

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

Complaint no.: 4727 of 2022
First Date of Hearing: 14.10.2022
Order reserved on: 26.10.2023
Order Pronounced on: 21.12.2023

Sh. Rohit Kumar Gupta
R/o:- 109, Vidya Vihar Apartments, Sector-9,
Rohini, New Delhi-110085

Complainant


Versus

1. M/s Real Town Properties Pvt. Ltd.
Regd. Office at: Sector-83, Village Sihi,
Gurugram-122004
2. M/s Venetian LDF Projects LLP
Regd. Office at: 205-Second Floor, Time
Center, Golf Course Road, Gurugram-122002

Respondents

CORAM:
Shri Vijay Kumar Goyal

Member

APPEARANCE:
Sh. Nishant Jain (Advocate)
Sh. Harshit Batra (Advocate)

Complainant
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 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall

be responsible for all obligations, responsibilities and functions under the provision of the Act or the Rules and regulations made thereunder or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S.No.	Particulars	Details
1.	Name of the project	83 Avenue, Sector – 83, Gurugram
2.	Project area	2.3625 acres
3.	Nature of the project	Commercial
4.	DTCP license no. and validity status	12 of 2013 dated 13.03.2013 valid up to 12.03.2019
5.	Name of licensee	Dharam Singh S/o Shish Ram
6.	RERA Registered/ not registered	GGM/310/42/2019/04 dated 16.01.2019 valid up to 30.09.2020
7.	Provisional allotment letter	15.11.2014 (As per page no. 30 of the complaint)
8.	Date of execution of space buyer's agreement	16.12.2014 (As per page no. 32 of the complaint)
9.	Unit no.	F-169, 1 st floor (As per page no. 34 of the complaint)
10.	Unit area admeasuring	502.68 sq. ft. (As per page no. 34 of the complaint)
11.	Possession clause	38. <i>The Developer/LLP will, based on its present plans and estimates,</i>

A



contemplates to offer possession of the said unit to the Allottee(s) within 36 months from the date of signing of this Agreement or within 36 months from the date of start of construction of the said Building whichever is later with a grace period of 3 months, subject to force majeure events or Governmental action/inaction. If the completion of the said building is delayed by reason slow down, strike or due to a dispute with the construction agency employed by the "Developer/LLP", lock out or departmental delay or civil commotion or by reason of war or enemy action or terrorist action or earthquake or any act of God or any other reason beyond the control of the "Developer/LLP", the "Developer/LLP" shall be entitled to extension of time for delivery of possession of the said premises. The "Developer/LLP" as a result of such a contingency arising, reserves the right to alter or vary the terms and conditions of this Agreement or if the circumstances beyond the control of the "DEVELOPER/LLP" so warrant, the "DEVELOPER/LLP" may suspend the Scheme for such period as it might consider expedient. In case the "DEVELOPER/LLP" is unable to complete the project on account of any law passed by the legislature or any other government agency, in that event the "DEVELOPER/LLP" if so advised, shall be entitled to challenge the validity, applicability and/or efficacy of such legislation, rule, order and/or bye law by instituting appropriate proceedings before court(s), tribunal(s)

A



		<p>or authorities. In such situation, the amounts paid by the Allottees (s) shall continue to remain with the "DEVELOPER/LLP" and the Allottee (s) shall not be entitled to initiate any proceedings against the DEVELOPER/LLP" for delay in execution of the project. It is specifically agreed that this agreement shall remain in abeyance till final determination of such matters/cases by appropriate court(s)/tribunal(s)/authorities. In case, the "DEVELOPER/LLP" succeeds in its challenge to the impugned legislation/rule/order and/or bye-law, in that event, this agreement shall be revived. In case, the "DEVELOPER/LLP" is unsuccessful in its challenge to the impugned legislation/rule/bye law, in that event the "DEVELOPER/LLP" shall refund without any interest or compensation and in such reasonable manner as may be decided by the "DEVELOPER/LLP" the amounts paid by the Allottee(s). The decision of the "DEVELOPER/LLP" in this regard shall be final and binding on the Allottee</p> <p>[emphasis supplied] (As per page no. 43 of the complaint)</p>
12.	Due date of possession	16.12.2017 (Calculated from the signing of buyer's agreement i.e., 16.12.2014, being later)
13.	Total sale consideration	Rs.54,28,944/- (As per page no. 34 of the complaint)
14.	Amount paid by the complainant	Rs.49,25,004/- (As per page no. 32 of the reply)

A



15.	Occupation certificate	Not obtained
16.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainants has made the following submissions: -

- I. That the complainant was allotted a commercial space bearing no. F-178, vid allotment letter dated 01.02.2014, which was subsequently changed to F-169, First Floor in "83 Avenue", Sector-83, Gurgaon vide allotment letter dated 15.11.2014.
- II. That a space buyer's agreement dated 16.12.2014 was duly executed between the parties. As per clause 38 of the agreement, the respondent was to deliver the possession of the said unit to the complainant within 36 months from the date of execution of the agreement dated 16.12.2014 i.e., by 16.12.2017.
- III. That the project of the respondents is not even nearing completion. The respondents have still not completed even the basic construction work of the said unit. The complainant has already paid a sum of Rs.49,25,004/- till date out of the total sale price of Rs.54,28,944/-. The complainant has already paid approximately 90% of the sale price to the respondents but the respondents have neither completed the construction and obtained the occupation certificate for the unit nor offered possession of the unit of the complainant till date.
- IV. That the complainant has paid all the demands raised by the respondents in fulfilment of his obligations to make due payments as per the space buyer agreement and has been an ideal allottee of the respondents. The status of the construction is still under process and no update is being provided by the respondents despite several requests.

A



There has already been a delay of approximately 5 years in delivery of possession of the unit to the complainant. The said unit is nowhere near completion.

- V. That the complainant has paid approximately 90% cost of the said unit but the respondents had stopped all communication and intimations regarding the construction of the said unit.
- VI. That it is well settled principle under the law that the basic foundation of an agreement/contract is when both the parties to the contract fulfil its obligations so to maintain the essence of the agreement/contract. The respondents have failed to adhere to the terms of the contract and have committed breach of contract.
- VII. That the cause of action for filing the present complaint arose when the respondents despite taking approximately 90% sale consideration of the said unit failed to complete the construction of the unit and offer possession to the complaint and the same is continuing as the respondents have not yet completed the construction of the said unit of the complainant. The cause of action is continuing one and still subsisting hence, the present complaint.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- I. Direct the respondent to handover the legal and rightful possession of the apartment.
 - II. Direct the respondent to pay interest for every month of delay at the rate of 18% per annum from due date possession i.e., 16.12.2017 till offer of possession of the unit after obtaining OC to the complainant.
 - III. Direct the respondent not to demand anything more than the total sale consideration mentioned in the space buyer's agreement.

A

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.

D. Reply by the respondent no. 2:

6. The respondent has contested the complaint on the following grounds:
- I. That the present complaint is not maintainable and it is the complainant's attempt to extort monies from respondent and hence liable to be dismissed.
 - II. That the complainant is being dishonest and have filed the present baseless and false complaint against respondent to misuse the provisions of Act of 2016 and the Haryana RERA Rules, 2017. The present complaint is nothing but an attempt to illegally extract benefits from respondent which they are not entitled to.
 - III. That the complainant has got no *locus standi* or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the contractual terms and conditions between the parties shall be evident from the submissions made in the following paragraphs of the present reply.
 - IV. That the complainant upon learning about the real estate project launched by the respondent known under the name of '83 Avenue' situated at Sector 83, Village Sihi, Gurgaon, approached the respondent to invest in the said project.
 - V. That after having keen interest in making the investment in the project being constructed by the respondent, the complainant expressed his willingness to book a unit in the said project and applied for the booking of a retail shop. Thereafter, the complainant submitted an application form dated 25.01.2014.

- VI. That the complainant with respect to the said application form was then allotted a unit no. F-178, retail unit on first floor having super built-up area of 497.30 sq. ft. vide provisional allotment letter dated 01.02.2014.
- VII. That the provisional allotment of the unit of the complainant underwent a change to revised retail unit no. F-169 on first floor admeasuring tentative super area of 502.68 sq. ft. and the respondent issued an allotment letter dated 15.11.2014 informing the same to complainant.
- VIII. That the space buyer's agreement with respect to the Unit No. F-169 was voluntarily executed by the complainant after thoroughly going through all the terms and conditions of the said agreement. At the outset, it must be noted that the complainant willingly and voluntarily entered into all and every agreement after reading and understanding the contents thereof. That as per the agreement, the sale price of the said unit is Rs.54,28,944/-. It is pertinent to mention here that the said sale price was exclusive of the charges against tax and other charges as per clause 2(a) of the agreement.
- IX. That as per clause 38 of the agreement, the proposed due date of offer of possession was 36 months of signing of the agreement i.e., 16.12.2014 or within 36 months from the date of start of construction of the said Building i.e., 30.01.2014 whichever is later with a grace period of 3 months and was subject to *force majeure* conditions or governmental action/inaction and such other terms and conditions as mentioned in the said section. Accordingly, the proposed and estimated date comes out to be 16.03.2018. However, the same was not absolute and was subject to *force majeure* events, governmental action/inaction, and reasons beyond the control of the developer.

Delay in project due to reason beyond the control of the respondent:

A ✓

- X. That the respondent was adversely affected by various construction bans, lack of availability of building material, regulation of the construction and development activities by the judicial authorities including NGT in NCR on account of the environmental conditions, restrictions on usage of ground water by the High Court of Punjab & Haryana, demonetization, adverse effects of covid etc. and other force majeure circumstances.
- XI. That the respondent in his written submissions mentioned that a period of 337 days was consumed on account of circumstances beyond the power and control of the respondent, owing to the passing of orders by the statutory authorities. That all the circumstances come within the purview of the force majeure clause and hence allow a reasonable time to the respondent-builder. That it must also be noted that the respondent had the right to suspend the construction of the project upon happening of circumstances beyond the control of the respondent, however, despite all the hardships faced by the respondent, the respondent did not suspend the construction and managed to keep the project afloat through all the adversities. Further it is pertinent to mention here that the Hon'ble Authority in a similar case where such orders were brought before them in the complaint No. 3890 of 2021 titled "Shuchi Sur and Anr vs. M/S Venetian LDF Projects LLP" decided on 17.05.2022, the Hon'ble Authority was pleased to allow the grace period and hence, the benefit of the above affected 337 days need to be rightly given to the respondent-builder.
- XII. That further the respondent in the written submissions mentioned that the Authority recently in its order dated 30.05.2023 in the complaint no. 1506 of 2022 titled as "Ameena Bano vs. Sternal Buildcon Pvt. Ltd." had

allowed the benefit of 6 month's Covid-19 pandemic benefit to the builder as per HARERA notification no. 9/3-2020 dated 26.05.2020, on account of the force majeure due to outbreak of Covid-19 pandemic. Thus, the respondent is also entitled for the same benefit.

Non-payment of dues as per agreed payment schedule:

XIII. That it is submitted that several allottees, including the complainant, has defaulted in timely remittance of payment of instalments which was an essential, crucial and an indispensable requirement for conceptualization and development of the project in question. Furthermore, when the proposed allottees default in their payments as per schedule agreed upon, the failure has a cascading effect on the operations and the cost for proper execution of the project increases exponentially whereas enormous business losses befall upon the respondent. The respondent despite default of several allottees has diligently and earnestly pursued the development of the project in question and has constructed the project in question as expeditiously as possible. Therefore, there is no default or lapse on the part of the respondent and there is no equity in favour of the complainant. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. The allegations levelled by the complainant are totally baseless. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

RERA is retroactive and not retrospective

XIV. That the Act of 2016 is not retrospective in nature but retroactive hence, the interest on delay caused by the respondent, if any, shall be subjected to retroactive effect and not retrospective. The respondent

shall only be liable to issue interest on payments made by the complainant against the said unit, as per the terms defined in the space buyer's agreement and only against the payments made after the enactment and implementation of Act of 2016, the provision of the act would prevail as the Act of 2016 is only retroactive in nature.

XV. The retroactive nature of any act creates a new obligation on the transactions but does not affect the previous ones. For the projects which are ongoing after the implementation of Act of 2016, the act will apply prospectively, meaning new rights will be conferred to the parties only from the date of enactment and not before. Thus, the right of allottee to claim interest as per the provisions of the Act, shall also be retroactive in its nature and shall only be attracted to payments made after the enactment and implementation of Act of 2016.

XVI. That the entire case of the complainant is nothing but a web of lies, false and frivolous allegations made against the respondent. That the complainant has not approached the Hon'ble Authority with clean hands and has himself violated the agreement and the section 19(6) and 19(7) of the Act and hence the present complaint deserves to be dismissed with heavy costs. That it is brought to the knowledge of the Hon'ble Authority that the complainant is guilty of placing untrue facts and are attempting to hide the true colour of intention of the complainant.

7. The present complaint has been filed by the complainant against two respondents i.e., M/s Real Town Properties Pvt. Ltd. as R1 and M/s Venetian LDF Projects LLP as R2. The reply has been filed by the R2 and the payments were also made to R2 but the R1 has been made party as the registration of the project is in the name of R1. The counsel for the respondent clarified vide

A

proceedings of the day dated 26.10.2023 that both are the same entity as the name of R1 has been as Real Time Property Pvt. Ltd.

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

E. Jurisdiction of the authority:

9. The respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. 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

10. 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) The promoter shall-

A

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

Section 34-Functions of the Authority:

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

11. 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 objections raised by the respondent no. 1:

F.I Objection regarding the Act of 2016 is retroactive and not retrospective

12. The contention of the respondent is that the Act of 2016 is retroactive and not retrospective. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of *Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)* which provides as under:

A

119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter.....

122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

13. Also, in appeal no. 173 of 2019 titled as **Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya**, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

14. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the apartment buyer's agreement has been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules, statutes,

instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

F.II Objection regarding delay due to force majeure circumstances

15. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the National Green Tribunal (hereinafter, referred as NGT), lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour. Further, the authority has gone through the possession clause of the agreement and observed that the respondent-developer proposes to handover the possession of the allotted unit within a period of 36 months from the date of execution of agreement or date of start of construction, whichever is later. In the present case, the date of execution of agreement is 16.12.2014 and date of start of construction is 30.01.2014 as taken from the documents on record. The due date is calculated from the date of execution of agreement being later, so, the due date of subject unit comes out to be 16.12.2017. **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/due date on or after 25.03.2020.** The authority put reliance judgment of Hon'ble Delhi High Court in case titled as **M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020** dated 29.05.2020 which has observed that-

"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself."

A

16. The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 16.12.2017 i.e., before 25.03.2020. Therefore, an extension of 6 months is not 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. The due date of subject unit comes out to be 16.12.2017, which is prior to the occurrence of Covid-19 restrictions and hence, the respondent cannot be benefitted for his own wrong. Though there has been various orders issued to curb the environment pollution, but these were for a short period of time. So, the circumstances/conditions after that period can't be taken into consideration for delay in completion of the project.

G. Findings on the relief sought by the complainant:

G.I Direct the respondent to pay interest for every month of delay, on the amount paid so far, at the rate of 18% per annum

17. The due date of possession of the apartment as per possession clause of apartment buyer's agreement is to be calculated 36 months from the date of execution of agreement being later i.e., 16.12.2014. The due date of possession comes out to be 16.12.2017, as per the possession clause of apartment buyer's agreement.

18. Admissibility of delay possession charges at prescribed rate of interest:

In the present complaint, the complainant intend 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."

(Emphasis supplied)

1A ✓

19. The complainant is seeking delay possession charges at the prescribed rate as per the Act of 2016. 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.

20. 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.
21. 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%**.
22. 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—

A ✓

- (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;"*

23. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85% by the respondents /promoter which is the same as is being granted to the complainant in case of delayed possession charges.
24. 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 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. The due date of handing over possession is 16.12.2017. No document is placed on record to show that after completing the unit, OC has been obtained or even applied to the competent Authority but the counsel for the respondent has brought to the notice of the authority that the unit has been completed and application for occupation has been made to the DTCP on 04.10.2023, but the occupation certificate is not yet granted and no offer of possession has been made to the complainant-allottee.
25. The respondents have failed to handover possession of the subject apartment till date of this order. Accordingly, it is the failure of the respondents/promoter to fulfil its obligations and responsibilities as per the 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 respondents are established. As such the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e.,

A

16.12.2017 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.

H. Directions of the Authority:

26. 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 respondents are directed to pay interest on the paid-up amount by the complainant at the prescribed rate of 10.85% p.a. for every month of delay from the due date of possession i.e., 16.12.2017 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.
- ii. The arrears of such interest accrued from 16.12.2017 till the date of this order by the authority shall be paid by the promoter to the allottee(s) 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 allottee(s) before 10th of the subsequent month as per rule 16(2) of the rules.
- iii. The complainant is directed to pay outstanding dues, if any remains after adjustment of interest for the delayed period, the respondents shall handover the possession of the allotted unit on obtaining of occupation certificate.
- iv. The respondents shall not charge anything from the complainant which is not the part of the apartment buyer's agreement.

A

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

27. Complaint stands disposed of.

28. File be consigned to registry.


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.12.2023

सत्यमेव जयते

HARERA
GURUGRAM