

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

Complaint no.: 5146 of 2023
Date of decision:- 24.07.2024

1. Mr. Mukesh Kumar
2. Mrs. Harjeet
Both R/o:- H.no-2/49A, Shivaji nagar,
Ward-17, Gurugram-122001.

Complainants

Versus

M/s. Apex Buildwell Pvt. Ltd.
Regd. office: 14A/36, Wea Karol Bagh,
New Delhi-110053.

Respondent

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Sh. Garurav Rawat

Complainants

Sh. Harshit Batra

Respondent

ORDER

1. The present complaint dated 07.11.2023 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 as provided under the provision of the Act or the Rules and regulations made there under or to the allottees as per the agreement for sale executed *inter se*.

A. Unit and project related details

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, date of proposed handing over the possession and delay period, if any, have been detailed in the following tabular form:

Sr. No.	Particulars	Details
1.	Name of the project	"Our Homes", Sector-37-C, Gurugram, Haryana.
2.	Nature of the project	Affordable housing
3.	HRERA registered	Registered vide 346/78/2019/40 Dated - 08.07.2019
4.	DTCP licence	License no. 13 of 2012 Dated 22.02.2012
4.	Unit no.	498, 4 th floor, Tower-Iris (As on page no. 61 of complaint)
5.	Unit area	48 sq.mtrs (As on page no. 61 of complaint)
6.	Provisional allotment letter	23.10.2012

		(As on page no. 28 of complaint)
7.	Buyer's Agreement executed	16.02.2013 (As on page no. 59 of complaint)
8.	Possession clause	4 years from the date of environmental clearance or sanction of building plans, whichever is later.
9.	Due date of possession	26.06.2017 [Calculated 4 years from date of environmental clearance = 26.06.2013.]
10.	Basic sale consideration	Rs.16,00,000/- (As on page no. 61 of complaint))
11.	Total amount paid by the complainant	Rs.16,36,391/- (As per receipts attached with the complaint)
12.	Occupation certificate	29.11.2019 (As on page no. 34-38 of reply)
13.	Unit handover letter	07.04.2021 (As on page no. 75 of complaint)
14.	Conveyance deed btw complainants and respondent	07.06.2021 (As on page no. 76 of complaint))

B. Facts of the complaint:

1. The complainants have made the following submissions in the complaint:

- I. That in 2012, the respondent issued an advertisement in respect of its affordable group housing project called "Our Homes" situated at Sector - 37C, Gurugram. Relying on the representations and assurances of the respondent and on belief of such assurances, the complainants booked a unit on 26.09.2012 bearing no. 498 on 4th floor in tower-Iris, in Sector 37C, having super area admeasuring 516.67 sq. ft. by paying an amount of Rs.1,64,944/-. That the unit was allotted to the complainants for a total sale consideration of Rs.16,00,000/- along with a car parking.
- II. That an Apartment Buyer's Agreement was executed between the allottee and respondent on 16.02.2013. The complainants were also handed over one detailed payment plan which was construction linked plan. As per Clause 3(a) of the Apartment Buyer's Agreement, the respondent had to deliver the possession of the flat within period 36 months from the commencement of the construction plus 6 months. Thus, the due date of possession is calculated 36 months from the date of agreement i.e. 16.02.2013 which comes out to be 16.02.2016.
- III. As per the demands raised by the respondent, the complainants have already paid a sum of Rs.16,36,391/- against the total sale consideration of Rs.16,00,000/-. The complainants approached the respondent enquiring about the status of construction and also raised objections towards non-completion of the project.
- IV. The complainants received the offer of possession on 12.01.2021. It is pertinent to note here that along with the letter of offer of possession, the respondent raised several illegal demands. That offering possession on payment of illegal charges which the complainants

- were not contractually bound to pay, cannot be considered to be a valid offer of possession.
- V. That the respondent asking for electric meter charges of and electrification charges from the complainants is absolutely illegal as the cost of the electric meter in the market is not more than Rs.2,500/- hence asking for such a huge amount when the same is not a part of the Builder Buyer Agreement is unjustified and illegal and therefore needs to be withdrawn immediately. That the complainants requested the respondent that they will not make further payments in respect of the unit unless the respondent let them inspect the unit but the respondent chose not to reply.
- VI. That the respondent asked the complainants to sign the indemnity bond as perquisite condition for handing over of the possession. The complainants raised objection to the said pre-requisite condition as no delay possession charges was paid to the complainants. Instead of paying the delay possession charges, the respondent clearly refused to handover possession if the complainants do not sign the indemnity bond. Further, the complainants were left with no other option instead of signing the same.
- VII. That after many follow ups , reminders, clearing all the dues, fulfilling all one-sided demands and formalities as and when demanded by the respondent, the complainants issued a physical handover advice letter dated 07.04.2021 on account of handing over possession of the unit.
- VIII. That the conveyance deed was executed on 07.062021. While this sale deed acknowledges that the complainants have paid the total consideration of Rs.16,36,391/-, towards full and final consideration of the said apartment and applicable taxes etc, it makes no provision

for compensating the complainants for the huge delay in handing over the flat and project.

- IX. It is pertinent to mention that the respondent has arbitrarily demanded for payment of interest on account of delayed payment at the rate of 15%-24% whereas the compensation for delay stipulated for the buyers is merely Rs.5/- per sq. ft. It is also important to note that the mere execution of the sale deed will not deprive the complainants of their rights to seek compensation.

C. Relief sought by the complainant:

4. The complainants have sought following relief(s):
- Direct the respondent to pay interest on the total amount paid by the complainant at the prescribed rate of interest.
 - Direct the respondent to set aside the one sided indemnity bond.

D. Reply by respondent:

5. The respondent has made following submissions by way of reply:
- That the complainants approached the respondent expressing their interest in the Low Cost/Affordable Group Housing project developed by the respondent known as "Our Homes" situated in Sector 37C, Gurgaon, Haryana.
 - That the complainants, vide an application form dated 22.09.2012 applied for provisional allotment of the unit. Pursuant thereto, unit bearing no. 498, located on the 4th Floor, Tower- Iris admeasuring 516.67 sq. ft. (tentative area) was allotted on 23.10.2012. Thereafter, a Buyer's Agreement dated 16.02.2013 was executed between the complainants and the respondent.



- III. That being a low cost/Affordable Housing Policy project, the rights and obligations of complainants as well as the respondent are completely and entirely determined by the covenants incorporated in the Affordable Housing Scheme, 2013 and the Buyer's Agreement continues to be binding upon the parties thereto with full force and effect.
- IV. That as per Clause 5(iii)(b) of the Affordable Housing Policy, 2013, the due date of possession of the unit in question is 4 years from the date of sanction of building plans or receipt of environmental clearance, whichever is later. The relevant para is reiterated hereunder:

" All flats in a specific project shall be allotted in one go within four months of sanction of building plans or receipt of environmental clearance whichever is later and possession of flats shall be offered within the validity period of 4 years of such sanction/ clearance."

- V. That the benefit of grace period has to be given to the respondent as per the terms and conditions of the Agreement dated 01.02.2013. The same has also been considered by the Hon'ble Appellate Tribunal, Chandigarh in the case titled as **Emaar MGF Land Ltd. vs Laddi Praramjit Singh Appeal no. 122 of 2022** that if the grace period is mentioned in the clause, the benefit of the same is allowed. Para 30 of the order in said appeal is reiterated as under:

"Para 30: As per the aforesaid clause of the Agreement, the possession of the unit was to be delivered within 33 months from the date of start of construction and there is a provision of a grace period of three months for obtaining the completion/occupation certificate etc. There is no dispute construction which reckoned from 25.02.2011. It is well known that it takes time to obtain Occupation Certificate from the concerned authorities after



applying the Occupation Certificate. So, the appellant/promoter is entitled to avail grace period so provided as per the provision in the said clause 11(a) of the Agreement for obtaining the Occupation Certificate. Thus, with inclusion of the grace period of three months as per provision in Clause 11(a) of the Agreement, the total completion period has become 36 months and therefore schedule date of completion comes out to be as 24.02.2014"

- VI. However, it is pertinent to mention here that the due date is subjective in nature and depend on the allottee/complainants complying all the terms and conditions of the Agreement. The relevant para is reiterated hereunder:

"That subject to terms of this clause 3, and subject to the Apartment Allottee having complied with all the terms and conditions of this Agreement and not being in default under any provision of this Agreement and further subject to compliance with all the provisions, formalities, registration of sale deed, documentation, payment of all amount due and payable to the Developer by the Apartment Allottee under this Agreement....."

- VII. That the development and implementation of the project has been hindered on account of several orders/directions passed by various authorities/forums/courts. That a period of 377 days was consumed on account of circumstances beyond the power and control of the respondent, owing to the passing of orders of various statutory authorities and the Covid-19 pandemic.
- VIII. That remittance of timely payments by the complainants was of essence and it was an obligation of the complainants to remit all the outstanding dues as per the terms and conditions of the Affordable Housing Policy, 2013 and the agreement executed between the parties. However, the complainants delayed in remitting the same resulting in hampering of the construction of the project.



- IX. That the respondent completed the construction of the project and applied for the Occupation certificate before the concerned authority and successfully attained the Occupation Certificate dated 29.11.2019 and 24.02.2020. That the time period taken by the concerned statutory authority for granting the occupation certificate is liable to be excluded from the time period utilised for the implementation of the project. That it is pertinent to mention here that after receiving of the Occupation Certificate, the possession of the said unit was lawfully offered to the complainants.
- X. That thereafter the physical possession was taken by the complainants without any demur and hence a possession certificate dated 07.04.2021 was issued in favour of the complainants by the respondent. It is now, after over 3 years of the offer of possession that the complainants have approached the Authority as an afterthought seeking delay possession charges with the sole intent of getting wrongful gains and causing wrongful loss to the respondent. That the present complaint is barred by limitation as the cause of action if any, only arose till the receipt of occupancy certificate and not thereafter.
- XI. That there is a delay of 3 years 11 months and 2 days in filing of the present complaint and hence the same is liable to be dismissed. Without prejudice to the rights and the contentions of the respondent, it is submitted that the order passed by the Apex court in suo moto no. 3 of 2020 has no applicability in the present case.
- XII. That after giving lawful possession of the unit to the complainants, the conveyance deed dated 07.06.2021 was also executed. It is



submitted that after execution of the Conveyance Deed, the contractual relationship between the parties stands fully satisfied and comes to an end. That there remains no claim/ grievance of the complainants with respect to the Agreement or any obligation of the parties.

XIII. That the peaceful possession having been taken by the complainants, non-existence of cause of action and the frivolous complaint filed by the complainants, this complaint is bound be dismissed with costs in favour of the respondent.

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

E. Jurisdiction of the authority:

7. 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

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



E. II Subject matter jurisdiction

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

Section 11(4)(a)

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

10. So, in view of the provisions of the Act quoted above, the Authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on objections raised by the respondent

F.I Objection regarding delay due to force majeure circumstances

11. The respondent-promoter has raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the National Green Tribunal, Environment Pollution (Prevention & Control) Authority, shortage of labour and stoppage of work due to lock down due to outbreak of Covid-19 pandemic. Since there were circumstances beyond the control of respondent, so taking into consideration the above-mentioned facts, the respondent be allowed the period during



which his construction activities came to stand still, and the said period be excluded while calculating the due date. The plea of the respondent regarding various orders of the authorities, all the pleas advanced in this regard are devoid of merit. The orders passed by authorities 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. In the present case, according to Clause 5(iii)(b) of the Affordable Housing Policy, 2013, the stipulated timeline for handing over possession of the unit in question is four years from either the date of sanction of building plans or the receipt of environmental clearance, whichever occurs later. In this instance, the environmental clearance was granted on 26.06.2013. Calculating four years from this date results in 26.06.2017. The argument related to Covid-19 lacks merit since the pandemic began in March 2020, which is well after the due possession date. Therefore, leniency cannot be extended to the promoter/respondent based on these grounds. It is a fundamental principle that one cannot benefit from their own wrongdoing. Consequently, the Authority concludes that no relief can be granted to the respondent in this regard.

F.II. Objection regarding the complainant cannot claim delay possession charges after execution of the conveyance deed.

12. It had been contended by the respondent that on execution of the conveyance deed, the relationship between both the parties stands



concluded and no right or liabilities can be asserted by the respondent or the complainant against the other. Therefore, the complainants are stopped from claiming any interest in the facts and circumstances of the case.

14. It is important to look at the definition of the term “deed” itself in order to understand the extent of the relationship between the allottee and the promoter. A deed is a written document or an instrument that is sealed, signed, delivered by all the parties to the contract i.e., buyer and seller. It is a contractual document that includes legally valid terms and is enforceable in a court of law. It is mandatory that a sale deed should be in writing and both the parties involved must sign the document. Thus, a conveyance deed is essentially one wherein the seller transfers all rights to legally own, keep and enjoy a particular asset, immovable or movable. In this case, the assets under consideration are immovable property. On signing a conveyance deed, the original owner transfers all legal rights over the property in question to the buyer, against a valid consideration usually monetary. Therefore, a “conveyance deed” or “sale deed” implies that the seller signs a document stating that all authority and ownership of the property in question has been transferred to the buyer.
15. From the above it is clear that on execution of a sale/conveyance deed, only the title and interest in the said immovable property (herein the allotted unit) is transferred. However, the conveyance deed does not conclude the relationship or marks an end to the liabilities and obligations of the promoter towards the said unit



whereby the right, title and interest has been transferred in the name of the allottees on 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 their 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 pf 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. After consideration of all the facts and circumstances, the Authority holds that even after execution of the conveyance deed, the complainants/allottees cannot be precluded from their right to seek delay possession charges from the respondent-promoter.

F.III. Objection regarding complaint being barred by limitation

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 07.04.2021 when the possession was handed over to the complainants by the respondent. The complainant has filed the present complaint on 07.11.2023 which is 2 years 7months 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 on the relief sought by the complainant:

G.I Direct the respondent to pay delayed possession charges on the total amount paid from the due date of possession till the actual handover of possession.

22. The complainants booked a unit in the project "Our Home" located in Sector-37C, Gurugram, being developed by the respondent. They were allotted unit number 498 on the 4th floor of tower-Iris, with a super area of 516.67 sq.ft, as per the provisional allotment letter dated 23.10.2012. Subsequently, the Buyer's Agreement was executed between the parties on 16.02.2013. According to Clause 5(iii)(b) of the Affordable Housing Policy 2013, possession of the



unit was to be provided to the complainants within four years from either the date of obtaining building plan approvals or the grant of environmental clearance from the concerned authorities, whichever was later. The respondent obtained the environmental clearance on 26.06.2013. Calculating four years from this date, the due date for possession comes out to be 26.06.2017. The respondent obtained the occupation certificate on 29.11.2019, and the unit was handed over to the complainants on 07.04.2021. However, neither party has provided any documentation regarding the offer of possession. The conveyance deed was executed on 07.06.2021.

23. During the proceedings dated 08.05.2024, the respondent's counsel sought to introduce on record an M.O.U dated 12.02.2021, executed prior to the conveyance deed. According to the M.O.U, the parties have resolved their financial obligations towards each other and agreed that no further claims shall arise between them. The complainants' counsel did not contest the existence of the M.O.U but strongly objected, asserting that it was not duly executed by both complainants.
24. In the present complaint, the complainants intends to continue with the project and are seeking delay possession charges along with interest on the amount paid. 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.

"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.

25. **Admissibility of delay possession charges at prescribed rate of interest:** Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may 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., 24.07.2024 is 9 %. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11%.



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

30. On consideration of the documents available on record and submissions made 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. As per Clause 5 (iii)(b) of the Affordable Housing Policy 2013, the due date of possession of the unit in question is 4 years from the date of sanction of building plans or receipt of environmental clearance, whichever is later. The environmental clearance of the project was obtained by the respondent on 26.06.2013. Therefore, the due date of handing over possession is 26.06.2017.



31. The competent authorities granted the occupation certificate to the respondent on 29.11.2019, and the unit was subsequently handed over to the complainants on 07.04.2021. There is no documentary evidence on record indicating when possession of the unit was offered to the complainants. The deadline for handing over possession of the unit was 26.06.2017, and the delay on the part of the respondent is evident.
32. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such the allottees, shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 26.06.2017 till offer of possession plus two months after obtaining occupation certificate from the competent authority or actual handing over of possession whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

G.II. Direct the respondent to set aside the indemnity bond.

33. It is noteworthy that section 18 of the Act stipulates for the statutory right of the allottee against the obligation of the promoter to deliver the possession within stipulated timeframe. Therefore, the liability of the promoter continues even after the execution of indemnity-cum-undertaking at the time of possession, in the present case, the M.O.U dated 12.02.2021. The Authority is of the view that the aforesaid memorandum of undertaking or indemnity-cum-undertaking does not preclude the complainant-allottee from exercising his right to claim delay possession charges as per the provisions of the Act. Thus, the said Memorandum of Understanding dated 12.02.2021 is hereby set-aside.

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 casted upon the promoters as per the functions entrusted to the authority under section 34(f):

- i. The Memorandum of Understanding dated 12.02.2021 is set-aside and the respondent is directed to pay the interest at the prescribed rate i.e., 11% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e., 26.06.2017 till offer of possession plus two months after obtaining occupation certificate from the competent authority or actual handover, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

35. Complaint stands disposed of.

36. File be consigned to registry.

Ashok Sangwan
(Member)
Haryana Real Estate Regulatory Authority, Gurugram
Dated: 24.07.2024