

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

Complaint no. :	2001 of 2022
Date of filing complaint:	17.08.2022
First date of hearing:	17.08.2022
Date of decision :	20.04.2023

Smt. Pallavi Rani W/o Sh. Mritunjay Kumar R/O: D5/201, Tulip Petals, Sector-89, Gurugram	Complainant
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Versus

M/s Ashiana Dwellings Private Limited Regd. office: Sector-2, Sohna, Gurugram	Respondent
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CORAM:	
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Sh. Divanshu Saraswat (Advocate)	Complainant
Sh. Deeptanshu Jain (Advocate)	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 29 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 complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S.no.	Particulars	Details
1.	Name of the project	Ashiana Mulberry-Phase II, Sector-2, Gurgaon
2.	Project type	Group Housing Project
3.	RERA registered/not registered	Registered vide registration no. 449 of 2019
	Validity status	30.06.2023
4.	DTPC License no.	16 of 2014 dated 10.06.2014
	Validity status	09.06.2014
	Licensed area	10.25 acres
	Name of licensee	Ashiana Dwellings Private Limited
5.	Provisional allotment dated	Not placed on record
6.	Unit no.	1201 on 12 th floor, tower T1 (As per page no. 36 of complaint)
7.	Unit area admeasuring	1730 sq. ft. (As per page no. 36 of complaint)
8.	Date of apartment buyer agreement	21.11.2015 (As per page no. 34 of complaint)
9.	Possession clause	Clause 11.2 of agreement <i>The company, based on its present plan</i>



		<p>and estimated and subject to force measure and all exceptions and conditions beyond control of the company and subject to the allottee making timely payments, endeavor to complete the construction work of the set apartment /building within <u>a period of 39 (thirty-nine) months from the date of this agreement or start of construction after grant of environment clearance by MOEF, whichever is later and grace period of 6 months ("completion date")</u> and shall thereafter apply for grant of occupation certificate and on receipt of the same will offer position of the set apartment to the allottee.</p>
10.	Date of start of construction	Not available on record
11.	Due date of possession	21.08.2019 (Calculated from date of agreement i.e. 21.11.2015 as date of start of construction is not available on record + 6 months grace period) Grace period of 6 months is allowed
12.	Payment plan	Construction linked payment plan (As per applicant ledger dated 14.10.2022 on page no. 43 of reply)
13.	Total sale consideration	BSP- Rs. 74,73,600/- TSC- Rs. 93,24,350/- (As per payment plan on page no. 72 of complaint)
14.	Amount paid by the complainant	Rs 92,18,945/- (As per applicant ledger dated 14.10.2022 on page no. 43 of reply)

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15.	Occupation certificate	02.11.2022 (As per page no. 127 of reply)
16.	Offer of possession	03.11.2022 (As confirmed by both the parties during proceedings dated 20.04.2023)

B. Facts of the complaint:

3. That the complainant in the year 2015 booked a residential space for an amount of Rs. 93,24,350/- in the project run by the respondent by the name and style of "Ashiana Mulberry" to be constructed at the piece and parcel of land situated at Sector 2, Sohna Road, having super area of 1730 sq. Ft.
4. That the apartment buyer agreement was signed on 21.11.2015 between the parties and as per the agreement, the respondent has to deliver the possession of the unit within 39 months from the date of the agreement, i.e., by February 2019.
5. That the complainant has paid Rs. 89,55,080/- towards the consideration of the unit as per the special payment plan. However, the respondent has failed to provide the possession of the unit. She tried to contact the respondent several times, however, it gave false assurances and misrepresentations to the complainant. Subsequently, she personally visited the site and found out that no sufficient construction work was going on, which points out towards the

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malafide intention of the respondent of not delivering the project and cheat the complainant.

6. That the respondent has violated the terms and conditions of the agreement by failing to hand over the possession to the complainant on time contractually determined by itself and after exhausting all the alternatives, the present complaint is being filed by the complainant against the respondent for its fraudulent actions and misdeeds.
7. That the complainant is an aggrieved party in this complaint and has suffered huge losses due to the respondent.

C. Relief sought by the complainant:

8. The complainant have sought following relief(s):
 - i. Direct the respondent to pay interest at the prescribed rate of interest for every month of delay.
9. 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 respondent:

10. The respondent by way of written reply made the following submissions: -
 - a. That the complaint filed by the complainant is baseless, vexatious and is not tenable in the eyes of law therefore, the complaint

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deserves to be dismissed at the threshold. Further, the present complaint lacks any cause of action to approach this Authority and as such the same deserves to be dismissed at the very threshold. The present complaint is filed with oblique motives without any merits. The allegations and averments in the complaint are false and frivolous and hence, there is no cause of action in the captioned complaint.

- b. That the complainant being investor approached the respondent out of her own free will and volition to apply for booking of a residential unit bearing no. A-1201 (hereinafter referred to as "the said unit") on 12th floor of tower T-1, in the respondent's project in the name and style of 'Ashiana Mulberry' situated at Sector-2, Village- Sohna, Gurugram (hereinafter referred to as the "said project") and applied for the said unit vide application form dated 23.10.2015.
- c. That in due compliance of the provisions of Real Estate (Development & Regulation) Act, 2016, the entire project has been registered under RERA having registration no. 449 of 2019 and tower 1, 2, 3 and EWS has been registered under RERA having registration no. 438 of 2019. Necessarily put, the respondent has been duly following all the mandates and provisions of the RERA Act, 2016 without any failure.

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- d. That it was only upon being satisfied, including understanding of all the terms and conditions about the entire project conditions, that the complainant opted for performance linked payment plan- a and also paid an amount of Rs. 7,50,000/- on 29.10.2015.
- e. That pursuant thereto, the said unit was allotted to the complainant vide flat buyer agreement was executed on 21.11.2015 (hereinafter referred to as "the flat buyer agreement").
- f. That the total sale consideration of the said unit was Rs. 88,25,058/-, out of which the respondent has received a sum of Rs. 84,31,809/- till date and a sum of Rs. 3,93,249/- still remains outstanding which she has failed to pay qua the allotment of the said unit.
- g. That the complainant was under an obligation to adhere to the payment plan opted by her. Nevertheless, she has frequently defaulted to adhere to the payment plan. It is most respectfully submitted before the Authority that despite receiving various reminders and demand letter(s) through email and otherwise sent by it demanding the outstanding payments, she has failed to adhere to the said payment plan opted. There is no iota of doubt that the said act of the complainant is highly deplorable and amounts to breach of terms of the flat buyer agreement.

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- h. That as per clause 11.2 of buyer agreement, the respondent never promised the complainant to handover the possession of the unit within 39 months plus grace period of 6 months from the date of execution of buyer agreement. The said clause clearly states that the respondent company shall handover the possession subject to application made for grant of occupation certificate and on receipt of the same shall offer possession of the said unit. Further, clause 11.3 of the agreement enumerates the "force majeure" clause wherein it has been laid down that completion date would automatically be deemed to be extended if the delay in completion of construction of the project has occurred due to force majeure or circumstances beyond the control of the respondent-company.
- i. That there were certain factors like non-availability of construction materials, electric power slow down, scarcity of water etc., were the substantial reasons which led to the delay in completing the construction of the project. Additionally, the construction of the project was stopped by Hon'ble National Green Tribunal pertaining to the factors of poor air quality. It is pertinent to point out here that due to stoppage of construction work, it may take another month's time to remobilize the construction work at project site. Thus, the calculation of period of completion for which the construction work was stopped shall be treated as zero period. Pursuant thereto, as per the terms of

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the apartment buyer agreement and the RERA registration, subject to timely payment by the allottee as well as subject to force majeure, the construction of the unit was to be completed by 10.03.2019 plus 6 months grace period unless there is delay due to "force majeure", court order etc. It is pertinent to mention herein that the construction of the project was stopped several times during the year 2017, 2018, 2019 and 2020 by the order of EPCA, HSPCB, NGT and the Hon'ble Supreme Court of India. It is most respectfully submitted that due to the increase in the level of pollution in the NCR region, the Hon'ble Supreme Court vide its order dated 14.11.2019 passed in the matter of **"MC Mehta Vs Union of India & Others"** bearing Writ Petition (c) No. **13029/1985** imposed complete ban on construction and excavation work across the National Capital Region from 04.11.2019, which was ultimately lifted on 14.02.2020. Ban on construction caused irreparable damage to the delivery timelines and the real estate developers' finances as it was unable to undertake any construction work during the aforesaid period and the same was beyond its control. Furthermore, the impact of Covid-19 pandemic has been felt throughout the globe and more particularly by real estate industry. The pandemic completely disrupted the supply chain of the respondent, therefore, the delay if any, is not attributable to the respondent herein.

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- j. That in order to curb down the air pollution, the Environment & Pollution (Prevention & Control) Authority, for National Capital Region, has reviewed the urgent action that needs to be taken for the implementation of the Graded Response Action Plan (GRAP) vide it's notification dated EPCA-R/2020/L-38 dated 08.10.2020 and has imposed ban on the use of diesel generator set with effect from 15.10.2020, which has further led to delay in the construction being raised.
- k. That even after the delay caused by the various complainant in making the payments towards their respective units and various orders of the EPCA, HSPCB and the Apex Court, the respondent has finished the major portion of the construction work and has accordingly applied for the occupation certificate on 31.03.2021
- l. That the respondent has always kept him updated with respect to the development of surrounding area as well as of construction of the project and repetitively apprised the complainant of the factors which has a visible adverse impact on the real estate industry.
- m. That the money received from the complainant/allottee has been utilized towards the construction of the project/flat. It is further pertinent to mention here that during the last three years, Real Estate Sector has seen several events which severely impacted the Real Estate Sector. It is further pertinent to mention here that



the construction works of the Project is still going on, despite of the financial obstacles due to economic slowdown and 72% of the construction cost is already being incurred as on date and major portion of the construction work has already been completed. Since the money paid by the allottee have only been utilized for construction of the project thus, it is not feasible for the respondent to pay interest as sought for, since the project is near completion, thus, the respondent puts forth before the complainant to wait till the possession for the reasons that awarding any relief as sought for by the complainant shall cause severe loss to the project and other allottee who are eagerly waiting for the possession of their respective flat. Therefore, the complainant in the instant case is not entitled for relief as sought for vide the captioned complaint.

- n. That due to the current pandemic COVID-19 situation the construction at the site is slowed down the respondent has already completed majority of the construction work in the project. It is relevant to mention here that the project is at the stage of completion and all the primary construction activities have been completed. Since the money paid by the allottee have only been utilized for construction of the project thus, it is not feasible for the respondent to pay back the interest amount as sought for, since the project is nearing completion and the same

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will cause severe loss to the project and other allottee who are eagerly waiting for the possession of their respective flat.

- o. That the jurisdiction of the Authority cannot be invoked as there is no cause of action which arose within the jurisdiction of the Authority. He has prayed for reliefs which otherwise have to be claimed in a suit for damages and recovery, after paying appropriate court fee. That in order to avoid the payment of court fee, he has raised a dispute of a civil nature, which requires elaborate evidence to be led and which cannot be adjudicated upon under the summary jurisdiction of the Authority. In this view of the matter, the complaint is liable to be dismissed with costs.
- p. That the law has been settled by the Apex Court that the power to grant compensation vests only with the Adjudicating Officer and therefore, the prayer seeking compensation by the complainant cannot be decided by the Authority.
- q. That the dispute between the parties involves complicated questions of facts and law, which necessarily entail the leading of copious evidence. The issues raised by the complainant cannot be addressed in a complaint before the Authority which follows a summary procedure. In this view of the matter, the complaint is liable to be dismissed on this ground alone.

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r. That the complainant has applied for the allotment of the unit as an investment and not for personal use of the complainant which is abundantly clear and evident from the conduct of the complainant. Admittedly, he has invested in the unit with intent to have monetary gains by way of reselling the unit to a higher bidder at an appreciated value. Thus, in view of the constant precedents upheld by various Real Estate Regulatory Authorities across the country, the present complaint is not maintainable wherein, it is held unanimously that the investors of real estate projects are not entitled to relief from Real Estate Regulatory Authority.

11. 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:

12. The plea of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. 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

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

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 promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.

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 objections raised by the respondent.

F.I Objection regarding the complainant being investor.

13. It is pleaded on behalf of respondent that complainant is investor and not consumer. So, he is entitled to any protection under the Act and

the complaint filed by her under Section 31 of the Act, 2016 is not maintainable. It is pleaded that the preamble of the Act, states that the Act is enacted to protect the interest of consumers of the real estate sector. The Authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states the main aims and objects of enacting a statute but at the same time, the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the buyer's agreement, it is revealed that the complainant is buyer and paid considerable amount towards purchase of subject unit. At this stage, it is important to stress upon the definition of the term allottee under the Act, and the same is reproduced below for ready reference:

"Z(d) 'allottee' in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold(whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent."

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14. In view of above-mentioned definition of allottee as well as the terms and conditions of the apartment buyer's agreement executed between the parties, it is crystal clear that the complainant are allottee as the

subject unit allotted to them by the respondent/promoter. The concept of investor is not defined or referred in the Act of 2016. As per definition under section 2 of the Act, there will be 'promoter' and 'allottee' and there cannot be a party having a status of 'investor'. The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal No.000600000010557 titled as *M/s Srushti Sangam Developers Pvt Ltd. Vs Sarvapriya Leasing (P) Ltd. and anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottee being investors are not entitled to protection of this Act also stands rejected.

F.II Objection regarding delay due to force majeure circumstances

15. The respondent-promoter has raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the National Green Tribunal, Environment Pollution (Prevention & Control) Authority. Since there were circumstances beyond the control of respondent, so taking into consideration the above-mentioned facts, the respondent be allowed the period during which his construction activities came to stand still, and the said period be excluded while calculating the due date. But the plea taken in this regard is not tenable. The due date for completion of project is calculated as per clause 11.2 of agreement which comes out to be 21.08.2019. Though there have been various orders issued by various competent authorities to curb the

environment pollution, but these were for a short period of time and the fact that such type of orders are passed by the various competent Authorities from time to time was already known to the respondent-builder. Moreover, grace period of six months as provided under clause 11.2 has been allowed to the respondent being unconditional and thus, no further grace period in this regard can be allowed to the respondent.

16. The respondent-promoter has raised the contention that the construction of the project was delayed due to reasons beyond the control of the respondent such as COVID-19 outbreak, 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 IAs 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."

17. 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 21.08.2019. 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

F.III Objection regarding non-payment by the complainant.

18. The respondent-builder submitted that the complainant-allottee has failed to make timely payment towards consideration of allotted unit. Despite issuance of various demand notices & reminders, it never came forward to make payment towards due installments. The Authority observes that the subject unit was booked under construction linked payment plan and she has already paid an amount of Rs. 92,18,945/- towards sale consideration of Rs. 93,24,350/- constituting more than 98% of total sale consideration. Thus, the plea of the respondent that the complainant is not coming forward in making payment towards consideration of allotted unit is not tenable.

G. Findings on the relief sought by the complainant

Relief sought by the complainant:

G.I Direct the respondent to pay interest at the prescribed rate of interest for every month of delay.

19. 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."

20. Clause 11.2 of the buyer's agreement 21.11.2015 provides for handing over of possession and is reproduced below:

"Clause 11.2

The company, based on its present plan and estimated and subject to force measure and all exceptions and conditions beyond control of the company and subject to the allottee making timely payments, endeavor to complete the construction work of the set apartment /building within a period of 39 (thirty-nine) months from the date of this agreement or start of construction after grant of environment clearance by MOEF, whichever is later and grace period of 6 months ("completion date") and shall thereafter apply for grant of occupation certificate and on receipt of the same will offer possession of the set apartment to the allottee.."

21. 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-nine months from the date of execution of agreement or grant of environment clearance by MOEF, whichever is later and grace period of 6 months. In the present case, the date of start of construction is not available on record and therefore, due date of handing over of possession is calculated from date of agreement. The buyer's agreement inter-se parties was executed on 21.11.2015; as such the

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due date of handing over of possession without considering grace period comes out to be 21.02.2019.

22. **Admissibility of grace period:** As per clause 11.2 of buyer's agreement dated 21.11.2015, the respondent-promoter proposed to handover the possession of the said unit within a period of thirty-nine months and six months grace period. 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 11.2 of the buyer's agreement dated 21.11.2015, the due date of possession comes out to be 21.08.2019.

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

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

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

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

24. 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.
25. 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., 20.04.2023 is @ 8.70 %. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.
26. 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;"*
27. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.70 % by the respondent/promoters which is the same as is being granted to them in case of delayed possession charges.

28. 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 are 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 11.2 of buyer's agreement executed between the parties on 21.11.2015, the possession of the subject apartment was to be delivered within a period of thirty-nine months and six months grace period from date of execution of such agreement or start of construction, whichever is later. Since date of start of construction is not available on record, the due date of possession is calculated from the date of execution of buyer's agreement i.e.; 21.11.2015, which comes out to be 21.08.2019. The respondent has offered the possession of the allotted unit on 03.11.2022 as confirmed by both the parties vide proceedings dated 20.04.2023; after obtaining occupation certificate from competent Authority on 02.11.2022.
29. 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 been obtained from the competent Authority on 02.11.2022 and it has also offered the possession of the allotted unit on 03.11.2022. 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 he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject

to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e. 21.08.2019 till the expiry of two months from the date of offer of possession or till actual handing over of possession, whichever is earlier. The respondent-builder has already offered the possession of the allotted unit on 03.11.2022, thus delay possession charges shall be payable till offer of possession plus two months i.e. 03.01.2023.

Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 21.11.2015 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., 21.08.2019 till offer of possession plus two months i.e. 03.01.2023; 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.

30. The respondent through its counsel stated at bar that the complainant has failed to make payment of Rs. 4,40,439/- and the same still stands outstanding on its part. On the other hand, the complainant submitted that the despite payment of more than basic sale price of allotted unit and delay of more than three years in offer for possessions, possession of allotted unit is yet not handed over to her. In view of aforesaid circumstances, the respondent is directed to issue revised statement of account after adjusting delay possession charges as per direction

above, within 15 days from date of this order and the respondent is further directed to handover the possession complete in all aspects as per specifications of buyer's agreement in next 15 days on payment of outstanding dues, if any, remains outstanding.

H. Directions of the authority

31. 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):

- a. 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.; 21.08.2019 till the date of offer of possession (03.11.2022) plus two months i.e. 03.01.2023; as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- b. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.
- c. 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.



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- d. The respondent is directed to issue a fresh statement of account after adjusting delay possession charges within 15 days from date of this order.
- e. 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 within next 15 days.
- f. The respondent is directed to pay arrears of interest accrued, if any, after adjustment in statement of account; within 90 days from the date of this order as per rule 16(2) of the rules.
32. Complaint stands disposed of.
33. File be consigned to registry.

HARERA
GURUGRAM

V. I - S
(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 20.04.2023