BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.:	**2999 of 2021**
First date of hearing:	**22.09.2021**
Date of decision:	**10.11.2021**

Karan Sood
R/o: - E-52, Anand Niketan, Southwest Delhi, Delhi-110021 **Complainant**

Versus

M/s Apex Buildwell Private Limited
Having Regd. office at: - 14A/36, WEA Karol Bagh, New Delhi-110020 **Respondent**

CORAM:
Dr. K.K. Khandelwal **Chairman**
Shri Vijay Kumar Goyal **Member**

APPEARANCE:
Complainant in person Complainant
Sh. Sandeep Chaudhary (Advocate) Respondent

ORDER

1. The present complaint dated 20.08.2021 has been filed by the complainant/allottee 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 as provided 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

Sno.	Heads			Information	
1.	Project name and location			"Our Homes", Sector 37-C, Gurugram.	
2.	Project area			10.144 acres	
3.	Nature of the project			Low cost /Affordable group housing colony	
4.	DTCP license no.			13 of 2012 dated 22.02.2012	
5.	License validity status			01.12.2019	
6.	Name of licensee			Prime IT Solution & Phonix Datatech Service	
7.	RERA registration details				
	S no.	Registration No.	Registration date	Valid up to	Area
	i.	40 of 2019	08.07.2019	01.12.2019	10.14 acres
8.	Unit no.			779, 7th floor, Tower Tulip	
9.	Unit measuring			48 sq. mtrs.	
10.	Date of execution of flat buyer agreement			29.04.2013	

11.	Payment plan	Time linked Plan
12.	Total consideration	Rs.16,00,000/- (as per BBA at page 27 of complaint)
13.	Total amount paid by the complainant	Rs.17,10,266/- (as alleged by the complainant at page 12 of complaint)
14.	Due date of delivery of possession as per clause 3(a) of the flat buyer agreement 36 months or from the date of commencement of construction upon receipt of all approvals + 6 months' grace period [Page 33 of complaint]	02.06.2017 (36 + 6 months from start date of construction i.e., date of consent to establish which is 02.12.2013) **(Note: Grace period allowed)**
15.	Delay in handing over possession till the offer of possession (20.03.2020) + 2 months i.e., 20.05.2020	2 years 11 month 18 days
16.	Occupation certificate	i. 19.05.2017 Primary School ii. 29.11.2019 Type-1 (5 nos. towers), Type-1 (3 nos. towers), Type-2 (2 nos. towers) iii. 24.02.2020 Type-1 (16 nos. towers) & Commercial
17.	Offer of possession	20.03.2020

B. Facts of the complaint

3. The complainant pleaded the complaint on the following facts:

   a. That the respondent is a company, working in field of construction and development of residential as well as commercial projects across the country in the name of M/s Apex Buildwell Pvt. Ltd. That the real estate project named "OUR HOMES" low cost /affordable group housing project, which is the subject matter of present complaint, is situated at sector-37-C, village Garauli-Khurd, Tehsil & District Gurugram, therefore, the hon'ble authority do have the jurisdiction to try and decide the present complaint. It is submitted that the subject matter of the present complaint is with respect to possession along with delay possession charges upon the money/amount paid by the complainant with the penalty, interest, therefore, it falls within the provisions of the Real Estate (Regulation & Development) Act, 2016 and the Haryana Real Estate (Regulation & Development) Rules, 2017; hence, the present complaint.

   b. That the respondent had advertised itself as a very ethical business group that lives onto its commitments in delivering its housing projects as per promised quality standards and agreed timelines. The respondent while launching and advertising any new housing project always commits and promises to the targeted consumer that their dream home will be completed and delivered to them within the time agreed initially in the agreement while selling the dwelling unit to them. They also assured to the consumers like

complainant that they have secured all the necessary sanctions and approvals from the appropriate authorities for the construction and completion of the real estate project sold by them to the consumers in general.

c. That the respondent was very well aware of the fact that in today's scenario looking at the status of the construction of housing projects in india, especially in NCR, the key factor to sell any dwelling unit is the delivery of completed house within the agreed and promised timelines and that is the prime factor which a consumer would consider while purchasing his / her dream home. The respondent, therefore, used this tool, which is directly connected to emotions of gullible consumers, in its marketing plan and always represented and warranted to the consumers that their dream home will be delivered within the agreed timelines and consumer will not go through the hardship of paying rent along-with the installments of home loan like in the case of other builders in market.

d. That somewhere in the month of February 2012, the respondent through its marketing executives and advertisement through various medium and means approached the complainant, who is common friends with an offer to invest and buy a low cost /affordable house in the proposed project of respondent, which the respondent was going to launch the said project. The respondent represented to the complainant that the respondent is a very ethical business house in the field of construction of residential and commercial project and in case the complainant would invest in the

project of respondent then they would deliver the possession of proposed house on the assured delivery date as per the best quality assured by the respondent. The respondent had further assured to the complainant that the respondent has already secured all the necessary sanctions and approvals from the appropriate and concerned authorities for the development and completion of said project on time with the promised quality and specification. The respondent had also shown the brochures and advertisement material of the said project to the complainant given by the respondent and assured that the allotment letter and apartment buyer's agreement for the said house /apartment would be issued to the complainant within one week of booking to made by the complainant. The complainant while relying on the representations and warranties of the respondent and believing them to be true had agreed to the proposal of respondent to book the residential apartment in the project of respondent.

e. That respondent arranged the visit of its representatives to the complainant, and they also assured the same as assured by respondent to the complainant, wherein it was categorically promised by the respondent that they already have secured all the sanctions and permissions from the concerned authorities and departments for the sale of said project and would allot the residential apartment in the name of complainant immediately upon the booking. Relying upon those assurances and believing them to be true, complainant booked a residential apartment bearing **no. 779 on 7th floor**, tentatively admeasuring **48 sq.**

meters (carpet area) in the said project. Accordingly, the complainant has paid Rs.1,65,000/- through cheque/DD bearing no. 608467 dated 18.09.2012 amounting to Rs.1,65,000/- drawn on ICICI Bank Ltd., Gurugram as booking amount in wake of application of dated 18.09.2012, which the respondent has not given to the complainant so far, and respondent issued receipt thereof of dated 24.09.2012 for the same. Copy of the receipt is appended here to with this complaint as **Annexure – C1.**

f. That in continuation of the receipt of dated 08.09.2012, the respondent has issued a provisional allotment letter to the complainant. which the respondent has again acknowledged the payment of Rs.1,64,944/- being paid by the complainant as the initial payment for obtaining provisional allotment /registration of the residential apartment. In the aforesaid letter, the respondent itself admitted that the cost of the said affordable low-cost residential unit is of **Rs.16,00,000/-,** which is inclusive of EDC/IDC payable by the company as on date. Copy of provisional allotment letter dated 18.09.2012 is appended hereto with this complaint as **Annexure – C2.**

g. The respondent did not fulfill its promise and assurance and has issued only the apartment buyer's agreement of dated 29.04.2013. That in the said apartment buyer's agreement, the basic sale price of the said apartment was agreed at the rate of Rs.16,00,000, which includes external development charges (EDC), infrastructure development charges (IDC) as levied by DTCP till the date of issue of the license along-with reserved car parking along-with other

charges as mentioned in the said apartment buyer's agreement. At the time of execution of the said apartment buyer's agreement, it was agreed and promised by the respondent that there shall be no change, amendment or variation in the area or sale price of the said apartment from the area or the price committed by the respondent in the said application form or agreed otherwise.

h. That thereafter, the respondent started raising the demand of money /installments from the complainant, which was duly paid by the complainant as per agreed timelines and along-with the making of payments, complainant time and again requested the respondent to execute the apartment buyer's agreement as per its promise and assurance but the respondent acting arbitrarily and negligently have refused and ignored the requests and demands of the complainant on lame excuses and deliberately and intentionally delayed the execution of the apartment buyer's agreement and ultimately it was executed on 29.04.2013.

i. That as per the clause 3(a) of the said apartment buyer's agreement dated 29.04.2013, the respondent had agreed and promise to complete the construction of the said apartment and deliver its possession within a period of 36 months, with a grace period of 6 months thereon from the date of execution of the said apartment buyer's agreement.

j. That from the date of booking and till today, the respondent had raised various demands for the payment of installments on complainant towards the sale consideration of said apartment and the complainant have duly paid and satisfied all those demands as

per the apartment buyer's agreement without any default or delay on their part and have also fulfilled otherwise also their part of obligations as agreed in the apartment buyer's agreement. The complainant was and has always been ready and willing to fulfill their part of agreement, if any pending. That the complainant solely has paid the entire sale consideration to the respondent for the said apartment. As per the statement issued by the respondent, upon the request of the complainant, the complainant have already paid Rs. 17,10,266/- towards total sale consideration as on today to the respondent as demanded time to time and now nothing major is pending to be paid on the part of complainant.

k. That the respondent has issued receipts from the date of booking in the name of both the complainant towards the payments made by the complainant to the respondent towards sale consideration for the said apartment. That the complainant has approached the respondent personally and wanted to know as on what date they are delivering the possession of the said apartment to the complainant. However, the respondent did not pay any heed to the request of the complainant and evading the complainant on lame excuses.

l. That on the date agreed for the delivery of possession of said unit as per date of booking and later on according to the apartment buyer's agreement, the complainant had approached the respondent and its officers inquiring the status of delivery of possession, but none had bothered to provide any satisfactory answer to the complainant about the completion and delivery said

apartment. The complainant thereafter kept running from pillar to post asking for the delivery of his home but could not succeed as the construction of the said apartment and said project was nowhere near to completion and still has not been completed.

m. That the conduct on part of respondent regarding delay in delivery of possession of the said apartment has clearly manifested that respondent never ever had any intention to deliver the said apartment on time as agreed. It has also cleared the air on the fact that all the promises made by the respondent at the time of sale of involved apartment were fake and false. The respondent had made all those false, fake, wrongful and fraudulent promises just to induce the complainant to buy the said apartment basis its false and frivolous promises, which the respondent never intended to fulfill. The respondent in its advertisements had represented falsely regarding the area, price, quality and the delivery date of possession and resorted to all kind of unfair trade practices while transacting with the complainant.

n. That relying upon respondent's representation and believing them to be true, the complainant was induced to pay Rs. 17,10,266/- as sale consideration of the aforesaid apartment as on today. That due to the failure on part of respondent to deliver the said apartment on time as agreed in the builder buyer agreement, the complainant was constrained to stay in the rented accommodation by paying monthly rent along-with the monthly installments of home loan taken by them for the aforesaid apartment. The complainant has therefore paid Rs.16,00,000/- (as rentals @ Rs.40,000/- per month

for the rented accommodation for the period of delay i.e., 31 months from November 2016 to June 2019. The complainant was constrained to pay the aforesaid rental amount solely due to the deficiency in services and negligence on part of respondent in delivering said unit within the timelines as agreed in the apartment buyer's agreement. The complainant has suffered this monetary loss just because of the unfair trade practices adopted by the respondent in their business practices with respect to the said apartment.

o. That the complainant has undergone severe mental harassment due to the negligence on the part of respondent to deliver his home on time agreed as he was compelled to pay Rs.40,000/- as monthly rental for the rented accommodation used by him. The complainant had faced all these financial burdens and hardship from his limited income resources, only because of respondent's failure to fulfill its promises and commitments. Failure of commitment on respondent's part has made the life of the complainant miserable socially as well financially as all their personal financial plans and strategies were based on the date of delivery of possession as agreed by the respondent. Therefore, the respondent has forced the complainant to suffer grave, severe and immense mental and financial harassment with no fault on their part. The complainant being common persons just made the mistake of relying on respondent's false and fake promises, which lured them to buy an apartment in the aforesaid residential project of the respondent.

The respondent has trapped the complainant in a vicious circle of mental, physical and financial agony, trauma and harassment in the name of delivering their dream home within deadline representing itself as a multinational real estate giant.

C. Relief sought by the complainant:

4. The complainant has sought following reliefs:

   a. Pass an order to direct the respondent company to give possession of the said flat along with delay possession charges on ₹ 17,10,266/- paid by the complainant as sale consideration of the said apartment along with future and pende-lite compounding interest @18% per annum from the date of payment till its final payment.

   b. Pass an order to direct the respondent to pay an amount of ₹ 50,000/- to the complainant as cost of the litigation.

   c. Any other relief which this hon'ble authority deems fit and proper.

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 has contested the complaint on the following grounds:

   a. It is at the very outset it is submitted that the complainant has no cause of action against the answering respondent and the alleged cause of action is nothing but false and frivolous and the respondent has neither caused any violation of the provisions of the

Act nor caused any breach of agreed obligations as per the agreement between the parties. Since the respondent has already completed the project promoted under the low cost/affordable housing policy, and therefore, the provisions of section 18 of the act are not applicable as it cannot be said that the promoter has failed to complete or unable to give possession of the apartment.

b. That the complaint under reply is neither tenable nor maintainable and has been filed with an oblique motive when the respondent has already offered possession of the flat vide offer letter dated 20.03.2020 and the complainant has already taken over the possession and the conveyance deed dated 29.06.2020 already executed in favour of the complainant and therefore, the complaint is filed merely with an intent to gain wrongfully and arm twist the respondent through the process of law once all obligations on behalf of the respondent are complete.

c. It is stated that the respondent has been very well committed to the development of the real estate project and secured the occupation certificates for both phases of the project named "our homes" and offered possession to the complainant. And the delay occasioned in delivering the possession of the project is only because of explainable and extendable as per the agreed terms i.e clause 3 of the apartment buyer's agreement and is due to causes beyond the control of the respondent.

d. That the brief facts in the development and completion of the said project are firstly, on grant of license bearing no. 13/2012 dated 22.02.2012 the respondent applied for all other relevant

permissions and could secure the BRIII for sanction of building plans only on 07.05.2013 and the consent to establish by the office of Haryana State Pollution Control Board, Panchkula was only granted on 02.12.2013. Since then the respondent is continuing the construction of the project, but to the misery the license so granted expired on 21.02.2016 i.e. prior to the permissible period of construction of 48 months and since 11.02.2016 the respondent had been seeking the renewal of the license from the office of Director General Town & Country Planning, Haryana and finally the application dated 14.03.2016 of the respondent was allowed and the license was renewed on 26.04.2019 and the respondent in a duty bound manner had completed the entire construction and development of the project and obtained the first occupation certificate on 29.11.2019 and the second occupation certificate on 24.02.2020.

e. That the provisions of Real Estate (Regulation and Development) Act, 2016 came into force on 28.07.2017 for which the respondent duly filed an application dated 28.08.2017 and due to lapse of license no. 13/2012 the same got dismissed vide orders dated 19.01.2018 and finally after regular follow ups and initial rejections the project has been registered vide registration no. 40 of 2019 dated 08.07.2019 and the said fact even lead to further operational obstacles & restrictions of funds in completion of the project and leading to delay in completion of the project which had been beyond the control of the respondents and was extendable as per the agreed terms.

f. That the respondent company had been hard trying to avail all the approvals, permissions, and sanctions from the relevant authorities and discharging the additional costs of renewal of license, plans and sanctions. And had the approvals & renewal of license be granted in time the respondent, would have duly completed the project within the permissible time period. The respondent has already applied to Directorate of Town and Country Planning, Haryana for declaring the time taken in renewal of the license as zero period and the copy of the same is annexed herewith.

g. More so the bans to construction activity imposed by the NGT from time to time and lastly in the months of October – November 2019 have further led to delay in completion of the project which are per se beyond the control of the respondent.

h. That if the period of pendency of the license is condoned and extended than the respondent has delivered the project well within the agreed period of completion and therefore, there is no occasion or cause of action in favour of the complainant to file the present complaint.

i. That thereby, the delay being occasioned is beyond the control of the respondent i.e. Firstly due to the grant of consent to establish and thereafter due to the lapse of license and the same is excusable as contemplated and agreed by the parties vide para 3(b) (i) & (ii) of the apartment buyer's agreement executed between the parties and the agreed period of 36 months plus 6 months grace period is extendable and the complainant is estopped from filing the present complaint.

j. Further it is stated that it is the respondent who had been suffering due to the delay that is being occasioned and has to face extra charges and costs and expenses in getting all the above permissions renewed and in particular the renewal of license and the costs of registration under RERA. Pertinent to note that the respondent has not received any exaggerated advance amounts from the complainant and construction as on date is much more advanced than the amount received. Hence there is no cause or occasion to file the present complaint.

k. That the complaint so preferred is hopelessly barred by limitation and the complainant is estopped from filling the present complaint due to his own acts, conduct and latches. The complainant is estopped to file the present complaint due to his own acts and conduct of accepting the possession upon securing best possible deal for himself and having never objected to the delay being so occasioned. Pertinent to note that the entire obligations of completion of the project is upon the respondent and the failure to pay the due amounts in a timely manner by so many of the allottees including the complainant have led to multiple problems and extra costs on the respondent leading to further delays.

l. That the complainant does not have any cause of action under the jurisdiction of the hon'ble authority and hence the complaint is liable to be dismissed.

m. That reliefs claimed are beyond the scope of jurisdiction of the hon'ble authority under section 36 to 38 of the Act. And hence the complaint on the face of it is liable to be rejected.

n. That the complainant has deliberately concealed the material fact of taking over the possession and execution of the conveyance deed and hence the complainant is trying to defraud the hon'ble court and has come before the hon'ble court by concealing material facts and the complainant is on this ground itself liable to be dismissed with heavy costs.

7. 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 theses undisputed documents.

E. Jurisdiction of the authority

8. 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

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

E. II. Subject matter jurisdiction

10. 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 relief sought by the complainant

F.I. Pass an order to direct the respondent company to give possession of the said flat along with delay possession charges on ₹ 17,10,266/- paid by the complainant as sale consideration of the said apartment along with future and pende-lite compounding interest @18% per annum from the date of payment till its final payment.

11. In the present complaint, the complainant intends to continue with the project and is seeking delayed 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."*

12. Clause 3(a) of the flat buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below: -

> *"3. POSSESSION*
>
> *(a) Offer of possession:*
>
> *That subject to terms of this Clause 3, and subject to the APARTMENT ALLOTTEE(S) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions, formalities, registration of sale deed, documentation, payment of all amount due and payable to the DEVELOPER by the APARTMENT ALLOTTEE(S) under this agreement etc., as prescribed by the DEVELOPER, the DEVELOPER proposes to hand over the possession of the APARTMENT within a period of thirty (36) months with a grace period of 6 months, from the date of commencement of construction of*

the Complex upon the receipt of all project related approvals including sanction of building plan/revised plan and approval of all concerned authorities including the Fire Service Department, Civil Aviation Department, Traffic Department, Pollution Control Department etc. as may be required for commencing, carrying on and completing the said Complex subject to force majeure, restraints or restriction from any court/authorities. It is however understood between the parties that the possession of various Blocks/Towers comprised in the Complex as also the various common facilities planned therein shall be ready & completed in phases and will be handed over to the allottees of different Block/Towers as and when completed in a phased manner."

13. The authority has gone through the possession clause of the agreement and observed that the possession has been subjected to all kinds of terms and conditions of this agreement and the complainant 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 favour of the promoter and against the allottee that even a single situation may make the possession clause irrelevant for the purpose of allottee and the committed date for handing over possession loses its meaning. If the said possession clause is read in entirety, the time period of handing over possession is only a tentative period for completion of the construction of the flat in question and the promoter is aiming to extend this time period indefinitely on one eventuality or the other. Moreover, the said clause is an inclusive clause wherein the numerous approvals have been mentioned for commencement of construction and the said approvals are sole liability of the promoter for which allottee cannot be allowed to suffer. It is settled proposition of law that one cannot get the advantage of his own fault. 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.

Admissibility of grace period: The apartment buyer's agreement was executed on 29.04.2013 and as per clause 3(a) of the said agreement, the promoter has proposed to hand over the possession of the said unit within 36 months with an extended period of 6 months from the date of commencement of construction. The consent to establish by the office of Haryana State Pollution Board, Panchkula was granted on 02.12.2013. The due date of handing over possession has been calculated from the date of consent to establish. Since in the present case, the promoter is seeking 6 months' time as grace period and the BBA incorporates unqualified reason for grace period/extended period of 6 months in the possession clause. Accordingly, the authority literally interpreting the same allows this grace period of 6 months to the promoter at this stage.

14. **Admissibility 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."

15. 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.

16. Consequently, as per website of the State Bank of India i.e., https://sbi.co.in, the marginal cost of lending rate (in short, MCLR) as on date i.e., **10.11.2021** is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.

17. 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;"

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

19. Accordingly, the complainant is entitled for delayed possession charges as per the proviso of section 18(1) of the Real Estate (Regulation and Development) Act, 2016 at the prescribed rate of interest i.e., 9.30% p.a. for every month of delay on the amount paid by the complainant to the respondent from the due date of possession i.e., 02.06.2017 till the offer of possession + two months i.e., 20.05.2020.

F. II. Pass an order to direct the respondent to pay an amount of ₹ 50,000/- to the complainant as cost of the litigation.

20. The complainant is claiming compensation in the above-mentioned reliefs. The authority is of the view that it is important to understand that the Act has clearly provided interest and compensation as separate entitlement/rights which the allottee can claim. For claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainant may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

21. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 3(a) of the agreement executed between the parties on 29.04.2013, the possession of the subject apartment was to be delivered within 36 months from the date of commencement of construction. The period of 36 months expired on 02.12.2016. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is 02.06.2017. The respondent has offered the possession of the subject

apartment on 20.03.2020. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 02.06.2017 till the offer of the possession plus two months i.e., 20.05.2020, at prescribed rate i.e., 9.30 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

G. Directions of the authority

22. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoters as per the functions 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., 02.06.2017 till the offer of possession plus two months i.e., 20.05.2020.

ii. The arrears of such interest accrued from 02.06.2017 till the offer of possession plus two months i.e., 20.05.2020 shall be paid by the promoters to the allottee within a period of 90 days from date of this order.

iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

iv. The rate of interest chargeable from the allottee 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 promoters shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

v. The respondents shall not charge anything from the complainant which is not the part of the agreement. However, holding charges shall not be charged by the promoters at any point of time even after being part of agreement as per law settled by Hon'ble Supreme Court in civil appeal no. 3864-3889/2020.

23. Complaint stands disposed of.

24. File be consigned to registry.

(Dr. K.K. Khandelwal)
Chairman

(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 10.11.2021