

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

Complaint no. : 4547 of 2020
First date of hearing: 23.02.2021
Date of decision : 19.08.2021

Rakesh Sareen
R/o: C 5-12, 1st floor, Vasant Kunj, New Delhi-
110070

Complainant

Versus

M/s Ansal Housing and Construction limited.
Address: 606, 6th floor, Indra Prakash 21,
Barakhamba Road, New Delhi-110001.

Respondent

CORAM:

Shri Samir Kumar
Shri Vijay Kumar Goyal

**Member
Member**

APPEARANCE:

Shri Rit Arora
Ms. Meena Hooda

Advocate for the complainant
Advocate for the respondent

BRIEF

1. The present complaint dated 23.12.2020 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.

2. Since, the buyer's agreement has been executed on 20.04.2012 i.e. prior to the commencement of the Act ibid, therefore, the penal proceedings cannot be initiated retrospectively. Hence, the authority has decided to treat the present complaint as an application for non-compliance of statutory obligation on part of the promoter/respondent in terms of section 34(f) of the Act ibid.

A. Project and unit related details

3. 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	Estella, Sector-103, Gurugram
2.	Project area	15.743 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	17 of 2011 dated 08.03.2011 valid upto 07.03.2015
5.	Name of licensee	Rattan Singh and 8 others
6.	HRERA registered/ not registered	Not registered
7.	Occupation certificate granted on	Not obtained
8.	Building plan approval	28.11.2011
9.	Unit no.	K-1108 (page 21 of FBA)
10.	Unit measuring	1245 sq. ft.
11.	Date of execution of buyer's agreement	20.04.2012 (Page 17 of complaint)
12.	Payment plan	Construction linked payment plan (Page 37 of complaint)
13.	Total consideration as per payment plan	Rs.53,09,668.75/- (Page 37 of complaint)

14.	Total amount paid by the complainant	Rs.52,83,104.7 /- (As per details given on page 38,40 & 41)
15.	Due date of delivery of possession as per clause 30 of the said agreement i. e. 36 months from the date of agreement or within 36 months from the date of obtaining all the required sanction and approval necessary for commencement of construction whichever is later subject to timely payment of all the dues by buyer and subject to force majeure circumstances as described in clause 31. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 36 months as above in offering the possession of the unit.	20.04.2015 [Note: Grace period is not allowed] Since date of agreement is later than date of building plan. Therefore, due date is calculated from date of agreement
16.	Offer of possession to the complainant	Not offered
17.	Delay in handing over possession till date of decision i. e. 19.08.2021	6 years 3 months 30 days

B. Facts of the complaint

The complainant has made following submissions in the complaint:

- That the complainant herein is law abiding citizen of India and is residing at the above-mentioned address. He applied for booking of a unit bearing unit no K-1108, having a super area 1245 sq.ft. in the project "Estella" situated in sector 103, Gurugram for a total sale

consideration of Rs 53,09,668.75/- and agreed to pay all the demands and charges as provided under the agreement and all the payments as per the payment schedule provided by the respondent.

5. That the respondent herein is a company registered under the provision of the companies Act, 1956 and is engaged in housing construction having their registered office at New Delhi. The complainant is aggrieved as the respondent has failed to deliver the possession of the said apartment within the prescribed time limit. Respondent through agents and representative made several representations to the complainant with respect to their project named "Estella" situated at Sector 103 Gurgaon, Haryana. It is submitted that the respondent had made several claims regarding the project with him to lure them into investing their hard-earned money in the project of the respondent.
6. That the complainant after several representations and tall claims of the representatives of the respondents' company, applied for allotment in the project of the respondent and made a payment of Rs. 4,54,891.88/- as the booking amount. The reference of the booking amount paid to the respondent by the complainant is made in page no 5. of flat buyer agreement. As per the flat buyer agreement, the possession of the said flat was due after 36 months of the date of execution of agreement or within 36 months from the date of obtaining all required sanctions and approvals necessary for commencement of construction whichever is later. The respondent obtained the necessary approvals on 28.11.2011 and the date of execution of builder buyer agreement is 20.04.2012. As

- per the said clause, the due date of delivery of possession of the apartment is 20.04.2015 and there has been a delay of almost 5 years in delivery of possession.
7. That as per the payment plan opted by the complainant herein, the complainant has made a payment upto 95% of the total sale consideration of the apartment by 27.12.2016. It is pertinent to mention that the opposite party has failed miserably in delivering the possession of the apartment to the complainant even after receiving almost full consideration of the apartment. The respondent had raised a demand of Rs 2,37,681/- from the complainant on 03.12.2016. As per the demand letter raised by the respondent, the complainant had made a payment of Rs 2,37,681/- in favour of the respondent. The complainant has made that payment in favour of respondent on 27.12.2016 vide cheque no. 000116 drawn on HDFC bank ltd. The receipt of the same was raised by the respondent on 30.12.2016.
 8. That the complainant has made all the payments in time with regard to the said unit and is eagerly waiting for delivery of possession of the said unit. That there has already been a delay of more than 5 years in delivering the possession of the said apartment and the respondent herein is guilty of unfair trade practice and deficiency in service.
 9. It is submitted that the respondent drew and unfair and arbitrary which was totally one-sided, illegal, unjust and arbitrary. All the clauses regarding possession, compensation etc. were drawn in their own favour and the complainant had no say in anything whatsoever. In the agreement, the complainant was denied fair

scope of compensation, in case of delay of possession and was supposed to pay heavy penalty in case of delay in payment of instalments. The arbitrary and unfairness of the apartment buyer agreement can be deprived from the perusal of clauses 35 and 41. That as per the terms and conditions the respondent had the authority to impose an exorbitant rate of interest on the complainant to the tune of 24% p.a. compounded quarterly on delayed payments and whereas, the respondent was only liable to pay a meagre amount in case of delayed possession to the tune of Rs. 5/- per sq. ft. per month for the period of delay. It is requested that as the terms and conditions of the flat buyer agreement and unilateral, this hon'ble authority shall not take into consideration the terms and conditions of the agreement during the adjudication of the case.

10. That the said clauses of the flat buyer agreement are also in clear contravention of the provision of the Real Estate (Regulation and Development) Act, 2016 which has clarified the position that the interest payable by the promoter in case of default shall be the same as the interest payable by the allottee in case of any default made by them. Such unilateral agreements have already been held to be illegal and arbitrary and inapplicable while deciding the compensation for the allottees by several courts. It is submitted that the complainant's mother is a lay women and had no idea that the opposite party would indulge in such practice's illegal malpractices.

11. The hon'ble Supreme Court has already held such one-sided agreements to be unfair and invalid in the case of *Pioneer Urban Land and Infrastructure Limited versus Govindon Raghavan*.
12. That till date of complainant has paid a total amount of Rs 52,83,104/- out of the total sale price of the unit of Rs. 53,09,669.75/- Since booking till date, the respondent never informed the complainant about any force majeure or any other circumstances which is beyond their reasonable control, which has led to the delay in the completion of the project within the time prescribed in the agreement. It is clear that the delay in the construction of the is intentional and solely due to the deliberate negligence and deficiency on the part of the respondent. The delay of 5 years is not reasonable, and no reason can be attributed to such delay except the wilful and deliberate negligence and ignorance of the respondent. The respondent started the project with malafide intention and with the intention of cheating the allottee/homebuyer and extracting money from them.
13. That respondent has failed to abide by their promise and failed to deliver the possession of the unit within the promised time. In such circumstances, it is only fair that the respondent be directed to deliver the immediate peaceful possession of the unit complete in all aspects along with all the promised amenities and in a habitable condition to the satisfaction of complainant along with delay compensation @18% p.a. and other compensation. Thus, in the present circumstances, the complainant is left with no other option but to file the present complaint seeking peaceful possession and delay compensation.

C. Relief sought by the complainant

14. The complainant has filed the present complaint for seeking following reliefs:

i. Direct the respondent to deliver immediate peaceful possession of the booked unit complete in all aspect as per the specifications mentioned in the buyer agreement and in habitable conditions after obtaining the valid occupation certificate from the competent authority.

ii. Direct the respondent to pay compensation for the delay in possession to the complainant in the form of interest at prescribed rate of interest on the amount paid to the respondent, from the promised date of delivery of the flat till the actual physical possession.

iii. Direct the respondent not to include any charges which are not the part of the buyer agreement.

15. 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 and to plead guilty or not to plead guilty.

D. Reply by the respondent

16. The respondent has raised certain preliminary objections and has contested the present complaint on the following grounds:

i. That the present complaint is neither maintainable nor tenable by both law and facts. It is submitted that the present complaint is not maintainable before this hon'ble authority. The complainant has filed the present complaint seeking interest and compensation. It is respectfully submitted that

complaint pertaining to interest, compensation and refund are to be decided by the adjudicating officer under section 71 of the Real Estate (Regulation and Development) Act, 2016 read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules 2017 and not by this hon'ble authority. The present complaint is liable to be dismissed on this ground alone.

- ii. That even otherwise, the complainant has no locus-standi and 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 allotment letter/buyer's agreement dated 20.04.2012, which is evidentiary from the submissions made in the following paragraphs of the present reply.
- iii. That the respondent is a public limited company registered under the companies Act, 1956 having its registered office at 606, Indraprakash, 21 Barakhamaba Road, New Delhi-110001. The complainant approached the respondent in the year 2012 for the purchase of 2BHK flat bearing unit no K-1108 in residential project "Estella", Sector 103, Gurugram, Haryana. It is submitted that complainant prior to approaching the respondent had conducted extensive and independent inquiries regarding the project and it was only after the complainant was being fully satisfied with regard to all aspects of the project, including but limited to the capacity of the respondent to undertake development of the same and the

complainant took an independent and informed decision to purchase the unit, uninfluenced in any manner. It is pertinent to mention here that despite there being a number of defaulters in the project, the respondent itself infused funds into the project and had diligently developed the project in question. It is also submitted that the construction work of the project is swing on full mode and the work will be completed within prescribed time period as given by the respondent to the authority.

- iv. That without prejudice to the aforesaid and the rights of the respondent, it is submitted that the respondent would have handed over the possession to the complainant within time had there been no force majeure circumstances beyond the control of the respondent, there had been several circumstances which were absolutely beyond and out of control of the respondent such as orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the hon'ble Punjab & Haryana High Court duly passed in civil writ petition no 20032 of 2008 through which the shucking/extraction of water was banned which is the backbone of construction process, simultaneously orders at different dates passed by hon'ble National Green Tribunal thereby restraining the excavation work causing Air Quality Index being worst, may be harmful to the public at large without admitting any liability. Apart from these the demonetization is also one of the main factors to delay in giving possession to the home buyers as demonetization caused abrupt stoppage of work in many

projects. This sudden restriction on withdrawals led the respondent unable to cope with the labour pressure. However, the respondent is carrying its business in letter and spirit of the builder buyer agreement as well as compliance of other local bodies of Haryana government.

- v. That the respondent is carrying his business in letter and spirit of the builder buyer agreement but due to COVID 19 the lockdown was imposed throughout the country in March 2020 which badly affected the construction and consequently respondent was not able to handover the possession on time as the same was beyond the control of the respondent. It is submitted that the complaint is not maintainable or tenable under the eyes of law as the complainant has not approached this hon'ble authority with clean hands and has not disclosed the true and material facts relates to this case of complaint. The complainant, thus, has approached the hon'ble authority with clean hands and also has suppressed and concealed the material facts and proceedings which have direct bearing on the very maintainability of purported complaint and if there had been disclosure of these material facts and proceedings the question of entertaining the present complaint would have not arising in view of the case law titled as S.P. Chengalvarya Naidu Vs. Jagan Nath reported in 1994 (1) SCC page 1 in which the hon'ble Apex Court of the land opined that non-disclosure of material facts and documents amounts to a fraud on not only the opposite party, but also upon the hon'ble authority and subsequently the same view was taken by even hon'ble

National Commission in case titled as Tata Motors Vs. Baba Huzoor Maharaj bearing RP no 2562 of 2016 decided on 25.09.2013.

- vi. That without admitting or acknowledging the truth or legality of the allegations advanced by the complainant and without prejudice to the contentions of the respondent, it is respectfully submitted that the provisions of 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 project which registered with the authority, the Act cannot be said to be operating retrospectively. The provisions of the Act relied upon by the complainant seeking refund, interest and compensation cannot be called into aid in derogation and ignorance of the provisions of the flat buyer agreement. 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 builder buyer's agreement. However, in view of the law as laid down by the hon'ble Bombay High Court in case titled as Neelkamal Realtors Suburban Pvt. Ltd. Vs. Union of India published in 2018(1) RCR (C) 298, the liberty to the promoter/developer has been given U/s 4 to intimate fresh date of offer of possession while complying the provision of section 3 of RERA Act as it was opined that the said Act named RERA is having

- prospective effect instead of retrospective. Para no 86 and 119 of the above said citation are very much relevant in this regard.
- vii. That it is also a conceded and admitted fact that the project pertaining to the present complaint has not yet been registered with RERA and as such the hon'ble authority lacks jurisdiction to entertain the present complaint. It is submitted that several allottees, have defaulted in timely remittance of payment of instalment which was an essential, crucial and an indispensable requirement for conceptualization and development of the project in question. Furthermore, when the proposed allottee defaulted in their payment as per schedule agreed upon, the failure has a cascading effecting on the operation and the cost for proper execution of the project increase exponentially whereas enormous business losses befall upon the respondent. The respondent, despite default of several allottees has diligently and earnest pursued the development of the project in question and has constructed the project in question as expeditiously as possible.
- viii. The central government levied such taxes, which are still beyond the control of the respondent, it is specifically mentioned in clause 7 & 8 of the builder buyer's agreement, vide which complainant was agreed to pay in addition to basic sale price of the said unit he us liable to pay EDC, IDC together with all the applicable interest, incidental and other charges inclusive of all interest on the requisite bank guarantees for EDC, IDC or any other statutory demand etc. The complainant further agreed to pay his proportionate share in any future

enhancement/additional demand raised by authorities for these charges even if such additional demand raise after sale deed had been executed.

17. 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

18. The preliminary objections raised by the respondent regarding jurisdiction of the authority to entertain the present complaint 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.

E. I Territorial jurisdiction

19. 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

The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act of 2016 leaving aside

compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the objections raised by the respondent.

F.I Objection regarding jurisdiction of the complaint w.r.t. the apartment buyer's agreement executed prior to coming force of the Act.

20. The respondent submitted that the complaint is neither maintainable nor tenable and is liable to be outrightly dismissed as the apartment buyer's agreement was executed between the complainant and the respondent prior to the enactment of the Act and the provision of the said Act cannot be applied retrospectively.
21. The authority is of the view that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. The Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgement of as per clause 2: sale consideration (page 31 of BBA) *Neelkamal Realtors*

Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017) which provides as under:

"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter..."

122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

22. Also, in appeal no. 173 of 2019 titled as **Magic Eye Developer Pvt. Ltd. Ishwer Singh Dahiya**, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

23. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that

the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the conditions that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules and regulations made thereunder and are not unreasonable or exorbitant in nature. Hence, in the light of above-mentioned reasons, the contention of the respondent w.r.t. jurisdiction stands rejected.

F.2 Objection regarding delay due to force majeure

24. The respondent promoters have sought further extension for a period of 6 months after the expiry of 36 months for offering the possession of the unit. the respondent raised the contention that the construction of the project was delayed due to *force majeure* conditions including demonetization and the orders passed by the hon'ble NGT including others. It was observed that due date of possession as per the agreement was 20.04.2015 wherein the event of demonetization occurred in November 2016. By this time, the construction of the respondent's project must have been completed as per timeline mentioned in the agreement executed between the parties. Therefore, it is apparent that demonetization could not have hampered the construction activities of the respondent's project. Thus, the contentions raised by the respondent in this regard stand rejected. The other force majeure conditions

mentioned by the respondent are of usual nature and the same could not have led to a delay of more than 5 years. Therefore, the respondent could be allowed to take advantage of its own wrongs/faults/deficiencies.

F3. Objection regarding delayed payments

25. Though an objection has been taken in the written reply that the complainant failed to make regular payments as and when demanded. So, it led to delay in completing the project. The respondent had to arrange funds from outside for continuing the project. However, the plea advanced in this regard is devoid of merit. A perusal of statement of accounts shows otherwise wherein like other allottees, the complainant had payed more than 90% of the sale consideration. The payments made by the allottee does not match the stage and extent of construction of the project. So, this plea has been taken just to make out a ground for delay in completing the project and the same being one of the force majeure.

G. Findings on the relief sought by the complainant

G. I Delay possession charges

26. **Relief sought by the complainant:** Direct the respondent to pay interest at prescribed rate of interest on the amount paid to the respondent, from the promised date of delivery of the flat till the actual physical possession.
27. In the present complaint, the complainant intends to continue with the project and are seeking delay possession charges as provided

under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

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

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

28. Clause (30) of the flat buyer agreement provides for time period for handing over of possession and is reproduced below:

The developer shall offer possession of the unit any time, within a period of 36 months from the date of execution of agreement or within 36 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all the dues by buyer and subject to force-majeure circumstances as described in clause 31. Further, there shall be a grace period of 6 months allowed to the developer over the above the period of 36 months as above in offering the possession of the unit.

29. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement, and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions 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 time period for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottees of their right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

30. **Admissibility of grace period:** The promoter has proposed to handover the possession of the said unit within 36 months from the date of execution of agreement or fulfilment of the preconditions imposed thereunder. The respondent promoter has sought further extension for a period of 6 months after the expiry of 36 months for unforeseen delays in respect of the said project. Further, the respondent has sought 6 months grace period for offering possession of the unit and the respondent has failed to offer of possession even after the lapse of grace period of 6 months and till date. The respondent raised the contention that the construction of the project was delayed due to *force majeure* which were beyond the control of the respondent promoter. Also, the allottees should not be allowed to suffer due to the fault of the respondent promoter. It may be stated that asking for extension of time in completing the construction is not a statutory right nor has it been provided in the rules. This is a concept which has been evolved by the promoters themselves and now it has become a very common practice to enter such a clause in the agreement executed between the promoter and the allottee. It needs to be emphasized that for

availing further period for completing the construction the promoter must make out or establish some compelling circumstances which were in fact beyond his control while carrying out the construction due to which the completion of the construction of the project or tower or a block could not be completed within the stipulated time. Now, turning to the facts of the present case the respondent promoter has not assigned such compelling reasons as to why and how it is entitled for further extension of time 6 months in delivering the possession of the unit. Accordingly, this grace period of 6 months cannot be allowed to the promoters at this stage.

31. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession. 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.


32. The legislature in its wisdom in the subordinate legislation under the 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.
33. 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., 19.08.2021 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.
34. 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;"*
35. 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 delayed possession charges.

36. On consideration of the circumstances, the evidence and other record and submissions made by the complainant and the respondent and based on the findings of the authority regarding contravention as per provisions of Act, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 30 of the flat buyer agreement executed between the parties on 20.04.2012, possession of the said unit was to be delivered within a period of 36 months from the date of execution of agreement i. e. 20.04.2012. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession is to be 20.04.2015. The six months of grace period is not allowed as the respondent has not offered the offer of possession till date.
37. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainant is entitled to delay possession charges at prescribed rate of the interest @ 9.30 % p.a. w.e.f. 20.04.2015 till handing over of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules and 19(10) of the Act of 2016.

G. Directions of the authority

38. 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. 20.04.2015 till handing over of possession after the date of receipt of valid occupation certificate as per section 18(1) read with rule 15 and 19(10) of the Act of 2016
 - ii. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order and thereafter monthly payment of interest till the offer of possession shall be paid on or before 10th of each subsequent month.
 - iii. The complainant is also directed to make payment/ arrears if any due to the respondent at the equitable rate of interest i. e. 9.30% per annum.
 - iv. The respondent/ promoter shall not charge anything from the complainant/ allottee which is not the part of the agreement, the respondent would not be entitled to claim holding charges at any point of time even after being part of agreement as per law settled by hon'ble Supreme Court in civil appeal no. 3864-3889/2020 decided on 14.12.2020.
39. Complaint stands disposed of.
40. File be consigned to registry.


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram


(Samir Kumar)
Member

Dated: 19.08.2021

Judgement uploaded on 18.10.2021.