

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

Complaint no. : 1633 of 2021
Date of filing complaint : 23.03.2021
Date of decision : 21.11.2023

M/s Shiva Medichem Exports Pvt. Ltd R/O: - 2027/7, Chuna Mandi, Paharganj, New Delhi-110055.	Complainant
Versus	
1. M/s Haryana Urban Development Authority (HUDA) Regd. Office at: C-1, Infocity, Sector-34, Gurugram. 2. M/s Haryana State Industrial & Infrastructure Development Corporation Ltd. (HSIIDC Ltd.) Regd. Office at: Vanjjya Nikunj Complex, Udyog Vihar, Phase V, Gurugram, Haryana.	Respondents

CORAM:	
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Vikas Deep	Advocates for the complainant
Sh. B.P. Gaur	Advocate for the respondent no. 1
Sh. Kuldeep Sharma	Advocate for the respondent no. 2

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 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	Prestigious Projects, for "Information Technology (IT)-enabled services", Sector 34, Gurugram.
2.	Plot no. as per the allotment letter	Plot no. 74 3586 sq. mtr
3.	Letter of Allotment	08.08.2014 (Page 21 of complaint) (Annexure C-5 on page no. 31 of the complaint)
4.	Date of new allotment letter	11.08.2014 (Page 25 of complaint) Area revised by on 09.08.2014 by Chief Administrator, Huda Panchkula

5	Possession clause	N/A
6	Due date of possession	11.08.2017 (calculated 3 years from the date of allotment as there is no buyer agreement executed between the parties)
7	Total consideration	Rs. 7,88,94,200/- (Page 7 of the complaint)
8	Total amount paid by the complainant	Rs. 6,30,00,000/- (Page 6 of the complaint)
9	Completion certificate	-----
10	Date of offer of possession to the complainant	12.08.2014 as alleged by the complainant at page 26

B. Facts of the complaint

3. That the present complaint is being filed by the complainant company through its Director Mr. Shashank Garg who is also authorised vide resolution dated 02/09/2020.
4. That the complainant company intended to set up a unit under category of 'Prestigious Projects' for 'Information Technology (IT) & IT-enable Services' and to apply for allotment of 4050 Sq. Mtrs. Industrial Plot at Sector-34, Gurgaon, Haryana.
5. That the complainant company, by Application dated 26/08/2013, got received by the respondent No.1 on dated 29/08/2013, applied for allotment of 4050 Sq. Mtrs. industrial plot at sector-34, Gurgaon

(now Gurugram), Haryana with the respondent no.1, under category of 'Prestigious Projects'. Along with the application dated 26/08/2013, the complainant company annexed application form; DD of initial payment amounting Rs.81,00,000/- in favour of Chief Administrator, Haryana Urban Development Authority, as required; all requisite documents; project report etc. as per instructions of respondent No.1.

6. That further vide application dated 22/10/2013, got received by the respondent No.1 on dated 11/11/2013, the complainant company had deposited a DD No.035000 dated 08/11/2013 amounting Rs.60,00,000/-, in addition to the previously deposited amount of Rs.81,00,000/-. In this way, the complainant company had deposited the total amount of Rs.1,41,00,000/- against the application for allotment of plot.
7. That vide letter dated 07/02/2014, the office of Chief Administrator, Haryana Urban Development Authority, informed to appear before the committee constituted under the provision of clause 1.3 (ii) of the EMP-2011, under the Chairmanship of Additional Chief Secretary to Govt. Haryana, Industries Department, Haryana, held on 18/02/2014 in conference room, HQ, Panchkula, for considering the cases of allotment of industrial plot with proposed investment of 30 crore and above.
8. That the complainant company, through its director Mr. Pavel Garg, appeared for personal interview before plot allotment committee on the given date and time. In pursuance, the office of respondent No.1, vide letter dated 08/08/2014, issued 'allotment letter', allotting the plot no.74, measuring 3874.44 SQM (subsequently reduced to 94 X 38.15 Meter = 3586.10 SQM.), in sector no.34 (EHTP), Gurgaon, at

tentative rate of Rs.22,000/- per sq. mtrs. In this way, the tentative total sale consideration of the plot having size of 3874.44sq.mtrs.@ Rs.22,000/- per sq. mtrs., allotted to the complainant company, comes to Rs.8,53,25,680/-. It was further directed to implement the project within a period of 3 years from the date of allotment. By this time, the complainant company had deposited the total amount of Rs.2,14,00,000/-, against the said application, as acknowledged by the respondent No.1 in the present allotment letter dated 08/08/2014. This amount of Rs.2,14,00,000/- was considered to be constituted as the earnest money. The rest of 75% i.e. Rs.6,39,25,680/- was payable without interest within 60 days from date of issuance of allotment letter dated 08/08/2014, in five half yearly instalments, with interest @ 12% per annum, starting from the expiry of six months from the allotment letter dated 08/08/2014, means the instalments payable from 08/02/2015.

9. That subsequently after reduction of size of the plot the tentative price of the plot in question i.e. Plot No.74, Sector-34 (EHTP), Gurgaon, measuring 3586.10SQM was reduced to Rs.7,88,94,200/-. Despite reduced price of the plot in question, the respondent No.1 still retained the amount of Rs.2,14,00,000/- as already paid, which constitutes more than 25% of the total sale consideration. The balance amount of Rs.5,74,94,200/- was payable without interest within 60 days from date of issuance of allotment letter dated 08/08/2014, in five half yearly instalments, with interest @ 12% per annum, starting from the expiry of six months from the allotment letter dated 08/08/2014, means the instalments payable from 08/02/2015. It is also pertinent to mention here that in case the allottee opt to pay the amount in instalments, the allottee was liable

to pay the interest of Rs.1,03,48,960/-, as calculated by the respondent No.1 in the letter dated 11/08/2014. It is also pertinent to mention here that the road in front of the plot in question was encroached upon and HSVP was unable to provide the clear right of way to the plot in question.

10. That the total sale consideration of subject unit was Rs.7,88,94,200/- and the complainant company has already paid the amount of Rs.6,30,00,000/-.
11. That on 28/04/2015, the complainant had submitted the Building Plan for approval alongwith all requisite documents and Fees, in the office of respondent No.1 to implement the project immediately. But various correspondences from the complainant show that the Building Plan was not sanctioned, despite lapse of huge time, on account of departmental laches. The respondent No.1 has committed gross violations and deficiencies on both accounts i.e. a) the respondent No.1 failed to remove the encroachment upon the road, approaching to the said plot, and was unable to provide the clear Right of Way to the plot; b) the respondent No.1 failed to sanction the Building Plan. The entire correspondences with the respondents, i.e. letter dated 05/06/2015, 30/07/2015, 08/08/2015, 04/04/2016, 06/04/2016, 26/12/2016, 22/01/2018, 16/07/2018, 28/02/2019 are collectively annexed as **Annexure-C/16**, evidencing both the deficiencies.
12. That the officials of the respondent No.1 verbally told the complainant that the Sector-34, Gurugram is taken over for maintenance by the respondent No.2.
13. That now vide letter dated 11/10/2019, the complainant requested the respondent No.2 to change the category of the project from

Prestigious Project to General Project i.e. to allow reduction of project cost from 36.23 Crore to 22.00 Crores on pro-rate basis, due to various factors like reduction in plot size, reduction in covered area, viability of IT / ITES in changed market scenario etc. But the respondent No.2 gave no response.

14. That the complainant had placed hording of its name over the said plot since possession but suddenly, after possession of 4/5 years of the possession, when the complainant visited the location, it was transpired that the hoarding of the complainant was removed by M/s Swapnil Properties Pvt. Ltd. and over the said plot, the hoarding of M/s Swapnil Properties Pvt. Ltd. was affixed and when the complainant had confronted their guard posted on said plot, he had informed that there is some legal dispute over the plot, without providing any documents related to the same. But the respondent No.1 never intimated so to the complainant about said dispute. The complainant, vide letter dated 26/02/2020, had requested the respondent No.1 to give the documents of legal dispute, as pending. But the respondent No.1 failed to give any response.
15. That later on, vide letter dated 27/08/, the respondent No.1 has intimated that *'the plot in question falls under khasra No.851 & 852, in the revenue estate of village Khandsa. The said khasra numbers were acquired by HSVP vide award No.15 dated 18.07.2011. The CWP No.26536 of 2018 titled Swapnil Properties Vs. Union of India and others has been filed w.r.t. Khasra No.852 before the Hon'ble High Court. The order dated 29.11.2019 passed by Hon'ble Court for maintaining status quo and the case is still pending'*. But as per information obtained from the official web-site of the Hon'ble High Court of Punjab & Haryana, it is transpired that the said Civil Writ Petition

No.26536/2018 is disposed off, as withdrawn, vide order dated 31/08/2020.

16. That the respondents have been using the huge money of the complainant without providing the right to way to the plot and as much as without sanctioning the building plan, which has caused huge losses to the complainant and undue earnings to the respondents, at the cost of the complainant. In this way, the complainant is suffering loss of its investment over the plot in question and also the loss of expected profit. Hence, due to the deficiency and illegality by the respondents, the complainant company is entitled to the damages / interest @ 12%, on equity basis and also entitled to exit its unit from the category of 'Prestigious Projects' i.e. reduction of project cost from 36.23 Crore to 22.00 Crores, without any fee / penalty, due to deficiency and illegality committed by respondents, as the plot in question is lying without any use because the respondents failed to provide the clear right to way and also did not sanction the building plan, so due to lapse of such long time, under the changed circumstances, the cost and plan of project is bound to be changed.
17. That under the given circumstances and facts, as stated in the foregoing paras, it is also submitted that the respondents cannot be entitled to the interest on the remaining amount or any other dues, including on enhancement amount, if so imposed by the respondents. It is also submitted that in such circumstances when the clear right to way to the plot is not provided and also that the building plan is not sanctioned, the plot in question cannot be put for use

C. Relief sought by the complainant:

The complainant has sought the following relief:



- i) The respondents be further directed to pay the statutory compensation, in the form of interest, on amount of Rs.6,30,00,000/- which is lying deposited, from 07/08/2014, in the interest of justice. This amount of interest may kindly be adjusted in the amount, as remain due against the plot in question and over and above compensation / interest, as finally accrues, may kindly be refunded to the complainant.
- ii) The respondents be further directed to convert its unit under category of 'Regular Projects' from the category of 'Prestigious Projects', without any fee / penalty, i.e. to allow reduction of project cost from 36.23 Crore to 22.00 Crores on pro-rate basis, in the interest of justice.
- iii) The respondent may kindly be restrained from charging/imposing any interest on the remaining amount or any other dues, including enhancement amount, if so imposed by the respondents.

D. Reply by the respondent no. 1:

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

18. The present complaint is not maintainable in law or on facts. It is submitted that the present complaint is not maintainable before this Hon'ble Authority. The Complainant has filed the present complaint seeking sanctioning the building plan and other action to be taken by the respondent No.1. In reply to this contention of the Complainant, it is submitted that as per the Government of Haryana's decision dated 08.08.2018, conveyed to the Managing Director, Haryana State

Industrial and Infrastructure Development Corporation Ltd. (hereinafter be referred to as the "HSIDC"), by the Chief Administrator, HSVP, Panchkula vide Memo No. CCF-HSVP-AO-I-2018-35660 dated 22.02.2018 and decision taken in the meeting dated 12.09.2019 under the Chairmanship of Additional Chief Secretary to Government Haryana, Industries Department, all industrial Sectors of HSVP, Gurugram were ordered to be transferred to HSIDC for taking further necessary action in all aspect and concerned HSVP PPM system/Online website in respect of all industrial Sectors has been closed by Headquarter, Information and Technology Cell, therefore, the approval of revised building plan etc. cannot be issued by respondent No.1 in any manner whatsoever being closure of HSVP PPM /online system for all industrial plot.

19. The plot files of the Industrial Sectors have been transferred to HSIIDC including the Complainant's plot file. Since, now the custodian of record is HSIDC. Therefore further action regarding the approval of building plans etc. are to be governed and taken by the HSIIDC department.
20. That, similarly case came up for decision before the Hon'ble High Court of Punjab & Haryana at Chandigarh in CWP No.5951 of 2020 titled as "M/s Ashkit Properties Limited Vs. State of Haryana & Ors" and the same was disposed of vide order dated 18.09.2020 with the following direction: - "This case has been taken up for hearing through video conferencing. It has been brought to the notice of this Court that as per the policy decision, all the industrial plots earlier allotted by HUDA have now been transferred to HSIDC in the year 2018. It is further submitted that as far as the petitioner is concerned, his case is now being sent to HSIIDC. in view of this, HUDA is directed

to send the complete papers of the petitioner to the HSIDC within two weeks from today. Thereafter, the HSIDC shall take final decision within further three weeks, as recommended by the HUDA.

21. That, in the present complaint case, the plot file of plot No.74, Sector-34, Gurugram has been handed over to HSIIDC by the respondent No.1 on dated 29.10.2018.
22. The complainant has filed the present complaint seeking interest and compensation for alleged delay in delivering possession of the unit booked by the Complainant and default in making the payments by the Complainant. It is respectfully submitted that complaints pertaining to the compensation and interest are to be decided by the Adjudicating Officer under Section 71 of the Real Estate Regulation and Development) Act, 2016 (hereinafter referred to as "the Act" for short) read with Rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017, (hereinafter referred to as "the Rules") and not by this Hon'ble Authority. The present complaint is liable to be dismissed on this ground alone.
23. All other averments made in the complaint were denied in toto.
24. 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. Reply by the respondent-2:

25. That the Plot in dispute i.e. Plot No. 74/34, EHT with area measuring 3878.44 sq.mtr. was allotted under "Prestigious Category" by HSVP to M/s. Shva Medichem Exports Pvt Ltd vide RLA (fp-256) dated 08.08.2014 @ Rs. 22000/- per sq mtr. As per possession letter dated 11.08.2014 (fp-262) area mentioned was 3586.10 sq. mtrs. 2. That the

allottee vide letter dated 11.10.2019 requested for: a. Conversion of the above-mentioned plot from Prestigious Category to General Category as the plot allotted is less than the plot area applied for. b. Reduction of project cost from Rs.36.23 crore to Rs.22.14 crore as due to change in IT scenario, P&M cost has also come down drastically as compared to year 2011 and other dynamics of the industry & project has changed significantly since then.

26. That vide letter dated 24.01.2020, addressed to Administrator, HSVP, Sec. 14, Gurugram, it was mentioned that, "The matter was examined at various levels of HSVP office and the worthy Zonal Administrator, HSVP Gurugram vide his letter dated 18.10.2018 addressed to Estate Officer-II Gurugram (cc to CA, HSVP - TP Wing, LAO, Gurugram and DTP Gurugram found the grievances of the allottee genuine and that the appropriate action may be initiated in the case). However, till now inspite of several reminders, the matter has not been settled by the HSVP and the allottee of the plots are time and again requesting to sort out the matter. Though the file of Plot no.76, Sector 34 was called by EO-II HSVP Gurugram, however the same has been returned back on 26.08.2019 without any decision in the matter. In this respect, I am directed by our Head Office to apprise you of the matter and request you to kindly direct the concerned official at HSVP (i.e. EO-II, DTP etc.) to settle the issue once and for all and forward the decision to us so that the further action could be taken in the matter".
27. That in reply to the letter, HSVP vide their Memo No.4964 dated 27.08.2020, EO-I/HSVP, Gurugram informed that, " the said plot falls under Khasra No. 851 and 852 in the revenue Estate of village Khandsa and the said Khasra numbers were acquired by HSVP vide award No.15 dated 18.07.2011. The CWP No. 26536 of 2018 titled as

Swapnil Properties us Union of India and others has been filed w.r.t. Khasra No. 8752 before Hon'ble High Court. The order dated 29.11.2019 has been passed by the Hon'ble Court for maintaining Status Quo and the case is still pending. It is hereby apprised that due to the said court case possession cannot be handed over to the allottee, As and when the court case gets decided, further action will be taken regarding handing over the Physical Possession of the plot accordingly'.

28. That since HSVP has not given the list of vacant plots till date and also has not handed over the area along with infrastructure facilities to HSIDC Engineering Division, therefore the office of Respondent No.2 has no clear idea about vacant sites and litigations/ encroachments on such sites.
29. All other averments made in the complaint were denied in toto.
30. 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

F. Jurisdiction of the authority

31. The authority observes that the respondents fall under the definition of promoter under provisions of section 2(zk)(iii) wherein it is provided as under:

“Promoter” means: 2(zk)(iii) any development authority or any other public body in respect of allottees of—

- (a) Buildings or apartments, as the case may be, constructed by such authority or body on lands owned by them or placed at their disposal by the Government; or

- (b) plots owned by such authority or body or placed at their disposal by the Government, for the purpose of selling all or some of the apartments or plots; or

Further, 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

32. 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.

F. II Subject-matter jurisdiction

33. 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.

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

G. Findings on the relief sought by the complainant.

G.I The respondents be further directed to pay the statutory compensation, in the form of interest, on amount of Rs.6,30,00,000/- which is lying deposited, from 07/08/2014, in the interest of justice. This amount of interest may kindly be adjusted in the amount, as remain due against the plot in question and over and above compensation / interest, as finally accrues, may kindly be refunded to the complainant.

34. The complainant applied for allotment of 4050 sq.mtrs, industrial plot at sector-34, Gurgaon, Haryana under category of 'prestigious projects'. On 17.02.2014, the office of Chief Administrator informed the complainant to appear before the plot allotment committee for considering the cases of allotment of industrial plot. The complainant appeared before the committee and vide letter dated 08.08.2014 issued allotment letter of plot no. 74, measuring 3874.44 sq. mtr. (Subsequently reduced to 94X38.15 meter= 3586.10 sq. mtr.) At tentative rate of Rs. 22,000/- per sq. mtr.

35. The complainant states that the road in front of the plot in question was encroached upon and HSVP was unable to provide the clear right of way to the plot in question even the building plan is not sanctioned till date. The complainant come to know that there is some legal dispute over the plot without providing any documents related to the

same. On 26.02.2020, the complainant requested the respondent no. 1 to provide the document of legal dispute but the respondent did not pay any heed to the complainant's request. On 27/08/2020, the respondent no.1 intimated the complainant that *the plot in question falls under khasra No.851 & 852, in the revenue estate of village Khandsa. The said khasra numbers were acquired by HSVP vide award No.15 dated 18.07.2011. The CWP No.26536 of 2018 titled Swapnil Properties Vs. Union of India and others has been filed w.r.t. Khasra No.852 before the Hon'ble High Court. The order dated 29.11.2019 passed by Hon'ble Court for maintaining status quo and the case is still pending'.*

36. On the contrary respondent no. 1 states that as per Government of Haryana's decision dated 08.08.2018, all industrial sectors of HSVP, Guugram were ordered to be transferred to HSIIDC for taking further necessary action in all aspect. The plot files of the industrial sectors have been transferred to HSIIDC including the complainant's plot file. Therefore further action regarding approval of building plan etc., are to be governed and taken by HSIIDC department.
37. On the contrary respondent no. 2 states that the matter was examined at various levels and found that the grievances of the allottee is genuine and the appropriate action may be initiated in the case. However, inspite of several reminders, the matter has not been settled by the HSVP. It is pertinent to mention here that the site was under litigation and therefor, handing over of physical possession is challenge unless and until clear possession of the entire area is handed over by HSVP to HSIIDC. AS per joint decision taken by HSIIDC & HSVP on 02.02.2022, it was decided that all enhancement due to be paid/payable shall be raised and collected by HSVP. Therefore, the

issue about the enhancement shall be decided by the respondent no.1 i.e. HSVP.

38. The authority is of view that the unit was allotted on 08.08.2014 to the complainant bearing no. industrial plot no. 74, sector 34 (EHTP) at Gurgaon on free hold basis. As per clause 17 of the allotment letter at page no. 23 of the complaint it clearly states that complainant will have to start the civil works within a period of 1 year as per approved building plan from the issuance of the final letter of allotment/ offer of possession. It is pertinent to mention here that the respondent no.1 offered the possession to the complainant on 12.08.2014 without providing even basic amenities as is evident from the foregoing paras. The complainant came to know that there is some legal dispute over the plot. The respondent no. 1 never intimated so to the complainant but on 27.08.2020 vide memo no. 4964, the respondent no. 1 confirmed the same that the matter is pending before the Hon'ble High Court of Punjab and Haryana, Chandigarh in CWP No. 26536 of 2018 titled as Swapnil properties V/s Union of India and others. Hence, after the consideration of all the facts and circumstances, the authority is of the view that the possession offered by the complainant is invalid in the eyes of law as the respondent never informed the complainant that it was a disputed land and there was no basic infrastructure at site. Further, to the detriment of the interest of the complainant, the respondents failed to approve the building plan submitted by the complainant due to which the project of the complainant has been delayed and the complainant has suffered cost escalation of the project. The complainant cannot be made to suffer due to the fault of the respondents who are laying the blame upon each other for the inability to complete the services.

Infact, the respondent no. 1 by its own admission has stated that the plot of the complainant was under litigation

39. In the present complaint, the complainant intends to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

40. Hence, the respondent-builder is directed to pay delay possession charges from the due date of possession i.e. 11.08.2017 till valid offer of possession after all the necessary services are made available at site and a certificate to this effect is provided to the complainant.
41. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the prescribed rate of interest on the amount already paid by him. However, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

- (1) *For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.*

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

42. 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.
43. 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., 21.11.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.
44. 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. 11.08.2017 till valid offer of possession plus two months as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

G.II The respondents be further directed to convert its unit under category of 'Regular Projects' from the category of 'Prestigious Projects', without any fee / penalty, i.e. to allow reduction of project cost from 36.23 Crore to 22.00 Crores on pro-rate basis, in the interest of justice

45. The complainant took a plea that it was allotted subject unit under the category of prestigious projects. Vide letter dated 11.10.2019, the complainant requested the respondent no.2 to change the category of the project from prestigious to general projects but respondent no. 2 did not pay any heed to the complainant. On the contrary, the respondent builder states that the complainant should file the application before the appropriate authority for changing of category of the projects from the prestigious project to the general projects.

46. The authority is of view that the exit route for the allottees of prestigious projects category has specifically been mentioned in the 5.9(b)(v) of the EMP-2015. The complainant allottee may accordingly opt the mentioned exit route by making a representation to the competent authority as per the provision of industrial policy of 2005 of Haryana Government. The competent authority is directed to decide the matter within the period of 3 months from the date of this order.

G.III The respondent may kindly be restrained from charging/imposing any interest on the remaining amount or any other dues, including enhancement amount, if so imposed by the respondents

47. The functions of the authority are to safeguard the interest of the aggrieved person, may be the allottee or the promoter. The rights of the parties are to be balanced and must be equitable. 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;"*

Hence, The rate of interest chargeable from the allottees by the promoters, in case of default shall be charged at the prescribed rate of interest (the prescribed rate of interest will be marginal cost of lending rate +2%) by the respondent/promoters which is the same rate of interest which the promoters would be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

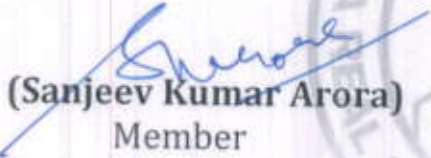
H. Directions of the Authority:

48. 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 10.75% p.a. for every month of delay on the amount paid by the complainant from the due date of possession i.e., 11.08.2017 till valid offer of possession plus 2 months after all the necessary services are made available at site and a certificate to this effect is provided to the complainant.



- ii) The rate of interest chargeable from the allottees by the promoters, in case of default shall be charged at the prescribed rate i.e., 10.75% by the respondent/promoters which is the same rate of interest which the promoters would be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- iii) The respondent is directed to hand over the possession to the complainant allottee on payment of outstanding dues, if any, after adjustment of interest for the delayed period.
49. Complaint stands disposed of.
50. File be consigned to the Registry.


(Sanjeev Kumar Arora)
Member


(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 21.11.2022

HARERA
GURUGRAM