

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

Complaint no.	:	582 of 2022
Date of filing complaint:		03.03.2022
First date of hearing:		26.04.2022
Date of decision	:	18.11.2022

Sh. Balbir Singh Poonia S/o Sh. Dharam Singh R/o: Satrod Khurd, Hisar, Haryana -125044	<b>Complainant</b>
Versus	
Aster Infrahome Private Limited Regd. office: 24A, Ground Floor, Vipul Agora, Gurugram- 122001	<b>Respondent</b>

<b>CORAM:</b>	
Shri Vijay Kumar Goyal	<b>Member</b>
Shri Sanjeev Kumar Arora	<b>Member</b>

<b>APPEARANCE:</b>	
Complainant-in-person	Complainant
Shri. Shanker Wig	Respondent

**ORDER**

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



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

**A. Unit and project related details**

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

S.no.	Heads	Information
1.	Project name and location	"Green Court", Sector-90, District-Gurugram, Haryana
2.	Project area	10.125 acres
3.	Nature of the project	Affordable Group Housing Project
4.	DTCP license no. and validity status	61 of 2014 dated 07.07.2014
		Valid up to 06.07.2019
		62 of 2014 dated 07.07.2014
		Valid up to 06.07.2019
5.	Name of licensee	M/s Aster Infrahome Pvt. Ltd. ( For both the licences)
6.	HRERA registered/ not registered	<b>Registered</b>
		<b>Vide registration no. 137 of 2017 dated 28.08.2017</b>
		<b>(Registered for 10 acres)</b>
		Valid up to 22.01.2020
	Extension certificate no.	09 of 2020 dated 29.06.2020
		Valid up to 22.01.2021
7.	Allotment letter dated	20.08.2015 [As per page no. 21 of the complaint]
8.	Unit no.	102 on 1st floor, tower C [As per page no. 21 of the complaint]

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9.	Unit measuring	Carpet area- 590 sq. ft.	Balcony area- 100 sq. ft.
		[As per page no. 21 of the complaint]	
10.	Date of execution of buyer's agreement	02.06.2016	[As per page no. 28 of the complaint]
11.	Payment plan	Time linked payment plan	
12.	Total consideration	Rs. 24,10,000/-	[As per page no. 32 of the complaint]
13.	Total amount paid by the complainant	Rs. 25,14,943.45/-	[As per customer ledger dated 01.02.2022 on page no. 58 of the complaint]
14.	Building plan approvals	22.10.2014	[As per <i>complaint no. 3244 of 2021 titled as Deep Chand Vs Aster Infracore Private Limited</i> ]
15.	Environment clearance	22.01.2016	[As per page no. 40 of reply]
16.	Consent to establish	06.05.2016	[As per page no. 51 of the reply]
17.	Possession clause	<b>Clause 8(a)</b> <i>Subject to the force major circumstances, intervention of statutory authorities, receipt of occupation certificate and Allottee having timely complied with all its obligations, formalities or</i>	

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		<i>documentation, as prescribed by Developer and not being in default under any part hereof, including but not limited to the timely payment of installments of the other charges as per the payment plan, Stamp Duty and registration charges, the Developer proposes to offer possession of the Said Flat to the Allottee within period of 4(four) years from the date of approval of building plans or grant of environment clearance, whichever is later (hereinafter referred to as the "Commencement Date.")</i>
18.	Due date of delivery of possession	22.01.2020 [Calculated from date of environment clearance i.e.; 22.01.2016, being later]
19.	Loan sanction letter dated	29.09.2017 [As per page no. 51 of the complaint]
20.	Occupation certificate	Not obtained [Applied on 04.08.2021]
21.	Offer of possession	Not offered

**B. Facts of the complaint**

3. That in the year January 2015, the complainant came across the real estate project 'Green Court' situated at Sector 90, Gurgaon, Haryana (herein referred to as the 'Project') through marketing representative of the respondent.
4. That it was assured that the project is one of the finest and is also free from all kind of encumbrance and it has already obtained necessary

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approvals required for the construction of the project. Moreover, it also claimed that construction of the project is in full swing and promised to deliver the possession of the said unit as per the projected date. Believing upon such assurances and commitments the complainant, agreed to purchase a residential unit in the aforesaid project for a total sale consideration of Rs. 24,10,000/- and paid a booking amount of Rs. 1,24,223/- for further registration and the same was acknowledged by the respondent vide payment receipt dated 24.02.2015.

5. That after 6 months of booking, the respondent issued an allotment letter wherein the complainant was allotted unit bearing no. 104 on first floor of tower C, admeasuring carpet area 590 sq. ft. and balcony area 100 sq. ft. and raised a demand of Rs. 4,98,870/-.
6. That on 02.06.2016, a flat buyer's agreement (herein referred to as 'Agreement') was executed between the parties. As per clause 8(a) of the said agreement, the respondent was bound to deliver the possession of the unit within 4 years from the date of approval of building plan or environmental clearance, whichever is earlier. However, it never informed him about the status of building plan or environmental clearance neither at the time of booking or execution of agreement nor after execution, thus, the due date of possession may be calculated from the date of execution of the agreement. Therefore, as such the possession of the unit was to be delivered to him on or

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before 02.06.2020, but the respondent has not only failed to provide possession but has also failed to provide the interest for delay in handing over of possession.

7. That the complainant has been running behind the respondent for possession and such act and omissions on behalf of the respondent has caused loss of money; loss of time; loss of resources and has also adversely affected the mental health/peace of the complainant.
8. That the terms of the agreement are completely one-sided and unfair. On one hand the builder entitled itself for an interest @ 15% p.a. on delay payments from the complainant. However, on the other hand, he is being provided interest @ Rs. 5/ sq. ft. The terms of the agreement are completely unfair and unjustified and required to be set aside accordingly.
9. That on the demands made by the respondent, the complainant has paid a sum of Rs. 25,14,944/- towards the agreed sale consideration. The detail of the payments made by him is mentioned below for ready reference:

S.NO	CHEQUE/RTGS NO.	DATED	AMOUNT
1.	800826	31.01.2011	Rs. 1,24,223/-
2.	104426	05.09.2015	Rs. 98,870/-
3.	497235	05.09.2015	Rs. 2,00,000/-
4.	228931	02.09.2015	Rs. 2,00,000/-
5.	RTGS	23.11.2017	Rs.12,41,151/-

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6.	RTGS	09.03.2018	Rs. 3,25,350/-
7.	RTGS	02.05.2019	Rs. 3,25,349.45-
<b>TOTAL</b>			<b>Rs. 25,14,943.45/-</b>

10. That as per account statement dated 01.02.2022, shared by the respondent, it has levied interest of Rs. 2,36,441.06/- on the pretext of delay payments which is completely unfair and result of dishonest intention of the respondent. It is imperative to note that the complainant has already paid an amount of Rs. 25,14,943.45/- against the sale consideration of the unit i.e. Rs. 24,10,000 which amount to more than 100% of the cost of unit. However, the respondent harbouring malicious intention since very beginning, has levied such irregular interest which is completely unjust and unfair in the eyes of law.
11. That the complainant has always adhered to the terms and conditions of the agreement, but the respondent has failed to provide the possession of the unit within the timelines prescribed by it as per terms and conditions of the agreement. As per the said agreement, the possession of the allotted unit was proposed to be given by 02.06.2020. But it was utter shock for him that even on the due date as proposed by the respondent the construction was not even close to completion and the project was far from completion. Hence, it cannot be denied that since beginning it has misled the complainant for easy money gains. Astonished by the act of the respondent, he rushed to its

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office and raised his concern over the delay in completion and deliver of his unit. However, it failed to provide any satisfactory reply to the concern raised by him and provided false assurances of handing over the unit soon.

12. That not getting the possession despite a delay of more than one and half year has become a nightmare for the complainant. The same has led to a period of suspense, uncertainty, anxiety, harassment, mental torture, tyranny and even depression. All this has had a devastating impact on the mental and physical health of the complainant as being in mid-seventies, his loss of health and wellbeing cannot be compensated by levying any amount of penalty on the respondent.
13. That by act and omissions the respondent has violated various provisions mentioned in the RERA Act, 2016. That by act of providing wrong, incorrect and misleading advertisement and information in regard to the aforesaid project it has violated the provision of Section 12 of Act of 2016 and further, violated the provision of Section 18, by delaying the handing over of the possession of the allotted unit as per agreed terms of agreement and further by not providing any interest for the said delayed period. hence, as per the facts and averments the complainant, he is entitled for compensation for the delay in handing over the possession.

**C. Relief sought by the complainant:**

14. The complainant have sought following relief(s):

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- (i) Direct the respondent to handover the unit of the complainant immediately along with all the amenities as promised under the builder buyer's agreement.
  - (ii) Direct the respondent to pay prescribed rate of interest on the amount paid for Delay<sup>by</sup> in handing over of possession from the due date of possession i.e. 02.06.2020 till the date of actual handing over a position.
  - (iii) Restrict correspondent from demanding amount of Rs. 2,36,441.06/- on the pretext of delay payment charges as per the one-sided terms of agreement.
15. On the date of hearing, the authority explained to the respondent/promoter about the contravention 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**

16. The respondent has contested the complaint on the following grounds.
- i. That the complainant made an application to the respondent for booking/allotment of a 2 BHK flat having carpet area of 590 sq. ft. and balcony area 100 sq. ft. in the said scheme/colony. The complainant submitted signed application form dated 31.01.2015 which contained necessary particulars of the residential scheme such as description of land, license and building plans granted/approved by DTCP, Haryana, and also salient terms and

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conditions on which the allotment was to be made to the complainant. The complainant also read and understood the terms and conditions of the flat buyer agreement and undertook to sign the same as and when required by respondent.

- ii. That the application form also contained the payment plan in accordance to which the complainant were to make the due installments as specified. That the payment plan clearly stated at the time of application 5% of the basic sale price (hereinafter BSP), 20% of the BSP within 15 days from the issuance of allotment letter and thereon at intervals of 6 months 12.5% of the total BSP was to be paid, respectively. The payment plan was in accordance with the payment plan prescribed in the said policy.
- iii. That under the said policy, the allotment was required to be made through draw of lots to be held in the presence of a committee consisting of deputy commissioner or his representative (at least of the cadre of Haryana Civil Services), Senior Town Planner (Circle officer), DTP of the concerned district. The policy prescribed a transparent procedure for allotment of a flat in the affordable housing project of the policy which inter alia included advertisements for booking of apartments by the coloniser/developer on two occasions at one week interval in one of the leading English national daily and two Hindi newspapers having circulation of more than ten thousand copies in the state of

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Haryana to ensure adequate publicity of the project, submission of the applications by the interested persons, scrutiny of all application by the coloniser/developer by the overall monitoring of the concerned DTP within a period of three months from the last date or receipt of applications, fixing of the date for draw of lots by the concern senior town planner, publication of the advertisement issues by the coloniser informing the applicants about the details regarding date/time and venue of draw of lots in the newspaper etc. The said procedure as laid down in policy was dully follows by the respondent.

- iv. That the complainant was informed by the respondent that the draw is to be held on 19.08.2015 at 10.30 A.M. and he was invited to the said event. The draw of lots was conducted at the given date, time and place in the presence of the required officials of Government of Haryana.
- v. That the complainant was successful applicants in the said draw and as such the respondent vide its letter dated 20.08.2015 intimated the complainant that they had been allotted flat no. C-102 of tower C in the said project. Thereafter, the builder buyer agreement dated 02.06.2016 was executed between the parties against the said flat.
- vi. That the aforesaid facts and circumstances makes it clear that the respondent has neither indulged into any unfair trade practice nor

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committed any deficiency in service. It is submitted that in the real estate projects like the project in question the development being multi-storied group housing development, the default in payment committed by even one allottee adversely affect the development of the other units as well in as much as the financial planning, the pace of the project etc. get adversely affected thereby causing impediment in the development and overall delay in delivery of the project.

- vii. The complainant was fully aware that the project in question was a project under the Affordable Housing Policy, 2013 of the Government of Haryana which contained strict check and balances to protect interests of all stake holders with special emphasis on the protection of rights of the potential purchases of the flats. Almost each and every aspect of the transaction was governed by the policy. Even the draw of flats was to be held after permission of government and in the presence of government officials and permission to conduct draw was to be granted only after all necessary approvals were in place. The flat buyer agreement contained provisions that were in consonance with the policy guidelines/parameters.
- viii. That as per the agreement the respondent was to start the construction from the date of environment clearances which was granted on 22.01.2016. It is relevant to mention here that from

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November 2019 onwards things started moving out of control of the respondent. Many force majeure events, situations and circumstances occurred that made the construction at site impossible for a considerable period of time. Such events and circumstances included, inter-alia, repeated bans on construction activities by EPCA, NGT and Hon'ble Supreme Court of India, Nationwide lock down due to emergence of covid-19 pandemic, massive nationwide migration of labourers from metropolis to their native villages creating acute shortage of labourers in NCR regions, disruption of supply chains for construction materials and non-availability of them at construction sites due to Covid-19 pandemic and closure/restricted functioning of various private offices as well as government offices disrupting the various approvals required for the real estate projects, resulting financial distress etc.

- ix. That the Environmental Pollution (Prevention and Control) Authority for NCR ("EPCA") vide its notification bearing no. EPCA-R/2019/L-49 dated 25.10.2019 banned construction activity in NCR during night hours (6pm to 6am) from 26.10.2019 to 30.10.2019 which was later on converted into complete 24 hours ban from 01.11.2019 to 05.11.2019 by EPCA vide its notification no. EPCA-R/2019/L-53 dated 01.11.2019. The Hon'ble Supreme Court of India vide its order dated 04.11.2019 passed in writ



petition no. 13029/1985 titled as "*M.C. Mehta vs Union of India*" completely banned all construction activities in NCR which restriction was partly modified vide order dated 09.12.2019 and was completely lifted by the Hon'ble Supreme Court vide its order dated 14.02.2020.

- x. That due to these repeated bans forced the migrant labourers to return to their native states/villages creating an acute shortage of labourers in NCR region. Due to the said shortage, the construction activity could not resume at full throttle even after lifting of ban by the Hon'ble Supreme Court. Even before the normalcy in construction activity could resume, the world was hit by the 'Covid-19' pandemic. The unprecedented situation created by the Covid-19 pandemic presented yet another force majeure event that brought to halt all activities related to the project including construction of remaining phase, processing of approval files etc.
- xi. That the Ministry of Home Affairs, Government of India vide notification dated March 24, 2020 bearing no. 40-3/2020-DM-I(A) recognised that India was threatened with the spread of Covid-19 epidemic and ordered a complete lockdown in the entire country for an initial period of 21 days which started from March 25, 2020. By virtue of various subsequent notifications, the Ministry of Home Affairs, Government of India further extended the lockdown from time to time. Various state governments, including the

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- Government of Haryana have also enforced several strict measures to prevent the spread of Covid-19 pandemic including imposing curfew, lockdown, stopping all commercial, construction activity.
- xii. That as a result of this situation, nationwide massive migration of labourers from metropolis to their native villages creating acute shortage of labourers in NCR regions, disruption of supply chains for construction materials and non-availability of them at construction sites and the full normalcy has not returned so far.
- xiii. That even before the nation could recover fully from the impact of the first wave of Covid-19, the Second wave hit vary badly the entire nation particularly NCR region which resulted in another lockdown from April 2021 till June 2021 and now the threat of 3rd wave is looming large.
- xiv. That it is a matter of common knowledge and widely reported that even before advent of such events, the real estate sectors was reeling under severe strain. However, such events/incidents as above noted really broke the back of entire sector and many real estate projects got stalled and came to the brink of collapse. The situation was made worse by the dreaded second wave which again impeded badly the construction activities. The said unprecedented factors beyond control of respondent and force majeure events have resulted so far in time loss of almost 14

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- months in total and as such all timelines agreed in the settlement agreement stood extended at least by said 14 months, if not more.
- xv. That the respondent is perhaps one of the very few developers in NCR region who had fought valiantly during these testing times/odd circumstances and completed the project. Even the occupancy certificates were applied on 04.08.2021. The applications made by the respondent is pending without any objection and/or deficiency ever pointed out, perhaps because of limited restricted functioning of the public offices.
- xvi. That the respondent has completed all residential towers including the creche, community hall, lifts, firefighting systems are ready and functional with all necessary approvals in place. Round the clock security is being provided with all necessary security/ward and watch arrangement in place. The project is thus fully habitable. Every responsible person/institution in the country has responded appropriately to overcome the challenges thrown by Covid-19 pandemic and have Suo-motu extended timelines for various compliances. The authorities also have extended time periods given at the time of registration for completion of the project. The HRERA has also for the same reasons granted extension to all the real estate projects including the project in question.





- xvii. That it is most humbly stated that considering the time lost due to above force majeure circumstances, which is required to be excluded in computing the timelines given in the agreement, there shall be no delay on part of the respondent, much less intentionally.
- xviii. That the construction activities were halted several times due to the orders passed by NGT and Supreme Court to control the pollution level in NCR including Gurugram.
17. 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 parties.

**E. Jurisdiction of the authority**

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

**E.I Territorial jurisdiction**

18. 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.

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**E.II Subject matter jurisdiction**

19. 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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 allottee and the real estate agents under this Act and the rules and regulations made thereunder.*

20. 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 objections raised by the respondent**

- F.I Objection regarding passing of various force majeure conditions such as orders by EPCA, lockdown due to Covid-19 pandemic, shortage of labour and NGT orders.**





21. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the Environmental Pollution (Prevention and Control) Authority for NCR (hereinafter, referred as EPCA) from 26.10.2019 to 14.12.2019, lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour and orders passed by National Green Tribunal (hereinafter, referred as NGT) but the due date for completion of the project comes to 22.01.2020. The respondent-builder has already applied for getting occupation certificate vide application dated 04.08.2021 and the same is pending before the competent authority. The authority is of considered view that circumstances such as various orders passed by the Environmental Pollution (Prevention and Control) Authority for NCR (hereinafter, referred as EPCA) from 26.10.2019 to 14.12.2019, NGT were for shorter period of time and were not continuous and thus, no leniency in this regard can be given to the respondent builder. The respondent-builder stated at bar that it has already applied for grant of occupation certificate vide application dated 04.08.2021 and there is delay on part of competent authority. Further, an application in this regard is also pending. The authority is of considered view that no occupation certificate has been obtained by the respondent till date and if such delay is on the part of any competent authority then, it may approach the competent/deciding authority for getting this time



period be declared as 'zero time period' for computing delay in completing the project. However, for the time being, the authority is not considering this time period as zero period and the respondent is liable for delay in handing over possession as per provisions of the Act.

22. As far as delay in construction due to outbreak of Covid-19 is concerned, *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."*

The respondent was liable to complete the construction of the project and handover the possession of the said unit was to be handed over the possession of the allotted unit by 22.01.2020 and is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. 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.

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**G. Findings on the relief sought by the complainant**

**Relief sought by the complainant:**

**G.I Direct the respondent to handover the unit of the complainant immediately along with all the amenities as promised under the builder buyer's agreement.**

23. For a valid offer of possession, the offer must be made after obtaining occupation certificate from competent authority. The respondent-builder applied for obtaining occupation certificate on 04.08.2021 but there is nothing on record to show that the said certificate has been granted to the respondent. In view of aforesaid circumstances, the respondent is directed to offer the possession of the allotted unit to the complainant within one month after obtaining occupation certificate, complete in all aspects as per specifications of buyer's agreement dated 02.06.2016.

**G.II Direct the respondent to pay prescribed rate of interest on the amount paid for delay in handing over of possession from the due date of possession i.e. 02.06.2020 till the date of actual handing over a position.**

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

***"Section 18: - Return of amount and compensation***

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

.....

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for*



*every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

25. Clause 8(a) of the flat buyer's agreement (in short, agreement) dated 02.06.2016 provides for handing over of possession and is reproduced below:

**"Clause 8(a).**

*Subject to the force major circumstances, intervention of statutory authorities, receipt of occupation certificate and Allottee having timely complied with all its obligations, formalities or documentation, as prescribed by Developer and not being in default under any part hereof, including but not limited to the timely payment of instalments of the other charges as per the payment plan, Stamp Duty and registration charges, the Developer proposes to offer possession of the Said Flat to the Allottee within period of 4(four) years from the date of approval of building plans or grant of environment clearance, whichever is later (hereinafter referred to as the "Commencement Date")."*

26. The authority has gone through the possession clause of the agreement and observed that the respondent-developer proposes to handover the possession of the allotted unit within a period of four years from the date of approval of building plan or from the date of grant of environment clearance, whichever is later. As per clause 8(a) of flat buyer's agreement the possession of the allotted unit is to be handed over within four years from date of sanction of building plan i.e.; 22.10.2014 or within four years from the date of environment clearance i.e.; 22.01.2016, whichever is later. The due date of possession is calculated from the date of environment clearance i.e.; 22.01.2016, being later which comes out to be 22.01.2020.

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27. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant are seeking delay possession charges however, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

***Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***

- (1) *For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.*

*Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*

28. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
29. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 18.11.2022 is @ 8.35%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.35%.
30. The definition of term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottee by

the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.

The relevant section is reproduced below:

*"(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;"*

31. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.35% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.
32. On consideration of the documents available on record and submissions made regarding contravention of 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. By virtue of clause 8(a) of the flat buyer's agreement executed between the parties on 02.06.2016, the possession of the subject apartment was to be delivered within 4 years from the date of sanction of building plan or from the date of environment clearance, whichever is later. The due date of possession is calculated from the date of environment clearance i.e.; 22.01.2016, being later which comes out to be 22.01.2020.



33. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate is yet not obtained but the respondent- builder has applied for the grant of occupation certificate before the due date of possession. The respondent shall offer the possession of the unit in question to the complainant after obtaining occupation certificate, so it can be said that the complainant shall come to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. This 2 months' of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e. 22.01.2020 till the expiry of 2 months from the date of offer of possession or actual handing over of possession, whichever is earlier.
34. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the agreement dated 02.06.2016 to hand over the possession within the stipulated period. Accordingly, the 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 allottee shall be paid, by the promoter,

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interest for every month of delay from due date of possession i.e., 22.01.2020 till the date of offer of possession plus 2 months or actual handing over of possession, whichever is earlier; at prescribed rate i.e., 10.35 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

**G.III Restrict correspondent from demanding amount of Rs. 2,36,441.06/- on the pretext of delay payment charges as per the one-sided terms of agreement**

35. 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. Therefore, in case of any default by the complainant, it shall be liable to pay interest at the equitable rate as charged by the respondent.

**H. Directions of the authority**

36. 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 shall pay interest at the prescribed rate i.e. 10.35% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. 22.01.2020 till the date of offer of possession plus 2 months or actual handing over of possession, whichever is earlier; at prescribed rate i.e., 10.35 % p.a. as per proviso to section 18(1) of the Act 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 of this order as per rule 16(2) of the rules and thereafter monthly payment of interest to be paid till date of handing over of possession shall be paid on or before the 10<sup>th</sup> of each succeeding month.
  - iii. The respondent shall not charge anything from the complainant which is not the part of the flat buyer's agreement.
  - iv. The complainant are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
  - v. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.35% 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.
37. Complaint stands disposed of.
38. File be consigned to registry.

  
(Sanjeev Kumar Arora)  
Member

  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 18.11.2022**