

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

**Complaint no. : 1711 of 2021**  
**First date of hearing : 01.07.2021**  
**Date of decision : 01.07.2021**

Neetu Yadav  
R/O- H. no. 17, VPO Mulahera,  
Distt. Gurugram, Haryana.

**Complainant**

**Versus**

M/s Apex Buildwell Pvt. Ltd.  
Address: 14A/36, W.E.A, Karol Bagh,  
New Delhi -110053

**Respondent**

**CORAM:**

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

**Chairman**  
**Member**  
**Member**

**APPEARANCE:**

Shri Pardeep K. Khatana  
Shri Sandeep Choudhary

Advocate for the complainant  
Advocate for the respondent

**HARERA**  
**GURUGRAM**  
**BRIEF**

1. The present complaint dated 25.03.2021 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 allottees as per the agreement for sale executed inter se them.

**A. Unit and project related details.**

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

S. No.	Heads	Information
1.	Project name and location	"Our Homes", Sector 37-C, Gurugram.
2.	Project area	10.144 acres
3.	Nature of the project	Affordable group housing colony
4.	DTCP license no.	13 of 2012 dated 22.02.2012
	License valid/renewed up to	01.12.2019
	Name of licensee	Prime IT Solution Phonix Datatech Service
5.	HRERA registered/ not registered	<b>Registered vide no. 40 of 2019 dated 08.07.2019</b>
	HRERA registration valid up to	<b>01.12.2019</b>
6.	Occupation certificate	i. <b>19.5.2017</b> - Primary School ii. <b>29.11.2019</b> Type-1 (8 nos. towers), Type-2 (2 nos. towers) iii. <b>24.02.2020</b>



		Type-1 (16 nos. towers) & Commercial
7.	Unit no.	699E, 6 <sup>th</sup> floor, Tower Iris (Page 28 of complaint)
8.	Unit measuring (carpet area)	48 sq. mtrs.
9.	Date of allotment letter	23.10.2012 (page no. 68 of complaint)
10.	Date of execution of apartment agreement buyer's	23.10.2012 (As alleged by complainant on page no. 11 and admitted by respondent on page no. 7 of reply)
11.	Payment plan	Time linked payment plan (Page 63 of complaint)
12.	Total Consideration	Rs.16,00,000/- (Page 28 of complaint)
13.	Total amount paid by the complainant	Rs.16,00,000/- (As alleged by the complainant on page 12 of complaint)
14.	Consent to establish granted by HSPCB on	<b>02.12.2013</b> <b>(Note: Time for computation of due date of delivery of possession)</b>
15.	Due date of delivery of possession as per clause 3(a) of apartment buyer's agreement (36 months + 6 months' grace period from the date of commencement of construction upon receipt of all approvals) (page 34)	02.12.2016
16.	<b>Date of offer of possession to the complainant</b>	<b>11.03.2020</b> (Page no. 25 of the reply)

17.	Delay in handing over possession till 11.05.2020 i.e. date of offer of possession (11.03.2020) + 2 months	3 years 5 months 9 days
18.	Possession certificate	10.07.2020 (Page no. 26 of the reply)

**B. Brief facts of the complaint**

3. The complainant submitted that the respondent had advertised itself as a very ethical business group that lives onto its commitments in delivering its housing projects as per promised quality standards and agreed timelines. That the respondent while launching and advertising any new housing project always commits and promises to the targeted consumer that their dream apartment unit/apartment will be completed and delivered to them within the time agreed initially in the agreement while selling the apartment unit/apartment to them. The respondent and its officials further represented that the said project being developed by them is reserved for the government employee, retired employee or their dependents, which is evident from the name "OUR HOMES". That somewhere in the month August 2011, the respondent through its marketing executives and advertisement through various medium and means approached the complainant with an offer to invest and buy a unit in the proposed project of respondent.

4. The complainant further submitted that respondents arranged the visit of its representatives to the complainant and they also assured the same as assured by the respondent to the complainants, wherein it was categorically promised by the respondents that they already have secured all the sanctions and permissions from the concerned authorities and departments for the development and completion of said project on time with the promised quality and specification and for the sale of said project and would allot the apartment unit in the name of complainant immediately upon the booking. Relying upon those assurances and believing them to be true, the complainant booked a unit bearing number 699E on 6<sup>th</sup> floor situated in tower/block No. IRIS having a carpet area of Approx. 48 sq. mtrs. approx. in "OUR HOMES", Basic Sales Price (BSP) Rs. 16,00,000/- in the proposed project of the respondent on 23.10.2012 in the township to be developed by respondents. Accordingly, the complainant had paid the full amount against various receipts and the same was received by the respondent towards the booking amount and towards the consideration amount of the sale price of the said unit.
5. The complainant submitted that while executing the apartment buyer agreement dated 23.10.2012 in favour of the complainants giving them the assurance that the possession of the allotted

floor/unit shall be given by the respondent to the complainant within 36 months from the date of execution of apartment buyer agreement dated 23.10.2012, in addition there was grace period of 6 months, which also ended in august 2015.

6. That at the time of execution of the said apartment buyer agreement dated 23.10.2012 the respondents misusing its dominant position had coerced and pressurized the complainant to sign the arbitrary, illegal and unilateral terms of the said builder buyer agreement and when complainant had objected to those arbitrary terms and conditions of the said apartment buyer agreement dated 23.10.2012 and refused to sign the same, the respondent threatened to forfeit the amount already paid by the complainant as sale consideration in respect of the said unit and also to cancel their booking. the complainant having no other option and to found themselves helpless and being cheated had under duress and coercion had signed the said apartment buyer agreement dated 23.10.2012.
7. The complainant submitted that the responsibility of the promoter, with respect to the structural defector any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed. The complainant submitted that the

respondent raised the demands of money; accordingly, the complainant had paid the amount as demanded by the respondent time to time. The respondent has not completed the construction/finishing work in the above said project on time in which the apartment no. 240 on 2nd floor, block/tower 'Lotus' having a carpet area of approx. 48 sq. mtrs. with an exclusive right to use of one (covered/open) car parking space.

8. The complainant submitted that after taking the money, the respondent has failed to deliver the possession as per the terms and conditions of the buyer's agreement clause no. 3 that the possession of the said apartment was to be delivered by the seller to the purchaser within 36 months from the date of execution of the agreement/construction. Despite the elapse of the grace of 6 months, the respondent has failed to deliver the possession to the complainant on time.
9. The complainant submitted that the basic sale price of the above said unit is Rs. 16,00,000/- and the complainant has paid said amount through cheques and demand drafts to the respondent and in this regard the respondent has issued the acknowledgment/receipts.
10. The complainant further submitted that he has undergone severe mental harassment due to the negligence on the part of the respondent to deliver the unit on time agreed. The

complainant has faced all these financial burdens and hardships from their limited income resources, only because of respondent's failure to full fill its promises and commitments. Failure of commitments on part of respondent have made the life of the complainant miserable socially as well as financially as all their financial plans and strategies were based on the date of delivery of possession as agreed by the respondent. Therefore, the respondent has forced the complainant to suffer grave, severe and immense mental and financial harassment with no fault on their part.

11. That the cause of action accrued in favour of the complainant and against the respondents on 23/10/2012, when the complainant had booked the said unit and it further arose when respondents failed to deliver the possession of the unit within agreed timeline. the cause of action is continuing and is still subsisting on day-to-day basis as the respondent have delivered the delayed possession of the unit on 10/07/2020 to the complainant even after various repeated requests made by the complainant to the respondents in this regard.

**C. Relief sought by the complainant**

12. The complainant is seeking the following relief:

- i. Direct the respondent to compensate the complainant to receive the interest of 18% on Rs.16,00,000/- for delay in



possession for almost 4 years and the complainant is also entitled to receive the interest on the amount from the respondent.

**D. Reply by the respondent**

13. The respondent had contested the complaint on the following grounds:

- (i) That the complainant has no cause of action against the answering respondent and the alleged cause of action is nothing but false and frivolous and the respondent has neither caused any violation of the provisions of the Act nor caused any breach of agreed obligation as per the agreement between the parties. The complaint is neither tenable nor maintainable and has been filed with an oblique motive when the respondent has already offered possession of the flat and the complainant has already taken over possession and the complaint is merely filed with an intent to gain wrongfully by avoiding the due and outstanding payments to the respondent.
- (ii) That the respondent has been very well committed to the development of the real estate project and secured the occupation certificates for both the phases of the project in question. The delay occasioned in delivering the possession of the project is only because of explainable and

extendable as per the agreed terms i.e. clause 3 of the apartment buyer's agreement and is due to causes beyond the control of the respondent.

- (iii) That on grant of license bearing no. 13/2012 dated 22.02.2012, the respondent applied for all other relevant permissions and could secure the BRIII for sanction of building plans only on 07.05.2013 and the Consent to Establish by the Office of Haryana State Pollution Control Board, Panchkula was only granted on 02.12.2013. Since then the respondent continued the construction of the project, but the license so granted expired on 21.02.2016 i.e. prior to the permissible period of construction of 36 months and since 11.02.2016, the respondent had been seeking the renewal of the license from the office of Director General Town & Country Planning, Haryana and finally the same has now been received on 26.04.2019 and the respondent in a duty bound manner has completed the entire construction and development of the project and obtained the first OC on 29.11.2019 and the second OC on 24.02.2020. Thereupon, vide letter dated 11.03.2020 offered possession of the allotted unit to the complainant and the same has been taken over by the complainant

without any objection or reservation settling all dues with the complainant on 10.07.2020.

- (iv) That the provisions of the Real Estate (Regulation and Development) Act, 2016 came into force on 28.07.2017 for which the respondent duly filed an application dated 28.08.2017 and due to lapse of license no. 13/2012, the same got dismissed vide orders dated 19.01.2018. Finally, after regular follow ups and initial rejection, the project has been registered vide registration no. 40 of 2019 dated 08.07.2019 and the said fact even led to further operational obstacles & restrictions of funds in completion of the project and leading to delay in completion of the project which had been beyond the control of the respondent and was extendable as per the agreed terms.
- (v) That the respondent company had been hard trying to avail all the approvals, permissions and sanctions from the relevant authorities and discharging the additional costs of renewal of license, plans and sanctions. And had the approvals and license be granted in time, the respondent would have duly completed the project within the permissible time period. More so, the bans to construction activity imposed by the N.G.T from time to time and lastly in the months of October - November, 2019 have further

led to delay in completion of the project which are per se beyond the control of the respondent. That if the period of pendency of the license is condoned and extended then the respondent has delivered the project well within the agreed period of completion and therefore, there is no occasion or cause of action in favour of the complainant.

- (vi) That the delay being occasioned is beyond the control of the respondent i.e. firstly due to the grant of consent to establish and thereafter due to the lapse of license and the same is excusable as contemplated and agreed by the parties vide clause 3(b)(I) & (ii) of the apartment buyer's agreement executed between the parties and the agreed period of 36 months plus 6 months grace period is extendable and the complainant is estopped from filing the present complaint.
- (vii) That it is the respondent who is suffering due to the delay that is being occasioned and has to face extra charges and costs and expenses in getting all the above permissions renewed and in particular the renewal of license and the costs of registration under RERA. Pertinent to note that the respondent has not received any exaggerated advance amounts from the complainant and construction as on date



is much more advanced than the amount received. Hence there is no cause or occasion to file the present complaint.

- (viii) That the Complainant is estopped to file the present complaint due to her own acts and conduct as the complainant has not complied with the demands of the due amounts as made by the respondent. It is pertinent to note that the entire obligation of completion of the project is upon the respondent and the failure to pay the due amounts in a timely manner by so many of the allottees including the complainant have led to multiple problems an extra cost on the respondent leading to for the delays.
- (ix) That the Amount of Rs. 16,00,000/- are basic sale price and does not include other charges including EDC, IDC, tax and other charges for the service agreed to be provided and stamp and registration charges and interest on delayed payments etc.
- (x) That last and not the least, the complainant in actual is only seeking a relief of compensation and interest, apart from direction for possession which has already been offered, which is beyond the scope of jurisdiction of the hon'ble authority under section 36 and 38 of the Act. Hence, the complaint on the face of it is liable to be rejected.

**E. Jurisdiction of the authority**

**E.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.

**E.II Subject matter jurisdiction**

15. The respondent has contended that the complainant in actual is only seeking a relief of compensation and interest, apart from direction for possession which has already been offered which are beyond the scope of jurisdiction of the hon'ble authority under section 36 and 38 of the Act. The authority observed that the reply given by the respondent is without going through the facts of the complaint as the same is totally out of context. The complainant has nowhere sought the relief of compensation in the complaint. 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 respondent**

**F.I The period of renewal of license shall be excluded while computing delay in handing over possession.**

16. The respondent contended that on grant of license bearing no. 13/2012 dated 22.02.2012, the respondent applied for all other relevant permissions and could secure the BRIII for sanction of building plans only on 07.05.2013 and the Consent to Establish by the Office of Haryana State Pollution Control Board, Panchkula was only granted on 02.12.2013. Since then, the respondent continued the construction of the project, but the license so granted expired on 21.02.2016 i.e. prior to the permissible period of construction of 36 months and since 11.02.2016, the respondent had been seeking the renewal of the license from the office of Director General Town & Country Planning, Haryana and finally the same has now been received on 26.04.2019.

17. The respondent is claiming that due to non-renewal of license by the competent authority, the promoter was not able to complete

the project in question within the stipulated time and had the license be granted in time, the respondent would have duly completed the project within the permissible time period. The authority is of the considered view that if there is lapse on the part of competent authority in granting the renewal of license within reasonable time and that the respondent was not at fault in fulfilling the conditions of renewal of license then the respondent should approach the competent authority for getting this time period i.e. 21.02.2016 till 26.04.2019 be declared as 'zero time period' for computing delay in completing the project. However, for the time being, the authority is not considering this time period as zero period and the respondent is liable for the delay in handing over possession as per provisions of the Act.

**G. Findings on the relief sought by the complainant**

**18. Relief sought by the complainant-** Direct the respondent to compensate the complainant to receive the interest of 18% on Rs.16,00,000/- (sixteen lac) for delay in possession for almost 4 years and the complainant is also entitled to receive the interest on the amount from the respondent.

**G.I Admissibility of delay possession charges**

19. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as



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

***"Section 18: - Return of amount and compensation***

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

.....

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

20. Clause 3(a) of the apartment buyer's agreement (in short, agreement) provides for time period for handing over of possession and is reproduced below:

**"3. POSSESSION**

**(a) Offer of possession:**

*"That subject to terms of this Clause 3, and subject to the APARTMENT ALLOTTEE(S) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions, formalities, registration of sale deed, documentation, payment of all amount due and payable to the DEVELOPER by the APARTMENT ALLOTTEE(S) under this agreement etc., as prescribed by the DEVELOPER, the DEVELOPER proposes to hand over the possession of the APARTMENT within a period of thirty (36) months with a grace period of 6 months, from the date of commencement of construction of the Complex upon the receipt of all project related approvals including sanction of building plan/revised plan and approval of all concerned authorities including the Fire Service Department, Civil Aviation Department, Traffic Department, Pollution Control Department etc. as may be required for commencing, carrying on and completing the said Complex subject to force majeure, restraints or restriction from any court/authorities. It is however understood between the parties that the possession of various Blocks/Towers comprised in the Complex as also the various common facilities planned therein shall be ready & completed in phases and will be handed*

*over to the allottees of different Block/Towers as and when completed in a phased manner."*

21. The authority has gone through the possession clause of the agreement and observed that 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 agreements 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 situation may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. If the said possession clause is read in entirety, the time period of handing over possession is only a tentative period for completion of the construction of the flat in question and the promoter is aiming to extend this time period indefinitely on one eventuality or the other. Moreover, the said clause is an inclusive clause wherein the numerous approvals have been mentioned for commencement of construction and the said approvals are sole liability of the promoter for which allottee cannot be allowed to suffer. It is settled proposition of law that one cannot get the advantage of his own fault. The

incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

**Admissibility of grace period:** The apartment buyer's agreement was executed on 23.10.2012 and as per clause 3(a) of the said agreement, the promoter has proposed to hand over the possession of the said unit within 36 months with an extended period of 6 months from the date of commencement of construction. The Consent to Establish by the office of Haryana State Pollution Board, Panchkula was granted on 02.12.2013. The due date of handing over possession has been calculated from the date of consent to establish. In the present case, the promoter is seeking 6 months' time as grace period. The said period of 6 months shall not be granted as the possession clause clearly states that the promoter will give the possession of the said unit within 36 months plus 6 months grace period asked by the promoter was for getting the approvals needed to complete the construction work i.e. after receiving OC but the promoter has not applied for occupation certificate within the time limit

prescribed i.e. by 02.12.2016. So, as per settled law one cannot be allowed to take advantage of his own wrong. Accordingly, this grace period of 6 months 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.*

22. So, in settled proposition of law discussed above, the facts and circumstances detailed the builder/promoter can't be allowed, 6 months of grace period for the purpose of calculating delayed possession charges.

23. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the rate of 18% p.a. however, proviso to section 18 provides that where an allottee does not intend to withdraw from the

project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

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

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

24. 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* (Supra) observed as under: -

"64. Taking the case from another angle, the allottee was only entitled to the delayed possession charges/interest only at the rate of Rs.15/- per sq. ft. per month as per clause 18 of the Buyer's Agreement for the period of such delay; whereas, the promoter was entitled to interest @ 24% per annum compounded at the time of every succeeding instalment for the delayed payments. The functions of the Authority/Tribunal are to safeguard the interest of the aggrieved person, may be the allottee or the promoter. The rights of the parties are to be balanced and must be equitable. The promoter cannot be allowed to take undue advantage of his dominate position and

*to exploit the needs of the home 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."*

25. 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., 01.07.2021 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.

26. The definition of term 'interest' as defined under section 2(z) 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:

*"(z) "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,"*

27. 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.

28. On consideration of the documents available on record and the submissions made by the parties, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 3(a) of the apartment buyer's agreement executed between the parties on 23.10.2012, the possession of the booked unit was to be delivered within a period of 36 months plus 6 months grace period from the date of commencement of construction upon receipt of all project related approvals. The grace period of 6 months is not allowed to the respondent as the promoter has not applied for occupation certificate within the time limit prescribed by the promoter in the apartment buyer's clause. In the present case, the consent to establish was granted to the respondent on 02.12.2013. Therefore, the due date of handing over possession will be computed from the date of consent to establish i.e. 02.12.2013

and the due date of possession comes out to be 02.12.2016. The possession was offered in 11.03.2020 after receiving occupation certificate. The authority is of the considered view that there is delay on the part of the respondent to offer possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 23.10.2012 executed between the parties.

29. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 24.02.2020. The respondent offered the possession of the unit in question to the complainant only on 11.03.2020, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. This 2 months' of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified



that the delay possession charges shall be payable from the due date of possession i.e. 02.12.2016 till the expiry of 2 months from the date of offer of possession (11.03.2020) which comes out to be 11.05.2020.

30. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the agreement dated 23.10.2012 to hand over the possession within the stipulated period. 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 allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 02.12.2016 till 11.05.2020, at prescribed rate i.e., 9.30 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

#### **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 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. 02.12.2016 till the expiry of 2


months from the date of offer of possession i.e. 11.05.2020. 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.

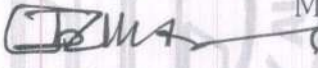
- ii. The respondent shall not charge anything from the complainant which is not the part of the agreement.

32. Complaint stands disposed of.

33. File be consigned to registry.

  
(Samir Kumar)  
Member

  
(V.K. Goyal)  
Member

  
(Dr. K.K. Khandelwal)  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated:01.07.2021

**HARERA**  
GURUGRAM