

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

Complaint no. : 844 of 2022
Date of filing complaint: 04.03.2022
Date of decision : 17.10.2023

1. Suresh Kumar Garg
R/O: A-247, 3rd Floor, Meera Bagh,
New Delhi-110087
2. Rajesh Kumar Garg
R/O: NS-33, 3rd Floor, Mianwali Nagar,
New Delhi-110087

Complainants

Versus

M/s Shree Vardhman Infrahome Private Limited
Regd. office: 301, 3rd floor, Indraprakash Building, 21-
Barakhamba Road, New Delhi-110001

Respondent

CORAM:

Shri Vijay Kumar Goyal
Shri Ashok Sangwan
Shri Sanjeev Kumar Arora

Member
Member
Member

APPEARANCE:

Sh. Abhishek Garg along with Sh. Yash Gaiha
(Advocates)
Sh. Gaurav Rawat (Advocate)

Complainants
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 under the provision of the Act or the rules and regulations made thereunder or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

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

S. No.	Particulars	Details
1.	Name and location of the project	"Shree Vardhman Flora", Village Badshapur, Sector-90, Gurugram, Haryana
2.	Project area	10.881 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	23 of 2008 dated 11.02.2008 valid upto 10.02.2025
	License valid till	10.02.2025
	Licensee	Moti ram
5.	Occupation certificate	02.02.2022 (Page 46 of reply)
6.	RERA registered/ not registered and validity status	Registered vide no. 88 of 2017 dated 23.08.2017 Valid upto 30.06.2019



7.	Unit no.	1002, Tower B5 (Page 42 of complaint)
8.	Unit area admeasuring	1875 sq. ft. (super area) (Page 42 of complaint)
9.	Allotment letter in favour of the original allottee i.e., Naresh Kumar Garg	28.12.2011 (Page 37 of complaint)
10.	Request to the respondent for change of right through transfer letter from the original allottee to second allottee i.e., M/s Krishna Enterprises	10.10.2018 (Page 87 of complaint)
11.	Request to the respondent for change of right vide transfer letter from the second allottee in favour of the complainants	06.07.2019 [Page 92 of complaint]
12.	Confirmation by the respondent vide letter dated	19.07.2019 [Page 94 of complaint]
13.	Date of buyer agreement executed between the original allottee and the respondent	06.02.2012 (Page 40 of complaint)
14.	Possession clause	14.(a) <i>The Construction of the Flat is likely to be completed within a period of thirty six (36) months of commencement of construction of the particular tower/block in which the Flat is located with a grace period of six (6) months, on receipt of sanction of building plans/ revised plans and all other approvals subject to force majeure including any restrains/restrictions from any authorities, non-availability of building</i>

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		<i>materials or dispute with construction agency/workforce and circumstances beyond the control of Company and subject to timely payments by the Buyer(s) in the Said Complex....</i> (Emphasis Supplied) [Page 50 of complaint]
15.	Date of commencement of construction	13.08.2012 (Page 9 of reply)
16.	Due date of possession	13.02.2016 13.08.2015 + 6 months of grace period = 13.02.2016 (Calculated from date of commencement of construction)
17.	Total sale consideration	Rs. 44,90,625 /- (Page 26 of reply) Rs. 65,11,270 /- (Page 142 of reply)
18.	Amount paid by the complainants	Rs. 59,30,544 /- (Page 147 of reply and also as per Page 13 of complaint)
19.	Offer of possession	18.04.2022 (Page 50 of reply)

B. Facts of the complaint:

3. The complainants have made following submissions in the complaint:

- i. That during the year 2011, the respondent showcased and advertised the launch of a group housing colony namely "Shree Vardhman Flora". That original allottees namely, Sh. Naresh Kumar Garg, ("Original Allottee")

had been allotted a residential apartment in the project and were allotted a unit on 28.12.2011. The original allottee entered into a builder buyer agreement with the respondent on 06.02.2012 for the purchase of the flat. The basic price of the flat is Rs. 44,90,625/- and the original allottee had further agreed to pay preferential location charges @ Rs. 75 per sq. ft. for park facing and Rs. 75,000/- as club membership fee. The original allottees had also agreed to pay Rs. 2,00,000/- separately as car parking charges.

- ii. That as per clause 14(a) of the agreement, the construction of the flat was to be completed within a period of thirty-six months from the commencement of construction with a grace period of six months. The period of 36 months from the date of commencement of construction would end on 09.03.2015 and the grace period would end on 09.09.2015. They had already booked four flats in the year 2011 and 2012, and considering the fact that they have joint family, they wanted to buy another flat in the same project.
- iii. That they were informed that the original allottee had already made payments to the tune of Rs. 55,57,948/- to the respondent. The original allottee via agreement with the second allottee transferred the rights to the flat to the second allottee on 10.10.2018 and a further payment of Rs. 3,72,496/- was made to the respondent by the second allottee on 20.10.2018. That is to say, a total payment of Rs. 59,30,544/- has been received by the respondent. The complainants entered into an agreement to sell with the second allottee on 21.06.2019 for the purchase of the flat. That the complainants on 06.07.2019 in consensus with the second allottee purchased the rights to the flat from the second allottee by paying the consideration of Rs. 59,30,544/-. That it is imperative to mention that after purchasing the flat from the second allottee, the

complainants now stand into the shoes of the original allottee. Till date a sum of Rs. 59,30,544/- has been paid to the respondent, however, despite making almost the entire payment of the flat, the respondent has failed to deliver the flat to the complainants. That even today in 2021, i.e., after almost 9 years from the date of initial execution of the agreement with the original allottee, the respondent has failed to deliver the flat and offer legal possession to them. The project is incomplete so much so that at present there is no provision of proper water and sewerage and the water for daily use is being supplied through water tankers. Thus, the present complaint.

C. Relief sought by the complainants:

4. The complainants have sought following relief (as amended vide application dated 04.09.2023):
 - a) Direct the respondent to handover the physical, peaceful and legal possession of the flat to the complainants.
 - b) Direct the respondent to pay delay possession charges as per proviso to section 18(1) of the Act at prescribed rate of interest for every month of delay on the amount paid by the complainants.
 - c) Direct the respondent to supply to the complainants a revised account statement by adjusting the amount of 'delay possession charges' at the prescribed rate due towards the complainants.
 - d) Direct the respondent not to charge anything from the complainants which is illegal, arbitrary and which is not part of builder buyer agreement.
 - e) Pass any other order which this Hon'ble Authority deems fit and proper in the interest of justice.

D. Reply by respondent:

5. The respondent by way of written reply made the following submissions:
- i. The complaint filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 is not maintainable under the said provision. The respondent has not violated any of the provisions of the Act. The complainants have sought relief under section 18 of the Act, but the said section is not applicable in the facts of the present case and as such, the complaint deserves to be dismissed. It is submitted that the operation of section 18 is not retrospective in nature and the same cannot be applied to the transactions that were entered prior to the Act came into force. The parties while entering into the said transaction could not have possibly took into account the provisions of the Act and as such cannot be burdened with the obligations created therein. In the present case also, the agreement was executed much prior to the date when the Act came into force and as such section 18 of the Act cannot be made applicable to the present case. Any other interpretation of the Act will not only be against the settled principles of law as to retrospective operation of laws but will also lead to an anomalous situation and would render the very purpose of the Act nugatory. The complaint as such cannot be adjudicated under the provisions of the Act.
 - ii. It is submitted that the complainants are engaged in the business of real estate broking under the name and style of JMC Investments and Anchal Estate. They booked multiple flats in the project in question as well as in other projects of the builder for the purpose of selling those bookings further. Many bookings have already been sold by them.
 - iii. That the expression "agreement to sell" occurring in section 18(1)(a) of the Act covers within its folds only those agreements to sell that have

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been executed after the Act came into force and the flat buyers agreement executed in the present case is not covered under the said expression, the same having been executed prior to the date the Act came into force.

- iv. That the flat buyer agreement executed in the present case did not provide any definite date or time frame for handing over of possession of the apartment to the complainants and on this ground alone, the refund and/or compensation and/or interest cannot be sought under the Act. Clause 14 (a) of the flat buyer agreement merely provided a tentative/estimated period for completion of construction of the flat and filing of application for occupancy certificate with the concerned authority. After completion of construction, the respondent was to make an application for grant of occupation certificate and after obtaining the occupation certificate, the possession of the flat was to be handed over.
- v. The relief sought by the complainants is in direct conflict with the terms and conditions of the flat buyer agreement and on this ground alone, the complaint deserve to be dismissed. It is submitted that delivery of possession by a specified date was not essence of the agreement, and the complainants were aware that the delay in completion of construction beyond the tentative time given in the contract was possible. Even the flat buyer agreement contained provisions for grant of compensation in the event of delay. As such, it is submitted without prejudice that the alleged delay on part of respondent in delivery of possession, even if assumed to have occurred, cannot entitle the complainants to ignore the agreed contractual terms and to seek interest and/or compensation on any other basis.

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- vi. That the alleged delay in delivery of possession even if assumed to have occurred, cannot entitle the complainants to rescind the flat buyer agreement under the contractual terms or in law. The delivery of possession by a specified date was not essence of the flat buyer agreement and the complainants were aware that the delay in completion of construction beyond the tentative time given in the contract was possible.
- vii. That issue of grant of interest/compensation for loss occasioned due to breach committed by one party of the contract is squarely governed by the provisions of section 73 and 74 of the Contract Act, 1872 and no compensation can be granted de hors the said sections on any ground whatsoever. A combined reading of the said sections makes it amply clear that if the compensation is provided in the contract itself, then the party complaining the breach is entitled to recover from the defaulting party only a reasonable compensation not exceeding the compensation prescribed in the contract and that too upon proving the actual loss and injury due to such breach/default. On this ground, the compensation, if at all to be granted to the complainants, cannot exceed the compensation provided in the contract itself.
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 those undisputed documents and submissions made by the parties.
7. The complainants have filed the application for amendment of relief on 04.09.2023. However, no reply to the said application has been filed by the respondent so far. The counsel for the respondent has no objection to the above amendment of relief and the respondent is willing to handover

the possession of the unit as occupation certificate of the unit has already obtained from the competent authority on 02.02.2022. He further states that no further reply on behalf of the respondent is to be filed. In view of the respondent having no objection, the application moved by the complainants regarding amendment of relief stands allowed.

E. Jurisdiction of the authority:

8. The plea 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

9. 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)(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 complainants at a later stage.

F. Findings on the objections raised by the respondent:

F.I Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act.

12. The contention of the respondent is that authority is deprived of the jurisdiction to go into the interpretation or rights of the parties inter-se in accordance with the flat buyer agreement executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties.
13. 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. The 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) decided on 06.12.2017 which provides as under:

- "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."

14. Further, 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 observed- as under

"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."

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15. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have 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 entitlement of refund on account of complainants being investors.

16. The respondent has taken a stand that the complainants are the investors and not consumers, therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector.
17. The authority observed that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or

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regulations made thereunder. Upon careful perusal of all the terms and conditions of the documents placed on record, it is revealed that the complainants are buyer and they have paid total price of Rs. 59,30,544/- to the promoter towards purchase of an apartment in the project of the promoter. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

18. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the flat buyer agreement executed between promoter and complainants, it is crystal clear that the complainants are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in **appeal no. 000600000010557 titled as M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.** has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the complainants-allottees being investors are not entitled to protection of this Act also stands rejected.

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G. Findings on relief sought by the complainants:

G.I Possession and delay possession charges

19. 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. Section 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."

20. Clause 14.(a) of the flat buyer agreement provides for time period for handing over of possession and is reproduced below:

"14.(a) The Construction of the Flat is likely to be completed within a period of thirty six (36) months of commencement of construction of the particular tower/block in which the Flat is located with a grace period of six (6) months, on receipt of sanction of building plans/revised plans and all other approvals subject to force majeure including any restrains/restrictions from any authorities, non-availability of building materials or dispute with construction agency/workforce and circumstances beyond the control of Company and subject to timely payments by the Buyer(s) in the Said Complex..."

21. **Due date of possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within 36 months from the date of commencement of construction and it is further provided in agreement that promoter shall be entitled to a grace period of six months. The construction commenced on 13.08.2012 as the same has been admitted by the respondent at page 9 of the reply. Therefore, the due date of possession comes out to be 13.02.2016.

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22. **Entitlement of delay possession charges to the complainants being subsequent allottees w.e.f. due date of handing over possession-** The authority observes that the issue w.r.t. the entitlement of delay possession charges to the allottees being subsequent allottees is concerned, the authority has exhaustively decided the said issue in CR no. 4031 of 2019 titled as Varun Gupta Vs. Emaar MGF Land Ltd. wherein it has been held that where subsequent allottee had stepped into the shoes of original allottee after the due date of handing over possession and after the coming into force of the Act, the delayed possession charges shall be granted w.e.f. due date of handing over possession as per the flat buyer's agreement. Therefore, in furtherance of Varun Gupta Vs. Emaar MGF Land Ltd. (supra), the complainants are entitled to delay possession charges w.e.f. the due date of handing over possession as per the flat buyer's agreement i.e., 13.02.2016.

23. **Admissibility of delay possession charges at prescribed rate of interest:** The 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.

24. The legislature in its wisdom in the subordinate legislation under the 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., 17.10.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.
26. **Rate of interest to be paid by complainants/allottees for delay in making payments:** 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;"*
27. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.75% by the respondent/promoter

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

28. On consideration of the documents available on record and submissions made by the parties regarding contravention as per 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 14.(a) of the flat buyer's agreement executed between the parties on 06.02.2012, the possession of the said unit was to be delivered within a period of 36 months from the date of commencement of construction and it is further provided in agreement that promoter shall be entitled to a grace period of six months for applying and obtaining completion certificate/occupation certificate in respect of said floor. As far as grace period is concerned, the same is allowed being unqualified and unconditional. Therefore, the due date of handing over possession comes out to be 13.02.2016. In the present case, the complainants were offered possession by the respondent on 18.04.2022 after obtaining occupation certificate dated 02.02.2022 from the competent authority. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainants as per the terms and conditions of the flat buyer's agreement dated 06.02.2012 executed between the parties.

29. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 02.02.2022. However, the respondent offered the possession of the unit in question to the complainants only on 18.04.2022, so it can be said that the complainants

came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, they should be given 2 months' time from the date of offer of possession. These 2 months' of reasonable time is being given to the complainants keeping in mind that even after intimation of possession practically they have to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e. 13.02.2016 till the expiry of 2 months from the date of offer of possession (18.04.2022) which comes out to be 18.06.2022. Also, the complainants are directed to take possession of the unit in question within 2 months from the date of this order as per section 19(10) of the Act after clearing outstanding dues, if any.

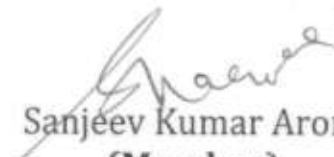
30. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainants are entitled to delay possession charges at prescribed rate of the interest @ 10.75 % p.a. w.e.f. 13.02.2016 till 18.06.2022 as per provisions of section 18(1) of the Act read with rule 15 of the rule.


H. Directions of the Authority:

31. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:



- i) The respondent /promoter is directed to pay delay possession charges to the complainants at prescribed rate of the interest @ 10.75 % p.a. w.e.f. 13.02.2016 till 18.06.2022 as per provisions of section 18(1) of the Act read with rule 15 of the rules.
 - ii) The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order as per rule 16(2) of the rules.
 - iii) The complainants are directed to take possession of the unit in question within 2 months from the date of this order as per section 19(10) of the Act after clearing outstanding dues, if any.
 - iv) The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement. The respondent is also 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.
32. Complaint stands disposed of.
33. File be consigned to the registry.


Sanjeev Kumar Arora
(Member)


Ashok Sangwan
(Member)


Vijay Kumar Goyal
(Member)

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 17.10.2023