PROCEEDINGS OF THE DAY	22
Day and Date	Thursday and 07.07.2022
Complaint No.	CR/2614/2019 Case titled as Vikas Jain Vs Spaze Towers Private Limited
Complainant	Vikas Jain
Represented through	Shri Sukhbir Yadav Advocate
Respondent	Spaze Towers Private Limited
Respondent Represented	Shri Ishaan Dang Advocate
Last date of hearing	
Proceeding Recorded by	Naresh Kumari and HR Mehta

Proceedings

The predecessors-in-interest of ***Vikas Jain & Anr*** i.e., earlier allottees were allotted a unit bearing no. 212 admeasuring 1745 sq.ft. at 11th floor of tower A4 along with one covered parking in the project known as "Spaze Privy AtA4" by the respondent for a total sum of Rs. 74,40,528/- inclusive of other charges. A builder buyer agreement was executed between them on 09.07.2012. The due date for handing over of possession of the allotted unit was fixed as 36 months excluding a grace period of 6 months. A total sum of Rs. 75,08,844/- was paid against the allotted unit. Since, the respondent fails to offer possession by the due date. So, the same led to filing an application seeking possession of the allotted unit as well as delay possession charges.

After obtaining the respondent's reply and hearing both the parties, the authority vide its order dated 15.03.2022 allowed delay possession charges and other reliefs. While preparing the final order, a typographical mistake accrued while recording the name of counsel for complainants as "Shri. S.S. Hooda" instead of "Shri Sukhbir Singh", the nomenclature of the final order as "Brief" instead of "Order", the date beneath the signature of the Hon'ble Chairman & the Hon'ble Member as "09.01.2016" instead of "15.03.2022" and in the direction it was inadvertently mentioned that " a period of 6 months is

given to pay the arrears of interest" instead of "a period of 90 days is given to pay the arrears of interest.

Though an application for rectification of the same has been moved, the same being typographical mistakes, which are ordered to be corrected accordingly.

The application stands disposed of. File be consigned to the registry.

V.I –

Vijay Kumar Goyal
Member

Dr. KK Khandelwal
Chairman
07.07.2022

Rectified vide order dated 07-07-2022

HARERA
GURUGRAM

Complaint No. 2614 of 2019

BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	:	**2614 of 2019**
Date of filing complaint:		**10.07.2019**
First date of hearing	:	**29.10.2019**
Date of decision	:	**15.03.2022**

1. 2.	Vikas Jain Anju **Both RR/o:** H.No: 3121- A, Mahendra Park, Rani Bagh, New Delhi-110034	**Complainants**
	Versus	
1. 2.	M/s Spaze Towers Private Limited Mr. Vivek Sharma **C/o:** Spazedge, Sector 47, Gurgaon Sohna Road, Gurgaon, Haryana. **Regd.Office:** 18, Community Center, Mayapuri, Phase-1, New Delhi.	**Respondents**

CORAM:	
Dr. K.K. Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
~~Sh. SS Hooda (Advocate)~~ Sh. SUKHBIR YADAV	Complainants
Sh. J.K Dang (Advocate)	Respondents

7.7.2022

~~BRIEF~~ ORDER

7.7.2022

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 promoters 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 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	"Spaze privy at4" Sector-84, village sihi, Gurugram
2.	Project area	10.512 acres
3.	Nature of the project	Group housing complex
4.	DTCP license no. and validity status	26 of 2011 dated 25.03.2011valid up to 24.03.2019
5.	Name of licensee	Smt. Mohinder Kaur and Ashwini Kumar
6.	RERA Registered/ not registered	**Registered vide registration no. 385 of 2017 dated 14.12.2017**
	RERA Registration valid up to	**31.06.2019**
7.	Building plan approval	06.06.2012 (annexure R6, page 59 of reply)
8.	Unit no.	112, 11th floor, tower A4 as per allotment letter (page P-21 of complaint)
9.	Unit measuring (super area)	1745 sq.ft.
10.	Date of allotment letter	03.08.2011 [Page P-21 of the complaint]
11.	Date of execution of builder buyer agreement	09.07.2012 (annexure C7)
12.	Subsequent allottees	Endorsement-1 dated 02.05.2012

		Endorsement-2 dated 23.12.2013 in favour of complainants *Note: Complainants are second endorsee (page 38 of reply)
13.	Total sale consideration	Rs. 74,40,528/- (as per statement of account dated 10.07.2019 at page 65, annexure R7 of reply)
14.	Total amount paid by the complainants	Rs. 75,08,844/- (as per statement of account dated 10.07.2019 at page 66, annexure R7 of reply)
15.	Payment plan	Construction linked payment plan [Page 49 of the reply]
16.	Due date of delivery of possession *Clause 3(a): The developer proposes to hand over the possession of the apartment within a period of thirty-six (36) months (excluding a grace period of 6 months) from the date of approval of building plans or date of signing of this agreement whichever is later*	09.01.2016 (Calculated from the date of execution of BBA i.e., 09.07.2012) [Note: Grace period is allowed]
17.	Offer of possession	Not offered
18.	Occupation Certificate	11.11.2020
19.	Delay in delivery of possession till the date of decision i.e., 15.03.2022	5 years 11 months 12 days

B. Facts of the complaint:

3. The matter in dispute relates to intentional, wilful, deliberate and vexatious non-offer of actual, physical and vacant possession of a 03 bedrooms residential unit bearing no. 112 having super area measuring 1745 sq.ft. on 11th floor in tower A4 along with 01

covered car parking space of a multistoried residential project in the name & style "Spaze Privy At4", complete in all respects over the land situated within the revenue estate of village Sihi, Sector-84, Tehsil & District Gurugram for a total valuable sale price of Rs. 74,40,528/- inclusive EDC, IDC, PLC including floor, corner, green facing & 2BHK, club membership charges along with service tax or any other tax as applicable in breach of terms & conditions of buyer's agreement dated 09.07.2012 within the agreed period of 36 months with a grace period of 6 months from the date of building plans or date of signing of the buyer's agreement whichever is later i.e. on or before 08.07.2015*(sic)* 09.07.2015 and at the most with the grace period i.e. on or before 08.01.2016 *(sic)* 09.01.2016.

4. Believing upon the words & representations of the respondents to dwelling unit dated 20.04.20211, an erstwhile allottee i.e. M/s Advent Infrastructure(P) Ltd. having its office at C-92, II floor, Fateh Nagar, New Delhi-110019, India booked a unit having super area measuring 1745 sq.ft. comprising 03 bedrooms and 01 study on 11th floor in tower A along with 01 covered car parking space in the multistoried residential project in the name & style "Spaze Privy At4", proposed to be constructed and developed over land measuring 10.512 acres situated within the revenue estate of Village Sihi, Sector 84, Tehsil & District Gurugram, hereinafter referred to be in as the "said project" by the respondent no.1 under payment plan "PAT4-CLP(GH)" upon payment of Rs. 5,00,000 duly received and acknowledged vide receipt no. PAT4-R/00001059 dated 20.04.2011, in consideration to which, vide allotment letter dated 03.08.2011 accompanied by payment plan while allocating application code:PAT4/01045 & customer code:C07138, the

respondents allotted a 03 bedrooms residential unit bearing no.112 having super area measuring 1745 sq.ft. on 11th floor in tower A along with 01 covered car parking space, hereinafter referred to in as the said unit in the said project for a total sale price of Rs. 74,40,528 inclusive of EDC, IDC, PLC, club membership charges along with service tax or any other tax as applicable and in terms with the aforesaid application, the erstwhile allottee further paid amounts of Rs. 7,20,879/- and Rs. 6,10,440/- duly received and acknowledged vide duly received and acknowledged vide receipts no. PAT4-R/000001158 dated 08.06.2011 and PAT4-R/000001468 dated 29.08.2011.

5. As per the endorsement made on the reverse side of aforesaid allotment letter dated 03.08.2011, receipts no. PAT4-R/000001059 dated 20.04.2011, PAT4-R/000001158 dated 08.06.2011 & PAT4-R/000001468 dated 29.08.2011, vide application dated 02.05.2012, the aforesaid erstwhile initial allottee i.e. M/s Advent Infrastructure(P) Ltd. got its rights, titles & interests over the said unit transferred in favour of Mr. Kunal Sandhu son of Mr. Amarjeet Singh Sandhu resident of E-89, Sector 21, Noida, Uttar Pradesh, hereinafter referred to in as "endorsee no. 1" after which in consonance with the application dated 20.04.2011 and allotment letter dated 03.08.2011, the respondent no.1 through its duly authorised person Mr. Vivek Sharma i.e. respondent no.2 executed a buyer's agreement dated 09.07.2012 with the aforesaid endorsee no. 1.

6. As per clause no. 1.2(a) of the buyer's agreement, the sale price of the apartment payable by the apartment allottees to the developer

inclusive of EDC, IDC, PLC is Rs. 74,40,528/- payable by the apartment allottees as per the payments plan annexed herewith as annexure 1. In addition, the apartment allottees agrees and undertakes to pay service tax or any other tax as, may be demanded by the developer in terms of applicable laws/guidelines. As per clause no. 1.2(b) of the buyer's agreement, apart from basic price the apartment allottees shall be liable to be pay fixed PLC for certain apartment in the complex in the apartment allottees opt for any such apartment. The PLC shall be payable for apartment which are park facing, corner apartments, apartments on ground floor and on first to fifth floor, terrace facing and 2BHK apartments etc.

7. In the meantime, the complainants were also looking for residential apartment suitable to their bonafide needs in and around Gurugram and as the time for handing over possession of the said unit was nearing upon completion of 36 months on 08.07.2015*(sic)* 09.07.2015 or completion of grace period of 6 on 08.01.2016 *(sic)* 09.01.2016, the endorsee no.1 approached the complainants with the representations that he was the allottees of the which almost read to move unit in question and as he in need of money urgently for his personal bonafide needs, he was interested to sell the same for a valuable sale consideration of Rs. 86,43,380 i.e., with a premium of Rs. 10,28,852. In pursuance of the intents of the endorsee no.1 to sell the said unit, after detailed discussions, due negotiations, diligence, confirmation and assurances from the respondents to handover the actual & physical possession of the said unit well within time, the endorsee no. 1 executed an agreement to sell dated 15.11.2013 with the complainants, vide which, the endorsee no. 1 agreed to convey and transfer the said

unit in favour of complainants, after which, upon completion of all the documentary formalities, vide letter dated 13.12.2013, the respondents issued NOC for nomination of allotment of the said unit in favour of complaint subject to the terms & conditions of the buyer's agreement.

8. In performance of their part of contractual obligations in terms with the aforesaid buyer's agreement dated 09.07.2012 and the payment plan at annexure I, the complainants always paid the amounts as demanded by the respondents from time to time and thus as on 20.03.2017, they had paid a total sum of Rs. 67,71,437/- besides the premium amount of Rs. 10,00,000 to endorsee no.1 against a total sale consideration of Rs. 74,40,528/-. Even after timely performance of their part of contractual obligations by the complainants stated above, intentionally, wilfully , deliberately with malafide intents, without there being applicability of clause 3(b) or 13 of the buyer's agreement dated 09.07.2012 despite such an undue, inordinate and unwarranted delay of more than 37 months, as at no point of time, the respondents were never prevented, hindered or restrained from completing the residential project in question by any act of God, fire, flood, explosion, war, riot, terrorist acts, sabotage, inability to procure or general shortage of energy, labour, equipment, facilities, materials or supplies, failure of transportation, strikes lockouts, action of labour unions or any other cause not within their reasonable control, despite repeated requests & representations, neither did the respondents pay compensation @Rs. 5 per sq.ft. per month of the super area of the apartment for the period of delay in offering possession not handed over the actual, physical and vacant possession of the said unit

complete in all respects in sheer breach of the terms & conditions of the buyer agreement. In fact, the respondents seemed to have abandoned the residential project in question.

9. The complainants approached the respondents personally on numerous occasions to request them to handover the actual & physical possession of the said unit, upon which, initially the respondents extended false assurances, later on avoided even meet them, finally flatly refused to accede to their just & legal request, followed by harassment, humiliation and serious threats to their life, liberty and property, whereafter the complainants are left with no efficacious remedy to redress their grievances but to approach this hon'ble authority by filing the instant complaint.

C. Relief sought by the complainants:

10. The complainants have sought following relief(s):

    i. Direct the respondents to handover the actual, physical and vacant possession of 3 bedrooms residential unit bearing no. 112 having super area measuring 1745 sq.ft. on 11 floor, in tower A4 along with 01 covered car parking space in the project in the name& style "Spaze Privy at 4" complex situated within the revenue estate of village Sihi, Sector 84, Gurugram to the complainants along with all the rights titles and interest appurtenant thereto without any delay or default in terms with the buyer's agreement dated 09.07.2012.

    ii. Direct the respondents to pay interest @24% per annum over the amounts paid by the complainants for illegal, unlawful and unauthorised use of Rs. 67,71,437/- till handing over of actual

physical and vacant possession of the said unit apartment to the complainants.

D. Reply by respondent no.1

i. That the complainants have been allotted apartment bearing no. A4- 112, situated on 11th floor admeasuring 1745 sq.ft. of super area was provisionally allotted in favour of M/s Advent Infrastructure Private Limited (original allottee), vide allotment letter dated 3.08.2011. The allotment was transferred in favour of Mr. Kunal Sandhu (second allottee) on 2.05.2012. Thereafter, builder buyer's agreement dated 09.07.2012 (annexure R4) had been executed between the second allottee and the respondents. The allotment was transferred in favour of the complainants herein on 23.12.2013 consequent to which the complainants stepped into the shoes of the original/second allottee and have assumed all the rights and obligations under the buyer's agreement dated 09.07.2012.

ii. That it is respectfully submitted that the contractual relationship between the complainants and the respondents are governed by the terms and conditions of the buyer's agreement dated 09.07.2012. The apartment in question has been purchased in resale after the complainants fully understood and accepted the terms and conditions of the buyer's agreement dated 09.07.2012. Hence, the buyer's agreement dated 09.07.2012 is binding upon the complainants with full force and effect. Once a contract is executed between the parties, the rights and obligations of the parties are determined entirely by the covenants incorporated in the

contract. No party to a contract can be permitted to assert any right of any nature at variance with the terms and conditions incorporated in the contract.

iii. That the complainants have completely misinterpreted and misconstrued the terms and conditions of the buyer's agreement dated 09.07.2012. So far as alleged non-delivery of physical possession of the apartment is concerned, it is submitted that in terms of clause 3(a) of the buyer's agreement dated 09.07.2012, the time period for delivery of possession was 36 months excluding a grace period of 6 months from the date of approval of building plans or date of execution of the buyer's agreement, whichever is later, subject to the allottees) having strictly complied with all terms and conditions of the buyer's agreement and not being in default of any provision of the buyer's agreement including remittance of all amounts due and payable by the allottees under the agreement as per the schedule of payment incorporated in the buyer's agreement. It is pertinent to mention that the application for approval of building plans was submitted on 26.08.2011 (annexure R5) and the approval for the same was granted on 06.06.2012 (annexure R6). Therefore, the time period of 36 months and grace period of 6 months as stipulated in the contract has to be calculated from 11.09.2012 subject to the provisions of the buyer's agreement.

iv. That it was further provided in clause 3 (b) of the buyer's agreement dated 09.07.2012 that in case any delay occurred on account of delay in sanction of the building/zoning plans by the concerned statutory authority or due to any reason beyond the

control of the developer, the period taken by the concerned statutory authority would also be excluded from the time period stipulated in the contract for delivery of physical possession and consequently, the period for delivery of physical possession would be extended accordingly. It was further expressed therein that the allottees had agreed to not claim compensation of any nature whatsoever for the said period extended in the manner stated above.

v. That for the purpose of promotion, construction and development of the project referred to above, a number of sanctions/permissions were required to be obtained from the concerned statutory authorities. It is respectfully submitted that once an application for grant of any permission/sanction or for that matter building plans/zoning plans etc. are submitted for approval in the office of any statutory authority, the developer ceases to have any control over the same. The grant of sanction/approval to any such application/plan is the prerogative of the concerned statutory authority over which the developer cannot exercise any influence. As far as respondent no. 1 is concerned, it has diligently and sincerely pursued the matter with the concerned statutory authorities for obtaining of various permissions/sanctions.

vi. That in accordance with contractual covenants incorporated in the buyer's agreement dated 09.07.2012 the span of time, which was consumed in obtaining the following approvals/sanctions deserves to be excluded from the period agreed between the parties for delivery of physical possession: –

S.no.	Nature of Permission / Approval	Date of submission of application for grant of Approval/sanction	Date of Sanction of permission/grant of approval	Period of time consumed in obtaining permission/approval
1	Environment Clearance	30.05.2012	not received till date	-
2	Zoning Plans submitted with DGTCP	27-04-2011	03.10.2011	5 month
3	Building Plans submitted with DTCP	26.08.2011	06.06.2012	9 months
4	PWD Clearance	08.07.2013	16.08.2013	1 month
5	Approval from Deptt. of Mines & Geology	17.04.2012	22.05.2012	1 month
6	NOC from AAI	24.01.2017	01.02.2017	-
7	Approval granted by Assistant Divisional Fire Officer acting on behalf of commissioner	18.03.2016	01.07.2016	4 months
8	Clearance from Deputy Conservator of Forest	05.09.2011	15.05.2013	19 months
9	Aravali NOC from DC Gurgaon	05.09.2011	20.06.2013	20 months

vii. That from the facts and circumstances mentioned above, it is comprehensively established that the time period mentioned

hereinabove, was consumed in obtaining of requisite permission/sanctions from the concerned statutory authorities. It is respectfully submitted that the project in question could not have been constructed, developed and implemented by respondent no. 1 without obtaining the sanctions referred to above. Thus, respondent no. 1 has been prevented by circumstances beyond its power and control from undertaking the implementation of the project during the time period indicated above and therefore the same is not to be taken into reckoning while computing the period of 36 months and grace period of 6 months as has been explicitly provided in the buyer's agreement dated 09.07.2012.

viii. That it is pertinent to mention that it was categorically provided in clause 3(b)(iii) that in case of any default/delay by the allottees in payment as per schedule of payment incorporated in the buyer's agreement, the date of handing over of possession would be extended accordingly, solely on the developer's discretion till the payment of all the outstanding amounts to the satisfaction of the developer. Since the complainants have defaulted in timely remittance of payments as per schedule of payment, the date of delivery of possession is not liable to be determined in the manner alleged by the complainants. In fact, the total outstanding amount including interest due to be paid by the complainants to the respondents as on date is Rs. 12,791/. The statement of account dated 10.07.2019 is appended herewith as annexure R7.

ix. That it is submitted that there is no default on part of respondent no.1 in delivery of possession in the facts and

circumstances of the case. Interest ledger dated 10.07.2019 depicting periods of delay in remittance of outstanding payments by the complainants as per schedule of payment incorporated in the buyer's agreement has been annexed as annexure R 8. Thus, it is comprehensively established that the complainants have defaulted in payment of amounts demanded by respondent no. 1 under the buyer's agreement and therefore the time for delivery of possession deserves to be extended as provided in the buyer's agreement. It is submitted that the complainants consciously and maliciously chose to ignore the payment request letters and reminders issued by respondent no. 1 and flouted in making timely payments of the instalments which was an essential, crucial and indispensable requirement under the buyer's agreement. Furthermore, when the proposed allottees default in their payments as per schedule agreed upon, the failure has a cascading effect on the operations and the cost for proper execution of the project increases exponentially and at the same time inflicts substantial losses to the developer. The complainants chose to ignore all these aspects and wilfully defaulted in making timely payments. It is submitted that respondent no. 1 despite defaults of several allottees earnestly fulfilled its obligations under the buyer's agreement and completed the project as expeditiously as possible in the facts and circumstances of the case.

x. That without admitting or acknowledging in any manner the truth or legality of the allegations put forth by the complainants and without prejudice to any of the contentions of the respondents, it is submitted that only such allottees, who have

complied with all the terms and conditions of the buyer's agreement including making timely payment of instalments are entitled to receive compensation under the buyer's agreement. In the case of the complainants, the complainants had delayed payment of instalments and consequently, are not eligible to receive any compensation from the respondent no.1 as alleged.

xi. That it is pertinent to mention that respondent no.1 had submitted an application for grant of environment clearance to the concerned statutory authority in the year 2012. However, for one reason or the other arising out of circumstances beyond the power and control of respondent no.1, the aforesaid clearance has not been granted till date, despite due diligence having been exercised by Respondent no. 1 in this regard. no lapse whatsoever can be attributed to respondent no. 1 insofar non-issuance of environment clearance is concerned. The issuance of an environment clearance referred to above is a precondition for submission of application for grant of occupation certificate.

xii. That the building in question has been completed in all respects and is very much eligible for grant of occupation certificate. However, for reasons already stated above, application for issuance of occupation certificate cannot be submitted with the concerned statutory authority by the respondent no. 1. Thus, the allegation of delay against the respondents are not based on correct and true facts. The photographs comprehensively establishing the completion of construction/development activity at the spot have been appended with this reply as annexure R 9 (colly). It is further submitted that the respondent

no. 1 expects to deliver the possession of the unit in question by December 2019.

xiii. That it is pertinent to note that all construction activities involving excavation, civil construction were stopped in Delhi and NCR Districts from 1st November 2018 to 10th November 2018 vide directions issued by Environment Pollution (Prevention & Control) Authority for the National Capital Region. The said circular was applicable to the project in question and consequently respondent no.1 had to suspend its construction activities for the said period. Respondent no.1 cannot be held liable for any delay caused due to this fact as well. The aforesaid circular dated 29.10.2018 is appended herewith as annexure R10.

xiv. That buyer's agreement further provides that compensation for any delay in delivery of possession shall only be given to such allottees who are not in default of the agreement and who have not defaulted in payment as per the payment plan incorporated in the agreement. The complainants, having defaulted in payment of instalments, are not entitled to any compensation under the buyer's agreement.

xv. Furthermore, in case of delay caused due to non- receipt of occupation certificate or any other permission/sanction from the competent authorities, no compensation shall be payable being part of circumstances beyond the power and control of the developer. It is further submitted that despite there being a number of defaulters in the project, respondent no.1 itself infused funds into the project, earnestly fulfilled its obligations under the buyer's agreement and completed the project as

expeditiously as possible in the facts and circumstances of the case. Therefore, cumulatively considering the facts and circumstances of the present case, no delay whatsoever can be attributed to respondent no.1 by the complainants. However, all these crucial and important facts have been deliberately concealed by the complainants from this honourable authority.

xvi. That the complaint has been preferred on absolutely baseless, unfounded and legally and factually unsustainable surmises which can never inspire the confidence of this Honourable authority. The accusations levelled by the complainants are completely devoid of merit. The complaint filed by the complainants deserves to be dismissed.

11. 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:

12. The plea of the respondent no. 1 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 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 objection raised by the respondent no.1

F.I Objection regarding timely payment.

The respondent has contended that the complainants have defaulted in timely payments and has placed reliance on clause 3(b)(iii) that in case of default in delay by the allottees in payment as per schedule of payment incorporated in the buyer agreement, date of handing over of the possession would be extended accordingly. Solely, on the developer discretion till the payment of outstanding amounts to the satisfaction of the developer. Since, the complainants have defaulted in timely remittance of payment as per schedule of payments, the date of delivery of possession is not liable to be determined in the manner alleged by the complainants. The relevant clause is reproduced below:

> *3(b)Subject to Clause 13, in the following circumstances, the date of possession shall get extended accordingly:*
>
> *iii) That the APARTMENT ALLOTTEES(S) agrees and accepts that in case of any default/delay in payment as per the Schedule of Payments as provided in Annexure I, the date of offer of possession shall be extended accordingly solely on DEVELOPER'S discretion till the payment of all outstanding amounts to the satisfaction of the DEVELOPER.*

On perusal of the above-mentioned clause, it is pertinent to mention here that the complainants have till date paid the full amount of the total consideration whereas, the due date of delivery of possession was 09.01.2016 and till date the respondent no.1 has not offered the possession of the unit and has also obtained OC on 11.11.2020. therefore, it is clearly implied that despite receiving full consideration the respondent no.1 has defaulted in timely delivery of possession therefore, respondent cannot take benefit of his own wrong and the defence of respondent regarding delay in payment. Moreover, the photos attached on annexure 9 are not clear as to the stage of construction. Hence, does not find in any merit.

F. Findings regarding relief sought by the complainants:

Relief sought by the complainants: Direct the respondents to pay interest for delay possession charges at prevailing rate of interest.

F.1 Admissibility of delay possession charges:

13. In the present complaint, the complainants intend 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***
>
> *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*

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

15. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builder/promoter and buyers/allottees are protected candidly. The apartment buyer's agreement lays down the terms that govern the sale of different kinds of properties like residentials, commercials etc. between the buyers and builders. It is in the interest of both the parties to have a well-drafted apartment buyer's agreement which would thereby protect the rights of both the builders and buyers in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the apartment, plot or building, as the case may be and the right of the buyers/allottees in case of delay in possession of the unit. In pre-RERA period it was a general practice among the promoters/developers to invariably draft the terms of the apartment buyer's agreement in a manner that benefited only the promoters/developers. It had arbitrary, unilateral, and unclear clauses that either blatantly favoured the promoters/developers or gave them the benefit of doubt because of the total absence of clarity over the matter.

16. The authority has gone through the possession clause of the agreement. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the complainants not being in default under any provisions of this agreements and in compliance with all provisions, formalities and documentation as prescribed by the

promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottees that even a single default by the allottees in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the apartment buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottees of his right accruing after delay in possession. This is just to comment as to how the builders have misused his dominant position and drafted such mischievous clause in the agreement and the allottees are left with no option but to sign on the dotted lines.

17. **Admissibility of grace period:** The respondents have proposed to handover the possession of the unit within a period of 36 months (excluding a grace period of 6 months) from the date of approval and of building plans or date of signing of this agreement whichever is later. In the present case, the promoter is seeking 6 months' time as grace period. But the grace period is unqualified and does not prescribe any preconditions for the grant of grace period of 6 months. The said period of 6 months is allowed to the promoter for the exigencies beyond the control of the promoters. Therefore, the due date of possession comes out to be 09.01.2016.

18. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges however, proviso to section 18 provides that where an allottees

does not intend to withdraw from the project, he shall be paid, by the promoters, 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.*

19. 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.

20. 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., 15.03.2022 is @ 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.

21. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoters, in case of default, shall be equal to the rate of interest which the promoters shall be liable to pay the

allottees, in case of default. The relevant section is reproduced below:

> *"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
> *Explanation. —For the purpose of this clause—*
> *(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;"*

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

22. On consideration of the documents available on record and submissions made by both the parties, the authority is satisfied that the respondents are 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 3(a) of the unit buyer's agreement executed between the parties on 09.07.2012, The developer proposes to hand over the possession of the apartment within a period of thirty-six (36) months (excluding a grace period of 6 months) from the date of approval of building plans or date of signing of this agreement whichever is later. The date of execution of builder buyer's agreement is on 09.07.2012+ six months of grace period is allowed so the possession of the booked unit was to be

delivered on or before 09.01.2016. The respondents obtained occupation certificate by the competent authority on 11.11.2020. The authority is of the considered view that there is delay on the part of the respondents to offer physical possession of the allotted unit to the complainants as per the terms and conditions of the buyer's agreement dated 09.07.2012 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 09.07.2012 to hand over the possession within the stipulated period.

23. 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 respondents are established. As such the complainants are entitled to delay possession at prescribed rate of interest i.e. 9.30% p.a. w.e.f. 09.01.2016 till offer of possession + two months, which is earlier as per provisions of section 18(1) of the Act read with rule 15 of the rules.

G. Directions of the authority:

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

i. The respondents shall pay the interest at the prescribed rate i.e., 9.30% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e., 09.01.2016 till offer of possession + two months, which is earlier as per provisions of section 18(1) of the Act read with rule 15 of the rules.

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ii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

iii. The rate of interest chargeable from the complainants/ allottees by the promoters, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondents/ 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 delay possession charges as per section 2(za) of the Act.

iv. The arrears of interest accrued till date of decision shall be paid to the complainants within a period of ~~6 months~~ 90 days from the date of this order and thereafter monthly payment of interest till the offer of possession shall be paid before 10th of every subsequent month.

v. The respondents shall not charge anything from the complainants which is not part of the flat buyer agreement.

25. Complaint stands disposed of.

26. File be consigned to registry.

(Vijay Kumar Goyal)
Member

(Dr. K.K. Khandelwal)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram

Dated: ~~09.01.2016~~ 15.03.2022