

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

Date of decision: 31.05.2024

NAME OF THE BUILDER		M/S APEX BUILDWELL PVT. LTD.	
PROJECT NAME		OUR HOMES	
S. No.	Case No.	Case title	Appearance
1	CR/3012/2023	Surender Singh Yadav V/S M/S Apex Buildwell Pvt. Ltd.	Sh. Gaurav Rawat Sh. Harshit Batra
2	CR/3013/2023	Kartik Yadav V/S M/S Apex Buildwell Pvt. Ltd.	Sh. Gaurav Rawat Sh. Harshit Batra
3	CR/3014/2023	Naveen Yadav V/S M/S Apex Buildwell Pvt. Ltd.	Sh. Gaurav Rawat Sh. Harshit Batra

**CORAM:**

Shri Sanjeev Kumar Arora

**Member****ORDER**

1. This order shall dispose of the three complaints titled above filed before this authority under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project,

namely, Our Homes situated at Sector-37-C, Gurugram being developed by the same respondent/promoter i.e., M/s Apex Buildwell Pvt. Ltd. The terms and conditions of the buyer's agreements fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking possession of the unit along with delayed possession charges.

3. The details of the complaints, reply status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

<b>Project Name and Location</b>	<b>"Our Homes" at sector 37-C, Gurgaon, Haryana.</b>
<b>Project area</b> <b>DTCP License No.</b>	10,144 acres 13 of 2012 dated 22.02.2012 valid upto 01.12.2019
<b>Rera Registered</b>	Registered vide no. 40 of 2019 dated 08.07.2019 valid upto 01.12.2019
<b>Possession clause: 3. Possession</b> <b>(a) Offer of possession:</b>	<i>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 nay of this 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 handover the possession of the Apartment <u>within a period of 36 months with a grace period of 6 month, from the date of commencement of construction of complex upon the receipt of all project related approvals</u> .....</i>
<b>Date commencement of construction:</b>	02.12.2013
<b>Due date of possession:</b>	02.12.2016+ 6 month grace period=02.06.2017 [calculated from the date of commencement of construction including grace period of 6 months]
<b>Occupation certificate:</b>	29.11.2019

Sr. No	Complaint No., Case Title, and Date of filing of complaint	Unit No.	Unit admeasuring	Date of apartment buyer agreement	Due date of possession	Total Sale Consideration / Total Amount paid by the complainant	Relief Sought
1.	CR/3012/2023  Surender Singh Yadav V/S M/S Apex Buildwell Pvt. Ltd.  <b>DOF:</b> 04.07.2023  <b>Reply status:</b> 18.01.2024	106, 1 <sup>st</sup> floor, Tower-Jasmine	516.67 sq. ft.	16.02.2013	02.06.2017  Conveyance deed: 01.12.2021	BSP: Rs. 16,00,000/-  TSC: - Rs. 17,71,119/-  AP:- Rs. 18,44,268/-	DPC
2.	CR/3013/2023  Kartik Yadav V/S M/S Apex Buildwell Pvt. Ltd.  <b>DOF:</b> 04.07.2023  <b>Reply status:</b> 18.01.2024	106, 1 <sup>st</sup> floor, Tower-Jasmine	516.67 sq. ft.	16.02.2013	02.06.2017  Possession certificate: 15.06.2019  Conveyance deed: 01.12.2021	BSP: Rs. 16,00,000/-  TSC: - Rs. 17,71,119/-  AP: - Rs. 18,43,657/-	DPC

3	CR/3014/ 2023  Naveen Yadav V/S M/S Apex Buildwell Pvt. Ltd.  <b>DOF:</b> 04.07.202 3  <b>Reply status:</b> 18.01.202 4	223, 2 <sup>nd</sup> floor, Tower- Rose	516.67 sq. ft.	16.02.20 13	02.06.201 7  Conveyan ce deed: 01.12.202 1	BSP: Rs. 16,00,00 0/-  TSC: - Rs. 17,71,11 9/-  AP: - Rs. 18,45,65 7/-	DPC
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**Note: In the table referred above certain abbreviations have been used. They are elaborated as follows:**

**Abbreviation Full form**  
TSC Total Sale consideration  
AP Amount paid by the allottee(s)

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the builder buyer's agreement executed between the parties in respect of said units for not handing over the possession by the due date, seeking seeking possession of the unit along with delayed possession charges.
5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter /respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant(s)/allottee(s) are similar. Out of the above-mentioned case, the particulars of lead case **CR/3012/2023 Surender Singh Yadav V/S M/S Apex Buildwell Pvt. Ltd.**

are being taken into consideration for determining the rights of the allottee(s).

**A. Project and unit related details**

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

*CR/3012/2023 Surender Singh Yadav V/S M/S Apex Buildwell Pvt. Ltd.*

S.N.	Particulars	Details
1	Name and location of the project	"Our Homes" at sector 37-C, Gurgaon, Haryana
2	Nature of the project	Low Cost/Affordable Group housing
3	Project area	10.144 acres
4	DTCP license no.	13 of 2012 dated 22.02.2012 valid upto 01.12.2019
5	RERA Registered/ not registered	Registered vide no. 40 of 2019 dated 08.07.2019 valid upto 01.12.2019
6	Unit no.	106, 1 <sup>st</sup> floor, Tower-Jasmine (page 53 of complaint)
7	Unit area admeasuring	516.67 sq. ft. (page 53 of complaint)
8	Date of Application	05.09.2012 (Page no. 52 of complaint)
9	Allotment letter	23.10.2012 (page no. 26 of complaint)
10	Date of builder buyer agreement	16.02.2013

		(Page 50 of complaint)
11	Date of construction of project	CTE-02.12.2013 (as per project details)
12	Possession Clause	<p><b>3. Possession</b></p> <p><b>(a) Offer of possession:</b></p> <p><i>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 nay of this 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 handover the possession of the Apartment within a period of 36 months with a grace period of 6 month, from the date of commencement of construction of complex upon the receipt of all project related approvals .....</i></p> <p><i>(emphasis supplied)</i></p>
13	Due date of possession	02.06.2017  (Calculated from the date of the commencement of construction i.e., 02.12.2013 + 6 months grace period) (Grace period of 6 months is allowed)
14	Basic Sale consideration	Rs. 16,00,000/-  (as per BBA on page no. 53 of complaint)

15	Total sale consideration	Rs. 17,71,119/- (as alleged by respondent in reply)
16	Amount paid by the complainant	Rs. 18,44,268/- (as alleged by complainant)
17	Offer for fit out	15.06.2019 (page no. 39 of complaint)
18	Occupation certificate	29.11.2019 (page no. 33 of reply)
19	Offer of possession	30.11.2019 (page no. 44 of complaint)
20	Conveyance Deed	01.12.2021 (page no. 82 of complaint) -

**B. Facts of the complaint**

The complainant has made the following submissions in the complaint: -

8. That the respondent advertised about its new project and the complainant relying on various representations and assurances given by the respondent booked a unit in the project by paying an amount of Rs. 1,64,944/- dated 06.09.2012.
9. That a buyer's agreement was executed between the allottee and respondent on 16.02.2013. As per annexure of the buyer's agreement the sale price of the said apartment shall be Rs. 16,00,000/-. That would include the basic sale price, EDC, IDC, Preferential location charges and exclusive right to use the dedicated car parking.
10. As per clause no. 3(a) of the apartment buyer's agreement, the respondent had agreed to deliver the possession of the flat within period 36 months plus 6 months from the date of commencement of construction upon

receipt of all project related approval. Due date of possession is calculated from the date of agreement i.e. 16.02.2013.

11. As per the demands raised by the respondent, based on the payment plan, the complainant to buy the captioned unit already paid a total sum of Rs. 18,44,268/-, towards the said unit against total sale consideration of Rs. 16,00,000 /-.
12. That the payment plan was designed in such a way to extract maximum payment from the buyers viz a viz or done/completed. The complainant approached the respondent and asked about the status of construction and also raised objections towards non-completion of the project.
13. That in terms of clause 3(a) of the said buyer's agreement respondent was under obligation to complete the construction and to offer the possession on or before 16.02.2016. The complainant approached in person to know the fate of the construction and offer of possession in terms of the said buyer's agreement, respondent misrepresented to complainant that the construction will get completed soon.
14. That the complainant after many requests and emails; received the demand on account of offer of possession for fit outs on 15.06.2019. thereafter, offer of possession dated 30.11.2019
15. That the respondent has completely failed to honour their promises and have not provided the services as promised and agreed through the brochure, BBA and the different advertisements released from time to time. Further, such acts of the respondent is also illegal and against the spirit of RERA Act, 2016.
16. That the respondent asking for electric meter charges and electrification charges from the complainant is absolutely illegal as the cost of the electric meter in the market is not more than Rs. 2,500/- hence asking for such a



huge amount, when the same is not a part of the builder buyer agreement is unjustified and illegal and therefore needs to be withdrawn immediately.

17. That as per section 18 of the RERA Act. 2016, the promoter is liable to pay delay possession charges to the allottees of a unit, building or project for a delay or failure in handing over of such possession as per the terms and agreement of the sale.

**C. Relief sought by the complainant: -**

18. The complainant has sought following relief(s):

I. Direct the respondent to pay interest on the total amount paid by the complainant at the prescribed rate of interest as per RERA from due date of possession till date of actual physical possession.

19. 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.**

20. That the complainant, namely, Surender Singh Yadav approached the respondent and expressed his interest in booking of an apartment in the low cost/affordable group housing project developed by respondent known as "Our Homes" situated in Sector 37C, Gurgaon, Haryana. Prior to the booking, the complainant conducted extensive and independent enquiries with regard to the project and only after being fully satisfied on all aspects, they took an independent and informed decision, uninfluenced in any manner by the respondent, to book the unit in question.

21. That the complainant, vide an application form applied to the respondent for provisional allotment of the unit. Pursuant thereto, unit bearing no 106, located on the 1st floor, tower- Jasmine admeasuring 516.67 sq. ft.

- (tentative area) along with one car parking was allotted to the complainant.
22. Thereafter, a buyer's agreement dated 16.02.2013 was executed between the complainant and the respondent. The buyer's agreement was consciously and voluntarily executed between the parties and the terms and conditions of the same are binding on both the parties.
  23. That as per clause 3(a) of the buyer's agreement dated 16.02.2013, the due date of possession of the unit in question was 36 months from date of commencement of construction upon the receipts of all project related approvals along with a grace period of 6 months.
  24. 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.
  25. That a period of 377 days was consumed on account of circumstances beyond the power and control of the respondent, owing to the passing of orders of various statutory authorities and the Covid-19 Pandemic. However, despite all odds, the respondent was able to carry out construction/development at the project site and obtain the necessary approvals and sanctions and has ensured compliance under the agreement, laws, and, rules and regulations.
  26. That the respondent, despite such delay, earnestly fulfilled its obligation under the buyer's agreement and completed the project as expeditiously as possible in the facts and circumstances of the case. The various circumstances are beyond the control of the respondent are the factors responsible for the delayed development of the project. The respondent cannot be penalized and held responsible for the default of its customers or

due to force majeure circumstances. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

27. That the respondent has complied with all of its obligations, not only with respect to the buyer's agreement with the complainant but also as per the concerned laws, rules, and regulations thereunder and the local authorities. That despite innumerable hardships being faced by the respondent, the respondent completed the construction of the project and applied for the occupation application before the concerned authority and successfully attained the occupation certificate dated 29.11.2019 and 24.02.2020. Once an application for grant of occupation certificate is submitted to the concerned statutory authority, the respondent ceases to have any control over the same. The grant of occupation certificate is the prerogative of the concerned statutory authority and the respondent does not exercise any influence in any manner whatsoever over the same. 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.

28. That after receiving of the occupation certificate, the possession of the said unit was lawfully offered to the complainant vide offer of possession dated 30.11.2019 already annexed with the complaint.

29. That thereafter the physical possession was taken by the complainant without any demur and hence a possession certificate was thereby issued in favour of the complainant by the respondent. It is now, after over 3 years of the offer of possession that the complainant has approached the Ld. Authority as an afterthought seeking delay possession charges with the sole

intent of getting wrongful gains and causing wrongful loss to the respondent.

30. 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**

31. 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**

32. 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**

33. 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) The promoter shall-*

*(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made*

*thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

**Section 34-Functions of the Authority:**

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

34. 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. Findings on the objection raised by the respondent**

**F.1 Objections raised by the respondent w.r.t complaint being barred by limitation.**

35. The respondent-promoter in its reply has contended that the complaint is barred by limitation as it is filed after 3 years from the date of offer of possession i.e., 30.11.2019. Whereas the complainant-allottee rebuts the said submissions made by the respondent on the ground of leave period of 23 months, being granted by the Hon'ble Supreme Court in Suo Moto Order no. 03 of 2020 for calculation limitation period, on account of Covid-19. The authority after consideration of the documents placed on record and the arguments advanced by both the parties is of the view that the due date of possession of the subject unit, as per clause 3 of the builder buyer agreement dated 16.02.2013 comes out to be 02.06.2017. The respondent-promoter offered the possession of the said unit on 30.11.2019 after obtaining OC from the competent authority on 29.11.2019. Thereafter,

conveyance deed was executed interse parties on 01.12.2021. So, limitation if any for a cause of action would accrue to the complainants with effect from 30.11.2019 and not from 01.12.2021. The limitation period of 3 years expires on 30.11.2022. Further, the Hon'ble Supreme court in **Suo Motu Writ Petition (Civil) No.3 of 2020** dated 10.01.2022 has excluded the period from 15.03.2020 till 28.02.2022 i.e., 23 months while computing the period of limitation for any suit, appeal, application or proceeding. Therefore, in the present matter the limitation period shall be computed after excluding the above mentioned period of 23 months. Accordingly, the limitation expires on 30.10.2024 and the present complaint was filed on 04.07.2023 hence, the same is well within the limitation period and the contention of the respondent w.r.t. compliant being barred by limitation is hereby denied by the authority with aforesaid reasons.

#### **F.II Objections raised by the respondent w.r.t force majeure.**

36. The respondent-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 NGT, Environment Pollution (Prevention & Control) Authority, shortage of labour, demonetization and covid 19 pandemic. The plea of the respondent regarding various orders of the authorities, all the pleas advanced in this regard are devoid of merit. The orders passed by authorities banning construction in the NCR region was for a very short period of time and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. The plea regarding Covid 19 is also devoid of merit as the covid came in March 2020. 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. Findings on the relief sought by the complainant.**

I. Direct the respondent to pay interest on the total amount paid by the complainant at the prescribed rate of interest as per RERA from due date of possession till date of actual physical possession.

37. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

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

***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."*

38. Clause 3 (a) of the buyer's agreement provides for handing over of possession and is reproduced below:

***3. Possession***

***(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 nay of this 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 handover the possession of the Apartment within a period of 36 months with a grace period of 6 month, from the date of commencement of construction of complex upon the receipt of all project related approvals .....*

39. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainants not being in default under any provisions of this agreement

and compliance with all provisions, formalities and documentation as prescribed by the promoters. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoters and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoters may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the flat buyer agreement by the promoters are just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

40. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment within 36 months from the date of commencement of construction with a grace period of 6 months. Since in the present matter the BBA incorporates unqualified reason for grace period/extended period of 6 months in the possession clause. Accordingly, the authority literally interpreting the same allows this grace period of 6 months to the promoter at this stage. Accordingly, the due date of possession comes out to be 02.06.2017.
41. **Admissibility of delay possession charges at prescribed rate of interest:** 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.

42. 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.
43. 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., 31.05.2024 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
44. 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;"*

45. 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 it in case of delayed possession charges.
46. 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 as per the agreement. By virtue of clause 3(a) of the agreement executed between the parties on 16.02.2013, the possession of the subject apartment was to be delivered within 36 months from the date of commencement of construction. The date of construction has been taken from the date of issuance of consent to establish i.e., 02.12.2013. As far as grace period of 6 months is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession calculated from date of CTE comes out to be 02.06.2017.
47. 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 29.11.2019. The respondent has offered the possession of the subject unit(s) to the respective complainant after obtaining occupation certificate from competent authority. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. This 2 months' 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., 02.06.2017 till the expiry of 2 months from the date of offer of possession (30.11.2019) plus two months (i.e., 30.01.2020).

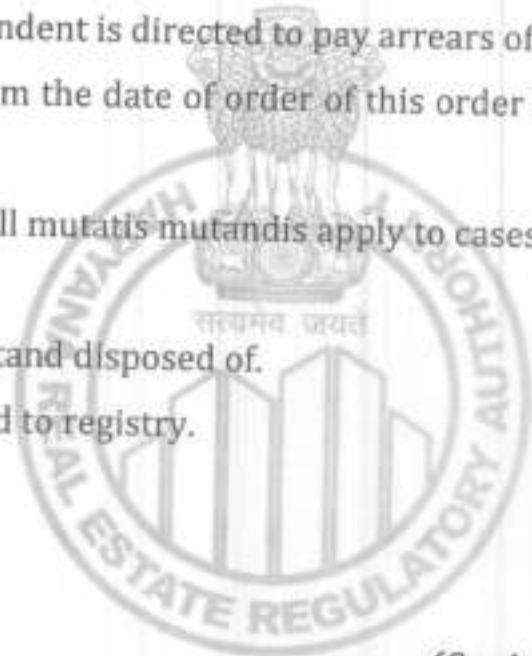
48. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the apartment buyer's agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 02.06.2017 till offer of possession plus two months (i.e., 30.01.2020), at the prescribed rate i.e., 10.85 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

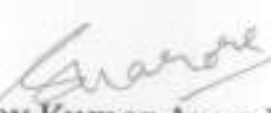
#### **H. Directions of the authority**

49. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent is directed to 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 02.06.2017 till offer of possession i.e., 30.11.2019 plus two months i.e., upto 30.01.2020 as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- ii. The respondent shall not charge anything from the complainant which is not the part of the flat buyer's agreement.

- iii. 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.
  - iv. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
  - v. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order of this order as per rule 16(2) of the rules.
50. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
51. The complaints stand disposed of.
52. Files be consigned to registry.



  
(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 31.05.2024