

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

**Complaint no. :** 341 of 2022  
**Order reserved on:** 28.09.2023  
**Order pronounced on:** 21.12.2023

Mrs. Vaishali Mali

**R/o:** House No. 181, GS Malibu Town, Sohna Road,  
Gurugram - 122018

**Complainant**

Versus

1. M/s Tashee Land Developers.
2. M/s KNS Infracon Private Limited

**Both having Regd. office at:** 517A, 5<sup>th</sup> Floor, Narain  
Manzil, 23 Barakhamba Road, Cannaught Place, New  
Delhi- 110001

**Respondents**

**CORAM:**

Shri Vijay Kumar Goyal

**Member**

**APPEARANCE WHEN ARGUED:**

Sh. Rajan Kumar Hans (Advocate)

Complainant

Sh. Rishabh Jain (Advocate)

Respondents

**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 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

**A. Unit and project related details**

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

S. No.	Heads	Information
1.	Project name and location	"Capital Gateway", Sector- 111, Gurugram.
2.	Project area	10.462 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	34 of 2011 dated 16.04.2011 valid till 15.04.2024
5.	Name of licensee	KNS Infracon Pvt. Ltd. and 3 others
6.	RERA Registered/ not registered	<b>Registered vide no. 12 of 2018 dated 10.01.2018</b>
7.	RERA registration valid up to	31.12.2020 for phase-I (tower A to G) & 31.12.2021 for phase- II (tower H to J)
8.	Unit no.	C2-S1, ground floor, tower-Commercial2 [Page no. 16 of complaint]
9.	Unit measuring	125 sq. ft. [carpet area]
10.	Date of allotment letter	18.09.2017 (Page no. 16 of the complaint)
11.	Date of execution of flat buyer agreement	26.04.2018 (As alleged by the complainant at page no. 13 of the complaint)
12.	Possession clause	<b>Possession of the unit for commercial, usage</b> <b>7.1 Schedule for possession of the said unit:</b> - The promoter/confirming party agrees and understands that timely delivery of possession of the unit

		along with the parking (if applicable) if any, to the allottee and the common areas to the associations of the allottees of the competent authority, as the case may be as provided under this Act and Rules 2(1)(f) of the rules of 2017, is the essence of the agreement.
13.	Due date of possession	<b>30.06.2021</b> [Note: - Calculated from the due date of registration certificate issued by this authority i.e., 31.12.2020 + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020.]
14.	Total consideration	Rs.17,50,000/- [As alleged by his brief facts, at page no. 13 of the complaint]
15.	Total amount paid by the complainants	Rs.10,00,000/- [As alleged by his brief facts at page no. 13 of the complaint]
16.	Occupation certificate	Not obtained
17.	Offer of possession	Not offered

**B. Facts of the complaint:**

3. The complainants have made the following submissions in the complaint: -
- I. That in the year 2017, the complainant got information about an advertisement in a local new paper of the respondent project namely "Capital Gateway", situated in Sector- 111, Gurugram, which was having 13 commercial units/shops as part of the licence from DTCP Haryana.
- The complainant called on the phone numbers provided in the

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newspapers. The marketing staff of the respondents showed a rosy picture of the project and allure with proposed specifications and invited the site visit. The complainant visited the project site and met with local staff of respondents. The represented staff of the respondents gave an application form and assured that possession will be delivered within 18-24 months as the project was started long back and the construction was in advance stage. On 01.08.2017, she was applied a commercial unit in the said project of the respondents i.e., "Capital Gateway", situated in Sector- 111, Grurgram.

- II. That on 18.09.2017, the respondent no. 2, issued the allotment letter to the complainant and the shop bearing no. C2-S1, area admeasuring 125 sq. ft. was allotted to her. The complainant has paid an amount of Rs.10,00,000/- to the respondent no. 2.
- III. That after, on 26.04.2018, a pre-printed, one-sided, arbitrary and unilateral buyer's agreement was executed between the parties and allotted a shop bearing no. C2-S1, ground floor for down linked payment plan.
- IV. That in contravention to the duties of promoter provided under section 13(2) of the Act of 2016, the respondents failed to provide clear date of possession of the buyer's agreement. That in the matter of **Fortune Infrastructure Vs Tavor D'Lima (2018) 5SCC 442**, the Hon'ble Supreme Court has ordered that when no date of possession is mentioned in the agreement the promoter is expected to handover the

possession within a reasonable time and the period of 3 years is held to be a reasonable time. That in the present case no specific date of possession has been mentioned in the buyer's agreement so the reasonable time for possession will be 3 years from signing of the buyer's agreement i.e., 26.04.2021.

V. That till date respondents had called an amount of Rs.8,75,000/- and the complainant had paid Rs.10,00,000/- i.e., 114% of the money called, but the complainant observes that there is no progress in the construction of the subject unit for a long time, she raised her grievance to the respondents by verbal means and by visited their offices and site many times. The complainant has always paid the instalments on time and last installment was paid on 05.09.2017. That there is slow progress in the construction of the allotted unit and it is expected to take around 1-2 years more for the completion of the project. the main grievance of the complainant in the present complaint that in spite of the complainant having 114% of the amount as when demanded by it, the respondents has failed to delivered the possession of commercial unit on time. That the respondents company at the time of receiving payments for the commercial unit that the possession of the fully constructed shop as shown in newspaper at the time of sale would be handed over to the complainant within 18-24 months.

VI. That for the first-time cause of action for the present complaint arose on 26.04.2018, when a one-sided, arbitrary and unilateral flat buyer

agreement was executed between the parties and on 05.09.2017 when the complainant paid the last instalment. Further, the cause of action arose on 26.04.2021, when the respondents failed to hand over the possession of the flat as per the buyer agreement. Further, the cause of action arose when respondents had arbitrarily increased the size of the unit. The cause of action again arose on various occasions, till date, when protests were lodged with the respondents about its failure to deliver the project. The cause of action is alive and continuing and will continue to subsist till such time as this authority restrains the respondents by an order of injunction and/or passes the necessary orders.

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

4. The complainants have sought following relief(s):
  - i. To award the due date of possession 26.04.2021, as the builder buyer agreement is silent on the possession clause.
  - ii. Direct the respondents to pay interest at the prescribed rate on delayed possession since the due date of possession i.e., 26.04.2021 till date of actual legal possession.
  - iii. Direct the respondents to complete and seek necessary governmental clearances regarding infrastructural and other facilities including road, water, sewerage, electricity, environmental, etc. before handing over of possession of the commercial units.
5. On the date of hearing, the authority explained to the respondent/promoter 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.

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**D. Reply by respondents:**

6. The respondents have contested the complaint on the following grounds:-
- i. That at the outset, it is most respectfully submitted that the instant complaint of the complainants is not maintainable on facts or in law and is as such liable to be dismissed/rejected. The complainant has obfuscated the provisions of the Act, 2016 and the rules, 2017 to their advantage, which is brazen misuse of law. The complainant has failed to provide the correct/complete facts and the same are reproduced hereunder for proper adjudication of the present matter. They have raised false, frivolous, misleading and baseless allegations against the respondents with intent to make unlawful gains.
  - ii. The respondents had applied for environment clearance on 20th October 2011. The developer finally got the environment clearance on 17th June 2013. The respondents had applied for the revision in building plans of the said project before the appropriate authority. However, for no fault of the respondents, the plans were approved by the department only after a delay of 2 years. Owing to this, the construction of project could not be started in a timely manner. The complainants, having keen interest in the said project, approached the respondents for booking a unit in the said project. The complainant applied for a residential unit after her due diligence.
  - iii. That, after being satisfied with the project in totality they expressed their willingness to book a unit in the project. It is thus apparent on the face of it, the complainants in the present case are not consumers rather 'investors' who falls outside the purview of the Act, 2016 more specifically in view of the preamble of the Act, 2016 which states to protect the interest of the consumers. In is to be considered that

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- complainant is not consumer and thus fall outside the purview of the Act, 2016 and the instant complaint is liable to be dismissed.
- iv. In 2018, the agreement for sale was executed between the parties for the allotted unit no. C2-51, commercial -2 tower, was allotted to the complainant.
  - v. At present, it is a matter of record that the structure of the said project in question is complete, and few instalments are due and payable on account of the complainants. Moreover, it is pertinent to state that the respondents have applied from obtaining occupation certificate for Phase-I of the said project as all the construction and development activities are complete.
  - vi. After receipt of SWAMHI investment fund, the respondents were able to resume the construction activities at a very large scale in expeditious manner. The development at the project site is in full swing, in order to complete the project and handover the possession to the allottees at the earliest. At present, more than three hundred nineteen labourers of different contractors are working at the project site to complete the said project.
  - vii. That the respondents have always made efforts for completion of the said project. Initially, the Interim RERA granted RERA registration on 10th January 2018 till 31.12.2020 for Phase I (Tower A to G) and 31.12.2021 for Phase II (Tower H to J). From time-to-time construction activities were impeded due to poor air quality in the Delhi NCR region.
  - viii. The legal fraternity is respected for its novelty and highly educated professionals. The Hon'ble Supreme Court has allowed extension of limitation taking into consideration the impact of the novel corona virus over the world. Similarly, the real estate sector was impacted

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badly due to Covid-19 as the construction activities were halted for a long time. Moreover, the cost of construction kept on increasing with time.

- ix. The present complaint is devoid of any merit and has been preferred with the sole motive to harass the respondents. In fact, the present complaint is liable to be dismissed on the ground that the said claim of the complainants is unjustified, misconceived and without any basis and is against the respondents. The present complaint is baseless and flagrant abuse of process of law to harass the respondents.
- x. In spite of the fact that the real estate market has gone down badly, the respondents have managed to carry on the works with certain delays caused due to various above mentioned reasons and the fact that various buyers, including the complainants of the project have defaulted in making timely payments towards their outstanding dues, resulting into inordinate delay in the construction activities, still the construction of the said project has never been stopped or abandoned and the project will be delivered soon.
- xi. It is a respectful submission of the respondents that a bare perusal of the complaint will sufficiently elucidate that the complainants have miserably failed to make a case against the respondents. It is submitted that the complainants have merely alleged in the complaint about the delay on the part of the respondents in offering possession but has failed to substantiate the same. The fact is that the respondents have been acting in consonance with the registration of project with the Authority and no contravention in terms of the same can be projected on the respondents.
- xii. The Haryana Real Estate Regulatory Authority, Gurugram, does not have jurisdiction in the instant case as the subject-matter of the

complaint has to be decided as per the Act, 2016 and the Rules, 2017. The complainant has erred in invoking the jurisdiction of the Authority, Gurugram, as the compensation can only be granted in cases where the Authority so directs.

xiii. Thus, it is germane to state that there is no further deficiency as claimed by the complainants against the respondents and no occasion has occurred deeming indulgence of this authority. Hence, the present complaint is liable to be dismissed.

7. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions made by the parties.

**E. Jurisdiction of the authority:**

8. 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**

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

**E. II Subject matter jurisdiction**

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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 promoter, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

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

**F. Findings on the objections raised by the respondents:**

**F.I Objection regarding delay due to force majeure circumstances.**

10. The respondent-promoter pleaded that though the due date for completion of the project as provided under this Act and Rules 2(1)(f) of the rules of 2017, is the essence of the agreement. As per section 4 (2)(l) (c) of the Act of 2016, mentioned that *a declaration, supported by affidavit, which shall be signed by the promoter or any other person authorised by the promoter, stating- the time period with in which he undertakes to complete the project or phase thereof, as the case may be; and the due date of completion of the project stating in affidavit filed by the promoter or his authorized representative is 31.12.2020. The Authority as per notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after*

25.03.2020, has already allowed the grace period of 6 months from 01.03.2020 to 01.09.2020.

11. The respondent also took a plea that the construction at the project site was delayed due to Covid-19 outbreak. In the instant complaint, the due date of handing over of possession comes out to be 30.12.2020 and grace period of 6 months on account of force majeure has already been granted in this regard and thus, no period over and above grace period of 6 months can be given to the respondent-builders. Also, a relief of 6 months will be given to the complainant/allottee and no interest shall be charged from him for the delayed payments if any, during the Covid period i.e., from 01.03.2020 to 01.09.2020.

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

- G.I To award the due date of possession 26.04.2021, as the builder buyer agreement is silent on the possession clause.**
- G.II Direct the respondents to pay interest at the prescribed rate on delayed possession since the due date of possession i.e., 26.04.2021 till date of actual legal possession.**
12. In the present complaint, the complainant intends to continue with the project and is seeking possession of the subject unit and delay possession charges as provided under the provisions of section 18(1) of the Act which 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."***

13. The apartment buyer's agreement was executed between the parties. As per clause 7.1 of the agreement, the possession was to be handed over the associations of the allottees of the competent authority, as the case may be as provided under this Act and Rules 2(1)(f) of the rules of 2017, is the

essence of the agreement. The clause 7.1 of the buyer's agreement is reproduced below:

**7. POSSESSION OF THE UNIT FOR COMMERCIAL USAGE**

**7.1 Schedule for possession of the said unit:** - *The promoter/confirming party agrees and understands that timely delivery of possession of the unit along with the parking (if applicable) if any, to the allottee and the common areas to the associations of the allottees of the competent authority, as the case may be as provided under this Act and Rules 2(1)(f) of the rules of 2017, is the essence of the agreement.*

(Emphasis supplied)

14. **Admissibility of grace period:** As per clause 7.1 of buyer's agreement, the respondents/promoters have proposed to handover the possession the said unit as provided under this Act and Rules 2(1)(f) of the rules of 2017, is the essence of the agreement. As per section 4 (2)(l) (c) of the Act of 2016, mentioned that *a declaration, supported by affidavit, which shall be signed by the promoter or any other person authorised by the promoter, stating- the time period with in which he undertakes to complete the project or phase thereof, as the case may be; and the due date of completion of the project stating in affidavit filed by the promoter or his authorized representative is 31.12.2020. A relief of 6 months will be given to the complainant/allottee and no interest shall be charged from him for the delayed payments if any, during the Covid period i.e., from 01.03.2020 to 01.09.2020.*
15. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges. However, proviso to section 18 provides that where an allottee(s) 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.*

*The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest.*

16. 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., 21.12.2023 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
17. 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;"*

18. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is satisfied that the respondents are 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 7.1 of the buyer's agreement executed between the parties, the possession of the subject apartment was to be delivered under this Act and Rules 2(1)(f) of the rules of 2017, is the essence of the agreement. As per section 4 (2)(l) (c) of the Act of 2016, mentioned that *a declaration, supported by affidavit, which shall be signed by the promoter or any other person authorised by the promoter, stating- the time period with in which he undertakes to complete the project or phase thereof, as the case may be; and the due date of completion of the project stating in affidavit filed by the promoter or his authorized representative is 31.12.2020. Further, as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 31.12.2020 i.e., after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession comes out to be 30.06.2021. The respondent has failed to handover possession of the subject unit till date of this order. 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. The authority is of the considered view that there is delay on the part of the*

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respondent to offer of possession of the allotted unit to the complainant as per the terms and conditions of the agreement to sell dated 26.04.2018 executed between the parties. It is pertinent to mention over here that even after a passage of more than 2.5 years neither the construction is complete nor an offer of possession of the allotted unit has been made to the allottee by the builder. Further, the authority observes that there is no document on record from which it can be ascertained as to whether the respondent has applied for occupation certificate/part occupation certificate or what is the status of construction of the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottee.

19. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the apartment buyer's agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondents is established. As such, the allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 30.06.2021 till actual handing over of possession or offer of possession plus two months, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

**G.II Direct the respondents to complete and seek necessary governmental clearances regarding infrastructural and other facilities including road, water, sewerage, electricity, environmental, etc. before handing over of possession of the commercial units.**

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20. The respondent is legally bound to meet the pre-requisites for obtaining occupation certificate from the competent authority. It is unsatisfied that even after the lapse of more than 8.5 years from the due date of possession the respondent has failed to apply for occupation certificate to the competent authority. The promoter is duty bound to obtain occupation certificate and hand over possession only after obtaining occupation certificate.

**H. Directions of the Authority:**

21. 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 functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i. The respondents are directed to pay interest to the complainant against the paid-up amount at the prescribed rate of 10.85% p.a. for every month of delay from the due date of possession i.e., 30.06.2021 till actual handing over of possession or offer of possession plus two months, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
- ii. The respondents shall not charge anything from the complainant which is not the part of the flat buyer's agreement.
- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period and the respondents shall handover the possession within a period of two month after receipt of occupation certificate from the competent authority.
- iv. The arrears of such interest accrued from due date of possession i.e., 30.06.2021 till the date of order by the authority shall be paid by the

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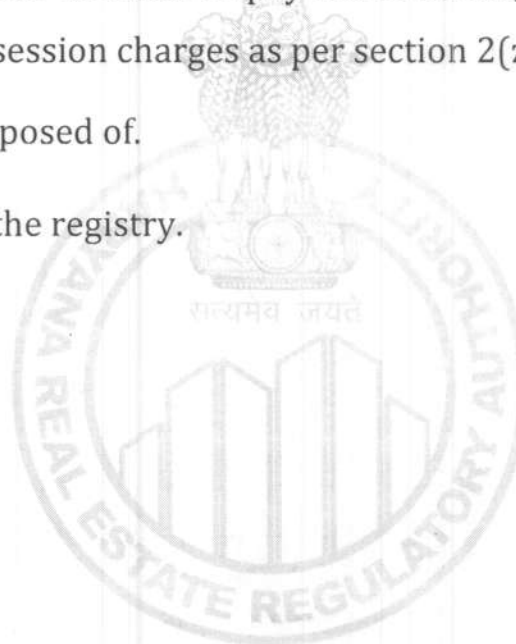
promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottees before 10th of the subsequent month as per rule 16(2) of the rules.

- v. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondents/promoters 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.

22. Complaint stands disposed of.

23. File be consigned to the registry.

Dated: 21.12.2023



V.I - 3  
**(Vijay Kumar Goyal)**  
Member  
Haryana Real Estate  
Regulatory Authority,  
Gurugram