

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

Complaint no. :	658 of 2023
Date of complaint :	14.02.2023
Order pronounced on:	14.03.2024

Mrs. Abha Gahlot R/o: G-403, Ispatika Appts Plot No. 29, Sector-4, Dwarka, New Delhi-110078.	Complainant
Versus	
M/s VSR Infratech Private Limited Registered office: A-22, Hill View Apartments, Vasant Vihar, New Delhi-110057 and Corporate office: Plot No.14, Ground Floor, Sector-44, Institutional Area, Gurugram-122003.	Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Sushil Yadav, Advocate

Complainant

Ms. Shriya Takkar, Advocate

Respondent

ORDER

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

A. Unit and project related details:

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

S. N.	Particulars	Details
1.	Name of the project	" 114 Avenue ", Sector 114, Gurgaon
2.	Project area	2.968 acres
3.	Nature of the project	Commercial Colony
4.	DTCP license no. and validity status	72 of 2011 dated 21.07.2011 Valid up to 20.07.2024
5.	Name of licensee	AMD Estates & Developers Pvt. Ltd.
6.	RERA Registered/ not registered	Registered Vide no. 53 of 2019 dated 30.09.2019 Valid upto 31.12.2020
7.	Allotment Letter	10.07.2012 (page no. 63 of reply)
8.	Unit no.	G-90A, Ground Floor (page no. 63 of reply)
9.	Unit area admeasuring (super area)	523.130 sq. ft. (page no. 63 of reply)
10.	Date of start of construction	Not provided either by both the parties
11.	Date of execution of Buyer's Agreement	30.10.2012 (Page no. 110 of complaint)
12.	Possession clause	32. "That the company shall give possession of the said unit within 36 months of this agreement or within 36 months from the date of start of construction of the said building whichever is later..." (Emphasis supplied)
13.	Due date of possession	30.10.2015 (calculated from the date of execution of buyer's agreement, as construction was commenced prior to the BBA, as same was confirmed by the respondent during proceedings dated 14.03.2024)

A

14.	Total sale consideration	Rs.42,73,972/- (page no. 68 of reply)
15.	Amount paid by the complainant	Rs.46,29,855/- (As per statement of account dt. 25.01.2023 at page no. 36 of the complaint)
16.	Occupation certificate	17.02.2021 (page no. 84 of reply)
17.	Offer of Possession	05.04.2021 (page no. 87 of the reply)
18.	Introduction Letter of Project management company	25.02.2023 (page no. 94 of the reply)

B. Facts of the complaint:

3. The complainant has made the following submissions: -

- I. That the respondent gave advertisement in various leading newspapers about their forthcoming project named "114 Avenue" sector 114, Gurgaon promising various advantages, like world class amenities and timely completion/execution of the project etc. relying on the promise and undertakings given by the respondent in the aforementioned advertisements, original buyer booked a unit measuring 523.13 sq. ft. in aforesaid project of the respondent for total sale consideration is Rs.42,73,972/-. On dated 10.07.2012 original buyer Ms. Prem Lata resident of Ganeshi Lal Kailash Chand, Commission Agent Nai Nandi, Narnaul, Haryana endorse the unit in the favour of complainant.
- II. That the complainant made payment of Rs.50,59,316/-to the respondent vide different cheques on different dates.
- III. That space buyer's agreement was executed on dated 30.10.2012 and as per SBA the respondent had allotted a unit bearing No. G-90A in ground floor having super area of 523.13 sq. ft to the complainant. That as per para no.36 of the agreement, the respondent had agreed to



deliver the possession of the unit within 36 months from the date of signing of agreement or within 36 months from the date of start of construction.

- IV. That the complainant used to telephonically ask the respondent about the progress of the project and the respondent always gave false impression that the work is going in full mode and accordingly asked for the payments which the complainant gave on time and the complainant when visited to the site was shocked & surprised to see that construction work is not in and no one was present at the site to address the queries of the complainant. It appears that respondent has played fraud upon the complainant. The only intention of the respondent was to take payments for the unit without completing the work and not handing over the possession on time.
- V. That the respondent mala-fide and dishonest motives and intention cheated and defrauded the complainant. That despite receiving of more than 90% approximately payments on time for all the demands raised by the respondent for the said unit and despite repeated requests and reminders over phone calls and personal visits of the complainant, the respondent has failed to deliver the possession of the allotted unit to the complainant within stipulated period.
- VI. That it could be seen that the construction of the block in which the complainant unit was booked with a promise by the respondent to deliver the unit by 29.10.2015 but was not completed within time for the reasons best known to the respondent; which clearly shows that ulterior motive of the respondent was to extract money from the innocent people fraudulently.

- VII. That due to this omission on the part of the respondent the complainant has been suffering from disruption on his living arrangement, mental torture, and agony and also continues to incur severe financial losses. This could have been avoided if the respondent had given possession of the unit on time. That as per clause of the agreement it was agreed by the respondent that in case of any delay, the respondent shall pay to the complainant a compensation @ Rs.5/- per sq. ft. per month of the super area of the unit. However, pertinent to mention here that a clause of compensation at such a nominal rate of Rs.5/- per sq. ft. per month for the period of delay is unjust and the respondent has exploited the complainant by not providing the possession of the unit even after a delay from the agreed possession plan. The respondent cannot escape the liability merely by mentioning a compensation clause in the agreement. It could be seen here that the respondent has incorporated the clause in one sided buyer's agreement and offered to pay a sum of Rs. 5/- per sq. ft. for every month of delay. If we calculate the amount in terms of financial charges it comes to approximately @ 2% per annum rate of interest whereas the respondent charges @ 18% per annum interest on delayed payment.
- VIII. That on the ground of parity and equity the respondent also be subjected to pay the same rate of interest hence the respondent is liable to pay interest on the amount paid by the complainant from the promise date of possession till the unit is actually delivered to the complainant.
- IX. That the complainant has requested the respondent several times on making telephonic calls and also personally visiting the offices of the respondent to deliver possession of the unit in question along with

prescribed interest on the amount deposited by the complainant but respondent has flatly refused to do so. Thus, the respondent in a pre-planned manner defrauded the complainant with his hard-earned huge amount of money and wrongfully gains himself and caused wrongful loss to the complainant.

- X. That Accordingly, the complainant is entitle to get interest for delayed period on the amount paid by him at the rate of MCLR + 2% under section 18 of the Act.

C. Relief sought by the complainant:

4. The complainant has sought following relief:
- I. Direct the respondent to pay the interest on the total amount paid by the complainant at the prescribed rate of interest as per RERA.
5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent:

6. The respondent has contested the complaint by filing reply on the following grounds: -
- i. That, the respondent has perused the complaint filed by the complainant and thus, states that the same is grossly misconceived, blatantly false and frivolous. All averments, submissions, and contentions raised in the complaint are denied by the respondent, unless expressly admitted to hereinafter and no part of the suit shall be deemed to have been admitted for mere want of specific traverse.
 - ii. That the original allottee i.e. Mrs. Prem Lata applied for allotment of a commercial unit in the project of the respondent company being developed in the name and style of "114 Avenue". That for the purpose

of booking the original allottee submitted an application form for allotment of commercial unit no. G-90A and paid the booking amount to the tune of Rs.7,00,000/-. That before the respondent company could proceed with the issuance of an allotment letter or execution of the space buyer's agreement, the original allottee vide letter dated 05.07.2012 requested for transfer of the unit in question in the name of the complainant herein. That as a goodwill gesture, the respondent company acceded to the request of the original allottee and the unit in question was transferred in the name of the complainant and the booking amount paid by the original allottee was also transferred. It is submitted, that the complainant herein submitted an application form for the same purpose. That pursuant to the application form, the respondent company allotted commercial unit G-90A having tentative super area 523.130 sq. ft. to the complainant vide allotment letter dated 10.07.2012. That the space buyer's agreement was executed between the parties on 30.10.2012. The cost of the unit in question as per the space buyer's agreement was Rs.36,61,910/- plus EDC/IDC to the tune of Rs.2,45,871/- along with Preferred Location Charges amounting to Rs.42,73,972/- i.e. Rs.42,73,972/- plus IFMS, taxes and other charges. It is submitted that the space buyer's agreement covers all rights and liabilities of both the parties. It is submitted that the complainant opted for construction linked payment plan. It is submitted that all the demands were raised as per the payment plan opted by the complainant. It is pertinent to mention herein that the complainant vide request letter dated 04.06.2013 requested for deferment of payment towards demand letter dated 22.04.2013. It is submitted that the respondent company as a good will gesture acceded

A

to the request of the complainant and the payment towards demand letter dated 22.04.2013 was deferred by the respondent company.

iii. That as per clause 32 of the space buyer's agreement dated 05.05.2012, the respondent was supposed to hand over the possession within a period of 36 months of signing of this agreement i.e. 30.10.2012 or within 36 months from the date of start of construction of the said building i.e. in the year 2012 whichever is later and the possession date comes out to be 30.10.2015. However, the said timeline was subject to force majeure conditions. That as per clause 32 of the space buyer's agreement which clearly states that respondent shall be entitled to extension of time for delivery of possession of the said premises if such performance is prevented or delayed due to conditions as mentioned therein. That despite exercising diligence and continuous pursuance of project to be completed, project of answering respondent could not be completed as prescribed for the following reasons:

a) The substantial part of delay in delivery of the project happened as unknown to the landowner M/s AMD Developers and the developer (respondent herein), there was an encroachment by an individual namely Mukesh alias Mahesh on part of land on which the project was to be built. This encroachment came to the knowledge of the developer at the time when construction was to be started, after obtaining license, all the requisite sanctions, approval of building plan, etc. The aforesaid individual, Mukesh alias Mahesh filed a civil suit before the Gurgaon District Court and obtained a stay order upon the construction over the suit land in one corner of the project. The company could not start construction over the said suit land, to the extent that the project was re-visited

and re-planned and the building plans had to be revised so as to exclude the encroached land as the litigation had become a prolonged one. Thus, in this process, the project was substantially delayed for approximately 4 years) without there being any fault of the answering respondent.

- b) That it is pertinent to mention here that the project in question was launched in the year 2010 and is right on the Dwarka expressway, which was supposed to be completed by the State of Haryana by the end of 2012. That the star purpose of launching the project and object of the complaint buying the project was the connectivity of Dwarka expressway which was promised by the State Government to be completed in the year 2012. That it is reiterated that the only approach road to the project in this Dwarka expressway which is still not complete and is likely to take another year or so. There being no approach road available it was initially not possible to make the heavy trucks carrying construction material to the project site and after a great difficulty and getting some kacha paths developed, materials could be supplied for the project to get completed which took a lot extra time. Even now the Govt has not developed and completed the basic infrastructure, despite the fact that EDC/IDC were both deposited with the State Government on time. That in this view of the circumstances as detailed above the respondent/ developer can by no means be expected to complete a project which does not even have an approach road to be constructed by the State. Thus, the respondent cannot be held accountable for the delay in the project



- c) That in the year, 2012 on the directions of the Hon'ble Supreme Court of India, the mining activities of minor minerals (which includes sand) were regulated. The competent authorities took substantial time in framing the rules and in the process the availability of building materials including sand which was an important raw material for development of the said project became scarce in the NCR as well as areas around it.
- d) That the company faced the problem of sub soil water which persisted for a period of 6 months and hampered excavation and construction work. The problem still persists and we are taking appropriate action to stop the same.
- e) That the company is facing the labour problem for last 3 years continuously which slowed down the overall progress of the project and in case the company remains to face this problem in future, there is a probability of further delay of project.
- f) That the building plans were approved in January 2012 and company had timely applied for environment clearances to competent authorities, which was later forwarded to State Level Environment Impact Assessment Authority, Haryana. Despite of our best endeavor we only got environment clearance certificate on 28.05.2013 i.e., almost after a period of 17 month from the date of approval of building plans.
- g) That the infrastructure facilities are yet to be created by competent authority in this sector is also a reason for delay in overall project. The drainage, sewerage and other facility work not yet commenced by competent authority.

A



- h) That there was a stay on construction in furtherance to the direction passed by the Hon'ble NGT. In furtherance of the above-mentioned order passed by the Hon'ble NGT.
- i) That the shortage of bricks in region has been continuing ever since and the respondent had to wait many months after placing order with concerned manufacturer who in fact also could not deliver on time resulting in a huge delay in project.
- j) That the sand which is used as a mixture along with cement for the same construction activity was also not available in the abundance as is required since mining department imposed serious restrictions against manufacturing of sand from Aravali region.
- k) That in addition the current Govt. has on 8th Nov. 2016 declared demonetization which severely impacted the operations and project execution on the site as the labourer's in absence of having bank accounts were only being paid via cash by the sub-contractors of the company and on the declaration of the demonetization, there was a huge chaos which ensued and resulted in the labourer's not accepting demonetized currency after demonetization.
- l) That in July, 2017, the Govt. of India further introduced a new regime of taxation under the Goods and Service Tax which further created chaos and confusion owing to lack of clarity in its implementation.
- m) That there was a delay in the project also on account of violations of the terms of the agreement by several allottees. That because of the recession in the market most the allottees have defaulted in making timely payments and this accounted to shortage of money for the project which in turn also delayed the project.



- iv. That in addition to above all the projects in Delhi NCR region are also affected by the blanket stay on construction every year during winters on account of AIR pollution which leads to further delay the projects. That such stay orders are passed every year either by Hon'ble Supreme Court, NGT or/and other pollution boards, competent courts, Environment Pollution (Prevention & Control) Authority established under Bhure Lal Committee, which in turn affect the project. That to name few of the orders which affected the construction activity are as follows: (i) Order dated 10.11.2016 and 09.11.2017 passed by the Hon'ble National Green Tribunal, (ii) Notification/ orders passed by the Pollution control board dated 14.06.2018, 29.10.2018 and 24.12.2018 and (iii) Letter dated 01.11.2019 of EPCA along with orders dated 04.11.2019, 06.11.2019 and 25.11.2019 of the Hon'ble Supreme Court of India. That after making sincere efforts despite the force majeure conditions, the respondent completed the construction and thereafter applied for the occupancy certificate (OC) on 15.07.2020. That the OC has been received by the respondent company on 17.02.2021. That immediately after the receipt of the OC on 17.02.2021, the respondent company vide letter dated 05.04.2021 requested the complainant to come forward and clear her dues and take possession.
- v. That on 25.01.2023, the respondent company issued a letter to the complainant herein requesting her to come forward and make payment towards charges of property tax and bulk electricity amounting to total Rs.1,13,889/-. It is in the humble submission of the answering respondent that the complainant till date has made a payment of Rs.45,40,706.57/- and is still liable to pay an amount of

A



Rs.1,13,889/- towards charges of property tax and bulk electricity and is also liable to stamp duty, registration charges, administrative expenses etc. to the respondent company. That the complainant has failed to come forward to take possession, get the conveyance deed registered and make payment towards the aforementioned pending charges. That the complainant is in default of his obligation under Sec 19(6), 19(10) of the RERA Act. Sec 19(6) and 19(10) of the RERA Act is reproduced herein below for ready reference:

"19(6) Every allottee, who has entered into an agreement or sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and with the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any."

19(10) Every allottee shall take physical possession of the apartment, plot or building as the case may be, within a period of two months of the occupancy certificate issued for the said apartment, plot or building, as the case may be."

- vi. That, thereafter a letter dated 25.02.2023 was issued by the respondent informing the complainant that a management company by the name of M/s Quala Services Pvt. Ltd. has been appointed by the respondent for project management.
 - vii. That all the reliefs claimed by the complainant is false and frivolous and hence denied, and therefore the complainant is not entitled for any such reliefs.
7. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of those undisputed documents and oral as well as written submissions made by the parties.

A

E. Jurisdiction of the authority

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

8. 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

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

Section 11.... (4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

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 the 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 shortage of labour, various orders passed by NGT and weather conditions in Gurugram and non-payment of instalment by different allottees of the project but all the pleas advanced in this regard are devoid of merit. The floor buyer's agreement was executed between the parties on 30.10.2012 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be 30.10.2015. The events such as and various orders by NGT in view of weather condition of Delhi NCR region, were for a shorter duration of time and were not continuous as there is a delay of more than six years and even some happening after due date of offering possession. There is nothing on record that the respondent has even made an application for grant of occupation certificate. Hence, in view of aforesaid circumstances, no period grace period can be allowed to the respondent-promoter. Though some allottees may not be regular in paying the amount due but whether the interest of all the stakeholders concerned with the said project be put on hold due to fault of on hold due to fault of some of the allottees. Thus, the promoter-respondent cannot be given any leniency on based of aforesaid reasons. It is well settled principle that a person cannot take benefit of his own wrongs.
12. As far as delay in construction due to outbreak of Covid-19 is concerned, Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020* and I.As 3696-3697/2020 dated 29.05.2020 has observed that-

"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself."

13. The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by 30.10.2015 and is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period is not excluded while calculating the delay in handing over possession.

F.II Objection regarding the complainant being investor.

14. The respondent has taken a stand that the complainant is the investor and not consumer, therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumer of the real estate sector. The authority observed that the respondent is correct in stating that the Act is enacted to protect the interest of consumer of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or

regulations made thereunder. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

15. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment buyer's agreement executed between promoter and complainant, it is crystal clear that the complainant are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". Thus, the contention of promoter that the allottee being an investor is not entitled to protection of this Act also stands rejected.

G. Findings on the relief sought by the complainant.

G.I Direct the respondent to pay the interest on the total amount paid by the complainant at the prescribed rate of interest as per RERA.

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

"Section 18: - Return of amount and compensation

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

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

17. Clause 32 of the space buyer's agreement provides the time period of handing over possession and the same is reproduced below:

ra

"32 That the company shall give possession of the unit within 36 months of signing of this agreement or within 36 months from the date of start of construction of the said building whichever is later....."

18. The authority observes that the possession clause is quite vague and does not provide to any specific date by which possession is to be handed over. It is in the interest of both the parties to have a well-drafted buyer's agreement which would thereby protect the rights of both the builder and buyer in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the unit, plot or building, as the case may be and the right of the buyer/allottee in case of delay in possession of the unit.

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

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

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

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

20. 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.

21. 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., 14.03.2024 is 8.85%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.85%.
22. 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;"*

23. 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 them in case of delayed possession charges.
24. On consideration of the documents available on record and submissions made by both the parties, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement dated 30.10.2012. By

virtue of clause 32 of the agreement, the possession of the subject apartment was to be delivered within 36 months of signing of this agreement or within 36 months from the date of start of construction of the said building whichever is later. Further during proceeding dated 14.03.2024, the counsel for the respondent clarified that the commencement of construction has been started prior to the execution of the buyer's agreement. For the reasons quoted above, the due date of possession is to be calculated from the date of signing of this agreement. Therefore, the due date for handing over of possession comes out to be 30.10.2015. In the present complaint the complainant was offered possession of the flat by the respondent on 05.04.2021 after receipt of the occupation certificate dated 17.02.2021 from the competent authority.

25. The respondent has obtained the occupation certificate on 17.02.2021. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the space buyer's agreement dated 30.10.2012 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and responsibilities as per the space buyer's agreement dated 30.10.2012 to hand over the possession within the stipulated period.
26. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 17.02.2021. The respondent offered possession of the unit in question to the complainant only on



05.04.2021. So, it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. This 2 month of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e. 30.10.2015 till the date of offer of possession (05.04.2021) plus two months i.e., 05.06.2021.

27. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession charges at rate of the prescribed interest @ 10.85% p.a. w.e.f. 30.10.2015 till the date of offer of possession (05.04.2021) plus two months i.e., 05.06.2021; as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

28. During the proceeding dated 14.03.2024, the counsel for the respondent had raised a plea that the complainant has to pay the proportionate municipal taxes as per the demand raised vide letter dated 25.01.2023. Whereas as per, Section 11 (4) (g) of the act, which is reproduced below:

Section 11: Functions and duties of promoter.

(4) The promoter shall—

(g) pay all outgoings until he transfers the physical possession of the real estate project to the allottee or the associations of allottees, as the case may be, which he has collected from the allottees, for the payment of outgoings (including land cost, ground rent, municipal or other local taxes, charges for water or electricity, maintenance charges, including

mortgage loan and interest on mortgages or other encumbrances and such other liabilities payable to competent authorities, banks and financial institutions, which are related to the project):

Provided that where any promoter fails to pay all or any of the outgoings collected by him from the allottees or any liability, mortgage loan and interest thereon before transferring the real estate project to such allottees, or the association of the allottees, as the case may be, the promoter shall continue to be liable, even after the transfer of the property, to pay such outgoings and penal charges, if any, to the authority or person to whom they are payable and be liable for the cost of any legal proceedings which may be taken therefor by such authority or person;

29. Accordingly, the respondent/ promoter on 14.10.2021 issued a No dues letter against the allotted unit of the complainant, even after issuance of No dues letter dated 14.10.2021, the respondent/ promoter issued a demand vide letter dated 25.01.2023, for payment of property taxes/ municipal taxes.
30. Hence, the authority is of view that it is the duty of the promoter to pay the taxes on behalf of the allottees to the concerned authority until the unit was physically handed over to the allottees, however, if the promoter has already paid the taxes on behalf of the allottees, he may claim the said amount from the said allottee, after providing the requisite documents and adjustment of already paid amount.

H. Directions of the authority: -

31. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent is directed pay interest at the prescribed rate i.e., 10.85% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e., 30.10.2015 till the date of offer of possession (05.04.2021) plus two months i.e., upto 05.06.2021;



as per proviso to section 18(1)(a) of the Act read with rule 15 of the rules.

- ii. The complainant is directed to pay the outstanding dues, if any, after adjustment of delay possession charges and also, the respondent is directed to handover the possession of the allotted unit completes in all aspects as per specifications of space buyer's agreement within four weeks from date of this order.
- iii. The respondent is directed to pay arrears of interest accrued within 90 days from the date of this order.
- 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 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.
- v. The respondent shall not charge anything from the complainant which is not the part of buyer's agreement.

32. Complaint stands disposed of.

33. File be consigned to registry.

Dated:14.03.2024

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