

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

Complaint no. :	4296 of 2021
Date of filing complaint:	02.11.2021
First date of hearing:	23.11.2021
Date of decision :	28.04.2023

Dr Namrata Manshani R/o: Tower 1, 702, Parsvanath Greenville, Sector 48, Sohna Road	Complainant
Versus	
M/s Vatika Limited address: A-002, INXT City Centre, Ground Floor, Block -A, Sector -83, Vatika India Next Gurugram, Haryana - 122012.	Respondent

CORAM:	
Shri Ashok Sangwan	Member
Shri. Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Uday Bedi	Complainant
S/Sh. Venket Rao & Pankaj Chandola	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 provisions of

the Act or the rules and regulations made there under or to the allottees 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:

	Heads	Information
1.	Project name and location	“Vatika Town Square” at sector 82, Vatika India Next, Gurgaon, Haryana.
2.	Project area	1.60 acres
3.	Nature of the project	Commercial complex
4.	DTCP License	113 of 2008 dated 01.06.2008 valid upto 31.05.2018 71 of 2010 dated 15.09.2010 valid upto 14.09.2018 62 of 2011 dated 02.07.2011 valid upto 0.07.2024 76 of 2011 dated 07.09.2011 valid upto 06.09.2017
5.	RERA Registered/ not registered	40 of 2021 dated 10.08.2021 valid upto 31.03.2022
6.	Unit no.	312, 2 nd Floor, block A (Page 16 of complaint)
7.	Unit area admeasuring	450 sq.ft. (super area)
8.	Date of allotment letter	NA
9.	Date of builder buyer agreement	31.08.2015 (Page 14 of complaint)
10.	Due date of possession	31.08.2019 [Due date of possession calculated from the date of BBA]



11.	Possession clause	<p>17.Handing over possession of the commercial unit</p> <p><i>The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said unit within a period of 48 months from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in this agreement or due to failure of buyer(s) to pay in time the price of the said commercial unit along with all other charges and dues in accordance with the schedule of payments.</i></p> <p>(Emphasis supplied)</p>
12.	Total sale consideration	Rs. 27,15,300/- as per SOA dated 19.11.2021 (page 37 of reply)
13.	Amount paid by the complainant	Rs. 5,84,950/- as per SOA dated 19.11.2021 (page 37 of reply)
14.	Occupation certificate	17.02.2022
15.	Intimation of offer of possession	20.10.2018 (page 29 of reply)
16.	Notice for termination	18.01.2019 (page 34 of reply)
17.	Letter for cancellation	27.07.2021 (page 35 of reply)

B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint:
 - a. The complainant booked a unit for a total sale consideration of Rs. 27,15,300/- which includes BSP, PLC, & EDC/IDC. She made payment of Rs. 5,84,950/- to the respondent. As per buyer's agreement dated 31.08.2015, the respondent allotted a unit bearing no. 312, 2nf floor, block A admeasuring 450 sq.ft. to the complainant. As per para no. 17 of the buyer's agreement, the



respondent agreed to deliver the possession of the unit within a period of 48 months from the date of execution of buyer agreement.

- b. In fact, on 20.11.2018, in blatant disregard of the terms and conditions mentioned in the buyers' agreement, the complainant received an email that the payment demand had been raised and the same become due and due to delay in payment, interest was getting accumulated. The email further stated that finishing work was going on at the project which would take a maximum of 60 to 90 days after which handing over of possession would be initiated. It is therefore clear that even as on 20.11.2018, the respondent was far from offering possession before which the payment was being demanded by it.
- c. Since the said email dated 20.11.2018 was completely illegal and amounted to extortion, the complainant responded immediately on 29.11.2018 stating that the progress of development was at a dismal stage and that it was the first time any intimation was received by them for payment. Hence, it was wrong of the respondent to demand any interest. The complainant stated that as per the buyer's agreement, once the offer of possession would be issued, payment towards said unit would also be made.
- d. When no response to the above was received, the complainant once again through her husband sent an email dated 08.01.2019 seeking details of when the project would be completed and the



process for handing over of the unit would begin so that she can arrange for the payment of the rest of the funds.

- e. There was no response received by the complainant on the emails sent to the respondent. There was complete silence on its part throughout the year 2019 even though she repeatedly tried to follow up on the possession timeline as it could be seen that the work at the project site was at a dismal stage. Suddenly, on 12.08.2020, 21 months after the first intimation on 20.11.2018, the complainant received another email and stated that finishing activities were going on and there was a delay in the same due to covid-19. It was further wrongly stated that an intimation had already been issued and that payment was due. The complainant responded on 01.11.2020 via email and requested the respondent for offer of possession as there had been no possession letter sent. Therefore, there was no payment that had become due as a result of which no interest could be accumulated.
- f. On 06.11.2020, the respondent sent another email containing an illegal termination notice warning the complainant that the allotment was liable to be cancelled in case payment was not made within 7 days and that the payment made was liable to be forfeited.
- g. Over the course of the last six years, the complainant has lost complete faith in the respondent and has become aware of the criminal and malicious intentions of its management by extorting into making payments illegally without having the capability of developing the project and hand over possession



of the said unit in time. All the demands raised by it in its communications received by her are completely illegal, malicious and amount to her harassment. The buyer's agreement clearly provides that the balance payment was supposed to be paid upon offer of possession being sent to her which has till date not been shared with her.

- h. Since there was an inordinate delay in handing over possession of the said unit, the complainant had issued a legal notice to the respondent asking for details regarding possession and also claiming interest on the delay caused by it in handing over possession, in accordance with the applicable laws. Vide the said notice, she further protested against the illegal demands being raised by it. The complainant received an email from the respondent on 24.02.2021 containing a notice for termination of the said unit. The said notice contains reference to imaginary letters dated 01.11.2018 and 06.12.2018 that have never been received by her wherein it claimed to have raised a demand for payment of Rs. 34,13,645.55 from her.
- i. In response to the aforesaid notice, the complainant through her lawyer had replied to the aforesaid communication via email dated 24.02.2021 received from the respondent, denying and disputing the illegal termination notice and further reminding it to share the offer of possession and respond to the legal notice sent to it on 14.12.2020. However, there has been complete silence from the end of the respondent towards the legal notice issued by her. The respondent's actions are evidently deliberate and amount to harassment of the



complainant. It has failed to show even one proof that the any intimation of offer of possession was sent to her.

- j. That the entire basis of notice of termination issued by the respondent is a sham and moonshine. The emails warning the complainant that the payment had become due were completely illegal and ultra vires of the buyer's agreement. Further, the lies of the respondent are clear from the fact that despite passing of 21 months from November 2018 to August 2020, the respondent claim to be doing the finishing work at the project site. The communication of 20.11.2018 was therefore false to the knowledge of the respondent and the project was nowhere near the stage of finishing and there is no explanation provided by it for the same. The respondent had promised her in November 2018 that the finishing work would be complete in 60-90 days. However, even after 18 months, it could not complete the same and to wriggle out of the same tried a desperate and dishonest attempt to blame the delay on COVID-19 which had its onset only in March 2020, i.e., more than a year after the finishing work ought to have been completed as per its email.
- k. It is also pertinent to mention that the account statement made available to the complainants mentions that interest on overdue amounts has been levied upon her on 06.12.2018 and 16.01.2019. The account statement is illegal and incorrect to that extent as the complainant is not liable to make any payment to it. Therefore, there does not arise any occasion for any



interest on delayed payment being levied upon the complainant.

- l. It is submitted that the notice of termination of the respondent is further completely illegal and liable to be set aside as it is an admitted position that the finishing work had not been completed even until August 2020, and it is not clear as to how any further payment would be due as the offer of possession could not have been shared. The notice of termination clearly says that intimation was shared in 2018. However, if the works had not been completed even until August 2020, it is impossible that the payments became due in 2018. This act of the respondent once again evidence of the fact that it is deliberately acting in violation and breach of the builder buyer agreement knowing that it has already breached the timelines and that the tactics to demand money and threatening her with termination is only a tactic to arm twist her who would have availed legal remedies against the respondent.
- m. In light of the above, it is clear that there is a gross delay in handing over possession of the said unit which was supposed to be completed in July 2019. It is also clear that all the payment demands and the notice of termination are ex facie illegal and amount to harassment and are in total violation of the builder buyer agreement and the Real Estate (Regulation and Development) Act, 2016.

C. Relief sought by the complainant:

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



- i. The respondent is directed to pay to the complainant delayed possession charges for every month of delay in handing over possession at a rate prescribed by Authority.
- ii. The respondent is directed to execute the conveyance deed in respect of the said unit being unit no. 312 situated on 2nd floor of block A measuring approximately 450 sq. ft. super area along with proportionate, indivisible pro-rata share in the land underneath forming the footprint of the said building block.
- iii. The respondent be directed to hand over physical, vacant and peaceful possession of the said unit being unit no. 312 situated on 2nd floor of block A measuring approximately 450 sq. ft. super area along with proportionate, indivisible pro-rata share in the land underneath forming the footprint of the said building block.

D. Reply by respondent:

5. The respondent made the following submissions in its reply:
 - (a) That the complaint under reply is a bundle of lies, proceeded on absurd grounds and is filed without any cause of action hence is liable to be dismissed. She has to failed to provide the correct/complete facts and the same are reproduced hereunder for proper adjudication of the present matter. She is raising false, misleading and baseless allegations against the it with intent to make unlawful gains.
 - (b) It is submitted that the complainant has not approached the Authority with clean hands and has suppressed the relevant



material facts. It is submitted that the complaint under reply is devoid of merit and the same be dismissed with cost.

- (c) At the outset, around October 2014, the complainant learned about the commercial project launched by the respondent titled as "**Vatika Town Square 2**" situated at Sector 82, Gurugram and visited its office to know the details of the said project. She further inquired about the specifications and veracity of the commercial project and was satisfied with every proposal deemed necessary for the development.
- (d) That after having dire interest in the commercial project constructed by the respondent, the complainant booked a unit vide application form dated 27.10.2014 and paid an amount of Rs. 2,76,950/- for further registration on her own judgement and investigation. It is evident that the she was aware of each and every terms of the application form and agreed to sign upon the same with free will and consent.
- (e) That on 08.12.2014; the respondent issued an allotment letter to the complainant and thereby allotted a unit bearing no. 312, 2nd floor, block A, admeasuring to 450 Sq. ft. for a total sale consideration of Rs. 24,75,000/- in the aforesaid project. On 31.08.2015, a builder buyer agreement was executed between the parties for the said unit. It is pertinent to mention that the complainant was well aware of the terms and conditions of the said agreement and agreed to sign upon the same without any protest or demur.
- (f) It is submitted that the complainant was aware of the payment plan and agreed to sign on the same with free will and without



any protest or demur. She is being the habitual defaulter in terms of payment has failed to adhere to the payment plan.

- (g) It is to note, that the complainant was very well aware of the payments schedule and that the timely payment was essence for completion of the project but despite after being aware of the payment schedule the respondent had to issue payment reminder on 08.01.2015, calling upon the complainant to pay the instalment of Rs. 3,07,919.05/- so agreed under the agreement.
- (h) It is submitted that the complainant is a habitual defaulter and despite after knowing that payment was essence for timely completion the complainant has failed to pay the instalment on time even after making reminders. It is pertinent to bring into the knowledge of the Authority that she has failed to make any payment after the booking amount and as on date the total sale consideration of the respective unit is due and payable on account of the complainant since long back i.e., year 2014.
- (i) It is pertinent to mention that since starting the respondent had been running behind the complainant to make the payment as due and payable towards the total sale consideration. As on date an amount of Rs.3,10,292/- is due and pending on account of the complainant towards the respective unit. Despite after not receiving the instalment as due and payable on account of the complainant, the respondent in the matter has managed to complete the construction of the said project and has offered the possession of the said unit allotted to the complainant on 20.10.2018.



- (j) That vide offer for possession letter dated 20.08.2018, the respondent yet again called upon the complainant to come forward to take the possession of the said unit and clear the dues of Rs. 24,05,368/- which was due and payable at the time of possession.
- (k) Despite after intimating the complainant about the exact status of the project and calling upon her to take the possession as offered. The respondent was again bound to issue a final intimation letter for possession on 06.12.2018, calling upon her to take the possession as already offered on 20.08.2018. The complainant in the present matter was well aware of the payment schedule in respect to the unit allotted by it. However, she has failed to pay any amount towards the total sale consideration since the date of booking.
- (l) It is an evident fact that the respondent at times had issued payment reminders calling upon the complainant to pay the instalment amount as due and payable towards the respective unit. Yet, she has failed to pay any amount after several reminders. As on date she has merely paid the booking amount and still a substantial amount of money is due and payable on her account. In spite after delay in payment the respondent has managed to complete the construction of the said project even after construction ban and other reasons beyond its control and has offered possession to her on 20.10.2018. However, she has failed to come ahead and take possession as on date.
- (m) That in spite after requesting the complainant to take the possession, the respondent yet again to make a final intimation



letter for possession on 06.12.2018, calling upon her to take the possession of the respective unit and clear the amount due and payable on account of the complainant since long back but the same was left unanswered. Even after making several reminders and request calling upon the complainant to take the possession as offered by the respondent on 20.08.2018, the respondent issued a notice of termination dated 18.01.2019, calling upon her to immediately make payment of Rs. 25,00,264/- on or before seven days from the date of letter failing which the respondent would be constrained to 'cancel/terminate' the unit with immediate effect.

- (n) The respondent vide communication dated 06.11.2020, intimated the complainant that the respective unit was complete and further granted final opportunity to her to come forward and take possession. Yet, she has failed not only to take the possession but also to revert the same reminders made by it at time. Despite after such delay and demur on account of the complainant in making the requisite amount of instalment due and payable, the respondent while having customer centric approach again called upon her vide notice for termination letter dated 24.02.2021 and provided sufficient time to make the amount due and payable towards the respective unit.
- (o) It is a matter of fact, that inspite offering possession the complainant has failed to come to take possession but has also failed to pay the amount as due and payable for which the respondent has reminded several times. On account of non-



payment of dues and no response from the complainant it was constrained to cancel unit allotted to her on 27.07.2021.

- (p) That further, the complainant has harped that the respondent has failed to offer timely possession of the respective unit. It is pertinent to note that since starting the respondent is running behind her first to take make the requisite payment due for the unit and then to take possession as offered by the respondent long back on 20.10.2018. The respondent provided complainant with sufficient opportunity at times to pay the requisite instalment amount and take possession. However, the complainant since starting has not only failed to comply with the same but has also failed to reply to the reminders made by it. As a result, it was forced to cancel the unit allotted to the complainant.
- (q) That, it is evident that the entire case of the complainant is nothing but a web of lies, false and frivolous allegations made against the respondent. The complainant has not approached the Authority with clean hands. Hence, the present complaint deserves to be dismissed with heavy costs. It is brought to the knowledge of the Authority that she is guilty of placing untrue facts and are attempting to hide the true colour of her intention.
- (r) That the complainant herein, has suppressed the above stated facts and has raised this complaint under reply upon baseless, vague, wrong grounds and has mislead the Authority, for the reasons stated above. It is further submitted that none of the



reliefs as prayed for by the complainant are sustainable before the Authority and in the interest of justice.

6. 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. The written submissions made by both the parties along with documents have also been perused by the authority.

E. Jurisdiction of the authority:

7. 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

8. 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

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



Section 11(4)(a)

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

Section 34-Functions of the Authority:

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

10. 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.
11. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in ***Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.*** SCC Online SC 1044 decided on 11.11.2021 wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the



regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

F. Findings on the relief sought by the complainants:

- F.I Direct the respondent to handover physical, vacant and peaceful possession of the said unit being unit no. 312 situated on 2nd floor of block A measuring approximately 450 sq.ft. super area along with proportionate, indivisible pro-rate share in the land underneath forming the footprint of the said building block.**
- F.II Restrained the respondent from cancelling the allotment of the complainant for the said unit being unit no. 312 situated on 2nd floor of block A measuring approximately 450 sq.ft. super area along with proportionate, indivisible pro-rata share in the land underneath forming the footprint of the said building block**
12. The complainant was allotted the subject unit 312, 2nd floor, block A admeasuring 450 sq.ft. for a total sale consideration of Rs. 27,15,300/-. A builder buyer agreement was executed between the parties w.r.t that unit on 31.08.2015. The complainant stated depositing payments against that unit and paid a total sum of Rs. 5,84,950/- as evident from statement of account dated 19.11.2021. The due date for completion of the project and offer of possession of the allotted unit was agreed upon between the parties as 31.08.2019. It is the case of complainant that the respondent/ builder was unable to complete the project and offer possession of the allotted unit within the stipulated time. But the version of respondent is otherwise and who took a plea that after the completion of the project, it informed the allottee about the same,



followed by an offer of possession on 20.10.2018 of the allotted unit and payment of the amount due. But the allottee failed to pay that amount due leading to cancellation of allotment of the unit vide letter dated 27.07.2021. The respondent sent an intimation of possession of the allotted unit to the complainant vide letter dated 20.10.2018 but without obtaining occupation certificate and ultimately issuing conditional letter for cancellation of the unit vide letter dated 27.07.2021 which cannot be said to be legal and valid in the eyes of law. The respondent/builder failed to complete the project by the due date i.e., 31.08.2019. So, offering that unit for possession vide letter dated 20.10.2018 and later on cancelling the same vide letter dated 27.07.2021, are not sustainable in the eyes of law. Secondly, as per the payment plan attached with the buyer's agreement dated 31.08.2015, the allottee was required to pay Rs.2,33,343/- & Rs.3,50,015/- of BSP, at the time of booking, and within 60 from the date of booking along with remaining of BSP + other charges on offer of possession respectively. The complainant had paid a sum of Rs. 5,84,950/- against the BSP of Rs. 27,15,300/- which is about 21.54% of the sale consideration. The allottee was required to pay Rs. 5,83,358/- of the basic sale price within 60 days of the date of booking and she made payment more than Rs. 5,83,258/-. The developer raised demands against the allotted unit vide letter dated 20.10.2018, terming it as "an intimation of possession" even without completing the project and receipt of occupation certificate. So, in such a situation, the demands raised against the allotted unit and letter for cancellation dated 20.10.2018 & 27.07.2021 respectively without valid offer of



possession are not sustainable in the eyes of law and the same are hereby ordered to be set-aside.

13. Though, while filing written reply on 22.07.2022, it was pleaded by the respondent/builder that the unit allotted in favour of the complainants has been cancelled on the ground of non-payment of dues vide letter dated 27.07.2021 but there is no whisper w.r.t. its re-allotment in favour of any person including Mr. Naresh Parshad vide letter dated 04.08.2021. If that would have been the position and the factual matrix, then the factum of re-allotment of the subject unit might have been disclosed in the pleadings while filing written reply. So, the plea of the respondent w.r.t. re-allotment of the subject unit after its cancellation vide letter dated 27.07.2021 is nothing but an afterthought ploy to defeat the legitimate claim of the allottees and deprived them of their valuable rights in that property. So, the plea of respondent/builder w.r.t. re-allotment of the subject unit vide letter dated 04.08.2021, in favour of Mr. Naresh Parshad is after thought just to escape the consequences of the case and defeat the genuine claim of the claimants. Thus, the re-allotment of the subject unit vide letter dated 04.08.2021, is ordered to be set-aside and the unit is ordered to be restored to its original position.

F.II Delay possession charges.

14. 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

15. Clause 17 the agreement to sell provides for handing over of possession and is reproduced below.

17.Handing over possession of the commercial unit

The Developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said unit within a period of 48 months from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in this agreement or due to failure of buyer(s) to pay in time the price of the said commercial unit along with all other charges and dues in accordance with the schedule of payments.

16. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to providing necessary infrastructure specially road, sewer & water in the sector by the government, but subject to force majeure conditions or any government/regulatory authority's action, inaction or omission and reasons beyond the control of the seller. The drafting of the clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in making payment as per the plan may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the agreement to sell by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder



has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

17. **Payment of delay possession charges at prescribed rate of interest:** 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.

18. 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.
19. 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., 28.04.2023 is **8.70%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.70%**.



20. 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;"*

21. 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.
22. 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-builder 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 17 of the agreement executed between the parties on 31.08.2015, the possession of the subject unit was to be delivered within 48 months from the date of agreement to sell. Therefore, the due date of handing over possession was



31.08.2019. The respondent failed to handover possession of the subject unit till date of this order. 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-builder 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., 31.08.2019 till date of grant of OC i.e., 17.02.2022 plus two months (17.04.2022) 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.

F.II Conveyance deed

23. With respect to the conveyance deed, the provision has been made under clause 10 of the buyer's agreement and the same is reproduced for ready reference.

8. Conveyance

"Subject to the approval/no objection/clearances of the appropriate authority, as may be required in terms of statutory laws/rules, the Developer will execute and get registered the Conveyance Deed in respect of the Said Unit, after all dues of the Developer and other statutory dues have been paid in full by the Buyer and the said commercial unit is ready for occupation, to confer upon the buyer/his nominee, marketable title to the said commercial unit free from all encumbrances in due course of time. The Conveyance Deed shall be in the form and content as approved by the Developer's advocate. The buyer undertakes to execute conveyance deed within the time stipulated by the developer in its written notice. The buyer will be solely responsible and liable for compliance of the provisions of Indian Stamp Act 1899 including any actions taken or deficiencies/penalties imposed by the competent authority(ies). The Buyer, subject to the income tax and



other clearances, permissions, sanctions and NOC's as may be required will get the conveyance deed executed and registered in his own name or in the name of his nominee....."

24. Section 17 (1) of the Act deals with duties of promoter to get the conveyance deed executed and the same is reproduced below:

"17. Transfer of title.-

(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws:

Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.

25. The respondent is under obligation as per section 17 of Act to get the conveyance deed executed in favour of the complainant. Accordingly, the respondent is directed to execute the conveyance deed in favour of the complainant after receiving all pre-requisite from the competent authorities, if any.

H. Directions of the Authority:

26. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the



functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i. The cancellation of the allotted unit vide letter dated 27.07.2021 on the ground of non-payment of dues and its re-allotment vide letter dated 04.08.2021 are hereby ordered to be set-aside and the same is re-stored to its original position. A direction is given to the respondent/builder to offer possession of the allotted unit to the complainants and give its possession after receipt of payments due.
- ii. The respondent is directed to pay interest at the prescribed rate of 10.70% p.a. for every month of delay from the due date of possession i.e., 31.08.2019 till date of grant of OC i.e., 17.02.2022 plus two months (17.04.2022) 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.
- iii. The respondent is under obligation as per section 17 of Act to get the conveyance deed executed in favour of the complainants. Accordingly, the respondent is directed to execute the conveyance deed in favour of the complainants after receiving all pre-requisite from the competent authorities, if any.
- iv. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order as per rule 16(2) of the rules.
- v. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period and to take the possession of the subject unit within two months from date of this order.



- vi. 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% which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- vii. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.
27. Complaint stands disposed of.
28. File be consigned to the registry.

Sanjeev Kumar Arora

Ashok Sangwan
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 28.04.2023