

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

Complaint no. : 4673 of 2023
Date of order : 21.08.2024

1. Mr. Yatin Sanduja
2. Mr. Prabhu Dayal Sanduja
Both R/o: H.No.-443, Sector-9,
Gurugram, Haryana-122001.

Complainants

Versus

M/s Emaar MGF Land Ltd.
Office at: - House 28, Kasturba Gandhi Marg,
New-Delhi-110001.

Respondent

CORAM:
Shri. Ashok Sangwan

Member

APPEARANCE:
Seema Singh (Advocate)
Dhruv Rohtagi (Advocate)

Complainants
Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under

the provision of the Act or the rules and regulations made 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:

Sr. No.	Particulars	Details
1.	Name of the project	"Gurgaon Greens", Sector-102, Village Dhankot, Gurugram.
2.	Area of project	95829.92 sq.mtrs.
3.	Nature of project	Group Housing Colony.
4.	DTCP License no.	Licence no. 75 of 2012 Dated-31.07.2012
5.	RERA registered	Registered 139/2017/2294 dated 05.12.2017
6.	Unit no.	GGN-18-0202, Floor-2 nd , Tower-18 (As on page no. 30 of complaint)
7.	Unit area	1650 sq.ft [Super-Area] (As on page no. 30 of complaint)
8.	Allotment letter	27.01.2013 (As on page no. 56 of complaint)
9.	Welcome letter	27.01.2013 (As on page no. 64 of complaint)
10.	Date of execution of buyer's	29.04.2013

	agreement	(As on page no. 29 of complaint)
11.	Possession clause	<p>Clause 14 POSSESSION</p> <p>(a) Time of handing over the Possession'</p> <p><i>Subject to terms of this clause and barring force majeure conditions, and subject to the Allottee having complied with all the terms and conditions of this Agreement, and not being in default under any of provisions of this Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the Company, the Company proposes to hand over the possession of the Unit within 36 (Thirty Six) months from the date of start of construction ,, subject to timely compliance of the provisions of the Agreement by the Allottee. The Allottee agrees and understands that the Company shall be entitled to a grace period of 5 (five) months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project.</i></p> <p><i>[Emphasis supplied]</i></p> <p><i>(As on page no. 37 of complaint)</i></p>
12.	Due date of possession	<p>14.12.2016</p> <p>[Calculated 36 months from date of start of construction i.e., 14.06.2013 plus grace period of 5 months]</p>
13.	Total sales consideration	<p>Rs.96,67,495/-</p> <p>(As per schedule of payment on page no. 44 of complaint)</p>

		Rs.1,00,19,279/- (As per S.O.A dated 22.11.2023 on page no. 129 of reply)
14.	Amount paid by the complainants	Rs.1,00,19,277/- (As per S.O.A dated 22.11.2023 on page no. 129 of reply)
15.	Endorsement in favour of Mr. Yatin Sanduja	04.04.2019
16.	Occupation certificate	05.12.2018 (As on page no. 133 of reply)
17.	Offer of possession	12.12.2018 (As on page no. 129 of complaint)
18.	Unit handover letter	20.07.2019 (As on page no. 161 of reply)
19.	Conveyance deed	02.08.2019 (As on page no. 166 of reply)

B. Facts of the complaint

3. The complainants have made the following submission: -

- I. That the real estate project "Gurgaon Greens" is situated at Sector-102, Dhankot, Gurugram, Haryana. That on the assurances given by the respondent as well as their agents, the complainant booked a residential unit in the project.
- II. That on 30.01.2012, the complainants booked a unit in the project. At the time of booking, the officials of the respondent assured that the possession of the unit will be delivered within 36 months.
- III. That a total amount of Rs.1,00,19,277/- has been paid by the complainant to the respondent in respect of the flat. As per clause no.

- 30 of the provisional allotment letter, the possession of the unit was to be handed over to the complainant within 36 months from the date of start of construction.
- IV. That as per clause no. 31 of the provisional allotment letter, in case the developer fails to handover the actual physical possession of the unit to the buyers, the developer shall pay to the allottee, compensation at the rate of Rs.7.50/- per sq. ft. of the super area of the unit per month for the period of delay.
- V. That the possession was offered by the respondent through "Letter of Offer of Possession" dated 12.12.2018 which was not a valid offer of possession because respondent had offered possession with stringent condition to pay certain amounts which were never part of agreement and respondent also demanded a lien marked FD of Rs.2,32,859/- on pretext of future liability against HVAT which was also unfair.
- VI. That the respondent has charged Rs.5,25,405/- as GST on the sale consideration, whereas the GST Tax has come into force on 01.07.2017, it was a fresh tax. The possession of the apartment was supposed to be delivered to the complainant on 25.06.2016, therefore, the tax which has come into existence after the due date of possession. This extra cost should not be levied on complainant as the same would not have fallen on the complainant if the respondent had offered possession of the unit within the time stipulated in the agreement.
- VII. That the complainant paid the amount as per the payment plan opted by the complainant but when the complainant visited the project site no construction work was going on. The complainant waited for some time but no work resumed and till date the project is not completed. According to clause 30 of the provisional allotment letter, the

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respondent was supposed to deliver the possession within 36 months but the possession has been handed over in the month of July, 2019.

- VIII. That the complainant has made several visits to the respondent office and made several requests to the respondent to compensate the complainant as per clause no. 31 of provisional allotment letter but no reply has been received from the respondent. That the complainant had booked his residential flat under construction linked plan but the respondent have taken amounts over and above the actual cost of the unit as agreed at the time of booking the unit.
- IX. That the complainant repeatedly followed up with the officials of the respondent to refund the entire paid amount alongwith interest but the respondent avoided the matter on one pretext or the other.
- X. That an invalid offer of possession was sent by the respondent on 12.12.2018. In the said offer of possession, the respondent stated that the unit was allegedly complete and added delayed payment charges inter-alia several other charges. This delay in offering possession only lead to the conclusion that the project was not implemented as per the instalment plan even though demand was raised from the complainant from time to time.
- XI. That the complainant has already made all the payments although the respondent never stuck to the mile stones as set out in the provisional allotment letter. That the total amount paid by the complainant is Rs.1,00,19,277/- which is also reflecting in the Statement of Account issued by the respondent.
- XII. The promoter has proposed to hand over the possession of the said unit within 36 months from the date of start of construction and further provided that promoter shall be entitled to a grace period of 5 months for applying and obtaining completion certificate/occupation

certificate in respect of said unit The date of start of construction is 25.06.2013 as per statement of account. The period of 36 months expired on 24.06.2016. As a matter of fact, the promoter has not applied to the concerned authority for obtaining completion certificate/ occupation certificate within the time limit prescribed by the promoter in the buyer's agreement. The promoter has moved the application for issuance of occupation certificate when the period of 36 months had already expired. As per the settled law one cannot be allowed to take advantage of his own wrong. Accordingly, the benefit of grace period of 5 months cannot be allowed to the respondent .

XIII. That the respondent has handed over the possession of the unit on 20.07.2019.

C. Relief sought by the complainants:

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

- i. Direct the respondent to pay the interest at the prescribed rate on the amount paid on account of delay in delivering possession of said apartment.
- ii. Direct the respondent to refund the amount charged under the head of HVAT along with interest.
- iii. Direct the respondent not to charge GST from the complainant.

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 on the following grounds: -

- I. That the possession was offered to the complainants on 12.12.2018 and the unit was handed over on 20.07.2019 and thereafter, conveyance deed was executed on 02.08.2019. The lack of bonafide of the complainants is apparent that after conclusion of the entire transaction on the execution of the Conveyance Deed and the completion of all obligations of the respondent, they chose to remain silent for such a long period and have now approached the Authority to extort money.
- II. The present complaint is not maintainable in view of the fact that the conveyance deed has already been executed and the respondent is absolved of all or any liability towards delay possession charges, even in terms of Section 11(4) of the Real Estate (Regulation and Development) Act, 2016.
- III. That upon handing over of possession and execution of the conveyance deed, the complainants have accorded their satisfaction to the services provided by the developer and voluntarily discharged the developer of all its liabilities under the Buyer's Agreement. The unit handover letter dated 20.07.2019, executed by the complainants clearly records
"Upon acceptance of possession, the liabilities and obligations of the Company as enumerated in the allotment letter/ Agreement executed in favour of the Allottee stand satisfied".
- IV. Thus, the respondent is discharged of all liabilities, including the claim of delay possession charges, which is being claimed by way of present complaint. That the complainants have even accorded their satisfaction and non-claim of compensation in the recitals of the Conveyance Deed dated 02.08.2019.
- V. Thus, the complainants cannot now be allowed to retract from their affirmations and claims more compensation that has already been granted to them. The complainants were fully satisfied by the compensation of

Rs.3,08,799/- credited on account of IOP and Rs.58,172/- credited on account of Anti-Profiting by the respondent to the complainants on 12.12.2018 and 10.12.2018 respectively and never raised any grievance to the same.

- VI. That the present complaint is not maintainable in law or on facts. The present complaint raises several such issues which cannot be decided in summary proceedings. The said issues require extensive evidence to be led by both the parties and examination and cross-examination of witnesses for proper adjudication. Therefore, the disputes raised in the present complaint are beyond the purview of this Authority and can only be adjudicated by the civil court. Therefore, the present complaint deserves to be dismissed on this ground alone.
- VII. That the complaint is barred by limitation. The complainants have received the offer of possession on 12.12.2018, on which the cause of action for claiming the delay compensation has arisen. The present complaint has been filed on 04.10.2023, after a gross delay of almost 5 years.
- VIII. That the original allottee had approached the respondent and expressed an interest in booking an apartment in the residential group housing colony known as "Gurgaon Greens" situated in Sector - 102, Village Dhankot, Tehsil & District Gurgaon.
- IX. That thereafter the original allottee vide an application form dated 22.01.2013 applied for provisional allotment. The complainants, in pursuance of the aforesaid application form, was allotted an independent unit bearing no GGN-18-0202, Tower-18 admeasuring 1650 sq. ft., vide provisional allotment letter dated 27.01.2013. The original allottee consciously and willfully opted for an "Instalment Payment Plan" and

further represented to the respondent that he shall remit every installment on time as per the payment schedule.

- X. That unfortunately on 07.08.2017 the original allottee expired, subsequent to which a request for change of name was made by the surviving son of the original allottee. The respondent, upon necessary compliances made by the original allottee's son accepted the request and substituted the name of the original co-allottee from 'Shiv Sanduja' to "Yatin Sanduja". That in the manner as aforesaid, the co-complainants were substituted in the place of the original co-allottee.
- XI. That the original allottee as well as the complainants were irregular in payment of instalments. Thus the respondent was constrained to issue reminder letters requesting them to make payment of demanded amounts.
- XII. That the complainants are not "allottees" but are investors who have booked the apartment in question as a speculative investment in order to earn rental income/profit from its resale. The apartment has been booked by the complainants as a speculative investment and not for the purpose of self-use as their residence. Therefore, no equity lies in favour of the complainants.
- XIII. That even after sending the payment requests letters to the complainants, the complainants gave no heed to the said letters. The complainants consciously and maliciously chose to ignore the letters issued by the respondent and flouted in making timely payments of the instalments which was an essential, crucial and an indispensable requirement under the Buyer's Agreement.
- XIV. Clause 14 of the Buyer's Agreement provides that subject to the allottees having complied with all the terms and conditions of the Buyer's Agreement, and not being in default of the same, possession of the unit would be handed over within 36 months **plus grace period of 5 months,**

from the date of start of construction. That the grace period of 5 months cannot be excluded and is liable to be included.

- XV. That clause 16 of the Agreement provides that compensation for any delay in delivery of possession shall only be given to such allottees who are not in default of their obligations envisaged under the Agreement and who have not defaulted in payment of instalments as per the payment plan. In case of delay caused due to non-receipt of occupation certificate, completion certificate or any other permission/sanction from the competent authorities, no compensation shall be payable to the allottees. The complainants, having defaulted in payment of instalments and thus are not entitled to any compensation or any amount towards interest under the Buyer's Agreement. The complainants by way of present complaint are demanding interest for alleged delay in delivery of possession. The interest is compensatory in nature and cannot be granted in derogation and ignorance of the provisions of the Buyer's Agreement.
- XVI. That despite there being a number of defaulters in the project, the respondent itself infused funds into the project and has diligently developed the project. The respondent had applied for Occupation Certificate on 13.04.2018 and the same was issued by the concerned statutory authority on 05.12.2018.
- XVII. That the provisions of the Act are not retrospective in nature. The provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act. It is submitted that merely because the Act applies to ongoing projects which are registered with the authority, the Act cannot be said to be operating retrospectively. The provisions of the Act relied upon by the complainants for seeking interest cannot be called in to aid in derogation and ignorance of the provisions of the Buyer's Agreement.

- XVIII. That the construction of the project/allotted unit already stands completed and the respondent has already offered possession of the unit to the complainants.
- XIX. That the complainants were offered possession of the unit through letter of offer of possession dated 12.12.2018 and subsequently, several reminders were sent to the complainants to take the possession. That an indemnity cum undertaking for possession dated 04.06.2019 was also executed by the complainants. The complainants were called upon to remit balance payment including delayed payment charges and to complete the necessary formalities/documentation necessary for handover of the unit to the complainants. The respondent explained to the complainants that they are not entitled to any compensation in terms of the Buyer's Agreement on account of default in timely remittance of instalments as per schedule of payment incorporated in the Agreement. However, yet the respondent credited a sum of Rs.3,08,799/- as delay compensation to the complainants and Rs.58,172 on account of anti-profiting, which was duly accepted by the complainants without any demur or protest. The respondent earnestly requested the complainants to obtain possession of the unit in question and further requested the complainants to execute a conveyance deed in respect of the unit after completing all the formalities regarding delivery of possession.
- XX. That the complainants approached the respondent requesting it to deliver the possession of the unit. A unit handover letter dated 20.07.2019 was executed by the complainants, specifically and expressly agreeing that the liabilities and obligations of the respondent as enumerated in the allotment letter or the Buyer's Agreement stand satisfied.
- XXI. That after execution of the unit handover letter dated 20.07.2019 and obtaining of possession of the unit, the complainants are left with no right,

entitlement or claim against the respondent. That the complainants have further executed a conveyance deed on 02.08.2019 in respect of the unit. The transaction between the complainants and the respondent stands concluded and no right or liability can be asserted by the respondent or the complainants against the other.

7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

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

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District, Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

10. 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;

11. 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.

F. Findings on the objections raised by the respondent.

F.1 Whether the complainant can claim delayed possession charges after execution of the conveyance deed .

12. The respondent stated that the conveyance deed of the unit has already been executed in favour of the complainants on 02.08.2019 and the transaction between the parties stands concluded upon the execution of conveyance deed.
13. The respondent has argued that upon the execution of the conveyance deed, the relationship between the parties is considered concluded, precluding any further claims or liabilities by either party. Consequently, the complainant is barred from asserting any interest in light of the circumstances of the case.
14. In order to comprehend the relationship between the allottee and the promoter, it is essential to understand the definition of a "deed." A deed is a formal, written document that is executed, signed, and delivered by all parties involved in the contract, namely the buyer and the seller. It is a legally binding document that incorporates terms enforceable by law. For a

sale deed to be valid, it must be written and signed by both parties. Essentially, a conveyance deed involves the seller transferring all rights to legally own, retain, and enjoy a particular asset, whether immovable or movable. In the present case, the asset in question is immovable property. By signing a conveyance deed, the original owner transfers all legal rights pertaining to the property to the buyer in exchange for valid consideration, typically monetary. Thus, a "conveyance deed" or "sale deed" signifies that the seller formally transfers all authority and ownership of the property to the buyer.

15. That the execution of a conveyance deed transfers only the title and interest in the specified immovable property (in this case, the allotted unit). However, the conveyance deed does not terminate the relationship between the parties or absolve the promoter of their obligations and liabilities concerning the unit, despite the transfer of title and interest to the allottee upon execution of the conveyance deed.
16. The allottees have invested their hard-earned money and there is no doubt that the promoter has been enjoying benefits of and the next step is to get her title perfected by executing the conveyance deed which is the statutory right of the allottees. Also, the obligation of the developer-promoter does not end with the execution of a conveyance deed. Therefore, in furtherance to the Hon'ble Apex Court judgement and the law laid down in case titled as ***Wg.Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. Vs. DLF Southern Homes Pvt. Ltd. (now known as BEGUR OMR Homes Pvt. Ltd.) and Ors. (Civil appeal no. 6239 of 2019) dated 24.08.2020***, the relevant paras are reproduced herein below:

"34 The developer has not disputed these communications Though these are four communications issued by the developer, the appellants submitted that they are not isolated aberrations but fit into the pattern. The developer does not state that it was willing to offer the flat purchasers possession of their flats and the right to execute conveyance of the flats while reserving their claim for compensation for delay. On the contrary, the tenor of the

communications indicates that while executing the Deeds of Conveyance, the flat buyers were informed that no form of protest or reservation would be acceptable. The flat buyers were essentially presented with an unfair choice of either retaining their rights to pursue their claims (in which event they would not get possession or title in the meantime) or to forsake the claims in order to perfect their titles to the flats for which they have paid valuable consideration. In this backdrop, the simple question which we need to address is whether a flat buyer who espouses a claim against the developer for delayed possession can as a consequence of doing so be compelled to defer the right to obtain a conveyance to perfect their title. It would, in our view, be manifestly unreasonable to expect that in order to pursue a claim for compensation for delayed handing over of possession, the purchaser must indefinitely defer obtaining a conveyance of the premises purchased or, if they seek to obtain a Deed of Conveyance to forsake the right to claim compensation. This basically is a position in which the NCDRC has espoused. We cannot countenance that view.

35. The flat purchasers invested their hard earned money. It is only reasonable to presume that the next logical step is for the purchaser to perfect the title to the premises which have been allotted under the terms of the ABA. But the submission of the developer is that the purchaser forsakes the remedy before the consumer forum by seeing a Deed of conveyance. To accept such a construction would lead to an absurd consequence of requiring the purchaser either to abandon a just claim as a condition for obtaining the conveyance or to indefinitely delay the execution of the Deed of Conveyance pending protracted consumer litigation."

17. The Authority has already taken a view in **Cr. No. 4031/2019** and others titled as **Varun Gupta V/s Emaar MGF Land limited and others** and observed that the execution of a conveyance deed does not conclude the relationship or marks an end to the liabilities and obligations of the promoter towards the subject unit and upon taking possession, and/or executing conveyance deed, the complainant never gave up his statutory right to seek delayed possession charges as per the provisions of the said Act.
18. Upon reviewing all relevant facts and circumstances, the Authority determines that the complainants/allottees retain the right to seek compensation for delays in possession from the respondent-promoter, despite the execution of the conveyance deed.

F.II. Whether the complaint is barred by limitation or not?

19. So far as the issue of limitation is concerned, the Authority is cognizant of the view that the law of limitation does not strictly apply to the Real Estate Regulation and Development Authority Act of 2016. However, the Authority under section 38 of the Act of 2016, is to be guided by the principle of

natural justice. It is universally accepted maxim and the law assists those who are vigilant, not those who sleep over their rights. Therefore, to avoid opportunistic and frivolous litigation a reasonable period of time needs to be arrived at for a litigant to agitate his right. This Authority of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances.

20. It is also observed that the Hon'ble Supreme Court in its order dated 10.01.2022 in **MA NO.21 of 2022 of Suo Moto Writ Petition Civil No.3 of 2020** have held that the period from 15.03.2020 to 28.02.2022 shall stand excluded for purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.
21. In the present matter the cause of action arose on 12.12.2018 when the offer of possession was made by the respondent. The complainants have filed the present complaint on 19.10.2023 which is 4 years 10 months and 7 days from the date of cause of action. In the present case the three year period of delay in filing of the case also after taking into account the exclusion period from 15.03.2020 to 28.02.2022. In view of the above, the Authority is of the view that the present complaint has been filed within a reasonable time period and is not barred by the limitation.

G. Findings regarding relief sought by the complainant

G.1 Direct the respondent to pay the interest at the prescribed rate on the amount paid on account of delay in delivering possession of said apartment.

22. In the present complaint, the complainants intends to continue with the project and are seeking possession of the unit and delayed possession charges as per section 18(1) of the Act and the same is reproduced below for ready reference:

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)

23. Clause 14(a) of the apartment buyer's agreement (in short, the agreement) dated 29.04.2013, provides for handing over possession and the same is reproduced below:

14(a) Time of handing over the Possession

"Subject to terms of this clause and barring force majeure conditions, and subject to the Allottee having complied with all the terms and conditions of this Agreement, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the Company, the Company proposes to hand over the possession of the Unit within 36 (Thirty Six) months from the date of start of construction..subject to timely compliance of the provisions of the Agreement by the Allottee. The Allottee agrees and understands that the Company shall be entitled to a grace period of 5(five) months , for applying and obtaining the completion certificate/occupation certificate in respect of the unit and/or the Project.

24. The buyer's agreement was executed on 29.04.2013. As per clause 14 (a) of the agreement the respondent was to offer the possession of the unit to the allottees within 36 months from the date of start of construction. The date of start of construction as per the Statement of Accounts as on 22.11.2023 at page no. 129 of reply is 14.06.2013. Thus, the Authority have calculated 36 months from the date of start of construction, also the grace period of 5 months is allowed to the respondent/promoter. Therefore, the due date comes out to be 14.11.2016.

25. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges however, 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.

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. 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., 21.08.2024 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
28. 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;"*
29. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date

as per the agreement. The Authority has observed that the Buyer's Agreement was executed on 29.04.2013 between the original allottee Mr. Shiv Sanduja and the co-Allottee i.e., Mr. Prabhu Dayal Sanduja and the respondent. The possession of the subject unit was to be offered within a period of 36 months plus 5 months from date of commencement of construction. The Authority calculated due date of possession from the date of start of construction i.e., 14.06.2013 along with a grace period of 5 months which comes out to be 14.11.2016. The respondent has failed to handover possession of the subject unit on the due date.

30. That the respondent has stated that on 07.08.2017, one of the original allottee Mr. Shiv Sanduja has passed away. Following this, the surviving son of the original allottee submitted a request for a change of name to the respondent. The respondent, having received the necessary compliances from the son, accepted the request and updated the records to reflect the substitution of the original allottee's name from Late Sh. Shiv Sanduja to Mr. Yatin Sanduja. The Authority observes that Mr. Shiv Sanduja and Mr. Prabhu Dayal Sanduja were the original allottees, and upon the demise of Mr. Shiv Sanduja, Mr. Yatin Sanduja, the son of Late Sh. Shiv Sanduja, has stepped into the shoes of Mr. Shiv Sanduja for all intents and purposes. Accordingly, Mr. Yatin Sanduja will be considered the original allottee for the purposes of present matter.
31. 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 complainants as per the terms and conditions of the Buyer's Agreement dated 29.04.2013 executed between the parties. Further, the Authority observes that the respondent obtained the

occupation certificate on 05.12.2018 and offered possession to the complainants on 12.12.2018 and the conveyance deed was executed on 02.08.2019.

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 @ 11.10% p.a. w.e.f. 14.11.2016 till the date of offer of possession plus two months or handover of possession, whichever is earlier, after obtaining the occupation certificate, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

G.II. Direct the respondent to refund the amount charged under the head of HVAT along with interest.

G.III. Direct the respondent not to charge GST from the complainant.

33. The financial liabilities between the allottee and the promoter comes to an end after the execution of the conveyance deed. The complainants could have asked for the claim before the the conveyance deed got executed between he parties. Therefore, after execution of the conveyance deed the complainant-allottee cannot seek refund of charges other than statutory benefits if any pending. Once the conveyance deed is executed and accounts have been settled, no claims remains. So, no directions in this regard can be effectuated at this stage.

H. Directions of the authority: -

34. Hence, the Authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the functions entrusted to the authority under sec 34(f) of the Act: -
- i. The respondent/promoter shall pay interest at the prescribed rate i.e., 11.10% for every month of delay on the amount paid by the complainants from the due date of possession i.e., 14.11.2016 till the

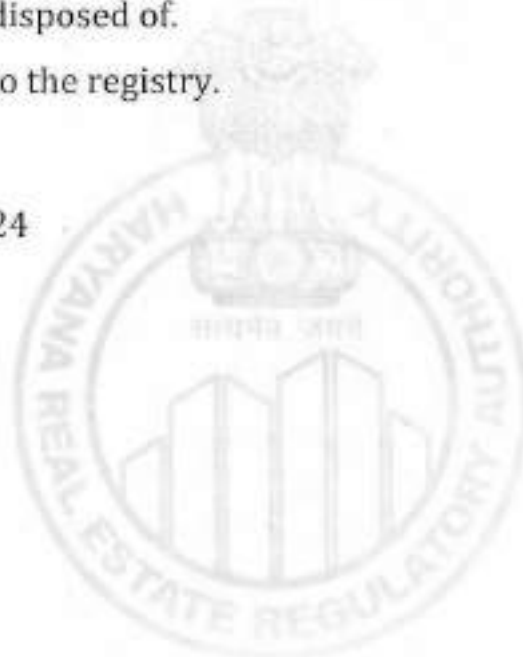
possession plus 2 months i.e., 12.02.2019 or handover of possession whichever is earlier after adjustment/deduction of the amount already paid if any towards delay in handing over of possession as per proviso to section 18(1) of the Act read with rule 15 of the rules.

ii. The respondent is directed to pay arrears of interest accrued, if any , after adjustment in statement of account, within 90 days from the date of this order as per rule 16(2) of the Act,

35. Complaint stands disposed of.

36. File be consigned to the registry.

Dated: 21.08.2024




(Ashok Sangwan)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram

HARERA
GURUGRAM