



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

Complaint no. :	3972 of 2021
Date of filing complaint:	19.10.2021
Date of decision :	06.01.2023

Sandeep Kohli Mamta Kohli R/O: 50, Hazratganj, Lucknow, U.P-226001	Complainants
Versus	
M/s Imperia Wishfield Pvt. Ltd. Regd. office: A-25, Mohan Cooperative Industrial Estate, New Delhi-110044	Respondent

CORAM:	
Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Sukhbir Yadav (Advocate)	Complainants
Sh. Rishi Kapoor (Advocate)	Respondent

ORDER

1. The present complaint has been filed by the complainant/allottees 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 the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name and location of the project	"Elvedor", Sector 37 C, Gurugram
2.	Nature of the project	Commercial Project
3.	Project area	2 acres
4.	DTCP license no.	47 of 2012 dated 12.05.2012 valid upto 11.05.2016
5.	Name of licensee	Prime IT Solutions
6.	RERA Registered/ not registered	Not registered
7.	Unit no.	A13, 14th Floor, Tower Evita (page no. 59 of complaint)
8.	Unit area admeasuring (super area)	436 sq. ft. (page no. 59 of complaint)
9.	Date of buyer agreement	13.03.2015 (page no. 49 of complaint)
10.	Possession clause	11 (a) Schedule for possession of the said unit



		<p><i>The company based on its present plans and estimates and subject to all exceptions endeavors to complete construction of the said building/said unit within a period of sixty (60) months from the date of this agreement unless there shall be delay or failure due to department delay or due to any circumstances beyond the power and control of company or force majeure conditions including but not limited to reasons mentioned in clause 11(b) and 11(c) or due to failure of the allottee(s) to pay in time the total price and other charges and dues/payments mentioned in this Agreement or any failure on the part of the Allottee(s) to abide by all or any of the terms and conditions of this Agreement.</i></p>
11.	Due date of possession	13.03.2020 (calculated from the date of agreement i.e., 13.03.2015)
12.	Total sale consideration	Rs. 31,70,204/- (As per agreement on page 59 of complaint)
13.	Amount paid by the complainants	Rs. 27,67,148/- (As per details of payment on page 114 of complaint)
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not obtained
16.	Delay in handing over possession till date of this order i.e. 06.01.2023	2 years 9 month 24 days

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B. Facts of the complaint:

3. That in 2013, the complainants received a marketing call from the office of the respondent, the caller represented himself as the manager of the respondent company and marketed a commercial project namely "Elvedor Adus" situated at sector - 37C, Gurugram. The complainants visited the Gurugram office and project site of the respondent/builder. There they met with the marketing staff of the builder and got information about the project "Elvedor Adus". The marketing staff gave them brochure and pricelist etc. and allured them with a rosy picture of the project.
4. That, on believing the representation and assurance of respondent, the complainants booked one studio bearing no. 14-A13 on 14th Floor in tower Evita for tentative size admeasuring 436 sq. ft. and paid Rs. 2,75,000/- as booking amount vide cheque no. "222076" dated 31.01.2013 drawn on Punjab National Bank and signed a pre-printed application form. The studio was purchased under the construction linked Plan for a sale consideration of Rs. 31,70,204/-.
5. That after a long follow-up on 13.03.2015, a pre-printed, unilateral, arbitrary flat buyer agreement was executed inter-se the parties. According to clause 11(a) of the flat buyer agreement, the respondent has to give possession of the said flat within (60) months from this agreement. The agreement was executed on 13.03.2015, Hence the due date of possession was 13.03.2020.
6. That the complainants kept paying the demands raised by the respondent. As per the demand letter dated 05.02.2016, issued by the respondent, the complainants have paid Rs.25,16,917/- till 05.02.2016. That thereafter the

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complainants have also paid a demand of Rs.1,25,116/- vide cheque drawn on Punjab National Bank dated 08.02.2016 & 13.06.2016 raised by the respondent which comes to a total of Rs.27,67,148/- i.e., more than 87% of total sale consideration.

7. That on 18.03.2019, the complainants sent a grievance email to the respondent and alleged regarding the possession date of the studio & asked the respondent that despite paying 90% of the total consideration till today the respondent has not offered the possession of the studio and also asked to give a date for the offer of possession. That thereafter on 29.07.2019, the complainants sent another grievance email and asked the respondent to update on handing over of the unit.
8. That on 21.05.2020, the respondent sent an email to the complainants and alleged the COVID-19 pandemic situation and considered this lockdown period as force majeure period as per BBA and stated that "the project is progressing gradually however its completion as per force majeure stipulations is likely to result in completion of the project by the end of 2021". The due date of possession of the unit/studio was 13.03.2020 and at the time of booking the respondent stated that the unit will be handed over within 36 months from the date of booking but later on without even intimating and without the consent of the complainants the respondent extended the delivery date of possession of the unit/studio. That even after 7 years from the date of booking the unit/studio is yet not ready for possession and the respondent has failed to hand over the possession of the unit/studio on the prescribed time as per BBA.
9. That since 2020 the complainants are regularly visiting the office of the respondent as well as the construction site and making efforts to get possession of the allotted studio, but all went in vain. Despite several visits

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and requests by the complainants, the respondent did not give possession of the studio. The complainants have never been able to understand/know the actual state of construction. Though the towers seem to be built up, there was no progress observed on finishing and landscaping work and amenities for a long time.

10. That the complainant(s) being an aggrieved person filing the present complaint under section 31 with the authority for violation/contravention of provisions of this Act. As per section 18 of the RERA Act, 2016, the promoter is liable to pay the interest or return of amount and to pay compensation to the allottees of a unit, building, or project for a delay or failure in handing over of such possession as per the terms and agreement of the sale.

C. Relief sought by the complainants:

11. The complainants have sought following relief(s):
- (i) To get possession of the fully developed/constructed studio with all amenities within 6 months of the filing of this complaint.
 - (ii) To get the delayed possession interest @ prescribed rate from the due date of possession till the actual date of possession (complete in all respect with all amenities).
 - (iii) To get an order in their favour by directing the respondent party to provide area calculation (carpet area, loading, and super area).

D. Reply by respondent:

The respondent by way of written reply made following submissions:

12. That unit no. 14_A13, in tower- Evita situated in the said commercial project, which had been allotted to the complainants by the respondent company for a total consideration amount of Rs. 33,17,409/-, vide



allotment letter/ retail buyer agreement dated 13.03.2015 on the terms and conditions mutually agreed by the parties.

13. That the rights of the present parties are governed by the allotment letter/buyers agreement executed between the parties on 13.03.2015. That the project in question i.e., Elvedor is a joint venture project with "Prime IT Solutions Pvt. Ltd." and this Prime IT was also a licensee company and holding a 50% equity in answering respondent company till November 2015.
14. The said project is a commercial project being developed on two acres of land situated at Sector 37-C, Gurugram, Haryana and comprises of retail and studio apartments. The foundation of the said project vests on the joint venture agreement executed between M/s Prime IT Solutions Pvt. Ltd. and Imperia Structure Pvt. Ltd. lying down the transaction structure for the project and for creation of SPV company, named and styled as "Imperia Wishfield Pvt. Ltd.". Later, collaboration agreement dated 06.12.2012 as executed between M/s Prime IT Solutions Private Limited (on one part) and M/s Imperia Wishfield Pvt. Ltd. (on the second part). In terms of the said collaboration agreement, the second party i.e., Imperia Wishfield Pvt. Ltd was legally liable to undertake construction and development of the project at its own costs, expenses and resources in the manner it deems fit and proper without any obstruction and interference from any other party. The referred collaboration agreement has been signed by representative of M/s Prime IT Solutions Private Limited and Imperia Wishfield Pvt. Ltd. Suffice to mention here that on the relevant date i.e., 06.12.2012 on which the collaboration agreement was signed, there are common directors in both these companies i.e., in M/s Prime IT Solutions Private Limited and M/s Imperia Wishfield Pvt. Ltd.



15. That a clear reference of the said collaboration agreement has been given in the said allotment letter/ retail buyer agreement executed between the complainants and the respondent. In the said agreement it is distinctly mentioned that "Prime IT Solutions Private Limited", a company incorporated under the provisions of Companies Act, having its registered office at B-33, First Floor, Shivalik Colony (Near Malviya Nagar), New Delhi-110017, has been granted licence No. 47/2012 by the Director General, Town and Country Planning, Haryana in respect of project land and the respondent company is undertaking implementation of project based on the basis of said collaboration agreement.
16. That in the above collaboration agreement, M/s Prime IT Solutions Private Limited represented and confirmed to the Imperia Wishfield Pvt. Ltd. that it has already obtained Letter of Intent ("LOI") from the Department of Town and Country Planning, Government of Haryana on 24.05.2011 and subsequent license from the Department of Town and Country Planning, Government of Haryana as necessary for setting up a commercial project on the land admeasuring 2.00 acres in the revenue estate of Village Gadoli Khurd, Sector 37 C, Gurugram on 12.05.2012 along with the Zoning Plan. (License No. 47 of 2012, dated 12.05.2012). The building plans of the said project being developed under above mentioned license no. 47 of 2012 were approved on 25.06.2013. It is pertinent to mention here that even before the execution date of above referred collaboration agreement between M/s Prime IT Solutions Private Limited and Imperia Wishfield Pvt. Ltd., both these companies were under the same management and directors.
17. Further, it is also relevant to mention here that in terms of compromise dated 12.01.2016 a decree sheet was prepared on 21.01.2016 in a suit titled M/s Prime IT Solutions Pvt. Ltd. Vs Devi Ram & Imperia Wishfield



Pvt. Ltd. As per this compromise, both M/s Imperia Wishfield Pvt. Ltd. and M/s Prime IT Solutions Pvt. Ltd. apart from other points, agreed to take collective decision for the implementation of the project and all expenses related to the project would be jointly incurred by both the parties from the dedicated project account which would be in the name of "M/s Imperia Wishfield Limited Elvedor Account."

18. That the said project suffered a setback on account of non-cooperation by aforesaid JV Partner Le. Prime IT Solutions Private Limited as major part of the collections received from the allottees of the project have been taken away by said JV partner.
19. That for the proper adjudication of the present complaint, it is necessary that M/s Prime IT Solutions Pvt. Ltd. be arrayed as a necessary party. Any coercive order passed without hearing the said necessary party is clearly cause grave prejudice to the answering respondent's rights and same is also in contrary to admitted understanding between the parties as contained in the decree dated 21.01.2016.
20. It was submitted that in clause 11(a), it is mentioned and duly agreed by the complainants as under:

"11. (a) SCHEDULE FOR POSSESSION OF THE SAID UNIT:

The Company based on its present plans and estimates and subject to all just exceptions endeavours to complete construction of the Said building/Said Unit within a period of sixty (60) months from the date of this agreement unless there shall be delay or failure due to department delay or due to any circumstances beyond the power and control of the Company or force majeure conditions including but not limited to reasons mentioned in clause 11(b) and 11(c) or due to failures of the Allottee(s) to pay in time the Total Price and other charges and dues/payments mentioned in this Agreement or any failure on the part of the Allottee(s) to abide by all or any of the terms and conditions of this Agreement. In case there is any delay on the part of the Allottee(s) in making of payments to the Company than notwithstanding



rights available to the Company elsewhere in this contract, the period for implementation of the project shall also be extended by a span of time equivalent to each delay on the part of the Allottee(s) Company”.

21. In view of the above said, the respondent company had intended to complete the construction of the allotted unit on time. It is pertinent to mention that the respondent company had successfully completed the civil work of the said tower/project, and the finishing work, MEP work is remaining of these towers, which is going on and the respondent company is willing to complete the same within next six to twelve months of period. However, the delay in handing over the project has occurred due to certain force majeure circumstance, inter alia includes the covid-19. The possession of the unit would be tentatively delivered to its respective allottee(s) in next 12-15 months with respective OC on the said project.
22. That, several allottees have withheld the remaining payments, which is further severally affecting the financial health of the respondent company and further due to the force majeure conditions and circumstances/reasons, which were beyond the control of the respondent company as mentioned herein below, the construction works got delayed at the said project. Both the parties i.e. the complainants as well as the respondent company had contemplated at the very initial stage while signing the allotment letter/agreement that some delay might have occurred in future and that is why under the force majeure clause as mentioned in the allotment letter, it is duly agreed by the complainants that the respondent company shall not be liable to perform any or all of its obligations during the subsistence of any force majeure circumstances and the time period required for performance of its obligations shall inevitably stand extended. It is unequivocally agreed between the complainant and the respondent company that the respondent company is entitled to



extension of time for delivery of the said unit on account of force majeure circumstances beyond the control of the respondent company and inter-alia, some of them are mentioned herein below:

- (i) That, the respondent company started construction over the said project land after obtaining all necessary sanctions/approvals/clearances from different state/central agencies/authorities and after getting building plan approved from the authority (all in the name of prime it) and named the project as "Elvedor." The respondent company had received applications for booking of apartments in the said project by various customers and on their requests, the respondent company allotted the under-construction apartments/ units to them.
- (ii) That, owing to unprecedented air pollution levels in Delhi NCR, the Hon'ble Supreme Court ordered a ban on construction activities in the region from November 4, 2019, onwards, which was a blow to realty developers in the city. The Air Quality Index (AQI) at the time was running above 900, which is considered severely unsafe for the city dwellers. Following the Central Pollution Control Board (CPCB) declaring the AQI levels as not severe, the SC lifted the ban conditionally on December 9, 2019 allowing construction activities to be carried out between 6 am and 6 pm, and the complete ban was lifted by the Hon'ble Supreme Court on 14th February, 2020.
- (iii) That, when the complete ban was lifted on 14th February 2020 by the Hon'ble Supreme Court, the Government of India imposed National Lockdown on 24th of March, 2020 due to pandemic COVID-19, and conditionally unlocked it in 3rd May, 2020, However, this has left the great impact on the Procurement of material and Labour. The 40-day lockdown in effect since March 24, which was further extended up to



May 3 and subsequently to May 17, led to a reverse migration with workers leaving cities to return back to their villages. It is estimated that around 6 lakh workers walked to their villages, and around 10 lakh workers are stuck in relief camps. The aftermath of lockdown or post lockdown periods has left great impact and scars on the sector for resuming the fast-paced construction for achieving the timely delivery as agreed under the "allotment letter." That initially, after obtaining the requisite sanctions and approvals from the concerned Authorities, the respondent company had commenced construction work and arranged for the necessary infrastructure including labour, plants and machinery, etc. However, since the construction work was halted and could not be carried on in the planned manner due to the force majeure circumstances detailed above, the said infrastructure could not be utilized and the labour was also left to idle resulting in mounting expenses, without there being any progress in the construction work. Further, most of the construction material, which was purchased in advance, got wasted/deteriorated causing huge monetary losses. Even the plants and machineries, which were arranged for the timely completion of the construction work, got degenerated, resulting into losses to the respondent company running into crores of rupees.

- (iv) Moreover, it is also pertinent to mention here that every year the construction work was stopped / banned / stayed due to serious air pollution during winter session by the Hon'ble National Green Tribunal (NGT), and after banned / stayed the material, manpower and flow of the work has been disturbed / distressed. Every year the respondent company had to manage and rearrange for the same and it almost multiplied the time of banned / stayed period to achieve the

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previous workflow. The orders already placed on record before this Hon'ble Bench.

- (v) The real estate sector so far has remained the worst hit by the demonetization as most of the transactions that take place happen via cash. The sudden ban on Rs 500 and Rs 1000 currency notes has resulted in a situation of limited or no cash in the market to be parked in real estate assets. This has subsequently translated into an abrupt fall in housing demand across all budget categories. Owing to its uniqueness as an economic event, demonetization brought a lot of confusion, uncertainty and, most of all, - especially when it came to the realty sector. No doubt, everyone was affected by this radical measure, and initially all possible economic activities slowed down to a large extent, which also affected the respondent company to a great extent, be it daily wage disbursement to procuring funds for daily construction, and day-to-day activities, since construction involves a lot of cash payment/transactions at site for several activities.
- (vi) It is a well-known fact that there is extreme shortage of water in State of Haryana and the construction was directly affected by the shortage of water. Further the Hon'ble Punjab and Haryana High Court vide an Order dated 16.07.2012 in CWP No. 20032 of 2009 directed to use only treated water from available Sewerage Treatment Plants (hereinafter referred to as "STP"). As the availability of STP, basic infrastructure and availability of water from STP was very limited in comparison to the requirement of water in the ongoing constructions activities in Gurgaon District, it was becoming difficult to timely schedule the construction activities. The availability of treated water to be used at construction site was thus very limited and against the



total requirement of water, only 10-15% of required quantity was available at construction sites.

23. That, owing to the above said force majeure circumstances and reasons beyond the control of the respondent company, it was extremely necessary to extend the intended date of offer of possession mentioned in the allotment letter.
24. Copies of all the relevant documents have been filed and placed on 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:

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

E. I Territorial jurisdiction

26. 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.

E. II Subject matter jurisdiction

27. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)



Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

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

F. Findings on the objections raised by the respondent:

F.1 Objection regarding non joinder of M/s Prime IT Solutions Pvt. Ltd. as a party.

29. While filing written reply on 05.05.2022, a specific plea was taken by the respondent with regard to non-joining of M/s Prime IT Solutions Pvt. Ltd. as a party in the complaint. It is pleaded by the respondent that there was joint venture agreement executed between it and M/s Prime IT Solutions Pvt. Ltd., leading to collaboration agreement dated 06.12.2012 between them. On the basis of that agreement, the respondent undertook to proceed with the construction and development of the project at its own cost. Moreover, even on the date of collaboration agreement the directors of both the companies were common. A reference to that agreement was also given in the letter of allotment as well as buyers agreement. So, in view of these facts, the presence of M/s Prime IT Solutions Pvt. Ltd. as a respondent before the authority is must and be added as such. But the



pleas advanced in this regard are devoid of merit. No doubt there is mention to that collaboration agreement in the buyer's agreement but the complainants allottee was not a party to that document executed on 06.12.2012. If the IT Solutions would have been a necessary party, then it would have been a signatory to the buyer's agreement executed between the parties on 13.03.2015 i.e., after signing of collaboration agreement. The factum of merely mentioning with regard to collaboration agreement in the buyer's agreement does not ipso facto shows that M/S Prime IT Solutions Pvt. Ltd. should have been added as a respondent. Moreover, the payments against the allotted units were received by the respondent/builder. So, taking into consideration all these facts it cannot be said that joining of M/s Prime IT Solutions Pvt. Ltd. as a respondent was must and the authority can proceed in its absence in view of the provision contained in Order 1 Rules 4 (b) and 9 of Code of Civil Procedure, 1908.

F.II Objection regarding force majeure conditions:

30. The respondent-promoter has raised the contention that the construction of the tower in which the unit of the complainants is situated, has been delayed due to force majeure circumstances such as orders of the NGT, High Court and Supreme Court, demonetisation, govt. schemes and non-payment of instalment by different allottee of the project but all the pleas advanced in this regard are devoid of merit. First of all, the possession of the unit in question was to be offered by 13.03.2020. Hence, events alleged by the respondent do not have any impact on the project being developed by the respondent. Moreover, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. Thus, the



promoter respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

G. Entitlement of the complainants for relief:

- (i) **To get possession of the fully developed/constructed studio with all amenities within 6 months of the filing of this complaint.**
- (ii) **To get the delayed possession interest @ prescribed rate from the due date of possession till the actual date of possession (complete in all respect with all amenities).**

31. In the present complaint, the complainants intend 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."

32. Clause 11(a) of the buyer's agreement provides the time period of handing over possession and the same is reproduced below:

"11. (a) SCHEDULE FOR POSSESSION OF THE SAID UNIT:

The Company based on its present plans and estimates and subject to all just exceptions endeavours to complete construction of the Said building/Said Unit within a period of sixty (60) months from the date of this agreement unless there shall be delay or failure due to department delay or due to any circumstances beyond the power and control of the Company or force majeure conditions including but not limited to reasons mentioned in clause 11(b) and 11(c) or due to failures of the Allottee(s) to pay in time the Total Price and other charges and dues/payments mentioned in this Agreement or any failure on the part of the Allottee(s) to abide by all or any of the terms and conditions of this Agreement. In case



there is any delay on the part of the Allottee(s) in making of payments to the Company than notwithstanding rights available to the Company elsewhere in this contract, the period for implementation of the project shall also be extended by a span of time equivalent to each delay on the part of the Allottee(s) Company".."

33. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges, 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.

34. 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.
35. 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., 06.01.2023 is 8.60%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.60% per annum.
36. 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;”*

37. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.60% p.a. by the respondent/promoter which is the same as is being granted to the complainants in case of delay possession charges.
38. On consideration of the circumstances, the evidence and other record and submissions made by the parties, 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 a matter of fact that buyer's agreement executed between the parties on 13.03.2015, the possession of the booked unit was to be delivered within a period of 60 months from the date of execution of the agreement, which comes out to be 13.03.2020.
39. 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 complainants are entitled to delayed possession charges at the prescribed rate of interest i.e., 10.60% p.a. for every month of delay on the amount paid by them to the respondent from the due date of possession i.e., 13.03.2020 till the offer of possession of the



subject flat after obtaining occupation certificate from the competent authority plus two months or handing over of possession whichever is earlier as per the provisions of section 18(1) of the Act read with rule 15 of the rules.

(iii) **To get an order in their favour by directing the respondent party to provide area calculation (carpet area, loading, and super area).**

40. The authority is of the view that as per section 19(1) of the Real Estate (Regulation and Development) Act 2016, the allottee shall be entitled to obtain the information relating to sanctioned plans, layout plans along with the specifications, approved by the competent authority and such other information as provided in this Act or the rules and regulations made thereunder or the agreement for sale signed with the promoter.

41. In view of the same, the respondent/promoter is directed to provide the area calculation of the subject unit to the complainants allottees.

H. Directions of the Authority:

42. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

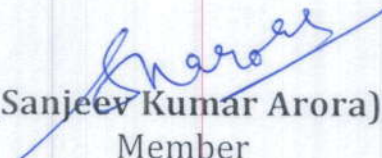
- i) The respondent is directed to pay interest at the prescribed rate of 10.60% p.a. for every month of delay from the due date of possession i.e., 13.03.2020 till the offer of possession of the subject flat after obtaining occupation certificate from the competent authority plus two months or handing over of possession whichever is earlier.




- ii) The respondent is directed to pay arrears of interest accrued within 90 days from the date of order and thereafter monthly payment of interest to be paid till date of handing over of possession shall be paid on or before the 10th of each succeeding month.
- iii) The complainants are also directed to pay the outstanding dues, if any.
- iv) The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.60% 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(z a) of the Act.
- v) The respondent shall not charge anything from the complainants which is not part of the builder buyer agreement.

43. Complaint stands disposed of.

44. File be consigned to the registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 06.01.2023