

**BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY,
GURUGRAM**Date of decision: **01.03.2023**

NAME OF THE BUILDER		RAHEJA DEVELOPERS LIMITED.	
PROJECT NAME		"RAHEJA ARANYA CITY"	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/3592/2021	Rajiv Agarwal and Suman Agarwal V/S Raheja Developers Limited	Shri Gaurav Bhardwaj Advocate and Shri Garvit Gupta Advocate
2.	CR/3593/2021	Om Trade Link Private Limited V/S Raheja Developers Limited	Shri Gaurav Bhardwaj Advocate and Shri Garvit Gupta Advocate
3.	CR/3595/2021	Omvik Engineers Private Limited V/S Raheja Developers Limited	Shri Gaurav Bhardwaj Advocate and Shri Garvit Gupta Advocate

CORAM:

Shri Ashok Sangwan

Member**ORDER**

1. This order shall dispose of all the 3 complaints titled as above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.

2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Raheja Atharva" (group housing project) being developed by the same respondent/promoter i.e., M/s Raheja Developers Limited. The terms and conditions of the agreement to sell and allotment letter against the allotment of unit in the upcoming project of the respondent/builder and fulcrum of the issues involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, possession along with delayed possession charges along with interest and other.
3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

Project Name and Location	Raheja Developers Limited at "Raheja Aranya City" situated in Sector- 11 & 14, Sohna Gurugram.
Possession Clause: - 4.2 Possession Time and Compensation <p>That the Seller shall sincerely endeavor to give possession of the Plot to the purchaser <i>within thirty-six (36) months from the date of the execution of the Agreement to sell</i> and after providing of 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. <i>However, the seller shall be entitled for compensation free grace period of +/- six (6) months in case the development is not completed within the time period mentioned above.</i> In the event of Purchaser's failure to take over possession of the Plot, provisionally ang/or finally allotted, within 30 days from the date of intimation in writing by the seller, then the same shall lie at his/her risk and cost and the Purchaser shall be liable pay</p>	



to @ Rs.50/- per sq. yd. of the Plot area per month as holding charges for the entire period of such delay. It is made clear to purchaser that the holding charges and the late construction charges are distinct and separate to be payable by the Purchaser to the seller. Further, if the seller fails to give possession of the said Plot within Thirty-Six (36) plus aforesaid grace period of six (6) from the date of execution of the Agreement To sell and after providing of necessary infrastructure in the sector by the government or for any reason other than the reason stated above, then the Seller shall be liable to pay the Purchaser compensation @Rs.50/- per sq. yard of the plot area for the entire period of such delay....."

Sr. No	Complaint No., Case Title, and Date of filing of complaint	Reply status	Unit No.	Date of execution of agreement to sell	Due date of possession	Total Consideration / Total Amount paid by the complainants	Relief Sought
1.	CR/3592/2021 Rajiv Agarwal and Suman Agarwal V/S Raheja Developers Limited Date of Filing of complaint 13.09.2021	Reply received on 07.02.2022	E-153, Tower /block - E area measuring 275.8 10 sq. ft. (Page no. 41 of complaint)	30.07.2014 (Page no. 39 of the complaint)	30.01.2018 [Note: 36 months from the date of agreement to sell i.e., 30.07.2014 + six months grace period]	TSC: - Rs.94,92,446/- AP: - Rs.88,94,707 /- (As per customer ledger dated 25.06.2019 page no. 24 of complaint)	Possession along with delayed possession charges
2.	CR/3593/2021	Reply received	E-156, Tower	18.09.2014	18.03.2018	TSC: -	Possession



	Om Trade Link Private Limited V/S Raheja Developers Limited. Date of Filing of complaint 13.09.2021	on 07.02.2022	/block - E 270.7 50 sq. ft. (Page no. 41 of complaint)	(Page no. 38 of the complaint)	[Note: 36 months form the date of agreement to sell i.e., 18.09.2014 + six months grace period]	Rs.93,22,462/- Rs.88,14,034/- (As per customer ledger dated 20.12.2016 page no. 34 of complaint)	along with delayed possession charges
3.	CR/3595/2021 Omvik Engineers Private Limited V/S Raheja Developers Limited Date of Filing of complaint 13.09.2021	Reply received on 08.02.2022	E-155, Tower /block - E area admeasuring 275.8 10 sq. ft. (Page no. 41 of complaint)	19.08.2014 (Page no. 38 of the complaint)	19.02.2018 [Note: 36 months form the date of agreement to sell i.e., 19.08.2014 + six months grace period]	TSC: - Rs.94,92,390/- Rs.91,00,285/- (As per customer ledger dated 23.11.2020 page no. 34 of complaint)	Possession along with delayed possession charges

Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:

Abbreviation Full form

TSC Total Sale consideration

AP Amount paid by the allottee(s)

4. The aforesaid complaints were filed against the promoter on account of violation of the agreement to sell and allotment letter against the allotment of units in the upcoming project of the respondent/builder and for not handing over the possession by the due date, seeking award of possession along with delayed possession charges.

5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of both the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case ***CR/3592/2021 titled as Rajiv Agarwal and Suman Agarwal V/S Raheja Developers Limited*** are being taken into consideration for determining the rights of the allottee(s) qua delayed possession charges along with interest and others.

A. Project and unit related details

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

CR/3592/2021 titled as Rajiv Agarwal and Suman Agarwal V/S Raheja Developers Limited.

S. N.	Particulars	Details
1.	Name of the project	"Raheja Aranya City", Sector- 11&14, Sohna Road, Gurugram, Haryana
2.	Project area	107.85 acres
3.	Nature of the project	Residential Plotted Colony



4.	DTCP license no. and validity status	25 of 2012 dated 29.03.2012 valid up to 28.03.2018
5.	Name of licensee	Ajit Kumar and 22 Others
6.	Date of approval of building plans	29.01.2016
7.	RERA Registered/ not registered	Registered vide no. 93 of 2017 dated 28.08.2017
8.	RERA registration valid up to	27.08.2022
9.	Plot no.	E-153, Tower/block- E (Page no. 41 of complaint)
10.	Plot area admeasuring	275.810 sq. ft. (Page no. 41 of complaint)
11.	Date of execution of agreement to sell - Raheja Aranya	30.07.2014 (Page no. 39 of the complaint)
12.	Date of allotment letter	30.07.2014 [Page no. 37 of the complaint]
13.	Possession clause	4.2 Possession Time and Compensation "That the Seller shall sincerely endeavor to give possession of the Plot to the purchaser <i>within thirty-six (36) months</i> from the date of the execution of



	<p><i>the Agreement to sell</i> and after providing of 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. <i>However, the seller shall be entitled for compensation free grace period of +/- six (6) months in case the development is not completed within the time period mentioned above.</i> In the event of Purchaser's failure to take over possession of the Plot, provisionally and/or finally allotted, within 30 days from the date of intimation in writing by the seller, then the same shall lie at his/her risk and cost and the Purchaser shall be liable pay to @ Rs.50/- per sq. yd. of the Plot area per month as holding charges for the entire period of such delay. It is made clear to purchaser that the holding charges and the late construction charges are distinct and separate to be payable by the Purchaser to the seller. Further, if the seller fails to give possession of the said Plot within Thirty-Six (36) plus aforesaid grace period of six (6) from the date of execution of the Agreement To sell and</p>
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		<p>after providing of necessary infrastructure in the sector by the government or for any reason other than the reason stated above, then the Seller shall be liable to pay the Purchaser compensation @Rs.50/- per sq. yard of the plot area for the entire period of such delay..... “</p> <p>(Page 47 of agreement).</p>
14.	Grace period	<p>Allowed</p> <p>As per clause 4.2 of the agreement to sell, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 36 months plus 6 months of grace period. It is a matter of fact that the respondent has not completed the project in which the allotted unit is situated and has not obtained the part completion certificate by July 2017. As per agreement to sell, the construction and development work of the project is to be completed by July 2017 which is not completed till date. Accordingly, in the present case the grace period of 6 months is allowed.</p>
15.	Due date of possession	<p>30.01.2018</p> <p>[Note: 36 months form the date of agreement to sell i.e., 30.07.2014 + six months grace period]</p>

16.	Total sale consideration	Rs.94,92,446/- (As per customer ledger dated 25.06.2019 page no. 24 of complaint)
17.	Amount paid by the complainants	Rs.89,88,060/- (As per customer ledger dated 25.06.2019 page no. 24 of complaint))
18.	Occupation certificate /Completion certificate	Not received
19.	Offer of possession	Not offered
20.	Delay in handing over the possession till date of this order i.e., 01.03.2023	5 years 1 month and 1 day

B. Facts of the complaint

8. The complainants have made the following submissions in the complaint: -
- That in the year 2011- 2012, the respondent company advertised about its new plotted colony namely "Raheja's Aranya City" located in Sector 11 & 14, Sohna, District Gurugram, (Haryana). The respondent painted a rosy picture of the project in the advertisement making tall claims and representing that the project 'Aranya City' as a mega city with a complete integrated social infrastructure & facilities one needs and aspires to enjoy a comfortable lifestyle. It is strategically located adjacent to the Aravali Hills making it a nature's paradise and the best township in Sohna. The township comprises of plots, premium

apartments, schools & colleges, hospitals, dispensaries & nursing homes, retail spaces, community activities, and recreational centres. It was represented that the said township is Haryana's first integrated township planned in accordance with India's vision of creating smart cities with features like solar power generation, rainwater harvesting, solar street lighting, waste management systems, water recycling systems designed for zero discharge, Wi-Fi hotspot etc.

- b. That believing the representations of the respondent company and on the lookout for a plot for themselves and their family, the complainants booked a residential plot in the said project of the respondent by paying an amount of Rs.5,00,000/- vide instrument bearing no. 006626 dated 24.02.2012 towards the booking of a plot in the said project.
- c. That thereafter, the complainants kept making further payments in accordance with the demands raised by the respondent company only in the hope that the allotment letter as well as the agreement to sell would be issued soon, but to no avail as the respondent kept on prolonging the matter on one pretext or the other. Despite several requests made by the complainants for execution of above said documents, the respondent kept saying that the agreement is a mere formality and shall be issued soon. Having invested a huge chunk out of their hard-earned money and life savings, they had no other option but to believe the false assurances of it and continue with the booking.
- d. That the respondent demanded and taken Rs.34,62,796/-, i.e. almost 30% of the total sale consideration from the complainants prior to the execution of the agreement to sell. The said receipt of more than 10%



of the total sale consideration without first entering into a written agreement was a clear violation of Section 13 of the Act, 2016 and the respondent must be heavily penalised for the same.

- e. That after almost 2.5 years from the date of booking, finally, on 30.07.2014, the respondent issued an allotment letter thereby allotting plot/unit bearing no. E153 admeasuring 275.81 sq. yard.
- f. That thereafter, on 30.07.2014, an agreement to sell was executed between both the parties for the plot bearing no. E-153 admeasuring 275.81 sq. yard. The said agreement to sell contain some unfair and one-sided clauses like exorbitant interest rate on account of delay in payment by buyer in contrast to the delay compensation to be paid by the builder for failure in handing over possession. They pointed out the same to the respondent requested to correct the same. But it flatly refused to entertain any such request and on the contrary, the respondent threatened the complainants to cancel his unit and forfeit the earnest money upon their failure in executing the agreement. Having no option after paying a substantial amount to it, the complainants had to sign the agreement.
- g. That till date, they have paid a total sum of Rs.89,94,707/- towards the said unit in the project from 2012, as and when demanded by it as against a total consideration of Rs.94,92,446/-. The complainants have paid 94.8% of total consideration till date.
- h. That as per clause 4.2 of the agreement to sell dated 30.07.2014, the respondent undertook to complete the project and handover possession of the unit within a period of 36 months from the date of

execution of the agreement to sell along with a grace period of 6 months, i.e., by 30.01.2018. However, the respondent/promoter miserably failed to hand over possession of the unit on or before said date.

- i. That when the respondent failed in handing over the possession on the due date, i.e., 30.01.2018 (inclusive of grace period), the complainants visited the project site and were stunned to see that the project was nowhere near completion. Rather, the project was not even an inch closer to the basic amenities like roads, sewerage, drainage etc. They took serious note of said default on part of respondent company and immediately rushed to the respondent's office in order to inquire about the reason for delay and seeking information regarding exact date of handing over possession, but to no avail. No concrete date of completion and handover with due occupancy certificate issued by authorities governing the area was committed by the respondent nor an explanation was given for the snail-paced work at the project site and the inordinate delay, thereby leaving the complainants in an absolute state of misery.
- j. That, the complainants along with the other allottee(s) regularly and repeatedly followed up with the representatives of the respondent and enquired about the status of the project. However, they on every occasion made false and vague assurances that the possession of the unit would be delivered by the end of upcoming month or so and kept on prolonging the matter unjustifiably without any cogent reason,





thereby inflicting great mental agony and hardship upon the complainants.

- k. That having already invested almost all of their life savings in order to purchase the unit in question, they had no other option but to believe the representations of the respondent and continued making payment.
- l. They have booked the plot with high hopes and dreams that they would be able to construct their dream house on said plot and live in the same along with their family and give them a safe and comfortable environment. However, the respondent simply refrained from adhering to his commitments, though it never failed in raising payment demands irrespective of the pace of progress at the project site. But when it came to completing construction and handing over possession, it failed miserably and till today, has failed to give possession of unit.
- m. That when the complainants asked the respondent to clarify about the interest being charged by it on the delayed payments, the latter replied that the interest is being charged on the basis of the agreement to sale. While under clause 3.6 of agreement to sell dated 30.07.2014, the respondent had been charging 18% p.a. interest on account of delayed payments of the instalments. On the contrary, as per clause 4.2 of the agreement to sell, on account of delay in handing over possession, the respondent could be held liable to pay merely Rs. 50/-per sq. yard. per month of the super area of the plot for the period of delay. The above-mentioned clauses are not equitable and are completely arbitrary, one-sided and nowhere fall in line of laws regulating the real estate sector as on date.

- n. That, accordingly, the complainants approached the respondent and objected to arbitrary demands against the pace of project completion and sought justification upon the same. However, the respondent simply refrained from giving any substantial explanation. Rather, it justified the said demands on the false pretext that it is a reputed builder and completed several projects in the past and shall be delivering possession of the unit in question soon. To this, the complainants raised serious objection and sought payment of delayed possession charges on account of delay in handing over of possession, but the respondent bluntly refused to pay the same.
- o. That the respondent simply duped the complainants of their hard-earned money and life savings by wrongfully retaining it for so many years. The aforesaid arbitrary and unlawful acts on the part of respondent have resulted into extreme kind of financial hardship, mental distress, pain, and agony to the complainants.
- p. That the present complaint has been filed in order to seek possession and interest on the delayed possession along with the other reliefs as mentioned in the complaint.

C. Relief sought by the complainants: -

9. The complainants have sought following relief(s)
- a. Direct the respondent to handover possession of the unit in the question to the complainants post receipt of necessary compliances and completion certificate/ occupation certificate.



- b. To award delay interest at the prescribed rate for every month of delay, from the due date of possession, i.e., 30.01.2018 till actual handing over of possession.
 - c. Direct the respondent to charge delay payments, if any, at the prescribed rate in accordance with the Haryana Real Estate (Regulation and Development) Rules, 2017.
10. 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.

11. The respondent contested the complaint on the following grounds: -
- a) That the complainants after checking the veracity of the project namely, 'Raheja Aranya City' applied for allotment of plot no. E-155, admeasuring 275.810 sq. yds. in the project vide provisional allotment letter dated 19.08.2014. The complainants consciously and willfully opted for a construction linked payment plan for remittance of the total sale consideration for the subject unit and further, represented that they would remit every installment on time as per the payment schedule. The respondent has no reason to suspect the *bonafide* of the complainants and proceeded to allot the subject unit in their favor.
 - b) That the complainants have no cause of action to file the present complaint as it is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the agreement to sell dated 19.08.2014 entered between

the parties. It is further submitted that the complainants are investors and booked the unit in question to yield gainful returns by selling the same in the open market. The complainant filed the present purported complaint to wriggle out of the agreement. They do not come under section 2(d) of the Act, as they are investors and booked the unit to enjoy the good returns from the project.

- c) That the application form and the allotment letter were the preliminary draft containing the basic and primary understanding between both the parties. The application form and the allotment letter being the initial documents were just an understanding document executed between the parties, to be followed by the agreement to sell to be executed between the parties. After the initial documents, both the parties fulfilled certain documentation and procedures and after fulfilling the same, the agreement to sell was issued dated 19.08.2014 in favour of the complainant allotting the desired plot no. E-155 in the said project. The agreement to sell was executed between the parties containing the final understandings between the parties stipulating all the rights and obligations.
- d) That the respondent applied for the occupational certificate for the said project dated 15.09.2014 with the competent authority. A part of occupational certificate was received dated 28.08.2017 and the occupational certificate for the area where the complainants unit lies is still awaited. Despite the respondent fulfilling all its obligations as per the provisions laid down under law, the competent authority failed



miserably to grant the occupational certificate to the respondent for the remaining part.

- e) That the time period for calculating the interest for the due date of possession would only be limited till the date of application of the occupational certificate with the competent authority. Non-granting of the occupational certificate by the competent authority is not in the hands of the respondent for which it would not be made responsible and liable to pay the delay possession charges. The respondent is doing its every level best to obtain the occupational certificate from past many months but it's the competent authority who has failed miserably to grant the occupational certificate within the time limit.
- f) That the construction of the project in which the unit is allotted to the complainant is already complete and the respondent would hand over the possession of the same to them after getting occupational certificate subject to making the payments of the due instalments amounts as per the terms of the application and agreement to sell. It is submitted that non-availability of the occupational certificate is beyond the control of the respondent and the same also falls within the ambit of the definition force majeure condition as stipulated in clause 4.4 of the agreement to sell.
- g) That the compensation in the form of interest on delayed possession to be paid by the respondent to the complainant at this crucial juncture would bring a bad name to the goodwill of the entire company and would create a bad precedent eventually leading to an array of similarly filed frivolous and vexatious complaints asking for a similar relief,

leaving the respondent without any funds to carry on the completion of the project and would further go bankrupt. The respondent itself has infused huge sum of funds into the project so that the same could be completed on time. Despite force majeure conditions, the respondent has made all the efforts to complete the project in time.

- h) That the delay, if any in the project has been due to the time taken in grant of necessary approvals by the competent authorities and not due to deficiency on part of the respondent. The process of the grant of necessary approvals by the competent authorities have been beyond the control of respondent. The respondent has made best possible and all efforts at every stage to diligently follow with the competent authorities for the concerned approvals. In fact, it is in the interest of the respondent also to complete the project as early as possible and handover the possession to the complainant. However, much against the normal practice and expectation of the respondent, at every stage each division of the concerned authority has taken time, beyond normal course and practice.
21. That the complainants, thus, have approached the authority with unclean hands and have suppressed and concealed material facts and proceedings which have a direct bearing on the very maintainability of the purported complaint. If there had been any disclosure of these material facts and proceedings, the question of entertaining the purported Complainant would not have arisen.
12. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be

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

E. Jurisdiction of the authority

13. 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

14. 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

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

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the 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.

16. 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 complainants at a later stage.

F. Findings on the relief sought by the complainants.

- F. I Direct the respondent to handover possession of the unit in the question to the complainant's post receipt of necessary compliances and completion certificate/ occupation certificate.**
17. There is nothing on the record to show that the respondent has applied for CC/part CC or what is the status of the development of the above-mentioned project. So, in such a situation no direction can be given to the respondent to handover the possession of the subject unit as the possession cannot be offered till the CC/part CC for the subject plot has been obtained. However, delay possession charges as ascertained by the authority shall be payable to the complainants as per provisions of the Act.
- F. II To Award delay interest at the prescribed rate for every month of delay, from the due date of possession, i.e., 30.01.2018 till actual handing over of possession.**
- F.III Direct the respondent to charge delay payments, if any, at the prescribed rate in accordance with the Haryana Real Estate (Regulation and Development) Rules, 2017.**



18. In the present complaint, the complainants intend to continue with the project and are 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."

19. Article 4.2 of the agreement to sell provides for handing over of possession and is reproduced below:

4.2 Possession Time and Compensation

*That the Seller shall sincerely endeavor to give possession of the Plot to the purchaser **within thirty-six (36) months** from the date of the execution of the Agreement to sell and after providing of 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. **However, the seller shall be entitled for compensation free grace period of +/- six (6) months in case the development is not completed within the time period mentioned above.** In the event of Purchaser's failure to take over possession of the Plot, provisionally and/or finally allotted, within 30 days from the date of intimation in writing by the seller, then the same shall lie at his/her risk and cost and the Purchaser shall be liable pay to @ Rs.50/- per sq. yd. of the Plot area per month as holding charges for the entire period of such delay. It is made clear to purchaser that the holding charges and the late construction charges are distinct and separate to be payable by the Purchaser to the seller. Further, if the seller fails to give possession of the said Plot within Thirty-Six (36) plus aforesaid grace period of six (6) from the date of execution of the Agreement To sell and after providing of*





necessary infrastructure in the sector by the government or for any reason other than the reason stated above, then the Seller shall be liable to pay the Purchaser compensation @Rs.50/- per sq. yard of the plot area for the entire period of such delay....."

20. 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 reason beyond the control of the seller. The drafting of this 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.

21. Payment of delay possession charges at prescribed rate of interest:

Proviso to section 18 provides that where an allottees do not intend to



withdraw from the project, they 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.

22. 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.
23. Taking the case from another angle, the complainant-allottees were entitled to the delayed possession charges/interest only at the rate of Rs.7/- per sq. ft. per month as per relevant clauses of the buyer's agreement for the period of such delay and whereas the promoter was entitled to interest @ 18% per annum compounded at the time of every succeeding instalment for the delayed payments. The functions of the authority are to safeguard the interest of the aggrieved person, may be the allottee or the promoter. The rights of the parties are to be balanced and must be equitable. The promoter

cannot be allowed to take undue advantage of his dominate position and to exploit the needs of the home buyers. The authority is duty bound to take into consideration the legislative intent i.e., to protect the interest of the consumers/allottees in the real estate sector. The clauses of the buyer's agreement entered between the parties are one-sided, unfair, and unreasonable with respect to the grant of interest for delayed possession. There are various other clauses in the buyer's agreement which give sweeping powers to the promoter to cancel the allotment and forfeit the amount paid. Thus, the terms and conditions of the buyer's agreement are ex-facie one-sided, unfair, and unreasonable, and the same shall constitute the unfair trade practice on the part of the promoter. These type of discriminatory terms and conditions of the buyer's agreement would not be final and binding.

24. 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., 01.03.2023 is **8.70%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.70%**.
25. The definition of term 'interest' as defined under section 2(z) 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;"*

26. 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 her in case of delayed possession charges.
27. On consideration of the circumstances, the documents, submissions made by the parties and based on the findings of the authority regarding contravention as per provisions of rule 28(2), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 4.2 of the agreement to sell executed between the parties on 30.07.2014, the possession of the subject unit was to be delivered within 36 months from the date of execution of this agreement. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession comes out to be 30.01.2018. The respondent has 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. The authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit to the complainant as per the terms and conditions of the agreement to sell dated 30.07.2014 executed between the parties. Further no OC/part OC has been granted to the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottees.

28. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainants are entitled to delay possession charges at rate of the prescribed interest @ 10.70% p.a. w.e.f. 30.01.2018 till actual handing over of possession or offer of possession plus two months, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

F. Directions of the authority

29. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

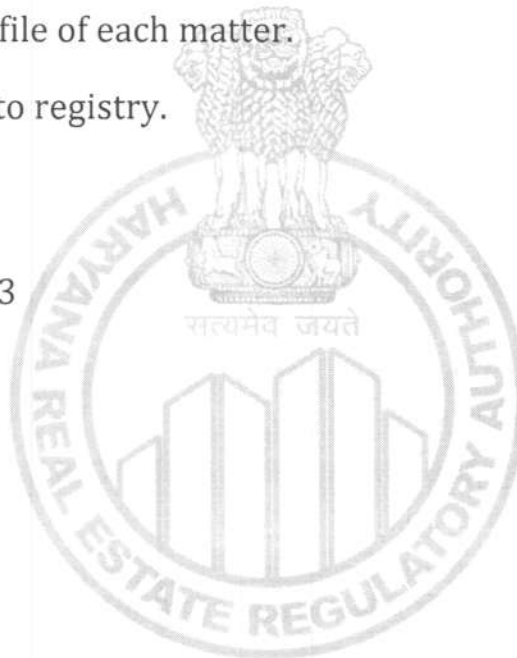


- i. The respondent is directed to pay interest to the each of the complainants against the paid-up amount at the prescribed rate of 10.70% p.a. for every month of delay from the due date of possession i.e., 30.01.2018 till actual handing over of possession or offer of possession plus two months, whichever is earlier, as per section 18(1) of the Act of 2016 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 as per rule 16(2) of the rules.
- iii. The respondent shall not charge anything from the complainants which is not the part of the agreement to sell.
- iv. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- v. The respondent is directed to offer the possession of the allotted unit within 30 days after obtaining occupation certificate from the competent authority. The complainants w.r.t. obligation conferred upon him under section 19(10) of Act of 2016, shall take the physical possession of the subject unit, within a period of two months of the occupancy certificate.
- vi. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.70% by the respondent/promoter which is the same rate of interest which

the promoter shall be liable to pay the allottees, in case of default i.e.,
the delayed possession charges as per section 2(za) of the Act.

30. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
31. Complaints stand disposed of. True certified copy of this order shall be placed in the case file of each matter.
32. File be consigned to registry.

Dated: 01.03.2023




(Ashok Sangwan)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM