

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

Complaint no. : 6575 of 2022
Date of complaint : 14.10.2022
Date of order : 06.03.2024

1. Dilipdev Jayadevan,
2. Kapildev Jayadevan,
Both R/o: - D-14/18, GF, Platinum Greens,
Ardee City, Sector-52, Gurgaon-122003.

Complainants

Versus

M/s Raheja Developers Limited.
Regd. Office at: - W4D, 204/5, Keshav Kunj,
Cariappa Marg, Western Avenue, Sainik Farms,
New Delhi-110062.

Respondent

CORAM:

Ashok Sangwan

Member

APPEARANCE:

Siddharth Karnawat (Advocate)
Garvit Gupta (Advocate)

Complainants
Respondent

ORDER

1. This complaint has been filed by the complainant/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 allottees as per the agreement for sale executed *inter se*.



A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the 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	"Raheja Trinity", Sector 84, Gurugram,
2.	Project area	2.281 acres
3.	Nature of the project	Commercial colony
4.	DTCP license no. and validity status	26 of 2013 dated 17.05.2013 valid up to 16.05.2019
5.	Name of licensee	Sh. Bhoop Singh and Others
6.	RERA Registered/ not registered	Registered vide no. 24 of 2017 dated 25.07.2017
7.	RERA registration valid up to	25.01.2023 For a period commencing from 25.07.2017 to 5 years from the date revised Environment Clearance + 6 months grace period in view of Covid- 19
8.	Date of approval of building plans	31.10.2013 [As per information obtained from planning branch]
9.	Date of environment clearance	17.10.2014 [As per information obtained from planning branch]
10.	Shop no.	43, Ground floor (Page 34 of the complaint)
11.	Unit area admeasuring	512.64 sq. ft. (gross area) (Page no. 34 of the complaint)
12.	Date of execution of agreement to sell	17.09.2014 (Page no. 33 of the complaint)
13.	Allotment letter	17.09.2014 (Page no. 31 of the complaint)
14.	Possession clause	4.2 Possession Time and Compensation

That the Seller shall sincerely endeavor to give possession of the shop/commercial space to the purchaser **within thirty-six (36) months from the date of the execution of the Agreement to sell or sanction of building plans and environment clearance whichever is later** and after providing of necessary infrastructure specially road sewer & water in the sector by the Government, but subject to force majeure circumstances, reasons conditions or any Government/Regulatory authority's action, inaction or omission and reasons beyond the control of the Seller. The seller on obtaining certificate for occupation and use by the Competent Authorities shall hand over the shop/ commercial space to the Purchaser for this occupation and use and subject to the Purchaser having complied with all the terms and conditions of this application form & Agreement To sell. In the event of his failure to take over possession and /or occupy and use the shop/commercial space provisionally and/or finally allotted within 30 days from the date of intimation in writing by the seller, then the same shall lie at his/her risk and cost and the Purchaser shall be liable to compensation @ Rs.7/- per sq. ft. of the super area per month as holding charges for the entire period of such delay....."

		(Page no. 44 of the complaint)
15.	Due date of possession	17.10.2017 [Note: - 36 months from date of environment clearance i.e., 17.10.2014]
16.	Total sale consideration	Rs.73,53,779/- (As per customer ledger on page no. 75 of complaint)
17.	Amount paid by the complainant	Rs.60,29,964.02/- (As per customer ledger on page no. 77 of complaint)
18.	Occupation certificate /Completion certificate	Not received
19.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That on 02.11.2013 the complainants booked a unit in the project of respondent named "Raheja Trinity" at Sector 84, Gurgaon by paying a booking amount of Rs.5,00,000/- vide cheque bearing no. 788622 dated 06.09.2013.
- II. That the complainants continuously followed up with the respondent through telephonic calls and office visits, for the allotment of the unit and execution of the agreement to sell since they had booked the unit on 02.11.2013 but the same were of no avail because the respondent delayed it under one pretext or another. However, only after collecting a substantial amount of Rs.21,13,742/- in lieu of the consideration of the unit, the respondent issued an allotment letter and agreement to sell dated 17.09.2014 to the complainants vide which a unit bearing no. 048 on the ground floor, having a super area of 512.64 sq. ft. was allotted to them for a total sale consideration of



Rs.62,58,207/-.

- III. That as per clause 3.7 of the agreement, for each delayed payment by the complainants, the respondent was entitled to charge interest at an enormous rate of 18% per annum from the due date of payment of installment on monthly compounded basis, whereas, as per clause 4.2 of the agreement, in the event the respondent was unable to offer possession within the time promised, it was liable to compensate the complainants merely at the rate of Rs.7/- per sq. ft. of the gross saleable area per month for the first year and @Rs. 10/- per month for the subsequent period of such delay till the date of receipt of occupancy certificate. However, the complainants could not negotiate or dispute any of them since any dispute or disagreement thereof would have led to cancellation of the unit and forfeiture of the earnest money i.e. 10% of the basic selling price as per clause 3.6 of the agreement.
- IV. That as per clause 4.2 of the agreement, the possession of the unit was promised to be offered within 36 months from the date of the execution of this agreement to sell or sanction of building plans and environment clearance whichever is later and after providing of necessary infrastructure in the sector by the government. Since the environment clearance was received on 17.10.2014, the possession of the unit was promised to be offered in 17.10.2017.
- V. That the complainants complied with each payment demand as was raised by the respondent. The complainants sought regular updates from the respondent through meetings and telephonic conversations, with respect to the progress of construction work of the project and were assured that the same was progressing as per schedule and that possession of the unit would be offered within the time promised. By



February 2021, the respondent had collected an amount of Rs.60,29,964/- against the unit from the complainants. However, the respondent failed to offer possession of the unit to the complainants within the time promised i.e. by 17.10.2017 and even till date. The complainants relentlessly chased the respondent seeking a tentative date by when possession of the unit would be offered but the same was of no avail.

- VI. That as per Section 18 of the Act the respondent was liable to pay interest to the complainants at a prescribed rate of interest which as per Rule 15 of the Rules is prescribed as the highest marginal cost of lending rate plus two percent.
- VII. That the respondent has failed to offer possession of the unit to the complainants within the time promised. The said delay continues since legal possession of the unit has not been offered to the complainants even after the expiry of more than 5 (five) years from the promised date of possession, the same has not been offered to the complainants till date.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- I. Direct the respondent to hand over the possession of the unit and to pay interest on the paid-up amount at prescribed rate of interest.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent has contested the complaint by filing reply dated 17.10.2023 on the following grounds: -



- i. That the complaint is not maintainable for the reason that the agreement contains an arbitration clause i.e. clause 62 of the application form which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute.
- ii. That the complainants, after checking the veracity of the project namely, 'Raheja's Trinity', Sector 84, Gurgaon had applied for allotment of a commercial shop vide his booking application form and agreed to be bound by the terms and conditions of the booking application form.
- iii. That the complainants are real estate investor who had booked the commercial unit in question with a view to earn quick profit in a short period. However, it appears that their calculations have gone wrong on account of severe slump in the real estate market and the complainants are now raising untenable and illegal pleas on highly flimsy and baseless grounds.
- iv. That based on the application for booking, the respondent allotted to the complainants commercial shop bearing no. 048. The payment plan opted by the complainants with the respondent was the down payment plan wherein the majority of the payment towards the total sale consideration was made by the complainants. However, they are still liable to make payment towards the registration charges, stamp duty, service tax and other charges at the applicable stage and the same is known to them complainant from the very inception.
- v. That the complainants were continuous defaulters from the very inception and despite being aware that timely payment was the essence of the allotment, they failed to remit the same on time.
- vi. That despite the respondent fulfilling all its obligations as per the provisions laid down by law, the government agencies have failed to



- fully provide essential basic infrastructure facilities such as roads, sewerage line, water and electricity supply in the sector where the said project is being developed. Therefore, the respondent cannot be held liable on account of non-performance by the concerned governmental authorities. The respondent company has even paid all the requisite amounts including the External Development Charges (EDC) to the concerned authorities.
- vii. That on account of certain conditions which were beyond the reasonable control of the respondent, the construction of the project in question has not been completed and the respondent cannot be held liable for the same in accordance with clause 34 read with clause 52 of the application form.
- viii. That the present complaint has been filed with malafide motives and the same is liable to be dismissed with heavy costs payable to the respondent.
7. 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

8. 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) 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.

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 the complainants being investor.

12. The respondent has taken a stand that the complainants are investors and not consumer, 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. The authority observes that the respondent is correct





in stating that the Act is enacted to protect the interest of consumer of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims and 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 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 buyers, and they have paid a total price of Rs.60,29,964.02/- to the promoter towards purchase of an unit 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;"

13. 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 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 allottees being investor are not entitled to protection of this Act also stands rejected.

F. II Objection regarding agreements contains an arbitration clause which refers to the dispute resolution system mentioned in agreement.

14. The respondent submitted that the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute and the same is reproduced below for the ready reference:

15.2 Arbitration

"All or any disputes arising out of or touching upon or relating to the terms of this Agreement to Sell / Application Form/ Conveyance Deed including the interpretation and validity of the terms hereof and the respective rights and obligations of the parties, which cannot be amicably settled, despite best efforts, shall be settled through arbitration. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory amendments / modifications thereof for the time being in force. The parties have agreed that the arbitration proceedings shall be held at the office of the Seller in New Delhi by a sole arbitrator who shall be appointed by mutual consent of the parties and whose decision shall be final and binding on the parties. The cost of arbitration proceedings shall be borne by the parties equally. In case of any proceeding, reference etc. touching upon the arbitration subject including any award, the territorial jurisdiction of the courts shall be Gurgaon, Haryana as well as of Punjab and Haryana High Court at Chandigarh."

15. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall



be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in ***National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506***, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause. Therefore, by applying same analogy the presence of arbitration clause could not be construed to take away the jurisdiction of the authority.

16. Further, in ***Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017***, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainants and builders could not circumscribe the jurisdiction of a consumer. The relevant paras are reproduced below:

"49. Support to the above view is also lent by Section 79 of the recently enacted Real Estate (Regulation and Development) Act, 2016 (for short "the Real Estate Act"). Section 79 of the said Act reads as follows: -

"79. Bar of jurisdiction - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

It can thus, be seen that the said provision expressly ousts the jurisdiction of the Civil Court in respect of any matter which the Real Estate Regulatory Authority, established under Sub-section (1) of Section 20 or the Adjudicating Officer, appointed under Sub-section (1) of Section 71 or the Real Estate Appellant Tribunal established under Section 43 of the Real Estate Act, is empowered to determine. Hence, in view of the binding dictum of the Hon'ble Supreme Court in A. Ayyaswamy (supra), the matters/disputes, which the Authorities under the Real Estate Act are



empowered to decide, are non-arbitrable, notwithstanding an Arbitration Agreement between the parties to such matters, which, to a large extent, are similar to the disputes falling for resolution under the Consumer Act.

...

56. Consequently, we unhesitatingly reject the arguments on behalf of the Builder and hold that an Arbitration Clause in the afore-stated kind of Agreements between the Complainants and the Builder cannot circumscribe the jurisdiction of a Consumer Fora, notwithstanding the amendments made to Section 8 of the Arbitration Act."

17. While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the builder buyer agreement, the hon'ble Supreme Court **in case titled as M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017 decided on 10.12.2018** has upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view. The relevant paras are of the judgement passed by the Supreme Court is reproduced below:

"25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being a special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength an arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."

18. Therefore, in view of the above judgements and considering the provision of the Act, the authority is of the view that complainants are



well within their right to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and RERA Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily.

F.III Objections regarding force majeure.

19. The respondent has contended that the project was delayed because of the 'force majeure' situations like delay on part of government authorities in granting approvals etc. which were beyond the control of respondent. However, all the pleas advanced in this regard are devoid of merits. First of all, the possession of the unit in question was to be offered by 17.10.2017. Further, the time taken in getting governmental approvals/clearances cannot be attributed as reason for delay in project. Moreover, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. Thus, the promoter-respondent cannot be given any leniency on based of aforesaid reasons and it is a well settled principle that a person cannot take benefit of his own wrong and the objection of the respondent that the project was delayed due to circumstances being force majeure stands rejected.

G. Findings on the relief sought by the complainant.

- G. I Direct the respondent to hand over the possession of the subject unit and to pay interest on the paid-up amount at prescribed rate of interest.**
20. 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

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

(Emphasis supplied)

21. Clause 4.2 of the agreement to sell dated 17.09.2024 (in short, agreement) provides for handing over of possession and is reproduced below:

4.2 Possession Time and Compensation

"That the Seller shall sincerely endeavor to give possession of the Shop/Commercial Space to the Purchaser within thirty six (36) months from the date of the execution of this Agreement to Sell or Sanction of Building Plans and Environment Clearance whichever is later and after providing of necessary infrastructure in the sector by the Government, but subject to force majeure, circumstances, reasons conditions or any Government/Regulatory authority's action, inaction or omission and reasons beyond the control of the Seller. The Seller on obtaining certificate for occupation and use by the Competent Authorities shall hand over the Shop / Commercial Space to the Purchaser for his occupation and use and subject to the Purchaser having complied with all the terms and conditions of this Agreement to Sell. In the event of his failure to take over possession and/or occupy and use the Shop/Commercial Space provisionally and / or finally allotted within thirty (30) days from the date of intimation in writing by the Seller, then the same shall lie at his risk and cost and the Purchaser shall be liable to pay compensation @ Rs. 5/- per sq. ft. of the gross saleable area per month as holding charges for the entire period of such delay for the first year and Rs. 7/- per sq. ft. per month subsequently."

22. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to providing necessary infrastructure specially road, sewer & water in the sector by the government, but subject to force majeure conditions or any government/regulatory authority's action, inaction or omission and reason beyond the control of the seller. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottees that even a single default by the allottees in making payment as per the



plan 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 a clause in the agreement to sell by the promoter is just to evade the liability towards the timely delivery of subject unit and to deprive the allottees of their right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such a mischievous clause in the agreement and the allottees are left with no option but to sign on the dotted lines.

23. **Due date of handing over possession:** As per clause 4.2 of the agreement to sell, the possession of the allotted unit was supposed to be offered within a stipulated timeframe of 36 months from the date of execution of the agreement or sanction of building plans and environment clearance, whichever is later. The buyer's agreement was executed between the parties on 17.09.2014, whereas the building plans were approved on 31.10.2013 and environmental clearance was granted by the competent authority on 17.10.2014. Thus, the due date for handing over of possession comes out to be 17.10.2017.
24. **Admissibility of delay possession charges at prescribed rate of interest:** 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.

25. 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.
26. 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., 06.03.2024 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
27. The definition of term 'interest' as defined under section 2(z a) 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;'*

28. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85% by the respondent/promoter which is the same as is being granted to the complainants in case of delayed possession charges.

29. 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. The possession of the unit was to be delivered by 17.10.2017. However, the respondent has failed to handover possession of the subject unit/shop till date of this order. 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. Further, no CC/part CC has been granted to the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottee.
30. 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/completion certificate is yet not obtained. The respondent shall offer the possession of the unit in question to the complainants after obtaining CC/part CC and so, it can be said that the complainants shall come to know about the completion certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainants should be given two months time from the date of offer of possession. This two months of reasonable time is being given to the complainants keeping in mind that even after intimation of possession practically one 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. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e.,

17.10.2017 till the expiry of 2 months from the date of offer of possession after obtaining CC/part CC from the competent authority or actual handing over of possession and whichever is earlier.

31. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the agreement dated 17.09.2014 to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 17.10.2017 till offer of possession plus 2 months after obtaining CC/part CC from the competent authority or actual handing over of possession whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

H. Directions of the authority

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

- i. The respondent-promoter is directed to pay interest to the complainants against the paid-up amount of Rs.60,29,964.02/- at the prescribed rate of 10.85% p.a. for every month of delay from the due date of possession i.e., 17.10.2017 till offer of possession plus 2 months after obtaining CC/part CC from the competent authority or actual handing over of possession, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.



- ii. The arrears of such interest accrued from 17.10.2017 till the date of order by the authority shall be paid by the promoter to the allottees 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 respondent/promoter is directed to handover possession of the unit in question and execute conveyance deed in favour of the complainants on payment of stamp duty and registration charges within three months after obtaining completion/part completion certificate from the competent authority.
 - iv. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - v. The respondent-promoter shall not charge anything from the complainants which is not the part of the agreement to sale.
 - vi. 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 allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
33. Complaint stands disposed of.
34. File be consigned to registry.

(Ashok Sangwan)
Member