

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

Complaint no.	:	5694 of 2022
Date of filing	:	07.09.2022
First date of hearing:		08.12.2022
Date of decision	:	03.05.2023

1. Sh. Ramesh Chand S/o Sh. Hari Gobind 2. Smt. Naveeta Sehgal W/o Sh. Pardeep Sehgal Both R/o: B-4012, B-Block, Devinder Vihar, Sector 56, Gurugram, Haryana-122011	Complainants
Versus	
Angle Infrastructure Private Limited Regd. office: 406, 6 th floor, Elegance Tower, 8, Jasola District Centre, Jasola, New Delhi 110025	Respondent

CORAM:

Shri Ashok Sangwan

Member**APPEARANCE:**

Shri Jagdeep Kumar (Advocate)

Complainants

Shri Shivam Rajpal (Advocate)

Respondent

ORDER

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

A. Unit and Project related details:

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

S.no.	Particulars	Details
1.	Name of the project	"Florence Estate", Sector- 70, Gurgaon
2.	Nature of project	Group housing project
3.	DTPC License no.	170 of 2008 dated 22.09.2008
	Validity status	21.09.2020
	Licensed area	14.468 acres
	Name of licensee	Central Government Employees Welfare Housing Organization
4.	RERA registered/not registered	Registered vide registration no. 287 of 2017 dated 10.10.2017
	Validity status	31.12.2018
5.	Allotment letter	25.04.2013 [As per page no. 20 of complaint]
6.	Unit no.	B-2502 on 24 th floor of tower B [As per page no. 26 of complaint]
7.	Unit area admeasuring	1865 sq. ft. [Super area] [As per page no. 26 of complaint]
8.	Date of apartment buyer agreement	17.06.2013 [As per page no. 23 of complaint]

9.	Payment plan	Construction linked plan [As per customer ledger on page no. 50-54 of complaint]
10.	Total sale consideration	Rs. 91,38,500/- (BSP) Rs. 99,77,750/- (TSC) [As per customer ledger dated 27.07.2022 on page no. 50 of complaint]
11.	Amount paid by the complainants	Rs. 1,00,24,679/- [As per customer ledger dated 27.07.2022 on page no. 53 of complaint]
12.	Possession clause	<p>Clause 3.1 of agreement</p> <p><i>3.1 Subject to Clause 10 herein or any other circumstances not anticipated and beyond the reasonable control of the Seller and any restraints/ restrictions from any courts/authorities and subject to the Purchaser(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and having complied with all provisions, formalities, documentation, etc. as prescribed by the Seller, whether under this Agreement or otherwise, from time to time, the Seller proposes to offer to hand over the possession of the Apartment to the Purchasers) <u>within a period of 4 (four) years (with a grace period of 9 (nine) months from the date of commencement of construction or execution of this Agreement or date of obtaining all licenses, permissions or approvals for commencement of construction, whichever is later, subject</u></i></p>

		<i>to Force Majeure The Purchasers) agrees and understands that the Seller shall be entitled to a grace period of 9 (nine) months after the expiry of 4 (four) years for offer to hand over the possession of the Apartment to the Purchaser. Any application for the occupation certificate in respect of the Project shall be filed in the due course....</i>
13.	Building plan approvals	Not available on record
14.	Environmental clearance	15.10.2013 [As per page no. 13 of reply]
15.	Commencement of construction	01.06.2013 [As per customer ledger dated 27.07.2022 on page no. 51 of complaint]
16.	Due date of possession	15.07.2018 [Calculated from the date of environment clearance i.e., 15.10.2013, being later + grace period of 9 months] Grace period of 9 months is allowed.
17.	Occupation certificate	Not obtained
18.	Offer of possession	Not offered

B. Facts of the complaint

- That somewhere in the month of June 2012, the respondent through its business development associate approached the complainants with an offer to invest and buy a flat in its proposed project, which was going to launch exclusively That the respondent advertised itself as a very

ethical business group that lives onto its commitments in delivering its housing projects as per promised quality standards and agreed timelines. It further assured to them that it have secured all the necessary sanctions and approvals from the appropriate authorities for the construction and completion of the real estate project sold by it.

4. That somewhere in the month of October 2012, the respondent through its business development associate approached the complainants with an offer to invest and buy a unit in the proposed project of respondent, which was going to launch exclusively for Central Government Employees by the name and style of "Florence Estate" in the Sector-70, Gurugram (hereinafter referred to as "said project"). A meeting in this regard was held on 25.10.2012 at its branch office, where it explained the details and highlighted the amenities of the project.
5. That the respondent also shown the brochures and advertisement material of the said project to the complainants and assured that the allotment letter and builder buyer agreement would be issued to the complainants within one week of said booking.
6. That the complainants while relying upon those assurances and believing them to be true, booked a residential flat on 25.10.2012 bearing no. B-2502 on 24th floor in tower B measuring super area of approximately 1865 sq. ft in the project to be developed by the respondent and paid booking amount of Rs. 10,00,000/- through cheque bearing no. 051766 and 012496 dated 25.10.2012.

7. That as per said application form, the price of the said flat was agreed at the rate of Rs. 4900/- per sq. ft. At the time of execution of the said application form, it was agreed and promised by it that there shall be no change, amendment or variation in the area or sale price of the said flat from the area or the price committed by it in the said application form or agreed otherwise.
8. That approximately after six months on 25.04.2013, the respondent issued provisional allotment letter to complainants. A buyer's agreement dated 17.06.2013 was executed between the parties consisting very stringent and biased contractual terms which are illegal, arbitrary, unilateral and discriminatory in nature, because every clause of agreement was drafted in a one-sided way and a single breach of unilateral terms of buyers agreement by complainants, will cost him forfeiting of 15% of total consideration value of unit. Further, it has exceptionally increased the net consideration value of unit by adding EDC/IDC and when they opposed the unfair trade practices of respondent they inform that EDC and IDC are just the government levies and they are as per the standard rules of government and these are just approximate values which may come less at the end of project and same can be proportionately adjusted on prorata basis. It further stated that delay payment charges of 24%, is standard rule of company and it would also compensate to them, at the rate of Rs 10 per sq. ft. per month in case of delay in possession by it. They opposed these illegal, arbitrary,

unilateral and discriminatory terms of buyer's agreement but as there is no other option left with them because if they stop the payment of installments, then it may forfeit 15% of total consideration value from the total amount paid.

9. That as per the clause 3 of the said apartment buyer's agreement dated 17.06.2013, it agreed and promised to complete the construction of the said flat and deliver its possession within a period of four years with a grace period of nine months thereon, from the date of start of construction. The proposed possession date as per buyer's agreement was due on 01.06.2017. However, the respondent breached the terms of said agreement and failed to fulfill its obligations and has not delivered possession of said flat within the agreed time frame.
10. That from the date of booking i.e. 25.10.2012 and till 20.07.2018, the respondent raised various demands for the payment of installments from complainants towards the sale consideration of said flat and they have duly paid and satisfied all those demands as per the apartment buyer's agreement without any default or delay on their part and have also fulfilled otherwise also their part of obligations as agreed. They were and have always been ready and willing to fulfill their part of agreement, if any pending.
11. That as per annexure-D (payment plan) of buyer's agreement the sales consideration for said flat was Rs. 99,77,750/- (which includes the charges towards basic price- Rs 91,38,500/-, govt charges (EDC & IDC)

- 7,46,000/-, PLC of Rs 0/-, overhead expenses - Rs 0/- club membership - Rs. 0/- and IFMS - Rs 93,250/-) exclusive of service tax and GST.
12. That the complainants have paid 95% of sale consideration along with applicable taxes to the respondent for the said unit. As per the statement dated 27.07.2022, issued by the respondent, they have already paid Rs. 1,00,24,679/- towards total sale consideration and applicable taxes till date, as demanded by it from time to time and now considering delay in construction nothing is pending to be paid on their part.
13. That as per booking and apartment buyer's agreement, agreed date for delivery of possession of said unit was 01.06.2017, they have approached the respondent and its officers for inquiring the status of delivery of possession but none bothered to provide any satisfactory answer to the complainants about the completion and delivery of the unit. They kept running from pillar to post asking for the delivery of his home but could not succeed in getting any reliable answer.
14. That the respondent's conduct regarding delay in delivery of possession of the said unit has clearly manifested that it never had any intention to deliver the subject unit on time as agreed. It has also cleared the air on the fact that all the promises made by the respondent at the time of sale of involved flat were false. It made all those false, fake, wrongful and fraudulent promises just to induce the complainants to buy the said flat.

The respondent in its advertisements has represented falsely regarding the delivery date of possession and resorted to all kind of unfair trade practices while transacting with them.

15. That the respondent has acted in a very deficient, unfair, wrongful, fraudulent manner by not delivering the said unit within the timelines agreed in the buyer's agreement and on 15.08.2022, there has been a delay of 5 years & 1 month.

C. Relief sought by the complainants:

16. The complainants have sought following relief:

- i. Direct the respondent to pay interest @ 18% on account of delay in offering possession on amount paid by the complainants as sale consideration of the said flat from the date of payment till the date of delivery of possession.
- ii. Direct the respondent to pay an amount of Rs. 55,000/- as cost of present litigation.

17. On the date of hearing, the authority explained to the respondent/promoter about the contraventions 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:

18. That initially one M/s. Capital Builders was the absolute owner of the land situated at Village Fazilpur, Jharsa and District Gurgaon (Haryana) comprising of total admeasuring approximately 115 Kanal 15 Marla i.e. 14.468 Acres (hereinafter referred to as "the said project land").

19. That Directorate of Town and Country Planning, Haryana, (hereinafter referred to as "DTCP") issued license bearing no. 170 of 2008 dated 22.09.2008 to M/s. Capital Builders for development of the said project.
20. That, the said M/s. Capital Builders executed certain irrevocable development rights agreement in favour of the respondent and granted, conveyed and transferred all development, construction, marketing, sales and other rights and entitlements to develop, construct, market and sell groups housing project on the said project land. M/s. Capital Builders also transferred the license to the respondent.
21. That, accordingly, it proposed to develop a group housing project namely "Florence Estate" (hereinafter referred to as "the said project") on the said project land and get the site plan sanctioned from DTCP on 14.05.2013. The State Environment Impact Assessment Authority, Haryana issued the environment clearance certificate to the respondent on 15.10.2013.
22. That after conducting his own independent due diligence and being fully satisfied with the particulars of the project, the complainants voluntarily approached and applied to the respondent and expressed his interest in purchasing an apartment in the said project.
23. That as per his request, the respondent agreed to allot an apartment to the complainants in the said project. Subsequently, an apartment buyer's agreement (hereinafter referred to as "the agreement") dated

16.09.2013 was executed between the parties. He entered into the said agreement voluntarily and was allotted apartment bearing no. 2502, tower B on 24th floor admeasuring 173.26 sq. mtr. saleable area for a total basic sale consideration of Rs. 1,04,46,126/-. They have made total payment of Rs. 99,29,802/- to the respondent till date. (Sic: BSP- Rs. 91,38,500/-; Amount paid- Rs. 1,00,24,679/-; As per statement of account dated 27.07.2022 issued by respondent-builder on page no. 50-54 of complaint)

24. That in terms of the clause 3.1 of the agreement, the respondent was under an obligation to hand over the actual, vacant, physical possession of the apartment to the complainants within a period of 4 years with a grace period of 9 months from the date of commencement of construction or execution of the agreement or date of obtaining all licenses, permissions or approvals for commencement of construction, whichever is later i.e. on or before 17.03.2018 subject to force majeure.
25. That in terms of the clause 3.5 of the agreement, the complainants agreed that, if the respondent failed to complete the construction of the apartment within the stipulated period as mentioned in the agreement due to force majeure circumstances or for other reasons as stated in the agreement or some other circumstances beyond its control then he agreed that the respondent would be entitled to reasonable extension of time for completion of construction of the said project and the delivery of possession of the apartment to him.

26. That in terms of clause 12.1 of the agreement, timely payment of all the amounts is the essence of the agreement. Further, if the complainants failed to make the payment in terms of the agreement, the respondent had a right to cancel /terminate the agreement and forfeit the booking amount.
27. That the complainants always failed to make the payments as per the payment plan i.e. annexure D of the agreement. It is further stated that sometime in the year 2013, one Mr. Ballu Ram filed a writ petition (CWP No. 17737 of 2013) before the Hon'ble High Court of Punjab and Haryana challenging grant of license no. 170 of 2008 issued by DTCP. The Hon'ble High Court vide order dated 16.08.2013 directed the parties to maintain status-quo with regard to transfer and construction in respect to the said project of the respondent herein. In view of the aforesaid orders passed by the Hon'ble High Court of Punjab and Haryana, the respondent failed to continue with any kind of construction at the project site. All the construction work at the project site came to stand still for about 15 months. The Hon'ble High Court of Punjab and Haryana vide order dated 17.11.2014 dismissed the said writ petition.
28. That it is further pertinent to bring to the notice of this authority that certain disputes arose between M/s. Capital Builders and the respondent. In an Appeal [EFA-15-2015 (O&M)] filed by M/s. Capital Builders against the respondent before the Hon'ble High Court of

Punjab and Haryana, and vide order dated 10.09.2015, it restrained the respondent from creating any third-party interest in respect unsold flats. The said order was modified vide order dated 08.05.2019 and excluded 60 un-sold flats from the ambit of the stay order.

29. That the respondent in the process of completing and developing the said project and will deliver the possession of the apartment to the complainants within an abbreviated period of time. It is further stated that the authority has granted registration of the said project under Act of 2016 and it has also applied for extension of validity of registration of the project with the requisite fees. The development of the project is in an advance stage.
30. That as per terms of clause 3.5 of the agreement, if it failed to complete the construction of the apartment within the period as mentioned in the agreement due to force majeure circumstances or for other reasons as stated in the agreement or some other circumstances beyond its control, then the respondent is entitled to reasonable extension of time for completion of construction of the project and delivery of the possession of the apartment to the complainants. Further, as per the said clause 3.5 of the agreement, the complainants are not entitled to any interest or refund of the amount paid to the respondent.
31. That in view of the circumstances beyond its control, it was unable to complete the construction and deliver the possession of the apartment to the complainants within the stipulated period of time and there is no

failure on the part of the respondent and as such the present complaint is not maintainable.

32. That the present complaint along with the reliefs sought is not maintainable before this authority as it does not have the jurisdiction to award any relief prayed for. As such, the present complaint is not maintainable.
33. 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.

E. Jurisdiction of the authority

34. The respondent has raised preliminary objection regarding jurisdiction of authority to entertain the present complaint. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

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 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.

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 complainants at a later stage.

F. Findings on the objections raised by the respondent:

F.I Objection regarding force majeure circumstances.

35. The respondent-promoter alleged that there was no delay on its part and the delay in completing the project and handing over the possession of the allotted unit was on account of force majeure circumstances such as stay on construction by Hon'ble High Court of Punjab & Haryana challenging grant of license no. 170 of 2008 issued by DTCP in writ petition (CWP No. 17737 of 2013) and due to a dispute arising between M/s. Capital Builders and the respondent, in an appeal [EFA-15-2015

(O&M)] filed by M/s. Capital Builders against it before the Hon'ble High Court of Punjab and Haryana vide order dated 10.09.2015 restraining creation of any third-party interest in respect unsold flats modified vide order dated 08.05.2019 and excluded 60 un-sold flats from the ambit of the stay order. The respondent also took plea that the complainants-allottees has failed to make payments towards consideration of allotted unit. But the authority is of view that the pleas taken by the respondent are devoid of merits.

36. The respondent stated that the complainants-allottees has failed to make payments towards consideration of allotted unit. However, the statement of account dated 27.07.2022 annexed on page no. 53 on complaint shows otherwise. The complainants have already paid an amount of Rs. 1,00,24,679/- against total consideration of Rs. 99,77,750/- which is more than total sale consideration. Hence, the plea in this regard that the complainants have failed to make payment towards consideration of allotted unit is rejected.
37. The respondent also took a plea that the construction of the said project was stopped due to orders of Hon'ble High Court of Punjab & Haryana in writ petition (CWP No. 17737 of 2013) challenging grant of license no. 170 of 2008 issued by DTCP and ban on creating third party rights vide order of Hon'ble High Court of Punjab and Haryana in an appeal [EFA-15-2015 (O&M)] filed by M/s. Capital Builders against the respondent. The respondent pleaded that such period should not be

considered vide calculating the delay in completion of the subject unit. The authority is of considered view that such ban on construction and transfer of unsold unit would affect the construction activities at project site and the respondent was not at fault in fulfilling his obligation. The respondent should approach the competent/deciding authority for getting this time period be declared as 'zero time period' for computing delay in completing the project. However, for the time being, the authority is not considering this time period as zero period and the respondent is liable for delay in handing over possession as per provisions of the Act.

G. Findings regarding relief sought by the complainants.

G. I Direct the respondent to pay interest @ 18% on account of delay in offering possession an amount paid by the complainants as sale consideration of the said flat from the date of payment till the date of delivery of possession.

38. In the present complaint, the complainants 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

If the promoter fails to complete or is unable to give possession of an apartment, plot or building, -

.....

Provided that where an allottees 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

39. As per clause 3.1 of the apartment buyer's agreement dated 17.06.2013, the possession of the subject unit was to be handed over by 14.07.2018.

Clause 3.1 of the buyer's agreement provides for handover of possession and is reproduced below:

"As per clause 3.1: Subject to Clause 10 herein or any other circumstances not anticipated and beyond the reasonable control of the Seller and any restraints/ restrictions from any courts/authorities and subject to the Purchaser(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and having complied with all provisions, formalities, documentation, etc. as prescribed by the Seller, whether under this Agreement or otherwise, from time to time, the Seller proposes to offer to hand over the possession of the Apartment to the Purchaser(s) within a period of 4 (four) years (with a grace period of 9 (nine) months from the date of commencement of construction or execution of this Agreement or date of obtaining all licenses, permissions or approvals for commencement of construction, whichever is later, subject to Force Majeure The Purchaser(s) agrees and understands that the Seller shall be entitled to a grace period of 9 (nine) months after the expiry of 4 (four) years for offer to hand over the possession of the Apartment to the Purchaser. Any application for the occupation certificate in respect of the Project shall be filed in the due course. The Seller shall give Notice of Offer of Possession in writing to the Purchaser(s) with regard to the handing over of possession, where after, within thirty (30) days, the purchaser(s) shall clear his outstanding dues and complete documentary formalities and take physical possession of the Apartment.."

40. As per said clause, the due date of handing over of possession is to be calculated from the date of commencement of construction(01.06.2013) or execution of this agreement(17.06.2013) or date of obtaining all licenses, permissions or approvals for commencement of construction (EC- 15.10.2013), whichever is later. The due date for handing over of possession is calculated from date of grant of environment clearance i.e. 15.10.2013, being later. As such due date of handing over of possession comes out to be 15.07.2018 without considering admissibility of grace period.
41. The flat buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builders/promoters and buyers/allottees are protected candidly. The apartment buyer's

agreement lays down the terms that govern the sale of various kinds of properties like residential, commercials etc. between the buyer and builder. It is in the interest of both the parties to have a well-drafted flat buyer's agreement which would thereby protect the rights of both the builder and buyer in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision about the stipulated time of delivery of possession of the apartment, plot or building, as the case may be and the right of the buyer/allottees in case of delay in possession of the unit. In pre-RERA period it was a general practice among the promoters/developers to invariably draft the terms of the apartment buyer's agreement in a manner that benefited only them. It had arbitrary, unilateral, and unclear clauses that either blatantly favoured the promoters/developers or gave them the benefit of doubt because of the total absence of clarity over the matter.

42. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement, and the complainants not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottees that even a single default by him in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment time period for

handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottees of the 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 allottees is left with no option but to sign on the dotted lines.

43. **Admissibility of grace period:** As per clause 3.1 of buyer's agreement dated 17.06.2013, the respondent-promoter has proposed to handover the possession the said unit within a period of 4 years with a grace period of 9 months from the date of commencement of construction or execution of this agreement or date of obtaining all licenses, permissions or approvals for commencement of construction, whichever is later, subject to force majeure circumstances. The said possession clause incorporates unqualified reason for grace period/extended period of 9 months. Accordingly, the authority literally interpreting the same and allows this grace period of 9 months to the promoter at this stage. Therefore, grace period of nine months as per clause 3.1 of buyer's agreement is allowed and included while calculating the due date of handing over of possession.
44. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges however, proviso to section 18 provides that where an allottees 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.

45. 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.
46. 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., 03.05.2023 is @ 8.70 %. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70 %.
47. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default. The relevant section is reproduced below:

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

Explanation. —For the purpose of this clause—

- (i) *the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default.*
- (ii) *the interest payable by the promoter to the allottees 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 allottees to the promoter shall be from the date the allottees defaults in payment to the promoter till the date it is paid;"

Therefore, interest on the delay payments from the complainants 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 complainants in case of delayed possession charges.

48. 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 3.1 of the buyer's agreement executed between the parties, the possession of the subject apartment was to be delivered within a period of 4 years with a grace period of 9 months from the date of commencement of construction or execution of this Agreement or date of obtaining all licenses, permissions or approvals for commencement of construction, whichever is later. As per documents available on record the dates of environment clearances, commencement of construction and date of executing agreement between the parties are 15.10.2013, 01.06.2013 and 17.06.2013 respectively. The due date of handing over of possession is calculated from date of environmental clearances i.e. 15.10.2013, being later. As such, the due date of handing over of possession including grace period of 9 months comes out to be 15.07.2018. No occupation certificate of the project has been obtained by the respondent.
49. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the apartment buyer's agreement to hand over

the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e. 15.07.2018 till offer of possession plus two months or handing over of possession, 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.

G.II Direct the respondent to pay an amount of Rs. 55,000/- as cost of present litigation.

50. The complainants are seeking relief w.r.t. compensation in the above-mentioned reliefs. Hon'ble Supreme Court of India in *civil appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.*, has held that an allottees is entitled to claim compensation & litigation charges 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 & litigation expense 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 & legal expenses. Therefore, for claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainants may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.


H. Directions of the authority:

51. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligation

cast upon the promoter as per the function entrusted to the authority under section 34(f) of the act of 2016:

- i. The respondent is directed to pay delay possession charges at the prescribed rate of interest i.e., 10.70% p.a. for every month of delay on the amount paid by the complainants to the respondent from the due date of possession i.e. 15.07.2018 till offer of possession plus two months, after obtaining occupation certificate or 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 respondent is directed to pay arrears of interest accrued within 90 days from the date of order of this order as per rule 16(2) of the rules and thereafter monthly payment of interest to be paid till date of handing over of possession shall be paid on or before the 10th of each succeeding month.
- iii. The respondent shall not charge anything from the complainants which is not the part of the flat buyer's agreement.
- iv. The rate of interest chargeable from the allottees by the promoter, in case of default shall be 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 allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- v. The respondent is directed to make payment of cost of Rs. 5,000/- to the complainants imposed vide proceedings dated 18.12.2022.
- vi. The respondent is directed to issue a fresh statement of account after adjusting delay possession charges within 15 days from date of this order.

- vii. The complainants are 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 after obtaining occupation certificate from competent authority.
52. Complaint stands disposed of.
53. File be consigned to registry.



Haryana Real Estate Regulatory Authority, Gurugram

Dated:03.05.2023

(Ashok Sangwan)

Member