BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	:	**1348 of 2019**
Date of filing complaint	:	**03.04.2019**
First date of hearing	:	**04.09.2019**
Date of decision	:	**22.08.2022**

	Sandeep Jagota **R/O: -** 121-R, Model Town, Jalander City , Jalandar , Punjab.	**Complainant**
	Versus	
1. 2. 3. 4.	M/s BPTP Limited M/s Countrywide Promoters Private Limited **Regd. Office at: -** M-11, Middle Circle, Connaught Circus, New Delhi-110001 Kabul Chawla, Managing Director BPTP Limited. **Regd. Office At**: 7, Amrita Shergill Marg Lodhi Garden, Lodhi Road, Central Delhi, New Delhi-110003. Mahesh Yadav (deleted vide order dated 22.08.2022) **Regd. office at**: 571-D, Sector 15, Part-I, Gurugram	**Respondents**

CORAM:	
Dr. K.K. Khandelwal	**Chairman**
Shri Vijay Kumar Goyal	**Member**
APPEARANCE:	
Sh. Chandan Singh	Advocate for the complainant
Sh. Venket Rao	Advocate for the respondents

ORDER

1. The present complaint 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.N.	Particulars	Details	
1.	Name of the project	"Terra", Sector- 102, Gurugram	
2.	Nature of project	Group Housing Towers	
3.	**RERA registered/not registered**	Registered 299 of 2017 dated 13.10.2017	
4.	**DTPC License no.**	83 of 2008 dated 05.04.2008	94 of 2011 dated 24.10.2011
	Validity status	04.04.2025	23.10.2019
	Name of licensee	SUPER BELTS PVT. LTD and 3 others	COUNTRYWIDE PROMOTERS PVT LTD and 6 others

	Licensed area	23.18 acres	19.74
7.	Unit no.	T-21-1001, Tower 21 [As per page no. 26 of complaint]	
8.	Unit measuring	1691 sq. ft. [As per page no. 26 of complaint]	
9.	Date of execution of Flat buyer's agreement	24.12.2012 (Page no. 17 of complaint)	
10.	Possession clause	**5. Possession** **5.1 The Seller/Confirming Party proposes to offer possession of the Unit to the Purchaser(s) within e Commitment Period.** The Seller/Confirming Party shall be additionally entitled to a Grace Period of 180 days after the expiry of the said Commitment Period for making offer of possession of the said Unit. **1.6 "Commitment Period"** shall mean, subject to, Force Majeure circumstances; intervention of statutory authorities and Purchaser(s) having timely complied with all its obligations, formalities or documentation, as prescribed/requested by Seller/Confirming Party, under this Agreement and not being in default under any part of this Agreement, including but not limited to the timely payment of instalments of the sale consideration as per the payment plan opted, Development Charges (DC). Stamp duty and	

		other charges, the Seller/Confirming Party shall offer the possession of the Unit to the **Purchaser(s) within a period of 42 months from the date of sanction of the building plan or execution of Flat Buyer's Agreement, whichever is later**.
12.	Due date of possession	24.06.2016 (calculated from the execution of BBA)
13.	Basic sale Price	**Rs. 88,77,750/-** [AS per BBA on page no. 27 of complaint]
14.	Total amount paid by the complainant	Rs. 98,09,425/- (as alleged by the complainant)
15.	Occupation certificate dated	09.12.2021 (As intimated by the counsel for the respondents)
16.	Offer of possession	not offered

B. Facts of the complaint

3. That the complainant booked the unit with the respondents in their project "TERRA" T21-1001 by paying the amount of Rs. 6 lacs on 22.08.2012 and also paid an amount of Rs. 12,30,414/- on 20.10.2012. further on 20.12.2012 the complainant paid Rs.9,15,207/- and thereafter agreement was executed on 24.12.2012. It is relevant to mention here that the total basic sale price of the flat as per clause 3.1 (a) of the agreement was Rs. 88,77,750/- + development charges @ Rs. 462/- per

square feet on super built up area measuring 1691 square feet as per clause 2.1 of the agreement. The complainant as on 21.02.2017 paid Rs. 98,09,425.77.

4. That as per clause 5 of the buyer's agreement, it was specifically stated that the construction of the unit will be completed and possession will be offered to the allottee / complainant within the commitment period, as per the definition of commitment period as defined under clause 1.6 of the agreement the commitment period is 42 months. It is relevant to mention herein that the buyer's agreement was one-sided and heavily loaded in the favour of the respondents pointing out to the grave unfair trade practices being carried out by it. There is no construction activity or development work going in the said project and same has come to a complete halt. It is further submitted that the work at the project has been delayed inordinately without any cogent justification and it is the absolute breach of the terms of the agreement by the builder as the promised date for the possession was given by the builder i.e. 23.06.2016. It is therefore submitted that the time was the essence of the agreement and therefore since the possession was not given by the builder within time, therefore, it is not obligatory nor feasible on the part of the complainant to take the possession after such a long delay and this amount to frustration of agreement on part of the builder as the material term of the agreement has been breached by the builder. The time being the essence of the contract, the complainant have become duly entitled for the refund of their money along with penal interest.

5. That the complainant being aggrieved against the respondents for not completing the project and for not delivering the possession of apartments, the complainant paid number of visits to the site and

requested the respondents to hand over the possession but all in vain and this shows that the respondents are not able to hand over the possession of the flat which they have already delayed and therefore, it is clear that the respondents are not able to hand over the possession in near future and therefore, the complainant is no more interested to continue with the project.

6. That the complainant has at all times made payments against the demands of the respondents and as per payment schedule of the agreement pertaining to has flat, therefore the fraudulent act and conduct of the respondents needs to be penalized in accordance with the provisions of the Real Estate (Regulation and Development) Act, 2016 (Hereinafter being referred as "the act"),

C. Relief sought by the complainant.

7. The complainant has sought following relief:

(i) Direct the respondents to return sale consideration sum of Rs. Rs. 98,09,425/- received by it from the complainant.

(ii) Direct the respondents to pay Rs. 10,00,000/- as compensation for mental agony and harassment.

(iii) Direct the respondents to pay Rs. 5,00,000/- as compensation on account off deficiency in service on the part of respondents.

(iv) Refund of all legal cost incurred by the complainant to the tune of Rs. 1 Lac.

D. Reply by the respondents.

8. It is submitted that the complainant has approached this Authority for redressal of the alleged grievances with unclean hands, i.e., by not

disclosing material facts pertaining to the case at hand and, by distorting and/or misrepresenting the actual factual situation with regard to several aspects. It is further submitted that the Hon'ble Apex Court in plethora of cases has laid down strictly, that a party approaching the court for any relief, must come with clean hands, without concealment and/or misrepresentation of material facts, as the same amounts to fraud not only against the respondents but also against the court and in such situation, the complaint is liable to be dismissed at the threshold without any further adjudication.

- That the complainant falsely stated that the timely payments were made by the complainant as and when demanded by the respondents. It is further submitted that complainant made several defaults in making timely payments as a result thereof, respondents had to issue reminders letter for payment of the outstanding amounts.
- That the complainant is an investor and has booked the unit in question to yield gainful returns by selling the same in the open market.

9. That the respondents have offered the complainant waiver of 100% upon the delayed payment interest charged by the respondents.
10. That the complainant has concealed the fact that the complainant has still not cleared the dues against each installments for the sum of Rs. 4,96,788/-.
11. That the complainant in the entire complaint concealed the fact that no updates regarding the status of the project were provided to him y the

respondents. However, complainant was constantly provided construction updates b the respondents vide emails dated 16.03.2017, 24.05.2017, 21.06.2017, 15.06.2018, 28.06.2018, 09.09.2018, 07.11.2018, 19.12.2018, 24.01.2019, 19.04.2019, 15.05.2019 and 1.11.2019.

12. Copies of all the relevant do 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 respondents have 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.

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 complainant at a later stage.

G. Findings on the objections raised by the respondents.

F. I Objection regarding untimely payments done by the complainant.

13. It is contended that the complainant has made defaults in making payments as a result thereof and so the respondents had to issue reminder letter dated 17.02.2017, 07.03.2018, 09.04.2018, 04.07.2018 and 21.08.2018. The respondents has further submitted that the complainant has still not cleared the dues. The counsel for the respondents pointed towards clause 7.1 of the buyer's agreement wherein it is stated that timely payment of instalment is the essence of the transaction, and the relevant clause is reproduced below:

"7. TIMELY PAYMENT ESSENCE OF CONTRACT. TERMINATION, CANCELLATION AND FORFEITURE"

7.1 The timely payment of each instalment of the Total Sale Consideration i.e., COP and other charges as stated herein is the essence of this transaction/Agreement. In case the Purchaser(s) neglects, omits, ignores, defaults, delays or fails, for

any reason whatsoever, to pay in time any of the instalments or other amounts and charges due and payable by the Purchaser(s) as per the payment schedule opted or if the Purchaser(s) in any other way fails to perform, comply or observe any of the terms and conditions on his/her part under this Agreement or commits any breach of the undertakings and covenants contained herein, the Seller/Confirming Party may at its sole discretion be entitled to terminate this Agreement forthwith and forfeit the amount of Earnest Money and Non-Refundable Amounts and other amounts of such nature..."

14. At the outset, it is relevant to comment on the said clause of the agreement i.e., *"7. TIMELY PAYMENT ESSENCE OF CONTRACT. TERMINATION, CANCELLATION AND FORFEITURE"* wherein the payments to be made by the complainant has 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 observes that despite complainant being in default in making timely payments, the respondents have not exercised discretion to terminate the buyer's agreement. The attention of authority was also drawn towards clause 7.2 of the flat buyer's agreement whereby the complainant would be liable to pay the outstanding dues together with interest @ 18% p.a. compounded quarterly or such higher rate as may be mentioned in the notice for the period of delay in making payments. In fact, the respondents have charged delay payment interest as per clause 7.2 of the buyer's agreement and has not terminated the agreement in terms of clause 7.1

of the buyer's agreement. In other words, the respondents has already charged penal interest from the complainant 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 allottees by the promoters, in case of default, shall be equal to the rate of interest which the promoter would be liable to pay the allottee, in case of default. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10% by the respondents which is the same as is being granted to the complainant in case of delay possession charges.

F. Findings on the relief sought by the complainant.

Relief sought by the complainant: The complainant has sought following relief:

(i) Direct the respondents to return sale consideration sum of Rs. Rs. 98,09,425/- received by it from the complainant.

(ii) Direct the respondents to pay Rs. 10,00,000/- as compensation for mental agony and harassment.

(iii) Direct the respondents to pay Rs. 5,00,000/- as compensation on account off deficiency in service on the part of respondents.

(iv) Refund of all legal cost incurred by the complainant to the tune of Rs. 1 Lac.

Note: A request has been received from the respondent no. 4 i.e. Shri Mahesh Yadav for deletion of his name as he is not a necessary party

as has been agreed by other respondents and the complainant. Accordingly, his name is deleted from the list of respondents.

Delay Possession Charge

15. While filing the complaint, the complainant sought refund of the paid up amount besides interest and compensation. But, during the course of proceedings, a stand was taken by the complainant through their counsel that occupation certificate of the project has been obtained by the respondents. So, instead of seeking refund of the paid up amount, they would like to take possession of the allotted unit subject to payment/ adjustment of DPC and other charges as per the report of the committee appointed by the authority vide its orders dated 06.07.2021 and 17.08.2021. The respondents through their counsel did not object to that offer of the complainant. So, instead of refund of the paid-up amount of the allotted unit, the claim of complainants is being considered for its possession subject to payment/ adjustment of DPC and other charges as per the report of the committee appointed by the authority vide its orders dated 06.07.2021 and 17.08.2021. So, in view of stand taken by both the parties through their respective counsel, the claim of the allottees with regard to possession of allotted unit is being dealt with as per the report of the committee, given for the project Spacio developed by the respondent-builders and as applicable to the project Terra being reproduced below.

Sr. No	Key Issues	Recommendations
i.	Super Area	Consequent to exclusion of the pool balancing tank and area under the feature wall from the list of the common areas, the additional common areas will decrease from 45713.29 sq. ft. to 38363.97 sq. ft (Park Spacio). Accordingly, the saleable area/specific

		area factor (997049.14/772618.28) will reduce from 1.30 to 1.2905 (Park Spacio).
ii.	Cost Escalation:	After analysis of various factors as detailed in the committee report, The committee is of the view that an escalation cost of Rs. 374.76 per sq. feet is to be allowed instead of Rs. 588 demanded by the developer.
iii.	STP Charges and Electric Connection (ECC) + Fire Fighting (FF)+Power-Backup Charges (PBIC):	the allottees of Spacio may be charged on the pattern of the allottees of Park Generation in respect of STP charges (@INR 8.85 sq. ft. and ECC+FFC+PBIC (@ INR 100 per sq. ft.)
iv.	Annual Maintenance Charges	it was agreed upon that the developer will recover maintenance charges quarterly, instead of annually
v.	Car Parking Charges:	After discussion, the committee finds no dispute on the issue and it was agreed upon that the car parking along with its cost shall be included in the conveyance deed to be executed with the allottees
vi.	Holding Charges:	The Committee observes that the issue already stands settled by the Hon'ble Supreme Court vide judgment dated 14.12.2020 in civil appeal no. 3864-3889/202, whereby the Hon'ble Court had upheld the order dated 03.01.2020 passed by NCDRC, which lays in unequivocal terms that no holding charges are payable by the allottee to the developer
vii.	Club membership charges	it was agreed upon that club membership will be optional
viii.	Preferential location charges	In view of this, the Committee recommends that the respondent may be directed to submit an affidavit declaring that PLCs have been levied strictly as prescribed in the FBAs executed with all the complainants in the projects terra
ix.	EDC/IDC	The Committee observes that the concern of the complainants is genuine and recommends that the respondent be directed not to raise any undue and inappropriate demands in the future.
x.	HVAT	

Period	Scheme	Effective Rate of Tax	Whether recoverable from Customer
Up to 31.03.2014	Haryana Alternative Tax Compliance Scheme	1.05 %	Yes
From	Normal	4.51%	Yes

		01.04.2014 to 30.06.2017	Scheme		
xi.	Service Tax	Service tax Rates/Date		Effective Tax Rate after abatement	
		01 July 2010 to 31st March 2012		10.30%	
		1st April 2012 to 31st May 2015		3.71%	
		1st June 2015 to 14th Nov 2015		4.20%	
		15th Nov 2015 to 31st May 2016		4.35%	
		1st June 2016 to 30th June 2017		4.50%	
xii.	GST	Particulars		Teera	
		HVAT (after 31.03.2014) (A)		4.51%	
		Service Tax (B)		4.50%	
		Pre-GST Rate (C =A+B)		9.01%	
		GST Rate (D)		12.00%	
		Incremental Rate E= (D-C)		2.99%	
		Less: Anti-Profiteering benefit passed if any till March 2019 (F)		2.58%	

16. 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."

17. Clause 5.1 read with clause 1.6 of the flat buyer's agreement provides the time period of handing over possession and the same is reproduced below:

> *"Clause 5.1- The Seller/Confirming Party proposes to offer possession of the unit to the Purchaser(s) within the Commitment period. The Seller/Confirming Party shall be additionally entitled to a Grace period of 180 days after the expiry of the said Commitment Period for making offer of possession of the said unit.*
> *Clause 1.6 "Commitment Period" shall mean, subject to, Force Majeure circumstances; intervention of statutory authorities and Purchaser(s) having timely complied with all its obligations, formalities or documentation, as prescribed/requested by Seller/Confirming Party, under this Agreement and not being in default under any part of this Agreement, including but not limited to the timely payment of instalments of the sale consideration as per the payment plan opted, Development Charges (DC). Stamp duty and other charges, the Seller/Confirming Party shall offer the possession of the Unit to the Purchaser(s) within a period of 42 months from the date of sanction of the building plan or execution of Flat Buyer's Agreement, whichever is later.."*

18. At the inception, it is relevant to comment on the pre-set possession clause of the floor buyer's agreement wherein the possession has been subjected to numerous terms and conditions and force majeure circumstances. 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 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

buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

19. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the unit within a period of 42 months from the date of sanction of the building plan or execution of Flat Buyer's Agreement, whichever is later, the flat buyer's agreement was executed on 24.12.2012. So, the due date is calculated from the date of execution of flat buyer's agreement i.e. 24.06.2016. Further it was provided in the floor buyer's agreement that promoter shall be entitled to a grace period of 180 days after the expiry of the said committed period for making offer of possession of the said unit. In other words, the respondents are claiming this grace period of 180 days for making offer of possession of the said unit. There is no material evidence on record that the respondent-promoters had completed the said project within this span of 42 months and had started the process of issuing offer of possession after obtaining the occupation certificate. As a matter of fact, the promoter has not obtained the occupation certificate and offered the possession within the time limit prescribed by him in the floor buyer's agreement. As per the settled law, one cannot be allowed to take advantage of his own wrongs. Accordingly, this grace period of 180 days cannot be allowed to the promoter.

20. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the

prescribed rate of interest on the amount already paid by him. 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.*

21. 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.

22. 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., 22.08.2022 is 8%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10%.

23. 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

promoter, in case of default, shall be equal to the rate of interest which the promoter 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—*
> *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;"*

24. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10% by the respondents/promoters which is the same as is being granted to the complainant in case of delayed possession charges.

25. Though the relief sought by the complainants relates to refund of the paid up amount against the allotted unit but during the proceedings, a stand was taken by them through their counsel for taking possession of the allotted unit on the basis of occupation certificate subject to delay possession charges and other reliefs as recommended by the committee appointed by the authority. The respondents through their counsel did not object to the same. The committee gave its certain recommendations with regard to the project of the subject unit and the were adopted by the authority, having no objection from the respondents. So, the complainants would be entitled to relief w.r.t. STP , electrification, fire-

fighting ,power backup, club membership , PLC charges , GST/VAT , super area, development charges , car parking , advance maintenance charges and cost escalation etc. (applicable if any).

(ii)**Direct the respondents to pay Rs. 10,00,000/- as compensation for mental agony and harassment**

(iii)Direct the respondents to pay Rs. 5,00,000/- as compensation on account off deficiency in service on the part of respondents.

(iv)Refund of all legal cost incurred by the complainant to the tune of Rs. 1 Lac.

26. The complainant in the aforesaid relief is seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021), has held that an allottees are entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of compensation

H. **Directions of the authority**

27. 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 respondents are directed to pay interest at the prescribed rate of 10% p.a. for every month of delay from the due date of possession i.e. 24.06.2016 till the offer of possession plus two months to the complainant(s) as per section 19(10) of the Act.

II. The arrears of such interest accrued from due date of possession till its admissibility as per direction (i) above shall be paid by the promoter to the allottee respectively from date of this order as per rule 16(2) of the rules.

III. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period against their unit to be paid by the respondents.

IV. The rate of interest chargeable from the allottees by the promoters, in case of default shall be charged at the prescribed rate i.e., 10% by the respondent/promoters 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.

V. The complainants would also be entitled to relief w.r.t. STP , electrification, fire-fighting ,power backup, club membership , PLC charges , GST/VAT , super area, development charges , car parking , advance

maintenance charges and cost escalation etc. (applicable if any) as per the recommendations of the committee detailed earlier in para no. 15 of the order

VI. The respondents shall not charge anything from the complainant 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.

28. Complaint stands disposed of.

29. File be consigned to registry.

(Vijay Kumar Goyal)
Member

(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.08.2022