

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

Complaint no.: 4250 of 2022
Date of filing: 01.07.2023
Order pronounced on: 01.08.2024

Mrs. Balwinder Kaur
R/o: - 4055, Sector-B, pocket -5 & 6, Vasant
Kunj, New Delhi-110070

Complainant

Versus

M/s Raheja Developers Limited
Regd. Office: - W4D, 204/5, Keshav Kunj,
Western Avenue, Cariappa Marg, Sainik Farms,
New Delhi- 110062

Respondent

CORAM:
Shri Vijay Kumar Goyal

Member

APPEARANCE:
Shri Rishabh Gupta (Advocate)
Shri Garvit Gupta (Advocate)

**Complainant
Respondent**

ORDER

1. This 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 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.No.	Particulars	Details
1.	Name and location of the project	"Raheja Shilas", Sector-109, Gurugram
2.	Nature of the project	Low rise independent floors
3.	Project area	14.812acres
4.	DTCP License and validity	257 of 2007 dated 07.11.2007 valid up to 06.11.2024
5.	Name of the licensee	Brisk Construction Pvt. Ltd. and 3 others
6.	RERA Registration	90 of 2017 dated 28.08.2017 valid up to 31.12.2020
7.	Unit no. and floor no.	IF10-01, Ground floor, Block-IF10 (page no. 63 of the complaint)
8.	Unit area admeasuring	2152.64 sq. ft. (Super area) (page no. 21 of the complaint)
9.	Allotment letter	16.02.2010 (page no. 30 of the complaint)
10.	Date of execution of agreement to sell	16.02.2010 (page no. 31 of the complaint)
11.	Possession clause	4.2 Possession Time and Compensation <i>That the seller shall sincerely endeavour to give possession of the plot to the purchaser within thirty-six (36) months in case of towers and thirty (30) months in case of Independent Floor from the date of the execution this Agreement and after providing necessary infrastructure in the sector by the Government, but subject to force majeure conditions or nay Government/Regulatory authority's action, inaction or omission and reasons beyond the control of the company.....</i> (Emphasis Supplied) (Note: clause taken from another file CR/4809/2022 of similar project i.e. of Raheja Shillas as complainant has placed half possession clause on record) (*inadvertently mentioned different possession clause in proceedings dated 16.05.2024)



12.	Due date of possession	16.08.2012 (calculated from the date of execution of agreement to sell i.e., 16.02.2010)
13.	Total sale consideration	Rs.90,14,776/- inclusive of taxes (As per customer ledger on page no. 60 of the complaint)
14.	Amount paid by the complainant	Rs.79,08,191/- (As per customer ledger on page no. 61 of the complaint)
15.	Name deletion of co-allottee issued by respondent	02.08.2021 (page 63 of complaint)
16.	Occupation Certificate/ completion certificate	Not obtained
17.	Offer of possession	Not offered

B. Facts of the complaint.

3. The complainant has made the following submissions: -

- I. That the respondent advertised its project under name of RAHEJA SHILAS, Sector- 109, Gurugram alleging to be consisting of many advance technologies and amenities/ infrastructures. Pursuant to the lucrative offer and strong market hold of the respondent, the complainants showed their interest in the said project and agreed to purchase a unit in the respondent's project. The project is stated to be low-rise independent floor which is a part of project Raheja Atharva.
- II. Further, the allotment letter dated 16.02.2010 was issued by the respondent alleging the unit booked comprising of 2015.64 sq. ft. and 1485.75 sq. ft. terrace/court area.
- III. Thereafter, the buyer's agreement was executed on 16.02.2010 between the parties for the unit no. IF10-01 and the complainants opted for construction linked plan. The complainants paid total Rs.79,08,191/- including all government taxes and charges as and when demanded by the respondent. The basic sale price of the subject unit was Rs.73,08,279/-. The remaining amount was to be paid by the complainants on offer of possession.

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- IV. As per clause 4.2 of the buyer' agreement the possession was to be handed over within 30 months including the grace period from the date of execution of the buyer's agreement which came to end on August 2012.
- V. That no possession has been handed over to the complainants and whenever the complainants tried to contact, the respondent gave false assurances about the completion of the project and revised date of possession.
- VI. That the husband of complainant Sh. Mandeep Singh/co-allottee died on 01.06.2021 and thereafter the request was sent to the respondent to substitute the name of Mandeep Singh from the booking of said unit. The respondent endorsed the name of Mandeep Singh and the unit is solely owned by the complainant.
- VII. That the complainant regularly contacted the respondent through telephonically as well as through e-mail to get the final date of possession but the respondent with malafide intention was not giving the positive answer to their request. The complainants sent various letter to the respondent to inform the final date of delivery of possession but the respondent being in a dominant position and being a powerful person, never relied to the request made by the compliant.
- VIII. That the respondent after several request vide email dated 14.12.2017 informed the complainants that they have applied for the occupation certificate for project Shilla's independent floor on May 2017 but no occupation certificate has been received yet. The possession was to be handed over by August 2012 and the respondent has submitted the application for obtaining occupation certificate on May 2017 which is still not received by the respondent. Thus, there is total delay of 09 year 09 months for not handing over of the possession.

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IX. That the respondent has failed to fulfil its obligations as under builder buyer agreement and has also failed to provide any offer of possession of the subject unit. The complainant after exhausting all her patience lastly contacted to the respondent representative for providing the final revised date of possession of the subject unit but no fruitful answer has been replied by the respondent and its officials. The cause of action firstly arose in the month of August 2012 where the respondent failed to deliver the possession of the subject unit and still it is continuing one as possession has not been handed over to the complainant.

C. Relief sought by the complainant:

4. The complainant has sought following relief(s):

- i. Direct the respondent to pay delayed possession charges.
- ii. Direct the respondent for execution and registration of sale deed.

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: -

- I. That the complaint is not maintainable as the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute i.e. clause 15.2 of the agreement.
- II. That the complainant after checking the veracity of the respondent's project applied for allotment of a commercial project vide booking application form and agreed to be bound by the terms and conditions of the booking application form.
- III. That the complainant is investor who had booked the commercial unit in question with a view to earn quick profit in a short period. However, it appears that her calculations have gone wrong on account of severe slump

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in the real estate market and the complainant is now raising untenable and illegal pleas on highly flimsy and baseless grounds.

- IV. That based on the application for booking, the respondent allotted to the complainant a unit no. IF-1001. The complainant was continuous defaulters from the very inception and despite being aware that timely payment was the essence of the allotment, they failed to remit the same on time and the respondent was constrained to remind them frequently. The complainant signed and executed the agreement to sell and the complainant agreed to be bound by the terms contained therein.
- V. That the respondent raised payment demands from the complainant in accordance with the mutually agreed terms and conditions of allotment as well as of the payment plan and the complainant made the payment of the earnest money and part-amount of the total sale consideration and is bound to pay the remaining amount towards the total sale consideration of the unit along with applicable registration charges, stamp duty, service tax as well as other charges payable at the applicable stage.
- VI. That the possession of the unit was supposed to be offered to the complainant in accordance with the agreed terms and conditions of the buyer's agreement. The use of expression endeavour to give the possession' in clause 4.2 of the buyer's agreement clearly shows that the company has merely held out a hope that it will try to give the possession to the complainant within a specified time. However, no unequivocal promise was made to the prospective buyers that possession of the unit will be delivered at the end of a particular period.
- VII. That the time period for calculating the due date of possession shall start only when the necessary approvals will be provided by the governmental authorities. The non-availability of the occupational certificate is beyond the control of the respondent and the same also falls within the ambit of the

definition of force majeure' condition as stipulated in clause 4.4 of the agreement to sell.

- VIII. That the respondent fulfilling all its obligations as per the provisions laid down by law, the government agencies have failed miserably to provide essential basic infrastructure facilities such as roads, sewerage line, water and electricity supply in the sector where the said project is being developed. The development of roads, sewerage, laying down of water and electricity supply lines has to be undertaken by the concerned governmental authorities and is not within the power and control of the respondent. The respondent cannot be held liable on account of non-performance by the concerned governmental authorities. The respondent company has even paid all the requisite amounts including the external development charges to the concerned authorities.
- IX. That the time period for calculating the due date of possession shall start only when the necessary infrastructure facilities will be provided by the governmental authorities and the same was known to the complainant from the very inception. That it is pertinent to mention herein that despite the respondent fulfilling all its obligations as per the provisions laid down by law, the government agencies have failed miserably to provide the timely occupational certificate.
- X. That the respondent applied to the DTCP, Haryana on 27.04.2017 for the grant of Occupation Certificate. The DTP, Gurugram on 31.07.2018 sent a report to the STP, Gurugram Circle.
- XI. That the construction activity of the Raheja Shilas - independent floors consisting of low rise floor is already completed and only after completion of construction of the Raheja Shilas -independent floors, the respondent applied for grant of occupation certificate to the DTCP, Haryana on 05.06.2018 and the same is still pending with the department. The

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- apartments are ready for delivery and the physical possession may only be offered to the complainant after obtaining occupation certificate.
- XII. That the factors delay in acquisition of land for development of roads and infrastructure, delay by government in construction of the Dwarka Expressway and allied roads and oversupply of the commercial units in the NCR region operated to not yield the price rise as was expected by a few.
- XIII. That the complainant willingly and voluntarily signed the application for allotment, after carefully reading and understanding the terms thereof and agreed to be bound by the terms and conditions of the booking application form. The complainant was not forced nor pressurized to apply for the allotment of the independent floor. The agreement was in symmetry with the application form signed by the complainant. Further the buyer's agreement was executed between the parties. The agreement was duly signed by the complainant after going through the same and understanding each and every clause contained in the agreement as well as the application form.
- XIV. That the complainant cannot be allowed to claim advantage of the emails/communications sent inadvertently by the representative of the respondent company who had no power or authority to do so. The complainant are real estate investors who had made the booking with the respondent in order to make profit in a short span of time. However, on account of slump in the real estate market, her calculations have gone wrong and they are not possessed with sufficient funds to honor her commitments and are trying to illegally extract benefits from the respondent under the garb of the present baseless, false and frivolous complaint.
7. All other averments made in the complainant were denied in toto.

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8. 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 submissions made by the parties.

E. Jurisdiction of the Authority.

9. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial Jurisdiction:

10. 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:

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

Section 11(4)(a)

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

Section 34-Functions of the Authority:

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

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12. 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 Objections regarding the complainant being investor.

13. The respondent took a stand that the complainants is an investor and not a consumer and therefore, she is not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. However, it is pertinent to note that any aggrieved person can file a complaint against the promoter if he contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the allotment letter, it is revealed that the complainant is a buyer and she has paid a total price of Rs.79,08,191/- to the promoter towards purchase of a unit in its project. 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;"

14. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the buyer's agreement executed between promoter and complainant, it is crystal clear that the complainant is an allottee as the subject unit was allotted to her by the promoter. The concept of investor is not defined or referred to in the Act. As per the definition given under section 2 of

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the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". Thus, the contention of the promoter that the allottee being investor is not entitled to protection of this Act also stands rejected.

F.II Objection regarding agreements contains an arbitration clause which refers to the dispute resolution system mentioned in agreement.

15. The buyer's agreement executed between the parties dated 16.02.2010 contains a clause 15.2 relating to dispute resolution between the parties. The clause reads as under: -

15.2

"All or any disputes arising out or touching upon or in relation to the term's this Flat Buyer Agreement and / or Conveyance Deed including the interpretation and validity of the terms thereof and the respective rights and obligations of the parties, which cannot be amicably settled, shall be settled through arbitration. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory amendments / modifications thereof for the time being in force. The arbitration proceedings shall be held at the Office of the Company in New Delhi by a sole arbitrator who shall be appointed by the Managing Director of the Company. The Allottee(s) hereby confirms that he she shall have no objection in this appointment. In case of any proceeding, reference etc. touching upon the arbitration subject including any....."

(Emphasis Supplied)

16. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme Court,

particularly in ***National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506***, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause. Therefore, by applying same analogy the presence of arbitration clause could not be construed to take away the jurisdiction of the authority.

17. Further, in ***Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017***, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainants and builders could not circumscribe the jurisdiction of a consumer.
18. While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the builder buyer agreement, the hon'ble Supreme Court ***in case titled as M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017 decided on 10.12.2018*** has upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view.
19. Therefore, in view of the above judgements and considering the provision of the Act, the authority is of the view that complainant is well within his right to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and RERA Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this authority has the requisite

jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily.

F.III Objections regarding the circumstances being 'force majeure'.

20. The respondent has contended that the project was delayed because of the 'force majeure' situations like delay on part of government authorities in granting approvals/Occupation certificate, passing of HT lines over the project etc. non-availability of necessary infrastructure facilities like road connectivity, laying down of water and electricity lines to be provided by the government for carrying out development activities which were beyond the control of respondent. However, all the pleas advanced in this regard are devoid of merits. First of all, the possession of the unit in question was to be offered by 16.08.2012. Further, the time taken in getting governmental approvals/clearances cannot be attributed as reason for delay in project. Moreover, some of the events mentioned above are of routine in nature happening annually and the promoter is required to take the same into consideration while launching the project. Thus, the promoter-respondent cannot be given any leniency on based of aforesaid reasons and it is a well settled principle that a person cannot take benefit of his own wrong and the objection of the respondent that the project was delayed due to circumstances being force majeure stands rejected.

G. Findings on the relief sought by the complainant.

G.I Direct the respondent to pay delayed possession charges.

21. That the complainant was allotted a unit no. IF10-01, Ground floor, Block-IF10 in the project "Raheja Shilas" by the respondent-builder for a sale consideration of Rs.90,14,776/- vide allotment letter dated 16.02.2010. Further, the builder buyer agreement was executed between the complainant, co-allottee i.e. Mandeep Singh and respondent. Upon perusal of documents on record it has been found that the name of the co-allottee i.e. Mandeep Singh was deleted vide letter dated 02.08.2021 issued by the respondent wherein

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the booking/allotment/agreement was endorsed solely in the name of the complainant i.e. Balwinder Kaur on the basis of representation submitted by the legal heirs of the deceased co-allottee to the respondent. The complainant has paid a sum of Rs.79,08,191/- to the respondent against the allotted unit.

22. In the present complaint, the complainant intends 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."

23. Article 4.2 of the buyer's agreement provides for handing over of possession and is reproduced below:

"That the seller shall sincerely endeavour to give possession of the plot to the purchaser within thirty-six (36) months in case of towers and thirty (30) months in case of Independent Floor from the date of the execution this Agreement and after providing necessary infrastructure in the sector by the Government, but subject to force majeure conditions or nay Government/Regulatory authority's action, inaction or omission and reasons beyond the control of the company. The Company on obtaining certificate for occupation and use by the Competent Authorities shall hand over the Apartment to the Allottee(s) for his / her occupation and use and subject to the Allottees) having complied with all the terms and conditions of this Flat Buyer Agreement. In the event of his / her failure to take over and / or occupy and use the Apartment provisionally and / or finally allotted within thirty (30) days from the date of intimation in writing by the Company, then the same shall lie at his / her risk and cost and the Allottee(s) shall be liable to pay compensation @Rs. 5/-sq. ft. of the super area per month as holding charges for the entire period of such delay. If the Company fails to complete the construction of the said building / Apartment within thirty-six (36) months in case of towers and Thirty (30) months in case of Independent Floors from the date of execution of this Agreement and after providing necessary infrastructure in the sector by the Government, as aforesaid, then the Company shall pay to the Allottee(s) compensation @ Rs. 7/- sq. ft. of the super area per month for the entire period of such delay. The adjustment of compensation shall be done at the time of conveying of the Apartment and not earlier. The said compensation shall be a distinct charge in addition to maintenance charges and not related to any other charges as

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provided in this Agreement. If there is any delay in payments / remittances by the Allottee(s) or in order to comply with any specific request of the Allottee(s) such as providing additional fitments in his / her Apartment, then the abovesaid period of thirty-six (36) months in case of towers and Thirty (30) months in case of Independent Floors will automatically and correspondingly get extended by the period of such delay and in that case Company shall not be liable for any such delay. The Allottee(s) has understood and agreed that due to typographical error in the clause 32 of the Application form possession of independent floor is indicated as Twenty four (24) months instead of Thirty months (30) mentioned as indicated in payment plan. The said error is rectified in this Agreement".
(Emphasis Supplied)

24. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to providing necessary infrastructure specially road, sewer and water in the sector by the government, but subject to force majeure conditions or any government /regulatory authority's action, inaction or omission and reason beyond the control of the seller. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favor of the promoter and against the allottee that even a single default by the allottee in making payment as per the plan may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the agreement to sell by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

25. **Admissibility of delay possession charges at prescribed rate of interest:**
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

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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.

26. 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.

27. Taking the case from another angle, the complainant-allottees were entitled to the delayed possession charges/interest only at the rate of Rs.7/- per sq. ft. per month as per clause 4.2 of the buyer's agreement for the period of such delay, whereas the promoter as per clause 4.1 of the buyer's agreement was entitled to charge interest @ 18% per annum for the period of delay in depositing the sale consideration according to the payment plan. The functions of the authority are to safeguard the interest of the aggrieved person, may be the allottee or the promoter. The rights of the parties are to be balanced and must be equitable. The promoter cannot be allowed to take undue advantage of its dominant position and to exploit the needs of the home buyer's. The authority is duty bound to take into consideration the legislative intent i.e., to protect the interest of the consumer/allottee in the real estate sector. The clauses of the buyer's agreement entered between the parties are one-sided, unfair and unreasonable with respect to the grant of interest for delayed possession. There are various other clauses in the buyer's agreement

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which give sweeping powers to the promoter to cancel the allotment and forfeit the amount paid. Thus, the terms and conditions of the buyer's agreement are ex-facie one-sided, unfair, and unreasonable, and the same shall constitute the unfair trade practice on the part of the promoter. These type of discriminatory terms and conditions of the buyer's agreement would not be final and binding.

28. 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., 01.08.2024 is **9%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11%**.

29. 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;"

30. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11% by the respondent/promoter which is the same as is being granted to her in case of delayed possession charges.

31. On consideration of the circumstances, the documents, submissions made by the parties and based on the findings of the authority regarding contravention as per provisions of rule 28(2), the Authority is satisfied that the respondent

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is in contravention of the provisions of the Act. By virtue of clause 4.2 of the buyer's agreement executed between the parties on 16.02.2010, the possession of the subject unit was to be delivered within 30 months from the date of execution of this agreement. Therefore, the due date of handing over possession comes out to be 16.08.2012. The respondent has failed to handover possession of the subject unit 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. The authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 16.02.2010 executed between the parties. Further no OC/part OC has been granted to the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottees.

32. 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 @11% p.a. w.e.f. 16.08.2012 till actual handing over of possession or offer of possession plus two months, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

G.II Direct the respondent for execution and registration of sale deed.

33. Section 17 (1) of the Act deals with duties of promoter to get the conveyance deed executed and the same is reproduced below:

"17. Transfer of title:- (1).

The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case, may be, in a real estate project, and the other title documents pertaining thereto within

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specified period as per sanctioned plans as provided under the local laws. Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate."

34. The authority observes that OC with regard to unit in question has not been obtained by the respondent/promoter from the competent authority. The respondent/promoter is contractually and legally obligated to execute the conveyance deed upon receipt of the occupation certificate/completion certificate from the competent authority. Whereas as per Section 19(11) of the Act of 2016, the allottees are also obligated to participate towards registration of the conveyance deed of the unit in question. In view of above, the respondent shall execute the conveyance deed of the allotted unit within a period of three months after receiving occupation certificate from the competent authority.

H. Directions of the authority

35. 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 to pay interest to the complainant against the paid-up amount at the prescribed rate i.e. 11% p.a. for every month of delay from the due date of possession i.e., 16.08.2012 till offer of possession plus two months or actual handing over of possession after obtaining occupation certificate from the competent authority, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
- ii. The arrears of such interest accrued from due date of possession till the date of order by the authority shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for

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- every month of delay shall be paid by the promoter to the allottees before 10th of the subsequent month as per rule 16(2) of the rules.
- iii. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.
- iv. The complainant is directed to pay outstanding dues, if any, after adjustment of delay possession charges. The respondent/promoter shall handover possession of the unit and execute conveyance deed in favour of the complainant in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within three months after obtaining occupation certificate from the competent authority.
- v. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 11% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(z a) of the Act.
36. Complaint stands disposed of.
37. File be consigned to registry.

Dated: 01.08.2024

V.1-3
(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram