

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

Complaint no. : 3061 of 2021
Date of first hearing : 02.09.2021
Date of decision : 02.09.2021

Randhir Kapoor
Address: E-702, The Palm Springs,
Golf Course Road, Sector-54,
Gurgugram-122002

Complainant

Versus

Capital Skyscrapers Private Limited
Address: C-96, Panchsheel Enclave,
New Delhi 110017

Respondent

CORAM:
Shri Samir Kumar
Shri Vijay Kumar Goyal

**Member
Member**

ORDER

1. The present complaint dated 05.08.2021 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 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.	Project name and location	"Commercial Project", Sector66, Village Maidawas, Gurugram, Haryana
2.	Project area	2.0229 acres
3.	Nature of the project	Commercial complex
4.	DTCP license no.	43 of 2010 dated 08.06.2010
	License valid up to	07.06.2022
5.	RERA registered/not registered	02 of 2018 dated 01.01.2018
	Registration valid up to	31.12.2018
6.	Unit no.	62 on Ground floor of Tower Phase- 1 [Page 45 of complaint]
7.	Size of unit	541 sq. ft.
8.	Allotment letter	15.06.2013 [Provisional allotment letter on page no. 27 of complaint]
9.	Date of execution of buyer's agreement	13.05.2014 [Page 40 of complaint]
10.	Payment plan	Construction Linked Plan
11.	Date of commencement of construction	16.12.2013
12.	Due date of delivery of possession as per clause 7(a) of buyer's agreement,	16.12.2016 [Note: Grace period is not included]

	36 months from the date of commencement of construction of project (16.12.2013) + 6 months grace period [Page no. 51 of complaint]	
13.	Total consideration	Rs. 53,15,325/- [As per applicant ledger dated 20.02.2021 on page no.87 of the complaint]
14.	Total amount paid by the complainant	Rs. 39,41,112/- [As per applicant ledger dated 20.02.2021 on page no. 87 of the complaint]
15.	Offer of Possession	Not offered
16.	Delay in handing over the possession till date of decision i.e., 02.09.2021	4 years 8 months 17 days
17.	Occupation Certificate	Not received

B. Facts of the complaint

The complainant has submitted as under: -

3. That the complainant was approached by the respondent in the year 2012 for purchasing a unit in the commercial colony being developed by the respondent named "The Cityscape". The complainant paid an amount of Rs. 4,58,560/- towards booking a unit in the project of the respondent vide booking application dated 31.12.2012.
4. That after collecting a substantial amount of Rs. 9,51,053/- in lieu of the consideration of unit, the respondent issued a

provisional allotment letter dated 15.06.2013. After the expiry of more than 2 years from the date of provisional allotment of the unit and after collecting an amount of Rs. 13,08,729/- against the unit, the respondent executed buyer's agreement on 13.05.2014. The total consideration of the unit was Rs. 53,15,325/-.

5. That the respondent was unable to offer possession within the time promised, it was liable to compensate the complainant merely at the rate of Rs. 10/- per sq. ft. per month of the unit. as per clause 7(a) of the agreement, the possession of the unit was promised to be offered within 36 months from the date on which the raft of the entire project has been casted with additional 180 days as 'Grace period'. Since the demand for the instalment to be paid at the stage of 'Excavation' was raised as on 05.09.2013, the possession of the unit was promised to be offered on 04.03.2017.
6. That the respondent had collected an amount of Rs. 39,41,112/- by March 2016. But the respondent failed to offer possession of the unit to the complainant within the time promised i.e., by March 2017 or even within a reasonable period thereafter.
7. That the construction of the project has still not been completed by the respondent and it was clear from the construction update sent by it vide email dated 25.01.2021.

8. That the complainant had already paid an amount of Rs. 39,41,112 against the unit to it by March 2016 and even after the expiry of more than 4 years from the promised date of possession, the same has not been offered to it till date.

C. Relief sought by the complainant.

9. The complainant is seeking the following relief:

- (i) Direct the respondent to handover the possession of the unit.
- (ii) Direct the respondent to pay interest @ 9.30% per annum on the amount deposited by the complainant with the respondent with effect from the date of delivery of the unit promised till the date the actual possession is handed over by the respondent.

10. 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

11. The respondent has contested the complaint on the following grounds:
- i. That the present complaint is not maintainable in law or on facts. The present complaint is not maintainable before this authority. The complainant

has filed the present complaint seeking, inter alia, interest and compensation for alleged delay in delivering possession of the unit purchased by the complainant. It is respectfully submitted that complaint pertaining to compensation and interest are to be decided by the adjudicating officer under section 71 of the Real Estate (Regulation and Development) Act, 2016 read with the Haryana Real Estate (Regulation and Development) Rules, 2017 and not by this authority. The present complaint is liable to be dismissed on this ground alone. Moreover, it is respectfully submitted that the adjudicating officer derives his jurisdiction from the central act which cannot be negated by the rules made thereunder.

- ii. That the complainant has no locus standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the act as well as an incorrect understanding of the terms and conditions of the buyer's agreement dated 13.05.2014, as shall be evident from the submissions made in the present reply.
- iii. That the present complaint is not maintainable in law or on facts. The present complaint raises several such issues which cannot be decided in summary

proceedings. The said issues require extensive evidence to be led by both the parties and examination and cross-examination of witnesses for proper adjudication. Therefore, the disputes raised in the present complaint are beyond the purview of this authority and can only be adjudicated by the adjudicating officer civil court. The present complaint deserves to be dismissed on this ground alone.

- iv. That the complainant is estopped by his own acts, conduct, acquiescence, laches, omissions etc. from filing the present complaint.
- v. That the complaint is barred by limitation. The so-called cause of action as per the version of the complainant arose prior to the Act. The false and frivolous complaint is liable to be dismissed on this ground as well, that the complainant is not an "allottee" but an investor who has booked the unit in question as a speculative investment in order to earn rental income/profit from its resale. The unit in question has been booked by the complainant as a speculative investment and not for the purpose of self-use.
- vi. That the complainant has not come before this authority with clean hands and have suppressed vital and material facts from this authority.



- vii. That the complainant had approached respondent sometime in the year 2012 for purchase of a unit in its upcoming project "the cityscape" situated in sector 66, Gurugram. It is submitted that the complainant prior to approaching respondent, had conducted extensive and independent enquiries regarding the project and it was only after the complainant were fully satisfied with regard to all aspects of the project, including but not limited to the capacity of respondent to undertake development of the same, that the complainant took an independent and informed decision to purchase the unit, un-influenced in any manner by respondent.
- viii. That thereafter the complainant vide application form dated 31.12.2012 applied to respondent for provisional allotment of a unit in the project. The complainant, in pursuance of the aforesaid application, was allotted an independent unit bearing no. 062 admeasuring 541 square feet (super area) located on the ground floor in the said project vide provisional allotment letter dated 15.06.2013. The complainant had consciously and wilfully opted for a construction linked plan for remittance of the sale consideration for the said unit and further represented to respondent that they shall remit every instalment on time as per the payment

schedule. The complainant further undertook to be bound by the terms and conditions of the application form. The buyer's agreement dated 13.05.2014 was executed between the complainant and respondent, it is pertinent to mention that the complainant had voluntarily executed the buyer's agreement with open even after carefully going through the terms and conditions mentioned therein.

- ix. That commencement of construction at the project site/casting of raft had taken place by 16.12.2013. Letter dated 16.12.2013 issued by respondent to the complainant. सत्यमेव जयते
- x. That the "high street plan" as had been initially conceptualised by respondent would not have been conducive for commercial success for the said project. Therefore, certain modifications were necessary to be made in the building plans for the benefit of the allottees. It is submitted that M/s French Buildmart Private Limited had applied to the concerned statutory authority vide letters dated 15th of December, 2018 for amendment/revision in building plans. It is pertinent to mention that the revised building plans for the said project had been sanctioned by the concerned statutory authority on 11 of May 2020.



- xi. That the time consumed by the government authorities in sanctioning the revised building plans is beyond the control of answering respondent therefore, the said time period must not be construed as a delay. M/s French Buildmart Private Limited has duly complied with the requirements put forth by the concerned authorities in order to make the necessary amendment/changes. in the building plans. Furthermore, M/s French Buildmart Private Limited had also made payment of substantial amounts to the concerned authorities in order to avail the Transit Oriented Development (TOD) benefits and get the approvals with respect to revised building plans.
- xii. That M/s French Buildmart Private Limited vide letter dated 6th of July, 2017 had applied to the Director, Town & Country Planning Department, Haryana, Chandigarh for increase in FAR from 175 to 350 in principal approval for grant of benefit under TOD policy for enhancement of FAR had been granted to M/s French Buildmart Private Limited Subsequently, final petition with respect to benefit under TOD policy for enhancement of FAR had been granted to M/s French Builders Private Limited by Directorate of Town & Country Planning, Haryana. It is pertinent to mention that respondent is an

associate company of M/s French Buildmart Private Limited, which is the licensee company.

xiii. That it is respectfully submitted that the rights and obligations of the complainant as well as respondent are completely and entirely determined by the covenants incorporated in the buyer's agreement. It is pertinent to mention that it had been duly mentioned in clause 7 of the buyer's agreement that possession of the said unit would be handed over to the complainant within a period of 36 months from the date of casting of the raft for the project (16.12.2013). Furthermore, respondent was also entitled to a cumulative grace period of 360 business days (grace period additional grace period) over and above the said period of 36 months for handing over of possession of the said unit to the complainant. It would not be out of place to mention that the same was subject to multiple factors including but not limited to timely payment of consideration amount by the complainant, force majeure factors, any reason beyond the control of respondent, any action of the Government etc.

xiv. That in the meantime, respondent had raised payment demands as per the construction linked payment plan. It would not be out of place to mention that no payments had been made by the complainant

after March, 2016 till date. The payments made by the complainant have been duly mentioned in applicant ledger/statement of account dated 20.02.2021.

xv. That thereafter, final notice dated 20.03.2021 had been issued by the respondent to the complainant. It is pertinent to mention that the respondent was constrained to issue the aforesaid notice on account of the defaults committed by the complainant in making payment of the outstanding dues towards the respondent pertaining to the said unit. It had been duly mentioned in the aforesaid notice that the complainant has chosen to ignore communication/reminders sent by the respondent, including letter dated 28.05.2020, letter dated 02.02.2020, letter dated 15.07.2020 , letter dated 12.11.2006, letter dated 20.02.2021 and letter dated 01.03.2021.

xvi. That it is pertinent to mention that M/s French Buildmart Private Limited (the Licensee Company) was scheduled to apply for the occupation certificate in July 2020. However, the construction work had been deeply impacted by several factors. The construction work at the project site had been halted since 04th of November 2019 on account of the ban imposed by the supreme court over all construction activities in Delhi-NCR. This was after taking into

account the drastic deterioration in air quality in and around the national capital.

- xvii. Moreover, as the respondent was mobilizing the workforce at the project site, the lockdown on account of covid-19 pandemic was imposed by the government on 24 of march, 2020 which continued till 09 of May, 2020. This also severely affected the progress of the construction work at the site.
- xviii. That it is pertinent to mention that the said project had been registered with RERA vide registration number 02 of 2018 in favour of the respondent which is an associate company of M/s French Buildmart Private Limited (licensee company). It would not be out of place to mention that application for extension of RERA Registration has been filed before the authority by respondent vide letter dated 10th of June, 2019.
- xix. That thereafter, the respondent and M/s French Buildmart Private Limited had decided that without infringing upon the rights and interests of the existing allottees, the said project would now be developed and completed by M/s French Buildmart Private Limited. Accordingly, M/s French Buildmart Private Limited had applied to Haryana Real Estate Regulatory Authority for reissuance/correction of RERA registration certificate in favour of M/s French



Buildmart Private Limited (licensee company) vide letter dated 24.09.2020 . It had been duly mentioned in the aforesaid letter dated 24.09.2020 that M/s French Buildmart Private Limited had already uploaded fresh A to H form vide Project Id RERA GRG-PROJ-745-2020 dated 16.09.2020. The same had been approved in principle by this authority. Subsequently, on account of covid-19 pandemic the authority had been shut for several months. Due to the same, the RERA registration has not been granted to M/s French Buildmart Private Limited, till date. The answering respondent cannot be held liable for the delays occurring on account of functioning of statutory authorities/government.

- xx. That, without admitting or acknowledging the truth or legality of the allegations advanced by the complainant, it is respectfully submitted that the provisions the act are not retrospective in nature. The provisions of the act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the act. It is further submitted that merely because the act applies to ongoing projects which are registered with the authority, the Act cannot be said to be operating retrospectively. The provisions of the Act relied upon by the complainant for seeking interest cannot be called in to aid in



derogation and ignorance of the provisions of the buyer's agreement. The interest is compensatory in nature and cannot be granted in derogation and ignorance of the provisions of the buyer's agreement.

- xxi. That it is further submitted that the interest for the alleged delay demanded by the complainant is beyond the scope of the buyer's agreement. The complainant cannot demand any interest or compensation beyond the terms and conditions incorporated in the buyer's agreement.
- xxii. That the complainant has wantonly and needlessly levelled false, defamatory and vexatious allegations against respondent. Furthermore, the complainant has consciously and voluntarily purchased the said unit in December 2012. The complainant was conscious and aware of the status of the project at the relevant time and had independently and wilfully proceeded to purchase the unit in question. Therefore, the complainant is estopped from claiming any interest or compensation from respondent in the facts and circumstances of the case. The allegations put forth by the complainant qua respondent are absolutely illogical, irrational and irreconcilable in the facts and circumstances of the case.

xxiii. That it is submitted that several allottees have defaulted in timely remittance of payment of instalments which was an essential, crucial and an indispensable requirement for conceptualisation and development of the project in question. Furthermore, when the proposed allottees default in their payments as per schedule agreed upon, the failure has a cascading effect on the operations and the cost for proper execution of the project increases exponentially whereas enormous business losses befall upon the respondent. The respondent, despite default of several allottees, have diligently and earnestly pursued the development of the project in question. Therefore, there is no default or lapse on the part of the respondent and there is no equity in favour of the complainant. It is evident from the entire sequence of events, that no illegality can be attributed to the respondent. The allegations levelled by the complainant are totally baseless. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

12. 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.

D. Jurisdiction of the Authority

13. The preliminary objection raised by the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

D.I. Territorial jurisdiction

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

D.II Subject matter jurisdiction

15. The respondent has contended that the complainants are seeking interest which, from reading of the Act and the rules, would be liable for adjudication, if at all, by the adjudicating officer and not this Id. Authority. The authority has complete

jurisdiction as per section 11(4) of the Act, 2016 to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

E. Findings on the objections raised by the respondent

E.1 Objection regarding format of the complaint

16. The respondent has further raised contention that the present complaint is not maintainable as the complainant have filed the present complaint before the adjudicating officer and the same is not in amended CRA format. The reply is patently wrong as the complaint has been addressed to the authority and not to the adjudicating officer. The authority has no hesitation in saying that the respondent is trying to mislead the authority by saying that the said complainant is filed before adjudicating officer. There is a prescribed proforma for filing complaint before the authority under section 31 of the Act in form CRA. There are 9 different headings in this form (i) particulars of the complainant- have been provided in the complaint (ii) particulars of the respondent- have been provided in the complaint (iii) is regarding jurisdiction of the authority- that has been also mentioned in para 14 of the



complaint (iv) facts of the case have been given at page no. 5 to 8 (v) relief sought that has also been given at page 10 of complaint (vi) no interim order has been prayed for (vii) declaration regarding complaint not pending with any other court- has been mentioned in para 15 at page 8 of complaint (viii) particulars of the fees already given on the file (ix) list of enclosures that have already been available on the file. Signatures and verification part is also complete. Although complaint should have been strictly filed in proforma CRA but in this complaint all the necessary details as required under CRA have been furnished along with necessary enclosures. Reply has also been filed. At this stage, asking complainant to file complaint in form CRA strictly will serve no purpose and it will not vitiate the proceedings of the authority or can be said to be disturbing/violating any of the established principle of natural justice, rather getting into technicalities will delay justice in the matter. Therefore, the said plea of the respondent w.r.t rejection of complaint on this ground is also rejected and the authority has decided to proceed with this complaint as such.

E.2 Objection regarding entitlement of DPC on ground of complainant being investor

17. The respondent has taken a stand that the complainant is an investor and not consumer, therefore, it is not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observed that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the apartment buyer's agreement, it is revealed that the complainant is buyer and it paid total price of Rs. 39,41,112/- to the promoter towards purchase of an apartment in the project of the promoter. At this stage, it is important to stress

upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

18. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment buyer's agreement executed between promoter and complainant, it is crystal clear that the complainant is allottee(s) as the subject unit was allotted to them by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottee being an investor is not entitled to protection of this Act also stands rejected.

F. Findings on the authority on relief(s) sought: -

(i) Direct the respondent to handover the possession of the unit and pay interest @ 9.30% per annum on the amount deposited by the complainant with the respondent with effect from the date of delivery of the unit promised till the date the actual possession is handed over by the respondent.

19. In the present complaint, the complainant intend 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."

20. Clause 7(a) of the buyer agreement provides for handing over of possession and is reproduced below:

"7(a) The Excavation work has already began on the Project Land much before the date of execution of this Agreement and the same must not be misunderstood with or shall be considered as the date of commencement of construction of the Project. The Company endeavours to



offer the possession of the Unit in the Commercial Complex to the Allottee(s) within a period of 36 (thirty six) months from the date of commencement of construction of the Project hereof, i.e. the date on which raft of the entire Project must be casted (the "Commencement of Construction"), and this date shall be duly communicated to the Allottee(s), subject to Force Majeure (defined hereinafter in Clause 26) and/or any other reason beyond the control of the Company, subject to the Allottee(s) having strictly complied with all the terms and conditions of this Agreement and not being in default under any provisions of the same, and all amounts due and payable by the Allottee(s) under this Agreement having been paid in time to the Company. The Company shall give notice to the Allottee(s) in writing, to take possession of the Unit for his fit outs and occupational use (the "Notice of Possession") on furnishing certain documents."

21. The authority has gone through the possession clause of the agreement and observed that this is a matter very rare in nature where builder has specifically mentioned the date of handing over possession rather than specifying period from some specific happening of an event such as signing of apartment buyer agreement, commencement of construction, approval of building plan etc. This is a welcome step, and the authority appreciates such firm commitment by the promoter regarding handing over of possession but subject to observations of the authority given below.
22. At the outset, it is relevant to comment on the present 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 of the provisions of the said 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 making timely payment of installments as per schedule of payments may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over the 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 handing over the possession of the subject unit. 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.

23. **Admissibility of grace period:** In the buyer's agreement, clause 7(b) states that the grace period of 6 months shall be given to the promoter. The relevant clause of the buyer agreement is reproduced as under:

"7(b)- The allottees understands and agrees that the Company shall be entitled to an extension period of 180

business days over the said period of 36 months (the "Grace Period"), for handing over the possession of the unit to the allottees. If the possession of the unit gets further delayed due to any reason and/or conditions/events which are unforeseeable then the Company shall be entitled to an additional grace period of 180 business days (the "Additional Grace Period") over and above the said Grace Period."

18. As the possession of the unit has not yet been offered to the complainant, therefore, the authority is of the view that the promoter shall not be granted with the grace period of 6 months in calculating the due date of handing over of possession of the unit.
19. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges as per the Act. 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.

24. 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.
20. 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., 02.09.2021 is 7.30% per annum. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30% per annum.
21. 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;”*

22. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same as is being granted to the complainant in case of delay possession charges.
23. On consideration of the circumstances, the evidence and other record and submissions made by the party, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 7 (a) & (b) of the buyer agreement executed between the parties on 13.05.2014, the possession of the booked unit was to be delivered within 36 months from the date of commencement of construction plus a grace period of six (6) months. Therefore, the due date of possession comes out to be 16.12.2016 in which the grace period is not allowed due to above mentioned reasons. Therefore, Accordingly, non-compliance of the mandate contained in section 11(4) (a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such complainants are entitled to delayed possession charges at the prescribed rate of interest i.e., 9.30% p.a. till handing over of possession of the booked unit as per the proviso to section 18(1)(a) of the Act read with rule 15 of the Rules and section 19(10) of the Act.

G. Directions of the authority

24. 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 respondent is directed to pay the 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., 16.12.2016 till the handing over of possession as per provisions of section 19(10) of the Real Estate (Regulation and Development) Act, 2016.
- (ii) 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 and thereafter monthly payment of interest till handing over of possession shall be paid on or before 10th of each subsequent month.
- (iii) The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- (iv) The rate of interest chargeable from the 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 same rate of interest which the



promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

- (v) The respondent shall not charge anything from the complainant which is not part of the flat buyer's agreement. Moreover, holding charges shall not be charged by the promoter at any point of time even after being part of the agreement as per law settled by the hon'ble Supreme Court in civil appeal no. 3864-3889/2020 dated 14.12.2020.

25. Complaint stands disposed of.

26. File be consigned to registry.

(Samir Kumar)
Member

(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 02.09.2021

JUDGMENT UPLOADED ON 09.10.2021