



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

Complaint no.:	5168 of 2021
First date of hearing:	23.02.2022
Date of decision:	10.03.2023

Trinity Infrabuild Pvt. Ltd.

**Office Address:** 307, JMD Galleria, Sohna Road, Sector-48, Gurugram

**Complainant**

Versus

1. M/s Anjali Promoters & Developers Pvt. Ltd.
2. M/s BPTP Ltd.

**Office address:** M-11, 1<sup>st</sup> Floor, middle circle, Connaught place, New delhi-110001

**Respondents**

**CORAM:**

Shri. Ashok Sangwan  
Shri. Sanjeev Kumar Arora

**Member  
Member**

**APPEARANCE:**

Shri. Ganesh Kamath (Advocate)  
Shri. Harshit Batra (Advocate)

**Complainant  
Respondents**

**ORDER**

1. The present complaint dated 14.01.2022 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions as provided under the



provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

**A. Unit and project related details**

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

S. N.	Particulars	Details
1.	Name of the project	Centra One
2.	Project location	Sector 61, Gurugram
3.	Date of allotment	01.10.2011 [annexure P2, pg. 17 of complaint]
4.	Unit No.	GF-02, Ground floor [annexure P2, pg. 17 of complaint]
5.	Unit Area	1460 sq. ft. [annexure P2, pg. 17 of complaint]
6.	Date of agreement for sale	Not executed
7.	Possession clause	<b>Clause 24</b> <i>That company shall endeavor to make offer of possession of the said building/shop/office space/unit by 31 December 2011, subject to force majeure circumstances and compliance of all terms and conditions and timely payment of all installments by the allottees of the building. If the company fails to make an offer of possession for fit outs latest by 30th June 2012, the company shall pay a compensation as mentioned in space buyers' agreement up till the date of making offer possession of the said premises. If the company has applied to DTCP/any other competent authority for issuance of occupation and/or completion</i>



		<p>certificate by 30 April 2012 and the delay, if any, in making offer of possession by 30th June 2012 is attributable to any delay on part of DTCP/ competent authority, then the possession may be delayed, and company shall not be liable to pay any compensation or penalty for the delay. The company, on obtaining certificate for occupation and use from the competent authorities, subject to clearance of all your dues and your compliance with all the terms and conditions of the application/allotment and standard space buyer's agreement to be executed, shall hand over the shop/office space/unit.</p> <p>(Emphasis supplied)</p> <p>[annexure P2, pg. 20 of complaint]</p>
8.	Due date of possession	30.06.2012 [Note: Grace period included]
9.	Total sale consideration as per statement of account dated 17.09.2019	₹ 1,50,63,840.55 /- [annexure P2, pg. 23 of complaint]
10.	Amount paid by the complainant as per statement of account dated 19.11.2021	₹ 1,07,34,612.34 /- [annexure P2, pg. 23 of complaint]
11.	Occupation certificate	09.10.2018 [annexure R21, pg. 112 of reply]
12.	Offer of possession	12.12.2018 [annexure R6, pg. 52 of reply]
13.	Assured return paid as per statement of account dated 17.09.2019	₹ 61,59,680/- [annexure P2, pg. 23 of complaint]

**B. Facts of the complaint**

3. The complainant has pleaded the following facts:

- a. Anjali Promoters & Developers Pvt Ltd was incorporated in 2002 under the Companies Act, 1956 and embarked upon



residential and commercial real estate projects buying large parcels of land in Gurgaon and other major cities of India. It is pertinent to mention here that the managing director of the said company during booking of the complainant was Ms. Anjali Chawla, who along with her husband Kabul Chawla used to control and run day to day affairs of the company.

- b. That on the basis of representations made by developer company which were widely circulated in newspapers and in other media, the complainant, acting under respondent's misrepresentations and being swayed by the published material as well as all the offers given from developer's office, was lured to purchase a ground floor unit measuring 1460 sq. ft. for a total consideration of ₹ 1,16,80,000/-, to be situated at Sector 61 Gurgaon in the scheme known as "Centra One" scheme floated by respondents under their banner.
- c. That relying on such representation along with other representations/ commitments made by the respondents which were also quite widely circulated in newspapers and in other media (print or electronic), the complainant was lured to purchase the aforementioned unit. The respondent's staff even represented that being a developer of repute and ethical business, the respondents shall adequately compensate the complainant in case the project was delayed for any reason. It was further conveyed to the complainant that the respondent no. 1 (developer) would proceed to obtain occupation certificate/completion certificate for the project from the concerned statutory authority on/before 31.12.2011 and accordingly the complainant purchased the unit.



- d. That when the complainant visited developer's office, they met Ms. Anjali Chawla & Kabul Chawla and they were offered the unit on the ground floor bearing no GF-02. That the complainant was informed that the super area of the said unit would be 1460 sq. ft. The complainant had asked the respondents about the calculation arrived at in calculating the super area. The complainant was informed that the respondent's office would satisfy his genuine query within a period of one month. That further, it was confirmed that the unit would be handed over on/before 31st December 2011. It was further conveyed that the respondent would proceed to obtain occupation certificate/completion certificate from the concerned statutory authority on/before 31st December 2011. Complainant was further assured that he would be getting a fixed assured return per month (from the date of booking) and the said assured return would be continued till the time his premises gets leased at the minimum guaranteed rental. The complainant booked the unit on July 2008 and paid the amounts.
- e. That finally, without any bargaining power at his disposal and under threat of losing his hard-earned money through forfeiture of monies he had already paid as threatened by the respondents, the complainant signed on certain blank formats as demanded by the developer. As far as the complainant is concerned, he had to no option to but to trust the respondents based on the picture portrayed by them.
- f. It is stated that after deposit of ₹ 1,07,34,612.34/- in regard to said unit, the complainant kept on following the developer as well as its directors about the fate of the unit and about exact time when its possession would be handed over and also about the details as to



when further documents would be executed by developer, but the respondents always avoided the issue and kept on delaying the matter on false and bogus pleas and excuses. Complainant was further shocked, when after such a long-time respondents failed to pay him the pending assured returns. That it is further startling that respondents have admitted the liability of assured returns and promised to pay the same vide many verbal communications, but till date have not fulfilled the same.

- g. To a glaring disregard, the respondent did not honour the commitments made to complainant in the said project and failed to give him the unit in the said project. respondents were duty bound to handover the possession of the unit to complainant in December 2012 as mentioned in the builder buyer agreement. It was thereafter revealed that the building plans were not approved by Department of Town & Country Planning-Chandigarh when respondents had taken the amounts from complainant. The same is in gross violation of the license conditions imposed upon developer/respondents. Thus, in 2009 when the complainant paid the booking about for allotment of the unit, no sale of any unit in the project could have been lawfully made by the respondents as they did not possess the necessary approvals that alone could legally empower respondents to sell units in the project. The booking of the unit made by respondents in favour of the present complainant is in utter violation of statutory provisions as well as the terms of license for the project. In fact, a specific prohibition had been imposed on respondents in the license itself in terms of which they were prohibited from even advertising for the sale of any shop/office/floor area in the said project prior to sanction and





- approval of the layout plans/building plans for the project which were still pending with DTCP when the said unit was sold to the complainant and the booking amount collected from him in 2008.
- h. That further, the developer unscrupulously issued the offer of possession letter in December 2018. The super area is unilaterally increased from 1460 sq. foot to 1685 sq. foot which has no nexus to actual area at site. Location is changed unilaterally. There is no nexus to super area Vs actual area at site. Approx ₹ 97,56,695/- is demanded from complainant (on alleged increase of area) and approx. ₹ 25,98,042/- is agreed to be paid back only for the last one year (that was stopped unilaterally). No response on 3 years assured returns (2009-2012) is made.
- i. The respondent has arbitrarily revised the super area of the unit without any rhyme or reason. Such revision in the area imposes hitherto unplanned and unforeseen additional financial demands upon the complainant in fact the respondent no. I has manipulated the area of the unit at its own whims and fancies and areas of the individual units have been arbitrarily and whimsically computed and the same has absolutely no nexus with the actual areas including but not limited to confined and open areas of the project and other common areas. The respondent has further sold the car parking illegally to the present complainant as well as many other similarly placed innocent customers of the project. The respondent was also selling/offering car parking separately during relevant times at varying prices.
- j. That the complainant visited the office of the respondent and tried his level best to meet the senior officials, but CRM (Customer Relation Managers) did not allow him to meet. The complainant



demanded his pending assured return money with interest for not fulfilling the promises as made in the BBA date 09.10.2013. However, the respondent didn't bother to pay heed to the genuine demands of the complainant and hence, this complainant to the Haryana Real Estate Regulatory Authority at Gurugram on the grounds which are raised in issues to decided.

**C. Relief sought by the complainant:**

4. The complainant has sought following reliefs:

a. Direct the respondent to pay interest for every month of delay at prescribed rate along with the pending amounts of assured return.

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

**D. Reply by the respondents.**

6. The respondents have contested the complaint on the following grounds:

a. That the complainant has deliberately impleaded BPTP Ltd., as respondent no. 2 despite being well aware that they are neither necessary nor proper party to the present complaint nor has any relief been sought from the respondent no. 2 in the present complaint. Without prejudice to the fact, that the present complaint is false, baseless and liable to be dismissed, it is respectfully submitted that, since the respondent no. 2 is a company having separate legal entity and not a partnership or a sole proprietorship concern thus, impleading BPTP Ltd. in their personal capacity as the beneficiary is neither proper nor justified and hence, the name of the respondent no.2 be deleted from the array of parties.





- b. The complainant is a defaulter/offender as the complainant has failed to take the possession in terms of offer of possession dated 12.12.2018, the complainant has filed the complaint with a view to wriggle out from their contractual obligations. In this regard it is submitted that the complainant is duty bound to take the possession of the unit within two months of the receipt of the notice for offer of possession. In the present case, the offer of possession was issued way back in 2018 but the complainant has abstained himself from taking the possession for two year. Upon completion of construction and upon getting/ securing occupancy certificate from competent authority, respondent no. 1 has issued the offer of possession letter on 12.12.2018. The respondent no. 1 herein is also entitled for holding charges for the two years as the complainant has grossly defaulted in making the payment on time.
- c. The complainant is a defaulter/offender under section 19(6), 19(7) and 19 (10) of the Real Estate (Regulation and Development) Act, 2016 and not in compliance of these sections. The complainant cannot seek any relief under the provision of the Real Estate (Regulation and Development) Act, 2016 or rules frame thereunder. In this regard it is submitted that the complainant is also duty bound to take the possession of the unit within two months of the receipt of the notice for offer of possession. In the present case, the offer of possession was issued way back in 2018 but the complainant has abstained from taking the possession for two year.
- d. It is submitted that the complainant has failed to take over the possession of the allotted unit even after lapse of more than two year from the date of offer of possession. It is submitted that the



transaction is being governed by the terms mentioned in application form duly signed by the complainant. In addition to this, complainant is also liable to pay the maintenance charges as per the maintenance agreement under clause 15 of the application form irrespective of the fact whether complainant is having actual possession of the unit or not.

- e. It is submitted that the complainant has approached this hon'ble authority for redressal of his alleged grievances with unclean hands, i.e., by not disclosing material facts pertaining to the case at hand and also, by distorting and/or misrepresenting the actual factual situation with regard to several aspects. It is further submitted that the Hon'ble Apex Court in plethora of decisions has laid down strictly, that a party approaching the court for any relief, must come with clean hands, without concealment and/or misrepresentation of material facts, as the same amounts to fraud not only against the respondent no. 1 but also against the court and in such situation, the complaint is liable to be dismissed at the threshold without any further adjudication.
- f. The complainant is trying to misguide this hon'ble authority by stating frivolous facts, in the complaint the complainant stated that they booked the shop space in the year 2008 but the booking form signed by the complainant clearly states that they approached the respondent no. 1 for booking in the year 2010.
- g. The complainant has concealed from this Hon'ble Authority that the complainant has already been offered possession by the respondent no. 1 vide offer of possession letter dated 12.12.2018, however the complainant has failed to pay the outstanding amount and with a view to wriggle out from his obligation to pay has filed



the present complaint. It is pertinent to mention that the respondent no. has duly adjusted assured return amounting to ₹ 61,59,680/- in complainant's account with regard to the unit in question.

- h. That the complainant also concealed from this hon'ble authority that the respondent no. 1 being a customer centric company has always addressed the concerns of the complainant and had requested the complainant time and again to visit the office of the respondent no. 1 in order to amicably resolve the concerns of the complainant. However, notwithstanding the several efforts made by the respondent no. 1 to attend to the queries of the complainant to their complete satisfaction, the complainant deliberately proceeded to file the present complaint before this hon'ble authority against the respondent.
- i. It is submitted that in terms of section 19(10) of Real Estate (Regulation and Development) Act, 2016 the allottee is bound to accept the possession within two months from issuance of occupation certificate. Despite the receipt of occupation certificate on 09.10.2018 the issuance of offer of possession on 12.12.2018, the complainant still did not clear his pending dues and take possession of the unit in question.
- j. It is submitted that there is no delay in issuing offer of possession as in terms of clause 14 of the application form, the respondent no. 1 was entitled to handover possession of the unit within 36 months and not less than 42 months from the date of sanctioning of the building plan. It is submitted that despite fulfilling all the requisites with DTCP, Haryana the building plan was not sanctioned by the DTCP without giving any cogent reason for the same.



- k. It is pertinent to point out that both the parties as per the application form duly agreed that the respondent no. 1 shall not be held responsible or liable for any failure or delay in performing any of its obligations or undertakings as provided for in the agreement, if such performance is prevented, delayed or hindered by delay on part of or intervention of statutory authorities like DTCP or the local authorities or any other cause not within the reasonable control of the respondent. In such cases, the period in question shall automatically stand extended for the period of disruption caused by such operation, occurrence or continuation of force majeure circumstance.
- l. **FORCE MAJEURE CONDITIONS:** That on 29.05.2008, the respondent no. 1 applied for grant of approval of building plans from DTCP, Haryana. On 21.07.2008, in the meeting of the building plan approval committee, the committee members concurred with the report of superintending engineer (HQ), HUDA and STP, Gurgaon who had reported that the building plans were in order. The said members also took note of the report of STP (E&V)'s observation on the building plans. The members stated that the said observations were "minor in nature" and hence approved the building plans subject to corrections.
- m. That DTCP vide letter dated 30.07.2008 approved the building plans of the respondent no. 1 subject to certain rectification of deficiencies. There were in total 3 deficiencies which were asked to be corrected by the respondent no. 1, namely, NOC from AAI to be submitted, covered area not correct and lastly fire safety measures were not provided.



- n. That in compliance with the directions issued by DTCP vide office memo no. ZP-345/6351 dated 30.07.2008, the respondent no. 1 submitted revised building plans on 27.08.2008 vide letter dated 25.08.2008. It is pertinent to point out that since there were no further objections conveyed to the respondent no. 1 for the release of the building plans it was assumed that the building plans would be released automatically.
- o. Since no communication was received by respondent no. 1 for almost 5 months, respondent no. 1 on its own volition enquired about the reasons for the delay in release of the building plans by DTCP. To its astonishment, it came to the respondent no. 1's knowledge that the same was being withheld by DTCP on account of EDC dues. However, no formal communication qua the same was received by respondent no. 1. Nonetheless, respondent no. 1 on 15.01.2009 and 16.01.2009 requested DTCP to release its building plans while submitting an undertaking to clear the EDC dues within a specified time period. It is pertinent to point out that there were no provisions in the Haryana Development and Regulation of Urban Areas Act, 1975 or the Haryana Development and Regulation of Urban Areas Rules, 1976 or any law prevalent at that time which permitted DTCP to withhold release of a building plan on account of dues towards EDC.
- p. That DTCP on 27.02.2009 after a lapse of almost six months from the date of submission of the revised building plans, conveyed the respondent no. 1 to clear EDC/IDC dues while clearly overlooking the undertakings given by the respondent no. 1. That it is stated that respondent no. 1, on 03.08.2010 deposited full EDC/IDC with the department.



- q. To its surprise, respondent no. 1 received a notice by DTCP dated 19.03.2013 directing the respondent no. 1 to deposit composition charges of ₹ 7,37,15,792/- on account of alleged unauthorized construction of over an area of 34238.64 sq. mtr. The said demand was questioned by the respondent no. 1 officials in various meetings with DTCP officials. Various representations were made by the respondent no. 1 on 04.09.2013, 22.10.2013, 11.11.2013, 02.12.2013, 14.03.2014, 15.04.2014, 07.07.2014, 13.11.2014, 09.02.2015, 07.04.2015. The respondent no. 1 in its representation dated 05.06.2015 pointed out all the illegalities in the demand of composition charges of ₹ 7.37 crores.
- r. That the respondent no. 1 succumbed to the undue pressure and on 13.01.2016 deposited ₹ 7.37 crores with DTCP as composition charges and further requested for release of its building plans. That the respondent no. 1 on 13.01.2016 further deposited an amount of ₹ 41,68,171/- towards the balance labour cess.
- s. Even after clearing the dues of EDC/IDC and payment of composition charges, the building plan was not released by DTCP, instead, the respondent no. 1 was asked to apply for sanction of building plan again as per the new format. The same was duly done by respondent no. 1 on 16.06.2017. Further, respondent no. 1, on completion of construction applied for grant of occupation certificate on 29.07.2017.
- t. That the respondent no. 1 on the very next day i.e., 25.10.2017 replied to the DTCP justifying the concern while submitting the building plan again for approval. In the meantime, respondent no. 1 also paid composition charges to the tune of ₹ 43,63,127/- for regularization of construction of the project. That, finally on





12.01.2018 the building plan was approved for centra one. Post approval of the same, the respondent no. 1 on 21.05.2018, in continuation to its application dated 31.07.2017, again requested DTCP for grant of occupation certificate for its project. It is stated that occupation certificate was duly granted by DTCP on 09.10.2018.

- u. Even after payment of the composition charges, the building plan was not released by DTCP. Instead, respondent no. 1 was asked to apply for sanction of building plan again as per the new format. The same was duly done by respondent no. 1 on 16.06.2017. However, it is after almost a lapse of 10 years from the date of first application that the building plan was finally approved on 12.01.2018.
7. Copies of all the documents have been filed and placed on record. The authenticity is not in dispute. Hence, the complaint can be decided on the basis of theses undisputed documents.

**E. Jurisdiction of the authority**

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

**E.I. Territorial jurisdiction**

9. 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**



10. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

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

**F.I. Objection raised by the respondents regarding force majeure conditions.**

11. The respondents in their reply have submitted the contentions regarding force majeure conditions for delay by the department for granting OC to be taken into note by the authority for granting grace period on account of force majeure:
12. As far as this issue is concerned the authority the authority has already settled this issue in complaint bearing no. **1567 of 2019** titled as ***Shruti Chopra & anr. V/s Anjali Promoters & Developers Pvt. Ltd.*** wherein the authority is of the considered view that if there is lapse on the part of competent authority in granting the required sanctions within reasonable time and that the respondent was not at fault in fulfilling the conditions of obtaining required approvals then the respondent should approach the competent authority for getting this time period i.e., 31.12.2011 till 19.11.2018 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 the delay in handing over possession as per provisions of the Act.

**G. Findings on the relief sought by the complainant.**

**G.I. DPC and assured return.**



13. In the present complaint, the complainant intends to continue with the project and is seeking delayed possession charges interest on the amount paid. Clause 24 of the allotment letter provides for handing over of possession and is reproduced below: -

*"That company shall endeavour to make offer of possession of the said building/shop/office space/unit by 31 December 2011, subject to force majeure circumstances and compliance of all terms and conditions and timely payment of all instalments by the allottees of the building. If the company fails to make an offer of possession for fit outs latest by 30th June 2012, the company shall pay a compensation as mentioned in space buyers' agreement up till the date of making offer possession of the said premises. If the company has applied to DTCP/any other competent authority for issuance of occupation and/or completion certificate by 30 April 2012 and the delay, if any, in making offer of possession by 30th June 2012 is attributable to any delay on part of DTCP/ competent authority, then the possession may be delayed, and company shall not be liable to pay any compensation or penalty for the delay. The company, on obtaining certificate for occupation and use from the competent authorities, subject to clearance of all your dues and your compliance with all the terms and conditions of the application/allotment and standard space buyer's agreement to be executed, shall hand over the shop/office space/unit."*

14. **Admissibility 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.



15. 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.
16. 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., 10.03.2023 is 8.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.
17. 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;"*
18. Therefore, interest on the delayed 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.
19. 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 24 of the allotment letter dated 01.10.2011, the possession of the subject apartment was to be delivered by 31.12.2011. As far as grace period is concerned, the same is allowed being unqualified. Accordingly, the due date of possession comes out to be 30.06.2012. The respondents have offered the possession of the subject unit on 12.12.2018. Accordingly, it is the failure of the respondent/promoter to fulfil obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.

20. 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 was granted by the competent authority on 09.10.2018. The respondent offered the possession of the unit in question to the complainant only on 12.12.2018. So, it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. This 2 month of reasonable time is being given to the complainant keeping in mind that even after intimation of possession, practically one has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit, but 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., 30.06.2012 till the expiry of 2 months from the date of offer of possession (12.12.2018) which comes out to be 12.02.2019.



21. 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 respondents is established. As such, the allottee shall be paid, by the promoters, interest for every month of delay from due date of possession i.e., 30.06.2012 till the date of offer of the possession of the unit plus two months i.e., till 12.02.2019, 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 after adjustment of the amount of assured return paid to the complainant by the respondent.
22. The respondents have already offered the possession of the subject unit on 12.12.2018 after the grant of OC. Therefore, the complainant is directed to take the possession of the subject unit after clearing the instalments due if, any within 15 days from the date of this order.

**H. Directions of the authority**

23. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoters as per the functions entrusted to the authority under section 34(f):
- i. The respondent no. 1 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., 30.06.2012 till the date of offer of the possession plus two months i.e., 12.02.2019 after adjustment of the amount of assured return paid to the complainant by the respondent.
  - ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
  - iii. 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 promoters 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.

- iv. The respondent shall not charge anything from the complainant which is not the part of the agreement. However, holding charges shall not be charged by the promoter at any point of time even after being part of agreement as per law settled by Hon'ble supreme court in civil appeal no. 3864-3889/2020.

24. Complaint stands disposed of.

25. File be consigned to registry.

  
Sanjeev Kumar Arora  
(Member)

  
Ashok Sangwan  
(Member)

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 10.03.2023

HARERA  
GURUGRAM