

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

**Complaint no. : 3332 of 2023**  
**Date of decision : 09.10.2024**

1. Ambika Saklani Bhardwaj  
2. Vishal Bhardwaj  
**Address** – Flat No.-10001, Tower-F,  
Stellar Jeevan, GH03, Sector-1,  
Greater Noida West

**Complainants**

**Versus**

M/s Anand Divine Developers Pvt. Ltd.  
Office: - 711/92, Deepali Nehru Place, New  
Delhi-110019

**Respondent**

**CORAM:**

Shri Ashok Sangwan

**Member**

**APPEARANCE:**

Shri Sukhbir Yadav (Advocate)

**Complainants**

Shri Gaurav Bhardwaj (Advocate)

**Respondent**

**ORDER**

1. The present complaint dated 18.07.2023 has been filed by the complainants/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the act or the rules

and regulations made there under or to the allottee as per the agreement for sale executed inter se.

**A. Unit and project related details**

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

S. N.	Particulars	Details
1.	Name of the project	"Triumph" at sector 104, Gurgaon, Haryana
2.	Nature of the project	Group Housing Colony
3.	Project area	14.093 acres
4.	DTCP license no. and validity status	63 of 2011 dated 16.07.2011 valid till 15.07.2019 10 of 2012 dated 03.02.2012 valid till 02.02.2020
5.	Name of licensee	M/s Great Value HPL Infratech Private Limited M/s Kanha Infrastructure Private Limited
6.	RERA Registered/ not registered	Not Registered (Planning Branch is directed to initiate suo moto proceedings)
7.	Unit no.	4022, Floor-2 <sup>nd</sup> , tower-4. (As on page no. 33 of complaint)
8.	Unit area admeasuring	2260 sq. ft [Super-Area] 1340 sq.ft. [Carpet-Area] (As on page no. 33 of complaint)

9.	Letter of respondent for one additional car parking usage rights	24.10.2019 (As on page no. 63 of complaint)
10.	Possession Clause	<p><b>Clause 18 Time of Handing Over possession</b></p> <p>Barring unforeseen circumstances and Force Majeure events as stipulated hereunder, the possession of the said Apartment is proposed to be, offered by the Company to the Allottee <b>on or before 30 October, 2019, plus grace period of 3 months from the date of this agreement</b> (hereinafter referred to as "Stipulated Date"), subject always to timely payment of all charges including the Basic Sale price, Stamp Duty, Registration Fees and Other charges demanded by the Company from time to time in this regard.</p> <p>[Emphasis supplied]</p>
11.	Due date of possession	30.01.2020 [Calculated 30.10.2019 + 3 months]
12.	Total sale consideration	Rs.1,53,00,200/- (As on page no. 111 of complaint)
13.	Amount paid by the complainants	Rs.1,53,00,200/- (As on page no. 111 of complaint)
14.	Occupation certificate	29.05.2019
15.	Offer of possession	Not on record

**B. Facts of the complaint:**

3. The complainants have made following submissions:

- I. That the complainants are law-abiding and peace-loving persons and the respondent i.e., M/s. Anand Divine Developers Pvt. Ltd. is a company incorporated under the Companies Act, 1956 having its registered office at # 711/92, Deepali, Nehru Place, New Delhi-110019 and the project in question is known as "ATS Triumph " situated in Sector - 104, Gurugram.
- II. That in June 2019, the complainants relied on the representation and assurances of the respondent and booked an apartment bearing no. 4022 on the 2<sup>nd</sup> floor in Tower-4 having a super area of 2260 sq. ft in the project. The project was marketed & developed by the respondent, and the complainant booked the flat under the Down Payment plan for a total sale consideration of Rs.1,53,00,200/-. It is also pertinent to mention here that the complainants have booked one additional exclusive car parking in the project of the respondent along with 2 car parkings.
- III. That on 19.06.2019, the respondent issued a welcome letter and in the said letter, an acknowledgement of payment of Rs.15,30,000/- was made by the respondent that the complainants had paid against the booking amount.
- IV. That on 01.08.2019, a pre-printed, arbitrary, unilateral Flat Buyer Agreement/ Agreement to Sell was executed between respondent and complainants. As per clause 4 of the Flat Buyer's Agreement, the total cost of the flat was Rs.1,53,00,200/-. As per clause 18 of the Flat Buyer Agreement, the respondent had to give the possession of the flat on or before 30.10.2019 plus grace period of 3 months from the date of this agreement. Accordingly, the due date of possession was 01.11.2019. It is

further relevant to mention here that on 29.05.2019, the respondent received the occupancy certificate from the competent authorities.

V. That the complainants kept on paying all the demands as and when raised by the respondent as well as per the payment plan. On 30.09.2019, the complainants issued a cheque of Rs.22,95,000/- and thereafter, the respondent issued two payment receipts against the said paid amount on 30.09.2019 for Rs.20,49,107/- and on 30.10.2019 for Rs.2,45,893/- (amounting in total Rs.22,95,000/-).

VI. That on 24.10.2019, the respondent sent a letter having the subject " One Additional Car Parking usage rights in "ATS Triumph", situated at Sector-104, Gurgaon, Haryana, against Unit bearing reference no. 4022" in the name of the complainants and stated that the allotment w.r.t the additional car parking space is subject to the terms and conditions of Apartment Buyer Agreement dated 01.08.2019. The relevant clause pertaining to the Car Parking i.e., clause 9.1 of the Apartment Buyer Agreement is produced below for ready reference:

*"9.1 Along with the said apartment, the allottee has acquired exclusive usage right of car parking space(s) mentioned herein above. However, the car parking space shall be identified and allocated by the company at the time of handing over of possession of the said apartment to the allottee subject to statutory rules and regulations".*

VII. That the respondent vide email dated 23.09.2019 and 31.10.2019 confirmed that the complainants have been offered an extra/additional car parking without any additional cost and the same would be mentioned in the possession letter and in the conveyance deed as well.

- VIII. That the complainants have availed a home loan from PNBHFL of Rs.1,15,00,000/- against the unit booked by the complainants and on 02.11.2019, an amount of Rs. 1,14,75,200/- was disbursed in favor of the respondent. It is pertinent to mention here that the complainants have paid 100% of the total sale consideration.
- IX. That the due date of the possession of the complainants' unit as per the Apartment Buyer's Agreement was 01.11.2019 and the complainants made payment of 100% of the total sale consideration till 02.11.2019. However, the respondent did not even offer the possession by then.
- X. That after the lapse of the due date of possession, the complainants asked several times about the delivery of the physical possession of their unit. However, the respondent kept on giving false assurances and has no intention to keep any of its promises.
- XI. That the complainants reside abroad and it was not possible for them to visit the site and office of the respondent frequently to obtain the information pertaining to the possession of their unit. Therefore, the complainants have been following up with the respondent through emails as well as their local attendant i.e., Anurag Saklani since 2019 and several emails have been exchanged between the complainants and the respondent.
- XII. That the complainants booked the unit in July 2019 and till date, the respondent has not even offered possession of the unit to the complainants. It is pertinent to mention here that the respondent in its email dated 31.08.2021 mentioned that



*"The reason of delay in handing over your apartment is obvious and beyond our control in view of the outbreak of pandemic due to spread of Coronavirus. Please note that the project got ready in all respect in 2019 only. Even the occupancy certificate was issued by the concerned authority, we started to offer the possession to the allottees, we were in the process of handing over the possession after the fit-out works, even have handed over the possession to some of the allottees who are residing there."*

- XIII. That as per the statement of the respondent, the project was ready in all aspects in 2019 and some of the allottees were also in possession and on the other hand the respondent is saying that the complainants' unit has not been handed over due to Covid-19 which is a completely contradictory statement of the respondent. It is pertinent to mention here that the respondent used the apartment of the complainant as a store and refrain the complainants from taking possession. Therefore, the respondent caused huge financial losses to them.
- XIV. That on 06.06.2022, the respondent issued a ledger identical to the statement of account and as per the said ledger, the complainants have paid a total sum of Rs.1,53,00,200/- against the unit booked by them. The respondent vide email dated 07.06.2022 asked for the advance maintenance charges amounting to Rs.48,000/- which is completely illegal and unjustified. Since October 2019, the respondent deprived the complainants from the occupation of their property and asked for maintenance charges.
- XV. That the cause of action for the present complaint arose in August 2019 when the one-sided buyer's agreement, containing arbitrary terms was

forced upon the complainants by the respondent. Thereafter, the cause of action arose on October 2019 when the respondent failed to hand over the possession of the unit. The cause of action again arose on various occasions, including on many times till date, when the protests were lodged with the respondent about its failure to deliver the fully developed project and the assurances were given that the delayed possession interest will be given.

- XVI. That the complainants do not want to withdraw from the project. The promoter has not fulfilled his obligation therefore as per obligations on the promoter under section 18(1) proviso, the promoter is obligated to pay the interest at the prescribed rate for every month of delay till the handing over of the possession.

**C. Relief sought by the complainants:**

4. The complainants have sought following relief(s):
- i. Direct the respondent to give the physical possession of the fully developed and constructed flat with all amenities.
  - ii. Direct the respondent to pay delayed possession charges from the due date of possession till actual handover of possession of the flat.
  - iii. Direct the respondent to allot 2 car parkings to the complainants and mention about the same in registration documents/conveyance deed.
  - iv. Direct the respondent to execute conveyance deed in favour of the complainants.

**D. Reply by the respondent**



5. The respondent has made following submissions by way of reply:
- I. That the complaint is not maintainable for the reason that the agreement contains an Arbitration Clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute i.e. Clause 39 of the Buyer's Agreement, which is reproduced for the ready reference of this Hon'ble Forum-  

*"All or any dispute arising out of or touching upon or in relation to the terms of this Agreement or its termination, including the interpretation and validity thereof and the respective rights and obligations of the Parties shall be settled amicably by mutual discussion, failing which the same shall be settled through arbitration. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 as amended up to date. A sole arbitrator who shall be nominated by the Board of Directors of the company shall hold the arbitration proceedings at the office of the Company at Noida. The allottee hereby confirms that he shall have no objection to this appointment, more particularly on the ground that the Sole Arbitrator being appointed by the Board of Directors of the company likely to be biased in favour of the company. The Courts at Noida, Uttar Pradesh shall to the specific exclusion of all other courts alone have the exclusive jurisdiction in all matters arising out of/touching and/or concerning this Agreement regardless of the place of execution or subject matter of this Agreement. Both the parties in equal proportion shall pay the fees of the Arbitrator.*
  - II. That the respondent is a reputed real estate company having immense goodwill, comprised of law abiding and peace loving persons and has always believed in satisfaction of its customers. That the complainant, after checking the veracity of the project namely, 'ATS Triumph', Sector 104, Gurugram had applied for allotment of a residential unit and agreed to be bound by the terms and conditions of the documents executed by the parties to the complaint. It is submitted that based on the application of the complainant, unit no. 4022, Tower no. 4 was allotted to the complainant by the respondent.
  - III. That the Buyer's Agreement was executed on 01.08.2019. It is pertinent to mention herein that the Real Estate (Regulation and Development) Act, 2016 was not in force when the Agreement was entered into

between the complainant and the respondent. The provisions of the Real Estate (Regulation and Development) Act, 2016 thus cannot be enforced retrospectively.

- IV. That it was agreed that as per Clause 4 of the Buyer's Agreement, the consideration of Rs.1,53,00,200/- was exclusive of other costs, charges including but not limited to EDC/IDC, Power Back up, IFMS, maintenance, stamp duty and registration charges, service tax, proportionate taxes and proportionate charges for provision of any other items/facilities. As per Clause 12 of the Buyer's Agreement, timely payment by the complainants was to be the essence of the agreement.
- V. That the possession of the unit was to be offered to the complainants in accordance with the agreed terms and conditions of the Buyer's Agreement. The possession of the unit was subject to the occurrence of the force majeure events.
- VI. That the implementation of the project was hampered due to non-payment of instalments by allottees on time and also due to the events and conditions which were beyond the control of the respondent and which have materially affected the construction and progress of the project. Some of the Force Majeure events/conditions which were beyond the control of the respondent and affected the implementation of the project and are as under :
  - I) Inability to undertake the construction for approx. 7-8 months due to Central Government's Notification with regard to Demonetization.
  - II) Orders Passed by National Green Tribunal.
  - III) Non-Payment of Instalments by Allottees.
  - IV) Inclement Weather Conditions viz. Gurugram.

- VII. That the respondent after completing the construction of the unit in question, applied for the grant of the Occupation Certificate on 20.12.2018 and the same was granted by the concerned authorities on 29.05.2019.
- VIII. That the complainant is a real estate investor who has invested his money in the project of the respondent with an intention to make profit in a short span of time. However, his calculations have gone wrong on account of slump in the real estate market and they are now deliberately trying to unnecessarily harass, pressurize and blackmail the respondent to submit to his unreasonable demands.
6. Copies of all the relevant documents have been duly 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 submissions 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. The 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;*

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 complainants at a later stage.

**F. Findings on the objections raised by the respondent:**

**F.I. Objection regarding delay due to force majeure events.**

11. The respondent-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by Hon'ble Supreme Court and other Authorities to curb the pollution in NCR. It further requested that the said period be excluded while calculating due date for handing over of possession. The Authority observes that the respondent has placed reliance on orders of Environment Pollution (Prevention & Control) Authority and Hon'ble Supreme Court of India to curb the pollution in the NCR. Further, in the instant complaint, as per clause 18 of agreement dated 01.08.2019 executed between the parties, the due date of handing over of possession was provided as 30.01.2020. Grace period of 3 months is allowed being

unconditional. The respondent-builder in the instant matter has already obtained the occupation certificate of the complainants unit from the competent authority on 29.05.2019. Hence, the plea regarding admissibility of any further grace period on account of aforesaid circumstances is untenable and does not require any further explanation

**F.II. Objection regarding complainants being investors.**

12. The respondent has taken a stand that the complainants are the investor and not consumers and therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The Authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the apartment buyer's agreement, it is revealed that the complainants are buyer and they have paid total price of Rs. 1,53,00,200/- to the promoter towards purchase of an apartment in its project. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

*"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but*



*does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"*

13. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment buyer's agreement executed between promoter and complainants, it is crystal clear that they are allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". Thus, the contention of promoter that the allottee being an investor is not entitled to protection of this Act also stands rejected.

**F.III. Objection regarding non-invocation of arbitration clause.**

14. The respondent submitted that the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute.
15. The Authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on the catena of judgments of the Hon'ble Supreme Court, particularly in *National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506*, wherein it has been held that the remedies provided under the Consumer Protection



Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause.

**G. Findings on the relief sought by the complainants.**

**G.I. Direct the respondent to give the physical possession of the fully developed and constructed flat with all amenities.**

16. As per documents available on record, the respondent has failed to offer the possession of the allotted unit to the complainants after obtaining occupation certificate from competent authority on 29.05.2019. Although, the respondent has alleged that the offer of possession was made by the respondent to the complainants on 01.11.2019 but failed to provide any document regarding the same.
17. In view of the above, the respondent/promoter is directed to complete the work of the subject unit in all aspect and handover physical possession of the unit to the complainants within a period of one month from the date of this order.

**G.II. Direct the respondent to pay delayed possession charges from the due date of possession till actual possession of the flat.**

18. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under:

***Section 18: - Return of amount and compensation***

*"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."*

19. As per clause 18 of the buyer's agreement dated 01.08.2019, the possession of the subject unit was to be handed over by 30.01.2020. Clause 18 of the buyer's agreement provides for handover of possession and is reproduced below:

*18. Time of handing over possession*

*"Barring unforeseen circumstances and Force Majeure events as stipulated hereunder, the possession of the said apartment is proposed to be offered by the Company by the Allottee on or before 30 October 2019, plus three months of grace period from the date of this agreement, subject always to timely payment of all charges including the Basic Sale Price\* Stamp Duty, registration Fees and other Charges as stipulated herein or as may be demanded by the Company from time to time in this regard."*

20. At the inception, it is relevant to comment on the pre-set possession clause of the buyer's agreement wherein the possession has been subjected to numerous terms and conditions and force majeure circumstances. The drafting of this clause is not only vague but so heavily loaded in favour of the promoters that even a single default by the allottee in fulfilling obligations, formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.
21. **Admissibility of grace period:** The respondent/promoter has proposed to complete the construction of the said building/unit by 30.10.2020. In the present case, the promoter is seeking 3 months' time as grace period. The said period of 3 months is allowed to the promoter being

unconditional. Therefore, the due date of possession comes out to be 30.01.2020.

22. In the present complaint, the complainants have send an email to the respondent company on 26.02.2021 with regard to handing over the possession of the allotted unit. The relevant portion of the said mail is reproduce as under for ready reference: -

*"Hope you are doing well!.  
Its been a long time , I wrote back to you. This COVID just disconnected the whole world.  
Not sure, if you remember us or not, just wanted to remind you that we bought an apartment #4022 in ATS Triumph during July, 2019.  
I want to check on the status of possession for my flat, since we are planning to come to India during may 2021 and wanted to complete the registration process and possession of the property.  
Let me know if any other details are needed from our end.  
Thanks & Regards  
Ambika Saklani Bhardwaj"*

*[Emphasis supplied]*

23. Thereafter, the complainants again approached the respondent for handing over of possession and the respondent has replied vide email dated 01.03.2021. The relevant portion of the said mail is reproduce as under for ready reference: -

*"FYI ...Please take urgent action as per below e-mail"*

24. The respondent replied the e-mail on 01.03.2021. the relevant portion of the e-mail is reproduced below:

**" With reference to your mail below and subsequent to our telecom held, this is to inform you that we have noted down your request. It will take approximately 90 days to complete the said unit. Once the same is ready we will inform you"**

*[Emphasis supplied]*

25. This implies that the development work was still pending, and because of aforesaid reasons, the respondent was not in position to handover the physical possession of the said unit to the complainants. It is well settled that for constituting a valid offer of possession, the project in which the allotted unit is situated should be complete in all aspect and must be in a habitable condition, so that an allottee may be able to occupy the same. In view of the above, the alleged offer of possession dated 01.11.2019 even if was issued to the complainants (which the respondent failed to bring on record) cannot be considered as valid offer of possession in the eyes of law. As mere offer of possession of unit has no meaning and serves no purpose if actual possession of the unit cannot be handed over in view of own admission made by the respondent vide above said emails dated 01.03.2021 respectively.
26. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the prescribed rate of interest on the amount already paid by them. However, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, they shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

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

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

*Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State*

*Bank of India may fix from time to time for lending to the general public.*

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(z) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default. The relevant section is reproduced below:

*"(z) "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., 10.85% by the respondents/promoters which the same is as is being granted to the complainants in case of delayed possession charges.



31. On consideration of the documents available on record and submissions made by the parties regarding contravention as per 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. By virtue of clause 18 of the buyer's agreement executed between the parties on 01.08.2019, and the due date of possession was specifically mentioned in the apartment buyer agreement as 30.01.2020. Occupation certificate was granted by the concerned authority on 29.05.2019. The authority is of the considered view that there is delay on the part of the respondent to handover the physical possession of the subject flat and it is failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 01.08.2019.
32. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 29.05.2019. The respondent failed to offer possession of the unit in question to the complainants. In the present complaint the complainants have sent emails to the respondent with regard to handing over the possession of the allotted unit. The respondent has replied on the vide mail on 01.03.2021 and stated that they will take 90 days of time to complete the unit and will inform the complainants soon. But till date the respondent has not handed over the physical possession of the unit.
33. 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 delayed possession charges at prescribed rate of interest i.e., 11.10 % p.a. w.e.f. 30.01.2020 till



the handing over of possession of the allotted unit after completion of development work as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act.

**G.III. Direct the respondent to allot 2 car parkings to the complainants and mention about the same in registration documents/conveyance deed.**

34. In the present complaint, the complainants were allotted an additional car parking space. Vide email dated 23.09.2019 and 30.10.2019, the respondent had confirmed the extra/additional car parking without any additional cost and the same would be mentioned in the offer of possession and the conveyance deed. The relevant part of the email is reproduced below:

*" Dear Mr. Vishal,  
As per my confirmation with Mr. Kulpreet regarding your scratch card for your booking, we would like to inform you that you have been offered one extra car parking with no additional cost"*

[Emphasis supplied]

*Dear Ms. Saklani,  
Refer to the trailing mail, we would like to confirm that you have been offered two car parking on the basis of the car parking letter. Allotment of two car parks would be mentioned in your possession kit and the conveyance deed of your flat in ATS Triumph"*

[Emphasis supplied]

35. Thus, in view of the aforesaid circumstances, the respondent is directed to provide the car parking space as agreed between the parties and admitted by the respondent vide emails dated 23.09.2019 and 31.10.2019.

**G.IV Direct the respondent to execute conveyance deed in favour of the complainants.**

36. In the present complaint, the respondent has obtained the occupation certificate on 29.05.2019 from the competent authority. As per section 11(4)(f) and section 17(1) of the Act of 2016, the promoter is under an obligation to get the conveyance deed executed in favour of the complainant. Whereas as per section 19(11) of the Act of 2016, the allottee is also obligated to participate towards registration of the conveyance deed of the unit in question.
37. In view of the above, the respondent is directed to execute conveyance deed in favour of the complainant in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within three months from the date of this order.

**H. Directions of the Authority**

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 function entrusted to the authority under section 34(f):

- i. The respondent/promoter is directed to complete the work of the subject unit in all aspect and handover physical possession of the unit to the complainants within a period of one month from the date of this order.
- ii. The respondent is directed to pay delayed possession charges at the prescribed rate of interest i.e., 11.10% p.a. for every month of delay on the amount paid by the complainants from due date of possession i.e. w.e.f. 30.01.2020 till the handing over of possession of the allotted unit after completion of development work as per

provisions of section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act.

- iii. The rate of interest chargeable from the allottee 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.
- iv. The respondent is directed to provide the car parking space as agreed between the parties and admitted by the respondent vide emails dated 23.09.2019 and 31.10.2019.
- v. The respondent is directed to execute conveyance deed in favour of the complainant in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within three months from the date of this order.

38. Complaint stands disposed of.

39. File be consigned to registry.



**(Ashok Sangwan)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 09.10.2024**