

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

Complaint no.	:	4149 of 2021
Date of filing complaint:		13.10.2021
Date of decision	:	06.01.2023

<b>Nishant Kumar</b> <b>Veena Kumar</b> R/O: G-37, Sai Apartments, Sector-13, Rohini, New Delhi - 110085	<b>Complainants</b>
Versus	
M/s Imperia Wishfield Pvt. Ltd. <b>Regd. office:</b> A-25, Mohan Cooperative Industrial Estate, New Delhi-110044	<b>Respondent</b>

<b>CORAM:</b>	
Shri Vijay Kumar Goyal	<b>Member</b>
Shri Ashok Sangwan	<b>Member</b>
Shri Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE:</b>	
Sh. Anand Dabas (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.	E-170, 1st Floor, Tower Evita (annexure C-2 on page no. 25 of complaint)
8.	Unit area admeasuring (super area)	261 sq. ft. (annexure C-2 on page no. 25 of complaint)
9.	Allotment letter	24.09.2013



		(annexure C-1 on page no. 12 of complaint)
10.	Date of apartment buyer agreement	07.05.2014 (annexure C-2 on page no. 15 of complaint)
11.	Possession clause	<b>11 (a) Schedule for possession of the said unit</b> <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 <b>sixty (60) months from the date of this agreement</b> 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>
12.	Due date of possession	07.05.2019 (calculated from the date of agreement)
13.	Total sale consideration	Rs. 33,15,364/- (As per statement of account dated 26.08.2021 on page 77 of complaint)
14.	Amount paid by the complainants	Rs. 25,78,235/- (As per statement of account dated 26.08.2021 on page 77 of complaint)



15.	Occupation certificate	Not obtained
16.	Offer of possession	Not obtained
17.	Delay in handing over possession till date of this order i.e. 06.01.2023	3 years 7 month 30 days

**B. Facts of the complaint:**

3. That in 2012, the respondent through its marketing executives and advertisement done through various medium and means approached the complainants with an offer to invest and buy a shop in the proposed project being developed by the respondent namely "Elvedor Retail" in Sector-37C, Gurugram. The respondent had represented to the complainants that it is very ethical business house in the field of construction of residential and commercial project and in case the complainants would invest in the project of respondent then it would deliver the possession of proposed shop on the assured delivery date as per the best quality assured by the respondent.
4. That the complainants booked a shop and was allotted shop bearing E-170 on 1st floor admeasuring 261 sq. ft. for a total sale consideration of Rs.29,40,164/-in the said project. It was assured and represented to the complainants by the respondent that they had already taken the required necessary approvals and sanctions from the concerned authorities and departments to develop and complete the said project on the time as assured by the respondent. Accordingly, they paid Rs. 2,21,850/- on 29.09.2012 towards booking amount.



5. That the respondent vide allotment letter dated 24.09.2013 allotted a commercial unit no. E-170, admeasuring 261 sq. ft. super area in their project "Elvedor" at Village Gharoli Khurd, Sector-37C, Gurugram, Haryana for a total sale consideration of Rs.29,40,164/- inclusive of external development charges (EDC)/ Infrastructure Development Charges (IDC).
6. That the respondent assured the complainants that it would execute the buyers' agreement at the earliest and maximum within one week. However, the respondent did not fulfil its promise and finally executed the same on 07.05.2014.
7. That from the date of booking and till today, the respondent had raised various demands for the payment of installments on the complainants towards the sale consideration of the said shop and they have duly paid all those demands without any default or delay on their part.
8. That they had already paid Rs. 25,78,235/- towards the sale consideration as on today to the respondent as demanded by it from time to time.
9. That the complainants thereafter had tried their level best to reach the representatives of the respondent to seek a satisfactory reply in respect of delivery and possession of the said shop but all in vain and the respondent has started to ignore the complainants and had not given any reply regarding the delivery and possession.
10. That according to clause 11(a) of the buyers' agreement dated 07.05.2014 the promised date of delivery of the said shop is 60 months from the date of execution of buyers' agreement i.e., 07.05.2019 but the



respondent has not delivered or offered possession of the said shop till date.

11. That the conduct on the part of the respondent has cleared the dust on the fact that all the promises made by the respondent at the time of sale of said shop were fake and false. The respondent had made all those false, fake, wrongful and fraudulent promises just to induce the complainants to buy the said shop basis its false and frivolous promises, which the respondent never intended to fulfil. The respondent in its advertisements had represented falsely regarding the area, price, quality and the delivery date of possession and resorted to all kind of unfair trade practices while transacting with the complainants.
12. That the respondent had caused a delay of about 2 year & 4 months in delivering the possession of aforesaid shop till the date of filing of the present complaint.
13. That the complainants had faced all these financial burdens and hardship from their limited income resources, only because of the respondent's failure to fulfil its promises and commitments. Failure of commitment on the part of respondent has made the complainants to suffer grave, severe and immense mental and financial harassment with no-fault on their part. The complainants being common person just made the mistake of relying on respondent's false and fake promises, which lured them to buy a shop in the aforesaid project of the respondent.
14. That the cause of action accrued in favour of the complainants and against the respondent on 07.05.2019 when the respondent was to hand over the delivery and possession of the said shop to the complainants and the cause of action is continuing and is still subsisting



on day-to-day basis as the respondent has not offered possession of the said shop till today even after repeated requests made by the complainants to the respondent in this regard.

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

15. The complainants have sought following relief(s):

- (i) Direct the respondent to pay interest at the prescribed rate on the amount paid of Rs. 25,78,235/- paid by the complainants for the said shop on account of delay in delivering possession from the date of payment till delivery of physical and vacant possession of said shop.

**D. Reply by respondent:**

The respondent by way of written reply made following submissions:

16. That unit no. E-170, 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. 33,16,453/-, vide allotment letter/ retail buyer agreement dated 13.05.2014 on the terms and conditions mutually agreed by the parties.
17. That the rights of the present parties are governed by the allotment letter/buyers agreement executed between the parties on 13.05.2014. 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.
18. The said project is a commercial project being developed on two acres of land situated at Sector 37-C, Gurugram, Haryana and comprises of

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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.

19. 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

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implementation of project based on the basis of said collaboration agreement.

20. 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.
21. 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."



22. 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.
23. 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.
24. 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".*

25. 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.

26. 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 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.

27. 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.

28. 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:**

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

**E. I Territorial jurisdiction**

30. 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**



31. 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.*

32. 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.I Objection regarding non joinder of M/s Prime IT Solutions Pvt. Ltd. as a party.**

33. 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 07.05.2014 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:**

34. 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 07.05.2019. 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 refund:**

**G.I Direct the respondent to pay interest at the prescribed rate on the amount paid of Rs. 25,78,235/- paid by the complainants for the said shop on account of delay in delivering possession from the date of payment till delivery of physical and vacant possession of said shop.**

35. 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."*

*AK*



36. 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" .."*

37. **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.

38. 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.

39. 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.

40. The definition of term 'interest' as defined under section 2(z a) 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;"*

41. 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.

42. 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 07.05.2014, 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 07.05.2019.

43. 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., 07.05.2019 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.

**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 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., 07.05.2019 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., 10.35% 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.
- v) The respondent shall not charge anything from the complainants which is not part of the builder buyer agreement.
45. Complaint stands disposed of.
46. 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**