

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

Complaint no. : 3244 of 2021
First date of hearing: 22.10.2021
Date of decision : 22.12.2021

Deep Chand

Both RR/o: V. & P.O. Dighal Mohla, Kaushik
Nagar, Tehsil Beri, District- Jhajjar, Haryana

Complainant

Versus

Aster Infrahome Private Limited

Regd. office: 24A, Ground Floor, Vipul Agora,
Gurugram- 122001

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Shri. Kamal Verma (Proxy
counsel)

Advocate for the complainant

Shri. Dharambir Singh

Advocate for the respondent

ORDER

1. The present complaint dated 23.08.2021 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the

Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

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

S.No.	Heads	Information
1.	Project name and location	"Green Court", Sector-90, District-Gurugram, Haryana
2.	Project area	10.125 acres
3.	Nature of the project	Affordable Group Housing Project
4.	DTCP license no. and validity status	61 of 2014 dated 07.07.2014
		Valid up to 06.07.2019
		62 of 2014 dated 07.07.2014
		Valid up to 06.07.2019
5.	Name of licensee	M/s Aster Infrahome Pvt. Ltd. (For both the licences)
6.	HRERA registered/ not registered	Registered
		Vide registration no. 137 of 2017 dated 28.08.2017
		(Registered for 10 acres)
		Valid up to 22.01.2020
	Extension certificate no.	09 of 2020 dated 29.06.2020
		Valid up to 22.01.2021
7.	Allotment letter dated	06.09.2015 [As alleged by the respondent on page no. 04 of the reply]
8.	Unit no.	0504 on 5th floor, tower L

		[As per page no. 29 of the complaint]
9.	Unit measuring	526 sq. ft. [As per page no. 29 of the complaint]
10.	Date of execution of buyer's agreement	16.01.2016 [As per page no. 26 of the complaint]
11.	Payment plan	Time linked payment plan [As per page 47 of complaint]
12.	Total consideration	Rs.21,54,000/- [As per page no.30 of the complaint]
13.	Total amount paid by the complainant	Rs.22,47,796/- [As per receipts of payment on page no. 24-25 & 49-58 of the complaint]
14.	Building plan approvals	01.03.2017 23.10.2014
15.	Consent to establish	06.05.2016 [As per page no. 27 of the reply]
16.	Revised Environment clearance	20.07.2016
17.	Due date of delivery of possession as per clause 8a of flat buyer's agreement (Subject to the force major circumstances, intervention of statutory authorities, receipt of occupation certificate and Allottee having timely complied with all its obligations, formalities or documentation, as prescribed by Developer and not being in default under any part hereof, including but not limited to the timely payment of installments of the other	01.09.2021 ^{06.11.2020} [Calculated from date of building plan approval i.e.; 01.03.2017 which comes out to be ^{06.05.2020} 01.03.2021 + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for projects having completion date on or after 25.03.2020]

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 i.e 06.05.2016
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	<i>charges as per the payment plan, Stamp Duty and registration charges, the Developer proposes to offer possession of the Said Flat to the Allottee within period of 4(four) years from the date of approval of building plans or grant of environment clearance, whichever is later) (hereinafter referred to as the "Commencement Date.")</i>		
18.	Application for obtaining OC	04.08.2021	[As per page no.66 of the reply]
19.	Occupation certificate	Not obtained	
20.	Offer of possession	Not offered	

B. Facts of the complaint

3. That the grievances of the complainant relate to gross unfair trade practices and deficiencies in the services committed by the respondent in regard to the flat no. L-0504, measuring carpet area 526 square feet in village Hayatpur, Sector 90, Gurugram, Haryana, purchased by the complainant.
4. That as per the flat buyer's agreement (hereinafter referred to as "agreement"), it is stated that the respondent possesses the land measuring 10.125 acres situated in the revenue estate of village Hayatpur, Sector 90, Gurugram, Haryana. The Director, Town and Country Planning, Haryana vide licence bearing no. 61 & 62 of 2014 both dated 07 July, 2014 had granted permission for construction and development of an Affordable Group Housing Colony to be known as 'Green Court'. After the grant of the licence, the respondent collected a

huge amount through application for allotment of a flat in the project from gullible and naïve buyers including the complainant from 2015 to 2018 and promised the complainant to hand over the possession of the flat latest by 16th January, 2020 as per the agreement.

5. That the complainant, in total, paid a sum of Rs.22,47,796/- way back till 18th December, 2018, which is more than 100 % payable amount, as and when demanded by the respondent. Even after a delay of one year and six months, the respondent has failed to offer the possession of the flat to the complainant till date.
6. That the respondent published very attractive brochure, of Affordable Group Housing Colony called 'Green Court' at village Hayatpur, Sector 90, Gurugram, Haryana. The Complainant wants to draw the attention of this authority, Gurugram to section 12 of the Act, 2016. The project was launched in 2014 with the promise to deliver the possession on time and huge funds were collected over the period by the respondent.
7. That the complainant made an application for allotment of a flat via application no. 002284 and paid an amount of Rs.1,11,028/- as application amount to the respondent, Aster Infrahome Private Limited via cheque no. 692571 of Oriental Bank of Commerce, New Delhi and the respondent issued receipt on 7th February, 2015 via receipt no. 496 and allotted customer code- GGC/A0449 to the complainant. Ultimately in draw, the complainant was allotted a 2BHK unit (Carpet Area 526 sq. ft.) flat no. L-0504 at the project "Green Court". The complainant paid Rs.4,45,878/- via cheque no. 039133 of

State Bank of India, Rohtak to the respondent and receipt no. 3214 was issued by the respondent on 6th September, 2015 against the payment.

8. That an agreement was executed between the complainant and the respondent on 16th January, 2016 for the allotted flat no. 0504, Tower - L, 5th floor measuring carpet area of 526 square feet and balcony area of 100 square feet. The total cost of the flat was Rs.21,54,000/- including balcony area charges.
9. That the complainant made payments amounting Rs.79,011/- and Rs.2,00,000/- on 4th March, 2016, Rs.2,59,489/- on 3rd September 2016, Rs.2,00,000/- and Rs.69,250/- on 3rd March, 2017, Rs.80,000/- and Rs.2,21,560 on 2nd September, 2017, Rs.2,90,790/- on 3rd March, 2018, Rs.1,90,790/- and Rs.1,00,000/- on 18th December, 2018 as per the payment plan of the agreement, to the respondent and the same were acknowledged by the respondent through receipts against the payments made by it.
10. That as per clause 8(a) of the agreement, the date of possession of the flat comes out to be 16th January 2020. The complainant approached the respondent and pleaded for delivery of possession of his flat as per the agreement on various occasions, but no information was provided, thereby the respondent violated section 19 of the Act of 2016. Moreover, the respondent is accountable to the terms and conditions prescribed in the agreement as per section 11 (4) (a) of the Act of 2016.

11. That the respondent has utilised funds collected from the complainant and other buyers for its own good in other projects, being developed by the respondent. The respondent has deliberately and wilfully indulged in undue enrichment, by cheating the complainant besides not delivering the legitimate and rightful possession of the flat in time.
12. That as per the obligations on the respondent/promoter under section 18 of the Act of 2016 read with rules 15 and 16 of the rules, 2017, the promoter has to pay interest on the delayed possession on the amount deposited by the complainant. The complainant being aggrieved person has filed a complaint under section 31 of the Act, 2016 read with rule 28 of the rules, 2017.
13. That the respondent/seller/builder/promoter is habitual of making false promises. The complainant has undergone enough pain, mental torture, agony, harassment, stress, anxiety, financial loss and injury. In the present circumstances, the complainant is left with no other options but approach the authority.
14. That the respondent promised to the complainant that the flat would be delivered by 16th January, 2020 as per the agreement, but not delivered yet and thus, constituted unfair trade practices. The respondent has unjustly enriched itself by taking complete payable amount but did not give possession of the flat, thus it constitutes unfair trade practices & deficiency in services and cheating.
15. That the respondent has not utilised collected funds for the construction of the project on time as promised by the respondent

which constitutes unfair trade practice and mental agony & harassment to the complainant as a result of the aforesaid deficiencies in services.

16. That the conduct of the respondent is suspect, wilfully unfair and arbitrary, deficient in every manner and scandalous. The complainant has lost faith, confidence and trust in the respondent as the respondent is continuously deceptive and non-responsive to the requisitions made by the complainant.

17. That the cause of action has accrued finally when the respondent has not submitted any justified response to the complainant. Thus, the complaint has been filed within time with effect from accrual of the cause of action.

C. Relief sought by the complainant:

18. The complainant have sought following relief(s):

- (i) Direct the respondent to complete the development of the flat 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 Flat to the Complainant, after receiving the Occupation Certificate and other required approvals from the competent authorities.
- (iii) Direct the respondent to provide a fixed date of delivery of possession.



- (v) Direct the respondent to not charge anything which is not mentioned in the agreement.
- (vi) Direct the respondent to pay an amount of Rs. 50,000/- as litigation expenses incurred by the complainant.
- (viii) Direct the respondent to pay interest for every month of delay in handing over the possession of the flat since 16 January, 2020 to the complainant with interest at the prescribed rate as per the Act of 2016 till the respondent hands over the legal and rightful possession of the flat to the complainant.
19. 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

20. The respondent has contested the complaint on the following grounds.
- i. That the complainant made an application to the respondent for booking/allotment of a 2 BHK flat having carpet area of 526 sq. ft. and balcony area 100 sq. ft. in the said scheme/colony. The application form dated 23.01.2015 signed and submitted by the complainant had necessary particulars of the residential scheme such as description of land, license and building plans granted/approved by DTCP, Haryana, and also salient terms and conditions on which the allotment was to be made to the complainant. The complainant also read and understood the terms



- and conditions of the flat buyer agreement and undertook to sign the same as and when required by respondent.
- ii. That the application form also contained the payment plan in accordance to which the complainant were to make the due installments as specified. That the payment plan clearly stated at the time of application 5% of the basic sale price (hereinafter BSP), 20% of the BSP within 15 days from the issuance of allotment letter and thereon at intervals of 6 months 12.5% of the total BSP was to be paid respectively. The payment plan was in accordance with the payment plan prescribed in the said policy.
- iii. That under the said policy, the allotment was required to be made through draw of lots to be held in the presence of a committee consisting of deputy commissioner or his representative (at least of the cadre of Haryana Civil Services), Senior Town Planner (Circle officer), DTP of the concerned district. The policy prescribed a transparent procedure for allotment of a flat in the affordable housing project of the policy which interalia included advertisements for booking of apartments by the coloniser/developer on two occasions at one week interval in one of the leading English national daily and two Hindi newspapers having circulation of more than ten thousand copies in the state of Haryana to ensure adequate publicity of the project, submission of the applications by the interested persons, scrutiny of all application by the coloniser/developer by the overall monitoring



of the concerned DTP within a period of three months from the last date or receipt of applications, fixing of the date for draw of lots by the concern senior town planner, publication of the advertisement issues by the coloniser informing the applicants about the details regarding date/time and venue of draw of lots in the newspaper etc. The said procedure as laid down in policy was dully follows by the respondent.

- iv. That the complainant were informed by the respondent vide letter dated 13.08.2015 that the draw is to be held on 25.08.2015 at 10.00 A.M. and they were invited to the said event. The draw of lots was conducted at the given date, time and place in the presence of the required officials of Government of Haryana.
- v. That the complainant were successful applicants in the said draw and as such the respondent vide its letter dated 06.09.2015 intimated the complainant that they had been allotted flat no. L - 0504 in the said project.
- vi. That the aforesaid facts and circumstances makes it clear that the respondent has neither indulged into any unfair trade practice nor committed any deficiency in service. It is submitted that in the real estate projects like the project in question the development being multi-storied group housing development, the default in payment committed by even one allottee adversely affect the development of the other units as well in as much as the financial planning, the pace of the project etc. get adversely affected thereby causing

- impediment in the development and overall delay in delivery of the project.
- vii. The complainant were fully aware that the project in question was a project under the Affordable Housing Policy, 2013 of the Government of Haryana which contained strict check and balances to protect interests of all stake holders with special emphasis on the protection of rights of the potential purchases of the flats. Almost each and every aspect of the transaction was governed by the policy. Even the draw of flats was to be held after permission of government and in the presence of government officials and permission to conduct draw was to be granted only after all necessary approvals were in place. The flat buyer agreement contained provisions that were in consonance with the policy guidelines/parameters.
- viii. That as per the agreement the respondent was to start the construction from the date of environment clearances which was granted on 06.05.2016. It is relevant to mention here that from November, 2019 onwards things started moving out of control of the respondent. Many force majeure events, situations and circumstances occurred that made the construction at site impossible for a considerable period of time. Such events and circumstances included, inter-alia, repeated bans on construction activities by EPCA, NGT and Hon'ble Supreme Court of India, Nationwide lock down due to emergence of covid-19 pandemic,

massive nationwide migration of labourers from metropolis to their native villages creating acute shortage of labourers in NCR regions, disruption of supply chains for construction materials and non-availability of them at construction sites due to Covid-19 pandemic and closure/restricted functioning of various private offices as well as government offices disrupting the various approvals required for the real estate projects, resulting financial distress etc.

- ix. That the Environmental Pollution (Prevention and Control) Authority for NCR ("EPCA") vide its notification bearing no. EPCA-R/2019/L-49 dated 25.10.2019 banned construction activity in NCR during night hours (6pm to 6am) from 26.10.2019 to 30.10.2019 which was later on converted into complete 24 hours ban from 01.11.2019 to 05.11.2019 by EPCA vide its notification no. EPCA-R/2019/L-53 dated 01.11.2019. The Hon'ble Supreme Court of India vide its order dated 04.11.2019 passed in writ petition no. 13029/1985 titled as "*M.C. Mehta vs Union of India*" completely banned all construction activities in NCR which restriction was partly modified vide order dated 09.12.2019 and was completely lifted by the Hon'ble Supreme Court vide its order dated 14.02.2020.
- x. That due to these repeated bans forced the migrant labourers to return to their native states/villages creating an acute shortage of labourers in NCR region. Due to the said shortage, the construction

- activity could not resume at full throttle even after lifting of ban by the Hon'ble Supreme Court. Even before the normalcy in construction activity could resume, the world was hit by the 'Covid-19' pandemic. The unprecedented situation created by the Covid-19 pandemic presented yet another force majeure event that brought to halt all activities related to the project including construction of remaining phase, processing of approval files etc.
- xi. That the Ministry of Home Affairs, Government of India vide notification dated March 24, 2020 bearing no. 40-3/2020-DM-I(A) recognised that India was threatened with the spread of Covid-19 epidemic and ordered a complete lockdown in the entire country for an initial period of 21 days which started from March 25, 2020. By virtue of various subsequent notifications, the Ministry of Home Affairs, Government of India further extended the lockdown from time to time. Various state governments, including the Government of Haryana have also enforced several strict measures to prevent the spread of Covid-19 pandemic including imposing curfew, lockdown, stopping all commercial, construction activity.
- xii. That as a result of this situation, nationwide massive migration of labourers from metropolis to their native villages creating acute shortage of labourers in NCR regions, disruption of supply chains for construction materials and non-availability of them at construction sites and the full normalcy has not returned so far.



- xiii. That even before the nation could recover fully from the impact of the first wave of Covid-19, the Second wave hit vary badly the entire nation particularly NCR region which resulted in another lockdown from April 2021 till June 2021 and now the threat of 3rd wave is looming large.
- xiv. That it is a matter of common knowledge and widely reported that even before advent of such events, the real estate sectors was reeling under severe strain. However, such events/incidents as above noted really broke the back of entire sector and many real estate projects got stalled and came to the brink of collapse. The situation was made worse by the dreaded second wave which again impeded badly the construction activities. The said unprecedented factors beyond control of respondent and force majeure events have resulted so far in time loss of almost 14 months in total and as such all timelines agreed in the settlement agreement stood extended at least by said 14 months, if not more.
- xv. That the respondent is perhaps one of the very few developers in NCR region who had fought valiantly during these testing times/odd circumstances and completed the project. Even the occupancy certificates were applied on 04.08.2021. The applications made by the respondent is pending without any objection and/or deficiency ever pointed out, perhaps because of limited restricted functioning of the public offices.

- xvi. That the respondent has completed all residential towers including the creche, community hall, lifts, firefighting systems are ready and functional with all necessary approvals in place. Round the clock security is being provided with all necessary security/ward and watch arrangement in place. The project is thus fully habitable. Every responsible person/institution in the country has responded appropriately to overcome the challenges thrown by Covid-19 pandemic and have suo-motu extended timelines for various compliances. The authorities also have extended time periods given at the time of registration for completion of the project. The HRERA has also for the same reasons granted extension to all the real estate projects including the project in question.
- xvii. That it is most humbly stated that considering the time lost due to above force majeure circumstances, which is required to be excluded in computing the timelines given in the agreement, there shall be no delay on part of the respondent, much less intentionally.
- xviii. That the construction activities were halted several times due to the orders passed by NGT and Supreme Court to control the pollution level in NCR including Gurugram.
21. 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 based on these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

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

22. 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

23. 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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;

The provision of assured returns is part of the builder buyer's agreement, as per clause 15 of the BBA dated..... Accordingly, the promoter is responsible for all obligations/responsibilities and functions including payment of assured returns as provided in Builder Buyer's Agreement.

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.

24. So, in view of the provisions of the Act of 2016 quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on objections raised by the respondent

F.1 Objection regarding passing of various force majeure conditions such as orders by EPCA, lockdown due to Covid-19 pandemic, shortage of labour and NGT orders.

25. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the Environmental Pollution (Prevention and Control) Authority for NCR (hereinafter, referred as EPCA) from 26.10.2019 to 14.12.2019, lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour and orders passed by National Green Tribunal (hereinafter, referred as NGT) but after adding a period of 6 months in completing the project as per HARERA notification no. 9/3-2020 dated 26.05.2020 passed by the authority, the due date for completion of the project comes to ~~01.09.2021~~ ⁰⁶⁻¹¹⁻²⁰²⁰ ^{46'} ^{5.7.22}. The respondent-builder has already applied for getting occupation certificate vide application dated 04.08.2021 and the same is pending

before the competent authority. The fact cannot be ignored that the respondent-builder has applied for obtaining occupation certificate before due date. So, in such a situation the complainant-allottee would be entitled to delay possession charges from the due date of possession i.e. ~~01.09.2021~~ ^{06.11.2020} till the offer of possession plus 2 months.

G. Findings on the relief sought by the complainant

Relief sought by the complainant:

- G.I Direct the respondent to complete the development of the flat along with all the facilities and amenities like water, electricity, roads, parks, club, etc. immediately.**
- G.II Direct the respondent to handover the legal and rightful possession of the flat to the complainant, after receiving the occupation certificate and other required approvals from the competent authorities.**
- G.III Direct the respondent to provide a fixed date of delivery of possession.**
26. In the present case, the respondent has made an application for grant of occupation certificate on 04.08.2021 to the concerned authority but the said occupation certificate for the tower in which the subject unit is allotted has not been received. So, the respondent is directed to make an offer of possession of the allotted unit to the complainant-allottee within a month of receipt of occupation certificate. This is to be noted such offer of possession must be after obtain occupation certificate to be regarded as a valid offer of possession.
- G.IV Direct the respondent to not charge anything which is not mentioned in the agreement.**
27. A contract is vital document executed between the parties as the rights and the liabilities of the parties signing it are defined through that agreement only. Therefore, it is of utmost important the buyer's

agreement is to be drafted in such a way that it must hold the position of both the parties relying on the same. A buyer's agreement is a contract executed between the respondent-builder and allottee so as to provide them with a pre-written rights and obligations. A flat buyer's agreement was executed between the parties on 16.01.2016 which in detail describes all the expenses/price/charges to be charged by the respondent from the complainant. Thus, the respondent shall not charge anything which is not part of said buyer's agreement dated 16.01.2016. However, 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.

G.V Direct the respondent to pay a sum of Rs.50,000/- towards litigation expenses incurred by the complainant.

54. The complainant are claiming compensation in 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 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.

G.VI Direct the respondent to pay interest for every month of delay in handing over the possession of the flat since 16 January, 2020 to the complainant with interest at the prescribed rate as per the Act, 2016, till the Respondent hands over the legal and rightful possession of the Flat to the Complainant.

55. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

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

.....

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

56. Clause 8(a) of the flat buyer's agreement (in short, agreement) dated 16.01.2016 provides for handing over of possession and is reproduced below:

"Clause 8(a).

Subject to the force major circumstances, intervention of statutory authorities, receipt of occupation certificate and Allottee having timely complied with all its obligations, formalities or documentation, as prescribed by Developer and not being in default under any part hereof, including but not limited to the timely payment of instalments of the other charges as per the payment plan, Stamp Duty and registration charges, the Developer proposes to offer possession of the Said Flat to the Allottee within period of 4(four) years from the date of approval of building plans or grant of environment clearance, whichever is later (hereinafter referred to as the "Commencement Date.").

57. The authority has gone through the possession clause of the agreement and observed that the respondent-developer proposes to handover the possession of the allotted unit within a period of four years from the date of approval of building plan or from the date of grant of environment clearance, whichever is later. In the present case,

date of approval of environment clearance has not been provided but the date of revised environment clearance is given which is 20.07.2016 but same could not be considered. Whereas with respect to environment clearance, the date of obtaining consent to establish is given, which was obtained on 06.05.2016. As per clause 8(a) of flat buyer's agreement the possession of the allotted unit is to be handed over within four years from date of sanction of building plan i.e.; ~~01.03.2017~~ ²²⁻¹⁰⁻²⁰¹⁴ or within four years from the date of consent to establish i.e.; 06.05.2016, being later. The due date of possession is calculated from the date of ~~sanction of building plan approval~~ ^{Consent to establish} i.e.; ~~01.03.2017~~ ⁰⁶⁻⁰⁵⁻²⁰¹⁶, being later which comes out to be ~~01.03.2021~~ ⁰⁶⁻⁰⁵⁻²⁰²⁰. As per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is ~~01.03.2021~~ ⁰⁶⁻⁰⁵⁻²⁰²⁰ i.e. after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. As such the due date for handing over of possession comes out to be ~~01.09.2021~~ ⁰⁶⁻¹¹⁻²⁰²⁰.

58. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant are seeking delay possession charges 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.

59. 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.
60. 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., 22.12.2021 is @ 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.
61. 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;"*

62. 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.

63. 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 8(a) of the flat buyer's agreement executed between the parties on 16.01.2016, the possession of the subject apartment was to be delivered within 4 years from the date of sanction of building plan or from the date of environment clearance, whichever is later. The due date of possession is calculated from the date of sanction of building plan approval i.e., ~~01.03.2017~~, being later which comes out to be ~~07.03.2021~~. As per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion date on or after 25.03.2020. The completion date of the aforesaid project in which the

subject unit is being allotted to the complainant is ~~01.03.2021~~ i.e. after ⁰⁶⁻⁰⁵⁻²⁰²⁰ ~~01.03.2021~~ after ⁵⁻⁷⁻²² 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. As such the due date for handing over of possession comes out to be ~~01.09.2021~~ ⁰⁶⁻¹¹⁻²⁰²⁰ ~~01.09.2021~~ ⁵⁻⁷⁻²².

64. Section 19(10) of the Act obligates the allottee 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 is yet not obtained but the respondent- builder has applied for the grant of occupation certificate before the due date of possession. The respondent shall offer the possession of the unit in question to the complainant after obtaining occupation certificate, so it can be said that the complainant shall come 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 months' of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he has 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. ~~01.09.2021~~ till the expiry of 2 months from the date of offer of possession. ⁰⁶⁻¹¹⁻²⁰²⁰ ~~01.09.2021~~ ⁵⁻⁷⁻²².
65. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the agreement dated 16.01.2016 to hand over

the possession within the stipulated period. 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., ~~01.09.2021~~ ⁰⁶⁻¹¹⁻²⁰²⁰ till the date of offer of possession plus 2 months, 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.


H. Directions of the authority

66. 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 shall pay interest at the prescribed rate i.e. 9.30% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. ~~01.09.2021~~ ⁰⁶⁻¹¹⁻²⁰²⁰ till the ~~expiry of 2 months~~ ⁵⁻⁷⁻²⁰²² from the date of offer of possession after obtaining occupation certificate.
- ii. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order of this order as per rule 16(2) of the rules and thereafter monthly payment of interest to be paid till date of handing over of possession shall be paid on or before the 10th of each succeeding month.
- iii. The respondent shall not charge anything from the complainant which is not the part of the flat buyer's agreement.



- iv. The complainant are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- v. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
67. Complaint stands disposed of.
68. File be consigned to registry.

V.I - 
(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.12.2021