

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

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| Complaint no. : | 4141 of 2021 |
| Date of filing complaint: | 11.10.2021 |
| First date of hearing: | 16.11.2021 |
| Date of decision : | 07.09.2022 |

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| Surinder Kumar Sharma Both R/o: H.No. 122-A, Sec- 22A, Gurugram, Haryana | Complainant |
| Versus | |
| M/s Mascot Buildcon Pvt. Ltd. (Hometown Properties Private Limited) Regd. office: 294/1, Vishwakarma Colony, Opposite Lal Kuan, New Delhi-110044 | Respondent |
| CORAM: | |
| Shri Vijay Kumar Goyal | Member |
| Shri Ashok Sangwan | Member |
| Shri Sanjeev Kumar Arora | Member |
| APPEARANCE: | |
| Shri Satish Tanwar (Advocate) | Complainant |
| Shri Gulshan Kumar and Rahul Bhardwaj (Advocates) | Respondent |

ORDER

1. The present complaint has been filed by the complainant/allottee in Form CRA 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 to the allottee as per the agreement for sale executed inter-se them.

A. Unit and Project related details:

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

| S. No. | Heads | Information |
|--------|---|---|
| 1. | Name and location of the project | "Oodles skywalk", Sector 83, Village sihi, Gurugram |
| 2. | Nature of the project | Commercial complex |
| 3. | Project area | 3.0326 acres |
| 4. | DTCP License | 08 of 2013 dated 05.03.2013 valid up to 04.03.2017 |
| 5. | Name of the licensee | Dharam Singh |
| 6. | RERA registered/ not registered | Registered vide no.294 of 2017 dated 13.10.2017 valid up to 31.12.2019 |
| 7. | Date of allotment | 26.03.2014 [Annexure P/D at page no.20 of the complaint] |
| 8. | Date of execution of buyer's agreement | 19.09.2014 [Annexure P/H at page no.26 of the complaint] |
| 9. | Date of commencement of construction of the project | 27.03.2014 [Annexure P/T at page no.60 of the complaint] |
| 10. | Unit no. | G-45, Ground floor [Annexure P/H at page no.29 of the complaint] |
| 11. | Super area | 322.27 sq. ft. |

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| | | [Annexure P/H at page no.29 of the complaint] |
| 12. | Payment plan | Construction linked payment plan [Page 60 of the complaint] |
| 13. | Total consideration | Rs.42,79,746/- [Annexure P/H at page no.29 of the complaint] |
| 14. | Total amount paid by the complainant | Rs.38,73,362/- [Annexure P/T at page no.60 of the complaint] |
| 15. | Possession clause | <p>38.</p> <p><i>The "Company" will, based on its present plans and estimates, contemplates to offer possession of said unit to the Allottee(s) within 36 months of signing of this Agreement or within 36 months from the date of start of construction of the said Building whichever is later with a grace period of 3 months, subject to force majeure events or Governmental action/inaction. If the completion of the said Building is delayed by reason of slow down, strike or due to a dispute with the construction agency employed by the "Company", lock out or departmental delay or civil commotion or by reason of war or enemy action or terrorist action or earthquake or any act of God or any other reason beyond the control of the "Company", the "Company" shall be entitled to extension of time for delivery of possession of the said premises. (emphasis supplied)</i></p> |
| 16. | Due date of delivery of possession | <p>19.09.2017</p> <p>Calculated from the date of signing of this agreement i.e. 19.09.2014</p> <p>Grace period of 3 months is disallowed as no substantial evidence/document has been placed on record to corroborate</p> |

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| | | that any such event, circumstances, condition has occurred which may have hampered the construction work. |
| 17. | Offer of possession | Not offered |
| 18. | Occupation certificate | Not obtained |
| 19. | Delay in delivery of possession till the date of decision i.e. 07.09.2022 | 4 years, 11 months, 19 days |

B. Facts of the complaint

3. The complainant/allottee had booked a commercial space/unit bearing no. G-45, ground floor, having super built-up area of 322.27 sq. ft. in the project "Oodles Skywalk" of the respondent situated in sector-83 Gurugram, Haryana and paid a sum of 3,00,000/- vide cheque bearing No. 310185 dated 11-07-2013 and payment of Rs. 2,00,000 vide cheque bearing No. 461626 dated 11-07-2013 to the respondent as booking amount and the respondent acknowledged the same vide receipt No. 000406 dated 16.07.2013 and vide receipt No. 000420 dated 16.07.2013.
4. That later on, allotment letter 26.03.2014 was issued by the respondents in respect of a space/unit bearing no. G-45, ground floor in the project "Oodles Skywalk" of the respondent situated in Sector-83 Gurugram, Haryana.
5. That on 19-09-2014 space buyer's agreement was executed between the parties. That all the negotiations before the booking of the unit and at the time of making payment to the respondents in the shape of cheques/bank transfer, the complainant were lured by respondents to invest in the project on the pretext that delivery of the commercial will be done within 36 months. As per clause no. 38

of the space buyer's agreement, the possession of the unit will be handed over to the complainant within 36 months from the date of signing of agreement.

6. That the complainant visited the site where the project to be developed by the respondent and shocked to see that the construction work was not going on in progress by the respondent and from physical verification at the project site, the complainant was/is sure that the respondent will not be able to deliver the possession of apartment/unit in near future.
7. That, thereafter, the complainant repeatedly followed up with the officials of the respondent for compensate him for delayed possession, but the respondent avoided the matter on one pretext or the other.
8. That the complainant visited the office of the respondent several times but the respondent had not given any satisfactory reply to the complainant, even the respondent have not been given any information regarding completion of the project and handed over the possession of space/unit.
9. That the respondent has ignored the request of the complainant to compensate him. It is pertinent to mention here that the terms of the agreement are completely one sided and favoured only the company and the same has been formulated in a way that they can take undue advantage of their dominant position at the site where the project is being developed and harass the complainant into making payments as and when demanding.

10. That the complainant has paid a substantial amount of Rs. 43,43,168/- towards the consideration of the unit/space which amounts to the entire demand raised by the respondent till date. The respondent, on the other hand, are enjoying the money collected by the buyers by putting it for their own use.

C. Relief sought by the complainant:

11. The complainant has sought following relief:

(i) To pass the order to pay the interest on the amount received by the respondent from the complainant/ allottee in respect of space/unit bearing No. G-45, Ground floor in the project "Oodles Skywalk" of the respondent situated in Sector-83 Gurugram, Haryana as per section 18 and other relevant provisions of HRERA and along with litigation charges Rs. 1,00,000/-

D. Reply by the respondent:

The respondent has taken grounds for rejection of complaint on the ground of jurisdiction along with reply. The respondent has contested the complaint on the following grounds: -

12. That thereafter the complainant vide an application form dated 11.07.2013 applied to the respondent for provisional allotment of a unit in the project. The complainant, in pursuance of the aforesaid application form, was allotted an independent unit bearing no G-45, located on the ground floor, in the project vide an application form dated 11.07.2013. The complainant consciously and wilfully opted for a down payment plan for remittance of the sale consideration for the unit in question and further represented to

the Respondent that he shall remit every installment on time as per the payment schedule.

13. After the application form, both the parties fulfilled certain documentation and procedures and after fulfilling the same, the allotment letter was issued dated 08.07.2014 in favour of the complainant allotting retail space/shop bearing no. 'G-45' on ground floor, admeasuring 322.27 sq. ft. Thereafter, immediately on 19.09.2014, finally, the space buyer agreement was executed between the parties.
14. It is further submitted 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, however, due to the ongoing slump in the real estate market, the complainant has filed the present purported complaint to wriggle out of the agreement. The complainant does not come under the ambit and scope of the definition an allottee under section 2(d) of the act, as the complainant is an investor and booked the unit in order to enjoy the good returns from the project.
15. That the possession of the unit as per clause 38 of the SBA was to be handed over within 36 months (plus the grace period of 3 months) from the date of the execution of the SBA and not from the date of the application form as stated by the complainant who is trying to confuse this hon'ble authority with his false, frivolous and moonshine contentions. Therefore, the date of completion of the project shall be constituted and calculated from the date of execution of the SBA and not from the signing of the date of the

application form excluding the period of force majeure. The date of the completion of the project therefore comes out to be 19.09.2017 and not somewhere in 2016 which the complainant has stated in the complaint. In addition to this, the date of possession as per the SBA further increased to grace months of 3 months, which comes out to be 19.12.2017. The date of the completion of the project was further pushed due to the force majeure conditions i.e. due to the various NGT orders and the lockdown imposed because of the worldwide Covid-19 pandemic, by which the construction work all over the NCR region came to halt. In view of all the above submissions, it is pertinent to mention that the respondent is on time to complete the said project and is almost on the verge of completion with fit-outs and the respondent will apply for its occupational certificate within next few weeks.

16. It is further stated that under clause 38 of the agreement, it was clearly stipulated by the respondent, that the company, based on its present plans and estimates, contemplates to offer possession of said unit to the allottee within 36 months of signing of this agreement or within 36 months from the date of start of construction of the said building, whichever is later with a grace period of 3 months, subject to force majeure events or Governmental action/inaction. It was further stipulated that if the completion of the said building is delayed by reason of slow down, strike or due to a dispute with the construction agency employed by the "company", lock out or departmental delay or civil commotion or by reason of war or enemy action or terrorist action

or earthquake or any act of God or any other reason beyond the control of the "company", the "company" shall be entitled to extension of time for delivery of possession of the said premises. It was further stipulated that the "company" as a result of such a contingency arising, reserves the right to alter or vary the terms and conditions of this agreement or if the circumstances beyond the control of the "company" so warrant, the "company" may suspend the scheme for such period as it might consider expedient. It was further stipulated that if the company is unable to complete the project on account of law passed by the legislature or any other government agency, in that event, the company, if so advised shall be entitled to challenge the validity, applicability can challenge the efficacy of such law and the amount paid by the allottees shall remain with the company. In fact, there existed other stipulations also, which if required shall be dealt with at the time of hearing the present complaint. Relevant clause reproduced as under:

"38. The "Company" will, based on its present plans and estimates, contemplates to offer possession of said unit to the Allottee(s) within 36 months (refer cl.37 above) of signing of this Agreement or within 36 months from the date of start of construction of the said Building whichever is later with a grace period of 3 months, subject to force majeure events or Governmental action/inaction. If the completion of the said Building is delayed by reason of slow down, strike or due to a dispute with the construction agency employed by the "Company", lock out or departmental delay or civil commotion or by reason of war or enemy action or terrorist action or earthquake or any act of God or any other reason beyond the control of the "Company", the "Company" shall be entitled to extension of time for delivery of possession of the said premises.

17. It is pertinent to note that the construction of the project was stopped on account of the NGT order prohibiting construction (structural) activity of any kind in the entire NCR by any person, private or government authority. It is submitted that vide order dated 20.07.2016 NGT placed sudden ban on the entry of diesel trucks more than ten years old and said that no vehicle from outside or within Delhi will be permitted to transport any construction material. Since the construction activity was suddenly stopped, after the lifting of the ban it took some time for mobilization of the work by various agencies employed with the respondent.
18. The date of the completion of the project was further pushed due to the force majeure conditions i.e. due to the lockdown imposed because of the worldwide Covid-19 pandemic, by which the construction work all over the NCR region came to halt. That DTCP, Haryana vide its notification no. 27 of 2021 dated 25.06.2021, gave a relaxation of 6 months to all the builders in view of the hurdles faced by them due to Covid-19.
19. That it was not only on account of following reasons which led to the push in the proposed possession of the project but because of other several factors also as stated below for delay in the project:
- a. Time and again various orders passed by the NGT staying the construction.
 - b. The sudden surge requirement of labour and then sudden removal has created a vacuum for labour in NCR region. That the projects of not only the Respondent but also of all the other

developers have been suffering due to such shortage of labor and has resulted in delays in the projects beyond the control of any of the developers.

- c. Moreover, due to active implementation of social schemes like National Rural Employment Guarantee and Jawaharlal Nehru National Urban Renewal Mission, there was also more employment available for laborers at their hometown despite the fact that the NCR region was itself facing a huge demand for labor to complete the projects.
- d. Even today in current scenario where innumerable projects are under construction all the developers in the NCR region are suffering from the after-effects of labor shortage on which the whole construction industry so largely depends and on which the respondent have no control whatsoever.
- e. Shortage of bricks in region has been continuing ever since and the respondent had to wait many months after placing order with concerned manufacturer who in fact also could not deliver on time resulting in a huge delay in project.
- f. In addition, the current Govt. has on 08.11.2016 declared demonetization which severely impacted the operations and project execution on the site as the laborers in absence of having bank accounts were only being paid via cash by the sub-contractors of the company and on the declaration of the demonetization, there was a huge chaos which ensued and resulted in the laborer not accepting demonetized currency after demonetization.

- g. In July 2017, the Govt. of India further introduced a new regime of taxation under the Goods and Service Tax which further created chaos and confusion owing to lack of clarity in its implementation. Ever since July 2017 since all the materials required for the project of the company were to be taxed under the new regime it was an uphill task of the vendors of building material along with all other necessary materials required for construction of the project wherein the auditors and CA's across the country were advising everyone to wait for clarities to be issued on various unclear subjects of this new regime of taxation which further resulted in delays of procurement of materials required for the completion of the project.
- h. That it is further submitted that there was a delay in the project also on account of violations of the terms of the agreement by several allottees and because of the recession in the market most the allottees have defaulted in making timely payments and this accounted to shortage of money for the project which in turn also delayed the project.
- i. Then the developers were struck hard by the two consecutive waves of the covid-19, because of which the construction work completely came to halt. Furthermore, there was shortage of labor as well as the capital flow in the market due to the sudden lockdown imposed by the government.
- j. Lately, the work has been severely impacted by the ongoing farmers protest in the NCR as the farmers protest has caused huge blockade on the highway due to which ingress and egress

of the commercial vehicles carrying the raw materials has been extremely difficult, thereby bringing the situation not in the control of the developers and thus constitutes a part of the force majeure.

20. That the complainant has also misrepresented that no updates regarding the status of the project were provided to him by the respondent. The complainant was constantly provided construction updates by the respondent from time to time and was well aware of the force majeure conditions prevailed during the course of time which led in delaying the completion of the said project. That it is submitted that several allottees, have defaulted in timely remittance of payment of instalments which was an essential, crucial and an indispensable requirement for conceptualisation and development of the project in question. that despite there being a number of defaulters in the project, the respondent itself infused huge amount of funds into the project and is diligently developing the project in question.
21. It is further pertinent to mention that the project at present date has been completed up to 95% and therefore, it will be difficult for the respondent to pay the interest over the delayed possession of the unit at this stage. Furthermore, almost 90-95% of the fire-fighting, plumbing, electrical, AC ducting work has been done and the internal finishing work is going on and within few months, the possession would be given to the complainant and therefore, it will be difficult for the respondent to pay any interest on the delayed possession at this stage and the possession would be given to the

complainant in next few months. At this point, the project is almost at the edge of completion and any relief cannot be given to the complainant as it will be detrimental to the interest of the respondent as well as all the other investors who have invested in the project.

22. Almost 90-95% of the firefighting, plumbing, electrical, AC ducting work has been done and the internal finishing work is going on and within few months, the possession would be given to the complainant.
23. 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:

24. The plea of the respondent 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.1 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 allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

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

Section 34-Functions of the Authority:

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

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

F. Findings on the objections raised by the respondent

F.I. Objection regarding entitlement of DPC on ground of complainant being investor.

25. The respondent is contending that the complainants have invested in the unit in question for commercial gains, i.e to earn income by way of rent and/ resale of the property at an appreciated value and to earn premium thereon. Since the investment has been made for commercial purpose therefore the complainants are not consumers but are investors, therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time, preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if it contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the apartment buyer's agreement, it is revealed that the complainants are buyers and paid total price of **Rs.38,73,362/-** to the promoter towards purchase of an apartment in the project of the promoter. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

26. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment buyer's agreement executed between promoter and complainants, it is crystal clear that the complainant is an allottee(s) as the subject unit was allotted to her by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottee being an investor is not entitled to protection of this Act also stands rejected.

F. II. Objection regarding Timely payments:

The respondent has alleged that the complainant having breached the terms and conditions of the agreement and contract by defaulting in making timely payments. Further the above-mentioned contention is supported by the builder buyer agreement executed between both the parties. Clause 24 provides that timely

payments of the instalments and other charges as stated in the schedule of payment is essence of the agreement.

But the respondent cannot take advantage of this objection of timely payments being himself at wrong firstly by still not obtaining the occupation certificate and offering the possession of the unit despite being delay of more than 2 years and the complainant has already paid more than 80% of the total sale consideration till date. Therefore, the respondent itself failed to complete its contractual and statutory obligations. Moreover, there is no document on file to support the contentions of the respondent regarding delay in timely payments.

G. Findings regarding relief sought by the complainants:

G.1. Direct the respondent to pay the interest on the amount received by the respondent from the complainant/allottee in respect of the space/unit bearing no. G-45, ground floor as per section 18 and other relevant provisions of HRERA

Admissibility of delay possession charges:

27. 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

28. 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 complainant not being in default under any provisions of this agreement and 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 favor of the promoter and against the allottee(s) that even formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee(s) and the commitment date for handing over possession loses its meaning.
29. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builder(s)/promoter(s) and buyer(s)/allottee(s) 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 buyer and builder. 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 builder and buyer 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.

30. 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 allottee 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 their

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.

31. **Admissibility of grace period:** The respondent promoter has proposed to handover the possession of the unit within a period of 36 months of signing of this agreement or within 36 months from the date of start of construction of the said building whichever is later. In the present case, the promoter is seeking 3 months' time as grace period. The grace period of 3 months is disallowed as no substantial evidence/document has been placed on record to corroborate that any such event, circumstances, condition has occurred which may have hampered the construction work. Therefore, the due date of possession comes out to be 19.09.2017.
32. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges however, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

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

- (1) *For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the*

"interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

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

33. 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.
34. 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., 07.09.2022 is @ 8%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10%.
35. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) *the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.*
- (ii) *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount*

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

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

36. On consideration of the documents available on record and submissions made by both the parties, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 38 of the buyer's agreement executed between the parties on 19.09.2014, possession of the booked unit was to be delivered within 36 months of signing of this agreement or within 36 months from the date of start of construction of the said building whichever is later, since the date of signing of the agreement i.e. 19.09.2014 and the date of start of construction is 27.03.2014. Therefore, the due date is calculated from the date of signing of the agreement being later. Hence, the due date comes out to be 19.09.2017 as grace period of 3 months is disallowed as no substantial evidence/document has been placed on record to corroborate that any such event, circumstances, condition has occurred which may have hampered the construction work. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of

the buyer's agreement dated 19.09.2014 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and responsibilities as per the flat buyer's agreement dated 19.09.2014 to hand over the possession within the stipulated period.

37. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was not granted by the competent authority till date and the respondent has not offered the possession of the subject unit. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. This 2 months' of reasonable time is being given to the complainants keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e. 19.09.2017 till actual handing over of possession or offer of possession (after obtaining OC from the competent authority) plus two months whichever is earlier.
38. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession at prescribed rate of interest i.e. 10% p.a. w.e.f.

19.09.2017 till actual handing over of possession or offer of possession (after obtaining OC from the competent authority) plus two months whichever is earlier as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act of 2016.

F.2 Litigation charges:

The complainants are claiming compensation in the present relief. The authority is of the view that it is important to understand that the Act has clearly provided interest and compensation as separate entitlement/rights which the allottee can claim. For claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainant may file a separate complaint before adjudicating officer under section 31 read with section 71 of the Act and rule 29 of the rules.

H. Directions of the authority:

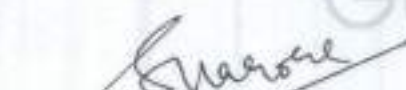
39. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the authority under section 34(f) of the Act of 2016:
- i. The respondent is directed to pay the interest at the prescribed rate i.e. 10% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. 19.09.2017 till actual handing over of possession or offer of possession (after obtaining OC from

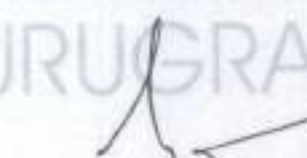
the competent authority) plus two months whichever is earlier .


- ii. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the 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.
- iv. The rate of interest chargeable from the complainant/allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delay possession charges as per section 2(za) of the Act.
- v. The respondent shall not charge anything from the complainant which is not the part of buyer's agreement.

40. Complaint stands disposed of.

41. File be consigned to registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 07.09.2022