

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

Complaint no. : 3136 of 2020  
First date of hearing : 13.11.2020  
Date of decision : 25.08.2021

1. Vijay Kumar
2. Rashmi

**Both R/o** B-35, Sushant Apartment,  
Sushant Lok-1, Galleria DLF-IV, Gurugram

**Complainants**

Versus

1. Magic Eye Developers Private Limited  
**Office address:** - G.F. - 09, Plaza M - 6,  
District Centre, Jasola, New Delhi -  
110025
2. M/s Spire Developers Private Limited  
**Address:** - 5-D, M-6, District Centre  
Jasola, New Delhi-118025

**Respondents**

**CORAM:**

Shri Samir Kumar  
Shri Vijay Kumar Goyal

**Member**  
**Member**

**APPEARANCE:**

Shri Nilotpal Shyam  
Ms. Neelam Gupta

Advocate for the complainants  
Advocate for the respondents

**ORDER**

1. The present complaint dated 06.10.2020 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 allottees 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	The Plaza at 106, Sector-106, Gurgaon
2.	Project area	3.725 acres
3.	Nature of the project	Commercial colony
4.	DTCP license no. and validity status	65 of 2012 dated 21.06.2012 valid upto 21.06.2022
5.	Name of licensee	Magic Eye Developers
6.	RERA Registered/ not registered	Registered No. 72 of 2017 dated 21.08.2017 valid upto 31.12.2021
7.	Unit no.	1810, 18th floor, Tower-B2
8.	Unit measuring	700 sq. ft.
9.	Date of execution of Buyers Agreement	24.05.2013 (Page 25 of the complaint)
10.	Payment plan	Construction linked payment plan
11.	Total Sale consideration	Rs. 43,92,360/-

		(As per applicant ledger, page 23-26 of the reply)
12.	Total amount paid by the complainants	Rs. 34,52,021/- (As per applicant ledger, page 23-26 of the reply)
13.	Due date of delivery of possession as per (As per clause 9.1 within a period of three years from the date of execution of agreement)	24.05.2016 (Due date of possession is calculated from the date of execution of agreement dated 24.05.2013) <b>Note:</b> Grace period not allowed
14.	Offer of possession	30.11.2019 (Page 22 of the reply)
15.	Delay in handing over possession till 30.01.2020 i.e. date of offer of possession i.e. (30.11.2019) + 2 months	3 years 8 months 6 days
16.	Occupation Certificate received on	28.11.2019 for block A, B & C

**B. Facts of the complaint**

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

- i. The complainants have submitted that application for allotment of unit No. 1810 proposed to be built on 18th floor of block-B2 in the impugned project. The said application form was submitted along with the earnest money to the respondent company. The complainants had opted for construction linked plan. That pursuant to the submission of application form, the parties entered into agreement i.e. apartment buyer's agreement (hereinafter referred to as "ABA") dated 24.05.2013 for

the sale of said unit number no. 1810 admeasuring 700 sq. feet located at sector-106, Gurugram, Haryana.

- ii. That as per ABA, the respondent agreed to sell/ convey/ transfer the impugned unit 1810 for an amount of **Rs. 43,75,840/-** which includes basic sale price, external development charges and infrastructure development charges, preferential location charges plus applicable taxes. The complainants have already paid a sum of **Rs.34,52,021/-** towards the sale consideration in respect of the impugned unit. That the said ABA was executed after almost 1 year from the date of booking and was issued to the complainants. As per the said agreement, the respondents were required to complete the construction of the unit and handover the possession of the same to the complainants within 4 years from the date of buyer's agreement. Also, the possession of the completely constructed and functional unit, along with the facilities and the promised amenities was to be handed over to the complainants by the May 2017 from the date of execution of agreement. That clause 7 of said ABA also stipulates a penal interest @ 1.5% per month for any delay in payment of instalments made by the complainants. The ABA further stipulates under clause 10.4 that respondents company, if failed to deliver the possession of the impugned unit within the stipulated time and subject to the *force majeure* conditions shall pay compensation @ Rs.5/- per sq.ft. of the super area per month for the entire period till the date of handing

over the possession. The said compensation clause is *ex facie* discriminatory in comparison to clause 7 of the ABA and amounts to unfair trade practices in view of catena of judgments of Hon'ble National Consumer Disputes Redressal Commission. Further, the said compensation clause is also in direct conflict with the RERA Act, 2016 and rules made there -under. Further, it is noteworthy that said clause of ABA is part of standard form of agreement, which is biased, one sided, amounting to unfair trade practice as the complainants were compelled to sign on dotted lines in view of one-sided standard form of agreement i.e. ABA. Therefore, such discriminatory clause is not binding on the complainants in view of the judgment of hon'ble supreme court. The complainants crave leave of hon'ble authority to produce and rely upon relevant judgments at the time of oral hearing as may be required.

- iii. That the complainants have paid more than 78% of the total sale consideration wherein all the demand made by the respondent company till date was honoured by the complainants. Despite the said payments, the respondent company failed to deliver the possession in agreed timeframe for reasons best known to them and the respondent company never bothered to intimate rhymes and reasoning for the delay to the complainants. Even, the grace time period has long ago been breached by the respondent company with no clarity about the delivery of possession till November, 2019. The offer



letter of possession was sent by the respondent's company to the complainants on 30.11.2019. There was a delay of 3.6 years. Therefore, the respondent have the breached the sanctity of the agreement for sell i.e. ABA. The respondent is liable to pay the delayed possession compensation in the form of interest on the principal paid. That the complainant considering slow progress at project site and no firm confirmation on project delivery date till November 2019 , the complainants was frustrated with the respondent malafide intent and false assurances regarding the new dates of handing over the possession without assigning any reason whatsoever for such a prolonged delay. Therefore, was delay of around 3.6 years of delay.

- iv. That the respondent failed to handover the possession to the complainants on the agreed date or even after the elapse of the grace period of 360 days as provided under ABA. The reason for the delay in handing over the possession despite payment of more than 78% of total consideration is only best known to the respondent as they have never bothered to intimate any rhymes and reasoning for the delay to the complainants. Therefore, the respondent has breached the sanctity of the ABA. The respondent deliberately maintained silence and never bothered to abreast the complainants of the latest development of the project and any rhymes and reason for such a gross and inordinate delay. Henceforth, the respondent is liable to pay interest for delayed period of

handing over the possession till the actual date of handing over the possession in accordance with Section 18 of the RERA Act. That the complainants also paid amount towards service tax for the impugned unit. However, the said service tax/GST was not payable for the period before July 2012 in accordance with the judgment of hon'ble Delhi High Court in **Suresh Kumar Bansal v. Union of India & Ors.** 2016 S.T.R.3(Del.) and which has been followed by hon'ble Punjab and Haryana High Court in **Balvinder Singh v. Union of India** CWP No. 23404 of 2016, decision dated 25.09.2018. Further, the complainants are not liable to pay service tax/GST for the period post July 2012 since the proposed date of handing over the possession was August 2012 which is next months after the cut-off date of July, 2012. The complainants are not liable to pay service tax/GST which would not have accrued if the respondent company would have handed over the possession in accordance with the ABA, the same has been held by coordinate bench (Panchkula) of Hon'ble Authority in **Madhu Sareen v M/s. BPTP Ltd.** complaint No.113/2018 decision dated 16.07.2018.

- C. Relief sought by the complainants:**
- 4. The complainants have filed the present compliant for seeking following relief:**

- a) To direct the respondents immediately deliver the possession of impugned unit no. 1810, tower—B2, along with 18% per annum interest compounded quarterly for the delayed period of handing over the possession calculated from the date of delivery of possession as mentioned in the ABA.
5. On the date of hearing, the authority explained to the respondents/promoters 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. The respondent no. 1 filed reply on 04.11.2020. However, neither respondent no. 2 put in appearance nor plead any reply.

**D. Reply by the respondent no. 1 (Magic Eye Developers Pvt. Ltd.):-**

6. The respondent has contested the complaint on the following grounds.
- i. That instant complaint is neither maintainable in law nor on facts. The instant complaint is without cause of action and has been filed with malafide. Therefore, instant complaint is not maintainable and is liable to be rejected.
- ii. That the instant complaint is not maintainable and is liable to be rejected in as much as the construction is already completed and after completing the construction of said commercial project, respondent has obtained occupation certificate in respect of the same



from Director General Town and Country Planning, Chandigarh vide memo bearing no. ZP-833/AD/(RA)/2019/29244 dated 28.11.2019. After obtaining the aforesaid Occupation Certificate, respondent has already offered possession of units to its respective allottees including the complainants on 30.11.2019. That complainants now cannot be allowed to wriggle out of the terms and conditions of the agreement dated 24.05.2013. That the respondent vide letter dated 20.12.2019 intimated to the complainants that in terms of the agreement, principal amount of Rs. 9,23,819/- is due and payable by them at the stage of offer of possession after adjustment of a rebate of Rs. 105633/- in terms of clause 10.4 of agreement dated 24.05.2013. That the complainants are also liable to pay interest @ rate in terms of RERA on the amounts due, which is accruing on day-to-day basis. In addition to the aforesaid possession dues along with interest as applicable, complainants are also liable to pay the maintenance charges of Rs. 16520/- w.e.f. 01.12.2019 till 31.03.2020. Thus, making the total amount of Rs. 9,40,339/- due and payable by the complainants as on 31.10.2020. it is the complainants who have till date failed to take possession of the aforesaid unit and to make the payment of the dues payable at various stage as per the opted payment plan including the dues payable at offer of possession and on the contrary, with the malafide intentions have filed the instant complaint

for delayed possession charges along with interest, and hence, the complaint is liable to be dismissed.

iii. That the Act does not contemplate execution of any fresh agreement and therefore, buyer's agreement dated 24.05.2013 cannot be affected by the provisions of the Act and has to be implemented in toto and to be read and interpreted "as it is" without any external aid including without aid of subsequent enactment especially the enactment which do not especially require its aid to interpret agreements executed prior to commencement of such enactment. Hence, rights and liabilities of the parties including the consequence of default/default of any party have to be governed by buyer's agreement dated 24.05.2013 and not by the Act. That when the entitlement to claim possession is as per the declaration given by the promoter for completion of construction u/s 4(2) (I) (c) of the Act, then the necessary corollary to this is that the entitlement for delay possession charges shall also be from the expiry of the date of completion i.e. 31.12.2021 as provided at the time of registration. Hence, otherwise the claim for delay possession charges is pre-mature and is liable to be rejected.

iv. It is submitted that agreement executed between the parties especially prior to commencement of Act has to be read and interpreted "as it is" without any external aid including without aid of subsequent enactment especially the enactment which do not especially require its aid to interpret agreements executed prior to

commencement of such enactment. Hence rights and liabilities of the parties including the consequence of default/default of any party have to be governed by buyer's agreement dated 24.05.2013 and not by the Act. That the instant complaint is further liable to be dismissed as not maintainable in as much as, the alleged delay in possession is not due to any act of omission or commission on part of respondent but is due to the fact that the completion of construction is linked with the timely payment of the installments by all the allottees including the complainants. That there are many allottees who have failed to make payments of installments as per the construction linked payment schedule which has affected the progress of construction. It is submitted that non-payment of the installments by the allottees has rather acted, as a catalyst in delay in offer of possession at the end of respondent.

- v. That most respectfully submitted that this hon'ble authority does not have judicial or quasi-judicial powers to pass adjudicatory orders in relation to disputes between an allottee and promoter of an ongoing project on the date of commencement of Act especially in circumstances when there is no violation of any declaration given by promoter at the time of getting the ongoing project registered with the authority.
- vi. That without prejudice it is further submitted that the buyer's agreement dated 24.05.2013 executed between

the complainants and respondent is 'sacrosanct' and nothing can be added or deleted in the terms agreed thereupon. That compensation or penalty, if any shall be payable to the complainants as per the terms of the agreement dated 24.05.2013. That the adjustment of such penalty/compensation, thereof shall be done only at the time of settling the final accounts for handing over of the unit, as per the provisions of the agreement executed between the parties in order to attain the very objective of the Act, i.e. timely completion of the projects.

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

**E. Jurisdiction of the authority**

10. 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**

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 completed territorial jurisdiction to deal with the present complaint.

### **E.II Subject matter jurisdiction**

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 and duties of allottee as per section 19(6),(7) and(10) leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

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

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

11. The respondent no. 1 contended that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the 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 respondent further submitted that the provisions of the Act are not retrospective in nature and the provisions of the Act cannot undo or modify the terms of buyer's agreement duly executed prior to coming into effect of the Act.

12. The authority is of view that the Act nowhere provides, nor can be so constructed that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, the 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, 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 ***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 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 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."*

13. 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."*

14. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottees 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 buyer's agreement subject to the condition that the same are in accordance with the plans/permission approved by the respective

departments/competent authorities and are not in contravention of the Act and are not unreasonable or exorbitant in nature.

**F.II Objection regarding handing over possession as per declaration given under section 4(2)(I)(C) of Real Estate Regulation and Development Act 2016.**

15. The council for the respondent has started that the registration of the project is valid till 31.12.2021 and therefore cause of action, if any, would accrue in favour of the complainants to prefer a complaint if the respondent fails to deliver possession of the unit in question within the aforesaid period. That the entitlement to claim possession or interest would arise once the possession has not been handed over as per declaration given by the promoter under section 4(2)(I)(C). Therefore, next question of determination is whether the respondent is entitled to avail the time given to it by the authority at the time of registration the project under section 3 & 4 of the Act.
16. It is now settled law that the provisions of the Act and the rules are also applicable to ongoing project and the term ongoing project has been defined in rule 2(1)(o) of the rules. The new as well as the ongoing project are required to be registered under section 3 and section 4 of the Act.
17. Section 4(2)(I)(C) of the Act requires that while applying for registration of the real estate project, the promoter has to file



a declaration under section 4(2)(1)(C) of the Act and the same is reproduced as under: -

*Section 4:- Application for registration of real estate projects*

*(2) The promoter shall enclose the following documents along with the application referred to in sub-section (1), namely:-*

- .....
- (1):- a declaration, supported by an affidavit, which shall be signed by the promoter or any person authorised by the promoter, stating:-*
- (C) the time period within which he undertakes to complete the project or phase thereof, as the case may be....."*

18. The time period for handing over the possession is committed by the builder as per the relevant clause 9.1 of the buyer's agreement and the committed of the promoter regarding handing over the possession of the unit is taken accordingly. The new timelines indicated in respect of on-going project by the promoter while making an application for registration of the project does not change the commitment of the promoter to hand over the possession by the due date as per th buyer's agreement. The new timelines as indicated by the promoter in the declaration under section 4(2)(1)(C) is now the new timelines as indicated by him for the completion of the project. Although, penal proceeding shall not be initiated against the builder for not meeting the committed due date of possession but now, if the promoter fails to complete the project in declared timelines, then he is liable for penal proceedings. The

due date of possession as per the agreement remains unchanged and promoter is liable for the consequences and obligations arising out of failure in handing over possession by the due date as committed by him in the buyer's agreement and he is liable for the delayed possession charges as provided in proviso to section 18(1) the Act. The same issue has been dealt by hon'ble Bombay High Court in case titled as **Neelkamal Realtors Suburban Pvt. Ltd. and Anr. Vs Union of India and Ors.** And has observed as under:

*"119. Under the provision 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....."*

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

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

(i) To direct the respondents immediately deliver the possession of impugned unit no. 1810, tower—B2, along with 18% per annum interest compounded quarterly for the delayed period of handing over the possession calculated from the date of delivery of possession as mentioned in the ABA.

20. 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."*

21. Clause 9.1 of the apartment buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below:

**"9.1 SCHEDULE FOR POSSESSION OF THE SAID UNIT**

*The developer based on its present plans ad estimates and subject to all just exceptions/force majeure/statutory prohibitions/courts order etc., contemplates to complete the construction of the said building/Said unit within a period of three years from the date of execution of this agreement with two grace periods of six months each, unless there is a delay for reason mentioned in clause 10.1,10.2 and clause 37 or due to failure of allottee(s) to pay in time the price of the said unit along with other charges and dues accordance with the schedule of payments given in Annexure-C or as per the demands raised by the Developer from time to time or any failure on the part of the Allottee(s) to abide by all or any of the terms or conditions of this Agreement.*

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. 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 allottees that even a single default by the allottees in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees 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 allottees 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 allottees is left with no option but to sign on the dotted lines.

22. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment by 24.05.2017 and further provided in agreement that promoter shall be entitled to a grace periods of six month each unless there is a delay for reason mentioned in clause 10.1,10.2 and clause 37 or due to failure of allottee(s) to pay in time the price of the said unit along with other charges and dues accordance with the schedule of payments given in Annexure-C or as per the demands raised by the developer from time to time or any failure on the part of the allottee(s) to abide by all or any of the terms or conditions of this agreement. As a matter of fact, the



promoter has not given the valid reason for delay to complete the project within the time limit prescribed by the promoter in the apartment buyer's agreement. As per the settled law one cannot be allowed to take advantage of his own wrong. Accordingly, this grace periods of six months each cannot be allowed to the promoter at this stage.

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

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

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

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

24. 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.

25. 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., 25.08.2021 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.

26. **Rate of interest equally chargeable to the allottees in case of default in payment:-** 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;"*

27. 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 the same as is being granted to the complainants in case of delayed possession charges.
28. On consideration of the documents available on record and submissions made by both the parties it is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 24.05.2013 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 respondents are established. By virtue of clause 9.1 of the buyer's agreement executed between the parties on 24.05.2013, possession of the said unit to be delivered within a period of 3 years from the date of execution of buyer's agreement. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over of possession comes out to be 24.05.2016. In the present case, the complainants were offered possession by the respondents on 30.11.2019 after receipt of occupation certificate dated 28.11.2019. The authority is of the considered view that there is delay on the part of the respondents to offer physical possession of the allotted unit to the complainants as per the



terms and conditions of the buyers agreement dated 24.05.2013 executed between the parties.

29. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 28.11.2019. However, the respondents offered the possession of the unit on 30.11.2019, so it can be said that the complainants came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, they should be given 2 months' time from the date of offer of possession. This 2 month of reasonable time is being given to the complainants keeping in mind that even after intimation of possession practically they have to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit, but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e. 24.05.2017 till the expiry of 2 months from the date of offer of possession (30.11.2019) which comes out to be 30.01.2020. Furthermore, the complainants are directed to take possession within two weeks from the date of this order.





30. 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 respondents are established. As such, the complainants are entitled to delay possession charges at prescribed rate of the interest @ 9.30% p.a. w.e.f. 24.05.2017 till 30.01.2020 as per provisions of section 18(1) of the Act read with rule 15 of the rules.


**G. Directions of the authority**

31. 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 respondents are directed to pay interest at the prescribed rate of 9.30% p.a. for every month of delay on the amount paid by the complainants from the due date of possession i.e., 24.05.2017 till 30.01.2020 i.e. expiry of 2 months from the date of offer of possession (30.11.2019).
- ii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period. 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 the rules.



- iii. 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 respondents/promoters 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.
- iv. The respondents shall not charge anything from the complainants which is not the part of the agreement, however, holding charges shall not be charged by the promoter at any point of time even after being part of agreement as per law settled by hon'ble Supreme Court in civil appeal no. 3864-3899/2020 decided on 14.12.2020.
32. Complaint stands disposed of.
33. File be consigned to registry.

  
(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 25.08.2021

  
(Vijay Kumar Goyal)

Member

Judgement uploaded on 08.11.2021.