

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

Complaint no. : 1059 of 2023
Date of filing complaint: 24.03.2023
First date of hearing: 24.08.2023
Date of decision : 15.02.2024

1. Sh. Daya Shankar Choubey
2. Smt. Amita Choubey

Complainants

R/o: M 305, Sispal Vihar, Sector-49, Sohna Road
Gurgaon-122018.

Versus

M/s Pareena Infrastructure Private Limited

Respondent

Regd. Office at: Flat No. 2, Palm Apartment, Plot
No.13B, Sector - 6, Dwarka, New Delhi - 110075

Corporate Office at: C-7A, Second Floor, Omaxe
City Centre, Sector - 49, Sohna Road, Gurugram -
122018

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Sh. Utkarsh Thapar (Advocate)

Complainants

Sh. Prashant Sheoran (Advocate)

Respondent

ORDER

1. The present complaint 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 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 the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

S. No.	Particulars	Details
1.	Name and location of the project	"Coban Residences", Sector-99A, Gurugram
2.	Nature of the project	Residential
3.	Project area	10.5875 acres
4.	DTCP license no.	10 of 2013 dated 12.03.2013 valid up to 11.03.2024
5.	Name of licensee	Monex Infrastructure Pvt. Ltd.
6.	RERA Registered or not registered	GGM/419/151/2020/35 dated 16.10.2020 valid up to 11.03.2024
7.	Unit no. and floor no.	303 and 3 rd floor and Tower-2 (As per page no. 23 of the complaint)
8.	Unit area admeasuring	1997 sq.ft. (Super area) (As per page no. 23 of the complaint)
9.	Date of execution of apartment buyer's agreement	11.02.2014 (As per page no. 21 of the complaint)
10.	Possession clause	3.1 <i>That the developer shall, under normal conditions, subject to force majeure, complete construction of Tower/Building in which the said flat is to be located within 4 years of the start of construction or execution of this Agreement whichever is later, as per the said plans and specifications seen and accepted by the Flat Allottee.....</i> and 5.1 <i>In case within a period as provided hereinabove, further extended by a period of 6(six) months if so required by the developer, the developer is unable to complete construction of the said flat as provided hereinabove (subject to force majeure conditions) to the flat allottee(s), who have made payments as required for in this agreement, then the</i>

12



		<p>flat allottee(s) shall be entitled to the payment of compensation for delay at the rate of Rs. 5/- per sq.ft. per month of the super area till the date of notice of possession as provided hereinabove in this agreement. The flat allottee(s) shall have no other claim against the developer in respect of the said flat and parking space under this agreement. (As per page no. 34 and 37 of the complaint)</p>
11.	Due date of possession	16.10.2018 (Note: Due date to be calculated 4 years from the date of start of construction i.e., 16.10.2014 being later.)
12.	Payment Plan	Construction linked payment plan (As per page no. 46 of the complaint)
13.	Total sale consideration	Rs.1,23,47,465/- (As per schedule of payments on page no. 46 of the complaint)
14.	Amount paid by the complainant	Rs.1,17,52,481/- (As per statement of account on page no. 56 of the complaint)
15.	Occupation Certificate/ completion certificate	13.12.2022 (As per page no. 21 of the reply)
16.	Offer of possession	14.12.2022 (As per page no. 64 of the complaint)
17.	Reminder letters	29.09.2015, 03.11.2015 & 24.11.2015 (As per page no. 32, 34 & 36 of the reply)
18.	Amount paid to the complainants by way of credit note	Rs.4,99,250/- (As per page no. 67-71 of the reply)

B. Facts of the complaint:

3. The complainants have made following submissions:

- I. That in the year 2013, the complainants were searching for a house with green spaces, recreational opportunities, and other amenities. During this time, they came across the respondent's project, which was advertised in a very impressive and stellar way. The



respondent claimed the project would meet all standards of ultra-modern lifestyle sensibilities and the units would be built with impeccable precision. At the same time, the complainants stumbled upon a unit that was being sold to the unit's first buyer.

- II. That the complainants expressed their interest in the project and met with respondent's officials to inquire more about the project. After being impressed and satisfied by the representations and assurances made by the respondent's officials the complainants decided to purchase a residential unit bearing no. T2-303 in the project known as "Coban Residencies" in Sector 99A, Gurugram.
- III. That believing the representations, promises and personal guarantees put forth by the respondent to be genuine and by extending trust in the management of the respondent's company, the complainants decided to purchase a unit in the project. Subsequently, the complainants booked a unit by way of transfer in the project from the first buyer of the unit namely Mr. Varun Samtani.
- IV. That after the complainants fulfilled the required formalities with the above named second buyer and paid them off the money towards the initial booking amount of Rs.8,50,000/-. Thereafter, the complainants vide apartment buyer's agreement dated 11.02.2014 were allotted a unit having an approximate super area measuring 1997 sq. ft. in tower T-2 of the said project. The total projected cost of the apartment was Rs.1,31,38,281/-
- V. That the respondent represented to the complainants that the construction of the project had already commenced and further, according to clause 3.1 of the apartment buyer's agreement, the respondent promised to complete the project no later than 4 years from the execution of the ABA or the start of construction, whichever came later, which was by or before February, 2018.

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- VI. That as per Clause 1.2 (vii)(b) of the BBA in case the allottee/complainants made the payments of all due installments, within the specified time, for the initial 40% amount of the total BSP of the unit, the allottee shall be entitled to timely payment rebate of Rs.110/- per sq.ft. for the area of the unit. According to the aforementioned provision, the complainants made sure they always made their payments on time to comply with the requirement and be qualified for the rebate.
- VII. That the respondent was only able to issue a provisional allotment letter in the name of the complainants on 16.10.2014, as the unit in question had been bought by the complainants through endorsement from the second buyers. The complainants then made a payment of Rs.12,66,367/- on 28.10.2014.
- VIII. That the complainants wanted to shift to a house with facilities of security, green areas, recreational activities and other such amenities and the project as advertised by the respondent was a perfect match. Thus, the complainants agreed to purchase an expensive house that met all their requirements and even applied for a loan and were thereafter granted a home loan from the State Bank of India for Rs.92,50,000/- on 25.10.2014.
- IX. That thereafter, the complainants continued to make the due payments on time as required by the demand letters being issued by the respondent. The complainants were always particular about paying all of the installments in a timely manner and were extremely excited to get the possession of the unit in due course of time and realize their dream of owning a house.
- X. That on 30.03.2017, the respondent under a promotional scheme of the company and in order to compliment the complaints commitment of timely payments was pleased to provide the complainants with a loyalty

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- bonus of Rs.5,99,100/- i.e., at the rate of Rs.300/- per sq. ft. The respondent proposed to adjust the said amount towards loyalty bonus in the future installments payable by the complainants.
- XI. That the completion of the project was to be due by or before February, 2018. However, to the misery of the complainants, the respondent miserably failed to complete the project and deliver the possession within the stipulated time period of 4 years as mentioned in clause 3.1 of the ABA.
- XII. That despite numerous follow-up visits to the respondent's office and communications with the officials of the respondent concerning the delivery of possession, the complainants never received a specific response from the respondent regarding the date of possession. This failure on part of the respondent caused the complainants great mental anguish, harassment, and financial hardship.
- XIII. That even though the respondent failed to offer the possession of the unit in a timely fashion, the respondent made no efforts to make amends for the unacceptable delay and provide the complainants with delay compensation charges.
- XIV. That unfortunately, the complainants were unaware that they were in for a bumpy ride. In order to avoid its obligation to pay delayed possession charges to the complainants, the respondent clearly refused to pay any DPC and stated that it would be unable to do so because the DPC was covered by the loyalty bonus that the complainants had been offered vide letter dated 30.12.2017.
- XV. That nonetheless the complainants kept fulfilling their obligation of making timely payments and were thereafter offered possession after a whopping delay of more than 4 years vide the letter for offer of possession dated 14.12.2022. That during this time, the respondent proposed the complainants to pay their last and final installment



towards the total sale consideration to the tune of Rs.13,85,800/-. As well as proposed the respondent to execute an indemnity bond with the respondent.

- XVI. That the amount of DPC that the respondent owes to the complainants is significantly higher than the loyalty bonus amount. Additionally, it is stated that the respondent cannot arbitrary waive off the requirement to pay DPC in circumstances of a delay in handing over possession since the above said is a statutory liability.
- XVII. That the complainants have till date have paid an amount of Rs.1,17,52,481/- but have not received the possession even till date despite a delay of more than 5 years. By not honoring the promises and the terms of the ABA the respondent has caused the complainants grave mental agony, financial suffering and harassment. The respondents have cheated the complainants in the most deceiving manner.
- XVIII. That the sole intention of the respondent, from the very beginning was to induce its customers and to make wrongful gains at the expense of the complainants. That for personal gains, the respondent has caused the complainants grave mental agony and made the complainants suffer exceedingly owing to the illimitable financial burden they have been placed with.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
- To handover the actual, physical, vacant possession of the unit.
 - To direct the respondent to pay the delay possession charges of Rs.62,29,344/- to the complainants for delay of handing over the possession of the unit to the complainants.
 - Direct the respondent to adjust the amount of final instalment against the due balances of TPR amount of Rs.2,19,760/- and DPC amount of Rs.62,29,344/- and pay the remaining balance of DPC.



D. Reply by the respondent:

5. The respondent contested the present complaint on the following grounds:
- i. That the respondent is in the process of developing several residential group housing colonies in Gurugram, out of them one is "Coban Residences" at Sector 99A.
 - ii. That the respondent has already completed the concerned unit and vide letter dated 14.12.2022 a letter of offer of possession was issued to the complainant. It is submitted that construction of the concerned unit as well as tower stands completed in the month of April 2022 itself and thereafter an application for obtaining occupation certificate was filed by the respondent before the concerned authority. Thus, the reason for filing the present complaint is absolutely baseless. That the respondent is a committed real estate developer, who is developing various residential colonies as per rules and law.
 - iii. That the respondent continues to bonafidely develop the project in question despite there being various instances of non-payments of installments by various allottees. This clearly shows unwavering commitment on the part of the respondent to complete the project. Yet, various frivolous petitions, such as the present one seriously hampers the capability of the respondent to deliver the project as soon as possible. The amounts which were realized from the complainant have already been spent in the development work of the proposed project. On the other hand the respondent is still ready to deliver the unit in question to the complainant, of course, subject to payment of due instalments and charges.
 - iv. That it has become a matter of routine that baseless and unsubstantiated oral allegations are made by allottees against the respondent with a mere motive of avoiding the payment of balance

12



consideration and charges of the unit in question. If such frivolous and baseless allegations will be admitted then, interest of other genuine allottees of the project, will be adversely affected. In these circumstances, the present complaint deserves to be dismissed.

- v. That the completion of project is dependent on a collective payment by all the allottees and just because few of the allottees paid the amount, demand does not fulfil the criteria of collective payment. It is submitted that numerous allottees have defaulted in payment demanded by the respondent, resulted in delaying of completion of the project, yet the respondent is trying to complete the project as soon as possible by managing available funds.
- vi. That over a period of time numerous allottees have defaulted in their payments at the relevant stages of construction and it is not possible to construct with inadequate funds. Thus, the situation of non-payment of amount by the allottees is beyond the control of respondent. It is submitted that even in the apartment buyer's agreement it was stated that period of 4 years was subjected to normal conditions and force majeure and with any stretch of imagination situations faced by respondents are not normal. That it is the fault of those allottees who had committed defaults and respondent should not be made to suffer for the same.
- vii. That non-payment is one of the major issue faced by all the developer including respondent but it is not the only issue faced by the respondent while developing a project, the outbreak of COVID-19, several orders / notifications were kept on passed by various authorities/courts like NGT or Supreme Court where construction activities were either completely stopped or levied such condition which makes it highly difficult to develop the project, even when

12



- developer is facing shortage of fund due to non-payment of installments by allottees.
- viii. That at the time of seeking allotment in the project of respondent, complainants very well knew that unit/apartment in question is a part of tower consisting of several other units and the unit shall be completed along with other units which belong to other allottees. It is submitted that merely because complainants had paid on time, it does not fulfill the criteria of complete payment required for construction of whole of the tower/project. That the complainants knew that without complete payment on time from all allottees it is not possible or quite difficult to complete the project on time. It is submitted that for the same reason the clause of "force majeure" was made part of agreement. It is submitted that it is absolutely beyond the control of developer to get money from the buyer on time. It is submitted that after a demand was raised, the only thing developer can do is to send a reminder and in extreme cases cancellation. But reminders / cancellation do not bring money which the developer had already incurred and is incurring continuously.
- ix. That the apartment buyer's agreement was executed between the parties on 11.02.2014. However, certain extremely important facts were concealed by the complainants while drafting the present complaint. The complainants falsely pleaded in their complaint that they have paid all the demands as and when demanded/raised by the respondent. It is submitted that material, labor and other requirements does not comes for free and if allottees wishes to get the possession on time than it is their legal duty to pay on time, since without money it is not possible to construct the project on time. The complainants intentionally did not produced demand letters and reminders issued by respondent, for the reason that they have not paid demands in



timely manner. The complainants never paid any demand in full and since beginning always made less payment than demanded. It is submitted that rights are reciprocal to duties and in order to seek possession on time allottee has a duty to pay on time but in the present payment in time out of question, since the complainants have not even bothered to pay the demands raised by the respondent over a period of time and against appropriate stage of construction. That since no demands were fulfilled by complainants, thus complainants are not entitled for TPR as per clause 1.2 (vii) (b), since as per clause 1.2 (vii) (c) it is specifically mentioned that even if a single payment is not made on time than allottee is not entitled for benefit of TPR (timely payment rebate) which is always adjusted at the time of last payment. That these defaults in itself clarifies the fact that complainants themselves have not come before the Hon'ble forum with clean hands, thus their complaint is liable to be dismissed with cost. It is submitted that allottee rights are governed through their duties and if they failed to fulfill their duties, than they have no right to seek refund as alleged in present complaint. That none is allowed to take benefit of their own mistake.

- x. That the construction is reciprocal to amount paid and it is not possible to raise complete construction without getting complete amount. That in such cases if delayed possession charges is granted than it would be absolutely against the natural justice. It is pertinent to mention here that whatsoever amount which was received by respondent qua construction as already been utilized for construction and it is the complainant who delayed in payments. Thus he cannot put blame upon respondents. Thus keeping in view of above stated facts and circumstances, present complaint is not maintainable and deserves to be dismissed.

6. 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 these undisputed documents and submissions made by the parties.

E. Jurisdiction of the authority:

7. 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, 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

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 allottee as per the agreement for sale, or to the association of allottee, as the case may be, till the conveyance of all the apartments, plots, or buildings, as the case may be, to the allottee, or the common areas to the association of allottee 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 promoter, the allottee and the real estate agents under this Act and the rules and regulations made thereunder.



8. 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 objections raised by the respondent:

F.I Objection regarding delay due to force majeure circumstances

9. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the Hon'ble Supreme Court or NGT, lockdown due to outbreak of Covid-19 pandemic and non-payment of instalments by different allottees. Further, the authority has gone through the possession clause of the agreement and observed that the respondent-developer proposes to handover the possession of the allotted unit within a period of 4 years from the date of start of construction or date of execution of buyer's agreement, whichever is later." In the present case, the date of execution of buyer's agreement is 11.02.2014 and date of start of construction is 16.10.2014 as taken from the documents on record. The due date is calculated from the date of start of construction being later, so, the due date of subject unit comes out to be 16.10.2018, which is prior to the occurrence of Covid-19 restrictions and hence, the respondent cannot be benefitted for his own wrong. Though there has been various orders issued to curb the environment pollution, but these were for a short period of time. So, the circumstances/conditions after that period can't be taken into consideration for delay in completion of the project. Though some allottees may not be regular in paying the amount due but the interest of all the stakeholders concerned with the said project cannot 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 based on aforesaid reasons and the plea advanced in this regard is untenable.



F.II Objection regarding non-entitlement of timely payment rebate

10. The respondent has raised a contention that the complainants have not made the payments within the specified time so they are not entitled for timely payment rebate as per clause 1.2(vii)(b) and 1.2(vii)(c) of the apartment buyer's agreement which specifically mentioned that even if a single payment is not made on time than allottee is not entitled for benefit of TPR (timely payment rebate) which is always adjusted at the time of last payment. Further, the authority has gone through the clauses for timely payment rebate of the agreement and observed that the allottee is entitled to timely payment rebate @ Rs.110/- per sq. ft. for the area of the unit on the basic sale price of the unit if the allottee makes the payments of all the due instalments, within specified time, for the initial 40% amount of the total BSP of the unit. It has been observed by the authority while going through the statement of account dated 17.05.2022 issued by the respondent clearly shows that all the due instalments were made on time except the last two instalments and 40% of the BSP has been paid way before those two instalments. Thus, the timely payment rebate is to be paid to the complainants on account of payment of all instalments of 40% of the BSP within specified time as per the agreement and the plea advanced in this regard is untenable.

G. Findings on relief sought by the complainants:

G.I Direct the respondent to handover the possession and pay delay possession charges of Rs.62,29,344/- to the complainants for delay of handing over the possession of the unit to the complainants

11. The relief(s) sought by the complainants are taken together being interconnected.
12. In the present complaint, the complainants intend 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

12



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 3.1 of the apartment buyer's agreement provides for handing over of possession and is reproduced below for ready reference:

3.1

That the developer shall, under normal conditions, subject to force majeure, complete construction of Tower/Building in which the said flat is to be located within 4 years of the start of construction or execution of this Agreement whichever is later, as per the said plans and specifications seen and accepted by the Flat Allottee (with additional floors for residential units if permissible) with such additions, deletions, alterations, modifications in the layout, tower plans, change in number, dimensions, height, size, area or change of entire scheme the developer may consider necessary or may be required by any competent authority to be made in them or any of them. To implement all or any of these charges, supplementary sale deed(s)/agreements, if necessary will be got executed and registered by the developer which the flat allottee(s) undertakes to execute.....

(Emphasis supplied)

14. The due date of possession of the apartment as per clause 3.1 of the apartment buyer's agreement, is to be calculated as 4 years from the date of start of construction i.e., 16.10.2014 being later. Therefore, the due date of possession comes out to be 16.10.2018.

15. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the prescribed rate and proviso to section 18 provides that where an allottee does not intend to withdraw from the project, they 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., 15.02.2024 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.
18. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:
- "(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
- Explanation. —For the purpose of this clause—*
- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*
19. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.85% by the respondent /promoter which is the same as is being granted to the complainants in case of delayed possession charges.
20. On consideration of the circumstances, the documents, submissions made by the parties and based on the findings of the authority regarding



contraventions as per provisions of rule 28, the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 3.1 of apartment buyer's agreement executed between the parties on 11.02.2014, the possession of the subject unit was to be delivered by 16.10.2018.

21. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate has been obtained by the respondent-builder and offered the possession of the subject unit to the complainants after obtaining occupation certificate on 14.12.2022. So, it can be said that the complainants would come to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainants should be given 2 months' time from the date of offer of possession. This 2 month of reasonable time is to be given to the complainants keeping in mind that even after intimation of possession, practically one has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but that 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., 16.10.2018 till actual handing over of possession or offer of possession made on 14.12.2022 after obtaining occupation certificate from competent authority plus two months, whichever is earlier.
22. The counsel for the complainants have placed on record their written submissions on 23.02.2024 and submitted that the respondent vide letter dated 30.03.2017 provided the complainants with a loyalty bonus of Rs.5,99,100/- i.e., @ Rs.300 sq. ft. under the canopy of Pareena Honours and it was submitted that the amount would be adjusted in future



instalments proportionately payable by the complainants. But the respondent had failed to adjust the last instalment of the said loyalty bonus which is to the tune of Rs.99,850/- and hence the said amount is to be adjusted in the total remaining total amount payable by the complainants. The receipts of credit notes placed on record by the respondent on page no. 67-71 of the reply amounts to Rs.4,99,250/- which is not disputed by the complainants and no other documents have been placed on record by the complainants regarding this. In view of the aforementioned facts, the amount paid towards loyalty bonus is considered as Rs.4,99,250/-.

23. 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 allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 16.10.2018 till actual handing over of possession or offer of possession made on 14.12.2022 after obtaining occupation certificate from competent authority plus two months, whichever is earlier at 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 adjust the amount of final instalment against the due balances of TPR amount of Rs.2,19,760/-.

24. The respondent has opted for construction linked payment plan and as per the clause 1.2(vii)(b) and 1.2(vii)(c) of the apartment buyer's agreement, the complainants are entitled to timely payment rebate if they make payment of all the due instalments, within specified time, for the initial 40% amount of the total BSP of the unit. Clause 1.2(vii)(b) and 1.2(vii)(c) of the apartment buyer's agreement are reproduced herein for the ready reference:

1.2(vii)(b)

That in case the allottee makes the payment of all the due instalments, within the specified time, for the initial 40% amount of the total BSP of the unit, the allottee



shall be entitled to timely payment rebate (TPR) @ Rs.110/- per sq. ft. for the area of the unit on the basic sale price of the unit.

1.2(vii)(c)

That for availing the TPR it shall be mandatory for the allottee to make the payments of all the instalments of the initial 40% payment of the total BSP, within the specified time. In case, even one of the payments is delayed or is not made within the specified time, then the allottee shall cease to be entitled for either of the TPR of any of the previous instalments and for all the instalments.

25. It has been observed by the authority while going through the statement of account dated 17.05.2022 issued by the respondent clearly shows that all the due instalments were made on time except the last two instalments and 40% of the BSP has been paid way before those two instalments. Thus, the timely payment rebate is to be paid to the complainants on account of payment of all due instalments of 40% of the BSP within specified time.

Directions of the Authority:

26. 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 functions entrusted to the Authority under Section 34(f) of the Act of 2016:
- The respondent is directed to pay delayed possession 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., 16.10.2018 till offer of possession (14.12.2022) plus two months i.e., up to 14.02.2023 as per proviso to section 18(1) of the Act read with rule 15 of the rules. Also, an amount of Rs.4,99,250/- already given by the respondent as credit note shall be deducted/adjusted towards the delay possession charges to be paid by the respondent.
 - The arrears of such interest accrued from 16.10.2018 till date of this order shall be paid by the promoter to the allottee within a period of 90 days from date of this order as per rule 16(2) of the rules.
 - The respondent is directed to issue a revised account statement after adjustment of credit note/timely payment rebate paid to the



complainants and delayed possession charges within 30 days and thereafter the complainants are directed to pay outstanding dues, if any, within next 30 days and the respondent shall handover the physical possession of the allotted unit complete in all aspects as per specifications of flat buyer's agreement.

- iv. The respondent is directed to execute the conveyance deed in terms of section 17(1) of Act of 2016 within a period of 90 days after payment of requisite stamp duty and registration charges by the complainants.
 - v. 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 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.
 - vi. The respondent shall not charge anything from the complainants which is not the part of the apartment buyer's agreement and no holding charges shall be levied as per law settled by **Hon'ble Supreme Court in Civil Appeal no. 3864-3899/2020 decided on 14.12.2020.**
27. Complaint stands disposed of.
28. File be consigned to the registry.

HARERA
GURUGRAM
V.I-3
(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 15.02.2024