

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

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| Complaint no. | : | 4291 of 2022 |
| First date of hearing: | | 02.09.2022 |
| Date of decision | : | 01.08.2023 |

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| 1. Mr. Sanjay Vanjani 2. Mrs. Jaya Vanjani R/o : B-2/112, Paschim Vihar, New Delhi-110063. | Complainants |
| Versus | |
| M/s Vatika Ltd. Office: Unit No. A-002, INXT City Centre, Ground Floor, Block-A, Sector-83, Vatika India Next, Gurugram, Haryana-122012. M//s Indiabulls Housing Finance Ltd Office: F-60, IIND floor, Malhotra Building, New Delhi | Respondents |
| CORAM: | |
| Shri Ashok Sangwan | Member |
| Shri Sanjeev Kumar Arora | Member |
| APPEARANCE: | |
| Sh. K.K. Kohli | Complainant |
| Sh. Venket Rao & Pankaj Chandola | Respondent no. 1 |
| Sh. Gaurav Dua | Respondent no. 2 |

ORDER

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

provisions of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of 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 | "Vatika India Next Signature 2 Villas, Sector 82, Gurugram, Haryana |
| 2. | Nature of the project | Group Housing |
| 3. | Project area | 182 acres |
| 4. | DTCP license no. | 113 of 2008 dated 01.06.2009 |
| 5. | RERA Registered/ not registered | Not registered |
| 6. | Date of builder buyer agreement | 12.05.2010 (Page 66 of complaint) |
| 7. | Plot no. | 63/240/Simplex/BR admeasuring 1527 sq.ft.(Page 71 of complaint) |
| 8. | Possession clause | <p>10.1 Schedule for possession of the said independent dwelling unit</p> <p>hat the Company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/ said independent dwelling unit within a period of three years from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in Clauses (11.1), (11.2), (11.3) and Clause (38) or due to failure of Allottee(s) to pay in time the price of the said independent dwelling unit along with all other charges and dues in accordance with the schedule of payments given in Annexure III or as per the demands raised by the Company from time to time or any failure on the part of the Allottee(s) to abide by any of the terms or</p> |

| | | <i>conditions of this Agreement. (Emphasis supplied)</i> |
|-----|--|---|
| 9. | Due date of possession | 12.05.2013 |
| 10. | Total sale consideration | Rs.96,70,500/- SOA dated 14.07.2022 (annexure R4, page 29 of reply) |
| 11. | Total amount paid by the complainants. | Rs. 49,29,001/- as admitted by the respondent in termination letter (page 125 of complaint) |
| 12. | Occupation certificate | Not obtained |
| 13. | Offer of possession | Not offered |
| 14. | Notice for termination | 08.12.2021 (page 125 of complaint) |

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
- I. That the respondent made advertisements, assurances, representations and promises about their premium Residential Township called "Vatika India Next" situated in Sector 82, Gurugram, Haryana with impeccable facilities and believing the same to be correct and true, the complainants considered booking villa Ref No. 63/240/simplex/BR in "Bellevue Villas" at "Vatika India Next" on 01.09.2009. The booking of the said villa i.e **63/240/simplex/BR** in the "**Vatika Bellvue Residences**" project was confirmed to the complainant vide letter dated 01.09.2009. They paid an initial amount of Rs. 1,00,000/- towards the booking and thereafter, Rs. 4,00,000/-. The builder buyer agreement for villa ref no. 63/240/simplex/Br in "Vatika Bellevue residences" admeasuring 1527 sq. ft. built up area and 240 sq. yds. super area was executed between the complainants and respondent no. 1 for a total consideration of Rs. 91,90,500.00. According to **clause 11.1** of the builder buyer agreement, the possession was required to be delivered within 3 years from the date of execution of the agreement, i.e., on or before 12.05.2013. The

- complainants opted for a home-loan linked payment plan wherein after the payment of 20% consideration amount, the balance amount and interest till possession was to be paid by the respondent no. 1.
- II. That the respondent no. 1 without the consent of the complainants shifted their allotted villa from **63/240/simplex/BR** to **1/240/simplex/ST-82 D1-9** in the new Signature 2 Villas (formerly known as Bellevue Villas) with certain fine-tunings made to the old Villas and intimated the complainants regarding the change vide its letter dated 20.01.2012. The respondent made this re-allotment without even informing and taking prior consent of the complainants.
- III. That pursuant to the original builder buyers agreement, the respondent company forced the complainants to enter into a tripartite agreement dated Nil with itself and the respondent no. 2 wherein the complainants were loaned an amount of Rs. 66,00,000/- in which respondent no. 1 agreed to pay the interest for 30 months and promised the complainants to deliver the said villa within 30 months. It is stated that the respondent has involved themselves into act of forgery, criminal breach of trust and cheating in order to avoid their financial obligations towards the complainants. The complainants had paid an amount of Rs. 9,29,001/- towards the above said villa till 12.06.2012. The payment of Rs. 22,76,160/- disbursed by the respondent no. 2 in the loan account of the complainants and in favour of respondent no. 1 was done without verifying the status of progress of the project. The respondent no. 1 despite the passing of the due date of possession failed to raise any further demands from the complainants. The complainants vide email dated 13.03.2015 sought clarification on the delivery of possession as promised at the time of signing of the tripartite agreement in 2012 and

further information about the estimate time for delivery of possession and the payment of interest being charged by respondent no. 2 from January 2015.

- IV. That the respondent no. 1 issued email dated 18.02.2016 informing that the date of delivery of possession of the above-said villa had been delayed to June-July 2016 and that the construction of the villa would start in 6 months from the said date, and in response, the complainants sent an email dated 18.02.2016 stating that they had been waiting for a long period of 7 years since the booking of the villa and the financial loss incurred on account of such inordinate delay.
- V. That, after more than 1 year since the email dated 18.02.2016, the respondent no. 1 through its representative, Sumit Arora issued an email dated 11.07.2017 stating that the construction of the villa was yet to start in 2 or 3 months. further, the handover of the possession was delayed for another 15-18 months, meaning that the project had been delayed for 6 years and the complainants had to wait for 10 years to get delivery of possession.
- VI. That the respondent no. 1 vide letter ref#11-07-0058274 dated 08.12.2021 after a delay of more than 8 years from the due date of possession, cancelled the allotment under clause 12.5 of the builder buyer agreement. The respondent terminated the agreement on account of issues with execution of the project citing false and vexatious reasons being *inter alia* initiation of GAIL corridor passing through the project, delay in acquisition of sector roads by HUDA and unauthorized occupation of certain parcels of land by farmers. Further, the respondent no. 1 without any consultation with the complainant offered

to refund the principal amount with 6% simple interest from the date of payment as mentioned in the agreement which is an unfair interest rate.

- VII. That the complainants being aggrieved by the unilateral cancellation of the allotment and the fraudulent conduct of respondents no. 1 and 2, got issued a notice dated 17.02.2022 replied to the termination letter Ref#11-07-0058274 dated 08.12.2021 seeking refund of the amount of Rs. 49,29,001/- along with interest @ 24% p.a. from September 2009 till the realization of the same and further the refund of the interest paid by them to respondent no. 2. However, the complainants having invested a huge sum of money in the said property changed their decision and got issued another letter dated 01.06.2022 revoking the previous notice dated 17.02.2022.
- VIII. That despite several efforts from the complainants to seek timely updates about the status of the construction work at the site, the respondents were negligent and did not provide any satisfactory response to their queries. The builder buyer agreement dated 12.05.2010 entered between the parties provided for home loan- linked payment plan, wherein the payments were to be made as per the stages of construction and so the complainants had assumed the money collected by the respondent no. 1 would be utilized for construction purpose. Unfortunately, the respondent has failed to properly utilize the complainants' hard-earned money and even after the lapse of the 13 years of the date of booking, there is no sign of delivery of possession. Upon visiting the site, the complainants were shocked to see 30% progress being done at the construction site and the purpose of the complainant to book the unit is not fulfilled. The respondent no. 1 has acted in a very deficient, unfair, wrongful, fraudulent manner by not

allotting the said unit to the complainants. The respondent at various instances violated the terms and condition of the builder buyer's agreement.

- IX. That the respondent no. 1 is required to offer the possession as required under law as the complainants have waited for a long time period of 13 years since the booking of the said villa. The respondent no. 1 by citing false reasons terminated the agreement unilaterally without taking into consideration that the complainants had in the hope of possession of the said unit had invested in the said project and parked their hard-earned money for the past 13 years and more. There has been an inordinate delay of more than 9 years since the due date of delivery of possession as per clause 11.1 builder's buyer agreement, i.e., 12.05.2013.
- X. That the agreement is unfair and one-sided and loaded with terms such as clauses 12.4, 12.5 which involve unilateral termination of the agreement and entitle the respondent no.1 to gain undue advantage over the complainants and indirectly penalizing the consumers and not allowing any scope to bargain the rates of interest to be payable in case the project is not delivered by the respondent no. 1. There is no parity in the remedies available to the complainants and the respondent showing biased and unfair trade practices of the respondent. The complainants had no option but to accept the terms of the builder buyer agreement without any negotiation because of the assurance given by the respondent no. 1 that they will stick to their assurances and promises. However, evidently, the respondent has miserably failed in keeping their promises and assurances causing irreparable losses and injury to the complainants.

- XI. That the respondent no. 1 is guilty of deficiency in service, unfair trade practice, giving incorrect and false statement while selling the said unit to the complainants within the purview of provisions of the rera 2016 and applicable rules. The complainants have suffered losses on account deficiency in service, unfair trade practice, giving incorrect and false statement.
- XII. That the cause of action accrued in favour of the complainants and against the respondents on the date when the respondent no. 1 advertised the said project, it again arose on diverse dates when the complainants entered into the agreement, it also arose when the respondent no. 1 inordinately and unjustifiably and with no proper and reasonable legal explanation or recourse delayed the project beyond any reasonable measure continuing to this day, and when the respondent no. 2 disbursed payments to respondent no. 1, when the agreement was terminated, it continues to arise as the complainants have not been given possession of their villa and have not been paid the amount of interest for delayed possession of the unit in the project till date and the cause of action is still continuing and subsisting on day to day basis.
- XIII. That the cause of action accrued in favor of the complainant and against the respondent on the date when the respondents advertised the said project, it again arose on diverse dates when the apartments owners entered into their respective agreement, it also arose when the respondents inordinately and unjustifiably and with no proper and reasonable legal explanation or recourse delayed the project beyond any reasonable measure continuing to this day, it continues to arise as the apartment owners have not been delivered the apartments and the

infrastructure facilities in the project have not been provided till date and the cause of action is still continuing and subsisting on day to day basis. It is a matter of fact that there is a continuous running cause of action right from the time of the allotment of the subject unit till date. Every month of delay in giving possession to the complainant gives rise to a fresh cause of action in favour of the complainant. In view of the above-mentioned reasoning there is a continuous running cause of action, and the complaint is well within limitation.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s).
 - I. Direct the respondent to handover the possession of the property/floor to the complainants, in a time bound manner.
 - II. Direct the respondent to pay interest @ 18% p.a. as payment, towards delay in handing over the property in question as per provisions of Act, 2016 and Rules, 2017.
 - III. Direct the respondent No. 1 to execute the sale deed of the above said villa in favour of the complainants.
5. 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

6. The respondent contested the complaint on the following grounds.
 - a. That at the outset, the respondent humbly submits that each and all averments and contentions, as made in the complaint, unless specifically admitted, be taken to have been categorically denied by the respondent and may be read as travesty of facts.

- b. That the complaint filed by the complainants before the Authority besides being misconceived and erroneous, is untenable in the eyes of law. The complainants have misdirected themselves in filing the above captioned complaint before the Authority as the relief being claimed by them, besides being illegal, misconceived and erroneous, cannot be said to even fall within the realm of jurisdiction of the Authority.
- c. That further, without prejudice to the aforementioned, even if it was to be assumed though not admitting that the filing of the complaint is not without jurisdiction, even then the claim as raised cannot be said to be maintainable and is liable to be rejected for the reasons as ensuing.
- d. That the reliefs sought by the complainants appear to be on misconceived and erroneous basis. Hence, the complainants are estopped from raising the pleas, as raised in respect thereof, besides the said pleas being illegal, misconceived and erroneous.
- e. That apparently, the complaint filed by the complainants is abuse and misuse of process of law and the reliefs claimed as sought for, are liable to be dismissed. No reliefs much less any interim relief, as sought for, is liable to be granted to the complainants.
- f. That the respondent has already cancelled the booking of the complainants vide cancellation notice dated 31.07.2021 due to various reasons but not limited to change in the layout plan, initiation of the GAIL corridor, non-removal or shifting of the defunct high tension lines and non-acquisition of sector roads by HUDA. As per clause 11.5 of the agreement, it has been agreed that in the event of failure to handover the possession, the company shall be entitled to terminate the agreement and refund the amount. The respondent also offered to refund the amount to the complainants along with 6% interest p.a.

However, it was the complainants who did not come forward to collect the money.

g. That in the present case, there has been a delay due to various reasons which were beyond the control of the respondent and the same enumerated below:

a. Decision of the Gas Authority of India Ltd. (GAIL) to lay down its gas pipeline from within the duly pre-approved and sanctioned project of the Respondent which further constrained the Respondent to file a writ petition in the Hon'ble High Court of Punjab and Haryana seeking directions to stop the disruption caused by GAIL towards the project. However, upon dismissal of the writ petition on grounds of larger public interest, the construction plans of the Respondent were adversely affected and the Respondent was forced to reevaluate its construction plans which caused a long delay.

b. Delay caused by the Haryana Development Urban Authority (HUDA) in acquisition of land for laying down sector roads for connecting the Project. The matter has been further embroiled in sundry litigations between HUDA and landowners.

c. Re0routing of High-Tension lines passing through the lands resulting in inevitable change in the lay out plans and cause unnecessary delay in development.

h. That it was due to the aforesaid reasons which were beyond the control of the respondent, the unit of the complainants became non-deliverable.

7. All other averments made in the complaint were denied in total.

8. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents.

E. Jurisdiction of the authority

9. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.1 Territorial jurisdiction

10. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

11. 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.

12. 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.

13. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022 (1) RCR (Civil), 357 and reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022*, wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

14. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the relief sought by the complainants.

- F. I Direct the respondent to pay interest @18% p.a. as payments, towards delay in handing over the property in question as per provisions of the Act, 2016 Rules 2017.**

15. 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."

16. Clause 10.1 of the buyer's agreement provides for time period for handing over of possession and is reproduced below:

"10.1 Schedule for possession of the said unit

The Company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Unit/said Unit within a period of three years from the date of execution of this agreement. However, in case the Company is not able to adhere to the said time frame, it shall be entitled to reasonable extension of time for completing the construction, unless there shall be delay or there shall be failure due to reasons mentioned in clauses (11.1),(11.2),(11.3) and clause (38) or due to failure of applicant(s) to pay in time the price of the said unit along with all other charges and dues in accordance with the schedule of payments given herein in Annexure-III or as per the demands raised by the Company from time to time or any failure on the part of the Applicant(s) to abide by any of the terms or conditions of this Agreement.

17. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the prescribed rate. However, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of

possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

18. The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
19. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 01.08.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.
20. **Rate of interest to be paid by complainants/allottees for delay in making payments:** The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

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

Explanation. —For the purpose of this clause—

(i) *the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of*

interest which the promoter shall be liable to pay the allottee, in case of default;

(ii) *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

21. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.75% by the respondent/promoter which is the same as is being granted to the complainants in case of delayed possession charges.
22. 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 10.1 of the agreement executed between the parties on 12.05.2010, the possession of the subject apartment was to be delivered within three years from the date of execution of agreement. Therefore, the due date of handing over possession was 12.05.2013. The respondent has failed to handover possession of the subject apartment 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 complainants as per the terms and conditions of the agreement dated 12.05.2010 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.

23. 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 @ 10.75% p.a. w.e.f. 12.05.2013 till the actual handing over of possession or offer of possession + 2 months whichever is earlier as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

F.II Possession

24. The complainant booked a villa in the project of the respondent and in consonance of same, a buyer's agreement dated 12.05.2010 was executed inter-se parties. It is an undisputed fact that the complainant has already paid an amount of Rs. 49,29,001/- towards total consideration of Rs. 96,70,500/-. The respondent sent a letter namely "notice for termination" dated 08.12.2021. However, there is nothing on record to substantiate the fact that the said notice was proceeded by cancellation by the respondent-builder. The complainants approached the Authority seeking possession of the allotted villa as one of their reliefs, Whereas the respondent, submitted that the said unit not available due to passing of GAIL pipeline over the allotted area.
25. The Authority observes that it is high headedness on part of the respondent that despite booking of the subject unit way back in 2009, the respondent is now denying to provide the possession of the unit to the complainants.
26. In view of the submissions of the parties, the respondent is directed to provide alternative plot/units to the complainants at the same rate at which the unit was earlier purchased. The rationale behind same is simple, that the allottees booked the plot in the project way back in 2009 and paid the amount then only, in a hope to get the possession.

27. Moreover, the interest (DPC) component is levied to balance the time-value component of the money. However, the same is made applicable on the amount then paid by the allottee for the delay in handing over of the possession by the respondent and the same is balanced vide provision of section 2(za) of the Act. The complainants cannot be made suffer due to fault of the respondent and supposed to pay for the unit as per todays rate.

G. Directions of the authority

28. 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 provide possession of the alternative plot/unit as agreed between the parties, at the same rate at which the unit was earlier purchased within two months from the date of this order.
- ii. The respondent is directed to pay interest at the prescribed rate of 10.75% p.a., for every month of delay from the due date of possession i.e., 12.05.2013 till the actual handing over of possession or offer of possession + 2 months whichever is earlier.
- iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.75% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.



- v. The respondent shall not charge anything from the complainants which is not the part of the agreement. The respondent is not entitled to charge holding charges from the complainant/ allottee at any point of time even after being part of the builder buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 on 14.12.2020.

29. Complaint stands disposed of.

30. File be consigned to registry.


(Sanjeev Kumar Arora)

Member
Haryana Real Estate Regulatory Authority, Gurugram


(Ashok Sangwan)

Member

Dated: 01.08.2023

HARERA
GURUGRAM