

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

**Complaint no. :** 4817 of 2021  
**Order reserved on :** 03.09.2024  
**Date of decision :** 19.11.2024

Mr. Ashok Singal  
R/o: - E-1406, Godrej Summit, Sector- 104,  
Gurugram- 122006.

**Complainant**

**Versus**

M/s Ocean Seven Buildtech Private Limited  
**Regd. office at:** - 505-506, 5<sup>th</sup> Floor, Tower-B4,  
Spaze I-Tech Park, Sohna Road, Gurugram-  
122018.

**Respondent**

**CORAM:**

Shri Arun Kumar  
Shri Vijay Kumar Goyal  
Shri Ashok Sangwan

**Chairman**  
**Member**  
**Member**

**APPEARANCE:**

Shri Sham Taneja (Advocate)  
Shri Arun Yadav (Advocate)

**Complainant**  
**Respondent**

**ORDER**

1. The present complaint has been filed by the complainant/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provisions of the Act or the Rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

**A. Project and unit 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:

S. No.	Particulars	Details
1.	Name of the project	Expressway Towers, Sector 109, Gurugram, Haryana.
2.	Project area	7.5 Acres
3.	Nature of the project	Affordable housing project
4.	DTCP license no.	06 of 2016 dated 16.06.2016
	License valid till	15.06.2021
	Licensed area	7.5 acres
	License holder	Sh. Shree Bhagwan C/o M/s Ocean Seven Buildtech Pvt. Ltd.
5.	HRERA registered/ not registered	<b>Registered vide no. 301 of 2017 dated 13.10.2017</b>
	HRERA registration valid up to	12.04.2022 (Including 6 months COVID extension)
6.	Building plan approval dated	26.09.2016
7.	Environment clearance dated	30.11.2017
8.	Allotment letter issued in favour of complainant on	20.05.2017 (Page no. 49 of complaint)
9.	Unit no.	1601, 16 <sup>th</sup> floor, Tower 2 (Page no. 58 of complaint)
10.	Unit admeasuring	644 sq. ft. of carpet area along with 100 sq. ft. of balcony area (Page no. 58 of the complaint)
11.	Builder buyer agreement	25.05.2019 (Page no. 53 of complaint)
12.	Possession clause as per clause 5.2 of the agreement	<i>The Company shall sincerely endeavour to complete the construction and offer the possession of the said unit <b>within five years from the date of the receiving of license ("Commitment Period")</b>, but subject to force majeure clause of this Agreement and timely payment of installments by the Allottee(s). However In case the Company</i>



		<p>completes the construction prior to the period of 5 years the Allottee shall not raise any objection in taking the possession after payment of remaining sale price and other charges stipulated in the Agreement to Sell. The Company, on obtaining certificate for occupation and use by the Competent Authorities shall hand over the said unit to the Allottee for his/her/their occupation and use, subject to the Allottee having complied with all the terms and conditions of the said Policy and Agreement to Sell and payments made as per Payment Plan. It is further agreed by the Allottee that the Developer shall not be liable for delay in completion of construction, in case of force majeure condition and/or the delay is caused due to non-completion of construction of said Complex/building/unit. In the event if a number Allottee(s) are not paying due installments on time or a number of Allottee(s) has withdrawn their application after allotment of unit or a number of units has been cancelled due to nonpayment of due installments or otherwise...</p> <p>[Page 65 of complaint]</p>
13.	Possession clause	<p><b>1(IV) of the Affordable Housing Policy, 2013</b></p> <p>All such projects shall be required to be necessarily completed within 4 years from the approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of this policy. The licenses shall not be renewed beyond the said 4 years period from the date of commencement of project.</p>
14.	Due date of possession	<p>30.05.2022</p> <p>(calculated from the date of environment clearance dated 30.11.2017 being later + 6 months as per HARERA notification no. 9/3-2020 dated 26.05.2020 for the</p>

		projects having completion date on or after 25.03.2020)
15.	Total consideration	Rs.26,26,000/- [As per clause 4.1 of BBA at page no. 58 of complaint]
16.	Amount paid by the complainant	Rs.27,15,144/- [As alleged by the complainant at page no. 9 of complaint]
17.	Occupation certificate	Not obtained
18.	Offer of possession	Not offered
19.	Cancellation notice	02.09.2021 (Page no. 108 of complaint)
20.	Legal notice send by the complainant with regard to restoration of allotment of the subject unit	01.10.2021 [Page no. 113 of complaint]
21.	Reply to the aforesaid legal notice send by the complainant	10.10.2021 (Page no. 117 of complaint)

**B. Facts of the complaint**

3. The complainant has made the following submissions in the complaint: -
  1. That the complainant is a peace-loving and law-abiding Indian Senior Citizen, residing at E-1406, Godrej Summit, Sector 104, Gurugram - 122006, who is filing this complaint u/s 31 of the Real Estate (Regulation and Development) Act, 2016 r/w rule 28(1) of the Haryana Real Estate (Regulation and Development) Rules, 2017 against the respondent, who -
    - (i). has unilaterally and unauthorized cancelled his allotment of unit no. 1601 in Tower 3 of an 'Affordable Housing Project' namely, 'Expressway Towers' Sector 109, Gurugram in contravention of provision under Section 11(5) of the Act, 2016 in lieu of delayed payment of 8th Instalment as agreed upon and enumerated in payment schedule - Annexure 'B' (page 35) of the buyer's agreement dated 25.05.2019, and has failed to complete or is unable to give possession of an apartment in accordance with the

terms of buyer's agreement duly completed by the date specified therein.  
Hence the present complaint.

- II. That being persuaded by various advertisements in print and as well as in electronic media, the complainant has applied for allotment of the unit in the project namely 'Expressway Towers' situated at village Babupur, Sector 109, Gurugram, Haryana developed under the 'Affordable Group Housing Policy' on the land measuring 7.5 acres. The aforesaid 'Affordable Group Housing Colony' consisting of 1049 flats/units was being developed by the respondent. The license for this project has been received by the respondent vide license No. 06 of 2016 dated 16.06.2016 and the building plan approved on 26.09.2016 vide Memo No. ZP1118/AD(RA)2016/20260.
- III. The developer had assured the complainant that he has obtained all the necessary sanctions/approvals from the competent authorities to construct 1049 units spread over in 11 towers [tower 1 & 2 (G+10 floors), tower 3 (G+27 floors), tower 4, 5, 6 (G+17 Floors) and towers 7 to 11 (G+6 floors)] and has got all clearances as required for the purpose of development of affordable housing project on a land parcel of 7.5 acres. The said project has also been registered with this Authority vide registration bearing no. 301 of 2017 vide memo no. HRERA-632(a)/2017/1388 dated 13.10.2017.
- IV. That the representatives of respondent informed and assured the complainant that the development/construction will commence from the license granting date i.e., 16.06.2016 and the possession of the said unit will be handed over within 5 years i.e., on or before 15.06.2021. Thus, believing upon the representations and assurances of the respondent, the complainant booked a unit on 05.01.2017 vide application no. 06376 by



paying a booking amount of Rs.1,31,300/- vide cheque no. 265878 drawn on Indian Overseas Bank.

- V. That in pursuance to the aforesaid application made by the complainant for allotment of flat/unit, the respondent has allotted through draw of lots held on 19.05.2017, a unit/flat no. 1601 in tower 3 on 16th floor measuring 644 sq. ft. carpet area and 100 sq. ft. balcony area for a total sale consideration of Rs.26,26,000/- (excluding taxes, as applicable). The 'Allotment/Demand Letter' bearing Customer Code: OSB/ET/2BC2/1262 dated 20.05.2017 was issued by the respondent in confirmation of said allotment.
- VI. That the complainant at the time of booking asked the respondent to execute the buyer's agreement but the respondent gave false excuses and delayed stating or another reasons. Thereafter, the respondent created an undue pressure to give money as per their demands without executing buyer's agreement and it is also to state that within that said time period the complainant had already made a payment of substantial amount of Rs.16,64,062/- (constituting 61.3% of total sale consideration). Thus, after an intense persuasion the buyer's agreement was executed on 25.05.2019, well about 2 years after the allotment of the captioned unit. It is pertinent to mention that though the total sale consideration was to be paid in Eight Instalments [First-5%, Second-20% and Third to Eight-12.5% each], there had been a significant/remarkable variance in terms of payment schedule in application form' and 'buyer's agreement. In the application form, the payment schedule for the last six instalments was on a fixed time interval of six months from the date of issuance of allotment letter while in the buyer's agreement, there was an option of a construction-linked payment

up to seventh instalment and the last/8th instalment was to be paid on receipt of 'occupation certificate' from DTCP Haryana.

- VII. That thereafter the respondent kept on demanding money from the complainant on pretexts such as raising the construction at a very fast pace and the complainant with a hope that the possession of the unit will be handed over in due time after completion of construction, continued to pay the same as per the schedule of payment but all the demands made by the respondent were not as per the level of construction. The complainant has diligently performed his part of the contract and has always been prompt at making payments up to 7th instalments as can be seen from the account statements of demand and payment dates. However, the 8th instalment was not made as per the demand notice since the 'demand notice' dated 12.05.2020 was contrary to the payment schedule of the buyer's agreement'.
- VIII. That the complainant has paid his hard-earned money and life savings in a hope to reside peacefully in his dream home and fulfilled each and every demand of the respondent that have arisen from time to time, thus till date 100% sale consideration amount of Rs.27,15,144/- has been paid to the respondent for the subject unit. The complainant has made payments on the demands of the respondent and the same were duly accepted and receipts were provided against all the payments made except the last instalment made on 02.09.2021.
- IX. That the complainant was shocked to receive a demand notice dated 12.05.2020 for a sum of Rs.3,31,456/- being the last/8th instalment falling due on 19.05.2021, which was totally in contravention of payment terms agreed between the parties. On contesting by the complainant that the captioned instalment shall fall due only on receipt of occupation certificate

from the DTCP Haryana, the respondent remained silent for more than 14 months, since there had been no chance of obtaining the occupation certificate as the construction of the project was lagging far behind schedule and even till date the respondent has miserably failed to file requisite application with the competent authority for issuance of 'OC'. It is pertinent to mention that recently even the DTCP has issued a show-cause notice to the respondent for slow pace of construction activity in the 'Expressway Towers' Project, Sector 109 Gurugram.

- X. That on 27.07.2021, the respondent sent a notice for non-payment of dues for a sum of Rs.3,31,974/- as the last/8th instalment citing the due date as 19.05.2020, which again is an illegal demand and is in contravention to payment terms of 'buyer's agreement dated 25.05.2019. Reply to this notice was communicated by the complainant vide its letter dated 31.07.2021, reiterating the payment schedule of buyer's agreement, since the sight of obtaining an occupation certificate had been very remote because the construction at site is still far behind schedule.
- XI. That the complainant was in utter shock to receive an e-mail dated 02.09.2021, wherein the respondent had cancelled the allotment of captioned residential unit no. 1601, Tower 3 in the Affordable Housing Project 'Expressway Towers' alleging non-payment of last/8th installment. Though this demand of last instalment (12.5% of the total sale consideration) had been illegal/unauthorized and in contravention to the agreed upon payment schedule (Annexure 'B') of buyer's agreement, the complainant in order to buy peace had obliged by paying the same through NEFT transaction from his bank account and accordingly informed the respondent through e-mail on 02.09.2021 and also through his letter posted on 03.09.2021. Also, the complainant requested to restore the



allotment of captioned unit vide its letter dated 07.09.2021, which was cancelled arbitrarily on 02.09.2021.

- XII. That instead of restoring allotment of the unit, the respondent bent upon to remain hard-headed to cancel the same and communicated vide its e-mail and letter dated 04.09.2021 (received on 08.09.2021) to get refund of the deposited amount as per Affordable Housing Policy 2013 with prior appointment. That having failed in all his efforts to get the allotment of the captioned unit restored, the complainant sent a legal notice dated 01.10.2021 through his counsel, but even this didn't bear any fruits as evident from the respondent's reply on 10.10.2021.
- XIII. That Article 15 of the buyer's agreement dated 25.05.2019 executed between complainant and respondent stipulates conditions and procedure for surrender/cancellation of allotment. The respondent is entitled to terminate/cancel the allotment of unit only on defaults, breaches and/or non-compliance of any of the terms and conditions of the Affordable Housing Policy-2013 and 'agreement to sell i.e., buyer's agreement' and the complainant has not defaulted/breached/non-complied any of terms & conditions of the said policy and/or buyer's agreement. Even the due procedure of publishing the defaulters list in one regional Hindi newspaper having circulation of more than ten thousand in the State has not been diligently followed by the respondent.
- XIV. That the possession time for handing over of the residential unit in project namely 'Expressway Towers' after obtaining the required occupation certificate from the competent authority had been within five years from the date of receiving of license as per clause 5.2 of the buyer's agreement, which works out to be 15.06.2021, since the date of granting license to this project had been 16.06.2016. The project is running much behind schedule

and there seems no possibility of handing over possession of the captioned unit for at least another one year. Thus, the respondent is liable to pay the interest for every month of delay till handing over of the possession at the prescribed rate as envisaged under Section 18(1) of the Act 2016. The delay period on the date of filing of this complaint works out to be 6 months and following is the simple interest calculation @ 9.3% per annum on the deposited amount.

**C. Relief sought by the complainant: -**

4. The complainant has sought following relief(s):
  - I. Direct the respondent to restore the allotment of the unit of the complainant.
  - II. Direct the respondent to pay delayed possession charges at the prescribed rate for utilizing the complainant funds in the construction of the projects and hereby preventing the complainant from using his money for better investment.
  - III. To award pendent lite and future interest as per RERA rules/Act in favour of the complainant and against the respondent till recovery of the total amount dues.
5. The present complaint was filed on 06.12.2021. On 28.07.2023, the respondent was given one last opportunity to file the reply within 3 weeks, but the respondent failed to comply with the orders of the authority. Hence, despite a lapse of two year from the date of filing and more than seven months from the date of publication of notice on the newspapers, the respondent has failed to file reply within the stipulated timeframe. In view of the conduct of the respondent, on 08.12.2023, the authority is left with no option but to striking off the defence of the respondent.
6. 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 complainant.

**D. 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.

**D.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.

**D.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) The promoter shall-*

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

**Section 34-Functions of the Authority:**

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

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.

**E. Findings on the relief sought by the complainant.**

**E.1 Direct the respondent to restore the allotment of the unit of the complainant.**

11. The complainant was allotted a unit bearing no. 1601, 16<sup>th</sup> floor, in tower-2, in the project of the respondent at the sale consideration of Rs.26,26,000/- under the Affordable Group Housing Policy 2013. The possession of the unit was to be offered within 4 years from the approval of building plans (26.09.2016) or from the date of environment clearance (30.11.2017), whichever is later, which comes out to be 30.11.2021 calculated from the date of environment clearance being later. Further, as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the project having completion date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 30.11.2021 i.e., after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over of possession the due date of possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. Therefore, the due date of handing over of possession comes out to be 30.05.2022. The complainant has paid a sum of Rs.27,15,144/- towards the subject unit, and the complainant is ready and willing to retain the allotted unit in question.
12. That the counsel for the respondent stated that the complainant was default in making payment after giving demand notice cum reminders letter. But in spite of repeated reminders, the payment of outstanding amount was not made leading to cancellation of the unit on 02.09.2021. The OC of the unit



has not been obtained by the respondent and no offer of possession was made prior to the cancellation.

13. Upon perusal of documents and submissions made by the complainant, it has been found that allotment of the subject unit was cancelled by the respondent on 02.09.2021 due to non-payment. The foremost question which arise before the Authority for the purpose of adjudication is that "whether the said cancellation is valid or not?"
14. The authority observes that clause 5(i) of the Affordable Group Housing Policy, 2013 deals with the cancellation and the relevant clause is reproduced below: -

*"If any successful applicant fails to deposit the installments within the time period as prescribed in the allotment letter issued by the colonizer, **a reminder may be issued to him for depositing the due installments within a period of 15 days from the date of issue of such notice.** If the allottee still defaults in making the payment, the list of such defaulters may be published in one regional Hindi newspaper having circulation of more than ten thousand in the State for payment of due amount within **15 days from the date of publication of such notice, failing which allotment may be cancelled. In such cases also an amount of Rs.25,000/-** may be deducted by the coloniser and the balance amount shall be refunded to the applicant. Such flats may be considered by the committee for offer to those applicants falling in the waiting list".*

15. On 21.07.2021, the respondent raised a demand for an amount of Rs.3,31,974/- to be paid within a period of 15 days from the date of said letter. The respondent vide letter dated 02.09.2021, cancelled the allotted unit of the complainant. Thereafter, the complainant has paid the said demand on 02.09.2021. The Authority observes that the complainant has paid more than 100% of the sale consideration and the respondent was required to handover the project by 30.05.2022 including grace period of 6 months, the respondent failed to complete the construction of the project. More than two years later, the project remains incomplete and the respondent has not obtained the occupation certificate. Further, the interest accrued during the delay period significantly reduces the amount payable by the complainant. Upon adjustment of this interest, the respondent

would, in fact be liable to pay the complainant. Despite this, the respondent chose to cancel the unit on grounds of non-payment, while neglecting its own obligations. Such actions by the respondent displays bad faith, as it failed to adjust the delay period interest. Further, the respondent failed to fulfil the prerequisite of publishing the due notice in the daily newspaper. Therefore, the prescribed procedure as per clause 5(iii)(i) of the policy of 2013 had not been followed by the respondent to cancel the unit of the complainant. In light of these findings, the cancellation of the allotment on 02.09.2021, is deemed invalid and hereby quashed as issued in bad faith.

**E.II Direct the respondent to pay delayed possession charges at the prescribed rate for utilizing the complainant funds in the construction of the projects and hereby preventing the complainant from using his money for better investment.**

**E.III To award pendent lite and future interest as per RERA rules/Act in favour of the complainant and against the respondent till recovery of the total amount dues.**

16. The complainant intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

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

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

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

17. Clause 5.2 talks about the possession of the unit to the complainants, the relevant portion is reproduce as under:-

***"5.2 Possession Time***

*The Company shall sincerely endeavour to complete the construction and offer the possession of the said unit within five years from the date of the receiving of license ("Commitment Period"), but subject to force majeure clause of this Agreement and timely payment of installments by the Allottee(s), However In case the Company completes the construction prior to the period of 5 years the Allottee shall not raise any objection in taking the possession after payment of remaining sale*

*price and other charges stipulated in the Agreement to Sell. The Company, on obtaining certificate for occupation and use by the Competent Authorities shall hand over the said unit to the Allottee for his/her/their occupation and use, subject to the Allottee having complied with all the terms and conditions of the said Policy and Agreement to Sell and payments made as per Payment Plan. It is further agreed by the Allottee that the Developer shall not be liable for delay in completion of construction, in case of force majeure condition and/or the delay is caused due to non-completion of construction of said Complex /building/unit. In the event if a number Allottee(s) are not paying due installments on time or a number of Allottee(s) has withdrawn their application after allotment of unit or a number of units has been cancelled due to non-payment of due installments or otherwise.....*

*[Page 65 of complaint]."*

18. Further, as per clause 1(iv) of the Affordable Housing Policy, 2013 provides for completion of all such projects licensed under it and the same is reproduced as under for ready reference:

*1 (iv)*

*"All such projects shall be required to be necessarily completed within 4 years from the date of approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of the policy."*

19. **Due date of handing over of possession:** The Authority observes that since the respondent/promoter has lunched the project under the Affordable group housing policy, 2013 which was introduced by the state Government on 19.08.2013. Clause 1(IV) of the Affordable Group Housing Policy, 2013 clearly mentions that all such projects shall be required to be necessarily completed within 4 years from the approval of building plans or grant of environmental clearance, whichever is later. The respondent /promoter is obligated to act under the provisions of the said policy, 2013 only. Therefore, the said possession clause 5.2 of the buyer's agreement is hereby set-aside by the Authority and the due date of possession shall be calculated as per clause 1(iv) of the Affordable Housing Policy, 2013 it is prescribed that *"All such projects shall be required to be necessarily*

completed within 4 years from the date of approval of building plans or grant of environmental clearance, whichever is later. This date shall be referred to as the "date of commencement of project" for the purpose of this policy. The respondent has obtained environment clearance and building plan approval in respect of the said project on 30.11.2017 and 26.09.2016 respectively. Therefore, the due date of possession is being calculated from the date of environmental clearance, being later. Further, an extension of 6 months is granted to the respondent in view of notification no. 9/3-2020 dated 26.05.2020, on account of outbreak of Covid-19 pandemic. Therefore, the due date of possession comes out to be 30.05.2022.

20. **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.*

21. 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.



22. 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., 12.11.2024 is **9.10%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **11.10%**.
23. 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;"*
24. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 11.10% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.
25. On consideration of the documents available on record and submissions made by both the parties, 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 1(iv) of the Affordable Housing Policy, 2013, the respondent/promoter shall be necessarily required to complete the construction of the project within 4 years from the approval of building plans (26.09.2016) or from the date of

environment clearance (30.11.2017), whichever is later, which comes out to be 30.11.2021 calculated from the date of environment clearance being later. Further, as per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the project having completion date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainant is 30.11.2021 i.e., after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over of possession the due date of possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. Therefore, the due date of handing over of possession comes out to be 30.05.2022. However, the respondent has failed to handover possession of the subject apartment to the complainant till the date of this order. Accordingly, 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. Further, the authority observes that there is no document on record from which it can be ascertained as to whether the respondent has applied for occupation certificate or what is the status of construction of the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottees.

26. 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 allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 30.05.2022 till valid offer of possession plus 2 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.

**F. Directions of the authority**

27. 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 promoter as per the functions entrusted to the authority under section 34(f) of the Act:

- i. The cancellation letter dated 02.09.2021 is hereby set aside. The respondent is directed to re instate the allotted unit or if the same is not available then allot an alternate unit of the same size, similar location and same price as originally booked by the complainant within a period of 60 days from the date of this order.
- ii. The respondent/promoter is directed to pay interest to the complainant(s) against the paid-up amount at the prescribed rate of 11.10% p.a. for every month of delay from the due date of possession i.e., 30.05.2022 till valid offer of possession plus 2 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.
- iii. The arrears of such interest accrued from 30.05.2022 till the date of order by the authority shall be paid by the promoter to the allottee(s) within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottee(s) before 10<sup>th</sup> of the subsequent month as per rule 16(2) of the rules.
- iv. The complainant(s) are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period. The respondent/promoter shall handover possession of the physical

possession of the allotted unit and execute conveyance deed in favour of the complainant(s) in terms of section 17(1) of the Act of 2016 on payment of stamp duty and registration charges as applicable, within three months after obtaining occupation certificate from the competent authority.

- v. The respondent/promoter shall not charge anything from the complainant(s) which is not the part of the Affordable Housing Policy, 2013.
- vi. The rate of interest chargeable from the allottee(s) 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(s), in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
28. Complaint as well as applications, if any, stands disposed off accordingly.
29. Files be consigned to registry.

  
(Ashok Sangwan)  
Member

  
(Vijay Kumar Goyal)  
Member

  
(Arun Kumar)  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 19.11.2024