

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

Complaint no. : 1401-2023
Date of filing complaint : 05.04.2022
Date of decision : 18.07.2023

	Ramanjeet Singh and Mrs. Ninjit Kaur R/O: - A-223, Block A, New Friends Colony, New Delhi-110025.	Complainants
Versus		
1 2	M/s BPTP Limited M/s Countrywide Promoters Private Limited Regd. Office at: - 28 ECE House, 1 st Floor, KG Marg, New Delhi-10001.	Respondents

CORAM:	
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Ms. Priyanka Aggarwal	Advocate for the complainants
Sh. Harshit Batra	Advocate for the respondents

ORDER

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

A. Unit and project related details

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

Sr. No.	Particulars	Details
1	Name of the project	'Astaire Gardens', Sector 70A, Gurugram, Haryana.
2	Unit no.	C-119 (On page no. 48 of complaint)
3	Unit admeasuring	364 sq. yd. (on page no. 48 of complaint)
4	Date of sanction of service plan	15.02.2022 (Vide documents submitted by the respondent)
5	Date of execution of floor buyer's agreement	15.03.2013 (On page no. 39 of complaint)
6	Possession clause	Clause 5.1- Subject to Force Majeure, as defined in Clause 14 and further subject to the Purchaser(s) having complied with all its obligations under the terms and conditions of this Agreement and the Purchaser(s) not being in default under any part of this Agreement including but not limited to the timely payment of each and every installment of the total sale consideration including DC, Stamp duty and other charges and also subject to the Purchaser(s) having complied with all formalities or documentation as prescribed by the Seller/Confirming Party, the Seller/Confirming Party proposes to hand over the physical possession of the said unit to the Purchaser(s) within a period of 36 months from the date of sanctioning of

		<p>the service plan of entire colony or execution of Floor Buyers Agreement, whichever is later ("Commitment Period"). The Purchaser(s) further agrees and understands that the Seller/Confirming Party shall additionally be entitled to a period of 180 days ("Grace Period") after the expiry of the said Commitment Period to allow for filing and pursuing the Occupancy Certificate etc. from DTCP under the Act in respect of the entire colony.</p> <p>(Emphasis supplied)</p>
7	Due date of delivery of possession	15.03.2016 (Calculated from the date of execution of buyer agreement) (In proceeding dated 18.07.2023, the due date is inadvertently mentioned as 15.05.2016.)
8	Total sale consideration	Rs. 1,95,76,795/- (On page no. 98 of reply)
9	Total amount paid by the complainant	Rs. 2,00,64,407/- (On page no. 98 of reply)
10	Completion certificate	Not yet obtained as confirmed by the counsels during proceedings
11	Offer of possession	14.02.2018 (On page no. 96 of reply)
12	Execution of conveyance deed	30.01.2023

B. Facts of the complaint

3. That the complainants approached the respondent & booked a plot in plotted colony admeasuring area 350 sq. yds. Astaire Garden Sector -70 A Gurugram on dated 29.06.2011 and paid booking amount. In the booking application

form the due date of possession was 36 months from date of execution of agreement.

4. That the payment plan being a development linked plan, was however development in a manner for complainant to select only that milestone requiring to pay more than 40 % within 210 days of the booking and before start of development and execution of agreement. The builder extracted more than 40% even before start of development, which is illegal, arbitrary and unilateral.
5. That the respondent issued the allotment letter on 08.08.2011 and allotted a unit bearing no. C- 119 area admeasuring 364 Sq. yard. The respondent to dupe the complainants in their nefarious net even executed buyer agreement signed between the parties on dated 15.03.2013. Just to create a false belief that the project would be completed in time bound manner and in the garb of the agreement persistently raised demands due to which they were able to extract huge amount from the complainants.
6. That the total cost of the said plot admeasuring 364 sq. yds is Rs. 1,90,07,506/- inclusive BSP, PLC, EDC IDC, club charges, electrification & STP charges, utility connection charges, Vat Taxes and power backup charges. According to statement of account the complainant, paid a sum of Rs 2,00,64,407/- to the respondent till date and only one instalment is remained as per the payment schedule and the paid amount was demanded by the respondent without doing appropriate work on the said project even after extracting more than 100% amount which is illegal and arbitrary.
7. That the respondents have charged interest on delayed instalment @18% p.a. compounded interest as per BBA and offer the delay penalty for himself is just Rs. 100 per sq. yard. /Month as per clause no 5.4 which is totally illegal arbitrary and unilateral. Even builder has not given a single penny as a delayed possession charge.

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8. That as per clause 5.1 of the buyers' agreement dated 15.03.2013, the respondent was under obligation to handover the possession of the unit by 15.03.2016. However, it has come on record that the respondent has failed to fulfil the obligation conferred upon it and offered the subject unit on 14.02.2018.
9. That after paying all the dues which were mentioned in the offer of possession the complainants visited the office of builder many times, even wrote the email on 01.03.2019 and asked about the delayed penalty and physical possession of property. In its response the respondent apologised the complainant and gave the assurance for execution of conveyance deed. The complainants continue peruse the matter dated 31.03.2021 & 05.04.2021 with builder and received the assurance through email dated 06.05.2021 but builder was not given possession again peruse by complainants dated 12.07.2021, but till today builder not given him physical possession and never executed the conveyance deed.
10. That the complainants had taken house loan from Housing Development & Finance Corporation Limited at interest rate of 9.25 % (variable Rate of interest) which caused additional burden on the complainants as pre-EMI were to be paid.
11. That the complainants were shocked to receive the invoice of maintenance on dated 13.10.2021 in the tax invoice builder demanded the monthly maintenance from 15.06.2018 to 14.06.2019 without giving possession of the allotted unit.
12. That after paying more than 100% amount the complainants have repeatedly been seeking physical possession of property. However, the queries of the complainants were never satisfactorily replied or got false assurance of early possession. The respondents were always vague and evasive to such requests.

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13. That such an inordinate delay in the delivery of possession to the allottee is an outright violation of the rights of the allottee under the provisions of Act, 2016 as well the agreement executed between the parties. The complainants demand delay penalty in terms of section 18(1) read with section 18(3) of the Act, along with principles of Justice, equity and good conscience.
14. That the respondents have indulged in all kinds of tricks and blatant illegality, misrepresentation and huge mental and physical harassment of the complainants and their family. All the savoured dreams, hopes and expectations of the complainants have been rudely and cruelly dashed to the ground. After failing to get any response from the respondent to his various posers from time to time, the complainants are eminently justified in seeking possession of plot and delayed possession charges.

C. Relief sought by the complainants:

15. The complainants have sought the following relief:

- Direct the Respondents to pay interest at the prescribed rate for every month of delay from the due date of possession till the date of handing over of the possession, on the paid amount (complete in all respects) (as per section 18 of the Real Estate (Regulation and Development) Act, 2016).
- Direct the respondent to handover the possession of plot.
- Direct the respondent to execute the conveyance deed. Direct the respondent to quash the demand of monthly maintenance without giving physical possession with immediate effect.

D. Reply by the respondent

The respondent by way of written reply made the following submissions.

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16. That the conveyance deed would be executed by the respondent with respect to plot no. C-119 at the earliest subject to payment of applicable stamp duty and registration charges by the complainants. They are not coming forward to take possession of the plot and registration of the conveyance deed. The possession of the plot has already been offered to the complainants on 14.01.2018.
17. That as contemplated in section 13 of the Act, subsequent to the commencement of the rules, a promoter has to enter into an agreement for sale with the allottees and get the same registered prior to receipt of more than 10 percent of the cost of the plot, or building.
18. That rule 8(1) clearly specifies that the form of the agreement for sale is prescribed in annexure A to the rules and in terms of section 13 of the Act the promoter is obligated to register the agreement for sale upon receipt of any amount in excess of 10% of the cost of the plot. Rule 8(2) provides that any documents such as allotment letter or any other document executed post registration of the project with the Authority between the parties, which are contrary to the form of the agreement for sale, Act or Rules, the contents of the form of the agreement for sale, Act or Rules would prevail. The rule 8 deals with documents executed between the parties after registration of the project by the promoter. However, with respect to the documents including buyer's agreement executed prior to the registration of the project which falls within the definition of "ongoing projects" explained below and where the promoter has already collected an amount in excess of 10 percent of the total price, rule 8 is not applicable.
19. That the aforesaid view stated in the preceding para is clarified in the rules published by the state of Haryana, the explanation given at the end of the prescribed agreement for sale in annexure A of the rules, it has been

clarified that the developer would disclose the existing agreement for sale in respect of ongoing project and further that such disclosure would not affect the validity of such existing agreement executed with its customers. Thus, what has not been made and no legal and valid contract has been executed and is subsisting.

20. That the parties had agreed under clause 33 of the plot buyer's agreement to attempt to amicably settle the matter and if the matter is not settled amicably, to refer the matter for arbitration.
21. That the complainants have raised dispute but did not take any steps to invoke arbitration. Hence, is in breach of the agreement between the parties. The allegations made require proper adjudication by tendering evidence, cross examination etc. Therefore, cannot be adjudicated in summary proceedings.
22. All the averments made in the complaint were denied in toto.
23. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

24. 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

25. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district.

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

E. II Subject-matter jurisdiction

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

Section 11(4)(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.

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

F. Finding on the objections raised by the respondent.

F.I Objection regarding complainant is in breach of agreement for non-invocation of arbitration.

27. The respondent has raised an objection that the complainants have not invoked arbitration proceedings as per apartment buyer's agreement which contains provisions regarding initiation of arbitration proceedings in case of breach of agreement. The following clause has been incorporated w.r.t arbitration in the buyer's agreement:

"Clause 31: all or any disputes out of or touching upon or in relation to the terms of this Agreement the interpretation and validity of the terms thereof and the respective rights and obligation parties shall be settled amicably by mutual discussion failing which the same shall be adjudication and settled through Arbitration by the sole Arbitrator. The arbitration shall be governed Arbitration & Conciliation Act, 1995 or any statutory amendments/modifications thereto for being in force. The Arbitration proceedings shall be held at an appropriate location in New Delhi Sole Arbitrator who shall be appointed by the Managing Director of the Seller/Confirming Party Limited and whose decision shall be final and binding upon the Parties, The Purchaser(s) shall made any objection on the appointment of sole Arbitrator by the Seller/Confirming Party. The Purc hereby confirms and agrees that he/she lit shall have no objection to this appointment Independence or impartiality of the said sole ASTEPT person so appointed as the sole Arbitrator, is an employee or advocate of the Seller/Confirming is otherwise connected to the Seller/Confirming Party and the Purchaser(s) confirmed notwithstanding such relationship/connection, the Purchaser shall have no doubts or objection. Independence or impartiality of the said sole arbitrator...."

28. The respondent contended that as per the terms & conditions of the agreement duly executed between the parties, it was specifically agreed that in the eventuality of any dispute, if any, with respect to the provisional booked unit, the same shall be adjudicated through arbitration mechanism. 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* and *Aftab Singh and ors.*

v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017, 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. Further, the arbitration clause in agreements between the complainant and builders could not circumscribe the jurisdiction of a consumer.

29. While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the 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** upheld the aforesaid judgement of NCDRC.
30. Therefore, in view of the above judgements and considering the provisions of the Act, the Authority is of the view that complainant is well within their 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, 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.1 Direct the respondents to pay interest at the prescribed rate for every month of delay from the due date of possession till the date of handing over of the possession, on the paid amount (complete in all respects) (as per section 18 of the Real Estate (Regulation and Development) Act, 2016).

- A** 31. The complainants booked the plot in plotted colony admeasuring area 350 sq. Yds. Astaire Garden 70-A, Gurugram on 29.06.2011 for total

consideration of Rs. 1,95,76,795/- out of which they paid sum of Rs. 2,00,64,795/- which is more than 100% of the total sale consideration.

32. However, it is not clear the due date is to be calculated for a period of 36 months from the date of sanctioning of service plans of the entire colony or execution of plot buyers' agreement whichever is later. The respondent stated that service plans of the colony have been approved only on 15.02.2022 and hence 36 months if counted from the same, the due date is not yet over. In compliance of directions given on previous date, he has submitted a copy of letter dated 15.07.2022 vide which the DTCP has given approval of revised service plan estimates for residential plotted colony (License No.62 of 2021 dated 1.9.2021). The respondent had been demanding instalments on basis of schedule given in BBA and undertaking construction and development works as well from the complainant without getting service plans approved (which was later on approved on 15.2.2022). In view of judgment of the Hon'ble Supreme Court in case of *Fortune Infrastructure & Anr. VS Trevor D'lima & Ors., [(2018) 5 SCC 442]* a reasonable period of 3 years has been specified for completion of the project. In the instant complaint, the agreement between the parties was executed on 15.03.2013 and it has come on record that the complainants have already paid Rs. 2,00,64,407/- i.e., more than total sale consideration. Thus, it would be justified to calculate such period of 3 years from the date of buyer's agreement i.e., 15.03.2013. Therefore, the due date for handing over of possession calculated from buyer's agreement comes out to be 15.03.2016.
33. 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."

34. Clause 5 of the buyer's agreement provides the time period of handing over possession and the same is reproduced below:

"Clause 5.1 Subject to Force Majeure, as defined in Clause 14 and further subject to the Purchaser(s) having complied with all its obligations under the terms and conditions of this Agreement and the Purchaser(s) not being in default under any part of this Agreement including but not limited to the timely payment of each and every installment of the total sale consideration including DC, Stamp duty and other charges and also subject to the Purchaser(s) having complied with all formalities or documentation as prescribed by the Seller/Confirming Party, the Seller/Confirming Party proposes to hand over the physical possession of the said unit to the Purchaser(s) within a period of 36 months from the date of sanctioning of the service plan of entire colony or execution of Floor Buyers Agreement, whichever is later ("Commitment Period"). The Purchaser(s) further agrees and understands that the Seller/Confirming Party shall additionally be entitled to a period of 180 days ("Grace Period") after the expiry of the said Commitment Period to allow for filing and pursuing the Occupancy Certificate etc. from DTCP under the Act in respect of the entire colony.

35. 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 complainants not being in default under any provision of this agreement and in compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the 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.

36. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builder/promoter and buyer/allottee are protected candidly. The flat agreement lays down the terms that govern the sale of different kinds of properties like 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.
37. **Admissibility of grace period:** The promoters proposed to hand over the possession of the said unit within period of 36 months from the date of sanctioning of the service plan of the entire colony or execution of floor buyer agreement. So, the due date for handing over possession of the allotted unit comes to 15.03.2016 (calculated from the date of buyer's agreement). However, there is no material evidence on record that during the period of 180 days, the period sought as grace period, the promoters have applied to any authority for obtaining the necessary approvals with respect to this project. The counsel for the complainant further confirmed that completion certificate of the entire colony is not obtained, and the period of 36 months had already been expired. So, the promoters cannot claim the benefit of grace period of 180 days. Thus, the

grace period is not allowed, and the due date of possession comes out to be 15.03.2016.

38. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant(s) 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.

39. 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.
40. 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., 18.07.2023 is 8.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.
41. 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;"

42. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.70% by the respondents/promoters which is the same as is being granted to them in case of delayed possession charges.
43. **Validity of offer of possession:** At this stage, the authority will clarify the concept of 'valid offer of possession'. It is necessary to clarify this concept because after valid and lawful offer of possession, liability of promoter for delayed offer of possession comes to an end. On the other hand, if the possession is not valid and lawful, liability of promoter continues till a valid offer is made and allottee remains entitled to receive interest for the delay caused in handing over valid possession. The authority after detailed consideration of the matter has arrived at the conclusion that a valid offer of possession must have following components.
- i. Possession must be offered after completion certificate.
 - ii. The subject plot should be in habitable condition.
 - iii. Possession should not be accompanied by unreasonable additional demands.



44. The subject plot after its completion should have received completion certificate from the concerned department certifying that all the basic infrastructural facilities have been laid and are operational. Such infrastructural facilities include water supply, sewerage system, storm water drainage, electricity supply, roads and street lighting. Though in the light of the above-mentioned fact the offer of possession made by the promoter to the allottee is not valid, the same being made without obtaining completion certificate but the allottee has already accepted the possession through an email dated 19.05.2018. He is certainly entitled to delay possession charges but only from the due date 15.03.2016 till the date of offer of possession (14.02.2018) plus 2 months i.e., 14.04.2018. As the offer of possession made by the respondent and the same was accepted by the complainant through an email dated 19.05.2018.
45. On consideration of the documents available on record and submissions made by both the parties, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 5 of the agreement executed between the parties on 15.03.2013, the possession of the subject unit was to be delivered within 36 months from the date of sanctioning of the service plan of the entire colony or execution of floor buyers' agreement, whichever is later. For the reasons quoted above, the due date of possession is to be calculated from the date of execution of buyer's agreement i.e., 15.03.2013 and the said time period of 36 months has not been extended by any competent Authority. Therefore, the due date of possession is calculated from the date of execution of buyer's agreement and the said time period of 36 months expired on 15.05.2016. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of

handing over possession is 15.03.2016. The offer of possession made by the respondent/promoter is not a valid/lawful offer of possession due to no-receipt of completion certificate.

46. The respondent sent a letter of offer of possession by inviting the complainant to take possession and on 19.05.2018, the complainant accepted the possession. Therefore, after the date he has accepted the offer of possession, he cannot be allowed delayed possession charges till obtaining of completion certificate or execution of conveyance deed. Therefore, the complainant shall be entitled for DPC from the due date of possession i.e., 15.03.2016 till the date of acceptance of offer of possession i.e., 19.05.2018.

G. II Direct the respondent to execute the conveyance deed.

47. The complainant has sought relief of execution of conveyance deed. However, the respondent submitted in its additional document that the conveyance deed has already been executed on 30.01.2023. The Authority observed that the DTCP, Haryana has issued a letter on 20.05.2022, wherein providing clarification regarding execution of conveyance deed. The relevant para of the letter reproduced hereunder:

"In reference to the above referred clarification sought, I have been directed to inform that colonizer can execute the conveyance deed in respect of any plot in residential plotted colonies after obtaining license and approval of layout plan by Director, Town and Planning, Haryana".

48. Keeping in view of the aforesaid circumstances and the fact that conveyance deed has already been executed between the parties. Hence, no direction to this effect.

H. Directions of the Authority:

49. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations

cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i. The respondents are directed to pay interest at the prescribed rate of 10.70% p.a. for every month of delay on the amount paid by the complainants from the due date of possession i.e., 15.03.2016 till the date of acceptance of offer of possession i.e., 19.05.2018.
 - ii. 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 allottees within a period of 90 days from date of this order as per rule 16(2) of the rules.
 - iii. The respondents are directed to handover the possession of the allotted unit to the complainants completes in all aspects as per specifications of buyer's agreement.
 - iv. The respondent is not entitled to claim holding charges from the complainant(s)/allottee(s) at any point of time even after being part of the builder buyer's agreement as per law settled by Hon'ble Supreme Court in Civil appeal nos. 3864-3889/2020 decided on 14.12.2020.
50. Complaint stands disposed of.
51. File be consigned to the Registry.


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 18.07.2023