

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

Complaint no. :	187 of 2022
First date of hearing:	30.03.2022
Date of Decision:	29.02.2024

Smt. Megha Dewan

R/o: House no. 9992, Dewan Bhawan,
Sarai Rohilla, Delhi-110005

Complainant

Versus

M/s New Look Builders and Developers
Private Limited (Earlier known as M/s
Ansal Phalak Infrastructure Pvt. Ltd.)

Respondent

Regd. Office at: 115, Ansal Bhawan 16,
Kasturba Gandhi Marg, New Delhi-110001

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Sh. K.K. Kohli (Advocate)

Complainant

Sh. Ashwariya Jain (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 29 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 apartment buyer's agreement 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	"Versalia", Sector 67-A, Gurugram
2.	Nature of the project	Residential Plotted Colony
3.	Project area	38.262 acres
4.	DTCP license no.	81 of 2013 dated 19.09.2013 valid up to 19.09.2019
5.	Name of licensee	Lord Krishna Infra Projects Ltd. and 13 others
6.	RERA Registered/ not registered	154 of 2017 dated 28.08.2017 valid up to 31.08.2020
7.	Unit no.	SF-3177, Second Floor (As per page no. 29 of the complaint)
8.	Unit area admeasuring	1685 sq. ft. (Super area) (As per page no. 29 of the complaint)
9.	Allotment letter	13.03.2015 (As per page no. 29 of the complaint)
10.	Date of floor buyer's agreement	13.03.2015 (As per page no. 34 of the complaint)
11.	Possession clause	POSSESSION OF FLOOR 5.1 Subject to clause 5.2 infra and further subject to all the buyers of the floors in the residential colony making timely payment, the company shall endeavor to complete the development of residential colony and the floor as far as possible within 36 months with an extended period of (6) six months from the date of execution of this floor buyer agreement subject to the receipt of requisite building /revised building plans/ other approvals & permissions from the concerned authorities, as well as force majeure conditions as defined in the agreement and subject to fulfilment of the terms and conditions of the allotment, certificate & agreement including but not limited to timely payments by the buyers), in terms hereof. The company shall be entitled to extension of time for completion of construction of the unit equivalent to the

		<p>period of delay caused on account of the reasons stated above. No claim by way of damages/compensation shall lie against the company in case of delay in handing over possession of the unit on account of the aforesaid reasons.</p> <p>However, if the buyer(s) opts to pay in advance of schedule, a suitable discount may be allowed but the completion schedule shall remain unaffected. The buyer(s) agrees and understands that the construction will commence only after all necessary approvals are received from the concerned authorities and competent authorities including but not limited to environment & forest.</p> <p>(As per page no. 45 of the complaint)</p>
12.	Due date of possession	<p>13.09.2018</p> <p>[Note: Due date to be calculated 36 months from the date of execution of agreement i.e., 13.03.2015. Grace period of 6 months included being unqualified.]</p>
13.	Total sale consideration	<p>Rs.1,02,94,500/-</p> <p>(As per customer ledger dated 25.02.2022 on page no. 68 of the reply)</p>
14.	Amount paid by the complainant	<p>Rs.42,80,320/-</p> <p>(As per customer ledger dated 25.02.2022 on page no. 69 of the reply)</p>
15.	Occupation Certificate	Not obtained
16.	Offer of possession	Not offered

B. Facts of the complaint:

3. That the complainant has made following submissions:

- I. The respondent is a real estate developer and is in the process of developing a residential colony which has been named as "Versalia" located in sector 67A, Gurugram.
- II. That in the year 2014, the complainant was interested in purchasing a suitable residential floor for her needs. That at that point of time the respondent was marketing and advertising the said project. The

respondent was representing itself to a settled and committed real estate developer and was propagating that the said project shall be completed in a time bound manner. Swayed by the marketing and advertising being done by the respondent, the complainant approached the offices of the respondent where the representatives of the respondent confirmed that the said project was being developed by the respondent with full vigour and the respondent was holding all the permissions, sanctions as well as the requisite financial capacity to develop and complete the said project in a time bound manner. Yet again the complainant relied upon the representations which were made by the representatives of the respondent and decided to seek allotment of a residential floor in the said project. That the representatives of respondent stated if the complainant was interested in booking an independent floor in the project then she will have to pay an amount of Rs.35,00,000/- in cash and Rs.5,00,000/- via cheque. That when the complainant asked as to why such a huge amount of Rs.35,00,000/- was being demanded in cash, then the officials of respondent stated that since the current project is very high in demand and in order to avoid non-serious buyer's they have put a condition of Rs.35,00,000/- cash payment before booking. The officials of respondent assured that they will adjust the cash payment in basic sale price of the unit and the final basic sale price will be after deducting of Rs. 35,00,000/- only. That at that point of time officials of respondent showed the complainant 3 different floor types having different prices. That out of options given by respondent, complainant chose second floor having basic sale price of Rs.1,37,00,000/-. That officials of respondent stated that since the complainant had chosen a unit with BSP of Rs.1,37,00,000/- thus after payment of Rs.35,00,000/- said amount shall be adjusted in the BSP and

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- final BSP shall be calculated after deduction of amount paid in cash. That officials of respondent also stated that if complainant paid Rs.35,00,000/- in cash then additional discount of 7% will also be given to her and the same will be deducted and final BSP shall be after deduction of Rs.35,00,000/- + 7% of Rs.1,37,00,000/- i.e., Rs.9,59,000/- .
- III. That swayed by the assurance of officials of the respondent, complainant paid an amount of Rs.35,00,000/- in cash on 22.10.2014 and Rs.5,00,000/- vide cheque dated 22.10.2014. That in lieu of cheque amount respondent issued a payment receipt and said payment of Rs. 35,00,000 was adjusted in basic sale price and same was duly mentioned in application form duly signed by complainant and officials of respondent wherein BSP was shown as Rs.92,41,000/- after deduction of cash payment of Rs.35,00,000/- in addition to the discount of 7% of the BSP i.e., Rs.1,37,00,000.
- IV. That after execution of said application form complainant further paid an amount of Rs.37,81,814/- which has been duly acknowledged by the respondent by issuing receipts for all the payments made by the complainant.
- V. That as on 11.03.2015 complainant had paid an amount of Rs.77,81,814/- to the respondent and after making all the above payments the respondent issued a timely payment rebate @ Rs.250/- per sq. ft. and issued a letter dated 13.03.2015 in this regard.
- VI. That thereafter on 13.03.2015 respondent allotted a floor bearing no. 3177 having an area of 1685 sq. ft. located on second floor vide allotment letter dated 13.03.2015. That on said day an agreement qua said floor was executed between the parties.
- VII. That even the said floor buyer's agreement was a formal one-sided, unilaterally prepared and heavily tilted in favour of the respondent, with

no scope of negotiation. That since the complainant had already paid a hefty amount to the respondent; she was left with no other option but to sign the said agreement, as it was. That at the time of execution of said agreement respondent assured that it had all the permissions, licences, approved layout plans for the construction of the project. That as per clause 5.1 of the agreement respondent assured that the possession of the floor shall be delivered within 36 months with extended period of 6 months as force majeure from the date of execution of floor buyer's agreement. That for ready reference said relevant lines of clause 5.1 is being reproduced herein as follow:

"the Company shall endeavor to complete the development of Residential Colony and the Floor as far as possible within 36 months with an extended period of (6) six months from the date of execution of this floor buyer agreement subject to the receipt of requisite building /revised building plans/ other approvals & permissions from the concerned authorities, as well as Force Majeure Conditions as defined in the agreement"

That since respondent had already assured that it already has all the necessary permissions to develop the project, thus the date of possession shall be calculated from the date of execution of the agreement i.e., 13.03.2015 and accordingly due date of possession comes to 13.03.2018 i.e., 36 months from the date of execution of floor buyer's agreement.

- VIII. The complainant has always remained steadfast and committed in making the payment of all the instalments as and when demanded by the respondent however as the facts would speak for themselves, the respondent miserably failed in developing the said project in a time bound manner resulting in severe losses being suffered by the complainant. That as stated above, the complainant had already paid an amount of Rs.77,81,814/- and always ready to pay rest of the amount if the same were demanded. But after execution of floor buyer's



agreement respondent failed to develop the project thus no payment was demanded from complainant.

- IX. That since the respondent had failed to develop the project as per agreed terms and conditions, complainant approached the officials of the respondent and requested to refund the entire amount paid by the complainant along with interest. That after few meetings respondent even offered plots in the said project and tried to once again lure the complainant by giving deceitful promises which respondent never intended to fulfil. That respondent initially sent an offer vide e-mail dated 30.08.2018 offering certain benefits and plots in alternate but same was not acceptable to the complainant and she opted to seek refund only. That thereafter negotiations were again started and ultimately in the month of September 2019, the respondent agreed and admitted its mistake and offered to refund the entire amount to the complainant vide email dated 06.09.2019.
- X. That since the respondent was not able to complete the project in timely manner, the respondent should also be liable to pay the interest at the rates prescribed by Act of 2016 for every month of delay. Thus, the complainant is entitled to complete refund along with interest from the date of each payment. However, no such payment was ever made by the respondent.
- XI. That the complainant booked the unit in the year 2014 and it is crystal clear that respondent has failed to deliver possession in a timely manner. That aforementioned trail of events clearly shows and proves that the respondent has intentionally failed to abide by the terms and conditions of the allotment/agreement which had been made in favour of the complainant. The conduct of the respondent has remained deceitful and respondent induced the complainant to part away with a

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huge sum of money i.e., Rs.77,81,814/- and despite of waiting for around more than 4 years now, the respondent has still not able to offer possession of duly completed project or apartment nor refund the amount as agreed by respondent.

- XII. That complainant even after pursuing respondent for several months felt hopeless and was left with no other option to approach the Hon'ble authority for adjudication of the matter is in issue. Hence, the present complaint.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):
- I. Direct the respondent to handover the legal and rightful possession of the apartment.
 - II. Direct the respondent to pay interest for every month of delay at the prevailing rate of interest.
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:
- a. That the complainant was allotted with the unit no. 3177, second floor in the project at the basic sale price of Rs.97,89,000/- in terms of the floor buyer's agreement dated 12.03.2015. That in terms of the FBA, the taxes, External Development Charges and Internal Development Charges were to be levied upon the complainant separately i.e., over and above the basic sale price.
 - b. That in terms of clause no. 5.1 of FBA, the respondent undertook to complete the construction of the unit and to deliver its possession to the

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complainant within thirty-six months with an extended period of six months from;

- i. the date of execution of FBA i.e., 13.09.2018 (42 months from 13.03.2015); or
- ii. the date of receiving the approval of the building plan from the Department of Town and Country Planning i.e., pending till date.

whichever is later.

- c. That without prejudice to the above, the respondent has denied that the unit was sold to the complainant for basic sale price of Rs.1,37,00,000/- and it is also denied by the respondent that the complainant has paid Rs.35,00,000/- to the respondent in cash towards the basic sale price of the unit. It is humbly submitted that the unit was sold to the complainant for basic sale price of Rs.97,89,000/- after deducting the discounts offered by the respondent. That till date the complainant has paid Rs.39,78,763/- towards the basic sale price of the unit, Rs.1,70,495/- towards the preferential location charges and Rs.1,31,060/- towards the External Development Charges.
- d. That the complainant has tried to twist the facts in the present complaint to mislead the Hon'ble Authority. That the complainant has wrongly stated in the present complaint that an amount of Rs.77,81,814/- has been paid towards the unit, whereas, the fact of the matter is that the complainant has only paid Rs.39,78,763/-. Therefore, in case the Hon'ble Authority is of the view that delayed possession charges shall be granted to the complainant, the same shall be calculated on the deposited amount of Rs.39,78,763/-.
- e. That non-payment of the instalments by the allottees is a 'force majeure' circumstance, as stated in Clause 5.2 of the floor buyer's agreement. Furthermore, the other reasons for delay in the project are stoppage of



construction activities in NCR region by the orders of court, non-availability of construction material and labour, demonetisation of currency and change of tax regime, implementation of GST, implementation of nationwide 'lockdown' to contain the spread of 'Covid-19', etc. Moreover, all these situations and adverse conditions are 'force majeure' circumstances which are beyond the control of the respondent.

- f. That the said project of the respondent is reasonably delayed because of the 'force majeure' situation which is beyond the control of the respondent vide clause 5.2 of the FBA, the complainant has agreed and duly acknowledged that in case the development of the said dwelling unit is delayed for any reasons beyond the control of the company, then no claim whatsoever by way of any compensation shall lie against the respondent. Therefore, the complainant in terms of the FBA has agreed and undertook to waive all his rights and claims in such a situation.
- g. That vide clause 9.14 of the floor buyer's agreement, the complainant agreed that in case the respondent is not in a position to deliver the allotted unit as applied for and agree for delivering any alternate residential unit in the said residential project, the buyer shall not object to the same. It is most respectfully submitted that the respondent is willing to offer an alternative built up unit by adjusting the amount already paid by the complainant. It is pertinent to mention here that if in case the demand as raised by the complainant is allowed the same will cause irreparable damage to the genuine allottees who are waiting for the completion of their respective dwelling units.
- h. That the delay in handing over the possession of the dwelling unit/apartment has been caused due to the various reasons which were beyond the control of the respondent. Following important aspects are

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relevant which are submitted for the kind consideration of the Hon'ble Authority:

- a. **Non-booking of all floors/ units seriously affected the construction:** -It is submitted that the global recession badly hit the economy and particularly the real estate sector. The construction of project of the respondent is dependent on the amount of monies received from the bookings made and monies received henceforth, in form of instalments paid by the allottees. However, it is submitted that during the prolonged effect of the global recession, the number of bookings made by the prospective purchasers reduced drastically in comparison to the expected bookings anticipated by the respondent at the time of launch of the project. The reduced number of bookings along with the fact that several allottees of the project either defaulted in making payment of the instalment or cancelled booking in the project, resulted in less cash flow to the respondent, henceforth, causing delay in the construction work of the project.
- b. **Other various challenges being faced by the respondent:** The following various problems which are beyond the control of the respondent seriously affected the construction;
- Lack of adequate sources of finance;
 - Shortage of labor;
 - Rising manpower and material costs;
 - Approvals and procedural difficulties.

In addition to the aforesaid challenges the following factors also played major role in delaying the offer of possession;

- There was extreme shortage of water in the region which affected the construction works;

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- II. There was shortage of bricks due to restrictions imposed by Ministry of Environment and Forest on bricks kiln;
 - III. Unexpected sudden declaration of demonetization policy by the Central Government, affected the construction work of the respondent in a serious way for many months. Non-availability of cash-in-hand affected the availability of labor;
 - IV. Recession in economy also resulted in availability of labour and raw materials becoming scarce;
 - V. There was shortage of labour due to implementation of social schemes like National Rural Employment Guarantee Act (NREGA) and Jawaharlal Nehru Urban Renewal Mission (JNNURM);
 - VI. Direction by the Hon'ble National Green Tribunal & Environmental authorities to stop the construction activities for some time on regular intervals to reduce air pollution in NCR region.
- i. That apart from the above, it is relevant to mention here that due to the increase in pollution in National Capital Region, the Hon'ble Supreme Court of India vide Order dated 04.11.2019 passed in *Writ Petition (Civil) No. 13029 of 1985 titled as "M.C. Mehta-Versus-Union of India & Ors"* ("Writ Petition") had put a blanket ban on the construction activities in the National Capital Region. Subsequently vide Order dated 09.12.2019, the Hon'ble Supreme Court of India lifted the ban partially i.e. construction activities were only allowed between 6:00 A.M. to 6:00 P.M. It is pertinent to mention that due to the aforesaid restraining orders passed by the Hon'ble Supreme Court of India all the construction activities in the National Capital Region came to a standstill, resultantly the project got delayed. The said ban is completely

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lifted by the Hon'ble Supreme Court only on 14.02.2020. In past also the construction was banned by Hon'ble Courts and Tribunals.

- j. That in order to curb down the air pollution the Environment & Pollution (Prevention & Control) Authority, for National Capital Region, has reviewed the urgent action that needs to be taken for the implementation of the Graded Response Action Plan (GRAP) vide its notification dated EPCA-R/2020/L-38 dated 08.10.2020 and has imposed ban on the use of diesel generator set with effect from 15.10.2020, which has further led to delay in the construction being raised.
- k. That all the above stated problems are beyond the control of the respondent. It may be noted that the respondent had at many occasions orally communicated to the complainant that if the respondent is unable to construct the unit, the respondent shall offer another residential unit of a similar value for which the allottees shall not raise any objections. The respondent could not complete the said project due to certain unforeseen circumstances which are completely beyond the control of the developer.
- l. That it is submitted that the complainant has prayed for reliefs which otherwise have to be claimed in a suit for possession, damages and recovery of money, after paying appropriate court fee. That in order to avoid the payment of court fee, the complainant has not raised a dispute of a civil nature, which requires elaborate evidence to be led and which cannot be adjudicated upon under the summary jurisdiction of the Hon'ble Authority. In this view of the matter, the complaint is liable to be dismissed with costs.
- m. That it is submitted that the floor buyer's agreement delineates the respective liabilities of the complainant as well as respondent in case of

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breach of any of the conditions specified therein. In this view of the matter, the complaint is not maintainable in law and is liable to be dismissed in limine.

- n. That it is submitted that the dispute between the parties involves complicated questions of facts and law, which necessarily entails leading of copious evidence. The issues raised by the complainant cannot be addressed before the Hon'ble Authority, which follows a summary procedure. In this view of the matter, the complaint is liable to be dismissed.
- o. That it is further submitted that the complainant has filed the frivolous complaint with false averments, only with a malafide intention to make illegal enrichment at the cost of respondent.
7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

8. 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

9. 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 allottees 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.

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

F. Findings on objections raised by the respondent:

F.I Objection regarding force majeure conditions:

11. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as demonetisation, certain environment restrictions, weather conditions in NCR region, shortage of labour, increase in cost of construction material, and non-payment of instalment by different allottees of the project, etc. But all the pleas advanced in this regard are devoid of merit. Therefore, it is nothing but obvious that the project of the respondent was already delayed, and no extension can be given to the respondent in this regard. The events taking place such as restriction on construction due to weather conditions were for a shorter period of time and are yearly one and do not impact on

the project being developed by the respondent. 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.

G. Findings on relief sought by the complainant:

G.I Direct the respondent to handover the legal and rightful possession and to pay interest for every month of delay, on the amount paid so far, at the rate mandate by Act of 2016

12. The above-mentioned relief(s) sought by the complainant is taken together being inter-connected.
13. In the present complaint, the complainant intend 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."

(Emphasis supplied)

14. The date of possession of the apartment as per clause 5.1 of the buyer's agreement, is to be calculated as 36 months with an extended period of 6 months from the execution of buyer's agreement or sanction of building plans, whichever is later. Therefore, the due date is calculated 36 months with an extended period of 6 months from the date of execution of buyer's agreement as the building plan was shown to the complainant to her satisfaction before the execution of floor buyer's agreement and the approval of revised building plan is still pending with the competent

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Authority mentioned by the respondent in its reply which comes out to be 13.09.2018, as per the floor buyer's agreement.

15. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the prescribed rate as per the Act of 2016. Section 18 provides that where an allottee does not intend to withdraw from the project, she shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

16. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
17. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 29.02.2024 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 complainant 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 complainant in case of delayed possession charges.
20. The counsel for the respondent during proceedings of the day dated 29.02.2024 stated that the occupation certificate is yet to be obtained by the promoter and there is no unit available with the respondent.
21. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. The due date of handing over possession is 13.09.2018. No document is placed on record to show that after completing the unit, OC has been obtained or even applied to the competent Authority. Therefore, the respondent has failed to handover possession of the subject apartment till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of respondent is established. As such the allottees shall be paid, by the

promoter, interest for every month of delay from due date of possession i.e., 13.09.2018 till offer of possession of the said unit or offer of alternative unit to the complainant similarly situated and of the same size and same price after obtaining the occupancy certificate from the concerned authority plus two months or actual handing over of possession, whichever is earlier, at prescribed rate i.e., 10.85 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

22. During proceedings of the day dated 29.02.2024 the counsel for the complainant brought to the notice of the Authority that the amount deposited by the complainant as per receipt information annexed with the complaint at Annexure C2 and C-4 to C-8 is Rs.42,81,814/-. However, as per ledger account dated 25.02.2022 the total amount deposited by the complainant is Rs.42,80,320/-. The amount deposited by the complainant as per receipt information is not disputed by the counsel for the respondent and therefore, the amount paid by the complainant is considered as Rs.42,81,814/-.

H. Directions of the Authority:

23. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:
- The respondent is directed to pay interest on the paid-up amount by the complainant at the prescribed rate of 10.85% p.a. for every month of delay from the due date of possession i.e., 13.09.2018 till offer of possession of the said unit or offer of alternative unit to the complainant similarly situated and of the same size and same price after obtaining the occupancy certificate from the concerned authority plus two months or actual handing over of possession, whichever is earlier.

- ii. The complainants are directed to pay outstanding dues, if any remains after adjustment of interest for the delayed period, the respondent shall handover the possession of the allotted unit on obtaining of occupation certificate.
 - iii. The arrears of such interest accrued from 17.09.2018 till the date of order by the authority shall be paid by the promoter to the allottee(s) within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottee(s) before 10th of the subsequent month as per rule 16(2) of the rules.
 - iv. The respondent shall not charge anything from the complainant which is not the part of the floor buyer's agreement.
 - v. The rate of interest chargeable from the allottee(s) by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% 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.
24. Complaint stands disposed of.
25. File be consigned to the registry.


HARERA
GURUGRAM

Vijay Kumar Goyal
(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 29.02.2024