

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

Complaint no. : 458 of 2019
First date of hearing : 08.05.2019
Date of decision : 08.09.2021

1. Mr. Satish Kumar Sharma
2. Mrs. Sucheta Sharma
Address:- R/o House No. 972, Sector 15, Part 2,
Gurgaon, Haryana - 122001.

Complainants

Versus

1. M/s Parsvnath Hessa Developers Private
Limited
2. M/s Parsvnath Developers Private Limited
Office address:- Parsavnath Metro Tower,
Near Shahdara Metro Station, New Delhi -
110032.

Respondents

CORAM:
Shri Samir Kumar
Shri Vijay Kumar Goyal

**Member
Member**

APPEARANCE:
Shri Sukhbir Yadav
Shri Deeptanshu Jain

Advocate for the complainants
Advocate for the respondents

ORDER

1. The present complaint dated 06.02.2019 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 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	"Parsvnath Exotica" at Sector - 53, Gurugram
2.	Project area	33.511 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP license no. and validity status	69 to 74 of 1996 dated 03.05.1996 valid upto 02.05.2019 52 to 57 of 1997 dated 14.11.1997 valid upto 13.11.2019, 1079 to 1080 of 2006 dated 28.08.2006 valid upto 01.09.2019
5.	Name of licensee	Puri Construction and 5 others
6.	RERA Registered/ not registered	Not Registered
7.	Unit no.	B5-802, VII th floor, Block No. B5

8.	Unit measuring	3390 sq. ft. (As per flat buyer's agreement)
9.	Date of execution of Buyers Agreement	24.08.2007 (Page 37 of the complaint)
10.	Date of Endorsement	02.09.2013 (Page 54 of the complaint)
11.	Payment plan	Down payment plan (Page 51 of the complaint)
12.	Total Sale consideration	Rs. 1,82,72,100/- (As per the flat buyer's agreement on the page 39 of the complaint)
13.	Total amount paid by the complainants	Rs. 1,62,96,727/- (As per the final statement of account dated 30.06.2017 on page 60, annexure P5 of the complaint)
14.	Date of start of construction of the Block B5	17.02.2010 (As per CR/81/2018 on page 59, annexure R10 of the reply)
15.	Due date of delivery of possession as per (As per clause 10(a)- within a period of thirty six (36) months of commencement of construction of the particular block in which the flat is located, with the grace period of six months, on the receipt of sanction of building plans/revised building plans and approvals of all concerned authorities including the fire service deptt, civil aviation deptt, traffic deptt, pollution control deptt, as may be required for commencing and carrying on construction)	02.09.2016 (No grace is given as the construction is not yet complete) (Since the date of start of construction cannot be ascertained, the due date of delivery of possession is calculated from the date of endorsement i.e., 02.09.2013 - as the said endorsement is done after the due date if calculated from the start of construction - 17.02.2013)

16.	Occupation Certificate received on	Not received
17.	Offer of possession	Not offered
18.	Delay in handing over possession i.e., till 08.09.2021	5 years and 6 days

B. Facts of the complainants

3. The complainants have made the following submissions:

- i. That the complainants got to know about Parsvnath Exotica project (hereinafter, 'the Project). That the said flat bearing unit no. B5-802 was booked by Dr. Pinky Tomar (hereinafter, the original allottee), on 18.07.2006 under down payment plan for sale consideration of Rs. 1,82,72,100/- and Rs. 172,10,332/- after 8% rebate on BSP.
- ii. That as per payment plan, allottees have paid Rs. 1,62,96,727/-. That a pre-printed flat buyer agreement (FBA) was executed between Dr. Pinky Tomar and Parsvnath Developers Limited. As per clause no. 10(a) of FBA, respondents have to give the possession of flat "within a period of thirty six (36) months of commencement of construction of particular block in which the flat is located". It is pertinent to mention here that construction of said tower

was started in february, 2010, inter alia due date of possession was february, 2013.

- iii. That on 06.09.2012, original allottee Dr. Pinky Tomar transferred the said flat in the name of her husband, Mr. Tushar Tomar with the permission of respondents. respondents endorsed the name of Mr. Tushar Tomar in his record and charged administrative charges of Rs. 84,750/-. Till date allottees have paid Rs. 1,63,84,097/- i.e. 95% of total sale consideration.
- iv. That as per the payment schedule of the builder buyer agreement, allottee has already paid the more than 95% amount till 03.10.2006 along with car parking and other allied charges of actual purchase price, but when complainants observed that there is no progress in construction of subject flat for a long time, they raised their grievance to respondent(s). Though complainants was always ready and willing to pay the remaining installments provided that there is progress in the construction of flat.
- v. That on 02.09.2013, Mr. Satish Kumar Sharma and Mrs. Sucheta Sharma (hereinafter, the complainants) purchased

the above said flat from Mr. Tushar Tomar with permission of respondents and become allottee of flat no. B5-802.

- vi. That since september 2014, complainants are regularly visiting to the office of respondents as well as construction site and making efforts to get the possession of allotted flats, but all in vain, in spite of several visits by the complainants. The complainants never been able to understand/know the actual status of construction. Though towers seem to be built up but no progress is observed on finishing and landscaping work.
- vii. That the main grievance of the complainants is that in spite of paying more than 95% of the actual amounts of flats and ready and willing to pay the remaining amount, the respondents party has failed to deliver the possession of flat.
- viii. That the complainants had purchased the flat with intention that after purchase, his family will live in own flat. That it was promised by the respondent party at the time of receiving payment for the flat that the possession of fully constructed flat along like basement and surface parking, landscaped lawns, club/ pool, school, EWS etc. as shown in brochure at the time of sale, would be handed over to the complainants as soon as construction work is complete i.e. by september, 2013.

Thereafter, respondents assured to complainants that physical possession flat will be handover by february, 2014.

- ix. That on date 22.03.2018, respondents send a letter "offer for fit outs" with increase in super area by 105 sq. ft. In this letter respondents acknowledge delay in possession from September, 2013.
- x. That the work on other amenities, like external, internal MEP (Services) is yet not completed. Now it is more than 12 years from the date of booking and even the constructions of towers are not completed, it clearly shows the negligence towards the builder. As per project site conditions it seems that project takes further more than one year to complete in all respect, subject to willingness of respondents to complete the project.
- xi. That the facts and circumstances as enumerated above would lead to the only conclusion that there is a deficiency of service on the part of the respondent party and as such they are liable to be punished and compensate the complainants .
- xii. That due to above acts of the respondents and of the terms and conditions of the FBA, the complainants have been unnecessarily harassed mentally as well as financially, therefore the opposite party is liable to compensate the

complainants on account of the aforesaid act of unfair trade practice.

- xiii. That there is a clear unfair trade practice and breach of contract and deficiency in the services of the respondent party and much more a smell of playing fraud with the complainants and others. It is prima facie clear on the part of the respondent party which makes them liable to answer this authority.
- xiv. That there is an apprehension in the mind of the complainants that the respondent party has playing fraud and there is something fishy which respondent party are not disclosing to the complainants just to embezzle the hard earned money of the complainants and others co owners.
- xv. That for the first time cause of action for the present complaint arose in february, 2013, when the respondent party failed to handover the possession of the flat as per the buyer agreement. further the cause of action arose in september, 2013 when the respondent party failed to handover the possession of flat as per promise.
- xvi. That as per section 11 (4) of the Act of 2016, the promoter is under obligation towards allottees. That the responsibility of the promoter, with respect to the structural defector any other

defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed.

xvii. That as per section 18 of the Act of 2016, the promoter is liable to return of amount and to pay compensation to the allottees of an apartment, building or project for a delay or failure in handing over of such possession as per the terms and agreement of the sale.

xviii. That the complainants withdraw their complaint from NCDRC, New Delhi vide order dated 08.01.2019 to file complaint to RERA Authority.

xix. That the complainants do not want to withdraw from project and seeking delay possession charges as per section 18 of Act of 2016.

xx. That project of respondents come under the definition of "ongoing projects" and it is still unregistered in HARERA. It is pertinent to mention here that as per Section 3(1) of the Act of 2016, respondents need to get register the project within three months from the date of commencement of this Act. The

said act of respondents also indicates towards his irresponsible and unprofessional behavior.

C. Relief sought by the complainants:

4. The complainants have sought the following relief:
 - i. To get interest at the prescribed rate for every month of delay from due date of possession i.e. 01.03.2013 till the handing over the possession (complete in all respect) (as per section 18 of Real Estate (Regulation and Development) Act, 2016).
 - ii. To get the possession of flat complete in all respect within 6 months of filing the case. If respondents fails to give the possession within 6 months, the authority may kindly direct the respondent party to refund the paid money along with interest at prescribed rate.
 - iii. To restrain the respondent from giving effect to the unfair clauses unilaterally incorporated in the flat buyer agreement.

D. Reply by the respondents:-

5. The respondents have raised certain preliminary objections and has contested the present complaint on the following grounds:

- i. That the complaint filed by the complainants are baseless, vexatious and is not tenable in the eyes of law therefore the complaint deserves to be dismissed at the threshold.
- ii. That the respondent no.2 company, Parsvnath Developers Ltd (hereafter it is called as "PDL") are not a necessary party in the present complaint and hence the complaint is bad for misjoinder of parties respondent no.2 has brought foreign direct investment (FDI) in the project in question, so as to ensure fast completion and deliver of the project. As such an agreement has been executed between the respondent no.2 and respondent no.1 (Parsvnath Hessa Developers Pvt. Ltd. (hereafter it is called as "PHDPL"), a joint venture company of respondent no.2/PDL. Under the terms of the said agreement, development, construction and marketing of built up areas in towers B1, B2, B3, B5, B6 and C4 have been transferred to respondent no. 1. In this regard an intimation letter was sent to all the allottees of the project by the respondent no.2 and in the said letter it was specifically stated that the respondent no.2 shall be remained only as a confirming party and all other responsibilities were already transferred to respondent no.2. In view of the above reasons, respondent no.1 is not a

necessary party in the present case and hence the name of the respondent no.1 is liable to be deleted from the party array.

- iii. That the respondent company has applied for registration of the part of the said project with respect to tower no. B5, B6 and EWS with Haryana Real Estate Regulatory Authority wherein the revised declaration date of handing over the possession of the project is 31.12.2019. That the project construction is already complete and the respondents are putting its best efforts to complete the remaining final finishing work. Respondent company has applied for registration of the part of the said project with respect to tower no. B5, B6 and EWS with Haryana Real Estate Regulatory Authority wherein the revised declaration date of handing over the possession of the project is stipulated as 31.12.2019 as also confirmed in the Haryana Real Estate Regulatory Authority Registration affidavit cum declaration. It is further pertinent to state that all the basic facilities and amenities like electricity, water, club and swimming pool are duly available at the project site which is duly. Adequate with respect to the current occupancy at the project site. It is pertinent to state that due to dependency of the beneficiary

interest in favour of the respondents, the delay is being caused in handing over the possession of the flat. It is submitted that the respondents have been pursuing the authority with all its best & possible efforts to get the formal approval. However, the same is still pending with the concerned authority. It is submitted that the respondent company shall immediately handover the possession of the flat upon receipt of the occupancy certificate (OC) from the authority.

- iv. That the respondent company has duly complied with all the norms and bye-laws required for obtaining the occupancy certificate (OC) with the authority and has developed the project in complete adherence of the building bye-laws prevailing in Haryana.
- v. That the complainant is only subsequent purchasers who purchased the said flat from the open or secondary market in the year august 2013 only. They have purchased the allotment from the original allottee, Mr. Tushar Tomar in the year august 2013 and the complainant was well aware about the status of the construction at the time of purchasing the said flat from the open market or secondary market. The complainants has

- purchased the said the flat in question for investment purpose only and hence they cannot be treated as real consumers.
- vi. That the prayer for awarding to pay interest at the prescribed rate from due date of possession till the handing over the possession.
- vii. That the mutually agreed clause no. 10(c) of the FBA wherein the delay compensation has been specifically mentioned and agreed by the complainants and hence contending the date of offering the possession, interest and compensation is incorrect wherein 'time is not the essence of the contract' stands contravened and hence proviso of section 18 are not applicable in the captioned matter as the respondents have agreed to abide by the obligations made under the FBA duly executed between the complainants and the respondents.
- viii. That the respondent company has invested a huge amount on the construction and development of the said project and in case the reliefs as sought is allowed to the complainants, it would cause financial loss to the project as well as loss to the genuine customers in the said project.
- ix. That the enforcement of provisions under Act of 2016 should be prospective and not be retrospective. It is pertinent to

mention here that the respondent company has already applied for registration under Real Estate Regulatory Authority with respect to the said part of the project before the authority. The respondent company has further completed most of the development work in tower no. B-5 and has been already applied for the occupancy certificate before the competent authority.

- x. That as per the FBA, which is binding between the complainants and the respondents, both have agreed upon their respective liabilities in case of breach of any of the conditions specified therein. It is submitted that the liability of the respondents on account of delay is specified in the clause 10(c) of the said agreement and as such the complainants cannot claim relief(s) which are beyond the compensation agreed upon by the complainants. In this view of the matter, the captioned complaint is not maintainable in law and is liable to be dismissed in limine. It is a well settled proposition of law that the courts/forums cannot travel beyond what is provided in the agreement/contract and generate altogether a new contract; the responsibility of the courts/forums is to interpret appropriately the existing contract and decide the

rights and liabilities of the parties within the four corners of the contract.

- xi. That the delay in handing over the possession of the flat was caused only due to the various reasons which are beyond the control of the respondent company. That the global recession hit the economy and is continuing particularly in the real estate sector. It is submitted that the construction of project of the respondents are dependent upon the amount of money being received from the bookings made and money received henceforth in form of installments by the allottees'. However, it is submitted that during the prolonged effect of the global recession, the number of bookings made by the prospective purchasers reduced drastically in comparison to the expected bookings anticipated by the respondents at the time of launch of the project.
- xii. That the various problems which are beyond the control of the respondents seriously affected the construction like lack of adequate sources of finance, shortage of labour, rising manpower and material costs and approvals and procedural difficulties. In addition to the aforesaid challenges the following factors like demonetization, outbreak of corona virus

etc. also played major role in delaying the offer of possession. Continually, order of the Hon'ble Supreme Court and NGT were being passed putting stay upon the construction activity.

xiii. That the frivolous demands of some allottees' have resulted in the rampant increase in filing of vexatious complaints against the real estate players. This practice needs to be curbed and dealt with iron hands given the potential drain of the frivolous legal proceedings on the limited financial and time resources available to the real estate players. The respondents have always kept complainants aware with the status of the project, thus the allegation of the complainants are vague and frivolous. It is submitted that to avoid the contractual obligations and with malafide intention to earn wrongfully from the respondents, the complainants have filed the instant complaint. Hence, the complaint is liable to be dismissed in limine.

xiv. That the complaint has been made to injure the interest and reputation of the respondent and therefore, the instant complaint is liable to be dismissed.

E. Jurisdiction of the authority

6. The preliminary objections raised by the respondents 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 respondents:

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

F. I. Objection raised by the respondents regarding force majeure condition

10. The respondents/promoters raised the contention that the construction of the project was delayed due to several unforeseeable events which were beyond the reasonable control of the respondents which have materially and adversely affected the timely completion of the project and are covered under force majeure conditions such as non-payment of instalment by different allottee of the project, slow pace of construction due to non-availability of laborer, demonetization, lockdown due to covid-19 various orders passed by NGT and heavy rainfall in Gurugram in 2016.
11. 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 respondents/promoters have not assigned such compelling reasons as to why and how they shall be entitled for further extension of time six months in delivering the possession of the unit. Moreover, the due date of possession comes out to be 02.09.2016 and all the reasons for the delay stated by the respondents in its reply were applicable in 2015-2016 (demonetization etc.). Thus, the delay of over twelve years cannot be justified by the respondents.

12. The authority is of the view that commercial hardships does not give the respondents an exception to not perform the contractual obligations. The promoter had proposed to hand over the possession of the apartment by 02.09.2016 and further provided in agreement that promoter shall be entitled

to a grace periods of six month. 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 fla 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.

F2. Non-payment of installments by the complainants and other allottees

13. The respondents have raised another objection that due to non-payment of installments by the complainants and other allottees, he faced a financial crunch and wasn't able to finish the project on time. The objection raised by the respondent regarding delay in making timely payments by the complainants who have committed breach of terms and conditions of the contract by making default in timely payment of the installments which has led to delay in completion of construction at the end of respondents.
14. That the FBA was entered into between the parties and, as such, the parties are bound by the terms and conditions mentioned in the said agreement. The said agreement was duly signed by the complainants after properly understanding each and every clause contained in the agreement. The

complainants were neither forced nor influenced by respondents to sign the said agreement. It was the complainants who after understanding the clauses signed the said agreement in their complete senses.

15. In the present complaint, it is an obligation on the part of the complainants/ allottees to make timely payments under section 19(6) and 19(7) of the Act. Section 19(6), (7) proviso read as under.

"Section 19: - Right and duties of allottees.-

Section 19(6) states that every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13(1), shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.

Section 19(7) states that the allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6).

16. The authority has observed that the total consideration of the apartment of Rs. 1,82,72,100/- and the complainants have paid Rs. 1,62,96,727/-. As per clause 5(a) of FBA, it is the obligation of the allottee to make timely payments and the relevant clause is reproduced as under:

5 (a). Time is the Essence: Buyer's Obligation

Timely payment of the installments/ amounts due shall be of the essence of this agreement. If payment is not made within

the period stipulated and or the Buyer commits breach of any of the terms and conditions of this agreement, then this agreement shall be liable to be canceled. In the eventuality of cancellation, earnest money being 15% of the basic price would be forfeited and the balance, if any, would be refundable without interest. On cancellation of this agreement, the Buyer shall also be liable to reimburse to the Developers the amount of brokerage paid, if any, by the Developers towards the booking of the flat. In any case, all the dues, whatsoever, including interest, if any, shall be payable before taking possession of the flat."

17. The allottees have paid substantial amount of the total sale consideration as per the final statement of account dated 30.06.2017. The authority is of the view that the complainants cannot be said to be in violation of his duties and obligations arising out of sections 19 (6) and (7) nor clause 8 of the FBA. Thus, the respondents cannot be given benefit of this objection.

G. Findings on the relief sought by the complainants

G.I. Regarding DPC and interest

18. 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."

19. Clause 10 (a) of the FBA provides time period for handing over of possession and the same is reproduced below:

"Clause 10(a): Construction of the Flat is likely to be completed within a period of thirty six (36) months of commencement of construction of the particular Block in which the Flat is located or 24 months from the date of booking of the flat, whichever is later, with a grace period of six (6) months, on receipt of sanction of building plans/revised building plans and approvals of all concerned authorities including the Fire Service Dept., Civil Aviation Dept., Traffic Deptt., Pollution Control Deptt., as may be required for commencing and carrying on construction subject to force majeure, restraints or restrictions from any courts/authorities, non-availability of building materials, disputes with contractors/work force etc. and circumstances beyond the control of the Developer and subject to timely payments by the Flat Buyers. No claim by way of damages/compensation shall lie against the Developer in case of delay in handing over possession on account of the said reasons. The date of submitting application to the concerned authorities for issue of completion/part completion/occupancy/part occupancy certificate of the Sub-Project shall be treated as the date of completion of the Flat for the purpose of this clause/agreement."

20. 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.

- 21. Admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit as per clause 10(a)- within a period of thirty six (36) months of commencement of construction of the particular block in which the flat is located, with the grace period of six months, on the receipt of sanction of building plans/revised building plans and approvals of all concerned authorities including the fire service department, civil aviation department, traffic department, pollution control

department, as may be required for commencing and carrying on construction. The FBA between the original allottee and the respondents were executed on 24.08.2007. In the present complaint, the date of start of construction of the Block B5 cannot be ascertained from the documents on record, however this date is taken from previous decision of the authority in the matter of **Saurav Arya and anr. V/s Parsavnath Hessa (CR/81/2018) dated 13.09.2018** wherein as per page 59, annexure R10 of the reply, the date of start of construction for block B has been mentioned as 17.02.2010. The due date if calculated from the date of start of construction comes out to be 17.02.2013. Since, the endorsement has been done after 17.02.2013, i.e., on 02.09.2013. Thus, the due date of possession for the complainants is 02.09.2016. It is further provided in agreement that promoter shall be entitled to a grace period of six months. Since the construction of the tower B5 is incomplete, thus, this grace period cannot be allowed to the respondent company. Therefore, the due date of handing over possession comes out to be 02.09.2016.

22. 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."

23. 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.

24. 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., 08.09.2021 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.

- 25. 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—

(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;"

- 26.** Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 9.30% by the respondents/promoters which is same as is

being granted to the complainants in case of delayed possession charges.

27. 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 respondents are 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(a) of the buyer's agreement executed between the parties on 24.08.2007, possession of the said unit was to be delivered within a period of 36 months from the start of construction of the particular block in which the flat is located with the grace period of six months, on the receipt of sanction of building plans/revised building plans and approvals of all concerned authorities including the fire service department, civil aviation department, traffic department, pollution control department, as may be required for commencing and carrying on construction. In the present complaint, the date of start of construction of the Block B5 cannot be ascertained from the documents on record, however this date is taken from previous decision of the authority in the matter of **Saurav Arya and anr. V/s Parsavnath Hessa**

(CR/81/2018) dated 13.09.2018 wherein as per page 59, annexure R10 of the reply, the date of start of construction for block B has been mentioned as 17.02.2010. The due date if calculated from the date of start of construction comes out to be 17.02.2013. Since, the endorsement has been done after 17.02.2013, i.e., on 02.09.2013. Therefore, the due date of possession for the complainants is 02.09.2016. It is further provided in agreement that promoter shall not be entitled to a grace period of six months. Since the construction of the tower B5 is incomplete, thus, this grace period cannot be allowed to the respondent company. Therefore, the due date of handing over possession comes out to be 02.09.2016.

28. 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. 02.09.2016 till the handing over of possession after obtaining occupation certificate.

H. Directions of the authority


29. 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. 02.09.2016 till the handing over of possession after obtaining occupation certificate.
- ii. The arrears of such interest accrued shall be paid by the promoter to the allottee within a period of 90 days from the date of this order and thereafter monthly payment of interest till the offer of possession shall be paid on or before 10th of each subsequent month.
- 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 apartment buyer's agreement.

30. Complaint stands disposed of.


31. File be consigned to registry.


(Sanfir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 08.09.2021.


(Vijay Kumar Goyal)

Member

JUDGEMENT UPLOADED ON 02.11.2021