

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

**Complaint no. : 214 of 2022**  
**First date of hearing: 06.04.2022**  
**Date of decision : 21.04.2023**

Sangeeta Sharma

**R/O: - C-96, National Apartments, Plot no. - 4,  
Sector - 3, Dwarka, Delhi - 110075**

**Complainant**

Versus

Shree Vardhman Infraheights Pvt. Ltd.,  
**Regd. Office - 302, 3<sup>rd</sup> floor, Indraprakash  
Building, 21-Barakhamba Road, New Delhi -  
110001**

**Respondent**

**CORAM:**

Shri Sanjeev Kumar Arora

**Member**

**APPEARANCE:**

Mr. Harshit Batra

Advocate for the complainant

Mr. Gaurav Rawat

Advocate for the respondent

**ORDER**

1. The present complaint dated 20.01.2022 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.	Name and location of the project	"Shree Vardhman Victoria", village Badshapur, Sector-70, Gurugram
2.	Project area	10.9687 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	103 of 2010 dated 30.11.2010 valid upto 29.11.2020
5.	Name of the Licensee	Santur Infrastructures Pvt. Ltd.
6.	RERA registered/ not registered and validity status	<b>Registered</b> Registered vide no. 70 of 2017 dated 18.08.2017 Valid upto 31.12.2020
7.	Unit no.	1705, Tower - C (Annexure- A on page no. 19 of the reply)
8.	Unit admeasuring	1350 sq. ft. (Annexure- A on page no. 19 of the reply)



9.	Date of flat buyer's agreement	30.07.2014 (Annexure- A on page no. 16 of the reply)
10.	Payment plan	Construction linked payment plan (Annexure- A on page no. 35 of the reply)
11.	Total consideration	Rs. 74,11,500/- (Annexure- A on page no. 20 of the reply) Rs. 83,61,500/- (Annexure- B on page no. 45 of the reply)
12.	Total amount paid by the complainant	Rs. 83,15,379/- (Annexure- B on page no. 45 of the reply) Rs. 77,09,897/- (As per page 10 of complaint)
13.	Date of commencement of construction	07.05.2014 (As stated by respondent on page 7 of reply)
14.	Possession clause	<b>14(a)</b> The construction of the flat is likely to be completed <b>within a period of 40 months of commencement of construction of the particular tower/ block in which the subject flat is located with a grace period of 6 months</b> , on receipt of sanction of the building plans/ revised plans and all other approvals subject to force majeure including any restrains/ restrictions from any authorities, non-



		availability of building materials or dispute with construction agency/ workforce and circumstances beyond the control of company and subject to timely payments by the buyer(s) in the said complex. <b>(Emphasis supplied)</b>
15.	Due date of delivery of possession	07.03.2018 (Calculated from the date of commencement of construction)
16.	Occupation certificate	<b>Obtained on 13.07.2022 as stated by counsel for respondent</b>
17.	Offer of possession	Offered on 09.08.2022 as stated by counsel for respondent and agreed by the counsel for respondent
18.	Grace period utilization	Grace period is allowed in the present complaint.

**B. Facts of the complaint**

- i. That relying on the representations, warranties and assurances made by the respondent about the timely delivery of possession the original Allottee, M/s Rohra Buildcon Pvt Ltd, booked an apartment in the project vide an application on 31.05.2012 as is evident from the costumer ledger. The said unit was allotted to the original allottee vide an allotment letter on 20.12.2012, evident from the costumer ledger and subsequently, a Flat Buyer's Agreement ("**Agreement**") was executed in 2013 for which the Complainant was invited to sign as is evident from the Letter dated 09.05.2013 w.r.t. the execution of agreement. The letter dated 09.05.2013 w.r.t. the execution of agreement is marked.



- ii. That subsequent to the agreement, the said unit was transferred and endorsed in the name of the complainant/subsequent allottee in early 2015 and thereafter endorsed in the name of the complainant by virtue of which the subsequent allottee entered into the shoes of the original allottee.

The complainant entered into the picture in 2015, i.e., before the due date of offering the possession and hence is entitled to the delayed possession charges w.e.f. the due date of offering the possession.

- iii. It is submitted that the complainant with the dream of owning a house which was advertised to be a progressive and an aesthetic property, availed a housing loan for INR 65,01,000 from the Punjab National Bank in 2015 as is evident from the Statement of Account dated 14.01.2022. The Statement of Account of PNB Housing Finance Limited dated 14.01.2022 is marked. It is submitted that all the original documents including the agreement were submitted to the bank at the time of sanctioning of the loan; moreover, neither the Bank nor the respondent has provided the copy of agreement after several requests of the complainant.

- iv. Furthermore, it is categorically highlighted that the complainant has been paying interest to the bank since 2015 on the disbursed amount of loan at the interest rate of 10.17% p.a., which is a financial burden over the complainants, the same is evident from the PNB Interest breakup Since May 2015 till January 2022.

- v. That the relationship between the parties is contractual in nature and is governed by the agreements executed between the parties. The rights and obligations of the parties flow directly from such agreements. At the outset, it must be noted that the complainant entered into the agreement by virtue of which the respondent was obligated to deliver





the possession of the said unit within the prescribed time limit to the complainant. However, the respondent miserably failed to comply with the said obligation which directly flowed from the agreement despite being bound by the terms and conditions of the said agreement. The allotment of the unit was done in 20.12.2012, even after 9 years of the allotment of the unit, the respondent has failed to hand over the possession to the complainant.

- vi. That as per the customer ledger as on 12.01.2015, the construction of the unit began on 07.05.2014, in referring to the same tower, in **Complaint no.1201 of 2021**, this Hon'ble Authority observed that *"...it is a matter of fact that as per the affidavit filed by the respondent on 06.10.2021-, the date of start of foundation of the subject tower, where the flat in question is situated is 07.05.2014..."* Hence, it is depicted that after more than one year of allotment of the unit, the respondent began the construction of the unit. Furthermore, the respondent has not obtained the occupancy certificate till date.
- vii. That, furthermore, the respondent failed in complying with all the obligations, not only with respect to the agreement with the complainant but also with respect to the concerned laws, rules and regulations thereunder, due to which the complainant faced innumerable hardships. Moreover, the respondent made false statements about the progress of the project as and when inquired by the complainant.
- viii. It is pertinent to mention here that the respondent has not received the occupation certificate and hence the due date for delivery of possession cannot be anticipated. It is crystal clear that even after more than 9 years of allotment, the respondent has miserably failed in completing



the project and obtaining the occupation certificate, hence, it is a grave failure of the respondent's duty.

- ix. That out of the total cost of the property which is INR 80,91,500.00/- as per the costumer ledger as on 12.01.2015, the total payment made by the complainants towards the unit till date is INR 77,09,897/- as is evident from the costumer ledger as on 12.01.2015 annexed herewith and cheques drawn in the name of the complainant in the statement of account of the Bank dated 14.01.2022 annexed herewith.

S. No.	Particular	Amount (INR)
1.	Costumer Ledger as on 12.01.2015	44,02,062/-
2.	Cheque no. 285512	3,93,239/-
3.	Cheque no. 285757	3,59,698/-
4.	Cheque no. 169622	3,81,690/-
5.	Cheque no. 96752	3,70,575/-
6.	Cheque no. 265296	4,14,015/-
7.	Cheque no. 265817	3,28,655/-
8.	Cheque no. 269264	3,70,575/-
9.	Cheque no. 213754	6,89,392/-
<b>TOTAL</b>		<b>77,09,897/-</b>

- x. It is submitted that the complainant has paid almost 95% of the total cost of the property, as and when demanded by the respondent and rest of the payment has not been demanded by the respondent yet. It is submitted that the construction of the project is not complete;





moreover, the respondent has miserably failed in fulfilling the obligations and offering the possession till date.

- xi. That thereafter, the *malafide* conduct and unlawful activities of the respondent continued to be seen as the construction of the project has not been completed even after more than 9 years from allotment, which has consequently led the complainant to go through mental agony and financial distress.
- xii. That in light of the mala fide conduct of the respondent and delay in offering the possession of the unit, the respondent is clearly liable to pay the interest for every month of delay till date as per section 18 of the Act.
- xiii. It is the failure of the promoter to fulfill his obligations, responsibilities as per the agreement to hand over the possession within the stipulated period. As such the complainant is entitled to delayed possession at the prescribed rate of interest @ 9.30% p.a. w.e.f. due date of offer of possession, without the grace period till the handover of possession as per provisions of section 18(1) of the Act read with rule 15 of the HRERA Rules.
- xiv. That the respondent has utterly failed to fulfil his obligation to deliver the possession of the apartment in time and adhere to the contentions of the agreement which has caused mental agony, harassment and huge losses to the complainant, hence the present complaint.

### **C. Relief Sought**

3. This Authority may direct the respondent as follows:

- i. Direct the respondent to provide the possession to the complainant along with prescribed rate of interest on delay in handing over of possession of the apartment on the amount paid by the complainant





from the due date of possession as per the buyer's agreement till the actual date of possession of the apartment.

- ii. Direct the respondent to grant leave to the complainant to approach to the Hon. Adjudicating officer for seeking compensation for the mental harassment and financial burden caused for the delayed delivery of possession.
- iii. Direct the respondent for non-renewal or lapse of registration of the project under section 8 read with section 61 of the Act.

**D. Reply by the respondent**

4. The present complaint filed under Section 31 of the Real Estate "RERA Act" is not maintainable under the said provision. The respondent has not violated any of the provisions of the Act. As per rule 28(1) (a) of RERA Rules, a complaint under section 31 of RERA Act can be filed for any alleged violation or contravention of the provisions of the RERA Act after such violation and/or contravention has been established after an enquiry made by the Authority under Section 35 of RERA Act. In the present case no violation/contravention has been established by the Authority under Section 35 of RERA Act and as such, the complaint is liable to be dismissed.
5. The complainant has sought reliefs under section 18 of the RERA Act, but the said section is not applicable in the facts of the present case and as such, the complaint deserves to be dismissed. It is submitted that the operation of Section 18 is not retrospective in nature and the same cannot be applied to the transactions which were entered prior to the RERA Act came into force. The complaint as such cannot be adjudicated under the provisions of RERA Act.

6. That the expression “**agreement to sell**” occurring in Section 18(1)(a) of the RERA Act covers within its folds only those agreements to sell that have been executed after RERA Act came into force and the FBA executed in the present case is not covered under the said expression, the same having been executed prior to the date the Act came into force.
7. It is submitted without prejudice to above objection, in case of agreement to sell executed prior to RERA coming into force, the dates for delivery of possession committed therein cannot be taken as trigger point for invocation of Section 18 of the Act. When the parties executed such agreements, section 18 was not in picture and as such the drastic consequences provided under section 18 cannot be applied in the event of breach of committed date for possession given in such agreements. On this ground also, the present complaint is not maintainable.
8. That the FBA executed in the present case did not provide any definite date or time frame for handing over of possession of the Apartment to the complainant and on this ground alone, the refund and/or compensation and/or interest cannot be sought under RERA Act. Even clause 14 (a) of the FBA merely provided a tentative/estimated period for completion of construction of the Flat and filing of application for Occupancy Certificate with the concerned Authority. After completion of construction, the respondent was to make an application for grant of occupation certificate (OC) and after obtaining the OC, the possession of the flat was to be handed over.



9. The relief sought by the complainant is in direct conflict with the terms and conditions of the FBA and on this ground alone, the complaint deserves to be dismissed. The complainant cannot be allowed to seek any relief which is in conflict with the said terms and conditions of the FBA. It is submitted that delivery of possession by a specified date was not essence of the FBA and the complainant was aware that the delay in completion of construction beyond the tentative time given in the contract was possible. Even the FBA contain provisions for grant of compensation in the event of delay. As such, it is submitted without prejudice that the alleged delay on part of respondent in delivery of possession, even if assumed to have occurred, cannot entitle the complainant to ignore the agreed contractual terms and to seek interest and/or compensation on any other basis. It is submitted without prejudice that the alleged delay in delivery of possession, even if assumed to have occurred, cannot entitle the complaint to rescind the FBA under the contractual terms or in law. It is submitted that issue of grant of interest/compensation for the loss occasioned due to breach committed by one party of the contract is squarely governed by the provisions of section 73 and 74 of the Contract Act, 1872 and no compensation can be granted dehors the said sections on any ground whatsoever. A combined reading of the said sections makes it amply clear that if the compensation is provided in the contract itself, then the party complaining the breach is entitled to recover from the defaulting party only a reasonable compensation not exceeding the compensation prescribed in the contract and that too upon proving the actual loss and injury due to such breach/default. On this ground, the

compensation, if at all to be granted to the complainant, cannot exceed the compensation provided in the contract itself. The complaint is not in the prescribed format and is liable to be dismissed on this ground alone.

10. The complainant is not an original allottee but a subsequent purchaser who purchased the apartment from the original allottee in 2015. At that time, she was aware of the status of the construction of the project. She therefore cannot be allowed to claim interest/compensation.
11. Copies of all the relevant documents have been duly filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

#### **E. Jurisdiction of the authority**

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

##### **E.I Territorial jurisdiction**

12. 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**



The 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 promoter, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

13. 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 complainant at a later stage.

**F. Findings on the objections raised by the respondent**

**F.I Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act**

14. Another contention of the respondent is that authority is deprived of the jurisdiction to go into the interpretation or rights of the parties inter-se in accordance with the apartment buyer's agreement executed between the parties and no agreement for sale as referred to under the provisions of the act or the said rules has been executed inter se parties. The authority is of the

view that the act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the act. Therefore, the provisions of the act, rules and agreement have to be read and interpreted harmoniously. However, if the act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the act and the rules after the date of coming into force of the act and the rules. Numerous provisions of the act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of ***Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)*** decided on 06.12.2017 which provides as under:

- “119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter.....
122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports.”



15. Further, in appeal no. 173 of 2019 titled as ***Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya***, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal observed- as under

*“34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored.”*

16. The agreements are sacrosanct save and except for the provisions which have been abrogated by the act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

#### **F.II Objection w.r.t. the complainant being subsequent allottee.**

17. The respondent made an objection that complainant being a subsequent allottee is not entitled to delay possession charges as he is not an original allottee but if we ponder upon the veracity of this contention, it has already been decided by the authority on 12.08.2021 in complaint bearing no. 4031



of 2019 titled as Varun Gupta Vs. Emaar MGF Land Ltd. wherein it was held that the term “allottee” as defined under section 2(d) of the Act also includes and means the subsequent allottee, hence the rights and obligation of the subsequent allottee and the promoter will also be governed by the said builder buyer’s agreement. The relevant para of the judgement is reproduced below:

- “59. Therefore, keeping in view the aforesaid principles of law and arguments advanced by both the parties, the authority is of the view that four bifurcations can be made in respect to entitlement for delay possession charges to the subsequent allottee which are as follows:
- a. **Where the subsequent allottee had stepped into the shoes of original allottee before the due date of handing over possession:**  
.....So, the authority is of the view that in cases where the subsequent allottee had stepped into the shoes of original allottee before the due date of handing over possession, the delayed possession charges shall be granted w.e.f. due date of handing over possession.
  - b. **Where subsequent allottee had stepped into the shoes of original allottee after the due date of handing over possession but before the coming into force of the Act:**  
...Therefore, in light of **Laureate Buildwell judgment (supra)**, the authority holds that in cases where subsequent allottee had stepped into the shoes of original allottee after the expiry of due date of handing over possession and before the coming into force of the Act, the subsequent allottee shall be entitled to delayed possession charges w.e.f. the date of entering into the shoes of original allottee i.e. nomination letter or date of endorsement on the builder buyer’s agreement, whichever is earlier.
  - c. **Where the subsequent allottee has stepped into the shoes of the original allottee after coming into force of the Act and before the registration of the project in question:**  
...Therefore, the authority is of the view that in cases where the subsequent allottee had stepped into the shoes of original allottee after coming into force of the Act and before the registration of the project in question, the delayed possession charges shall be granted w.e.f. due date of handing over possession as per the builder buyer’s agreement.
  - d. **Where the subsequent allottee has stepped into the shoes of the original allottee after coming into force of the Act and after the registration of the project in question:**  
...Therefore, the authority is of the view that in cases where the subsequent allottee had stepped into the shoes of original allottee after coming into force of the Act and after the registration of the



*project in question, the delayed possession charges shall be granted w.e.f. due date of handing over possession as per the builder buyer's agreement."*

18. Hence, the plea of respondent in this regard is rejected and the present complainant is entitled to seek the said relief.

**19. Admissibility of delay possession charges at prescribed rate of interest:**

The complainant is seeking delay possession charges at the prescribed rate, 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.*

20. 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.

21. 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., 21.04.2023



is 8.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.

22. The definition of term 'interest' as defined under section 2(za) of the act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

*"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*

*Explanation. —For the purpose of this clause—*

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

23. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.70% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.

24. On consideration of the documents available on record and submissions made by both the parties 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 14(a) of the agreement executed between the parties on 30.07.2014, the possession of the subject apartment was to be



delivered within stipulated time i.e., by 07.03.2018. As far as grace period is concerned, the same is allowed for the reasons quoted above. The respondent has delayed in offering the possession but the same is offered on 09.08.2022 as mutually agreed by the parties. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. 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, interest for every month of delay from due date of possession i.e., 07.03.2018 till date of receipt of occupation certificate i.e., 13.07.2022 plus two months which is 13.09.2022 at prescribed rate i.e., 10.70 % p.a. as per proviso to section 18(1) of the act read with rule 15 of the rules.

25. The relief sought mentioned at serial no. iii. of the list is not pressed in the court proceeding by the complainant. So, no direction to this effect.

#### **G. Directions of the authority**

26. Hence, the authority hereby passes this order and issues the following directions under section 37 of the act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent is directed to handover the physical possession of the subject unit as OC has already been obtained.
- ii. The respondent is directed pay to the complainant the delayed possession charges as per the proviso of section 18(1) of the Real



Estate (Regulation and Development) act, 2016 at the prescribed rate of interest i.e., 10.70 %p.a. for every month of delay on the amount paid by her to the respondent from the due date of possession i.e., 07.03.2018 till date of receipt of occupation certificate i.e., 13.07.2022 plus two months which is 13.09.2022

- iii. The promoter shall not charge anything which is not a part of the BBA.
- iv. The complainant is 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., 10.70% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

27. Complaint stands disposed of.

28. File be consigned to registry.

  
(Sanjeev Kumar Arora)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.04.2023