

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

Complaint no. : 3326 of 2019
First date of hearing : 03.12.2019
Date of decision : 10.02.2021

1. Mr. Srinath Ramachandra
2. Mr. Mysore Srikantiah Ramachandra
3. Mrs Kushala Ramachandra
All R/o: 94, Sriraksha, 2nd Main, 2nd Cross, 6th
Block, 3rd Phase, Banashankari 3rd Stage,
Bengaluru-560085

Complainants

Versus

M/s. Chintels india Ltd.
Address: Chintels Corporate Park, Sector 114,
Gurugram, Haryana-122017

Respondent

CORAM:

Shri K. K. Khandelwal
Shri Samir Kumar

**Chairman
Member**

APPEARANCE:

Shri Gaurav Rawat
None

Advocate for the complainants
Advocate for the respondent

ORDER

1. The present complaint dated 09.08.2019 has been filed by the complainants/allottees in Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is



inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions to the allottee as per the agreement for sale executed inter se them.

A. Unit and Projects 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	Chintles Paradiso, Sector 109, Gurugram
2.	Project area	12.306 acres
3.	Nature of the project	Residential Group Housing colony
4.	DTCP license no. and Validity status	251 of 2007 dated 02.11.2007 01.11.2017
	Name of licensee	Chintels India
	DTCP license no. and Validity status	09 of 2008 dated 17.01.2008 16.01.2018
	Name of licensee	Chintels India
5.	HRERA registered/ not registered	Not Registered
6.	Unit no.	F-1501, 15 th floor, Tower-F [Page no. 35 of reply]
7.	Unit measuring	1785 sq. ft.
8.	Allotment letter	03.01.2012 [Page no. 35 of reply]



9.	Date of execution of buyer's agreement	03.01.2012 [Page no. 11 of complaint]
10.	Payment plan	Construction Linked Payment Plan
11.	Total consideration	Rs.81,93,250 /- (excluding taxes) [As per payment plan on page no. 32 of complaint]
12.	Total amount paid by the complainants	Rs.90,23,531/- [As per summary of payments on page no. 36]
13.	Due date of delivery of possession as per clause 11 of the said agreement i.e. 36 months plus 6 months grace period from the date of actual start of construction	01.07.2014
14.	Date of offer of possession to the complainants	17.12.2016 [Page no. 58 of complaint]
15.	Possession letter	19.07.2018 [Page no. 39 of reply]
16.	Date of occupation certificate*	18.08.2016 [Page no. 21 of reply]
17.	Date of Conveyance Deed	20.07.2018 [Page no. 27 of reply]
18.	Delay in handing over possession till offer of possession	2 years 7 months 16 days

Note*: Though occupation certificate was received on 18.08.2016 but that is with regard to different towers, EWS and nursery school. Except tower no. 4 having 64 units, floors numbering 1-17 there is no other tower having these floors more than 14. The allotted unit is situated in tower F, 15th



floor. The project is not registered. So, date of occupation certificate of project in which the unit in question is located is taken as 18.08.2016.

B. Facts of the complainant

3. That the complainants approached to the respondent for booking of a flat in the project namely "Chintels Paradiso", sector-109, Gurugram, Haryana and respondent suggested them a flat which was previously booked on dated 01.08.2011 in the name of Mr. Niraj Punjkaran and Mrs. Namita Punjkaran who were not interested to continue in the said project hence finally endorsed this flat to complainants with same flat buyer's agreement.
4. That based on promises and commitment made by the respondent, the complainants booked an apartment no. F-1501 admeasuring 1785 sq. ft. in the above said project through cheque dated 01.08.2011. A builder buyer agreement was executed between previous owner Mr. Niraj Punjkaran & Mrs. Namita Punjkaran and M/s Chintels India Limited on 03.01.2012, and after that endorsed in the name of complainants on 19.03.2013.
5. That as per clause 11 of the agreement, the possession was to be handed over within a period of 36 months with the grace period of 6 months from the date of actual start of the



construction of particular tower building in which the registration for allotment was made, subject always to timely payment of all charges including basic sale price, stamp duty, registration fees and other charges as stipulated herein or as may be demanded by the company from time to time in this regard.

6. That the total cost of the said unit is Rs. 81,93,250/- (excluding taxes) (as per BBA) of this sum of Rs. 90,23,531/- (including taxes) paid by the complainants. The respondent was liable to handover the possession of the said unit before 29.11.2014 so far from completion as per builder buyer's agreement clause 11 but the builder had offered the possession on 17.12.2016.
7. That such an inordinate delay in the delivery of possession to the buyer is an outright violation of the rights of buyer under the provisions of RERA act as well as the agreement executed between complainants and respondent.

C. Relief sought by the complainants

8. The complainants are seeking the following relief:
 - i. Direct the respondent to immediately pay delay interest on paid amount of Rs. 90,23,531/- from 29.11.2014 along with pendent lite interest till actual possession thereon @ as prescribed in RERA Act.
 - ii. Direct the respondent to quash the extra charges.



9. On the date of hearing, the Authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

10. The respondent has contested the complaint on the following grounds:

- i. That the present complaint is liable to dismiss as the complainant has not approached this authority with clean hands and has suppressed true and material facts from the authority. The complainant has suppressed the fact that sale deed pertaining to the said unit has already been executed and the complainant has taken over the possession of the property on 19.07.2018.
- ii. That with due respect it is submitted the Hon'ble tribunal does not have jurisdiction to adjudicate the present complaint as the respondent company had already obtained the occupancy certificate with regard to the unit in dispute on 18-8-2016. Hence the project Chintels Paradiso does not required a registration under THE REAL ESTATE (REGULATION AND DEVELOPMENT) ACT, 2016 (here in after referred to as RERA. Thus the provisions of RERA are not applicable on



the project Chintels Paradiso. The relevant para of the RERA is reproduced here with for ready reference. "Section 3 sub clause (2) Notwithstanding anything contained in sub-section (1), no registration of the real estate project shall be required— (a) where the area of land proposed to be developed does not exceed five hundred square meters or the number of apartments proposed to be developed does not exceed eight inclusive of all phases: Provided that, if the appropriate Government considers it necessary, it may, reduce the threshold below five hundred square meters or eight apartments, as the case may be, inclusive of all phases, for exemption from registration under this Act; (b) where the promoter has received completion certificate for a real estate project prior to commencement of this Act; (c) for the purpose of renovation or repair or re-development which does not involve marketing, advertising selling or new allotment of any apartment, plot or building, as the case may be, under the real estate project. Explanation. For the purpose of this section, where the real estate project is to be developed in phases, every such phase shall be considered a standalone real estate project, and the promoter shall



obtain registration under this Act for each phase separately."

- iii. That vide letter dated 17.12.2016 the answering respondent offered possession of apartment to the complainants but the complainant did not come forward to take the possession of aforementioned unit. It is pertinent to mention here that the complainant requested the respondent to delay the handover of the apartment due to personal reason and acting upon the request the respondent did not press the complainants to take over the possession nor demanded holding charges from him. Hence the complaint was filed by the complainants is liable to be dismissed as the complainants did not come forward to take the possession of the property for almost two years and the delay penalty which is being asked by the complainant is only for 8 months.
- iv. That as per clause no. 2 of the sale deed the complainants are estopped from claiming any amount on account of delay.
- v. Section 31 of RERA reads as follows "31. (1) Any aggrieved person may file a complaint with the Authority or the adjudicating officer, as the case may be,



for any violation or contravention of the provisions of this Act or the rules and regulations made thereunder against any promoter allottee or real estate agent, as the case may be. Explanation. For the purpose of this sub-section "person" shall include the association of allottees or any voluntary consumer association registered under any law for the time being in force. (2) The form, manner and fees for filing complaint under sub-section (1) shall be such as may be specified by regulations." That the answering respondent is not covered under the definition promoter as defined in RERA and also has not violated any terms and condition of RERA hence the present complaint is liable to be dismissed.

11. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents.

E. Jurisdiction of the Authority

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

E.I. Territorial jurisdiction

13. 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

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

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

F.1 Whether the execution of the conveyance deed extinguishes the right of the allottee to claim delay possession charges?

15. It has been contended by the counsel for the promoter that on execution of the conveyance deed, the relationship between the allottee and the promoter stands concluded, therefore, the



allottee is estopped from claiming any interest or refund in the facts and circumstances of the case. Clause 2 of the sale deed is reproduced below for ready reference:

"2. That the VENDOR has handed over the vacant and physical possession of the property mentioned above to the Vendee with all its rights, and privileges so far held and enjoyed by the Vendor to hold and enjoy the same forever free from all encumbrances whatsoever. The Vendee acknowledges that Vendee has taken over of possession of the said property and has further confirmed that all the fixtures, fittings are in order and further confirms and acknowledges that the construction of the said flat is as per agreed specifications and is to the satisfaction of the Vendee and that the Vendee shall not raise any claim whatsoever against the Vendor in respect of any defects or deficiency in construction, quality of the material used or on account of any delay, etc."

16. It is important to look at the definition of the term 'deed' itself in order to understand the extent of the relationship between an allottee and promoter. A deed is a written document or an instrument that is sealed, signed and delivered by all the parties to the contract (buyer and seller). It is a contractual document that includes legally valid terms and is enforceable in a court of law. It is mandatory that a deed should be in writing and both the parties involved must sign the document. Thus, a conveyance deed is essentially one wherein the seller transfers all rights to legally own, keep and enjoy a particular asset, immovable or movable. In this case, the assets under consideration are immovable property. On signing a conveyance deed, the original owner transfers all legal rights over the property in question to the buyer, against a valid

consideration (usually monetary). Therefore, a 'conveyance deed' or 'sale deed' implies that the seller signs a document stating that all authority and ownership of the property in question has been transferred to the buyer.

17. From the above, it is clear that on execution of a sale/conveyance deed, only the title and interest in the said immovable property (herein the allotted unit) is transferred. However, the conveyance deed does not mark an end to the liabilities of a promoter since various sections of the Act provide for continuing liability and obligations of a promoter who may not under the garb of such contentions be able to avoid its responsibility. The relevant sections are reproduced hereunder:

"11. Functions and duties of promoter.

(1) xxx

(2) xxx

(3) xxx

(4) The promoter shall—

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be.



Provided that the responsibility of the promoter, with respect to the structural defect or 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.

- (b) be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be;*
- (c) be responsible to obtain the lease certificate, where the real estate project is developed on a leasehold land, specifying the period of lease, and certifying that all dues and charges in regard to the leasehold land has been paid, and to make the lease certificate available to the association of allottees;*
- (d) be responsible for providing and maintaining the essential services, on reasonable charges, till the taking over of the maintenance of the project by the association of the allottees;*
- (e) enable the formation of an association or society or co-operative society, as the case may be, of the allottees, or a federation of the same, under the laws applicable:*

Provided that in the absence of local laws, the association of allottees, by whatever name called, shall be formed within a period of three months of the majority of allottees having booked their plot or apartment or building, as the case may be, in the project;

- (f) execute a registered conveyance deed of the apartment, plot or building, as the case may be, in favour of the allottee along with the undivided proportionate title in the common areas to the association of allottees or competent authority, as the case may be, as provided under section 17 of this Act;*



- (g) *pay all outgoings until he transfers the physical possession of the real estate project to the allottee or the associations of allottees, as the case may be, which he has collected from the allottees, for the payment of outgoings (including land cost, ground rent, municipal or other local taxes, charges for water or electricity, maintenance charges, including mortgage loan and interest on mortgages or other encumbrances and such other liabilities payable to competent authorities, banks and financial institutions, which are related to the project):*

Provided that where any promoter fails to pay all or any of the outgoings collected by him from the allottees or any liability, mortgage loan and interest thereon before transferring the real estate project to such allottees, or the association of the allottees, as the case may be, the promoter shall continue to be liable, even after the transfer of the property, to pay such outgoings and penal charges, if any, to the authority or person to whom they are payable and be liable for the cost of any legal proceedings which may be taken therefor by such authority or person;

- (h) *after he executes an agreement for sale for any apartment, plot or building, as the case may be, not mortgage or create a charge on such apartment, plot or building, as the case may be, and if any such mortgage or charge is made or created then notwithstanding anything contained in any other law for the time being in force, it shall not affect the right and interest of the allottee who has taken or agreed to take such apartment, plot or building, as the case may be;"*

"14. Adherence to sanctioned plans and project specifications by the promoter-

- (1) XXX
(2) XXX

In case any structural defect or any other defect in workmanship, quality or provision of services or any other obligations of the promoter as per the agreement for sale relating to such development is brought to the notice of

the promoter within a period of five years by the allottee from the date of handing over possession, it shall be the duty of the promoter to rectify such defects without further charge, within thirty days, and in the event of promoter's failure to rectify such defects within such time, the aggrieved allottees shall be entitled to receive appropriate compensation in the manner as provided under this Act." (emphasis supplied)

18. In respect of the above, the authority observes that the execution of a conveyance deed does not conclude the relationship or marks an end to the liabilities and obligations of the promoter towards the said unit whereby the right, title and interest has been transferred in the name of the allottee on execution of the conveyance deed.
19. This view is affirmed by the Hon'ble NCDRC in case titled as **Vivek Maheshwari Vs. Emaar MGF Land Ltd. (supra)** wherein it was observed as under:
- "7. It would thus be seen that the complainants while taking possession in terms of the above referred printed handover letter of the OP, can, at best, be said to have discharged the OP of its liabilities and obligations as enumerated in the agreement. However, this hand over letter, in my opinion, does not come in the way of the complainants seeking compensation from this Commission under section 14(1)(d) of the Consumer Protection Act for the delay in delivery of possession. The said delay amounting to a deficiency in the services offered by the OP to the complainants. The right to seek compensation for the deficiency in the service was never given up by the complainants. Moreover, the Consumer Complaint was also pending before this Commission at the time the unit was handed over to the complainants. Therefore, the complainants, in my view, cannot be said to have relinquished their legal right to claim compensation from the OP merely because the basis of the unit has been taken by them in terms of printed



hand over letter and the Sale Deed has also been got executed by them in their favour.

8. The relationship of consumer and service provider does not come to an end on execution of the Sale Deed in favour of the complainants.....(emphasis supplied)

20. From above, it can be said that the taking over the possession and thereafter execution of the conveyance deed can best be termed as respondent having discharged its liabilities as per the builder buyer's agreement and upon taking possession, and/or executing conveyance deed, the complainant never gave up his statutory right to seek delayed possession charges as per the provisions of the said Act. Also, the same view has been upheld by the Hon'ble Supreme Court in case titled as **Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and Ors. Vs. DLF Southern Homes Pvt. Ltd. (now Known as BEGUR OMR Homes Pvt. Ltd.) and Ors. (Civil appeal no. 6239 of 2019) dated 24.08.2020**, the relevant paras are reproduced herein below:

"34 *The developer has not disputed these communications. Though these are four communications issued by the developer, the appellants submitted that they are not isolated aberrations but fit into a pattern. The developer does not state that it was willing to offer the flat purchasers possession of their flats and the right to execute conveyance of the flats while reserving their claim for compensation for delay. On the contrary, the tenor of the communications indicates that while executing the Deeds of Conveyance, the flat buyers were informed that no form of protest or reservation would be acceptable. The flat buyers were essentially presented with an unfair choice of either retaining their right to pursue their claims*



(in which event they would not get possession or title in the meantime) or to forsake the claims in order to perfect their title to the flats for which they had paid valuable consideration. In this backdrop, the simple question which we need to address is whether a flat buyer who seeks to espouse a claim against the developer for delayed possession can as a consequence of doing so be compelled to defer the right to obtain a conveyance to perfect their title. It would, in our view, be manifestly unreasonable to expect that in order to pursue a claim for compensation for delayed handing over of possession, the purchaser must indefinitely defer obtaining a conveyance of the premises purchased or, if they seek to obtain a Deed of Conveyance to forsake the right to claim compensation. This basically is a position which the NCDRC has espoused. We cannot countenance that view.

35. *The flat purchasers invested hard earned money. It is only reasonable to presume that the next logical step is for the purchaser to perfect the title to the premises which have been allotted under the terms of the ABA. But the submission of the developer is that the purchaser forsakes the remedy before the consumer forum by seeking a Deed of Conveyance. To accept such a construction would lead to an absurd consequence of requiring the purchaser either to abandon a just claim as a condition for obtaining the conveyance or to indefinitely delay the execution of the Deed of Conveyance pending protracted consumer litigation."*

21. It is observed that perusal of the agreement/document signed by the allottees reveals stark incongruities between the remedies available to both the parties. These documents and contracts are ex-facie one sided, unfair and unreasonable whether the plea has been taken by the allottee while filing the complaint that the documents were signed under duress or not. The right of the allottee to claim delayed possession charges shall not be abrogated simply for the said reason.



22. The allottees have invested their hard-earned money and there is no doubt that the promoter has been enjoying benefits of and the next step is to get their title perfected by executing a conveyance deed which is the statutory right of the allottee. Also, the obligation of the developer – promoter does not end with the execution of a conveyance deed. The essence and purpose of the Act was to curb the menace created by the developer/promoter and safeguard the interests of the allottees by protecting them from being exploited by the dominant position of the developer which he thrusts on the innocent allottees. Therefore, in furtherance to the Hon'ble Apex Court judgement and the law laid down in the **Wg. Cdr. Arifur Rahman (supra)**, this authority holds that even after execution of the conveyance deed, the complainant allottee cannot be precluded from his right to seek delay possession charges from the respondent-promoter.

G. Findings on the relief sought by the complainants

- i. Direct the respondent to immediately pay delay interest on paid amount of Rs. 90,23,531/- from 29.11.2014 along with pendent lite interest till actual possession thereon @ as prescribed in RERA Act.

23. In the present complaint, the complainants intend to continue with the project and is seeking delay possession charges as



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

"Section 18: - Return of amount and compensation

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

.....

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

24. Clause 11 of the buyer's agreement is reproduced below.

"11. Barring unforeseen circumstances and force majeure events as stipulated hereunder, the possession of the said apartment is proposed to be delivered by the company to the allottee within 36 months with the grace period of 6 months from the date of actual start of the construction of particular tower building in which the registration for allotment is made, subject always to timely payment of all charges including basic sale price, stamp duty, registration fees and other charges as stipulated herein or as may be demanded by the company from time to time in this regard. The date of actual start of construction shall be the date on which the foundation of the particular Building in which the said Apartment is allotted shall be laid as per the certification by the Company's Architect/Engineer-in-charge of the Complex and the said certification shall be final and binding on the Allottee."

25. Admittedly, there is delay in completing the project in which the allotted unit is located. However, it is to be seen as to for how much time, the builder failed to complete the project and offer the possession of the allotted unit to the complainants. A perusal of clause 11 of builder buyer agreement shows a period of 36 months with a grace period of 6 months for handing over the possession from the actual date of construction of a particular tower/ building. It is also provided



that the date of actual start of construction shall be the date on which the foundation of particular building in which the said apartment is allotted to be laid as per certification by the companies, architect, engineer, in-charge of complex and said certification shall be final and binding on allottee. Keeping in view the above-mentioned provisions of agreement entered into between the parties, it is pleaded by the complainant that the construct of the tower in which the allotted unit is started on 29.11.2011 & the same should have been completed by 29.11.2014 excluding the grace period. However, to prove that fact nothing is on the record. It is well settled that mere pleadings can't take proof of evidence. The respondent has also not placed on file any document in view of clause 11 as detailed above, so in such a situation the authority has to depend on documents of the same project placed in complaint bearing RERA-GRG-2660 of 2021 wherein as per the payment plan the ground floor slab was completed on 26.12.2012. It might have taken a period of 6 months to complete construction of the project up to that stage. So, taking into consideration these facts the date of construction of the project in which the allotted unit is located comes to be 01.07.2011. As per clause 11 of builder buyer agreement the construction of the project was to be completed within 3 years with a grace period of 6 months from the date of start of construction. It is not proved that the construction was completed within a period of 36 months and the builder applied for getting occupation certificate within the grace



period of 6 months as that period is not allowed while calculating the total period for delay. The due date for handing over the possession comes to be June 2014. The occupation certificate was received by the respondent on 18.08.2016 and the valid offer of possession of the allotted unit was made on 17.12.2016 so the claimants are entitled for delay possession charges at the prescribed rate from the respondent with effect from 01.07.2014 to 17.12.2016 plus 2 months as per the provision of section 19 (10) of the Act, 2016.

26. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges as per the Act. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

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

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

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

27. 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.

28. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment within 36 months with the grace period of 6 months from the date of actual start of the construction of particular tower/building in which the allotment is made, subject always to timely payment of all charges including basic sale price, stamp duty, registration fees and other charges as stipulated herein or as may be demanded by the company from time to time in this regard. Though it is pleaded that a grace period of 6 months over and above the period of 36 months to complete the construction of the project and handing over the possession be allowed but it is not proved as to for what purpose the period of 6 months as grace period is being demanded. If it would have been a case of completion of construction and applying for occupation certificate within the grace period, then that period could have been considered. But the construction was completed only in the year 2016 and not 2014 as per the target date. So, the period of 6 months as claimed cannot be added for calculating the due date for offer of possession.
29. 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., 10.02.2021 is 7.30% per annum.



Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e.,9.30% per annum.

30. 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*

31. 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 the same as is being granted to the complainants in case of delay possession charges.
32. On consideration of the circumstances, the documents and other record and submissions made by the parties and based on the findings of the authority regarding contravention as per provisions of rule 28(2)(a), the authority is satisfied that the respondent is in contravention of the provisions of the Act. By



virtue of clause 11 of the buyer's agreement executed between the parties on 03.01.2012, the construction of the project was to be completed within 3 years with a grace period of 6 months from the date of start of construction. The due date for handing over the possession comes to be June 2014. The occupation certificate was received by the respondent on 18.08.2016 and the valid offer of possession of the allotted unit was made on 17.12.2016 so the claimants are entitled for delay possession charges at the prescribed rate from the respondent with effect from 01.07.2014 to 17.12.2016 plus 2 months as per the provision of section 19 (10) of the Act, 2016. Accordingly, it is the failure of the promoter to fulfil his obligations, responsibilities as per the buyer's agreement dated 03.01.2012 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 complainants are entitled to delayed possession at rate of the prescribed interest @ 9.30% p.a. w.e.f. 01.07.2014 till the offer of possession dated 17.12.2016 as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

33. Hence, the Authority hereby pass the following order and issue directions under section 34(f) of the Act:
- 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 01.07.2014 i.e. till the offer of



- possession i.e. 17.12.2016 plus 2 months as per the provision of section 19 (10) of the Act, 2016.
- ii. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order as per Rule 16(2) of rules and thereafter monthly payment of interest till offer of possession shall be paid before 10th of each subsequent month.
 - iii. The respondent shall not charge anything from the complainants which is not part of the buyer's agreement. Moreover, holding charges shall not be charged by the promoter at any point of time even after being part of the agreement as per law settled by the hon'ble Supreme Court in civil appeal no. 3864-3889/2020 decided on 14.12.2020.
 - iv. Interest on the due payments from the complainants shall be charged at the prescribed rate @9.30% by the promoter which is the same as is being granted to the complainants in case of delayed possession charges.
34. Complaint stands disposed of.
35. File be consigned to registry.


(Samir Kumar)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 10.02.2021