

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

Complaint no.: 1923 of 2023
Order pronounced on : 08.02.2024

Tanya Agarwal

R/o: House No. N-39, Ground Floor, GK-1, New Delhi-
110048

Complainant

Versus

M/s Adani M2K Projects LLP

Regd. office: Adani House, Plot No. 83, Industrial Area,
Sector- 32, Gurugram- 122001

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Sh. Amit Dwivedi (Advovate)

Sh. Prashant Sheoran (Advocate)

Complainant
Respondent

ORDER

1. 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 to the allottee as per the agreement for sale executed inter-se them.

A. Unit and Project related details:

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

S. No.	Particulars	Details			
1.	Name of the project	Oyster Grande, Sector 102, Gurugram, Haryana			
2.	Total area of the project	19.238 acres			
3.	Nature of the project	Group Housing Colony			
4.	DTCP license details:				
	S. No.	License no.	Validity	Licensed area	Licensee
	1.	29 of 2012 dated 10.04.2012	09.04.2020	15.72 acres	M/s Aakarshan Estates Pvt. Ltd. C/O M/s Adani M2K Projects LLP
	2.	30 of 2012 dated 10.04.2012	09.04.2020	3.52 acres	M/s Aakarshan Estates Pvt. Ltd. C/O M/s Adani M2K Projects LLP
5.	Registered/not registered	Registered by Adani M2K Projects LLP			
	Registration details				
	S. No.	Registration no.	Validity	Area	
	1.	37 of 2017 dated 10.08.2017	30.09.2024	Tower G (15773.477 sq. mtrs.)	
	2.	170 of 2017 dated 29.08.2017	30.09.2019	Tower J Nursery school-1 & 2, Convenient Shopping, Community Block X-1 & X-2 (19056.69 sq. mtrs.)	
	3.	171 of 2017 dated 29.08.2017	30.09.2019	Tower H (17229.629 sq. mtrs.)	
7.	Unit no.	B-1101, 11 th floor, Tower-B [page no. 97 of complaint]			
8.	Unit measuring	2579 sq. ft. (Super area)			
9.	Provisional allotment letter in favour of the original allottee i.e., mother of the complainant	16.01.2014 (Page no. 19 of the reply)			

10.	Provisional allotment letter in favour of the complainant	03.06.2019 [page no. 97 of the complaint]
11.	Date of execution of flat buyer agreement in favour of the mother of the complainant	21.09.2013 [page no. 26 of the complaint]
12.	Endorsement of nomination letter (original allottee i.e., mother of the complainant has transferred her rights to complainant herein i.e., daughter of the original allottee	03.06.2019 [page no. 97 of the complaint]
13.	Due date of delivery of possession as per clause 5(A) 48 months from the date of execution of this agreement or start of construction whichever is later with a grace period of 6 months.	21.03.2018
14.	Total sales consideration	Rs.1,81,16,858/- [page no. 88 of the complaint]
15.	Total amount paid by the complainant	Rs.1,81,41,757/- [page no. 88 of the complaint]
16.	Occupation Certificate,	20.12.2017 [page no. 17 of the reply]
17.	Offer of possession	25.01.2018 (Page no. 53 of the reply)

B. Facts of the complaint

3. The complainants have made the following submissions: -

- I. That the complainant is a law-abiding citizen of India and is aggrieved by the breach of mutually agreed terms and conditions by the respondent. The unit in question in the present complaint was initially bought by the

mother of the complainant Chhavi Agarwal, referred to as "first buyer", which was later transferred to the complainant with the approval of the respondent.

- II. That the respondent had extensively advertised about its project, Oyster Grande at Sector 102/102A, Gurugram, Haryana across various media channels and had inter alia promised the timely completion of construction and handing over of possession. That the said project was represented by the respondent as a residential flat project consisting of residential flats of various sizes, parks, open spaces, passages, Sewage facilities, metalled road and services for water supply, sewerage disposal, irrigation, etc. Respondent assured a plot in a residential colony with above mentioned facilities and represented that the timely possession of the same as per the mutually agreed agreement will be of the utmost important for the respondent and it would also be the essential part of agreement to be executed between the parties which was in fact executed on 21.09.2013 the details of which have been provided herein below.
- III. That based upon the representations made by the respondent, mother of the complainant in the year 2012 applied for the allotment of a flat in the said project in the year 2012. The respondent had painted a rosy picture of the said project and had induced mother of the complainant to apply for the allotment of the desired residential flat.
- IV. That the apartment buyer's agreement dated 21.09.2013 was executed between mother of the complainant and respondent. This agreement contained all terms and conditions to be followed by the buyer, complainant, and seller, respondent. In the said agreement, time of giving possession was of utmost importance and constituted essential part of the said agreement. It was specifically mentioned at para 3(G) of the said

agreement that the time was the essence of the said agreement and as per clause 5(A) possession of the said plot was to be provided within 48 months from the date of execution of the said agreement, that is complainant was to get possession of the applied unit latest by 21.09.2017. However, possession has not offered till date despite multiple requests by mother of the complainant.

- V. That pursuant to the aforesaid application and execution of the said agreement dated 21.09.2013, mother of the complainant was allotted a residential flat bearing no. B-1101 in tower B, having an area admeasuring approximately 1861 sq. ft. as well as rights of usage of common areas and facilities in the said flat in the said project for a sale consideration of Rs.1,50,89,498/-, along with PLCs (preferential location charges) hereinafter, inclusive of other charges mentioned in paragraph 3(B) of the said apartment buyers agreement dated 21.09.2013.
- VI. That the complainant has always been in full compliance of the terms of the said agreement, and the same is inter alia reflected by the instalment/amount paid by her to the respondent as per the mutually agreed terms. Thus far, undisputedly, and admittedly, the complainant has paid the respondent a total of Rs.1,81,69,850/- towards the sale consideration of the said unit, which is in compliance of the said agreement.
- VII. That even though the complainant has complied said agreement, the respondent has been in utter breach of the terms of the said agreement and has violated the essential part of the said agreement dated 21.09.2013 that was to give possession of the said unit within 48 months of the execution of the said agreement that is latest by 21.09.2017.
- VIII. That the default on the part of the respondent in the performance of its essential obligation under the said agreement that was to hand over the

possession of the said unit to the complainant within the time prescribed under the said agreement, has caused grave and severe loss to her, so in view of the fact that the complainant has invested substantial part of her saving in the said project. She paid the more than sale consideration amount to the respondent from the savings with the hope of own a home of her own as per the terms of the said agreement but that was not to be so. The modus operandi of the respondent has always been non-transparent and arbitrary to say the least during this whole described transaction. Feeling aggrieved by the said conduct of the respondent, complainant started writing e-mails to the respondent which were always replied in evasive manner.

- IX. That further, on application of the mother of the complainant, on 03.06.2019 to the respondent made the complainant herein as the nominee/allottee of the said flat. The complainant is aggrieved by the false and frivolous "Notice for payment of outstanding instalment of the sale consideration" letters which were issued to her again and again. The complainant is aggrieved as she has already paid more than the said sale consideration. Rather than offering the delay penalty for offering the possession late, the respondent is raising frivolous outstanding. In the above referred emails herein, the complainant raised strenuous objection to said demands repeatedly. The said outstanding demands are illegal and against the spirit of the law.
- X. That respondent issued letter on 04.02.2019, stating due payment of Rs.23,33,332/- as pre-cancellation letter, an email from Mr. Ravi Saxena was received on 12.04.2019 for reversing/waiving off the interest and holding charges was received wherein he mentioned that payment should be made till 25.04.2019. On 22.04.2019 & 24.04.2019, complainant issued cheques as full and final payment which was duly

acknowledged by the respondent. The complainant herein received an endorsement on 03.06.2019, in her favour accompanied by a letter issued by the respondent regarding non-payment of dues. The complainant received a letter on 24.08.2020 stating Rs.12,98,901/- as due and delayed payment charges of Rs.2,88,81,814/- till 20.08.2020. The complainant wrote a letter to the respondent on 07.09.2020 regarding multiple communications for possession and lack of clarity. The respondent company issued the letter dated 24.08.2020 (during Covid lock down period) and demanded Rs.2,88,81,814/- against holding, maintenance and delayed payment charges calculated till 20.08.2020). Immediately after receiving the letter dated 24.08.2020, complainant wrote mail mentioning the letters dated 05.9.2020, 22.09.2020, 28.10.2020, 16.10.2020, 03.03.2021, 21.05.2021, 02.08.2021, 24.11.2021, 21.02.2022, 14.11.2022, 21.11.2022, 17.01.2023, 08.02.2023 regarding possession of the flat and executing conveyance deed but all in vain. The respondent kept requesting money through to letters and mail but never responded to any correspondence.

- XI. That even though the complainant has complied the terms of the said agreement, the respondent has been in utter breach of the terms of the said agreement and has violated the essential part of the said agreement dated 21.09.2013 that was to give possession of the said unit within 48 months of the execution of the said agreement that is latest by 21.09.2017. Complainant has not been given possession till date and it is undisputed and established that there has been an inordinate and excessive delay of 5 years and 7 months in giving the possession as was mutually agreed in the said agreement. However, the respondent has miserably failed in adhering to the time limits, because of which the complainant has suffered grave financial loss and mental harassment. In

light of the aforesaid facts and circumstances, the complainant is constrained to approach this authority under section 18 of the Act, 2016 and seeking possession of the allotted flat along with all the facilities including but not limited to preferential location along with interest for the herein above mentioned inordinate delay and the compensation for having suffered immense mental trauma, anxiety and suffering on account of breach committed by the respondent of the mutually agreed said agreement forthwith.

C. Relief sought by the complainant:

4. The complainant has sought following relief:
 - i. Direct the respondent to grant possession of the allotted flat in compliance of buyer's agreement dated 21.09.2013, or an alternate plot with similar advantages with the mutually agreed facilities along with the interest for the delayed possession charges.
 - ii. Direct the respondent to pay litigation expenses to the complainant amounting of Rs.1,00,000/-.
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 the claims made and reliefs claimed by the complainant are barred by law of limitation and estoppel and the complainant intentionally produced incomplete documents just to gain unlawfully from the respondent. That the present complaint has been filed after 5 years from the date of issuance of the letter of offer of possession, thus clearly

an afterthought. Without prejudice to the rights of the respondent and without admitting the claim of the complainant, it is submitted that since the offer of possession was already made 5 years ago, and that too within the prescribed time limit the present complaint is not maintainable at this stage. Even the delayed possession charges are not maintainable in view of the following facts and circumstances.

- II. That the complainant herself alleged in para no VI of the complaint, that date of possession was 21.09.2017. The respondent obtained an occupation certificate on 20.12.2017. While calculating the said date of possession, the complainant did not take into consideration the time consumed in delayed payments. As per the complaint, the complainant acquired the right and interest in the unit in question through her mother. While acquiring the right complainant also inherited liabilities and consequences of her mother's default.
- III. That Mrs. Chavi Aggarwal i.e., original allottee had received all these demand letters and she intentionally didn't pay the amount only because she did not believe the pace of construction. She even wrote a letter to the respondent stating that it is unbelievable that you had completed 14th floors within such a short period. She further claimed that she could not able to reach the project site as the road was broken. That merely because the respondent was constructing the project at a fast pace does not mean that allottees would stop paying. The allottee opted for a construction-linked plan and was obliged to pay as and when demanded as per stage of construction, no matter how fast the respondent has reached a particular stage. Thus the days consumed in delayed payment are liable to be calculated while calculating the due date of possession, especially when no interest was charged on delayed payment by respondent.

- IV. That as per clause 5(A)(h)(ii) and 5(A)(h)(III) respondent is entitled to an extension of time due to default committed by the original allottee/complainant since she stepped into the shoes of the original allottee. It is submitted that for ready reference said clause 5 (A)(h)(ii) is repeated herein as follows "that in the event, the allottee has delayed in paying any instalment as required by her to be paid under this agreement, the time of delivery of apartment shall be extended by such delay in payment of all the instalments". That further as per clause 5(A)(h)(III) "That it is agreed that the developer shall also be entitled to reasonable extension in time for delivery of possession of the apartment to the allottee in the event of any default or negligence attributable to the allottee's fulfilment of conditions of the allotment and/or this agreement. Thus as per the complainant's defaults, there left no scope for delayed possession charges. That the fact was concealed by the complainant that after obtaining OC respondent immediately sent an offer of possession to the complainant vide letter dated 25.01.2018 as admitted by the complainant herself, thus if the complainant himself did not take possession thereafter then the developer can't be made liable for the same.
- V. That the said unit in question had been allotted for a sale consideration of Rs.1,65,89,152/- plus taxes. That complainant intentionally produced an incomplete copy of the builder buyer agreement only to mislead the authority and to gain unlawfully. The builder buyer agreement consisted of a total of 61 pages and the complainant intentionally produced 52 pages. That the reason for producing only 52 pages is that rest of the pages contain payment plan and details of sale consideration. That complainant out of her own accord had chosen to make the payment of sale consideration of the said unit by way of a

construction-linked plan attached with the apartment buyer agreement executed between the parties but miserably failed to do so.

- VI. That the apartment buyer agreement was executed between the parties. That the said agreement was signed by the complainant after completely understanding and after agreeing with the terms and conditions of the apartment buyer agreement and after receiving offer of possession and after making payment of principal amount original allottee transferred the unit in question in favour of her daughter Tanya Aggarwal i.e., present complainant. It is submitted that at the time of on 24.04.2019 Chavi Aggarwal nominated/substituted her daughter vide request for nomination letter dated 24.04.2019. That said the request was allowed and the unit was allotted in the name of the present complainant. That since the complainant stepped into the shoes of Chavi Aggarwal i.e., her mother she cannot close her eyes on defaults committed by her mother, since her mother nominated complainant in her place. That complainant herself has annexed a letter dated 03.12.2018, which was received by her mother Chavi Aggarwal, wherein it was specifically stated that the unit in question has been ready since 25.01.2018 and offer of possession has already been sent and further requested to come and obtain possession. That was further clarified that if the complainant failed to clear dues by 01.01.2019, then holding charges will be levied. That admittedly complainant/Chavi neither paid due amount till 01.01.2019 nor took possession. That due non-payment of demands on time respondent suffered losses, thus as per terms of agreement respondent was entitled to levy holding charges. It is further submitted that complainant has not paid interest on delayed payment, thus respondent is also entitled for interest on delayed payment as well since the date of demand till its payment. As

per the terms and conditions of apartment buyer agreement, the complainant is under a bounden duty to pay the amount as per the payment plan within time without making any delay.

- VII. That as per the agreement the allottee shall only be entitled for possession only after payment of all the stages in timely manner as mentioned in the payment plan annexed with the apartment buyer agreement. However, in the present case complainant miserably failed to pay the installments on time and since day one complainant kept on defaulting in payment. That it is duly cleared that complainant/Chavi Aggarwal never made payment on time and thus the time of delayed payment shall also be included while calculating date of possession. Thus respondent in present case has offered possession after obtaining OC much before date of actual delivery of possession and if complainant herself does not took possession than respondent cannot be made liable for the same. It is submitted that after obtaining occupation certificate, respondent offered possession of the unit in question on 25.01.2018.
- VIII. That the allegations levied in the present complaint under reply are wrong, and are premised on false allegations. The respondent vehemently urges that it is an attempt by the complainant to mislead and misguide this Authority by canvassing a vague story, which has no legs to stand in law. The respondent denies all such allegations and insinuations levelled against it. In the present case, it is ex-facie evident that the complainant in his quest for wrongful gain has not hesitated to take shelter to falsehood, misrepresentation and suppression of material facts in the present complaint.
- IX. That the present complaint has been filed by the complainant without showing an iota of material against the respondent, which would entitle the complainant to any relief whatsoever from this Authority, or any

other forum. It is submitted that the pleadings of complainant are proved to be false in light of facts so stated and documents annexed by 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 submissions made by the parties.
8. The respondent has filed the written submissions on 06.02.2024, which are taken on record. No additional facts apart from the reply have been stated in the written submissions.

E. Jurisdiction of the authority

9. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

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

10. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottee as per the agreement for sale, or to the association of allottee,

as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottee, or the common areas to the association of allottee or the competent authority, as the case may be; 34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottee 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 of 2016 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.

F. Findings regarding relief sought by the complainant.

F.1 Direct the respondent to grant possession of the allotted flat in compliance of buyer's agreement dated 21.09.2013, or an alternate plot with similar advantages with the mutually agreed facilities along with the interest for the delayed possession charges.

12. The respondent has offered the possession of the unit on 25.01.2018 after obtaining the occupation certificate dated 20.12.2017 from the competent authority. The occupation certificate is granted by the competent authority to the promoter only after the completion of the building when the civic infrastructure is complete.
13. During proceeding on 04.01.2024, the Authority has appointed Executive Engineer namely Shri Shanshak Sharma, to visit the site of the project where subject unit is situated for facilitating to hand over the possession of the unit to the complainant. Thereafter, on 08.02.2024, both the parties stated at bar that the possession of the unit has been handed over to the complainant on 13.01.2024 in presence of executive engineer of the Authority.
14. The complainant 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

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.

15. Article 5(A) of the buyer's agreement provides for handover of possession and is reproduced below:

ARTICLE 5
POSSESSION OF THE APARTMENT

A) Possession

"Subject to the compliance of all terms and conditions of this Agreement by the Allottee(s) including the timely payment of the Sale Consideration and Other Charges and all other applicable taxes/levies/interests/penalties, etc., the Developer based on its present plans and estimates and subject to all just exceptions will endeavor to complete construction of said apartment within a period of forty eight (48) months from the date of execution of this Agreement or from the date of commencement of construction, whichever is later with a grace period of six (6) months, subject to Force Majeure Events (as defined herein) which shall include events/circumstances or combination thereof which may prevent /obstruct/hinder/delay the construction/development of the Said Project/Complex. For the purpose of this Agreement, the date of making an application to the concerned authorities for issue of completion/part completion/occupancy/part occupancy certificate of the Project/Complex shall be treated as the date of completion of the Apartment. In particular, said after filing an application for grant of such certificate(s). The Developer shall not be liable for any delay in grant thereof by the competent authorities. However, after the expiry of forty eight (48) months and the grace period stated above, the Developer would pay charges @ Rs.10/- (Rupees Ten Only) per sq. ft. of the Super Area of the said Apartment per month up to 6 months and thereafter @ Rs. 15/- (Rupees Fifteen Only) per sq. ft. of the Super Area of the said Apartment per month for the period of delay in offering the delivery of possession, if any, save and except as for reasons beyond the reasonable control of the Developer and Force Majeure Events. These charges would be adjusted at the time of receipt of final payment from the Allottee(s).

16. The respondent has raised an objection that as per clause 5(A)(h)(ii), it is specifically mentioned "that in the event, the allottee has delayed in paying any instalment as required by her to be paid under this agreement, the time of delivery of apartment shall be extended by such delay in payment of all the instalments.". As such there was delay of approximately 463 days

wherein the complainants have failed to make timely payments towards the consideration of allotted unit and as such leading to shift in due date of handing over of possession to 21.03.2018.

17. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to payment of installment by the allottee and in event of delay in payment by the allottee, the time period for delivery of the apartment shall be extended by such delay in payment of all the installment. 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 allottee that even a single default by the allottee in making payment as per the plan may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the agreement to sell by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.
18. The authority has gone through the possession clause and observes accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the apartment buyer's 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 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., 21.03.2018 till offer of possession

(25.01.2018) plus two months i.e., 25.03.2018 at the 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.

19. **Admissibility of grace period:** - As per Article 5(A)(i) of buyer's agreement dated 21.09.2013, the respondent-promoter proposed to handover the possession of the said unit within a period of forty-eight months and six months grace period. The said clause is unconditional. The Authority is of view that the said grace period of six months shall be allowed to the respondent being unconditional. Therefore, as per Article 5(A)(i) of the buyer's agreement dated 21.09.2013, the due date of possession comes out to be 21.03.2018.
20. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the prescribed rate of interest. However, 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.
21. 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.

22. 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., 08.02.2024 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.

23. 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;"

24. 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

25. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date

as per the agreement. By virtue of article 5(A) of the buyer's agreement executed between the parties on 21.09.2013, the possession of the subject unit was to be delivered within a period of forty-eight months and six months grace period from date of execution of such agreement i.e., 21.09.2013, or from the date of commencement of construction, whichever is later. The due date of possession is calculated from the date of execution of buyer's agreement (in the absence of date of commencement of construction) i.e., 21.09.2013, which comes out to be 21.09.2017. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is 21.03.2018. Occupation certificate was granted by the concerned authority on 20.12.2017 and thereafter, the possession of the subject flat was offered to the complainant on 25.01.2018. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to handover the physical possession of the subject flat and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 21.09.2013 to hand over the possession within the stipulated period.

26. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 20.12.2017. The respondent offered the possession of the unit in question to the complainant only on 25.01.2018, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2

months' time from the date of offer of possession. These 2 months' of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically she has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession till the expiry of 2 months from the date of offer of possession (25.01.2018) which comes out to be 25.03.2018. The authority is of the view that there is a nominal delay of three days on the part of the respondent to offer possession of the unit to the complainant. Therefore, the prayer of the complainant with regard to delayed possession charges is hereby declined.

F.II Direct the respondent to pay litigation expenses to the complainant amounting of Rs.1,00,000/-.

27. The complainant is also seeking relief w.r.t. litigation expenses. Hon'ble Supreme Court of India in civil appeal nos. 6745-6749 of 2021 titled as *M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors.* 2021-2022(1) RCR(C),357 has held that an allottee is entitled to claim compensation & litigation charges under sections 12,14,18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation & litigation expense shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation & legal expenses.

G. Directions of the Authority

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

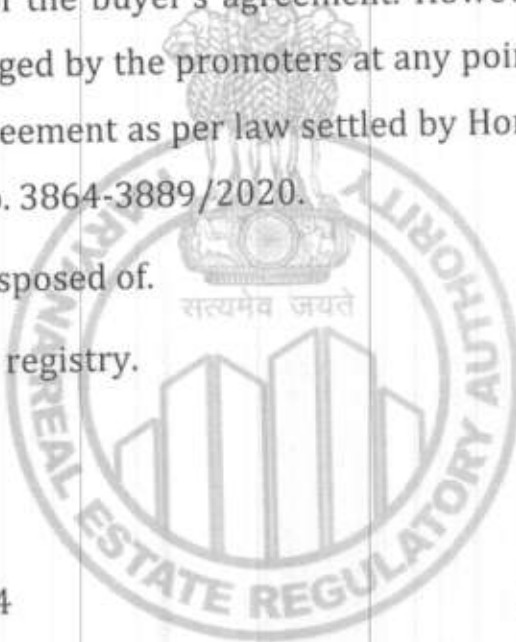
cast upon the promoter as per the function entrusted to the authority under section 34(f):

- I. The respondent is directed to execute the conveyance deed of the allotted unit executed in the favour of complainant in term of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable.
- II. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement. However, holding charges shall not be charged by the promoters at any point of time even after being part of agreement as per law settled by Hon'ble Supreme Court in civil appeal no. 3864-3889/2020.

29. Complaint stands disposed of.

30. File be consigned to registry.

Dated: 08.02.2024



HARERA
GURUGRAM

v.1-3
(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram