

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

Order reserved on :- 15.12.2022
Date of pronouncement 07.03.2023
of order :-

Name of the Builder		M Three M India Private Limited	
Project Name		M3M Urbana, Sector- 67	
S.no.	Complaint No.	Complaint title	Attendance
1.	CR/2868/2020	Amit Jaggi V/s M Three M India Private Limited	Shri Siddhant Sharma Ms. Shriya Takkar
2.	CR/3211/2020	Poonam Bhatt V/s M Three M India Private Limited	Shri Siddhant Sharma Ms. Shriya Takkar

CORAM:	
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member

ORDER

1. This order shall dispose of both the 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.
2. 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, M3M Urbana, sector 67 (Commercial Complex) being developed by the same respondent/promoter i.e., M Three M India Private Limited. The terms and conditions of the builder buyer's agreements fulcrum of the issue

involved in both the cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of delayed possession charges and cost of litigation.

3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, amount paid up, and reliefs sought are given in the table below:

Project: M3M Urbana, sector 67							
Possession clause: 15							
15.1 The company based upon its present plans and estimates, and subject to all just exceptions, proposes to hand over possession the unit within a period of thirty-six (36) months from the date of approval of building plans of the commercial complex or the date of execution of this agreement whichever is later ("Committed Period"). Should the possession of the unit not be given within the committed period, the allottee agrees to an extension of one hundred and eighty (180) days (Grace Period) after expiry of the commitment period.							
Sr. no	Complaint no./title/ date of complaint	Reply status	Unit No. and area admeasure- -eing	Date of execution of BBA	Due date of possession	Total sale consideration and amount paid by the Complainant (s)	Relief Sought
1.	CR/2868/2020 titled as Amit Jaggi V/s M Three M India Private Limited DOR- 08.10.2020	Reply received on 26.03.2021	SB/R/GL/08, 949.97 sq. ft.	20.03.2013 Page 68 the reply Date of allotment letter- 21.03.2011	11.11.2016 (Due date of the possession is calculated from the date of approval of building plan)	TSC: Rs. 1,26,18,036/ . (As per statement of account, page 139 of the reply) AP: 1,17,46,082 Offer of possession:- 11.07.2020	DPC Compensation

2.	CR/3211/2020 titled as Poonam Bhatt V/s M Three M India Private Limited DOR- 08.10.2020	Reply received on 22.03.2021	SB/R/G L/08/11 , Block-8 869.14 sq. ft.	07.01.20 13 Page 37 the complaint Date of allotment letter- 16.09.20 11	11.11.2016 (Due date of the possession is calculated from the date of approval of building plan)	TSC: Rs. 1,11,58,728 (As per statement of account, page 128 of the reply) AP: 1,07,44,771 Offer of possession:- 11.07.2020	DPC Compensation
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Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviations Full form

DOR- Date of receiving complaint

SA- Subsequent allottee

TSC- Total Sale consideration

AP- Amount paid by the allottee(s)

DPC- Delayed possession charges

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the builder buyer's agreement executed between the parties *inter se* in respect of said unit for not handing over the possession by the due date, seeking award of delayed possession charges and compensation.
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 all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR 2868/2020 titled as Amit Jaggi Vs. M Three M India Private Limited**

are being taken into consideration for determining the rights of the allottee(s) qua delay possession charges.

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 2868/2020 titled as Amit Jaggi Vs. M Three M India Private Limited

Sr. No.	Particulars	Details
1.	Name of the project	M3M Urbana, sector 67
2.	Area of the project	8.2125 acres
3.	Nature of the project	Commercial complex
4.	DTCP License no.	100 of 2010 dated 26.11.2010 valid upto 25.11.2022 101 of 2010 dated 26.11.2010 valid upto 25.11.2022 11 of 2011 dated 28.01.2011 valid upto 27.01.2023
5.	Building Plan approved on	03.08.2016 revised on dated 30.11.2017 as per website of DTCP
6.	Transfer of allotment in the name of present complainant on	20.07.2013 [page 118 of reply]
7.	OC received on	03.07.2020
8.	Unit no.	SB/R/GL/08,
9.	Unit area	949.97 sq. ft.
10.	Date of allotment	21.03.2011 (Page 63 of the reply)

11.	Date of builder buyer agreement	20.03.2013 (Page 68 of the reply)
12.	Possession clause	<p>15. Possession of the commercial unit</p> <p>15.1 The company based upon its present plans and estimates, and subject to all just exceptions, proposes to hand over possession the unit within a period of thirty-six (36) months from the date of approval of building plans of the commercial complex or the date of execution of this agreement whichever is later ("Committed Period"). Should the possession of the unit not be given within the committed period, the allottee agrees to an extension of one hundred and eighty (180) days (Grace Period) after expiry of the commitment period.....</p> <p style="text-align: right;">(Emphasis supplied)</p>
13.	Date of building plan	11.11.2013 [page 144 of reply]
14.	Due date of possession	11.11.2016 (Due date of the possession is calculated from the date of approval of building plan)
15.	Zero period	2 years 10 months and 29 days (i.e., from 01.11.2017 to 30.09.2020 vide order of DTCP, Haryana Chandigarh dated 03.03.2021)
16.	Total sale consideration	Rs. 1,26,18,036/- (As per statement of account, page 139)

		of the reply)
17.	Amount paid by the complainant	Rs. 1,17,46,082/- (As per statement of account, page 139 of the reply)
18.	Notice of offer of possession	11.07.2020 [Page 137-141 of reply]
19.	1. First pre- cancellation letter issued on	14.08.2020
	2. Last and final opportunity letter issued on	01.09.2020

B. Facts of the complaint

8. The complainant has made the following submissions in the complaint:
- i. That the complainant is a respectful citizen and currently residing at B-65, Defence Colony, New Delhi 110024. The Complainant booked commercial unit no. SB/R/GL/08/05 of super area admeasuring approximately 949.97 sq. ft. (88.25 sq. mtrs.) located on Ground Floor in block-8 in the commercial complex and the right to exclusive use of 1 car parking space in the commercial complex.
 - ii. That Mrs. Kusum Jain (Original allottee of the said commercial unit) booked a commercial unit in the project by the respondents named as "M3M URBANA" and advanced a payment of Rs. 7,25,000/- towards unit SB/R/GL/08/05, registration no. 639 vide 3 separate cheques. The respondents acknowledged the payment and issued receipts no. 2240, 2241 and 2242 to Mrs. Kusum Jain. That Mrs. Kusum Jain on 18.04.2011 issued another cheque to the respondents for Rs. 7,25,000/- as part payment for unit SB/R/GL/08/05, registration no.

- 639 which was duly acknowledged by the respondent by issuing a receipt vide no. 2850.
- iii. That Mrs. Kusum Jain advanced further amount of Rs. 37,338/- and Rs. 7,18,040/- to the respondents as part payment for unit SB/R/GL/08/05, registration no. 639 which was duly acknowledged by the respondent by issuing a receipt dated 23.05.2011. That an amount of Rs. 3,75,000/- and Rs. 3,50,000/- was further paid to the respondent through cheques no. 284010 and 281883 as part payment on 15.07.2011.
- iv. That the respondents acknowledged the payment of Rs. 37157/- as service tax paid by Mrs. Kusum Jain on 21.07.2011 vide cheques no. 365636. That Mrs. Kusum Jain as part payment paid further Rs. 15,14,820/- to the respondents vide receipt no. 12651 dated 06.03.2013. That the respondent and Mrs. Kusum Jain signed the builder buyer's agreement dated 20.03.2013 for allotment of commercial unit no. SB/R/GL/08/05 of super area admeasuring approximately 949.97 sq. ft. located on ground floor in Block-8 in the commercial complex and the right to exclusive use of 1 car parking space in the commercial complex.
- v. That an amount of Rs. 46,810/- was paid to the respondent through cheque no. 365656 dated 08.03.2013 as service tax. That Mrs. Kusum Jain vide agreement to sell, sold the commercial unit SB/R/GL/08/05 of super area admeasuring approximately 949.97 sq. ft. located on ground floor in block-8 in the commercial complex and the right to exclusive use of 1 car parking space in the commercial complex to Mr. Amit Jaggi (herein after referred to as complainant).

- vi. That as per the payment plan the complainant advanced further payment of Rs. 8,57,120/- to the respondent as part payment vide cheques no. 867538 and the same was acknowledged by the respondent vide receipt no. 15776 dated 02.09.2013. That in furtherance another demand was raised by the respondents to make the payment of Rs. 13,07,405/- towards service tax, EDC, IDC and part payment to which the complainant made the payment vide cheque no. 867539 and the same was acknowledged by the respondent vide receipt no. 16648 dated 02.11.2013. That the respondent issued further receipts acknowledging the payments of Rs 5510/-, Rs 12768/-, Rs 8265/- being the income tax deducted and the same deposited by the complainant vide Challan no. AB3995740, AB3995666 and AB3995283 and in furtherance of the same the respondents also acknowledged the part payment and service tax paid by the complainant vide receipt no. 31323 for Rs. 5,44,870/- on 16.10.2014. That the respondents acknowledged the payment of Rs. 5,65,697/- paid by the complainant as part payment and service tax and issued a receipt vide no. 35546 dated 20.02.2015. That the respondent issued further receipt no. 36420 acknowledging the payments of Rs 5715/- being the income tax deducted and the same deposited by the complainant vide challan no. AB6126691.
- vii. That the respondent acknowledged the payment of Rs. 5,65,698/- paid by the complainant as part payment and service tax and issued a receipt vide no. 38353 dated 25.05.2015 and also acknowledged the payments of Rs 5715/- being the income tax deducted and the same deposited by the complainant vide challan no. AC1107444. That the respondent acknowledged the payment of Rs. 5,68,382/- paid by the

complainant as part payment and service tax and issued a receipt vide no. 39682 dated 14.07.2015 and also acknowledged the payments of Rs 5742/-being the income tax deducted and the same deposited by the complainant vide challan no. AC2696514.

- viii. That the respondent acknowledged the payment of Rs. 7,74,699/- paid by the complainant as part payment and service tax and issued a receipt no. 41048 dated 16.09.2015 and also acknowledged the payment of Rs 7826/-being the income tax deducted and the same deposited by the complainant vide challan no. AC3929144 and issued a receipt dated 17.09.2015.
- ix. That the respondent acknowledged the payment of rs. 7,76,926/- paid by the complainant as part payment, service tax, SBC and KKC. That the respondents issued a Receipt no. 45582 dated 24.06.2016 and also acknowledged the payment of Rs 7848/-being the income tax deducted and the same deposited by the complainant vide challan no. AD2150116 and issued a receipt no. 45950. That the respondent sent a letter dated 11.07.2020 offering possession for retail unit bearing unit no. SB/R/GL/08/05 on the ground floor in Block-8 in "M3M Urbana" at sector 67 Gurugram, Haryana after a delay of more than 3 years and further demanded a payment of Rs. 16,80,954/- from the complainant and without any intimation increased the area and have demand an increased amount. That this authority in the matter of "**Usha Upender vs. M3M India Pvt. Ltd**" in CR/1929/2019 decided in favour of the complainant and against the same respondent in the same project, and held that the complainant was not only entitled to compensation but also delayed charges @ 10.20% till the offer of possession. The verbatim of the orders dated 09.01.2020.

"As such the complainant is entitled for delayed possession charges @ 10.20% p.a. w.e.f. 13.06.2016 till offer of possession as per the provisions of section 18(1) of the Real Estate (Regulation and Development) Act, 2016.

The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order..."

- x. That the respondent in furtherance of their delayed possession letter sent a letter dated 13.07.2020 seeking common area maintenance and IFMS calculations to the tune of Rs. 2,40,186.31/-. That the complainant received another letter dated 10.08.2020 showing the statement of accounts as on Aug 10, 2020 for unit no. SB/R/GL/08/05 on the ground floor in Block-8 in "M3M Urbana.
- xi. That the complainant received another letter dated 14.08.2020 showing the statement of accounts as on Aug 14, 2020 for Unit no. SB/R/GL/08/05 on the ground floor in Block-8 in "M3M Urbana". That despite paying more than 95% of the consideration amount to the respondent and wherein there was a considerable delay of handing over the offer of possession to the complainant, the respondent sent a Pre-cancellation notice to the complainant seeking payment of Rs. 8,77,760/-. That the complainant wrote an email to the respondent seeking statement of accounts for his reference where the respondents failed to provide the complainant a receipt of Rs. 5510/- which was made to the respondent as tax deduction. Further the respondents did not mention the same in any of the SOA showing discrepancies in the account. That left with no other option and paid an amount of Rs. 1,18,62,239/- to the respondent, the complainant sent a reply to the notice of possession dated 11.07.2020 and pre-cancellation notice dated 14.08.2020 issued to the complainant. That the respondent has failed to deliver the services as promised and has not developed the area as per the promise and assurances and it was categorical, default

and deficiency in functions and duties of the respondent and has thus, caused great loss to the complainant which is being caused due to willful default, non-completion of project as per assurances and promises and being a customer/consumer, complainant did not get any positive treatment from the end of respondent.

C. Relief sought by the complainant:

9. The complainant has sought following relief(s):

- a) Direct the respondent to pay the delay possession charges to the complainant along with prescribed rate of interest.
- b) Grant the cost of litigation of Rs. 1,10,000/- in favor of the complainant and against the respondents.

10. 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

11. The respondent has contested the complaint on the following grounds.

- a. That after making independent enquiries and only after being fully satisfied about the project the former allottee i.e. Ms. Kusum Jain approached the respondent company for booking of a commercial unit in 'M3M Urbana', containing commercial units for retail, office use and service apartments with suitable infrastructure facilities being developed in a planned and phased manner over a period of time referred to as the "commercial complex" and submitted a booking application form dated 16.03.2011.
- b. That thereafter the respondent company provisionally allotted the unit bearing no. "SB/R/GL/08/05" in favour of the former allottee vide

provisional allotment letter dated 21.03.2011. The former allottee as per her own decision and after fully understanding her obligations opted for the construction linked payment plan. It is submitted that all the demands have been raised from time to time as per the payment plan opted by the former allottee on the achievement of the relevant construction milestones.

- c. That after constant follow-ups, the buyer's agreement was executed between the parties on 20.03.2013. It is pertinent to mention that the buyer's agreement duly covers all the liabilities and rights of both the parties. It is submitted that the cost of the commercial unit for an admeasuring 949.97 sq. ft. as per the buyer's agreement was Rs.1,20,12,433/- plus taxes and other charges.
- d. That thereafter the former allottee, Ms. Kusum Jain sold the unit allotted to her in favour of the complainant herein. The agreement to sell was executed between the former allottee and the complainant herein on 15.07.2013. The complainant paid a sum of Rs. 30,00,000/- to the former allottee and the balance amount for the unit was to be paid directly to the respondent company directly as per the agreement to sell dated 15.07.2013. Thereafter the said unit was purchased by complainant from the former allottees after making independent enquiries and factually verifying everything. It is submitted vide letter dated 20.07.2013, the unit in question was transferred in the name of the complainant and the allotment letter, buyers' agreement and all the receipts were endorsed in the favour of the complainant. It is submitted that the complainant is a subsequent allottee of the property in dispute and as such has stepped into the shoes of the original allottee. Further, the respondents had duly and specifically agreed to



be bound by all the terms and conditions of the allotment/agreement and had undertaken to pay the balance sale consideration and other charges as applicable and had given affidavits/application dated 15.07.2013.

- e. It is further submitted that by the sale of the unit by the former allottee to the complainant herein, the complainant has stepped into the shoes of the former allottee. It is submitted that the complainant defaulted in making timely payments for which the respondent made repeated follow-ups. It is submitted that the amount paid till date by the complainant is Rs. 1,17,46,082/-.
- f. That it would also be pertinent to state here that after the completion of the construction and development of Block / Tower Nos. 7 (G+16) & 8 (G+1) and part of Block / Tower No. 2 (2nd floor) in respect of Commercial Complex M3M Urbana situated in Sector 67, Gurugram-Manesar Urban Complex, Gurugram, Haryana, an application for grant of Occupancy Certificate in respect thereof was applied for by Martial Buildcon Pvt. Ltd. way back vide application dated 12.05.2017. That pursuant to the said application there were no deficiency(ies) communicated by the Competent Authority i.e. DTCP, however despite, all compliances having been made the occupation certificate so applied for and requested for was not granted / received.
- g. That occupation certificate as stated hereinabove with respect to certain towers [i.e. Block / Tower Nos. 7 (G+16) & 8 (G+1) and part of Block / Tower No. 2 (2nd floor)] had already been applied for, which also includes the unit of the complainants, as the said block/towers were completely constructed and ready for possession and can be put to use / occupied. That the matter for grant of occupation certificate was

followed up from time to time at various levels in the office of competent authority i.e. DTCP and since no action was forthcoming, a Civil Writ Petition bearing No. **CWP No. 23839 of 2018** titled as: **Martial Buildcon Pvt. Ltd. vs. State of Haryana and Ors.** was filed in the Hon'ble High Court for the States of Punjab and Haryana on the grounds as stated therein. Further, some of the allottees having learnt and having assessed the state of development of the blocks/towers wherein the respective units were situated and on being satisfied that the same was ready for possession and in an habitable condition, were constrained to approach the Hon'ble High Court for the States of Punjab and Haryana by filing a writ petition being **CWP No.6801 of 2019** titled as **Varinder Pal Singh and Others versus State of Haryana and Others**, inter alia, praying for issuance of appropriate direction to State of Haryana to consider the case of the allottees for grant of occupation certificate, possession certificate and other statutory permissions, as may be required, on the same pattern as has been considered and granted to other similarly placed colonies in terms of Order dated June 17, 2016 passed in CWP No. 10770 of 2016: **M/s R P Estates Pvt. Ltd. Vs State of Haryana And Ors.** and order dated March 23, 2017 passed in CWP No. 20902 of 2016: **Frontier Home Developers Pvt. Ltd. Vs. State of Haryana and Ors.** by the Hon'ble High Court. That both the Civil Writ Petitions bearing Nos. CWP No. 23839 of 2018 and CWP No.6801 of 2019 have been decided by the Hon'ble High Court vide Order dated May 29, 2019 whereby the state authorities were directed to grant the occupancy certificates as expeditiously as possible, preferably within a period of 6 weeks from the date of receipt of the certified copy of the order. The operative

part of the said order is reproduced herein below for ready reference of this authority:

The Hon'ble Supreme Court also in its observations extracted above has recorded an acute concern for the flat owners and on the parity of that reasoning, we would also consider it appropriate to direct the respondents to grant the occupancy certificate to the petitioners and enable the allottees to take possession particularly when it has not been denied by the respondents that only a small portion of the project is under a scanner and even otherwise, the Hon'ble Supreme Court has observed that the interest of the allottees who have already paid almost 95% of the amount for their flats cannot be made to suffer by holding up the clearances.

We, therefore, dispose of these petitions in view of the observations made by the Hon'ble Supreme Court and direct the State authorities to release the occupancy certificates as expeditiously, as possible, preferably within a period of six weeks from the date of receipt of a certified copy of this order.

- h. The Hon'ble High Court had observed that the interest of the allottees, who have paid substantial amounts, cannot be made to suffer by holding up the clearances. It is relevant to mention here that despite this Order, the OC was still not released by the department of town and country planning. It is further relevant to add here that the department of town and country planning somehow does not appreciate the provision 4.10(5) of the Haryana Building Code, 2017. It needs to be highlighted here that the applicant/respondent suffered a state of complete helplessness at the hands of the statutory authorities, who despite the construction having been completed in all respects, without any shortcoming whatsoever in the construction, failed to grant the occupation certificate in compliance of their statutory duties. The said fact that there were no shortcomings/infirmity in the application for grant of the OC is apparent from the OC dated 03.07.2020, released for Tower 7 and 8. It is submitted that the OC was also delayed due to National Lockdown announced by the Government



of India due to COVID 19 pandemic on 24.03.2020 to be effective from the following day. It is submitted that this delay of the competent authorities in granting the OC cannot be attributed in considering the delay in delivering the possession of the flat, since on the day the answering respondent applied for OC, the flat was complete in all respects.

- i. That even though the respondent and M/s Martial Buildcon Pvt. Ltd. had duly complied with their obligations and had completed the construction and development of the respective units and were ready and willing to offer the possession, but due to non-receipt of the approval from the competent authority (DTCP), the Respondent and M/s Martial Buildcon Pvt Ltd. could not act further and offer possession. The respondent despite being ready and willing cannot proceed further with offering possession despite the fact there is no delay in completion of construction. That there has been no delay or failure on the part of the respondent in performing its obligations and in fact the respondent itself bared the brunt on account of the inaction by the competent authority and day by day incurred heavy cost in maintaining the premises and also further cost towards keeping the various approvals in place.
- j. That immediately after the receipt of the occupation certificate on 03.07.2020, the respondent proceeded with the procedure of offering possession and the possession has been offered to the complainants on 11.07.2020. That the possession having been offered to the complainant on 11.07.2020, the complainant was liable to come forward and clear his dues and take the possession. However, the complainant has failed to do so despite regular follow

ups. That due to the act of the complainant of not coming forward to clear his dues and take the possession, the respondent has been constrained to issue pre-cancellation notice dated 14.08.2020 and further a last and final opportunity dated 01.09.2020. The complainants are not coming forward to take the possession. It is further submitted that under section 19(10) of RERA it is the responsibility of the allottee to take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate.

- k. It is submitted that the revised building plans of the commercial complex were approved by the authorities on 11.11.2013. The construction of the project was affected on account of unforeseen circumstances beyond the control of the respondent developer. In the year, 2012 on the directions of the Hon'ble Supreme Court of India, the mining activities of minor minerals (which includes sand) was regulated. The Hon'ble Supreme Court directed framing of modern mineral concession rules. Reference in this regard may be had to the judgment of *Deepak Kumar v. State of Haryana, (2012) 4 SCC 629*. The competent authorities took substantial time in framing the rules and in the process the availability of building materials including sand which was an important raw material for development of the said project became scarce. Further, the respondent was faced with certain other force majeure events including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the

environmental conditions, restrictions on usage of water, etc. It is pertinent to state that the national green tribunal in several cases related to Punjab and Haryana had stayed mining operations including in O.A No. 171/2013, wherein vide order dated 2.11.2015 mining activities by the newly allotted mining contracts by the state of Haryana was stayed on the Yamuna River bed. These orders infact inter-alia continued till the year 2018. Similar orders staying the mining operations were also passed by the Hon'ble High Court and the National Green Tribunal in Punjab and Uttar Pradesh as well. The stopping of mining activity not only made procurement of material difficult but also raised the prices of sand/gravel exponentially. It was almost 2 years that the scarcity as detailed aforesaid continued, despite which all efforts were made and materials were procured at 3-4 times the rate and the construction continued without shifting any extra burden to the customer. The time taken by the Respondent to develop the project is the usual time taken to develop such a project of such a large scale.

1. Despite force majeure conditions the respondent had completed the construction of the construction within the agreed time limit and occupancy permission from the competent authority was duly applied for on 12.05.2017. It is submitted that despite all compliances from the side of the respondent, the occupation certificate was not issued till 03.07.2020 by the competent authorities. It is submitted that the delay in grant of occupation certificate by the competent authority is beyond the control of the respondent company and the same is squarely covered under clause 15.4. It is submitted that the under clause 15.4, parties have agreed that if the delay is on account of force majeure

conditions, the time for delivery of possession will be appropriately extended beyond the grace period.

- m. That the complainant is not a consumer and an end user since he has purchased the unit in question from the former allottee purely for commercial purpose as a speculative investor and to make profits and gains. Further, the complainant has invested in many projects of different companies which prove that the complainant is not a consumer but only an investor. Thus, it is clear that the complainant has invested in the unit in question for commercial gains, i.e. to earn income by way of rent and/or re-sale of the property at an appreciated value and to earn premium thereon. Since the investment has been made for the aforesaid purpose, it is for commercial purpose and as such the complainant is not a consumer / end user. The complaint is liable to be dismissed on this ground alone. Under these circumstances, it is all the more necessary for the complainant, on whom the burden lies, to show how the complainant is a consumer.
- n. The complainant has not disclosed his financial position and the statement of income and assets for the last 5 (five) years prior to the date of booking of the above unit. It is necessary for the complainant to file copies of its income tax returns for the 5 (five) years prior to the date of booking. It is reiterated herein that the complainant cannot be treated as a consumer and hence the captioned complaint is liable to be dismissed at threshold. That the complainant has 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 and if there had been disclosure of these material facts and proceedings, the question of

entertaining the purported complaint would not have arisen. It is settled law, as held by the Hon'ble Supreme Court in **S.P. Chengalvaraya Naidu v. Jagannath 1994(1)SCC(1)** that non-disclosure of material facts and documents amounts to a fraud on not only the opposite parties but also on the Court. Reference may also be made to the decisions of the Hon'ble Supreme Court in **Dillip Singh Vs State of UP 2010-2-SCC-114** and **Amar Singh Vs Union of India 2011-7-SCC-69** which is also been followed by the Hon'ble National Commission in the case of **Tata Motors Vs Baba Huzoor Maharaj being RP No. 2562 of 2012 decided on 25.09.2013.**

- o. That the complainant has not approached this hon'ble authority with clean hands. It is submitted that the complainants are attempting to raise frivolous issues and is now, at a belated stage, attempting to seek a modification of the agreement entered into between the parties in order to acquire benefits for which the complainant is not entitled in the least. That the complainant has wilfully agreed to the terms and conditions of the agreement and is now at this belated stage are attempting to wriggle out of their contractual obligations by filing the instant complaint before this authority. The relationship of the complainant and the respondent is defined and decided by the buyer's agreement executed between both parties. It is submitted that a specific clause for referring disputes to arbitration is included in the said agreement vide clause 47 of the agreement which is extracted hereunder;

"47.1- Any dispute connected or arising out of this Agreement or touching upon or in relation to terms of this Agreement including the interpretation and validity of the terms thereof and the respective

rights and obligations of the Parties hereto shall be resolved through the process of arbitration....."

- p. Hence, both the parties are contractually bound by the above condition. In view of clause 47.1 of the agreement, the captioned complaint is barred. The complainant ought to have resorted to arbitration instead of having approached this hon'ble authority with the captioned complaint. It is respectfully submitted that in light of the arbitration clause in the agreement, this authority does not have the jurisdiction to adjudicate upon the instant complaint and ought to dismiss the same.
- q. It is submitted that vide the instant complaint, the complainant has sought for interest on delayed possession qua subject unit. It is stated that the dispute and differences, if any, between the parties involves various questions of facts and law. The issues raised by the complainant cannot be addressed before this authority and the subject matter cannot be adjudicated without going into the facts of the case which requires elaborate evidence to be led and which cannot be adjudicated upon under the summary jurisdiction of this authority. That the present construction and development of the present phase was completed within the agreed time limit and the respondent applied to the competent authority for the grant of occupancy certificate on 12.05.2017 after complying with all the requisite formalities. That immediately after the receipt of the occupation certificate on 03.07.2020, the respondent proceeded with the procedure of offering possession and the possession has been offered to the complainant on 11.07.2020. That the possession having been offered to the complainant on 11.07.2020, the

complainant was liable to come forward and clear his dues and take the possession. However, the complainant has failed to do so despite regular follow ups. That due to the act of the complainant of not coming forward to clear his dues and take the possession, the respondent has been constrained to issue pre-cancellation notice dated 14.08.2020 and further a last and final opportunity dated 01.09.2020. Therefore, it is humbly submitted that since the complainant has been clearly in violation of his duty to clear the dues and take the possession and hence are not liable to any relief.

12. Written arguments by the respondent

- i. The respondent has filed written arguments on 08.12.2022. It is stated that the grant of occupation certificates, permissions and approvals were withheld by the Department of Town and Country Planning for Sectors 58-63 and 65-68 of GMUC. That aggrieved by this action of the Department, Civil Writ Petition bearing No. **CWP No. 29239 of 2018** titled as: **Martial Buildcon Pvt. Ltd. vs. State of Haryana and Ors.** and **CWP No.6801 of 2019** titled as **Varinder Pal Singh and Others versus State of Haryana and Others** were filed seeking directions for the grant of the Occupation Certificate with respect to the application dated 12.05.2017. That the Hon'ble High Court of Punjab and Haryana was pleased to pass an order dated 29th May 2019 directing the department to grant the occupation certificate preferably within 6 weeks from the receipt of the certified copy of the order. However, despite such an order the department failed to grant the occupation certificate, for no fault of the respondent. It is further submitted that the department after having sought the opinion of the Advocate General, Haryana, allowed and released the permissions and approvals

- which were previously withheld as admitted by them in the office order dated 3rd March 2021 ('Office Order').
- ii. The occupation certificate for the unit of the complainant was granted by the department on 03.07.2020. Upon receipt of the occupation certificate, the respondents forthwith issued the notice of possession dated 11.07.2020. It is submitted that no case of delayed possession is made out in the facts and circumstances of the present case as the delay was on the part of the concerned statutory authorities in granting the occupation certificate. It is thus stated that the complainant was offered the possession without any delay which can be attributed to the respondent. That the present petition has been filed post the offer of possession. It is submitted that the delay in grant of the occupation certificate by the competent authority is beyond the control of the respondent company and the same is squarely covered under clause 15.4 read with clause 15.6 of the buyers agreement.
- iii. That in view of the decision of the Department to withhold the permissions/approvals and the Occupation certificate for the unit in question for no fault or shortcomings of any sort attributable to the Respondent, the period for offer of possession stood extended by such time. That the authority vide its order dated 28.09.2021 in the matter titled as: **Mr. Sanjay Pareek and Anr. vs. M/s. Shree Vardhaman Buildprop Pvt. Ltd. (Complaint No. 964 of 2021)** in identical circumstances has given the benefit of zero period from 01.11.2017 to 30.09.2020. The relevant portion of the order dated 28.09.2021 passed by the Ld. Authority is reproduced herein below:

"59.....It is pertinent to mention here over here that the respondent promoter has filed a list of additional documents on 10.07.2021, where in an office order of the DTCP, Haryana, Chandigarh has been annexed. The para 4 of the said order has mentioned that "Government has accorded approval to consider the period i.e.

01.11.2017 to 30.09.2020 as 'Zero Period' where the approvals were withheld by the department within the said period in view of the legal opinion and also gave relaxations as mentioned in Para 3. Accordingly, the authority is of the considered view that this period should be excluded while calculating the delay on the part of the respondent to deliver the subject flat....."

iv. Therefore, in view of the submissions made hereinabove it is submitted that the Complainant is not entitled to any relief whatsoever and the present complaint is liable to be dismissed.

13. 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 submission made by the parties.

E. Jurisdiction of the authority

14. The respondent has raised preliminary objection regarding jurisdiction of authority to entertain the present complaint. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

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

E. II Subject-matter jurisdiction

16. 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;

The provision of assured returns is part of the builder buyer's agreement, as per clause 15 of the BBA dated..... Accordingly, the promoter is responsible for all obligations/responsibilities and functions including payment of assured returns as provided in Builder Buyer's Agreement.

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.

17. So, in view of the provisions of the Act of 2016 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.1 Objection regarding complainant is investor not consumer**

18. The respondent submitted that the complainant is investor and not consumer/allottee, thus, the complainant is not entitled to the protection of the Act and thus, the present complaint is not maintainable.
19. The authority observes that the Act is enacted to protect the interest of consumer of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims and objects of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that under section 31 of the Act, any aggrieved person can file a

complaint against the promoter if the promoter 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 buyer's agreement, it is revealed that the complainant is an allottee/buyer and he has paid total price of Rs. 1,17,46,082/- to the promoter towards purchase of the said unit in the project of the promoter. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

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

20. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between respondent and complainant, it is crystal clear that the complainant is allottee as the subject unit was allotted to them 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 complainant-allottee being investors is not entitled to protection of this Act stands rejected.

F.II Objection of the respondent w.r.t reasons for the delay in handing over of possession.

21. The respondent submitted that there were various events or the situations beyond the control of the respondent and the same have to be excluded while computing delay in handing over possession and these are as follows:
- a. **The respondent submitted that non-grant of OC is beyond the control of the respondent and the said approvals have not been granted so far despite the fact that the State Counsel assured to the hon'ble High Court of Punjab and Haryana to grant approvals/OC.**
22. As far as the aforesaid reason is concerned, the authority observes that the Hon'ble High Court of Punjab and Haryana vide its order dated 29.05.2019 in CWP-29239-2018 titled as **Martial Martial Bulldcon Pvt. Ltd. vs. State of Haryana and Ors.** and CWP No.6801 of 2019 titled as **Varinder Pal Singh and Others versus State of Haryana and Others** were filed seeking directions for the grant of the Occupation Certificate with respect to the application dated 12.05.2017 has held as under:

It is not disputed that petitioners have invested huge amounts of money and according to respondent No.3, 95% of the amount stands paid by them. It is also not in dispute that substantial portion of the project has already found affirmation with the respondents in so far as Tower Nos.1 to 6, 9 and some portion of Tower No.2 is concerned. The Hon'ble Supreme Court also in its observations extracted above has recorded an acute concern for the flat owners and on the parity of that reasoning, we would also consider it appropriate to direct the respondents to grant the occupancy certificate to the petitioners and enable the allottees to take possession particularly when it has not been denied by the respondents that only a small portion of the project is under a scanner and even otherwise, the Hon'ble Supreme Court has observed that the interest of the allottees who have already paid almost 95% of the amount for their flats cannot be made to suffer by holding up the clearances. We, therefore, dispose of these petitions in view of the observations made by the Hon'ble Supreme Court and direct the State authorities to release the occupancy certificates as expeditiously, as possible, preferably within a period of six weeks from the date of receipt of a certified copy of this order.

23. That the Hon'ble High Court of Punjab and Haryana passed an order dated 29th May 2019 directing the department to grant the occupation certificate preferably within 6 weeks from the receipt of the certified copy of the

order. However, despite such an order the department failed to grant the occupation certificate.

24. That the department after having sought the opinion of the Advocate General, Haryana, allowed and released the permissions and approvals which were previously withheld as admitted by them in the office order dated 3rd March 2021 ('Office Order').

25. In view of aforesaid order of Hon'ble High Court of Punjab and Haryana, an office order of the DTCP, Haryana, Chandigarh dated 03.03.2021 has been issued. The para 4 of the said order states that "Government has accorded approval to consider the period i.e., 01.11.2017 to 30.09.2020 as 'Zero Period' where the approvals were withheld by the department within the said period in view of the legal opinion and also gave relaxations as mentioned in para 3". Accordingly, the authority is of the considered view that this period should be excluded while calculating the delay on the part of the respondent to deliver the subject unit.

b. ***Unprecedented situation created by Covid-19 pandemic and lockdown for approx. 6 months starting from 25.03.2020.***

26. The Hon'ble Delhi High Court in case titled as ***M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020 dated 29.05.2020*** has observed that-

"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself."

27. In the present complaint also, the respondent was liable to complete the construction of the project in question and handover the possession of the

said unit by November 2016 and it is claiming benefit of lockdown which came into effect on 23.03.2020. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself and for the said reason the said time period is not excluded while calculating the delay in handing over possession.

F.III Objection regarding complaint not being maintainable due to presence of arbitration clause in the agreement between the parties:

28. The respondents submitted that the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute and the same is reproduced below for the ready reference:

"47. Arbitration

"47.1- Any dispute connected or arising out of this Agreement or touching upon or in relation to terms of this Agreement including the interpretation and validity of the terms thereof and the respective rights and obligations of the Parties hereto shall be resolved through the process of arbitration....."

29. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in **National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506**, followed in **Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017**, by the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force. Consequently, the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause. It was also held in the latter case that the arbitration clause in agreements between the complainant and builder could not circumscribe the jurisdiction of a consumer forum.

30. While considering the issue of maintainability of a complaint before a consumer forum/commission in the face of an existing arbitration clause in the builder buyer agreement, the Hon'ble Supreme Court in case titled as **M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017 decided on 10.12.2018** has upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view.
31. Therefore, in view of the above judgements and considering the provisions of the Act, the authority is of the view that complainants are well within right to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and RERA Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this authority has

the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily. In the light of the above-mentioned reasons, the authority is of the view that the objection of the respondents stands rejected.

G. Findings on the relief sought by the complainant:

32. The common issues with regard to delayed possession charges & compensation are involved in both cases.

G.I Direct the respondent to pay the delayed possession charges to the complainant along with prescribed rate of interest.

G.II Grant the cost of litigation of Rs. 1,10,000/- in favor of the complainant and against the respondent.

33. In the present complaint, the complainant(s) intends to continue with the project and is seeking delay possession charges as provided under the provisions of section 18(1) of the Act which 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."*

34. As per clause 15 of the BBA, the possession was to be handed over within 36 months from the date of approval of building plans of the commercial complex or the date of execution of this agreement whichever is later. The clause 15 of the builder buyers agreement is reproduced below:

15. Possession of the commercial unit

15.1 The company based upon its present plans and estimates, and subject to all just exceptions, proposes to hand over possession the

unit within a period of thirty-six (36) months from the date of approval of building plans of the commercial complex or the date of execution of this agreement whichever is later ("Committed Period"). Should the possession of the unit not be given within the committed period, the allottee agrees to an extension of one hundred and eighty (180) days (Grace Period) after expiry of the commitment period.

35. The promoter has proposed to hand over the possession of the said unit within 36 months from the date of approval of building plans of the commercial complex or the date of execution of this agreement whichever is later. The due date of possession is calculated from the date of approval of building plan i.e. 11.11.2013. So, the period of 36 months expired on 11.11.2016.

36. Admissibility of delay possession charges at prescribed rate of interest:

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.



37. The legislature in its wisdom in the subordinate legislation under the 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.
38. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 07.03.2023 is 8.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.
39. **Rate of interest to be paid by complainant/allottee for delay in making payments:** 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;"*

40. 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 to the complainant in case of delayed possession charges.
41. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. . It is pertinent to mention over here that as per the office order of the DTCP, Haryana, Chandigarh dated 03.03.2021, the para 4 of the said order has mentioned that "Government has accorded approval to consider the period i.e., 01.11.2017 to 30.09.2020 as 'Zero Period' where the approvals were withheld by the department within the said period in view of the legal opinion and also gave relaxations as mentioned in para 3". Accordingly, the authority is of the considered view that this period should be excluded while calculating the delay on the part of the respondent to deliver the subject unit. By virtue of clause 15 of the buyer's agreement executed between the parties on 20.03.2013, possession of the said unit was to be delivered within a period of 36 months from the date of approval of building plans of the commercial complex or the date of execution of this agreement whichever is later. Hence, the due date of possession is calculated from the date of date of approval of building plan i.e., 11.11.2013. So, the period of 36 months expired on 11.11.2016. However, the respondent offered the possession of the unit to the complainant on

11.07.2020 after obtaining OC from the concerned department. Furthermore, since 'Zero period' w.e.f. 01.11.2017 till 30.09.2020, granted by DTCP, Haryana, Chandigarh vide order dated 03.03.2021 have been considered by the authority. Accordingly, the complainant is entitled for DPC @ 10.70% from the due date of possession i.e., 11.11.2016 till 31.10.2017.

42. Accordingly, non-compliance of the mandate contained in section 11(4) (a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to delayed possession charges at the prescribed rate of interest i.e., 10.70% p.a. for every month of delay on the amount paid by the complainant to the respondent from the due date of possession i.e., 11.11.2016 till 31.10.2017 excluding 'Zero period' w.e.f. 01.11.2017 till 30.09.2020 as per the provisions of section 18(1) of the Act read with rule 15 of the rules and section 19 (10) of the Act.

H. Directions of the authority:

44. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the authority under section 34(f) of the act of 2016:
- i. The respondent shall pay interest at the prescribed rate i.e., 10.70% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e., 11.11.2016 till 31.10.2017 i.e., till starting of 'Zero period' w.e.f. 01.11.2017 till

30.09.2020, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

- ii. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order.
- iii. 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.
- iv. The complainant is also directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- v. The respondent shall not levy any charges from the complainant which is not the part of buyer's agreement.

45. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.

46. Complaint stands disposed of. True certified copy of this order shall be placed in the case file of each matter.

47. File be consigned to registry.


Sanjeev Kumar Arora
Member


Ashok Sangwan
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 07.03.2023