

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

**Complaint no. : 2600 of 2021**  
**First date of hearing: 11.08.2021**  
**Date of decision : 16.09.2021**

1. Shweta Nagi
2. Arun Kumar Balavachil  
Both RR/O - F-93, Richmond Park, DLF,  
Phase- IV, Gurugram- 122009

**Complainants**

**Versus**

1. M/s Sobha Limited  
Regd. Office at: - Sarjapur- Marathalli  
Outer Ring Road (ORR), Devarabisnahalli,  
Bellandur Post, Bangalore, Karnataka- 560103  
Regional Office at: - 5<sup>th</sup> Floor, Rider House,  
Plot No. 136-P, Sector- 44, Gurugram  
Haryana- 122003
2. Chintels India Limited.  
Regd. Office at: - A-11, Kailash Colony,  
New Delhi- 110048

**Respondents**

**CORAM:**

Shri Samir Kumar  
Shri Vijay Kumar Goyal

**Member**  
**Member**

**APPEARANCE:**

Sh. Manish Janghu  
Sh. Kamal Kadiyan

Advocate for the complainants  
Advocate for the respondents

**ORDER**

1. The present complaint dated 08.07.2021 has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the

Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions as provided 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*.

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	Shoba "International City" Sector- 106,108, and 109 Gurugram
2.	Project area	149.093 acres
3.	Nature of the project	Residential plotted colony
4.	DTCP license no. and validity status	190 of 2008 dated 22.11.2008 valid upto 22.11.2025
5.	Name of licensee	M/s Chintal export Pvt. Ltd. and others
6.	RERA Registered/ not registered	Not registered
7.	Unit no.	E-009A, Block- E [Page 28 of complaint]
8.	Unit measuring	3493.15 sq. ft.
9.	Date of execution of unit buyer's agreement	20.05.2013 [Page 24 of complaint]
10.	Payment plan	Construction linked payment plan.

		[Page 57 of complaint]
11.	Total sale consideration	Rs.4,24,83,419/- [As per ledger summary report dated 14.06.2021 page 70 of reply]
12.	Total amount paid by the complainants	Rs.4,24,83,420/-. [As per ledger summary report dated 14.06.2021 page 70 of reply]
13.	Due date of delivery of possession as per clause IV.1of the unit buyer agreement:42 months from the date of signing of agreement plus 6 months grace period to complete the construction of the unit and force majeure even. [Page 32 of complaint]	20.11.2016  [Note: - 6-month grace period is not allowed.]
14.	Offer of possession	10.04.2018 [Page 70 of complaint]
15.	Date of occupation certificate	10.11.2017 [Page 68 of complaint]
16.	Date of execution of conveyance deed	17.10.2019 [Page 75 of reply]
17.	Delay in handing over possession till 10.06.2018 (i.e. date of offer of possession (10.04.2018) + 2 months)	1 year 6 months and 21 days

## B. Facts of the complaint

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

- I. That the complainants on 20.05.2013 entered into a unit buyer's agreement with the respondents at Gurugram and booked a residential unit bearing unit no. E-009A unit A, admeasuring built up area of 3493.15 Sq. ft. in the residential project being developed in the name of "International City" of the respondents situated in the revenue estate of village Babupur, Pawala Khusropur in Tehsil and District Gurugram falling within the boundaries of Sector 106, 108 and 109 Urban estate, Gurugram, Haryana. That as per the terms of the said agreement the due date for handover of the possession of the said unit was 42 months from the date of execution of agreement subject to a further grace period of 6 months.
- II. That the complainants in accordance with the terms of the agreement have made all payments in a timely fashion as and when demanded by the respondents. The complainants have made a total payment of Rs. 4,24,83,420/- on account of total sale consideration including registration charges and taxes etc.
- III. The due date for possession (including 6 months grace period and 6 months for changes incorporated in said unit) as per the unit buyer's agreement lapsed in November 2017. However, the respondents were unresponsive and paid no heed to the complainants repeated requests and reminders

for handing over the possession, which caused great mental agony and harassment to the complainants. The complainants were shocked to know that the respondents were not carrying out the construction work as per the agreement, despite timely payment by the complainants.

- IV. That the District Town Planner, Gurugram vide memo no. 10642 dated 10.11.2017 had issued the occupation certificate for plot no. E-09, International City, Sector 106, 108 and 109, Gurugram. The complainants from time to time had enquired about progress of the work and regarding possession but they were shocked to find out that the unit was not ready for handover even after grant of occupation certificate by the concerned authority. The complainants from time to time had enquired about progress of the work and regarding possession but they were shocked to find out that the possession was not ready even after grant of occupation certificate by the concerned authority. The complainants had then sent several reminders for handing over possession to them but to no avail. The complainants from time to time had enquired about progress of the work and regarding possession but the respondents were at all the times gave lame excuses for their inability to complete the work on time and the unit was not ready for hand over even after grant of occupation certificate by the concerned authority. The



complainants had then sent several reminders for handing over possession to them but to no avail.

- V. The complainants had also paid their interest-bearing maintenance security deposit (IBMSD) amounting to Rs.6,98,630/- to the respondents as per the final payment request letter dated 04.05.2018 but despite full payment the unit was not ready. Further the respondents finally vide email dated 18.06.2019 had intimated to the complainants that the unit is ready for possession which was already delayed by over 19 months from the date of delivery (November 2017) as per the agreement. The unit was finally handed over on 16.10.2019.
- VI. The complainants through counsel had served legal notice dated 07.09.2020 to the respondent demanding compensation amounting to Rs.3,31,849/- for 19 months delay in handing over of possession of the unit to the complainants.
- VII. The complainants sent email dated 21.09.2020 and demanded the compensation amounting to Rs.3,31,849/- along with simple interest for 19 months delay in handover of the unit at the rate of 5 Per Sq. ft. It is to be noted that in their reply through email dated 21.09.2020 the respondents had increased the rate of compensation from Rs. 5 per Sq. ft. to Rs. 10 per sq. ft. It is to be noted that as per the new rate of

Rs. 10 per sq. ft. the compensation for delay is calculated to be Rs.6,63,698 (3493.15 (area in sq. ft.) x 19 (delay in months) x 10 (new rate per square ft) ) along with an interest of 12% per annum as compensation for delay in handling over the unit. That the complainants are entitled to an interest of Rs.1,59,287/- as on the day of filing of the present complaint. In addition to this several other emails were exchanged between both the parties. The respondents, instead of giving the compensation for the delay in handover as set out in the said agreement, made several inadequate offers to the complainants which were not equitable and were solely with the intention to deceive the complainants and cause more delay in the matter. The respondents had made an offer to set off a part of the compensation amount with common area maintenance as well as internal maintenance. The same has no correlation with the IBMSD interest. However, to the complainants' surprise, while raising the demand for common area maintenance, it was noticed that the respondents have foregone the IBMSD interest earned on the complainants' deposit of Rs.6,98,330/- under the pretext that the same has been waived alongwith common area maintenance for the period of June, 2019 till December, 2020 which is completely fraudulent and a tactic to avoid compensating the

complainants for the delay in delivery of possession of the unit due to omission on the respondents part. The complainants are entitled to get interest on the IBMS deposit of Rs.6,98,330/-. The respondents by offering inadequate offers to the complainants under the pretext of settling the matter were merely adopting a dilatory tactics to avoid compensating the complainants for the delay in handing over possession of the unit. It is submitted that all the offers given by the respondents during this entire period were insufficient to compensate the loss of complainants, and they were finally rejected by the complainants.

VIII. That the respondents are bound to strictly abide by the contractual stipulations incorporated in the said agreement. The respondents cannot be permitted to brazenly violate the contractual covenants incorporated in the said Agreement or to do any act, deed or thing which directly or impliedly frustrates or nullifies the aforesaid contract or for that matter renders it nugatory. Time was specifically made essence of the said agreement.

IX. That in the interregnum Real Estate Regulation and Development Act, 2016 has also come into force with safeguards for the rights of allottees like the complainants. For the last several months, the complainants had been requesting the respondents and chasing other officials of the



company to pay the delayed possession charges as stipulated in the said agreement to the complainants for delayed delivery of physical possession of the said unit.

- X. That it was communicated to respondents by the complainants that in terms of covenants incorporated in said agreement and also in accordance with provisions the Act and rules framed thereunder, delayed possession charges were liable to be paid to the complainants for the failure of the respondents to deliver physical possession thereof within the agreed/stipulated period of time.
- XI. That there does not exist any cogent or plausible reason for the evident failure of respondents to timely deliver physical possession of the said unit to the complainants within the period of time indicated above. The respondents have made misrepresentations to the complainants with malicious intent. The respondents were conscious and aware of the fact that in case any claim was put forth by the complainants under Real Estate Regulation and Development Act/other provisions of law against them for their failure to transfer title and deliver possession of the said plot, substantial compensation would become payable by them to the complainants. The respondents are bound both contractually and legally to deliver physical possession of the same to the complainants within stipulated time frame. It would not be

out of place to mention that physical possession of apartments was required to be delivered in the said project in the year 2017.

- XII. That the respondents have failed to abide by provisions of section 18 of the Real Estate (Regulation and Development) Act, 2016. The covenants incorporated in buyer's agreement dated 20.05.2013 are binding upon the respondents with full force and effect. The very objective of execution of a contract is that parties can only assert rights and obligations on the basis of covenants incorporated therein. The respondents have deliberately committed contractual and legal violations with impunity and complete disdain for law of the land.
- XIII. That the matter of the claim falls within the jurisdiction of this authority. Furthermore, the said project is situated, and cause of action has arisen within the ordinary territorial jurisdiction of this authority. Hence, this authority has got the jurisdiction to try and decide the present complaint.
- XIV. That the cause of action for filing the present complaint is a recurring one and it accrued in favor of the complainants when the respondents have failed to hand over possession of the said unit to the complainants within stipulated period as mentioned in unit buyers' agreement dated 20.05.2013. The cause of action further arose in favour of the complainants on multiple occasions when the respondents kept putting of the

transfer title in respect of the said unit by delaying delivery of possession of the said unit to the complainants and not paying delayed possession charges as provided in unit buyers agreement dated 20.05.2013. The cause of action for filing the present complaints is still subsisting in favour of the complainants. Hence, the present complaint has been filed against the respondents before this Hon'ble Authority.

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

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

- i. Directed the respondents to pay delayed possession charges at the rate of Rs.10/- per square foot commencing from 20.11.2017 till the date of delivery amounting to Rs. 6,63,698/- along with pendente-lite and future interest @ 12% p.a. in respect of aforesaid unit in accordance with the terms and conditions of the agreement;
- ii. The respondents may very kindly be directed to pay pendente lite interest @ 12% p.a. in respect of delayed possession charges till date of delivery of vacant, peaceful and physical possession of the aforesaid unit to the complainants.
- iii. That respondent may very kindly be directed to pay an amount of Rs. 1,00,000/- as litigation expenses and Rs.

4,00,000/- as compensation towards severe mental agony and harassment caused to the complainants.

iv. Any other relief/direction as may be deemed expedient may be passed in favour of the complainants.

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 no. 1**

6. The respondent no. 1 has raised certain preliminary objections and has contested the present complaint on the following grounds:

- I. That the present reply is being filed through Mr. Nitin Kohli, AGM-legal, being authorized signatory and constituted attorney of the respondent, who has been duly authorized to sign and verify the present proceedings before this authority vide resolution passed in the board meeting dated 19.12.2020 executed by respondent company in his favour.
- II. That the complaint filed by the complainants are not maintainable and liable to be dismissed, *in-limine*, because this regulatory authority has no jurisdiction whatsoever to entertain the present complaint. The respondent no. 1 has also separately filed an application for rejection of the complaint on the ground of jurisdiction and this reply is

without prejudice to the rights and contentions of the respondent contained in the said application.

- III. That the complaint filed by the complainants are not maintainable and liable to be dismissed, *in-limine*, for want of jurisdiction as the project of the respondent is not an ongoing project as per Rule 2(1)(o) of Haryana Real Estate (Regulation & Development) Rules, 2017.
- IV. That the respondent had already obtained the part completion certificate for the said project on 17.10.2014, which is prior to the date of publication of the rules i.e. 28.07.2017 and hence the said project is not an ongoing project as per rule 2(1)(o)(i) and 2(1)(o)(ii) and the present case is squarely covered under the first exception provided under rule 2(1)(o) and also under the second exception and therefore this regulatory authority has no jurisdiction, whatsoever, to entertain the present complaint and the present complaint is liable to be rejected.
- V. That without prejudice to the above, the above stated position is further substantiated by rule 4(5) which clearly states that any project for which an application for occupation certificate, part thereof or completion certificate or part-completion certificate is made to the competent authority on or before the publication of the said rules i.e. 28.07.2017, is outside the purview of this regulatory

authority, unless the said application is refused by the authority and it is only then that the project is required to be registered within 30 days of the receipt of such refusal.

VI. That the complaint filed by the complainant is not maintainable and liable to be dismissed, *in-limine*, as this regulatory authority has no jurisdiction whatsoever to entertain the present complaint because even if the project of the respondent had been covered under the definition of “ongoing project” and registered with this regulatory authority, the complaint, if any, still would have been required to be filed before the adjudicating officer under rule 29 of the said rules and not before the regulatory authority under rule 28 as this regulatory authority has no jurisdiction to entertain such complaint because any complaint in respect of any matter/grievance covered under section 12,14,18 and 19 or any complaint for failure to comply/non-compliance with any of the provisions of section 12,14,18 and 19 of the said Act is required to be filed before the adjudicating officer.

VII. The above stated position is further substantiated by the proviso to section 71 which clearly states that even in a case where a complaint is withdrawn from a Consumers Forum /Commission/NCDRC for the purpose of filling an application

if any, can only be filed before the adjudicating officer and not before the regulatory authority.

VIII. That the present complaint filed by the complainant is not maintainable and liable to be dismissed, *in-limine*, because as per clause IV (9) of the buyer's agreement " *the taking over of the possession by the buyer shall be an acceptance by the buyer that the unit has been completed as per the agreed specifications and to the satisfaction of the buyer and the buyer shall not have any claim or dispute against the Company or its nominee for any item of the work/specifications/compensation etc.*" So, now after more than two years of executing sale deed this, in view of this clause of unit buyer agreement the present complaint is not maintainable.

IX. That the present complaint filed by the complainant is not maintainable and liable to be dismissed, *in-limine*, because there is no delay as alleged in the complaint. That the proposed estimated time of  $42+6= 48$  months from the date of the unit buyer agreement dated 20.05.2013, which comes to 20.05.2017, was only for completing the construction of the unit and applying for the occupation certificate (which was duly applied on 26.07.2017 and not for handing over the possession, as alleged. At the same time the delay by statutory authorities to issue the occupation certificate shall not be construed as delay, in any manner. Without prejudice

to the above, such proposed estimated time of 48 months is applicable only subject to force majeure and the complainants having complied with all the terms and conditions and not being in default of any the terms and conditions of the unit buyer's agreement, including but not limited to the payment of installments.

- X. That the present complaint filed under section 31 of the Act, 2016 is not maintainable under the said provision. The respondents have not violated any of the provisions of the Act.
- XI. That the present complaint filed by the complainant is not maintainable and liable to be dismissed, in-limine, because the present complaint is filed by the complainant on 02.07.2021 after more than two years of taking possession of the said unit on 16.10.2019 and then execution of sale deed on 18.10.2019 regarding the said unit of the complainant, in the project of the answering respondent. That the answering respondent, after getting occupation certificate dated 10.11.2017 qua the unit of the complainant, intimated the complainant vide email dated 10.04.2018 for handing over the possession after final payment, but the complainant requested certain modifications in the said unit and after that the complainants, without any objection, demur or dispute, made the payments of dues after which, vide unit handover



letter dated 18.06.2019, the complainants, once again without any objection, demur or dispute, took over the satisfactory, vacant and peaceful physical possession. The complainants also certified that the unit has been completed in all respects as per the agreement and also accepted the possession of the said unit. Having already taken the possession of the unit and getting the sale deed pertaining to the unit registered, the complainants have now developed an intention to raise false and frivolous issues to engage the respondents in unnecessary, protracted, and frivolous litigation.

XII. That the expression "agreement for sale" occurring in section 18(1)(a) of the Act covers within its folds only those agreements for sale that have been executed after the Act came into force and the buyer's agreement executed in the present case is not covered under the said expression, the same having been executed prior to the date the Act came into force.

XIII. That the unit buyer agreement executed in the present case did not provide any definite date or time frame for handing over of possession of the apartment to the complainant and on this ground alone the compensation and/or interest cannot be sought under the Act. Even the Clause IV (1 & 3) of the agreement merely provided a tentative/estimated period

for completion of construction of the Unit and filing of application for occupancy certificate with the concerned authority. After completion of construction the respondent was to make an application for grant of occupation certificate and after obtaining the occupation certificate, the possession of the Unit was to be handed over to the buyer.

XIV. That the reliefs sought by the complainant are in direct conflict with the terms and conditions of the buyer's agreement and on this ground alone the complaint deserve to be dismissed. The complainant cannot be allowed to seek any relief which is in conflict with the said terms and conditions of the agreement. The complainant signed the agreement only after having read and understood the terms and conditions mentioned therein and without any duress, pressure or protest and as such the terms thereof are fully binding upon the complainant. The said agreement was executed much prior to the Act coming in to force and the same has not been declared and cannot possibly be declared as void or not binding between the parties. So, if there is any dispute between the builder and the buyer, then it should be settled as per clauses of unit buyer agreement or the conveyance deed and not with the Act.

XV. The construction of the entire project could not be completed within the time estimated at the time of launch of the project

due to various reasons beyond the control of the respondent, including inter-alia liquidity crisis owing to global economic crisis that hit the real estate sector in India very badly which is still continuing, defaults committed by allottees, depressed market sentiments leading to a weak demand/restrictions on construction by Govt/NGT/EPCA, force majeure events etc. and specially for many modifications sought by the complainant in their unit. The respondent cannot be held responsible for the alleged delay in completion of construction. The respondent is genuine and responsible developer who fought against all odds and has already completed one phase of project and have already handed over the units of the buyers including the unit of the complainant.

**D.II Reply by the respondent no. II**

7. That the reply is filed on behalf of the respondent no. 2 through Mr. Rakesh Kumar authorized representative working with the respondent no. 2, who has verified and signed this reply as also vakalatnama on behalf of the respondent no. 2 and is duly authorized in terms of the resolution dated 14.07.2021.
8. That the respondent no. 2 is adopted the contents of the reply/written statement filed by the respondent no.1 and the same may therefore kindly be treated as reply/written statement on behalf of respondent no. 2 also.

**E. Rejoinder filed by the complainants**

9. The complainants have filed rejoinder denying the facts asserted by the respondent in its reply.

**F. Jurisdiction of the authority**

10. The respondent no. 1 has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The objection of the respondent no.1 regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**F.I Territorial jurisdiction**

11. 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.

**F.II Subject matter jurisdiction**

12. 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.

**G. Findings on the objections raised by the respondent**

**G. I Maintainability of complaint**

13. The respondent no. 1 contended that the present complaint filed under the Act is not maintainable as the respondent has not violated any provision of the Act.
14. The authority, in the succeeding paras of the order, has observed that the respondent is in contravention of the section 11(4)(a) read with proviso to section 18(1) of the Act by not handing over possession by the due date as per the agreement. Therefore, the complaint is maintainable.

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

15. Another contention of the respondent no. 1 is that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the apartment buyer's agreement executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided



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

*"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter.....*

*122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."*

16. 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."*

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 allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

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

##### **Relief sought by the complainants: -**

**H.I Directed the respondents to pay delayed possession charges at the rate of Rs.10/- per square foot commencing from 20.11.2017 till the date of delivery amounting to Rs. 6,63,698/- along with pendente-lite and future interest @ 12% p.a. in respect of aforesaid unit in accordance with the terms and conditions of the agreement.**

17. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges as provided under

the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

***“Section 18: - Return of amount and compensation***

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

*.. .. .*

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

18. Clause IV (1) of the unit buyer’s agreement (in short, agreement) provides for handing over of possession and is reproduced below: -

***“IV. COMPENSATION AND POSSESSION: -***

*1 Subject to timely payments by the Buyer(s), the company shall propose to complete construction/development of the Unit on or before [42] months from the date of signing of this Agreement, subject to further grace period of [6] months to complete the construction of the unit and Force Majeure events as described in Article XII (1). It is however understood between the parties that various books comprised in the residential project shall be complete in phases and handed over accordingly. In the event of any default or negligence attributable to the buyer(s) in fulfilment of terms and conditions of allotment, the company shall be entitled to reasonable extension in delivery of possession of the Unit to the Buyer(s). No claim by way of damages/compensation shall lie against the company in case of delay in heading over possession on account of any of the said reasons and the company shall be entitled to appropriate extension of time.”*

19. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to timely payment and all kinds of terms and conditions of this agreement and application, and the complainant not being in default under any provisions of this agreement 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 allottees in fulfilling formalities and documentations etc. as prescribed by the promoters 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 developer 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.

20. **Admissibility of grace period:** As per clause IV (1) of the unit buyer's agreement, the respondents/promoters have proposed to hand over the possession of the apartment within 42 months from the date of signing of this agreement with a grace period of 6(six) months to complete the construction of the unit and force majeure events and subject to timely payment which comes out to be 20.11.2016. As a matter of record, ledger summary report dated 14.06.2021 issued by the promoters/respondent's company in favour of complainants /allottees shows that the complainants/allottees have paid entire amount of the total sale consideration. According to the payment plan, the allottees/complainants have fulfilled all certain terms and

conditions of the agreement. Hence, the respondents/promoter company fails to provide the possession of the unit within stipulated time. As per the settled law one cannot be allowed to take advantage of his own wrong. Accordingly, this grace period of 6 months cannot be allowed to the promoter at this stage.

21. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges however, proviso to section 18 provides that where an allottees does not intend to withdraw from the project, he shall be paid, by the promoters, 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.*

22. 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.

23. Taking the case from another angle, the complainants/allottees were entitled to the delayed possession charges/interest only at the rate of Rs.5/- per sq. ft. per month as per relevant clauses of the allotment letter for the period of such delay; whereas the promoters were entitled to interest @24% per annum compounded at the time of every succeeding installment for the delayed payments. The functions of the authority are to safeguard the interest of the aggrieved person, may be the allottees or the promoters. The rights of the parties are to be balanced and must be equitable. The promoters cannot be allowed to take undue advantage of his dominate position and to exploit the needs of the home buyers. This authority is duty bound to take into consideration the legislative intent i.e., to protect the interest of the consumers/allottees in the real estate sector. The clauses of the allotment letter entered into between the parties are one-sided, unfair and unreasonable with respect to the grant of interest for delayed possession. There are various other clauses in the buyer's agreement which give sweeping powers to the promoters to cancel the allotment and forfeit the amount paid. Thus, the terms and conditions of the buyer's agreement are ex-facie one-sided, unfair, and unreasonable, and the same shall constitute the unfair trade practice on the part of the promoters. These types of discriminatory terms and conditions of the buyer's agreement will not be final and binding.
24. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as

on date i.e., 16.09.2021 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.

25. 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 promoters, in case of default, shall be equal to the rate of interest which the promoters shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

*"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*

*Explanation. —For the purpose of this clause—*

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

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

**H. II That respondent may very kindly be directed to pay an amount of Rs. 1,00,000/- as litigation expenses and Rs. 4,00,000/- as compensation towards severe mental agony and harassment caused to the complainants.**

27. The complainants are claiming compensation in the present relief. 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 and rule 29 of the rules. For adjudging the quantum of compensation, the adjudicating officer shall have due regard to the factors mentioned in section 72.

28. On consideration of the documents available on record and submissions made by both the parties, 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 IV (1) of the unit buyer's agreement executed between the parties on 20.05.2013, possession of the booked unit was to be delivered on or before 20.11.2016. Occupation certificate has been received by the respondent on 10.11.2017 and the possession of the subject unit was offered to the complainants on 10.04.2018. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainants as per the terms and conditions of the buyer's agreement dated 20.05.2013 executed between the parties. It is the failure on part of the promoters to fulfil their obligations and responsibilities as per the flat buyer's agreement dated 20.05.2013 to hand over the possession within the stipulated period.

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 10.11.2017. The respondents offered the possession of the unit in question to the complainants only on 10.04.2018, 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, the complainants 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. 20.11.2016 till the expiry of 2 months from the date of offer of possession (10.04.2018) which comes out to be 10.06.2018.

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 respondent is established. As such the complainants are entitled to delay possession at prescribed rate of interest i.e. 9.30% p.a. w.e.f. 20.11.2016 till the expiry of 2 months from the date of offer of

possession (10.04.2018) which comes out to be 10.06.2018 as per provisions of section 18(1) of the Act read with rule 15 of the rules.

**I. Direction 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 the interest at the prescribed rate i.e. 9.30% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 20.11.2016 till 10.06.2018 i.e. expiry of 2 months from the date of offer of possession (10.04.2018). 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.
- ii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iii. The rate of interest chargeable from the complainants/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 promoters shall be liable to pay the allottees, in case of default i.e., the delay 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 unit buyer's agreement. The respondents are also not entitled to claim holding charges from the complainants/allottees at any point of time even after being part of unit buyer's agreement as per law settled by hon'ble Supreme Court in civil appeal no. 3864-3889/2020 decided on 14.12.2020.

32. Complaint stands disposed of.

33. File be consigned to registry.

**(Sanjiv Kumar)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

**(Vijay Kumar Goyal)**

Member

Dated: 16.09.2021

Judgement uploaded on 23.11.2021