

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

Complaint no. 5240 of 2022
Date of Filing Complaint 17.08.2022
Order Pronounced On 22.05.2024

Mr. Sajjan Kumar Goyal

R/o: House no. 274, Ward no. 5, Dayal Bhavan, Maham,
Rohtak, Haryana- 124112

Complainant

Versus

M/s Shree Vardhman Infraheights Pvt. Ltd.

Regd. office: 302, 3rd Floor, Indraprakash Building, 21,
Barakhamba Road, New Delhi- 110001

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Shri Ravinder Singh Yadav (Advocate)

Complainant

Shri Shalabh Singhal and Shri Gaurav Rawat (Advocates)

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 under the provision of the Act or the Rules and Regulations made there under or to the allottee 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:

Sr. no.	Particulars	Details
1.	Name and location of the project	"Shree Vardhman Victoria", Village Badshahpur, Sector-70, Gurugram
2.	Project area	10.9687 acres
3.	Nature of the project	Group Housing Colony (Residential Apartment)
4.	DTCP license no. and validity status	103 of 2010 dated 30.11.2010 valid upto 29.11.2020
5.	Name of the Licensee	Dial Soft Tech and two others
6.	RERA registered/ not registered and validity status	Registered Registered vide no. 70 of 2017 dated 18.08.2017 valid upto 31.12.2020
7.	Unit no.	1002, Tower - D (BBA at page no. 16 of complaint)
8.	Unit admeasuring	1950 sq. ft. (BBA at page no. 16 of complaint)
9.	Date of buyer's agreement	01.08.2013 (Page no. 15 of complaint)
10.	Basic Sale Price	Rs. 99,02,100/- (BBA at page 30 of reply)
11.	Total amount paid by the complainant	Rs.43,35,463/- (As pleaded by complainant at page 10 of complaint and agreed to by respondent in final reminder dated 05.06.2017 at page 62 of reply)
12.	Date of commencement of construction	07.05.2014 (Page no. 28 of complaint)
13.	Possession clause	Clause 14(a) <i>"The Construction of the Flat is likely to be completed within a period of forty (40) months of commencement of construction of the particular tower/ block in which the Flat is located with a grace period of six(6) months, on</i>



		<p>receipt of sanction of the building plans/revised plans and all other approvals subject to force majeure including any restrains/restrictions from any authorities, non-availability of building materials or dispute with construction agency/workforce and circumstances beyond the control of Company and subject to timely payments by the Buyer(s) in the Said Complex.”</p> <p>(Emphasis supplied)</p>
14.	Due date of delivery of possession	07.03.2018 (Calculated from the date of commencement of construction) Note: Grace period is included as it is unqualified.
15.	Reminders sent by respondent to complainants	05.05.2017, 15.05.2017 (Page no. 60 and 61 of reply)
16.	Final reminder to clear the outstanding dues sent by respondent	05.06.2017 (Page no. 62 of reply)
17.	Cancellation Letter	11.07.2017 (Page no. 63 of reply)
18.	Occupation certificate	05.05.2023 (Page no. 22 of reply)
19.	Offer of possession	11.05.2023 (Submitted by complainant by way of written submissions dated 24.04.2024)

B. Facts of the complaint:

3. That the complainant made a payment of Rs. 10,0000/- as advance registration charges for the allotment of residential apartment in the project “Shree Vardhman Victoria”, Sector-70, Gurugram, Haryana vide cheque no. 699144 dated 15.06.2012 which was acknowledged by the respondent vide receipt no.567 dated 13.06.2012.
4. That the promoter had sent allotment letter dated 25.12.2012, through Anil Kumar Kaushik, an authorized signatory of the respondent.
5. That an apartment buyer agreement was executed between the parties on 01.08.2013 and a residential flat bearing no. 1002, tower D, having a super

area of 1950 sq. ft, consisting of three bedrooms, three toilets, one drawing cum dining room, one kitchen, one servant room with toilet and three balconies was allotted to the complainant, at the basic sale price of Rs. 99,02,100/-.

6. That the respondent fixed 15% of the basic sales price as earnest money. The green park facing/ club membership fee/ covered car parking space and preferential location charges were payable additionally as per the payment plan. Further, the respondent tentatively fixed EDC and IDC @ Rs.300/- per sq. ft. of the super area of the flat.
7. That as per clause 3(a) of the buyer's agreement, the complainant paid an amount of Rs.34,61,437/- towards basic sales price and same was acknowledged by the respondent by way of a receipt. The construction of the unit was likely to be completed within a period of 40 months of the commencement of construction of the particular tower/block in which the unit of the complainant is situated, with a further grace period of six months.
8. That the complainant paid an amount of Rs. 43,35,463/- against the total sale consideration of Rs. 1, 14, 47,100/- including basic sale price, covered car parking, club membership fee, value added tax as per agreement arrived between the parties.
9. That the complainant made timely payments as per payment plan till 2014 but the promoter did not adhere to the terms and conditions of the buyer's agreement. The complainant visited the site and was surprised to note that there was no progress in the construction of the tower in which the unit of complainant was situated. Therefore, the complainant stopped making further payments to the respondent. Several meetings were held with the respondent/promoter asking the promoter to complete construction work since the project was considerably delayed. Thereafter, complainant also visited the site on 30.11.2021, and placed on record several photographs,



manifesting that the construction work at site is on standstill and there is no construction activity except that the promoter raised the towers and plastered them from outside. It is thus apparent that the promoter has no intention of completing the construction work in the near future.

C. Relief sought by the complainants:

10. The complainant has sought following relief:

- (i) Direct the respondent to pay delay possession charges at the prescribed rate of interest.

11. 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) of the Act to plead guilty or not to plead guilty.

D. Reply by respondent:

12. The respondent contested the complaint on the following grounds:

- I. That the present complaint filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 is not maintainable as there has been no violation of the provisions of the Act. The complaint under Section 31 can only be filed after a violation or contravention has been established by the authority under Section 35. Since no violation or contravention has been established, the complaint should be dismissed. Additionally, Section 18 of the Act of 2016, under which the complainant seeks relief, is not applicable to the present case as it does not have retrospective effect and cannot be applied to transactions entered into before the Act of 2016 came into force. Therefore, Section 18 cannot be applied in the present case as buyers' agreement was executed before the Act of 2016.
- II. That a flat buyer agreement dated 01.08.2013 was executed in respect of flat D-1002 between the complainant and the respondent.
- III. That the payment plan opted for payment of the agreed sale consideration and other charges was a construction linked payment

plan. The respondent from time to time raised demands as per the agreed payment plan, however the complainant committed severe defaults and failed to make the payments as per the agreed payment plan, despite various call letters and reminders from the respondent.

- IV. That the respondent sent a reminder on 05.05.2017 and 15.05.2017 to clear the outstanding dues, wherein it was clearly notified that in event of non-payment within 15 days, the booking would be considered under cancellation. A final reminder dated 05.06.2017 was sent to make the payment of arrears with interest. The complainants neither made any payment nor responded to the said letters/reminders and therefore, the unit of the complainants was cancelled and same was communicated to them vide letter dated 11.07.2017. Upon cancellation of the booking, the earnest money, i.e., 15% of the basic sale price stood forfeited in terms of clause 5(a) of the buyers agreement.
- V. In the said Agreement no definite or firm date for handing over possession to the allottee was given. However, clause 14 (a) provided a tentative period within which the project/flat was to be completed and application for OC was to be made to the competent authority was given. As the possession was to be handed over only after receipt of OC from DTCP Haryana and it was not possible to ascertain the period that DTCP, Haryana would take in granting the OC, therefore the period for handing over of possession was not given' in the agreement. The occupancy certificate in respect thereof was applied on 22.09.2022, as such the answering respondent cannot be held liable for payment of any interest and/or compensation for the period beyond 23.02.2021.
- VI. The said tentative period given in clause 14(a) of the Agreement was not the essence of the contract and the allottee(s) were aware that there could be delay in handing over of possession. Clause 14(b) even provided for the compensation to be paid to the Allottee(s) in case of

delay in completion of construction which itself indicate that the period given in clause 14(a) was tentative and not essence of the contract.

- VII. That the tentative period i.e., 46 months for the completion as indicated in the flat buyer agreement was to commence from commencement of construction of the particular tower/block in which the flat was located on receipt of sanction of the building plans/all other approvals. The last approval required for commencement of construction being "Consent To Establish (CTE)" was granted to the project on 12.07.2014 by Haryana State Pollution Board.
- VIII. The said tentative / estimated period given in clause 14 (a) of the FBA was subject to conditions such as force majeure, restraint/ restrictions from authorities, non-availability of building material or dispute with construction agency / work force and circumstances beyond the control of the respondent and timely payment of instalments by all the buyers in the said complex including the complainant. As aforesaid many buyers / allottees in the said complex, including the complainants.
- IX. The construction activity in Gurugram has also been hindered due to orders passed by Hon'ble NGT/State Govts. /EPCA from time to time putting a complete ban on the construction activities in an effort to curb air pollution. The Hon'ble National Green Tribunal, New Delhi (NGT) vide its order 09/11/2017 banned all construction activity in NCR and the said ban continued for almost 17 days hindering the construction for 40 days.
- X. The District administration, Gurugram under the Graded Response Action Plan to curb pollution banned all construction activity in Gurugram, Haryana vide from 01/11/2018 to 10/11/2018 which resulted in hindrance of almost 30 days in construction activity at site

in compliance of direction issued by EPCA vide its notification No. EPCA-R/2018/L-91 dated 27/10/2018.

- XI. The Environmental Pollution (Prevention and Control Authority for NCR ("EPCA") vide its notification bearing No. EPCA-R/2019/L-49 dated 25/10/2019 banned construction activity in NCR during night hours (06:00 PM to 06:00 AM) from 26/10/2019 to 30/10/2019 which was later on converted into complete 24 hours ban from 01/11/2019 to 05/11/2019 by EPCA vide its notification No. EPCA-R/2019/L-53 dated 01/11/2019.
- XII. The Hon'ble Supreme Court of India vide its order dated 04.11.2019 passed in Writ Petition No. 13029/1985 titled as, "MC Mehta vs Union of India" completely banned all construction activities in NCR which restriction was partly modified vide order dated 09.12.2019 and was completely lifted by the Hon'ble Supreme Court vide its order dated 14.02.2020.
- XIII. The unprecedented situation created by the Covid-19 pandemic presented yet another force majeure event that brought to halt all activities related to the project including construction of remaining phase, processing of approval files etc. The Ministry of Home Affairs, GOI vide notification dated March 24, 2020 bearing no. 40-3/2020-DM-I(A) recognised that India was threatened with the spread of Covid-19 epidemic and ordered a complete lockdown in the entire country for an initial period of 21 (twenty) days which started from March 25, 2020. By virtue of various subsequent notifications, the Ministry of Home Affairs, GOI further extended the lockdown from time to time. Even before the country could recover from the 1st wave of Pandemic, the second wave of the same struck very badly in the March/April 2021 disrupting again all activities. Various state governments, including the Government of Haryana have also enforced several strict measures to

prevent the spread of Covid-19 pandemic including imposing curfew, lockdown, stopping all commercial, construction activity. The pandemic created acute shortage of labour and material. The nation witnessed a massive and unprecedented exodus of migrant labourers from metropolis to their native village. Due to the said shortage the construction activity could not resume at full throttle even after lifting of restrictions on construction sites.

- XIV. That every responsible person/institution in the country has responded appropriately to overcome the challenges thrown by COVID-19 pandemic and have Suo-Moto extended timelines for various compliances. The Hon'ble supreme court of India has extended all timelines of limitations for court proceedings with effect from 15/03/2020 till further order; the Hon'ble NCDRC had also extended the timelines on the similar lines; RERA authorities also had extended time periods given at the time of registration for completion of the project; even income tax department, banking and financial institutions have also extended timelines for various compliances.
- XV. That after the receipt of OC, the offer of possession was sent to the allottees and same was also sent to the complainants inadvertently as a result of mistake of commercial department of the respondent. The said offer of possession was sent only on account of a bona fide error and it was never intended to be withdrawal of the aforesaid cancellation. The said offer of possession is non-est in the eyes of law and therefore, respondent withdraws the same as abundant caution. The defaults in payment by the complainants and other allottees adversely affected the pace of construction and caused significant financial losses. Therefore, the complainant should be held liable for payment of interest at the agreed rate mentioned in the agreement to compensate for the losses caused by the defaults of delay payments.

13. 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. Written submissions of the complainant:

14. The complainant by way of written submissions dated 07.05.2024 has made the following additional submissions:
- a) That on 15.09.2021, the complainant received a letter from the respondent informing that five towers (A, B, C, H, I) of the project in question have been completed and remaining towers (D, E, F) shall be completed within 6-8 months. The respondent had applied for occupation certificate for towers A, B, C, H, I to DTCP, Chandigarh on 23.02.2021.
 - b) That the promoter asked the complainant to make payment towards the instalment due on "commencement of external plaster" stage on 01.03.2022. The complainant assured the respondent that he will make the payment as soon the construction commences. However, the complainant did not start the construction work.
 - c) That the respondent again asked the complainant to make payment "on commencement of flooring" stage on 19.04.2022. Again, the complainant assured the respondent to make payment as soon as the construction commences. However, the complainant again did not start the construction work.
 - d) That the respondent submitted in its written submissions that they cancelled the flat due to non-payment, however failed to enclose the mode of communication supported with delivery report from Indian postal service or courier record of delivery of letter to the complainant. Also, despite cancelling the unit in 2017, the respondent kept on sending demand notices to the complainant.

- e) That further on 11.05.2023, the respondent sent an offer of possession to the complainant asking the complainant to discharge certain obligations and take the possession of the unit in question by clearing outstanding dues. It is nowhere mentioned in the said offer of possession that the unit allotted to the complainant stands cancelled.
- f) That the respondent is merely trying to mislead the Authority by producing false, fabricating and unsubstantiated letter of the year 2017 just to evade his liability of delay possession charges.

F. Jurisdiction of the authority:

15. The authority has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

F. I Territorial jurisdiction

16. 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.

F. II Subject matter jurisdiction

17. 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 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.

18. 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.

G. Findings on the objections raised by the respondent:

G.I Objection regarding jurisdiction of the complaint w.r.t the apartment buyer's agreement executed prior to coming into force of the Act.

19. The respondent submitted that the complaint is neither maintainable nor tenable and is liable to be outrightly dismissed as the buyer's agreement was executed between the parties prior to the enactment of the Act and the provision of the said Act cannot be applied retrospectively.
20. The authority is of the view that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. The Act nowhere provides, nor can be so construed, that all previous agreements would be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement must be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation would be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. The numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of *Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017) decided on 06.12.2017* which provides as under:

"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter.....

122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

21. Also, in appeal no. 173 of 2019 titled **as Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya**, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

22. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent

authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

G.II Objections regarding force majeure.

23. The respondents-promoter has raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as orders passed by National Green Tribunal to stop construction, non-payment of instalment by allottees. The plea of the respondent regarding various orders of the NGT and other authorities advanced in this regard are devoid of merit. The orders passed by NGT banning construction in the NCR region was for a very short period and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. Also, there may be cases where allottees has not paid instalments regularly but all the allottees cannot be expected to suffer because of few allottees. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

G.III Objection regarding delay in completion of construction of project due to outbreak of Covid-19.

24. The Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (1) (Comm.) no. 88/2020 and LAS 3696-3697/2020* dated 29.05.2020 has observed as under:

"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself."

25. In the present case also, the respondent was liable to complete the construction of the project and handover the possession of the said unit by 07.03.2018. It is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said period cannot be excluded while calculating the delay in handing over possession.

H. Findings regarding relief sought by the complainants.

26. That the complainant was allotted unit no. D-1002, tower D, in the respondent's project at basic sale price of Rs.99,02,100/-. A buyer's agreement was executed on 01.08.2013 between the parties. The possession of the unit was to be offered within a period of 40 months from the date of commencement of construction and it is further provided in agreement that promoter shall be entitled to a grace period of six months. The date of construction commencement was 07.05.2014. Therefore, the due date of possession comes out to be 07.03.2018 including grace period of six months being unqualified and unconditional.
27. The respondent cancelled the subject unit allotted to the complainant vide letter dated 11.07.2017 on account of non-payment of demands raised by it. It is pertinent to mention here that during the previous hearing dated 24.04.2024, the complainant submitted that no offer of possession had been made to the complainant. On the other hand, the respondent submitted that the unit allotted to the complainant was already cancelled by the respondent on 11.07.2017, therefore no question of offer of possession or delay possession charges is made out.
28. However, the complainant vide his written submissions dated 07.05.2024 submitted that an offer of possession letter dated 11.05.2023 had also

been sent to the complainant post the receipt of occupation certificate on 05.05.2023 whereas, the respondent in his reply dated 15.11.2023 contended that the said offer of possession was sent only on account of a bona fide error, and it was never intended to be withdrawal of the aforesaid cancellation.

29. The contention raised by the respondent with respect to the said offer of possession post cancellation is denied as the respondent itself offered the possession of the subject unit to the complainants and by offering the said possession, the cancellation letter is automatically deemed to be withdrawn as the respondent itself along with offer of possession asked the complainants to clear the outstanding dues. Had it not been intentional, the respondent could not have raised demands and issue statement of accounts for the subject unit. Therefore, the said cancellation dated 11.07.2017 is held to be bad in the eyes of law and is hereby quashed.

H.I Direct the respondent to pay delay possession charges at the prescribed rate of interest.

30. In the present complaint, the complainant intend to continue with the project and are seeking delay possession charges as provided under the Proviso to Section 18(1) of the Act. Section 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."*

31. Clause 14(a) of the apartment buyer's agreement provides the time period of handing over possession and the same is reproduced below:

"14.a The construction of the flat is likely to be completed within a period of 40 months of commencement of construction of the particular tower/ block in which the subject flat is located with a grace period of 6 months, on receipt of sanction of the building

plans/ revised plans and all other approvals subject to force majeure including any restrains/ restrictions from any authorities, non-availability of building materials or dispute with construction agency/ workforce and circumstances beyond the control of company and subject to timely payments by the buyer(s) in the said complex.

32. **Due date of possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within 40 months from the date of commencement of construction and it is further provided in agreement that promoter shall be entitled to a grace period of six months. The date of construction commencement was 07.05.2014. Therefore, the due date of possession comes out to be 07.03.2018 including grace period of six months being unqualified and unconditional.
33. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is 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, *ibid*. 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."

34. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, *ibid* 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.

35. 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., 22.05.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
36. The definition of term 'interest' as defined under Section 2(z) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

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

Explanation. —For the purpose of this clause—

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

37. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85 % by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.
38. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 14(a) of the buyer's agreement executed between the parties on 17.10.2013, the possession of the said unit was to be delivered within a period 40 months from the date commencement of construction i.e. 07.05.2014 and it is further provided in agreement that promoter shall be entitled for a grace period of six months. As far as grace period is

concerned, the same is allowed being unconditional and unqualified. Therefore, the due date of handing over of possession comes out to be 07.03.2018. In the present complaint the complainant was offered possession by the respondent on 11.05.2023 after obtaining occupation certificate dated 05.05.2023 from the competent authority. The authority is of view that there is a delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 01.08.2013 executed between the parties.

39. 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 05.05.2023. The respondent offered the possession of the unit in question to the complainant only on 11.05.2023, 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 they have 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 (11.05.2023) which comes out to be 11.07.2023, or till the date of actual handing over of possession of the unit, whichever is earlier.
40. 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 are entitled to delay possession charges at prescribed rate of the interest @ 10.85 % p.a. w.e.f. 07.03.2018 till expiry of 2 months from the date of offer of possession (11.05.2023) i.e., up to 11.07.2023 or till the date of actual handing over of possession of the unit, whichever is earlier, as per the provisions of Section 18(1) of the Act read with Rule 15 of the Rules, *ibid*.

41. The respondent has obtained the occupation certificate from the competent authority on 05.05.2023 and offered the possession of the allotted unit vide letter dated 11.05.2023. Further, as per Section 17(1) of the Act of 2016, the respondent is obligated to handover physical possession of the subject unit to the complainant. Therefore, the respondent shall handover the possession of the allotted unit as per specification of the buyer's agreement entered into between the parties.


I. Directions of the Authority:

42. 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 promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

- i. The respondent is directed to pay delayed possession charges at the prescribed rate of interest i.e., 10.85% p.a. for every month of delay on the amount paid by the complainant to the respondent from the due date of possession 07.03.2018 till the date of offer of possession (11.05.2023) plus two months i.e., 11.07.2023 or till the date of actual handover of possession, whichever is earlier, as per Section 18(1) of the Act of 2016 read with Rule 15 of the Rules, *ibid*. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per Rule 16(2) of the Rules, *ibid*.

- 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 issue a revised statement of account after adjustment of delayed possession charges, and other reliefs as per above within a period of 30 days from the date of this order. The complainant is directed to pay outstanding dues if any, after adjustment of delay possession charges within a period of next 30 days, thereafter.
 - iv. The respondent is directed to handover physical possession of the subject unit within 30 days from the date of this order as occupation certificate of the project has already been obtained by it from the competent authority.
 - v. The respondent shall not charge anything from the complainants which is not the part of the flat buyer's agreement.
43. Complaint stands disposed of.
44. File be consigned to the registry.

Dated: 22.05.2024


(Ashok Sangwan)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram