

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

Complaint no. : 2892 of 2021
First date of hearing : 02.09.2021
Date of decision : 29.09.2021

Mr. Prashant Ratan Singh
Address: House no. 3385,
Laxman Vihar Phase 1, Gurugram
Haryana-122001

Complainant

Versus

M/s. SS Group Private Limited
Address: 77, SS House, Sector-44,
Gurugram, Haryana-122003

Respondent

CORAM:

Shri Vijay Kumar Goyal
Shri Samir Kumar

**Member
Member**

APPEARANCE:

Shri G.S. Jarodia
Shri C.K. Sharma

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 05.08.2021 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 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 thereunder or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.no.	Heads	Information
1.	Project name and location	"SS OMNIA", Sector-86, Gurugram
2.	Licensed area	2.91 acres
3.	Nature of the project	Commercial complex
4.	a) DTCP license no.	113 of 2013 dated 30.12.2013
	b) License valid up to	29.12.2019
	c) Name of the licensee	North Star Apartments Private Limited & others
5.	RERA registered/not registered	Unregistered
6.	Unit no.	TF-89 on 3rd Floor (Page no. 21 of the complaint)
7.	Unit measuring	230 sq. ft. (Page no. 21 of the complaint)
8.	Date of allotment letter	29.11.2013 (Page no. 47 of the complaint)



9.	Date of execution of apartment buyers' agreement	09.05.2015 (Page no. 20 of the complaint)
10.	Payment plan	Construction linked payment plan (Page no. 43 of the complaint)
11.	Total consideration	Rs.16,70,260/- (As per applicant ledger dated 25.08.2021 on page no. 21 of the reply)
12.	Total amount paid by the complainant	Rs. 3,39,284/- (As per applicant ledger dated 25.08.2021 on page no. 21 of the reply)
13.	Due date of delivery of possession (as per clause 8.1(a), possession be handed over within a period of 36 months from the date of signing of this agreement plus 180 days as grace period, after the expiry of 36 months for applying and obtaining the occupation certificate) (Page no. 27 of complaint)	09.05.2018 Note: - Grace period is not included.
14.	Offer of possession	02.08.2019 (Page no. 84 of reply)
15.	Occupation certificate	14.06.2019 (Page no. 81 of reply)
16.	Delay in handing over possession	1 year, 4 months and 23 days

B. Facts of the complaint

The complainant submitted as under:



3. That the complainant paid an amount of Rs.15,000/- as the booking amount on 06.08.2013 and an amount of Rs.1,00,000/- on 08.08.2013, which in total amounted to Rs.1,15,000/-to the respondent. The complainant was allotted a commercial shop bearing unit no.TF-89 on 3rd floor having a super area of 230 sq. ft. in the commercial complex project "SS OMNIA" developed by the respondent, situated in sector-86, Gurgaon, Haryana. The respondent shared a draft of the builder buyer's agreement with the complainant, which was unjust, one sided and completely favoured the respondent.
4. The builder buyer agreement between the complainant and the respondent was signed and executed on 09.05.2015. The possession of the said unit shall be handed over to the complainant within a stipulated period of 36 months from the date of sanctioning of the building plans or execution of floor buyer's agreement whichever is later (commitment period). It was further agreed and settled that the respondent company shall additionally be entitled to a period of 180 days (grace period) after the expiry of said commitment period to allow for filing and pursuing the occupancy certificate etc. from DTCP under the Act in respect of the entire colony. Hence, from the above said clause of buyer's agreement dated 09.05.2015, the respondent company was duty bound to handover the physical possession of the above said unit to the complainant positively up to 09.11.2018 and it was told that till date they



have not delayed on completion of any project they have in their hand.

5. That the complainant without making any kind of delay always deposited the amount as per the payment plan opted by the complainant immediately on receipt of letters from the respondent company and in total the complainants paid an amount of Rs.3,39,284/- which has also been admitted and acknowledged by the respondent's company officials. The stamp duty + registration charges & administrative charges as mentioned in the payment plan is liable to be payable by the complainants and that too at the time of offer of possession.
6. That the respondent failed to complete the construction work of project even after the due date of possession. The complainant had been waiting for almost 3.3 years from the lapse of date of possession promised to them.
7. The total consideration of the unit was Rs. 16,35,760/- out of which the complainant has paid Rs.3,39,284/- till 16.03.2018 in favour of the respondent.

C. Relief sought by the complainant:

8. The complainant has sought following relief(s):
 - (i) Direct the respondent to pay the interest on delayed possession on the total amount paid by the complainant.
 - (ii) Direct the respondent to wave/delete cost of escalation in favour of complainant as per Section 18 and other relevant provisions of HRERA charge.



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

D. Reply by the respondent

10. The respondent contests the complaint on the following grounds:
1. That the complaint filed by the complainant before the authority, besides being misconceived and erroneous, is untenable in the eyes of law. The complainant has misdirected themselves in filing the above captioned complaint before this authority as the relief being claimed by them cannot be said to even fall within the realm of jurisdiction of this authority.
 2. That it would be pertinent to make reference to some of the provisions of the Act of 2016 and rules, 2017 made by the Government of Haryana in exercise of powers conferred by sub-section 1 read with sub-section 2 of section 84 of the Act of 2016. Section 31 of 2016 Act provides for filing of complaints with this authority or the adjudicating officer. Sub-section (1) thereof provides that any aggrieved person may file a complaint with the authority or the adjudicating officer, as the case may be, for any violation or contravention of the provisions of 2016 Act or the rules and regulations made thereunder



against any promoter, allottee or real estate agent, as the case may be. Sub-section (2) provides that the form, manner and fees for filing complaint under sub-section (1) shall be such as may be prescribed. Rule 28 of 2017 provides for filing of complaint with this authority, in reference to section 31 of Act of 2016.

3. That further, without prejudice to the aforementioned, even if it was to be assumed though not admitting that the filing of the complaint is not without jurisdiction, even then the claim as raised cannot be said to be maintainable and is liable to be rejected for the reasons as ensuing. That the relief sought by the complainant appear to be on misconceived and erroneous basis. Hence, they are estopped from raising the pleas, as raised in respect thereof.
4. That apparently, the complaint filed by the complainant was abuse and misuse of process of law and the reliefs claimed as sought for, are liable to be dismissed. No relief much less any interim relief, as sought for, is liable to be granted to the complainant.
5. That the complainant has miserably and wilfully failed to make payments in time or in accordance with the terms of the allotment/flat buyer's agreement. It is submitted that the complainant has frustrated the terms and conditions of the flat buyer's agreement, which were the essence of the arrangement between the parties and



therefore, the complainant now cannot invoke a particular clause, and therefore, the complaint is not maintainable and should be rejected at the threshold. The complainant has also misdirected in claiming interest on account of alleged delayed offer for possession. That there cannot be said to be any alleged delay in offering of the possession.

6. It is submitted that the complainant has frustrated the terms and conditions of the allotment, which were the essence of the arrangement between the parties and therefore, the complainants now cannot invoke a particular clause, and therefore, the complaint is not maintainable and should be rejected at the threshold. That the complainant has also misdirected in claiming interest on account of alleged delayed offer for possession.
7. It is submitted that the respondent has proposed to deliver the possession within 36 months from the date of signing of the buyer's agreement by the complainant. It had also been agreed that the respondent would be entitled to a further grace period of 180 days after expiry of 36 months. However, in the present case the complainant has till date did not sign the buyer's agreement and therefore there cannot be said to be any alleged delay in offering the possession.



8. That the complainant has not fulfilled their obligation and have not even paid the instalments on time that had fallen due. Accordingly, no relief much less as claimed can be granted to the complainant.
9. That the complainant has failed to make payments in time and in accordance with the payment plan annexed with the buyer's agreement and as such the complaint is liable to be rejected. It is submitted that out of the sale consideration of Rs. 16,70,260/- of the unit, the amount actually paid by the complainants was Rs. 3,39,284/- i.e., approximately 20% of the sale consideration of the unit booked by the complainants. It is further submitted that there is an outstanding amount of Rs. 15,35,731/- excluding interest to be payable by the complainants as on 25.08.2021 as per the construction linked plan opted by the complainant. It is also submitted that even though the complainant agreed that the payment will be made as per the payment plan (construction-linked payment plan) annexed with the buyer's agreement but the complainants, however, defaulted in making payments towards the agreed sale consideration of the unit from the very inception and the last payment was made by the complainants on 12.05.2014 that is much before the proposed due date of possession. That various demand letters and reminders were sent to the complainant to make the outstanding payment but the respondent's



request fell on deaf years of the complainants and the complainants did not pay the outstanding dues pending against the said unit. The complainant after defaulting in complying with the terms and conditions of the payment plan now wants to shift the burden on the part of the respondent whereas the respondent has suffered a lot financially due to such defaulters like the present complainants. It is submitted that under such facts and circumstances the complainants are not entitled to any relief as prayed for by the complainants in the present complaint.

10. That the project "SS Omnia" has been registered with the Haryana Real Estate Regulatory Authority vide registration no. 94 of 2017. It is submitted that due to the various reasons and not limited to delay on the part of the allottees, etc., there has been a little delay in completing the project. However, the respondent has received the occupation certificate in respect of the building where the complainant had booked a unit within the timeline committed before RERA Gurugram.
11. That the respondent has already offered the possession of the unit to the complainant vide letter dated 02.08.2019. However, the complainant has till date not taken over the possession of the unit for the reasons best known to them. Therefore, the complainant is also liable to pay the holding charges amounting to Rs. 26,450/- (pending as

on 30.08.2021) from 01.09.2019 till the taking over of possession.

12. That a builder constructs a project phase wise for which it gets payment from the prospective buyers and the money received from the prospective buyers are further invested towards the completion of the project. It is important to note that a builder is supposed to construct in time when the prospective buyers make payments in terms of the agreement. It is important to understand that one particular buyer who makes payment in time can also not be segregated, if the payment from other prospective buyer does not reach in time. It is relevant that the problems and hurdles faced by the developer or builder have to be considered while adjudicating complaints of the prospective buyers. It is relevant to note that the slow pace of work affects the interests of a developer, as it has to bear the increased cost of construction and pay to its workers, contractors, material suppliers, statutory renewals, etc.
13. That there is no concluded contract executed between the parties hence, the respondent cannot be made liable as per the provision of section 18 of the RERA Act.

E. Jurisdiction of the Authority

11. The preliminary objection raised by the respondent regarding rejection of complaint on ground of jurisdiction stands



rejected. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

E.I. Territorial jurisdiction

12. 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

13. The respondent has contended that the complainants are seeking interest which, from reading of the Act and the rules, would be liable for adjudication, if at all, by the adjudicating officer and not this ld. authority. The authority has complete jurisdiction as per section 11(4) of the Act, 2016 to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.



F. Findings on the objections raised by the respondent

F.I Objection regarding format of the complaint

14. The respondent has raised contention that the present complaint is not maintainable as the complainant have filed the present complaint before the adjudicating officer and the same is not in amended CRA format. The reply is patently wrong as the complaint has been addressed to the authority and not to the adjudicating officer. The authority has no hesitation in saying that the respondent is trying to mislead the authority by saying that the said complainant is filed before adjudicating officer. There is a prescribed proforma for filing complaint before the authority under section 31 of the Act in form CRA. There are 9 different headings in this form (i) particulars of the complainant- have been provided in the complaint (ii) particulars of the respondent- have been provided in the complaint (iii) is regarding jurisdiction of the authority- that has been also mentioned in para 14 of the complaint (iv) facts of the case have been given at page no. 5 to 8 (v) relief sought that has also been given at page 10 of complaint (vi) no interim order has been prayed for (vii) declaration regarding complaint not pending with any other court- has been mentioned in para 15 at page 8 of complaint (viii) particulars of the fees already given on the file (ix) list of



enclosures that have already been available on the file. Signatures and verification part is also complete. Although complaint should have been strictly filed in proforma CRA but in this complaint all the necessary details as required under CRA have been furnished along with necessary enclosures. Reply has also been filed. At this stage, asking complainant to file complaint in form CRA strictly will serve no purpose and it will not vitiate the proceedings of the authority or can be said to be disturbing/violating any of the established principle of natural justice, rather getting into technicalities will delay justice in the matter. Therefore, the said plea of the respondent w.r.t rejection of complaint on this ground is also rejected and the authority has decided to proceed with this complaint as such.

F.II Whether the promoter can claim holding charges from the complainant?

15. The respondent is contending that the complainant is liable to pay holding charges as per the flat buyer's agreement for the reason that complainants have delayed in taking possession even after offer of possession being made by the respondent. Clause 9 of the agreement is reproduced below: -

"9. Holding Charges



Further it is agreed by the Allottee (s) that in the event of the failure of the Allottee (s) to take the possession of the said PREMISES in the manner as aforesaid in Clause 8.2, then the Developer shall have the option to cancel this Agreement and avail of the remedies as stipulated in Clause 15 of this Agreement or the Developer may, without prejudice to its rights under any of the clauses of this Agreement and at its sole discretion, decide to condone the delay by the Allottee (s) in taking over the said PREMISES in the manner as stated in this clause on the condition that the Allottee (s) shall pay to the Developer holding charges @ Rs.5/- (Rupees Five only) per sq. ft. of the super area of the said PREMISES per month for the entire period of such delay and to withhold conveyance or handing over for occupation and use of the said PREMISES till the holding charges with applicable overdue interest as prescribed in this Agreement, if any, are fully paid. It is made clear and the Allottee (s) agrees that the holding charges as stipulated in this clause shall be a distinct charge not related to and shall be in addition to maintenance charges or any other outgoing cess, taxes, levies etc which shall be at the risk, responsibility and cost of the Allottee (s). Further the Allottee (s) agrees that in the event of his/her/their failure to take possession of the said PREMISES claim within the time stipulated by the Developer in its notice, the Allottee (s) shall have no right or any in respect of any item of work in the said PREMISES which the Allottee (s) may allege not to have been carried out or in respect of any design specification, building materials, use or any other reason whatsoever and that the allottee(s) shall be deemed to have been fully satisfied in all matters concerning construction related to the said premises/said block/said commercial complex."

16. The authority observed that the respondent has offered the possession of the unit vide offer of possession dated 02.08.2019 whereas the occupation certificate which is attached by the respondent is dated 14.06.2019. As per clause 9 of the agreement, in the event the flat buyer delays to take



the possession of the unit within the time limit prescribed by the company in its intimation/offer of possession then the promoter shall be entitled to holding charges. However, it is interesting to note that the term holding charges has not been clearly defined in the flat buyer's agreement or any other relevant document submitted by the respondent/promoter. Therefore, it is firstly important to understand the meaning of holding charges which is generally used in common parlance. The term holding charges or also synonymously referred to as non-occupancy charges become payable or applicable to be paid by the allottee if the possession has been offered by the builder to the owner/allottee and physical possession of the unit has not been taken over by the allottee, the flat/unit is lying vacant even when it is in a ready-to-move condition. Therefore, it can be inferred that holding charges is something which an allottee has to pay for his own unit for which he has already paid the consideration just because he has not physically occupied or moved in the said unit.

17. The hon'ble NCDRC in its order dated 03.01.2020 in case titled as "**Capital Greens Flat Buyer Association and Ors. V. DLF Universal Ltd.**, Consumer case no. 351 of 2015" held as under:

"36. It transpired during the course of arguments that the OP has demanded holding charges and maintenance charges from



the allottees. As far as maintenance charges are concerned, the same should be paid by the allottee from the date the possession is offered to him unless he was prevented from taking possession solely on account of the OP insisting upon execution of the Indemnity-cum-Undertaking in the format prescribed by it for the purpose. If maintenance charges for a particular period have been waived by the developer, the allottee shall also be entitled to such a waiver. As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding possession of the allotted flat except that it would be required to maintain the apartment. Therefore, the holding charges will not be payable to the developer. Even in a case where the possession has been delayed on account of the allottee having not paid the entire sale consideration, the developer shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed."

18. The said judgment of NCDRC was also upheld by the Hon'ble Supreme Court vide its judgement dated 14.12.2020 passed in the civil appeal filed by DLF against the order of NCDRC (supra). The authority earlier, in view of the provisions of the Rules, 2017 in a lot of complaints decided in favour of promoters that holding charges are payable by the allottee. However, in the light of the recent judgement of the NCDRC and Hon'ble Apex Court (supra), the authority concurring with the view taken therein decides that a developer/ promoter/ builder cannot levy holding charges on a homebuyer/allottee as it does not suffer any loss on account of the allottee taking possession at a later date even due to an ongoing court case.
19. As far as holding charges are concerned, the developer having received the sale consideration has nothing to lose by holding



possession of the allotted flat except that it would be required to maintain the apartment. Therefore, the holding charges will not be payable to the developer. Even in a case where the possession has been delayed on account of the allottee having not paid the entire sale consideration, the developer shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed.

E. Findings on the relief sought by the complainant.

- I. **Delay possession charges:** To direct the respondent to give the delayed possession interest to the complainant.
20. In the present complaint, the complainants intends to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

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

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

21. Clause 8.1(a) of the Builder buyer's agreement provides the time period of handing over possession and the same is reproduced below:

"8.1(a)- Time of handing over the possession



Subject to terms of this clause and subject to the allottee(s) having complied with all the terms and conditions of this agreement and not being in default under any of the provisions of this agreement and complied with all provisions, formalities, documentation etc., as prescribed by the developer, the developer proposes to handover the possession of the premises within a period of thirty-six (36) months from the date of signing of this agreement. The allottee(s) agrees and understands that the developer shall be entitled to a grace period of 180 days, after the expiry of thirty six (36) months for applying and obtaining the occupation certificate in respect of the commercial complex."

22. 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 application, 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 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.

23. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges. Proviso to section 18 provides that where an allottees does not intend to withdraw from the project, they 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. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment within 36 months from the date of signing of the flat buyer's agreement. This period of 36 months expires on 09.05.2018. Further the flat buyer's agreement provides that promoter shall be entitled to a grace period of 180 days for applying and obtaining occupation certificate in respect of group housing complex. As a matter of fact, the promoter has not applied for occupation certificate within the time limit prescribed by the promoter in the flat buyer's agreement. As per the settled law one cannot be allowed to take advantage of his own wrong. Accordingly, this grace period of 180 days cannot be allowed to the promoter at this stage.
26. 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., 29.09.2021 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.
27. The definition of term 'interest' as defined under section 2(z) 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;"*

28. 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 them in case of delayed possession charges.
29. 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 8.1(a) of the builder buyer's agreement executed between the parties on 09.05.2015, the possession of the subject unit was to be handed over within a period of 36 months from the date of signing of builder buyer agreement plus 180 days grace period, which comes out to be 09.05.2018. The grace period is not included in it for the reasons

mentioned above. The respondent has failed to handover possession of the subject unit till date of this order.

30. Section 19(10) of the Act obligates the allottees to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. These 2 months' of reasonable time is being given to the complainant keeping in mind that even after intimation of possession practically he has 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., 09.05.2018 till 02.08.2019 plus statutory period of 2 months as per the provision of section 19(10) of the Act.
31. Accordingly, it is the failure of the respondent to fulfil its obligations and responsibilities as per the builder buyer's agreement executed inter-se between the parties 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., 09.05.2018 till 02.08.2019 plus statutory period of 2 months as per the provision of section 19(10), proviso to section 18(1) of the Act read with rule 15 of the rules.

F. Directions of the authority

32. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent is directed to pay interest at the prescribed rate of 9.30% p.a. for every month of delay from the due date of possession i.e., 09.05.2018 till 02.08.2019 plus statutory period of 2 months as per the provision of section 19(10) of the Act.
- ii. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order as per Rule 16(2) of the rules and thereafter monthly payment of interest till handing over of possession shall be paid on or before 10th of each subsequent month.
- 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 same rate of interest which the promoter 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 respondent shall not charge anything from the complainant which is not part of the flat buyer's agreement. Moreover, holding charges shall not be charged by the promoter at any point of time even after being part of the agreement as per law settled by the hon'ble Supreme Court in civil appeal no. 3864-3889/2020 dated 14.12.2020.

33. Complaint stands disposed of.

34. File be consigned to registry.

(Samir Kumar)
Member

(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 29.09.2021

Judgment uploaded on 09.11.2021