

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

Complaint no. :	7600 of 2022
Date of filing complaint:	09.12.2022
Order Reserve On:	18.04.2023
Order Pronounce On:	07.07.2023

1. Harendra Singh 2. Shailendra Kumar R/O: H. no. 79D/30, Narendra Vihar, Rajendra Nagar, Bareilly, Uttar Pradesh	Complainants
Versus	
M/s Imperia Structures Limited+ Regd. office: A-25, Mohan Cooperative Industrial Estate, New Delhi-110044	Respondent

CORAM:	
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Maheshwar Rathi (Advocate)	Complainants
Sh. Rishi Kapoor (Advocate)	Respondent

ORDER

1. The present complaint has been filed by the complainants/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 provision of the Act or the rules

and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Name and location of the project	"The Esfera" Phase II at sector 37-C, Gurgaon, Haryana
2.	Nature of the project	Group Housing Complex
3.	Project area	17 acres
4.	DTCP license no.	64 of 2011 dated 06.07.2011 valid upto 15.07.2017
5.	Name of licensee	M/s Phonix Datatech Services Pvt Ltd and 4 others
6.	RERA Registered/ not registered	Registered vide no. 352 of 2017 issued on 17.11.2017 up to 31.12.2020
7.	Unit no.	1202, 12th Floor, Block C (page no. 34 of complaint)
8.	Unit area admeasuring (super area)	1435 sq. ft. (page no. 34 of complaint)
9.	Date of allotment	18.12.2012 (page no. 24 of complaint)



10.	Date of builder buyer agreement	14.06.2013 [page no. 28 of complaint]
11.	Possession clause	10.1. SCHEDULE FOR POSSESSION “The developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete the construction of the said building/said apartment within a period of three and half years from the date of execution of this agreement unless there shall be delay or there shall be failure due to reasons mentioned in clause 11.1, 11.2, 11.3, and clause 41 or due to failure of allottee(s) to pay in time the price of the said unit along with other charges and dues in accordance with the schedule of payments given in annexure C or as per the demands raised by the developer from time to time or any failure on the part of the allottee to abide by all or any of the terms or conditions of this agreement.”
12.	Due date of possession	14.12.2016 [calculated as per possession clause]
13.	Total sale consideration	Rs. 75,50,599/- [as per the statement of account on annexure R2 on page no. 14 of reply]
14.	Amount paid by the complainants	Rs. 70,19,943/- [as per the statement of account on annexure R2 on page no. 14 of reply]



15.	Demand Note Cum Possession Offer for Fit Out	11.08.2021 (page no. 35 of complaint)
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered

B. Facts of the complaint:

3. The respondent had allotted a flat bearing no. C-1202 on 12th floor, in tower – C, measuring an area of 1435 sq. ft. in the residential project named, “The Esfera” situated at sector-37C, Gurgaon at a basis sale price of Rs.3,800/- per sq. ft. on 18.12.2012.
4. The complainants entered into a buyer’s agreement on dated 14.06.2013, with the respondent in respect of the above said flat.
5. That, as per covenant of the said buyer’s agreement, it has been clearly mentioned that the possession of the said unit shall handover to the allottee within 42 months from the date of apartment buyer’s agreement maximum by 14.12.2016, including 6 months grace period.
6. That, on 11.08.2021, the respondent issued a demand note cum possession offer for fit outs, and from perusal of the letter dated 11.08.2021, the complainants have come to know that the respondent without intimation, information and consent of the complainants have increased the area of the said flat from 1435 to 1578 Sq. ft., illegally and unlawfully. The respondents had never obtained or sought the consent or permission of the complainants by flouting all the Acts, rules and framed under the RERA Act, 2016 and Haryana RERA Rules, 2017 to the winds. Not only this, but the respondent has also increased the average



escalation cost, as per indexed construction escalation between 2014-2017 @ Rs.5,89,959/-. However, this fact was never agreed upon between complainants and respondent and this demand of the respondent is out and out illegal and unlawful, having no sanctity in the eyes of law and liable to be discarded with immediate effect.

7. That in the letter dated 11.08.2021, the respondent had assured and ensured the complainants that their application for grant of occupation certificate is in advance stage, and they are going to obtain occupation certificate in few weeks. On the contrary, so far, no occupation certificate has been obtained by the respondent from the competent authority.
8. That, as per the apartment buyer's agreement dated 14.06.2013, the respondent was under legal obligation to handover the possession of the flat to the complainants maximum by 14.12.2016, but so far the respondent has not handed over the possession even has not yet offered the possession of the said flat.
9. The respondent is liable to pay the amount of delayed possession for about 09 years along with interest as per RERA Act and Policies to the respondent. The respondent is strictly bound by the terms and conditions of the buyer agreement and liable to make the payment of delayed possession with interest to the complainants.
10. The complainants made several requests to the respondent to make the delayed possession payment with interest, but respondent flatly refused to make the said delayed possession payment illegally and unlawfully and made false and lame excuses. The respondent knowingly escaping from his legal liability by not paying the delayed possession payment, however, the respondent is bound by the terms and conditions of the buyer's agreement.



11. That, till today the complainants had not received any satisfactory reply from the respondent regarding completion of the project. the complainants have been suffering a lot of mental, physical and financial agony and harassment.
12. That, as per the ledger being issued by the respondent on the request of complainants, they have paid an amount of Rs.70,19,941/- out of total sale consideration of Rs.72,30,375/-, which includes PLC, Parking, EDC, IDC and other charges as on 25.04.2019.
13. That, from bare perusal of the customer ledger, it is clear as crystal that the respondent has levied a charge of Rs.3,50,000/- towards reserved car parking, which in utter contravention of the law laid down by the Hon'ble Apex Court, wherein the Hon'ble Apex Court has ruled that the builder is under legal obligation to provide a parking to each homebuyer and the builder cannot sale the car parking separately.
14. The cause of action accrued in favour of the complainants and against the respondent, when complainants had booked the said apartment and it further arose when respondent failed/neglected to deliver the said apartment within stipulated time period. The cause of action is continuing and is still subsisting on day-to-day basis.

C. Relief sought by the complainants:

15. The complainants have sought following relief(s):
 - (i) Direct the respondent to pay the delayed possession charges till offer of possession of the said apartment along with prevailing interest as per the provisions of the Act.
 - (ii) Direct the respondent to waive off the reserve car parking charges.



- (iii) Direct the respondent to waive off unnecessary charges viz. escalation charges, increased area charges, average escalation charge.
- (iv) Direct the respondent to handover the possession of the said apartment to the complainants with immediate effect.
- (v) Direct the respondent to pay Rs. 50,000/- as litigation expenses.

D. Reply by respondent:

The respondent by way of written reply made following submissions:

16. That the complainants, after being fully satisfied about the project, had approached the respondent for booking of a residential unit in respondent's project 'The Esfera' located in sector-37-C, Gurugram, Haryana. The respondent provisionally allotted the unit bearing no. tower C 1202 in favor of the complainants for a total consideration amount of Rs. 75,50,599/- including applicable tax and additional miscellaneous charges vide booking dated 06.07.2012 and opted the construction linked payment plan on the terms and conditions mutually agreed by them.
17. That the construction of the said unit has completed on 10.04.2021 and the occupation certificate has already been applied for. The respondent has duly completed their compliances. The respondent has successfully completed the construction of the said project, way before the agreed timeline, and has applied to the competent authority for issuance of occupancy certificate on 15.04.2021 itself, after complying with all the requisite formalities, and the same is awaited to be procured anytime now by the end of month of May.
18. That the complainants haven't approached this Hon'ble Authority with clean hands or with bona fide intentions and the same is depicted in



their actions as they have not paid the outstanding instalments in time and it must be noted that till this day a large sum of amount is pending to be paid by them.

19. That the terms of the BBA were agreed to and signed by the complainants and, as such, the parties are bound by the terms and conditions mentioned in the said agreement. As per the BBA entered between the parties, time was agreed to be a matter of essence in the BBA and the allottees were bound to make timely payments of the instalments due as per the payment plan opted by the complainants.
20. That despite numerous reminders, the complainants failed to comply by the obligations laid down by the BBA they willingly entered into. Herein it is pertinent to mention that an exorbitant sum of Rs. 5,30,656/- is still due to be paid by the complainants.
21. That the default of the complainants in paying the outstanding amount and honouring the payment plan, in addition to default in payment by various other buyers in the said project, the respondent company has incurred huge losses/damages. On account of the breach of the terms of the agreement by the complainants, and other buyers in the said project, the respondent company had no option left but to resort to availing a last mile funding of Rs.99 crores from SWAMIH Investment Fund-I. The said alternate investment fund (AIF) was established under the Special Window by the Hon'ble Finance Minister to provide priority debt financing for the completion of stalled, brownfield, RERA registered residential developments that are in the affordable housing /mid-income category, are net-worth positive and require last mile funding to complete construction. After long overdue application to the said policy, the respondent company was finally granted a sanction on 23.09.2020. The act of the respondent company depicts the will and



bona fide intention of completing the said project and delivering their duties.

22. That the project of the respondent got delayed due to unforeseen circumstances. Firstly, owing to unprecedented air pollution levels in Delhi NCR, the Hon'ble Supreme Court directed a ban on construction activities in the said region from November 4, 2019 onwards, which was a huge hurdle to realty developers in the city. The air quality index (AQI) at the time was running as high as 900 PM, which is severely unsafe for the health. Later, in furtherance of declaration of the AQI levels as 'not severe by the Central Pollution Control Board (CPCB), the Hon'ble Supreme Court lifted the ban conditionally on 09.12.2019, allowing construction activities to be carried out between 6 a.m. and 6 p.m. and consequently, the complete ban was lifted by the Hon'ble Supreme Court on 14.02.2020. This had caused the project to be delayed and thus, there was a delay in application for occupancy certificate. Secondly, when the complete ban was lifted on 14.02.2020, the Government of India imposed National Lockdown on 24.03.2020 due to pandemic COVID-19, and later lifted the lockdown, conditionally, on 17.05.2020. It must be pertinent herein that the pandemic COVID-19 has caused immense delay and obstruction to the construction of the building, as the procurement of labour and raw material proved to be highly challenging. The whole situation led to a reverse migration of workers, who left cities and returned back to their villages, for safety of themselves and their families. It is estimated that around 6 lakh workers walked to their villages, and around 10 lakh workers are stuck in relief camps. The aftermath of lockdown or post lockdown periods have left great impact on the realty sector for resuming their respective constructions. Thus, causing delay in the



completion of the said project, which was already hampered by the non-payment of outstanding dues by numerous allottees, including the complainants.

23. That the respondent company had allotted the unit to the complainants at the price prevalent in the market on the assurance that the complainants will make timely payments and honour the terms of the BBA. However, the complainants defaulted in making payment despite several opportunities given by the respondent company to complete the payment and thus, the respondent company could not allot the said unit to any third party, who was willing to book the said unit at a higher price. The complainants have caused the respondent company to incur loss of opportunity & cost, and are thus, liable to indemnify the respondent company towards the same. It is no longer a res integra that failure on the part of the complainants to perform their contractual obligations disentitles them from any relief. It is a well settled proposition of law that the Courts cannot travel beyond what is provided in the agreement/contract and generate altogether a new contract leaving the responsibility of the court to interpret appropriately the existing contract and decide the rights and liabilities of the parties within the four corners of the contract rather than metamorphosing the nature of the contract. Thereafter, the complainants are not entitled to get any relief, as has been sought for in this complaint.
24. That it is thereafter concluded that this complaint is ultra vires and entertaining it will be bad in law. It is also submitted that the complainants are not entitled to the proposed reliefs as they have approached this Hon'ble Tribunal with malice and mala fide intentions. It is also submitted that the contractual obligations were not met by the



complainants, to begin with, and they have concealed these relevant facts, which resultantly render this complaint infructuous and not maintainable.

25. 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:

26. The authority has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

27. 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

28. 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.

29. 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 objections raised by respondent

F.I Objection regarding force majeure conditions:

30. The respondent-promoter has raised the contention that the construction of the tower in which the unit of the complainants is situated, has been delayed due to force majeure circumstances such as orders of the High Court and Supreme Court and Covid -19 and non-payment of instalment by different allottee of the project but all the pleas advanced in this regard are devoid of merit. First of all, the possession of the unit in question was to be offered by 14.12.2016. Hence, events alleged by the respondent do not have any impact on the project being developed by the respondent. Moreover, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.



G. Entitlement of the complainants:

G.I Direct the respondent to handover the possession of the said apartment to the complainants with immediate effect.

G. II Direct the respondent to pay the delayed possession charges till offer of possession of the said apartment along with prevailing interest as per the provisions of the Act.

31. 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."

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

10.1. SCHEDULE FOR POSSESSION

"The developer based on its present plans and estimates and subject to all just exceptions, contemplates to complete the construction of the said building/said apartment within a period of three and half years from the date of execution of this agreement unless there shall be delay or there shall be failure due to reasons mentioned in clause 11.1, 11.2, 11.3, and clause 41 or due to failure of allottee(s) to pay in time the price of the said unit along with other charges and dues in accordance with the schedule of payments given in annexure C or as per the demands raised by the developer from time to time or any failure on the part of the allottee to abide by all or any of the terms or conditions of this agreement."

33. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges, 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.

34. 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.
35. 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., 07.07.2023 is 8.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70% per annum.
36. 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:

"(z) "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;"*

37. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.70% p.a. by the respondent/promoter which is the same as is being granted to the complainants in case of delay possession charges.
38. 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 section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. It is a matter of fact that buyer's agreement executed between the parties on 14.06.2013, the possession of the booked unit was to be delivered within a period of three and half years from the date of execution of this agreement which comes out to be 14.12.2016.
39. 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 complainants are 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 the due date of possession i.e., 14.12.2016 till the valid offer of possession of the subject unit after obtaining occupation 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.

G.III Direct the respondent to waive off the reserve car parking charges.

40. The complainants in its relief have sought to waive off the amount of reserve car parking charges. The authority has gone through the builder buyer's agreement, the complainants as per clause 1.5 where details of additional charges of the unit has been specified has agreed to pay an amount of Rs. 3,50,000/- for the reserved car parking. Further as per clause 1.11 of the buyer's agreement talks about the reserve car parking which is reproduced for ready reference.

The Intending Allottee(s) agrees that reserved covered parking space allotted to him/her for exclusive use shall be understood to be together with the apartment and the same shall not have independent legal entity detached from the said Apartment. The Intending Allottee(s) undertakes not to sell/ transfer/deal with the reserved covered parking space independent of the said Apartment. The Intending Allottee(s) undertakes to park.....

41. In view of the same the authority is of the view that the respondent is right in charging Rs. 3,50,000/- in lieu of the reserved car parking space.

G.IV Direct the respondent to waive off unnecessary charges viz. escalation charges, increased area charges, average escalation charge.

42. The complainants have contended about various unnecessary charges raised by the respondent-promoter detailed as under:

S.No.	Particulars	Amount (Rs.)
1	Demand towards Balance Sale Consideration	4,97,021/-
2	Increased Area Charges (i.e., Increase in Area x Booking/ Allotment Rate)	6,75,675/-
3	Average Escalation Cost, as per indexed construction Escalation between 2014-2017	5,89,959/-



4(A)	Net Sales Value (Aggregate of above)	17,62,655/-
5(B)	Total Service Tax/ GST	4,42,954/-
6(C)	Service Tax/GST (Received)	2,86,589/-
7(D)	Balance Service Tax/GST [i.e., [B-C] =D]	1,56,365/-
8(E)	Delay Possession Penalty @ Rs. 5/- sq. ft. starting from 13 th December 2016 till 31 st May 2021	4,28,690/-
9(F)	Total Outstanding Dues [i.e., (A+D-E) =F]	14,90,330/-

43. It is pleaded that out of the above-mentioned charges detailed, there is no basis to demand charges against increase in area and average escalation cost. Though demand under the heading increased area charges (i.e., increase in area x booking/ allotment rate) has been mentioned as Rs. 6,75,675/-but without giving any basis. A buyer's agreement w.r.t allotted unit was executed between the parties on 14.06.2013 and clause 9.2 provides with regard to major alteration/modification resulting in excess of +/- 10% change in the super area of the apartment or material/ substantial change in the sole opinion of and as determined by the developer/company. The increase in super area of the unit comes to 9.9% i.e., from the original allotment of 1435 sq. ft., it comes to 1578 sq. ft. A reference to clause 9.2 of the agreement must detail as under:

9.2 Major alteration/modification

In case of any major alteration/modification resulting in excess of +10% change in the super area of the aid apartment or material/substantial change, in the sole opinion of and as determined by the Developer/company, in the specifications of the materials to be used in the said building/said apartment any time prior to and upon the, grant of occupation certificate, the develop/company shall intimate the intending allottee(s) in writing



the changes thereof and the resultant change, if any, in the price of the said apartment to be paid by him/her and the intending allottee agrees to deliver to the Developer/Company his/her written consent or objections to the changes within thirty days from the date of dispatch by the Developer/Company of such notice failing which the intending allottee shall be deemed to have given his/her full and unconditional consent to all such alterations/modifications and for payment, if any to be paid in consequence thereof.....

44. It is not disputed that the due date for completion of the project has already expired on 14.12.2016 and occupation certificate has still not been received. The impugned demand against the above-mentioned head was raised vide letter dated 11.08.2021 while offering possession for fit outs and the same is as per the above-mentioned provision of the buyer agreement. However, the respondent-builder is also duty bound to explain that increase in the super area of the unit vis a vis the project before raising such demand and can be therefore recovered from the allottee. The view of the authority in this regard find support from the ratio of law laid down in case of NCDRC in judgement no. 34 of 2022 titled as Himanshu Dewan and 5 others Vs. Experion Developers Pvt. Ltd.

- **Escalation charges**

45. While raising demand vide letter dated 11.08.2021, the respondent builder also raised a demand for Rs. 5,89,959/- being average escalation cost as per indexed construction escalation between the years 2014-2017. It is contended that the demand raised in this regard is illegal. But again, the plea advanced in this regard is devoid of merit. A reference to clause 1.2 and 1.6 of the agreement provides with regard to increase or decrease in the price of material used in the construction work and being recoverable/payable by the allottee. Then vide clause 1.6 of that document, the allottee agreed to pay sale price of the unit calculated on the basis of increase or decrease in the super area. There is increase in



the super area besides increase in the price of construction material used. So as per the terms and conditions of the buyer's agreement mentioned above the demand raised under this head can't be said to be illegal.

G.V Direct the respondent to pay Rs. 50,000/- as litigation expenses.

46. The complainants in the aforesaid relief are seeking relief w.r.t compensation. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as **M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.** (Decided on 11.11.2021), has held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation. Therefore, the complainants are advised to approach the adjudicating officer for seeking the relief of compensation.

H. Directions of the Authority:

47. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i) The respondent is directed to handover the valid offer of possession to the complainants after obtaining occupation certificate.
- ii) 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., 14.12.2016 till the valid offer of possession of the subject flat after obtaining occupation certificate from the competent authority plus two months or handing over of possession whichever is earlier.

- iii) 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.
- iv) The complainants are also directed to pay the outstanding dues after adjustment of delay possession charges, if any.
- v) The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.70% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- vi) The respondent shall not charge anything from the complainants which is not part of the builder buyer agreement.

48. Complaint stands disposed of.

49. File be consigned to the registry.


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 07.07.2023


(Ashok Sangwan)
Member