BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	**:**	**779 of 2022**
Date of filing complaint:		**03.03.2022**
First date of hearing:		**21.04.2022**
Date of decision	**:**	**07.03.2024**

M/s Tangent Films India Pvt. Ltd. (earlier known as M/s K.D. Studio & Communications Ltd.)
R/o: 16-A, Sant Nagar, East of Kailash, New Delhi-110065 — **Complainant**

Versus

M/s Pioneer Urban Land and Infrastructure Limited
Regd. Office at: Pioneer Square, IInd Floor, Near Golf Course Extension Road, Sector-62, Gurugram-122098 — **Respondent**

CORAM:

Shri Vijay Kumar Goyal — **Member**

APPEARANCE:

Sh. Sanjeev Sharma (Advocate) — Complainants

Sh. Venkat Rao (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 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	"Urban Square", Sector-62, Gurugram
2.	Nature of the project	Commercial
3.	Project area	24.606 acres
4.	DTCP license no.	268 of 2007 dated 25.07.2010 valid up to 24.07.2025
5.	Name of licensee	Puri Construction Pvt. Ltd. and 2 others
6.	Unit no. and floor no.	109 and 1st floor, Tower-D (As per page no. 29 of the complaint)
7.	Unit area admeasuring	950 sq. ft. (Super area) (As per page no. 29 of the complaint)
8.	Date of execution of apartment buyer's agreement	22.02.2010 (As per page no. 26 of the complaint)
9.	Possession clause	***10.1*** *The first party shall make all efforts to apply for the occupation certificate of the proposed project within thirty six (36) months from the date sanction of the plan by the competent authority and after the date of signing of this commercial buyer's agreement, subject to such limitations as be provided in this commercial buyer's agreement and the timely compliance of the provisions of the commercial buyer's agreement by the second party. The second party agrees and understands that the first party shall be entitled to a grace period of ninety (90) days, after the expiry of thirty six (36) months, for applying and*

		obtaining the occupation certificate in respect of the said complex. (As per page no. 35of the complaint)
10.	Due date of possession	22.02.2013 **(Note:** 36 months from the date of execution of apartment buyer's agreement i.e., 22.02.2010)
11.	Total sale consideration	Rs.46,83,500/- (As per payment plan on page no. 58 of the complaint)
12.	Amount paid by the complainant	Rs.45,24,291/- (As per SOA on page no. 133 of the reply)
13.	Occupation Certificate/ completion certificate	Applied on 02.02.2015 but not yet obtained (As alleged by the complainant) 30.06.2016 (For Tower-D) (As per reply of the respondent)
14.	Offer of possession	11.07.2016 (As per page no. 43 of the reply)

B. Facts of the complaint:

3. The complainants have made following submissions:

I. That upon the representation by the respondent and advertisement done in said behalf, the complainant purchased a commercial unit bearing no. D-109, 1st floor, admeasuring 950 sq. ft. along with one parking space in the project i.e., "Urban Square" located at Sector-62, golf course extension road, Gurgaon floated by the respondent and on the inducement that the possession of the unit purchased shall be handed over on time with all amenities as promised.

II. That the said unit/commercial space was purchased by the complainant, being the original allottee after signing an expression of interest and application form both dated 21.08.2009 whereby the

complainant had paid booking amount of Rs.5,00,000/- through cheque nos. 110115 for Rs.4,50,000/- and 110117 for Rs.50,000/- both dated 05.09.2009.

III. That the respondent thereafter, issued allotment letter dated 19.09.2009 in favour of the complainant along with raising a demand of Rs.4,36,700/- to be paid till 14.09.2009 and acknowledging the payment of Rs.5,00,000/- paid during booking on 16.07.2009.

IV. That the complainant and the respondent entered into the buyer's agreement on 22.02.2010 wherein the project was to be constructed on 24.606 acres of land. After obtaining license no. 268 of 2007 in the group housing complex, Pioneer Park. The total sale consideration for the unit along with one parking space was fixed at Rs.46,83,500/-. Clause 10.1 talks about handing over of possession within 36 months from the date of signing of the agreement along with grace period of 90 days. Further clause 10.4 talks about compensation to be paid by respondent in case of delayed possession @ of 9% for 12 months.

V. That the possession was to be handed over to the complainant by 22.02.2013 but the same did not happen despite making the above mentioned payments amounting to Rs.45,32,548/.

VI. That the respondent after a delay of 3 years, 4 months, 20 days offered the possession vide letter dated 11.07.2016 of the unit in question to the complainant however the area of the unit was increased to 1083 sq. ft. which is more than 15% increment and raising a final demand for Rs.10,90,726/-. The respondent further demanded amount for other charges equivalent to Rs.1,34,509/- which are arbitrary and illegal and which could not be arranged and paid to the builder.

VII. That it is pertinent to note that the respondent raised such frivolous demand from the complainant but did not even thought about providing or adjusting the delay possession interest since the unit was

offered to the complainant after a delay of 3 years, 4 months, 20 days. It is further submitted that instead of adhering to RERA rules and adjusting the requisite delay possession interest, the respondent issued a reminder letter dated26.02.2020 wherein the greed of the respondent was increased to Rs.52,77,413/- wherein the respondent had illegally imposed the holding charges upon the complainant which are illegal and not permissible as per law settled by the Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020 even after being part of the builder buyer's agreement.

VIII. That the respondent did not stop even after this, as vide reminder letter dated 30.06.2021, the respondent raised the demand for Rs.62,22,350/- but there were no talks about the delay possession interest despite the fact that the complainant has raised the issue of delay possession interest as well as increase in super area vide e-mail dated 24.02.2018 but the same went to the deaf ear of the respondent.

IX. That is submitted that though the respondent has never provided the complainant with the occupancy certificate and therefore, there is a serious apprehension that the respondent has offered possession of the unit in question without obtaining the occupancy certificate. Further, not only this, the respondent even till today has not attained the completion certificate in respect of the project in question and thus, the project as on date is an under construction/on-going project.

C. Relief sought by the complainant:

4. The complainants have sought following relief(s):

a. To handover the possession of the unit.

b. To direct the respondent to pay interest for every month of delay at the prevailing rate of interest as per Act of 2016

D. Reply by the respondent:

5. The respondent contested the present complaint on the following grounds:

I. That at the very outset, it is submitted that the present complaint is not maintainable in its present form and the complaint is strictly liable to be dismissed in view of below enlisted grounds. That the Authority has no jurisdiction to entertain the present complaint.

II. That the various contentions and claim raised by the complainant are fictitious, baseless, vague, wrong and created to misrepresent and mislead the Authority for the reasons stated above. That it is further submitted that none of the reliefs as prayed for by the complainant are sustainable before the Authority or in the eyes of law. Hence, the complaint is liable to be dismissed with imposition of exemplary cost for wasting the precious time and resources of the Authority. That the present complaint is an utter abuse of the process of law and hence deserves to be dismissed.

III. That the present case is not that of defective title nor the complainant has proved beyond any reasonable doubt that the respondent has failed to discharge any other obligations imposed on him under the Act of 2016 or the Rules & Regulations made thereunder. At the very outset, it is to be noted that the respondent has not failed to deliver the possession in terms of the Act of 2016 or as per the terms under the buyer's agreement.

IV. That as per the agreement, the respondent was to make all efforts to apply for occupation certificate within 36 months plus 90 days from the date of sanction of building plans and thereafter offer the possession of the commercial unit within 30 days from the receipt of occupation certificate. The sanction of building plans was received on 08.04.2010 therefore, the respondent should have applied for occupation certificate on 08.07.2013 but the same was delayed due to

reasons beyond the control of the respondent, as detailed out in the foregoing paras. The occupation certificate was applied for in the year 2015 and was received on 30.06.2016. Thereafter, the respondent offered the possession of the unit on 11.07.2016 i.e., well within 30 days from the date of occupation certificate.

V. That there has been a delay of 2 years in the application of the occupation certificate and the possession of the unit was offered in the year 2016 i.e., precisely 6 years ago from the date of the present complaint, in the pre-RERA regime. Post the offer of possession, the complainant had ample time to raise any objection(s) whatsoever against the said offer or to pursue a suitable proceeding before an appropriate forum but the complainant did not take any suitable action knowing well enough that the complainant will not have a watertight case. The complainant has filed the present complaint with the sole motive of extracting undue monies from the respondent in the form of interest as considerable time has elapsed.

VI. That the present complaint is not maintainable as the respondent has already received the occupation certificate for the particular Tower-D of the project 'Urban Square' on 30.06.2016, in which the complainant has the unit. The occupation certificate states that it has been granted for block A and block B. It is hereby clarified that the project consists of two blocks/towers, i.e., Block-A and Block- B. Block A is bifurcated into two wings i.e., Wing A1 and Wing A2 and also Block B into Wing B1 and Wing B2 respectively which is clearly reflected in the building plan sanctioned by the competent Authority. However, for marketing purposes, the respondent had named the wings as Tower A, B, C and D. The unit of the complainant is in Tower D which is in Wing B2 of Block B. Therefore, it is clearly established that the unit of the complainant is completed in all aspects and the occupation certificate

w.r.t. the same has been duly received on 30.06.2016. Moreover, the respondent after the receipt of the occupancy certificate, without any delay, had offered possession to the complainant on 11.07.2016 itself, which the complainant chose to completely ignore and proceeded to file this false and fictitious complaint, that too after passage of 6 years.

VII. That the present complaint and the claims raised thereunder are squarely hit by the provisions of the Limitation Act, 1963. A conjoint reading of the provisions of Section 3, Section 29(2)of the Limitation Act, 1963, the schedule thereunder and Section 88 of the RERA Act, 2016, the complainant's claim was admissible before this forum or any other forum within a period of 3 years and not after a mammoth delay of 6 years. In the context of the foregoing discussions, a complaint filed by an allottee after the period of limitation i.e., 3 years has elapsed, shall be maintainable and the Authority is not vested with the jurisdiction to adjudicate the same.

VIII. That the complainant has failed to raise any claim or file a complaint for a period as long as 6 years without any justifiable cause explaining or justifying the said delay. This is a case of nothing but sheer negligence on part of the complainant. It is relevant to point out that when a litigant, in our present scenario, an allottee does not approach this Authority within a period as long as "3 years" and further delays for another 3 years on account of no substantial ground but sheer "Negligence" or want of due diligence, the Authority cannot show judicial generosity in accommodating such complaint/claim.

IX. That the respondent has not cancelled the allotment of the subject unit it cannot be construed that there is a continuing cause of action. At the very outset it is pertinent to note herein "cancellation of the unit/plot" is a right bestowed upon the promoter and not a "duty". Section 11(5) also uses the term "may" and not "shall". Further in the

buyer's agreement it is a right reserved by the promoter to be used at his discretion. Merely an absence of cancellation cannot be inferred to have conferred an extension of limitation to the claim of the allottee.

X. That the agreement executed between the parties in context of the commercial unit allotted to the complainant was executed in the Pre-RERA regime with K.D. Studios and Communications Limited (whose name was later on changed to Tangent Films India Private Limited). The terms and conditions set out therein are in consonance with the mutual understanding and negotiations between the parties, the then applicable laws and prevalent general market practice. Therefore, any disputes arising in the context of the said agreement are not maintainable before this Authority. Furthermore, the complainant was supplied a copy of the buyer's agreement proposed to be executed with the sole purpose that the complainant may go through the terms thereunder and raise objections if any. But no objections/ queries were ever raised by the complainant in respect of the same. The complainant is now obligated in terms of buyer's agreement dated 22.02.2010 to take possession and also to clear all outstanding dues including interest on delayed payments & other charges, stamp duty, registration charges etc. to the respondent.

XI. That despite the best efforts by the respondent to hand over timely possession of the said unit booked by the complainant herein, the respondent could not do so due to reasons and circumstances beyond the control of respondent. It was only on account of the following reasons/circumstances that the project got delayed:

a. **Delay in payments by many customers:** The most important factor in the delay of the project is that customers including the complainant who didn't make timely payments which lead to the squeezing of the working capital of the respondent. As a customer

centric company, the respondent did not cancel the allotment even though there has been delay as well as non-payment by the customers but today these very customers are threatening/are filing fictitious litigation against the respondent for delay in possession. It is pertinent to note that the complainant had also defaulted in making timely payments.

b. **Dispute with contractors:** The respondent had given the contract of construction of the towers to the reputed constructing agency M/s Bhayana Builders Pvt Ltd, a company registered under the provisions of the Companies Act, 1956, for towers A, B, C & D (basement & superstructure) within 24 months. However, from time to time, it was observed that the contractor was not constructing the project as per the assured timelines and resulted into the labour slowdown and increase in labour disputes. It is relevant to note that around the same time there was an acute shortage of labour due to social schemes detailed above which also was a fundamental factor in the delay of the project.

c. **Water shortage:** In addition to the labour shortage, the respondent as per the Hon'ble High Court order which imposed a ban on ground water on the construction, faced extreme water shortage which was completely unforeseen by any of the Real Estate companies in the NCR region. The respondent already coping up hard with the above mentioned shortage of labour, was now also faced with the acute shortage of water in the NCR region. It is a well-known fact that there is extreme shortage of water in State of Haryana and the construction was directly affected by the shortage of water.

d. **Lack of infrastructural support from State Government:** The respondent duly paid the External Development Charges as per

the license awarded in its favour. The State Government was supposed to lay the whole infrastructure in that licensed area for providing the basic amenities such as drinking water, sewerage, drainage including storm water line, roads etc. However, even on repeated requests the department paid no heed and ignored to provide such basic amenities in these upcoming new sectors of Gurgaon. It is pertinent to note that the respondent would have planned or stretched these services further in the project only after the establishment of the same by the government.

e. **Delay in approvals by the State Government:** It is submitted by the respondent herein that such acute shortage of labour, water and other raw materials or the additional permits, licenses, sanctions by different departments were not in control of the respondent and were not at all foreseeable at the time of launching of the project and commencement of construction of the complex. The respondent cannot be held solely responsible for things that are not in control of the respondent.

Therefore, in the light of the abovementioned submissions the delay in application for occupation certificate is not attributable to the respondent. By signing the agreement, the complainant has already accepted and acceded to the fact that in case of any delay due to *force majeure* circumstances the said delay shall not attributable to the respondent.

XII. That the entire case of the complainant is nothing but a web of lies and the false and frivolous allegations made against the respondent are nothing but an afterthought and a concocted story. Hence, the present complaint filed by the complainant deserves to be dismissed with heavy costs.

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.

7. The respondent has brought to the attention of the Authority by the written submissions that there are discrepancies in the buyer's agreement which is mere typographical error with regard to the license no. 240 of 2007 dated 25.10.2007 in the application form and occupation certificate whereas in the buyer's agreement license no. 268 of 2007 is mentioned. This is bare typographical error and the same has been mentioned by the counsel for the respondent during the proceedings of the day dated 16.11.2023. The counsel for the respondent further stated that the complainant never raised this issue before the filing of the present complaint and now bringing on the same just for the sake of objection.

E. Jurisdiction of the authority:

8. The respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. 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

9. 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.*

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 complainants at a later stage.

F. Findings on objections raised by the respondent:

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

11. The contention of the respondent is that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the apartment buyer's agreement executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and

agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of ***Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)*** which provides as under:

> *119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter.....*
>
> *122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."*

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

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

13. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the plot buyer's agreement has been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

F.II Objection regarding delay due to force majeure circumstances

14. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as delay in approvals by the state government, dispute with contractors, labour shortage, water shortage, lack of infrastructural support from state government and non-payment of instalments by different allottees. 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 dispute with contractors were for a shorter period of time 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.

F.III Objection regarding complaint barred by Limitation Act, 1963

15. Another contention of the respondent is that if the offer of possession was to be made in July 2016, the period of limitation has come to an end in the year July, 2019. The authority is of the view that the provisions of Limitation Act, 1963 does not apply to Act, 2016. The same view has been taken by Hon'ble Maharashtra Real Estate Appellate Tribunal, Mumbai in its order dated 27.01.2022 in Appeal no. 006000000021137 titled as ***M/s Siddhitech Homes Pvt. Ltd. vs Karanveer Singh Sachdev and others*** which provides as under:

> *"Agreeing entirely with the allottee, it is observed that RERA nowhere provides any timeline for availing reliefs provided thereunder. A developer cannot be discharged from its obligations merely on the ground that the complaint was not filed within a specific period prescribed under some other statutes. Even if such provisions exist in other enactments, those are rendered subservient to the provisions of RERA by virtue of non obstante clause in Section 89 of RERA having overriding effect on any other law inconsistent with the provisions of RERA. In view thereof, Article 54 of Limitation Act would not render the complaint time barred. In the absence of express provisions substantive provisions in RERA prescribing time limit for filing complaint reliefs provided thereunder cannot be denied to allottee for the reason of limitation or delay and laches. Consequently, no benefit will accrue to developers placing reliance on the case law cited supra to render the complaint of allottee barred by any limitation as alleged in Para 10 above. Hence, no fault is found with the view held by the Authority on this issue."*

16. Thus, the contention of promoter that the complaint is time barred by provisos of Limitation Act stands rejected.

G. Findings on relief sought by the complainant:

G.I Direct the respondent to handover the possession and

G.II Direct the respondent to pay interest for every month of delay at the prevailing rate of interest as per Act of 2016

17. The relief(s) sought by the complainant is taken together being interconnected.

18. 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)

19. Clause 10.1 of the apartment buyer's agreement provides for handing over of possession and is reproduced below for ready reference:

> ***10.1***
> *The **first party shall make all efforts to apply for the occupation certificate of the proposed project within thirty six (36) months from the date sanction of the plan by the competent authority and after the date of signing of this commercial buyer's agreement**, subject to such limitations as be provided in this commercial buyer's agreement and the timely compliance of the provisions of the commercial buyer's agreement by the second party. The second party agrees and understands that the first party shall be entitled to a grace period of ninety (90) days, after the expiry of thirty six (36) months, for applying and obtaining the occupation certificate in respect of the said complex.*
> ***(Emphasis supplied)***

20. The due date of possession of the apartment as per clause 10.1 of the apartment buyer's agreement, is to be calculated as 36 months from the date of sanction of building plan after signing of the commercial buyer's agreement. Therefore, the due date of possession comes out to be 22.02.2013.

21. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is 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, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

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

22. 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.

23. 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., 07.03.2024 is **8.85%.** Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.

24. 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;"*

25. 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.

26. 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 10.1 of apartment buyer's agreement executed between the parties on 22.02.2010, the possession of the subject unit was to be delivered by 22.02.2013.

27. The counsel for the complainant vide proceedings of the day dated 16.11.2023 stated that no occupation/completion certificate has been obtained by the respondent till date. However, the counsel for the respondent clarified that the unit of the complainant is a commercial unit under license no. 240 of 2007 but inadvertently in the BBA, the license no. is mentioned as 268 of 2007. The other clauses and specifications are as per commercial license no. 240 and 268 and the OC for the above commercial license as well as unit has been applied as per copy of BR-IV along with copy of OC obtained from the competent authority obtained on 30.06.2016. However, due to above error in the BBA, pertaining to license no., the demands raised have not been paid and offer of possession is made on 11.07.2016 with demand note. The counsel further stated that the complainants never raised objection on this issue before filing of this complaint and now raising this issue just for the sake of objection. Further, the counsel for the respondent has submitted the written submissions on 01.03.2024 and clarified that there are discrepancies in the buyer's agreement which is mere typographical error with regard to the license no. 240 of 2007 dated 25.10.2007 in the application form and occupation certificate whereas in the buyer's agreement license no. 268 of 2007 is stated. Moreover, the occupation certificate is a public document which is accessible to each and every person. Thus, it can be said that the occupation certificate of the unit of the complainant has been obtained on 30.06.2016 and possession has been offered on 11.07.2016.

28. 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 complainant after obtaining occupation certificate on 11.07.2016. So, it can be said that the complainant would come 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 to be given to the complainant 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., 22.02.2013 till offer of possession made on 11.07.2016 after obtaining occupation certificate from competent authority plus two months.

29. The counsel for the complainant vide proceedings of the day dated 25.01.2024 stated that there was not only delay in making offer of possession of the unit which was made on 11.07.2016, but also stated that the complainant has made a payment of Rs.45,32,548/- against the sale consideration amount of Rs.46,83,500/- but with the offer undue demands were raised including demand on account of charges etc. and last demand raised for Rs.62,22,350/-. The counsel for the respondent was directed to clarify the break-up of demands raised vide letter dated 30.06.2021 including holding charges and the same has been placed on record by the counsel for the respondent in which it was found that the respondent has charged Rs.35,69,852/- on account of holding charges. As per law settled by **Hon'ble Supreme Court in Civil Appeal no. 3864-3899/2020 decided on 14.12.2020,** no holding charges shall be levied by the respondent.

30. Keeping in view the aforementioned facts and the judgement of Hon'ble Apex Court, the respondent vide proceedings of the day dated 07.03.2024 was directed to deduct the holding charges of Rs.35,69,852/- while issuing the revised account statement as the same is not permissible.

31. 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., 22.02.2013 till offer of possession (11.07.2016) plus two months i.e., 11.09.2016 after obtaining occupation certificate from competent authority 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.

Directions of the Authority:

32. 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:

i. 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 complainant from due date of possession i.e., 22.02.2013 till offer of possession (11.07.2016) plus two months i.e., 11.09.2016 after obtaining occupation certificate as per proviso to section 18(1) of the Act read with rule 15 of the rules.

ii. The arrears of such interest accrued from 22.02.2013 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.

iii. The respondent is directed to issue a revised account statement after adjustment of delayed possession charges within 30 days and thereafter the complainant 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 apartment buyer's agreement.

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 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**.

33. Complaint stands disposed of.

34. File be consigned to the registry.

(Vijay Kumar Goyal)
Member
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 07.03.2024