BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Order pronounced on: 16.11.2023

Name of the Builder		Tashee Land Developers Private Limited and KNS Infracon Private Limited	
Project Name		Capital Gateway	
S.no	Complaint No.	Complaint title	Attendance
1.	CR/1437/2022	Harjit Singh V/s Tashee Land Private Limited and KNS Infracon Pvt. Ltd.	Mr. Sushil Yadav Mr. Rishabh Jain
2.	CR/1583/2022	Ajit Kumar Yadav V/s Tashee Land Private Limited and KNS Infracon Pvt. Ltd.	Mr. Sushil Yadav Mr. Rishabh Jain
3.	CR/2490/2022	Anil Kumar V/s Tashee Land Private Limited and KNS Infracon Pvt. Ltd.	Mr. Sushil Yadav Mr. Rishabh Jain

CORAM:	
Shri Vijay Kumar Goyal	**Member**

ORDER

1. This order shall dispose of all the 3 complaints titled as above filed before this authority in form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, Capital Gateway being developed by the same respondent/promoter i.e., Tashee Land Developers Private Limited and KNS Infracon Pvt. Ltd. The

terms and conditions of the builder buyer's agreements fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of possession along with delayed possession charges.

3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, offer of possession, total sale consideration, amount paid up, and reliefs sought are given in the table below:

Project: Capital Gateway, Sector-111, Gurugram
Possession clause: Clause 2.1 Subject to clause 9 or any other circumstances not anticipated and beyond control of the first party/conforming party and any restraints/restrictions from any court/authorities and subject to the purchaser having complied with all the terms of this agreement including but not limited timely payment of total sale consideration and stamp duty and other charges and having complied with all provisions, formalities documentation etc. as prescribed by the first party/conforming party proposes to handover the possession of the flat to the purchaser within approximate **period of 36 months from the date of sanction of building plans of the said colony**. The purchaser agrees and understands that the first party/conforming party shall be entitled to a grace period of 180 days after the expiry of 36 months for applying and obtaining OC in respect of the colony from the concerned authority.
Note: **1. Date of sanction of building plans-** Date of sanction of building plans is 07.06.2012 as stated by complainant. Therefore, date of **sanction of building plans** considered to be 07.06.2012 (It is taken by averment of complainant as the said date has not been stated by respondents) ***2. Grace period-*** Since possession clause 2.1 of the BBA incorporates qualified reason which provides a pre-condition that the entitlement of said grace period of 6 months is dependent of the situation of respondent applying for or obtaining occupation certificate from the competent Authority but as per the given facts it has failed to apply for occupation certificate to the competent authority within the stipulated time. Accordingly, the authority disallows this grace period of 6 months to the promoter wherein the respondent has itself failed to comply with the condition incorporated by it. Therefore, such grace period of six months as per clause 2.1 of buyer's agreement is disallowed and not included while calculating the due date of handing over of possession. ***3. Due date of handing over of possession-*** As per clause 2.1 of buyer's agreement, the due date of handing over of possession is 36 months from date of ***sanction of building plans*** and

as specified above, date of ***sanction of building plans*** 07.06.2012. Therefore, due date of handing over of possession **07.06.2015**.

4. DTCP License no. 34 of 2011 dated 16.04.2011 - KNS Infracon Pvt. Ltd. is the licensee for the project as mentioned in land schedule of the project and payment has been made to Tashee Land Developers Pvt. Ltd. as annexed in the payment plan of the agreement.

5. RERA registration – 120 of 2018 dated 10.08.2018 valid up to 31.12.2020.

6. ***Occupation certificate***- *Not obtained.*

7. ***Offer of possession*** – *Not offered*

Sr. no	Complaint no./title/ date of filing complaint	Reply status	Unit No. and area admeasuring (Carpet area)	Date of execution of apartment agreement	Due date of possession	Total sale consideration and amount paid by the Complainant (s) in RS.
1.	**CR/1437/2022** Harjeet Singh Vs. Tashee Land Developers Pvt. Ltd. and anr. DOF- 04.04.2022	Reply received on 25.08.2023	201, 2nd floor, tower-A Admeasuring 1295 sq. ft. (As per page no. 18 of complaint)	29.01.2013 (As per page no. 13 of complaint)	**07.06.2015** (calculated from the date of sanction of building plans i.e., 07.06.2012)	TSC: 60,33,855/- (Page no. 2 of the complaint) AP: 55,00,791/- (As per alleged by his brief facts of complaint, page no. 6)

2.	CR/1583/2022 Ajit Kumar Yadav Vs. Tashee Land Developers Pvt. Ltd. and anr. DOF- 07.04.2022	Reply received on 25.08.2023	501, 5th floor, tower C Admeasuring 1990 sq. ft. (As per page no. 16 of complaint)	20.12.2012 (As per page no. 15 of complaint)	**07.06.2015** (calculated from the date of sanction of building plans i.e., 07.06.2012)	TSC: 76,97,920/- AP: 84,83,240/- (As per alleged by his brief facts of complaint, page no. 6)
3.	CR/2490/2022 Anil Kumar Vs. Tashee Land Developers Pvt. Ltd. and anr. DOF- 31.05.2022	Reply received on 25.08.2023	801, 8th floor, tower G Admeasuring 1695 sq. ft. (As per page no. 20 of complaint)	13.01.2015 (As per page no. 16 of complaint)	**07.06.2015** (calculated from the date of sanction of building plans i.e., 07.06.2012)	TSC: 57,11,705/- AP: 56,87,983/- (As per alleged by his brief facts of complaint, page no. 6)

The complainant(s) in the above complaints have sought the following reliefs:

1. Direct the respondents to provide interest at the prescribed rate for every month of delay on the amount paid by the complainant.
2. Direct the respondents to handover the possession of the flat.

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

Abbreviations Full form
DOF- Date of filing complaint
TSC- Total Sale consideration
AP- Amount paid by the allottee(s)
DPC- Delayed possession charges

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the builder buyer's agreement executed

between the parties *inter se* in respect of said unit for seeking award of possession along with delayed possession charges.

5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoters /respondents in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.

6. The facts of all the complaints filed by the complainant(s)/allottee(s)are also similar. Out of the above-mentioned case, the particulars of lead case ***CR/1437/2022 titled as Harjeet Singh Vs. M/s Tashee Land Developers Private Limited*** *and* ***KNS Infracon Pvt. Ltd*** are being taken into consideration for determining the rights of the allottee(s) qua delay possession charges and possession.

A. Project and unit related details

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

CR/1437/2022 titled as Harjeet Singh Vs. M/s Tashee Land Developers Private Limited and KNS Infracon Pvt. Ltd

S. No.	Heads	Information
1.	Project name and location	"Capital Gateway", Sector- 111, Gurugram.
2.	Project area	10.462 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	34 of 2011 dated 16.04.2011 valid till 15.04.2024

5.	Name of licensee	KNS Infracon Pvt Ltd
6.	RERA Registered/not registered	Registered vide no. 12 of 2018 dated 10.01.2018
7.	RERA registration valid up to	31.12.2020 for phase-I (tower A to G) and 31.12.2021 for phase- II (tower H to J)
8.	Unit no.	201, 2nd floor, tower A [Page no. 18 of complaint]
9.	Unit measuring	1295 sq. ft. [super area]
10.	Date of execution of flat buyer agreement	29.01.2013 [page no. 13 of complaint]
11.	Total consideration	Rs.60,33,855/- [as per alleged by his brief facts of complaint, page no. 6]
12.	Total amount paid by the complainants	Rs.55,00,791/- [as per alleged by his brief facts of complaint, page no. 6]
13.	Due date of delivery of possession as per clause 2.1 of the flat buyer agreement 36 months from the date of sanction of building plan & a grace period of 180 days, after the expiry of 36 month, for applying and obtaining the occupation certificate [Page 25 of complaint]	07.06.2015 As per information obtained by planning branch building plan approved i.e., 07.06.2012. [Grace period is not allowed as neither OC applied nor obtained within the time limit prescribed by the promoter in the apartment buyer's agreement.]
14.	Occupation certificate	Not obtained
15.	Offer of possession	Not offered

B. Facts of the complaint

8. The complainant has made the following submissions in the complaint: -

I. That the respondents gave advertisement in various leading newspapers about their project named in question. They booked an apartment/flat measuring 1295 sq.ft. in aforesaid project of the respondents for total sale consideration is Rs.60,33,855/-. They made payment of Rs.55,00,791/- to the respondents. The flat buyer's agreement was executed on dated 29.01.2013 and as per FBA the respondents had allotted a unit/flat bearing No. A-201 having super area of 1295 sq. ft. to the complainant. That as per para no. 2.1 of the agreement, the respondents had agreed to deliver the possession of the flat within 36 months from sanctioning of building plan i.e., 07.06.2012 with an extended period of 180 days.

II. They used to telephonically ask the respondents about the progress of the project, and it always gave false impression that the work is going in full mode and accordingly asked for the payments which the complainant gave on time and the complainant when visited to the site was shocked & surprised to see that construction work is not in and no one was present at the site to address the queries of them. That despite receiving of 95% approximately payments on time for all the demands raised by the respondents for the said flat and despite repeated requests and reminders over phone calls and personal visits of the complainant, the respondents have failed to deliver the possession of the allotted flat to them within stipulated period.

III. That it could be seen that the construction of the block in which their flat was booked with a promise by the respondents to deliver the flat by 07.06.2015 but was not completed within time for the reasons best known

to the respondents, which clearly shows that ulterior motive of the respondents was to extract money from the innocent people fraudulently.

IV. That they have requested them several times while making telephonic calls and also personally visiting the offices of the respondents to deliver possession of the flat in question along with prescribed interest on the amount deposited by them, but respondents has flatly refused to do so.

C. Relief sought by the complainant(s):

8. The complainant has sought following relief(s):

   i. Direct the respondents to provide interest at the prescribed rate for every month of delay on the amount paid.

   ii. Direct the respondents to handover the possession of the flat.

9. 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 respondents

10. The respondents have contested the complaint on the following grounds.

   I. That at the outset, it is most respectfully submitted that the instant complaint of the complainants is not maintainable on facts or in law and is as such liable to be dismissed/rejected. The complainant has obfuscated the provisions of the Act, 2016 and the rules, 2017 to their advantage, which is brazen misuse of law. The complainant has failed to provide the correct/complete facts and the same are reproduced hereunder for proper adjudication of the present matter. They have raised false, frivolous, misleading and baseless allegations against the respondents with intent to make unlawful gains.

   II. The respondents had applied for environment clearance on 20th October 2011. The developer finally got the environment clearance on 17th June

2013. The respondents had applied for the revision in building plans of the said project before the appropriate authority. However, for no fault of the respondents, the plans were approved by the Department only after a delay of 2 years. Owing to this, the construction of project could not be started in a timely manner. The complainants, having keen interest in the said project, approached the respondents for booking a unit in the said project.

III. That, after being satisfied with the project in totality they expressed their willingness to book a unit in the project. It is thus apparent on the face of it, the complainants in the present case are not consumers rather 'investors' who falls outside the purview of the Act, 2016 more specifically in view of the preamble of the Act, 2016 which states to protect the interest of the consumers. In is to be considered that complainants are not consumers and thus they fall outside the purview of the Act, 2016 and the instant complaint is liable to be dismissed.

IV. At present, it is a matter of record that the structure of the said project in question is complete, and few instalments are due and payable on account of the complainants. Moreover, it is pertinent to state that the respondents have applied from obtaining occupation certificate for Phase-I of the said project as all the construction and development activities are complete.

V. After receipt of SWAMHI investment fund, the respondents were able to resume the construction activities at a very large scale in expeditious manner. The development at the project site is in full swing, in order to complete the project and handover the possession to the allottees at the earliest.

VI. That the respondents have always made efforts for completion of the said project. Initially, the Interim RERA granted RERA registration on 10th January 2018 till 31.12.2020 for Phase I (Tower A to G) and 31.12.2021 for Phase II (Tower H to J). From time-to-time construction activities were impeded due to poor air quality in the Delhi NCR region.

VII. The legal fraternity is respected for its novelty and highly educated professionals. The Hon'ble Supreme Court has allowed extension of limitation taking into consideration the impact of the novel corona virus over the world. Similarly, the real estate sector was impacted badly due to Covid-19 as the construction activities were halted for a long time. Moreover, the cost of construction kept on increasing with time.

VIII. The present complaint is devoid of any merit and has been preferred with the sole motive to harass the respondents. In fact, the present complaint is liable to be dismissed on the ground that the said claim of the complainants is unjustified, misconceived and without any basis and is against the respondents. The present complaint is baseless and flagrant abuse of process of law to harass the respondents.

IX. Moreover, it is pertinent to state that the complainants have filed a wrong affidavit in support of their complaint, which is not acceptable in the present form. There are two complainants who have filed a single affidavit, whereas both the complainants are bound to file their individual affidavit. Therefore, the complaint is liable to be dismissed/rejected on this ground alone.

X. In spite of the fact that the real estate market has gone down badly, the respondents have managed to carry on the works with certain delays caused due to various above mentioned reasons and the fact that various buyers, including the complainants of the project have defaulted

in making timely payments towards their outstanding dues, resulting into inordinate delay in the construction activities, still the construction of the said project has never been stopped or abandoned and the project will be delivered soon.

XI. It is a respectful submission of the respondents that a bare perusal of the complaint will sufficiently elucidate that the complainants have miserably failed to make a case against the respondents. It is submitted that the complainants have merely alleged in the complaint about the delay on the part of the respondents in offering possession but has failed to substantiate the same. The fact is that the respondents have been acting in consonance with the registration of project with the Authority and no contravention in terms of the same can be projected on the respondents.

XII. The Haryana Real Estate Regulatory Authority, Gurugram, does not have jurisdiction in the instant case as the subject-matter of the complaint has to be decided as per the Act, 2016 and the Rules, 2017. The complainant has erred in invoking the jurisdiction of the Authority, Gurugram, as the compensation can only be granted in cases where the Authority so directs.

XIII. Thus, it is germane to state that there is no further deficiency as claimed by the complainants against the respondents and no occasion has occurred deeming indulgence of this authority. Hence, the present complaint is liable to be dismissed.

11. 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

12. The respondents have raised preliminary objection regarding jurisdiction of authority to entertain the present complaint. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana 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

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.

13. 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 complainant at a later stage.

F. Findings on the objections raised by the respondent:

F.I Objection regarding delay due to force majeure circumstances.

14. The respondent-promoter has raised a contention that the construction of the project was delayed due to force majeure conditions such as orders passed by the National Green Tribunal during October-November 2019 and other orders. But the plea taken by respondents is devoid of merit and hence, rejected. The authority is of considered view that as per clause 2.1 of apartment buyer's agreement, the due date of handing over of possession is to be calculated as 36 months from date of sanction of building plan. The date of sanction of building plan as stated by complainant is 07.06.2012. As the due date of handing over of possession come out to be 07.06.2015 which is way before from the conditions that respondents are taking plea of. The respondents were liable to complete the construction of the project and handover the possession of the said unit by 07.06.2015 and the respondents are claiming benefit of ban on construction by National green Tribunal laid in October-November 2019 whereas the due date of handing over of

possession was much prior to the event. Therefore, the authority is of the view that ban on construction by NGT cannot be used as an excuse for non-performance of a contract for which the deadlines were much before such restriction, the said time period is not excluded while calculating the delay in handing over possession.

F.II Objection regarding delay in completion of construction of project due to outbreak of Covid-19

15. The Hon'ble Delhi High Court in case titled as M/s Halliburton ***Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (1) (Comm.) no. 88/2020 and LAS 3696-3697/2020*** dated 29.05.2020 has observed as under:

> *69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself."*

In the present case also, the respondents were liable to complete the construction of the project and handover the possession of the said unit by 07.06.2015. It is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were

much before the outbreak itself and for the said reason, the said time period cannot be excluded while calculating the delay in handing over possession.

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

16. The respondents have taken a stand that the complainants are the investors and not consumers, therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondents 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 observed that the respondents are 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 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. 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;"*

17. 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 complainants, it is crystal clear that the complainants 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". Thus, the contention of promoter that the allottee being an investor is not entitled to protection of this Act also stands rejected.

G. Findings on the relief sought by the complainant(s):

18. The common relief of delayed possession charges & possession are involved in all these cases.

G.I Direct the respondents to provide interest at the prescribed rate for every month of delay on the amount paid.

19. In the present complaint, the complainant intends to continue with the project and is seeking possession of the subject unit and delay possession charges as provided under the provisions of section 18(1) of the Act which reads as under.

> *"Section 18: - Return of amount and compensation*
>
> *18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*
>
> .....
>
> ***Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."***

20. The apartment buyer's agreement was executed between the parties. As per clause 2.1 of the agreement, the possession was to be handed over within 36 months from the date of sanction of building plans along with a grace period of 6 months. The clause 2.1 of the buyer's agreement is reproduced below:

> **2.1 possession**
>
> *Subject to clause 9 or any other circumstances not anticipated and beyond control of the first party/conforming party and any restraints/restrictions from any court/authorities and subject to the purchaser having complied with all the terms of this agreement including but not limited timely payment of total sale consideration and stamp duty and other charges and having complied with all provisions, formalities documentation etc. as prescribed by the first party/conforming party proposes to handover the possession of the flat to the purchaser* ***within approximate period of 36 months from the date of sanction of building plans of the said colony****. The purchaser agrees and understands that the first party/conforming party shall be entitled to a grace period of 180 days after the expiry of 36 months for applying and obtaining OC in respect of the colony from the concerned authority...*
>
> (Emphasis supplied)

21. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement, and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottees that even a single default by him in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment time period for handing over possession loses its meaning. The

incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottees of their right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottees is left with no option but to sign on the dotted lines.

22. **Admissibility of grace period:** As per clause 2.1 of buyer's agreement, the respondents/promoters have proposed to handover the possession the said unit within a period of 36 months from date of sanction of building plans. The said possession clause incorporates qualified reason for grace period/extended period of 6 months. Since possession clause 2.1 of the BBA incorporates qualified reason which provides a pre-condition that the entitlement of said grace period of 6 months is dependent of the situation of respondent applying for or obtaining occupation certificate from the competent Authority but as per the given facts it has failed to apply for occupation certificate to the competent authority within the stipulated time. Accordingly, the authority literally interpreting the same and disallows this grace period of 6 months to the promoter at this stage. Therefore, grace period of six months as per clause 2.1 of buyer's agreement is disallowed and not included while calculating the due date of handing over of possession.

23. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges. However, proviso to section 18 provides that where an allottee(s) 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.*

The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest.

24. Consequently, as per website of the State Bank of India i.e., https://sbi.co.in, the marginal cost of lending rate (in short, MCLR) as on date i.e., 16.11.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.

25. 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;"

26. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is satisfied that the respondents are in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 2.1 of the buyer's agreement executed between the parties, the possession of the subject apartment was to be delivered within a period of 36 months from date of sanction of building plans. Date of sanction of building plan is taken from complaint as submitted by complainant in their complaint i.e., 07.06.2012. As such the due date of handing over of possession comes out to be 07.06.2015 in all the cases as detailed in para no. 03 of order. The respondent has failed to handover possession of the subject unit till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit to the complainant as per the terms and conditions of the agreement to sell dated 29.01.2013 executed between the parties. It is pertinent to mention over here that even after a passage of more than 8.5 years neither the construction is complete nor an offer of possession of the allotted unit has

been made to the allottee by the builder. Further, the authority observes that there is no document on record from which it can be ascertained as to whether the respondent has applied for occupation certificate/part occupation certificate or what is the status of construction of 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 allottee.

27. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In these complaints, the occupation certificate has not been obtained. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 07.06.2015 till the expiry of 2 months from the date of offer of possession plus two months after obtaining OC or handing over of possession whichever is earlier.

28. 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 respondents 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., 07.06.2015 till actual handing over of possession or offer of possession plus two months, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

H. Directions of the authority

29. 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 pay interest to the each of the complainant(s) against the paid-up amount at the prescribed rate of 10.75% p.a. for every month of delay from the due date of possession i.e., 07.06.2015 till actual handing over of possession or offer of possession plus two months, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

ii. The respondents shall not charge anything from the complainant which is not the part of the flat buyer's agreement.

iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period and the respondents shall handover the possession within a period of two month after receipt of occupation certificate from the competent authority.

iv. The arrears of such interest accrued from due date of possession i.e., 07.06.2015 till the date of order by the authority shall be paid by the promoter to the allottee within a period of 90 days from date of this

order and interest for every month of delay shall be paid by the promoter to the allottees before 10th of the subsequent month as per rule 16(2) of the rules.

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.

30. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.

31. Complaint stands disposed of. True certified copy of this order shall be placed in the case file of each matter.

32. File be consigned to registry.

Dated: 16.11.2023

(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram