

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

Complaint no. :	7587 of 2022
Order reserved on:	08.09.2023
Date of pronouncement:	10.11.2023

1. Manish Rustaggi
2. Ashish Rustaggi
R/o B-403, 1st floor, Saini Colony, Sector 49,
Faridabad, Haryana-121001

Complainants

Versus

M/s Athena Infrastructure Ltd.

Office address: M-62 & 63, 1st floor, Connaught Place,
New Delhi-110001.

Respondent

CORAM:

Shri Sanjeev Kumar Arora

Member

APPEARANCE:

Mr. Maninder Singh (Advocate)

Complainants

Mr. Rahul Yadav (Advocate)

Respondent

ORDER

1. The present complaint dated 13.12.2022 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 as provided under the provision of the Act or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

A. Project and unit related details

2. The particulars of the project, the amount 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. No.	Heads	Information
1.	Name and location of the project	"Indiabulls Enigma", Sector 110, Gurugram
2.	Nature of the project	Residential complex
3.	Project area	15.6 acres
4.	DTCP License	213 of 2007 dated 05.09.2007 valid till 04.09.2024. 10 of 2011 dated 29.01.2011 valid till 28.01.2023
	Name of the licensee	M/s Athena Infrastructure Private Limited
		64 of 2012 dated 20.06.2012 valid till 19.06.2023
	Name of the licensee	Varali properties
5.	HRERA registered/ not registered	Registered vide no. i. 351 of 2017 dated 20.11.2017 valid till 31.08.2018. ii. 354 of 2017 dated 17.11.2017 valid till 30.09.2018. iii. 353 of 2017 dated 20.11.2017 valid till 31.03.2018. iv. 346 of 2017 dated 08.11.2017 valid till 31.08.2018.



6.	Date of execution of flat buyer's agreement	09.03.2013 (pg. 21 of complaint)
7.	Unit no.	B-034 on 3 rd floor, tower B (pg. 25 of complaint)
8.	Super Area	3400 sq. ft. (pg. 25 of complaint)
9.	Possession clause	Clause 21 <i>The Developer shall endeavor to complete the construction of the said building /Unit within <u>a period of 3 years, with a six-month grace period thereon from the date of execution of the Flat Buyers Agreement subject to timely payment</u> by the Buyer(s) of Total Sale Price payable according to the Payment Plan applicable to him or as demanded by the Developer. The Developer on completion of the construction /development shall issue final call notice to the Buyer, who shall within 60 days thereof, remit all dues and take possession of the Unit.</i>
10.	Due date of possession	09.09.2016 (Calculated from the date of the agreement i.e., 09.03.2013 + grace period of 6 months) Grace period is allowed
11.	Basic sale consideration	BSP- ₹ 2,50,80,000/- (pg. 25 of complaint)
12.	Total amount paid.	₹ 2,42,93,729/- (As per applicant ledger dated 02.02.2023 at pg. 45 of reply)

		<i>Amount paid by complainant.</i>	<i>Amount paid by IHFL</i>
		₹ 67,93,729/-	₹ 1,75,00,000/- (As per loan sanction letter at pg. 42 of complaint)
13.	Occupation Certificate	12.10.2021 (pg. 38 of reply)	
14.	Offer of possession	03.10.2022 (pg. 41 of reply)	

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint:

- a. That the real estate project named "**Indiabulls Enigma**", which is the subject matter of present complaint, is situated at Sector 110, Pawala Khusrupur, District Gurugram, therefore, the Hon'ble Authority do have the jurisdiction to try and decide the present complaint.
- b. That the respondent had always advertised itself as a very ethical business group that lives onto its commitments in delivering its housing projects as per promised quality standards and agreed timelines. That the respondent while launching and advertising any new housing project always commits and promises to the targeted consumer that their dream home will be completed and delivered to them within the time agreed initially in the agreement while selling the dwelling unit to them. They also assured to the consumers like complainant(s) that they have secured all the necessary sanctions and approvals from the appropriate authorities for the construction and

completion of the real estate project sold by them to the consumers in general.

- c. That the respondent was very well aware of the fact that in today's scenario looking at the status of the construction of housing projects in India, especially in NCR, the key factor to sell any dwelling unit is the delivery of completed house within the agreed and promised timelines and that is the prime factor which a consumer would consider while purchasing his/her dream home. Respondent, therefore used this tool, which is directly connected to emotions of gullible consumers, in its marketing plan and always represented and warranted to the consumers that their dream home will be delivered within the agreed timelines and consumer will not go through the hardship of paying rent along-with the installments of home loan like in the case of other builders in market.
- d. That somewhere in 2012, the respondent through its marketing executives and advertisement done through various medium and means approached the complainant(s) with an offer to invest and buy a flat in the proposed project of respondent, which the respondent was going to launch the project namely "**Indiabulls Enigma**", which is situated at sector 110, Pawala Khusrupur, district Gurugram (hereinafter referred to as "said project"). The respondent had represented to the complainant(s) that the respondent is very ethical business house in the field of construction of residential and commercial project and in case the complainant(s) would invest in the project of respondent then they would deliver the possession of proposed flat on the assured delivery date as per the best quality

assured by the respondent. The respondent had further assured to the complainant(s) that the respondent has already secured all the necessary sanctions and approvals from the appropriate and concerned authorities for the development and completion of said project on time with the promised quality and specification. The respondent had also shown the brochures and advertisement material of the said project to the complainant(s) given by the respondent and assured that the flat buyer's agreement for the said project would be issued to the complainant(s) within one week of booking to be made by the complainant(s). The complainant(s) while relying on the representations and warranties of the respondent and believing them to be true had agreed to the proposal of the respondent to book the residential flat in the project of respondent.

- e. That the respondent arranged the visit of its representatives to the complainant(s) and they also assured the same as assured by the respondent to the complainant(s), wherein it was categorically assured and promised by the respondent that they already have secured all the sanctions and permissions from the concerned authorities and departments for the sale of said project and would allot the residential flat in the name of complainant(s) immediately upon the booking. Relying upon those assurances and believing them to be true, the complainant(s) booked a residential flat bearing b-034 on 3rd floor having super area of 3400 sq. ft. At the rate of ₹ 7,376.46/- per sq. ft. and for basic sale consideration of ₹ 2,50,80,000/- at the proposed project to be developed by respondent on 17.12.2012. It was assured and represented to the complainant(s) by the respondent that they had

- already taken the required necessary approvals and sanctions from the concerned authorities and departments to develop and complete the proposed project on the time as assured by the respondent. Accordingly the complainant(s) had paid ₹ 5,00,000/- on 17.12.2012 as booking amount.
- f. Thereafter, the complainant(s) requested the respondent to allot the promised flat and to execute the required agreement for the same, however, the respondent ignored the request of the complainant(s) and did not execute the required agreement for next 3 months. Upon the regular follows up of the complainant(s), the respondent had executed the flat buyer's agreement dated 09.03.2013 allotting the aforesaid flat in favour of the complainant(s). The builder buyer agreement is having terms and conditions in respect of the possession and delivery of the aforesaid flat.
- g. That thereafter, the respondent started raising the demand of money /installments from the complainant(s), which was duly paid by the complainant(s) as per agreed timelines. The complainant(s) opted for the subvention scheme jointly with his family through Indiabulls housing finance ltd i.e., associate company of the respondent on 21.02.2013 for an amount ₹ 1,75,00,000/-. That as per the clause -21 of the said flat buyer's agreement dated 09.03.2013, the respondent had agreed and promised to complete the construction of the said flat and deliver its possession within a period of 3 years with a grace period of 6 months thereon from the date of the execution of flat buyer's agreement.

- h. That the complainant(s) had paid the sale consideration to the respondent for the said flat. As per the records of complainant(s), the complainant(s) had already paid ₹ 2,42,93,729/- towards the sale consideration as on today to the respondent as demanded by it, time to time and now nothing major is pending to be paid on the part of complainant(s).
- i. As per flat buyer's agreement dated 09.03.2013, the delivery of the possession of said flat was promised to be delivered by the respondent within 3 years along-with the six months grace period i.e. by 09.09.2016. By committing delay in delivering the possession of the aforesaid flat respondent has violated the terms and conditions of the flat buyer's agreement and promises made at the time of booking of said flat.
- j. That the cause of action accrued in favor of the complainant(s) and against the respondent on 17.12.2012, when the complainant(s) had booked the said flat and it further arose when respondent failed /neglected to deliver the said flat on the agreed date. The cause of action is continuing and is still subsisting on day-to-day basis as the respondent has still not paid the interest for making delay in delivery of possession of said flat as agreed.
- k. That the complainant(s) further declares that the matter regarding which the present complaint has been made is not pending before any court of law and any other authority or any other tribunal on the subject matter.

C. Relief sought by the complainants: -

4. The complainants have sought following relief(s):

- a. Direct the respondent to pay interest at applicable rate on account of delay in offering possession on ₹ 2,42,93,729/- towards the sale consideration paid by the complainants as sale consideration of the said flat from the date of payment till the date of delivery of possession.
5. On the date of hearing, the authority explained to the respondent/promoters about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent by way of written reply made the following submissions:
 - a. That the instant compliant filed by the complainants is outside the purview of the Hon'ble Authority, since the complainants looking into the financial viability of the project and its future monetary benefits willingly approached the respondent and applied for provisional reservation of a group housing apartment in the project, and in return thereof the answering respondent accepting the said request of the complainants provisionally allotted them a unit no. B034, situated on the 03rd Floor of Tower B, having and approximate super area of 3400 sq. ft. (hereinafter referred to as '**Subject Unit**').
 - b. That the complainants post understanding the terms & conditions of the buyer's agreement voluntarily executed a flat buyer agreement (hereinafter referred as "FBA") with the respondent on 09.03.2013. It is submitted that as per the FBA /agreement duly executed between the complainants and the respondent, it was

specifically agreed that in the eventuality of any dispute, if any, with respect to the provisional unit booked by the complainants, the same shall be adjudicated through arbitration mechanism as detailed in the agreement.

- c. Thus in view of above Section 49 of FBA, it is humbly submitted that, the dispute, if any, between the parties are firstly arising out of the said duly executed FBA and it was specifically agreed to refer the dispute, if any, qua the agreement to arbitration. Thus, the complainants are contractually and statutorily barred from invoking the jurisdiction of this Hon'ble Authority. Moreover no cause of action ever arose in favour of the complainants and against the respondent. Further the Hon'ble Authority has no Jurisdiction to entertain the present complaint and decide the same hence the present complaint filed by the complainants is liable to be dismissed on the very same ground.
- d. That the complainants got booked the subject unit under "subvention scheme payment plan till possession", further availing a home loan for an amount of ₹ 1,75,00,000/- from the financier towards the subject unit, and entered into a tripartite agreement dated 11.03.2013 with the financier and the respondent.
- e. That as per the agreed terms of the tripartite agreement, till the offer of possession the respondent were to pay the Pre-EMI interest to the financier and upon offering the possession of the subject unit by the respondent, the complainants were under liability to pay their monthly EMI to the financier. That timely payment of the monthly EMI was the essence of the tripartite agreement. That the



- respondent has during the subvention period paid a total amount of ₹ 1,81,22,289/- to the financier towards PRE-EMI for the loan advanced to the complainants in terms of the tripartite agreement.
- f. That the respondent after completing the construction of the unit/ tower applied for grant of occupation certificate for the tower in question on 19.04.2021 and on 12.10.2021 the occupational certificate was received from the Director Town & Country Planning Department, Chandigarh (Haryana). It is submitted that the respondent completed the construction of the unit/ tower in question by and before 19.04.2021 as such any delay beyond the said if any, cannot be attributed upon the respondent.
- g. That subsequent to receiving of occupational certificate, the respondent vide its letter dated 03.10.2022 offered possession of the subject unit to the complainants, whereby calling them to take physical possession of their unit after remitting balance outstanding amount which were due and payable towards the sale consideration of the subject unit, giving a credited of ₹ 9,54,833/- to the complainants as per the terms of the buyers agreement.
- h. That in terms of the builder buyers agreement, under the payment plan opted by the complainants for the subject unit, an amount of ₹ 37,45,960/- was the outstanding balance amount due and payable by the complainants to the respondent.
- i. It is submitted that the basis of the present complaint is that there is a delay in delivery of possession of the unit in question, seeking delay interest on entire amount of ₹ 2,42,93,729/- paid by them has been claimed by virtue of the present complaint, which is wrong and

misleading fact. It is pertinent to mention herein that the flat buyer's agreement itself envisages the scenario of delay and the compensation thereof. Therefore, the contention that the possession was not offered within time is based on a complete misreading of the agreement.

- j. It is stated that it is a universally known fact that due to adverse market conditions viz. delay due to reinitiating of the existing work orders under GST regime, by virtue of which all the bills of contractors were held between, delay due to the directions by the Hon'ble Supreme Court and National Green Tribunal whereby the construction activities were stopped, non-availability of the water required for the construction of the project work & non-availability of drinking water for labour due to process change from issuance of HUDA slips for the water to totally online process with the formation of GMDA, shortage of labour, raw materials etc., which continued for around 22 months, starting from February'2015. Due to the above mentioned reasons, the project of the respondent was severely affected and it is in these above elaborated circumstances, which were beyond the control of the respondent, that the progress and construction activities, sale of various flats and spaces has not taken place as envisaged.
- k. Further, as per the license to develop the project, external development charges were paid to the state government and the state government in lieu of the EDCs was supposed to lay the whole infrastructure in the licensed area for providing the basic amenities such as drinking water, sewerage, drainage including storm water

line, roads etc. That the state government terribly failed to provide the basic amenities due to which the construction progress of the project was badly hit.

1. Inability to undertake the construction for approx. 7-8 months due to central government's notification with regard to demonetization. Orders passed by National Green Tribunal: In last four successive years i.e. 2015-2016-2017-2018, Hon'ble National Green Tribunal has been passing orders to protect the environment of the country and especially the NCR region.
7. All other averments made in the complaint were denied in toto.
8. Copies of all relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submissions made by parties.
9. The complainant and respondent has filed the written statement on 21.09.2023 & 06.10.2023 respectively.

E. Jurisdiction of the authority

10. The plea of the respondents regarding rejection of complaint on ground of jurisdiction stands rejected. 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

11. 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 completed territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

12. 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 promoter, 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 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 objection raised by the respondent.

F.I. Objection regarding agreements contains an arbitration clause which refers to the dispute resolution system mentioned in agreement

14. The agreement to sell entered into between the two side on 09.03.2013 contains a clause 49 relating to dispute resolution between the parties. The clause reads as under:



"All or any disputes arising out or touching upon or in relation to the terms of this application and/ or Flat Buyers Agreement including the interpretation and validity of the terms thereof and the rights and obligations of the parties shall be settled amicably by mutual discussion failing which the same shall be settled through arbitration. The arbitration shall be governed by the Arbitration and Conciliation: Act, 1996 or any statutory amendments/modifications thereof for the time being in force. The Venue of arbitration shall be New Delhi/ Gurgaon and it shall be held by a sole arbitrator who shall be appointed by the Developer and whose decision shall be final and binding upon the parties. The Buyer hereby confirms that he/she shall have no objection to this appointment even if the person so appointed, as the Arbitrator, is an employee or advocate of the Developer or is otherwise connected to the Developer and the Buyer confirms that notwithstanding such relationship/connection, the Buyer shall have no doubts as to the independence or impartiality of the said Arbitrator. The courts at New Delhi alone shall have the jurisdiction."

15. 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. Therefore, by



applying same analogy the presence of arbitration clause could not be construed to take away the jurisdiction of the authority.

16. 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. The relevant paras are reproduced below

"49. Support to the above view is also lent by Section 79 of the recently enacted Real Estate (Regulation and Development) Act, 2016 (for short "the Real Estate Act"). Section 79 of the said Act reads as follows: -

"79. Bar of jurisdiction - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

It can thus, be seen that the said provision expressly ousts the jurisdiction of the Civil Court in respect of any matter which the Real Estate Regulatory Authority, established under Sub-section (1) of Section 20 or the Adjudicating Officer, appointed under Sub-section (1) of Section 71 or the Real Estate Appellate Tribunal established under Section 43 of the Real Estate Act, is empowered to determine. Hence, in view of the binding dictum of the Hon'ble Supreme Court in A. Ayyaswamy (supra), the matters/disputes, which the Authorities under the Real Estate Act are empowered to decide, are non-arbitrable, notwithstanding an Arbitration Agreement between the parties to such matters, which, to a large extent, are similar to the disputes falling for resolution under the Consumer Act.

...

56. Consequently, we unhesitatingly reject the arguments on behalf of the Builder and hold that an Arbitration Clause in the afore-stated kind of Agreements between the Complainants and the Builder cannot circumscribe the jurisdiction of a Consumer

Fora, notwithstanding the amendments made to Section 8 of the Arbitration Act."

17. 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 and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view. The relevant paras are of the judgment 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."

18. Therefore, in view of the above judgements and considering the provision of the Act, the authority is of the view that complainant is well within the right to seek a special remedy available in a beneficial Act such as the

Consumer Protection Act and RERA Act, 2016 instead of going in for an arbitration. Hence, we have 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.

G. Findings on the relief sought by the complainants.

G. I Direct the respondent to pay interest at applicable rate on account of delay in offering possession on ₹ 2,42,93,729/- towards the sale consideration paid by the complainants as sale consideration of the said flat from the date of payment till the date of delivery of possession.

19. In the present complaint, the complainants intend to continue with the project and is 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, —

(a)

(b)

*he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act
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. Clause 21 of the buyer's agreement (in short, agreement) provides for handing over of possession and is reproduced below:

The Developer shall endeavour to complete the construction of the said building /Unit within a period of 3 years, with a six-month grace period thereon from the date of execution of the Flat Buyers Agreement subject to timely payment by the Buyer(s) of Total Sale Price payable according to the Payment Plan applicable

to him or as demanded by the Developer. The Developer on completion of the construction /development shall issue final call notice to the Buyer, who shall within 60 days thereof, remit all dues and take possession of the Unit.

21. **Due date of handing over possession and admissibility of grace period:** The respondent contends that the construction of the project was delayed due to reinitiating of the existing work orders under GST regime, by virtue of which all the bills of contractors were held between, delay due to the directions by the Hon'ble Supreme Court and National Green Tribunal whereby the construction activities were stopped, Non-availability of the water required for the construction of the project work & non-availability of drinking water for labour due to process change from issuance of HUDA slips for the water to totally online process with the formation of GMDA, shortage of labour, raw materials etc., which continued for around 22 months, starting from February'2015.
22. Furthermore, the promoter has proposed to hand over the possession of the apartment within a period of 3 years plus 6 months from date of agreement. The authority calculated due date of possession according to clause 21 of the agreement dated 09.03.2013 i.e., within 3 years from date of the agreement. Since in the present matter the BBA incorporates unqualified reason for grace period/extended period of 6 months in the possession clause subject to force majeure circumstances. Accordingly, this grace period of 6 months shall be allowed to the promoter at this stage.
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 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.

24. 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.
25. 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., **10.11.2023** is @8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.
26. The definition of term 'interest' as defined under section 2(z) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default. The relevant section is reproduced below:

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

Explanation. —For the purpose of this clause—

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

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

27. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.75% by the respondent/promoter which is the same as is being granted to the complainants in case of delayed possession charges.
28. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, 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 21 of the agreement executed between the parties on 09.03.2013, the possession of the subject apartment was to be delivered within 3 years from the date of execution of this agreement. The period of 3 years expired on 09.03.2016. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is 09.09.2016. Section 19(10) of the Act obligates the allottees 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 is obtained on 12.10.2021 and the same was obtained after the due date of possession. The respondent offered the possession of the unit in question to the complainant on 03.10.2022. 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.


29. 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 allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 09.09.2016 till the offer of the possession i.e., 03.10.2022 plus two months i.e., till 03.12.2022 at 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 after deducting the amount paid or adjusted by the respondent on account of delay possession charges, if any.

H. Directions of the authority सत्यमेव जयते

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):
- a. The complainant is entitled to 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 him to the respondent from the due date of possession i.e., 09.09.2016 till the offer of the possession i.e., 03.10.2022 plus two months i.e., till 03.12.2022 at 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 after deducting the amount paid or adjusted by the respondent on account of delay possession charges, if any.

- b. The promoter shall not charge anything which is not part of the buyer's agreement.
 - c. The respondent is directed to pay arrears of interest accrued, if any after adjustment in statement of account; within 90 days from the date of this order as per rule 16(2) of the rules.
 - d. 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.
31. The complaint stands disposed of.
32. File be consigned to registry.




(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 10.11.2023

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GURUGRAM