



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

Complaint no. :	6880 of 2022
Date of complaint :	31.10.2022
Order pronounced on:	19.10.2023

Vinod Kumar Dureja R/o: Flat no. 302, tower-8, Uniworld garden-1, near Subash chowk, Sohna road, South city - 2, Gurugram-122018	Complainant
Versus	
M/s SS Group Pvt. Ltd. Registered office: 77, SS house, Sector-44, Gurugram	Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Subash Grover, Advocate

Complainant

Shri Rahul Bhardwaj, Advocate

Respondent

ORDER

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

A. Unit and project related details

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

Sr. No.	Particulars	Details
1	Name of the project	'The Leaf', Sector -84-85, Gurugram
2	Nature of the project	Group Housing Complex
3	DTCP License No.	81 of 2011 dated 16.09.2011 Valid upto 15.09.2024
4	RERA Registered/ Not Registered	RERA registered 35 of 2021 dated 14.07.2021
5	Unit no.	24D, 24 th Floor, T-3 (BBA on page no. 139 of complaint)
6	Unit admeasuring	1575 sq. ft. (BBA on page no. 139 of complaint)
7	Date of execution of builder buyer agreement	14.09.2013 (On page no. 137 of complaint)
8	Possession clause	8. Possession 8.1: Time of handing over the possession <i>8.1 (a) subject to terms of this clause and subject to the flat buyer(s) having complied with all the terms and conditions of this agreement and not being in default under any of the provisions of this agreement and complied with all provisions, formalities, documentation etc. as prescribed by the developer, the developer proposes to handover the possession of the flat within a period of thirty six months from</i>



		<p><i>the date of signing of this agreement. However, this period will automatically stand extended for the time taken in getting the building plans sanctioned. The flat buyer(s) agrees and understands that the developer shall be entitled to a grace period of 90 days, after the expiry of thirty-six months or such extended period, for applying and obtaining occupation certificate in respect of the Group Housing Complex.</i></p> <p>(Emphasis supplied).</p>
9	Grace period utilization	<p><i>As per the clause for possession, the developer shall be entitled to a grace period of 90 days, after the expiry of thirty-six month (36) months or such extended period for applying and obtaining the occupation certificate in respect of the Group Housing Complex. The promoter has not applied for occupation certificate within the time limit prescribed In the builder buyer agreement. As per the settled law one cannot be allowed to take advantage of his own wrong. Therefore, the grace period is not allowed</i></p>
10	Due date of delivery of possession	<p>14.09.2016</p> <p>(Calculated from the date of signing of buyer agreement)</p>
11	Total sale consideration	<p>Rs. 86,24,250/-</p> <p>(As per BBA, page 141 of complaint)</p>

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12	Total amount paid by the complainant	Rs. 76,97,981/- (As alleged by the complainant)
13	Occupation Certificate	09.05.2022 (As per page no. 79 of reply)
14	Offer of possession	14.05.2022 (As per page no. 83 of the reply)

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- I. That on dated 21.07.2012, the complainant filled an application form i.e. advance registration form, whereby he requested for booking a unit in the said project and remitted a registration amount of Rs.7,50,000/- .
- II. That the respondent issued allotment letter dated 10.09.2012 of unit no. 24-D, 24th floor, tower-3, Group Housing Complex, Sector-84, Gurugram with super area of 1575 sq. ft. with basic rate of Rs.4,650/- per sq. ft., preferential location charges (PLC) of Rs.150/- per sq ft., External Development Charges (EDC) of Rs.355/- per sq. ft. and infrastructure Development Charges (IDC) of Rs.35/- per sq. ft. i.e. for total sale consideration of Rs.86,24,250/- to the complainant.
- III. That builder buyer's agreement was executed on 14.09.2013 between the parties.
- IV. As per clause 8.1 of the builder buyer agreement dated 14.09.2013, the time of handing over the possession of the said unit was prescribed as 36 months from the date of executing buyer's agreement, therefore the date of handing over the possession can be determined as 14.09.2016.



- V. That on dated 16.02.2014 the respondent through broker/ middle man M/s Goel Associates remitted an amount of Rs.1,41,750/- to the account of complainant as a discount towards booking of unit.
- VI. That respondent requested to deposit 1% as TDS on amount paid after 01.06.2013, as per the notifications by central government.
- VII. That in 2017 respondent did not issued any demand notice for installment payment nor there was any communication regarding status of project completion, despite the fact that the possession of the unit was due to be delivered on 14.09.2016, i.e. was already in delay to deliver the possession of unit by 2 years. By the year 2017, the respondent was only able to reach 50 per cent of its milestone, i.e. not even 50 per cent construction was completed and the project site was only a concrete mess with no sight of forwarding with the plan and despite this the respondent over the years, without failure, kept issuing demand notices with the promise of timely completion of the project.
- VIII. That the complainant has been very punctual with the payment of amount as when issued through demand notices issued by the respondent and till date Rs.76,97,981/- has been paid to respondent against the total sale consideration of Rs.86,24,250/-.
- IX. That on several occasions, the complainant has approached the respondent to complete the project and hand over the possession as promised in builder buyer's agreement. But even after a delay of 6 years and 1 month approximately, there seem no sight of completion of project as well.
- X. That the respondent issued the notice of possession for the unit on dated 14.05.2022. Thereafter, when the complainant visited the site on dated 29.05.2022 to check the condition he was surprised to see that a

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lot of work was pending which is yet to be done. Thereafter the respondent assured the complainant that work would be completed within a month.

- XI. That the complainant again took a visit of site on 11.09.2022 and was shocked to find that the condition of the unit & the project was same. The complainant took the photograph of the site which was sent to the respondent through email dated 14.09.2022.
- XII. That the complainant has invested a sum of Rs.76,97,981/-which had been lying with the respondent since 6 years because of the delay in the delivery of possession caused by the respondent. The complainant had invested this huge sum elsewhere and would have fetched a heavy return on investment. Therefore, the complainant prays for the interest given on the amount till the date of receiving of possession due to the delay caused by the respondent.

C. Relief sought by the complainants:

4. The complainant has sought following relief:
- I. Direct the respondent to pay delay possession charges along with prescribed rate of interest.
5. On the date of hearing, the authority explained to the respondent/ promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent/builder.

6. The respondent has contested the complaint by filing reply on the following grounds: -
- i. That, the respondent has perused the complaint filed by the complainant and thus, states that the same is grossly misconceived, blatantly false and frivolous. All averments, submissions, and

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contentions raised in the complaint are denied by the respondent, unless expressly admitted to hereinafter and no part of the suit shall be deemed to have been admitted for mere want of specific traverse.

- ii. That the complainant vide an application form dated 23.07.2012 applied for an allotment of a unit in the project. Pursuant to the receipt of the registration form the complainant was allotted a unit bearing no. 24-D, 24th floor, tower-3 super area of 1575 sq. ft. vide an allotment letter dated 10.09.2012. The complainant consciously and willfully opted for a construction linked payment plan for remittance of the sale consideration for the unit and further represented to the respondent that he shall remit every installment on time as per the payment schedule.
- iii. That the registration form and allotment letter being the preliminary and the initial drafts contained the basic and primary understanding between both the parties, to be followed by the buyer's agreement to be executed between the parties. After fulfilling certain documentation and procedures the buyer agreement dated 14.09.2013 was executed between the complainant and respondent which contained the final understandings between the parties stipulating all the rights and obligations.
- iv. That the complainant were allotted unit bearing no. 24-D, 24th floor, tower-3 super area of 1575 sq. ft. of the project "The Leaf" at the basic price of Rs. 4650 per sq. ft. and Preferential Location Charges (PLC) of Rs. 150/- per sq. ft., External Development Charges (EDC) of Rs. 355/- per sq. ft., Infrastructure Development Changes (IDC) of Rs 35/- per sq. ft. to be payable as per the payment plan. The sale consideration of the flat booked by the complainant was Rs. 86,24,250/-. The sale

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consideration amount was exclusive of the registration charges, stamp duty charges, service tax and other charges which were to be paid by the complainant at the applicable stage but the complainant defaulted in making payments towards the agreed sale consideration of the unit from the very inception i.e. after signing the allotment letter.

- v. That complainant has no cause of action to file the present complaint as it is based on an erroneous interpretation of the provisions of the act as well as an incorrect understanding of the terms and conditions of the buyer agreement between the parties. Complainant is an investor and therefore booked the unit in question to yield gainful returns by selling the same in the open market. However, due to the ongoing slump in the real estate market, the complainant has filed the present purported complaint to wriggle out of the agreement. The complainant has not come under the ambit and scope of the definition of an allottee under section 2(d) of the act, as the complainant is an investor and booked the unit in order to enjoy the good returns from the project.
- vi. That the complainant is attempting to raise issues at a belated stage, attempting to seek modification in the agreement entered between the parties in order to acquire benefits to which the complainant is not entitled in the least.
- vii. That the respondent from the very inception had run after the complainant to clear the outstanding dues and has sent demand notice to clear the outstanding bills from 2013 to 2022.
- viii. That the project at present date has been completed and accordingly, the occupational certificate of the project by the competent authority has been received dated 09.05.2022.

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- ix. That the possession of the unit has been offered to the complainant vide letter dated 14.05.2022 and has invited them to take possession of their apartment as complainant's apartment is ready for possession. But complainant did not come forward to take the said possession. The acts of the complainant clearly exhibit their mala fide intentions and further establish the fact that the complainant is investors and booked the unit in question to yield gainful returns by selling it in the open market.
- x. That the construction of the project was stopped on account of the NGT order prohibiting construction (structural) activity of any kind in the entire NCR by any person, private or government authority.
- xi. That the possession of the unit as per clause 8.1 of the buyer agreement was to be handed over within 36 months (plus the grace period of 90 days i.e. 3 months) from the date of the execution of the flat buyer agreement and not from the date of terms and conditions as stated by the complainant who is trying to confuse this Hon'ble Authority with his false, frivolous and moonshine contentions. The date of the completion of the project therefore comes out to be 23.03.2017. The date of possession as per the buyer's agreement further increased to grace months of 3 months. The date of the completion of the project was further pushed due to the force majeure conditions i.e. Due to the NGT orders and the lockdown imposed because of the worldwide covid-19 pandemic, by which the construction work all over the NCR region came to halt. DTCP, Haryana vide its notification no. 27 of 2021 dated 25.06.2021, gave a relaxation of 6 months to all the builders in view of the hurdles faced by them due to covid-19.

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xii. That all the reliefs claimed by the complainant is false and frivolous and hence denied, and therefore the complainant is not entitled for any such reliefs.

7. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and oral as well as written submissions made by the parties.

E. Jurisdiction of the authority

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

8. 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

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11.....(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common

areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

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

10. 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 the objections raised by the respondent.

F.1 Objection regarding force majeure conditions:

11. The respondent-promoter alleged that grace period on account of force majeure conditions be allowed to it. It raised the contention that the construction of the project was delayed due to force majeure conditions such as shortage of labour, various orders passed by NGT and weather conditions in Gurugram and non-payment of instalment by different allottees of the project but all the pleas advanced in this regard are devoid of merit. The flat buyer's agreement was executed between the parties on 14.09.2013 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be 14.09.2016. The events such as and various orders by NGT in view of weather condition of Delhi NCR region, were for a shorter duration of time and were not continuous as there is a delay of more than six years and even some happening after due date of offering possession. There is nothing on record that the respondent has even made an application for grant of occupation certificate. Hence, in view of aforesaid circumstances, no period grace period can be allowed to the respondent- builder. Though some allottees may not be regular in paying the

amount due but whether the interest of all the stakeholders concerned with the said project be put on hold due to fault of on hold due to fault of some of the allottees. Thus, the promoter-respondent cannot be given any leniency on based of aforesaid reasons. It is well settled principle that a person cannot take benefit of his own wrongs.

12. As far as delay in construction due to outbreak of Covid-19 is concerned, 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 (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020* dated 29.05.2020 has observed that-

"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."

13. The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by 14.09.2016 and 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 is not excluded while calculating the delay in handing over possession.

F.II Objection regarding the complainants being investors.

14. 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;"

15. 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.

G.I Direct the respondent to deliver the possession of the allotted unit and pay the delay possession charges along with prescribed rate of interest.

16. In the present complaint the complainant intends 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."

17. Clause 8 of the buyer's agreement provides the time period of handing over possession and the same is reproduced below:

*"8.1 (a) subject to terms of this clause and subject to the flat buyer(s) having complied with all the terms and conditions of this agreement and not being in default under any of the provisions of this agreement and complied with all provisions, formalities, documentation etc. as prescribed by the developer, the developer proposes to handover the possession of the flat **within a period of thirty six months from the date of signing of this agreement.** However, this period will automatically stand extended for the time taken in getting the building plans sanctioned. **The flat buyer(s) agrees and understands that the developer shall be entitled to a grace period of 90 days, after the expiry of thirty-six months or such extended period, for applying and obtaining occupation certificate in respect of the Group Housing Complex***

18. The authority has gone through the possession clause of the agreement. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the complainant not being in default under any provision of this agreement and in 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

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allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning.

19. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builder/promoter and buyer/allottee are protected candidly. The flat agreement lays down the terms that govern the sale of different kinds of properties like residentials, commercials etc. between the builder and the buyer. It is in the interest of both the parties to have a well-drafted buyer's agreement which would thereby protect the rights of both the builder and buyer in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the unit, plot or building, as the case may be and the right of the buyer/allottee in case of delay in possession of the unit.
20. **Admissibility of grace period:** The respondent promoter has proposed to handover the possession of the unit within a period of 36 months from the date of signing of this agreement. In the present case, the promoter is seeking 90 days as grace period for applying and obtaining occupation certificate. However, there is no material evidence on record that during the period of 90 days, the period sought as grace period, the promoters have applied to any authority for obtaining the necessary approvals with respect to this project or obtained during this period. So, the promoters cannot claim the benefit of grace period of 90 days. Consequently, the authority has rightly determined the due date of possession. Thus, the grace period is not allowed, and the due date of possession comes out to be 14.09.2016.

21. **Admissibility of delay possession charges at prescribed rate of interest:**

The complainants are seeking delay possession charges. However, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoters, 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.

22. 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.

23. 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., 19.10.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.

24. 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.

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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;"*

25. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.75% by the respondents/ promoters which is the same as is being granted to them in case of delayed possession charges.
26. On consideration of the documents available on record and submissions made by both 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. By virtue of clause 8 of the agreement, the possession of the subject apartment was to be delivered within 36 months from the date of execution of agreement. For the reasons quoted above, the due date of possession is to be calculated from the date of execution of buyer's agreement i.e., 14.09.2013 and the said time period of 36 months has not been extended by any competent authority. Therefore, the due date of possession is calculated from the date of execution of buyer's agreement and the said time period of 36 months expired on 14.09.2016. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession is 14.09.2016.
27. The respondent has obtained the occupation certificate on 09.05.2022. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms

and conditions of the buyer's agreement dated 14.09.2013 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 14.09.2013 to hand over the possession within the stipulated period.

28. 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 the present complaint, the occupation certificate was granted by the competent authority on 09.05.2022. The respondent offered the possession of the unit in question to the complainant only on 14.05.2022. So, it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. This 2 months' of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e. 14.09.2016 till the date of offer of possession (14.05.2022) plus two months i.e., 14.07.2022.
29. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainants are entitled to delay possession charges at rate of the prescribed interest @ 10.75% p.a. w.e.f. 14.09.2016 till the date of offer of possession (14.05.2022) plus two months i.e., 14.07.2022; as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

H. Directions of the authority

30. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- I. The respondent is directed pay interest at the prescribed rate i.e., 10.75 % per annum for every month of delay on the amount paid by the complainants from due date of possession i.e., 14.09.2016 till the date of offer of possession (14.05.2022) plus two months i.e. upto 14.07.2022; as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- II. The respondent is directed to issue a revised account statement after adjustment of delay possession charges as per above within 30 days and thereafter the complainants are directed to pay outstanding dues, if any, within next 30 days and the respondent shall handover the possession of the allotted unit complete in all aspects as per specifications of buyer's agreement within next 30 days and if no dues remain outstanding, the possession shall be handed over within four weeks from date of this order
- III. 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.
- IV. The respondent shall not charge anything from the complainant which is not the part of buyer's agreement. The respondent is not entitled to charge holding charges from the complainant/ allottee at any point of

time even after being part of the builder buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 on 14.12.2020.

31. Complaint stands disposed of.
32. File be consigned to registry.

Dated:19.10.2023

V. I - 3
(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram



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GURUGRAM