



HARERA
GURUGRAM

Complaint no. 4802 of 2020

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

Complaint no.	:	4802 of 2020
Date of filing complaint	:	18.12.2020
First date of hearing	:	24.02.2021
Date of decision	:	07.04.2023

Sh. Niraj Kumar Singh S/o Late Sh. Babban Singh R/o: H-2, Mitradweep Apartments, I.P Extension, Delhi- 110092	Complainant
Versus	
ALM Infotech City Private Limited Regd. office: B-418, New Friends Colony, New Delhi - 110065	Respondent
CORAM:	
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Complainant-in-person	Complainant
None	Respondent

ORDER

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

A. Unit and project related details

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

S. no.	Particulars	Details
1.	Name of the project	"ILD Grand", Sector-37C, Gurgaon
2.	Nature of project	Group housing project
3.	RERA registered/not registered	Registered vide registration no. 386 of 2017 dated 18.12.2017
	Validity status	30.06.2023
	Licensed area	41223.953 sqm.
4.	DTPC License no.	96 of 2010 dated 03.11.2010
	Validity status	02.11.2025
	Licensed area	21.1804 acres
	Name of licensee	M/s Jubilant Malls Pvt. Ltd.
5.	Allotment letter dated	Not placed on record
6.	Unit no.	Unit no. 9C on 9th floor of tower Skytree (type- 3BR) [As per page no. 50 of complaint]
7.	Unit area admeasuring	1789 sq. ft. [Super area] [As per page no. 50 of complaint]
8.	Date of apartment buyer agreement	14.02.2013 [As per page no. 47 of complaint]



9.	Possession clause	<p>Clause 9(i) of apartment buyer's agreement</p> <p><i>Subject to Force Majeure circumstances as defined herein and subject to timely grant of all approvals, permissions, NOCs, etc. and further subject to the Allottee(s) having complied with all his obligations under the terms and conditions of this Agreement and the Allottee(s) not being in default under any part of this Agreement including but not limited to the timely payment of the total Sale Consideration and other charges/fees/taxes/levies and also subject to the Allottee(s) having complied with all formalities or documentation as prescribed by the Developer the Developer proposes to complete the construction <u>within a period of 36 months computed from the date of execution of this agreement with further grace period of 180 days under normal circumstances.</u></i></p>
10.	Due date of possession	<p>14.08.2016</p> <p>[Calculated from the date of execution of buyer's agreement i.e. 14.02.2013 + grace period of 180 days]</p> <p>Grace period of 180 days is allowed.</p> <p><i>(Inadvertently, mentioned as 16.08.2016 in proceedings dated 07.04.2023)</i></p>
11.	Payment plan	Construction linked payment plan
12.	Total sale consideration	<p>Rs.70,81,978/-</p> <p>[As per ABA on page no. 52 of complaint]</p>

13.	Amount paid by the complainant	Rs.69,44,214/- [As per email dated 23.11.2020 on page no. 86 of complaint]
14.	Tri-partite agreement dated	15.07.2013 [For an amount of Rs. 39,00,000/-] [As per page no. 40 of complaint]
15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered

B. Facts of the complaint

3. That the complainant purchased a residential unit, bearing no. 9C in block Skytree, having super area of 1789 sq. ft. and approx. built up area of 1342 sq. ft. from its original allottee, in the project of the respondent namely, ILD Grand.
4. That a builder buyer agreement dated 14.02.2013, was executed between the parties stipulating the terms and conditions, including the sale consideration as well as the time of possession. Thereafter, according to he paid installments in the manner visualised therein.
5. That as per the terms of agreement, the respondent-company was to handover possession of the unit on or before 14.01.2016, excluding the grace period of six months but, in any way, on or before 14.07.2016. However, it is an admitted fact that, not to speak of possession of the unit, he was not even informed about the likely date for handing over possession of the unit and status of the construction, despite having received more than 95% of the agreed sale consideration.

6. That the complainant has paid Rs. 69,44,214/- against the sale consideration of Rs. 70,81,915/- as per the acknowledgement of respondent-company, received vide its e-mail. At this juncture, it would be beneficial to recollect that complainant had opted for "Construction Linked Plan", i.e., the demands for payments were linked with the status of construction. Since the complainant has paid more than 98% of the demand, raised by it, from time to time, it would be logical to infer that the construction must have been proportionate to the amount received. However, the fact remains otherwise, as is evident from the photographs, depicting the status of construction at the site.
7. That the agreement specified a mechanism for computation of compensation in case of failure of respondent to handover possession of the unit on time. Since the complainant had taken home loan from State Bank of India (SBI), to the tune of Rs. 39 Lakhs, a tripartite agreement, dated 15.07.2013 was executed between the parties, including the bank in this regard.
8. That the failure of respondent to intimate the likely date of possession is sufficient to infer that it was criminally negligent in discharging its obligations, cast by the provisions of the Act. Moreover, the failure to offer possession is not only deliberate but is attributable to the financial bungling committed by it. There cannot be any doubt that the it has indulged in financial embezzlement and has diverted sizable chunk of the funds so collected from the allottee and other buyers. It is an ongoing project and is

registered with HRERA, due to its failure to handover possession on time, the provisions of the Act are applicable to it.

9. That it has not fulfilled its mandatory obligations, in terms of Section 11(4) of the Act, in respect of adhering to the time frame in handing over possession of the unit nor has compensated the complainant against the delay in handing over possession of the unit, as per the mechanism agreed upon. Rather has not even acknowledged its liability towards the same nor has proposed the mechanism for its settlement. Whereas it remained indifferent towards the manner of disbursement of amount towards compensation despite having been repeatedly asked by complainant.
10. That the respondent has not only failed and neglected to honour its contractual obligation but has also abdicated its statutory obligations, however, despite that, it has the audacity and gumption to ask him to sign an MOU, dated October 2020 which is nothing but a blatant attempt to deprive him of his legitimate, legal and reasonable right against respondent and a feeble, albeit, abominable, effort to cover up its acts of omissions and commissions. The terms of the MOU not only prick the conscience but are also a specimen of being "unfair and unreasonable, besides being arbitrary and whimsical".
11. That the respondent is not in a position to handover possession of the unit and has been buying time by indulging into cheap gimmicks rather has been putting premium on the wrongs, committed by it. It has been indulging in

despicable acts and has been buying time on flimsy pretext and on spacious pleas, that too, to further its vested interest.

12. That the complainant has been burdened with EMI, to the extent of Rs. 37,000/- per month (approx.), against home loan availed by him which has put him in a precarious condition.

C. Relief sought by the complainant:

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

- i. Direct to the respondent to compensate the complainant for not handing over the possession of the flat till due date as the complainant is paying EMI on home loans.
- ii. Direct the respondent to pay interest for every month of delay, on the amount paid so far, at the rate mandate by Act of 2016.

14. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

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

- i. That the present complaint is bundle of lies and hence liable to be dismissed as it is filed on baseless grounds. He has failed to provide the correct/complete facts and is raising false, frivolous, misleading and baseless allegations against the respondent with intent to make unlawful gains. He has not approached the Authority with clean hands and has suppressed relevant material facts. The complaint under reply is devoid of merits and the same should be dismissed with cost.

- ii. That it is imperative to note, that the complainant learned about the project titled as 'ILD Grand' ('Project') and repeatedly approached the respondent to know the details of the said project. He further inquired about the specification and veracity of the project and was satisfied with every proposal deemed necessary for the development of the project.
- iii. That he decided to invest in the project of the respondent and booked a unit bearing no. 9C in block Skytree admeasuring super area 1789 sq. ft. (herein referred to as the 'unit') without getting induced by any sale, plan, brochure, representation/advertisements, or commitment made by it either orally or in written; only solely upon his own judgement and investigation.
- iv. That on 14.02.2013, a builder buyer agreement was executed between the parties wherein allotting unit bearing no. 9C in block Skytree admeasuring super area of 1789 sq. ft. and built-up area of 1342 sq. ft. to him for a total sale price of Rs. 79,81,195/- in the aforesaid project.
- v. That he was well aware of the terms and conditions mentioned under the agreement and agreed to sign upon the same upon being fully satisfied with each and every term without any protest or demur.
- vi. That it is imperative to note, that the complainant, learned about the project of the respondent titled as 'ILD Grand' and approached the respondent repeatedly to know the details of the said project. He further inquired about the specification and veracity of the project and was satisfied with every proposal deemed necessary for the development of the project.

- vii. That the complainant failed to adhere terms of the agreement and keep on delaying the payments and never made the payments as per the payment schedule duly agreed upon at the time of booking and agreement.
- viii. That the respondent was committed to complete the development of the project. However, the developmental work of the said project was slightly delayed due to the reasons beyond its control.
- ix. That the project was majorly hindered due to lack of infrastructure in the said area as the twenty-four-meter sector road was not completed on time. Due to non-construction of the sector road, it faced many hurdles to complete the project. For completion of road, it was totally dependent upon the Govt. Department/machinery.
- x. That it is pertinent to mention that the delay caused, if any was beyond the control of the respondent and further, it is not liable for delay caused, due to force majeure conditions or any government order or policy as mentioned under clause 9(7) of the agreement. It is submitted that the project was not completed within time due to the reason mentioned above and due to several other reasons and circumstances absolutely beyond its control, such as, interim orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble High Court of Punjab & Haryana in CWP No. 20032/2008 whereby ground water extraction was banned in Gurgaon, orders passed by National Green Tribunal to stop construction to prevent emission of dust in the month of April, 2015 and again in November, 2016, adversely affected the progress of the project.
- xi. That due to the impact of the Goods and Services Act, 2017 (herein referred to as 'GST') which came into force after the effect of

demonetisation in the last quarter of 2016 left long lasting effect on various real estate and development sector even in 2019. It has to undergo huge obstacle due to adverse effect of demonetisation and implementation of GST.

- xii. That in the recent years, various construction activities in the real estate sector was stayed due to constant ban levied by various Courts/Tribunals/Authorities/ to curb pollution in Delhi-NCR Region. In recent years, the Environment (Pollution and Control) Authority, NCR (EPCA) vide its notification dated 25.10.2019, bearing no. EPCA-R/2019/L-49 banned the construction activities in NCR during night hours (6:00 PM to 6:00 AM) from 26.10.2019 to 30.10.2019 and subsequently, the EPCA vide its notification bearing no. R/2019/L-53, dated 01.11.2019, converted the same into a complete ban from 01.11.2019 to 05.11.2019.
- xiii. That the Hon'ble Apex Court in the writ petition vide its order dated 04.11.2019 passed in writ *petition bearing no. 13029/1985 titled as "MC Mehta vs. Union of India"* has completely banned all construction activities in Delhi-NCR and such restriction was partly modified vide order dated 09.12.2019 and was completely lifted by its order dated 14.02.2020.
- xiv. That due to the ban levied by the competent authorities, the migrant labourers were forced to return to their native towns/states/villages creating an acute shortage of labourers in the NCR Region and, even after lifting of ban by the Hon'ble Court the construction activities could not resume at full throttle due to such acute shortage.

- xv. That after such obstacles in construction activities in the real estate sector and before the normalcy could resume, the entire nation was hit by the worldwide Covid-19 pandemic. Therefore, it is safely concluded that the said delay in the seamless execution of the project was due to genuine force majeure circumstances and the period shall be excluded while computing the delay.
- xvi. The Covid-19 pandemic resulted in serious challenges for the respondent with no available labourers, contractors etc. for the construction of the project. On 24.03.2020, the Ministry of Home Affairs, GOI vide notification bearing no. 40-3/2020-DM-I(A) recognised that the entire nation was threatened with Covid-19 pandemic and ordered a completed lockdown in the entire country for an initial period of 21 days starting from 25.03.2020. Subsequently, such lockdown was extended from time to time and till date the same continues in some or the other form to curb the pandemic. It is to note, various state governments, including the Government of Haryana also imposed strict measures to prevent the pandemic including imposing curfew, lockdown, stopping all commercial activities, stopping all construction activities.
- xvii. That pursuant to the issuance of advisory by the GOI vide office memorandum dated 13.05.2020 regarding extension of registrations of real estate projects under the provisions of the Act of 2016 due to "Force Majeure", the Haryana Real Estate Regulatory Authority has also extended the registration and completion date by 6 months for all real estate projects whose registration or completion date expired and/or was supposed to expire on or after 25.03.2020.s

- xviii. That despite, after above stated obstructions, the nation was yet again hit by the second wave of Covid-19 pandemic and again all the activities in the real estate sector were forced to stop. It is pertinent to mention, that considering the wide spread of Covid-19, firstly night curfew was imposed followed by weekend curfew and then complete curfew. That during the period from 12.04.2021 to 24.07.2021, each and every activity including the construction activity was halted in the State due to the adverse effect of the pandemic.
- xix. That despite after lifting the restrictions the respondent was bound to resume with the construction activity in a hybrid mode i.e., only with the labours that were available within the region and nearby to the construction site. Due to such acute shortage of labour the project was deemed to be delayed due to above said circumstances which were neither in control of the respondent nor complainant.
- xx. That the entire case of the complainant is nothing but a web of lies, false and frivolous allegations made against the respondent. He has not approached the Authority with clean hands. Hence, the present complaint deserves to be dismissed with heavy costs. That it is brought to the knowledge of the Authority that he is guilty of placing untrue facts and are attempting to hide the true colour of his intention.
- xxi. That the present complaint is filed with the oblique motive of harassing the respondent and to extort illegitimate money while making absolutely false and baseless allegations against the respondent.
16. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be

decided based on these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

17. 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

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

Section 11(4)(a)

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

Section 34-Functions of the Authority:

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

19. So, in view of the provisions of the Act of 2016 quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the objections raised by the respondent:

F.I Objection regarding force majeure conditions:

20. The respondent-promoter has raised a contention that the construction of the project was delayed due to reasons beyond its control such as delay in project due to lack of construction of 24-meter road by the Government Authorities, stay on construction vide orders of NGT & EPCA, implementation of GST, demonetization and Covid-19 outbreak. The respondent requested that the delay was due to uncertain circumstances which were beyond its the control and same cannot be made liable for such delay.
21. The Authority is of considered view that the plea w.r.t delay in construction of project due to its dependency on construction of 24 meter road is devoid of merits as the fact that such road is under construction or is going to be constructed was already known to the respondent-builder while launching the said project and it would have been considered the same while providing date of completion of project.
22. The respondent also contended that the pace of work at project site was hampered due to stay on construction vide orders of Hon'ble Punjab and Haryana High Court and orders of NGT & EPCA and implementation of GST.

The plea w.r.t. ban on using ground water vide orders of Hon'ble Punjab and Haryana High Court is not tenable as the same were for shorter period of time. As far as order of NGT & EPCA banning construction to curb the pollution in Delhi NCR were of 2019 whereas as per table above, the due date of handing over of possession was 14.08.2016 i.e. much before to such orders of NGT & EPCA. Moreover, the plea that the construction at project site was hampered due to introduction of GST, it is observed that the due date of handing over of project was 14.08.2016 and the GST was introduced on 01.07.2017. Therefore, by that time the project would have been completed, but the same was not done. It is a well settled principle that one cannot take advantage of his own wrong. Moreover, grace period of 180 days as provided in clause 9(1) of agreement dated 14.02.2013 is allowed to the respondent-builder being unconditional and thus, no further leniency in this regard can be given to the respondent.

23. As far as plea w.r.t. COVID-19 is concerned, lockdown due to outbreak of such pandemic and shortage of labour on this account. The authority put reliance judgment of Hon'ble Delhi High Court in case titled as ***M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020*** dated 29.05.2020 which has observed that-

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

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

said unit by 14.08.2016. The respondent is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the Authority is of the view that outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself and for the said reason the said time period is not excluded while calculating the delay in handing over possession.

G. Findings on the relief sought by the complainant

Relief sought by the complainant:

G.I Direct to the respondent to compensate the complainant for not handing over the possession of the flat till due date as the complainant is paying EMI on home loans.

24. The complainant submitted that the subject unit was booked under construction linked payment plan and to make payment towards consideration of allotted unit, he took a loan from SBI for an amount of 39 lacks and the same is evident from tri-partite agreement dated 15.07.2013.
25. As per table above, the due date of handing over of possession was 14.08 2016 however, the respondent has failed to handover the possession of the allotted unit within stipulated time and as a consequence, he was made to make payment towards EMI on such home loan. The complainant is seeking compensation on account of payment made towards EMI sue to such delay in handing over of possession.
26. The complainant is seeking relief w.r.t compensation in the aforesaid relief, Hon'ble Supreme Court of India in civil appeal titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. (SLP(Civil))*

No(s). 3711-3715 OF 2021), held that an allottee are entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainant may approach the adjudicating officer for seeking the relief of compensation

G.II Direct the respondent to pay interest for every month of delay, on the amount paid so far, at the rate mandate by Act of 2016.

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

"Section 18: - Return of amount and compensation

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

.....

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

28. Clause 7(i) of apartment buyer's agreement dated 14.02.2013 provides for handing over of possession and is reproduced below:

"Clause 9(i).

Subject to Force Majeure circumstances as defined herein and subject to timely grant of all approvals, permissions, NOCs, etc. and further subject to the Allottee(s) having complied with all his obligations under the terms and conditions of this Agreement and the Allottee(s) not being in default under any part of this Agreement including but not limited to the timely payment of the total Sale Consideration and other charges/fees/taxes/levies and also

subject to the Allottee(s) having complied with all formalities or documentation as prescribed by the Developer the Developer proposes to complete the construction within a period of 36 months computed from the date of execution of this agreement with further grace period of 180 days under normal circumstances..

29. The Authority has gone through the possession clause of the agreement and observes that the respondent-developer proposes to handover the possession of the allotted unit within a period of thirty-six months from the date of execution of agreement and along with grace period of 180 days. The buyer's agreement inter-se parties was executed on 14.02.2013; as such the due date of handing over of possession without considering grace period comes out to be 14.02.2016 without considering admissibility of grace period.
30. **Admissibility of grace period:** As per clause 9(i) of buyer's agreement dated 14.02.2013, the respondent-promoter proposed to handover the possession of the said unit within a period of thirty-six months with grace period of 180 days. The Authority is of view that the said grace period of six months shall be allowed to the respondent being unconditional. Therefore, as per clause 9(1) of the buyer's agreement dated 14.02.2013, the due date of possession comes out to be 14.08.2016.
31. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges however, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

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

- (1) *For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.: Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*
32. 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.
33. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 07.04.2023 is @ 8.70 %. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.
34. 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;"*

35. 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 them in case of delayed possession charges.
36. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 9(i) of apartment buyer's agreement executed between the parties on 14.02.2013, the possession of the subject apartment was to be delivered by 14.08.2016.
37. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate has yet not obtained by the respondent-builder. The respondent shall offer the possession of the subject unit to the complainant after obtaining occupation certificate. So, it can be said that the complainant would come to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. This 2 months' of reasonable time is to be given to the complainant keeping in mind that even after intimation of possession, practically one has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but that is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e. from the due date of possession i.e., 14.08.2016 till

actual handing over of possession or offer of possession plus two months, whichever is earlier.

38. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 14.02.2013 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., 14.08.2013 till the date of actual handing over of possession or till offer of possession plus 2 months, whichever is earlier; at the 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.

H. Directions of the authority

39. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- i. The respondent shall pay interest at the prescribed rate i.e. 10.70% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e.; 14.08.2016 till offer of possession plus two months after obtaining occupation certificate or the date of actual handing over of possession, whichever is earlier; as per proviso to section 18(1) of the Act read with rule 15 of the rules.
 - ii. The arrears of such interest accrued from 14.08.2016 till date of this order shall be paid by the promoter to the allottee within a period of 90

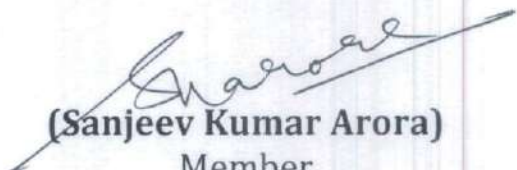


days from date of this order and interest for every month of delay shall be payable by the promoter to the allottee before 10th day of each subsequent month as per rule 16(2) of the rules.

- iii. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.
- 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., 10.70 % 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.
- v. The respondent is directed to issue a fresh statement of account after adjusting delay possession charges within 15 days from date of this order.
- vi. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period and thereafter payment of such dues, if any, the respondent shall handover the possession of the allotted unit complete in all aspects as per specifications of buyer's agreement.

40. Complaint stands disposed of.

41. File be consigned to registry.


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 07.04.2023