

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

Complaint no. : 2171 of 2023
Date of filing : 15.05.2023
First date of hearing: 28.09.2023
Date of decision : 04.07.2024

Ashish Jain
R/o: 41/23, Opposite Canara Bank, Near
Hindu Girls College, Sonipat, Haryana-
131001.

Complainant

Versus

M/s Pivotal Infrastructure Pvt. Ltd.
Regd. Office at: 309,3rd Floor, JMD
Pacific Square, Sector-15, Part-II,
Gurugram-121001.

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Sh. Sushil Yadav (Advocate)
Sh. Sidharth Sejwal (AR)

**Complainant
Respondent**

ORDER

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

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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 and location of the project	"Paradise" at Village Ullahawas, Sector-62, Gurugram.
2.	Project area	5.06875 Acres
3.	Nature of Project	Affordable Group Housing
4.	DTCP license no. and validity status	05 of 2016 dated 30.05.2016 Valid upto 30.09.2023
5.	Name of Licensee	M/s Pivotal Infrastructure Private Limited
6.	Rera registered/ not registered and validity status	Registered Vide no. 178 of 2017 dated 01.09.2017 Valid upto 29.05.2021
7.	Unit No.	T2-806, on 8th Floor in Tower-T2 (page no. 53 of complaint)
8.	Unit area admeasuring	566 sq. ft. (carpet area) (page no. 53 of complaint)
9.	Date of Allotment letter	27.04.2017 (page no. 53 of complaint)
10.	Date of buyer's agreement	30.05.2017 (page no. 22 of complaint)
11.	Date of approval of building plan	25.07.2016 (page no. 19 of reply)
12.	Environmental Clearance date	28.07.2017 (page no. 23 of reply)
13.	Possession Clause	8.1 Expected time for handing over possession. <i>"Except where any delay is caused on account of reasons expressly provided for under this agreement and other situations beyond the reasonable control of the company and subject to the company having obtained the occupation/completion certificate from the competent authority(ies), the company shall endeavor to complete the construction and handover the possession of the said apartment within a period of 4 years from the date of</i>

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		<i>grant of sanction of building plans for the project or the date of receipt of all the environmental clearances necessary for the completion of the construction and development of the project, whichever is later, subject to timely payment by the allottee of all the amounts payable under this agreement and performance by the allottee of all other obligations hereunder”</i> [Emphasis Supplied]
14.	Due date of possession	28.01.2022 (28.07.2021 plus additional grace of 6 months of Covid-19 as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020.) [due date of possession calculated from the date of environmental clearance dated 28.07.2017, being later].
15.	Sale consideration	Rs.23,09,500/- (as per allotment letter at page no. 53-54 of complaint and as mentioned in BBA)
16.	Amount paid by the complainant	Rs.24,47,791/- (as per the receipts annexed with complaint at page no.57-66 of complaint)
17.	Application for grant of Occupation certificate	22.12.2022 (As per page no. 40 of reply)
18.	Occupation certificate	Not obtained
19.	Offer of possession	Not offered

B. Facts of the complaint:

3. The complainant has made the following submissions in the complaint:

- I. That the complainant is a simple, law abiding and peace-loving person. The complainant throughout has acted as per the terms of the allotment, rules and regulations and the provisions laid down by law and no illegality whatsoever has been committed by him in adhering to his contractual obligations. The booking was made by the complainant and the payments were made by him with all the efforts and hope to fulfil the dream of their family of having his own home and to live a peaceful and secured life.

- II. That the respondent offered for sale units in an Affordable Group Housing Complex known as 'Paradise' which claimed to comprise of multi-storied apartments, residential units, car parking spaces, recreational facilities, gardens etc. on a piece and parcel of land situated in Sector-62, Gurugram, Haryana. It was claimed that the project would be spread across approx. 5.06875 acres and would consist of several world class facilities. The said project was represented to be developed by the respondent in accordance with the approvals and other sanctions in terms of the Affordable Group Housing Policy, 2013 notified by the Government of Haryana vide Town and Country Planning Department notification dated 19.08.2013.
- III. That the complainant received a marketing call from the office of respondent in the month of February, 2017 for booking in the said residential project of the respondent. The complainant had also been attracted towards the aforesaid project on account of publicity given by the respondent through various means like various brochures, posters, advertisements etc. The respondent has been making and painting a very rosy picture of the project and made several representations with respect to the innumerable world class facilities to be provided by the respondent in their project to its prospective customers and made the same representations to the complainant as well. Accordingly, the complainant applied for the booking vide application no. 1413 by making payment of 5% towards the total sale consideration as per the provisions laid down in Affordable Group Housing Policy, 2013. Pursuant to the application, the draw of lots were held and the complainant was allotted unit no. 806, 8th Floor,

- Tower no. T-2 having carpet area of 566 sq. ft. together with a two-wheeler parking.
- IV. That accordingly, a copy of the buyer's agreement was sent to the complainant. The agreement which was shared was a wholly one-sided document containing totally unilateral, arbitrary, one-sided, and legally untenable terms favoring the respondent and was totally against the interest of the purchasers, including the complainant herein.
- V. That it is pertinent to mention herein that while in the case of the complainant making the delay in the payment of instalments, the respondent is shown to be entitled to charge interest @15% per annum.
- VI. However, the agreement is completely silent about the delayed penalty charges which the respondent would be paying to the complainant in case of default of the complainant in handing over the possession to the complainant as per the agreed timeline. It is thus clear, that the delayed penalty demanded from the complainant, in case of default of the complainant, has deliberately been formulated to the detriment of the complainant and the same is illegal and unsustainable.
- VII. That the above stated provisions of the buyer's agreement besides other similar one-sided provisions were on the face of it highly illegal, absurd, unilateral, arbitrary, unconscionable and not valid. The legislature has promulgated the Real Estate (Regulation and Development) Act, 2016 to balance the bargaining power of the allottees who have been disadvantaged by the abuse of the dominant position of the developers. A bare perusal of the above clauses highlights the one-sided arbitrary agreement and the abuse of dominant position is all pervasive in the terms and conditions of the

agreement executed by the respondent vide various clauses imposing all the liabilities on the complainant, while conveniently relieving itself from all obligations on its part.

VIII. That the complainant made vocal their objections to the arbitrary and unilateral clauses of the agreement to the respondent. It is pertinent to mention herein that prior to the signing of the agreement, complainant had made payment of Rs.5,77,375/- out of the consideration amount of Rs.23,09,500/-. The respondent categorically assured the complainant that they need not worry and that the respondent would strictly adhere to the timeline, terms of the allotment and the provisions laid down by law including Real Estate (Regulation and Development) Act, 2016 and Affordable Group Housing Policy, 2013. Since the complainant had already parted with a considerable amount, he was left with no other option but to accept the lopsided and one-sided terms of the agreement. The complainant felt trapped and had no other option but to sign the dotted lines. Hence, the buyer's agreement dated 30.05.2017 was executed. That the respondent had demanded and the complainant had to pay more than 10% of the sale consideration amount prior to the execution of the agreement and the same is violation of Section 13 of the RERA Act, 2016.

IX. That the complainant made all the payments strictly as per the terms of the allotment and the construction linked payment plan and no default in making timely payment towards the instalment demands was committed by the complainant. That the respondent used to only provide a short time span to make the payment of all the payment demands. Yet, all the payments were made by the complainant without

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any delay. The complainant has till date made the payment of Rs. 21,40,955/- i.e., 100% of the demanded payment.

- X. That despite having made the buyer's agreement dated 30.05.2017 containing terms very much favorable as per the wishes of the respondent, still the respondent miserably failed to abide by its obligations thereunder. The respondent failed to perform the most fundamental obligation of the agreement which was to handover the possession of the flat within the promised time frame, which in the present case was delayed for an extremely long period of time. The failure of the respondent and the fraud played by it is writ large.
- XI. That as per clause 8.1 of the agreement, the possession of the unit was to be handed over by the respondent within a period of 4 years from the date of approval of the building plans or grant of environment clearance. As per clause 8.1 of the buyer's agreement, the developer was to provide ready to move in possession of the allotted unit to the complainant on or before 27.07.2021.
- XII. That it is evident from a bare perusal of the above-mentioned clauses and a copy of the environment clearance submitted by the respondent with this Hon'ble Authority at the time of registration, that the environment clearance of the project was obtained on 28.07.2017. Thus, the due date to deliver the possession as per the agreed terms of the buyer's agreement was on 27.07.2021. Even on the website of this Hon'ble Authority, the respondent had at the time of registration of the project mentioned the due date of completion as 27.07.2021.
- XIII. That on the lapse of the due date to handover the possession, the complainant visited the project site in August, 2021 and was shocked to see that no construction activity was going on there and the work

was at standstill. The actual ground reality at the construction site was way different than what the respondent had claimed to the complainant regarding the completion of the project. There was inordinate delay in developing the project well beyond what was promised and assured to the complainant. This further shows that the demands which were raised by the respondent didn't correspond to the actual construction status on the site. On their part, the complainant was at all material times ready and willing to pay the balance consideration and other charges as per the terms of the allotment and they had ready funds for the same. However, as stated above the respondent miserably failed to abide by its obligations.

- XIV. Thus, since the time period to handover the possession stated by respondent in the buyer's agreement had lapsed, the complainant requested respondent telephonically, and by visiting the office of respondent to update them about the date of handing over of the possession. The representatives of respondent assured the complainant that the possession of the unit would be handed over to them very shortly as the construction was almost over. However, the representations of respondent turned out to be false. The complainant realized that respondent has continuously been misleading the allottees by giving incorrect information and timelines within which it was to hand over the possession of the unit to the complainant. respondent had represented and warranted at the time of booking that it would deliver the dream home of the complainant and his family to them in a timely manner. However, the failure of respondent resulted in serious consequences being borne by the complainant.

- XV. That the respondent has misused and converted to its own use the huge hard-earned amounts received from the complainant and other buyers in the project in a totally illegal and unprofessional manner and the respondent was least bothered about the timely finishing of the project and delivery of possession of the apartment in question to the complainant as per the terms of the buyer's agreement. The respondent has deliberately, mischievously, dishonestly and with malafide motives cheated and defrauded the complainant. It is unambiguously lucid that no force majeure was involved and that the project has been at standstill since several years. The high headedness of the respondent is an illustration of how the respondent conducts its business which is only to maximize the profits with no concern to the buyers.
- XVI. That due to the illegalities of the respondent, the complainant has been deprived of what they are entitled to as per law. The respondent is bound to comply with provisions of the Act and the Rules and Regulations made there under. It is, thus clear that respondent has acted not only in contrary to the terms of the agreement which were drafted by respondent itself but has also on account of its own acts and has reduced the complainant at its mercy wherein but also in continuing with its illegal acts acting strictly in violation of the provisions of the RERA Act, 2016. Haryana RERA Rules, 2017 and Affordable Group Housing Policy, 2013.
- XVII. That the respondent is enjoying the valuable amount of consideration paid by the complainant out of his hard-earned money and the complainant realizing the same demanded delayed possession charges and compensation from the respondent. But a week ago, the

respondent has in complete defiance of its obligations refused to give delayed possession charges and compensation leaving him with no other option but to file the present complaint. Since respondent miserably failed in its obligations, hence the complainant is entitled to delayed possession charges at the rate prescribed as per the Real Estate (Regulation and Development) Act, 2016 and Haryana Real Estate (Regulation and Development) Rules, 2017.

XVIII. That the cause of action for the present complaint is recurring one on account of the failure of respondent to perform its obligations within the agreed time frame. The cause of action again arose when the respondent failed to give delayed possession charges and compensation and finally about a week ago when the respondent refused to compensate the complainant with the delayed possession interest amount and compensation. The complainant reserves his right to approach the appropriate forum to seek compensation.

C. Relief sought by the complainant:

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

- i. Direct the respondent to pay interest for every month of delay at prevailing rate of interest from 27.07.2021 till the date of actual handing over of possession.
- ii. Direct the respondent to handover the peaceful possession of the habitable unit after receipt of the occupation certificate.
- iii. Direct the respondent to provide interest for the excess amount taken by it from the complainant at the stage of allotment which was in violation of the Affordable Group Housing Policy, 2013.
- iv. Pass an order imposing penalty in the builder on account of various defaults under RERA Act, 2016 and the same be ordered to be paid to the complainant.

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:
 - a. That the present complaint in the present form cannot be maintainable as the same is contrary to the provision of the Real Estate (Regulation and Development) Act, 2016 and Haryana Real Estate (Regulation and Development) Rules, 2017 and therefore, the present complaint is liable to be dismissed in limine.
 - b. That this Hon'ble Authority does not have the jurisdiction and adjudicate the present complaint. Therefore, the present complaint is liable to be dismissed.
 - c. That the respondent was granted a License bearing no. 05 of 2016 dated 30.05.2016 for the development of an affordable group housing residential colony on the land admeasuring area of 5.06875 acres situated in the revenue state of village Ullahawas, sector-62, Gurugram. The respondent thereafter, obtained all the relevant approvals and sanctions to commence the construction of the project. The respondent obtained the approvals of the building plans vide approvals dated 25.07.2016 and also obtained the environmental clearance vide approvals dated 28.07.2017. That the respondent further obtained the registration under RERA Act and the respondent was granted the registration no.178 of 2017. The said RERA registration was valid till 29.11.2021 taking into account the order dated 26.05.2020 passed by this Hon'ble authority granting extension of the RERA registration for a period of six months due to lockdown measures owing to pandemic of covid-19.

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- d. That due to the outbreak of the pandemic covid-19 in march, 2020, a national lockdown was imposed as a result of which all the construction works were severely hampered. Keeping in view the difficulties in completing the project by Real Estate Developers, this Hon'ble Authority granted 6 months extension to all the under-construction projects vide order dated 26-05-2020. Thereafter due to the second covid wave from January to May 2021 once again the construction activities came to a standstill. The covid pandemic led to severe shortage of labour which resulted in the delay in completing the construction of the project for which the time of 6 months granted by this Hon'ble Authority was not sufficient as the effect of labour shortage continue well beyond for more than 12 months after the covid lockdown. Furthermore, the covid pandemic lockdown caused stagnation and sluggishness in the real estate sector and had put the respondent company in a financial crunch, which was beyond the control of the respondent company.
- e. That the construction of the project had been stopped/obstructed due to the stoppage of construction activities several times during this period with effect from 2016 as a result of the various orders and directions passed by Hon'ble National Green Tribunal, New Delhi; Environment Pollution (Control and Prevention) Authority, National Capital Region, Delhi; Haryana State Pollution Control Board, Panchkula and various other authorities from time to time. The stoppage of construction activities abruptly had led to slowing down of the construction activities for months which also contributed in the delay in completing the project within the specified time period.

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- f. That the delivery of the flat by the respondent within the agreed period of 4 years from the date of grant of building approvals or from the date of grant of environmental clearance, which is later, was incumbent upon the complainant making timely payments. The complainant, in the present matter, had failed to make timely payments and there were substantial delays in making the payments of the due installments as is evident from the demand letter. Therefore, the complainant is forbidden to demand the timely performance of the 'contractual obligations' by the respondent, wherein the complainant, himself, had failed to perform his part of the 'contractual obligations' on time.
- g. That the present project is an affordable group housing project being developed in accordance with the provision of the affordable housing policy, 2013. The allotment price of the unit was fixed by the government of Haryana and in terms of the policy, the respondent was paid the allotment price in installment. Though, the allotment price was fixed by the government of Haryana in the year 2013 but the same was not revised till date. Although the construction cost for increased manifold but the Government of Haryana had failed to increase the allotment price. The Government of Haryana had failed to take into account the increase in the construction cost since the policy in the year 2013. If by conservative estimates the construction cost is deemed to have increased by 10% every year then till date the construction costs have got doubled since the date of promulgation of affordable housing policy, 2013. The license for the project paradise was granted on 30.05.2016 and the respondent was permitted to sell the units and the allotment price of Rs.4000 per sq. ft. the project is being constructed by the respondent and is near in completion. The

photographs of the current status of the project are attached herewith which clearly proves that the entire construction has been done and the formalities of obtaining occupation certificate remains pending. The respondent had applied for grant of occupation certificate vide application dated 22.12.2022.

7. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority:

8. The respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of 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

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E.II Subject-matter jurisdiction

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

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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.

9. 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 objections raised by the respondent:

F.I Objection regarding delay due to force majeure circumstances

10. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as certain orders/restrictions of the NGT and other authorities in NCR region, increase in cost of construction material and shortage of labour, etc. All the pleas advanced in this regard are devoid of merit. Firstly, the events taking place such as orders of NGT in NCR region on account of the environmental conditions are for short duration, and thus, cannot be said to impact the respondent leading to such an inordinate delay in the completion. Secondly, the respondent is claiming benefit of lockdown in lieu of Covid-19, which came into effect on 23.03.2020, due to covid-19 there may be a delay but the same has been set off by the government as well as authority while granting extension in registration of the projects, the validity which expired from March, 2020 for a period of six (6) months. The due date of possession in the present case as per clause 8 is

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come to 28.07.2021, which is after March, 2020. Therefore, an extension of six months is to be given over and above the due date of handing over of possession in view of HARERA Notification no. 9/3-2020 dated 25.03.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. Thus, the due date for handing over of possession is comes out to 28.01.2022.

G. Findings on the relief sought by the complainant:

- G.I Direct the respondent to pay interest for every month of delay at prevailing rate of interest from 27.07.2021 till the date of actual handing over of possession.
- G.II Direct the respondent to handover the peaceful possession of the habitable unit after receipt of the occupation certificate.
- G.III Direct the respondent to provide interest for the excess amount taken by it from the complainant at the stage of allotment which was in violation of the Affordable Group Housing Policy, 2013.
- G.IV Pass an order imposing penalty in the builder on account of various defaults under RERA Act, 2016 and the same be ordered to be paid to the complainant.

11. The above-mentioned relief sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

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

"Section 18: - Return of amount and compensation

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

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

13. Clause 8.1 of the apartment buyer's agreement provides for handing over of possession and is reproduced below for ready reference:

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8. Handing over of possession

8.1 Expected Time for Handing over Possession

*“Except where any delay is caused on account of reasons expressly provided for under this agreement and other situations beyond the reasonable control of the company and subject to the company having obtained the occupation/completion certificate from the competent authority(ies), **the company shall endeavor to complete the construction and handover the possession of the said apartment within a period of 4 years from the date of grant of sanction of building plans for the project or the date of receipt of all the environmental clearances necessary for the completion of the construction and development of the project, whichever is later, subject to timely payment by the allottee of all the amounts payable under this agreement and performance by the allottee of all other obligations hereunder.**”*

(Emphasis supplied)

14. The authority has gone through the possession clause of the agreement and observed that the respondent proposes to handover the possession of the allotted unit within four years from the date of approval of building plan or from the date of grant of environmental clearance, whichever is later. As per clause 8.1 of the apartment buyer's agreement the possession of the allotted unit to be handed over the possession of the allotted unit within four years from the date of approval of building plan i.e.,25.07.2016 or from the date of grant of environmental clearance i.e.,28.07.2017, whichever is later. And hence, the due date is calculated from the date of environmental clearance i.e., 28.07.2017 being later. Therefore, the due date of possession comes out to be 28.01.2022 (by adding a period of six months due to covid-19 as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020.)
15. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the prescribed rate as per the Act of 2016. Section 18 provides that where an allottee does not intend to withdraw from the project, she 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.

16. 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.
17. 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%**.
18. 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;"*
19. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.95% by the respondent /promoter which is the same as is being granted to the complainant in case of delayed possession charges.
20. 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. By virtue of clause 8.1 of the buyer's agreement, the due date of handing over of possession of the unit in question is 28.01.2022 (calculated from the date of environmental clearance, being later, including additional period of six months HARERA notification no. 9/3-2020 dated 26.05.2020 for the projects having completion date on or after 25.03.2020.). A document is placed on record by the respondent which shows that an application for grant of occupation certificate was made on 22.12.2022 which is yet to be approved by the competent authority. Therefore, the respondent has failed to handover possession of the subject apartment till date of this order. 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 the possession of the allotted unit to the complainant as per the terms



and conditions of the buyer's agreement dated 30.05.2017 executed between the parties.

21. 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 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., 28.01.2022 till offer of possession of the said unit after obtaining the occupancy certificate from the concerned authority plus two months or actual handing over of possession, whichever is earlier, at prescribed rate i.e., 10.95 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

H. Directions of the Authority:

22. 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 delay interest on the paid-up amount of Rs.24,47,791/- by the complainant at the prescribed rate of 10.95% p.a. for every month of delay from the due date of possession i.e., 28.01.2022 till offer of possession of the said unit after obtaining the occupancy certificate from the concerned authority plus two months or actual handing over of possession, whichever is earlier.
 - ii. The arrears of such interest accrued from 28.01.2022 till the date of order by the authority shall be paid by the promoter to the allottee(s) 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 allottee(s) before 10th of the subsequent month as per rule 16(2) of the rules.

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- iii. The respondent is directed to issue a revised account statement after adjustment of delayed possession charges within 30 days and complainant is directed to pay outstanding dues, if any remains after adjustment of interest for the delayed period, the respondent shall handover the possession of the allotted unit after obtaining of occupation certificate.
 - iv. The respondent shall not charge anything from the complainant which is not the part of the builder buyer's agreement.
 - v. The rate of interest chargeable from the allottee(s) 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 allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
23. Complaint stands disposed of.
24. File be consigned to registry.


(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 04.07.2024