

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

Complaint no. : 6645 of 2022
Date of complaint : 07.10.2022
Order pronounced on: 15.02.2024

Gurbachan Singh Sawhney
R/o: I-602, Lagoon Apartments, Ambience Island,
Nathupur, NH-8, Behind Ambience Mall, Gururgram-
122002.

Complainant

Versus

M/s Shree Vardhman Infraheights Pvt. Ltd.
Registered office: 302, 3rd Floor, Indraprakash
building, 21-Barakhamba Road, New Delhi-110001.

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri K.K. Kohli (Advocate)

Complainant

Shri Gaurav Rawat (Advocate)

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

A. Unit and project related details

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

Sr. No.	Particulars	Details
1.	Name of the project	"Shree Vardhman Victoria", Sector-70, Gurugram
2.	Nature of the project	Group Housing Complex
3.	DTCP License No.	103 of 2010 dated 30.11.2010 Valid up to 29.11.2020
4.	Licensed Area	10.9687 acres
5.	RERA Registered/ Not Registered	RERA registered 70 of 2017 dated 18.08.2017
6.	Unit no.	102, tower-A (as per BBA page 58 of complaint)
7.	Unit admeasuring	1950 sq. ft. (super area) (as per BBA page 58 of complaint)
8.	Date of commencement of construction	07.05.2014 (as per page no 51 of reply)
9.	Allotment Letter	25.12.2012 (as per page no. 52 of complaint)
10.	Date of execution of Floor buyer's agreement	28.05.2013 (as per page no. 55 of complaint)
11.	Possession clause	14(a). Possession <i>"The construction of Flat is likely to be completed within a period of forty (40) months of commencement of construction of particular tower/block in which the flat is located with a grace period of six (6) months on receipt of sanction of building plans/revised plans and all other approvals subject to force majeure including any restrains/restrictions from any authorities, non-availability of building materials or dispute with construction agency/ workforce and circumstance beyond the control of company and subject to timely payments by the Buyer(s) in the said complex....."</i> <i>(Emphasis supplied).</i>
12.	Due date of delivery of possession	07.03.2018 (Calculated from the date of commencement of construction i.e., 07.05.2014 of tower including grace period of 6 months being unconditional and unqualified)

13.	Basic sale consideration	Rs.1,01,08,800/- (As per BBA, page no. 59 of complaint)
14.	Total amount paid by the complainant	Rs.1,08,45,835/- (as per SOA page no. 137 of complaint)
15.	Occupation Certificate	13.07.2022 (As per page no. 15 of reply)
16.	Offer of possession	28.07.2022 (As per page no. 138 of complaint)

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- I. That the respondent, M/s Shree Vardhman Infraheights Pvt. Ltd. advertised about its new project namely "SHREE VARDHMAN VICTORIA", Sector 70, Gurugram. The respondent painted a rosy picture of the project in its advertisements making tall claims. In 2012, the respondent issued an advertisement announcing a group housing colony project called 'SHREE VARDHMAN VICTORIA' in a land parcel admeasuring a total area of approximately 10.96 acres, Sector 70, Gurugram, Haryana and thereby invited applications from prospective buyers for the purchase of units in the said project. The respondent confirmed that the project had got building plan approvals.
- II. The complainant while searching for a flat/accommodation was lured by such advertisements and calls from the brokers of the respondent for buying a house in their project. The respondent company told the complainant about the moonshine reputation of the company and the representative of the respondent company made huge presentations about the project mentioned above and also assured that they have delivered several such projects in the NCR. The respondent handed over one brochure to the complainant which showed the project like heaven and in every possible way tried to hold the complainant and incited the complainant for payments.

- III. That relying on various representations and assurances by the respondent company and on belief of such assurances, the complainant, booked a unit in the project by paying an amount of Rs.10,00,000/- vide cheque bearing no. 025170 dated 12.05.2012 and Rs. 10,84,233/- vide cheque bearing no. 096143 dated 18.11.2012, towards the booking of the said flat bearing no. A-102 in Sector 70 admeasuring 1950 sq. ft. super area to the respondent dated 11.06.2012 and 20.11.2012 respectively and the same was acknowledged by the respondent.
- IV. Thereafter the respondent confirmed the booking of the unit to the complainant vide allotment letter dated 25.12.2012, providing the details of the project, confirming the booking of the unit dated 11.06.2012, allotting a unit no. A-102 admeasuring 1950 sq. ft. in the aforesaid project of the developer for a total sale consideration of the unit Rs.1,20,36,000/- including EDC, IDC, power backup charges, car parking charges, PLC, club membership fee and other specifications of the allotted unit and providing the time frame within which the next instalment was to be paid.
- V. Thereafter, the buyer's agreement was executed between the complainant and the respondent on 28.05.2013. As per clause 14(a) of the builder buyer agreement dated 28.05.2013, the time of handing over the possession of the said unit was prescribed as 40 months from the date of commencement of construction. The commencement of construction as mentioned in the form A-H as uploaded by the respondent company, the date for commencement of construction is 12.12.2012, therefore the date of handing over the possession comes out to be 12.04.2016.
- VI. That against the demands raised by the respondent, based on the payment plan complainant paid a total amount of Rs.1,08,45,835/- against the total sale consideration of Rs.1,20,36,000/-.

- VII. That the complainant visited the office of the respondent several times and requested him to allow them to visit the site but it was never allowed saying that they do not permit any buyer to visit the site during construction period. Once the complainant visited the site but was not allowed to enter the site and even there was no proper approached road. The complainant even after paying amounts still received nothing in return but only loss of time and investment of money.
- VIII. That the complainant contacted the respondent on several occasions and were regularly in touch with the respondent. The respondent was never able to give any satisfactory response regarding the status of the construction and were never definite about the delivery of the possession.
- IX. That on repeated requests and emails by the complainant, the complainant received the offer for possession on 28.07.2022, in which the respondent raised several illegal demands on account of the following which are actually not payable as per the buyer's agreement: (1) interest free maintenance security deposit of Rs.1,95,000/-, (2) maintenance charges of Rs.70,200/-, (3) sinking fund of Rs.5,850/-, (4) common electricity charges of Rs.11,700/-, (5) electric meter charges of Rs.25,000/-, (6) power backup for 3KVA of Rs.90,000/- & (7) CGST and SGST on all the charges. The said demands were raised at the time of offering possession by the respondent, which the flat buyer is not contractually bound to pay and cannot be considered to be a valid offer of possession.
- X. That the complainant requested the respondent for inspection of their unit, before complainant pay any further amount and requesting to provide the car parking space number but respondent failed to reply.
- XI. That the respondent has arbitrarily demanded for payment of interest on account of delayed payment at the rate of 15%-24% whereas the compensation for delay stipulated for the buyers is merely Rs.5/- per sq. ft.

However, the complainant is actually entitled to interest @10% p.a. on the total sum paid by them. Accordingly, the complainant is entitle to get interest for delayed period on the amount paid by him

C. Relief sought by the complainant:

4. The complainant has sought following relief:

- I. Direct the respondent to handover the actual physical possession to the complainant along with the fresh and valid offer of possession with no excess demands.
 - II. To set aside the offer of possession letter dated 28.07.2022 and issue a fresh offer of possession with unconditional demands.
 - III. Direct the respondent to pay the interest on the total amount paid by the complainants at the prescribed rate of interest as per RERA from due date of possession till date of actual physical possession
 - IV. Direct the respondent to not to charge IFMS for an amount of Rs.1,95,000/- as the complainant is not legally bound to pay the same.
 - V. Direct the respondent to not to charge the sinking fund for an amount of Rs.5,850/- as the complainant is not legally bound to pay the same before the actual possession.
 - VI. Direct the respondent to not to charge the maintenance charges for an amount of Rs.70,200/- as the complainant is not legally bound to pay the same before the actual possession.
 - VII. Direct the respondent to execute the conveyance deed of the unit in question in favour of 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 contested the complaint on the following grounds: -

- i. That the present complaint filed under section 31 of the Act, 2016 is not maintainable as there has been no violation of the provisions of the Act. The complaint under section 31 can only be filed after a violation or contravention has been established by the authority under section 35. Since

no violation or contravention has been established, the complaint should be dismissed. Additionally, the section 18 of the Act of 2016, under which the complainant seeks relief, is not applicable to the present case as it does not have retrospective effect and cannot be applied to transactions entered into before the Act of 2016 came into force. Therefore, the section 18 cannot be applied in the present case as buyers' agreement was executed before the Act of 2016.

- ii. That the buyer's agreement did not provide a definite date for handing over possession and the tentative period as per clause 14(a) for completion was subject to various conditions, including force majeure events and timely payments of instalments by the complainant and other allottees. The occupancy certificate for the tower in question was applied on 23.02.2021, and the respondent cannot be held liable for any interest or compensation beyond the application date. The tentative period as per the buyer's agreement was not the essence of the contract, and the complainant was aware of the possibility of delays in handing over possession.
- iii. That the first phase of the project consisting of residential Towers - A, B, C, H, I and Basement had been completed and ready to be occupied. An application for grant of occupation certificate qua the said first phase was filed with the Director Town and Country planning Haryana on 23.02.2021. The Department of Town and Country Planning Haryana allowed the said application and on 13/07/2022 granted OC for the said phase vide its memo No. ZP-686/AD(RA)/2022/20077 dated 13.07.2022, and for the second phase of the project consisting of residential Towers - D, E, F has also been completed and ready to be occupied. An application for grant of occupation certificate qua the said 2nd phase was filed with the Director Town and Country planning Haryana on 22.09.2022 and the Department of Town and Country Planning, Haryana allowed the said application and on

05.05.2023 granted the OC for the said phase vide its Memo No. ZP-686-Vol.-II/JD(RA)/2023/13044 dated 05.05.2023.

- iv. That consequent to grant of OC, the respondent started the process of delivering possession of the units in those towers to their respective allottees. Many allottees have already taken possession of their respective flats.
- v. That the respondent vide letter dated 28.07.2022 offered possession of the subject unit to the complainant calling upon him to clear the outstanding dues as mentioned in appendixes A, B & C and to take possession after getting the conveyance deed registered in his favor. However, the complainant did not responded to the said offer.
- vi. That the payment plan opted for payment of the agreed sale consideration and other charges was a construction linked payment plan. The respondent from time to time raised demands as per the agreed payment plan, however the complainant committed severe defaults and failed to make the payments as per the agreed payment plan, despite various call letters and reminders from the respondent.
- vii. That the agreed total cost of the unit including BSP, other charges and taxes was Rs.1,30,97,351/- out of which the complainant paid a total amount of Rs.1,08,45,836/- out of which Rs.98,43,419/- has been paid towards basic cost, PLC, open car parking, club membership, and Rs.10,02,416/- has been paid towards EDC & IDC, service tax, etc.
- viii. That the subject agreement does not consist of definite or firm date for handing over possession to the allottee. However, clause 14 (a) provided a tentative period within which the project/flat was to be completed and application for OC was to be made to the competent authority. As the possession was to be handed over only after receipt of OC from DTCP Haryana and it was not possible to ascertain the period that DTCP, Haryana

would take in granting the OC, therefore the period for handing over of possession was not given in the agreement. The occupancy certificate for the tower where allottee unit was situated was applied on 23.02.2021. So, the respondent cannot be held liable for payment of any interest and/or compensation for the period beyond 23.02.2021.

- ix. The said tentative period given in clause 14(a) of the agreement was not the essence of the contract and the allottee(s) were aware that there could be delay in handing over of possession. Clause 14(b) even provided for the compensation to be paid to the allottee(s) in case of delay in completion of construction which itself indicate that the period given in Clause 14(a) was tentative and not essence of the contract.
- x. The tentative period i.e., 46 months for the completion as indicated in the buyer's agreement was to commence from commencement of construction of the tower/block in which the flat was located on receipt of sanction of the building plans/all other approvals. The last approval required for commencement of construction being "Consent to Establish (CTE)" was granted to the project on 12.07.2014 by Haryana State Pollution Board. After receipt of CTE, the construction of tower in question started on or about 12.07.2014 with the laying of its foundation.
- xi. That the delay in construction was due to various factors beyond the control of respondent, such as orders from environmental authorities, NGT/State Govts. /EPCA from time to time putting a complete ban on the construction activities and the impact of the Covid-19 pandemic, which resulted in significant delays in construction. Additionally, the defaults in payment by the complainant and other allottees adversely affected the pace of construction and caused significant financial losses. Therefore, the complainant should be held liable for payment of interest at the agreed rate

mentioned in the agreement to compensate for the losses caused by the defaults of delay payments.

7. All other averments made in the complaint were denied in toto.
8. 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 oral as well as written submissions made by the parties.

E. Jurisdiction of the authority

9. 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

10. 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

11. 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:

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.

12. 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 complainants at a later stage.

F. Findings on the objections raised by the respondent.

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

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

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

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

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

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

16. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of

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

F.II Objection regarding force majeure conditions.

17. The respondent-promoter alleged that grace period on account of force majeure conditions be allowed to it. It raised the contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by NGT and weather conditions in Gurugram and non-payment of instalment by different allottees of the project but all the pleas advanced in this regard are devoid of merit. The floor buyer's agreement was executed between the parties on 28.05.2013 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be 07.03.2018. The events such as and various orders by NGT in view of weather condition of Delhi NCR region, were for a shorter duration of time and were not continuous as there is a delay of more than four years. Hence, in view of aforesaid circumstances, no period grace period can be allowed to the respondent- builder. Though some allottees may not be regular in paying the amount due but whether the interest of all the stakeholders concerned with the said project be put on hold due to fault of on hold due to fault of some of the allottees. Thus, the promoter-respondent cannot be given any leniency on based of aforesaid reasons. It is well settled principle that a person cannot take benefit of his own wrongs.

18. As far as delay in construction due to outbreak of Covid-19 is concerned, 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 (I) (Comm.) no. 88/ 2020 and IAs 3696-3697/2020** dated 29.05.2020 has observed that-

"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."

19. The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by 07.03.2018 and 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 is not excluded while calculating the delay in handing over possession.

G. Findings on the relief sought by the complainant.

G.I Direct the respondent to handover the actual physical possession to the complainant along with the fresh and valid offer of possession with no excess demands.

G.II To set aside the offer of possession letter dated 28.07.2022 and issue a fresh offer of possession with unconditional demands.

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

21. The said offer of possession is valid as the possession has been offered after receiving occupation certificate from the competent authority. As per Section 19(10) of Act of 2016, the allottees are under an obligation to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. The complainants are directed to take the possession of the allotted unit after making payment of outstanding dues, if any within a period of 60 days of this order. The respondent shall handover the possession of the allotted unit as per specification of the buyer's agreement entered into between the parties.

A

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

22. 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."***

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

"14(a) The construction of Flat is likely to be completed within a period of forty (40) months of commencement of construction of particular tower/block in which the flat is located with a grace period of six (6) months, on receipt of sanction of building plans/revised plans and all other approvals subject to force majeure including any restrains/restrictions from any authorities, non-availability of building materials or dispute with construction agency/workforce and circumstance beyond the control of company and subject to timely payments by the Buyer(s) in the said complex....."

(Emphasis Supplied)

24. The authority has gone through the possession clause of the agreement. 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 the complainant not being in default under any provision of this agreement and in 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 allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession

clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning.

25. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builder/promoter and buyer/allottee are protected candidly. The flat agreement lays down the terms that govern the sale of different kinds of properties like residentials, commercials etc. between the builder and the buyer. It is in the interest of both the parties to have a well-drafted buyer's agreement which would thereby protect the rights of both the builder and buyer in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the unit, plot or building, as the case may be and the right of the buyer/allottee in case of delay in possession of the unit.
26. **Due date of possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within 40 months from the date of commencement of construction and it is further provided in agreement that promoter shall be entitled to a grace period of six months. The date of construction commencement was initially to be commenced from 07.05.2014 as per the intimation/demand letter dated 16.04.2014 issued by the respondent. Therefore, the due date of possession comes out to be 07.03.2018 including grace period of six months being unqualified and unconditional.
27. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges. However, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoters, 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.

28. 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.
29. 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., 15.02.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
30. 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:

"(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;"

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31. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.85% by the respondents/ promoters which is the same as is being granted to them in case of delayed possession charges.
32. On consideration of the documents available on record and submissions made by both the parties, 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 dated 28.05.2013. By virtue of clause 14(a) of the agreement, the possession of the subject apartment was to be delivered within 40 months from the date of commencement of construction of the particular tower in which the flat is located with a grace period of 6 months. For the reasons quoted above, the due date of possession is to be calculated from the commencement of construction of the particular tower i.e., 07.05.2014 and it is further provided in agreement that promoter is entitled for a grace period of 6 months. As far as grace period is concerned, the same is allowed being unconditional and unqualified. Therefore, the due date for handing over of possession comes out to be 07.03.2018. In the present complaint the complainant was offer the possession of the flat by the respondent on 28.07.2022 after receipt of the occupation certificate dated 13.07.2022 from the competent authority.
33. The respondent has obtained the occupation certificate on 13.07.2022. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 28.05.2013 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 28.05.2013 to hand over the possession within the stipulated period.

34. 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 13.07.2022. The respondent offered the possession of the unit in question to the complainant only on 28.07.2022. So, it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. 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. 07.03.2018 till the date of offer of possession (28.07.2022) plus two months i.e., 28.09.2022.

35. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession charges at rate of the prescribed interest @ 10.85% p.a. w.e.f. 07.03.2018 till the date of offer of possession (28.07.2022) plus two months i.e., 28.09.2022; as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

G.IV Direct the respondent to not to charge IFMS for an amount of Rs.1,95,000/- as the complainant is not legally bound to pay the same.

G.V Direct the respondent to not to charge the sinking fund for an amount of Rs.5,850/- as the complainant is not legally bound to pay the same before the actual possession.

36. That the respondent/promoter may be allowed to collect a reasonable amount from the complainant/allottee under the head of "IFMS". However, the authority directs that the promoter must always keep the amount collected

under this head in a very transparent manner. If any allottee requires the promoter to give the details regarding the availability of IFMS amount and the interest accrued thereon, the promoter must provide the details to the allottee. This is further clarified the out of this IFMS/IBMS, no amount can be spent by the promoter for expenditure it is liable to incur to discharge its liability and obligations as per the provisions of section 14 of the Act.

37. As far as sinking fund is concerned, the IFMS and the sinking fund are same and the respondent cannot charge for the same under different heads.

G.VI Direct the respondent to not to charge the maintenance charges for an amount of Rs.70,200/- as the complainant is not legally bound to pay the same before the actual possession.

38. This issue has already been dealt with by the Authority in complaint bearing no. **4031 of 2019 titled as "Varun Gupta Vs. Emaar MGF Land Limited" decided on 12.08.2021**, wherein it was held that the respondent is right in demanding maintenance charges at the rates' prescribed in the builder buyer's agreement at the time of offer of possession. However, the respondent shall not demand the maintenance charges for more than one year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where the maintenance charges has been demanded for more than a year.

G.VII Direct the to execute the conveyance deed of the unit in question in favour of the complainant

39. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under obligation to get the conveyance deed executed in favour of the complainant. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question.

40. Since the possession of the subject unit has already been offered after obtaining occupation certificate on 13.07.2022. The respondent is directed to

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get the conveyance deed executed within a period of three months as per the terms of Section 17 of the Act of 2016 from the date of this order.

H. Directions of the authority

41. 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 pay interest at the prescribed rate i.e., 10.85% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e., 07.03.2018 till the date of offer of possession (28.07.2022) plus two months i.e. up to 28.09.2022 as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- II. The respondent is directed to issue a revised account statement after adjustment of delay possession charges as per above within 30 days and thereafter the complainant is directed to pay outstanding dues, if any, within next 30 days and the respondent shall handover the possession of the allotted unit complete in all aspects as per specifications of buyer's agreement within next 30 days.
- 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 respondent shall not charge anything from the complainant which is not the part of buyer's agreement. The respondent is not entitled to charge holding charges from the complainant/ allottee at any point of time even after being part of the builder buyer's agreement as per law

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settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 on 14.12.2020.

- V. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under obligation to get the conveyance deed executed in favor of the complainant. Therefore, the respondent is directed to get the conveyance deed executed within a period of three months from the date of this order.

42. Complaint stands disposed of.

43. File be consigned to registry.

Dated:15.02.2024



V.I-3
(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM