

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

**Date of decision: 01.02.2023**

NAME OF THE BUILDER		RAHEJA DEVELOPERS LIMITED.	
PROJECT NAME		"RAHEJA ATHARVA"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/4375/2021	Adarsh Kumar and Renu Adarsh V/S Raheja Developers Limited and others	Shri Shyamal Kumar Advocate and Shri Garvit Gupta Advocate
2.	CR/4420/2021	Anurup Arora V/S Raheja Developers Limited and others	Shri Shyamal Kumar Advocate and Shri Garvit Gupta Advocate
3.	CR/4657/2021	Neelam Bala V/S Raheja Developers Limited	Shri Manu Chaturvedi Advocate and Shri Garvit Gupta Advocate

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

Shri Ashok Sangwan

**Member**

**ORDER**

1. This order shall dispose of all the 3 complaints titled as above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
- The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Raheja Atharva" (group housing project) being developed by the same respondent/promoter i.e., M/s Raheja Developers Limited. The terms and conditions of the agreement to sell and allotment letter against the allotment of unit in the upcoming project of the respondent/builder and fulcrum of the issues involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, delayed possession charges along with interest and other.
  - The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	Raheja Developers Limited at "Raheja Atharva" situated in Sector- 109, Gurugram.
<p><b>Possession Clause: -</b></p> <p><b>4.2 Possession Time and Compensation</b></p> <p><i>That the Seller shall sincerely endeavor to give possession of the plot to the purchaser <b>within thirty-six (36) months from the date of the execution of the Agreement to sell</b> and after providing of necessary infrastructure specially road sewer &amp; 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. <b>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.</b> In the event of his 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 lie at his/her risk and cost the purchaser shall be liable to pay @ Rs.50/- per sq. Yds. of the plot area per month as cost and the purchaser</i></p>	

*shall be liable to pay @ Rs.50/- per sq. Yards. Of the plot area per month as holding charges for the entire period of such delay.....”*

Sr. No	Complaint No., Case Title, and Date of filing of complaint	Reply status	Unit No.	Date of execution of agreement to sell	Due date of possession	Total Consideration / Total Amount paid by the complainants	Relief Sought
1.	CR/4375/2021 Adarsh Kumar V/S Raheja Developers Limited  Date of Filing of complaint 22.11.2021	Reply not received	IF 11 - 02, first floor, block/tower- IF 11  [Page no. 34 of the complaint]	16.02.2010  [Page no. 31 of the complaint]	16.08.2012  [Note: 30 months form the date of agreement to sell i.e., 16.02.2010]	TSC: - Rs.68,78,014/-  (As per customer ledger dated 11.01.2021 at page no. 67 of complaint)  AP: - Rs.60,70,269 /-  (As per customer ledger dated 11.01.2021 at page no. 67 of complaint)	DPC and other charges
2.	CR/4420/2021 Anurup Arora V/S Raheja Developers Limited.	Reply not received	IF 18 - 03, 2 <sup>nd</sup> floor, block/tower- IF 18  [Page no. 34]	30.06.2011  [Page no. 31 of the complaint]	<b>30.12.2013</b>  [Note: 24 months form the date of agreement to sell i.e., 30.06.2011]	TSC: - Rs.1,00,74,725/-  (As per customer ledger dated 25.08.201	DPC and other charges

	Date of Filing of complaint 22.11.2021		of the compl aint]			9 at page no. 59 of complaint)  AP: - Rs. 89,14,544/ -  (As per customer ledger dated 25.08.201 9 at page no. 59 of complaint)
3.	CR/4657/20 21 Adarsh Kumar V/S Raheja Developers Limited  Date of Filing of complaint 01.12.2021	Reply not received	IF18 - 02, first floor, block/ tower- IF 18  [Page no. 28 of the compl aint]	02.03.2010 [Page no. 25 of the complaint]	02.09.2012 [Note: 30 months form the date of agreement to sell i.e., 02.03.2010]	TSC: - Rs. 65,61,935 /-  (As per BBA at page no. 50 of the complaint)  AP: - Rs. 61,74,463/ -  (As alleged by the complaina nt at page no. 18 of complaint)

**Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:**

**Abbreviation Full form**

TSC Total Sale consideration

AP Amount paid by the allottee(s)

4. The aforesaid complaints were filed against the promoter on account of violation of the agreement to sell and allotment letter against the allotment of units in the upcoming project of the respondent/builder and for not handing over the possession by the due date, seeking award of delayed possession charges.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of both the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case ***CR/4375/ Adarsh Kumar V/S Raheja Developers Limited and others*** are being taken into consideration for determining the rights of the allottee(s) qua delayed possession charges along with interest and others.

**A. Project and unit related details**

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

***CR/4375/ Adarsh Kumar V/S Raheja Developers Limited and others.***

S.No.	Heads	Information
1.	Project name and location	"Raheja's Atharva", Sector 109, Gurugram

2.	Project area	14,812 acres
3.	Nature of the project	Residential Group Housing Colony
4.	DTCP license no. and validity status	257 of 2007 dated 07.11.2007 valid up to 06.11.2017
5.	Name of licensee	Brisk Construction Pvt. Ltd and 3 others
6.	RERA Registered/ not registered	Registered vide no. 90 of 2017 dated 28.08.2017
7.	RERA registration valid up to	27.02.2023 5 Years from the date of revised Environment Clearance
8.	Unit no.	IF 11 - 02, first floor, block/tower- IF 11 [Page no. 34 of the complaint]
9.	Unit measuring	2062.33 sq. ft. [Page no. 34 of the complaint]
10.	Date of allotment letter	16.02.2010 [Page no. 66 of the complaint]
11.	Date of execution of flat buyer agreement	16.02.2010 [Page no. 31 of the complaint]
12.	Possession clause	<b>4.2 Possession Time and Compensation</b> <i>That the company shall endeavor to give possession of the apartments to the allottee(s) <b>within</b> thirty-six (36) months in case of tower <b>and thirty (30) months in case of 'Independent Floor' from the date of the execution of the Agreement</b></i>



		<p><i>to sell and after providing of necessary infrastructure 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 company. The company on obtaining certificate for occupation and use by the Competent Authorities shall hand over the Unit to the Purchaser for this occupation and use and subject to the Purchaser having complied with all the terms and conditions of this application form &amp; Agreement To sell. In the event of his failure to take over and /or occupy and use the unit 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 to compensation @ Rs.7/- per sq. ft. of the super area per month as holding charges for the entire period of such delay....."</i></p>
13.	Due date of possession	<p><b>16.08.2012</b></p> <p><b>[Note: 30 months form the date of agreement to sell i.e., 16.02.2010]</b></p>
14.	Payment plan	Installment Payment Plan

		[as per payment plan at page no. 56 of the complaint]
15.	Basic sale consideration as per BBA at page no. 56 of the complaint	Rs.67,13,262 /-
16.	Total sale consideration as per customer ledger dated 11.01.2021 at page no. 67 of complaint	Rs.68,78,014/-
17.	Total amount paid by the complainants as per customer ledger dated 11.01.2021 at page no. 67 of complaint	Rs.60,70,269 /-
18.	Occupation certificate /Completion certificate	Not received
19.	Offer of possession	Not offered
20.	Delay in handing over possession till date of this order i.e., 01.02.2023	10 years 5 months and 16 days

**B. Facts of the complaint**

8. The complainants have made the following submissions in the complaint:-
- a. That the complainants are the buyers of the Independent Floor who has booked & paid almost the entire sale consideration amount in advance towards the same by entering into an agreement to sale/purchase of their respective Independent Floors in the approved township /ongoing residential project started by the respondent/promoter namely M/s. Raheja Developers Private Limited, in the name & style



- “Raheja Shilas Low Rise In Raheja Atharva”** at Sector-109, Village: Pawala Khushrupur, District: Gurugram (Haryana). The agreement to sell/purchase dated 16.02.2010 entered into between the parties along with the allotment letter for the unit bearing no. IF11-02 & statement of accounts (ledger) issued by the respondent/promoter showing the payment of Rs.60,70,269/- made by the complainants as consideration.
- b. That the respondent/promoter fraudulently & dishonestly, advertised in the various newspapers & publicly distributed their handbills /brochures & also through its directors, employees & agents between the year 2007-2012 till date, representing the complainants as well as public at large that it intend to construct a world class luxury group housing project with all the modern amenities as well as green areas, to be developed by it on the project area admeasuring 14844.46 sq. meters, situated at Sector-109, Gurugram(Haryana) where a buyer can live peacefully & with dignity, for which it has complied with all the requisite legal compliances & has obtained the necessary permissions/licenses, as per the local building bye-laws & other clearances as required by law. The same would be constructed within a period of thirty months from the date of booking of the residential space/agreement to sell entered into between the prospective buyers and the respondent which it never intended to comply since beginning of the transaction.
- c. That acting upon the aforesaid dishonest & fraudulent representations made by the respondent /promoter, the complainants entered into the agreement to sell with it towards the purchase of the independent

floors in the aforesaid real estate project & agreed to pay huge amount towards the sale consideration for the same. They would not have paid to the developer had it not made such dishonest & fraudulent representation to them through its directors, employees, agents & thereby intentionally deceived the complainants as well as other buyer's & induced them to part with their valuable money which they never intended to comply since beginning.

- d. That the agreement to sell was entered into between the complainants & the respondent/promoter on 16.02.2010 after payment of substantial amount of Rs.60,70,269/- towards sale consideration amount to the developer. The possession of unit was required to be handed over on 16.08.2012 as per clause 4.2 of the agreement to sell.
- e. Despite receiving almost, the entire sale consideration amount towards the sale of the unit in the above said project, the respondent refused to hand over the possession with all the fittings & fixtures and necessary compliances as per the local building bye laws, to the complainants regarding which several requests & representations made to the directors /promoter of the company.
- f. That the complainants along with other buyers, is directly & substantially aggrieved by the illegalities committed by the respondent /promoter and its directors, and its employees & agents.
- g. That on enquiry, the complainants & other buyer's, were shocked to know that the application in form BR-IV(B) dated 26.04.2017 submitted by the respondent for the issuance of occupation certificate, to the office of Director General, Town & Country Planning Haryana at

Chandigarh bearing the signatures of its architect & structural engineer supervising the construction on site, was rejected by the Town Planner vide Memo No. ZP-331/SD(B5)/2017/19946 dated 16.08.2017, for the reason of non-compliance of the building bye-laws.

- h. That the respondent/promoter filed an appeal against the order dated 16.08.2017 passed by the office of Director Town & Country Planning(Haryana) before the Principal Secretary to the Government of Haryana, Town & Country Planning Department (Chandigarh), who vide its order dated 09.11.2017 was pleased to give direction to the Director Town & Country Planning(Haryana) to obtain a fresh report from the field functionaries regarding the status of construction at the site and to take appropriate action on the basis of the same.
- i. That the aforesaid order dated 09.11.2017, the respondent again made a representation on 05.06.2018 after a delay of more than six months, to the Office of District Town Planner(HQ) Haryana O/o Director(Town & Country Planning, Haryana Chandigarh), who vide its Office order bearing Memo No.ZP-331/AD(RA)/2018/1934 dated 29.06.2018 was pleased to direct the District Town Planner (Gurugram) to re-visit the site and send the comments/report through Senior Town Planner, Gurugram immediately.
- j. That accordingly, a team from the office of District Town Planner visited the site in question for the re-inspection of the construction of the housing complex in July 2018 and submitted its detailed report to the Office of Senior Town Planner (Gurugram) vide Memo bearing no. DTP(G)/2018/2.08.2018 dated 31.07.2018 enumerating the details of

the deviations made by the respondent and for the necessary action by the competent authority.

- k. That the respondent was granted licenses bearing no. 257 of 2007 dated 07.11.2007 of the land admeasuring of 14.81 acres & latter an area of 0.8 acres was added to the project and got a license no. 14 of 2011 dated 13.02.2011 from the DTCP, Haryana for construction of the aforesaid group housing residential complex/real estate project, already expired, required to be renewed on 06.11.2017 & 12.02.2019 respectively, however, the respondent has not taken any steps towards the renewal of the same.
- l. That the communication bearing memo no. STP (G)/2018/6346 dated 02.08.2018 that the building plan submitted by the respondents for the construction of the aforesaid real estate project was approved by the Director General Town & Country Planning, Government of Haryana vide its Office Memo No.ZP-331/JD (BS)/2012/22993 dated 16.11.2012 was valid till 15.11.2017 and the same has expired with the efflux of time, however, the respondent took no steps to renew the same by taking the appropriate steps. Further, the respondent for granting occupation certificate regarding the aforesaid real estate project in question, was seriously & consciously considered by the senior official of the office of Directorate of Town & Country Planning Haryana and several opportunities were granted to it to comply the mandatory legal requirements as per the building byelaws as well as the other legal compliances/clearances. The office memo bearing No. ZP-331/AD (RA)/2019/21688 Dated 09.09.2019 & MEMO NO. ZP-

331/AD(RA)/2020/2767 Dated 29.01.2020, were issued by the Office of District Planner (HQ) O/o Director General, Town & Country Planning Haryana, (Chandigarh) were communicated to the respondent for legal compliances but no action or reply was submitted by it.

- m. That the respondent further perpetuated the illegality in development /construction of the housing complex by not taking the environment clearance for the aforesaid project in question till date from the competent authority and is facing prosecution for the same. The Chairman, Haryana State Pollution Control Board vide its office order bearing No. 293-95 dated 20.03.2020, has granted the approval to prosecute the respondent & its other Directors/employees under section 15 read with Section 19 of the Environmental Protection Act, 1986. Further sanction has been granted for the prosecution of the respondent under section 43&44 for violation of section 24&25 of Water Act, 1974 concerning the aforesaid real estate project. The sanction has been also granted for the prosecution of respondent under Section 38&39 for violating section 21&22 of the Air Act 1981 vide orders dated 20.03.2020.
- n. That the respondent/promoter was granted registration no. 90 of 2017 dated 28.08.2017, for the aforesaid on-going real estate project pursuant to the application made in this regard on 31.07.2017 by the Haryana Real Estate Regulatory Authority, HUDA Complex, Sector-6, Panchkula-134109, in terms of the provisions of the Act, 2016 and the



Rules, 2017 subject to the mandatory terms & conditions enumerated therein.

- o. That they have now come to know that the respondent has also taken huge loan amount from the various financiers/banks to finance the real estate projects apart from the sale consideration amount, paid by the buyers. However, the same has not been utilized by the respondent towards the construction activities & diverted the same for own use resulting in undue delay in completion of the aforesaid ongoing real estate project. The financier/banker failed to monitor the utilization of loan amount towards the construction activities resulting in undue delay in completion of the real estate projects apart from the deviations in the sanctioned plan, resulting in rejection of occupation certificate by the town planner and in fact, have helped the respondent siphoning of funds and therefore, is not entitled to possess or sell the unsold units in the aforesaid ongoing project.
- p. That the respondent cannot abdicate the responsibility to pay compensation/damages due to delay in completing the real estate project in question apart from handing over the possession of the apartments & common areas etc., to the complainants as per the law laid down by the parliament to protect the interest of the buyers & maintain the fairness in the action of the state.

**C. Relief sought by the complainants: -**

9. The complainants have sought following relief(s)
- a. To issue directions revoking the license bearing No. 90 of 2017 dated 28.08.2017 granted to the respondent/promoter by the Haryana Real



Estate Regulatory Authority towards the construction of group housing complex in the name & style "Raheja Shilas low rise in Raheja Atharva" at Sector-109, Village Pawala, Khusurpur, Gurugram, as revoked under Section 7 of the Act,2016.

- b. To issue appropriate directions or orders directing the respondent to hand over the development work of the aforesaid project in question to the association of the buyers i.e., the complainants herein or take up the project under its control & supervision, in terms of Section 8 of the Act,2016 in case the authority deems fit & proper.
- c. To issue appropriate directions or orders permitting the complainants to get the Buyers Association for "Raheja Shilas in Low Rise in Raheja Atharva" registered under the local laws so as to enable it take over the development work of the aforesaid project in terms of Section 8 of the Act, 2016.
- d. To issue the occupation certificate to the buyers under RERA Act.
- e. To issue appropriate directions or orders authorizing the complainants to get the structural auditing of the ongoing project in question conducted by appointing an independent architect or such entity so as to identify & rectify the deviations made in the construction work.
- f. To issue appropriate directions or orders authorizing the complainant/association of buyers, to open an escrow account in any nationalized bank and accept the balance payment to be made towards the purchase of independent floors in the ongoing project in question and utilize the same towards completing the project in question as per the law.

- g. To issue appropriate directions or orders directing the respondent /promoter to transfer the un-utilized fund lying in its escrow account no. 017105008614 with ICICI Bank Ltd. (IFC CODE: ICICI0000171), Saket, New Delhi, belonging to the buyers, for its utilisation for the completion of ongoing project as per law.
- h. To issue appropriate directions or orders holding the unsold flats/independent floors as well as 0.8 Acres Land shall remain in the actual as well as notional possession of the complainant/buyer's association & further permit to sell the unsold floors to the prospective buyers and utilize the funds towards the completion of the ongoing project as well as providing compensation/damages to the buyers on account of delayed possession as per the law.
- i. To issue appropriate directions or orders or directing for payment of interest on principal amount to the buyers on account of delayed possession as per the law @ 10.20% from the date of handing over as per the agreement to sell till the actual possession is handed over to be paid proportionately from the unutilized fund if any remains with the complainant/buyer's association and also grant adequate compensation also.
- j. To issue appropriate directions or orders authorizing the complainants /association of buyers to make representations to various authorities for the grant of completion certificate as well as environmental clearance for the ongoing project as per law.
- k. To issue appropriate directions or orders for publication of notice in a daily newspaper for the Information of buyers of the aforesaid

development project requiring them to give their consent for becoming the members of the buyer's association.

- i. To issue appropriate directions or orders to appoint any other competent authority to complete the development project in case the authority deems fit & proper to do so.
10. The respondent/promoter put in appearance through company's A.R & Advocate and marked attendance on 08.02.2022, 21.04.2022 and 02.11.2022. Despite specific directions it failed to comply with the orders of the authority. Therefore, in view of order dated 02.11.2022, the defence of the respondent was struck off.
11. 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 based on these undisputed documents and submission made by the complainants.

**D. Jurisdiction of the authority**

12. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**D. I Territorial jurisdiction**

13. 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.

**D. II Subject matter jurisdiction**

14. 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.*

15. 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.

**E. Findings on the relief sought by the complainants.**

- E. I To issue directions revoking the license bearing No. 90 of 2017 dated 28.08.2017 granted to the respondent/promoter by the Haryana Real Estate Regulatory Authority towards the construction of group housing complex in the name & style "Raheja Shilas low rise in Raheja Atharva" at Sector-109, Village Pawala, Khusurpur, Gurugram, as revoked under Section 7 of the Act,2016.**

- E. II** To issue appropriate directions or orders directing the respondents to hand over the development work of the aforesaid project in question to the association of the buyers i.e., the complainants herein or take up the project under its control & supervision, in terms of Section 8 of the Act, 2016 in case the authority deems fit & proper.
- E. III** To issue appropriate directions or orders permitting the complainants to get the Buyers Association for "Raheja Shilas in Low Rise in Raheja Atharva" registered under the local laws so as to enable it take over the development work of the aforesaid project in terms of Section 8 of the Act, 2016.
- E. IV** To issue the occupation certificate to the buyers under RERA Act.
- E. V** To issue appropriate directions or orders authorizing the complainants to get the structural auditing of the ongoing project in question conducted by appointing an independent architect or such entity so as to identify & rectify the deviations made in the construction work.
- E. VI** To issue appropriate directions or orders authorizing the complainant /association of buyers, to open an escrow account in any nationalized bank and accept the balance payment to be made towards the purchase of independent floors in the ongoing project in question and utilize the same towards completing the project in question as per the law.
- E. VII** To issue appropriate directions or orders directing the respondent /promoter to transfer the un-utilized fund lying in its escrow account no. 017105008614 with ICICI Bank Ltd. (IFC CODE: ICICI0000171), Saket, New Delhi, belonging to the buyers, in the escrow account of the buyer's association/complainant for its utilisation for the completion of ongoing project as per law.
- E. VIII** To issue appropriate directions or orders holding the unsold flats /independent floors as well as 0.8 Acres Land shall remain in the actual as well as notional possession of the complainants/buyer's association & further permit to sell the unsold floors to the prospective buyers and utilize the funds towards the completion of the ongoing project as well as providing compensation/damages to the buyers on account of delayed possession as per the law.
- E. IX** To issue appropriate directions or orders authorizing the complainants /association of buyers to make representations to various authorities for the grant of completion certificate as well as environmental clearance for the ongoing project as per law.
- E. X** To issue appropriate directions or orders for publication of notice in a daily newspaper for the Information of buyers of the aforesaid development project requiring them to give their consent for becoming the members of the buyer's association.



**E. XI To issue appropriate directions or orders to appoint any other competent authority to complete the development project in case the authority deems fit & proper to do so.**

16. The above-mentioned reliefs sought were not pressed by the complainants counsel during the arguments. The authority is of the view that the complainant counsel does not intend to pursue the above-mentioned relief sought. Hence, the authority has not raised any finding w.r.t. to the above-mentioned relief.

**E.XII To issue appropriate directions or orders or directing for payment of interest on principal amount to the buyers on account of delayed possession as per the law @ 10.20% from the date of handing over as per the agreement to sell till the actual possession is handed over to be paid proportionately from the unutilized fund if any remains with the complainant/buyer's association and also grant adequate compensation also.**

17. In the present complaint, the complainants intend to continue with the project and are 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."*

18. 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 company shall endeavor to give possession of the apartments to the allottee(s) within thirty-six (36) months in*



*case of tower and **thirty (30) months in case of 'Independent Floor' from the date of the execution of the Agreement to sell** and after providing of necessary infrastructure 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 company. The company on obtaining certificate for occupation and use by the Competent Authorities shall hand over the Unit to the Purchaser for this occupation and use and subject to the Purchaser having complied with all the terms and conditions of this application form & Agreement To sell. In the event of his failure to take over and /or occupy and use the unit 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 to compensation @ Rs.7/- per sq. ft. of the super area per month as holding charges for the entire period of such delay..... "*

19. 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.

**20. 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.

21. 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.

22. Taking the case from another angle, the complainants-allottees were 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 person, 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 will not be final and binding.

23. 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., 01.02.2023

is **8.60%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.60%**.

24. 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;"*

25. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., **10.60%** by the respondent/promoter which is the same as is being granted her in case of delayed possession charges.

26. 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 16.02.2010,

the possession of the subject unit was to be delivered within 30 months from the date of agreement to sell. Therefore, the due date of handing over possession was 16.08.2012. 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 complainants as per the terms and conditions of the agreement to sell dated 16.02.2010 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.

27. 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 charges at rate of the prescribed interest @ 10.60% p.a. w.e.f. 16.08.2012 till the handing over of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

**F. Directions of the authority**

28. 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 each of the complainant against the paid-up amount at the prescribed rate of 10.60% p.a. for every month of delay from the due date of possession i.e., 16.08.2012 till the handing over of possession of the allotted unit.
- ii. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order as per rule 16(2) of the rules.
- iii. The respondent shall not charge anything from the complainant which is not the part of the flat buyer's agreement.
- iv. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- v. The respondent is directed to offer the possession of the allotted unit within 30 days after obtaining occupation certificate from the competent authority. The complainants w.r.t. obligation conferred upon him under section 19(10) of Act of 2016, shall take the physical possession of the subject unit, within a period of two months of the occupancy certificate.



- vi. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.60% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(z a) of the Act.
29. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
30. Complaint stands disposed of. True certified copy of this order shall be placed in the case file of each matter.
31. File be consigned to registry.

  
(Ashok Sangwan)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

V.1-3  
(Vijay Kumar Goyal)  
Member

Dated: 01.02.2023

**HARERA**  
**GURUGRAM**