

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

Complaint no. : 1231 of 2020
First date of hearing: 31.03.2020
Date of decision : 06.04.2021

1. Mr. Gurbachan Singh Chowdhary
2. Mrs. Gursharan Kaur Chowdhary
Both R/o: - 195-B, Lane W-11, Western
Avenue, Sainik Farms, Khanpur, Delhi
110062

Complainants

Versus

1. M/s BPTP Limited
2. M/s Countrywide Promoters Private
Limited
Both Having Regd. Office at: - M-11,
Middle Circle, Connaught Circus,
New Delhi 110001

Respondents

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar
Shri Vijay Kumar Goyal

Chairman
Member
Member

APPEARANCE:

Sh. Priyanka Agarwal
Sh. Venket Rao

Advocate for the complainants
Advocate for the respondents

ORDER

1. The present complaint dated 11.03.2020 has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of

section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

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

S. No	Heads	Information
1.	Unit no.	A-158-GF Ground Floor Block A [Page 13 of complaint]
2.	Unit measuring	1999 sq. ft. (185.71 sq. mtrs.) [Page no.15 of complaint]
3.	Date of execution of apartment buyer's agreement	01.02.2012 [Page 68 of reply]
4.	Allotment letter	05.08.2011 [Page 47 of reply]
5.	Payment plan	Construction linked payment plan. [Page 48 of reply]
6.	Total consideration	Rs.12,294,961.42/- [as per statement of accounts on page 163 of reply]
7.	Total amount paid by the complainants	Rs.89,11,523.65 /-



		[as per statement of accounts page 163 of reply]
8.	Due date of delivery of possession as per clause 5.1 of the apartment buyer agreement: 01.02.2012 [Page 68 of reply]	01.02.2014 [Note:- Grace Period is not allowed]
9.	Offer of possession	07.02.2020 [Page 161 of reply]
10.	Occupation certificate	20.01.2020 [as alleged by the respondent's page 11 of reply] [Not on record]
11.	Delay in handing over possession till date of offer of possession i.e., 07.02.2020	6 years and 6 days

3. The particulars of the project namely, "Amstoria" as provided by the registration branch of the authority are as under:

Project related details		
<p>The License no. 58 of 2010 and 45 of 2011 comprising of total land area 126.674 Acres were previously sold by the promoter by the project name i.e., Amstoria and was not registered.</p> <p>As such, the promoter has registered with the authority vide registration no.31of 2020 valid till 30.04.2024 on the same land comprising of license no. 58 of 2010 and 45 of 2011. Now, the Name of the said project is 102, Eden Estate and is registered with the Authority.</p>		
1.	Name of the promoter	M/s Countrywide Promoters Private Limited
2.	Name of the project	102 Eden Estate
3.	Location of the project	Sector-102 & 102A, Gurugram, Haryana.
4.	Nature of the project	Residential Plotted Colony



5.	Whether project is new or ongoing	Ongoing	
6.	Registered as whole/phase	Whole	
7.	If developed in phase, then phase no.	N/A	
8.	Total no. of phases in which it is proposed to be developed, if any	N/A	
9.	HARERA registration no.	31 of 2020	
10.	Registration certificate	Date	Validity
		09.10.2020	30.04.2024
11.	Area registered	126.674 acres	
	Total Plots 1028 {Out of which 28 plots for villas and 155 plots for the floors (G+3)}		
12.	Extension applied on	N/A	
13.	Extension certificate no.	Date	Validity
		N/A	N/A
Licence related details of the project			
1.	DTCP license no.	58 of 2010 dated 03.08.2010 and 45 of 2011 dated 17.05.2011	
2.	License validity/ renewal period	02.08.2025 and 16.05.2024	
3.	Licensed area	18.606 acres and 108.068 acres	
4.	Name of the license holder	M/s Shivanand Real Estate Pvt. Ltd. and others.	
5.	Name of the collaborator	NA	
6.	Name of the developer/s in case of development agreement and/or marketing agreement	NA	

	entered into after obtaining license.		
7.	Whether BIP permission has been obtained from DTCP	NA	
Date of commencement of the project			
1.	Date of commencement of the project	N/A	
Details of statutory approvals obtained			
S.N.	Particulars	Approval no and date	Validity
1.	Approved Building Plan	N/A	N/A
2.	Environment Clearance	12.12.2013	11.12.2020
	Revised Environment Clearance	22.07.2016	21.07.2023
3. (a)	Occupation Certificate Date	Provided individually for the floors	
4.	Part Completion Certificate date	03.10.2017	
	Area	66.50 acres	

B. Facts of the complaint

1. The case of the complainants who are senior citizens is that they booked a floor bearing unit no. A-158-GF, Block A, Ground floor admeasuring 1999 sq. ft. in the respondent's project namely "BPTP Amstoria", Sector-102, Gurugram on 24.05.2011.
2. The builder buyer's agreement was executed between the parties on 01.02.2012, as per clause 5.1 of the agreement the promoter was to handover the possession of the unit to the complainants

within 24 months with further grace period of 180 days. After the expiry of the said commitment period to allow for filing and pursuing the occupancy certificate etc., from the DTCP in respect of the entire colony. Clause 5.1 of the apartment buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below:

"5.1. POSSESSION

Subject to force majeure, as defined in Clause 14 and further subject to purchaser(s) having complied with all its obligations under the terms and conditions of this agreement and the purchaser(s) not being in default under any part of this agreement including but not limited to the timely payment of each and every instalment of the total sale consideration including but not limited to the timely payment of each and every instalment of the total sale consideration including DC, Stamp duty and other charges and also subject to the Purchaser(s) having complied with all formalities or documentation as prescribed by the Seller/ confirming party, the Seller/confirming party proposes to hand over the physical possession of the said unit to the purchaser(s) within a period of 24 months from the date of sanctioning of the building plan or execution of Floor Buyer's Agreement, whichever is later. (Commitment Period). The Purchaser(s) further agrees and understands that the seller/confirming party shall additionally be entitled to a period of 180 days ("Grace Period") after the expiry of the said Commitment Period to allow for filing and pursuing the Occupancy Certificate etc. from DTCP under the Act in respect of the entire colony."

3. The complainants paid the instalments as detailed in the complaint from time to time, however the builder buyer's agreement was one sided and at the time of offer of possession the respondents used new tricks for extracting extra money from the complainants forcibly imposing the escalation cost of Rs. 6,84,102/- which was concluded illegally, arbitrarily and accordingly not acceptable by

the complainants, beside this the complainants have raised grievances for charging of GST.

4. The offer of possession of the unit was given to the complainants vide offer of possession letter dated 07.02.2020 (**Copy Annexure P1 of complaint**)
5. By filing the present complaint, the complainants have raised various grievances, however during the argument at the bar they have confined their grievances in respect of award of delay possession charges. Therefore, the authority is not into the other issues.

C. Relief sought by the complainants:

6. The complainants have sought following relief:
 - (i) Pass an order for delay interest on paid amount of 89,11,523/- from August 2014 along with pendent lite and future interest till actual possession thereon @18%.
7. On the date of hearing, the authority explained to the respondents/promoters 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 respondents

8. The respondents has contested the complaint and filed a reply. The respondents have also taken various pleas thereby contravening the arguments made in the complaint. Since, as stated above the complainants confined their grievances with regard to delay possession charges only, the authority does not think it is expedient to discuss the arguments made in the reply in detail.

9. So far as, delay in offering possession of the unit in question is concerned the case of the respondents is that as per clause 5.5 of the builder buyer's agreement, it was agreed between the parties that the payment of delay penalty, shall be Rs. 10 per sq. ft. per month for the first six months of delay, Rs. 20 per sq. ft. per month for the next 6 months of delay, Rs. 30 per sq. ft. per month for any delay thereafter.

"That notwithstanding any other provisions of this agreement, the purchaser(s) agrees that if it fails, ignores or neglects to take over the possession of the floor in accordance with the notice of handing over the physical possession of the floor sent by the seller/confirming party, the purchaser(s) shall also be liable to pay "Holding Charges" on the following rates: -

- i. Rs. 10/per sq. ft./month- (Rupees Ten Only) per sq. ft. of the built-up area of the Floor per month for the first six (6) months of delay.*
- ii. Rs. 20/per sq. ft./month- (Rupees Twenty Only) per sq. ft. of the built-up area of the Floor per month for the next six (6) months of delay.*
- iii. Rs. 30/sq. ft./month for the built-up area of the Floor per month for any delay."*

10. That vide clause 5.6 it was stipulated that if the respondents failed to complete the construction due to force majeure circumstances or any other circumstances beyond the control of the respondents, then the respondents shall be entitled to reasonable extension of time for completion of construction.

"Clause 5.6: That if the Seller/Confirming Party fails to complete the construction of the Said Colony and Floor within the period as mentioned in this Agreement due to force majeure circumstances and any other reason stated in the Agreement and any other circumstances beyond the control of the Seller/Confirming Party, then the Purchaser(s) agrees that Seller/Confirming Party shall be entitled to reasonable extension of time for completion of construction of the Colony and delivery of possession of Floor".

11. The parties had agreed under the flat buyer's agreement to attempt

at amicably settling the matter and if the matter is not settled amicably, to refer the matter for arbitration. Admittedly, the complainants had raised a dispute but did not take any steps to invoke arbitration. The allegations made requires proper adjudication by tendering evidence, cross examination etc. and therefore cannot be adjudicated in summary proceedings.

12. The complainants are defaulters/offenders under section 19(6) and 19 (7) of The Real Estate (Regulation and Development) Act, 2016 and not in compliance of these section. The complainants cannot seek any relief under the provision of The Real Estate (Regulation and Development) Act, 2016 or rules frame thereunder. The respondents made follow up with the complainants to seek outstanding dues towards VAT payment vide several reminder letters dated 11.04.2017, 22.06.2017, 11.12.2017, 07.03.2018, etc. Thereafter, the respondents again approached the complainants vide reminder letter dated 19.02.2020 for payment of outstanding dues towards demand raised vide offer of possession, however the complainants failed to clear the pending dues till date.

E. Jurisdiction of the authority

E. I Territorial jurisdiction

13. 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 completed territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

14. 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 complainants 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 on the objections raised by the respondents.

15. It is submitted that the respondents have obtained the occupancy certificate for the said unit on 20.01.2020 and then offered possession of the unit to the complainants vide letter dated 07.02.2020, but it is the complainants who failed to complete the documentation work required to take over the possession of the unit.
16. Hence, it is argued that the complaint be dismissed. Thus, the only question to be considered and decided by the authority, as to whether the complaint is maintainable, if so, whether the complainants are entitled to delay possession charges and if so, for what period and what rate of interest.
17. The respondent had raised an objection for not invoking arbitration proceedings as per the provisions of flat buyer's agreement which contains provisions regarding initiation of arbitration proceedings

in case of breach of agreement. The following clause has been incorporated w.r.t arbitration in the buyer's agreement:

"33. Dispute Resolution by Arbitration

All or any disputes arising out of or touching upon or in relation to the terms of this Agreement including the interpretation and validity of the terms thereof and the respective rights and obligations of the Parties shall be settled amicably by mutual discussion failing which the same shall be settled through arbitration by a sole arbitrator. The arbitration shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory amendments/modifications thereto for the time being in force. The arbitration proceedings shall be held, at an appropriate location in New Delhi by a Sole Arbitrator who shall be appointed by the Managing Director of the Seller and whose decision shall be final and binding upon the Parties. The Purchaser(s) shall not raise any objection on the appointment of sole arbitrator by the Managing Director of the Seller/Confirming Party.

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

would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause. Therefore, by applying same analogy the presence of arbitration clause could not be construed to take away the jurisdiction of the authority.

19. Further, in ***Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017***, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainants and builders could not circumscribe the jurisdiction of a consumer. The relevant paras are reproduced below:

"49. Support to the above view is also lent by Section 79 of the recently enacted Real Estate (Regulation and Development) Act, 2016 (for short "the Real Estate Act"). Section 79 of the said Act reads as follows:-

"79. Bar of jurisdiction - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

It can thus, be seen that the said provision expressly ousts the jurisdiction of the Civil Court in respect of any matter which the Real Estate Regulatory Authority, established under Sub-section (1) of Section 20 or the Adjudicating Officer, appointed under Sub-section (1) of Section 71 or the Real Estate Appellant Tribunal established under Section 43 of the Real Estate Act, is empowered to determine. Hence, in view of the binding dictum of the Hon'ble Supreme Court in A. Ayyaswamy (supra), the matters/disputes, which the Authorities under the Real Estate Act are empowered to decide, are non-arbitrable, notwithstanding an Arbitration Agreement between the parties to such matters, which, to a large extent, are similar to the disputes falling for resolution under the Consumer Act.

...



56. Consequently, we unhesitatingly reject the arguments on behalf of the Builder and hold that an Arbitration Clause in the afore-stated kind of Agreements between the Complainants and the Builder cannot circumscribe the jurisdiction of a Consumer Fora, notwithstanding the amendments made to Section 8 of the Arbitration Act."

20. While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the builder buyer agreement, the hon'ble Supreme Court in case titled as *M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017 decided on 10.12.2018* has upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view. The relevant paras are of the judgement passed by the Supreme Court is reproduced below:

"25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being a special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength an arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."

21. Therefore, in view of the above judgements and considering the provision of the Act, the authority is of the view that complainants

are well within their rights to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and RERA Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily.

22. 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.

G. Findings on the relief sought by the complainants.

- I. Pass an order for delay interest on paid amount of 89,11,523/- from August 2014 along with pendent lite and future interest till actual possession thereon @18%.

23. **Delay Possession Charges Interest:** - As per clause 5.1 of the builder buyer's agreement which is reproduced here below: -

"5.1 Possession: -

Subject to force majeure, as defined in Clause 14 and further subject to purchaser(s) having complied with all its obligations under the terms and conditions of this agreement and the purchaser(s) not being in default under any part of this agreement including but not limited to the timely payment of each and every instalment of the total sale consideration including but not limited to the timely payment of each and every instalment of the total sale consideration including DC, Stamp duty and other charges and also subject to the Purchaser(s) having complied with all formalities or documentation as prescribed by the Seller/ confirming party, the Seller/confirming party proposes to hand over the physical possession of the said unit to the purchaser(s) within a period of 24 months from the date of sanctioning of the building plan or execution of Floor Buyer's Agreement, whichever is later. (Commitment

Period). The Purchaser(s) further agrees and understands that the seller/confirming party shall additionally be entitled to a period of 180 days ("Grace Period") after the expiry of the said Commitment Period to allow for filing and pursuing the Occupancy Certificate etc. from DTCP under the Act in respect of the entire colony."

The respondents were to handover the physical possession to the purchaser within a period of 24 months from the date of sanctioning of building plans or execution of the builder buyer's agreement. The respondents were additionally entitled to a grace period of 180 days.

24. The date of sanction of building plans is not made available to the authority. Hence the date of execution of agreement must be taken as the date of commencement of construction. Thus, the respondents were obligated to give the physical possession of the unit in question to the complainants on or before 1st February 2014. However, the respondents offered the possession of the unit in question on 07.02.2020, therefore there is a delay of 6 years and 6 days in offering the possession of the unit in question to the complainants.
25. The respondents have not pleaded any ground for availing the benefit of the force majeure clause. The only contention raised in this behalf of the respondents is that the complainants are entitled to delay possession charges as per clause 5.6 of the agreement.
26. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within period of 24 months from the date of building plans or execution of the buyer's agreement whichever is later. In the present complaint, the building plans are not record and the buyer's agreement was

executed on 01.02.2012. Therefore, the due date of handing over possession is calculated from the date of the buyer's agreement which comes out to be 01.02.2014. It is further provided in agreement that promoter shall be entitled to a grace period of 180 days for pursuing the Occupancy Certificate etc. from DTCP under the Act in respect of the colony. As a matter of fact, there is no document that has been placed on record which shows that the promoter has applied for occupation certificate within the time limit prescribed by the promoter (i.e., on or before 01.02.2014). As per the settled law one cannot be allowed to take advantage of his own wrong. Accordingly, this grace period of 180 days cannot be allowed to the promoter at this stage. The same view has been upheld by the Hon'ble Haryana Real Estate Appellate Tribunal in appeal nos. 52 & 64 of 2018 case titled as **Emaar MGF Land Ltd. VS Simmi Sikka** case and observed as under: -

68. As per the above provisions in the Buyer's Agreement, the possession of Retail Spaces was proposed to be handed over to the allottees within 30 months of the execution of the agreement. Clause 16(a)(ii) of the agreement further provides that there was a grace period of 120 days over and above the aforesaid period for applying and obtaining the necessary approvals in regard to the commercial projects. The Buyer's Agreement has been executed on 09.05.2014. The period of 30 months expired on 09.11.2016. But there is no material on record that during this period, the promoter had applied to any authority for obtaining the necessary approvals with respect to this project. The promoter had moved the application for issuance of occupancy certificate only on 22.05.2017 when the period of 30 months had already expired. So, the promoter cannot claim the benefit of grace period of 120 days. Consequently, the learned Authority has rightly determined the due date of possession.

27. Admissibility of delay possession charges at prescribed rate of interest: The complainants are seeking delay possession charges

at 18%. 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.

28. The legislature in its wisdom in the subordinate legislation under 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** 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."

29. 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., 06.04.2021 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.
30. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

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

30. Therefore, the authority holds that the respondents are liable to pay delay possession charges to the complainants at the prescribed rates.

H. Directions of the authority


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

- i. The respondents are directed to pay interest at the prescribed rate of 9.30% p.a. for every month of delay on the amount paid by the complainants with the respondents from the due date of possession i.e., 01.02.2014 to 07.02.2020 plus two months. The arrears of such interest accrued shall be paid by the promoter to the allottee within a period of 90 days from date of this order as per Rule 16(2) of the rules.
- ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iii. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.
- iv. The rate of interest chargeable from the complainant /allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in

case of default i.e., the delay possession charges as per section 2(za) of the Act.

32. Complaint stands disposed of.
33. File be consigned to registry.


(Samir Kumar)
Member


(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 06.04.2021 सत्यमेव जयते

Judgement uploaded on 22.09.2021

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