

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

Complaint no. :	1352 of 2022
First date of hearing:	21.04.2022
Order reserved on:	21.09.2023
Order Pronounced on :	04.01.2024

1. Sh. Sanjay Varma
2. Smt. Anita Varma

Complainants

R/o: House No.-B-1449, Indira Nagar,
Lucknow, U.P.-226016

Versus

M/s New Look Builders and Developers
Private Limited
(Formerly known as Ansal Phalak
Infrastructure Pvt. Ltd.)

Respondent

Regd. office: 115, Ansal Bhawan, 16
Kasturba Gandhi Marg, New Delhi-
110001

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Sh. Anoop Gupta (Advocate)

Complainants

Sh. Deeptanshu Jain (Advocate)

Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees 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

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

S.No.	Particulars	Details
1.	Name and location of the project	"Esencia", Sector 67, Gurugram
2.	Nature of the project	Residential Floor/unit
3.	Project area	28.556 acres
4.	DTCP license no.	21 of 2011 dated 24.03.2011 valid upto 23.03.2019
5.	Name of licensee	Mangal Murti Realtors Pvt. Ltd. and 20 others
6.	RERA Registered/ not registered	336 of 2017 dated 27.10.2017 valid up to 31.12.2019
7.	Unit no.	E-2167, Ground Floor, Tower-E (As per page no. 28 of the complaint)
8.	Unit area admeasuring (Super area)	2491 sq. ft. (As per page no. 28 of the complaint)
9.	Allotment letter	29.09.2011 (As per page no. 24 of the complaint)
10.	Date of Builder Buyer Agreement	07.11.2011 (As per page no. 26 of the complaint)
11.	Possession clause	POSSESSION OF FLOOR <i>5.1 Subject to clause 5.2 infra and further subject to all the buyers of the Dwelling Units in the said Sovereign Floors, Esencia, making timely payment, the company shall endeavor to complete the development of residential colony and the Dwelling Unit as far as possible</i>

			<p><i>within 30 months with an extended period of (6) six months from the date of execution of this Agreement or the date of sanction of the building plan whichever falls later.</i></p> <p>(As per page no. 37 of the complaint)</p>
12.	Date of approval of building plan	23.01.2013	(As per page no. 49 of the reply)
13.	Due date of possession	23.01.2016	[Note: Due date calculated from date of approval of building plan i.e., 23.01.2013 being later. Grace period of 6 months included being unqualified.]
14.	Total sale consideration	Rs. 92,15,000/-	(As per page no. 31 of complaint)
15.	Amount paid by the complainants	Rs. 99,43,392/-	(As per page no. 17 of complaint)
16.	Date of Endorsement	08.11.2013	(As per page no. 57 of complaint)
17.	Occupation Certificate	Not obtained	
18.	Offer of possession	Not offered	

B. Facts of the complaint:

- The present complaint on behalf of the complainants is being signed by Sh. Rahul Varma S/o Sh. Ravindra Nath Varma R/o 154, DDA, SFS Flat, Punjabi Bagh, Delhi, who has been duly authorized by the complainants vide Special Power of Attorney dated 18.04.2013.
- That the residential floor/unit having an approximate area of 2491 sq. ft. bearing no. E2167GF situated in the project of the respondent named "Esencia", at Sector-67, Gurugram, Haryana was originally allotted by the



respondent jointly in favour of Mr. Yogesh Gupta and Mr. Abhishek Gupta vide allotment letter dated 29.09.2011.

5. That the floor buyer's agreement dated 07.11.2011 was also executed among Mr. Yogesh Gupta and Mr. Abhishek Gupta (the original allottee of said floor) and the respondent, whereby the sale consideration of the said floor was Rs.92,15,000/- excluding other charges, in terms thereof.
6. That in pursuance of the said agreement, Mr. Yogesh Gupta and Mr. Abhishek Gupta had transferred/assigned all his rights, interest and liabilities in the said floor under the agreement in favour of the complainants. The said transferred/assignment had confirmed/endorsed by the respondent on 08.11.2013 and credited total sum of Rs.30,01,260/- in the complainants account vide letter dated 18.11.2013.
7. That in terms of clause no.5.1 of the said unilateral, arbitrary floor buyer's agreement, the respondent has to give possession of the said floor within a period of 30 months with an extended period of 6 months from the date of execution of this agreement. Therefore, the due date of possession as per agreement is 07.11.2014. It is pertinent to mention herein that the said agreement was a standard form agreement prepared solely by the respondent without any scope/room for negotiation on the part of the complainants and were completely one-side and biased in favour of the respondent. Further, respondent did not permit any changes in the agreement and the complainants had no choice but to sign on the dotted lines, since he had no bargaining power.
8. Further, vide letter dated 08.01.2015, the respondent induced the complainants to make the payment of their instalments in advance as against the plan stipulated in the agreement under Early Payment Rebate (EPR) scheme. It is stated that as per said EPR scheme... "*any amounts being*

paid by the customer in advance instalments, against their respective allotted unit, the customer shall be provided a rebate of 14% per annum into their respective customer account...". The complainants were induced by the representations of the respondent/promoter and thereby paid a sum of Rs.26,00,000/- in advance against future due instalment vide (i) receipt no.4091 of Rs.8,00,000/-; (ii) receipt no.4092 of Rs.9,00,000/- and (iii) receipt no.4093 of Rs.9,00,000/- all dated 28.04.2015.

9. Further, vide demand letter dated 04.07.2016, the complainants was asked to pay a sum of Rs.20,97,699/- against due installment. However, the said demand letter was issued by the respondent without adjusting the interest/rebate under EPR scheme. It is stated that upon protest by the complainants vide email dated 27.08.2016 and 07.09.2016, the interest/rebate of Rs.4,52,756/- under EPR scheme was adjusted by the respondent against aforesaid demand of Rs.20,97,699/- vide email dated 09.09.2016 and balance payment of Rs.16,44,943/- was paid by the complainants vide receipt no.4857 dated 29.12.2016.
10. Further, vide letter dated 07.08.2017, the complainants was forced to pay a sum of Rs.22,44,433/- against due instalment by 28.08.2017. Again, the said demand was raised by the respondent without adjusting the interest/rebate under EPR scheme. On 29.08.2017, under the protest, the complainants paid Rs.22,44,433/- vide receipt no.138 dated 29.08.2017.
11. That the complainants submitted a sum of Rs.4,52,756/- was adjusted under EPR scheme and a total payment of Rs.94,90,636/- was made in following manner:

S. No.	Receipt No.	Receipt dated	Letter dated	Amount (Rs.)
1.	-	-	18.11.2013	30,01,260
2.	4091	28.04.2015	-	8,00,000
3.	4092	28.04.2015	-	9,00,000

4.	4093	28.04.2015	-	9,00,000
5.	4857	29.12.2016	-	16,44,943
6.	138	29.08.2017	-	22,44,433
Total Amount Paid				94,90,636

12. That in terms of the agreement, the possession of the floor/unit was to be offered to the complainants by the respondent latest by 07.11.2014. However, due to the inordinate delay and defaults attributable solely to the respondent, the construction of the said floor/unit has not been completed till date and possession of the same has not been offered to the complainants in breach of the terms and the timelines specified in the said agreement. It is reiterated herein that in the agreement, it was clearly stated that the possession of the said unit would be handed over to the complainants latest by 07.11.2014. However, a period of approximately over 7 years has expired from the stipulated date of handover of possession, and in utter breach of the terms of the agreement, the respondent has failed to hand over the possession of the unit to the complainants. The complainants has time and again enquired from the respondent regarding status of offer of possession and completion of the said floor/project vide email dated 25.07.2018, 28.07.2018, 02.08.2018, 07.09.2018, 23.06.2019, 02.09.2019, 03.09.2019, 28.01.2020, 05.02.2022 and also the reasons for the delay in the handover of possession but has never received any satisfactory response from the respondent.
13. It is submitted that the respondent had undertaken to pay/adjust interest/rebate of 14% per annum under EPR scheme to the complainants, in terms of said letter dated 08.01.2015, till the actual hand over of the possession. However, the respondent completely failed to pay/adjust the

same with effect from 26.07.2016 till date, without any justification whatsoever.

14. It is submitted that the default on the part of the respondent in the performance of its obligations under the said agreement including the failure of the respondent to pay the interest/rebate, along with its failure to offer the possession of the said floor to the complainants within the time prescribed under the agreement has caused grave and severe financial loss and hardship to the complainants. Apart from the fact that the complainants have invested huge sums of his hard-earned money in the said floor, they have been subjected to financial, economic and mental harassment, due to the respondent being in utter and complete breach of the terms of the said agreement.
15. That the complainants had purchased the said floor from the respondent based on the representation made by the respondent and the undertaking given by the respondent in the said agreement that possession of the said floor shall be handed over to the allottee latest by 07.11.2014, in addition to payment of interest/rebate under EPR scheme to the complainants till the date of offer of possession of said floor. However, the respondent has miserably failed in adhering to the terms and time limits so mentioned in the agreement, as a result of which the complainants have suffered grave financial loss and mental harassment. In light of the aforesaid facts and circumstances, the respondent is liable to pay the interest/rebate under EPR scheme in arrears from 26.07.2016 and is also liable to pay delay interest to the complainants, to compensate the complainants for the financial loss suffered as well as the mental harassment and agony that the complainants have undergone at the behest of the respondent.
16. That there are clear unfair trade practices and breach of contract and deficiency in the services of the respondent and much more a smell of

playing fraud with the complainants and is prima facie clear on the part of the respondent which makes him liable to answer this Authority.

17. That the complainants being aggrieved person/s filing the present complaint under section 31 with the Authority for violation/ contravention of provisions of this Act as mentioned in the preceding paragraph.
18. That the complainants does not wants to withdraw from project. The promoter has not fulfilled his obligation therefore as per obligations on the promoter under section 18(1) proviso, the promoter is obligated to pay the interest at the prescribed rate for every month of delay till the handing over of the possession.
19. That the present complaint is not for seeking compensation, without prejudice, complainants reserve their right to file a complaint to Adjudicating Officer for compensation.

C. Relief sought by the complainants:

20. The complainants have sought following relief(s):
 - i. Direct the respondent company to pay the delayed possession charges @ prescribed rate for every month of delay from the due date of possession till the actual date of possession(complete in all respect with all amenities after obtaining the OC);
 - ii. Direct the respondent to pay all contractually committed pecuniary benefits to the complainants under EPR Scheme;
 - iii. Direct the respondent to pay a sum of Rs.1,00,000/- to the complainants towards the cost of the litigation.

D. Reply by the respondent:

21. The respondent has contested the complaint on the following grounds: -

12



- i. That at the very outset, the respondent i.e., Ansal Phalak Infrastructure Pvt. Ltd. (Now Known as "New Look Builders And Developers Pvt. Ltd.") denies each and every assertion, averment, statement, allegation made in the complaint filed by the complainants as false, frivolous, vexatious and misleading, except for those which are matter of record or are specifically admitted herein under. It is humbly submitted that the present complaint is nothing more than an afterthought and has been made with sole purpose to wrongfully gain at the cost of the answering respondent and to malign its reputation in the market.
- ii. It is humbly submitted, the complainants has arrayed "Ansal Phalak Infrastructure Pvt. Ltd." as the respondent in the present complaint. However, the name of "Ansal Phalak Infrastructure Pvt. Ltd." was changed to "New Look Builders and Developers Pvt. Ltd." on 23.10.2020. Therefore, prayer sought by the complainants cannot be allowed, hence, the present complaint is not maintainable for misjoinder of parties and same is liable to be dismissed with exemplary cost upon them the aforesaid reason alone.
- iii. It is humbly submitted that the complainants have attempted to mislead this Authority by presenting concocted facts and misrepresenting the facts & circumstances of the instant case. Therefore, the answering respondent states the true and correct facts of the instant case are as follows;
 - a. That the said unit in the project was originally allotted to Mr. Yogesh Gupta and Mr. Abhishek Gupta vide floor buyer agreement dated 07.11.2011 for a basic sale price of Rs. 92,15,000/-.
 - b. That the present housing scheme was proposed on a freehold land in the revenue state of village Badshahpur Tehsil and

A



District Gurgaon falling under residential Sector 67, Gurgaon. The answering respondent obtained the license no. 21 of 2011 under Haryana Development and Regulation of Urban Area Act, 1975 and the Rules, 1976 for an additional area admeasuring 38.262 acres in revenue estate of village Badshahpur, Sector 67-A and Sector 67 of Gurgaon Manesar Urban complex, Distt. Gurgaon.

- c. That in terms of clause No. 5.1 of FBA, the answering respondent undertook to complete the construction of the unit and to deliver its possession to the complainants within 36 months from;
- The date of execution of FBA i.e., 07.11.2014 (36 months from 07.11.2011); or
 - The date of receiving the approval of the building plan from the Department of Town and Country Planning i.e. 23.03.2016 (36 months from 23.01.2013).

Whichever is later.

- d. It is submitted that sanction plans for the said flat was sanctioned by the concerned authorities on 23.01.2013. Consequently, in terms of the conditions of FBA, the unit was to be handed over by 23.03.2016.
- e. That subsequently, license for development of another 51.16875 acres falling under revenue estate of village Badshahpur, Sector 67-A and Sector 67 of Gurgaon Manesar Urban complex, Distt. Gurgaon for development of plotted colony was granted by Haryana Government, Town and Country Planning Department on 09.03.2018.
- f. It is submitted that the complainants observing the steep increase in the real estate sector and with the sole motive to earn high returns purchased the said unit from the erstwhile owners

A



in the year 2013 and accordingly the unit was endorsed in the name of the complainants on 08.11.2013.

- iv. That due to license granted for additional land, the layout plan of the housing project developed by the answering respondent was changed which led to delay in certain approvals from competent authorities and consequently caused delay in the construction of the said project. It is most respectfully submitted that many of the buyers who have booked the flats/villa in the project have defaulted in making the timely payment and therefore also the project was delayed.
- v. That non-payment of the instalments by the allottees is a 'force majeure' circumstance, as stated in clause 5.2 of the FBA. Furthermore, the other reasons for delay in project are stoppage of construction activities in NCR region by the orders of court, non-availability of construction material and labour, demonetisation of currency and change of tax regime, implementation of GST, implementation of nationwide 'lockdown' to contain the spread of 'Covid-19', etc. Moreover, all these situations and adverse conditions is 'force majeure' circumstances which are beyond the control of the answering respondent.
- vi. Furthermore, it is pertinent to state that the said project of the answering respondent is reasonably delayed because of 'force majeure' situation which is beyond the control of the answering respondent. Vide clause 5.2 of the FBA, the complainants have agreed and duly acknowledged that in case the development of the said dwelling unit is delayed for any reasons beyond the control of the company, then no claim whatsoever by way of any compensation shall lie against the answering respondent. Therefore, the complainants in terms of the

12



FBA have agreed and undertook to waive all her rights and claims in such situation.

vii. That the delay in handing over the possession of the dwelling unit/ apartment has been caused due to the various reasons which were beyond the control of the answering respondent. Following important aspects are relevant which are submitted for the kind consideration of this Authority;

i. **Non-booking of all floors/ units seriously affected the**

construction:- It is submitted that the global recession badly hit the economy and particularly the real estate sector. The construction of project of the answering respondent is dependent on the amount of monies received from the bookings made and monies received henceforth, in form of instalments paid by the allottees. However, it is submitted that during the prolonged effect of the global recession, the number of bookings made by the prospective purchasers reduced drastically in comparison to the expected bookings anticipated by the answering respondent at the time of launch of the project. The reduced number of bookings along with the fact that several allottees of the project either defaulted in making payment of the instalment or cancelled booking in the project, resulted in less cash flow to the answering respondent, henceforth, causing delay in the construction work of the project.

ii. **Other various challenges being faced by the answering**

respondent: The following various problems which are beyond the control of the answering respondent seriously affected the construction;

a. Lack of adequate sources of finance;

12

- b. Shortage of labor;
- c. Rising manpower and material costs;
- d. Approvals and procedural difficulties.

In addition to the aforesaid challenges the following factors also played major role in delaying the offer of possession;

- a. There was extreme shortage of water in the region which affected the construction works;
 - b. There was shortage of bricks due to restrictions imposed by Ministry of Environment and Forest on bricks kiln;
 - c. Unexpected sudden declaration of demonetization policy by the Central Government, affected the construction works of the respondent in a serious way for many months. Non-availability of cash-in-hand affected the availability of labor;
 - d. Recession in economy also resulted in availability of labour and raw materials becoming scarce;
 - e. There was shortage of labour due to implementation of social schemes like National Rural Employment Guarantee Act (NREGA) and Jawaharlal Nehru Urban Renewal Mission (JNNURM);
 - f. Direction by the Hon'ble National Green Tribunal & Environmental authorities to stop the construction activities for some time on regular intervals to reduce air pollution in NCR region.
- iii. It is pertinent to mention here that the construction of the project was stopped several times during the year 2016, 2017, 2018 and 2019 by the order of EPCA, HSPCB, NGT and the Hon'ble Supreme Court of India. It is most respectfully submitted that due to the increase in the level of pollution in the NCR region, the Hon'ble

PA



Supreme Court vide its order dated 14.11.2019 passed in the matter of "MC Mehta Vs Union of India & Others" bearing Writ Petition (c) No. 13029/1985 imposed complete ban on construction and excavation work across the National Capital Region from 04.11.2019, which was ultimately lifted on 14.02.2020. Ban on construction caused irreparable damage to the delivery timelines and the real estate developers' finances as the answering respondent were not able to undertake any construction work during the aforesaid period and the same was beyond the control of the answering respondent.

- iv. It is submitted that in order to curb down the air pollution the Environment & Pollution (Prevention & Control) Authority, for National Capital Region, has reviewed the urgent action that needs to be taken for the implementation of the Graded Response Action Plan (GRAP) vide it's notification dated EPCA-R/2020/L-38 dated 08.10.2020 and has imposed ban on the use of Diesel Generator set with effect from 15.10.2020, which has further led to delay in the construction being raised.
- v. That all the above stated problems are beyond the control of the answering respondent. It may be noted that the answering respondent had at many occasions orally communicated to the complainants that if the answering respondent is unable to construct the unit, the answering respondent shall offer another residential unit of a similar value for which the allottee shall not raise any objections. The answering respondent could not complete the said project due to certain unforeseen circumstances which are completely beyond the control of the developer.

22. It is submitted that as per the FBA which is binding between the complainants and the answering respondent, both have agreed upon their respective liabilities in case of breach of any of the conditions specified therein. It is submitted that the liability of the answering respondent on account of delay is specified in clause 5.4 of the FBA and as such the complainants cannot claim reliefs which are beyond the compensation agreed upon by him.
23. It is submitted that the FBA delineates the respective liabilities of the complainants as well as the answering respondent in case of breach of any of the conditions specified therein. In this view of the matter, the complaint is not maintainable in law and is liable to be dismissed in limine.
24. That without prejudice to the above, it is humbly submitted that the construction of the unit is 90% complete and the answering respondent will handover the possession of the unit to the complainants after the completion of the unit within a period of 3 months.
25. It is further submitted that the complainants have filed the captioned frivolous complaint with false averments, only with a malafide intention to make illegal enrichment at the cost of the answering respondent.
26. That in view of aforesaid facts, it is respectfully submitted that the complaint has been filed without any legally justifiable cause of action and is rendered liable to be dismissed with exemplary costs.
27. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided based on these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

A ✓

28. 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

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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be;

Section 34-Functions of the Authority:

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

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

A

F. Findings on objections raised by the respondent:

F.I Objection regarding force majeure conditions:

30. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as demonetisation, certain environment restrictions, weather conditions in NCR region, increase in cost of construction material and non-payment of instalment by different allottees of the project, etc. But all the pleas advanced in this regard are devoid of merit. Therefore, it is nothing but obvious that the project of the respondent was already delayed, and no extension can be given to the respondent in this regard. The events taking place such as restriction on construction due to weather conditions were for a shorter period of time and are yearly one and do not impact on the project being developed by the respondent. Though some allottees may not be regular in paying the amount due but the interest of all the stakeholders concerned with the said project cannot be put on hold due to fault of on hold due to fault of some of the allottees. Thus, the promoter/respondent cannot be given any leniency based on aforesaid reasons and the plea advanced in this regard is untenable.

G. Findings on the relief sought by the complainants:

G.1 Direct the respondent to pay interest for every month of delay, on the amount paid so far, at the rate mandate by Act of 2016

31. In the present complaint, the complainants 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, —

.....

1A ✓

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."

32. Clause 5.1 of floor buyer's agreement dated 07.11.2011 provides for handing over of possession and is reproduced below:

"Clause 5.1

*Subject to clause 5.2 infra and further subject to all the buyers of the Dwelling Units in the said Sovereign Floors, Esencia, making timely payment, the company shall endeavor to complete the development of residential colony and the Dwelling Unit as far as **possible within 30 months with an extended period of (6) six months from the date of execution of this Agreement** or the date of sanction of the building plan whichever falls later.*

33. The Authority has gone through the possession clause of the agreement and observes that the respondent-developer proposes to handover the possession of the allotted unit within a period of 30 months from the date of execution of agreement or the date of sanction of the building plan whichever falls later along with grace period of 6 months. The building plan was sanctioned on 23.01.2013; as such the due date of handing over of possession comes out to be 23.01.2016 considering admissibility of grace period being unqualified.

34. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges however, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

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

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

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

35. 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.
36. 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., 04.01.2023 is @ 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
37. 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;"*

38. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.85 % by the respondent/promoter

19

which is the same as is being granted to them in case of delayed possession charges.

39. The complainants in the present complaint are subsequent allottees and had purchased the apartment in question from the original allottees and thereafter, the respondent had acknowledged the same transaction vide endorsement letter dated 08.11.2013. In terms of the order passed by the authority in complaint titled as *Varun Gupta Versus Emaar MGF Land Ltd. (CR/4031/2019)*, the complainants are entitled to delayed possession charges w.e.f. the due date of possession i.e., 23.01.2016 as the complainants stepped into the shoes of the original allottees before the due date of possession.
40. 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. Though the due date of handing over possession is 23.01.2016 but the occupation certificate of the unit is yet to be obtained by the respondent. 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 allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 23.01.2016 till offer of possession of the said unit after obtaining the occupancy certificate from the concerned authority plus two months or actual handing over of possession, whichever is earlier, at prescribed rate i.e., 10.85 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

G.II Direct the respondent to pay an amount of Rs. 1,00,000/- to the complainants as cost of present litigation.

41. The complainants are seeking relief w.r.t. compensation in the above-mentioned reliefs. The Hon'ble Supreme Court of India in *civil appeal nos. 6745-6749 of 2021 titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of Up & Ors.*, has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses. Therefore, for claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainants may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

H. Directions of the Authority:

42. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- i. The respondent is directed to pay interest on the paid-up amount by the complainants at the prescribed rate of 10.85% p.a. for every month of delay from the due date of possession i.e., 23.01.2016 till valid offer of possession of the said unit after obtaining the occupancy certificate from the concerned authority plus two months or actual handing over of possession, whichever is earlier.
 - ii. The arrears of such interest accrued from 23.01.2016 till the date of order by the authority shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for


A ✓

every month of delay shall be paid by the promoter to the allottee before 10th of the subsequent month as per rule 16(2) of the rules.

- iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The respondent shall not charge anything from the complainants which is not the part of the floor buyer's agreement.
- 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 respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

43. Complaint stands disposed of.

44. File be consigned to the registry.


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 04.01.2024

HARERA
GURUGRAM