

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

Complaint no. : 2345 of 2023
Date of first hearing: 18.10.2023
Date of decision : 01.03.2024

1. Devinder Kaur Dhody 2. Jagjyot Singh Dhody Address - Flat no. B-803, Chinar CGHS, Plot no. 3, Sector-18A, Dwarka, New Delhi-110078	Complainants
Versus	
M/s Anand Divine Developers Pvt. Ltd. Office: - 711/92, Deepali Nehru Place, New Delhi-110019	Respondent
CORAM:	
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Shri Sukhbir Yadav (Advocate)	Complainants
Shri Vinayak Gupta (Advocate)	Respondent

HARERA
GURUGRAM

ORDER

1. The present complaint dated 01.06.2023 has been filed by the complainants/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the act or the rules

and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

2. The particulars of unit details, 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	"Triumph" at sector 104, Gurgaon, Haryana
2.	Nature of the project	Group Housing Colony
3.	Project area	14.093 acres
4.	DTCP license no. and validity status	63 of 2011 dated 16.07.2011 valid till 15.07.2019 10 of 2012 dated 03.02.2012 valid till 02.02.2020
5.	Name of licensee	M/s Great Value HPL Infratech Private Limited M/s Kanha Infrastructure Private Limited
6.	RERA Registered/ not registered	Not Registered (Planning Branch is directed to initiate suo moto proceedings)
7.	Unit no.	5022, 2nd Floor, Tower 5 (as per BBA on page no. 25 of complaint)
8.	Unit area admeasuring	3327 sq. ft.

		(as per BBA on page no. 25 of complaint)
9.	Welcome Letter	22.04.2019 (page no. 22 of complaint)
10.	Date of builder buyer agreement	25.04.2019 (page no. 24 of complaint)
11.	Possession Clause	<p>18: Time of Handing Over Possession</p> <p>Barring unforeseen circumstances and Force Majeure events as stipulated hereunder, the possession of the said apartment is proposed to be offered by the Company by the Allottee on or before 30 June 2019, plus three months of grace period from the date of this agreement, subject always to timely payment of all charges including the Basic Sale Price* Stamp Duty, registration Fees and other Charges as stipulated herein or as may be demanded by the Company from time to time in this regard.</p>
12.	Due date of possession	30.09.2019
13.	Total sale consideration	Rs. 2,26,22,280/- (as per payment plan on page no. 44 of complaint)
14.	Amount paid by the complainants	Rs. 2,54,21,975/- [page no. 76 of complaint]
15.	Occupation certificate	29.05.2019 (page no. 45 of complaint)
16.	Offer of possession	30.05.2019

B. Facts of the complaint

3. That on 14.04.2019, the complainants Mrs. Devinder Kaur Dhody along with her son namely Mr. Jagiyot Singh Dhody booked a 4BHK residential apartment bearing no. 5022 on the 2nd floor tower no - 5 in "ATS Triumph" situated at sector - 104, Gurgaon, along with 3 car parking and paid the booking amount of Rs. 25,39,296/- through cheque. The said apartment was purchased under down payment plan for a total sale consideration of Rs. 2,26,22,280/- as per BBA.
4. That after a long follow-up, on 25.04.2019 a pre-printed, arbitrary builder buyer agreement was executed between the respondent and the complainants. As per clause no. 18 of the flat buyer agreement, the respondent has to hand over possession of the apartment on or before 30.06.2019 with an additional grace period of 3 months from the date of this agreement. Therefore, the due date of possession was 30.09.2019. At the time of booking the construction of the project/tower was complete, but the internal finishing work was in progress, moreover, the O.C. for the project was obtained by the respondent on 29.05.2019.
5. That on 30.05.2019, respondent issued a letter of offer of possession and registration of conveyance deed for apartment bearing no 5022 to the complainants and stating that " we are pleased to inform you that we have received the OC for ATS Triumph vide memo no -ZP-760/AD(RD)/20219/12813 and would like to offer you the possession of your aforesaid mentioned apartment in our project ATS Triumph Sector-104 Gurugram. You are requested to clear the entire outstanding dues of your apartment on or before June 2019. You can take over the possession

- of your apartment after completing possession formalities along with the payment of all outstanding dues attached with this letter". The said offer of possession contains a demand of Rs. 24,40,180/-.
6. That various emails from 11.05.2020 to 22.10.2022 were by the complainants to the respondent alleging that despite making the payment of Rs. 2,54,21,975/- as per the agreement i.e. more than 100% of the total sale consideration but still the respondent failed to handover the possession of the unit. Even after a lapse of three years from the due date of possession i.e., 30.06.2019 and offer of possession, neither possession of the apartment given nor the refund of the excess paid amount Rs. 2,57,457/- was given. Thereafter, the respondent sent an email dated 25.07.2022 and simply said that because of a shortage of manpower, they are unable to complete the project on time, which is a very lame excuse to be provided by the builder to a legitimate home buyer.
 7. That on 24.07.2021 the complainants sent a letter to the respondent and asked for the possession and registration of the conveyance deed, and raised various grievances.
 8. That various emails from 19.02.2023 to 09.05.2023 were sent by the complainants expressing disappointment of not getting possession even after paying the full consideration of the flat and doing a follow-up almost daily with the developers and their team either on the phone or by visiting the site or sending emails. The flat was booked for the personal use of the complainants and their families.
 9. That the complainants further sent an email dated 14.05.2023 asking for the account ledger from the respondent and the same was provided by the respondent through email dated 14.05.2023. That, as per the account statement a total payment of Rs. 2,54,21,975/- has been made against the total cost of Rs. 2,26,22,280/-.

10. That till today the respondent has not handed over the physical possession of the unit to the complainants and refrained the complainants from enjoying the benefit of their flat.
11. That the main grievance of the complainants in the present complaint is that despite the complainants having been paid more than 100% of the actual cost of the flat, the respondent is not handing over the physical possession of the flat and not paying the credit balance. Therefore, as per section 18 respondent is liable to pay interest for delay or failure in handing over of possession.

C. Relief sought by the complainants:

12. The complainants have sought following relief(s):
 - a) Direct the respondent to give the physical possession of the fully developed and constructed flat with all amenities.
 - b) Direct the respondent to pay delayed possession charges from the due date of possession till actual possession of the flat.
 - c) Direct the respondent to refund the excess amount paid by the complainants.
 - d) Direct the respondent to refrain from charging advance maintenance charges till the actual physical handover of the flat.
 - e) Direct the respondent to refrain from charging holding charges.

D. Reply by the respondent

13. That the complainants, after checking the veracity of the project namely, 'ATS Triumph', Sector 104, Gurugram had applied for allotment of a residential unit and agreed to be bound by the terms and conditions of the documents executed by the parties to the complaint. The complainants were allotted unit no. 5022, 2nd floor, tower no.5 admeasuring 2224 sq. ft. by the respondent.

14. That the buyer's agreement was executed on 25.04.2019. The Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as the "Act") was not in force when the agreement was entered into between the complainants and the respondent. The provisions of the Real Estate (Regulation and Development) Act, 2016 thus cannot be enforced retrospectively.
15. That as per clause 4 of the buyer's agreement, the consideration of Rs. 2,26,22,280/- was exclusive of other costs, charges including but not limited to EDC/IDC charges, maintenance deposit, power back up, electricity meter charges, stamp duty and registration charges, service tax, proportionate taxes and proportionate charges for provision of any other items/facilities. As per clause 12 of the buyer's agreement, timely payment by the complainants of the basic sale price and other charges as stipulated in the payment plan was to be the essence of the agreement.
16. That the possession of the unit was supposed to be offered to the complainants in accordance with the agreed terms and conditions of the buyer's agreement.
17. That the implementation of the said project was hampered due to non-payment of instalments by allottees on time and also due to the events and conditions which were beyond the control of the respondent and which have affected the materially affected the construction and progress of the project. Some of the Force Majeure events/conditions which were beyond the control of the respondent and affected the implementation of the project and are as under:
18. Inability to undertake the construction for approx. 7-8 months due to Central Government's Notification with regard to Demonetization: [Only happened second time in 71 years of independence hence beyond control and could not be foreseen]. The respondent had awarded the construction

of the project to one of the leading construction companies of India. The said contractor/ company could not implement the entire project for approx. 7-8 months w.e.f from 9-10 November 2016 the day when the Central Government issued notification with regard to demonetization. During this period, the contractor could not make payment to the labour in cash and as majority of casual labour force engaged in construction activities in India do not have bank accounts and are paid in cash on a daily basis. During demonetization the cash withdrawal limit for companies was capped at Rs. 24,000 per week initially whereas cash payments to labour on a site of the magnitude of the project in question are Rs. 3-4 lakhs per day and the work at site got almost halted for 7-8 months as bulk of the labour being unpaid went to their hometowns, which resulted into shortage of labour. Hence the implementation of the project in question got delayed due on account of issues faced by contractor due to the said notification of Central Government.

19. Further there are studies of Reserve Bank of India and independent studies undertaken by scholars of different institutes/universities and also newspaper reports of Reuters of the relevant period of 2016-17 on the said issue of impact of demonetization on real estate industry and construction labour.
20. Reserve Bank of India has published reports on impact of Demonetization.
In the report- Macroeconomic impact of demonetization, it has been observed and mentioned by Reserve Bank of India at page no. 10 and 42 of the said report that the construction industry was in negative during Q3 and Q4 of 2016-17 and started showing improvement only in April 2017.
21. Furthermore, there have been several studies on the said subject matter and all the studies record the conclusion that during the period of demonetization the migrant labour went to their native places due to

shortage of cash payments and construction and real estate industry suffered a lot and the pace of construction came to halt/ or became very slow due to non-availability of labour. Some newspaper/print media reports by Reuters etc. also reported the negative impact of demonetization on real estate and construction sector.

22. That in view of the above studies and reports, the said event of demonetization was beyond the control of the respondent, hence the time period for offer of possession should be deemed to be extended for 6 months on account of the above.
23. Orders Passed by National Green Tribunal: In last four successive years i.e. 2015-2016-2017-2018, Hon'ble National Green Tribunal has been passing orders to protect the environment of the country and especially the NCR region. The Hon'ble NGT had passed orders governing the entry and exit of vehicles in NCR region. Also the Hon'ble NGT has passed orders with regard to phasing out the 10 year old diesel vehicles from NCR. The pollution levels of NCR region have been quite high for couple of years at the time of change in weather in November every year. The Contractor of Respondent could not undertake construction for 3-4 months in compliance of the orders of Hon'ble National Green Tribunal. Due to following, there was a delay of 3-4 months as labour went back to their hometowns, which resulted in shortage of labour in April -May 2015, November- December 2016 and November- December 2017. The district administration issued the requisite directions in this regard.
24. In view of the above, construction work remained very badly affected for 6-12 months due to the above stated major events and conditions which were beyond the control of the respondent and the said period is also required to be added for calculating the delivery date of possession.

25. Non-Payment of Instalments by Allottees: Several other allottees were in default of the agreed payment plan, and the payment of construction linked instalments was delayed or not made resulting in badly impacting and delaying the implementation of the entire project.
26. Inclement Weather Conditions viz. Gurugram: Due to heavy rainfall in Gurugram in the year 2016 and unfavorable weather conditions, all the construction activities were badly affected as the whole town was waterlogged and gridlocked as a result of which the implementation of the project in question was delayed for many weeks. Even various institutions were ordered to be shut down/closed for many days during that year due to adverse/severe weather conditions. The said period is also required to be added to the timeline for offering possession by the respondent.
27. That the respondent after completing the construction of the unit in question, applied for the grant of the occupation certificate on 03.10.2016 and the same was granted by the concerned authorities on 28.05.2019. The respondent offered the possession of the unit to the complainants immediately vide letter dated 07.06.2019. The complainants were intimated to remit the outstanding amount on the failure of which the delay penalty amount would accrue.
28. That immediately after receiving occupation certificate on 29.05.2019, the answering respondent company submitted offer of possession of the unit in question to the complainants vide communication dated 30.05.2019 subject to clearing outstanding payable amount.
29. That the complainants have already been offered possession by the respondent company vide communication dated 30.05.2019, hence how can the complainants demand for interest on delayed possession? Complainants are now deliberately trying to unnecessarily harass, pressurizing the respondent to submit to the unreasonable demands.

30. The complainants were not coming forward to take the possession of the unit after remitting the due amount. The complainants are bound to take the physical possession of the unit after making payment towards the due amount along with interest and holding charges.
31. That the complainants are still bound to pay outstanding amount against the booked unit to the respondent company.
32. That the complainants are a real estate investor who has invested his money in the project of the respondent with an intention to make profit in a short span of time. However, his calculations have gone wrong on account of slump in the real estate market and they are now deliberately trying to unnecessarily harass, pressurize and blackmail the respondent to submit to his unreasonable demands.
33. That despite the abovementioned illegal conduct of the complainants the respondent company submits that the same is ready and willing to execute conveyance deed with the complainants.
34. Copies of all the relevant documents have been duly 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 parties.

E. Jurisdiction of the authority

35. 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

36. 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

37. The 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 promoter, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

38. 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 delay due to force majeure events.

39. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as various

orders passed by Hon'ble Supreme Court and other Authorities to curb the pollution in NCR and outbreak of Covid-19 pandemic. It further requested that the said period be excluded while calculating due date for handing over of possession. The Authority observes that the respondent has placed reliance on orders dated 01.11.2019 and 04.11.2019 of Environment Pollution (Prevention & Control) Authority and Hon'ble Supreme Court of India to curb the pollution in the NCR. Further, in the instant complaint, as per clause 18 of agreement dated 25.04.2019 executed between the parties, the due date of handing over of possession was provided as 30.09.2019. Grace period of 3 months is allowed being unconditional. The respondent-builder in the instant matter has already obtained the occupation certificate of the complainants unit from the competent authority on 29.05.2019. Hence, the plea regarding admissibility of any further grace period on account of aforesaid circumstances is untenable and does not require any further explanation.

F. II Objection regarding the delay in payment.

40. Another objection raised by the respondent regarding delay in payment by many allottees is totally invalid because the allottees have already paid the amount of Rs.2,54,21,975/- against the total sale consideration of Rs.2,26,22,280/- to the respondent. The complainants have already paid more than the total consideration. The fact cannot be ignored that there might be certain group of allottees that defaulted in making payments but upon perusal of documents on record it is observed that no default has been made by the complainants in the instant case. Section 19(6) of Act lays down an obligation on the allottee(s) to make timely payments towards consideration of allotted unit. As per documents available on record, the complainants have paid all the installments as per payment plan duly agreed upon by the complainants while signing the agreement

and the same is not disputed by the respondent. The respondent has not gone through the facts of the complaint carefully. Moreover, the stake of all the allottees cannot put on stake on account of non-payment of due installments by a group of allottees. Hence, the plea advanced by the respondent is rejected.

F.III. Objection regarding entitlement of DPC on ground of complainants being investor.

41. The respondent has taken a stand that the complainants are the investor and not consumers and therefore, she is 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. The authority observes 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 the 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 regulations made thereunder. Upon careful perusal of all the terms and conditions of the apartment buyer's agreement, it is revealed that the complainants are buyer and they have paid total price of Rs. 2,54,21,975/- to the promoter towards purchase of an apartment in its project. 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;"

42. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment buyer's agreement executed between promoter and complainants, it is crystal clear that they 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". Thus, the contention of promoter that the allottee being an investor is not entitled to protection of this Act also stands rejected.

G. Findings on the relief sought by the complainants.

Relief sought by the complainants: The complainants had sought following relief(s):

- i. **Direct the respondent to give the physical possession of the fully developed and constructed flat with all amenities.**

43. As per documents available on record, the respondent has offered the possession of the allotted unit on 30.05.2019 after obtaining occupation certificate from competent authority on 28.05.2019. The complainants took a plea that offer of possession was made in 2019, but the respondent has failed to handover the physical possession of the allotted unit. They wrote various reminders as detailed above in the table seeking handover of physical possession of the allotted unit.

44. In view of the above, the respondent/promoter is directed to complete the work of the subject unit in all aspect and handover physical possession of

the unit to the complainants within a period of one month from the date of this order.

ii. Direct the respondent to pay delayed possession charges from the due date of possession till actual possession of the flat.

45. 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."*

46. As per clause 18 of the buyer's agreement dated 25.04.2019, the possession of the subject unit was to be handed over by 30.09.2019. Clause 18 of the buyer's agreement provides for handover of possession and is reproduced below:

18. Time of handing over possession

*"Barring unforeseen circumstances and Force Majeure events as stipulated hereunder, the possession of the said apartment is proposed to be offered by the Company by the Allottee on or before **30 June 2019, plus three months of grace period from the date of this agreement**, subject always to timely payment of all charges including the Basic Sale Price* Stamp Duty, registration Fees and other Charges as stipulated herein or as may be demanded by the Company from time to time in this regard."*

47. At the inception, it is relevant to comment on the pre-set possession clause of the buyer's agreement wherein the possession has been subjected to numerous terms and conditions and force majeure circumstances. The drafting of this clause is not only vague but so heavily loaded in favour of the promoters that even a single default by the allottee in fulfilling obligations, 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.

48. **Admissibility of grace period:** The respondent/promoter has proposed to complete the construction of the said building/unit by 30.06.2019. In the present case, the promoter is seeking 3 months' time as grace period. The said period of 3 months is allowed to the promoter being unconditional. Therefore, the due date of possession comes out to be 30.09.2019.
49. **Validity of offer of possession:** - In the present complaint, the complainants have paid an amount of Rs. 2,54,21,975/- against the total sale consideration of Rs. 2,26,22,280/- and the respondent company has offered the possession of the allotted unit on 30.05.2019 after obtaining the occupation certificate from the competent authority. Thereafter the complainants have send an email to the respondent company on 11.05.2020 to 22.10.2022 respectively with regard to handing over the possession of the allotted unit. The respondent has replied vide mail on 25.07.2022, and the relevant portion of the said mail is reproduce as under for ready reference: -

*Dear Sir,
Greetings!!*

With reference to our telecom held, this is to inform you that we have prioritized your unit for the readiness. But due to material and manpower constrains prevailing at the site was the reason for the

delay in handover the remaining work in your unit, otherwise we would have handed over the flat as per the schedule.

Kindly bear with us for some time as we are working on the same.

As assured below we will put our best efforts forward to deliver your apartment at the earliest, given the smooth supply of resources (material and manpower).

Should you need any further clarifications, feel free to get in touch with us at the below mentioned number.

Thanks & Regards

Divya Negi

Sr. Manager-Customer Relations Department

50. Thereafter, the complainants again approached the respondent for handing over of possession and the respondent has replied vide email dated 10.05.2023. The relevant portion of the said mail is reproduce as under for ready reference: -

Dear Sir/Mam,

This is with reference to your unit bearing no. 5022 in our project ATS Triumph. We, hereby confirm you that the final finishing of your unit will be start from this month end (i.e May 2023). And we will complete the final finishing of the said apartment within 90 days.

Thanking You

For Anand Divine Developers Private Limited

51. This implies that the development work is still pending, and because of aforesaid reasons, the respondent was not in position to handover the physical possession of the said unit to the complainants. It is well settled that for constituting a valid offer of possession, the project in which the allotted unit is situated should be complete in all aspect and must be in a habitable condition, so that an allottee may be able to occupy the same. In view of the above, the said offer of possession dated 30.05.2019 cannot be considered as valid offer of possession in the eyes of law. As mere offer of possession of unit has no meaning and serves no purpose if actual possession of the unit cannot be handed over in view of own admission

made by the respondent vide above said emails dated 25.07.2022 and 10.05.2023 respectively.

52. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the prescribed rate of interest on the amount already paid by them. However, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, they 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.

53. 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.
54. 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., 01.03.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
55. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the

promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, 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—

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 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;”

56. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.85% by the respondents/promoters which the same is as is being granted to the complainants in case of delayed possession charges.
57. 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 18 of the buyer's agreement executed between the parties on 25.04.2019, and the due date of possession was specifically mentioned in the apartment buyer agreement as 30.09.2019. Occupation certificate was granted by the concerned authority on 29.05.2019 and thereafter, the possession of the subject flat was offered to the complainants on 30.05.2019. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to handover the physical possession of the subject flat and it is failure on part of the promoter to fulfil its

- obligations and responsibilities as per the buyer's agreement dated 25.04.2019.
58. 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 29.05.2019. The respondent offered the possession of the unit in question to the complainants only on 30.05.2019, 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, the complainants 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 she has 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. In the present complaint the complainants has send an email to the respondent company on 11.05.2020 to 22.10.2022 respectively with regard to handing over the possession of the allotted unit. The respondent has replied on the vide mail on 25.07.2022 and stated that they are working on the same. Thereafter the complainants again approached the respondent for handing over of physical possession and the respondent replied vide email dated 10.05.2023 and stated that they will complete the final finishing of the said apartment within 90 days. But till date the respondent has not handed over the physical possession of the unit.
59. 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 delayed possession

charges at prescribed rate of interest i.e., 10.85 % p.a. w.e.f. 30.09.2019 till the handing over of possession of the allotted unit after completion of development work as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act.

iii. Direct the respondent to refund the excess amount paid by the complainants.

60. The complainants have not pressed this relief during the course of arguments. However, necessary directions in this regard are given in direction of authority Part H.

iv. Direct the respondent to refrain from charging advance maintenance charges till the actual physical handover of the flat.

61. The respondent shall not demand the advance maintenance charges for more than one (1) 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 one year.

v. Direct the respondent to refrain from charging holding charges

62. The respondent is debarred from claiming holding charges from the complainants /allottees at any point of time even after being part of apartment buyer's agreement as per law settled by hon'ble Supreme Court in civil appeal no. 3864-3899/2020 decided on 14.12.2020.

H. Directions of the Authority

63. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations



cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent is directed to pay delayed possession charges at the prescribed rate of interest i.e., 10.85% p.a. for every month of delay on the amount paid by the complainants from due date of possession i.e. 30.09.2019 till the handing over of possession of the allotted unit after completion of the development work as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act.
- ii. The arrears of such interest accrued from 30.09.2019 till the date of order by the authority shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottee before 10th of the subsequent month as per rule 16(2) of the rules.
- iii. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- iv. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period within 30 days and if some amount remains to be payable by respondent to complainants, respondent should pay the same in 30 days of this order.
- v. The respondent shall handover the possession in next 30 days to the complainants/allottees and to get the conveyance deed of the allotted unit executed in the favour of complainants in term of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable.



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- vi. The respondent is also not entitled to claim holding charges from the complainants at any point of time even after being part of the builder buyer's agreement as per law settled by hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.
64. Complaint stands disposed of.
65. File be consigned to registry.


(Sanjeev Kumar Arora)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 01.03.2024

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