

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

Complaint no.: 4324 of 2023
Date of first hearing: 04.01.2024
Date of decision 04.07.2024

Gulshan Dua
R/o: - 548A/23, DLF Colony, Rohtak, Haryana-
124001

Complainant

Versus

1. M/s Tashee Land Developers Pvt. Ltd.
2. M/s KNS Infracon Private Limited.
Regd. office at: 517A, Narain Manzil, 23,
Barakhamba Road, Connaught Place, New
Delhi-110001

Respondents

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Himanshu Ahuja (Advocate)
Shri Rishabh Jain (Advocate)

**Complainant
Respondents**

ORDER

1. This 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 thereunder or to the allottee as per the agreement for sale executed *inter se*.

A

A. Project and unit related details

2. 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:

S. No.	Particulars	Details
1.	Project name and location	"Capital Gateway", Sector- 111, Gurugram.
2.	Project area	10.462 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	34 of 2011 dated 16.04.2011 valid till 15.04.2024
5.	Name of licensee	KNS Infracon Pvt Ltd
6.	RERA Registered/not registered	Registered vide no. 12 of 2018 dated 10.01.2018
7.	RERA registration valid up to	31.12.2020 for phase-I (tower A to G) and 31.12.2021 for phase- II (tower H to J)
8.	Extension of RERA registration	RC/REP/HARERA/GGM/12 of 2018/7(3)/2022/3 dated 09.08.2022
9.	Validity of extension	30.06.2025 for both the phases, phase-I (tower A to G) for phase- II (tower H to J)
10.	Unit no.	701, 7 th floor, tower-1 (As per page no. 47 of the complaint)
11.	Unit measuring	2675 sq. ft. (super area) (As per page no. 47 of the complaint) (Later revised to 2990 sq. ft.)

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		(As per page no. 93 of the complaint)
12.	Allotment letter	12.12.2012 (As per page no. 41 of the complaint)
13.	Date of execution of flat buyer's agreement	12.02.2013 (As per page no. 45 of the complaint)
14.	Possession clause	<p>Clause 2.1</p> <p><i>Subject to clause 9 or any other circumstances not anticipated and beyond control of the first party/conforming party and any restraints/restrictions from any court/authorities and subject to the purchaser having complied with all the terms of this agreement including but not limited timely payment of total sale consideration and stamp duty and other charges and having complied with all provisions, formalities documentation etc. as prescribed by the first party/conforming party proposes to handover the possession of the flat to the purchaser within approximate period of 36 months from the date of sanction of building plans of the said colony. The purchaser agrees and understands that the first party/conforming party shall be entitled to a grace period of 180 days after the expiry of 36 months for applying and obtaining OC in</i></p>



		<i>respect of the colony from the concerned authority.</i> (As per page no. 53 of the complaint)
15.	Basic sale consideration	Rs.1,01,65,000/- (As per page no. 49 of the complaint)
16.	Total sale consideration	Rs.1,23,71,222/- (As per written submissions of the complainant)
17.	Total amount paid by the complainant	Rs.1,28,57,481/- (As per confirmation of accounts on page no. 29-30 and receipt information on page no. 96-123)
18.	Due date of delivery of possession	07.06.2015 As per information obtained by planning branch building plan approved i.e., 07.06.2012. (Note: Grace period is not allowed as neither OC applied nor obtained within the time limit prescribed by the promoter in the apartment buyer's agreement.)
19.	Occupation certificate	Not obtained
20.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:
 - I. That in the year 2011, the respondent through its marketing executives and advertisement done through various mediums and means approached the complainant with an offer to sell a unit in the said project. Being induced by the said offer and the



representations made by the executive of the respondent to be true and correct, the complainant agreed to purchase a unit in the said project.

- II. That thereafter the complainant booked a unit in the said project and made an initial payment of Rs.26,06,687/-. The payment of the said initial amount can be ascertained by the entries from 31.10.2011 to 01.04.2012 made in books of account maintained by the respondent no. 1.
- III. That thereafter the respondent no.1 demanded further 10% of booking amount and 50% of EDC/IDC on account of building plan being approved and sent a demand letter dated 07.06.2012 but the complainant did not make any payment at that time as no allotment letter was issued in favor of complainant. Thereafter on 12.12.2012, the complainant was allotted a unit bearing no. 701, tower-1, 7th floor, 4BHK unit, admeasuring 2675 sq. ft. which was later revised to 2990 sq. ft. in the said project.
- IV. That on 12.02.2013, a builder buyer's agreement was executed between the complainant and respondents and as per the clause 1.2 of the agreement, the basic sale price of the said unit is Rs.1,01,65,000 exclusive of External Development Charges (Rs.328/- per sq. ft.), Infrastructure Development Charges (Rs.36/- per sq. ft.), Club Membership Charges - (Rs.1,50,000/-), Interest Free maintenance security-(Rs.75 per sq. ft.), Car Parking Charges, Electric Connection Charges etc.
- V. That as per the clause 2.1 of the builder buyer's agreement, the promoter/developer was supposed to handover the possession of the flat to the complainant within approximate period of 36 months from the date of sanction of the building plans of the said colony.

That further, the builder shall be entitled to a grace period of 180 days, after the expiry of 36 months, for applying and obtaining the occupation certificate in respect of the colony from the concerned authority.

- VI. That the clause 2.3 of the BBA states that if the builder fails to offer possession of the said flat within a period of 45 months from the date of sanction of the building plans of the said colony, it shall be liable to pay to the purchaser compensation calculated @Rs.5 per sq. ft. for every month of delay till the date of handing over the possession.
- VII. That the complainant opted for constructed linked payment plan and was supposed to make the payments as per the demand letters and the stages mentioned aforesaid.
- VIII. That the complainant against the said construction linked payment plan, made regular payments and paid the total amount of Rs.1,28,57,481/- inclusive of service tax, interest etc, to the respondent.
- IX. That against all the demand letters based on the construction linked payment plan the complainant had made complete payment. Moreover, the respondent no. 1 revised the building plan. The super area was revised (from 2675 sq. ft. to 2990 sq. ft.) by the respondent and a demand letter demanding basic sale consideration for the increased super area (330 sq. ft.) was made by the respondent, the complainant made complete payment which can be evident from the payment receipts and books of accounts of the respondent no.1. It is evident that the complainant has made more than 90% of the payment for the said unit.

- X. That the respondent no. 1 has also charged penalty amount of Rs.2,00,000/- from the complainant and threatened the complainant that if the penalty amount will not be paid by the complainant then the unit will be transferred to third person.
- XI. That vide letter dated 07.06.2012 the respondent no.1 had intimated the complainant that the building plan of the said project has been approved. Based upon the said letter dated 07.06.2012, the due date of possession of the said unit comes out to be 07.06.2015 but the respondents have failed to offer the possession till date. The respondents not only failed to handover possession of the said unit before the deemed day of possession but have also failed to complete the construction of the said unit.
- XII. That despite repeated requests, the respondent has failed to even give inspection of the said unit till date which is a clear indication of the fact that the said unit is still far from completion.
- XIII. That the respondents even had the audacity to demand further amount towards the completion of the project while the project was not even close to completion at that time. It is also surprising and astonishing that even after 8 years the construction of the said unit is still not complete.
- XIV. That a mere glance will make it evident that the said agreement is a one sided, unfair and unreasonable agreement as all the major clauses therein solely protect the interest of the respondent. The wordings have been chosen in a manner so as to provide maximum benefit to the respondent in giving possession of the said unit to the complainant.
- XV. That the conduct of the respondent as narrated above clearly shows that they were only interested in collecting huge sums from

the prospective purchasers despite knowing fully well that the project would take years to get completed. The respondents deliberately made fake, wrongful and fraudulent promises to induce the complainant and other prospective buyers and made them victims of their malice filled plans and have enjoyed large sum of money free of interest for years together.

- XVI. That the respondent has committed grave deficiency in services by delaying the delivery of possession and false promises made at the time of sale of the said unit which amounts to unfair trade practice which is immoral as well as illegal. The respondent has also criminally misappropriated the money paid by the complainants as sale consideration of said unit by not delivering the unit by agreed timelines. The respondent has also acted fraudulently and arbitrarily by inducing the complainant to buy the said unit basis its false and frivolous promises and representations about the delivery timelines aforesaid project in gross violation of the rules and law applicable in such cases.
- XVII. That the respondent has acted in a very deficient, unfair, wrongful, fraudulent manner by not delivering the said unit, imposing heavy charges on vague accounts and compelling the complainant to pay a heavy amount towards enhanced area.
- XVIII. That the cause of action accrued in favor of the complainant and against the respondent arose on 07.06.2015 when the respondent failed to offer the possession of the said unit on the deemed date i.e., 07.06.2015. The cause of action is still subsisting and continuing one.
- XIX. That the complainant further declare that the matter regarding which this complaint has been made is not pending before any

court of law and any other authority or any other tribunal on the subject matter.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
 - i. Direct the respondents to provide interest at the prescribed rate for every month of delay on the amount paid.
 - ii. Direct the respondents to handover the possession of the flat.
 - iii. Direct the respondent to pay Rs.1,00,000/- towards litigation expenses, to the complainant.
 - iv. Direct the respondent to pay differential amount of circle state towards stamp duty payable in 2015 and the amount to be paid at the time of execution of sale deed.
5. The authority issued a notice dated 28.09.2023 to the respondents by speed post and also on the given email address at advashu979@gmail.com and info@tashee.in. The delivery reports have been placed in the file. The counsel for the respondents neither put in appearance nor filed a reply to the complaint within the stipulated period despite ample opportunities. Accordingly, the authority is left with no other option but to struck off the defence of the respondents and proceed ex-parte against the respondents and decide the complaint on the basis of documents and pleadings filed by the complainant. But, on hearing dated 18.04.2024, Sh. Rishabh Jain, the new counsel for the respondent has put in appearance and filed memo of appearance and requested to file written submissions within a period of 2 weeks and the same is allowed. The counsel for the respondent has filed written arguments on 27.06.2024 on behalf of the respondents in consonance to the request made by the counsel for the respondent.

6. On the date of hearing dated 18.04.2024, 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. Written arguments by the respondents:

7. The respondents have contested the complaint on the following grounds:
- I. That at the outset, it is most respectfully submitted that the instant complaint of the complainant is not maintainable on facts or in law and is as such liable to be dismissed/rejected. The complainant has obfuscated the provisions of the Act, 2016 and the rules, 2017 to their advantage, which is brazen misuse of law. The complainant has failed to provide the correct/complete facts and the same are reproduced hereunder for proper adjudication of the present matter. They have raised false, frivolous, misleading and baseless allegations against the respondents with intent to make unlawful gains.
 - II. The respondents had applied for environment clearance on 20.10.2011. The developer finally got the environment clearance on 17.06.2013. The respondents had applied for the revision in building plans of the said project before the appropriate authority. However, for no fault of the respondents, the plans were approved by the Department only after a delay of 2 years. Owing to this, the construction of project could not be started in a timely manner. The complainant, having keen interest in the said project, approached the respondents for booking a unit in the said project.
 - III. That, after being satisfied with the project in totality he expressed his willingness to book a unit in the project. It is thus apparent on

the face of it, the complainant in the present case is not consumer rather 'investor' who falls outside the purview of the Act, 2016 more specifically in view of the preamble of the Act, 2016 which states to protect the interest of the consumers. It is to be considered that complainant is not consumer and thus he fall outside the purview of the Act, 2016 and the instant complaint is liable to be dismissed.

- IV. At present, it is a matter of record that the structure of the said project in question is complete, and few instalments are due and payable on account of the complainants. Moreover, it is pertinent to state that the respondents have applied from obtaining occupation certificate for Phase-I of the said project as all the construction and development activities are complete.
- V. After receipt of SWAMIH investment fund, the respondents were able to resume the construction activities at a very large scale in expeditious manner. The development at the project site is in full swing, in order to complete the project and handover the possession to the allottees at the earliest.
- VI. That the respondents have always made efforts for completion of the said project. Initially, the Interim RERA granted RERA registration on 10th January 2018 till 31.12.2020 for Phase I (Tower A to G) and 31.12.2021 for Phase II (Tower H to J). From time-to-time construction activities were impeded due to poor air quality in the Delhi NCR region.
- VII. The legal fraternity is respected for its novelty and highly educated professionals. The Hon'ble Supreme Court has allowed extension of limitation taking into consideration the impact of the novel corona virus over the world. Similarly, the real estate sector was impacted

badly due to Covid-19 as the construction activities were halted for a long time. Moreover, the cost of construction kept on increasing with time.

- VIII. The present complaint is devoid of any merit and has been preferred with the sole motive to harass the respondents. In fact, the present complaint is liable to be dismissed on the ground that the said claim of the complainant is unjustified, misconceived and without any basis and is against the respondents. The present complaint is baseless and flagrant abuse of process of law to harass the respondents.
- IX. In spite of the fact that the real estate market has gone down badly, the respondents have managed to carry on the works with certain delays caused due to various above mentioned reasons and the fact that various buyers, including the complainant of the project has defaulted in making timely payments towards his outstanding dues, resulting into inordinate delay in the construction activities, still the construction of the said project has never been stopped or abandoned and the project will be delivered soon.
- X. It is a respectful submission of the respondents that a bare perusal of the complaint will sufficiently elucidate that the complainant has miserably failed to make a case against the respondents. It is submitted that the complainant has merely alleged in the complaint about the delay on the part of the respondents in offering possession but has failed to substantiate the same. The fact is that the respondents have been acting in consonance with the registration of project with the Authority and no contravention in terms of the same can be projected on the respondents.

- XI. The Haryana Real Estate Regulatory Authority, Gurugram, does not have jurisdiction in the instant case as the subject-matter of the complaint has to be decided as per the Act, 2016 and the Rules, 2017. The complainant has erred in invoking the jurisdiction of the Authority, Gurugram, as the compensation can only be granted in cases where the Authority so directs.
- XII. Thus, it is germane to state that there is no further deficiency as claimed by the complainant against the respondents and no occasion has occurred deeming indulgence of this authority. Hence, the present complaint is liable to be dismissed.
8. The complainant has filed the complaint against R1 and R2 in which R1 is the developer/promoter and R2 is the land owner of the project land. The flat buyer's agreement has been executed with both the respondents and the payments have been made to R1 only. The registered office address of both the respondents as mentioned in the flat buyer's agreement is same. Sh. Vishnu Pandey, is the Authorized signatory for both the companies and while filing the reply on behalf of both companies he has not distinguished the role and responsibilities between R1 and R2 and both respondents are associated company having same address and hence both are jointly and severally responsible to the complainant-allottee.
9. 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:

10. The respondents have raised preliminary objection regarding jurisdiction of authority to entertain the present complaint. 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

11. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana 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

12. 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.

13. So, in view of the provisions of the Act of 2016 quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.



F. Findings on the objections raised by the respondent:**F.I Objection regarding delay due to force majeure circumstances.**

14. The respondent-promoter has raised a contention that the construction of the project was delayed due to force majeure conditions such as orders passed by the National Green Tribunal during October-November 2019 and other orders. But the plea taken by respondents is devoid of merit and hence, rejected. The authority is of considered view that as per clause 2.1 of flat buyer's agreement, the due date of handing over of possession is to be calculated as 36 months from date of sanction of building plan. The date of sanction of building plan as stated by complainant is 07.06.2012. As the due date of handing over of possession come out to be 07.06.2015 which is way before from the conditions that respondents are taking plea of. The respondents were liable to complete the construction of the project and handover the possession of the said unit by 07.06.2015 and the respondents are claiming benefit of ban on construction by National green Tribunal laid in October-November 2019 whereas the due date of handing over of possession was much prior to the event. Therefore, the authority is of the view that ban on construction by NGT cannot be used as an excuse for non- performance of a contract for which the deadlines were much before such restriction, the said time period is not excluded while calculating the delay in handing over possession.

F.II Objection regarding delay in completion of construction of project due to outbreak of Covid-19

15. 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."*

16. In the present case also, the respondents were liable to complete the construction of the project and handover the possession of the said unit by 07.06.2015. 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 time period cannot be excluded while calculating the delay in handing over possession.

F.III Objection regarding entitlement of DPC on ground of complainant being investor

17. The respondents have taken a stand that the complainant is investor and not consumer, therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondents also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observed that the respondents are correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aim & object of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a

complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

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

G. Findings on the relief sought by the complainant(s):

- G.I Direct the respondents to provide interest at the prescribed rate for every month of delay on the amount paid.**
G.II Direct the respondents to handover the possession of the flat.

19. The above sought relief(s) by the complainant are taken together being inter-connected.
20. In the present complaint, the complainant intends to continue with the project and is seeking possession of the subject unit and delay possession charges as provided under the provisions of section 18(1) of the Act which 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."

21. The flat buyer's agreement was executed between the parties. As per clause 2.1 of the agreement, the possession was to be handed over within 36 months from the date of sanction of building plans. The clause 2.1 of the buyer's agreement is reproduced below:

2.1 Possession

Subject to clause 9 or any other circumstances not anticipated and beyond control of the first party/conforming party and any restraints/restrictions from any court/authorities and subject to the purchaser having complied with all the terms of this agreement including but not limited timely payment of total sale consideration and stamp duty and other charges and having complied with all provisions, formalities documentation etc. as prescribed by the first party/conforming party proposes to handover the possession of the flat to the purchaser within approximate period of 36 months from the date of sanction of building plans of the said colony. The purchaser agrees and understands that the first party/conforming party shall be entitled to a grace period of 180 days after the expiry of 36 months for applying and obtaining OC in respect of the colony from the concerned authority.

(Emphasis supplied)

22. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of the agreement, and the complainant not being in default under any provisions of the agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottees that even a single default by him in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant

for the purpose of allottees and the commitment time period for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottees of their 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 allottees is left with no option but to sign on the dotted lines.

23. **Admissibility of grace period:** As per clause 2.1 of buyer's agreement, the respondents/promoters have proposed to handover the possession the said unit within a period of 36 months from date of sanction of building plans. The said possession clause incorporates qualified reason for grace period/extended period of 6 months. Since possession clause 2.1 of the BBA incorporates qualified reason which provides a pre-condition that the entitlement of said grace period of 6 months is dependent of the situation of respondent applying for or obtaining occupation certificate from the competent Authority but as per the given facts it has failed to apply for occupation certificate to the competent authority within the stipulated time. Accordingly, the authority literally interpreting the same and disallows this grace period of 6 months to the promoter at this stage. Therefore, grace period of six months as per clause 2.1 of buyer's agreement is disallowed and not included while calculating the due date of handing over of possession.
24. **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(s) 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.

25. The legislature in its wisdom in the subordinate legislation under the rule 15 of the rules has determined the prescribed rate of interest. 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., 04.07.2024 is 8.95%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.95%.
26. 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;"*

27. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is satisfied that the respondents are 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 2.1 of the flat buyer's agreement executed between the parties, the possession of the subject unit was to be delivered within a period of 36 months from date of sanction of building plans. Date of sanction of building plan is taken from written submissions submitted by complainant i.e., 07.06.2012. As such the due date of handing over of possession comes out to be 07.06.2015. The respondent has failed to handover possession of the subject unit till 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 possession of the allotted unit to the complainant as per the terms and conditions of the flat buyer's agreement dated 12.02.2013 executed between the parties. It is pertinent to mention over here that even after a passage of more than 9 years neither the construction is complete nor an offer of possession of the allotted unit has been made to the allottee by the builder. Further, the authority observes that there is no document on record from which it can be ascertained as to whether the respondent has applied for occupation certificate/part occupation certificate or what is the status of construction of the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottee.

28. 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 has not been obtained. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 07.06.2015 till the

expiry of 2 months from the date of offer of possession plus two months after obtaining OC or handing over of possession whichever is earlier.

29. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the flat 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 respondents 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., 07.06.2015 till actual handing over of possession or offer of possession plus two months, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

G.III Direct the respondents to pay Rs.1,00,000/- towards litigation expenses, to the complainant.

30. The complainant is seeking relief w.r.t compensation in the aforesaid relief, **Hon'ble Supreme Court of India in civil appeal titled as M/s Newtech Promoters and Developers Pvt. Ltd. V/s State of UP & Ors. Supra** held that an allottee is entitled to claim compensation under sections 12, 14, 18 and section 19 which is to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The adjudicating officer has exclusive jurisdiction to deal with the complaints in respect of compensation.

G.IV Direct the respondent to pay differential amount of circle state towards stamp duty payable in 2015 and the amount to be paid at the time of execution of sale deed.

31. As per clause 5.4 of the flat buyer's agreement provides for conveyance deed and stamp duty and is reproduced below for ready reference:

"5. Conveyance Deed and Stamp Duty

The stamp duty, statutory charges and registration charges and incidental charges and incidental charges of the conveyance/sale/transfer deed or any other documents required to be executed under this agreement shall be borne by the purchaser.

32. The Authority has gone through the conveyance deed and stamp duty clause of the agreement and observes that the stamp duty, registration charges and administrative charges shall be borne by the complainant-allottee at the time of execution of registration of conveyance deed.
33. Also, as per section 19(6) of the Act, which is reproduced below:

“19. Rights and duties of allottees:

19(6) Every allottee, who has entered into agreement or sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.”

34. The authority is of the view that it is the duty of the complainant/allottee to pay the stamp duty, registration charges at the time of execution of registration of conveyance deed and administrative charges up to Rs.15,000/- as fixed by the local administration.

H. Directions of the authority:

35. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- The respondent is directed to pay interest to the complainant against the paid-up amount at the prescribed rate of 10.95% p.a. for every month of delay from the due date of possession i.e., 07.06.2015 till actual handing over of possession or offer of possession after obtaining occupation certificate plus two months, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

- ii. The respondents shall not charge anything from the complainant which is not the part of the flat buyer's agreement.
 - iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period and the respondents shall handover the possession within a period of two month after receipt of occupation certificate from the competent authority.
 - iv. The arrears of such interest accrued from due date of possession i.e., 07.06.2015 till the date of order by the authority shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottees before 10th of the subsequent month as per rule 16(2) of the rules.
 - v. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.95% 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.
36. Complaint stands disposed of.
37. File be consigned to registry.

Dated: 04.07.2024


(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram