BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 2494 of 2019
First date of hearing: 24.09.2019
Date of decision : 11.02.2021

Shri Vivek Kumar
R/o: C-24, Ground Floor, Mayfield Garden,
Sector-51, Gurugram-122002. **Complainant**

Versus

M/s Vatika Limited,
Address: 4th Floor, Vatika Triangle,
Sushant Lok, Block-A, Phase-1,
M.G. Road, Gurugram-122002, Haryana **Respondent**

CORAM:
Dr. K.K. Khandelwal **Chairman**
Shri Samir Kumar **Member**

APPEARANCE:
Shri Sunil Kumar Advocate for the complainant
Shri Venket Rao Advocate for the respondent

ORDER

1. The present complaint dated 01.07.2019 has been filed by the complainant/allottee in Form CRA 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 dwelling unit buyer's agreement for sale executed inter-se them.

A. Project and unit 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.	Heads	Information
1.	Name and location of the project	"Emilia Floors in Vatika India Next", Sector 83, Gurugram
2.	Nature of the project	Residential township
3.	DTCP license no.	113 of 2008 dated 01.06.2008
	Valid up to	31.05.2018
4.	RERA registered/ not registered	**Not registered**
5.	Date of execution of dwelling unit buyer's agreement	**23.03.2011**
6.	Unit no.	Plot no.32, First Floor, St.-16 Block-E
7.	Plot measuring	781.25 sq. ft.
8.	Payment plan	Construction linked plan
9.	Addendum to the agreement	11.09.2013
10.	New unit	1C/FF/St. 82 H-6/VIN

11.	Revised area	925.26 sq. ft.
12.	Second addendum to the agreement	04.05.2017
13.	New unit	Plot 31, St. K-8.1, Level-2
14.	Revised area	985 sq. ft.
15.	Total consideration as per statement of account dated 12.06.2019	Rs. 34,05,673.56/-
16.	Total amount paid by complainant as per statement of account dated 12.06.2019	Rs. 10,34,187.08/-
17.	Due date of delivery of possession (As per clause 10.1 of the dwelling unit buyer's agreement, the respondent company contemplated to complete the construction within 3 years from the date of execution of the agreement i.e. 23.03.2011)	23.03.2014
18.	Date of offer of possession to the complainant	**Not offered**
19.	Delay in handing over possession till date of decision	6 years 10 months 21 days

B. Facts of the complaint

3. The complainant submitted that he booked a 2 BHK flat with Vatika Limited in their project 'Emilia Floors. On 12.12.2009,

the complainant made payment of Rs. 2,22,177.82/- towards booking of the said unit. On 23.03.2011, the respondent executed the buyer's agreement with the complainant. After payment of booking amount on 12.12.2009, the complainant executed buyer's agreement on 23.03.2011 i.e. after delay of approx. 2 years. Till 01.12.2016, the complainant as per the payment plan has paid Rs.10,34,187/- i.e. approx. 35% of the total flat value. On 12.01.2012, the complainant received an email for payment for increase area.

4. The complainant submitted that the respondent as per clause 11.5 of the buyer's agreement has undertaken to complete the construction within a period of three years from the date of execution of this agreement i.e. by 23.03.2014. As per clause 10.3 of the buyer agreement, the respondent has mentioned that if the construction is delayed due to the reason beyond his control, the promoter shall be entitled to a reasonable extension of time for offering delivery of possession of the apartment, the company shall be liable to pay a sum of Rs. 5 per sq. ft. of the super area per month as penalty.

5. The complainant submitted that as per section 11(4) of the Act, the promoter shall 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. In this case, the promoter as per the buyer's agreement has agreed to give possession of the flat within the period of 3 years from the date of agreement but the promoter had neither given the possession nor updates the status of the dues received and spent on the project. The promoter has violated the terms of buyer's agreement, terms of section 11 and 13 of the Act. That the complainant has got no other efficacious remedy but to approach this hon'ble authority for redressed the grievances and hence this complaint.

C. Reliefs ought by the complainant:

6. The complainant has sought following relief(s):

   i. Direct the respondent to handover the possession of the unit in question.

   ii. Direct the respondent to pay interest at the rate of 18% for delay in delivery.

7. On the date of hearing, the authority explained to the respondent/promoter about the contravention 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

8. The respondent has contested the complaint on the following grounds:

i. That the complainant has got no locus standi or cause of action to file the present complaint at this belated stage. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect interpretation and understanding of the terms and conditions of the application form dated 11.12.2009 and the dwelling unit buyer's agreement dated 23.03.2011.

ii. That the complainant has misdirected himself in filing the said complaint before the ld. authority as the reliefs being claimed by the complainant cannot be said to fall within the realm of jurisdiction of this ld. authority. That the claim for interest and compensation would only be adjudged by the adjudicating officer as appointed under section 71 of the Act. Ld. authority is not specifically empowered by any provision of the Act to award any relief enumerated in section 12, 14, 18 & 19 of the Act, which are within the purview of the adjudicating officer. Also, in view of common judgement and order dated 02.05.2019 titled as "Sameer Mahawar versus MG Housing Pvt. Ltd.", in appeal no. 6 of 2018 and other connected appeals passed by the HRERA Appellate Tribunal, the authority

lacks jurisdiction to entertain the matter. Hence, no complaint can be entertained much less before this ld. authority in respect of the matters to be adjudged by the adjudicating officer.

iii. That the complainant had vide application form dated 11.12.2009 booked residential floor of built up area 781.25 sq. ft at the project of the respondent company. It is submitted that due change in circumstances, the size of unit was increased to 925.26 sq. ft. The said amendment was duly intimated to the complainant and it is in consonance with clause 9.2 of the agreement. That further the change, major alteration, modification was accepted by the complainant without protest vide addendum dated 11.09.2013. That the increase in the unit size resulted in increase of the price of the floor however, the respondent ensured that no disadvantage is suffered by the complainant and thus the increased plot size did not result in increase in price and increased amount was waived off by the respondent company.

iv. That due to unavoidable reasons beyond the control of the respondent, the complainant was re-allotted an alternate plot/unit/apartment. That the complainant, being fully aware of the construction status of the re-allotted unit/ project agreed and signed the addendum to the agreement on 04.05.2017 detailing therein the circumstances for the

change in allotted unit and the size change. That the complainant was kept up-to-date with regard to the actual status of the project and was well aware that the Emilia Floors project had changed due to circumstances beyond the control of the respondent company. The re-allotted unit details and the size of the unit was communicated to the complainant and the same was agreed by the complainant without any protest. Further the complainant had agreed to pay the sale consideration on the basis of actual super area and location of new allotted unit. The relevant portion of the addendum dated 04.05.2017 is reproduced herein below:

> *"the Allottee is fully satisfied and readily accepts the allotment of new Sector-83, Plot No-31, ST.K-8.1, Level-2 admeasuring 985 sq. ft. super area in Project "Vatika India Next" without any demur of protest. In view thereof, Allottee has been left with no right, title and interest in the Old Unit No. Plot No.1c, FF, Street H-6, Vatika India Next, Gurgaon. Therefore in Builder Buyer's Agreement dated 23.03.2011 executed between the Allottee, and the company herein the EMILIA Floors, wherever it is written in the Agreement, shall be read as Unit No. Sector-83, Plot No-31, ST.K-8.1, Level-2. Allottee undertakes to pay the sale consideration on the basis of actual Super Area & location of new allotted Unit No. Sector-83, Plot No-31, ST.K-8.1, Level-2in Project "Vatika India Next".*

v. That further, the complainant has already waived off his right to claim any compensation for delay in possession of the re-allocated unit. A copy of the addendum dated 04.05.2017 was provided to the complainant and after fully understanding and agreeing to the terms and

conditions of the addendum to agreement, the complainant signed the same. Further it will be clear from the relevant portion reiterated below that the complainant waived off his right to get compensation for the delay in handing over the possession. The relevant part states as follows:

> *"That we are fully aware of the present construction status of the re-allotted unit/project and unequivocally and unconditionally agree that I am not entitled to any compensation for delay in possession of the re-allotted unit or it getting reallocated".*

vi. That the primary prayer of the complainant is that they want compensation in accordance with section 18 of the Act. That as per the agreement the time of construction was 3 years from the date of execution of the agreement unless there is any delay as per clauses 11.1, 11.2, 11.3, 38 or by default of the allottee in timely payments as per the payment schedule. It is submitted that the changed timelines for delivery have been beyond the control of the respondent owing to the following reasons:

a) Initiation of the GAIL Corridor which passes through the project, resulting in realignment of the entire layout.

b) Non-removal or shifting of the defunct High-Tension lines passing through the lands resulting in inevitable change in the layout plans.

c) Non-acquisition of sector roads by HUDA to enable accessibility to the various corners of the project.

That since the hurdles faced by the respondent company were beyond the control of the respondent, no fault can be found qua the respondent. Clause 11.1 of the agreement clearly states that in case of delay due to reasons beyond the control of the respondent, the respondent reserves the right to alter or vary terms and conditions of the agreement and suspend the scheme for such period. It further clarifies that the allottee agrees to not claim any compensation during such period. It is further submitted that, it was never the intention of the respondent company to not complete the project on time, rather the delay was beyond the control as indicated in aforesaid paragraph. The respondent is committed in completing the present project at the earliest and hand over possession to the complainant after receiving the full amount as per the schedule of payment against the said unit.

vii. That it is submitted that both the parties are bound by the dwelling unit buyer's agreement as per the provisions of the Contract Act 1872. That both the complainant and the respondent had agreed on account of a legal and reciprocal consideration to fulfil their part of the obligations, where the respondents were to construct and deliver the apartment as per the terms of the agreement

and the complainant were to make all timely payments as per the payment schedule. However, right from the very beginning, the complainant has been extremely irregular with regard to payment of the instalments according to the schedule of payment as agreed upon by the parties in terms of the buyer's agreement. Consequently, the respondent had to issue payment request letter/s to give the complainant notice of due date for the payments to be made and payment request reminders calling upon the complainant to pay the amounts that had become due on account of failure of the complainant to adhere to the schedule of payment in terms of the buyer's agreement.

viii. Hence, this complaint is liable to be dismissed.

9. 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.

E. Jurisdiction of the authority

10. The respondent has raised preliminary objection regarding jurisdiction of authority to entertain the present complaint. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

11. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana 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

12. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as held in ***Simmi Sikka v/s M/s EMAAR MGF Land Ltd.*** **(complaint no. 7 of 2018)** leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage. The said decision of the authority has been upheld by the Haryana Real Estate Appellate Tribunal in its judgement dated 03.11.2020, in appeal nos. 52 & 64 of 2018 titled as ***Emaar MGF Land Ltd. V. Simmi Sikka and anr.***

F. Findings of the authority

Relief sought by the complainant: The respondent be directed to handover possession of the unit in question and to pay interest @ 18% p.a. on the delay in handing over the possession in view of the violation of section 18 of the Act.

13. In the present complaint, the complainant intends to continue with the project and is 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."*

14. As per clause 10.1 of the dwelling unit buyer's agreement, the possession of the unit in question was to be handed over to the complainant within a period of 3 years from the date of execution of the agreement. Clause 10.1 of the buyer's agreement is reproduced below:

> ***10.1 <u>Schedule for Possession of the said independent dwelling unit</u>***
>
> *That the Company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/ said independent dwelling unit within a period of three years from the date of execution*

of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in Clauses (11.1), (11.2), (11.3) and Clause (38) or due to failure of Allottee(s) to pay in time the price of the said independent dwelling unit along with all other charges and dues in accordance with the schedule of payments given in Annexure III or as per the demands raised by the Company from time to time or any failure on the part of the Allottee(s) to abide by any of the terms or conditions of this Agreement. However, it is agreed that in the event of any time overrunning completion of construction of the said building/said dwelling unit, the Company shall be entitled to reasonable extension of time for completing the same".

15. 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 in making payments as per the schedule of payment or upon demand raised by the promoter or failure on part of the allottee to abide by any of the terms and conditions of the buyer's agreement. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee 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 doted lines.

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

> ***Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]***
>
> *(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.:*
>
> *Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.*

17. 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. The Haryana Real Estate Appellate Tribunal in **Emaar MGF Land Ltd. vs. Simmi Sikka (Supra)** observed as under: -

> *"64. Taking the case from another angle, the allottee was only entitled to the delayed possession charges/interest only at the rate of Rs.15/- per sq. ft. per month as per clause 18 of the Buyer's Agreement for the period of such delay; whereas, the promoter was entitled to interest @ 24% per annum compounded at the time of every succeeding instalment for the delayed payments. The functions of the Authority/Tribunal are to safeguard the interest of the aggrieved person, may be the allottee or the promoter. The rights of the parties are to be balanced and must be equitable. The promoter cannot be allowed to take undue advantage of his dominate position and to exploit the needs of the homer buyers. This Tribunal is duty bound to take into consideration the legislative intent i.e., to protect the interest of the consumers/allottees in the real estate sector. The clauses of the Buyer's Agreement entered into between the parties are one-sided, unfair and unreasonable with respect to the grant of interest for delayed possession. There are various other clauses in the Buyer's Agreement which give sweeping powers to the promoter to cancel the allotment and forfeit the amount paid. Thus, the terms and conditions of the Buyer's Agreement dated 09.05.2014 are ex-facie one-sided, unfair and unreasonable, and the same shall constitute the unfair trade practice on the part of the promoter. These types of discriminatory terms and conditions of the Buyer's Agreement will not be final and binding."*

18. 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., 11.02.2021 is 7.30%. Accordingly, the

prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.

19. 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;"*

20. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 9.30% by the respondents/promoters which is the same as is being granted to the complainant in case of delayed possession charges.

21. 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 provisions of the Act. Vide application form dated 11.12.2009, the complainant booked a residential floor in the project 'Emilia Floors in Vatika India Next'. In pursuance of aforesaid application form, the complainant and the respondent have executed the buyer's agreement on 23.03.2011 in respect of unit no. plot no. 32, first floor, street no.16, block E admeasuring 781.25 sq. ft. Thereafter, due to unavoidable reasons beyond the control of the respondent, the complainant was reallotted an alternate plot/unit/apartment and an addendum dated 11.09.2013 was executed to that effect allotting a new unit bearing no. 1C/FF/St. 82 H-6/VIN admeasuring 925.26 sq. ft. The relevant para of the addendum is reproduced below:

> *"...That now aforesaid Emilia Floors has been changed due to circumstances, which has been explained to and understood by the Allottee and accordingly, Allottee has been re-allotted a new Emilia Floors (new unit) no. 1C/FF/St.82 H-6/VIN admeasuring about 925.26 sq. ft. built up area in Project. "Vatika India Next" in lieu of the Old unit no. (old unit) Plot No. 32, Emilia, FF, ST.83E-16, Sec.83E, VIN which has been duly accepted by the Allottee. The Allottee is fully satisfied and readily accepts the allotment of new no. 1C/FF/St.82 H-6/VIN, admeasuring about 925.26 sq. ft. built up area in Project "Vatika India Next" without any demur or protest. In view thereof, Allottee has been left with no right, title and interest in the Old unit no. (old unit) Plot No.32, Emilia, FF, ST.83E-16, Sec.83E, VIN. Therefore, in Builder Buyer's Agreement dated 23.03.2011 executed between Allottee, and the company herein the Emilia Unit, wherever it is written in the Agreement, shall*

be read as Unit no. 1C/FF/St.82 H-6/VIN. Allottee undertakes to pay the Sale Consideration on the basis of actual Built-up Area & location of new allotted Unit no. 1C/FF/St.82 H-6/VIN in Project "Vatika India Next". All other terms and condition of the Builder buyer Agreement dated 23.03.2011 and consequent documentation and understandings in this regard executed between the Parties herein shall remain and hold good and valid for this new allotted Unit no. 1C/FF/St.82 H-6/VIN and all payment received on account of Old Unit no. (old) Plot no. 32, Emilia, FF, ST.83E-16, Sec.83E, VIN shall be treated as part payment of sale consideration of new Unit no. 1C/FF/St.82 H-6/VIN and shall constitute a valid discharge to such effect. All the terms and conditions of the executed Builder Buyer's Agreement shall remain the same & binding on the parties. The allottee has till date not created any charge encumbrance on the original allotted Plot no. 32, Emilia, FF, ST.83E-16, Sec.83E, VIN.

This Addendum shall be considered as an integral part & parcel of the Builder Buyer's Agreement dated 23.03.2011, modifying only those terms as have been specifically mentioned hereinabove, all other terms and conditions of the Builder Buyer's Agreement dated 23.03.2011 shall remain unaltered and effective."

(.....Emphasis supplied)

From the above clauses of addendum to the buyer's agreement it is quite evident that the original agreement shall stand changed only to the extent of change in unit number and its location. In other words, all the terms and conditions of buyer's agreement dated 23.03.2011 remained effective and unaltered except change in unit.

22. Subsequently, another addendum dated 04.05.2017 was executed between the parties whereby the unit of the complainant was changed again and a new unit bearing no. Plot no.31, ST.K-8.1, Level 2 admeasuring 985 sq. ft. was

reallotted in favour of the complainant. It was further stated in the addendum to the agreement that the complainant shall not be entitled compensation for delay in possession of the re-allotted unit. The relevant clauses of the addendum dated 04.05.2017 are reproduced below:

> "....
>
> *That we are fully aware of the present construction status of the re-allotted unit/project and unequivocally and unconditionally agree that I am not entitled to any compensation for delay in possession of the re-allotted unit or it getting reallocated.*
>
> *This Addendum shall be considered as an integral part & parcel of the Builder Buyer's Agreement dated 23.03.2011 modifying only those terms as have been specifically mentioned hereinabove, all other terms and conditions of the Builder Buyer's Agreement dated 23.03.2011 shall remain unaltered and effective.*"

23. From the above clauses of addendum to the buyer's agreement it is quite evident that this addendum forms an integral part and parcel of the buyer's agreement dated 23.03.2011 and the original agreement shall stand changed only to the extent of change in unit number and its location. In other words, all the terms and conditions of buyer's agreement dated 23.03.2011 including but not limited to possession clause (clause 10.1) remained effective and unaltered except change in unit. Therefore, the due date of possession shall be calculated as per clause 10.1. of the agreement dated 23.03.2011. As far as disentitlement to claim compensation as per aforesaid clause

of addendum dated 04.05.2017 is concerned, the respondent has not clarified as to why a need arose for the complainant to agree on such a clause and as to why the complainant has agreed to surrender his legal rights which were available or had accrued in his favour. The respondent has also not stated the compelling circumstances on grounds of which the respondent has kept on changing the unit allotted to the complainant. The respondent has not provided any documentary proof which shows that the units has been changed again and again on the request of the complainant-allottee, so it can be concluded that the change in unit and execution of addendum was only at the unilateral wish of the respondent. In these circumstances, it can be said that the allottee was left with no choice but to sign on the dotted lines of the addendum. Also, it can be said that by incorporating such clause wherein the allottee was compelled to waive his right to compensation for delay in handing over possession, the respondent-promoter can be said to be in a win-win situation wherein on one hand he has violated terms of buyer's agreement dated 23.03.2011 by not handing over possession within time stipulated therein and on the other hand disentitling the allottee to claim delay possession charges. So,

the clause regarding waiving of delay possession charges incorporated in the addendum becomes ineffectual. Such a clause whereby a person gave up his valuable rights must be shown to have been executed in a free atmosphere and should not give rise to a suspicion. If even a slightest of doubt arises in the mind of the adjudicator that such an agreement was not executed in an atmosphere free of doubts and suspicions, the same would be deemed to be against public policy and would also amount to unfair trade practices.

24. By virtue of clause 10.1 of the dwelling unit buyer's agreement executed between the parties on 23.03.2011, possession of the booked unit was to be delivered within a period of 3 years from the date of signing of the agreement which comes out to be 23.03.2014. Since, the respondent has not offered the possession of the subject unit to the complainant so far, it is the failure on the part of the respondent-promoter to fulfil its obligations and responsibilities as per the dwelling unit buyer's agreement dated 23.03.2011 to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) of the Act on the part of the respondent is established. As such the complainant is entitled for delayed possession charges at

prescribed rate of interest i.e. 9.30% p.a. w.e.f. 23.03.2014 till the date of handing over the possession, as per provisions of section 18(1) of the Act read with rule 15 of the rules.

25. Hence, the authority hereby passes the following order and issue 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 shall pay interest at the prescribed rate i.e. 9.30% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. 23.03.2014 till the date of handing over the possession.

ii. The arrears of interest accrued till date of decision shall be paid to the complainant within a period of 90 days from the date of this order and thereafter monthly payment of interest till the offer of possession shall be paid before 10th of every subsequent month.

iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

iv. The respondent shall not charge anything from the complainant which is not part of the dwelling unit buyer's agreement.

v. Interest on the delay payments from the complainant shall be charged at the prescribed rate of interest @9.30% p.a. by the promoter which is the same as is being granted to the complainant in case of delayed possession charges.

26. Complaint stands disposed of.

27. File be consigned to registry.

(Samir Kumar)
Member

(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 11.02.2021

Judgement uploaded on 04.08.2021.