

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

Complaint no. : 3719 of 2021
Date of filing of complaint: 10.09.2021
Ordre reserved on: 02.11.2022
Order pronounced on: 22.02.2023

Mrs. Maya Aggarwal
W/o Sh. Rajesh Aggarwal
R/o: - UP-58, Maurya Enclave, Pritampura New Delhi-
110088

Complainant

Versus

M/s Raheja Developers Limited.
Regd. Office at: W4D, 204/5, Keshav Kunj, Western
Avenue, Sainik Farms, New Delhi- 110062

Respondent

CORAM:

Shri Ashok Sangwan
Shri Sanjeev Kumar Arora

**Member
Member**

APPEARANCE:

Sh. Shankar Wig (Advocate)
Sh. Garvit Gupta (Advocate)

**Complainant
Respondent**

HARERA
ORDER

1. This complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made



thereunder or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

| S. N. | Particulars | Details |
|-------|--------------------------------------|---|
| 1. | Name of the project | "Raheja Aranya City", Sector-11&14, Sohna, District Gurugram, Haryana |
| 2. | Project area | 107.85 acres |
| 3. | Nature of the project | Residential Plotted Colony |
| 4. | DTCP license no. and validity status | 25 of 2012 dated 29.03.2012 valid up to 28.03.2018 |
| 5. | Name of licensee | Ajit Kumar and 22 Others |
| 6. | Date of approval of building plans | 29.01.2016 |
| 7. | RERA Registered/ not registered | Registered vide no. 93 of 2017 dated 28.08.2017 |
| 8. | RERA registration valid up to | 27.08.2022 |
| 9. | Plot no. | F-41, Tower/block- F (Page no. 23 of complaint) |
| 10. | Plot area admeasuring | 253.790 sq. ft. |



| | | |
|-----|--|--|
| | | (Page no. 23 of complaint) |
| 11. | Date of execution of agreement to sell - Raheja Aranya | 16.11.2013 (Page no. 24 of the complaint) |
| 12. | Date of allotment letter | 16.11.2013 [Page no. 44 of the reply] |
| 13. | Possession clause | 4.2 Possession Time and Compensation "That the Seller shall sincerely endeavor to give possession of the Plot to the purchaser <i>within thirty-six (36) months</i> from the date of the execution of the Agreement to sell and after providing of necessary infrastructure specially road sewer & water in the sector by the Government, but subject to force majeure conditions or any Government/ Regulatory authority's action, inaction or omission and reasons beyond the control of the Seller. <i>However, the seller shall be entitled for compensation free grace period of +/- six (6) months in case the development is not completed within the time period mentioned above.</i> In the event of Purchaser's failure to take over possession of the Plot, provisionally and/or finally allotted, within 30 days from the date of intimation in writing by the seller, then the same |



| | | |
|-----|--------------|---|
| | | <p>shall lie at his/her risk and cost and the Purchaser shall be liable pay to @ Rs.50/- per sq. yd. of the Plot area per month as holding charges for th entire period of such delay. It is made clear to purchaser that the holding charges and the late construction charges are distinct and separate to be payable by the Purchaser to the seller. Further, if the seller fails to give possession of the said Plot within Thirty-Six (36) plus aforesaid grace period of six (6) from the date of execution of the Agreement To sell and after providing of necessary infrastructure in the sector by the government or for any reason other than the reason stated above, then the Seller shall be liable to pay the Purchaser compensation @Rs.50/- per sq. yard of the plot area for the entire period of such delay..... “</p> <p>(Page 71 of agreement).</p> |
| 14. | Grace period | <p>Allowed</p> <p>As per clause 4.2 of the agreement to sell, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 36 months plus 6 months of grace period. It is a matter of fact that the respondent has not completed the project in</p> |



| | | |
|-----|---|--|
| | | which the allotted unit is situated and has not obtained the part completion certificate by November 2016. As per agreement to sell, the construction and development work of the project is to be completed by November 2016 which is not completed till date. Accordingly, in the present case the grace period of 6 months is allowed. |
| 15. | Due date of possession | 16.05.2017 [Note: 36 months from the date of agreement to sell i.e., 16.11.2013 + six months grace period] |
| 16. | Total sale consideration | Rs.85,56,206/- (As per customer ledger dated 30.03.2012 page no. 54 of complaint) |
| 17. | Amount paid by the complainant | Rs.39,52,039/- (As per averment of complainant page no. 7 of complaint) |
| 18. | Occupation certificate /Completion certificate | Not received |
| 19. | Offer of possession | Not offered |
| 20. | Delay in handing over the possession till date of this order i.e., 22.02.2023 | 5 years 9 months and 6 days |

B. Facts of the complaint

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

- I. That in 2013, the respondent advertised the proposed project called "Raheja's Aranya City" situated in Villages – Rajpur, and Sohna, District Gurugram, Haryana showing that the construction and quality of the building and the infrastructure would be world class residential property with ultra-luxury.
- II. That the respondent specifically represented that the possession of the units would be delivered within 36 months of signing of the builder buyer's agreement along with amenities, infrastructure and complete in all respects. The property dealer/agents engaged by the respondent of marketing the project approached the complainant for booking a unit in the said project showing the rosy pictures. Being lured by the aforesaid advertisements and assurances, the complainant was induced to part with the hard-earned money for booking the promised flat.
- III. That the complainant booked a flat in the month of July 2013 by making payment of Rs.39,52,039/- by way of cheque in favour of respondent. After receiving the amount from the complainant, the respondent duly signed and executed a buyer agreement dated 16.11.2013 and allotted a unit no. F 41 in her favour with the assurances that it would deliver the unit within time.
- IV. That thereafter, the complainant started paying the amount of instalments as per the demand of the respondent on time. It also



received the same from time to time accordingly while assuring the timely delivery of possession which fell due on 2017, but never delivered. The respondent had miserably failed to handover the possession of the aforesaid flat to the complainant despite there being inordinate delay of more than 3 years from the due date.

- V. That when the complainant met the officials of the respondent, they instead of completing the project and her unit as per their promise started extending false assurances and without any basis despite knowing well that the project is not yet complete, and the respondent is not in position to handover the unit to her complete in all respects as per promises and builder buyer agreement.
- VI. That since the respondent has been very negligent in providing the services and even failed to deliver the possession within the stipulated time, it even cannot add the grace period in the total period agreed for handing over the actual physical possession of the allotted apartment within the grace period, failing which it is liable to pay the interest and penalty for that period also.
- VII. That the complainant and many other people have invested their hard-earned money with hope of having a residential flat and which they could use for their personal use. But now, she is left with alternative to go except approach this authority.
- VIII. That the act of the respondent in deliberately inducing complainant to part way with the life's savings and cheat her



based upon false documents amount to an act of fraud and cheating for which the complaint is being filed.

- IX. That the modus operandi of the respondent had caused tremendous financial pressure upon the complainant for which she is entitled to be reimbursed forthwith as well as for the mental agony caused by its acts, omissions, and mala fide conduct.
- X. That the act of taking hard earned money from the complainant and not making delivery of the aforesaid flat after passing of 7 years from the date of possession wilfully and knowingly amounts to an act of fraud and deliberate delay for which respondent is solely liable to pay damages also. However, the complainant is filing the present complaint without prejudice to her right for filing the separate claim for damages. The complainant is filing the present complaint only for compensation on account of delay in handing over the possession of the aforesaid flat.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
- I. Direct the respondent to pay interest at the rate of 18% per annum on the entire payment made by the complainant from the date of handing over of possession till the flat is transferred in her name.
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 complainant after checking the veracity of the project namely, 'Raheja Aranya City' applied for allotment of plot no. F-41, admeasuring 253.790 sq. yds. in the project vide provisional allotment letter dated 16.11.2013. The complainant consciously and willfully opted for a construction linked payment plan for remittance of the total sale consideration for the subject unit and further, represented that she would remit every installment on time as per the payment schedule. The respondent has no reason to suspect the *bonafide* of the complainant and proceeded to allot the subject unit in her favor.
- b) That the complainant has no cause of action to file the present complaint as the complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the agreement to sell dated 16.11.2013 entered between the respondent and the complainant. It is further submitted that the complainant is an investor and booked the unit in question to yield gainful returns by selling the same in the open market. The complainant filed the present purported complaint to wriggle out of the agreement.
- c) That the application form and the allotment letter were the preliminary draft containing the basic and primary understanding between both the parties. The application form and the allotment letter being the initial documents were just an understanding



document executed between the parties, to be followed by the agreement to sell, to be executed between the parties. After the initial documents, both the parties fulfilled certain documentation and procedures and after fulfilling the same, the agreement to sell was issued dated 16.11.2013 in favour of the complainant allotting the desired plot no. F41 in the said project. The agreement to sell was executed between both the parties which containing the final understandings between the parties stipulating all the rights and obligations.

- d) That the respondent applied for the occupational certificate for the said project dated 15.09.2014 with the competent authority. A part of occupational certificate was received dated 11.11.2016 and the occupational certificate for the area where the complainant unit lies is still awaited. Despite the respondent fulfilling all its obligations as per the provisions laid down under law, the competent authority failed miserably to grant the occupational certificate to the respondent for the remaining part.
- e) That the time period for calculating the interest for the due date of possession would only be limited till the date of application of the occupational certificate with the competent authority. Non-granting of the occupational certificate by the competent authority is not in the hands of the respondent for which it would not be made responsible and liable to pay the delay possession charges. The respondent is doing its every level best to obtain the occupational certificate from past many months but it's the competent authority who has failed miserably to grant the occupational certificate within the time limit.



- f) That the construction of the project in which the unit is allotted to the complainant is already complete and the respondent would hand over the possession of the same to her after getting occupational certificate subject to her making the payments of the due instalments amounts as per the terms of the application and agreement to sell. It is submitted that non-availability of the occupational certificate is beyond the control of the respondent and the same also falls within the ambit of the definition force majeure condition as stipulated in clause 4.4 of the agreement to sell.
- g) That the complainant is a real estate investor who booked the unit in question with a view to earn quick profit in short period. However, it appears that the calculations have gone down on account of severe slump in the real estate market and is now raising untenable and illegal pleas on the highly flimsy and baseless ground. Such mollified tactics of her cannot be allowed to succeed.
- h) That the use of expression 'endeavour to give the position' in clause 4.2 of the agreement to sell clearly shows that the company has nearly held out a hope that it would try to give the possession to the complainant within the specified time. However, no unequivocal promise was made to the prospective buyers. That the possession of the unit would be delivered at the end of a particular period.
- i) That the compensation in the form of interest on delayed possession to be paid by the respondent to the complainant at this crucial juncture would bring a bad name to the goodwill of the entire company and would create a bad precedent eventually leading to an array of similarly filed frivolous and vexatious complaints asking for a similar relief, leaving the respondent without any funds to carry



on the completion of the project and would further go bankrupt. The respondent itself has infused huge sum of funds into the project so that the same could be completed on time. Despite force majeure conditions the respondent has made all the efforts to complete the project in time.

- j) That the delay, if any in the project has been due to the time taken in grant of necessary approvals by the competent authorities and not due to deficiency on part of the respondent. The process of the grant of necessary approvals by the competent authorities have been beyond the control of respondent. The respondent has made best possible and all efforts at every stage to diligently follow with the competent authorities for the concerned approvals. In fact, it is in the interest of the respondent also to complete the project as early as possible and handover the possession to the complainant. However, much against the normal practice and expectation of the respondent, at every stage each division of the concerned authority has taken time, beyond normal course and practice. It is submitted that the construction of the structure in which the apartment is located is complete.
- k) That it is trite law that the terms of the agreement are binding between the parties. The Hon'ble Supreme Court in the case of *"Bharti Knitting Co. vs. DHL Worldwide Courier (1996) 4 SCC 704"* observed that that a person who signs a document containing contractual terms is normally bound by them even though he has not read them, and even though he is ignorant of the precise legal effect. It is seen that when a person signs a document which contains certain contractual terms, then normally parties are bound by such



contract; it is for the party to establish exception in a suit. When a party to the contract disputes the binding nature of the signed document, it is for him or her to prove the terms in the contract or circumstances in which he or she came to sign the documents.

- 1) That the complainant, thus, have approached the authority with unclean hands and has suppressed and concealed material facts and proceedings which have a direct bearing on the very maintainability of the purported complaint. If there had been any disclosure of these material facts and proceedings, the question of entertaining the purported Complainant would not have arisen.
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 respondents

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

12. The respondent has taken a stand that the complainant is an investor and not a consumer. Therefore, she is not entitled to the protection of the Act and is 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 consumer 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 the consumers of the real estate sector. It is settled principle of interpretation that the preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time the 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 he 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 complainant is a buyer and paid total price of Rs.39,52,039/- to the promoter towards purchase of an apartment in its project. 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;"

13. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment application for allotment, it is crystal clear that the complainant is an allottee 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.

G. Findings on the relief sought by the complainant.

G.I Direct the respondent to pay interest at the rate of 18% per annum on the entire payment made by the complainant from the date of handing over of possession till the flat is transferred in her name.

14. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

15. Article 4.2 of the agreement to sell provides for handing over of possession and is reproduced below:

4.2 Possession Time and Compensation

*That the Seller shall sincerely endeavor to give possession of the Plot to the purchaser **within thirty-six (36) months** from the date of the execution of the Agreement to sell and after providing of necessary infrastructure specially road sewer & water in the sector by the Government, but subject to force majeure conditions or any Government/ Regulatory authority's action, inaction or omission and reasons beyond the control of the Seller. **However, the seller shall be entitled for compensation free grace***



period of +/- six (6) months in case the development is not completed within the time period mentioned above. In the event of Purchaser's failure to take over possession of the Plot, provisionally and/or finally allotted, within 30 days from the date of intimation in writing by the seller, then the same shall lie at his/her risk and cost and the Purchaser shall be liable pay to @ Rs.50/- per sq. yd. of the Plot area per month as holding charges for the entire period of such delay. It is made clear to purchaser that the holding charges and the late construction charges are distinct and separate to be payable by the Purchaser to the seller. Further, if the seller fails to give possession of the said Plot within Thirty-Six (36) plus aforesaid grace period of six (6) from the date of execution of the Agreement To sell and after providing of necessary infrastructure in the sector by the government or for any reason other than the reason stated above, then the Seller shall be liable to pay the Purchaser compensation @Rs.50/- per sq. yard of the plot area for the entire period of such delay....."

16. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to providing necessary infrastructure specially road, sewer & water in the sector by the government, but subject to force majeure conditions or any government/regulatory authority's action, inaction or omission and reason beyond the control of the seller. 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 allottee that even a single default by the allottee in making payment as per the plan 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 agreement to sell by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the



agreement and the allottee is left with no option but to sign on the dotted lines.

17. **Admissibility of grace period:** As per clause 4.2 of the agreement to sell, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 36 months plus 6 months of grace period. It is a matter of fact that the respondent has not completed the project in which the allotted unit is situated and has not obtained the occupation certificate by November 2016. However, the fact cannot be ignored that there were circumstances beyond the control of the respondent which led to delay in completion of the project. Accordingly, in the present case, the grace period of 6 months is allowed.

18. **Payment of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the rate 18% p.a. 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.



19. 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.
20. Taking the case from another angle, the complainant/allottee was entitled to the delayed possession charges/interest only at the rate of Rs.7/- per sq. ft. per month as per relevant clauses of the buyer's agreement for the period of such delay; whereas the promoter was entitled to interest @ 18% per annum compounded at the time of every succeeding instalment for the delayed payments. The functions of the authority are to safeguard the interest of the aggrieved persons, may be the allottee or the promoter. The rights of the parties are to be balanced and must be equitable. The promoter cannot be allowed to take undue advantage of his dominate position and to exploit the needs of the home buyers. The authority is duty bound to take into consideration the legislative intent i.e., to protect the interest of the consumers/allottees in the real estate sector. The clauses of the buyer's agreement entered between the parties are one-sided, unfair and unreasonable with respect to the grant of interest for delayed possession. There are various other clauses in the buyer's agreement which give sweeping powers to the promoter to cancel the allotment and forfeit the amount paid. Thus, the terms and conditions of the buyer's agreement are ex-facie one-sided, unfair, and unreasonable, and the same shall constitute



the unfair trade practice on the part of the promoter. These type of discriminatory terms and conditions of the buyer's agreement would not be final and binding

21. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 22.02.2023 is **8.70%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.70%**.

22. The definition of term 'interest' as defined under section 2(z) 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:

"(z) "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;"*

23. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., **10.70%** by the respondent /promoter which is the same as is being granted her in case of delayed possession charges.

24. On consideration of the circumstances, the documents, submissions made by the parties and based on the findings of the authority regarding



contravention 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 4.2 of the agreement executed between the parties on 16.11.2013, the possession of the subject apartment was to be delivered within 36 months from the date of agreement to sell which comes out to be 16.11.2016. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession was 16.05.2017. The respondent has failed to handover possession of the subject apartment 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 to sell dated 16.11.2013 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 allottee.

25. 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 @ 10.70% p.a. w.e.f.



16.05.2017 till the handing over of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

H. Directions of the authority

26. 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 to the complainant against the paid-up amount at the prescribed rate of 10.70% p.a. for every month of delay from the due date of possession i.e., 16.05.2017 till the handing over of possession of the allotted unit through a valid offer of possession after obtaining the completion certificate from the competent authority.
- 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 16.05.2017 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 allottees 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., 10.70% 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 to sell.

27. Complaint stands disposed of.


28. File be consigned to registry.


(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.02.2023


(Ashok Sangwan)

Member