

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

Complaint no.	:	4100 of 2021
Date of filing	:	12.10.2021
Date of decision	:	15.09.2023

1. Sh. Ashish Chugh 2. Smt. Sumita Chugh 3. Sh. Om Prakash Chugh R/o: B-1/522, Janakpuri, New Delhi- 110058	Complainants
Versus	
Anand Divine Developers Private Limited Regd. office: ATS Tower, Plot No 16, Sector 135, Noida- 201305	Respondent
CORAM:	
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Ishaan Dang	Complainants
None	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 to the allottee as per the agreement for sale executed inter-se them.

A. Unit and Project related details:

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

S. N.	Particulars	Details
1.	Name of the project	ATS Triumph
2.	Unit no.	8192 on 19 th floor, tower 08 (Type-A) (As per page no. 34 of the complaint)
3.	Super area admeasuring	3150 sq. ft. (As per page no. 34 of the complaint)
4.	Date of builder buyer agreement	24.12.2012 (As per annexure- C3 on page no. 31 of the complaint) (between Sh. Ashish Chugh, Smt. Sumita Chugh and respondent)
5.	Possession clause	18. Time of handing over possession Barring unforeseen circumstances and force majeure events as stipulated hereunder, the possession of the said apartment is proposed to be, offered by the company to the allottee <i>within a period of 36 (Thirty- Six) months with a grace period of 6 (Six) months from the date of actual start of construction of a particular tower building in which the registration for allotment is made</i> , such date hereinafter referred to as "stipulated



		date", subject always to timely payment of all charges including the basic sale price, stamp duty, registration fees and other charges as stipulated herein or as may be demanded by the company from time to time in this regard. The date of <i>actual start of construction shall be the date on which the foundation of the particular building in which the said apartment is allotted</i> shall be laid as per certification shall be final and binding on the allottee.
6.	Date of start of construction for concerned tower	05.07.2013 (As alleged by the complainants that demand letter dated 05.07.2013 places on page no. 55 of the complainants were raised at the time of piling of tower 08)
7.	Date of Supplemental agreement	12.06.2014 (Page 56 of complaint) (between Sh. Ashish Chugh, Smt. Sumita Chugh, Sh. Om Prakash Chugh and respondent)
8.	Due date of possession	05.01.2017 (Calculated from date of start of construction 05.07.2013 as per clause 18 + 6 months grace period)
9.	Total sale consideration	Rs.1,60,56,250/- (Exclusive of Tax) (As per details of consideration on page 54 of complaint)
10.	Amount paid by the complainants	Rs. 1,67,37,405/- (As per page no. 59 of complaint)

11.	Occupation certificate	28.05.2019 (As per annexure R09 on page no. 98 of reply)
12.	Offer of possession	30.05.2019 (As per annexure- C7 on page no. 61 of the complaint)
13.	Grace period utilization	Upon perusal of the possession clause, the authority observed that the grace period of 6 months is conditional on the eventuality of unforeseeable circumstances and conditions which is hereby allowed as substantial evidence/documents have been placed on record by the respondent in its reply to corroborate that any such event, circumstances, condition that hampered the construction work. Such events includes NGT orders barring the construction, demonetization.

B. Facts of the complaint

3. That the officials of the respondent had represented to the complainants that construction of the said project would be definitely completed within a period of 36 months. That convinced by the representations and assurances proffered by the officials of the respondent, complainant number 1 and 2 had booked a residential apartment in the said project. They had filled the application form/booking form for booking the unit in the said project.

4. It is submitted that at the time of booking, they had also paid booking amount of Rs.10,00,000/- which had been duly acknowledged by the respondent. That they vide allotment letter allotted an apartment bearing no. 8192 located on the 19th Floor in Tower/Building number 8 admeasuring 3150 square feet approximately (super area) along with two car parking spaces. They had opted for a construction linked payment plan. That buyer's agreement dated 24.12.2012 prepared by the respondent had been executed between the complainant numbers 1 and 2 and the respondent after a gap of more than one year from the date of booking. That the total basic sale price of the said unit was Rs.1,47,75,000/-.
5. That it is submitted that the terms and conditions incorporated in the aforesaid buyer's agreement were tilted heavily in favour of the respondent and completely one-sided. It would not be out of place to mention that the respondent had represented to them at the time of booking that the possession of the said unit would be handed over to the complainant number 1 and 2 positively by July, 2016.
6. That supplemental agreement dated 12.06.2014 has been executed between the complainants and the respondent by way of which the name of complainant number 3 i.e. Mr. Om Prakash Chugh was added as co-allottee. Furthermore, it had also been mentioned in the aforesaid supplemental agreement that Mr. Om Prakash Chugh (complainant number 3) would have 50% share in the said unit and complainants number 1 and 2 would have 25% share each in the said unit. It had further been incorporated in the aforesaid supplemental agreement that the terms and conditions of the buyer's agreement dated 24.12.2012 would remain valid and binding on the complainants and the respondent. That

the complainants had made all the payments as demanded by the respondent in a regular and timely manner. It is pertinent to mention that till date, the complainants have made a total payment of Rs.1,67,37,404/- to the respondent. It would not be out of place to mention that as per the payment plan appended with the buyer's agreement, the total sale consideration amount had been quantified to be Rs.1,60,56,250/-

7. That letter of offer of possession dated 30.05.2019 had been issued by the respondent to the complainants with respect to the said unit. The respondent had mentioned in the aforesaid letter of possession that a total amount of Rs.16,04,300/- was outstanding and liable to be paid to the respondent by the complainants. However, the said letter did not contain any details about the delayed payment charges which were liable to be paid by the respondent to the complainants.
8. That the complainants proceeded to make the entire payment of the outstanding amount of Rs.16,04,300/- to the respondent after receiving the letter of offer of possession.
9. That the complainants in the month of January, 2021 had received several draft documents from the respondent including certificate of possession indemnity cum undertaking, discharge cum no dues certificate, key handover letter, possession letter, client data sheet, tripartite maintenance agreement draft conveyance deed and deed of apartment. That a cursory glance at the documents listed above would show that the same had been drafted by the officials of the respondent with an intent to entrap the complainants and take away the legal rights and remedies available to the complainants. In fact, the finishing work of the said unit has not been commenced till date by the respondent even though the complainants have requested the respondent several times to initiate the

same. As on date, the complainants have made a total payment of Rs.1,67,37,404/- to the respondent.

10. That the cause of action for filing the present complaint is a recurring one and it accrued in favour of the complainants on 24.12.2012 when the buyer's agreement containing unfair and biased terms had been executed between the parties.

C. Relief sought by the complainant:

11. The complainants have sought following relief:
- i. Direct the respondent to handover possession of apartment bearing no. 8192 on 19th floor tower/building no. 8 admeasuring 3150 sq. ft. approximately (super area) along with two car parking spaces in the project "ATS Triumph" located in Sector 104, Gurugram, Haryana to the complainants after completing the finishing work in the said unit.
 - ii. Direct the respondent to pay interest to the complainants for the entire amount paid by them against the respondent towards delayed possession charges from the due date of possession till date.
 - iii. Kindly initiate possible action and levy suitable penalty for its deliberate failure to get the said project registered with the authority.
 - iv. Direct the respondent to pay an amount of Rs 1,00,000 as litigation expenses.
12. 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:

13. That the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed. The complainants are estopped from filing the present complaint by their acts, omissions, admissions, acquiescence and laches.
14. That the present complaint is neither maintainable nor tenable before this Hon'ble Forum and is liable to be outrightly dismissed. The agreement in question was executed between the parties prior to the enactment of RERA, 2016 and the provisions laid down in the said Act cannot be enforced retrospectively.
15. 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.
16. That the buyer's agreement was executed on 24.12.2012. It is pertinent to mention herein that the Real Estate (Regulation and Development) Act, 2016 was not in force when the agreement was entered into between the complainants and the respondent. The provisions of the Real Estate (Regulation and Development) Act, 2016 thus cannot be enforced retrospectively.
17. That the possession of the unit was supposed to be offered to the complainants in accordance with the agreed terms and conditions of the buyer's agreement. It is submitted that clause 18 of the buyer's agreement. That the possession of the unit was subject to the occurrence of the force

majeure events. The relevant clause of the agreement pertaining to force majeure event is clause 22.

18. That it is pertinent to mention herein that the implementation of the said project was hampered due to non-payment of instalments by allottees on time and also due to the events and conditions which were beyond the control of the respondent and which have affected the materially affected the construction and progress of the project. Some of the force majeure events/conditions which were beyond the control of the respondent and affected the implementation of the project and are firstly, inability to undertake the construction for approx. 7-8 months due to Central Government's Notification with regard to Demonetization secondly Orders Passed by National Green Tribunal thirdly non-payment of instalments by allottees lastly, inclement weather conditions viz. Gurugram
19. That the respondent after completing the construction of the unit in question, applied for the grant of the occupation certificate on 03.10.2016 and the same was granted by the concerned authorities on 28.05.2019. The respondent offered the possession of the unit to the complainants vide letter dated 30.05.2019. The complainants were intimated to remit the outstanding amount on the failure of which the delay penalty amount would accrue. The photographs of the tower in question are also attached. The complainants are not coming forward to take the possession of the unit after remitting the due amount. The complainants are bound to take

the physical possession of the unit after making payment towards the due amount along with interest and holding charges.

20. That the complainants are real estate investor who has invested his money in the project of the respondent with an intention to make profit in a short span of time. However, his calculations have gone wrong on account of slump in the real estate market and he is now deliberately trying to unnecessarily harass, pressurize and blackmail the respondent to submit to the unreasonable demands.
21. 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

22. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

E. I Territorial jurisdiction

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

23. 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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.

So, in view of the provisions of the Act of 2016 quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the objections raised by the respondent:

F.I Objection regarding complainants is in breach of agreement for non-invocation of arbitration.

24. The respondent has raised an objection that the complainants have not invoked the arbitration proceedings as per the provisions of flat buyer's agreement which contains provisions regarding initiation of arbitration proceedings in case of breach of agreement. The following clause has been incorporated w.r.t arbitration in the buyer's agreement:

"Clause 39: All or any dispute arising out of or touching upon or in relation to the terms of this Agreement or its termination, including the interpretation and validity thereof and the respective rights and obligations of the Parties shall be settled amicably by mutual discussion, failing which the same shall be settled through arbitration. The arbitration proceedings shall be governed by the Arbitration and

Conciliation Act, 1996 as amended up to date. A sole arbitrator who shall be nominated by the Board of Directors of the company shall hold the arbitration proceedings at the office of the Company at Noida. The allottee hereby confirms that he shall have no objection to this appointment, more particularly on the ground that the Sole Arbitrator being appointed by the Board of Directors of the company likely to be biased in favour of the company. The Courts at Noida, Uttar Pradesh shall to the specific exclusion of all other courts alone have the exclusive jurisdiction in all matters arising out of/touching and/or concerning this Agreement regardless of the place of execution or subject matter of this Agreement. Both the parties in equal proportion shall pay the fees of the Arbitrator”

The respondent contended that as per the terms & conditions of the agreement dated 24.12.2012 duly executed between the parties, it was specifically agreed that in the eventuality of any dispute, if any, with respect to the provisional booked unit by the complainant, the same shall be adjudicated through arbitration mechanism. 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. 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 complainants and builders could not circumscribe the jurisdiction of a consumer forum.

25. 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. 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."

26. Therefore, in view of the above judgements and considering the provisions of the Act, the authority is of the view that complainants are well within the right to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and Act of 2016 instead of going in for an arbitration. Hence, there is 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.

F.II. Objection regarding delay due to force majeure events

27. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by Hon'ble Supreme Court and other Authorities to curb the pollution in NCR and outbreak of Covid-19 pandemic. It further requested that the said period be excluded while calculating due date for handing over of possession. The Authority observes that the respondent has placed reliance on orders dated 01.11.2019 and 04.11.2019 of Environment Pollution (Prevention & Control) Authority and Hon'ble Supreme Court of India to curb the pollution in the NCR. Further, in the instant complaint, as per clause 18 of agreement dated 24.12.2012 executed between the parties, the due date of handing over of possession was provided as 05.01.2017. Grace period of 6 months is allowed being unconditional. The respondent-builder in the instant matter has already offered the possession of the allotted unit on 30.05.2019. Hence, the plea regarding admissibility of any further grace period on account of aforesaid circumstances is untenable and does not require any further explanation.

F.III Objection regarding entitlement of DPC on ground of complainants being investor

28. The respondent has taken a stand that the complainants are the investor and not consumers and therefore, are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observes that the respondent is correct in

stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the apartment buyer's agreement, it is revealed that the complainants are buyer and he has paid total price of Rs. 1,67,37,405/- to the promoter towards purchase of an apartment in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

29. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment buyer's agreement executed between promoter and complainant, it is crystal clear that they are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra

Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottee being an investor is not entitled to protection of this Act also stands rejected.

G. Findings regarding relief sought by the complainant.

G.I Direct the respondent to handover possession of apartment bearing no. 8192 on 19th floor tower/building no. 8 admeasuring 3150 sq. ft. approximately (super area) along with two car parking spaces in the project "ATS Triumph" located in Sector 104, Gurugram, Haryana to the complainants after completing the finishing work in the said unit.

G.II Direct the respondent to pay interest to the complainants for the entire amount paid by them against the respondent towards delayed possession charges from the due date of possession till date.

G.III Kindly initiate possible action and levy suitable penalty for its deliberate failure to get the said project registered with the authority.

G.IV Direct the respondent to pay an amount of Rs 1,00,000 as litigation expenses.

30. In the present case, the complainants were offered possession of allotted unit on 30.05.2019 after receipt of occupation certificate dated 28.05.2019 from the competent Authority. Moreover, it was contended by complainants that the possession has not been handed over to them. They further stated that the subject unit is not complete and thus, despite various reminders, the actual possession has not been handed over to them. In view of aforesaid circumstances, the Authority vide proceedings dated 15.09.2023, directed the respondent to provide possession in complete aspect along with delayed possession charges.

The complainant are seeking relief of possession and delay possession charges in the instant complaint, but it is relevant to comment upon the validity of offer of possession to ascertain the liability of respondent-builder towards delay possession charges. As per obligation conferred upon the complainant-allottee under Section 19(10), he was under an obligation to take the possession of the allotted unit within two months from date of occupation certificate. Although it is a case when the buyer's agreement inter-se parties was executed on 24.12.2012 and possession has been offered, after obtaining occupation certificate so it can be said that the unit must be in habitual condition by the time of offer of possession.

Validity of offer of possession

It is necessary to clarify this concept because after valid and lawful offer of possession, the liability of promoter for delayed offer of possession comes to an end. On the other hand, if the possession is not valid and lawful, the liability of promoter continues till valid offer is made and allottee remains entitled to receive interest for the delay caused in handing over valid possession. The authority is of considered view that a valid offer of possession must have following components:

- i. Possession must be offered after obtaining occupation certificate;
- ii. The subject unit should be in a habitable condition;
- iii. The possession should not be accompanied by unreasonable additional demands.

In the present matter, the respondent has offered the possession of the allotted unit on 30.05.2019 i.e., after obtaining occupation certificate from the concerned department on 28.05.2019 along with alleged additional demand of Rs.16,04,300 and with a condition which is subject to such payment the complainants have to submit a request to the respondent to complete the finishing work of the concerned unit. Therefore, no doubt that the offer of possession has been sent to the complainants but the same is accompanied with unreasonable additional demands. Thus, the offer of possession is not an invalid offer of possession.

Delay possession charges

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

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. As per clause 18 of the buyer's agreement dated 24.12.2012, the possession of the subject unit was to be handed over by of 05.01.2017. Clause 18 of the buyer's agreement provides for handover of possession and is reproduced below:

18. Time of handing over possession

Barring unforeseen circumstances and force majeure events as stipulated hereunder, the possession of the said apartment is proposed to be, offered by

the company to the allottee within a period of 36 (Thirty- Six) months with a grace period of 6 (Six) months from the date of actual start of construction of a particular tower building in which the registration for allotment is made, such date hereinafter referred to as "stipulated date", subject always to timely payment of all charges including the basic sale price, stamp duty, registration fees and other charges as stipulated herein or as may be demanded by the company from time to time in this regard. The date of actual start of construction shall be the date on which the foundation of the particular building in which the said apartment is allotted shall be laid as per certification shall be final and binding on the allottee..

33. The authority has gone through the possession clause and observes Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the apartment buyer's agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 05.01.2017 till actual handing over of possession plus two months at the prescribed rate i.e., 10.75 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.
34. **Admissibility of grace period:** The respondent promoter has proposed to complete the construction of the said building/ unit by 05.07.2016. In the present case, the promoter is seeking 6 months' time as grace period. The said period of 6 months is allowed to the promoter being unconditional. Therefore, the due date of possession comes out to be 05.01.2017.
35. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges as one of the reliefs. 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.

36. By virtue of clause 18 of the buyer's agreement executed between the parties on 24.12.2012, possession of the booked unit was to be delivered by 05.01.2017. Accordingly, the complainants are entitled for delayed possession charges as per the proviso of section 18(1) of the Real Estate (Regulation and Development) Act, 2016 at the prescribed rate of interest i.e. 10.75% p.a. for every month of delay on the amount paid by them to the respondent from the due date of possession i.e., 05.01.2017 till actual handing over of possession of the unit.

G.III Kindly initiate possible action and levy suitable penalty for its deliberate failure to get the said project registered with the authority the respondent to provide/inform the date by which the all the amenities in the project will be ready.

37. The above-mentioned relief has not been pressed during proceedings by either of the parties. So, no directions in this regard can be effectuated.

G.IV Direct the respondent to pay an amount of Rs 1,00,000 as litigation expenses.

38. The complainants are seeking relief w.r.t. compensation in the above-mentioned reliefs. **Hon'ble Supreme Court of India in case titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.**

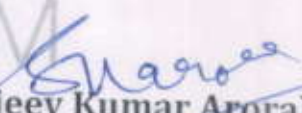
(2021-2022(1)RCR(Civil),357), has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating 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 & legal expenses. Therefore, for claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainants may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

H. Directions of the Authority

39. 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 promoter as per the function entrusted to the authority under section 34(f):
- i. The respondent is directed to handover the possession of the unit within 30 days from the date of this order as per BBA's terms and conditions to be complied with in toto.
 - ii. The respondent is directed to pay delayed possession charges at the prescribed rate of interest i.e., 10.75% p.a. for every month of delay on the amount paid by the complainants to the respondent from the due date of possession i.e., 05.01.2017 till actual handing over of possession of the unit.

- iii. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order of this order as per rule 16(2) of the rules.
- iv. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- v. 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.
- vi. The respondent shall not charge anything from the complainants which is not the part of the flat buyer's agreement.
40. Complaint stands disposed of.
41. File be consigned to registry.

HARERA
GURUGRAM


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated:15.09.2023