

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

Complaint no. : 4779 of 2021
First date of hearing: 02.02.2022
Date of decision : 28.10.2022

Suresh Kumar Yadav
R/o: -House no. 1078, 31, Street no. 01, near Apna
Enclave, Laxman Vihar, phase-1, Gurugram

Complainant

Versus

M/s Vatika Limited.
Regd. Office at: Unit no. A 002, INXT City Centre, ground
floor, block A, Sector 83, Vatika India Next, Gurugram

Respondent

CORAM:

Shri Vijay Kumar Goyal
Shri Sanjeev Kumar Arora

Member
Member

APPEARANCE:

Sh. Tripti Kaushik proxy counsel
Sh. Dhruv Dutt Sharma

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 10.12.2021 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 provisions of the

Act or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S. No.	Heads	Information	
1.	Name of the project	"Vatika India Next", Sector 82-83, Gurugram	
2.	Agreement to assign unit to complainant	08.05.2014 (Page 86 of complaint)	
3.	Nature of the project	Initial plot 35, Ground floor, Block E Area 929.02 sq. ft. (Page 38 of complaint)	New Plot 38, ST. K-8.1, Level-1 Area 940 sq. ft. (Page 123 of complaint)
4.	Date of execution of buyer's agreement between builder and original allottee	24.03.2011 (As per page 35 of complaint)	
5.	Possession clause	10.1 Schedule for Possession of the said independent dwelling unit That the Company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/ said independent dwelling unit within a period of three years from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in Clauses	

		(11.1), (11.2). (11.3) and Clause (38) or due to failure of Allottee(s) to pay in time the price of the said independent dwelling unit along with all other charges and dues in accordance with the schedule of payments given in Annexure III or as per the demands raised by the Company from time to time or any failure on the part of the Allottee(s) to abide by any of the terms or conditions of this Agreement. However, it is agreed that in the event of any time overrunning completion of construction of the said building / said dwelling unit, the Company shall be entitled to reasonable extension of time for completing the same.
6.	Due date of possession	11.06.2018 *Note: An indemnity cum undertaking has been signed between the parties. Wherein, it has been mentioned in clause 3 that the unit was delivered within 4 years from the date of his affidavit.
7.	Total sale consideration	Rs. 33,318,903.14/- (BSP) (As per addendum to BBA page 124 of complaint)
8.	Total amount paid by the complainant	Rs. 26,37,906.00/- (As per SOA dated on page 126 of complaint)
9.	Offer of possession	Not offered
10.	Occupation certificate/completion certificate	Not obtained

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:-

- I. That in October 2009, Mrs. Anita Yadav, and Mr. Bhupinder Singh Yadav (original allottees) booked unit no. 35, having built up area admeasuring 781.25 sq. ft, (revised to 929.02 sq. ft before signing of addendum) for total sale price of Rs. 24,76,849/- (revised to 29,45,337 before signing of addendum) on ground floor, 4th street, block-E, Sector-83, Gurugram-122002 and invested in the upcoming residential project of respondent upon the land for which license no. 113/2008 dated 01.06.2008 (valid up to 31.05.2018) issued by the DTCP, Haryana.
- II. That after making the payment of Rs. 2,48,000/- by original allottees, a builder buyer's agreement in respect of the said unit was executed on 24.03.2011. A buyer's agreement offered to be signed and executed was one sided having all terms in favour of the respondent. The said unit was assigned to the complainant by the original allottees after receiving NOC from the promoter on 17.06.2014.
- III. That a home loan of the complainant was sanctioned by Tata Capital Housing Finance Limited (TCHFL) on 24.05.2014 for a total amount of Rs. 35,00,000/-. TCHFL disbursed Rs. 15,00,000/.
- IV. That in July 2017, the parties executed an addendum to a buyer's agreement for re-locating the unit in Sector 83 itself on the same terms & conditions as there were in a buyer's agreement and new unit no. 38, ST. K-8.1, level-1, Sector-83 having area of 940 Sq. ft.

- for revised basic sale price Rs.33,18,903/-was allotted to him. He has already paid Rs. 27,87,906/- to it.
- V. That in term of buyer's agreement it is specifically mentioned in clause 10.1 that the respondent would complete the construction of the project within 3 years from the date of execution of buyer's agreement.
- VI. The complainant visited the site in November 2021. He was shocked to see that the construction progress which was very far from the completion. It is vital to note that no satisfactory explanation with regard to delay in construction has been provided by to him .
- VII. That one-sided buyer's agreement has been one of the core concerns of the buyers in the real estate project. The terms of the agreement are non-negotiable and a buyer even if he does not agree to a term, there is no option of modifying it or even deliberating it with the builder. This aspect has often been unfairly exploited by it, whereby it imposes unfair and discriminatory terms and conditions.
- VIII. That buyer's agreement was executed before the building plans were approved. Further, the builder changed the building plans of the project without keeping the allottees in loop. The construction of another floor on the land has resulted in decrease of undivided share of land of the complainant. The respondent never informed

and nor took NOC from the allottees for change in the building plans i.e., one more floor on the original building plan. This is clear violation of section 14 of the Act.

- IX. That the complainant signed the addendum to buyer's agreement. Which was supposed to be an integral part & parcel of a buyer's agreement. He was forced to sign an addendum for re-location as the respondent informed that if the same was not signed, the earlier paid amount would be refunded, and unit would be cancelled. He signed the addendum under pressure as he purchased the unit in Rs.45,00,000/- i.e., by paying Rs 15,00,000/- premium. No logical explanation was provided to him for relocating the unit.
- X. That it is abundantly clear that the respondent had shown a rosy picture about project sold the unit in 2009, extracted the amount of Rs 27,87,906/- from the complainant by giving false milestone and commitment and by executing illegal, unilateral, one-sided buyer's agreement.
- XI. That the complainant was misinformed regarding status of RERA registration of the project. Even after requesting for status of the project and RERA registration no. multiple times on 21.11.2018, 26.11.2018, 30.11.2018 & 03.02.2018, it failed to provide the same. Due to this, TCHFL stopped the further disbursement of loan. Yet, it kept on making undue demands on the threat of cancelling the

unit. The complainant bore the financial burden himself and kept paying the demands and one time interest for delay payments. Regardless of receiving nearly 82% of the total amount of the allotted unit, the construction at the project site is still far away from the completion stage and there does not seem to be any hope that the project will be completed in near future.

- XII. That the complainant is entitled for interest, as per section 18 of the Act, 2016 and executed buyer's agreement taking in factor of law of equity and justice, for the delayed period in handing over the actual possession of the unit. A buyer's agreement being entirely one sided provide interest to be paid by allottee in case of delayed payment at 15% yet do not provide for any interest payment by promoter in case of delay of possession at the end of it. Taking into consideration the law of equity and justice, he is entitled for interest equivalent to 15% delayed period on the amount already paid.
- XIII. That the complainant is aggrieved as more than 12 years lapsed since the booking of unit was made in the project of the respondent. He has paid the amount to it on time, out of his hard-earned money, but the possession of the unit is far away from as on the date of this complaint. The respondent failed to provide the date of possession of the unit and hence leaving the complainant with no other option but to file the present complaint.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
 - I. Direct the respondent to immediately handover the possession and interest on paid amount for delay possession of the unit with all amenities as agreed.
 - II. Direct the respondent not to raise further demand and not threat to cancel the unit till the matter is sub-judice.
 - III. Pass an order for delay interest on paid amount of Rs. 27,87,906/- along with pendent lite and future interest till actual possession hereon @15%.
 - IV. Direct the respondent to pay the litigation expenses of Rs. 1,50,000/-.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent contested the complaint on the following grounds: -
 - a) That the complaint filed before the authority, besides being misconceived and erroneous, is untenable in the eyes of law. He has misdirected himself in filing the above captioned complaint before the authority as the relief being claimed by him, besides being illegal, misconceived and erroneous, cannot be said to even fall within the realm of jurisdiction of the authority.



- b) That further, without prejudice to the aforementioned, even if it was to be assumed though not admitting that the filing of the complaint is not without jurisdiction, even then the claim as raised cannot be said to be maintainable and is liable to be rejected for the reasons as ensuing.
- c) That the reliefs sought by the complainant appears to be on misconceived and erroneous basis. Hence, the complainant is estopped from raising the pleas, as raised in respect thereof, besides the said pleas being illegal, misconceived and erroneous.
- d) That apparently, the complaint filed by the complainant is an abuse and misuse of process of law and the reliefs claimed as sought for, are liable to be dismissed. No relief much less any interim relief, as sought for, is liable to be granted to him.
- e) That the complainant has miserably and willfully failed to make payments in time or in accordance with the terms of the floor buyer's agreement. He has frustrated the terms and conditions of the buyer's agreement, which were the essence of the arrangement between the parties and therefore, he now cannot invoke a particular clause, and therefore, the complaint is not maintainable and should be rejected at the threshold. He has also misdirected in claiming payment of interest on account of alleged delayed offer for possession. He cannot be said to be any alleged delay in offering of the possession. It has been categorically agreed between the parties that subject to the complainant having complied with all the terms and conditions of a buyer's agreement and not being in default under any of the provisions of the said agreement and having complied with all provisions, formalities, documentation etc., the

developer contemplates to complete construction of the said unit within a period of 3 years from the date of execution of the agreement unless there shall be delay due to force majeure events and failure of allottee(s) to pay in time the price of the said Unit.

f) In the present case, there has been delay in construction due to various reasons which were beyond its control and the same are enumerated below:-

- i. It is submitted that in the agreement, the respondent had inter alia represented that the performance by the company of its obligations under the agreement was contingent upon approval of the unit plans of the said complex by the Director, Town & Country Planning, Haryana, Chandigarh and any subsequent amendments modifications in the unit plans as may be made from time to time by the Company & approved by the Director, Town & Country Planning, Haryana, Chandigarh from time to time.
- ii. Clause 16.2 of the booking and the signing of the agreement, the company was facing umpteen roadblocks in construction and development works in projects in its licensed lands comprised of the township owing to the initiation of the GAIL corridor which passes through the same. The concomitant cascading effects of such a colossal change necessitated realignment of the entire layout of the various projects, including plotted /group housing/ commercial/ institutional in the entire township. This was further compounded with the non-removal or shifting of the defunct high-tension lines passing through these lands which also contributed to the inevitable change in the layout plans.
- iii. Delay caused by the Haryana Development Urban Authority (HUDA) in acquisition of land for laying down sector roads for connecting the

- project. The matter has been further embroiled in sundry litigations between HUDA and landowners.
- iv. Re-routing of high-tension lines passing through the lands resulting in inevitable change in the lay out plans and cause unnecessary delay in development.
 - v. The Hon'ble National Green Tribunal (NGT)/Environment Pollution Control Authority (EPCA) issued directives and measures to counter deterioration in Air Quality in the Delhi-NCR region, especially during winter months. Among these measures were bans imposed on construction activities for a total period of 70 days between November,2016 to December,2019.
 - vi. Due to the implementation of MNREGA schemes by the Central Government, the construction industry as a whole has been facing shortage of labour supply, due to labourers regularly travelling away from Delhi-NCR to avail benefits of the scheme. This has directly caused a detrimental impact to the respondent, as it has been difficult to retain labour for longer and stable periods of time and complete construction in a smooth flow.
 - vii. Disruptions caused in the supply of stone and sand aggregate, due to orders passed by the Hon'ble Supreme Court and the Hon'ble High Court of Punjab and Haryana prohibiting mining by contractors in and around Haryana.
 - viii. Disruptions caused by unusually heavy rains in Gurgaon every year.
 - ix. Due to the slump in real estate sector, major financial institutions are facing difficulty in providing funding to the developers. As a result, developers are facing financial crunch.
 - x. Disruptions and delays caused in the supply of cement and steel due to various large-scale agitations organized in Haryana.



- xi. Declaration of Gurgaon as a notified Area for the purpose of groundwater and restrictions imposed by the state government on its extraction for construction purposes.
- xii. Additionally, imposition of several partial restrictions from time to time prevented the respondent from continuing construction work and ensuring fast construction. The imposition of several total and partial restrictions on construction activities and suppliers as well as manufacturers of necessary material required, has rendered the respondent with no option but to incur delay in completing construction of its projects. This has furthermore led to significant loss of productivity and continuity in construction as the respondent was continuously stopped from dedicatedly completing the project. The several restrictions have also resulted in regular demobilization of labour, as the respondent would have to disband the groups of workers from time to time, which created difficulty in being able to resume construction activities with required momentum and added many additional weeks to the stipulated time of construction.
- xiii. The Government of India imposed lockdown in India in March 2020 to curb the spread of the Covid-19 pandemic and surge of 2nd wave in the year 2021. This severely impacted the respondent as it was constrained to shut down all construction activities for the sake of workers' safety, most of the labour workforce migrated back to their villages and home states, leaving the respondent in a state where there is still a struggle to mobilize adequate number of workers to start and complete the construction of the project due to lack of manpower. Furthermore, some suppliers of the respondent, located in Maharashtra, are still unable to process orders which inadvertently have led to more delay.

- xiv. Further, it is also not disputed that due to the outbreak of Covid 19, the entire world went into lockdown and all the construction activities were halted and no labour were available. In fact, all the developers are still facing hardship because of acute shortage of labour and therefore, there cannot be said to be any delay in delivering the possession by the respondent.
- g) That initially, the plot was booked by Ms. Anita Yadav and Mr. Bhupinder Singh Yadav (original allottees) and a buyer's agreement was signed between the original allottees and respondent on 24.03.2011. Thereafter, a buyers' agreement was endorsed in the name of the complainant on 25.06.2014. It is submitted that prior to purchasing the unit, the complainant has made extensive and independent inquiries regarding the veracity of the project and only after being fully satisfied with regard to all aspects of the project, did the complainant take an independent and informed decision to purchase the said unit, un-influenced in any manner by it.
- h) That the complainant had entered into an agreement for sale dated 03.05.2014 with the original allottees. It is submitted that he had already condoned the alleged delay and relinquished the claim of delay possession charges to which the original allottee might have been entitled and is now estopped from claiming the delay possession charges. He had also given an indemnity cum undertaking and an affidavit at the time of transfer/ endorsement of unit in his name whereby he agreed and consented that the period for calculating possession shall be four years from 11.06.2014 and the relevant clause of a buyer's agreement related to handing over of the possession of unit shall be read as amended. This is without

prejudice to the submission of the respondent that the delay, if any, has been due to the reasons beyond its control.

- i) That the original allottees and complainant have failed to make payments in time in accordance with the terms and conditions as well as payment plan annexed with a buyer's agreement and as such the complaint is liable to be rejected. It is submitted that out of the sale consideration of Rs. 33,90,903/-, the amount actually paid by the original allottees, and complainant is Rs. 27,87,906/-. It is further submitted that there is an outstanding amount of Rs. 1,59,043/- payable by the complainant as on 14.01.2022 as per the payment plan opted by him. It is submitted that it was constrained to issue notice for termination dated 23.10.2021 to the complainant on account of non-payment of due installments upon him. It is further submitted that the complainant till date did not make the complete payment of demand raised on 'completion of super structure'. The complainant after defaulting in complying with the terms and conditions of the buyer's Agreement, now wants to shift the burden on the part of respondent whereas it has suffered a lot financially due to such defaulters like the present complainant.
- j) That it is to be appreciated that a builder constructs a project phase wise for which it gets payment from the prospective buyers and the money received from the prospective buyers is further invested towards the completion of the project. It is important to note that the respondent shall complete to construct in time when the prospective buyers make payments in terms of the buyers' agreement. It is submitted that one particular buyer who makes payment in time can also not be segregated, if the payment from

other perspective buyer does not reach in time. It is relevant that the problems and hurdles faced by the developer or builder have to be considered while adjudicating complaints of the prospective buyers. It is also relevant to note that the slow pace of work affects the interests of a developer, as it has to bear the increased cost of construction and pay to its workers, contractors, material suppliers, etc. It is most respectfully submitted that the irregular and insufficient payment by the prospective buyers such as the complainants freezes the hands of developer / builder in proceeding towards timely completion of the project.

7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

8. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

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

E.II Subject-matter jurisdiction

10. 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.

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

F. Findings on the objections raised by the respondent

F.I Objection raised by the respondent regarding force majeure condition: -

12. It is contended on behalf of respondent/builder that due to various circumstances beyond its control, it could not speed up the construction of the project, resulting in its delay such as various orders passed by NGT, hon'ble Supreme Court, introduction of new highway being NH-352W, transferring the land acquired for it by HUDA to GMDA, then

handing over to NHAI, re-routing of high-tension lines passing through the land of the project, impact on the project due to policy of NIPL and TOD issued on 09.02.2016 and outbreak of Covid-19 etc. But all the pleas advanced in this regard are devoid of merit. The passing of various orders to control pollution in the NCR-region during the month of November is an annual feature and the respondent should have taken the same into consideration before fixing the due date. Secondly, the various orders passed by other authorities were not all of a sudden. The due date of possession for completion of the project was 11.06.2018. So, any situation or circumstances which could have an effect on the due date should have been considered before fixing a due date. Moreover, the circumstances detailed earlier did not arise at all and could have been taken into account while completing the project and benefit of indefinite period in this regard cannot be given to the respondent/builder.

G. Findings on the relief sought by the complainants.

- G.1 Direct the respondent not to raise further demand and not to threat cancellation of the unit till matter is sub-judice.**
15. Since there is considerable delay in completion and handing over of unit to the allottee in spite of the extending period sought in the indemnity bond and hence, the respondent shall issue a revised account statement after adjusting the DPC at the prescribed rate of interest i.e., 10.25% for the delayed period and the allottee shall pay the outstanding amount, if any remains after adjustment of DPC amount. The rate of interest to be charged from the allottee shall be same as being paid to the allottee i.e., 10.25% per annum. Further, the demand of further payment shall be



made only commensurate with the construction and shall be as per construction status.

G.II Direct the respondent to handover the possession of the unit along with prescribed interest per annum from the promissory date of delivery till actual delivery of the unit in question.

13. 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."

14. Clause 10.1 of the agreement provides for handing over of possession and is reproduced below:

10.1. Schedule for possession of the said unit

*The Company based on its present plans and estimates and subject to all just exceptions, contemplates to **complete construction of the said unit within a period of three years from the date of execution of this Agreement** unless there shall be delay or there shall be failure due to reasons mentioned in Clauses (11.), (11.2), (11.3) and Clause (38). or due to failure of Allottee(s) to pay in time the price of the said independent dwelling unit along with all other charges and dues in accordance with the schedule of payments given in Annexure III or as per the demands raised by the Company from time to time or any failure on the part of the Allottee(s) to abide by any of the terms or conditions of this Agreement. However, it is agreed that in the event of any time overrunning completion of construction of the said building/said dwelling unit, the Company shall be entitled to reasonable extension of time for completing the same"*

15. Similarly, clause 3 of the Indemnity Cum Undertaking of the buyer/assignee provides for handing over of possession and is reproduced below:



3. That Indemnifier agree without demur that the clause as envisaged in Builder buyer agreement w.r.t. handing over of possession of the Flat/Apartment/floor/Villa/unit shall be rectified/amended hereof and indemnifier agree that the possession of the same shall be given within 4 years from the date of his/her affidavit. Indemnifier hereby ratify that the relevant clause of the builder buyer agreement related to handing over the Apartment/Floor/Villa/Plot/Unit within 3 years from the date of signing of the Agreement herein stand cancelled and shall be read as amended above for which indemnifier hereby give his/her consent."

16. Though, as per the buyer's agreement entered between the original allottees and the respondent/builder, the due date for completion for the project and offer of possession of the allotted unit was fixed as 24.03.2014, but the complainant came into picture after that date on 11.06.2014. He was assigned the unit by the original allottees and the same was received by the respondent/builder on 17.06.2014. At that time, the original allottees gave some indemnity cum undertaking in favour of the respondent/builder. Similarly, on the same day, the complainant also gave an indemnity cum undertaking to the respondent/builder and vide clause 3 of that undertaking agreed to take possession of the allotted unit within 4 years from the date of his affidavit. He further, agreed that the relevant clause of the builder buyer agreement relating to handing over of the unit within 3 years from the date of signing of the agreement herein stands cancelled and shall be read as amended above for which indemnifier hereby gives his or her consent. In pursuant to that undertaking dated 11.06.2014, an addendum to buyer's agreement dated 24.03.2011 as annexure P/7 was signed between the parties in July 2017. So, keeping in view all these facts and the documents detailed above and executed between the

parties, the due date for completion of the project and handing over of possession of the allotted unit comes to 11.06.2018.

17. Payment of delay possession charges at prescribed rate of interest:

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.

18. 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.

19. 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., 28.10.2022 is **8.25%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.25%**.

20. 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;"*

21. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.25% by the respondent/promoter which is the same as is being granted him in case of delayed possession charges.
22. On consideration of the circumstances, the documents, submissions made by the parties and based on the findings of the authority regarding contraventions as per provisions of rule 28(2), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 3 of the indemnity cum undertaking executed between the parties on 11.06.2014, the possession of the subject unit was to be delivered within 3 years from the date of execution of agreement. Therefore, the due date of handing over possession was 11.06.2018. The respondent has failed to handover possession of the subject unit till



date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit to the complainant as per the terms and conditions of the agreement dated 11.06.2014 executed between the parties. Further no OC/part OC has been granted to the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottees.

23. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to delay possession charges at rate of the prescribed interest @ 10.25% p.a. w.e.f. 11.06.2018 till the handing over of possession or offer of possession + 2 months whichever is earlier as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

G. III Litigation cost

The complainant is also seeking relief w.r.t. litigation expenses & compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.* (2021-2022,RCR(c),357), has held that an allottee is entitled to claim compensation & litigation charges under

sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, the complainant is advised to approach the adjudicating officer for seeking the relief of litigation expenses.

H. Directions of the authority

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

- i. The respondent is directed to pay interest at the prescribed rate of interest i.e., 10.25% p.a. for every month of delay from the due date of possession i.e., 11.06.2018 till actual handing over of possession or offer of possession + 2 months whichever is earlier.
- ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iii. The arrears of such interest accrued from 11.06.2018 till the date of order by the authority shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to



- the allottee before 10th of the subsequent month as per rule 16(2) of the rules;
- iv. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.25% 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 delayed 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 the agreement.
25. Complaint stands disposed of.
26. File be consigned to registry.


(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram


(Vijay Kumar Goyal)

Member

Dated: 28.10.2022