

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

Complaint no. : 3574 of 2021
Date of decision : 02.02.2024

Dinesh Kumar

R/o: - H.no. 191/44, Ward No. 5, Haily Mandi
Gurugram-123504

Complainant**Versus**

M/s Apex Buildwell Pvt. Ltd.
Office: 14A/36, WEA Karol Bagh,
New Delhi-110053

Respondent**CORAM:**

Shri Sanjeev Kumar Arora

Member**APPEARANCE:**

Sh. Rajender Kumar Goel Adv.
None

Complainant
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 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 to the allottees as per the agreement for sale executed *inter-se* them.

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, delay period, if any, have been detailed in the following tabular form:

| S. N. | Particulars | Details |
|-------|---|---|
| 1. | Name of the project | Our Homes |
| 2. | Project location | Sector 37C, Gurugram, Haryana |
| 3. | Project type | Low-cost group housing project |
| 4. | Unit no. | 798 on 7 th floor, tower- Iris (As per page no. 47 of the complaint) |
| 5. | Unit area admeasuring | 48 sq. mtrs. (Carpet area) (As per page no. 47 of the complaint) |
| 6. | Allotment letter dated | 23.10.2012 (As per page no. 20 of the complaint) (Wherein no specific unit was allotted to the complainant instead only a provisional allotment of residential unit measuring 48 sq. mtrs. in the project was allotted against provisional registration dated 20.09.2020) |
| 7. | Date of apartment buyer agreement | 23.02.2013 (As per page no. 44 of the complaint) |
| 8. | Date of commencement of construction of the project | CTE-02.12.2013 (As per page no. 11 of the reply) |
| 9. | Possession clause | 3(a) Offer of possession |



| | |
|--|--|
| | <p>That subject to terms of this clause 3, and subject to the apartment allottee (s) having complied with all the terms and conditions of this agreement and not being in default under any of the provisions of this agreement and further subject to compliance with all provisions, formalities, registration of sale deed, documentation, payment of all amount due and payable to the developer by the apartment allottee(s) under this agreement etc. as prescribed by the developer, the developer proposes to hand over the possession of the apartment <i>within a period of 36 months with the grace period of six month from the date of commencement of construction of the complex upon the receipt of all project related approvals including sanction of building plans/ revised plans</i> and approval of all concerned authorities including the fire service department, civil aviation department, traffic department, pollution control department etc. as may be required for commencing, carrying on and completing the said complex subject to force majeure, restraints or restrictions from any court/authorities. It is however understood between the parties that the possession of various blocks/towers comprised in the complex as also the various common facilities planned therein shall be ready and completed in phases and will be</p> |
|--|--|



| | | |
|-----|---|---|
| | | handed over to the allottees of different block/towers as and when completed and in a phased manner. |
| 10. | Due date of possession | 02.06.2017 (Calculated from the date of the commencement of construction i.e., 02.12.2013 + 6 months grace period) (Grace period of 6 months is allowed) |
| 11. | Total sale consideration | Rs.16,00,000/- (As per page no. 47 of the complaint) |
| 12. | Amount paid by the complainant | Rs.15,66,968/- (As alleged by the complainant on page no. 09 of complaint) |
| 13. | Occupation certificate | 24.02.2020 (As per page no. 19 of reply) |
| 14. | Offer of possession | 11.03.2020 (As per page no. 33 of the complaint) |
| 15. | Date of delivery of letter of offer of possession to the complainant. | 10.07.2021 (As per page no. 33(i) of the complaint) |

B. Facts of the complaint

3. The complainant has made the following submissions: -

- That the complainant was allotted a flat no. 798 in tower IRIS of the project "Our Homes" Sector 37 – C, Gurugram. The project was being developed by M/s Apex Buildwell Pvt. Ltd.
- That the builder (M/s Apex Buildwell Pvt. Ltd.) had invited applications for allotments of flats in the above mentioned project in the year 2012. The staff/agents of developer



approached the complainant, presented a rosy picture of the project and the developer. They requested the complainants to book a flat. They confirmed that all legal formalities in relation to development has been completed. Possession would be given before 36 months i.e. on or before 19.09.2015. They confirmed that the construction is in full swing, likely to be completed in next 24 months and in all cases the possession would be handed over long before 36 months. On such assurances and based on documents of project shown, complainant handed over a cheque no. 758117 dated 19.09.2012 for ₹1,64,944/- drawn on Punjab National Bank. After payment of initial booking amount i.e., ₹1,64,944/- on 20.09.2012, unit no. 798 was allotted to the complainants vide allotment letter dated 23.10.2012. A builder buyer's agreement was executed on 23.02.2013, according to which the construction was to be completed within 36 months from the date of allotment. The agreement was totally favoring builder and was against the interest of complainant. There was no alternate with the complainant but to accept all terms of the builder / developer as complainant has already paid considerable amount.

- c. That the complainant has paid ₹15,66,968/- (total cost of the said flat was ₹16,00,000/-) till date. That on 17.06.2021 a demand notice for payment of ₹4,40,659.74/- as illegal, unauthorized charges in the name of BSP, VAT recovery, Labour-cess recoverable, Power Backup, Meter charges etc. Intercom and misc. charges, Legal and administrative charges, holding charges, other charges. That no detail of how the amount



of such charges arrived at / calculated / justified was provided in-spite of repeated requests. Such a demand letter need cancellation.

- d. That in the said demand letter company has not calculated and adjusted interest @ 18% for the delayed period from date of each payment till date. The respondent had been charging interest @18% compounded quarterly in terms of clause 2(f) of the buyer's agreement, from the complainant by pointing out that there was some delay in payment of the installment.

C. Relief sought by the complainant:

4. The complainant has sought following relief:

- a. To calculate and pay interest @ 18% pa on the amount paid by complainant from time to time to the company / builder / developer, they have been charging interest at 18% on any late installment.
- b. To remove illegal demands from the demand letter dated 11.05.2021.
- c. To handover the possession of the allotted flat to complainant immediately.
- d. To refund the extra amount as the interest paid / payable to the developer. The interest is refundable as payable interest is more than the demand amount in respect to the flat.
- e. To consider equal / same rate of interest applicable on the complainant and respondent.
- f. To consider the date of offer of possession as 10.07.2021 since the letter dated 11.03.2020 was received on 10.07.2021.



- g. To pay interest @ 18% (compounded quarterly) for the period from the date of each payment till the actual date to which possession given. The developer has been charging interest @ 18% in terms clause 2 (f) of BBA dated 23.02.2013.
- h. Not to charge any interest for delayed payment by the plaintiff, if any, on the demands made from the due date to offer possession i.e., 19.09.2015 to date at which possession given. The minor delay occurred due to collection delay / wrongly and illegally demand was raised.

D. Reply filed by the respondent:

- 5. The respondent has contested the complaint on the following grounds:
 - a. That the complainant has no cause of action against the answering respondent and the alleged cause of action is nothing but false and frivolous and the respondent has neither caused any violation of the provisions of the Act nor caused any breach of agreed obligations as per the agreement between the parties and no case is made out under Section 18 of the Act.
 - b. That the complaint under reply is neither tenable nor maintainable and has been filed with an oblique motive when the respondent has already completed the obligations and offered the possession to the complainant and the complaint is filed merely with an intent to gain wrongfully and arm twist the respondent through the process of law once all obligations on behalf of the respondent are complete. That worth noting that the complainant never had any objection or complaint for delay



in construction of the project and has only filed the present complaint to gain wrongfully.

- c. It is stated that the respondent has been very well committed to the development of the real estate project and secured the occupation certificates for both of the phases of the project named "Our Homes". And the delay occasioned in delivering the possession of the project is only because of explainable and extendable as per the agreed terms i.e., clause 3 of the apartment buyer's agreement and is due to causes beyond the control of the respondent and hence there is no violation under Section 18(1) of the Real Estate(Regulation and Development) Act, 2016 as the project has been constructed and the time of delay is extendable as per the agreement between the parties and it cannot be said that the respondent could not give possession as per the terms of the agreement for sale.
- d. That firstly, on grant of license bearing no. 13 of 2012 dated **22.02.2012** the respondent applied for all other relevant permissions and could secure the BRIII for sanction of building plans only on **7.05.2013** and the consent to establish by the Office of Haryana State Pollution Control Board, Panchkula was only granted on **2.12.2013**. Since then the respondent is continuing the construction of the project, but to the misery the License so granted expired on **21.02.2016** i.e. prior to the permissible period of construction of 36 months and since **11.02.2016** the respondent had been seeking the renewal of the License from the Office of Director General Town & Country Planning, Haryana and finally the same was received on



26.04.2019 and the respondent in a duty bound manner had completed the entire construction and development of the project and obtained the first occupation certificate on **29.11.2019** and the second occupation certificate on **24.02.2020**. And thereupon offered possession of the flat to the complainant in all its bona fides on **11.03.2020** and the same was taken over by the complainant.

- e. That the provisions of Real Estate (Regulation and Development) Act, 2016 came into force on 28.07.2017 for which the respondent duly filed an application dated 28.08.2017 and due to lapse of license no. 13/2012 the same got dismissed vide orders dated 19.01.2018 and finally after regular follow ups and initial rejections the project has been registered vide registration no. 40 of 2019 dated 8.07.2019 and the said fact even lead to further operational obstacles & restrictions of funds in completion of the project and leading to delay in completion of the project which had been beyond the control of the respondents and was extendable as per the agreed terms.
- f. That the respondent company had been hard trying to avail all the approvals, permissions and sanctions from the relevant Authorities and discharging the additional costs of renewal of license, plans and sanctions. And had the approvals & renewal of license be granted in time the respondent, would have duly completed the project within the permissible time period.
- g. More so the bans to construction activity imposed by the NGT from time to time and lastly in the months of October-November,



2019 have further lead to delay in completion of the project which are per se beyond the control of the respondent.

- h. That if the period of pendency of the license is condoned and extended than the respondent has delivered the project well within the agreed period of completion and therefore, there is no occasion or cause of action in favour of the complainant to file the present complaint.
- i. That thereby, the delay being occasioned is beyond the control of the respondent i.e. firstly due to the grant of consent to establish and thereafter due to the lapse of License and the same is excusable as contemplated and agreed by the parties vide para 3(b) (i) & (ii) of the apartment buyer's agreement executed between the parties and the agreed period of 36 months plus 6 months grace period is extendable and the complainant is estopped from filing the present complaint. That the respondent has even applied to the Directorate of Town and Country Planning, Haryana for declaring the time taken in renewal of the license as a "Zero Period" vide representation dated 25.08.2021 which is still pending adjudication.
- j. Further it is stated that it is the respondent who had been suffering due to the delay that is being occasioned and has to face extra charges and costs and expenses in getting all the above permissions renewed and in particular the renewal of license and the costs of registration under RERA. Pertinent to note that the respondent has not received any exaggerated advance amounts from the complainant and construction as on date is

much more advanced than the amount received. Hence there is no cause or occasion to file the present complaint.

- k. That the complainant is estopped to file the present complaint due to his own acts and conduct of accepting the possession along with non-monetary benefits including waiver of interest and other charges on possession as the complainant has not complied with the demands of the due amounts as made by the respondent at the time of offer of possession and instead is wrongfully filing the present complaint. Pertinent to note that the entire obligations of completion of the project is upon the respondent and the failure to pay the due amounts in a timely manner by so many of the allottees including the complainant have led to multiple problems and extra costs on the respondent leading to further delays.
- l. That the complainant does not have any cause of action under the jurisdiction of the Hon'ble Authority and hence the complaint is liable to be dismissed.
6. 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 submissions made by the complainants.

E. Jurisdiction of the authority

7. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

E. I Territorial jurisdiction

8. 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

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

"Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the 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;

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

10. 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 regarding relief sought by the complainant.

F.I. To handover the possession of the allotted flat to complainant immediately.

F.II. To consider the date of offer of possession as 10.07.2021 since the letter dated 11.03.2020 was received on 10.07.2021.

11. The complainant in its complaint stated that although the respondent has offered the possession of the unit on 11.03.2020 but they



received the said letter on 10.07.2021. The track shipment summary has also been attached by the complainant wherein it is clear that the said consignment was delivered on 10.07.2021. The said issue was also raised by the counsel for the complainant during the course of hearing dated 19.05.2023. The authority directed the respondent to file proof of providing letter of offer of possession to the complainant on 11.03.2020. The respondent on 03.10.2023 have submitted the postal receipt of a tracking consignment mentioning 14/3 which is not proving the delivery date of the said offer. Accordingly, the authority is of the view that since the respondent has failed to prove the same therefore, the date of delivery i.e., 10.07.2021 as submitted by the complainant be treated as the date of offer of possession. Since the OC for the said unit has been received on 24.02.2020 accordingly the respondent is further directed to handover the physical possession of the unit within a period of 60 days from the date of this order.

- F.III. To remove illegal demands from the demand letter dated 11.05.2021.
12. The complainant refers to the letter dated 11.05.2021 wherein the respondent has charged under the following heads:

- VAT- ₹ 11,394/-

13. This issue has already been dealt by the authority in complaint bearing no. **4031 of 2019** titled as **Varun Gupta V/s Emaar MGF Land Ltd.** the authority has held that the promoter is entitled to charge VAT from the allottees for the period up to 31.03.2014 @ 1.05% (one percent VAT + 5 percent surcharge on VAT) under the amnesty scheme. However, if the respondent opted for composition levy, then also, the incidence of such taxes shall be borne by the



respondent only. But if composition scheme is not availed, VAT may be charged on proportionate basis subject to furnishing of proof of having its actual payment to the concerned taxation Authority

- **Labour Cess- ₹7,094/-**

14. Labour cess is levied @ 1% on the cost of construction incurred by an employer as per the provisions of sections 3(1) and 3(3) of the Building and Other Construction Workers' Welfare Cess Act, 1996 read with notification no. S.O 2899 dated 26.9.1996. It is levied and collected on the cost of construction incurred by employers including contractors under specific conditions. Moreover, this issue has already been dealt with by the authority in complaint no.962 of 2019 titled *Mr. Sumit Kumar Gupta and Anr. Vs Sepset Properties Private Limited* wherein it was held that since labour cess is to be paid by the respondent, as such no labour cess should be charged by the respondent. The authority is of the view that the allottee is neither an employer nor a contractor and labour cess is not a tax but a fee. Thus, the demand of labour cess raised upon the complainant is completely arbitrary and the complainant cannot be made liable to pay any labour cess to the respondent and it is the respondent builder who is solely responsible for the disbursement of said amount. Accordingly, the respondent is directed to quash the amount of ₹7,094/- charged from the complainant on account of labour cess.

- **Power backup Charges- ₹59,000/-**

15. The authority has already deliberated the said issue in complaint bearing no. 4031 of 2019 titled as *Varun Gupta V/s Emaar MGF Land Ltd.* wherein the authority has held that, if the allottee has



already paid these charges, then it would be unjust for him to pay further charges under the head "power backup charges" despite there being a condition for payment of these charges in the builder buyer's agreement, the allottee should not be made or compelled to pay amount towards these charges. Therefore, if the promoter in fact requires further money for meeting expenses to provide these basic infrastructures to the allottees in the project, the promoter should always give a break-up of these expenses to the allottee very transparently with each and every detail.

- **Meter charges, connection charges and security deposit- ₹23,600/-**

16. This issue has already been dealt by the authority in complaint bearing no. **4031 of 2019** titled as **Varun Gupta V/s Emaar MGF Land Ltd.** the authority has held that the promoter would be entitled to recover the actual charges paid to the concerned departments from the complainant/allottee(s) on pro-rata basis on account of electricity connection. However, the complainant(s) would also be entitled to proof of such payments to the concerned department along with a computation proportionate to the allotted unit, before making payment under the aforesaid heads. The model of the digital meters installed in the complex be shared with allottee(s) so that they could verify the rates in the market and the coloniser.

- **Intercom & misc. charges- ₹2,950/-**

17. The authority has decided this in the complaint bearing no. **4031 of 2019** titled as **Varun Gupta V/s Emaar MGF Land Ltd.** wherein the authority has held that the respondent is not entitled for any other charges like incidental/miscellaneous and of like nature, since the



same are not defined and no quantum is specified in the builder buyer's agreement, therefore, the same cannot be charged. Accordingly, the respondent is directed to quash the amount of ₹2,950/- charged under the head of misc. charges.

- **Legal & administrative charges- ₹11,800/-**

18. This issue has already been dealt by the authority in complaint bearing no. *CR/4031/2019 titled as Varun Gupta Vs. Emaar MGF Land Limited* wherein it is held that the administrative registration of property at the registration office is mandatory for execution of the conveyance (sale) deed between the developers (seller) and the homebuyer (purchaser). Besides the stamp duty, homebuyers also pay for execution of the conveyance/sale deed. This amount, which is given to developers in the name of registration charges, is significant and the amount can be as steep as ₹ 25,000 to ₹ 80,000. In a circular issued on 02.04.2018, the DTP's office fixed the registration charges per flat at ₹ 15,000 in furtherance to several complaints received from homebuyers that developers charge 1.5% of the total cost of a property in the name of administrative property registration charge. The authority considering the pleas of the developer-promoter is of the view that a nominal amount of up to ₹ 15000/- may be charged by the promoter – developer for any such expenses which it may have incurred for facilitating the said transfer as has been fixed by the DTP office in this regard.
19. In the present complaint, the respondent has charged an amount of ₹11,800/- towards administrative charges as per letter dated 11.05.2021 issued by the respondent. Accordingly, the respondent is right in charges the said amount under this head.

- **Holding charges- ₹79,154/-**

20. The authority has decided this in the complaint bearing no. **4031 of 2019** titled as **Varun Gupta V/s Emaar MGF Land Ltd.** wherein the authority has held that the respondent is not entitled to claim holding charges from the complainant/allottee at any point of time even after being part of the buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020. Therefore, in light of the above, the respondent shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed. Accordingly, the respondent is directed to quash the amount of ₹ 79,154/- charged under the head of holding charges.

- **IFMS- ₹ 40,000/-**

21. The complainant has pleaded that the respondent is demanding Rs. 15,000/- as IFSD. The authority has already decided the above issue in complaint bearing no. **CR/4068/2021** titled as **Pradeep Kumar through his attorney Suresh Kumar V/S Pareena Infrastructure Private Limited**, wherein it was held that the promoter may be allowed to collect a reasonable amount from the allottees under the head "IFSD". However, the authority directs and passes an order that the promoter must keep the amount collected under that head in a separate bank account and shall maintain the account regularly in a very transparent manner. If any allottee of the project requires the promoter to give the details regarding the availability of IFSD amount and the interest accrued thereon, it must provide details to them. It is further clarified that out of this IFMS/IFSD account, no amount can



be spent by the promoter for the expenditure for which he is liable to incur/discharge the liability under section 14 of the Act.

- **Maintenance for 12 months- ₹ 28,320/-**

22. This issue has already been dealt by the authority in complaint bearing no. *CR/4031/2019 titled as Varun Gupta Vs. Emaar MGF Land Limited wherein* it is held that the respondent is right in demanding advance maintenance charges at the rates' prescribed in the builder buyer's agreement at the time of offer of possession. However, the respondent shall not demand the advance maintenance charges for more than one year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than a year.

23. The authority is of the view that the respondent has demanded an amount of ₹ 28,320/- towards advance maintenance charges. In the present complaint the respondent has charged the AMC for 12 months accordingly the complainant is liable to pay the charges.

- **Sinking Fund- ₹3,000/-**

24. The authority observes that the term sinking fund is not mentioned anywhere in the BBA executed inter-se parties. Moreover, sinking fund and IFMS are the same as both of them are collected for the same purpose. Therefore, the respondent cannot charge it under different heads and is directed to quash the amount of ₹ 3,000/- charged towards sinking fund as the complainant has already paid the maintenance security.

25. Although, the above mentioned charges are agreed in the buyer's agreement executed between the parties but still the respondent shall not charge as per the findings given above.



F.IV. To calculate and pay interest @ 18% pa on the amount paid by complainant from time to time to the developer, they have been charging interest at 18% on any late instalment.

F.V. To refund the extra amount as the interest paid/payable to the developer. The interest is refundable as payable interest is more than the demand amount in respect to the flat.

F.VI. To consider equal rate of interest applicable on the complainant and respondent.

F.VII. To pay interest @ 18% (compounded quarterly) for the period from the date of each payment till the actual date to which possession given. The Developer / Builder / Respondent has been charging interest @ 18% in terms clause 2 (f) of BBA dated 23.02.2013.

F.VIII. Not to charge any interest for delayed payment by the Plaintiff, if any, on the demands made from the due date to offer possession i.e., 19.09.2015 to date at which possession given. The minor delay occurred due to collection delay/wrongly and illegally demand was raised.

26. The above said reliefs are interconnected therefore, they are being taken up together for adjudication. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under:

Section 18: - Return of amount and compensation

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,

27. As per clause 3(a) of the buyer's agreement dated 23.02.2013, the possession of the subject unit was to be handed over by 02.06.2017. Clause 3(a) of the buyer's agreement provides for handover of possession and is reproduced below:

"That subject to terms of this clause 3, and subject to the apartment allottee (s) having complied with all the terms and conditions of this agreement and not being in default under any of the provisions of this agreement and further subject to compliance with all provisions, formalities, registration of sale deed,



*documentation, payment of all amount due and payable to the developer by the apartment allottee(s) under this agreement etc. as prescribed by the developer, the developer proposes to hand over the possession of the apartment **within a period of 36 months with the grace period of six month from the date of commencement of construction of the complex upon the receipt of all project related approvals including sanction of building plans/ revised plans** and approval of all concerned authorities including the fire service department, civil aviation department, traffic department, pollution control department etc. as may be required for commencing, carrying on and completing the said complex subject to force majeure, restraints or restrictions from any court/authorities. It is however understood between the parties that the possession of various blocks/towers comprised in the complex as also the various common facilities planned therein shall be ready and completed in phases and will be handed over to the allottees of different block/towers as and when completed and in a phased manner."*

28. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainants not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoters. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoters and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoters may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the flat buyer agreement by the promoters are just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment

as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

29. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment within 36 months from the date of commencement of construction with a grace period of 6 months. Since in the present matter the BBA incorporates unqualified reason for grace period/extended period of 6 months in the possession clause. Accordingly, the authority literally interpreting the same allows this grace period of 6 months to the promoter at this stage. Accordingly, the due date of possession comes out to be 11.07.2019.
30. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges as one of the reliefs. 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."

31. 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.

32. 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., 02.02.2024 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
33. 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;"

34. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same as is being granted to the complainants in case of delayed possession charges
35. On consideration of the documents available on record and submissions made 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. By virtue of clause 3(a) of the agreement executed between the parties on 23.02.2013, the possession of the subject apartment was to be delivered within 36 months from the date of commencement of construction. The date of construction has been taken from the date of issuance of consent to establish i.e., 02.12.2013. As far as grace period of 6 months is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession calculated from date of CTE comes out to be 02.06.2017. The respondent has offered the possession of the subject apartment on 10.07.2021 but since the respondent has issued a letter dated 11.05.2021 accompanied with illegal demands which was a pre requisite for physical handing over of possession of the unit therefore, the respondent is liable to pay the delay possession charges as per the provisions of the Act, 2016 till the actual handing over of possession. Since, 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. 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 allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 02.06.2017 till the actual handing over of possession of the unit 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. Directions of the authority

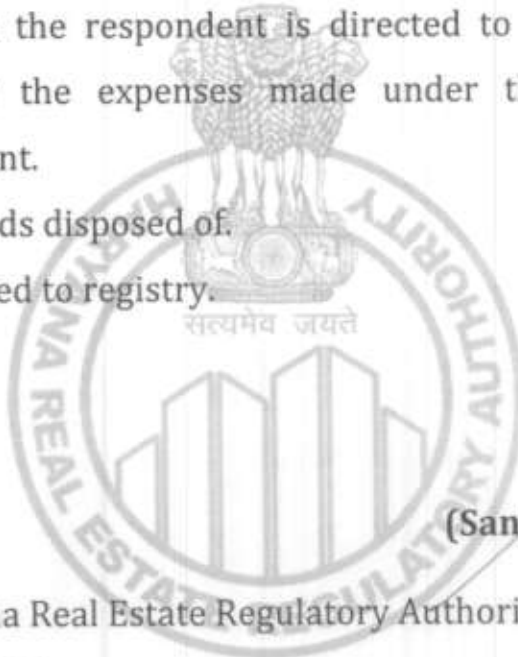


36. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoter as per the functions entrusted to the authority under section 34(f) of the Act:

- a. The respondent is directed to hand over the actual physical possession of the unit to the complainants within 60 days from the date of this order and pay interest at the prescribed rate of 10.85% p.a. for every month of delay from due date of possession i.e., 02.06.2017 till the actual handing over of possession of the unit.
- b. 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 promoters 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. Accordingly, the respondent is directed to refund the excess amount charged on account of delay payment from the complainant if any.
- c. The respondent is also directed to quash the amount of ₹2,950/- charged under the head of misc. charges.
- d. The respondent shall not charge anything from the complainants which is not the part of the agreement. However, holding charges shall not be charged by the promoters at any point of time even after being part of agreement as per law settled by Hon'ble Supreme Court in civil appeal no. 3864-3889/2020. Accordingly, the respondent is directed to quash the amount of ₹ 79,154/- charged under the head of holding charges.



- e. The respondent cannot charge under different heads and is directed to quash the amount of ₹ 3,000/- charged towards sinking fund as the complainant has already paid the maintenance security.
 - f. The respondent is also directed to quash the amount of ₹7,094/- charged from the complainant on account of labour cess.
 - g. As far as the meter charges, power backup charges and VAT are concerned the respondent is directed to make available the details of the expenses made under those heads to the complainant.
37. Complaint stands disposed of.
38. File be consigned to registry.



(Signature)
(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 02.02.2024

HARERA
GURUGRAM