

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

Complaint no.	:	1663 of 2022
Date of filing complaint:		20.04.2022
Date of decision:		16.04.2024

Sh. Pranav Kumar Jha Smt. Vandana Jha R/O: L-49d, Saket, New Delhi	Complainants
Versus	
1. Emaar India Limited Office: Ece House, 28 Kasturba Gandhi Marg, New Delhi -110001 2. Kamdhenu Projects Pvt Limited Office :- 306-308, Square One, C-2, District Centre, Saket, New Delhi--110017	Respondent

CORAM:	
Shri Arun Kumar	Chairman
Shri Vijay Kumar Goyal	Member
Shri Ashok Sangwan	Member
Shri Sanjeev Kumar Arora	Member
APPEARANCE:	
Sh. Nilotpal Shyam (Advocate)	Complainants
Sh. Dhruv Rohatgi (Advocate)	Respondent

ORDER

- The present complaint has been filed by the complainant/allottees under Section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall

be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottees as per the agreement for sale executed inter se.

A. Unit and project related details

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

S.no.	Heads	Information
1.	Name of the project	Imperial Garden, Sector 102, Gurugram, Haryana
2.	Nature of the project	Group housing colony
3.	Total area of the project	12 acres
4.	DTCP license no. and validity status	107 of 2012 dated 10.10.2012 valid till 09.10.2020
5.	Name of licensee	Kamdhenu Projects Pvt. Ltd.
6.	HRERA registered/ not registered	<p>Registered in two phases</p> <p>i. 208 of 2017 dated 15.09.2017 [Valid up to 31.12.2018 for 49637 sq. mtrs. and extension granted vide no.3/2019 dated 02.08.2019 which is extended up to 31.12.2019]</p> <p>ii. 14 of 2019 dated 28.03.2019(Phase II) [Valid up to 17.10.2018 for 4.57 acres]</p>
7.	Provisional allotment letter	8.10.2018 Page 41 of complaint
8.	Unit no.	IG-05-0603, 06 th floor, building no.5 [annexure 1, page 59 of complaint]
9.	Area of the unit	1255.73 sq. ft. (Carpet area) 2025 sq. ft. (Super area)



		[Page 59 of complaint]
10.	Date of execution of buyer's agreement	15.11.2018 [annexure 1, page 45 of complaint]
11.	Possession clause	"7. Possession Within 60 (sixty) days from the date of issuance of Occupation Certificate by the concerned Authorities, the Company shall offer the possession of the unit to the Allottee. Subject to Force Majeure and fulfillment by the Allottee of all the terms and conditions of this Agreement including but not limited to timely payment by the Allottee of the Total Price payable in accordance with Payment Plan Annexure-III, along with stamp duty, registration and incidental charges and other charges in connection thereto due and payable by the Allottee and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the Company shall offer the possession of the Unit to the Allottee on or before 31-12-2018 or such time as may be extended by the competent authority."
12.	Due date of delivery of possession as per clause 7(a) of the said agreement i.e. the company shall offer the possession of the unit to the allottee on or before 31.12.2018 or such time as may be extended by the competent authority. [Page 67 of complaint]	31.12.2018
13.	Total consideration as per the statement of account dated 24.10.2019 at page 107 of complaint	Rs.1,29,99,650/-
14.	Total amount paid by the complainant as per calculation sheet at page 26 of reply the statement of	Rs.1,29,99,650/-

	account dated 24.10.2019 at page 107 of complaint	
15.	Occupation certificate granted on	17.10.2019 [annexure R4, page 108 of reply]
16.	Offer of possession	23.10.2019 [annexure 4, page 123 of complaint]
17.	Unit Handover dated	29.11.2019 [Page 122 of complaint]
18.	Conveyance deed executed on	26.12.2019 [annexure R11, page130 of reply]

B. Facts of the complaints:

3. That the respondents through their representative had approached the complainants and represented that the respondent's residential project name "imperial gardens" located at Sector-102, Dwarka Expressway, Gurugram, Haryana will effectively serve the residential purpose of complainants and his family and has the best of the amenities through a Diwali offer.
4. That the respondent no.1 claimed that they have obtained a license from the Director General, Town & Country Planning, Haryana (DTCP), Chandigarh for development of the project land into group housing complex comprising of multi-storied residential apartments in accordance with law bearing license no.102 of 2012 dated 15.10.2012. Further, M/s Kamdhenu Projects Private Limited which is respondent no. 2 is the wholly owned subsidiary of respondent no.1 and is the owner of impugned project land whereby the respondent no. 1 entered in to a

collaboration agreement. All the payments by the complainants have been made to respondent no. 1.

5. That based on the aforementioned representation and enquiries made, the complainants started payment from 23.08.2018 pursuant to which the buyer's agreement was signed on 15.11.2018. Complainants made the first payment of Rs. 1,00,000/- on 23.08.2018 for allotment of unit no. IG-05-0603 proposed to be built at 6th Floor in the impugned project.
6. That as per the agreement the respondent agreed to sell/ convey/ transfer the unit no. IG-05-0603 6th floor, Imperial Garden in the Complex situated at Sector-102, Village-Kherki, Gurugram, Haryana having a carpet area of 1255.73 sq. ft. for an amount of Rs. 1,16,39,009/- which includes basic sale price, external development charges and infrastructure development charges, applicable maintenance charges, taxes and interest free maintenance security charges etc.
7. That as per clause 7(a) of the agreement the possession date for the impugned unit IG-05-0603 was agreed to be 31.12.2018. Further the agreement stipulates under Clause 12 that the respondent, if failed to deliver the possession of the impugned unit within the stipulated time frame and subject to the force majeure conditions, shall pay compensation for the entire period till the date of handing over the possession in accordance with RERA Act.
8. That the complainants have paid the amount towards the sale consideration towards the cost of the impugned unit in the complex including costs towards other facilities wherein all the payments were made in accordance with the demand made by the respondent. Despite the said payments, the respondent failed to deliver the possession in agreed time-frame (i.e. December, 2018) for reasons best known to them and the never bothered to intimate rhymes

and reasoning for the delay to the complainants. The offer of possession was made to the complainants by the respondent on 23.10.2019 and the actual physical possession of the impugned unit was handed over on 29.11.2019.

9. That there is 12 months of unexplained delay in handing over the possession by the respondent company to the complainants without any sign of them meeting the future deadline as provided to the concerned authority in accordance with law.
10. That the respondent provided discount of Rs. 1,75,000/- on the total sale consideration on account of maintenance charge waiver for 2 years. However, the complainants were compelled to remit the said amount at the time of handing over of the impugned unit. It is pertinent to note that communications in relation to the maintenance charge waiver were duly made to the respondent but no positive response was received from the respondent company.
11. That the Hon'ble Authority granted the registration certificate to the respondent company vide Regd. No. 208 of 2017 dated 15.09.2017 wherein the said registration was valid till 31.12.2018. However, the respondent failed to handover the possession by the said date.
12. That the complainants have paid the entire sale consideration within the stipulated time without any defaults in accordance with the agreement and thus entitled to the interest at prescribed rate for the unreasonable delays in delivering the possession by the respondent. The respondent deliberately maintained silence and never bothered to abreast the complainants of the latest development of the Project and any rhymes and reason for such a gross and inordinate delay. Henceforth, the respondent is liable to pay interest for delayed period of handing over the possession till the actual date of handing over the possession in accordance with Section 18 of the RERA Act.

C. Relief sought by the complainants:

13. The complainants have sought the following relief(s):

- i. Direct the respondent to pay interest at prescribed rate for the delay period of handing over the possession calculated from the date of delivery of possession as mentioned in the agreement to the actual date of handing over the possession on the amount paid by the complainant towards the booked unit.
- ii. Direct the respondent to grant the maintenance charge waiver to the complainant.

D. Reply by respondent no. 1

The respondent by way of written reply made following submissions

14. That the complainants are not "allottees" but investors who have booked the apartment in question as a speculative investment in order to earn rental income/profit from its resale. The apartment in question has been booked by the complainants as a speculative investment and not for the purpose of self-use.
15. That the complainants had approached the respondent no. 1 sometime in the year 2018 for purchase of an independent unit in its upcoming residential project "imperial gardens" situated in Sector 102, Village Kherki Majra Dhankot, Tehsil & District Gurugram, Haryana.
16. That thereafter the complainants vide an application form dated 20.08.2018 applied to the respondent no. 1 for provisional allotment of a unit in the project and the complainants were duly welcomed by the respondent no. 1. The complainants, in pursuance of the aforesaid application form, was allotted an independent unit bearing no ig-05-0603, in the project vide provisional allotment letter dated 08.10.2018. The complainants consciously

and willfully undertook to remit the sale consideration for the unit in question in accordance with the payment plan incorporated in the buyer's agreement. The respondent no. 1 had no reason to suspect bona fide of the complainants.

17. That it is respectfully submitted that the rights and obligations of the complainants as well as respondent no. 1 are completely and entirely determined by the covenants incorporated in the registered buyer's agreement dated 15.11.2018 which continues to be binding upon the parties thereto with full force and effect. It is submitted that the complainants out of their own free will and volition, without any inducement, force, misrepresentation or coercion of the respondent no. 1 purchased the said unit with open eyes.
18. That as per Clause 7(a) of the buyer's agreement the possession of the unit in question was liable to be delivered within 60 days from the date of issuance of occupation certificate by the concerned authorities, the company shall offer the possession of the allottee. It is further the term of the said clause that the company would offer the possession on or before 31.12.2018 or such time as may be extended by the competent authority, subject to force majeure and fulfillment by the allottee of all the terms and conditions of the agreement including but not limited to timely payment by the allottee of the total price payable in accordance with payment plan along with stamp duty, registration and incidental charges and other charges in connection thereto due and payable by the allottee and also subject to the allottee having complied with all formalities or documentation as prescribed by the company. It is further provided in the buyer's agreement that time period for delivery of possession shall stand extended on the occurrence of delay for reasons beyond the control of the respondent no.1. It is pertinent to mention that the respondent has obtained the extension letter dated 02.08.2019 which was granted by the

competent authority till 31.12.2019 . The complainants are conscious and aware of the said agreement and have filed the present complaint to harass the respondent and compel the respondent to surrender to their illegal demands. It is relevant to submit that the project in question was completed and the respondent no. 1 had submitted an application dated 11.02.2019 for grant of occupation certificate to the concerned statutory authority, pursued the development and completion of the project in question. The complainants were offered the possession of the unit in question through letter of offer of possession dated 23.10.2019 , i.e. well within 60 days of the issuance of the Occupation Certificate on 17.10.2019. Hence, there is no delay in the possession being offered by the respondent, in terms of the registered buyer's agreement executed between the complainants and the respondent no.1.

19. That upon offer of possession being given to the complainant, an indemnity cum undertaking for possession dated 14.11.2019 was also executed by the complainants. The complainants were called upon to remit balance payment including delayed payment charges and to complete the necessary formalities/documentation necessary for handover of the unit in question to the complainants. However, the complainants approached the respondent no. 1 with request for payment of compensation for the alleged delay in utter disregard of the terms and conditions of the buyer's agreement. The respondent no. 1 explained to the complainants that they are not entitled to any compensation in terms of the buyer's agreement on account of default in timely remittance of instalments as per schedule of payment incorporated in the buyer's agreement. The respondent no. 1 earnestly requested the complainants to obtain possession of the unit in question and further requested the complainants to execute a conveyance deed in respect of the unit in question after completing all the formalities regarding delivery of

possession. It is submitted that a sum of Rs. 13,31,354/- was credited in the account of the complainants as rebate on account of gst, a sum of Rs. 1,08,770/- was also credited on account of tds certificate, an amount of Rs. 2,00,000/- was even credited in the account of the complainants as OTPR. Furthermore, it is submitted that an amount of Rs. 1,75,000/- was credited on account of maintenance and other benefits in full and final settlement of the grievances of the complainants.

20. That after receipt of the aforesaid amount, the complainants approached the respondent no. 1 requesting it to deliver the possession of the unit in question. A unit handover letter dated 29.11.2019 was executed by the complainants, specifically and expressly agreeing that the liabilities and obligations of the respondent as enumerated in the allotment letter or the buyer's agreement stand satisfied. The complainants have further executed a conveyance deed dated 26.12.2019 in respect of the unit in question. The transaction between the complainants and the respondent no. 1 stands concluded and no right or liability can be asserted by the respondent no. 1 or the complainants against the other.

21. That the complaint is bad for non-joinder of necessary parties. It is submitted that the complainants had availed a housing loan from Housing Development Finance Corporation Limited (HDFC) by mortgaging the unit in question. That the Tripartite agreement dated 12.01.2019 evidencing this fact has been appended as Annexure R-12 . In accordance with the terms and conditions incorporated in the tripartite agreement dated 12.01.2019, no orders pertaining to refund, compensation, interest etc. can be legally passed without HDFC Limited being impleaded as a party to the proceedings. Furthermore, such a dispute is clearly beyond the jurisdiction of this Hon'ble Authority and can only be decided by a Civil

Court. Thus, it is most respectfully submitted that the prosecution of the instant complaint in absence of HDFC Limited is bad in law.

22. The date of 31.12.2018 is the date as registered with the Rera Authority in its certificate dated 15.09.2017. The said registration was extended by the Authority upto 31.12.2019 vide extension certificate dated 02.08.2019. Thus, the typographical error that has crept in is that the due date of 31.12.2018 ought to have been typed as 31.12.2019.
23. No written reply is filed by respondent no. 2
24. 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 these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

25. 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)(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;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.

26. 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.

F. Objections raised by the respondent:-

F.I Objection regarding maintainability of complaint on account of complainant being investor.

27. The respondent took a stand that the complainant is investor and not consumers and therefore, he is not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon

careful perusal of all the terms and conditions of the allotment letter, it is revealed that the complainant is buyer's, and he has paid a total price of Rs.1,29,99,650/- 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;"

28. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between promoter and complainant, it is crystal clear that the complainant are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred to in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". Thus, the contention of the promoter that the allottee being investor are not entitled to protection of this Act also stands rejected.

F.II Whether the complainant can claim delayed possession charges after execution of conveyance deed.

29. The respondent stated that the complainants have alleged that the possession of the unit was to be given not later than December 2018 and

therefore cause of action, if any, accrued in favour of the complainants in 2018. The counsel for the respondent also stated at bar that the conveyance deed of the unit has already been executed in favour of the complainant on 27.09.2018. The transaction between the parties stands concluded upon the execution of conveyance deed.

30. It has been contended by the respondent that on execution of conveyance deed, the relationship between both the parties stands concluded and no right or liabilities can be asserted by the respondent or the complainant against the other. Therefore, the complainants are estopped from claiming any interest in the facts and circumstances of the case.
31. It is important to look at the definition of the term 'deed' itself in order to understand the extent of the relationship between an allottee and promoter. A deed is a written document or an instrument that is sealed, signed and delivered by all the parties to the contract (buyer and seller). It is a contractual document that includes legally valid terms and is enforceable in a court of law. It is mandatory that a deed should be in writing and both the parties involved must sign the document. Thus, a conveyance deed is essentially one wherein the seller transfers all rights to legally own, keep and enjoy a particular asset, immovable or movable. In this case, the assets under consideration are immovable property. On signing a conveyance deed, the original owner transfers all legal rights over the property in question to the buyer, against a valid consideration (usually monetary). Therefore, a 'conveyance deed' or 'sale deed' implies that the seller signs a document stating that all authority and ownership of the property in question has been transferred to the buyer.
32. From the above, it is clear that on execution of a sale/ conveyance deed, only the title and interest in the said immovable property (herein the allotted unit) is transferred. However, the conveyance deed does not conclude the

relationship or marks an end to the liabilities and obligations of the promoter towards the said unit whereby the right, title and interest has been transferred in the name of the allottee on execution of the conveyance deed.

33. The allottees have invested their hard-earned money and there is no doubt that the promoter has been enjoying benefits of and the next step is to get their title perfected by executing a conveyance deed which is the statutory right of the allottee. Also, the obligation of the developer – promoter does not end with the execution of a conveyance deed. Therefore, in furtherance to the Hon'ble Apex Court judgement and the law laid down in case titled as *Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. Vs. DLF Southern Homes Pvt. Ltd. (now Known as BEGUR OMR Homes Pvt. Ltd.) and Ors. (Civil appeal no. 6239 of 2019) dated 24.08.2020*, the relevant paras are reproduced herein below:

"34 The developer has not disputed these communications. Though these are four communications issued by the developer, the appellants submitted that they are not isolated aberrations but fit into a pattern. The developer does not state that it was willing to offer the flat purchasers possession of their flats and the right to execute conveyance of the flats while reserving their claim for compensation for delay. On the contrary, the tenor of the communications indicates that while executing the Deeds of Conveyance, the flat buyers were informed that no form of protest or reservation would be acceptable. The flat buyers were essentially presented with an unfair choice of either retaining their right to pursue their claims (in which event they would not get possession or title in the meantime) or to forsake the claims in order to perfect their title to the flats for which they had paid valuable consideration. In this backdrop, the simple question which we need to address is whether a flat buyer who seeks to espouse a claim against the developer for delayed possession can as a consequence of doing so be compelled to defer the right to obtain a conveyance to perfect their title. It would, in our view, be manifestly unreasonable to expect that in order to pursue a claim for compensation for delayed handing over of possession, the purchaser must indefinitely defer obtaining a conveyance of the premises purchased or, if they seek to obtain a Deed of Conveyance to forsake the right to claim compensation. This basically is a position which the NCDRC has espoused. We cannot countenance that view.

35. *The flat purchasers invested hard earned money. It is only reasonable to presume that the next logical step is for the purchaser to perfect the title to the premises which have been allotted under the terms of the ABA. But the submission of the developer is that the purchaser forsakes the remedy*

before the consumer forum by seeking a Deed of Conveyance. To accept such a construction would lead to an absurd consequence of requiring the purchaser either to abandon a just claim as a condition for obtaining the conveyance or to indefinitely delay the execution of the Deed of Conveyance pending protracted consumer litigation."

34. The authority has already taken a view in in **Cr no. 4031/2019 and others tiled as Varun Gupta V/s Emaar MGF Land Limited and others** and observed that the execution of a conveyance deed does not conclude the relationship or marks an end to the liabilities and obligations of the promoter towards the subject unit and upon taking possession, and/or executing conveyance deed, the complainant never gave up his statutory right to seek delayed possession charges as per the provisions of the said Act.
35. After consideration of all the facts and circumstances, the authority holds that even after execution of the conveyance deed, the complainant allottee cannot be precluded from his right to seek delay possession charges from the respondent-promoter.

F.III Whether the complaint is barred by limitation or not?

36. So far as the issue of limitation is concerned, the Authority is cognizant of the view that the law of limitation does not strictly apply to the Real Estate Regulation and Development Act of 2016 .However, the Authority under section 38 of the Act of 2016, is to be guided by the principle of natural justice. It is a universally accepted maxim and the law assists those who are vigilant, not those who sleep over their rights .Therefore, to avoid opportunistic and frivolous litigation a reasonable period of time needs to be arrived at for a litigant to agitate his right. This Authority is of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances.
37. It is also observed that the Hon'ble Supreme Court in its order dated 10.01.2022 in MA NO. 21 of 2022 of Suo Moto Writ Petition Civil No. 3 of 2020

have held that the period from 15.03.2020 to 28.02.2022 shall stand excluded for purpose of limitation as maybe prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

38. In the present matter the cause of action arose on 23.10.2019 when the offer of possession was made by the respondent to the complainant. The complainant has filed the present complaint on 20.04.2022 which is 2 years 5 months and 28 days from the date of cause of action. In the present matter the three year period of delay in filing of the case also after taking into account the exclusion period from 15.03.2020 to 28.02.2022 would fall on 06.10.2024. In view of the above, the Authority is of the view that the present complaint has been filed within a reasonable time period and is not barred by the limitation.

G. Findings on the relief sought by the complainant

G.1 Direct the respondent to pay interest at prescribed rate for the delay period of handing over the possession calculated from the date of delivery of possession as mentioned in the agreement to the actual date of handing over the possession on the amount paid by the complainant towards the booked unit.

39. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

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."

40. Clause 7 of the buyer's agreement 15.11.2018 provides for handing over of possession and is reproduced below:

Within 60 (sixty) days from the date of issuance of Occupation Certificate by the concerned Authorities, the Company shall offer the possession of the unit to the Allottee. Subject to Force Majeure and fulfillment by the Allottee of all the terms and conditions of this Agreement including but not limited to timely payment by the Allottee of the Total Price payable in accordance with Payment Plan Annexure-III, along with stamp duty, registration and incidental charges and other charges in connection thereto due and payable by the Allottee and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the Company shall offer the possession of the Unit to the Allottee on or before 31-12-2018 or such time as may be extended by the competent authority."

41. The buyer's agreement was executed on 15.11.2018 .As per clause 7 of the agreement the company shall offer the possession of the unit to the allottee on or before 31.12.2018. Therefore the due date comes out to be 31.12.2018.
42. **Admissibility of delay possession charges at prescribed rate of interest:**
The complainant are seeking delay possession charges 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.

43. 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.

44. 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., 16.04.2024 is @ 8.85 %. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
45. 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;"*

46. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85 % by the respondent/promoters which is the same as is being granted to them in case of delayed possession charges.
47. On consideration of the documents available on record and submissions made 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. In the present case the due date is taken from clause 7 of the agreement which is 31.12.2018 .The

occupation certificate was received on 17.10.2019 and the possession was offered to the complainants on 23.10.2019.

48. 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 17.10.2019. The respondent offered the possession of the unit in question to the complainant on 23.10.2019. So, it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. The handover letter was given to the complainants on 29.11.2019. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. This 2 month of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit, but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 31.12.2018 till the date of offer of possession plus 2 months or handover of possession whichever is earlier.
49. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession charges at rate of the prescribed interest @ 10.85% p.a. w.e.f. from the due date of possession i.e., 31.12.2018 till the date of offer of possession plus 2 months or handover of possession whichever is earlier as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

G.II Direct the respondent to grant the maintenance charge waiver to the complainant.

50. The Act mandates under section 11 (4) (d) that the developer will be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees. The complainant allottee is required to pay the maintenance charges to the respondent in terms of obligation of complainant allottee under section 19(6) of the Act of 2016 and the same is reproduced below :


19(6) Rights and duties of allottees

Every allottee , who has entered into an agreement or sale to take an apartment , plot or building as the case may be , under section 13 , shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place , the share of the registration charges , municipal taxes , water and electricity charges , maintenance charges , ground rent , and other charges , if any.


H. Directions of the Authority:

51. 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 functions entrusted to the Authority under Section 34(f) of the Act of 2016:
- i. The respondent shall pay interest at the prescribed rate i.e., 10.85 % per annum for every month of delay on the amount paid by the complainant from due date of possession i.e., 31.12.2018 till the date of offer of possession plus 2 months or handover of possession whichever is earlier after adjustment / deduction of the amount already paid if any towards delay in handing over of possession as per proviso to section 18(1) of the Act read with rule 15 of the rules.


- ii. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85 % by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- iii. The respondent is directed to pay arrears of interest accrued, if any, after adjustment in statement of account; within 90 days from the date of this order as per rule 16(2) of the rules.
- iv. The complainant allottee is required to pay the maintenance charges to the respondent in terms of obligation of complainant allottee under section 19(6) of the Act of 2016.
52. Complaint stands disposed of.
53. File be consigned to the registry.



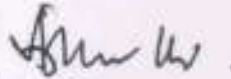
(Sanjeev Kumar Arora)
Member



(Ashok Sangwan)
Member



(Vijay Kumar Goyal)
Member



(Arun Kumar)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 16.04.2024