

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

Complaint no. : 3948 of 2020
Date of filing complaint : 24.11.2020
First date of hearing : 19.01.2021
Date of decision : 31.05.2022

Suresh Tripathy S/o Late Sh. N.M Tripathy R/O: - C 63, Silver Oak Apartment, Plot No. 109, IP Ext Patparganj Delhi 110092	Complainant
Versus	
1. M/s BPTP Limited Regd. Office at: - M-11 (First Floor), Middle Circle, Connaught Circus, New Delhi - 110001 2. Country Wide Promoters Regd. Office at: - M-11 Middle Circle, Connaught Circus, New Delhi	Respondents

CORAM:	
Dr. K.K. Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Sh. Rishab Jain (Advocate)	Advocate for the complainant
Sh. Venket Rao (Advocate)	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 to the allottees as per the agreement for sale executed inter se.

A. Unit and project related details:

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

S.no.	Heads	Information	
1.	Project name and location	'Park Terra', Sector 37-D, Gurugram, Haryana.	
2.	Project area	19.74 Acres	
3.	Nature of the project	Group Housing Towers	
	a) DTCP license no.	83 of 2008 dated 05.04.2008	94 of 2011 dated 24.10.2011
	b) License valid up to	04.04.2025	23.10.2019
	c) Name of the licensee	SUPER BELTS PVT. LTD and 4 others.	COUNTRY WIDE PROMOTERS PVT LTD and 6 others
4.	a) RERA registered/not registered	Registered vide no. 299 of 2017 issued on 13.10.2017 valid up to 12.10.2020	
5.	Unit no.	T-23-604, floor no. 6, tower -T23	

		(Page no. 21 of complaint)
6.	Unit admeasuring	1998 sq. ft. (Page no. 21 of complaint)
7.	Date of execution of the flat buyer's agreement	16.01.2013 (Page no. 16 of complaint)
8.	Total consideration	Rs. 1,29,96,541/- (Page no. 43 of complaint)
9.	Total amount paid by the complainant	Rs.1, 24,19,473/- (Page no. 43 of complaint)
10.	Possession clause	<p>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.</p> <p>Clause 1.6 "FBA" "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</p>

		Party shall offer the possession of the Unit to the Purchaser(s) within a period of 42 months from the date of sanction of building plan or execution of Flat Buyers Agreement whichever is later. (Emphasis supplied)
11.	Due date of delivery of possession	16.07.2016 (Calculated from the date of execution of agreement as being later)
12.	Occupation certificate	Not Obtained
13.	Offer of possession	Not offered
14.	Grace period utilization	In the present case, grace period is not allowed

B. Facts of the complaint

3. That as per flat buyer's agreement, the respondents allotted a residential flat/unit bearing No. T23-604, floor no.6, in T23 tower, tentatively admeasuring super built up area 1998 sq. ft. (185.619 sq. mt.), at their project Park Terra Sector 37 D Gurugram to the complainant.
4. The booking of the apartment/flat in aforesaid project of the respondents was done for total sale consideration of Rs. 12,996,541/- inclusive of BSP, car parking, IFMS, club membership, PLC etc. and complainant made total payment of Rs.1,24,19,473/- to the respondents on various dates.
5. That the complainant regularly visited the site but was surprised to see that construction work was not in progress and no one was present at the site to address the queries of the complainant.
6. That due to these omissions on the part of the respondents, the complainant had suffered mental torture, agony, and also severe

financial losses. As per clause 1.7 of the flat buyer agreement, it was agreed upon by the respondents that in case of any delay, they shall pay to the complainant a compensation @ Rs.5/- per sq. ft. per month of the super area of the apartment/flat. It is, however, pertinent to mention here that a clause of compensation at such a nominal rate of Rs.5/-pr sq. ft per month for the period of delay is unjust and the respondents have exploited the complainant by not providing the possession of the flat even after a delay from the agreed possession plan. The respondents cannot escape the liability merely by mentioning a compensation clause in the agreement. Calculating the amount in terms of financial terms it comes to merely @ 2 % per annum rate of interest whereas the respondents are charging 18% per annum interest on delayed payment from the flat buyers.

7. That on the ground of parity and equity, the respondents also liable to pay the same rate of interest on the amount paid by the complainant from the promised date of possession till that flat is delivered to the complainant.
8. That the complainant has requested the respondents several times on making telephonic calls and also personally visiting the offices of the respondents to deliver possession of the flat in question along with prescribed interest on the amount deposited by the complainant but respondents have flatly refused to do so. The complainant on 09.01.2020 has formally sent an email raising the demand of the interest on delayed possession. It is pertinent to mention here that the respondents had agreed to pay an interest @ 14% to the complainant for the delayed period of

possession but without confirming in writing. Thus, the respondents in a pre-planned manner defrauded the complainant with his hard-earned money and used the same and caused wrongful loss to the complainant.

C. Relief sought by the complainants:

9. The complainants have sought following relief:

- (i) Direct the respondents to handover the possession of the flat along with interest @18% per annum from the date of booking of the flat in question.

D. Reply by the respondents:

10. It is submitted that the respondents have diligently applied for registration of the project in question i.e. "Terra" located at sector-37D, Gurugram including towers-T-20 to T-25 & EWS before this Authority and accordingly, registration certificate No. 299 of 2017 dated 13.10.2017 was issued by the Authority.
11. It is submitted that the complainant has approached this Authority to gain undue advantage with unclean hands, i.e. by not disclosing material facts pertaining to the case at hand and also, 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 decisions 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. In this regard, a reference may be made to the following instances which establish concealment/suppression/misrepresentation on the part of the complainant:

a) That the complainant misrepresented as well as concealed from this Hon'ble Authority that the cheque issued against demand letter dated 07.11.2013 was bounced due to insufficient amount". Therefore, the respondents vide letter dated 02.12.2013 informed the complainant that acknowledgment receipt issued against the said cheque dated 22.11.2013 stood revoked. Further, respondents sent reminder letter dated 02.12.2013, and whereby the complainant was requested to clear outstanding dues. The complainant made payment, accordingly and receipt dated 05.12.2013 was issued by respondents.

b) That the complainant has further misrepresented that no construction is in progress, or his queries remain unanswered or that respondents have till date not provide the exact construction status with respect to the unit in question. In this context, it is submitted that via different demand letters, the complainant was duly informed from time to time about the stage of construction of the unit in question. Further, the respondents has also, from time to time, been updating the complainant with respect to the progress being made in the Project by means of emails dated 16.03.2017, 24.04.2017, 24.05.2017, 21.06.2017, 28.07.2017, 21.08.2017, 11.12.2017, 26.03.2018, 09.04.2018, 08.05.2018, 15.06.2018, 09.09.2018, 07.11.2018, 19.12.2018, 21.01.2019, 24.02.2019, 22.03.2019, 21.04.2019, 15.05.2019, 01.11.2019,

13.01.2020 and 23.11.2020 wherein, the respondents shared regular construction updates with the complainant.

c) It is further submitted that the sole intention of the complainant is to unjustly enrich himself at the expense of the respondents by filing this frivolous complaint which is nothing but gross abuse of the due process of law.

12. The complainant has raised dispute but did not take any steps to invoke arbitration clause which is in breach of the agreement between the parties. The allegations made requires proper adjudication by tendering evidence, cross examination etc. and therefore cannot be adjudicated in summary proceedings.
13. That vide clause G.(1) of the application for allotment, which was later reiterated vide Clause 6.1 of the FBA, it was duly agreed between the parties that subject to the conditions mentioned therein, in case the respondents fails to hand over possession within 42 months from the date of sanctioning of the building plans or execution of FBA, whichever is later along with 180 days of grace period, the respondents shall be liable to pay to the complainant compensation calculated @ Rs.5 per sq. ft. for every month of delay. It is further submitted that the parties had agreed the penalty in case of delay in offering possession prior to entering into the transaction. Prior to entering into the transaction, the parties had further agreed vide clause G.2 of the application form that in case the complainant fails or defaults in making payment of any of the instalments, then the complainant would not be eligible for delay compensation and the said understanding was also reiterated in clause 6.1 of the FBA. Thus,

the understanding between the parties regarding compensation for delay in offering of possession had been agreed to and accepted prior to entering into the transaction.

14. That the proposed timelines for possession have been diluted due to serious payment defaults in making payment of instalments by various allottees of the project Terra including the complainant herein.
15. 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 submissions made by the parties.

E. Jurisdiction of the authority

16. 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 completed 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 promoters leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the objections raised by the respondents.

F.1 Objection regarding untimely payments done by the complainant.

17. The respondents have contended that the complainant has made defaults in making payments as a result thereof, they had to issue reminder letter dated 02.12.2013. The respondents have further submitted that the complainant has still not cleared the dues. The

counsel for the respondents referred to upon 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..."

18. 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 promoters and against the allottee that even a single default by the allottee in making timely payment as per the payment plan may result in termination of the said agreement and forfeiture of the earnest money. Moreover, the authority has observed that despite complainant being in

default in making timely payments, the respondents have not exercised their 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 have 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 allottee by the promoters, in case of default, shall be equal to the rate of interest which the promoter would be liable to pay the allottees, in case of default. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 9.50% by the respondents which is the same as is being granted to the complainant in case of delay possession charges.

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

19. Another contention of the respondents is that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the buyer's

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

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

122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the

parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

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

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

21. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottees to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention

of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

F.III Objections regarding the complaint in breach of agreement for non-invocation of arbitration.

22. The respondents have raised an objection that the complainant has not invoked the arbitration proceedings as per clause 17 of buyer's agreement which contain a specific provision regard initiation of arbitration proceedings in case of breach of agreement. The following clause has been incorporated with regard arbitration in the buyer's agreement:

All or any dispute arising out of or touching upon or in relation to the terms of this agreement or its termination, including the interpretation and validity thereof and the respective rights and obligations of the parties shall be settled amicably by mutual discussion failing which the same shall be settled through arbitration. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory amendments, modifications thereof for the time being in force. A sole arbitrator, who shall nominated by the Seller/Confirming Party's Managing Director, shall hold the arbitration proceedings at Gurgaon. The Purchaser(s) hereby confirm that he shall have no objection to such appointment and the Purchaser(s) confirms that the Purchaser(s) shall have no doubts as to the independence or impartiality of the said Arbitrator and shall not challenge the same. The arbitration proceedings shall be held in English language and decision of the Arbitrator including but not limited to costs of the proceedings/award shall be final and binding on the parties.

23. It is contended on behalf of respondents that as per terms and conditions of the Agreement duly executed between the parties, it was specifically mentioned that in the eventuality of any dispute, the same shall be settled (arbitration proceedings. However, the Authority is of the view that its jurisdiction cannot be fettered by the existence of any arbitration clause in Buyer's agreement. It

may be noted that section 79 of the Act, 2016 bars the jurisdiction of civil courts about any matter falling within the purview of the Authority or the Appellate Tribunal. Thus, as the intention to render such disputes a non-arbitrable seems to be clear. Also, Section 88 of the Act says that the provisions of this Act shall be in addition to and no in derogation of the provision of any other law for the time being in force. Further, the Authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in **National Seeks Corporation Limited Vs M. Madhusudhan Reddy & Anr(2012) 2 CC 506, Emmar MGF Land and Ors Vs Aftab Singh and Ors in Civil Appeal 23512/23513 of 2017 decided on 10.12.2018** and wherein it was held that the remedies provided under the Consumer Protection Act, 1986 are in addition to and not in derogation of other laws in force. It was also held that under Article 141 of the Constitution of India, the law declared the Supreme Court shall be binding on all the courts within the territory of India. So, in view of law laid down in these cases, the Authority is bound by the same and cannot refer the parties to arbitration, even if the agreement between the parties had an arbitration clause. Thus, the Authority has no hesitation in holding that it has the jurisdiction to entertain the complaint and the dispute does not require to be referred to arbitration.

G. Findings on the relief sought by the complainant.

G.1 Direct the respondents to handover the possession of the flat along with interest @18% per annum from the date of booking of the flat in question.

24. 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.”

25. 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 “FBA” “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 building plan or execution of Flat

Buyers Agreement."

26. At the inception it is relevant to comment on the pre-set possession clause of the flat buyer's agreement wherein the possession has been subjected to numerous terms and conditions, force majeure circumstances and numerous terms and conditions. The drafting of this clause is not only vague but so heavily loaded in favour of the promoter that even a single default by the allottees 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 allottees 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 allottees are left with no option but to sign on the dotted lines.
27. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment within a period of 42 months from date of sanction of building plan or execution of flat buyers' agreement whichever is later. In the present complaint, the flat buyer's agreement was executed on 16.01.2013. So, the due date is calculated from the date of execution of flat buyer's agreement i.e. 16.07.2016. Further it was provided in the flat buyer's agreement that promoters 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 promoters have not offered the possession within the time limit prescribed by them in the buyer's agreement nor have they offered the possession till date. 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 at this stage.

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

29. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
30. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 31.05.2022 is 7.50%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.50%.
31. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, 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—
the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.*

the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter

shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"

32. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 9.50% by the respondents/promoters which is the same as is being granted to the complainant in case of delayed possession charges.

H. Directions of the authority

33. 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 promoters 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 9.50% p.a. for every month of delay from the due date of possession i.e., 16.07.2016 till offer of possession of the subject unit after obtaining occupation certificate from the competent authority plus two months i.e., 16.09.2016 or handing over of possession whichever is earlier as per the provisions of section 19 (10) of the Act.
- ii. The arrears of such interest accrued from 16.07.2016 till date of this order shall be paid by the promoters to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be payable by the promoters to the allottee.
- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period and takeover the possession.

- iv. The rate of interest chargeable from the allottee by the promoters, in case of default shall be charged at the prescribed rate i.e., 9.50% by the respondents/promoters which is the same rate of interest which the promoters 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 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 promoters 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.
34. Complaint stands disposed of.
35. File be consigned to registry.


(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 31.05.2022