



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

<b>Complaint no.</b>	:	<b>4175 of 2020</b>
<b>Date of filing</b>	:	<b>10.12.2020</b>
<b>Date of decision</b>	:	<b>28.11.2023</b>

Ms. Ravneet Anand

**R/o:** BG-7/116, Paschim Vihar, Delhi- 110063.

**Complainant**

**Versus**

M/s Sana Realtors Pvt. Ltd.

**Office address:** H-69, Upper Ground Floor,  
Outer Circle, Connaught Place, New Delhi-110001.

**Respondent**

**CORAM:**

Shri Ashok Sangwan

Shri Sanjeev Kumar Arora

**Member**

**Member**

**APPEARANCE:**

Mr. Nivedita Chauhan (Advocate)

For the complainant

Mr. Gaurav Raghav (Advocate)

For the 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 as provided under the provision of the Act



or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

**A. Project and unit related details**

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

S. No.	Heads	Details
1.	Project name and location	Precision Soho Tower, Sector-67, Sohna Road, Gurugram, Haryana-122102.
2.	Project area	2.46 acres
3.	Nature of project	Commercial complex
4.	RERA registered/not registered	<b>Not registered</b>
5.	DTPC license no. & validity status	72 of 2009 dated 26.11.2009 <b>Valid/renewed up to- 25.11.2019</b> <b>Licensee- SH HARI SINGH</b> <b>Licensed area- 2.456 acres</b>
6.	Building plan approved on	25.07.2011 [Page 3 of reply]
7.	Unit no.	916, 9 <sup>th</sup> floor [Page 37 of complaint]
8.	Unit measuring	525 sq. ft. (Super area) [Page 37 of complaint]
9.	Allotment letter	18.09.2010 [Page 65 of complaint]
10.	Date of execution of buyer agreement	Not executed



		<b>Note:</b> As per the copy of BBA placed on record, the BBA has not been signed by the respondent.
11.	Due date of delivery of possession	<b>18.09.2013</b>  <b>Note:</b> Fortune Infrastructure and Ors. Vs. Trevor D 'Lima and Ors (12.03.2018 - SC); MANU/SC/0253/2018 observed that "a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract.  In view of the above-mentioned reasoning, the date of signing of allotment letter, ought to be taken as the date for calculating due date of possession. Therefore, the due date of handing over of the possession of the unit comes out to be 18.09.2013.
12.	Total consideration	Rs. 24,70,125/- [Page 37 of complaint]
13.	Total amount paid by the complainant	Rs. 16,42,976/- [As alleged by the complainant on page 7 of complaint]
14.	Cancellation of unit	25.06.2013 [Page 37 of reply]



		<b>Note:</b> As per the cancellation letter, the respondent has forfeited an amount of Rs.4,94,025/- and had asked the complainant to collect the remaining amount of Rs.11,10,875/- from the office of the respondent. However, remaining amount has not been returned by the respondent so far.
15.	Occupation certificate	<ul style="list-style-type: none"><li>• 18.07.2017 [For tower A (ground floor - 9<sup>th</sup> floor) and tower C (ground floor-1<sup>st</sup> floor)]</li><li>• 10.10.2019 [For tower B (ground floor-4<sup>th</sup> floor)]</li></ul>
16.	Offer of possession	Not offered

**B. Facts of the complaint**

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

- a. That the present complaint is being filed by the complainant before hon'ble authority under section 31 the Act r/w rules laid down thereunder read with sections 11(4) (a), 12, 13, 14, 18 and 19 of the Act, against M/s Sana Realtors Pvt. Ltd. (hereinafter referred to as the respondent), which is a body corporate indulged in real estate business. The present complaint is being filed for non-compliance and violation of contractual obligation arising out of the flat buyer agreement executed between the complainant and the respondent and violation of the provisions of the Act.
- b. That the respondent was granted the license no. 72 of 2009 by the Town and Country Planning Department, Government of Haryana (hereinafter referred to as 'DTCP, Haryana') thereby granting



permission to develop commercial colony in Sector 67, Village Badshapur, Gurugram, Haryana. That it is utmost pertinent to mention that clause 6 of the license no. 72 of 2009 makes it a mandate on the respondent not to give any ***Advertisement for sale of Floor Area in Commercial Colony before the approval of Layout Plan/Building Plan.*** However, the respondent not only widely advertised the project but also accepted more than 50% of the entire sale consideration before entering into flat buyer agreement with the complainant.

- c. That the complainant on being allured by the project booked a unit/space by paying earnest money amounting to 50% in the year 2012 of the entire sale consideration qua the unit along with car parking, External Development Charges, Infrastructure Development Charges and after such payment executed flat buyer agreement (Hereinafter referred to as the 'FBA') dated 10.04.2012 with the respondent. That as per clause 15 of the FBA, the respondent had undertaken to deliver the possession of the unit / space in the commercial colony within three years from the date of execution of FBA with the complainant.
- d. That the respondent made the complainant herein enter into a FBA containing abusive, draconian, one-sided clauses, giving excessive arbitrary discretion at the hands of the respondent and the same if given effect to would render extremely detrimental to the interests of the complainant and would give undue freedom to the respondent to further harass the complainant and inflict further loss upon the complainant than what has already been suffered by



her due to years of fraudulent conduct on the part of the respondent.

- e. That the 'Installment Schedule' under which the complainant was required to make payment in lieu of the booked unit/space in the project, was construction linked and according to which the complainant had paid more than 50 % of the entire consideration amount to the respondent in the year 2012 and that the respondent kept the complainant in dark about the status of construction of the project, the units of which as per clause 15 of the FBA, were required to be delivered by the respondent by the year 2013.
- f. That the respondent had promised to deliver the unit in the project by 10.01.2015 and that there was supposed to be three towers in the project (Tower A, B and C) and that the complainant was allotted a virtual unit no. 916 on the ninth floor but in which tower this unit lies was never communicated to the complainant by the respondent.
- g. That the respondent had collected External Development Charges (EDC)/Infrastructure Development Charges (IDC) from the complainant and others as similarly placed which were not only wrongfully and exorbitantly charged but the respondent fraudulently recused itself from depositing entire such amount in the accounts of the competent authority i.e., DTCP, Haryana thereby causing wrongful gain to itself by misappropriating the money so collected in the name of EDC/IDC from the complainant.
- h. That the respondent advertised that there would be 46 units on each floor of the project (as per the brochure and website), whereas



it was later discovered that the exact number of units on each floor was only 34 in number and that it further came to the knowledge of the complainant in the year 2017 that the respondent on being caught for defrauding the complainant and others as similarly placed converted toilets into units and handed over the same to similarly placed customers as the complainant.

- i. That one Mr. Parveen Saluja discovered from the response dated 13.09.2017 received from the Public Information Officer of DTCP, Haryana upon filing an RTI Application dated 12.07.2017, that the respondent had applied for the occupation certificate on 21.05.2015 and the conditional occupation certificate was only granted on 18.07.2017 for Tower 'A' and 'C' in the project and further it is important to mention that the conditional occupation certificate for Tower 'B' in the project was only granted on 10.10.2019, whereas the respondent was obligated under the terms and conditions of the flat buyer agreements with the complainant to ready and deliver the final possession of the units along with necessary approvals/clearances from the concerned authority in the year 2013 which is an obligation of the promoter under section 11(4)(a) of the Act.
- j. That it is of utmost importance to mention that the complainant after depositing more than 50% of the amount in advance in the year 2011 requested the respondent to enter into the flat buyer agreement but such a request was avoided and ignored by the respondent on one pretext or the other. It was only on continuance insistence and follow up on the part of the complainant that the



respondent had agreed to enter into flat buyer agreement on 10.01.2012 during the execution of which the complainant was made to sign the flat buyer agreement as the authorized signatory of the respondent was not available and the complainant was given false assurance that as and when the authorized signatory for the respondent is available to sign the flat buyer agreement, the same shall be signed and sent to the complainant by post. That it was only in the mid of 2019 that the respondent handed over the flat buyer agreement to the complainant after the complainant had conveyed to the respondent that appropriate legal actions shall be taken against the respondent if flat buyer agreement is not handed over to the complainant. That despite this, the complainant was handed over an unsigned flat buyer agreement. In this regard it is submitted that the complainant had paid 66.51% of the entire consideration to the respondent and that she was handed over an unsigned flat buyer agreement which hold no value in the law, moreover, the unit which was allotted to her may or may not exist as the respondent despite accepting huge payments failed to recognize the ownership/legal right of the complainant over the alleged virtual space which was to be handed over by 2015, thus contravening the provisions of section 13 of the Act.

- k. That section 13(1) of the Act, unambiguously states that '*A promoter shall not accept a sum more than ten percent of the cost of the apartment, plot, or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the*





*said agreement for sale, under any law for the time being in force',* whereas in the present case the respondent has accepted around 50% of the entire sale consideration as an advance from the complainant herein before entering into a flat buyer agreement, thus, violating the provisions of the aforesaid section of the Act.

1. That the respondent had advertised of providing high-tech modern facilities and amenities such as CCTV backed high-tech security, high-tech elevators, air-conditioned complex etc. and promised the complainant of these amenities at the time of executing flat buyer agreement and while accepting earnest money payments from the complainant. Despite the lapse of more than 5 years not even an inch of sign of these amenities and facilities is to be seen from the current status of the project. That it is important to submit that it is a clear-cut case of cheating/fraud where a number of buyers including the complainant herein had been hoodwinked alluring them by showing dream units consisting of features of home cum office spaces while printing very glossy brochure as well as the advertisements put on its website and on YouTube. That the respondent has constructed only structure of the units by using inferior quality of raw materials and equipment and that no tangible development has taken place at the site, thus violating the obligation and responsibility imposed upon the respondent under sections 12 & 14 of the Act regarding veracity of the advertisements based on which the complainant herein had booked the unit in the said project.

m. That the complainant herein has invested hard earned money to book a unit/space in the project having the status of a commercial colony, being developed by the respondent with the hope of starting businesses and providing employment in the unit purchased by them containing special features of 'Small Office Home Office' in return of which the complainant received great deal of disappointment, fraud, misrepresentation and wrongful loss at the behest of the deficiency of services and mal practices by the respondent, thus the intervention by this Hon'ble Authority is need of the hour.

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

4. The complainant has sought following relief(s):

- a. Direct the respondent to give immediate possession of the unit of the abovementioned complainant along with prescribed interest per month from the date promised for delivery of possession till the date of actual delivery of possession of unit in favour of the complainant herein in a habitable condition.
- b. Direct the respondent to provide with all the amenities and facilities as mentioned in its brochure/advertisements and cure structural defects within 30 days from the final adjudication of the present complaint.
- c. To restrain the respondent from raising any demand of final payment with interest and holding charges from the complainant.
- d. To restrain the respondent from raising any demand of maintenance before the actual delivery of possession and before the



completion of one month after the actual delivery of possession of the unit.

- e. Pass any other order which deems fit in the interest of justice, good conscience and equity.
5. On the date of hearing, the authority explained to the respondent/promoters about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

**D. Reply by the respondent.**

6. The respondent by way of written reply made the following submissions:
- a. That the present complaint filed by the complainants is liable to be dismissed as the unit of the complainant was cancelled way back on 25.06.2013 on account of the non-payment of the consideration amount. After cancellation, no unit is owned or belongs to the complainant and hence as such the subject relief does not fall within the ambit of the Authority. The notice intimating the cancellation of unit in Precision SOHO Tower, Main Sohna Road, Sector-67, Gurugram was dispatched to the complainant on 25.06.2013 and the same was duly served upon the complainant. Even the amount of refund was asked to be collected after forfeiture of the earnest amount.
- b. That the present complaint filed by the complainant is liable to be dismissed as pursuant to the cancellation of the unit, the original flat buyer agreement was never signed between the complainant

- and the respondent. The complainant on account of the said reason even can't produce the original flat buyer agreement.
- c. That the complainant and the respondent are having no transaction since after 2012 and hence as such under no provisions of Limitation Act any legal proceedings are permissible.
- d. That the present complaint filed by the complainant is liable to be dismissed as the present project does not fall within the purview of the Act. The respondent had way back on 18.05.2015 applied with the concerned authority i.e. DTCP for the grant of the occupation certificate and the concerned authority on 18.07.2017 prior to the commencement of the Rules had granted the respondent with the occupation certificate. It is pertinent to state the said Rules mentioned herein above were notified only on 28.07.2017 and therefore, cannot be applied retrospectively to a project which stands completed before the Rules coming into force. The respondent had obtained the occupation certificate for its project despite which was an "ongoing project" even prior to the notification of the rules. Hon'ble Bombay High Court in the case of *Neelkamal Realtors Suburban Pvt. Ltd. v. Union of India* reported in *SCC Online Bom 9302*, wherein the collective reading of Rules 2(o) and 2(Zn) of the Rules have been interpreted and it was held that the rules of RERA are not applicable retrospectively.
- e. That the complaint before the authority is beyond the limitation period and hence the present application is liable to be dismissed. Referring to the provisions of Limitation Act, the maximum period



as per Article 113 of the Limitation Act is three years and the same has already elapsed.

- f. That the present complaint filed by the complainant is not maintainable as the unit of the complainant was cancelled and subsequently allocated to some other customer. Thereafter occupancy certificate of the project was issued on 18.07.2017 i.e. prior to the commencement of the Rule. The unit of the respondent was cancelled way back on 25.06.2013 and even the flat buyer agreement was never signed between the complainant and the respondent.
- g. That there is no flat buyer agreement between the complainant and the respondent. The complainant should be directed to produce the original agreement or else should be directed to produce the original agreement or else should be prosecuted for perjury under section 340 Cr.P.C. The copy of agreement placed on record bears no signature of the respondent and is a forged document created by the complainant with the help of "CamScanner" which otherwise is prohibited in India as per our Govt. regulations. Reproduction of clauses of flat buyer agreement is of no rescue for the complainant as no such agreement is in existence and hence, the same is also not binding on the parties to this complaint in any manner. Further the unit was cancelled way back in 2013 and the present complaint is filed in the year 2020 also deserves to fail on the ground of laches only.
- h. That the unit of the complainant was cancelled on account of the non-payment of the consideration amount and due intimation in



this regard was given to the complainant way back in 2012. The flat buyer agreement was never signed and the complainant is making false averments that in 2019 the complainant had handed over an unsigned flat buyer agreement. More than 50 litigations are going on in RERA and every unit holder had a flat buyer agreement duly signed and executed. It was one of the customers who had refused to pay the consideration amount and lastly the unit of the complainant was cancelled. As far as the completion of project is concerned the project was completed in all aspects in the year 2015 itself and the fire NOC was issued on 09.09.2015. An application for issuance of Occupancy Certificate was submitted with the DTCP on 18.05.2015 and lastly on account of administrative reasons the same was delayed for about two years and was lastly issued by DTCP vide memo No. ZP-589/SD (BS)/2017/17063 on 18/07/2017. All these factual facts with corroborating documents reflects that the respondent were taking up all the construction activities as per law and without any delay.

- i. All other averments made in the complaint were denied in toto.
7. While filing rejoinder on 10.09.2021, the complainant has submitted that the respondent has prepared a back dated notice intimating cancellation of the unit which was never sent to the complainant and attached a forged postal receipt. The respondent has created third party rights without any notice to the complainant. The intimation notice of the cancellation was never sent to the complainant.
8. Copies of all relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided



based on these undisputed documents and submissions made by parties.

**E. Jurisdiction of the authority**

9. 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**

10. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by the Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has completed territorial jurisdiction to deal with the present complaint.

**E. II Subject matter jurisdiction**

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

**Section 11(4)(a)**

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

**Section 34-Functions of the Authority:**

.....

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



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

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

**F.I Objections regarding that the respondent has made an application for grant of occupation certificate before coming into force of RERA**

13. The respondent-promoter has raised the contention that the said project of the respondent is a pre-RERA project as the respondent has already applied for obtaining occupation certificate from the competent authority in the year 2015 i.e., before the coming into force of the Act and the rules made thereunder. As per proviso to section 3 of Act of 2016, ongoing projects on the date of commencement of this Act i.e., 01.05.2017 and for which completion certificate has not been issued, the promoter shall make an application to the authority for registration of the said project within a period of three months from the date of commencement of this Act and the relevant part of the Act is reproduced hereunder: -

*Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:*

14. The legislation is very clear in this aspect that a project shall be regarded as an "ongoing project" until receipt of completion certificate. Since, no completion certificate has yet been obtained by the promoter-builder with regards to the concerned project, the plea advanced by it is hereby rejected.





**F.II Objection regarding complaint being barred by limitation.**

15. The respondent contended that the present complaint is not maintainable and barred by the law of limitation as the alleged cause of action arose on 25.06.2013, when the cancellation letter was issued to the complainant and any grievance w.r.t. the said cancellation should have been filed within 3 years i.e. till June, 2016.
16. Admittedly, in the present case, the respondent after terminating the allotment vide letter dated 25.06.2013, has forfeited an amount of Rs. 4,94,025/- and an amount of Rs. 11,10,875/- was refundable to the complainant as per the said letter. However, the respondent has failed to refund the said amount to the complainant so far, which clearly shows a subsisting liability.
17. Moreover, the respondent should not be allowed to get unfair advantage of its own wrong, as it should have refunded the amount after cancelling the unit in question, but it failed to do so till date. Allowing the respondent for such practices may set a wrong precedence in the real estate industry. Therefore, in view of the above, the objection of the respondent w.r.t. the complaint being barred by limitation stands rejected.

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

**G.I Possession and delay possession charges**

18. In the present complaint, the complainant is contending that the subject unit bearing no. 916 on 9<sup>th</sup> floor in the project "Precision Tower" was allotted by the respondent in favour of the complainant vide allotment letter dated 18.09.2010. Thereafter, the flat buyer agreement was signed by the respondent but the same was not signed by the respondent, thus no flat buyer agreement has been executed inter se parties till date. Further,



it is submitted that the cancellation letter dated 25.06.2013 which has been appended with the reply of the respondent was never received by the complainant.

19. The counsel for the respondent states that although the unit stands cancelled way back on 25.06.2013 with proof of delivery of cancellation notice annexed at page 39 and no third party rights have been created on the unit which is still lying vacant and if at all, this authority is of the view that possession should be offered, the same may be offered subject to payment of all dues along with maintenance charges.
20. Now the proposition before the authority is whether the cancellation made by the respondent vide letter dated 25.06.2013 is valid or not.
21. The authority is of the view that the cancellation letter was made vide letter dated 26.06.2013 is not a valid for the following reasons. **Firstly**, the respondent has failed to place on record the tracking report as to whether the said letter was served to the complainant. **Secondly**, despite affording ample opportunities, the respondent has failed to place on record reminders and pre-termination notice giving opportunities to the complainant to clear the outstanding dues prior to the cancellation. Concealment of such information calls for an adverse inference against the respondent. **Thirdly**, the complainant has placed on record a letter dated 25.04.2015 whereby the respondent is intimating the complainant that *"We are pleased to inform you that our prestigious Commercial Project 'Precision Soho Tower' is nearing completion. We shall be sending you the offer for possession shortly."* This letter dated 25.04.2015 is subsequent to the alleged cancellation letter dated 25.06.2013 which implies that the cancellation was superseded by the subsequent communication by the



respondent. **Lastly**, the counsel for the respondent during proceedings dated 18.05.2023 has stated that the respondent is willing to consider the handing over of possession of the unit which has been completed and OC has already been obtained and may set aside the cancellation made in the year 2013. Thus, the authority is of the view that the cancellation made vide letter dated 25.06.2013 was not valid and is hereby set aside.

22. 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."*

23. **Due date of handing over possession:** In the present matter, no BBA has been executed till date between the parties. Therefore, the due date is calculated as per the judgment passed by the Hon'ble Supreme Court in case titled as ***Fortune Infrastructure and Ors. Versus Trevor D 'Lima and Ors (12.03.2018)*** wherein the Apex Court observed that *"a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that **when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract.*** In view of the above-mentioned reasoning, the date of signing of allotment letter dated 18.09.2010, ought to be taken as



the date for calculating due date of possession. Therefore, the due date of handing over of the possession of the unit comes out to be 18.09.2013.

24. On the last date of hearing i.e., 10.10.2023, the counsel for the respondent had stated that that no third-party rights have been created on the unit which is still lying vacant and if at all, this authority is of the view that possession should be offered, the same may be offered subject to payment of all dues along with maintenance charges.

25. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges. 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.

26. 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.

27. 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., **28.11.2023** is @ 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.
28. **Rate of interest to be paid by the complainant-allottee on the outstanding dues:** The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default. The relevant section is reproduced below:
- "(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;"*
29. 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 the complainant in case of delayed possession charges.
30. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. In the present matter, no BBA has been executed till

date between the parties. Therefore, the due date is calculated as per the judgment passed by the Hon'ble Supreme Court in case titled as *Fortune Infrastructure and Ors. Versus Trevor D 'Lima and Ors (12.03.2018)* as delineated hereinabove. The date of signing of allotment letter dated 18.09.2010 ought to be taken as the date for calculating due date of possession. Therefore, the due date of handing over of the possession of the unit comes out to be 18.09.2013.

31. In the present complaint, the respondent has failed to handover possession of the subject unit within the stipulated time period. The occupation certificate was obtained on 18.07.2017 and the unit of the complainant falls in **tower A** as admitted by the counsel for the respondent. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.
32. 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 complainant-allottee shall be paid, by the respondent-promoter, interest for every month of delay from due date of possession i.e., 18.09.2013 till the receipt of occupation certificate (18.07.2017) plus 2 months i.e., 18.09.2017 at prescribed rate i.e., 10.75 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.
33. That as per section 19(6) and 19(7) of the Act every allottee shall be responsible to make necessary payments as per agreement for sale along with prescribed interest on outstanding payments from the allottee and to take physical possession of the apartment as per section 19(10) of the Act. In view of the same, complainant/allottees shall make the requisite

payments within a period of 2 months of the fresh demand raised by the respondent as per the provisions of sections 19(6) and (7) of the Act.

34. Further, the respondent is directed to handover the possession of the allotted unit to the complainant complete in all aspects as per specifications of buyer's agreement on payment of outstanding dues if any, after adjustment of delay possession charges as per aforesaid directions.

**G.II Maintenance charges**

35. As far as issue regarding advance maintenance charges is concerned, keeping in view the peculiar facts as stated above, the respondent is entitled to demand the maintenance charges after fresh offer of possession by the respondent along with the statement of account.

**G.III Holding charges**

36. The complainant has also challenged the demand raised by the respondent builder in respect of holding charges. On the contrary, the respondent submitted that all the demands have been strictly raised as per the terms of the flat buyer agreement.
37. The authority observes that this issue already stands settled by the Hon'ble Supreme Court vide judgment dated 14.12.2020 in civil appeal no. 3864-3889/202, whereby the Hon'ble Court had upheld the order dated 03.01.2020 passed by NCDRC, which lays in unequivocal terms that no holding charges are payable by the allottee to the developer.
38. Thus, the respondent is not entitled to demand holding charges from the complainant at any point of time even after being part of the buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.

**H. Directions of the authority**



39. Hence, the authority hereby passes this order and issues the following directions under section 37 of the act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- a. The termination letter dated 25.06.2013 is set aside in view of the aforesaid reasons and the respondent is directed to restore the allotted unit to the complainant within a period of 30 days from the date of this order and issue a fresh offer of possession along with statement of account. The complainant/allottees shall make the requisite payments within a period of next 2 months of the fresh demand raised by the respondent as per the provisions of sections 19(6) and (7) of the Act.
- b. The respondent is further directed to execute the flat buyer agreement with the complainant within a period of one month from the date of this order.
- c. The respondent is directed to pay interest at the prescribed rate i.e., 10.75% p.a. for every month of delay from the due date of possession i.e., 18.09.2013 till the date of receipt of occupation certificate plus 2 months i.e., up to 18.09.2017. The arrears of such interest accrued from due date of possession till its admissibility shall be paid by the respondent to the complainant within a period of 90 days from the date of this order.
- d. The respondent is directed to handover the possession of the allotted unit to the complainant complete in all aspects on payment of outstanding dues if any, after adjustment of delay possession charges as per aforesaid directions.





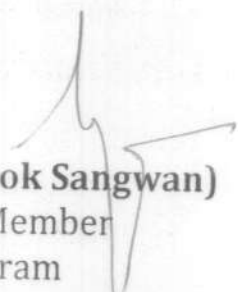
- e. The rate of interest chargeable from the allottees by the promoter, in case of default in making payment shall be charged at the prescribed rate i.e., 10.75 % by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- f. The respondent is not entitled to charge any amount against holding charges from the complainant/allottee at any point of time even after being part of the buyer's agreement as per law settled by Hon'ble Supreme Court in Civil appeal nos. 3864-3889/2020 decided on 14.12.2020.
40. The complaint stands disposed of.
41. File be consigned to registry.

  
**(Sanjeev Kumar Arora)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 28.11.2023

  
**(Ashok Sangwan)**

Member