

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

Complaint no.:	1857 of 2023
First date of hearing:	15.09.2023
Date of decision:	19.04.2024

1. Captain Rajan Kumar Gupta
2. Rinkey Gupta
R/o L-603, The Metrozone, Jawaharlal Nehru Road,
Anna Nagar, Chennai-600040

Complainants

Versus

M/s Athena Infrastructure Ltd.
Office address: M-62-63, 1st floor,
Connaught Place, New Delhi-110001

Respondent

CORAM:
Shri Sanjeev Kumar Arora

Member

APPEARANCE:
Shri Anand Dabas
Shri Rahul Yadav

Complainants
Respondent

ORDER

1. The present complaint dated 19.04.2023 has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions as provided under the provision of the Act or the rules and regulations made there under 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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. N.	Particulars	Details
1.	Name of the project	'IndiaBulls Enigma', Sector-110, Gurgaon
2.	Nature of Project	Residential complex
3.	Project area	15.6 acres
4.	DTCP license	213 of 2007 dated 05.09.2007 valid till 04.09.2024. 10 of 2011 dated 29.01.2011 valid till 28.01.2023
	Name of licensee	M/s Athena Infrastructure Private Limited
		64 of 2012 dated 20.06.2012 valid till 19.06.2023
	Name of licensee	Varali properties
5.	HARERA registration	Registered vide no. i. 351 of 2017 dated 20.11.2017 valid till 31.08.2018. ii. 354 of 2017 dated 17.11.2017 valid till 30.09.2018. iii. 353 of 2017 dated 20.11.2017 valid till 31.03.2018. iv. 346 of 2017 dated 08.11.2017 valid till 31.08.2018.
6.	Unit no.	B182, 18 th floor, Block B (page no. 27 of complaint)

7.	Unit area admeasuring	3350 sq. ft. (page no. 27 of complaint)
8.	Agreement to sell	14.01.2014 (page no. 23 of complaint)
9.	Tripartite agreement	22.01.2014 (Page no. 50 of complaint)
10.	Possession clause	<p>Clause 21</p> <p><i>The Developer shall endeavor to complete the construction of the said building /Unit within <u>a period of 3 years, with a six-month grace period thereon from the date of execution of the Flat Buyers Agreement subject to timely payment</u> by the Buyer(s) of Total Sale Price payable according to the Payment Plan applicable to him or as demanded by the Developer. The Developer on completion of the construction /development shall issue final call notice to the Buyer, who shall within 60 days thereof, remit all dues and take possession of the Unit.</i></p>
11.	Due date of possession	14.07.2017 (Calculated from the date of the agreement i.e., 14.01.2014 + grace period of 6 months) Grace period is allowed
12.	Basic consideration (As per BBA)	sale Rs. 2,59,90,000/- (page no. 28 of complaint)

13.	Total consideration sale	Rs. 2,11,12,245/- (as alleged by complainant) Rs. 2,76,80,750/- (As per applicant ledger dated 29.03.2023 on page 57 of complaint)
14.	Amount paid by the complainants	Rs. 2,93,24,912/- (As per applicant ledger dated 27.12.2013 on page 25 of written submissions filed by respondent) [Rs. 42,02,133 paid by complainant]
15.	Occupation certificate	12.10.2021 (page no. 21 of written submissions filed by respondent)
16.	Offer of possession through email	27.09.2022 (Page no. 61 of complaint)
17.	Possession handover letter	23.11.2023 (Page no. 26 of written submissions filed by respondent)

B. Facts of the complaint

3. That on the basis of assurances of the respondent company complainant(s) booked a residential flat bearing B-182 on 18th floor in tower / block no. B having super area of 3350 sq. ft. for a basic sale consideration of Rs.2,59,90,000/- and paid a sum of Rs.5,00,000/- on 10.09.2013 as booking amount.
4. That the respondent assured the complainant(s) that it would execute the flat buyer agreement at the earliest and maximum within one week. However, they failed to do so and after the regular follows up by

- the complainant(s), the respondent had executed the flat buyer's agreement dated 14.01.2014.
5. That as per the clause-21 of the said flat buyer's agreement dated 14.01.2014, the respondent had agreed and promised to complete the construction of the said flat and deliver its possession within a period of 3 years with a grace period of 6 months thereon from the date of the execution of flat buyer's agreement.
 6. That thereafter, the respondent started raising demands for money / installments from the complainant(s), which was duly paid by the complainant(s) as per agreed timelines. The complainant(s) opted for the subvention scheme through Indiabulls Housing Finance Ltd i.e., associate company of the respondent on 22.01.2014 for a loan amount of Rs.2,11,12,245/-.
 7. That the complainant(s) had paid 15% of the sale consideration amounting to Rs.42,02,133/- and availed a loan facility for a sum of Rs.2,11,12,245/- i.e. 75% of the sale consideration from Indiabulls Housing Finance Ltd. vide tripartite agreement dated 22.01.2014. The balance 10% was to be paid at the time of possession.
 8. That the complainant(s) had paid 85% of the sale consideration to the respondent for the said flat. As per the records of complainant(s), the complainant(s) had already paid Rs.2,60,80,739/- towards the sale consideration.
 9. That the complainant(s) had approached the respondent and its officers inquiring the status of delivery of possession but none provide any satisfactory answer or reply or response to the complainant(s) about the completion and delivery of the said flat.
 10. That the respondent caused a delay of 5 years and 7 months as the complainant(s) came to know about the offer of possession in respect

of the aforesaid flat on 16.02.2023, when he received and email from Indiabulls Housing Finance Limited informing him about the offer of possession by the respondent vide their letter dated 27.09.2022 sent via email and raised unreasonable demands of repayment of 3 installments of the loan with effect from January 2023.

11. That the letter for offer of possession dated 27.09.2022 sent via email to the complainant(s) whereby, the possession was offered, was sent to the wrong email id i.e. ranjankgupta@aol.in whereas, the email of the complainant(s) is rajankgupta@aol.in.
12. That the said unit was purchased under the subvention scheme wherein, Indiabulls Housing Finance Ltd i.e. the associate company of the respondent, had to pay the loan installments till possession was delivered. On 16.02.2023 the complainant(s) received an email from Indiabulls Housing Finance Limited stating that the said unit is ready for possession and certain installments have to be paid by the complainant(s) with effect from January 2023. It is submitted that it is incumbent upon Indiabulls Housing Finance Ltd. to pay the installments for January, February and March 2023 in accordance to the tripartite agreement dated 22.01.2014 executed between the complainant(s), respondent and Indiabulls Housing Finance Ltd. As a result of the above, the complainant(s) was forced to pay the installments for January, February and March 2023 amounting to Rs.8,99,031/- at an exorbitant interest rate of 17.45% which should have been borne by Indiabulls Housing Finance Ltd. That the complainant(s) have applied for a transfer of the home loan to HDFC bank and the differential interest for April 2023 amounts to Rs.1,25,000/- thus, the additional loss incurred by the complainant(s)

as a result of improper correspondence by the respondent is therefore, Rs.10,24,031/-.

13. That the complainant(s) had purchased four covered car parking spaces which is clearly mentioned in Clause 3 of the BBA. However, despite the complainant(s) best efforts, the respondent has not allotted the same till date. The complainant(s) vide email dated 31st March 2023 had requested the builder to allot all four covered car parking spaces with car park numbers, but the respondent continues to be evasive.
14. 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 flat, which amounts to unfair trade practice, which is immoral as well as illegal.

C. Relief sought by the complainants:

15. The complainants have sought following reliefs:
 - a. Direct the respondent to pay interest at the applicable rate on account of delay in offering possession on Rs. 42,02,133/- being the amount paid by the complainants towards the sale consideration of the said flat from the date of payment till date of intimation of possession to the complainants.
 - b. Direct the respondent to refund an amount of Rs. 10,24,031/- which was paid on account of late intimation of possession.
 - c. Direct the respondent for allotment of 4 covered parking spaces as per BBA, which have been already been paid by the complainants.
16. On the date of hearing, the authority explained to the respondents/promoters about the contravention 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

17. The respondent has contested the complaint on the following grounds:
18. That the complainants looking into the financial viability of the project being developed by the respondent and its future monetary benefits approached the respondent and showed its interest in booking unit in the project being developed by the respondent.
19. That the complainants got the subject unit booked under the subvention scheme (15:75:10) payment plan till possession wherein further availing a home loan of Rs. 2,11,12,245/- from Indiabulls Housing Finance Limited (IHFL). Further, the complainants only paid an amount of Rs.42,02,133/- on his own source to the respondent till offer of possession towards sale consideration of the subject unit provisionally booked by him.
20. That under the subvention scheme, a tripartite agreement got executed between the complainants, respondent and the financier, wherein as per the agreed terms of the TPA the builder assumed the liability of the interest component payable to the financier during the subvention period.
21. That in terms of the arrangement between the complainants and the respondent, the respondent has paid to the financier an amount of Rs.2,02,56,879/- towards Pre-EMI as the liability period is still continuing.
22. That the complainants looking into the financial viability of the project and its future monetary benefits willingly approached the respondent and applied for provisional reservation of a group housing apartment in the project, and in return thereof the answering respondent accepting the said request of the complainants provisionally allotted

them a unit no. B182, situated on the 18th floor of tower B, having and approximate super area of 3350 sq. ft.

23. That, pursuant to the provisional allotment, the complainants executed a builder buyers agreement dated 14.01.2014 with the answering respondent post understanding the terms & conditions of the said agreement. That as per the agreed terms of the builder buyers agreement the complainants were aware of the fact that the answering respondent shall endeavor to complete the construction of the said building/unit" within the stipulated time as mentioned in the said agreement.
24. That the complainants has paid total amount of Rs. 1,01,06,155/- out of total sale consideration of the allotted unit/flat was Rs. 1,24,25,000/- as per clause 1.1 of the buyer's agreement dated 24.12.2020.
25. That the implementation of the said project was hampered due to non-payment of instalments by allottees on time and also due to the events and conditions which were beyond the control of the respondent and which have affected the construction and progress of the project. Some of the force majeure events/conditions which were beyond the control of the respondent and affected the implementation of the project and are as under:

- I. Inability to undertake the construction for approx. 7-8 months due to Central Government's Notification with regard to Demonetization:** [Only happened second time in 71 years of independence hence beyond control and could not be foreseen]. The respondent had awarded the construction of the project to one of the leading construction companies of India. The said contractor/company could not implement the entire project for approx. 7-8

months w.e.f from 9-10 November 2016 the day when the Central Government issued notification with regard to demonetization. During this period, the contractor could not make payment to the labour in cash and as majority of casual labour force engaged in construction activities in India do not have bank accounts and are paid in cash on a daily basis. During demonetization the cash withdrawal limit for companies was capped at Rs. 24,000 per week initially whereas cash payments to labour on a site of the magnitude of the project in question are Rs. 3-4 lakhs per day and the work at site got almost halted for 7-8 months as bulk of the labour being unpaid went to their hometowns, which resulted into shortage of labour. Hence the implementation of the project in question got delayed due on account of issues faced by contractor due to the said notification of Central Government.

Further there are studies of Reserve Bank of India and independent studies undertaken by scholars of different institutes/universities and also newspaper reports of Reuters of the relevant period of 2016-17 on the said issue of impact of demonetization on real estate industry and construction labour.

II. Orders Passed by National Green Tribunal: In last four successive years i.e. 2015-2016-2017-2018, Hon'ble National Green Tribunal has been passing orders to protect the environment of the country and especially the NCR region. The Hon'ble NGT had passed orders governing the entry and exit of vehicles in NCR region. Also the Hon'ble NGT has passed orders with regard to phasing out the 10 year old diesel vehicles from NCR. The pollution levels of NCR region have been quite high for couple of years at the time of change in weather in November every year. The contractor of respondent could not undertake

construction for 3-4 months in compliance of the orders of Hon'ble National Green Tribunal. Due to following, there was a delay of 3-4 months as labour went back to their hometowns, which resulted in shortage of labour in April -May 2015, November- December 2016 and November- December 2017. The district administration issued the requisite directions in this regard.

In view of the above, construction work remained very badly affected for 6-12 months due to the above stated major events and conditions which were beyond the control of the respondent and the said period is also required to be added for calculating the delivery date of possession.

- III. Non-Payment of Instalments by Allottees:** Several other allottees were in default of the agreed payment plan, and the payment of construction linked instalments was delayed or not made resulting in badly impacting and delaying the implementation of the entire project.
- IV. Inclement Weather Conditions viz. Gurugram:** Due to heavy rainfall in Gurugram in the year 2016 and unfavorable weather conditions, all the construction activities were badly affected as the whole town was waterlogged and gridlocked as a result of which the implementation of the project in question was delayed for many weeks. Even various institutions were ordered to be shut down/closed for many days during that year due to adverse/severe weather conditions.
- V. Nationwide lockdown due to Outbreak of COVID-19 :** in view of the outbreak of COVID-19, the Government of India took various precautionary and preventive steps and issued various advisories, time to time, to curtail the spread of COVID 19 and declared a complete lockdown in India, commencing from 24th March, 2020 midnight thereby imposing several restrictions mainly non-supply of non-

essential services during the lockdown period, due to which all the construction work got badly effected across the country in compliance to the lockdown notification. Additionally, the spread of COVID 19 was even declared a 'Pandemic 'by World Health Organization on March 11, 2020, and COVID-19 got classified as a "Force Majeure" event, considering it a case of natural calamity i.e. circumstances to be beyond the human control, and being a Force Majeure period.

26. Further, the Haryana Real Estate Regulatory Authority Gurugram also vide its circular / notification bearing no. No.9/3-2020 HARERA / GGM (Admn), dated 26.05.2020 extended the completion date / revised completion date or extended completion date automatically by 6 months, due to outbreak of covid-19 (corona virus).
27. Copies of all the documents have been filed and placed on record. The authenticity is not in dispute. Hence, the complaint can be decided on the basis of theses undisputed documents.

E. Jurisdiction of the authority

28. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I. Territorial jurisdiction

29. 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

30. 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.

31. 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 raised by the respondent regarding force majeure condition.

32. The respondent-promoter has raised the contention that the construction of the tower in which the unit of the complainants are situated, has been delayed due to force majeure circumstances such as orders passed by National Green Tribunal to stop construction during 2015-2016-2017-2018, dispute with contractor, non-payment of instalment by allottees and demonetization. The plea of the respondent regarding various orders of the NGT and demonetisation and all the pleas advanced in this regard are devoid of merit. The

orders passed by NGT banning construction in the NCR region was for a very short period of time and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. The plea regarding demonetisation is also devoid of merit. The respondent has taken the plea w.r.t covid-19, the authority observes that the due date of possession falls in the year 2017 and the covid came in 2020. Further, any contract and dispute between contractor and the builder cannot be considered as a ground for delayed completion of project as the allottee was not a party to any such contract. Also, there may be cases where allottees has not paid instalments regularly but all the allottees cannot be expected to suffer because of few allottees. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

G. Findings on the relief sought by the complainants

G.I. Direct the respondent to pay interest at the applicable rate on account of delay in offering possession on Rs. 42,02,133/- being the amount paid by the complainants towards the sale consideration of the said flat from the date of payment till date of intimation of possession to the complainants.

33. In the present complaint, the complainants intends to continue with the project and seeking delay possession charges at prescribed rate of interest on amount already paid by her as provided under the proviso to 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."

34. Clause 21 of the flat buyer's agreement (in short, the agreement) dated 14.01.2014, provides for handing over possession and the same is reproduced below:

21. The Developer shall endeavor to complete the construction of the said building /Unit within a period of 3 years, with a six-month grace period thereon from the date of execution of the Flat Buyers Agreement subject to timely payment by the Buyer(s) of Total Sale Price payable according to the Payment Plan applicable to him or as demanded by the Developer. The Developer on completion of the construction /development shall issue final call notice to the Buyer, who shall within 60 days thereof, remit all dues and take possession of the Unit."

35. 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 this agreement, and the complainants not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the 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.

36. **Admissibility of grace period:** As per clause 21 of buyer's agreement, the respondent promoter has proposed to handover the possession of the subject unit within a period of 3 years along with a grace period of 6 month from the date of execution of flat buyer agreement. Since in the present matter the BBA incorporates unqualified reason for grace period/extended period of 6 months in the possession clause. Accordingly, the authority literally interpreting the same allows this grace period of 6 months to the promoter at this stage. Accordingly, the due date of possession comes out to be 14.07.2017.
37. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges. However, proviso to section 18 provides that where an allottee(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]

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.

38. The legislature in its wisdom in the subordinate legislation under the 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.
39. 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., 19.04.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
40. 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—*
- 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 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;"*
41. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 21 of the buyer's

agreement executed between the parties, the possession of the subject apartment was to be delivered within a period of 3 years with a grace period of 6 month from the date of execution of flat buyer agreement. As such the due date of handing over of possession comes out to be 14.07.2017 including grace period of 6 month as it is unqualified. The occupation certificate for the project where the subject unit of the allottee is situated was received on 12.10.2021 and subsequently respondent make offer of the said unit through email on 27.09.2022. The authority observes that after making the offer of the said unit the possession was handed over on 23.11.2023 i.e., after a lapse of more than one year. The complainant-allottee vide email dated 31.03.2023 has requested the respondent for covered car parking spaces. The said email is reiterated hereunder for ready reference:

Please refer to my meeting with Ms. Vidhi Sharma at her office on the forenoon of 29 Mar 2023 and discussions regarding joint inspection of my Flat & Car Parking Slots to ascertain readiness for possession.

During the subsequent site-visit the same afternoon, I was shown only two covered car parking slots (Nos. 95 & 96 in Basement 2) whereas as per clause no. 3 of the BBA (Page no. 6). I have purchased 4 covered car parking slots. It is therefore, requested that all four of my covered car parking slot numbers may please be intimated to me at the earliest to enable me to physically inspect the same.

I would also like to inform that the planned joint inspection of my flat could not be undertaken on 29Mar 2023 since there was no water and electricity supply to the flat. In such a situation, an inspection would be futile since the air conditioners, taps, WCs, etc. cannot be checked. It is also learnt that the flat has still not been inspected by the customer service team prior to offering possession. It is therefore requested that the flat may first be fully inspected by the customer service team and defects, if any, be cleared under intimation to me. Subsequently, a joint inspection may be planned at a mutually convenient date with electricity & water supply to the flat in place to enable proper inspection.

42. As per the builder buyer agreement dated 14.01.2014 the complainant was promised 4 car parking spaces but the respondent while offering the unit has not offered those car parking spaces and further the complainant requested the said spaces vide email dated 31.03.2023. Hence, the authority is of the view that there is a default on the part of promoter to handover the actual physical possession for which complainant has continuously requested them. Therefore, the delay possession charges are allowed till actual handing over of possession.
43. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such, the allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 14.07.2017 till actual handing over of possession i.e., 23.11.2023, at the prescribed rate i.e., 10.85 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

G.II Direct the respondent to refund an amount of Rs. 10,24,031/- which was paid on account of late intimation of possession.

44. The above-mentioned relief sought by the complainants was not pressed by the complainants counsel during the arguments in the passage of hearing. The authority is of the view that the complainants counsel does not intend to pursue the above-mentioned relief sought. Hence, the authority has not raised any finding w.r.t. to the above-mentioned relief.

G.III Direct the respondent for allotment of 4 covered parking spaces as per BBA, which have been already been paid by the complainants.


45. The complainants has raised an issue w.r.t the car parking spaces and argued that they has paid an amount of 4 covered car parking spaces so, the spaces were to be provided by the respondent-builder. The authority observes that vide possession / handover letter dated 23.11.2023 the respondent has already allotted 4 car parking spaces i.e., 93, 20, 20A, 20B in Basement 2. Hence, the authority has not raised any finding w.r.t. to the above-mentioned relief.

H. Directions of the authority

46. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoters as per the functions entrusted to the authority under section 34(f):
- i. The respondent is directed to pay interest at the prescribed rate of 10.85% p.a. for every month of delay from the due date of possession i.e., 14.07.2017 till the actual handing over of the possession i.e., 23.11.2023 as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
 - ii. The arrears of such interest accrued from 14.07.2017 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.
 - iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - iv. The rate of interest chargeable from the allottee 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 promoters 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.

47. Complaint stands disposed of.
48. File be consigned to registry.



(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 19.04.2024



HARERA
GURUGRAM