

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

Complaint no. : 3482 of 2023
Complaint filed on : 28.07.2023
Date of first hearing: 06.10.2023
Date of decision : 20.09.2024

Rita Bawa

R/o- Q-602 , AWHO Complex, Sispal Vihar, Sector 49,
Sohna Road, Gurugram-122018.

Complainant

Versus

1. M/s Tashee Land Developers
2. M/s KNS Infracon Private Limited
Both having their Registered Office at: 517A,
Narain Manzil, 23 Barakhamba Road, Cannaught
Place, New Delhi- 110001

Respondents

CORAM:

Shri Ashok Sangwan

Member

APPEARANCE:

Shri Sushil Yadav, Advocate

Complainant

Shri Rishabh Jain, Advocate

Respondents

ORDER

1. The present complaint has been filed by the complainant/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 to the allottee as per the agreement for sale executed inter-se them.

A. Unit and Project related details

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

S.No.	Particulars	Details
1.	Name of the project	CAPITAL GATEWAY, SECTOR-110A and 111, Gurugram
2.	Nature of the project	Group Housing Colony
3.	Area of project	10.462 ACRES
4.	RERA Registered/ not registered	Registered vide registration no. 12 of 2018 dated 10.01.2018 with RERA, Panchkula [Extension certificate provided by RERA, GGM u/s-6 of Act vide no. RC/REP/HARERA/GGM/12 of 2018/7(3)/2022/3 dated 09.08.2022, Valid upto 30.06.2025 for both phases]
5.	License no. and validity	34 of 2011 dated 16.04.2011, valid upto 15.04.2024
	Licensee name	KNS Infracon Pvt. Ltd. & 4 others [as mentioned in land schedule of the project]
6.	Unit no.	E-1202, 12 th floor, tower-E [as per flat buyer's agreement at Page 17 of complaint]
7.	Unit area admeasuring	1695 sq. ft. [as per flat buyer's agreement at Page 17 of complaint]
8.	Acknowledgment by respondents of transfer in favor of complainant	17.05.2014 [as per acknowledgment of transfer at pg.51 of complaint]
9.	Date of flat buyer's agreement executed b/w complainant and respondents	10.10.2014 [Page 15 of complaint]
10.	Possession clause	<u>2. POSSESSION</u> "2.1the First Party/Confirming Party proposes to handover the possession of the Flat to the Purchaser within approximate period of 36 months from the date of sanction of the building plans and other necessary Government approvals thereon, of the said Colony. The Purchaser agrees and understands the First Party/Confirming Party shall be entitled to a grace period of 180 days(One

		<i>Hundred and Eighty) days after the expiry of 36 months, for applying and obtaining the occupation certificate in respect of the Colony from the concerned authority..."</i> [as per FBA at page 24 of complaint]
11.	Date of sanction of building plans	07.06.2012 <i>As per information obtained by planning branch, building plan approved on 07.06.2012</i>
12.	Due date of possession	07.12.2015 <i>(Calculated 36 months from the date of sanction of building plans + Grace period of 180 days is allowed to the respondent in view of order dated 08.05.2023 passed by the Hon'ble Appellate Tribunal in Appeal No. 433 of 2022 tilted as Emaar MGF Land Limited Vs Babio Tiwari and Yooesh Tiwari)</i>
13.	Payment Plan	Construction Linked Plan [Page 9 of reply]
14.	Total sale consideration as per FBA dated 10.10.2014 executed b/w complainant and respondents	Rs.81,65,655/- [as per FBA at pg. 19 of complaint]
15.	Total Amount Paid	Rs. 82,04,592/- <i>[as alleged by complainant at pg.5 of complaint and not objected by respondent]</i>
16.	Occupation certificate /Completion certificate	Not obtained
17.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submissions: -

- i. That the respondents gave advertisement in various leading newspapers about their forthcoming project named "Capital Gateway Sector 111", Gurgaon promising various advantages, like world class amenities and timely completion/execution of the project etc. Relying on the promise and undertakings given by the respondents in the aforementioned advertisements, original buyer booked an apartment/flat measuring 1695 sq. ft. in aforesaid project of the respondents for total sale consideration is Rs 8204592/-. Later it was transferred to the complainant on 17.05.2014. The complainant made

payment of Rs.82,04,592/- to the respondents vide different cheques on different dates.

- ii. That flat buyers agreement was executed on dated 10.10.2014 and as per BBA the respondents had allotted a unit/flat bearing no. E-1202, 12th floor, on E tower having super area of 1695 sq. ft. to the complainant. That as per para no.2.1 of the agreement, the respondents had agreed to deliver the possession of the flat within 36 from sanctioning of building plan i.e., 07.06.2012 with an extended period of 180 days.
- iii. That the complainant used to telephonically ask the respondents about the progress of the project and the respondents always gave false impression that the work is going in full mode and accordingly asked for the payments which the complainant gave on time and the complainant when visited to the site was shocked & surprised to see that construction work is not in and no one was present at the site to address the queries of the complainant. It appears that respondents has played fraud upon the complainant. The only intention of the respondents was to take payments for the flat without completing the work and not handing over the possession on time. The respondents mala-fide and dishonest motives and intention cheated and defrauded the complainant.
- iv. That despite receiving of more than 100% approximately payments on time for all the demands raised by the respondents for the said flat and despite repeated requests and reminders over phone calls and personal visits of the complainant, the respondents has failed to deliver the possession of the allotted flat to the complainant within stipulated period.
- v. That it could be seen that the construction of the block in which the complainant flat was booked with a promise by the respondents to deliver the flat by 07.06.2015 but was not completed within time for the reasons best known to the respondents; which clearly shows that ulterior motive of the respondents was to extract money from the innocent people fraudulently.

- vi. That due to this omission on the part of the respondents the complainant has been suffering from disruption on his living arrangement, mental torture, and agony and also continues to incur severe financial losses. This could have been avoided if the respondents had given possession of the flat on time. That as per clause 2.3 of the agreement it was agreed by the respondents that in case of any delay, the respondents shall pay to the complainant a compensation @ Rs.5/- per sq. ft. per month of the super area of the flat. It is however, pertinent to mention here that a clause of compensation at such a nominal rate of Rs.5/- per sq. ft per month for the period of delay is unjust and the respondents has exploited the complainant by not providing the possession of the flat even after a delay from the agreed possession plan. The respondents cannot escape the liability merely by mentioning a compensation clause in the agreement. It could be seen here that the respondents has incorporated the clause in one sided buyer's agreement and offered to pay a sum of Rs.5/- per sq. ft for every month of delay. If we calculate the amount in terms of financial charges it comes to approximately @ 2% per annum rate of interest whereas the respondents charges @ 24% per annum interest on delayed payment.
- vii. That on the ground of parity and equity the respondents also be subjected to pay the same rate of interest hence the respondents is liable to pay interest on the amount paid by the complainant from the promise date of possession till the flat is actually delivered to the complainant.
- viii. That the complainant has requested the respondents several times on making telephonic calls and also personally visiting the offices of the respondents to deliver possession of the flat in question along with prescribed interest on the amount deposited by the complainants but respondents has flatly refused to do so. Thus, the respondents in a pre-planned manner defrauded the complainant with his hard-earned huge amount of money and wrongfully gains himself and caused wrongful loss to the complainant.

C. Relief sought by the complainant:

4. The complainant has sought following relief:

- i. Direct the respondents to pay delay possession charges at the prescribed rate of interest.
- ii. Direct the respondents to handover physical possession of the unit to the complainant.

On the date of hearing, the authority explained to the respondents/ 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 no. 1 and 2:

5. The respondents have made the following submissions: -

- i. That the respondents had been developing and marketing a residential group housing colony 'Capital Gateway' situated at Sector 110A and 111, Gurugram, in two phases, i.e., Phase I consisting of towers A to G and Phase II consisting of towers H to J. The said project also consisted of two towers for economically weaker sections (EWS), two commercial buildings, one community building and a nursery school. Therefore, there are a total of 551 units in the said project, which includes 538 residential units and 13 commercial units.
- ii. That the respondents had applied for environment clearance on 20.10.2011. The decision and issuance of certificate to the promoter remained in abeyance for a long time due to sudden demise of the Chairman of Environmental Impact Assessment (EIA) Committee in an unfortunate road accident. The developer finally got the environment clearance on 17.06.2013. Further, the respondents applied for revision of building plans of the said project before the appropriate authority. However, the said plans were approved by the department after a delay of 2 years. Therefore, there was a delay in starting the construction of the project.
- iii. That the complainant approached the respondents for booking a unit in the project of the respondents by looking into the financial viability of the project

and its future monetary benefits. Thus, the complainant in the present case is not a consumer, rather an investor who falls outside the purview of the preamble of the Act of 2016.

- iv. That, a buyer's agreement was executed between the complainant and the respondents on 10.10.2014, wherein unit no. E-1202, 12th floor, tower E admeasuring 1695 sq. ft. was allotted to the complainant.
- v. At present, it is a matter of record that the structure of the said project in question is complete, and few instalments are due and payable on account of the complainant. Moreover, it is pertinent to state that the respondents has applied from obtaining occupation certificate for Phase-I of the said project as all the construction and development activities are complete. The performance of obligations and duties of the respondents are contingent upon approval of unit plans of the said project by DTCP, Haryana and any subsequent amendments/modifications in the unit plans thereto.
- vi. That for reasons beyond the control of the respondents, the said project has been delayed. As a matter of fact, economic meltdown, financial crisis, sluggishness in the real estate sector, increase in cost of construction, default by allottees in making timely payments, multiple disputes between the workforce, labour and contractors resulting into shortage of labour and workforce and change in contractors, non-availability of sufficient water for construction due to restrictions imposed by local administration, restricted construction activities towards protection of the environment as directed by the local administration and the NGT and moreover, obstruction in construction due to Covid-19 outbreak are some of the impeding reasons beyond the control of the respondents.
- vii. That, simultaneously, the respondents was aware of the obligations and duties to complete the said project and that is why the respondents approached the 'SWAMIH Investment Fund I' of SBI Cap Ventures Limited. The Investment

Committee of the SWAMHI Investment Fund I vide letter dated 29.11.2021 communicated to the respondents that it has accorded an in-principal approval to invest up to ₹80 crore and an additional ₹27.92 crore. The project is a sick project wherein imposition of compensation will put a lot of burden over the project and its proponents including the respondents/promoter.

- viii. That after receipt of SWAMHI investment fund, the respondents was able to resume the construction activities at a very large scale in expeditious manner. The development at the project site is in full swing, in order to complete the project and handover the possession to the allottees at the earliest.
- ix. That it is pertinent to state that the respondents has always made efforts for completion of the said project. Initially, the Interim RERA granted RERA registration on 10.01.2018 till 31.12.2020 for Phase I (tower A to G) and 31.12.2021 for Phase II (tower H to J). From time-to-time construction activities were impeded due to poor air quality in the Delhi NCR region.
- x. That the legal fraternity is respected for its novelty and highly educated professionals. The Hon'ble Supreme Court has allowed extension of limitation taking into consideration the impact of the novel corona virus over the world. Similarly, the real estate sector was impacted badly due to Covid-19 as the construction activities were halted for a long time. Moreover, the cost of construction kept on increasing with time.
- xi. The present complaint is devoid of any merit and has been preferred with the sole motive to harass the respondents. In fact, the present complaint is liable to be dismissed on the ground that the said claim of the complainant is unjustified, misconceived and without any basis and is against the respondents. The present complaint is baseless and flagrant abuse of process of law to harass the respondents.
- xii. In spite of the fact that the real estate market has gone down badly, the respondents have managed to carry on the works with certain delays caused

due to various above mentioned reasons and the fact that various buyers, including the complainants of the project have defaulted in making timely payments towards their outstanding dues, resulting into inordinate delay in the construction activities, still the construction of the said project has never been stopped or abandoned and the project will be delivered soon.

- xiii. That it is a respectful submission of the respondents that a bare perusal of the complaint will sufficiently elucidate that the complainants have miserably failed to make a case against the respondents. It is submitted that the complainants have merely alleged in the complaint about the delay on the part of the respondents in offering possession but has failed to substantiate the same. The fact is that the respondents have been acting in consonance with the registration of project with the Authority and no contravention in terms of the same can be projected on the respondents.
- xiv. That the Haryana Real Estate Regulatory Authority, Gurugram, does not have jurisdiction in the instant case as the subject-matter of the complaint has to be decided as per the Act, 2016 and the Rules, 2017. The complainant has erred in invoking the jurisdiction of the HARERA, Gurugram, as the compensation can only be granted in cases where the Authority so directs.
- xv. Thus, it is germane to state that there is no further deficiency as claimed by the complainants against the respondents and no occasion has occurred deeming indulgence of the Hon'ble Adjudicating Officer. Hence, the present complaint is liable to be dismissed.
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 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.

E. I Territorial jurisdiction

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

E. II Subject matter jurisdiction

9. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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;

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 of 2016 quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside the compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on objections raised by the respondents:

F.I Objections regarding force Majeure.

11. The respondents-promoter has raised the contention that the construction of the unit of the complainant has been delayed due to force majeure

circumstances such as orders passed by the Hon'ble NGT, Environment Protection Control Authority, and Hon'ble Supreme Court. The pleas of the respondents advanced in this regard are devoid of merit. The orders passed were for a very short period of time and thus, cannot be said to impact the respondents-builder leading to such a delay in the completion. Furthermore, the respondents should have foreseen such situations. Thus, the promoter respondents cannot be given any leniency on the basis of aforesaid reasons, and it is a well-settled principle that a person cannot take benefit of his own wrong.

12. Furthermore, the respondents seeks an extension in the timeline for due date of possession in view of the Covid 19 pandemic. The authority put reliance judgment of Hon'ble Delhi High Court in case titled as M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M. P (I) (Comm.) no. 88/2020 and I.As 3696-3697/2020 dated 29.05.2020 which has observed that-

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

13. In the present complaint also, the respondents was liable to complete the construction of the project in question and handover the possession of the said unit by 07.06.2015. The respondents are claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself and for the said reason the said time period is not excluded while calculating the delay in handing over possession.

F.II Objection regarding complainant being an investor.

14. The respondents have taken a stand that the complainant is the investor and not a consumer, therefore, he is not entitled to the protection of the Act thereby not entitled to file the complaint under section 31 of the Act. The respondents 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 respondents is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is a settled principle of interpretation that a preamble is an introduction of a statute and states the main aims & objects of enacting a statute but at the same time 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 allotment letter, it is revealed that the complainant is a buyer, and he has paid a total price of Rs. 86,19,310/- to the promoter towards the 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" about 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;"

15. In view of the above-mentioned definition of "allottee" as well as all the terms and conditions of the allotment letter executed between promoter and complainant, it is crystal clear that the complainant is an allottee as the subject unit was allotted to him by the promoter. The concept of investor is not defined or referred to 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 the status of “investor”. Thus, the contention of a promoter that the allottee being an investor is not entitled to protection of this act also stands rejected.

G. Findings regarding relief sought by the complainant.

G.I Direct the respondents to pay delay possession charges at the prescribed rate of interest.

G.II Direct the respondents to handover physical possession of the unit to the complainant.

16. In the present complaint, the complainant intends to continue with the project and is seeking possession of the subject unit and delay possession charges as provided under the provisions of section 18(1) of the Act which reads as under.

“Section 18: - Return of amount and compensation

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

.....

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

17. The apartment buyer’s agreement was executed between the parties. As per clause 2.1 of the agreement, the possession was to be handed over within 36 months from the date of sanction of building plans along with a grace period of 180 days. The clause 2.1 of the buyer’s agreement is reproduced below:

2.1 Possession

Subject to clause 9 or any other circumstances not anticipated and beyond control of the first party/conforming party and any restraints/restrictions from any court/authorities and subject to the purchaser having complied with all the terms of this agreement including but not limited timely payment of total sale consideration and stamp duty and other charges and having complied with all provisions, formalities documentation etc. as prescribed by the first party/conforming party proposes to handover the possession of the flat to the purchaser within approximate period of 36 months from the date of sanction of building plans of the said colony. The purchaser agrees and understands that the first party/conforming party shall be entitled to a grace period of 180 days after the expiry of 36 months for applying and obtaining OC in respect of the colony from the concerned authority...

(Emphasis supplied)

18. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement, and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottees that even a single default by him in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment time period 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 allottees of their 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.
19. **Due date of possession and admissibility of grace period:** The respondents/promoter proposed to hand over the possession of the said unit within a period of 36 months from the date of sanction of building plans. The building plans were approved on 07.06.2012. It is further provided in agreement that promoters shall be entitled to a grace period of 180 days for filing and pursuing the occupancy certificate etc. from DTCP. The said grace period is allowed in terms of order dated 08.05.2023 passed by the Hon'ble Appellate Tribunal in *Appeal No. 433 of 2022 tilted as Emaar MGF Lamd Limited Vs Babia Tiwari and Yogesh Tiwari* wherein it has been held that if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining

the occupation certificate. The relevant portion of the order dated 08.05.2023, is reproduced as under:-

*“As per aforesaid clause of the agreement, possession of the unit was to be delivered within 24 months from the date of execution of the agreement i.e. by 07.03.2014. As per the above said clause 11(a) of the agreement, a grace period of 3 months for obtaining Occupation Certificate etc. has been provided. The perusal of the Occupation Certificate dated 11.11.2020 placed at page no. 317 of the paper book reveals that the appellant-promoter has applied for grant of Occupation Certificate on 21.07.2020 which was ultimately granted on 11.11.2020. It is also well known that it takes time to apply and obtain Occupation Certificate from the concerned authority. As per section 18 of the Act, if the project of the promoter is delayed and if the allottee wishes to withdraw then he has the option to withdraw from the project and seek refund of the amount or if the allottee does not intend to withdraw from the project and wishes to continue with the project, the allottee is to be paid interest by the promoter for each month of the delay. In our opinion if the allottee wishes to continue with the project, he accepts the term of the agreement regarding grace period of three months for applying and obtaining the occupation certificate. **So, in view of the above said circumstances, the appellant-promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the Occupation Certificate.** Thus, with inclusion of grace period of 3 months as per the provisions in clause 11 (a) of the agreement, the total completion period becomes 27 months. Thus, the due date of delivery of possession comes out to **07.06.2014.**”*

20. Therefore, in view of the above judgement and considering the provisions of the Act, the authority is of the view that, the promoter is entitled to avail the grace period so provided in the agreement for applying and obtaining the occupation certificate. Therefore, the due date of handing over of possession comes out to be 07.12.2015 including a grace period of 180 days.

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

The complainant is seeking delay possession charges. However, proviso to Section 18 provides that where an allottee(s) does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under Rule 15 of the Rules, *ibid*. Rule 15 has been reproduced as under:

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

(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.

22. The legislature in its wisdom in the subordinate legislation under the provision of Rule 15 of the Rules, ibid has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said Rule is followed to award the interest, it will ensure uniform practice in all the cases.

23. 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., 20.09.2024 is 11.10%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 11.10%.

24. 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;"*

25. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is satisfied that

the respondents are 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 2.1 of the buyer's agreement executed between the parties, the possession of the subject apartment was to be delivered within a period of 36 months from date of sanction of building plans. Date of sanction of building plan is taken from complaint as submitted by complainant in their complaint i.e., 07.06.2012. As such the due date of handing over of possession comes out to be 07.12.2015 in as detailed in para no. 18 of the order.

26. 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 these complaints, the occupation certificate has not been obtained. In view of the above, the delay possession charges shall be payable from the due date of possession i.e., 07.12.2015 till the expiry of 2 months from the date of offer of possession plus two months after obtaining OC or actual handover of possession, whichever is earlier.
27. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the apartment buyer's agreement to hand over the possession within the stipulated period. 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 respondents is established. As such, the allottee shall be paid, by the promoter delayed possession charges at the prescribed rate of interest i.e., 11.10 % p.a. per annum from 07.06.2015 till offer of possession after obtaining of OC + 2 months 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, *ibid*.

H. Directions of the authority:

28. Hence, the authority hereby passes this order and issues the following directions under Section 37 of the Act to ensure compliance of obligation cast

upon the promoter as per the function entrusted to the authority under Section 34(f) of the act of 2016:

- i. The respondents are directed to pay delayed possession charges at the prescribed rate of interest i.e., 11.10 % p.a. per annum from 07.12.2015 till offer of possession after obtaining of OC + 2 months 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, *ibid*. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per Rule 16(2) of the Rules, *ibid*.
- ii. The respondents are further directed to issue a fresh statement of account after adjusting the delayed possession charges within a period of 2 weeks from the date of order.
- iii. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 11.10% by the respondents/promoter which is the same rate of interest which the promoter 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 complainant is directed to pay outstanding dues if any remains, after adjustment of delay possession charges within a period of next 30 days.
- v. The respondents shall not charge anything from the complainant which is not the part of the buyer's agreement.

29. Complaint stands disposed of.

30. File be consigned to registry.

(Ashok Sangwan)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 20.09.2024