

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

Complaint no. : 1980 of 2021  
First date of hearing : 19.05.2021  
Date of decision : 03.08.2021

1. Mr. Satbir Singh Mor  
2. Mrs. Monisa Samal Mor  
**Address:** - H. No. 27, Q Extension, New Palam  
Vihar, Phase I, Haryana - 122017.

**Complainants**

**Versus**

Orris Infrastructure Pvt. Ltd.  
**Office address:** - C-3/260, Janankpuri, New  
Delhi - 110058.  
Also at: J-10/5, DLF Phase - II, Mehrauli-  
Gurgaon Road - 122002.

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Vijay Kumar Goyal

**Member**  
**Member**

**APPEARANCE:**

Shri Rishabh Jain  
Ms. Charu Rustagi

Advocate for the complainants  
Advocate for the respondent

**ORDER**

1. The present complaint dated 20.04.2021 has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all



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 them.

**A. Unit and project related details**

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

S.No.	Heads	Information
1.	Project name and location	Aster Court Premier, Sector 85, Gurugram.
2.	Project area	25.018 acres
3.	Nature of the project	Residential Housing Project
4.	DTCP license no. and validity status	39 of 2009 dated 24.07.2009 valid upto 23.07.2024 and 99 of 2011 dated 17.11.2011 valid upto 16.11.2024
5.	Name of licensee	BE Office Automation Products Pvt. Ltd. And 8 others <b>(For license no. 39 of 2009)</b> 1. M/s Radha Estate Pvt. Ltd. 2. M/s Elegant Land and Housing Pvt. Ltd.



		2. M/s Salmon Land and Housing Pvt. Ltd. <b>(For license no. 99 of 2011)</b>
6.	RERA Registered/ not registered	<b>Registered</b> vide Registration no. 19 of 2018 dated 13.10.2018 valid till 30.10.2020
7.	Unit no.	1204, 12 <sup>th</sup> Floor, Tower No. 3A (Later changed to Tower 3C vide letter dated 06.06.2018 on page 58, annexure 4 of the complaint)
8.	Unit measuring	1450 sq. ft. (Initial super area - As per buyer's agreement) 1595 sq. ft. (As per area revision letter dated 04.07.2013 on page 57, annexure 3) 1587 sq. ft. (Final super area - as per conveyance deed on page 59, annexure -05)
9.	Date of execution of Buyers Agreement	05.02.2011 (Page 28, annexure I of the complaint)
10.	Payment plan	Construction linked payment plan (page 51 of the complaint)
11.	Total Sale consideration	Rs. 41,94,700/- (As per the buyers' agreement on page 31, annexure 1 of the complaint)

12.	Total amount paid by the complainants	Rs. 39,84,211/- (As per conveyance deed on page 59, annexure -05)
13.	Date of sanction of building plans	10.04.2012 (As per project details)
14.	Date of commencement of construction	Not provided
15.	Due date of delivery of possession (As per clause 10.1 within a period of 36 months from the date of sanction of building plans, date of commencement of construction or date of execution of agreement, whichever is later)	10.04.2015 (No grace period is given) (Due date of delivery of possession is calculated from the date of sanction of building plans)
16.	Offer of possession (Deemed to be date of offer of possession as the complainants has accepted possession for carrying on fit outs/ interiors dated 06.06.2018 on page 122, annexure R4 of the reply)	06.06.2018
17.	Delay in handing over possession till 06.06.2018 plus two months i.e., 06.08.2018	3 Years, 4 months and 4 days
18.	Occupation Certificate received on	18.10.2018 (Page 120, annexure R3 of the reply)

**B. Facts of the complainants**

3. The complainants have made the following submissions:
  - i. That the complainants bought the unit no. 1204, tower - 3A, 12th floor measuring 1450 square feet in Aster Court project (hereinafter, the Project) at Sector 85, from the original allottees, Akhil Gupta and Supriya Gupta on 29.06.2011 being

- developed by the respondent after a payment of Rs.43,500/- as transfer charges to the respondent. The transfer in favour of the complainants were duly endorsed by the respondent.
- ii. That the Apartment Buyer Agreement (hereinafter, the ABA) between the original allottees and the respondent was executed on 05.02.2011.
  - iii. That the respondent issued a letter for 'area revision' on 4.07.2013 stating that area of the said unit has been increased from 1450 square feet to 1595, due to which cost the property has been raised from Rs.42,67,200/- to Rs.46,68,270/- without any explanation, clarification, approval or prior information to the complainants.
  - iv. That the date of possession, as per the ABA was signed between the parties on 05.02.2011, calculated 36 months and plus 6 months grace period as per clause 10.1 comes out to be 05.08.2014.
  - v. That the respondent issued a letter for 'acceptance of possession for carrying on fit outs / interiors' on 6.06.2018. In this letter, the tower of the apartment was changed from 3A to 3C without any explanation, clarification, approval or prior information to the complainants.
  - vi. That the respondent got executed the conveyance deed in the favour of the complainants, serial no. 519, on 12.06.2020 for the said unit and the area measurement was stated as 1587

square feet instead of 1595 square feet. The respondents have charged for 1595 square feet instead of 1587 sq. ft.

- vii. That the complainants have lost confidence and in fact have no trust left in the developer/builder as the respondent has deliberately and wilfully indulged in undue enrichment, by cheating the complainants besides being guilty of indulging in unfair trade practices and deficiency in services and then remaining non-responsive to the requisitions of the complainants.
- viii. That the respondent/promoter has neglected his part of obligations. The complainants being aggrieved persons have filed the complaint under section 31 of the Act, 2016 read with rule 28 of the rules before the Haryana Real Estate Regulatory Authority, Gurugram for violation or contravention of provisions of the Act, 2016 and Rules, 2017.
- ix. That the complainants have suffered financial losses and mental agony and harassment as a result of the aforesaid deficiencies in services on the part of the respondent. The complainants are the worst sufferers due to the greed of the respondent.
- x. That the respondent has cheated the complainants knowingly and has taken monies by deception, made fraudulent representations and deliberate false written promises. The

conducts of the respondent are wilfully unfair and arbitrary, deficient in every manner and scandalous.

**C. Relief sought by the complainants:**

4. The complainants have sought the following relief:
  - i. Direct the respondent to pay interest at the prescribed rate for every month of delay from the due date of possession till the date of actual possession.

**D. Reply by the respondent:-**

5. The respondent has raised certain preliminary objections and has contested the present complaint on the following grounds:
  - i. That the present complaint pertains to possession along with compensation for a grievance under section 18 of the Act and is required to be filed before the adjudicating officer under rule-29 of the rules and not before this authority under rule-28. In the present case, the complainants are seeking possession of the apartment along with compensation and other reliefs. That the complainants has filed the present complaint under rule-28 of the said rules and is seeking the possession of the apartment, compensation and interest under section 18 of the said Act. It is submitted that the complaint, if any, is required to be filed before the adjudicating officer under rule-29 and not before this authority under rule-28 as the authority has no

- jurisdiction whatsoever to entertain such complaint and as such the complaint is liable to be rejected on this ground alone.
- ii. That in the present case as per clause 10.1 of the ABA dated 05.02.2011, the respondent was supposed to hand over the possession within a period of 36 months from the date of the signing of agreement, sanction of building plans or start of construction or within 36 months plus 6 months grace period i.e. altogether 42 months from the date of execution of ABA by the company or sanctions of plans or commencement of construction whichever is later.
- iii. That the respondent has further held that the time for giving possession comes out to be 42 months and can be further increased if the respondent-builder faces hardships or due to the conditions mentioned under clause 11.1, 11.2, 11.3 and 38 of the ABA. Clauses 11.1 is reproduced below:

**“11.1 Delay due to reasons beyond the control of the Company** If, however, the completion of the said Building / said Complex is delayed by reason of non - availability of steel and/or cement or other building materials or water supply or electric power or slow down, strike or due to dispute with the construction agency(ies) employed by the Company, lock-out or civil commotion, by reason of war or enemy action or terrorist action or earthquake or any act of God or if non - delivery for possession is as a result of any Act, Notice, Order, Rule and Notification of the Government and / or any other Public or Competent Authority or due to delay in sanction of building / zoning plans, grant of completion / occupation certificate by any Competent Authority or for any other reasons beyond the control of the Company then the Allottee agrees that the Company shall be entitled to the extension of time for delivery of possession of the said Apartment. The Company, as a result of such contingency arising, reserves the right to alter or vary the terms and conditions of this Apartment Buyer Agreement or if the circumstances



*beyond the control of the Company so warrant, the Company may suspend the Scheme for such period as it may consider expedient and the Allottee agrees not to claim compensation / loss / damages of any nature whatsoever (including the compensation stipulated in Clause (11.5) of this Apartment Buyer Agreement) during the period of suspension of the Scheme."*

- iv. That clause 11.2 is "failure to deliver possession due to non-approval of building plan". As per the project report of the said project, approval for the building plan has already been received dated 10.04.2012 and the approval no. being ZP-556-JD(BS)/2012/5150.
- v. That in the intervening period when the construction and development was under progress, there were various factors because of which the construction works had to be put on hold due to reasons beyond the control of the respondent. It is submitted that the parties have agreed that if the delay is on account of force majeure conditions, the respondent shall not be liable for performing its obligations. It is submitted that the project got delayed and proposed possession timelines could not be completed on account of various reasons few of which are stated below.
- vi. That in the year, 2012 on the directions of the Supreme Court, the mining activities of minor minerals (including sand) were regulated. Supreme Court directed framing of Modern Mineral Concession Rules. The competent authorities took substantial time in framing the rules and in the process the availability of

building materials including sand which was an important raw material for development of the said project became scarce in the ncr region. Further, it is pertinent to state that the National Green Tribunal in several cases related to Punjab and Haryana had stayed mining operations including in O.A no. 171/2013, wherein vide order dated 2.11.2015 mining activities were stayed on the yamuna river bed. These orders inter-alia continued till the year 2018. Similar orders staying the mining operations were also passed by the National Green Tribunal. The stopping of mining activity not only made procurement of material difficult but also raised the prices of sand/gravel exponentially.

vii. That it is important to highlight that on account of non-payment of installments/dues (along with agreed amount of interest on such delayed payments) of this construction linked allotment by the respondent, it has been hard for the respondent to gather funds for the development of the project which is also one of the major reasons for delay in delivery of the project. It appears that it has become a trend amongst the allottees' nowadays to first not to pay of the installments due or considerably delay the payment of the same and later on knock the doors of the various courts seeking refund of the amount along with compensation or delayed possession compensation, thus taking advantage of their own wrongs,

whereas the developer comes under severe resource crunch leading to delays in construction or/and increase in the cost of construction thereof putting the entire project in jeopardy. The crux of the matter which emerges from the aforesaid submission is that had the complainants as well as other similarly situated persons paid of their installments in time, the respondent developer would have sufficient funds to complete the project which is not the case herein. By failing to deposit the installments on time the complainants have violated his contractual commitment and are estopped from raising any plea of delay in construction. Haryana Real Estate Regulatory Authority having been enacted by the legislature with the motive of balancing the rights and liabilities of the developer as well as the allottees, thus the complaint is liable to be dismissed on the this ground itself.

viii. That the completion of project requires availability of infrastructure like road, water supply, electricity supply, sewerage, etc. and after charging EDC and IDC from the promoter, the Haryana Urban Development Authority, has failed to provide the same. The promoter has paid all dues towards the said IDC and EDC however, till date no infrastructure has not been developed. Thus, due to the non-availability of basic infrastructure which was supposed to be

developed by competent authorities, it is very difficult for the real estate developers to meet the timeline.

- ix. That it is pertinent to mention here that the respondent had already applied for fire NOC and occupation certificate for the aforesaid towers falling in phase-I. The occupation certificate was applied on 10.11.2019. According to Haryana Real Estate Regulatory Authority registration, the date of completion of the project was 30.6.2020 which was duly extended due to COVID-19 by a period of 6 months i.e. up to 30.12.2020, vide order dated 26.5.2020 passed by Haryana Real Estate Regulatory Authority, Gurugram. Thus, the respondent is already in receipt of the fire NOC, thus no delay accountability can be ascertained upon the respondent for the year 2020 due to the ongoing pandemic.
- x. That in addition to the grounds as mentioned above, the project was also delayed due to on-going litigation filed by one of the collaborator/ landowner of land in the project - BE Automation Products (P) Ltd. who was the owner of only 5.8 acres of land in the entire project. BE Automation Products (P) Ltd. indulged in frivolous litigation and put restraints in execution of the project and sale of apartments. BE Automation Products (P) Ltd. filed cases against the company in each and every forum to create nuisance.

- xi. That a collaboration agreement dated 22.10.2007 was executed between the respondent and BE Automation Products (P) Ltd. setting out the terms and conditions of the collaboration. The said collaboration agreement also provided for the area entitlement of both the parties in the area to be developed on the 25.018 acres and the same was to be calculated on basis of saleable area attributable to 5.8 acres as contributed by BE Automation Products (P) Ltd..
- xii. That after the aforesaid Agreement with BE Automation Products (P) Ltd. in 2007, the respondent had acquired 4.5 acres additional land by the virtue of which more flats could have been constructed. BE Automation Products (P) Ltd., by misrepresenting the collaboration agreement raised a claim that it was entitled to proportionate share in the construction on the additional land acquired by the respondent. That after the aforesaid event BE Automation Products (P) Ltd. moved court and filed an application under section 9 of the Arbitration and Conciliation Act, 1996 before the Additional District and Sessions Judge, Gurgaon (hereinafter, ADJ).
- xiii. That the ADJ granted a blanket stay in favour of BE Automation Products (P) Ltd. and against the respondent, whereby the respondent was restrained from creating third party interest in respect of any apartments, villas and commercial areas till the matter could be decided finally by the

arbitrator. The respondent was also restrained from receiving any money in respect of sale of apartments, villas and commercial sites etc. or club membership charges or in any other form from any person.

xiv. That after the above said stay order was passed, the respondent filed F.A.O. No. 9901 of 2014 (O&M) whereby Punjab and Haryana High Court vacated the stay. Then the respondent and BE Automation Products (P) Ltd. went for arbitration and J. Chandramauli Kumar Prasad (retd.), was appointed as sole arbitrator to adjudicate and decide the dispute between the two parties by the High Court vide order dated 30.01.2015. Final award was granted on 12.12.2016 whereby contentions of the respondent were upheld and the share of BE Automation Products (P) Ltd. was restricted to the original 82 flats selected by it. The dispute between the respondent and BE Automation Products (P) Ltd. was further raised on various platforms and the respondent claims that the BE Automation Products Pvt Limited is also responsible for the delay in the construction of the project on account of various frivolous litigation initiated by the same.

**E. Jurisdiction of the authority**

6. 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**

7. 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**

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

**F. Findings of the authority on the objections raised by the respondent:**

9. With regards to the above contentions raised by the promoter/developer, it is worthwhile to examine following issues:

**F1. Admissibility of grace period due to various orders by NGT and other judicial bodies**

10. The respondent has raised an objection that the time of giving possession comes out to be 42 months and got delayed further due to numerous orders passed by NGT and other judicial bodies. This led to respondent facing commercial hardships to collect raw materials, labour for the completion of the said project in timely manner.
11. The respondent has relied upon various NGT orders for justifying the delay caused in completion of the project and to seek extension in the time-period. However, the various orders as placed on record do not pertain to the ban of construction activity in the state of Haryana, particularly in Gurugram. 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 promoters has not assigned such compelling reasons as to why and how they shall be entitled for further extension of time 6 months in delivering the possession of the unit.

12. The authority is of the view that commercial hardships does not give the respondent an exception to not perform the contractual obligations. The promoter had proposed to hand over the possession of the apartment by 10.04.2015 and further provided in agreement that promoter shall be entitled to a grace periods of six month each unless there is a delay for reason mentioned in clauses 11.1, 11.2, 11.3 and 38. As a matter of fact, the promoter has not given the valid reason for delay to complete the project 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 periods of six months each cannot be allowed to the promoter at this stage.

**F.2. Delay due to on-going litigation filed by collaborator/  
landowner**

13. The last objection raised by the respondent is that there was delay in development of the project as the respondent was involved in litigation at various forums and arbitration proceedings with the landowner/ collaborator. The authority is of the view that the various proceedings between the respondent and the collaborator were ongoing till 15.03.2017 (fact admitted by the respondent), yet the possession has been offered 06.06.2018. Thus, the respondent's claim for getting the delay condone is rejected as an innocent allottee should suffer because of the dispute between the promoters.

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

**G1. Admissibility of delay possession charges at prescribed  
rate of interest**

14. In the present complaint, the complainants intend 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."*

15. The possession clause 10.1 of the ABA is reproduced below:

**10.1 Schedule for possession of the said apartment**

*"The company based on its present plans and estimates and subject to all just exceptions: contemplates to complete construction of the said Building/ said Apartment within the period of 36 months plus grace period of 6 months from the date of execution of the Apartment Buyer Agreement by the Company or Sanction of Plans or Commencement of Construction whichever is later, unless there shall be delay or there shall be failure due to reasons mentioned in Clauses (11.1).(11.2). (11.3) and Clause (38) or due to failure of Allottee(s) to pay in time the price of the said Apartment along with all other charges and dues in accordance with the schedule of payments given in Annexure 1 or as per the demands raised by the Company from time to time or any failure on the part of the Allottee(s) to abide by any terms or conditions of this Apartment Buyer Agreement."*

16. 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 complainants not being in default under any provisions of these 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 favor 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 date 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

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.

- 17. Admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within period of 36 months from the date of start of construction or execution of the agreement, whichever is later. In the present complaint, the date of start of construction has not been provided therefore, the due date of handing over possession comes out to be 10.04.2015 which is calculated from date of sanction of building plans i.e., 10.04.2012. It is further provided in agreement that promoter shall be entitled to a grace period of 6 months for pursuing the occupancy certificate etc. from DTCP under the Act in respect of the project. As a matter of fact, the respondent has himself admitted that he had received the occupation certificate in respect of the said tower only on 17.07.2019. As per the 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.
- 18. Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at simple interest. 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. The same 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]**

*"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."*

19. 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.
20. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 3.08.2021 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.
21. **Rate of interest to be paid by complainants for delay in making payments:** 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— 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 interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

22. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is same as is being granted to the complainants in case of delayed possession charges.

23. **Mere clause in the indemnity-bond will not exhaust the rights of the allottees to raise claim for delayed possession charges:** The allottees have signed the 'acceptance of possession for carrying on fit outs/ interiors' and indemnity bond on 06.06.2018 whereby they had accepted the possession of the alternate unit 1204 in the tower 3C in lieu of 1204 in tower 3A. The said letter can be treated as offer of possession. Clause 14 of the said indemnity bond that has been placed on record (page 123-125 of the reply) is reproduced as below:

*"...I/we have taken possession at my/our will without any pressure or misrepresentation from Orris or any party. I/ we shall not raise any objection or claim with respect to the same. We understand that the registry of the unit will be done only after receipt of occupancy certificate which is acceptable to me/us."*

Merely putting a clause in the document will not exhaust the right of the allottees to claim delayed possession charges due to the default on the part of the respondent to give timely possession. Thus, the allottees are well within their rights to claim delayed possession charges even after the conveyance deed has been executed.

24. On consideration of the documents available on record and submissions made by the parties regarding contravention as per 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 agreement. By virtue of clause 10.1 of the buyer's agreement executed between the parties on 05.02.2011, possession of the said unit was to be delivered within a period of 36 months from the date of execution of agreement, sanction of building plans or start of construction. The date of sanction of building plans is 10.04.2012, the date of start of construction has not been provided. Thus, the due date of possession is calculated from the date of sanction of building plan as it is later. The respondent-builder had claimed a grace period of 6 months because of circumstances out of the control of the company (clause 11.1), delay in getting approval of building plans (clause 11.2), also because of the delay caused due to government orders (11.3) and clause 38 that the allottees to pay for the super area proportionate to their share. The grace period cannot be allowed to the respondent as the delay in getting a government document i.e., occupation certificate

from the competent authority was due to the failure of the builder/ promoter to complete the project on time and the occupation certificate was received as late as 18.10.2018. Thus, grace period is concerned, the same is disallowed for the reasons quoted above. Therefore the due date of possession comes out be 10.04.2015. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainants as per the terms and conditions of the buyer's agreement dated 05.02.2011 executed between the parties.

23. 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 18.10.2018. However, the respondent offered the possession of the unit in question to the complainants only on 06.06.2018, so it can be said that the complainants came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, he should be given 2 months' time from the date of offer of possession. These 2 months' of reasonable time is being given to the complainants 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. 10.04.2015 till the expiry of 2 months from the date of offer of possession (18.10.2018) which comes out to be 18.12.2018.

24. 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 complainants are entitled to delay possession charges at prescribed rate of the interest @ 9.30 % p.a. w.e.f. 10.04.2015 till 18.12.2018 as per provisions of section 18(1) of the Act read with rule 15 of the rules.

#### **H. Directions of the authority**

28. 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 complainants from due date of possession i.e. 10.04.2015 till 06.08.2018 i.e. expiry of 2 months from the date of offer of possession (06.06.2018).
- ii. The arrears of such interest accrued from 10.05.2015 till 06.06.2018 shall be paid by the promoter to the allottee within

a period of 90 days from the date of this order as per rule 16 of the rules.

iii. The complainants are directed to make the outstanding payments, if any, to the respondent alongwith prescribed rate of interest i.e., equitable interest which has to be paid by both the parties in case of failure on their respective parts.

iv. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement.

The respondent shall not charge holding charges from the complainants/allottees at any point of time even after being part of the builder buyer's agreement as per law settled by hon'ble Supreme Court in **Civil appeal nos. 3864-3889/2020 decided on 14.12.2020.**

29. Complaint stands disposed of.

30. File be consigned to registry.

**(Samir Kumar)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 03.08.2021

**(Vijay Kumar Goyal)**

Member