

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

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|-----------------------------|---|---------------------|
| Complaint no. | : | 2028 of 2023 |
| Date of filing | : | 22.12.2022 |
| Order Reserve On | : | 05.01.2024 |
| Order Pronounced On: | | 22.03.2024 |

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| 1. Dr. Amit Sen 2. Dr. Shelja Jain R/o: H. no. D-305, 1 st floor, Sarvodya Enclave, New Delhi-110017 | Complainants |
| Versus | |
| 1. M/s Ramprastha Promoters & Developers Pvt. Ltd. Office: Plot no. 114, Sector-44, Gurugram. 2. Housing Development Finance Corporation Ltd. Office: Ramon House, 169, Backbay Reclamation, HT Parekh Marg, Churchgate, Mumbai | Respondents |
| CORAM: | |
| Shri Ashok Sangwan | Member |
| Shri Sanjeev Kumar Arora | Member |
| APPEARANCE: | |
| Sh. Tarun Kumar Aggarwal | Complainant |
| Sh. Divyanshu (proxy) for R1 Sh. Virender Singh for R2 | Respondent |

ORDER

- The present complaint has been filed by the complainant/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 provisions of the Act or the Rules and regulations made there under 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

| Sr. No. | Particulars | Details |
|---------|-----------------------------------|--|
| 1. | Name of the project | "Primera", Sector 37D, Village Gadauli Kalan, Gurugram. |
| 2. | Total area of the project | 13.156 acres |
| 3. | Registered Area | 3.257 acres |
| 4. | Nature of the project | Group housing colony |
| 5. | DTCP license no. | 12 of 2009 dated 21.05.2009 valid upto 20.05.2024 |
| 6. | Name of licensee | Ramprastha realtor Pvt. Ltd. |
| 7. | Registered/not registered | Registered vide no. 21 of 2018 dated 23.10.2018 upto 31.03.2020 |
| 8. | Date of approval of building plan | 25.04.2013 [As per information obtained by planning branch] |
| 9. | Date of payment | 03.04.2014 (as per payment receipt on page no. 41 of complaint) |
| 10. | Tripartite agreement | 25.06.2014 (Page no. 17 of complaint) |
| 11. | Unit no. | E-703, 7 th Floor, Tower E |

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|-----|--|---|
| | | [pg. 18 of complaint] |
| 12. | Area of the unit | 1895 sq. ft. |
| 13. | Email for refund | 10.01.2018 (page no. 45 of complaint) |
| 14. | Date of execution of buyer's agreement | Not executed |
| 15. | Possession clause | Not mentioned |
| 16. | Due date of possession | 03.04.2017 [Calculated as per <i>Fortune Infrastructure and Ors. vs. Trevor D'Lima and Ors. (12.03.2018 - SC); MANU/SC/0253/2018</i>] |
| 17. | Basic sale consideration | NA |
| 18. | Total amount paid by the complainant | Rs. 29,69,845/- (Rs. 19,00,000/- + Rs. 10,69,845/- Pre-Emi's) (as alleged by complainant) |
| 19. | Occupation Certificate | 23.10.2018 (only for tower A to D not for the tower E where the unit of complainant is situated) |
| 20. | Offer of possession | Not offered |

B. Facts of the complaint

3. The complainant has made the following submissions:
4. That believing on the representations of the respondent no.1, the complainants booked a residential unit bearing flat no. E-703 , 7th floor, tower-E in the project known as 'Primeria' situated at Ramprastha City,

sector-37D, Village - Garauli Kalan Gurugram-122001 for a total consideration of Rs.1,15,00,000/-. The respondent no.1 also assured the complainants that possession of the suit premises shall be given in the year 2017.

5. That the booking was made under 'Subvention Scheme'. The copy of the allotment letter was also not provided to the complainants. Thereafter, a tripartite agreement dated 25.06.2014 was signed inter-se the complainants, respondent no.1 and respondent no. 2.
6. That according to the terms and conditions of tripartite agreement pre-EMIs till the offer of possession was to be borne by the respondent no.1. As per clause 3 of the aforesaid tripartite agreement the builder/respondent no.1 is liable to make payments under the loan agreement as payable by the complainants to respondent no. 2 till 25.09.2017. However, on failure of the respondent no.1 to pay the pre-EMI amount, respondent no. 2(HDFC Ltd) debited the pre-EMI amount from the account of the complainant. The EMIs are being debited from complainant no.1's account from October, 2017.
7. That the prime reason for the complainants to opt for the project in question was the subvention scheme wherein the builder-respondent no.1 undertook to pay the Pre-EMIs till the handing over of possession thereby ensuring no additional financial burden upon the complainants.
8. That respondent no.1 has not paid a single pre-EMIs to the bank i.e. respondent no.2 since the disbursement of the loan in June, 2014. Despite which respondent no.2 has never bothered to bring it to the notice of the complainants which establishes the collusion between respondents no.1 and no.2
9. That pursuant to the tripartite agreement a loan agreement dated 30.06.2014 was signed between the complainants and the respondent no.2.

10. That the complainants in the year 2014 through four installments from time to time have paid respondent no.1 a principal sum of Rs.19,00,000/- .
11. That the respondent no.1 was obliged to deliver possession of the said unit to the complainant in the year 2017. That when the complainant visited the project site in the month of February, 2017 they were stunned to see that the project is not even started and found that construction work was not going on as per the commitments given by respondent no.1. The complainants have adhered to all payment related formalities and there has been no breach of contract by the complainants.
12. That the complainants even met the officials of respondent no.1 at their head office somewhere in the month of October, 2017 and apprised them that the construction of the aforesaid tower has not started till date. However, the concerned officials of respondent no.1 refused to cooperate in the matter. Thereafter, the complainants addressed an email dated 10.01.2018 requesting respondent no.1 to refund the entire sum of Rs.19,00,000/- .
13. That respondent no.1 has failed and neglected to hand over possession of the unit to the complainants within specified time. Due to the conduct of the respondent no.1, the complainants have lost faith in their ability. Therefore, the complainants through their email dated 10.01.2018 called upon the respondent no.1 to refund the entire amount paid by the complainants.
14. That thereafter, the complainants kept making calls to the respondent no.1 and visiting their office requesting them to refund back their hard-earned money, but the respondent no. 1 refused to cooperate in the matter.
15. That the complainants have been severely exploited at the hands of the builder/respondent no.1. The respondent no.1 not only failed to pay the pre-EMIs and acted in collusion with respondent no.2 but also did not carry on any construction work, thereby duping the complainants of their hard earned money and causing them great mental trauma.

C. Relief sought by the complainant:

16. The complainant has sought following relief(s).
- i. **Direct the respondent to refund the entire amount paid by the complainant along with prescribed rate of interest.**
 - ii. **Direct the respondent no. 2 to stop deducting pre Emi's w.e.f 01.04.2023 from the account of the complainants and not to levy any foreclosure charge on complainants on account of default on part of respondent no. 1.**

D. Reply by the Respondent:

17. That the present complaint has been filed by the complainants praying for refund of Rs. 29,69,845/- allegedly paid by the complainants against booking of a residential unit bearing unit no. E-703, 7th floor, tower-E situated at Ramprastha City, Sector-37 D, Village - Garauli Kalan Gurugram - 122001.
18. That the complainants has not approached this Authority with clean hands and has concealed the material fact that the complainants are defaulters, having deliberately failed to make the timely payment of installments within the time prescribed, which resulted in delay payment charges/interest, as reflected in the statement of account.
19. That the complainants have never raised any dispute regarding delay in possession or any other aspect. Furthermore, filing a complaint after all these years only hints at the malafide intentions of the complainants.
20. That if any objections to the same were to be raised the same should have been done in a time bound manner while exercising time restrictions very cautiously to not cause prejudice to any other party. The complainants herein cannot now suddenly show up and thoughtlessly file a complaint against the respondent no. 1 on its own whims and fancies by putting the interest of the builder and the several other genuine Allottees at stake. If at all, the

complainants had any doubts about the project, it is only reasonable to express so at much earlier stage. Further, filing such complaint after lapse of such a long time at such an interest only raises suspicions that the present complaints is only made with an intention to arm twist the respondent. the entire intention of the complainants is made crystal clear with the present complaint and concretes the status of the complainants as investors who merely invested in the present project with an intention to draw back the amount as an escalated and exaggerated amount later.

21. That the complainants were actually waiting for the passage of several years to pounce upon the respondent no. 1 and drag the respondent no. 1 in unnecessary legal proceedings. Huge costs must be levied on the complainants for this misadventure and abuse of the process of court for arm twisting and extracting money from respondent no. 1.
22. That the complainants have concealed its own inactions and defaults since the very beginning. The complainants have deliberately concealed the material fact that the complainants are at default due to non-payment of several installments within the time prescribed, which has also resulted into delay payment charges/ interests.
23. That further the reasons for delay are solely attributable to the regulatory process for approval of layout which is within the purview of the Town and Country Planning Department. The complaint is liable to be rejected on the ground that the complainants had indirectly raised the question of approval of zoning plans which is beyond the control of the respondent and outside the purview of this hon'ble court and in further view of the fact the complainants had knowingly made an investment in a future potential project of the respondent no. 1.

24. That the delay in delivering the possession of the unit to the complainants herein has attributed solely because of the reasons beyond control of the respondent.
25. That the delay has occurred only due to unforeseen and un-tackle able circumstances which despite of best efforts of the respondent hindered the progress of construction, meeting the agreed construction schedule resulting into unintended delay in timely delivery of possession of the unit for which respondent cannot be held accountable. However, the complainants despite having knowledge of happening of such force majeure eventualities and despite agreeing to extension of time in case the delay has occurred as a result of such eventualities has filed this frivolous, tainted and misconceived complaint in order to harass the respondent no. 1 with a wrongful intention to extract monies.
26. That complainants is not entitled to claim refund as claimed by the complainants in the complaint is clearly time barred. That due to lackadaisical attitude of the complainants along with several other reasons beyond the control of the respondent no. 1 as cited by the respondent no. 1 which caused the present delay. If any objections to the same was to be raised the same should have been done in a time bound manner while exercising time restrictions very cautiously to not cause prejudice to any other party.
27. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions oral as well as written (filed by the complainant) made by the parties.

E. Jurisdiction of the authority

28. 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

29. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

30. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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.

31. 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 complainant at a later stage.
32. Further, the authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in cases of *Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors.*" 2021-2022(1) RCR(C), 357 &

M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022 and wherein it was held as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine, keeping in view the collective reading of Section 71 read with Section 72 of the Act. If the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

33. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the cases mentioned above, the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.

F. Findings on the objections raised by the respondent.

F.1 Objection regarding the complainant being investor.

34. The respondent has taken a stand that the complainants are the investors and not consumer. Therefore, they have not entitled to the protection of the Act and are 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 the 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 documents placed on file, it is revealed that the complainants are buyer and paid total price of Rs. 19,00,000/- to the promoter towards purchase of a 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;"

35. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment application for allotment, it is crystal clear that the complainant is allottee 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. 0006000000010557 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 allottee being investor is not entitled to protection of this Act also stands rejected.

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

36. Another contention of the respondent is that the present complaint is barred by limitation. 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 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."

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 complainant.

- i. Direct the respondent to refund the entire amount paid by the complainant along with prescribed rate of interest.
- ii. Direct the respondent no. 2 to stop deducting pre Emi's w.e.f 01.04.2023 from the account of the complainants and not to levy any foreclosure charge on complainants on account of default on part of respondent no. 1.

37. In the present complaint, the complainants intend to withdraw from the project and are seeking return of the amount paid by them in respect of subject unit along with interest at the prescribed rate as provided under section 18(1)(b) of the Act. Sec. 18(1)(b) of the Act is reproduced below for ready reference.

"Section 18: - Return of amount and compensation

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

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

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

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

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

38. The complainants booked a unit in the project of the respondent namely, Primera situated at sector-37D, Gurugram. The unit was booked under subvention scheme and the tripartite agreement was executed on 25.06.2014. The complainants made a payment of Rs. 19,00,000/- and Rs. 10,69,845/- as pre Emi to respondent no. 2 totalling to Rs. 29,69,845/- and the payment receipt was issued by respondent on 03.04.2014. In the present matter, neither the allotment was issued nor BBA was executed.
39. Before coming to the facts of the case, it is to be seen as to the receipt issued by the respondent/promoter falls within the definition of agreement, as per section 2(e) of the contract Act, 1872 and which provides that:

"Every promise and every set of promise forming the consideration for each other is an agreement."

40. Further, section 10 of the act defines the conditions under which the agreement made fall with the definition of contract and the same provides as under:

"All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object and are not hereby expressly declared to be void."

41. There is a large number of cases coming to the notice of the authority wherein the builder had taken the whole or partial amount of money and only issued receipt against the allotment of a plot either in the exiting or in its upcoming project at Gurugram. Neither it issued any allotment letter nor executed any builder buyer's agreement. The holders of those receipt/allotments are harassed lot failing to act on the basis of the documents issued by the developer and to initiate any civil or criminal action against the builder. This position existed in Pre- Rera cases as after Act of 2016, a promoter is obligated to comply with the provisions of the Act and follow the same while receiving any money against allotment of unit and execution of builder buyer agreement.
42. But the document/receipt so issued in favour of a person can be termed as an agreement for sale to drag the developer before RERA Authority and compelling him to fulfil his obligations against the holder of that document. It is also pertinent to mention in many cases that the allottee has been sleeping over his rights which is evident from the fact that after payment of an amount, he did not make any effort to get the agreement executed; and having no proof of any request or reminder in this regard made by the allottee to the promoter. However, the promoter is duty bound to explain the reasons for which he has kept such a huge amount for so long, considering the fact that the promoter company is not a bank or non- banking financial company (NBFC). In case of failure

on the part of promoter to give an explanation, it shall be liable to refund the principal amount deposited by the allottee.

43. However, as no BBA has been executed between the parties therefore the due date of possession cannot be ascertained. A considerate view has already been taken by the Hon'ble Supreme Court in the cases where due date of possession cannot be ascertained then a reasonable time period of 3 years has to be taken into consideration. It was held in matter **Fortune Infrastructure v. Trevor d' lima (2018) 5 SCC 442 : (2018) 3 SCC (civ) 1** and then was reiterated in **Pioneer Urban land & Infrastructure Ltd. V. Govindan Raghavan (2019) SC 725 -:**

"Moreover, a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration. In the facts and circumstances of this case, a time period of 3 years would have been reasonable for completion of the contract i.e., the possession was required to be given by last quarter of 2014. Further there is no dispute as to the fact that until now there is no redevelopment of the property. Hence, in view of the above discussion, which draw us to an irresistible conclusion that there is deficiency of service on the part of the appellants and accordingly the issue is answered."

44. Accordingly, the due date of possession is calculated as 3 years from the date of payment i.e., 03.04.2014. Therefore, the due date of possession comes out to be 03.04.2017. The occupation certificate for the tower E where the unit of the complainant is situated has not received till date.
45. The authority vide order dated 05.01.2024 directed the planning branch to verify the exact status of Tower E of the project Primera as there is sale in Tower E as per complaint but as per RC there is only tower A to D. Therefore, as per directions of the authority the Engineering officer Mr. Sumeet visited the project on 20.03.2024 and

submitted its report. The conclusion of the report are reproduced hereunder for ready reference:

- As per the approved site plan for the project area measuring 13.156 acres, tower E has been sanctioned/approved by DTCP which is to be constructed/developed by the promoter M/s Ramprastha Promoters and Developers Pvt. Ltd.
- The promoter has started the construction of tower E and till date only structure work upto 1st floor has been completed and shuttering work on second floor is processing.
- As per the complaint, the sale has been made in tower E which is part of the project and the same has been made prior to coming into force of RERA, 2016. The promoter was required to get the same registered with the authority, but the promoter had registered only tower A to D & EWS (area measuring 3.2570 acres) vide RC no. 21 of 2018 dated 23.10.2018 valid till 30.09.2025.
- The promoter has obtained the occupation certificate for tower A to D & EWS vide memo no. ZP-695/PA(DK)/2023/9616 dated 05.04.2023.

46. **Admissibility of refund along with prescribed rate of interest:** The complainants are seeking refund the amount paid by them. However, the allottee's are seeking refund of the amount paid by them with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates

which the State Bank of India may fix from time to time for lending to the general public.

47. 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.
48. 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., 22.03.2024 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
49. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) *the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) *the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

50. The authority after considering the facts stated by the parties and the documents placed on record is of the view that the complainants are well within their right for seeking refund under section 18(1)(b) of the Act, 2016.

51. Moreover, the authority observed by Hon'ble Supreme Court of India in ***Ireo Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors., civil appeal no. 5785 of 2019, decided on 11.01.2021***

"... The occupation certificate is not available even as on date, which clearly amounts to deficiency of service. The allottees cannot be made to wait indefinitely for possession of the apartments allotted to them, nor can they be bound to take the apartments in Phase 1 of the project....."

52. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a). The promoter has failed to complete or unable to give possession of the unit in accordance with the terms of provisional allotment letter or duly completed by the date specified therein. Accordingly, the promoter is liable to the allottee, as she wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of the unit with interest at such rate as may be prescribed.
53. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1)(b) of the Act on the part of the respondent is established. As such, the complainants are entitled to refund of the entire amount paid by them at the prescribed rate of interest i.e., @ 10.85% p.a. (the State Bank of India highest marginal cost of lending rate (MCLR) applicable as on date +2%) as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development) Rules, 2017 from the date of each payment till the actual date of refund of the amount within the timelines provided in rule 16 of the Haryana Rules 2017 *ibid*.

H. Directions of the authority

54. 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 is directed to refund the entire amount of paid by the complainants along with prescribed rate of interest @ 10.85% p.a. as prescribed under rule 15 of the Haryana Real Estate (Regulation and Development Rules, 2017) from the date of each payment till the actual date of realization of the amount.
- ii. A period of 90 days is given to the respondent to comply with the directions given in this order and failing which legal consequences would follow.
- iii. Out of the total amount so assessed, the amount paid by the financial institution/payee be refunded first in the account of the financial institution and the balance amount along with interest if any, be refunded to the complainant-allottees.

55. Complaint stands disposed of.


56. File be consigned to registry.


(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.03.2024


(Ashok Sangwan)

Member