BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 141 of 2021
First date of hearing: 04.03.2021
Date of decision : 24.08.2021

1. Nishant Arora
2. Henna Gupta

Both RR/o: - 19, Ashoka Apartments, A-2, Block, Paschim Vihar, Delhi- 110063 **Complainants**

Versus

M/s Raheja Developers Limited.
Regd. office: Raheja Mall, 3rd floor, Sector-47, Sohna Road, Gurugram- 122001 **Respondent**

CORAM:
Shri Samir Kumar **Member**
Shri Vijay Kumar Goyal **Member**

APPEARANCE:
Sh. Siddharth Sapra Special Power of attorney holder of the complainant

Sh. Mukul Kumar Sanwariya
Sh. Saurabh Seth
Ms. Gauri Desai Advocates for the respondent

ORDER

1. The present complaint dated 14.01.2021 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 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 unit details, 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	"Raheja's Atharva", Sector 109, Gurugram
2.	Project area	14.812 acres
3.	Nature of the project	Residential Group Housing Colony
4.	DTCP license no. and validity status	257 of 2007 dated 07.11.2007 valid up to 06.11.2017
5.	Name of licensee	Brisk Construction Pvt. ltd and 3 others
6.	RERA Registered/ not registered	Registered vide no. 90 of 2017 dated 28.08.2017
7.	RERA registration valid up to	5 Years from the date of revised Environment Clearance
8.	Unit no.	G-1202, 12th floor, block-G [as per applicant ledger dated 10.07.2020 page 34 of complaint]

9.	Unit measuring	4804.200 sq. ft.
10.	Date of provisional allotment letter	24.03.2019 [page 19 of complaint]
11.	Date of execution of agreement to sell	30.03.2019 [page no. 24 of complaint]
12.	Payment plan	SPL plan [as per applicant ledger dated 10.07.2020 page 34 of complaint]
13.	Total consideration	Rs.1,57,63,920/- [as per applicant ledger dated 12.11.2020 page 32 of complaint]
14.	Total amount paid by the complainants	Rs.1,56,11,570/- [as per applicant ledger dated 12.11.2020 page 32 of complaint]
15.	Due date of delivery of possession as per clause 3 of the agreement to sell: on payment of 95% of total price within stipulated time, possession will be offered to the buyer. [Page 26 of complaint]	21.05.2019
16.	Delay in handing over possession till date of this order i.e. 24.08.2021	2 years 3 months and 3 days

B. Facts of the complaint

3. The complainants have made the following submissions in the complaint: -

I. That complainants have booked a unit in flat no. 1202, 12th floor, D-block, super area 4804.20/- sq. ft. and 970 sq. ft. Terrace area in the project under the name and style "Raheja Atharva.

II. That the project came to the knowledge of the complainant by the shrewd marketing gimmick of the respondent. The complainant was given representations of the high-class aesthetic apartment and the timely delivery of their projects. The complainants being simple people were caught into the trap and believed the respondent on the representations made by them which were subsequently proved to be false. Nonetheless, the complaints booked an apartment in the project for a total sale consideration of Rs.1,52,35,000/- and paid Rs.15,25,390/- through cheque no. 000009 drawn on HDFC Bank on 27.03.2019. After the respondent company issued a provisional allotment letter dated 24.03.2019.

III. That the agreement to sell entered into was not according to the model agreement to sell as per Haryana Real Estate Rules, 2017 (herein referred to as the Rules, 2017). The respondent has mentioned certain points as per the requirement of the respondent and did not bother to confirm with the pattern of model agreement as per the

Rules, 2017. This act of the respondent is done with *malafide* intention and same is against the provisions of the Haryana Real Estate (Regulation and Development) Act, 2016.

IV. The complainants have submitted that he had to clear 85% of the dues within 7 days calculated from the agreement's execution date. The complainants took financial assistance from L&T HOUSING FINANCE LIMITED for Rs.1,06,23,808/-, the process of loan application to its disbursement took time longer than expected as the finance service was arranged through developer only. As per the email communications, the respondent took this period of time to get loan disbursed through finance company as the respondent was engaged in over-work activities and was unable to handle work of customers due to limited staff with it, for which the complainants are not responsible in any manner.

V. That the respondent has been very punctual in benefiting from the terms and conditions of the agreement which are in favour of the respondent and dedicatedly charged the dues payable by the complainants on time. As per the applicant ledger dated 12.11.2020, the respondent debited the amount payable by the complainants as per

the payment plan annexed in the agreement but failed to fulfil the prime responsibility of giving possession timely which has caused severe mental pressure and harassment to the complainants as the EMIs of the loan taken against the unit are being paid regularly. It is pertinent to mention that the respondent has already debited the amount payable at the stage of execution of conveyance deed of the unit in favour of the complainants. This clearly shows the intention of the respondent to take money from innocent buyers and carelessness in fulfilling the obligations.

VI. That the complainants several times tried to ask and confirm from the executives of the respondents as to when the construction the unit will be complete, and the offer of possession shall be given to the complainants for which the complainants had to wait for more than one and a half year. The complainants through Whatsapp chat and E-mail communication tried to gather information as an allottee on which, the representatives of the respondent gave future dates and promises to the complainants but till date the construction of the unit is not complete and not in a fit condition. For the sake of better understanding of the authority, the respondent has

not completed flooring work and paint related work on the walls inside the unit for more than one and a half year.

VII. That the respondent has substantially failed to discharge its obligation imposed on him under the Act. No delivery of possession has been made yet. The possession has been delayed from 07.04.2019 and for this delay in delivering of possession; the respondent is liable to pay the interest for every month of delay as per section 18 of the Act.

VIII. That the complainants paid amount of Rs.1,06,23,808/- on 30.04.2019 and the same is evident through payee advice as well as description of instrument of payment in the applicant ledger, however, the applicant ledger on record displays the date of amount credited on 20.05.2019. The complainants have further submitted that the delay in possession and the penalty on such delay, the respondent with unlawful intention paid no heed to the complainant's requests and queries.

C. Relief sought by the complainants:

4. The complainants have sought following relief(s).

I. To direct the respondent to submit an affidavit stating the anticipated date for delivery of possession and hand over the possession of the apartment by such date; or to direct

refund with interest on non-delivery of the apartment by the anticipated date.

II. To pass such direction, as may be deemed fit, under Sections 37 & 38 of the Act, towards giving effect to any one or more of the above sought reliefs.

5. 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

6. The respondent contested the complaint on the following grounds. The submission made therein, in brief is as under: -

I. That the present complaint is based on vague, misconceived notions and baseless assumptions of the complainant and these are, therefore, denied. The complainant has not approached this authority with clean hands and has suppressed the true and material facts. The complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed. It is submitted that the instant complaint is absolutely malicious, vexatious, and unjustifiable and accordingly has to pave the path of singular consequence, that is, dismissal.

II. That the respondent is traversing and dealing with only those allegations, contentions and/or submissions that are material and relevant for the purpose of adjudication of present dispute. It is further submitted that save and except what would appear from the record and what is expressly admitted herein, the remaining allegations, contentions and/or submissions shall be deemed to have been denied and disputed by the respondent.

III. That the complainant in a bid purchased the unit no. G-1202, 12th floor, in Raheja Atharva, Sector 109, Gurugram. The respondent vide letter dated 24.03.2019 issued allotment letter to the complainant. The project in which the unit allotted to the complainant lies was completed prior to the enactment of the Real Estate (Regulation and Development) Act, 2016.

IV. That the request for grant of occupation certificate for the unit allotted to the complainants in the project was made before the publication of Haryana Real Estate (Regulation and Development) Rules, 2017, That after completion of construction of Atharva towers and Shilas towers, the company applied for occupation certificates. The Department of Town and Country Planning, Haryana granted two occupation Certificates consisting

of all high rise Atharva towers and Shilas towers vide its letters bearing Memo No. ZP-331/SD(BS)/2014/10384 dated 20.05.2014 and Memo No. ZP-331/SD(BS)/2014/26665 dated 19.11.2014 respectively with respect to all high-rise apartments and EWS flats.

V. That the project "Raheja Atharva" is a residential group colony situated at Sector – 109, Gurugram consists of three components namely (a) Raheja – Atharva towers consists of 8 high rise towers from A to H, (Atharva Towers), (b) Raheja – Shilas Towers consists of three high rise towers named as T1, T2 and T3 (Shilas towers), (c) Raheja Shilas – independent floors (IF) which consists of low-rise floors apartment.

VI. That the complainants after checking the veracity of the project namely, 'Raheja Atharva" had applied for allotment of apartment no. G-1202. The complainants were agreed to be bound by the terms and conditions of the booking application form.

VII. That the complainants bought the unit in the bid of the decade event on "as in where is basis" and it was mutually agreed amongst the complainants and the respondent has handover of the unit will take place as is

where is basis only the cleaning of the apartment shall be done by them. However, as a special gesture, the respondent agreed to the requests of the complainant and did the wooden flooring, sanitary fitting and final coat of painting.

VIII. That the construction of the tower in which the floor is allotted to the complainants are located already complete and the respondent has already offered the possession of the same to the complainant. The allotment of the Unit was done on after getting the occupational certificate which the respondent has already received from the concerned department vide memo no. ZP-331/SD(BS)/2014/10384 on 20.05.2014 and memo no. ZP-331/SD(BS)/2014/26665 on 19.11.2014. That the complainants out of their own will have denied taking the possession.

IX. That the complainant has not approached this authority with clean hands and has intentionally suppressed and concealed the material facts in the present complaint. The present complaint has been filed by it maliciously with an ulterior motive and it is nothing but a sheer abuse of the process of law. The true and correct facts are as follows:-

- That the respondent is a reputed real estate company having immense goodwill, comprised of law abiding and peace-loving persons and has always believed in satisfaction of its customers. The respondent has developed and delivered several prestigious projects such as 'Raheja Atlantis', 'Raheja Atharva', and 'Raheja Vedanta' and in most of these projects large number of families have already shifted after having taken possession and resident welfare associations have been formed which are taking care of the day to day needs of the allottees of the respective projects.
- That the respondent launched the project Raheja Atharva- in the year 2010. That the project Raheja Atharva residential group colony situated at sector – 109, Gurugram consists of three components namely (a) Raheja – Atharva towers consists of 8 high rise towers from A to H, (Atharva towers), (b) Raheja – Shilas towers consists of three high rise towers named as T1,T2 and T3(Shilas towers), (c) Raheja Shilas – independent floors (IF) which consists of low-rise floors apartment.

- That the complainant, bought the unit form the respondent in the bid of the decade event on "as is where is basis" and it was mutually agreed amongst both the parties, that the handover of the unit will take place as is where is basis. It was decided that only cleaning of the apartment shall be done by them. That however, as a special gesture, the respondent agreed to the request of the complainant and did the wooden flooring, sanitary fitting, and final coat of painting.
- That the complainant is real estate investor who had booked the unit in question with a view to earn quick profit in a short period. However, it appears that their calculations have gone wrong on account of severe slump in the real estate market and the complainants are now raising untenable and illegal pleas on highly flimsy and baseless grounds. Such *malafide* tactics of the complainants cannot be allowed to succeed.
- That the respondent has already offered the possession of the same to the complainants and the complainants out of their own will has refused to

take the possession of the apartment. That the allotment of the unit was done on "As is where is basis" that means the apartment would be given to the complaint as it is without any further works etc. However, at the time of possession the complainants refused to take possession of the unit. That The complainant had also inspected the site/have gone through the entire details of the unit allotted fully and have satisfied and has familiarized with the prevalent site conditions in all respect before offering the bid without any influence or coercion. The respondent is suffering unnecessarily and badly without any fault on its part. Under these circumstances passing any adverse order against the respondent at this stage would amount to complete travesty of justice.

- That the respondent time and again requested the complainants to come forward and take possessions through various emails and communications. That the complainants out of their own will refused to take the possession and now making unnecessary illegitimate demand. That the complaint filed by the

complainants should be rejected, as the complainants have not disclosed the true facts before the authority

E. Jurisdiction of the authority

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

F. Findings on the objections raised by the respondents

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

8. Objection raised the respondent that the authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the apartment buyer's agreement executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously.

However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of ***Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)*** which provides as under:

> *"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter.....*
>
> *122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."*

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

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

10. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

F.II. Objection regarding entitlement of DPC on ground of complainants being investors

11. The respondents have taken a stand that the complainants are investors and not consumers, therefore, it is not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observed that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time the preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if it contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the unit buyer's agreement, it is revealed that the complainant is buyer and has paid a total price of Rs.1,56,11,570/- to the promoter towards purchase of an apartment in its project. At this stage, it is important to

stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

> *"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"*

12. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the apartment buyer's agreement executed between promoter and complainant, it is crystal clear that the complainant is an allottee(s) as the subject unit was allotted to her by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as ***M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.*** has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottee being an investor is not entitled to protection of this Act also stands rejected.

G. Findings on the relief sought by the complainant.

G. I To direct the respondent to submit an affidavit stating the anticipated date for delivery for possession and hand over the possession of the apartment by such date; or to refund along with interest on non-delivery of the apartment by the anticipated dated;

13. In the present complaint, the complainants intends to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

> *"**Section 18: - Return of amount and compensation***
>
> *18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*
>
> .....
>
> *Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

14. Clause 3 of the agreement to sell provides for handing over of possession and is reproduced below:

> *"**3.** on payment of 95% of total price within stipulated time, possession will be offered to the buyer"*

Milestone	Description	Amount
At the time of application/booking	10% of total cost	Rs.15,23,500/-
Within 7 days of bidding and agreement to sell	85% of total cost + IFMS/IBMS	Rs.1,34,78,670/-
At the time of execution of conveyance deed	5% of Total Cost + Stamp Duty & registration charges	Rs.7,61,750/-

15. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to payment of 95% of total price within stipulated time, possession will be offered to the buyer. 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 payment as per the plan 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 agreement to sell 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.

16. The complainants are seeking delayed possession charges from the respondent/builder. It is not disputed that the possession of the allotted unit has not been offered till now. The complainants were allotted the unit on 24.03.2019 for a total sale consideration of Rs.1,57,63,920/-. It led to execution

of an agreement to sell on 30.03.2019. A perusal of this document at clause 3 shows that possession of the allotted unit was to be offered to the allottee on payment of 95% of the total price within the stipulated time. A payment plan is annexed at "A" to that document, and which bears the signature of the parties. A perusal of this document shows that the complainants were required to deposit a sum of Rs.15,23,500/- i.e. is 10% of the total cost at the time of application/booking. Then 85% of the total cost + IFMS/IBMS to the tune of Rs.1,34,70,670/- was to be deposited within 7 days of booking/agreement to sell. Lastly 5% of the total cost + stamp duty + registration charges were to be deposited at the time of execution of conveyance deed. A further perusal of statement of account annexure C/4 shows that the claimants deposited a sum of Rs.15,25,390/- and 51,000/- on 27.03.2019 and 28.03.2019 respectively. However, within 7 days of execution of agreement to sell i.e. 06.04.2019. they were required to deposit 85% of the total cost plus IFMS/IBMS, as per payment plan annexed with that document. But a perusal of ledger of complainants account shows that they paid 95% of the total sale consideration upto 20.05.2019 instead of 06.04.2019 as agreed upon. Though the respondent /builder was required to offer possession of the allotted unit

to them as per clause 3 of the agreement to sell after receipt of 95% of the total sale consideration but that not been done even upto now. So, it shows as per the terms and conditions of the agreement to sell, the respondent/builder failed to offer possession of the allotted unit to the complainants on receipt of 95% of the total sale consideration. So, in such a situation, the allottees are entitled to delayed possession charges w.e.f. 21.05.2019 upto the date of actual offer of possession without payment of any maintenance charges.

17. **Payment of delay possession charges at prescribed rate of interest:** 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.*

18. 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.

19. Taking the case from another angle, the complainant-allottee was entitled to the delayed possession charges/interest only at the rate of Rs.7/- per sq. ft. per month as per relevant clauses of the buyer's agreement for the period of such delay; whereas the promoter was entitled to interest @ 18% per annum compounded at the time of every succeeding installment for the delayed payments. The functions of the authority are to safeguard the interest of the aggrieved person, may be the allottee or the promoter. The rights of the parties are to be balanced and must be equitable. The promoter cannot be allowed to take undue advantage of his dominate position and to exploit the needs of the home buyers. This authority is duty bound to take into consideration the legislative intent i.e., to protect the interest of the consumers/allottees in the real estate sector. The clauses of the buyer's agreement entered between the parties are one-sided, unfair and unreasonable with respect to the grant of interest for delayed possession.

There are various other clauses in the buyer's agreement which give sweeping powers to the promoter to cancel the allotment and forfeit the amount paid. Thus, the terms and conditions of the buyer's agreement are ex-facie one-sided, unfair, and unreasonable, and the same shall constitute the unfair trade practice on the part of the promoter. These types of discriminatory terms and conditions of the buyer's agreement will not be final and binding.

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., 24.08.2021 is **7.30%.** Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **9.30%.**

21. 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;"

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 the same as is being granted her in case of delayed possession charges.

23. On consideration of the circumstances, the evidence and other record and submissions made by the complainants and the respondent 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 3 of flat buyer agreement executed between the parties on 30.03.2019, possession of the booked unit was to be delivered on the payment of 95% of total price within stipulated time, possession will be offered to the buyer, the complainants are fulfilling the terms and conditions of the agreement to sell on 30.03.2019. Therefore, the due date of handing over possession comes out to be 21.05.2019. Accordingly, it is the failure of the respondent/promoter to fulfil his obligations, responsibilities as per the apartment buyer agreement dated

30.03.2019 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 complainants are entitled to delayed possession charges at the prescribed rate of interest i.e. @ 9.30% p.a. w.e.f. 21.05.2019 till the handing over of possession as per the provisions of section 18(1) of the Act read with rules 15 of the rules. The complainants have already paid Rs.1,56,11,750/- (as per applicant ledger dated 12.11.2020, at page 32 of complainant) against the total sale consideration of Rs.1,57,63,920 /- (as per applicant ledger dated 12.11.2020, at page 32 of complainant).

H. Directions of the authority

24. 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 interest at the prescribed rate of 9.30% p.a. for every month of delay from the due date of possession i.e. 21.05.2019 as per clause 3 of the agreement to sell dated 30.03.2019 till the immediate hand over the possession of the unit to

the complainants without claiming any arrears of maintenance charges;

II. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period;

III. The arrears of such interest accrued from 21.05.2019 till the date of order by the authority shall be paid by the promoter to the allottees within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottees before 10th of the subsequent month as per rule 16(2) of the rules;

IV. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

V. The respondent shall not charge anything from the complainants which is not the part of the agreement to sell. The respondent is not entitled to claim holding charges from the complainants/allottees at any point of time even after being part of apartment buyer's

agreement as per law settled by hon'ble Supreme Court in civil appeal no. 3864-3889/2020 decided on 14.12.2020.

25. Complaint stands disposed of.

26. File be consigned to registry.

(Samir Kumar)
Member

(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.08.2021
Judgement uploaded on 29.10.2021