

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

Complaint no. : 261 of 2024
Date of filing complaint : 01.02.2024
First date of hearing : 20.03.2024
Date of decision : 21.08.2024

1. Umesh Vashisht
2. Rachna Vashisht

Both Residents of: - House no. 403/1,
Sagavi C.GHS, Plot no. GH 85, Sector 55,
Gurugram

Complainants

Versus

M/s Shine Buildcon Private Limited
Registered office: H-334, Ground Floor,
New Rajinder Nagar, New Delhi
Corporate office: Plot No. 281, Udyog
Vihar, Phase-II, Gurugram

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Mr. Umesh Vashisht and Ms. Rachna Vashisht

Complainants

Mr. Manu Jain and Mr. Nishant Jain (Advocates)

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

provisions 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, the date of proposed handing over of the possession, and the delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	"70 Grandwalk", Sector 70, Gurugram
2.	Project area	2.893 acres
3.	Nature of the project	Commercial Complex
4.	DTCP license no. and validity status	34 of 2012 dated 15.04.2012 valid upto 14.04.2020
5.	Name of licensee	Shine Buildcon
6.	RERA Registered/ not registered	28 of 2017 dated 28.07.2017 valid upto 30.06.2022
7.	Unit no.	C-118, First Floor (Page no. 23 of complaint)
8.	Unit area admeasuring	509 Sq. Ft. (Super Area) (Page no. 28 of complaint)
9.	Date of execution of BBA	12.05.2015 (Page no. 24 of complaint)
10.	Possession clause	Clause 13. POSSESSION AND HOLDING CHARGES "(ii) subject to Force Majeure, as defined herein and further subject to the Allottee having complied with all its obligations under the terms and conditions of this Agreement and not having defaulted under any provision(s) of this Agreement including but not limited to the timely payment of all dues and charges including the total sale Consideration, registration charges, stamp duty and other charges and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the Company proposes to offer the possession of the said Shop to the Allottee within a period of 42 months from the date of signing of this agreement or

		<p>approval of the Building plans, whichever is later. The Allottee further agrees and understands that the Company shall additionally be entitled to a period of 6 (six month) ("Grace period"), after the expiry of the said Commitment Period to allow for unforeseen delays beyond the reasonable control of the Company."</p> <p>(Emphasis supplied)</p> <p>(As per BBA at page no. 80 of complaint)</p>
11.	Due date of possession	<p>12.05.2019</p> <p>(Calculated to be 42 months from the date of execution of BBA + Grace period of 6 months being unqualified and unconditional)</p>
12.	Basic Sale Price	<p>Rs. 45,43,334/-</p> <p>(As per BBA at page no. 35 of complaint)</p>
13.	Amount paid by the complainants	<p>Rs. 32,38,872/-</p> <p>(As per receipts annexed by complainant and agreed to by respondent at page 4 of reply)</p>
14.	Occupation certificate	<p>10.10.2023</p> <p>(Page no. 23 of reply)</p>
15.	Offer of possession	<p>15.10.2023</p> <p>(Page no. 26 of reply)</p>

B. Facts of the complaint:

3. That the complainant applied to the respondent vide application dated 15.09.2014 for allotment of unit no. C-118 on first floor, having super area of 509 sq. ft. in 70 Grandwalk, Gurugram.
4. That respondent allotted the said unit vide allotment letter no. AL/70GW-000025 dated 04.12.2014 at a consideration of Rs.51,09,597/- plus taxes in possession linked payment plan. Builder buyer agreement was signed on 12.05.2015 between the parties. The complainant paid Rs.34,38,872/- including taxes and laate payment interest @ 18% as per the payment plan.
5. That as per clause 13(ii) of the builder buyer agreement, the respondent proposed to provide possession within a period of 42 months from the date of the agreement, i.e., 12.11.2018 plus grace period of 6 months for

unforeseen delays beyond the reasonable control of the respondent. However, respondent failed to perform its obligations and offered possession on 15.10.2023 i.e., after a delay of 04 years 11 months and 3 days.

6. That in offer of possession, the respondent demanded for additional charges of Rs.60,062/- which was not part of the agreement. The complainant asked for details through emails and reminders but the respondent did not respond to any of the e-mail.

C. Relief sought by the complainants:

7. The complainants have sought the following relief(s):
- I. Direct the respondent to pay the delay payment charges on the amount already paid (Rs.34,38,872/-) from 12.11.2018 (promised possession date as per the builder buyer agreement to 15.10.2023 (offer of possession) @ SBI lending rate + 2%.
 - II. Direct the respondent not to ask for any money which was not part of builder buyer agreement i.e., additional charges for specifications upgradation.
 - III. Direct the respondent that the above charges need to be adjusted in the due payment.
8. 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 the respondent.

9. The respondent contested the complaint on the following grounds:
- a. That the present complaint is not maintainable as the complainants have booked the shop in question and buyer's agreement dated 12.05.2015 was executed between the parties before coming into force of the relevant provision of the Real Estate (Regulation & Development) Act, 2016 and the Haryana Real Estate (Regulation & Development) Rules, 2017. The legal provisions have been authoritatively held to be prospective in operation and these do not apply retrospectively before coming into force w.e.f. 01.05.2017. Hence, no interest can be imposed upon the respondent under the provisions of Sections 12, 18 or 19 of the Act as the parties are bound by the terms and

- conditions agreed and contained in the Buyer's Agreement dated 15.07.2015 which was executed prior to coming into force of Sections 3-19 of the RERA Act/Rules. Hence the Hon'ble Authority has no jurisdiction to modify the terms and conditions of Buyer's Agreement dated 15.07.2015. This Hon'ble Authority has no power to re-write the contract between the parties.
- b. That the complainants have no right to claim more than the amount for delayed possession as agreed between the parties as per Clause 13 (ii) of the buyer's agreement dated 12.05.2015.
 - c. That as per clause 13 (ii) of the buyer's agreement dated 12.05.2015, the complainants are entitled for compensation for delayed period, if any, @ Rs. 5 per sq. ft. of the super area for every month of delay until the actual date fixed by the company for handing over of possession of the shop to the complainants which was subject to force majeure.
 - d. The total cost of the unit including taxes is Rs.61,66,698.44/- out of which the complainants have only paid an amount of Rs.34,38,872/- and Rs.27,27,826.44/- is still outstanding against the complainants. The respondent has already offered possession to the complainants.
 - e. That as per Clause 13(iv) of buyer's agreement, the parties agreed that in case the completion of the said shop is delayed due to force majeure, then the commitment period, and/or grace period and/or extended delay period, as the case may be shall be extended automatically to the extent of the delay.
 - f. That the occupation certificate bearing memo no. ZP-819/JD(RA)/2023/33687 dated 10.10.2023 has been issued to the respondent by the competent authority. The complainants are under contractual obligation to clear their outstanding dues and take possession from the respondent.
 - g. That the complaint filed by the complainants is bundle of lies and hence liable to be dismissed as it is filed without any cause of action. That the

complainants had intentionally concealed the correct/complete facts from Authority. The complainants are raising false, frivolous, misleading and baseless allegations against the respondent with intent to make unlawful gains.

- h. That the respondent company launched a commercial project "70 GRANDWALK" situated Sector-70, Gurugram. The respondent owned the project land and had even obtained the license for the project under own name in due compliance in order and at par.
- i. That the respondent company with a good repute had complied with all the statutory requirements and holds no litigations. The keeping in view the interest of the allottee(s) at large the respondent had adopted customer centric policy and bears the cost escalations without sharing/passing the burden upon the allottees and had also refrained from making any such demands with respect to the cost escalations.
- j. That after being fully satisfied with specification and veracity of the project, the complainants applied for booking of commercial unit.
- k. That the respondent vide allotment letter dated 04.12.2014 was allotted a unit bearing no. C-118, first floor admeasuring super area of 509 sq. ft. (47.29 sq. mtr.) approximately.
- l. That as the development of the project was affected due to the Covid-19, and accordingly the respondent is entitled for a further extension of 6 months in due date of possession. The date of offering possession was to be calculated from the date of signing of the buyer's agreement and the respondent herein was entitled for extension for such period of delay caused due to force majeure being purely beyond the control of the respondent.
- m. That the respondent was committed to complete the construction of the project within the proposed timeline and till date had invested an amount approx. Rs.1,20,00,00,000/- towards completion of the project including

both the land cost and construction related costs/expenditures. The respondent under bonafide had already paid EDC/IDC charges in full to the concerned department and on the contrary, the collection from the allottees of the project was only approximate Rs.45,00,00,000/-. The respondent has already spent more amount than collected from the allottees in completion of the project and even obtained occupation certificate from the concerned department which apparently proves that there was never any mala fide on the part of the respondent and there is no intentional delay in completion of the project. The respondent is not liable to pay any delayed charges to the complainants.

- n. That in accordance with the provisions of the real estate the respondent had even applied for registration of the said project with the Ld. Authority vide application dated 20.07.2017 and upon receiving the said application the Ld. Authority had granted registration to the respondent for the project in question vide registration no.28 of 2017 dated 28.07.2017 which was duly intimated to the complainant vide email dated 05.08.2017.
- o. That the respondent was committed to complete the development of the project and handover the possession within the proposed timelines. The developmental work of the said project was slightly decelerated due to the reasons beyond the control of the respondent company due to the impact of Good and Services Act, 2017 which came into force after the effect of demonetisation in last quarter of 2016 which stretches its adverse effect in various industrial, construction, business area even in 2019. The respondent had to undergo huge obstacle due to effect of demonetization and implementation of the GST.
- p. That the development of project of the respondent was also adversely affected due to various orders of Hon'ble Supreme Court, National Green Tribunal, directions of Haryana State Pollution Control Board, Orders passed

by Municipal Commissioner of Gurgaon, Environment Pollution (Prevention & Control) Authority for National Capital Region for varying period during the year 2017, 2018, 2019 and 2020. The various dates which affected the constructions of the project have been detailed as under:

- (i) The National Green Tribunal vide order dated 09.11.2017 completely prohibited the carrying on of construction by any person, any private or government authority in the entire NCR till the next date of hearing 17.11.2017 when the prohibition was lifted.
 - (ii) Haryana State Pollution Control Board, Panchkula had passed order dated 29.10.2018 in furtherance of directions of Environment Pollution (Prevention and Control) Authority dated 27.10.2018 whereby directing all construction activities involving excavation, civil construction (excluding internal finishing/work where no construction material was used) to remain closed in Delhi and other NCR Districts from 1st to 10th November 2018.
 - (iii) Commissioner, Municipal Corporation, Gurugram vide order dated 11.10.2019 prohibited construction activity from 11.10.2019 to 31.12.2019. On account of passing of the aforesaid order, no construction activity could have been legally carried out by the respondent and accordingly, construction activity had been completely stopped during this period.
 - (iv) Again Environment Pollution (Prevention & Control) Authority, for the National Capital Region vide its direction dated 01.11.2019 imposed complete ban on the construction activities in Delhi, Faridabad, Gurugram, Ghaziabad, Noida and Greater Noida until morning of 05.11.2019.
 - (v) Hon'ble Supreme Court vide order dated 04.11.2019 in the W.P. (Civil) No. 13029/1985 M.C.Mehta vs Union of India & ors; directed for stoppage of all the constructions work till further order. The Hon'ble Supreme Court recalled the ban on construction work only vide order dated 14.02.2020.
 - (vi) Ministry of Housing and Urban Affairs imposed Covid-19 Lockdown vide notification dated 28.05.2020 and complete 9 months extension had been granted.
- q. As per the calculations, the date to offer possession has to be extended by approximately 1.4 years. Subsequently in June, 2021, removal of the Covid-19 restrictions it took time for the workforce to commute back from their villages, which led to slow progress of the completion of project. Despite,

- facing shortage in workforce, materials and transportation, the respondent managed to continue with the construction work. The respondent also had to carry out the work of repair in the already constructed building and fixtures as the construction was left abandoned for more than 1 year due to Covid-19 lockdown. This led to further extension of the time period in construction of the Project.
- r. That while computing the date to offer possession, the grace period as agreed by the complainants under clause 13 shall also be considered. As the Hon'ble Supreme Court in 'M/S Supertech Ltd. vs. Rajni Goyal, Civil Appeal No. 6649-50 of 2018', had rightly upheld that the grace period stated in the agreement shall also be considered.
- s. Thus, as per the agreement excluding the force majeure situations, the date to offer possession shall be 15.07.2019, after addition of the grace period as agreed by the complainants under Clause 13 (ii) of the agreement.
- t. That on 08.08.2022, after continuous efforts of respondent towards the completion of the project, the respondent informed the complainants that the mechanical, electrical, plumbing and other related services along with finishing work, tremix work and surface preparation in retail shops will be completed within 2-3 months. The respondent also stated that offer of possession will be provided within next 3-4 months and soon the complainants will be receiving the call letter for remittance of payment for the last instalment. The respondent also attached photographs showing the progress in the construction of the project.
- u. That the complainants herein, have suppressed the above stated facts and have raised this complaint under reply upon baseless, vague, wrong grounds and have mislead this Hon'ble Authority, for the reasons stated above. It is further submitted that none of the reliefs as prayed for by the complainants are sustainable before this Hon'ble Authority and in the interest of justice.

10. 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 based on these undisputed documents and submission made by the complainant.

E. Jurisdiction of the authority:

11. 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

12. 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 the entire Gurugram District for all purposes 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

13. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per the 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.

14. So, in view of the provisions of the Act quoted above, the Authority has complete jurisdiction to decide the complaint regarding non-compliance of

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

F. Findings on the objections raised by the respondent:

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

15. The respondent has contended that the authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the buyer's agreement executed between the parties prior to the enactment of the Act and the provision of the said Act cannot be applied retrospectively. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)** 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."

16. 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."

17. 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 allottees 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. Hence, in the light of above-mentioned reasons, the contention of the respondent w.r.t. jurisdiction stands rejected.

F.II Objections regarding force Majeure.

18. The respondent-promoter has raised the contention that the construction of the unit of the complainants has been delayed due to force majeure circumstances such as orders passed by the Hon'ble NGT, Environment Protection Control Authority, and Hon'ble Supreme Court. The pleas of the respondent advanced in this regard are devoid of merit. The orders passed were 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. Furthermore, the respondent should have foreseen such situations. Thus, the promoter respondent cannot be given any leniency on the basis of aforesaid reasons.
19. The respondent-promoter also raised the contention that, the Hon'ble Supreme Court vide order dated 04.11.2019, imposed a blanket stay on all construction activity in the Delhi- NCR region and the respondent was under the ambit of the stay order, and accordingly, there was next to no construction activity for a considerable period and other similar orders during the winter period 2017-2019. A complete ban on construction activity at site invariably results in a long-term halt in construction activities. As with a complete ban the concerned labours left the site and they went to their native villages and look out for work in other states, the resumption of work at site becomes a slow process and a steady pace of construction realized after long period of it. It is pertinent to mention here that flat buyer's agreement was executed between the parties on 12.05.2015 and as per the terms and conditions of the said agreement the due date of handing over of possession comes 12.05.2019 which is way before the abovementioned orders. 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.

20. Further, the respondent-promoter has raised the contention that the construction of the project was delayed due to reasons beyond the control of the respondent such as COVID-19 outbreak, lockdown due to outbreak of such pandemic and shortage of labour on this account. The authority put reliance judgment of Hon'ble Delhi High Court in case titled as **M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020** dated 29.05.2020 which has observed that-

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

21. In the present complaint also, the respondent was liable to complete the construction of the project in question and handover the possession of the said unit by 12.05.2019. The respondent 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

G. Findings on relief sought by the complainants.

G.I Direct the respondent to pay the delay payment charges on the amount already paid (Rs.34,38,872/-) from 12.11.2018 (promised possession date as per the builder buyer agreement to 15.10.2023 (offer of possession) @ SBI lending rate + 2%.

G.II Direct the respondent not to ask for any money which was not part of builder buyer agreement i.e., additional charges for specifications upgradation.

G.III Direct the respondent that the above charges need to be adjusted in the due payment.

22. All the above-mentioned reliefs sought by the complainants are being taken together as the findings in one relief will definitely affect the result of other relief and the same being interconnected.
23. In the present complaint, the complainants intend to continue with the project and are seeking possession of the subject unit and delay possession charges as provided under the provisions of Section 18(1) of the Act which 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."

24. Clause 13 of the apartment buyer agreement provides handing over of possession and is reproduced below:

"(ii) subject to Force Majeure, as defined herein and further subject to the Allottee having complied with all its obligations under the terms and conditions of this Agreement and not having defaulted under any provision(s) of this Agreement including but not limited to the timely payment of all dues and charges including the total sale Consideration, registration charges, stamp duty and other charges and also subject to the Allottee having complied with all formalities or documentation as prescribed by the Company, the Company proposes to offer the possession of the said Shop to the Allottee within a period of 42 months from the date of signing of this agreement or approval of the Building plans, whichever is later. The Allottee further agrees and understands that the Company shall additionally be entitled to a period of 6 (six month) ("Grace period"), after the expiry of the said Commitment Period to allow for unforeseen delays beyond the reasonable control of the Company."

25. **Due date of possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within 42 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. Therefore, the due date of possession comes out to be 12.05.2019 including grace period of six months being unqualified and unconditional.

26. Admissibility of delay possession charges at prescribed rate of interest:

The complainants are seeking delay possession charges. 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, *ibid*. 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]

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."

27. The legislature in its wisdom in the subordinate legislation under the Rule 15 of the Rules, *ibid* 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.
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., 21.08.2024 is 9.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.
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 —*

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 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 complainants 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.
31. 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 buyer's agreement executed between the parties, the possession of the booked unit was to be delivered within 42 months with an additional grace period of 6 months from the date of execution of the agreement (12.05.2015) or date of approvals of building plans, whichever is later. Therefore, the date of execution of agreement being later, the due date of possession was calculated from the date of execution of agreement between the parties. Accordingly, the due date of possession comes out to be 12.05.2019. Occupation certificate was granted by the concerned authority on 10.10.2023 and thereafter, the possession of the subject flat was offered to the complainants on 15.10.2023. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject unit and there is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 12.05.2015 to hand over the possession within the stipulated period.

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32. Section 19(10) of the Act obligates the allottees 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 10.10.2023. The respondent offered the possession of the unit in question to the complainants only on 15.10.2023, so it can be said that the complainants came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainants should be given 2 months' time from the date of offer of possession. These 2 month 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, i.e., 12.05.2019 till the expiry of 2 months from the date of offer of possession (15.10.2023) which comes out to be 15.12.2023.
33. The respondent is further directed that it shall not charge anything from the complainants which is not the part of the buyer's agreement.

H. Directions issued by the Authority:

34. Hence, the Authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance with obligations cast upon the promoter as per the functions entrusted to the Authority under Section 34(f) of the Act of 2016:
- I. The respondent is directed to pay interest to the complainants against the paid-up amount at the prescribed rate of 11.10% p.a. for every month of a delay from the due date of possession, i.e., 12.05.2019 till the date of offer of possession (15.10.2023) plus two months i.e.,

15.12.2023, 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 allottee, 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 complainants are directed to pay outstanding dues if any remains, after adjustment of delay possession charges within a period of next 30 days.

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

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