BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	**3905 of 2023**
Date of Filing Complaint	**18.08.2023**
Date of First Hearing	**22.11.2023**
Order Pronounced On	**21.08.2024**

Col. Ramneesh Pal Singh
R/o: House no. 366, Sector 71, Mohali, Punjab-160071 **Complainant**

Versus

M/s Shree Vardhman Infraheights Pvt. Ltd.
Regd. office: 302, 3rd Floor, Indraprakash Building, 21, Barakhambha Road, New Delhi- 110001 **Respondent**

CORAM:
Shri Ashok Sangwan **Member**

APPEARANCE:
Mr. Sanyam Diwan Advocate Complainant
Mr. Shalabh Singhal Advocate 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 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 complainants, 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	"Shree Vardhman Flora", village Badshapur, Sector-90, Gurugram
2.	Project area	10.881 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	23 of 2008 dated 11.02.2008 valid upto 10.02.2025
5.	Name of the Licensee	Moti Ram
6.	RERA registered/ not registered and validity status	Registered Registered vide no. 88 of 2017 dated 23.08.2017 valid up-to 30.06.2019
7.	Unit no.	1106, tower-C1 (page 21 of complaint)
8.	Unit area admeasuring	1300 sq. ft. (super area) (page 21 of complaint)
9.	Date of buyer agreement	01.02.2012 (Executed with original allottees- Ankur Aggarwal and Nikkhil Gupta) (page 19 of complaint)
10.	Unit endorsed by original allottees in favour of AMB Infratech Pvt. Ltd.	22.02.2012 (page 40 of complaint)
11.	Agreement to sell between ABM Infratech Pvt. Ltd. And the complainant	22.11.2014 (Page 43 of complaint)
12.	Endorsed by ABM Infratech Pvt. Ltd. In favor of the complainant	10.12.2014 (page 48 of complaint)
13.	Possession clause	*14 (a) Possession* ***The construction of the flat is likely to be completed within a period of thirty six months (36) of commencement of construction of the particular tower/block in which the flat is located with a grace period of 6 months*** *or receipts of sanction of building*

		plans/revised plans and all other approvals subject of the building plans/revised plans and all other approvals subject to force majeure including any restrains/restrictions from any authorities, non-availability of building materials or dispute with construction agency /workforce and circumstances beyond the control of company and subject to timely payments by the buyer in the said complex. ***(Emphasis Supplied)***
14.	Date of commencement of construction	14.02.2012 (page 81 of reply) **Inadvertently mentioned to be 10.03.2012 in POD dated 21.08.2024.*
15.	Due date of possession	14.08.2015 (calculated from date of commencement of construction i.e. 10.03.2012 including grace period of 6 months being unqualified and conditional) **Inadvertently mentioned to be 10.09.2015 in POD dated 21.08.2024.*
16.	Basic sale consideration	Rs.30,51,230/- (page 22 of complaint)
17.	Amount paid by the complainant	Rs.42,43,732.06/- (as per customer ledger dated 16.02.2024 at page 64 of reply)
18.	Offer for fit-outs	01.04.2021 (page 57 of reply)
19.	Occupation certificate	02.02.2022 (page 23 of reply)
20.	Offer of possession	20.04.2022 (page 51 of reply)

B. Facts of the complaint:

3. The complainants have made the following submissions: -

a) That on 01.02.2012 ABM Infratech Pvt. Ltd. purchased unit no. C-1/1106 Vardhman Flora, Sector 90, Gurugram, Haryana from Mr. Ankur Gupta and Mr. Nikkhil Gupta.

b) That on 22.11.2014 the complainant purchased unit no. C-1/1106 Vardhman Flora, Sector 90, Gurugram, from ABM Infratech Pvt. Ltd. at the consideration amount of Rs 44,59,420/- and agreed to pay the balance amount of Rs.4,59,420/- to the respondent.

c) That as per the clause 14(a) of the agreement, the respondent had to deliver the possession of unit no. C-1/1106 Vardhman Flora, Sector 90, Gurugram, Haryana by 09.09.2015 to the complainant within the period of 36 Months (6 months of Grace Period) from the date of start of construction i.e., from 09.03.2012.

d) That on 09.07.2015, the respondent served as letter/notice along with photographs to the complainant and gave him update of the current status of the project.

e) That after going through the aforesaid letter and photographs, the complainant assumed that the respondent will handover his flat within stipulated time period as agreed by them in clause 14 (a) of the agreement.

f) That despite handing over the possession to the complainant, the respondent vide letter 12.06.2017 sought additional charges of Rs. 91,035/- from the complainant as VAT under the notification no. 19/STI/H.A.6/ 2003/S.59A/2016 dated 12.09.2016. Apart from that on 20.12.2017 the complainant paid an amount of Rs.1,70,868/-.

g) That in the year 2018 under complaint no. 330 of 2018 titled as "Mrs. Hemlata vs M/s Shree Vardhman Infrahome Pvt. Ltd." the respondent filed their reply before this Hon'ble Authority and stated that they are committed to complete the project by 30.06.2019. Further, as per the RERA certificate no. 88 of 2017 the respondent again specified revised date of completion of project as 31.12.2020.

h) That on 18.08.2020 the respondent sent a mail to the complainant and took an excuse that due to some restriction in construction work by the government they extended the period of completion of the project by 11 months.

i) That as per the buyer's agreement, the complainant had to pay Rs. 4,59,420/- to the respondent but till date he paid Rs 6,89,421/- to the respondent which is apparent from the payment receipt and customer

ledger. Despite paying the aforesaid amount to the respondent they are still seeking more amounts from the complainant which is completely shows illicit and absurd unprofessional conduct of the respondent and the breach of the terms of FBA.

j) That since 2015 the complainant is in continuous touch with the concerned officials of the respondent for taking update about the development of his unit but the complainant always get revised limitation or time duration and demand for the money.

k) That on 01.04.2021 the respondent issued a letter/ notice offering of possession for fit out of the unit to the complainant by stating that the work of his flat is complete and they already applied to the concerned authority for issuance of occupation certificate.

l) That on 22.08.2021 the complainant went to site and was in utter shock to learn that the submissions made by the respondent in there aforesaid letter are completely vague and baseless. The unit is no where near to the completion nor it was ready for even for fit out possession.

m) That on 12.04.2022 the complainant wrote a letter to the respondent and sought the acute limitation for the completion of the work of his unit as per the agreement dated 01.02.2012.

n) That the respondent again issued letter dated 20.04.2022 and 21.06.2022 to the complainant and asked him to take the possession of his unit and subsequently without giving any satisfactory reply on the account of compensation, the concerned official on behalf of the respondent asked the complainant to pay the balance amount.

o) That since 2022 the complainant is seeking the compensation from the respondent for the delay of about 7 years in the completion of the work of his unit but the concerned authority of the respondent is completely hushed over that and over their failure to complete the project within

limitation as per clause 14(a) of FBA. The complainant always discharged his obligation towards the respondent by paid the money to them on time.

p) That it is pertinent to mention here that there is default of more than 7 years on the part of the respondent as they failed to comply with the terms of agreement dated 01.02.2012.

q) That the complainant is entitled for the compensation or delay possession charges with the interest at the prescribed rate in the agreement under Section 18 and 19(4) of the Act.

r) That the project in question is ongoing as defined under Rule 2(o) of the Rules ibid and does not fall in any of the exception provided under the rules.

s) That the complainant after losing all hope from the respondent company, having his dreams shattered of owing a unit and having basic necessary facilities in the vicinity of Shree Vardhman Flora and also losing considerable amount of money, is constrained to approach this Hon'ble Authority for redressal of his grievance.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s):
   I. Direct the respondent to pay delay possession charges.
   II. Direct the respondent to pay for the loss from the date on which the breach took place.

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) of the Act to plead guilty or not to plead guilty.

D. Reply by respondent:

6. The respondent contested the complaint on the following grounds:

a) That the present complaint filed under Section 31 of the Real Estate (Regulation and Development) Act, 2016 is not maintainable as there has been no violation of the provisions of the Act. The complaint under Section

31 can only be filed after a violation or contravention has been established by the authority under Section 35. Since no violation or contravention has been established, the complaint should be dismissed. Additionally, Section 18 of the Act of 2016, under which the complainant seeks relief, is not applicable to the present case as it does not have retrospective effect and cannot be applied to transactions entered into before the Act of 2016 came into force. Therefore, Section 18 cannot be applied in the present case as buyers' agreement was executed before the Act of 2016.

b) That the unit in question is situated in tower C-1, which was completed in April 2021 and for which the application for OC was made on 16.04.2021 and the OC was granted on 02.02.2022.

c) That the unit in question was originally allotted to Sh. Ankur Aggarwal and Sh. Nikhil Gupta and a flat buyer agreement dated 01.02.2012 was executed between the original applicant and the respondent. However, in February 2012, the said original allottees sold the unit in question to M/s ABM Infratech Pvt. Ltd. And the said unit was endorsed in favour of the said M/s ABM Infratech Pvt. Ltd. On 22.02.2012. Subsequently, in December 2014, the said ABM Infratech Pvt. Ltd. sold the unit to the complainant and the said unit was endorsed in favour of the complainant on 10.12.2014.

d) That the possession of the units in the said project has already been offered to the respective allottees of the project and a large no. of allottees have already occupied their respective units. Such an offer has also been made to the complainant but for the reasons best known to the complainant, the complainant has not come forward to take possession of the unit I question till date. The respondent sent a final reminder dated 21.06.2022 to the complainant calling upon him to take possession of the unit. To maintain parity, an offer for fit out possession was also made to the complainant

vide letter dated 01.04.2021, however the complainant did not avail the said offer.

e) That the payment plan opted for payment of the agreed sale consideration and other charges was a construction linked payment plan. The respondent from time to time raised demands as per the agreed payment plan, however the complainant committed severe defaults and failed to make the payments as per the agreed payment plan, despite various call letters and reminders from the respondent.

f) In the said Agreement no definite or firm date for handing over possession to the allottee was given. However, clause 14 (a) provided a tentative period within which the project/flat was to be completed and application for OC was to be made to the competent authority was given. As the possession was to be handed over only after receipt of OC from DTCP Haryana and it was not possible to ascertain the period that DTCP, Haryana would take in granting the OC, therefore the period for handing over of possession was not given' in the agreement. The occupancy certificate in respect thereof was applied on 16.04.2021, as such the answering respondent cannot be held liable for payment of any interest and/or compensation for the period beyond 16.04.2021.

g) That the construction of tower in question commenced with the laying of foundation on or about 06.08.2012. However the complainant in this case is a subsequent purchaser who came into contract with the respondent on 10.12.2014 and therefore, the period mentioned in the agreement should start counting from 10.12.2014.

h) The said tentative / estimated period given in clause 14 (a) of the FBA was subject to conditions such as force majeure, restraint/ restrictions from authorities, non-availability of building material or dispute with construction agency / work force and circumstances beyond the control of the respondent and timely payment of instalments by all the buyers in the

said complex including the complainant. As aforesaid many buyers/ allottees in the said complex, including the complainants.

i) The construction activity in Gurugram has also been hindered due to orders passed by Hon'ble NGT/State Govts. /EPCA from time to time putting a complete ban on the construction activities in an effort to curb air pollution. The Hon'ble National Green Tribunal, New Delhi (NGT) vide its order 09.11.2017 banned all construction activity in NCR and the said ban continued for almost 17 days hindering the construction for 40 days.

j) The District administration, Gurugram under the Graded Response Action Plan to curb pollution banned all construction activity in Gurugram, Haryana vide from 01.11.2018 to 10.11.2018 which resulted in hindrance of almost 30 days in construction activity at site in compliance of direction issued by EPCA vide its notification No. EPCA-R/2018/L-91 dated 27.10.2018.

k) The Environmental Pollution (Prevention and Control Authority for NCR ("EPCA") vide its notification bearing No. EPCA-R/2019/L-49 dated 25.10.2019 banned construction activity in NCR during night hours (06:00 PM to 06:00 AM) from 29.10.2019 to 30.10.2019 which was later on converted into complete 24 hours ban from 01.11.2019 to 05.11.2019 by EPCA vide its notification No. EPCA-R/2019/L-53 dated 01.11.2019.

l) The Hon'ble Supreme Court of India vide its order dated 04.11.2019 passed in Writ Petition No. 13029/1985 titled as," MC Mehta vs Union of India" completely banned all construction activities in NCR which restriction was partly modified vide order dated 09.12.2019 and was completely lifted by the Hon'ble Supreme Court vide its order dated 14.02.2020.

m) The unprecedented situation created by the Covid-19 pandemic presented yet another force majeure event that brought to halt all activities related to the project including construction of remaining phase, processing of

approval files etc. The Ministry of Home Affairs, GOl vide notification dated March 24, 2020 bearing no. 40-3/2020-DM-I(A) recognised that India was threatened with the spread of Covid-19 epidemic and ordered a complete lockdown in the entire country for an initial period of 21 (twenty) days which started from March 25, 2020. By virtue of various subsequent notifications, the Ministry of Home Affairs, GOI further extended the lockdown from time to time. Even before the country could recover from the Ist wave of Pandemic, the second wave of the same struck very badly in the March/April 2021 disrupting again all activities. Various state governments, including the Government of Haryana have also enforced several strict measures to prevent the spread of Covid-19 pandemic including imposing curfew, lockdown, stopping all commercial, construction activity. The pandemic created acute shortage of labour and material. The nation witnessed a massive and unprecedented exodus of migrant labourers from metropolis to their native village. Due to the said shortage the construction activity could not resume at full throttle even after lifting of restrictions on construction sites.

n) That every responsible person/institution in the country has responded appropriately to overcome the challenges thrown by COVID-19 pandemic and have Suo-Moto extended timelines for various compliances. The Hon'ble supreme court of India has extended all timelines of limitations for court proceedings with effect from 15.03.2020 till further order; the Hon'ble NCDRC had also extended the timelines on the similar lines; RERA authorities also had extended time periods given at the time of registration for completion of the project; even income tax department, banking and financial institutions have also extended timelines for various compliances.

7. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided

on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

8. The authority 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;*
> ***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.*

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 leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the objections raised by the respondent:

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

12. The respondent submitted that the complaint is neither maintainable nor tenable and is liable to be outrightly dismissed as the buyer's agreement was executed between the parties prior to the enactment of the Act and the provision of the said Act cannot be applied retrospectively.

13. The authority is of the view that the provisions of the Act are quasi retroactive to some extent in operation and 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. The Act nowhere provides, nor can be so construed, that all previous agreements would 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 would be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. The 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) decided on 06.12.2017*** 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."

14. 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 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. 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."

15. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the agreements have 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 Objections regarding force majeure.

16. The respondents-promoter has raised the contention that the construction of the tower in which the unit of the complainant is situated, has been delayed due to force majeure circumstances such as orders passed by

National Green Tribunal to stop construction, non-payment of instalment by allottees. The plea of the respondent regarding various orders of the NGT and other authorities advanced in this regard are devoid of merit. The orders passed by NGT banning construction in the NCR region was for a very short period of time and thus, cannot be said to impact the respondent-builder leading to such a delay in the completion. Also, there may be cases where allottees has not paid instalments regularly but all the allottees cannot be expected to suffer because of few allottees. Thus, the promoter respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

F.III Objection regarding delay in completion of construction of project due to outbreak of Covid-19.

17. The Hon'ble Delhi High Court in case titled as ***M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (1) (Comm.) no. 88/2020 and LAS 3696-3697/2020*** dated 29.05.2020 has observed as under:

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

18. In the present case also, the respondents were liable to complete the construction of the project and handover the possession of the said unit by 14.08.2015. It is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were

much before the outbreak itself and for the said reason, the said time period cannot be excluded while calculating the delay in handing over possession.

G. Findings regarding relief sought by the complainant.

19. That the complainant was allotted unit no. C-1106, tower C, in the respondent's project at basic sale price of Rs.30,51,230/-. A buyer's agreement was executed on 01.02.2012 between the original allottee, Mr. Ankur Aggarwal and Mr. Nikkhil Gupta and the respondent. Later, the said unit was endorsed in favour of the complainants on 06.08.2015. The possession of the unit was to be offered within 36 months from the date of commencement of construction and it is further provided in agreement that promoter shall be entitled to a grace period of six months. The date of construction commencement was initially to be commenced from 14.02.2012 as per the intimation/demand letter dated 14.02.2012 issued by the respondent. Therefore, the due date of possession comes out to be 14.08.2015 including grace period of six months being unqualified and unconditional. The respondent obtained the occupation certificate from the concerned authority on 02.02.2022 and thereafter, offered the possession of the unit to the complainants vide the offer of possession letter dated 20.04.2022.

G.I Direct the respondent to pay delay possession charges.
G.II Direct the respondent to pay for the loss from the date on which the breach took place.

20. The above-mentioned reliefs sought by the complainant are being taken together as the findings in one relief will definitely affect the result of the other relief and the same being interconnected.

21. In the present complaint, the complainant intend to continue with the project and are seeking delay possession charges as provided under the Proviso to Section 18(1) of the Act. Section 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."

22. Clause 14(a) of the apartment buyer's agreement provides the time period of handing over possession and the same is reproduced below:

> *"14.a* ***The construction of the flat is likely to be completed within a period of thirty six months of commencement of construction of the particular tower/ block in which the subject flat is located with a grace period of 6 months****, on receipt of sanction of the building plans/ revised plans and all other approvals subject to force majeure including any restrains/ restrictions from any authorities, non-availability of building materials or dispute with construction agency/ workforce and circumstances beyond the control of company and subject to timely payments by the buyer(s) in the said complex.*

23. **Due date of possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within 36 months from the date of commencement of construction and it is further provided in agreement that promoter shall be entitled to a grace period of six months. The date of construction commencement was initially to be commenced from 14.02.2012 as per the intimation/demand letter dated 14.02.2012 issued by the respondent. Therefore, the due date of possession comes out to be 14.08.2015 including grace period of six months being unqualified and unconditional.

24. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges. However, Proviso to Section 18 provides that where an allottee does not intend to withdraw from the project, they 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."

25. 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.

26. 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%.

27. 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;"

28. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10 % by the respondent/promoter

which is the same as is being granted to them in case of delayed possession charges.

29. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 14(a) of the buyer's agreement dated 01.02.2012, the possession of the said unit was to be delivered within a period 36 months from the date commencement of construction i.e. 14.02.2012 and it is further provided in agreement that promoter shall be entitled for a grace period of six months. As far as grace period is concerned, the same is allowed being unconditional and unqualified. Therefore, the due date of handing over of possession comes out to be 14.08.2015. In the present complaint the complainant was offered possession by the respondent on 20.04.2022 after obtaining occupation certificate dated 02.02.2022 from the competent authority. The authority is of view that there is a delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 01.02.2012.

30. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 02.02.2022. The respondent offered the possession of the unit in question to the complainant only on 20.04.2022, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. These 2 months' of reasonable time is being given to the complainants keeping in mind that even after intimation of possession practically they have to arrange a lot

of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession till the expiry of 2 months from the date of offer of possession (20.04.2022) which comes out to be 20.06.2022, or till the date of actual handing over of possession of the unit, whichever is earlier.

31. 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 are entitled to delay possession charges at prescribed rate of the interest @ 11.10 % p.a. w.e.f. 14.08.2015 till expiry of 2 months from the date of offer of possession (20.04.2022) i.e., up to 20.06.2022, as per the provisions of Section 18(1) of the Act read with Rule 15 of the Rules, ibid.

32. Further, the respondent is directed to handover physical possession of the subject unit within 30 days from the date of this order as occupation certificate of the project has already been obtained by it from the competent authority.

H. Directions of the Authority:

33. Hence, the authority hereby passes this order and issue the following directions under Section 37 of the Act to ensure compliance of obligations cast upon the promoters as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:

I. The respondent is directed to pay delayed possession charges at the prescribed rate of interest i.e., 11.10% p.a. for every month of delay on the amount paid by the complainant to the respondent from the due date of possession 14.08.2015 till the date of offer of possession (20.04.2022) plus two months i.e., 20.06.2022 or till the date of actual handover of possession, whichever is earlier, as per Section 18(1) of

the Act of 2016 read with Rule 15 of the Rules, ibid. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per Rule 16(2) of the Rules, ibid.

II. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% 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(za) of the Act.

III. The respondent is directed to issue a revised statement of account after adjustment of delayed possession charges, and other reliefs as per above within a period of 30 days from the date of this order. The complainant is directed to pay outstanding dues if any, after adjustment of delay possession charges within a period of next 30 days, thereafter.

IV. The respondent is directed to handover physical possession of the subject unit within 30 days from the date of this order as occupation certificate of the project has already been obtained by it from the competent authority.

V. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.

34. Complaint stands disposed of.

35. File be consigned to the registry.

Dated: 04.09.2024

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