

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

Date of decision : 19.10.2023

NAME OF THE BUILDER		Sternal Buildcon Pvt. Ltd.	
PROJECT NAME		The Serenas	
SR. NO	COMPLAINT NO.	TITLE OF COMPLAINT	APPEARANCE
1	CR/5448/2022	Manjeet Sherawat V/S Sternal Buildcon Pvt. Ltd & India Infoline Housing Finance Limited	C: Sh. Sushil Malhotra R:1 Sh. Neeraj Kumar & Mintu Kumar
2	CR/5449/2022	Rajesh Kumari V/S Sternal Buildcon Pvt. Ltd & India Infoline Housing Finance Limited	C: Sh. Sushil Malhotra R:1 Sh. Neeraj Kumar & Mintu Kumar R:2 Ms. Charmi

CORAM:	
Shri Vijay Kumar Goyal	Member

ORDER

- This order shall dispose of both the complaints titled as above filed before the authority 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 allottee as per the agreement for sale executed inter se between parties.
- 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 "The Serenas" (Affordable houses), Sector 36, Sohna, Gurugram (Hr.) being developed by the same respondent-promoter i.e., Sternal

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buildcon Private Limited. The terms and conditions of the builder buyer's agreements that had been executed between the parties *inter se* are also almost similar. The fulcrum of the issues involved in both the cases pertains to failure on the part of the respondent/promoter to deliver timely possession of the units in question and seeking award for delayed possession charges.

3. The details of the complaints, reply status, unit nos., dates of agreements, date of environment clearance, date of sanction of building plans, due date of possession, offer of possession and relief sought are given in the table below:

Sternal buildcon Private Limited							
Project Name		The Serenas					
<p>Possession Clause 5.1: Within 60 days from the date of issuance of Occupancy certificate, the Developer shall offer the possession of the said flat to the allottee(s). Subject to force majeure circumstances, receipt of occupancy certificate and allottee(s) having timely complied with all its obligations, formalities or documentation, as prescribed by developer in terms of the agreement and not being in default under any part hereof including but not limited to the timely payment of instalments as per the payment plan, stamp duty and registration charges, the developer shall offer possession of the said flat to the allottee(s) within a period of 4 years from the date of the said flat to the allottee(s) within a period of 4 years from the date of approval of building plans or grant of environment clearance, (hereinafter referred to as the "commencement date"), whichever is later.'</p> <p>Date of occupation certificate obtained in the project "The Serenas": 25.03.2022 Date of environment clearance : 18.05.2017 Due date of possession : 18.11.2021 (Calculated from date of environment clearance) Note: Grace period of 6 months is included while computing due date of possession on account of Covid-19 are in term of HARERA notification dated 26.05.2020 allowing grace period from 01.03.2020 to 30.09.2020.</p>							
Sr. No	Complaint No./Title/Date of filing	Reply status	Unit no.	Date of sanction of building plan	Date of execution of builder buyer's agreement	Offer of possession Total sale consideration Amount paid	Relief sought
1	CR/5448/2022 Manjeet Sherawat Vs. Sternal buildcon Pvt. Ltd. D.O.F 08.08.2022	11.11.2022	2-406, 2 nd floor, tower 2	09.01.2017	17.11.2017	27.03.2022 TC- Rs. 19,54,712/- AP- Rs. 20,33,963/-	1. DPC. 2. Possession
2	CR/5449/2022 Rajesh kumari Vs. Sternal buildcon Pvt. Ltd.	11.11.2022	5-303, 3 rd floor, tower 5	09.01.2017 [page no. 32 of complaint]	06.12.2017 [page no. 33 of complaint]	27.03.2022 TC- Rs. 19,54,712/-	1. DPC 2. Possession

D.O.F 08.08.2022					AP- Rs. 20,41,103/-	
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4. The above-mentioned complaints were filed under section 31 of the Act read with rule 28 of the rules by the complainants against the promoter M/S Sternal Buildcon Pvt. Ltd. on account of violation of the builder buyer's agreement executed between the parties *inter se* in respect of said units for not handing over the possession by the due date which is an obligation on the part of the promoter under section 11(4)(a) of the Act *ibid* apart from contractual obligations.
5. The delay possession charges to be paid by the promoter is positive obligation under proviso to section 18 of the Act in case of failure of the promoter to hand over possession by the due date as per builder buyer's agreement.
6. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under the Act, the rules and the regulations made thereunder.
7. The facts of all the complaints filed by the complainant/ allottees are also similar. However, out of the above-mentioned cases, the particulars of lead cases bearing **CR/5448/2022, titled as Manjeet Sehrawat Vs. Sternal Buildcon Pvt. Ltd.** are being taken into consideration for determining the rights of the allottee(s) qua delay possession charges.

A. Unit and project related details

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8. The particulars of unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, have been detailed in the following tabular form:

S.N.	Particulars	Details
1.	Name of the project	"The Serenas", Sector- 36, Sohna, Gurugram
2.	Nature of project	Affordable group housing
3.	RERA registered/not registered	Not Registered
4.	DTPC License no.	14 of 2016 dated 26.09.2016
	Validity status	25.09.2021
	Name of licensee	Pardeep and Sandeep
	Licensed area	9.78 acre
5	Unit no.	2-406, 2 nd floor, tower 2 [As per page no. 47 of complaint]
6	Unit measuring	Carpet Area- 531.57 sq. ft. Balcony Area- 82.12 sq.ft. [As per page no. 47 of complaint]
7	Date of execution of Floor buyer's agreement	17.11.2017 (Page no. 44 of complaint)
8	Building plan	09.01.2017 (As per DTCP)
9	Environment clearance	18.05.2017
10	Possession clause	5. Possession 5.1 4 years from the date of approval of building plan or grant of

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		environment clearances, whichever is later.
11	Due date of possession	18.11.2021 (18.05.2021 plus six months grace period due to covid-19 i.e., 18.11.2021) (Calculated from the date of environment clearance being later)
12	Total sale consideration	Rs. 19,54,712/- (As per page no. 55 of complaint)
13	Total amount paid by the complainant	Rs. 20,33,963/- (as per applicant ledger, 85 of complaint)
14	Occupation certificate dated	25.03.2022 (as per page no. 102 of reply)
15	Offer of possession	27.03.2022 (as per page no. 94 of complaint)

B. Facts of the complaint

The complainant has submitted as under: -

9. That the complainant received a marketing call from the office of respondent/builder about investment in their upcoming project, situated at Sector 36, SOHNA, Gurgaon. Its marketing staff shows rosy pictures of the project and allure with proposed specifications and invited for site visit.
10. That on 17.11.2017 a preprinted one sided, arbitrary and unilateral allotment letter cum buyer's agreement for unit no. 2-406 in tower 2 at 4TH floor 2BHK having carpet area of 531.57 sq.ft and balcony area 82.12 sq.ft in the project "The Serenas" at Sector 36, SOHNA, Gurgaon (Haryana) was executed between parties. As per clause 6.1(i) the respondent has to complete the construction of unit by 18.05.2021 for the purpose of this clause, 'ready to move in possession' mean that the said unit would be in habitable condition which is complete in all

respects for which occupancy certificate has been issued by the concerned Governmental Authority.

11. That the sale consideration of the unit is Rs. 19,54,712/- against which the complainant paid an amount of Rs. 20,33,963/- i.e., more than 100% of total consideration including with interest and other allied charges of actual purchase price, but when the complainant observed that there is no progress in construction of subject unit for a long time, the complainant raised his grievance to the respondent no. 1 through various verbal communications over a period of time, but no satisfactory reply was received.
12. That the main grievance of the complainant is that in spite of having paid more than 100% of the demanded amounts and ready and willing to pay the remaining amount if any, the respondent no. 1 has failed to deliver the possession of unit as per date mention in agreement.
13. That the main grievance of the complainant is that the respondent no. 2 is hand in glove with the respondent no.1. The respondent no. 2 has failed miserably in doing due-diligence of the project and has issued the loan amount to the respondent no. 1 without any actual construction on ground as per the promised time line hereby indulging in gross negligence and being a criminal party along with respondent no. 2 in frauding the innocent complainant. The respondent no. 2 has not kept a tab of usage of funds by the respondent no.1 whereby even after getting the funds , the respondent no. 1 has failed miserably in providing the possession on time and is so far from it. The criminality of respondent no. 2 is required to be assessed and is liable to be punished.
14. That the complainant had purchased the unit with intention that after the purchase, his family will live in their own flat. It was promised by the

respondent at the time of receiving payment for the unit that the possession of fully constructed unit along with surface parking as shown in broucher at the time of sale would be handed over to the complainant as soon as construction work is complete i.e by May 2021. The complainant visited the project site in March 2022 and found that the unit is not habitable and require time for completion.

15. That the complainant has been unnecessarily harassed mentally as well as financially, therefore the respondent is liable to provide delayed possession penalty and liable to be punished for aforesaid act of unfair trade practice.

C. Relief sought by the complainant:

(i) Direct the respondent to delay possession charges along with interest and handover the possession of the unit.

16. No reply has been received from the respondent no.2 with regard to the present complaint. Therefore, the defence of the respondent no.2 is hereby struck off and the complaint will be decided as per documents available on record and submission made by the parties.

17. 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 no. 1.

The respondent no. 1 has contested the complaint on the following grounds:-

18. That the complainant was allotted a unit bearing no. 2-406 in tower 2 having carpet area of 531.57 sq. ft. on the 2nd floor and balcony area 82.12

sq.ft. together with the two wheeler open parking site and the pro rata share in the common areas through draw of lots held on 20.07.2017 under the Affordable Group Housing Policy, 2013.

19. That subsequent to the allotment of the said unit the complainant entered into agreement with the respondent for the delivery of possession of the said unit on the terms and conditions as contained therein.
20. That the total cost of the allotted unit including balcony area was Rs.19,54,712/- excluding the other charges such as stamp duty, registration charges, other expenses etc. and the payment was time link payment as stipulated by the policy. The Goods and Service Tax was payable extra as applicable.
21. That the total cost of the said unit was escalation free, save and except increase on account of development charges payable to the Governmental Authority and/ or any other charges which may be levied or imposed by the Governmental Authority from time to time, which the complainant had agreed to pay on demand by the respondent.
22. That the delivery of the possession of the said unit was agreed to be offered within 4 years, from the approval of building plans or grant of environmental clearance, whichever is later. However the delivery of possession was subject to force majeure circumstances, receipt of occupancy certificate and allottee(s) having timely completed with all its obligations.
23. That the proposed period of delivery of physical possession was subject to force majeure circumstances, intervention of statutory authorities, receipt of occupation certificate and allottee having complied with all obligations of allotment in a timely manner and further subject to

completion of formalities/documentation as prescribed by the respondent and not being in default of any clause of the agreement.

24. That the agreed possession period would have been applicable provided no disturbance/hindrance had been caused either due to force majeure circumstances or on account of intervention by statutory authorities etc.
25. That it is respectfully submitted that prior to the completion of the project, various force majeure circumstances affected the regular development of the real estate project. The deadly and contagious Covid-19 pandemic had struck which have resulted in unavoidable delay in delivery of physical possession of the apartment. In fact, Covid 19 pandemic was an admitted force majeure event which was beyond the power and control of the respondent.
26. That in a recent judgment RERA Authority of Gautam Budh Nagar has provided benefit of 116 days to the developer on account of various orders of NGT and Hon'ble Supreme Court directing ban on construction activities in Delhi and NCR, 10 days for the period 01.11.2018 to 10.11.2018, 4 days for 26.10.2019 to 30.10.2019, 5 days for the period 04.11.2019 to 08.11.2019 and 102 days for the period 04.11.2019 to 14.02.2020. The Authority was also pleased to consider and provided benefit of 6 months to the developer on account of effect of covid also.
27. That aforesaid incidence was unforeseen events and beyond the control of the respondent which adversely affected the respondent's ability to perform its obligations under the agreement. The force majeure as defined in the clause 19 of the agreement.
28. That the respondent received the OC on 25.03.2022 from the Town & Country Planning Department Haryana and the respondent issued offer of possession vide letter dated 27.03.2022 requesting the complainant to

accept the possession and execute the necessary documents for the execution of the conveyance deed of the given flat.

29. That despite the lapse of more than 7 months of offer of possession, the complainant has failed to execute the necessary documents and has also failed to make payment towards administration charges, advance electricity consumption deposit etc. as per possession letter accordingly the complainant is liable to pay appropriate interest on the amount due from 26.04.2022 onwards.
30. All other averments made in the complaint were denied in toto.
31. 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 those undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority

32. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

F. I Territorial jurisdiction

33. 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.

F. II Subject matter jurisdiction

34. 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.

35. 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.

G. Findings on the objection raised by the respondent.

G.I Objection regarding force majeure conditions:

36. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour and orders passed by National Green Tribunal (hereinafter, referred as NGT). But all the pleas advanced in this regard are devoid of merit. The passing of various orders passed by NGT during the month of November is an annual feature and the respondent should have taken the same into consideration before fixing the due date. Similarly, the various orders passed by other authorities cannot be taken

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as an excuse for delay. Further, the authority has gone through the possession clause of the agreement and observed that the respondent-developer proposes to handover the possession of the allotted unit within a period of four years from the date of approval of building plan or from the date of grant of environment clearance, whichever is later. In the present case, the date of approval of building plan is 09.01.2017 and date of environment clearance is 18.05.2017 as taken from the documents on record. The due date is calculated from the date of environment clearance being later, so, the due date of subject unit comes out to be 18.11.2021. ***As per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion/due date on or after 25.03.2020.*** The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 18.05.2021 i.e., after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic.

H. Findings on the relief sought by the complainants.

37. Relief sought by the complainant: The complainant sought following relief(s):
- Direct the respondent to delay possession charges along with interest and handover the possession of the unit.

G.I Delay Possession Charges

38. The complainant booked a unit bearing no. 2-406, tower-2 admeasuring carpet area 531.57 sq.ft and balcony area 82.12 sq.ft. The complainant paid till date Rs. 20,33,963/- against the sale consideration of Rs.

19,54,712/- . A buyer agreement w.r.t the allotted unit was executed between the parties on 17.11.2017. As per clause 5.1 of the buyers' agreement, the due date for the completion of the project and offer of possession of the allotted unit was fixed as 18.05.2021 which is calculated from the date of environment clearances being later.

39. The complainant intends 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, —

.....

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."

40. Further, clause 5.1 of the buyer's agreement provides the time period of handing over possession and the same is reproduced below:

"5.1 within 60 days from the date of issuance of occupancy certificate, the Developer shall offer the possession of the said flat to the Allottee(s). Subject to force majeure circumstances, receipt of occupancy certificate and allottee(s) having timely complied with all its obligations, formalities or documentation, as prescribed by developer in terms of the agreement and not being in default under any part hereof including but not limited to the timely payment of instalments as per the payment plan, stamp duty and registration charges, the developer shall offer possession of the said flat to the allottee(s) within a period of 4 years from the date of approval of building plans or grant of environment clearance." .

41. 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

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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 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.

42. 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 buyer's agreement lays down the terms that govern the sale of different kinds of properties like residential, 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.
43. The authority has gone through the possession clause of the agreement and observed that the respondent-developer proposes to handover the possession of the allotted unit within a period of four years from the date of approval of building plan or from the date of grant of environment clearance, whichever is later. In the present case, the due date of approval

of building plan is 09.01.2017 and environment clearance is 18.05.2017. The due date is calculated from the date of environment clearance being later, so, the due date of subject unit comes out to be 18.05.2021. As per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 18.05.2021 i.e. after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. As such the due date for handing over of possession comes out to 18.11.2021.

44. **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 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.

45. 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.

46. 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%.
47. 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;"*

48. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.75% by the respondent/promoters which is the same as is being granted to them in case of delayed possession charges.
49. On consideration of the documents available on record and submissions made 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 5.1 of the buyer's agreement executed between the parties on 17.11.2017, the possession of the subject unit was to be delivered within 4 years from the date of approval of building plan or grant of environment clearance, whichever is later. The due date of possession is calculated from the date of environment clearance i.e., 18.05.2017. As per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainants is 18.05.2021 i.e., after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. As such the due date for handing over of possession comes out to be 18.11.2021. Further, a relief of 6 months will be given to the allottee that no interest shall be charged from the complainant-allottee for delay if any between 6 months Covid period from 01.03.2020 to 01.09.2020.

50. The respondent has obtained the occupation certificate on 25.03.2022. 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 17.11.2017 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 17.11.2017 to hand over the possession within the stipulated period.



51. 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 25.03.2022. The respondent offered the possession of the unit in question to the complainant only on 27.03.2022. 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. 18.11.2022 till the date of offer of possession (27.03.2022) plus two months i.e., 27.05.2022. The complainant is further directed to take possession of the allotted unit after clearing all the dues within a period of 2 months and failing which legal consequences as per the provisions of the Act will follow.
52. 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. 18.11.2021 till the offer of possession i.e., 27.03.2022 plus 2 months i.e., 27.05.2022 as per section of section 18(1) of the Act read with rule 15 of the Rules.

H. Directions of the authority

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53. 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 respondents are directed to pay interest on 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., 18.11.2021 till the date of offer of possession i.e., 27.03.2022 plus two months i.e., 27.05.2022 to the complainant.
- 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 complainant is 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 arrears of such interest accrued from due date of possession till its admissibility as per direction (i) above shall be paid by the promoters to the allottee within a period of 90 days from date of this order as per rule 16(2) of the rules.
- iv. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.75% by the respondents/promoters which is the same rate of interest which the promoters shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act. The 6 months grace period due to Covid-19 shall also apply to the allottee in case of any default in making payment.

- v. The respondent shall not charge anything from the complainant which is not the part of the flat buyer's agreement.
54. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
55. The complaints stand disposed of. True certified copies of this order be placed in the case files of each matter.
56. File be consigned to Registry.

V.1 - 
(Vijay Kumar Goyal)
Member
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 19.10.2023

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