

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

Complaint no. : 7930 of 2022
Date of order : 09.10.2024

1. Vishva Deep Sharma
2. Archana Vishwadeep

Both R/o: Premier Terraces at Palm Drive,
Unit no. PTT-08-0102, Floor-1st, Block-8,
Sector-66, Gurugram. .

Complainants

Versus

M/s Emaar MGF Land Ltd.

Office at: - House 28, Kasturba Gandhi Marg,
New-Delhi-110001.

Respondent

CORAM:

Shri. Ashok Sangwan

Member

APPEARANCE:

Gaurav Rawat (Advocate)
Dhruv Rohtagi (Advocate)

Complainants
Respondent

HARERA
GURUGRAM
ORDER

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

the provision of the Act or the rules and regulations made thereunder or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

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

Sr. No.	Particulars	Details
1.	Name of the project	"Premier Terraces at the Palm Drive", Sector-66, Gurugram, Haryana
2.	Nature of project	Group housing colony
3.	DTCP licence	DS-2007/24799 of 2007 Dated- 27.09.2007
4.	Unit no.	PTT-08-0102, 1 st floor, Tower-08 (As on page 55 of complaint)
5.	Unit area	2100 sq.ft. (As on page 56 of complaint)
6.	Provisional allotment letter in favor of original allottee(s)	25.05.2010 (As on page 44 of reply)
7.	Buyer's Agreement between original allottee(s) and respondent	29.06.2010 (As on page 55 of complaint)
8.	Possession clause	<p>14. POSSESSION</p> <p>(a) Time of handing over the Possession</p> <p><i>Subject to terms of this clause and the Allottee(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and upon complying with all provisions, formalities, documentation etc., as prescribed by the Developer, the Developer shall make all</i></p>

		<p>efforts to handover possession of the Unit (which falls within ground plus four floors tower/building) within a period of thirty(30) months from the date of commencement of construction, and for the Unit (which falls within ground plus thirteen floors tower/building) within a period of thirty six(36) months from the date of commencement of construction, subject to certain limitations as may be provided in this Agreement and timely compliance of the provisions of this Agreement by the Allottee(s). the Allottee(s) agrees and understands that the Developer shall be entitled to a grace period of three(3) months, for applying and obtaining the occupation certificate in respect of the Unit and/or the Project.</p> <p>(Emphasis supplied)</p> <p>(As on page 48 of complaint)</p>
9.	Due date of possession	24.03.2014 (calculated 30 months from date of start of construction i.e., 24.06.2011 plus 3 months)
10.	Agreement to Sell between original allottees and complainants	03.07.2014 (As on page no. 35 of complaint)
11.	Nomination letter in favour of complainants	21.07.2014 (As on page no. 42 of complaint)
12.	Total sales consideration	Rs.1,22,86,464/- (As per S.O.A dated 29.05.2023 on page no. 164 of reply)
13.	Total amount paid by the complainant	Rs.1,23,06,533/- (As per S.O.A dated 29.05.2023 on page no. 164 of reply)
14.	Occupation certificate	08.03.2019 (As on page no. 119 of reply)
15.	Offer of possession	14.03.2019

		(As on page 81 of complaint)
16.	Unit handover letter	07.05.2019 (As on page 87 of complaint)
17.	Conveyance deed btw complainants and respondent	10.10.2019 (As on page 100 of complaint)
18.	Indemnity cum undertaking	12.04.2019 (As on page 89 of complaint)

B. Facts of the complaint

3. The complainants have made the following submission: -

- I. That the respondent, M/s **Emaar MGF Land Ltd.** advertised about its project namely "Palm Terraces At Palm Drive" on the 45.48 acres of land, in Sector 66, Gurugram. The respondent painted a rosy picture of the project in its advertisements making tall claims.
- II. In 2007, the respondent issued an advertisement announcing a Group Housing colony under the license no. DS-2007/24799 of 2007 dated 27.09.2007 and thereby invited applications from prospective buyers for the purchase of unit in the project.
- III. That the complainants while searching for a flat/accommodation were lured by such advertisements and calls from the brokers of the respondent. Relying on various representations and assurances given by the respondent and on belief of such assurances, the original allottees' namely Rhit Dewan and Neerja Bansal, booked a unit in the project
- IV. That the respondent confirmed the booking of the unit to the original allottees' allotting a unit no. PTT-08-0102 on the 1st Floor in Tower/Block-8 admeasuring 2100 sq. ft (super built up area) for the total sale consideration of Rs.1,18,09,800/-.
- V. That the Buyer's Agreement was executed between the original allottees and the respondent on 29.06.2010. The complainants were also handed over one detailed payment plan which was construction linked plan. As per clause 14(a) of the buyer's agreement, the respondent had to deliver the possession of the unit by 24.06.2014 (i.e., 36 months from the

- commencement of construction dated 24.06.2011) with a grace period of 90 days for applying and obtaining the Occupation Certificate.
- VI. The original allottees subsequently transferred the property in favour of the complainants vide Agreement to Sell dated 03.07.2014 for an appropriate consideration. That the agreement to sell is executed between the original allottees and the complainants on 03.07.2014.
- VII. As per the demands raised by the respondent, based on the payment plan, the complainants paid a total sum of Rs.1,21,13,82/- towards the said unit against total sale consideration of Rs.1,18,09,800/-. That a nomination confirmation of the unit is executed on 21.07.2014 in favour of complainants.
- VIII. That the complainants approached the respondent and asked about the status of construction and raised objections towards non-completion of the project. That in terms of clause 14(a) of the said buyer's agreement, respondent was under dutiful obligation to complete the construction and to offer the possession on or before 24.06.2014 with a grace of 90 days. That the complainants approached in person to know the fate of the construction and offer of possession in terms of the said Buyer's Agreement, respondent misrepresented to the complainants that the construction will be completed soon.
- IX. That the respondents have played a fraud upon the complainants and have cheated them fraudulently and dishonestly with a false promise to complete the construction over the project site within stipulated period. The respondent had further malafidely failed to implement the buyer's agreement executed with the complainants.
- X. That the complainants have suffered a loss and damage in as much as they had deposited the money in the hope of getting the unit for residential purposes. They have not only been deprived of the timely possession of the unit but the prospective return they could have got if they had invested in fixed deposit in bank. Therefore, the compensation in such cases would necessarily have to be higher than what is agreed in the agreement.
- XI. That the complainants after many requests and emails, received the offer of possession on 14.03.2019. It is pertinent to note here that along with the letter of offer of possession, the respondent raised several illegal

- demands which are actually not payable as per the Builder Buyer Agreement.
- XII. That the respondent is demanding 12 months of advance maintenance charges from the complainants which is absolutely illegal and against the laws of the land. The respondent demanded electric meter charges and electrification charges from the complainants which is absolutely illegal as the cost of the electric meter in the market is not more than Rs.2,500/-
- XIII. That the complainants sent various reminders to the respondent stating and raising various grievances with respect to delayed possession charges, air conditioners, grid power supply, car parking, solar panels, golf range, palm drive condominium association and HVAT. Furthermore, stating that solar panels has been installed in phase-1 of the project not in the tower of the complainants, as per the agreed terms of the booking and name of the project itself indicates that there will be golf range but till date respondents have failed to provide the same. Thereafter, various reminder emails and letters were sent to the respondents on the above mentioned issues but till date, the respondent failed to provide any satisfactory response to the complainants.
- XIV. That the respondent asked the complainants to sign the indemnity bond as perquisite condition for handing over of the possession. The complainants raised an objection to the above said pre-requisite condition of the respondent as no delay possession charges were paid to the complainants but instead of paying the delay possession charges, the respondent clearly refused to handover possession if the complainants do not sign the aforesaid indemnity bond. Further, the complainants left with no option instead of signing the same, signed it.
- XV. That the complainants after many follow ups and reminders and after clearing all the dues and fulfilling all one-sided demands and formalities as and when demanded by the respondent, got the conveyance deed executed on 10.10.2019.
- XVI. That the Buyer's Agreement stipulates payment of compensation on account of delay in handing over possession of the flat in the project. The compensation payable as per the said agreement is Rs.5/- per sq. ft. per month. It is respectfully submitted that the said amount is atrociously low and unfair.

XVII. That the respondent is guilty of deficiency in service within the purview of provisions of the Act, 2016 and the provisions of Haryana Real Estate (Regulation and Development) Rules, 2017. Hence the present complaint.

C. Relief sought by the complainants:

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

- i Direct the respondent to pay the interest on the total amount paid at the prescribed rate of interest from the due date of possession till date of actual physical possession.
- ii Set aside the one-sided indemnity bond that got signed by the respondent from the complainants under undue influence.
- iii Direct the respondent to provide the amenities and golf driving range as per the brochure and the layout plans.

5. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

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

- I. That the complainants are estopped by their own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint. It is submitted that the complainants have already obtained possession of the unit in question vide the letter of offer of possession dated 14.03.2019 and have, further, executed a conveyance deed dated 10.10.2019, whereas the present complaint has been filed on 21.12.2022, after almost 3 years 20 months and 11 days from the date of execution of the Conveyance Deed.
- II. That the respondent had credited a sum of Rs.6,26,548/- as compensation for delay in offering the possession of the unit and Rs.14,924/- towards Anti-Profiteering. It is abundantly clear that the execution of the Conveyance Deed was without any undue influence and coercion. The

present complaint is an afterthought with malafide intent to enrich themselves. The complaint is admittedly belated and barred by limitation period of 3 years.

- III. That the complainants are not allottees" but investors who have booked the apartment in question as a speculative investment in order to earn rental income/profit from its resale. The apartment in question has been booked by the complainants as a speculative investment and not for the purpose of self-use as their residence. Therefore, no equity lies in favour of the complainants.
- IV. That the original allottees (Mr. Rohit Dewan and Mrs. Neerja) had approached the respondent and expressed an interest in booking an apartment in the residential group housing colony developed by the respondent and booked the unit in question, bearing number PTT-08-0102, 1st Floor, admeasuring 2100 sq. ft. situated in the project "Palm Terraces at Palm Drive" at Sector 66, Gurugram, Haryana.
- V. That the respondent issued a provisional allotment letter on 25.05.2010 to the original allottees. Subsequently, the respondent sent the Buyer's Agreement to the original allottees, which was executed between the parties on 29.06.2010.
- VI. That thereafter the original allottees executed an agreement to sell dated 03.07.2014 in favour of the complainants for transferring and conveying rights, entitlement and title of the original allottees in the unit in question to the complainants. It is pertinent to mention that the complainants further executed an indemnity cum undertaking dated 14.07.2014 and an affidavit dated 14.07.2014 whereby the complainants had consciously and voluntarily declared and affirmed that they would be bound by all the terms and conditions of the provisional allotment in favour of the original allottees. It was further declared by the complainants that having been

substituted in the place of the original allottees, they were not entitled to any compensation for delay, if any, in delivery of possession of the unit in question or any rebate under a scheme or otherwise or any other discount, by whatever name called, from the respondent.

- VII. That since, the complainants and the original allottees were irregular in payment of instalments which is why the respondent was constrained to issue reminders and letters to the complainants requesting them to make payment of demanded amounts.
- VIII. That the respondent, despite defaults of several allottees earnestly fulfilled its obligations under the Buyer's Agreement and completed the project as expeditiously as possible in the facts and circumstances of the case. Therefore, there is no equity in favour of the complainants.
- IX. That as per Clause 16 of the Buyer's Agreement compensation for any delay in delivery of possession shall only be given to such allottees who are not in default of their obligations envisaged under the Buyer's Agreement and who have not defaulted in payment of instalments as per the payment plan incorporated in the Buyer's Agreement.
- X. That despite there being a number of defaulters in the project, the respondent had to infuse funds into the project and have diligently developed the project. The respondent applied for Occupation Certificate and the same was thereafter issued on 08.03.2019.
- XI. That the construction of the project in question already stands completed and the respondent has offered possession of the unit in question to the complainants and the Conveyance Deed has also been executed. That the complainants were offered possession of the unit through letter of offer of possession dated 14.03.2019.
- XII. That thereafter, an indemnity cum undertaking for possession dated 12.04.2019 of the said unit was executed between the complainants and

the respondent for use and occupation of the said unit whereby the complainants have declared and acknowledged that they have no ownership right, title or interest in any other part of the project except in the unit area of the unit in question.

- XIII. That it is pertinent to mention that the complainants did not have adequate funds to remit the balance payments requisite for obtaining possession in terms of the Buyer's Agreement and consequently in order to needlessly linger on the matter, the complainants refrained from obtaining possession of the unit in question. The Complainants needlessly avoided the completion of the transaction with the intent of evading the consequences enumerated in the Buyer's Agreement.
- XIV. That subsequently, the complainants approached the respondent requesting it to deliver the possession of the unit in question. A unit handover letter dated 07.05.2019 was executed, specifically and expressly agreeing that the liabilities and obligations of the respondent as enumerated in the allotment letter or the Buyer's Agreement stand satisfied.
- XV. It needs to be highlighted that the complainants have further executed a conveyance deed dated 10.10.2019 in respect of the unit in question. The transaction between the complainants and the respondent stands concluded and no right or liability can be asserted by the respondent or the complainants against the other.
- XVI. That the respondent as a goodwill gesture has also credited an amount of Rs.6,26,548/- as compensation for the delay caused beyond the control of the respondent. It is further submitted that a Tripartite Agreement dated 16.01.2011 was also executed between the complainants, the respondent and the bank defining the terms and conditions as agreed between them.

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

E. Jurisdiction of the authority

8. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

E. I Territorial jurisdiction

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

E. II Subject matter jurisdiction

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

Section 11(4)(a)

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

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

F. Findings on the objections raised by the respondent.

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

12. The respondent stated that the conveyance deed of the unit has already been executed in favour of the complainants on 10.10.2019 and the transaction between the parties stands concluded upon the execution of conveyance deed.
13. The respondent has argued that upon the execution of the conveyance deed, the relationship between the parties is considered concluded, precluding any further claims or liabilities by either party. Consequently, the complainants are barred from asserting any interest in light of the circumstances of the case.
14. In order to comprehend the relationship between the allottee and the promoter, it is essential to understand the definition of a "deed." A deed is a formal, written document that is executed, signed, and delivered by all parties involved in the contract, namely the buyer and the seller. It is a legally binding document that incorporates terms enforceable by law. For a sale deed to be valid, it must be written and signed by both parties. Essentially, a conveyance deed involves the seller transferring all rights to legally own, retain, and enjoy a particular asset, whether immovable or movable. In the present case, the asset in question is immovable property. By signing a conveyance deed, the original owner transfers all legal rights pertaining to the property to the buyer in exchange for valid consideration, typically monetary. Thus, a "conveyance deed" or "sale deed" signifies that

the seller formally transfers all authority and ownership of the property to the buyer.

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

"34 The developer has not disputed these communications. Though these are four communications issued by the developer, the appellants submitted that they are not isolated aberrations but fit into the pattern. The developer does not state that it was willing to offer the flat purchasers possession of their flats and the right to execute conveyance of the flats while reserving their claim for compensation for delay. On the contrary, the tenor of the communications indicates that while executing the Deeds of Conveyance, the flat buyers were informed that no form of protest or reservation would be acceptable. The flat buyers were essentially presented with an unfair choice of either retaining their rights to pursue their claims (in which event they would not get possession or title in the meantime) or to forsake the claims in order to perfect their titles to the flats for which they have paid valuable consideration. In this backdrop, the simple question which we need to address is whether a flat buyer who espouses a claim against the developer for delayed possession can as a consequence of doing so be compelled to defer the right to obtain a conveyance to perfect their title. It would, in our view, be manifestly unreasonable to expect that in order to pursue a claim for compensation for delayed handing over of possession, the purchaser must indefinitely defer obtaining a conveyance of the premises purchased or, if they seek to obtain a Deed of Conveyance to forsake the right to claim compensation. This basically is a position in which the NCDRC has espoused. We cannot countenance that view.

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

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

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

19. So far as the issue of limitation is concerned, the Authority is cognizant of the view that the law of limitation does not strictly apply to the Real Estate Regulation and Development Authority Act of 2016. However, the Authority under section 38 of the Act of 2016, is to be guided by the principle of natural justice. It is universally accepted maxim and the law assists those who are vigilant, not those who sleep over their rights. Therefore, to avoid opportunistic and frivolous litigation a reasonable period of time needs to be arrived at for a litigant to agitate his right. This Authority of the view that three years is a reasonable time period for a litigant to initiate litigation to press his rights under normal circumstances.

20. It is also observed that the Hon'ble Supreme Court in its order dated 10.01.2022 in **MA NO.21 of 2022 of Suo Moto Writ Petition Civil No.3 of 2020** have held that the period from 15.03.2020 to 28.02.2022 shall stand excluded for purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.
21. In the present matter the cause of action arose on 14.03.2019 when the offer of possession was made by the respondent. The complainants have filed the present complaint on 02.02.2023. In the present case the period of delay in filing of the case needs to be calculated 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.

F.III Objection regarding project being delayed due to force majeure circumstances.

22. The respondent-promoter has raised a contention that the handover of the unit 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 the order of various authorities. 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. The Authority is of the view that though there have been various orders issued to curb the environment pollution, but these were for a short period of time. So, the circumstances/conditions after that period can't be taken into consideration for delay in completion of the project.

G. Findings regarding relief sought by the complainant

G.I Direct the respondent to pay the interest on the total amount paid at the prescribed rate of interest from the due date of possession till date of actual physical possession.

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

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building.-

.....
Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

(Emphasis supplied) यत्

24. Clause 14(a) of the apartment buyer's agreement (in short, the agreement) dated 29.06.2010, provides for handing over possession and the same is reproduced below:

14(a)Time of handing over the Possession

"Subject to terms of this clause and barring force majeure conditions, and subject to the Allottee having complied with all the terms and conditions of this Agreement, and not being in default under any of the provisions of this Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the Company, the Developer shall make all efforts to handover possession of the unit(which falls within ground plus four floors tower/building) **within a period of thirty(30) months from the date of commencement of construction**, and for the Unit(which falls within ground plus thirteen floors tower/building) **within a period of thirty six(36) months from the date of commencement of construction**, subject to certain limitations as may be provided in this Agreement and timely complince of the provisions of this Agreement by the Allottee(s). the Allottee(s) agrees and understands that the Developer shall be entitled to a grace period of three (3) months, for applying and obtaining the occupation certificate in respect of the Unit and/or the project.

25. The buyer's agreement was executed on 29.06.2010 between the original allottees and the respondent. As per clause 14 (a) of the agreement the respondent was to offer the possession of the unit to the allottees within 30

months from the date of start of construction. The date of start of construction as per the Statement of Accounts as on 29.05.2023 at page no. 164 of reply is 24.06.2011. Thus, the Authority have calculated 30 months from the date of start of construction, also the grace period of 3 months is allowed to the respondent/promoter. Therefore, the due date comes out to be 24.03.2014.

26. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges however, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

27. 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.
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., 09.10.2024 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—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid."*

30. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the Authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. The Authority has observed that the Buyer's Agreement was executed on 29.06.2010 between the original allottees and the respondent. The possession of the subject unit was to be offered within a period of 30 months plus 3 months from date of commencement of construction. The Authority calculated due date of possession from the date of start of construction i.e., 24.06.2011 along with a grace period of 3 months which comes out to be 24.03.2014. The respondent has failed to handover possession of the subject unit on the due date.

31. That thereafter the unit was transferred to the complainants by the original allottees. The transfer was accepted by the respondent vide nomination letter dated 21.07.2014. The occupation certificate in respect of the said project was received by the respondent/promoter on 08.03.2019 and the

thereafter, the unit was offered to the complainants on 14.03.2019. The conveyance deed was executed in favour of the complainants on 10.10.2019. No doubts, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period, but the complainants were already in knowledge of the delay caused and they accordingly chose to buy the subject unit. Here the complainants entered into the project with an expectation that delivery of possession is delayed beyond the timeline and the project is running late. Here in the present complaint, the endorsement has been made in favour of the complainants on 21.07.2014 and the occupation certificate was received by the respondent on 08.03.2019. The complainants have only suffered the delay from the time they entered into the project i.e., from the date of endorsement i.e., 21.07.2014.

32. Accordingly, the non-compliance of the mandate contained in section 11(4) (a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainants are entitled to delay possession charges at rate of the prescribed interest @ 11.10% p.a. w.e.f. 21.07.2014 till the date of offer of possession plus two months or handover of possession, whichever is earlier, after obtaining the occupation certificate, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

G.II. Set aside the indemnity bond that got signed by the complainant under the undue influence of the respondent.

G.III Direct the respondent to provide the amenities and golf driving course.

33. The complainants could have asked for the said relief before the execution of the conveyance deed between the parties. Therefore, after the execution of the conveyance deed the complainants cannot seek any other relief other

than the statutory benefits, if any pending. So no directions in this regard can be effectuated at this stage.

H. Directions of the authority: -

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

- i. The respondent/promoter shall pay interest at the prescribed rate i.e., 11.10% for every month of delay on the amount paid by the complainants from the date 21.07.2014 till the date of offer of possession plus 2 months or handover of possession whichever is earlier after adjustment/deduction of the amount already paid if any towards delay in handing over of possession as per proviso to section 18(1) of the Act read with rule 15 of the rules.
- ii. The respondent is directed to pay arrears of interest accrued, if any , after adjustment in statement of account, within 90 days from the date of this order as per rule 16(2) of the Act.
- iii. The rate of interest chargeable from the allottee/complainant 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 promoters 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.
- iv. The respondent shall not charge anything from the complainant which is not the part of the agreement.

35. Complaint stands disposed of.

36. File be consigned to the registry.

Dated:09.10.2024


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



HARERA
GURUGRAM