

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

Date of decision: 17.11.2023

NAME OF THE BUILDER		MAGIC EYE DEVELOPERS PVT. LTD.	
PROJECT NAME		THE PLAZA	
S. No.	Case No.	Case title	APPEARANCE
1.	CR/5681/2022	Varun Samotra V/s Magic Eye Developers Pvt. Ltd.	Ms. Priyanka Agarwal Ms. Neelam Gupta
2.	CR/5682/2022	Sanjay Agarwal & Savita Agarwal V/s Magic Eye Developers Pvt. Ltd.	Ms. Priyanka Agarwal Ms. Neelam Gupta

CORAM:

Shri Sanjeev Kumar Arora

Member

ORDER

1. This order shall dispose of both the complaints titled as above filed before this authority in Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the projects,



namely, 'THE PLAZA' being developed by the same respondent promoters i.e., M/s Magic Eye Developers Pvt. Ltd.

3. The details of the complaints, reply to status, unit no., date of agreement, & allotment, due date of possession, offer of possession and relief sought are given in the table below:

Project Name and Location	MAGIC EYE DEVELOPERS PVT. LTD. "THE PLAZA" Sector-106, Gurugram.	
Possession Clause	The developer present plans and estimates and subject to all just exceptions/force majeure/statutory prohibitions /court's order etc. Contemplates to complete the construction of the said building/said unit within a period of three years from the date of execution of this agreement, with two grace periods of six months each , unless there is a delay for reasons mentioned in clauses 10.1, 10.2 and clause 37 or due to failure of allottee(s) to pay in time the price of the said unit along with other charges and dues in accordance with the schedule of payments given in annexure-c or as per the demands raised by the developer from time to time or any failure on the part of the allottee(s) to abide by all or any of the terms or conditions of this agreement.	
Occupation certificate	28.11.2019	
Relief Sought	<ol style="list-style-type: none">1. Direct the respondent to immediately paid delay interest on paid up amount till physical possession.2. Direct the respondent to quash unjustified demand and refund CAM charges which was increased unilaterally ₹2.5 lacs to ₹ 7 lacs.3. Direct the respondent to immediately start the work of sunroom or refund the amount of ₹ 2,50,000/- if complainants will do glass work.4. Direct the respondent to appointment of local commissioner.	
Complaint no	CR/5681/2022	CR/5682/2022
Unit no.	B2-1501 admeasuring 700 sq. ft. [pg. 28 of complaint]	B2-0409 admeasuring 700 sq. ft. [pg. 29 of the complaint]

Date of allotment	25.03.2012	08.05.2012
Date of BBA	25.04.2013 [pg. 23 of complaint]	19.04.2013 [pg. 24 of complaint]
Due date of possession	25.04.2016	19.04.2016
Total sale consideration (TC)	₹ 45,88,567/-	₹ 45,88,567/-
Amount paid (AP)	₹ 45,88,567/-	₹ 45,88,567/-
Offer of possession	30.11.2019 [pg. 24 of reply]	30.11.2019 [pg. 48 of complaint]
Possession certificate	04.03.2020 [pg. 22 of reply]	04.03.2020 [pg. 29 of reply]
Conveyance deed	15.07.2020 [pg. 51 of complaint]	25.09.2020 [pg. 52 of complaint]
DPC paid	₹ 1,08,970/-	₹ 1,09,660/-

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the apartment buyer's agreement executed between the parties in respect of said unit for not handing over the possession by the due date, seeking award of delay possession charges along with interest.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.



6. The facts of all the complaints filed by the complainants/ allottees are also similar. Out of the above-mentioned cases, the particulars of lead case **CR/5681/2022 titled as Varun Samotra V/s Magic Eye Developers Pvt. Ltd.** are being taken into consideration for determining the rights of the allottees qua delay possession charges, quash the termination letter get executed buyers' agreement and conveyance deed.

A. Project and unit related details

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

**CR/5681/2022 titled as Varun Samotra V/s
Magic Eye Developers Pvt. Ltd.**

S. No.	Particulars	Details
1.	Name and location of the project	The Plaza, Sector-106
2.	Unit no.	B2-1501 [pg. 28 of complaint]
3.	Unit area admeasuring (Super area)	700 sq. ft. [pg. 28 of complaint]
4.	Allotment Letter	25.03.2012
5.	Date of buyer's agreement	25.04.2013 [pg. 23 of complaint]
6.	Possession Clause	9.1 Three years from the date of execution of agreement with two grace periods of six months each.....

7	Due date of possession	25.04.2016 [note: grace period not included]
8.	Total sale consideration	Rs. 45,88,567/- as per the applicant ledger dated 01.11.2022
9.	Amount paid by the complainant	Rs. 45,88,567/- as per the applicant ledger dated 01.11.2022
10.	Occupation certificate	28.11.2019 [pg. 22 of reply]
11.	Offer of possession	30.11.2019 [pg. 24 of reply]
12.	Possession certificate	04.03.2020 [pg. 22 of reply]
13.	Conveyance deed	14.03.2020 [pg. 51 of complaint]

B. Facts of the complaint

8. The complainants have made the following submissions in the complaint: -
- That the complainant is law abiding citizen, and consumer who have been cheated by the malpractices adopted by the respondent being a developer and promoter of real estate, since long time. Based on the advertisement, complainants showed interest in purchasing a service apartment in commercial project "The Plaza" at Sector 106, Gurugram and being developed by M/S Magic Eye Developers Pvt. Ltd.
 - That complainant approached to the respondent for booking of a service apartment. That based on promises and commitment made by the respondent, complainant booked a service apartment area admeasuring 700 sq. ft., super area & unit no. tower B2- 1501 in the



- project "The Plaza" Sector 106, Gurugram and being developed by M/S Magic Eye Developers Pvt. Ltd on dated 25.03.2012.
- c. That the respondent to dupe the complainant in their nefarious net even executed builder buyer's agreement signed between the buyers Mr Varun Samotra and M/S Magic eyes Developers Pvt. Ltd. on dated 25.04.2013, Just to create a false belief that the project shall be completed in time bound manner and in the garb of this agreement persistently raised demands due to which they were able to extract huge amount of money from the complainants.
- d. That the total cost of the said unit is ₹ 45,80,307/- of this a sum of ₹ 45,80,307/- paid by complainant. That respondent was liable to hand over the possession of a said unit before 24.04.2016 so far from completion as per builder buyer's agreement clause no 9.1 " *The developer based on its present plans and estimates and subject to all just exceptions/force majeure/ statutory prohibitions/courts order etc. contemplates to complete the construction of the said building/said unit within a period of three year from the date of execution of agreement, with 2 grace period of six months each, unless there is a delay for reason mentioned in clause 10.1, 10.2 and clause 37.....*" but builder offer the possession on dated 30.11.2019 and handover the possession on dated 04.03.2020.
- e. That at the time of offer of possession or before this builder was not disclosed the carpet area of unit and not paid the delayed penalty as per prescribed by RERA. The builder was executed the conveyance deed on dated 15.07.2020. The complainant was shocked to see that builder was changed the sunroom into balcony unilaterally

complainant raised the objection but builder was not given any satisfactory answer him. In the annexure D of BBA builder was clearly mentioned the sunroom. Which is main attraction of unit. Sunroom is money consuming attribute of any unit and at the time of marketing builder was promised the sunroom but at the time of delivery of unit builder replace the sunroom from balcony and save the money of ₹ 2,50,000/- without glass panel sunroom lose its relevance.

- f. That the respondent was carried malicious intentions in each and every stage before delivery and after delivery of unit how can extract more and more money from buyer's pocket after delivery of unit on dated 04/03/2020 builder was demanded CAM Charges of unit from offer of possession which is unilateral and arbitrary. Complainants was paid the demand which was raised by builder at the time of offer of possession after that builder was increased the maintenance charges ₹ 2.5 to ₹ 7 per sq. ft. on super area of unit. Which was revised 7 to 3.9 after lots of perusal. And thread to imposed the interest @18% in case delayed.
- g. That the complainants communicated with builder many time through emails and raised the issue of delay in physical possession after that raised the issue of increased CAM charges in reply not received the satisfactory answer and builder justified his all wrongs finally complainants accepts the offer of possession and all wrongs which done by builder.
- h. That the builder charged the full flag CAM charges but deployment of sufficient staff is very low in numbers. Even builder was not deployed staff related to water electricity and civic work related.

- i. At the premises builder was not completed the pending work like Club facility and recreational facility 3 years after receiving of Occupancy certificate. Even after not completed the pending work of units and most of the units in premises is still unoccupied.
- j. All issues related to delay in physical possession, deficiency of services related facility of CAM and charges of CAM was raised by complainants many times through email or verbally.
- k. That such an inordinate delay in the delivery of possession to the allottee is an outright violation of the rights of the allottee under the provisions of RERA act as well the agreement executed between Complainants and Respondent. The Complainant demands delay penalty in terms of Section 18(1) read with Section 18(3) of the Act, along with principles of Justice, Equity and Good Conscience.
- l. It is submitted that the cause of action to file the instant complaint has occurred within the jurisdiction of this Hon'ble Authority as the apartment which is the subject matter of this complaint is situated in Sector 106 Gurugram which is within the jurisdiction of this Hon'ble Authority.

C. Relief sought by the complainant:

9. The complainants have sought following relief(s)
 - a. Direct the respondent to immediately paid delay interest on paid up amount till physical possession.
 - b. Direct the respondent to quash unjustified demand and refund CAM charges which was increased unilaterally ₹2.5 to ₹ 7.
 - c. Direct the respondent to immediately start the work of sunroom or refund the amount of ₹ 2,50,000/- if complainants will do glass work.



d. Direct the respondent to appointment of local commissioner.

10. 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.

11. The respondent has contested the complaint on the following grounds.

a. That instant complaint is neither maintainable in law nor on facts. Instant complaint is without cause of action, bad for delay and laches and has been filed with malafide. Therefore, instant complaint is not maintainable and is liable to be rejected at the outset.

b. That the Project of the Respondent is duly registered with the Hon'ble Authority. As per the declaration submitted under section 4(2) (l)(c) of the Act of 2016, the date of completion of Project is 31.12.2021 which is accepted by the Hon'ble Authority and Authority preferred to grant registration on 21.08.2017 to respondent's project with 31.12.2021 as date of completion of project.

c. In fact, Respondent has already completed the construction of the said Project before due date of completion as per RERA and obtained Occupation Certificate on 28.11.2019 and offered possession of the Unit B2-1501 on 30.11.2019. Hence, there is no violation of the declaration as submitted by Respondent at the time of Registration of the Project. Further, the instant Complaint has been filed after 2.9 months of the offer of possession of Unit and thus, is bad for delay and laches.

d. Complainant had also made the complete payment of dues on 20.01.2020 after accepting the Rebate of Rs.1,08,970/- given as



adjustment from Principal dues towards compensation @ Rs.5/ - per Sq. Ft. of Super Area per month from the date of possession as agreed under clause 10.4 the Agreement till the date of offer of possession to Complainant.

- e. Complainant pursuant to letter dated 23.12.2019 also gave his consent vide letter dated 20.01.2020 for leasing out his unit to brand COHO on Revenue Sharing basis after reading and understanding the broad terms, as offered by the brand CoHo for taking the Units including the subject matter Unit on lease, thus, deemed to have taken over possession on said date of consent itself, i.e., 20.01.2020.
- f. However, Complainant took over physical possession of Unit satisfactorily on 04.03.2020 against the Check list and acknowledged that he is left with no claims whatsoever against the Respondent Company and all accounts pertaining to said Unit stands settled. Even after taking over possession, no protests or claims regarding the delay in possession or deficiency in amenities or change in sunroom was ever raised by Complainant.
- g. That instant Complaint is bad for delay and laches as the same has been filed after 6.5 years from the date of alleged cause of action and hence, is liable to be dismissed. It is submitted that as alleged by Complainant (sub para fof para 3 at pg. 11 of the Complaint), Possession was due to be offered by 24.04.2016 or 24.04.2017 (including the grace period of 12 months independent of the Force Majeure as agreed under clause 9.1. of the Agreement). However, the instant Complaint has been filed in August 2022, i.e., after approx. 6.5 years of the due date of offer of Possession as per the Agreement.

- h. It is pertinent to mention here that Complainant prior to the instant Complaint, never raised any objection or demand upon the Respondent for payment of delay possession charges as per the RERA Act of 2016 and accepted the payment of compensation as per the terms of the Agreement.
- i. Once the possession has already been offered to Complainant on 30.11.2019 and Complainant consented to lease his Unit on 20.01.2020 and thereafter, also took over the physical possession satisfactorily vide Possession Certificate dated 04.03.2020 and Complainant even never raised any protest that the Unit is incomplete, or Complainant was made to sign on the pre-printed Agreement, or that the Unit is without amenities or the same is not as per lay out or that sun room is not provided, as alleged. The allegations of Complainant are thus, prima-facie malafide, concocted and highly belated, that too, when he himself admitted that he is left with no claims, whatsoever against the Respondent, therefore, instant complaint is otherwise liable to be dismissed on account of estoppel.
- j. According to the said Proviso, right to demand either the withdrawal from the Project or the interest for every month of delay in possession accrued to the Complainants on failure of the Respondent-promoter to complete or unable to give possession of Unit in accordance with the terms of Agreement for sale or duly completed by the date specified, therein, which accrued to complainants admittedly on 24.04.2016 or 24.04.2017 after taking into account the grace period

of 12 months independent of any Force Majeure conditions, in terms of clause 9.1 of the Agreement.

- k. Possession has already been offered to complainants, way back on 30.11.2019 while the instant complaint has been filed on 12.08.2022. Therefore, if the allottee failed to demand the delay possession charges on the due date or even on the enactment of the Act of 2016 and failed to exercise his rights to either withdraw or to claim delay possession interest on monthly basis from the due date till actual handing over of possession and even after offer of possession for almost 2.9 years, i.e., for approx. 6.5 years from the due date, the claim is liable to be dismissed being barred by estoppel and delay and laches.
- l. The instant complaint is barred by Estoppel. It is submitted that upon execution of Conveyance Deed dated 15.07.2020, Complainant is now estopped from raising these belated claims/demands as he himself had acknowledged and accepted that "that they have received the possession of the said Unit to their complete satisfaction and have signed the Possession Certificate in respect thereof. Vendee(s)/ Complainant(s) herein further assured that they shall have no claim, whatsoever against the vendor/ Respondent including in respect of any defect or deficiency in construction or quality of materials used or on account of any delay, etc. and all such claim or objection, if any shall be deemed to have been waived off by the Vendee."
- m. That the Act does not contemplate execution of any fresh Agreement and therefore, buyer's agreement dated 25.04.2013 cannot be affected by the provisions of Act and must be implemented in toto and

to be read and interpreted "as it is" without any external aid including without aid of subsequent enactment especially the enactment which do not especially require its aid to interpret agreements executed prior to commencement of such enactment. Hence, rights and liabilities of the parties including the consequence of default/ default of any party have to be governed by buyer's agreement dated 25.04.2013 and not by the Act.

- n. That it is pertinent to submit here that Section 19(3) does not refer to 'agreement for sale'. It has been designed in such a way that it can cover not only the Post RERA 'agreement for sale' but also Pre-RERA Agreements because it makes allottee entitle for possession not on basis of agreement but on basis of Declaration given by promoter under Section 4(2) (I) (C) of Act, which in both cases i.e., in case of ongoing project as well as future project is filed after commencement of Act, promoter is made aware of consequences of its said declaration.
- o. That without prejudice, it is thus, submitted that entitlement of allottees of ongoing projects on the date of commencement of Act, to claim possession of their respective apartments/units is governed by section 19(3) of the Act i.e., as per declaration given by promoter under sub-clause (C) of Clause (1) of Sub-Section (2) of Section 4 and not by sections 18(1) or 18(3) or 19(4) of the Act. Here it may be noted that as per declaration given by respondent under sub-clause (C) of Clause (I) of Sub-Section (2) of Section 4, the date of completion of subject matter project is 31.12.2021.

- p. That when the entitlement to claim possession is as per the declaration given by the Promoter for completion of construction u/s 4(2) (1) (c) of the Act, then the necessary corollary to this is that the entitlement for delay possession charges at the RERA rates shall also be from the expiry of the date of completion i.e., 31.12.2021 as provided at the time of registration.
12. 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

13. The application 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

14. 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



15. 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) 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.

16. 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.

F. Findings on the relief sought by the complainants.

F.I Direct the respondent to pay delay possession charges at prescribed rate of interest from the due date of possession till the actual date of handing over of possession.

17. In the present complaint, the complainants intend to continue with the project and is seeking delay possession charges interest on the amount paid. 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:

"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. -

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

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)

18. Clause 9.1 of the apartment buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below:

"9.1.

The developer present plans and estimates and subject to all just exceptions/force majeure/statutory prohibitions /court's order etc. Contemplates to complete the construction of the said building/said unit within a period of three years from the date of execution of this agreement, with two grace periods of six months each, unless there is a delay for reasons mentioned in clauses 10.1, 10.2 and clause 37 or due to failure of allottee(s) to pay in time the price of the said unit along with other charges and dues in accordance with the schedule of payments given in annexure-c or as per the demands raised by the developer from time to time or any failure on the part of the allottee(s) to abide by all or any of the terms or conditions of this agreement."

19. At the outset, it is relevant to comment on the preset 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 these agreements and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favor of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is 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.

20. **Due date of handing over possession and admissibility of grace period:** In this particular case, the authority considered the possession clause and observes that the promoter has proposed to hand over the possession of the apartment within a period of 3 years from the date of execution of the agreement with two grace period of six months each unless there is a delay for reasons mentioned in clauses 10.1, 10.2 & 37. The authority calculated due date of possession from the date of execution of agreement i.e., 25.04.2013. The period of 3 years expired on 25.04.2016. Since in the present matter the BBA incorporates qualified reason for grace period/extended period in the possession clause and there are no reasons which affected in progress of the project and were not in control of the



promoter. Accordingly, the authority disallows this grace period of 12 months to the promoter at this stage.

21. Further in the judgement of the Hon'ble Supreme Court of India in the cases of Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022(1) RCR (c), 357 reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022. it was observed:

25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.

22. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder to the allottee as per agreement for sale under section 11(4)(a).
23. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges for the delay in handing over the possession at the prescribed rate of interest. However, the allottees intend to continue with the project and are seeking delay possession charges in respect of the subject unit with interest at

prescribed rate as provided 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.

24. 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.
25. 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., 17.11.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.

F.II. Direct the respondent to quash unjustified demand and refund CAM charges which was increased unilaterally ₹2.5 to ₹ 7.

26. The authority observes that there is no document placed on record which certifies that the CAM charges are increased unilaterally although there are emails attached in the complainant where complainant has only raised the contention for waiver of CAM charges but no reliance can be made upon the fact that the CAM charges were to be paid @ ₹ 2 formerly and then they were raised to ₹ 7. Moreover, the said issue was never pressed



upon during the course of hearing, accordingly, the authority cannot deliberate upon the said issue.

F.III. Direct the respondent to immediately start the work of sunroom or refund the amount of ₹ 2,50,000/- if complainants will do glass work.

F.IV. Direct the respondent to appointment of local commissioner.

27. The authority observes that as per the layout plan of the unit at annexure D attached with the BBA executed between the parties the respondent was obligated to deliver the sunroom of 8.2 x 7, but as per layout attached with possession letter dated 04.03.2020 there was no sunroom handed over to the complainant. Since the possession has already been handed over to the complainant accordingly, the complainants may be entitled for compensation as the aforesaid relief is w.r.t compensation. Hon'ble Supreme Court of India, in case titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.* (Civil appeal nos. 6745-6749 of 2021, decided on 11.11.2021), has held that an allottee is entitled to claim compensation 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 shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. Therefore, the complainant may approach the adjudicating officer for seeking the relief of compensation.
28. 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. By virtue of clause 9.1 of the agreement executed between the parties on 25.04.2013, the possession of the subject

apartment was to be delivered within 3 years from the date of execution of agreement. The authority calculated due date of possession from the date of agreement i.e., 25.04.2013. The period of 3 years expired on 25.04.2016. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession is 25.04.2016. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.

29. 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., 25.04.2016 till the offer of the possession plus two months 30.01.2020, at prescribed rate i.e., 10.75 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

G. Directions of the authority

30. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- a. The respondent is directed to pay delay possession charges at the prescribed rate of interest @10.75% p.a. for every month of delay from due date of possession i.e., 25.04.2016 till the offer of the possession plus two months 30.01.2020 after deducting the amount already paid by the respondent as compensation for delay, if any.

31. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
32. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.
33. Files be consigned to registry.


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 17.11.2023



HARERA
GURUGRAM