buyer for payments due as per the Payment Plan or for performance of any other obligations of the Buyer in terms hereof

11.1.2 For any delay in making any payment in terms hereof, simple interest @ 15% shall be chargeable. The Company shall also be within its rights to decline to execute the Conveyance Deed and refuse to transfer the Apartment in the name of any other buyer unless all payments are fully paid.

22. At the outset, it is relevant to comment on the said clause of the agreement i.e., "11. TIME OF THE ESSENCE: BUYERS OBLIGATIONS" wherein the payments to be made by the complainants have been subjected to all kinds of terms and conditions. The drafting of this clause and incorporation of

such conditions are not only vague and uncertain but so heavily loaded in favor of the promoter and against the allottee that even a single default by the allottee in making timely payment as per the payment plan may result in termination of the said agreement and forfeiture of the earnest money. Moreover, the authority has observed that despite complainants being in default in making timely payments, the respondent has not exercised his discretion to terminate the buyer's agreement. The attention of authority was also drawn towards clause 11.1.2 of the flat buyer's agreement whereby the complainants shall be liable to pay the outstanding dues together with interest @ 15% p.a. chargeable for delay payment interest. In other words, the respondent has already charged penalized interest from the complainants 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 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. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 9.50% by the respondent which is the same as is being granted to the complainants in case of delay possession charges.

G. Findings on the relief sought by the complainants.

Reliefs sought by the complainants: The complainants have sought following relief(s):

- (i) Direct the respondent to complete the development of the apartment along with all facilities and amenities like water, electricity, roads, parks, club, etc. immediately.
- (ii) Direct the respondent to handover the legal and rightful possession of the apartment to the complainants, after receiving all the required permissions and approvals from the competent authorities
- (iii) Direct the respondent to pay interest for every month of delay in handing over the possession of the apartment since 22nd December, 2019 to the complainants, on the amount taken from the complainants towards sale consideration and other charges for the aforesaid apartment, with interest at the prescribed rate as per the act, 2016, till the respondent hands over the legal and rightful possession of the apartment to the complainants.
- (iv) Direct the respondent to provide a definite and fixed date of delivery of possession, as the complainants cannot be made to wait till eternity for enjoying the rights over the apartment, with liberty to the complainants to seek appropriate

remedy if the respondent fails to handover the possession on the date mentioned before the Haryana Real Estate Regulatory Authority, Gurugram.

(v) Direct the respondent to pay legal expenses of Rs. 1,00,000/- incurred by the complainants for filing and pursuing the instant case.

Note:- The aforesaid reliefs no. 1 to 4 are being taken together.

23. Even otherwise, in the earlier complaint filed by the respondent builder, the issue with regard to calculation of due date of possession and grant of delay possession charges were involved and the same stand decided by the authority while disposing of complaint on 31.03.2021. Admittedly, neither of the party to the complaint challenged that order before any appellant authority. Now, the issues which was earlier dealt with by the authority are being raised by one of the party to that complaint and which bars filing of this complaint U/s 11 of code of civil procedure, 1908 and is hit by the principle of resjudicata. The order passed by the authority in the earlier complaint has attained finality and the same cannot be reopened in view of ratio of law laid down by the hon'ble Apex Court in case of *V. Rajeshwari V/s T.C. Saravanbava (2004) 1 SCC 551* followed in case of

Srihari Hanumandas Totala V/s Hemant Vithal Kamat & Ors. SLP(c) No. 3899 of 2021 decided on 09.08.2021.

G-I Delay Possession Charges

24. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building,

—

.....

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

25. Clause 14 of the flat buyer's agreement provides for handing over of possession and is reproduced below:

" 14.1 Subject to the terms hereof and to the buyer having complied with all the terms and conditions of this agreement, the company proposes to hand over possession of the apartment within a period of 48 months from the date of receiving the last of approvals required for commencement of construction of the project from the competent authority and or the date of signing the agreement whichever is later and to this period to be added for the time taken in getting fire approvals and occupation certificate and other approvals required before handing over the possession of the apartment or for such other requirement/conditions as may be directed by the DGTCP. The resultant period will be

called as "commitment period". However this committed period will automatically stand extended by for a further grace period of 180 days got issuing the possession notice and completing other required formalities ("Due Date of Possession") .

26. 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 promoters that even a single default by the allottee in fulfilling obligations, formalities and documentations etc. as prescribed by the promoters 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 buyer's agreement by the promoters is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.
27. **Admissibility of grace period:** In the present case, the promoter is seeking a grace period of 180 days after the expiry of the said committed period for making offer of possession of the said unit. The respondent is claiming this grace period of 180 days for making offer of possession of the

said unit. Though there is no material evidence on record that the respondent-promoter had completed the said project within this span of 48 months and had started the process of issuing offer of possession after obtaining the occupation certificate but it has brought to the notice to the authority that earlier, a complaint bearing No. 3854 of 2020 w.r.t. subject unit was filed by the respondent- builder against the complainant and the same was disposed of by authority on 31.03.2021 where grace period was allowed by the authority and that fact has not been challenged by the allottees by way of appeal and a direction was given to the allottees in that complaint to pay the remaining amount to the builder-complainant. So, in view of that order, the grace period as demanded is allowed.

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

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

- (1) *For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.*

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

29. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
30. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 19.05.2022 is 7.50%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.50%.
31. 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—

the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.

the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"

32. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 9.50% by the respondent/promoter which is the same as is being granted to the complainants in case of delayed possession charges.
33. On consideration of the documents available on record and submissions made by both the parties, 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 14 of the flat buyer's agreement executed between the parties on 22.12.2015, the possession of the subject unit was to be delivered within 48 months from the date of execution of agreement i.e., 22.12.2015. Therefore, the due date of handing over possession is 22.12.2019. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is 22.06.2020. There is no material evidence on record that the respondents-builder had started the process of issuing offer of possession after obtaining the occupation certificate. The authority is of the

considered view that there is delay on the part of the respondent to offer possession of the allotted unit to the complainants as per the terms and conditions of the flat buyer's agreement dated 22.12.2015 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and responsibilities as per the flat buyer's agreement to hand over the possession within the stipulated period.

34. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainants are entitled to delay possession at prescribed rate of interest i.e., 9.50% p.a. w.e.f. 22.06.2020 till the physical offer of possession plus 2 months as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19 (10) of the Act.

G.II Direct the respondents to award cost to the complainant.

35. The complainants are claiming compensation in the above-mentioned relief. For claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainants 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

36. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure

compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent is directed to pay interest at the prescribed rate of 9.50% p.a. for every month of delay from the due date of possession i.e., 22.06.2020 till the offer of possession of the subject unit after obtaining occupation certificate from the competent authority + 2 months to the complainants as per section 19(10) of the Act.
- ii. The arrears of such interest accrued from 22.06.2020 till offer of possession shall be paid by the promoter to the allottees within a period of 90 days from date of this order as per rule 16(2) of the rules.
- iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.50% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- v. The respondent shall not charge anything from the complainants which is not the part of the agreement. However, holding charges shall also not be charged by

the promoter at any point of time even after being part of agreement as per law settled by the Hon'ble Supreme Court in civil appeal no. 3864-3889/2020 dated 14.12.2020.

37. Complaint stands disposed of.
38. File be consigned to registry.


(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 19.05.2022


HARERA
GURUGRAM