

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

Complaint no. : 7910 of 2022  
Date of order : 10.04.2024

1. Mr. Ashish Dangwal  
2. Mrs. Kanika Kala  
**Both R/o:** H.No.-225, floor-2<sup>nd</sup>, Tower-rose,  
Our Homes, Sector-37-C, Gurugram, Haryana.

**Complainants**

M/s Apex Buildwell Pvt. Ltd.  
**Office at:** - 14A/36, Wea Karol Bagh,  
New Delhi-110053.

Versus

**Respondent**

**CORAM:**  
Shri. Ashok Sangwan

**Member**

**APPEARANCE:**  
Shri. Sunil Kumar (Advocate)  
Shri. Harshit Batra (Advocate)

Complainants  
Respondent

**HABERA  
ORDER**

1. The present complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made thereunder or to the allottee as per the agreement for sale executed inter se.

**A. Unit and project related details**

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

S. N.	Particulars	Details
1.	Name of the project	Our Homes
2.	Project location	Sector 37C, Gurugram, Haryana
3.	Project type	Low cost group housing project
4.	HRERA registered/ not registered	<b>Registered</b> <b>vide no. 40 of 2019 dated 08.07.2019</b>
	HRERA registration valid up to	<b>01.12.2019</b>
5.	Allotment letter dated	Not provided on record
6.	Date of apartment buyer agreement	14.05.2013
7.	Unit no.	225, 2 <sup>nd</sup> floor, Tower-Rose
8.	Unit area admeasuring	516.67 sq. ft.
9.	Possession clause	<b>3(a) Offer of possession</b> That subject to terms of this clause 3, and subject to the apartment allottee (s) having complied with all the terms and conditions of this agreement and not being in default under any of the provisions of this agreement and

		<p>further subject to compliance with all provisions, formalities, registration of sale deed, documentation, payment of all amount due and payable to the developer by the apartment allottee(s) under this agreement etc. as prescribed by the developer, the developer proposes to hand over the possession of the apartment <b><i>within a period of 36 months with the grace period of six month from the date of commencement of construction of the complex upon the receipt of all project related approvals including sanction of building plans/ revised plans</i></b> and approval of all concerned authorities including the fire service department, civil aviation department, traffic department, pollution control department etc. as may be required for commencing, carrying on and completing the said complex subject to force majeure, restraints or restrictions from any court/authorities. It is however understood between the parties that the possession of various blocks/towers comprised in the complex as also the various common facilities planned therein shall be handed over to the allottees of different block/towers as and when completed and in a phased manner.</p>
10.	Date of commencement of construction of the project	N/A
11.	Due date of possession	14.11.2016 (Calculated from the date of BBA i.e. 14.05.2013+ 6 months grace period) <b><i>(Grace period of 6 months is allowed)</i></b>
12.	Total sale consideration	Rs.16,00,000/- (As per page no. 25 of the complaint)

13.	Amount paid by the complainant	Rs.16,00,000/- (As per conveyance deed on page no. 25 of complaint)
14.	Occupation certificate	29.11.2019
15.	Offer of possession	01.12.2019
16.	Conveyance deed dated	17.03.2022

**B. Facts of the complaint**

3. The complainants have made the following submission: -

- I. That, the complainants are law-abiding and peace-loving citizens and the respondent "Apex Buildwell Pvt. Ltd." is a company incorporated under the Companies Act, 1956 having a Registered office at 14A/36, Wea Karol Bagh, New Delhi-110053 . The project in question is known as "our Homes", situated in Sector - 37-C, Gurugram, Haryana.
- II. That the apartment buyer's agreement was executed between the parties on 14.05.2013. As per clause 3(a) of the agreement, the respondent was to hand over possession of the unit within 36 months with a grace period of 6 months, from the date of commencement of construction of the complex. The due date of possession comes out to be 14.11.2016. The offer of possession was made on 01.12.2019 and the conveyance deed was executed on in favour of the complainants on 17.03.2022

**C. Relief sought by the complainants:**

4. The complainants have sought following relief(s):

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- i. Direct the respondent to pay the interest at the prescribed rate on the amount paid on account of delay in delivering possession of said apartment.
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 complainants being interested in the real estate development of the respondent known under the name and style of "Our Homes" at sector 37C, Gurugram, Haryana, approached the respondent to purchase the unit and booked a unit vide application form dated 25.04.2013. That pursuant thereto, an apartment bearing no 225, located on the 2<sup>nd</sup> Floor, Tower-Rose admeasuring carpet area of 516.67 sq. ft. was allotted to the complainants and the Apartment Buyers Agreement was executed between the parties on 14.05.2013.
  - II. That as per clause 3(a) of the agreement, the respondent proposed to hand over the possession of the unit within a period of thirty (36) months, with a grace period of 6 month, from the date of commencement of construction of the complex upon the receipt of all project related approvals. The relevant para of the Agreement is reiterated below:

*Clause 3(a)- That subject to terms of this Clause 3, and subject to the APARTMENT ALLOTTEE(S) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and further subject to compliance with all provisions, formalities, registration of sale deed, documentation, payment of all amount due and payable to the DEVELOPER by the APARTMENT ALLOTTEE(S) under this agreement etc., as prescribed by the DEVELOPER, the DEVELOPER proposes to hand over the possession of the APARTMENT within a period of thirty (36) months, with a grace period of 6 month, from the date of commencement of construction of the Complex upon the receipt of all project related approvals including sanction of building plan/revised plan and approval of all concerned authorities including the Fire Service Department, Civil Aviation Department, Traffic Department, Pollution Control Department*

*etc., as may be required for commencing, carrying on and completing the said Complex subject to force majeure, restraints or restriction from any court/ authorities....*

- III. That the due date of possession was subject to the allottees having complied with all the terms and conditions of the Agreement. Furthermore, the delivery of possession was also subject to the *force majeure* circumstances. It is categorical to note that in the year, 2012 on the directions of the Hon'ble Supreme Court of India, the mining activities of minor minerals (which includes sand) was regulated. The Hon'ble Supreme Court directed framing of modern mineral concession rules. Reference in this regard may be had to the judgment of **Deepak Kumar v. State of Haryana, (2012) 4 SCC 629**. The competent authorities took substantial time in framing the rules and in the process the availability of building materials including sand which was an important raw material for development of the said Project became scarce. Further, the Respondent was faced with certain other force majeure events including but not limited to non-availability of raw material due to various orders of Hon'ble Punjab & Haryana High Court and National Green Tribunal thereby regulating the mining activities, brick kilns, regulation of the construction and development activities by the judicial authorities in NCR on account of the environmental conditions, restrictions on usage of water, etc. It is pertinent to state that the National Green Tribunal in several cases related to Punjab and Haryana had stayed mining operations including in O.A No. 171/2013, wherein vide Order dated 2.11.2015 mining activities by the newly allotted mining contracts by the state of Haryana was stayed on the Yamuna River bed. These orders in fact *inter-alia* continued till the year 2018. Similar orders staying the mining operations were also passed by the Hon'ble High Court and the National Green Tribunal in Punjab and Uttar Pradesh as well. The stopping of mining activity not only made procurement of material difficult but also

raised the prices of sand/gravel exponentially. It was almost 2 years that the scarcity as detailed aforesaid continued, despite which all efforts were made and materials were procured at 3-4 times the rate and the construction continued without shifting any extra burden to the customer. The time taken by the Respondent to develop the project is the usual time taken to develop a project of such a large scale and despite all the *force majeure* circumstances, the Respondent completed the construction of the Project diligently and timely, without imposing any cost implications of the aforementioned circumstances on the Complainants and demanding the prices only as and when the construction was being done.

- IV. It is to be noted that the development and implementation of the said Project have been hindered on account of several orders/directions passed by various authorities/forums/courts, before passing of the subjective due date of offer of possession. They have been delineated hereinbelow:

S. no.	Date of Order	Directions	Period of Restriction	Days affected	Comments
1.	07.04.2015	National Green Tribunal had directed that old diesel vehicles (heavy or light) more than 10 years old would not be permitted to ply on the roads of NCR, Delhi. It has further been directed by virtue of the aforesaid order that all the registration authorities in the State of Haryana, UP and NCT Delhi would not register any diesel vehicles more than 10 years old and would also file the list of vehicles before the tribunal and provide the same to the police and other	7 <sup>th</sup> of April, 2015 to 6 <sup>th</sup> of May, 2015	30 days	The aforesaid ban affected the supply of raw materials as most of the contractors/building material suppliers used diesel vehicles more than 10 years old. The order had abruptly stopped movement of diesel vehicles more than 10 years old which are commonly used in construction activity. The order had completely hampered the construction

		concerned authorities.			activity.
2.	19 <sup>th</sup> July 2016	National Green Tribunal in O.A. No. 479/2016 had directed that no stone crushers be permitted to operate unless they operate consent from the State Pollution Control Board, no objection from the concerned authorities and have the Environment Clearance from the competent Authority.	Till date the order in force and no relaxation has been given to this effect.	30 days	The directions of NGT were a big blow to the real estate sector as the construction activity majorly requires gravel produced from the stone crushers. The reduced supply of gravels directly affected the supply and price of ready mix concrete required for construction activities.
3.	8 <sup>th</sup> Nov, 2016	National Green Tribunal had directed all brick kilns operating in NCR, Delhi would be prohibited from working for a period of 2016 one week from the date of passing of the order. It had also been directed that no construction activity would be permitted for a period of one week from the date of order.	8 <sup>th</sup> Nov, 2016 to 15 <sup>th</sup> Nov, 2016	7 days	The bar imposed by Tribunal was absolute. The order had completely stopped construction activity.
4.	7 <sup>th</sup> Nov, 2017	Environment Pollution (Prevention and Control Authority) had directed to the closure of all brick kilns, stones crushers, hot mix plants, etc. with effect from 7 <sup>th</sup> Nov 2017 till further notice.	Till date the order has not been vacated	90 days	The bar for the closure of stone crushers simply put an end to the construction activity as in the absence of crushed stones and bricks carrying on of construction were simply not feasible. The respondent eventually ended up locating alternatives with the intent of expeditiously concluding construction activities but the previous period of 90 days was



					consumed in doing so. The said period ought to be excluded while computing the alleged delay attributed to the Respondent by the Complainants. It is pertinent to mention that the aforesaid bar stands in force regarding brick kilns till date is evident from orders dated 21 <sup>st</sup> Dec, 19 and 30 <sup>th</sup> Jan, 20.
5.	9 <sup>th</sup> Nov 2017 and 17 <sup>th</sup> Nov, 2017	National Green Tribunal has passed the said order dated 9 <sup>th</sup> Nov, 2017 completely prohibiting the carrying on of construction by any person, private, or government authority in NCR till the next date of hearing. (17 <sup>th</sup> of Nov, 2017). By virtue of the said order, NGT had only permitted the competition of interior finishing/interior work of projects.	The order dated 9 <sup>th</sup> Nov, 17 was vacated vide order dated 17 <sup>th</sup> Nov, 17.	9 days	On account of passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.
6.	29th October 2018	Haryana State Pollution Control Board, Panchkula has passed the order dated 29 <sup>th</sup> October 2018 in furtherance of directions of Environmental Pollution (Prevention and Control) Authority dated 27th Oct 2018. By virtue of order dated 29th of October 2018 all the construction activities including the	1st Nov to 10th Nov, 2018	10 days	On account of the passing of the aforesaid order, no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.

		excavation, civil construction were directed to remain close in Delhi and other NCR Districts from 1st Nov to 10th Nov 2018.			
7.	24 <sup>th</sup> July, 2019	NGT in O.A. no. 667/2019 & 679/2019 had again directed the immediate closure of all illegal stone crushers in Mahendergarh Haryana who have not complied with the siting criteria, ambient air quality, carrying capacity, and assessment of health impact. The tribunal further directed initiation of action by way of prosecution and recovery of compensation relatable to the cost of restoration.		30 days	The directions of the NGT were again a setback for stone crushers operators who have finally succeeded to obtain necessary permissions from the competent authority after the order passed by NGT on July 2017. Resultantly, coercive action was taken by the authorities against the stone crusher operators which again was a hit to the real estate sector as the supply of gravel reduced manifolds and there was a sharp increase in prices which consequently affected the pace of construction.
8.	11th October 2019	Commissioner, Municipal Corporation, Gurugram has	11th Oct 2019 to 31st Dec 2019	81 days	On account of the passing of the aforesaid order.

	passed an order dated 11th of Oct 2019 whereby the construction activity has been prohibited from 11th Oct 2019 to 31st Dec 2019. It was specifically mentioned in the aforesaid order that construction activity would be completely stopped during this period.		no construction activity could have been legally carried out by the Respondent. Accordingly, construction activity has been completely stopped during this period.
		<b>Total days</b>	<b>287 days</b>

- V. That from the facts indicated above and documents appended, it is comprehensively established that a period of 287 days was consumed on account of circumstances beyond the power and control of the Respondent, owing to the passing of Orders by the statutory authorities. All the circumstances stated hereinabove come within the meaning of *force majeure*, as stated above.
- VI. That it is pertinent to note that the respondent should be given the benefits of the grace period of 6 months as per clause 3(a) of the Agreement. This Hon'ble Authority in the complaint no. 3865 of 2021, in complaint titled Ashish Goutam v. Apex Buildwell Private Ltd., decided on 09.09.2022, has allowed the grace period of 6 months to the respondent in the same project. The relevant para of the judgment is reiterated below:

*"38.... The said possession clause incorporates unqualified reason for grace period/extended period of 6 months. Accordingly, the authority literally interpreting the same and allows this grace period of 6 months to the promoter at this stage. Therefore, grace period of six months as per clause 3(a) of buyer's agreement is allowed and included while calculating the due date of handing over of possession"*

- VII. That the respondent has complied with all of its obligations, not only with respect to the agreement with the complainants but also as per the concerned laws, rules, and regulations thereunder and the local authorities. That despite innumerable hardships, the respondent successfully attained the Occupation Certificate on 29.11.2019. Therefore, it is respectfully submitted that the time period utilised by the concerned statutory authority for granting the occupation certificate is liable to be excluded from the time period utilised for the implementation of the project.
- VIII. That it is pertinent to mention here that after receiving of the Occupation Certificate, the possession of the said unit was lawfully offered to the complainants vide Offer of Possession on 01.12.2019. Thereafter, the physical possession was taken by the complainants without any demur. It is now, after over 3 years of the offer of possession that the complainants have approached the Authority as an afterthought seeking delay possession charges with the sole intent of getting wrongful gains and causing wrongful loss to the respondent. It is submitted that the present complaint is barred by limitation as the cause of action if any, only arose till the receipt of occupancy certificate and not thereafter. The present complaint having been filed after over years of receipt of occupancy certificate, the complaint is not maintainable and should be dismissed.
- IX. That after giving the lawful possession of the unit, the conveyance deed was also executed between the complainants and the respondent on 17.3.2022. It is submitted that after execution of the conveyance deed, the contractual relationship between the parties stands fully satisfied and comes to an end. That there remains no claim/ grievance of the complainants with respect to the Agreement or any obligation of the parties thereunder.
- X. That after the execution of the Conveyance Deed, the parties are estopped from making any claims at this instance. It is a settled matter of law that: The necessary condition is the detriment of the other party by the conduct

of the one estopped. An estoppel may result though the party estopped did not intend to lose any existing right.

- XI. That in light of the *bona fide* conduct of the respondent, the peaceful possession having been taken by the complainants, non-existence of cause of action and the frivolous complaint filed by the complainants, this complaint is bound to be dismissed with costs in favor of 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 submission made by the parties.

**E. Jurisdiction of the authority**

8. The respondent has raised a preliminary objection/submission that the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of the complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

**E. I Territorial jurisdiction**

9. 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 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;*

11. 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.

**F. Findings on the objections raised by the respondent.**

**F.1 Whether the complainant can claim delayed possession charges after execution of the conveyance deed.**

12. The respondent stated that the complainants have alleged that possession of the unit was to be given not later than May, 2016 and therefore the cause of action, if any, accrued in favour of the complainants in 2016. Also, that the conveyance deed of the unit has already been executed in favour of the complainants on 17.03.2022. The transaction between the parties stands concluded upon the execution of conveyance deed.
13. It had been contended by the respondent that on execution of the 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 complainant is stopped from claiming any interest in the facts and circumstances of the case.
14. It is important to look at the definition of the term "deed" itself in order to understand the extent of the relationship between the allottee and the

promoter. A deed is a written document or an instrument that is sealed, signed, delivered by all the parties to the contract i.e., 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 sale 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.

15. 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.
16. 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 her title perfected by executing the conveyance deed which is the statutory right of the allottees. 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 the 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 rights 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 titles to the flats for which they have paid valuable consideration. In this backdrop, the simple question which we need to address is whether a flat buyer who espouses 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 in which the NCDRC has espoused. We cannot countenance that view.*

*35. The flat purchasers invested their 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 seeing 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."*

17. The authority has already taken a view in **Cr. No. 4031/2019** and others titled 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.
18. After consideration of all the facts and circumstances, the authority holds that even after execution of the conveyance deed, the complainants/ allottees cannot be precluded from their right to seek delayed possession charges from the respondent-promoter.

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



19. 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 Authority 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 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 of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances.
20. 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 may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.
21. In the present matter the cause of action arose on 01.12.2019 when the offer of possession was made by the respondent. The complainants have filed the present complaint on 17.01.2023 which is 3 years 1 months and 15 days from the date of cause of action. In the present case 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. 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 regarding relief sought by the complainant**

**G.1 Direct the respondent to pay the interest at the prescribed rate on the amount paid on account of delay in delivering possession of said apartment.**

22. In the present complaint, the complainants intends to continue with the project and are seeking possession of the unit and delayed possession

charges as per section 18(1) of the Act and the same is reproduced below for ready reference:

**"Section 18: - Return of amount and compensation**

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

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

*(Emphasis supplied)*

23. Clause 3(a) of the apartment buyer's agreement (in short, the agreement) dated 14.05.2013, provides for handing over possession and the same is reproduced below:

**3(a)**

**Offer of Possession**

"That subject to terms of this clause 3, and subject to the apartment allottee (s) having complied with all the terms and conditions of this agreement and not being in default under any of the provisions of this agreement and further subject to compliance with all provisions, formalities, registration of sale deed, documentation, payment of all amount due and payable to the developer by the apartment allottee(s) under this agreement etc. as prescribed by the developer, the developer proposes to hand over the possession of the apartment **within a period of 36 months with the grace period of six month from the date of commencement of construction of the complex upon the receipt of all project related approvals including sanction of building plans/ revised plans** and approval of all concerned authorities including the fire service department, civil aviation department, traffic department, pollution control department etc. as may be required for commencing, carrying on and completing the said complex subject to force majeure, restraints or restrictions from any court/authorities. It is however understood between the parties that the possession of various blocks/towers comprised in the complex as also the various common facilities planned therein shall be ready and completed in phases and will be handed over to the allottees of different block/towers as and when completed and in a phased manner.

24. The buyer's agreement was executed on 14.05.2013. As per clause 3 (a) of the agreement the respondent was to offer the possession of the unit to the allottees within 36 months from the date of start of construction. The date of start of construction is not there on record. Thus, the authority have calculated 36 months from the date of execution of the agreement, also the grace period of 6 months is allowed to the respondent/promoter. Therefore, the due date comes out to be 14.11.2016.

25. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants 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.*

26. 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.
27. 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., 10.04.2024 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
28. 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;"*

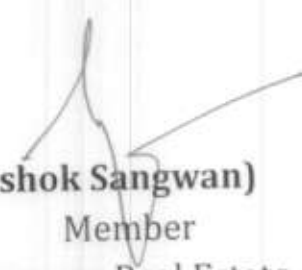
29. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. The authority has observed that the apartment buyer agreement was executed on 14.05.2013 and the possession of the subject unit was to be offered within a period of 36 months plus 6 months from date of commencement of construction. The authority calculated due date of possession from the date of execution of the agreement i.e., 14.05.2013 along with a grace period of 6 months which comes out to be 14.11.2016. The respondent has failed to handover possession of the subject unit on the due date. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit to the complainant as per the terms and conditions of the agreement to sell dated 14.05.2013 executed between the parties. Further, the authority observes that the respondent obtained the occupation certificate on 29.11.2019 and offered possession to the complainant on 01.12.2019 and the conveyance deed was executed on 17.03.2022.
30. 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. 14.11.2016 till the date of offer of

possession plus two months i.e., 01.02.2020 or handover of possession, whichever is earlier, after obtaining the occupation certificate, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

**H. Directions of the authority: -**

31. 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 sec 34(f) of the Act: -
- i. The respondent/promoter shall pay interest at the prescribed rate i.e., 10.85% for every month of delay on the amount paid by the complainant from the due date of possession i.e., 14.11.2016 till the date of offer of possession plus 2 months i.e., 01.02.2020 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 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 Act,
32. Complaint stands disposed of.
33. File be consigned to the registry.

Dated: 10.04.2024



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