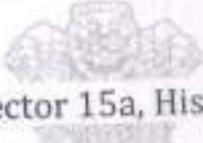


**BEFORE THE HARYANA REAL ESTATE REGULATORY  
AUTHORITY, GURUGRAM**

Complaint no.	:	4498 of 2022
Date of filing complaint:		01.07.2022
First date of hearing	:	29.09.2022
Date of decision	:	05.09.2023

1. 2.	Sh. Rajesh Punia Smt. Poonam Kundu R/O: House No. 625, Sector 15a, Hissar, Haryana	 <b>Complainants</b>
versus		
1. 2.	Cosmos Infra Infra Engineering India Pvt Ltd R/O: F-9, First Floor, Manish Plaza-1, Plot No-7, Mlu, Sector-10, Dwarka, New Delhi-110075 Shivnandan Buildtech Pvt Ltd R/O 4, Battery Lane, Rajpur Road. Civil Lines, New Delhi 110054	<b>Respondents</b>

**CORAM:**

Shri Vijay Kumar Goyal

**Member****APPEARANCE:**

Ms. Meena Hooda (Advocate)

**Complainant**

Sh. Dharmender Sehrawat (Advocate)

**Respondent****ORDER**

1. The present complaint has been filed by the complainant/allottee 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 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. Unit and project related details**

2. The particulars of unit details, 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.	Particulars	Details
1.	Name of the project	Cosmos Express 99 Sector 99, Village Dhankot , Tehsil and Distt., Gurugram
2.	Project Area	10.025 acres
3.	Nature of the project	Residential Unit
4.	DTCP License no. & validity status	70 of 2011 dated 22.07.2011 upto 21.07.2024
5.	Name of licensee	Shivnandan Buildtech Pvt Ltd
6.	RERA registered / not registered	Registered bearing no. 62 of 2019 dated 14.10.2019 upto 30.09.2021
7.	Unit no.	904 TowerD (Page no. 25 of the agreement)
8.	Unit admeasuring	1310 sq. ft. Page no. 25 of the agreement

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9.	Allotment Letter	20.10.2011
10.	Date of MOU	13.12.2019
11.	Date of execution of flat buyer agreement	21.03.2012
12.	Possession Clause	<b>3.1</b> 3.1 That the developer shall, under normal conditions, subject to force majeure, complete construction of tower/building in which the said flat is to be located, in <b>4 years from the start of construction or execution of this agreement whichever is later.</b> <b>(Emphasis supplied).</b>
13.	Due date of delivery of possession	12.03.2017
14.	Total sale consideration	Rs 38,84,150 /- (As alleged by the complaint)
15.	Total amount paid by the complainant	Rs 38,89,9330/- (As alleged by the complaint)
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered

**B. Facts of the complaint**

3. That previously, Mr. B.D. Grover and Smt. Santosh Grover had applied and were allotted a residential unit no. D-904, located in Type copper, in Tower No. D, consisting of 2 bedrooms and 2 toilets, located on ninth floor, in the

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group housing complex having an approximate super area of 1310 Sq. ft. in the project of the respondent vide allotment letter dated 20.10.2011.

4. The said B.D. Grover and Santosh Grover after going through advertisement published by respondent in the newspapers and as per the brochure/prospectus provided by respondent has applied for the allotment of aforesaid flat for total Basic Sale Price Rs.38,84,150/-
5. That, in wake of the allotment letter, the respondent had executed a flat buyer's agreement dated 21.03.2012 with the said B.D. Grover and Santosh Grover. When the respondent in utter contravention of its own terms and conditions have not handed over the possession of the unit to the said B.D. Grover and Santosh Grover, then they sold the said flat to the complainants and the same was accepted by the respondent.
6. That That, after purchasing of the said flat from B.D. Grover and Santosh Grover, the respondent had executed a memorandum of understanding dated 13.12.2019 in favour of the complainants. As per Clause - 1.4 of the memorandum of understanding dated 13.12.2019, the respondent had assured and promised the complainants that it would complete the work of project and would have handed over the possession of the flat to the complainants within 12-15 months from the date of memorandum of understanding. vii. That, as per Clause - 2.2 of the said memorandum of understanding, the respondent had agreed that it would hand over the possession of the said unit to the complainants maximum by 30.09.2020.

7. That in the Clause -2.5 of the memorandum of understanding, the respondent itself had admitted that the respondent has to pay accrued interest of Rs.3,14,400/- on the date of signing of memorandum of understanding and cosmos agrees to waive Rs.3,14,400/- interest charges due and payable by the allottee, because as per the flat buyer's agreement, the respondent has to deliver the possession of the dwelling flat by 18.09.2016
8. That , as per Clause 4 of the memorandum of understanding inter-alia provides that if respondent is not able to deliver the flat with all approvals by March 2021 and this said memorandum of understanding shall stand null and void and the terms and conditions of the original flat buyer agreement shall stand reinstated. The complainants may proceed with any legal remedy as available under the law. Hence, the flat buyer's agreement dated 21.03.2012 becomes applicable and the complainants have all the rights to approach this Hon'ble Authority and file their grievance.
9. The respondents are in right to exclusively develop, construct and build residential building, transfer or alienate the unit's floor space and to carry out sale deed, agreement to sell, conveyance deeds, letters of allotments etc. The complainants visited the site during the course of construction and noticed and found that the construction work is delayed beyond the possession date and since then they have been trying to communicate to the respondents by visiting their offices and through various modes including but not limited to telephonic conversations and personal approach etc and



there is a delay of 68 months in delivering the possession of the dwelling unit.

10. That the complainants made and satisfied all the payments against the demands raised by the respondent and as on the date of filing of the present complaint, the complainants have abided by all the payments plan of the flat buyer's agreement without any delay and default. The respondents has not completed the construction of the said real estate project till now and the complainants have not been provided with the possession of the said unit to the complainants despite promises and representation made by respondents.
11. That the respondents have committed grave deficiency in services by not delivering the possession of said unit and false promises made at the time of sale of the said apartment, which amounts to unfair trade practice which is immoral and illegal. The respondents have also criminally misappropriated the money paid by the complainant as sale consideration of the said apartment by not delivering the unit by agreed timelines.
12. That, relying upon respondents representation and believing those to be true, the complainants were induced to pay Rs.38,89,933/- and no amount is left to be paid by the complainants, as the complainants have paid more amount than the basic sale price.
13. That the respondents acted in a very deficient, unfair, wrongful, fraudulent manner by not delivering the said apartment situated at the project "COSMOS EXPRESS 99" Sector-99, Village Dhankot, Gurugram, District

Gurugram within the timelines agreed in the buyer's agreement. Therefore, respondents are liable to pay the damages and compensation for the monetary loss and harassment suffered by the complainants due to delay in delivering the possession of aforesaid apartment. The respondents are also liable to pay damages to the complainants for the losses they incurred due to wrongful and fraudulent promises & commitments made by the respondents in respect of the delivery of possession of aforesaid apartment.

14. That the complainants have filed the present complaint as the respondents are fully liable to pay/reimburse the payment claimed by the complainants in the form of interest along-with the delay possession charges for the losses incurred by the complainants due to the wrongful and fraudulent acts of the respondents.

**C. Relief sought by the complainant:**

15. The complainant has sought following relief(s):
- i. Direct to the respondent to pay the delayed possession charges till offer of possession of the said flat.
  - ii. Direct the respondent to handover the possession of the said flat to the complainants.
  - iii. Direct the respondent to pay Rs. 2,00,000/- as litigation expenses.
16. The respondent no. 2 has not put in appearance and did not file any written reply despite giving several opportunities. So, the authority was left with no option but to proceed based on averments given in the complaint and the documents placed on the file.

17. On the date of hearing, the authority explained to the respondent/promoter about the contravention 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 has contested the complaint on the following grounds.

18. ~~That~~ That in the present case the delay caused in the construction of the project was not due to the acts of the respondent No. 1 but due to the factors beyond the control of the respondent No. 1. The following factors caused the delay in the construction of the project, which are not within the control of the respondent No.1 and are force majeure events.
19. That since basic infrastructure and facilities like road, water, electricity supply and sewer were not available, the respondent no.1 could not continue with the construction.
20. That the project is located on the Dwarka Expressway which was proposed in the year 2006 and was supposed to be completed by 2010-11. But, however due to the unfortunate delay in the construction of the expressway, the construction of the project got delayed as well since there was no road for commuting. The respondent no.1 even filed an RTI application with the NHAI in 2017 inquiring about the estimate time of completion of the Dwarka Expressway to which no date of completion was informed in the reply given by the authority. The respondent no.1 had even filed an RTI with the HUDA asking information on water supply to the project, in reply of which it was stated that it would take another 2-3 years for supplying water to the project

which again delayed the project as the respondent no. 1 could not have handed over the possession without basic amenities like water.

21. That in July 2017, the RERA Act came into force which barred the developers from accepting the bookings or receiving any payments from the buyers unless and until the project was registered with the Haryana RERA. The application for registration was immediately filed with the HRERA by the respondent no. 1 on 31.07.2017 at the Panchkula Office. However, on 03.01.2018 an order was received by the respondent no.1 wherein it was stated that a copy of duly renewed license by the Director Town & Country Planning (DICP) Haryana, was to be filed for the registration. That on 16.03.2018 the renewed license was submitted with the concerned authority but however no registration was granted by HARERA for reasons not known to the Respondent No. 1. Thereafter, the respondent no.1 came to the knowledge that Haryana Real Estate (Regulation & Development) Rules 2017 were superseded by Harvana Real Estate regulatory authority Gurgaon (Registration of projects) Regulation 2018 & had to submit a fresh application that required many permissions from DTCP Haryana which took up a lot of time of the Respondent No. 1. Furthermore, the respondent no. 1 even sent a reminder dated 28.03.2018 to the principal secretary cum DRA to Government of Haryana Chandigarh to register the project as soon as possible as all the conditions under the Act and application had been met. On 15.03.2018 the Respondent No. 1 received the reply to the said reminder, in which it was stated that as per the new regulation of 2018, the Gurgaon

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office had the authority to register the project rather than the Panchkula office and a fresh application to be filed with the Gurgaon Office. That a fresh application was again filed with the Gurgaon office on 23/04/2018 and the registration was granted only on 14/10/2019 which is almost 27 months after the very first application was filed.

22. That the construction of the project was in full swing and the respondent no. 1 expected it be completed within the timeframe promised to the buyers but however due to the changes in law, the construction of the project suffered an unfortunate delay. On top of that, when the respondent no. 1 tried to mobilize the construction of the project after receiving the registration, the world was struck by the pandemic in the year 2020 and a nationwide lockdown was imposed due to which many workers went back to their hometowns and have not returned till date. The bank accounts of the respondent no.1 were blocked due to the RBI circular RBri2020-21/20DOR.No.BP.BC/7/21.04.048/2020-21 dated 06.08.2020 and hence the respondent no. 1 could not use the funds for the development of the project.
23. That as per the notification dated 26.05.2020, issued by HARERA Gurugram, an extension period of 6 months has been granted to projects that are expiring in 25.05.2020 or after. Since, the date of completion for the subject project is 30.09.2021, thus the extension is available for the Respondent No. 1 as well. Therefore, the construction of the project will be completed well within the time frame. The delay in the construction of the project due to the

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force majeure events, does not go against the provisions of the flat buyer's agreement and the agreement itself allows the delays that are caused by the factors beyond the control of the respondent no. 1. The present complaint is liable to be dismissed as the complainants have failed to show that the delay caused was due to the acts of the respondent no. 1 that are against the provisions of the flat buyer's agreement and hence, the present complaint is liable to be dismissed.

24. That it is accepted that a MOU dated 13.12.2019 was signed between the complainants and the respondent no. 1, however, it is pertinent to note that the MOU merely contains additional terms and conditions, and the agreement is still valid and applicable upon the parties. It is again reiterated that Clause 3.3. of the clearly states that if the construction is delayed in the event of force majeure, then the respondent no. 1 shall get additional time for the construction of the project. Since, the project has been delayed due to the factors like outbreak of the pandemic and changes in law, which fall under the category of force majeure. Thus, the respondent no. 1 has acted well with the bonds of the agreement and is not in the contravention of the same.

25. That it is stated that the complainants have wrongly interpreted the contents of the clause 2.2 of the MOU. It is pertinent to note that the said clause merely states that beyond 30.09.2022 delay payment charges will be provided. However, the payment of the delayed charges are subject to force majeure. Thus, the respondent no. 1 is acting well within the terms and

conditions of the agreement and the MOU. It is stated that clause 2.5 states that the allottee is liable to pay a sum of Rs. 1,89,638/- as interest for delay in making the payments, which the respondent no. 1 waived off out of goodwill.

26. That it is pertinent to note that the construction of the project is almost completed to extent of 70%. Further, it is also pertinent to note that the complainants have never tried to approach the respondent no. 1.
27. That since the delaying factors were beyond the control of the respondent no. 1 and that the respondent no. 1 were trying their best to overcome the hindrances. Further, it is pertinent to note that the Respondent No. 1 not only consumed the sale proceed but also invested extra funds out of his own pocket for timely construction of the project. As per the Engineer's report on estimated cost of the project, for submission before the RERA, the total cost for construction was estimated to be Rs. 128 Crores and estimated cost already incurred was calculated to be Rs. 90 Crores, however in reality, as on 31.03.2021, according to the C.A. certificate dated 16.06.2021, the developer has spent around Rs. 201.75 Crore towards construction & other expenses against the sales advance of Rs. 139.18 Crores. Therefore, it is clear that the respondent no.1 had no ulterior motives, nor was the respondent no.1 trying to cheat or defraud the complainants, rather, the respondent no.1 is trying its best to finish the construction and handover the property to the buyers as soon as possible.. It is also pertinent to note that it is complainants who has committed multiple breaches by not making the

payment as per the revised payment scheduled which is annexed with the MOU dated 13.012.2019, executed between the complainants and the Respondent. It is also pertinent to note that the complainants have not made the payment of the entire sale consideration amount yet.

28. That it is stated that the respondent no. 1 is also suffering due to the acts of force majeure but it is also trying its best to overcome the hindrances and hand over the possession of the property as soon as possible. The construction of the project is almost complete by 70% and the project would soon be ready for possession. As per the Architect's certificate showing quarterly progress, majority of the construction is completed.
29. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submission made by the parties.

#### **E. Jurisdiction of the authority**

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

##### **E.1 Territorial jurisdiction**

30. 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

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authority has complete territorial jurisdiction to deal with the present complaint.

#### **E.II Subject matter jurisdiction**

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

*Section 11(4)(a)*

*Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;*

*Section 34-Functions of the Authority:*

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

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

#### **F. Findings on the objections raised by the respondent:**

##### **F.I Objection regarding force majeure conditions:**

33. The respondent-promoter has raised a contention that the construction of the project was delayed due to reasons beyond its control such as road, water, electricity supply and sewer were not available, the respondent no.1 could not continue with the construction, Dwarka Expressway which was proposed in the year 2006 and was supposed to be completed by 2010-11

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and Covid-19 outbreak. The respondent requested that the delay was due to uncertain circumstances which were beyond its the control and same cannot be made liable for such delay. The Authority is of the concerned view that these periods were for very short duration of time. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

34. As far as plea w.r.t. COVID-19 is concerned, lockdown due to outbreak of such pandemic and shortage of labour on this account. The authority put reliance judgment of 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 IAs 3696-3697/2020* dated 29.05.2020 which 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."*

In the present complaint also, the respondent was liable to complete the construction of the project in question and handover the possession of the said unit by 12.03.2017. The respondent 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.

**G. Findings on the relief sought by the complainants**

**Relief sought by the complainants:**

**G.I Direct to the respondent to pay the delayed possession charges till offer of possession of the aid flat.**

**G.II Direct the respondent to handover the possession of the said flat to the complainants.**

35. In the present complaint, 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."*

36. Clause 3.1 of apartment buyer's agreement dated 21.03.2012 provides for handing over of possession and is reproduced below:

***"Clause 3.1***

*That the developer shall, under normal conditions, subject to force majeure, complete construction of tower/building in which the said flat is to be located, in 4 years from the start of construction or execution of this agreement whichever is later.*

37. That, as per Clause 4 of the memorandum of understanding inter-alia provides that if respondent is not able to deliver the flat with all approvals by March 2021 and this said memorandum of understanding shall stand null

and void and the terms and conditions of the original flat buyer agreement shall stand reinstated.

38. The Authority has gone through the possession clause of the agreement and observes that the respondent-developer proposes to handover the possession of the allotted unit within a period of 4 years from the start of construction or execution of this agreement whichever is later. The buyer's agreement inter-se parties was executed on 21.03.2012; and the date of start of construction is 12.03.2013 as per findings of the Authority in the CR No. 805 of 2018 as the date of start of construction pertain to same project and same tower. As such the due date of handing over of possession without considering grace period comes out to be 12.03.2017. The respondent is claiming benefit of delayed reasons which were beyond the control of the respondent and the same were for a very short period of time and 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 no grace period is being allowed.
39. **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

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*lending rates which the State Bank of India may fix from time to time for lending to the general public.*

40. 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.
41. 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., 05.09.2023 is @ 8.75 %. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.
42. 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;"*
43. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.75 % by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.



44. 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 3.1 of apartment buyer's agreement executed between the parties on 21.03.2012, the possession of the subject apartment was to be delivered by 12.03.2017.
45. 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 has yet not obtained by the respondent-builder. The respondent shall offer the possession of the subject unit to the complainant after obtaining occupation certificate. So, it can be said that the complainants would come to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainants should be given 2 months' time from the date of offer of possession. This 2 month of reasonable time is to be given to the complainant keeping in mind that even after intimation of possession, practically one has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but that 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. from the due date of possession i.e., 12.03.2017 till actual handing over of possession or offer of possession plus two months, whichever is earlier.
46. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 21.03.2012 to hand over



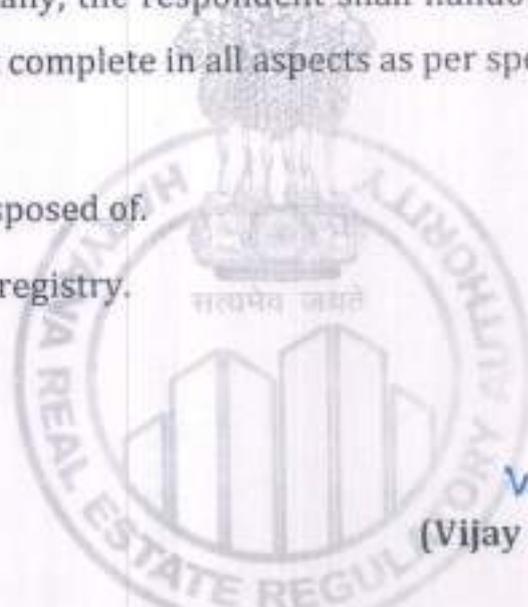
the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 12.03.2017 till the date of actual handing over of possession or till offer of possession plus 2 months, whichever is earlier; at the prescribed rate i.e., 10.75 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

#### **H. Directions of the authority**

47. 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 shall pay interest at the prescribed rate i.e. 10.75% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e.; 12.03.2017 till offer of possession plus two months after obtaining occupation certificate or the date of actual handing over of possession, whichever is earlier; as per proviso to section 18(1) of the Act read with rule 15 of the rules.
  - ii. The arrears of such interest accrued from 12.03.2017 till date of this order shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be payable by the promoter to the allottee before 10<sup>th</sup> day of each subsequent month as per rule 16(2) of the rules.
  - iii. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.

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- 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 respondent/promoter which is the same rate of interest which the promoter 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.
- v. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period and thereafter payment of such dues, if any, the respondent shall handover the possession of the allotted unit complete in all aspects as per specifications of buyer's agreement.
48. Complaint stands disposed of.
49. File be consigned to registry.



*V.I - 3*  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 05.09.2023**

**HARERA**  
**GURUGRAM**