

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

Complaint no.: 5768 of 2022
First Date of Hearing: 04.11.2022
Order reserved on: 15.02.2024
Order Pronounced on: 21.03.2024

1. Sh. Babu Lal Gupta
2. Smt. Madhu Gupta

Both R/o: - House No. 268/14, Jacabpura,
Near Krishna Mandir, Gurugram, Haryana-
122003

Complainants

Versus

M/s New Look Builders and Developers Pvt.
Ltd. (Earlier known as M/s Ansal Phalak
Infrastructure Pvt. Ltd.)

Regd. Office at: 115, Ansal Bhawan 16,
Kasturba Gandhi Marg, New Delhi-110001

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Sh. Kanish Bangia (Advocate)
Sh. Dhruv Gupta (Advocate)

Complainants
Respondent

ORDER

1. The present complaint dated 24.08.2022 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,

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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.No.	Particulars	Details
1.	Name of the project	"Esencia", Sector 67, Gurugram
2.	Nature of the project	Residential Plotted Colony
3.	DTCP license no. and validity status	21 of 2011 dated 24.03.2011 valid up to 23.03.2019
4.	Name of licensee	Bisram S/o Shera and 20 others
5.	RERA Registered/ not registered	Not registered
6.	Unit no.	E2179, Ground Floor, Sector/block E (As per page no. 31 of the complaint)
7.	Unit area admeasuring	2491 sq. ft. (As per page no. 31 of the complaint)
8.	Allotment letter	14.05.2011 (As per page no. 26 of the complaint)
9.	Date of Execution of FBA	23.08.2011 (As per page no. 28 of the complaint)
10.	Possession clause	5.1 <i>Subject to clause 5.2 and further subject to all the buyers of the dwelling units in the sovereign floors, Esencia, making timely payment, the company shall endeavor to complete the development of residential colony and the dwelling unit as far as possible within 30(thirty) months with an extended period of 6</i>

		<i>months from the date of execution of this agreement or the date of sanction of the building plan whichever falls later.</i> (As per page no. 40 of the complaint)
11.	Due date of possession	31.12.2015 (Calculated as 30 months from date of approval of building plans i.e., 31.12.2012 plus grace period of 6 months) (Inadvertently mentioned as 23.08.2014 in proceedings of the day dated 15.02.2024)
12.	Total sale consideration	₹ 1,29,48,159/- (As per page no. 60 of the complaint)
13.	Amount paid by the complainant	₹ 1,07,69,140/- (As per page no. 60 of the complaint)
14.	Offer of possession for fit outs	05.06.2016 (As per page no. 46 of the reply)
15.	Occupation certificate /Completion certificate	04.01.2017 (As per page no. 52 of the reply)

B. Facts of the complaint:

3. The complainants has made the following submissions: -

- I. That somewhere around 2011, the respondent advertised about the new residential project namely "Sovereign Floors at Alba, Esencia" located in Sector-67, Gurugram. The respondent painted a rosy picture of the project in their advertisement making tall claims and representing that the project aims at providing luxury residential apartments.
- II. That believing the representations of the respondent and on the lookout for an adobe for themselves and their family, in, 2011, the complainants booked an apartment in the project of the respondent





- by paying a booking amount of Rs.9,02,660/- vide cheque dated 03.05.2011 towards the booking of the said unit to the respondent.
- III. That thereafter, the respondent has issued an allotment letter dated 14.05.2011 allotting unit bearing no. E2179 GF located at Ground Floor (with basement) having approximate area of 2491 sq. ft. in the said project.
- IV. That the complainants after making the payment of Rs.18,63,556/- towards the total sale consideration of Rs.1,07,69,140/- as and when demanded by the respondent for the unit in the said project. Subsequently, the complainants requested the respondent to execute the flat buyer's agreement. However, on the requests of the complainants on 23.08.2011, flat buyer's agreement has been executed between the complainants and the respondent.
- V. That the complainants have paid a total sum of Rs.1,07,69,140/- towards the aforesaid residential unit in the project from 2011 till date as and when demanded by the respondent as against a total sale consideration.
- VI. That as per clause 5.1 of the flat buyer's agreement dated 23.08.2011, the respondent had undertaken to complete the project and handover possession within a period of 30 months with a grace period of 6 months from the date of execution of the flat buyer's agreement, i.e. by 23.08.2014 but the respondent clearly failed to do the same as the construction of the project in question was not even started till 23.08.2014.
- VII. That when the respondent failed in handing over the possession on the due date, i.e. 23.08.2014, the complainants visited the site and were stunned to see that the project was nowhere nearing

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completion. Then, thereafter the complainants rushed to the officials of the respondent to seek justification for the possession as the respondent undertook to handover the unit with 30 months with a grace period of 6 months from the date of execution of the flat buyer's agreement, i.e., by 23.08.2014; but the officials of the respondent became deaf ear and not given any concrete reply to justify the cause of delay. However, the respondent miserably failed in handing over possession of the unit in question till said due date and even after that.

- VIII. That the complainants had asked the respondent to clarify about the interest being charged by the respondent on the delayed payment upon which the respondent replied that the interest is being charged on the basis of the flat buyer's agreement. It is pertinent to mention that the respondent is charging interest on the account of delayed payment of the instalment similarly the respondent should also be held liable to pay interest on account of the delayed possession. Throughout this period the complainants along with the other apartment owners regularly and repeatedly followed up with the representatives of the respondent and enquired about the status of the project. However, the representatives of the respondent on every occasion made false assurances that the possession of the unit would be delivered as per schedule and kept on prolonging the matter unjustifiably without any cogent reason.
- IX. That the main grievance of the complainants in the present complaint is that in spite of complainants having paid the entire sale consideration as demanded by the respondent, the respondent failed to deliver the possession of unit on time. The project was

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- always running behind the schedule and the respondent had been continuously demanding payments by misleading the apartment owners regarding the actual progress at the project site.
- X. That the complainants had purchased the unit with intention that after purchase, their family will live in their own flat. That it was promised by the respondent at the time of receiving payment for the unit that the possession of fully constructed unit along with the likes of basement and surface parking, landscaped lawns, club/ pool, school, EWS etc. as shown in brochure at the time of sale, would be handed over to the complainants as soon as construction work is complete i.e., by 23.08.2014 but there was an inordinate delay in handing over the possession of the unit. This caused great mental agony and financial hardship to the complainants.
- XI. That the complainants in order to purchase the said unit also took a loan of Rs.41,51,151/- from DHFL and upon the said amount also paying a monthly interest of Rs.45,275/- from the date of purchase of the unit till now on the said amount.
- XII. That the complainants on 05.06.2016 received an offer of possession from the respondent but till date the respondent has not received the occupation certificate of the project. The complainants specifically pointed out to the respondent that no offer of possession can be made without receipt of an occupation certificate. Thus, the offer of possession dated 05.06.2016 is completely illegal in the eyes of law and only upon receipt of occupation certificate, the building/unit will become fit to occupied. Further, no final outstanding demand or demand of maintenance charges or registration charges can be made without OC as a

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registry/conveyance deed cannot be executed without receipt of a valid occupation certificate. Also, no holding charges could be imposed without a valid offer of possession.

- XIII. That throughout the period from booking till execution of agreement and even after that, the complainants showed utmost faith in the respondent and despite few lapses on the latter's part, he kept making payment as and when demanded. However, all the commitments and assurances made by the respondent were completely sham.
- XIV. That the respondent retained the hard earned money of the complainants for so many years beyond the due date of possession which clearly shows that the respondent by retaining the money caused wrongful loss to the complainants and wrongful gain to themselves, thereby highlighting unfair trade practice on their part and also breach of terms and conditions of the agreement and deficiency in the services on part of the respondent as against the complainants which makes them liable to answer to the Hon'ble Authority.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
- I. Direct the respondent to withdraw the offer of possession dated 05.06.2016 being illegal, null and void as the same was issued without obtaining occupation certificate.
 - II. Direct the respondent to obtain occupation certificate and further offer the possession of the unit.

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III. Direct the respondent to make the payment on account of delay possession charges at the prescribed rate from due date of possession till actual handing over of possession after obtaining occupation certificate.

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 on the following grounds:

- i. That at the very outset, it is submitted that the complaint filed by the complainants is not maintainable before this Authority as the occupation certificate of the subject unit was received on 04.01.2017 which is prior to enforcement of the Act. It is a settled proposition of law, that where the occupancy certificate of the unit is received before the enforcement of the Act, no complaint under Section 31 of the Act is maintainable before the Hon'ble Authority.
- ii. It is humbly submitted that the complainants have arrayed "Ansal Phalak Infrastructure Pvt. Ltd." as the respondent in the present complaint. However, the name of "Ansal Phalak Infrastructure Pvt. Ltd." was changed to "New Look Builders and Developers Pvt. Ltd." on 23.10.2020. Therefore, prayer sought by the complainants cannot be allowed. Hence, the present complaint is not maintainable for misjoinder of parties and same is liable to be dismissed with exemplary cost upon the complainants for the aforesaid reason alone.

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iii. That the complainants have attempted to mislead the Hon'ble Authority by presenting concocted facts and misrepresenting the facts & circumstance of the instant case. The true and correct facts of the instant case for easy reference of the Hon'ble Authority are as under:

- a. That complainants approached the respondent seeking high yielding opportunity for investment purposes. Accordingly, they filed an application for allotment of the unit in the project with the respondent. Accordingly, the respondent issued letter of allotment dated 14.05.2011 to the complainants and allotted the Unit No. 2179, Ground Floor in the project. Subsequently, flat buyer's agreement dated 23.08.2011 was executed between the parties with free will and free consent. As a matter of fact, the unit was allotted to the complainants for a basic sale consideration of Rs.88,00,000/- i.e., excluding the external development charges, preferential location charges, maintenance charges, taxes, etc.
- b. That in terms of clause No. 5.1 of FBA, respondent undertook to complete the construction of the unit and to deliver its possession to the complainants within a period of thirty six (36) months from the date of execution of FBA or the date of receiving the approval of the building plans, whichever is later. The building plans were approved by the District Town Planner, Gurugram on 31.12.2012, which is after the execution of FBA. Therefore, the due date of possession is to be calculated from the date of receiving approval for building plans. Hence, the due of possession of the unit was 31.12.2015.
- c. That the complainants have deliberately and habitually delayed several payments as per the flat buyer's agreement. The aforesaid

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fact is evident from the several demand-cum-termination notices dated 12.12.2011 and 13.03.2012 sent by the respondent. Therefore, it is crystal clear that any delay alleged by the complainants in completion of construction of the unit is solely attributable to the complainants and the complainants cannot benefit from their wrongful actions.

- d. That despite gross delay on part of the complainants in making payment towards the unit, the respondent being a customer oriented organization completed the construction of the unit on 02.06.2016. Accordingly, the respondent issued a letter dated 05.06.2016 to the complainants offering possession of the unit. The respondent through the letter dated 05.06.2016, called upon the complainants to take the possession of the unit subject to clearance of all the consideration due and unpaid towards the unit as per the flat buyer's agreement. However, the complainants with malafide intent did not come forward to take the possession of the unit.
- e. It is vehemently denied that the complainants have ever approached the respondent to take the possession of the unit. The aforesaid is evident from the fact that no email, letter, any other form of documentary proof has been annexed along with the complaint to substantiate their averments. On contrary, the respondent had issued a pre-cancellation notice dated 22.11.2016 to the complainants requesting the complainants to either take the possession of the unit after payment of remaining charges as per the flat buyer's agreement. However, the complainants for the reason best known to them did not even respond to the said reminder letters.

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- f. That the fact that construction of the unit was completed by the respondent is evident from the occupancy certificate dated 04.01.2017 issued by the District Town Planner, Gurugram. Thereafter, the complainants neither approached nor made any effort to take the possession of the unit from the respondent after making the payment due and payable by the complainants.
- g. It is submitted that to shock and surprise of the respondent, the complainants even after receiving the offer of possession through letter dated 05.06.2016 and reminder letter dated 22.11.2016, filed the captioned complaint before the Hon'ble Authority on 23.08.2022 seeking delay possession charges.
- iv. That the present complaint has been filed by the complainants after more than 6 years and 6 months from the date of legally valid offer of possession. The complainants cannot take benefit of ignoring the due process of law. Thereafter, there is a delay of more than 3 years and 6 months in filling the captioned complaint as per Limitation Act, 1963. Hence, the captioned complaint is liable to be dismissed on this ground alone.
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 respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of

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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

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

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.

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

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decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on objections raised by the respondent:

F.I Objections regarding that the respondent has grant of occupation certificate of the project from the competent Authority.

9. The respondent-promoter has raised the contention that the said project of the respondent is a pre-RERA project as the respondent has already obtained occupation certificate from the competent authority on 04.01.2017 i.e., before the coming into force of the Act and the rules made thereunder.
10. The authority is of the view that as per proviso to section 3 of Act of 2016, on-going projects on the date of commencement of this Act i.e., 01.05.2017 and for which occupation/completion certificate has not been issued, the promoter shall make an application to the authority for registration of the said project within a period of three months from the date of commencement of this Act and the relevant part of the Act is reproduced hereunder:

Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act:

11. The legislation is very clear in this aspect that a project shall be regarded as an "on-going project" until receipt of completion certificate. Since, the completion certificate is yet to be obtained by the promoter-builder with regards to the concerned project, therefore the plea advanced by it is hereby rejected.

F.II Objection regarding change of name of the company to "New Look Builders and Developers Pvt. Ltd." from "Ansal Phalak Infrastructure Pvt. Ltd.":

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12. The respondent has raised a contention that the present complaint is not maintainable as the complainants have filed a complaint against "Ansal Phalak Infrastructure Pvt. Ltd." while the name of "Ansal Phalak Infrastructure Pvt. Ltd." was changed to "New Look Builders and Developers Pvt. Ltd." on 23.10.2020. The complainants have filed a revise proforma with the name of the respondent as New Look Builders and Developers Pvt. Ltd. on 20.03.2024 which is placed on file. Therefore, the said contention of the respondent stands rejected.

F.III Objection regarding complaint barred by Limitation Act, 1963

13. Another contention of the respondent is that if the date of possession was to be construed in December 2015, the period of limitation has come to an end in the year December 2018. However, the possession of the unit is yet to be handed over to complainants, therefore, the project shall be regarded as an "on-going" project and liability of the respondent is still continuing. Further, as per section 11(4)(a) of the Act of 2016, the responsibility of the promoter continues till the execution of conveyance deed. The authority is of the view that the provisions of Limitation Act, 1963 does not apply to Act, 2016. The same view has been taken by Hon'ble Maharashtra Real Estate Appellate Tribunal, Mumbai in its order dated 27.01.2022 in Appeal no. 00600000021137 titled as *M/s Siddhitech Homes Pvt. Ltd. vs Karanveer Singh Sachdev and others* which provides as under:

"Agreeing entirely with the allottee, it is observed that RERA nowhere provides any timeline for availing reliefs provided thereunder. A developer cannot be discharged from its obligations merely on the ground that the complaint was not filed within a specific period prescribed under some other statutes. Even if such provisions exist in other enactments, those are rendered subservient to the provisions of RERA by virtue of non obstante clause in Section 89 of RERA having overriding effect on any other law inconsistent with the provisions of RERA. In view thereof, Article 54 of Limitation Act would not render the complaint time barred. In the absence of express provisions substantive provisions in RERA prescribing time limit for filing complaint reliefs provided thereunder cannot be

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denied to allottee for the reason of limitation or delay and laches. Consequently, no benefit will accrue to developers placing reliance on the case law cited supra to render the complaint of allottee barred by any limitation as alleged in Para 10 above. Hence, no fault is found with the view held by the Authority on this issue."

14. Thus, the contention of promoter that the complaint is time barred by provisos of Limitation Act stands rejected.

G. Findings on the relief sought by the complainants:

G.I Direct the respondent to withdraw the offer of possession dated 05.06.2016 being illegal, null and void

15. The complainants were allotted a unit in the project "Sovereign Floors at Alba, Essencia" in sector-67, Gurugram vide allotment letter dated 14.05.2011 for a sum of Rs.1,29,48,159/- and paid a considerable amount of Rs.1,07,69,140/- i.e., 83% of the sale consideration. A buyer's agreement dated 23.08.2011 was executed between the parties and the possession clause of the agreement is reproduced below for ready reference:

5.1

Subject to clause 5.2 and further subject to all the buyers of the dwelling units in the sovereign floors, Esencia, making timely payment, the company shall endeavor to complete the development of residential colony and the dwelling unit as far as possible within 30(thirty) months with an extended period of 6 months from the date of execution of this agreement or the date of sanction of the building plan whichever falls later.

16. The due date of handing over of possession is to be calculated 30 months plus 6 months from the date of approval of sanction of building plan i.e., 31.12.2012, being later which comes out to be 31.12.2015.
17. The respondent offered the possession of the unit on 05.06.2016 before obtaining occupation certificate that has been issued on 04.01.2017 by the competent authority. Therefore, the offer of possession dated 05.06.2016 made by the respondent is bad in the eyes of law and hence becomes redundant.

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18. As it is evident that the occupation certificate was received on 04.01.2017 and 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. Therefore, in the interest of natural justice, the complainants should be given 2 months' time from the date of issuance of occupation certificate from the competent authority. This 2 month of reasonable time is to be given to the complainant keeping in mind that even after occupation certificate, practically one has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but that is subject to that the unit being handed over at the time of taking possession is in habitable condition.

G.II Direct the respondent to offer fresh offer of possession after obtaining occupation certificate.

19. The respondent has offered the possession of the unit to the complainants on 05.06.2016 and occupation certificate of the unit was received by the respondent way back in 2017 which was never disputed by the complainants. Though the offer of possession made by the respondent in 2016 was bad in eyes of law but it clearly mentioned that the unit is complete. The occupation certificate was received on 04.01.2017 and 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 and the complainants never asked for the possession of the unit before filing of this complaint. Therefore, plea raised by the complainants is not tenable and no fresh offer of possession is required to be made by the respondent after obtaining occupation certificate.

G.III Direct the respondent to pay interest for every month of delay, on the amount paid so far, at the rate mandate by Act of 2016

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20. In the present complaint, the complainants intend to continue with the project and is 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. The date of possession of the apartment as per clause 5.1 of the floor buyer's agreement, is to be calculated as 36 months from the execution of buyer's agreement or sanction of building plans, whichever is later. Therefore, the due date is calculated 30 months from the date of approval of building plan being later i.e., 31.12.2012 plus grace period of 6 months which comes out to be 31.12.2015, as per the floor buyer's agreement.

22. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the prescribed rate as per the Act of 2016. 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.

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23. 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.
24. 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., 21.03.2024 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
25. The definition of term 'interest' as defined under section 2(z) 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:
- "(z) "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;"*
26. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.85% by the respondent /promoter which is the same as is being granted to the complainants in case of delayed possession charges.
27. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act,

the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. The due date of handing over possession is 31.12.2015. The occupation certificate was obtained by the respondent on 04.01.2017 from the competent Authority. 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. 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 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., 31.12.2015 till obtaining the occupancy certificate(04.01.2017) from the competent authority plus two months i.e., 04.03.2017 at prescribed rate i.e., 10.85 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

28. The counsel for the respondent during proceedings of the day dated 15.02.2024 mentioned that the amount paid by the complainants is Rs.96,15,261/- only and not Rs.1,07,69,140/- as claimed by the complainants in the complaint. The counsel for the complainants objected to this statement. The counsel for the complainants placed on record copy of receipts according to which the amount paid by the complainants is Rs.1,07,35,567/-. Therefore, the authority hereby directs the respondent to pay the delayed possession charges on the amount of Rs.1,07,35,567/- paid by the complainants.
29. The occupation certificate of the unit was obtained on 04.01.2017 but the physical possession of the unit is yet to be handed over to the complainants. Section 19 (10) of the Act of 2016 obligates the allottee to

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take possession of the subject unit within 2 months from the date of receipt of occupation certificate. Therefore, the allottee was obligated to take the possession of the unit by 04.03.2017. Thus, the complainants are directed to pay maintenance charges w.e.f. 04.03.2017.

30. 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.** Therefore, the respondent is directed not to levy holding charges.

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 function entrusted to the authority under section 34(f):
- The respondent is directed to pay interest on the paid-up amount by the complainants at the prescribed rate of 10.85% p.a. for every month of delay from the due date of possession i.e., 31.12.2015 till obtaining the occupation certificate (04.01.2017) from the concerned authority plus two months i.e., 04.03.2017.
 - The respondent is also directed to issue a revised account statement within 30 days from the date of this order after adjustment of delayed possession interest.
 - The complainants are directed to pay outstanding dues, if any remains after adjustment of interest for the delayed period and take the physical possession of the allotted unit in next 30 days from the date of this order.

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- iv. The rate of interest chargeable from the allottee(s) 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.
- v. The respondent shall not charge anything from the complainants which is not the part of the floor buyer's agreement.
- vi. The respondent is directed to not to levy holding charges and maintenance charges are to be levied w.e.f. 04.03.2017.
32. Complaint stands disposed of.
33. File be consigned to registry.



Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.03.2024

HARERA
GURUGRAM