

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

Complaint no.	:	2101 of 2021
Date of filing complaint:		27.04.2021
First date of hearing:		09.07.2021
Date of decision	:	07.09.2022

1. Mr. Ashok Sur 2. Mrs. Shuchi Sur Both R/o: -C/o Northern Refrigeration company,32, Hazratganj, Lucknow-226001	Complainants
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 Sukhbir Yadav (Advocate)	Complainants
Shri Gulshan Kumar and Rahul Bhardwaj (Advocates)	Respondent

ORDER

- The present complaint has been filed by the complainants/allottees 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 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.	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	N/A
8.	Date of execution of builder buyer's agreement	20.04.2017 [Annexure P1 at page no. 19 of the complaint]
9.	Date of commencement of construction of the project	21.03.2014 [Annexure P2 at page no. 48 of the complaint]
10.	Unit no.	F-115, first floor [Annexure P1 at page no. 22 of the complaint]
11.	Super area	293 sq. ft. [Annexure P1 at page no. 22 of the complaint]
12.	Payment plan	Construction linked payment plan

		[Page 43 of the complaint]
13.	Total consideration	Rs.32,06,885/- [Page 22 of the complaint]
14.	Total amount paid by the complainants	Rs.30,16,045/- [As per annexure P3 at page no.49 of the complaint]
15.	Possession clause	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 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)
16.	Due date of delivery of possession	20.10.2020 [Calculated from the date of agreement i.e. 20.04.2017 + 6 months grace period is allowed (extension as per Harera notification no. 9/3-2020 HARERA/GGM (Admn) dated 26.05.2020, due to Covid-19 outbreak for projects having its due

		date of completion on or after 25.03.2020.
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	1 year 10 months 18 days

B. Facts of the complaint

3. That, believing on representation and assurance of respondent, the complainants Ashok Sur & Shuchi Sur, booked one shop bearing no. F - 115 on first floor, admeasuring 293 sq. ft. and issued one cheque of Rs. 5,14,215/- on 09.07.2013 as booking amount and signed a pre-printed application form. The shop was purchased under the construction linked plan for a sale consideration of Rs. 32,06,885/-
4. That after a long follow-up on 20.04.2017, a pre-printed, unilateral, arbitrary shop buyer agreement/buyer's agreement was executed inter-se the respondent and the complainants. According to clause 38 of the shop buyer agreement, the respondent has to give possession of the said shop within 36 (thirty-six) months from the date of receipt of all approvals or signing of this agreement, whichever is later. It is germane that the construction was commenced on 21.03.2014 (start of excavation) and the complainant requested several times to the respondent for the execution of BBA, but the builder delayed the execution of BBA, hence, the due date of possession was 21.03.2017. It is pertinent to mention here that the builder keeps raised the demand without the execution of BBA.

5. That the complainants kept paying the demands raised by the respondent but when the builder delayed the execution of BBA, the complainants stopped making payment for some time.
6. That on 18.04.2019, the respondent raised a demand of Rs. 11,49,193/- as per the statement of account dated 04.11.2019, issued by the respondent, the complainants have paid Rs. 30,16,045/- i.e., more than 91% of total sale consideration.
7. That, since 2017 the complainants are regularly visiting the office of the respondent, as well as the construction site, and making efforts to get possession of the allotted shop but all in vain. Despite several visits and requests by the complainants, the respondent did not give possession of the shop. The complainants have never been able to understand/know the actual state of construction. Though the towers seem to be built up, but there was no progress observed on finishing and landscaping work and amenities for a long time.
8. That the main grievance of the complainants in the present complaint is that despite the complainants paid more than 91% of the actual cost of the shop and ready and willing to pay the remaining amount (justified) (if any), the respondent party has failed to deliver the possession of shop on promised time and till date project is without amenities. Moreover, it was promised by the respondent party at the time of receiving payment for the shop that the possession of a fully constructed shop and the developed project shall be handed over to the complainants as soon as construction completes.

C. Relief sought by the complainants:

9. The complainants have sought following relief:

(a) To get possession of the fully developed/constructed shop with all amenities within 6 months of the filing of this complaint.

(b) To get the delayed possession interest @ prescribed rate from the due date of possession till the actual date of possession (complete in all respect with all amenities after obtaining the OC).

(c) To get an order in her favour by directing the respondent party to provide area calculation (carpet area, loading, and super area).

(d) The complainants are entitled to get an order in their favour to refrain the respondent from giving effect to unfair clauses unilaterally incorporated in the Shop Buyer Agreement.

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: -

10. The complainants booked one shop bearing no. F-115 on first floor admeasuring 293 sq. ft. since the complainant - Mr. Ashok sur was himself a broker, he wanted to purchase this commercial shop for commercial benefits. In fact, after seeing the commercial viability and the profits attached with such commercial unit/shop, he himself paid the booking amount and had taken back the "commission" on the said Unit from the respondent.

11. The respondent submitted that despite exercising diligence and continuous pursuance of project to be completed, project of answering Respondent is near for successful completion, however, due to following reasons, there existed some delay, which reasons are as follows: -
- a. On 19.02.2013 the office of the executive engineer, Huda Division No. II, Gurugram had issued instruction to all developers to lift tertiary treated effluent for construction purpose for sewage treatment plant, Behrampur. Due to this instruction, the company faced the problem of water supply for a period of 6 months.
 - b. Time and again various orders passed by the NGT staying the construction.
 - c. Orders passed Hon'ble High Court of Punjab and Haryana wherein the Hon'ble Court has restricted use of groundwater in construction activity and directed use of only treated water from available seaweed treatment plants. However, there was no sewage treatment plant available which led to scarcity of water and further delayed the project.
 - d. Evidently there was lot of delay on part of government agencies in providing relevant permissions, licenses approvals and sanctions for project which resulted in inadvertent delay in the project which constitute a force majeure condition, as delay caused in these permissions cannot be attributed to respondent, for very reason that respondent, for very reason that respondent has been very prompt in making applications and replying to objections if any raised for obtaining such permissions.

12. It was not only on account of following reasons among others as stated above that the project got delayed and proposed possession timelines could not be completed in addition to above there were several others reasons also as stated below for delay in the project:
- i. 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 labour and has resulted in delays in the project's beyond the control of any of the developers.
 - ii. 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 labours at their hometown despite the fact that the NCR region was itself facing a huge demand for labour to complete the projects.
 - iii. 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 labour shortage on which the whole construction industry so largely depends and on which the Respondent have no control whatsoever.
 - iv. The Ministry of environment and Forest and the Ministry of mines had imposed certain restrictions which resulted in a drastic reduction in the availability of bricks and availability of Sand which is the most basic ingredient of construction activity. The said ministries had barred excavation of topsoil for manufacture of bricks and further directed that no more manufacturing of bricks

- be done within a radius of 50 km from coal and lignite based thermal power plants without mixing 25% of ash with soil.
- v. 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.
- vi. 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 labourers 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 labourers not accepting demonetized currency after demonetization.
- vii. In July 2017 the Govt. of India further introduced a new regime of taxation Page 20 of 26 Complaint No. 1069 of 2018 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.

- viii. 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.
- ix. The respondent submitted that there was a stay on construction in furtherance to the direction passed by the Hon'ble NGT. In furtherance of the above-mentioned order passed by the Hon'ble NGT, the construction activities at the project site was also delayed for several other reasons as stated in the aforesaid paragraphs and which were clearly prescribed under the agreement.
13. The true facts are that on every occasion, whenever, the respondents sent the SBA on the address of the complainant, he shifted to somewhere else. Thereafter, complainant specifically stated to the respondents that they should not send the original SBA by post or courier to his address as there is a threat of misplace of original SBA and requested the respondent that he himself would come to the office of the respondent and would then after reaching each and every term would sign it there. The present SBA was also executed / signed by the complainants at the office of the respondent only. Both the complainants read each and every clause and terms and conditions of space buyer agreement, price list and understood the total sale consideration, including "other charges" to be levied on the same.

14. Clause 36 (a) only talks about the applying of occupation certificate in respect of the project not later than 36 months, whereas the "possession" clause is 38 of the SBA, wherein it is clearly stipulated that the company will, based on its present plans and estimates, contemplates to offer possession of the 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 Government action/inaction. Moreover, it is further wrong to say and vehemently denied that the construction was commenced on 21.3.2014 and the complainant requested several times to the respondent for the execution of BBA, but the builder delayed the execution of BBA, hence the due date of possession was 21.3.2017. In this regard, it is respectfully submitted before this Hon'ble Authority that as admittedly in the present case, the execution of the SBA was happened on 20.4.2017, the due date of possession shall be after 36 months + 3 months grace period and the period of lockdown prevailed in the Country due to COVID-19 and due to NGT order for stopping of construction work for 2 months every year, all these period has to be excluded and then the actual date of possession would be given. In the present case from the date of 20.4.2017, if we count 39 months, the period is coming 20.7.2020 for due date of possession and in that period / date 20.7.2020, the period of lockdown and NGT orders period i.e. grace period of more than one year would be added and thus if the period of grace and lockdown, if be added the period of

due possession would be around December, 2021 and by that time the possession would be given. Further, with respect to progress of the Project is concerned, all the towers are ready, and the finishing work is going on. Hence, in lieu of aforesaid facts, it is wrong to say by the complainant that the due date of possession was 21.3.2017.

15. As stated above, since on many occasion the copy of SBA was sent to the address of the complainants and on every occasion the same was returned with the respondent with remarks that the complainants were not found at the address given. Thereafter, as per the request of the complainant, the original SBA was kept at the office of the respondent, whereupon, the complainants visited personally and after reading each and every covenant and other terms and conditions of the agreement, both the complainants then signed and executed the SBA with the respondent. The complainants themselves visited the office of respondent on 19.9.2018 and collected the original SBA.
16. The complainants on several occasions personally went to the site and met with the official / marketing staff members at the site and on his request, his area with size with actual shop area was shown to him. Moreover, in the present para, the complainants themselves have admitted that the towers were built up, however, complaining about the finishing and landscaping work and amenities, which as stated above, all the towers are ready and the finishing work is going on. The project is at the final stage of completion of other amenities and the possession of the said shop would be soon given to the complainants.

17. The complainants have been wilful defaulters from the beginning and not paying the instalments as per the payment plan opted by them. It is a well settled part that respondents are the builders and they need timely payments from its customers for successful completion of the project.
18. 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:

19. 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. I Territorial jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the 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 complainants being investors.

20. 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. 30,16,045/-** 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;"

21. 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. III. Objection regarding Timely payments:

The respondent has alleged that the complainants 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 installments 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 1.5 years and the complainants have already paid more than 90% 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 get the delayed possession interest @prescribed rate from the due date of possession till the actual date of possession.

Admissibility of delay possession charges:

22. 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

23. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the complainants not being in default under any provisions of this

agreement and compliance with all provisions, formalities and documentation as prescribed by the 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.

24. 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 residential, 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.

25. 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.
26. **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 6 months is allowed as per Harera notification no. 9/3-2020 HARERA/GGM (Admn) dated 26.05.2020, due to Covid-19 outbreak for projects having its due date of completion on or after 25.03.2020. Therefore, the due date of possession comes out to be 20.10.2020.

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

28. 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.
29. 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%.
30. 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 complainants in case of delayed possession charges.

31. 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 20.04.2017, 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. 20.04.2017 and the date of start of construction is 21.03.2014. Therefore, the due date is calculated from the date of signing of the agreement being later. Hence, the due date comes out to be 20.10.2020 as grace period of 6 months is allowed as per Harera notification no. 9/3-2020 HARERA/GGM (Admn) dated 26.05.2020, due to Covid-19 outbreak for projects having its due date of completion on or after 25.03.2020. Copies of the same have been placed on record. 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 20.04.2017 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 20.04.2017 to hand over the possession within the stipulated period.

32. 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 complainants 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. 20.10.2020 till actual handing over of possession or offer of possession (after obtaining OC from the competent authority) plus two months whichever is earlier.
33. 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 complainants are entitled to delay possession at prescribed rate of interest i.e. 10% p.a. w.e.f. 20.10.2020 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 Direct the respondent to get possession of the fully developed/constructed shop with all amenities within 6 months of the filing of this complaint.

There is nothing on the record to show that the respondent has applied for OC of the above-mentioned project. So, in such a situation no direction can be given to the respondent to handover the possession of the subject unit, as the possession cannot be offered till the occupation certificate for the subject unit has been obtained

F.3 Direct the respondent to provide area calculation (carpet area, loading and super area).

As per section 19(1) of Act of 2016, the allottee shall be entitled to obtain information relating to sanctioned plans, layout plans along with specifications approved by the competent authority or any such information provided in this Act or the rules and regulations or any such information relating to the agreement for sale executed between the parties. Therefore, the respondent promoter is directed to provide the area calculation relating to super area, loading and carpet area to the complainants.

F.4 Direct the respondent to refrain from giving effect to unfair clauses unilaterally incorporated in buyer's agreement.

The complainants have not disclosed about the unfair clauses in the complaint. So, this relief can't be decided as well as the respondent is also directed not to charge anything which is not part of BBA.

H. Directions of the authority:

34. 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 complainants from due date of possession i.e. 20.10.2020 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 complainants within 90 days from the date of this order as per rule 16(2) of the rules.
- iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The rate of interest chargeable from the complainants/allottees 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 is directed to provide the area calculation relating to super area, loading and carpet area to the complainants.

vi. The respondent shall not charge anything from the complainants which is not the part of buyer's agreement.

35. Complaint stands disposed of.

36. 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



HARERA
GURUGRAM