



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

**Complaint no. : 4452 of 2019**  
**First date of hearing : 06.11.2019**  
**Date of decision : 31.03.2021**

Urmila Bhargava  
Address: Chamber No. 680,  
Saket Court, Delhi-110017

**Complainant**

**Versus**

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

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Vijay Kumar Goyal

**Member**  
**Member**

**APPEARANCE**

Ms. Ankur Berry  
None

Advocate for the complainants  
On behalf of the respondent

**EX-PARTE ORDER**

1. The present complaint dated 16.09.2019 has been filed by the complainant/promoter against the allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the

provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

**A. Unit and project related details**

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

	<b>Heads</b>	<b>Information</b>
1.	Project name and location	The City Scape, Sector-66, Gurugram
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
	Name of the licensee	M/s French Buildmart Private Limited
5.	RERA registered/not registered	Registered
	HARERA registration no.	02 of 2018 dated 01.01.2018
	Validity of registration	31.12.2018
6.	Allotment letter	15.11.2013 [Page 16 of complaint]
7.	Unit no.	514, 5 <sup>th</sup> Floor [Page no. 16 of complaint]
8.	Unit measuring	525 sq. ft.
9.	Date of execution of apartment buyer's agreement	Not executed
10.	Payment plan	Construction linked payment



		plan. [Page 28 of complaint]
11.	Total consideration	Rs. 32,02,500/- [As per applicant ledger dated 25.04.2012 on page 28 of complaint]
12.	Total amount paid by the complainant	Rs. 22,63,835/- [As per applicant ledger dated 25.04.2012 on page 28 of complaint]
13.	Due date of delivery of possession as per clause 18 of terms and conditions of allotment, 36 months from the date of commencement of construction of I.e., casting of the raft of entire project (16.12.2013) + 180 days grace period [Page no. 20 of complaint]	16.12.2016 [Note: Grace period is not allowed]
14.	Offer of possession	Not offered
15.	Delay in handing over the possession till date of decision i.e., 31.03.2021	4 years 3 months 15 days
16.	Occupation certificate	Not received

**B. Facts of the complaint: -**

1. The complainant booked a unit no. 514 on 5<sup>th</sup> floor in the project "The City Scape" at a basic sale price of Rs. 29,53,125/- (Rs. 5,625 per sq. ft×525) and other charges, consisting of EDC, IDC and IFMS, for a sum of Rs. 2,49,375/-.



The complainant was granted provisional allotment of the said unit vide letter dated 15.11.2013 containing the terms and conditions for provisional allotment of the unit.

2. That the said terms and conditions of the allotment dated 15.11.2013, inter alia, provided (clause 18) possession of the said unit to the complainant within a period of 36 months from the date of commencement of construction i.e. casting of the raft of entire project, and this date shall be duly communicated to the complainant; and an additional grace period of 180 days. Abusing its dominant position, the respondent incorporated the condition of commencement of 36 months period from the date of commencement of construction, despite the fact that it had already retained booking amount of Rs. 2,96,437/- on 25.04.2012; Rs. 9,161 on 03.01.2013 and towards first instalment a sum of Rs. 3,05,597/- on 3.1.2013 totalling to a sum of Rs. 6,11,195/-.
3. That vide its letter dated 16.12.2013, the respondent communicated that raft of the entire project has already been casted of the project site of the project "cityscape". Thereby, intimating the date of commencement of construction as 16.12.2013.
4. That the respondent has failed to deliver the possession of the aforesaid unit to the complainant. The complainant has

paid Rs. 22,63,836/- out of Rs. 32,02,500/- which is the total sale consideration of the unit.

5. That, in terms thereof, the 36-month period, calculating from 16.12.2013 (the date of commencement of construction) expired on 15.12.2016 and a further grace period of 180 days expired on 15.12.2017.
6. That in terms of clause 18 of term of conditions of allotment, it is provided that respondent shall pay to the complainant compensation every month as follows:
  - Delay up to 6 months from the end of the grace period attracted payment of Rs. 5 per sq. ft. of super area.
  - Delay between 6 and 12 months from the end of the grace period attracted payment of Rs. 7.50 per sq. ft. of super area.
  - Delay beyond 12 months from the end of the grace period attracted payment of Rs. 10 per sq. ft. of super area.
7. That in terms thereof, for a period of 6 months (15.6.2017) from the end of grace period (15.12.2017), a sum of Rs. 15,750/- Rs. 5×525 sq. ft. × 6months), thereafter, a sum of Rs. 23,625/- is payable till 15.12.2017. Subsequent thereto, till the date of filing the petition i.e 15.04.2017, a sum of Rs.



84,000/- . Thereby, a sum of Rs. 1,23,375/- is due and payable by respondent to the complainant as on the date of filing of this complaint. The contractual compensation at the said rate of Rs. 10 per sq. ft. is continuing till the grant of possession of the unit by respondent to the complainant.

8. That the respondent has abused its dominant position in the transaction and made the terms of allotment only favouring them. Illustratively, under clause 13, the complainant on delay in payment is imposed with interest on the amount due @21% per annum. On the same principle and in terms of section 18 of RERA Act, 2016, the respondent is also liable for payment of 21% per annum on the amount retained and received further from the period 15.12.2017, being the end of grace period till the date of possession, which is calculated as follows.

9. That a sum of Rs. 6,33,874/- as interest is payable by respondent to the complainant. The said interest has been calculated till 15<sup>th</sup> April, 2019. However, the same is continuing to vest till actual physical possession of the unit to the complainant.

10. That the respondent is liable to pay and bear for all escalation charges, and/or all other expenses and factors that would

increase the price of unit due to non-delivery of unit on 15.12.2017.

**C. Relief sought by the complainant: -**

11. The complainant has sought following reliefs:

- i. Direct the respondent to grant immediate possession of the said unit.
- ii. Direct the respondent to pay sum of Rs. 1,23,375/- in terms of contractual obligation cast upon the respondent from the period 15.12.2017 till the date of filing of the petition along with future payment of Rs. 5250/- per month from the date of filing of petition till the date of possession of the unit.
- iii. Direct the respondent to pay sum of Rs. 6,33,874/- as interest @ 21% on the amount retained post 15.12.2017 till the date of filing of the petition along with future interest @ 21% on the amount retained by respondent till possession of the unit.
- iv. Direct the respondent to set off future payments to be made by the complainant for possession of the unit.

12. The authority issued a notice dated 22.10.2019 of the complaint to the respondent by speed post and also on the given email address at [chandoks@gmail.com](mailto:chandoks@gmail.com) . The delivery

reports have been placed in the file. Despite service of notice to the respondent by speed post as well as by email, the respondent has failed to file its reply to the complaint. Hence the authority has left with no other option but to proceed with ex-parte proceeding against the respondent.

13. 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**

14. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligation 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 of the authority on relief sought**

- i. Direct the respondent to pay sum of Rs. 1,23,375/- in terms of contractual obligation cast upon the respondent from the period 15.12.2017 till the date of filing of the petition along with future payment of Rs. 5250/- per month from the date of filing of petition till the date of possession of the unit.



15. 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.*

16. Clause 18 of the terms and conditions for provisional allotment provides for handing over of possession and is reproduced below:

*"Subject to force majeure, and further subject to all of the unit holders/applicant(s) of the project, having complied with all its obligations under the terms and conditions of this provisional allotment and the applicant(s) not being in default under any part of this provisional allotment including but not limited to the timely payment of the sale consideration and other charges and also subject to the applicant(s) having complied with all formalities or documentation as prescribed by the company, the company proposes to hand over the possession of the unit to the applicant within a period of 36 (thirty six) months from the date of commencement of construction i.e. casting of the raft of entire project, and this date shall be duly communicated to the applicant(s) ("the commitment period").*

17. At the outset, it is relevant to comment on the present possession clause of the terms and conditions for provisional allotment 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 terms and conditions for provisional allotment. 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 terms and conditions for provisional allotment and the allottee is left with no option but to sign on the dotted lines.

18. **Admissibility of grace period:** The clause 18 of the terms and conditions for provisional allotment states that the grace period of 180 days shall be given to the promoter. The relevant clause of the buyer agreement is reproduced as under:

*"The applicant(s) further agrees and understands that the company shall additionally be entitled to a period of*

*180 (one hundred and eighty) days ("the grace period"), after the expiry of the said commitment period to allow for any contingencies or delays in obtaining the occupation/completion certificate etc., of the project from the concerned authorities/ departments. subject to the condition contained herein, and further subject to the applicant(s) having complied with all its obligations under the terms and conditions of this provisional allotment, if the company fails to offer possession of the unit to the applicant(s) by the end of the grace period, it shall be liable to pay to the applicant compensation for every month of delay thereafter until the actual date of handing over of possession of the unit to the applicant."*

19. As a matter of fact, the promoter has not applied for occupation certificate within the time limit prescribed by the promoter in the apartment buyer's agreement. As per the settled law one cannot be allowed to take advantage of his own wrong. Accordingly, this grace period of 180 days cannot be allowed to the promoter at this stage.
20. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the rate of 21% 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.*

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.

21. 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., 31.03.2021 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e. 9.30% per annum.
22. 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;”*

23. Therefore, the respondent shall be charged at the prescribed rate i.e., 9.30% per annum by the complainant/promoter which is the same as is being granted to respondent/allottee in case of delay possession charges.

24. **Execution of builder buyer agreement:** The unit has been booked by the respondent through an application form dated 25.04.2012. The allotment letter was issued by the respondent/promoter to the complainant/allottee on 15.11.2013 along with terms and conditions of the allotment. After that the respondent neither made any effort to get builder buyer agreement executed from the complainant nor there is any evidence in this regard. There is only application form dated 25.04.2012 on the record which bears the sign of both the parties setting out terms and conditions of provisional allotment of the commercial unit. It is obligatory on the part of promoter to get builder buyer agreement



signed from an allottee failing which penal action as per the provision of section 63 of the Act is to be initiated against him. Since that was not done nor any evidence in tis regard is forthcoming so, the promoter is directed to get builder buyer agreement signed from the complainant.

25. On consideration of the documents available on record and submissions made by the party regarding contravention of provisions of the Act, 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 terms and conditions of allotment letter dated 15.11.2013. By virtue of clause 18 of the same, the possession of the subject apartment was to be delivered within 36 months from date of commencement of construction plus 180 days as grace period. The due date of possession comes out to be 16.12.2016 in which grace period is not included for the reasons mentioned above. The respondent has failed to handover possession of the subject apartment till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. Accordingly, the 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 the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 16.12.2016 till the handing over of the possession, 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 and section 19(10) of the Act.

**F. Directions issued by the authority:**

26. 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): -

- a. 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 18(1) read with Rule 15 of the rules section 19(10) of the Real Estate (Regulation and Development) Act, 2016.
- b. 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 10<sup>th</sup> of each subsequent month.

- c. Both the parties are directed to execute the apartment buyer's agreement. It is obligatory on the part of the promoter to get BBA signed failing which penal action as per provisions of section 63 of the Act shall be initiated against the promoter.
- d. The complainant/promoter shall obtain the occupation certificate after completion of the project and after that offer the possession of the unit.
- e. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- f. 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.
- g. The respondent shall not charge anything from the complainant which is not part of the flat buyer's



agreement. Moreover, holding charges shall also 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.

27. Complaint stands disposed of.  
28. File be consigned to the registry.

  
(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Date: 31.03.2021

JUDGMENT UPLOADED ON 13.10.2021

  
(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram