

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

Complaint no. : 3079 of 2021  
First date of hearing: 06.10.2021  
Order reserve on : 07.09.2022  
Order pronounced on: 14.03.2023

Praveen Jain  
R/O: DD-4, Ansal Villas, Chattarpur,  
New Delhi-110074

**Complainant**

**Versus**

Ireo Private Limited  
Office: A-11, First Floor, Neeti Bagh,  
New Delhi-110049

**Respondent**

**CORAM:**

Shri Ashok Sangwan  
Shri Sanjeev Arora

**Member  
Member**

**APPEARANCE:**

Shri Sanjeev Sharma  
Shri M.K Dang

Advocate for the complainant  
Advocate for the respondent

**ORDER**

1. The present complaint dated 03.08.2021 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and



regulations made thereunder 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 and location of the project | "Ireo City" Sector-60, Gurgaon                                 |
| 2.   | Nature of the project            | Residential colony   |
| 3.   | Project area                     | 251.196 acres  |
| 4.   | DTCP license no.                 | 63 of 2009 dated 03.11.2009                                    |
|      | Validity status                  | 02.11.2024   |
|      | Area                             | 104.8841 acres   |
|      | Name of licensee                 | Commander Realtors Pvt. Ltd.                                   |
|      | RERA registered/not registered   | Not registered   |
| 5.   | Plot no.                         | D11_01<br>(annexure- 2 on page no. 33 of the complaint)        |
| 6.   | Plot area                        | 507.4 sq. yd.<br>(annexure- 2 on page no. 33 of the complaint) |
| 7.   | Date of allotment letter         | 13.03.2012<br>(annexure- 1 on page no. 21 of the complaint)    |
| 8.   | Date of plot buyer agreement     | 01.06.2012<br>(annexure- 2 on page no. 27 of the complaint)    |





|     |                               |  |
|-----|-------------------------------|--|
| 9.  | Date of environment clearance | 24.12.2013<br>(annexure- R-12 on page no. 49 of reply)   |
| 10. | Date of consent to establish  | 14.02.2014<br>(annexure R-13 on page no. 55 of reply)  |
| 11. | Approval of part zoning plan  | 15.03.2021<br>(as per documents submitted by respondent during proceedings dated 07.09.2022)   |
| 12. | Possession clause             | <b>11. POSSESSION AND HOLDING CHARGES</b><br>11.1 Subject to Force Majeure, as defined herein and further subject to the Allottee having complied with all its obligations under the terms and conditions of this Agreement including but not limited to the timely payment of all dues and charges and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the Company proposes to offer conveyance of the said plot to the allottee within a period of 36 months from the date of receipt of requisite approvals (Commitment Period). The |



|     |  |   |
|-----|--|---|
|     |  | Allottee further agrees and understands that the Company shall additionally be entitled to a <b>period of 6 months ("Grace Period")</b> , after the expiry of the said Commitment Period to allow for unforeseen delays beyond the reasonable control of the Company.<br><b>(emphasis supplied)</b> |
| 13. | Due date of possession                     | <b>14.02.2017</b><br><b>(calculated from the date of consent to establish)</b>  |
| 14. | Total sale consideration                   | 6,79,73,900/-<br>(as per SOA dated 24.05.2021 on page no. 80 of complaint)  |
| 15. | Amount paid by the complainant             | 5,83,68,424/-<br>(as per SOA dated 24.05.2021 on page no. 80 of complaint)  |
| 16. | Completion certificate                     | Not obtained  |
| 17. | Application for part CC made by respondent | 23.05.2016<br>(page no. 61 of reply)  |
| 18. | Offer of possession                        | 24.05.2021<br>(as per additional document filed by respondent.)   |

**B. Facts of the complaint**

The complainant has submitted that:

- That believing on the assurances of the respondent, the complainant booked a unit in the said project. The unit bearing no. D11\_01





admeasuring tentative area of 507.40 sq. ft. was allotted vide allotment letter dated 13.03.2012.

4. That pursuant to the issuance of the provisional allotment letter dated 13.03.2012, the official plot buyers agreement was executed between the complainant and the respondent on 01.06.2012. As per the plot buyer's agreement dated 01.06.2012, the basic sale price of the plot was agreed to be Rs. 5,12,47,400/- and in addition that it was agreed that the complainant shall also make payments toward EDC Charges @ Rs. 2663.9 per sq. yard, IDC Charges @ Rs. 406.63 per sq. yard and PLC charge @ Rs. 18,500/- per sq. yard.
5. That as per clause 11.1 of the plot buyers agreement dated 01.06.2012, the possession of the plot in all regard was to be handed over within maximum period of 36 months, from the date of the receipt of the requisite approvals which period was termed as "commitment period" and that further a grace period of six months was agreed beyond the commitment period.
6. That the complainant made all regular payments as and when demanded by the respondent and has till date made payment of Rs. 5,83,68,424/- to the respondent against total sale consideration of Rs. 6,79,73,900/-.
7. That even after making almost 85% payment the complainant was left shocked and surprised, when the complainant in June 2015 contacted the respondent from getting the possession of the plot and on which the respondent started making one excuses or other to justify the non-completion of the project.
8. That since June 2015, the respondent even on repeated requests made by the complainant failed to hand over the possession of the



plot. It was only on 24.05.2021, the respondent issued possession notice to the complainant calling upon the complainant to take over the possession of the plot after making balance payment.

9. That the respondent offered the possession of the plot with a delay of almost 6 years and did not even take in account the delayed possession charges which the respondent was obliged to give the complainant as per law and instead arbitrarily increased the area of plot from 507.40 sq. yards to 518.21 sq. yards and charged additional sum of Rs. 19,74,264/- in addition to amount agreed as per provisional allotment letter. Subsequently a revised letter dated 15.07.2021 was issued by the respondent through mail where by the area of the plot was corrected to 504.94 sq. feet only.
10. That the respondent also increased the EDC and IDC charges from the originally agreed. That vide offer of possession letter the respondent further illegally levied infra-augmentation charges of Rs. 1,08,663/-.
11. That the complainant immediately on the receipt of the offer of possession letter dated 24.05.2021 wrote to the respondent vide letter dated 07.06.2021 disputing the above said illegal demands being raised by the respondent through offer of possession letter as also demanding his delayed possession charges. That the respondent through their email dated 11.06.2021 and 23.06.2021 tried to justify their illegal demands however the same can be said only to be in further distress of the complainant. The complainant further on receipt of the above said emails wrote letter dated 24.06.2021 to the respondent.



12. That respondent/promoter has collected the considerable amount of the said unit and since then the respondent is using the complainant's hard-earned money for their personal interest and delayed the completion of the above said project and failed to deliver the timely possession of the above said plot.

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

13. The complainant has sought following relief(s):
- Direct the respondent to handover the possession of the plot in question at the original sale consideration as agreed vide plot buyer agreement dated 01.06.2021.
  - Direct the respondent to pay interest for the delay in handing over possession from the due date i.e., 01.06.2015 as per RERA Act.
14. 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.**

The respondent has contested the complaint on the following grounds: -

15. That the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed. The plot buyer's agreement was executed between the parties prior to the enactment of the Real Estate (Regulation and Development) Act, 2016 and the provisions



laid down in the said Act cannot be applied retrospectively. There is no cause of action to file the present complaint. The complainant has no locus standi to file the present complaint.

16. That the complaint is not maintainable for the reason that the booking plot buyer's agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute i.e. clause 35 of the plot buyer's agreement.
17. That the complainant after checking the veracity of the project namely 'Ireo City' applied for the allotment of a plot vide booking application dated 28.2.2012. On the said application, the respondent vide provisional allotment offer letter dated 13.3.2012 allotted to the complainant plot no. D11\_01 having tentative super area of 424.19 sq. mtr. for a sale consideration of Rs. 6,24,45,986/- which is exclusive of applicable taxes, Stamp Duty, Registration Charges etc. Vide letter dated 28.3.2012, the respondent sent three copies of the agreement to the complainant which was signed and executed on 1.6.2012 by him.
18. That the respondent kept on raising payment demands from the complainant in accordance with the agreed terms and conditions of the allotment as well as payment plan and the complainant made the payment of the part amount without any default. It is submitted that the respondent vide payment demand letter dated 13.3.2012 had sent the installment for the net payable amount of Rs. 1,24,38,457/- However, the complainant failed to remit the amount despite reminder dated 5.6.2012 and the same was accordingly added in the next installment demand.





19. That vide installment dated 28.1.2013, the respondent had sent payment demand for the net payable amount of Rs. 2,02,16,263.10. However, the complainant yet again failed to make payment towards the said amount and the same was adjusted/ added in the next installment demand dated 1.5.2013.
20. That vide payment demand dated 7.4.2014, the complainant was to remit the amount of Rs. 1,01,08,131.20. However, the said amount was credited by the complainant towards the total sale consideration only after reminder dated 3.5.2014 was sent by the respondent.
21. That the possession of the plot is supposed to be offered to the complainant in accordance with the clause 11.1 of the plot buyer's agreement that the environment clearance issued by State Environment Impact Assessment Authority, Panchkula was granted on 24.12.13 for the plotted development of 29.79 acres at Sector 60 for which licenses no. 63 of 2009, 107 of 2010 and 60 of 2012 were issued. That it has been specified in clause 1 of PART A of the environment clearance of the said project that the consent to establish has to be obtained before starting the construction of the project. It is submitted that the consent to establish of the said project was granted on 14.02.2014. Therefore, the pre-condition of obtaining all the requisite approvals was fulfilled only on 14.02.2014. In terms of clause 11.1 and 11.3 of the agreement, the proposed time for handing over of possession expired only on 14.08.2018.
22. That the respondent completed the development of the project. The respondent had also intimated vide its letter dated 02.09.2016



about the completion of development work. That the respondent has already applied for the grant of part completion certificate on 12.05.2016 for the area admeasuring 29.79 acres for which licenses no. 63 of 2009, 107 of 2010 and 60 of 2012 were granted. Thus, after completing the development works of the project in a timely manner, the respondent did everything within its powers and control for obtaining part completion certificate. However, the respondent came to know on making enquiries in the concerned offices of the authorities in question were not processing such applications of the respondent and even of other developers on the ground that some CBI probe was ordered regarding proposed acquisition and release of HUDA land area measuring about 1400 acres due to which the respondent also suffered unnecessarily and without any fault on its part. It is submitted that the same falls under the ambit of the definition of force majeure condition as defined in the plot buyer's agreement. Under these circumstances, requisite approvals were not being issued by the concerned authorities and accordingly the respondent could not have offered the possession to the complainant. However, recently the Hon'ble Apex Court has vide its order dated 25.08.2020 has directed the builder to handover the possession in accordance with law to the applicants as expeditiously as possible and to execute proper conveyance and held that the judgement and order passed by that court will not come in the way of the applicants and further held that the occupation certificates be issued by the concerned authorities. Furthermore, it has been observed in the said order that the conveyance deeds would be subject to the ultimate outcome of the CBI investigation. The time





lost on account of the Court orders and CBI investigation falls under the ambit of the definition of 'force majeure' condition as defined in Clause 1 of the plot buyer's agreement as the same was beyond the reasonable apprehension and control of the respondent and it could not have offered the possession despite completing the development of the project on account of non-issuance of the requisite approvals by the concerned authorities.

23. 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 on the basis of these undisputed documents and submission made by the parties.

**E. Jurisdiction of the authority**

24. 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**

25. As per notification no. 1/92/2017-ITCP 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**



26. 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) The promoter shall-

(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.

27. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

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

**F.1 Objection regarding jurisdiction of the complaint w.r.t the plot buyer's agreement executed prior to coming into force of the Act.**

28. The respondent submitted that the complaint is neither maintainable nor tenable and is liable to be outrightly dismissed as the buyers agreement was executed between the complainant and the respondent prior to the enactment of the Act and the provision of the said Act cannot be applied retrospectively.





29. The authority is of the view that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. The Act nowhere provides, nor can be so construed, that all previous agreements would be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation would be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. The numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017) decided on 06.12.2017** which provides as under:

- "119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter...
122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger



*public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."*

30. Further, in appeal no. 173 of 2019 titled as ***Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya***, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

*"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."*

31. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules and regulations made thereunder and are not unreasonable or exorbitant in nature. Hence, in the light of above-mentioned reasons, the contention of the respondent w.r.t. jurisdiction stands rejected.





**F.II Objection regarding complainant is in breach of agreement for non-invocation of arbitration**

32. The respondent submitted that the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute and the same is reproduced below for the ready reference:

**35. Dispute Resolution by Arbitration**

*"All or any disputes arising out or touching upon in relation to the terms of this Agreement or its termination including the interpretation and validity of the terms thereof and the respective rights and obligations of the parties shall be settled amicably by mutual discussions failing which the same shall be settled through reference to a sole Arbitrator to be appointed by a resolution of the Board of Directors of the Company, whose decision shall be final and binding upon the parties. The allottee hereby confirms that it shall have no objection to the appointment of such sole Arbitrator even if the person so appointed, is an employee or Advocate of the Company or is otherwise connected to the Company and the Allottee hereby accepts and agrees that this alone shall not constitute a ground for challenge to the independence or impartiality of the said sole Arbitrator to conduct the arbitration. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory amendments/modifications thereto and shall be held at the Company's offices or at a location designated by the said sole Arbitrator in Gurgaon. The language of the arbitration proceedings and the Award shall be in English. The company and the allottee will share the fees of the Arbitrator in equal proportion".*

33. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal.



Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in **National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506**, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause.

34. Further, in **Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017**, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainant and builder could not circumscribe the jurisdiction of a consumer forum. The relevant paras are reproduced below:

"49. Support to the above view is also lent by Section 79 of the recently enacted Real Estate (Regulation and Development) Act, 2016 (for short "the Real Estate Act"). Section 79 of the said Act reads as follows:-

"79. Bar of jurisdiction - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

It can thus, be seen that the said provision expressly ousts the jurisdiction of the Civil Court in respect of any matter which the Real Estate Regulatory Authority, established under Sub-section (1) of





*Section 20 or the Adjudicating Officer, appointed under Sub-section (1) of Section 71 or the Real Estate Appellant Tribunal established under Section 43 of the Real Estate Act, is empowered to determine. Hence, in view of the binding dictum of the Hon'ble Supreme Court in A. Ayyaswamy (supra), the matters/disputes, which the Authorities under the Real Estate Act are empowered to decide, are non-arbitrable, notwithstanding an Arbitration Agreement between the parties to such matters, which, to a large extent, are similar to the disputes falling for resolution under the Consumer Act.*

...  
56. Consequently, we unhesitatingly reject the arguments on behalf of the Builder and hold that an Arbitration Clause in the afore-stated kind of Agreements between the Complainants and the Builder cannot circumscribe the jurisdiction of a Consumer Fora, notwithstanding the amendments made to Section 8 of the Arbitration Act."

35. While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the builder buyer agreement, the Hon'ble Supreme Court in case titled as **M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017 decided on 10.12.2018** has upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution of India, the law declared by the Hon'ble Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view. The relevant para of the judgement passed by the Supreme Court is reproduced below:

*"25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being a special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength an arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant has*



*also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."*

36. Therefore, in view of the above judgements and considering the provisions of the Act, the authority is of the view that complainant is well within right to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and RERA Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily. In the light of the above-mentioned reasons, the authority is of the view that the objection of the respondent stands rejected.

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

- Direct the respondent to handover the possession of the plot in question at the original sale consideration as agreed vide plot buyer agreement dated 01.06.2021.
- Direct the respondent to pay interest for the delay in handing over possession from the due date i.e., 01.06.2015 as per the Act.

37. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges at prescribed rate of interest on amount already paid by him as provided under the proviso to section 18(1) of the Act which 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."*

38. Clause 11.1 of the plot buyer's agreement (in short, the agreement) dated 01.06.2012 provides for handing over possession and the same is reproduced below:

*"11.1 Subject to Force Majeure, as defined herein and further subject to the Allottees having complied with all its obligations under the terms and conditions of this Agreement and not having defaulted under any provision(s) of this Agreement including but not limited to the timely payment of all dues and charges including the total Sale Consideration, registration charges, stamp duty and other charges and also subject to the Allottees having complied with all formalities or documentation as prescribed by the Company, the company proposes to offer of conveyance of the said plot to the allottee within a period of 36 months from the date of receipt of requisite approvals ("Commitment Period"). The Allottees further agrees and understands that the company shall additionally be entitled to a period of 6 (six) months ("Grace Period"), after the expiry of the said Commitment Period to allow for unforeseen delays beyond reasonable control of the company."*

39. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builders/promoters and buyers/allottee are protected candidly. The buyer's agreement lays down the terms that govern the sale of different kinds of properties like residentials, commercials etc. between the buyer and builder. It is in the interest of both the parties to have a well-drafted 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 with regard to stipulated time of delivery of possession of the apartment, plot or building, as the case may be and the right of the buyer/allottee 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 plot buyer's agreement in a manner that benefited only the promoters/developers. 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.

40. The authority has gone through the possession clause of the agreement. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the complainant not being in default under any provisions of this agreements and in compliance with all provisions, formalities and documentation as prescribed by the promoter. 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 fulfilling formalities and documentations etc. as prescribed by the promoter 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 plot buyer's agreement 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.

41. The respondent promoter has proposed to handover the possession of the subject plot within a period of 36 months from the date of requisite approvals plus 6 months grace period for unforeseen delays beyond the reasonable control of the company i.e., the respondent/promoter. On a bare reading of the clause 11.1 of the agreement, it becomes apparently clear that the possession in the present case is linked to the "date of requisite approvals" which is so vague and ambiguous in itself. If the said possession clause is read in entirety the time period of handing over possession is only a tentative period for the plot in question and the promoter is aiming to extend this time period indefinitely on one eventuality or the other.
42. In the present complaint, the "Environment Clearance for Plotted Development (29.79 acres)" for the project in question was issued by the State Environment Impact Assessment Authority, Panchkula on 24.12.2013. Furthermore, it has been specified in clause 1 of PART A of the environment clearance of the said project that the consent to establish has to be obtained before starting the construction of the project. The relevant is reproduced below for ready reference.

**Part A**

**Specific Conditions**



**Construction Phase**

- i. *Consent For Establish" shall be obtained from Haryana State Pollution Control Board under Air and Water Act and a copy shall be submitted to the SEIAA, Haryana before the start of any construction work at site.*
43. The consent to establish of the said project was granted by the competent authority on 14.02.2014. Before starting any construction in plotted colony, the promoter is obligated to obtain consent to establish. Therefore, the pre-condition of obtaining all the requisite approvals was fulfilled only on 14.02.2014. In the light of the above-mentioned reasons, the authority is of the view that the date of 'consent to establish' ought to be taken as the date for determining the due date of possession of the unit in question to the complainant.
44. By virtue of plot buyer's agreement executed between the parties on 01.06.2012, the possession of the booked unit was to be delivered within 36 months from the consent to establish (14.02.2014) which comes out to be 14.02.2017.
45. **Admissibility of grace period:** The respondent promoter had proposed to hand over the possession of the plot within 36 months from the date of requisite approvals. The respondent promoter has sought further extension for a period of 6 months for unforeseen delays in respect of the said project.
46. In the present complaint the counsel for the respondent submitted that the project could not be completed due to CBI probe on acquisition and release of HUDA land area and requested for consideration the zero period for calculating the interest. However, the counsel for the respondent could not produce any documentary





proof before the authority on question of whether zero period imposed by the DTCP is applicable to the concerned area of land of the project vide order dated 07.09.2022, two weeks' time was given to the respondent to submit any documents allowing zero period by DTCP. However, despite ample opportunity, the respondent has failed to place on record any relevant document in this regard. In such a scenario, no zero period or grace period is allowed to the respondent.

47. **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.*

48. 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.



49. 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 14.03.2023 is 8.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70% per annum.
50. 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;"*
51. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.70% by the respondent/promoter which is the same as is being granted to the complainant in case of delay possession charges.
52. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of plot buyer's agreement executed between the parties on 01.06.2012, the possession of the booked unit was to be





delivered within 36 months from the date of consent to establish (14.02.2014) which comes out to be 14.02.2017. The grace period of 6 months is not allowed in the present complaint for the reasons mentioned above. The counsel for the complainant stated at bar that the completion certificate for the plot has still not been obtained by the respondent. Accordingly, 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 complainant is entitled to delayed possession charges at the prescribed rate of interest i.e., 10.70% p.a. for every month of delay on the amount paid by them to the respondent from due date of possession i.e., 14.02.2017 till the offer of possession of the subject plot after obtaining completion certificate from the competent authority plus two months or handing over of possession whichever is earlier as per the provisions of section 18(1) of the Act read with rule 15 of the rules.

**H. Directions of the authority**

53. 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 at the prescribed rate of 10.70% p.a. for every month of delay from the due date of possession i.e., 14.02.2017 till the offer of possession of the subject plot after obtaining completion certificate from the competent authority plus two months or handing over of possession whichever is earlier.




- ii. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order 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 complainant is also directed to pay the outstanding dues, if any.
  - iv. The respondent shall not charge anything from the complainant which is not part of the builder buyer agreement.
54. The complaint stand disposed of.
55. Files be consigned to registry.

  
**Sanjeev Kumar Arora**  
**(Member)**

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.03.2023

  
**Ashok Sangwan**  
**(Member)**