

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

Complaint no. : 743 of 2020  
First date of hearing : 11.03.2020  
Date of decision : 14.09.2021

Nitish Mittal

**Address:-** 154, Sector-4R, Faridabad, Sector-  
92, Gurugram

**Complainant**

Versus

M/s Parkwood Infrastructure Pvt. Ltd.

**Address:-** 1001, Hemkunt Chambers 89  
Nehru Place, New Delhi-110019

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri Vijay Kumar Goyal

**Member  
Member**

**APPEARANCE:**

Shri Mukul Kaushik  
Shri Venket Rao

Advocate for the complainant  
Advocate for the respondent

**ORDER**

1. The present complaint dated 14.02.2020 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 under the provision of the Act or





the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se them.

**A. Unit and project related details**

2. The particulars of the project, the details of sale consideration, the amount paid by the complainant, 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	"Parkwood Westend", Sector-92, Gurugram
2.	Project area	14.125 acres
3.	Nature of the project	Residential Group Housing Colony
4.	DTCP license no. and validity status	53 of 2010 dated 10.07.2010 valid upto 09.07.2018
5.	Name of licensee	Smt. Devki and 4 others
6.	RERA Registered/ not registered	Registered vide no. 16 of 2018 dated 19.01.2018 valid upto 31.12.2019
7.	Occupation Certificate	Not received
8.	Unit no.	C-104, 1 <sup>st</sup> floor, Tower-C
9.	Unit measuring	1495 sq. ft.
10.	Date of execution of flat buyer's agreement	26.02.2013 (Page 38 of the complaint)
11.	Date of allotment letter	28.04.2011 (Annexure D, page 22 of the complaint)





12.	Payment plan	Construction linked payment plan
13.	Total Sale consideration	Rs. 47,25,400/- (As per payment plan, page 67 of the complaint)
14.	Total amount paid by the complainant	Rs. 38,70,445/- (As per demand letter on page 100-101 of the complaint)
15.	Due date of delivery of possession as per (As per clause 28 (a) 36 months from the date of signing of this agreement)	26.02.2016
16.	Offer of possession	Not offered
17.	Delay in handing over possession till date 14.09.2021	5 years 06 months 19 days

**B. Facts of the complaint**

3. The complainant has made the following submissions in the complaint:

- (i) The complainant submitted that in the month of January 2011, the respondent M/s Parkwood Infrastructure Private Limited, had launched a residential project in the name of "Parkwood Westend" at sector 92, Gurgaon on land measuring 73 Kanal 16 Marla situated in revenue estate of village Mewka, Tehsil & District Gurgaon.
- (ii) That after the launch of aforesaid residential project namely Parkwood Westend, the official of the respondent approached the complainant and assured him that by



virtue of their vast experience in the field and all the required and requisite licenses/ permissions/ sanctioned had been obtained from all the concerned department/competent authorities, the respondent shall not only complete the project well within time but also timely handover the physical possession of the residential unit within 36 months from the date of allotment.

(iii) That believing upon the assurance and promise of the respondent, on 18.04.2011, the complainant booked a residential unit No C-104, on the First floor, Tower -C, having approximate suer area 1495 sq. ft in the said Project on construction linked plan and for a total sale consideration of Rs. 47,25,400.00/- all-inclusive and paid the booking amount of Rs. 3,50,000/- vide Cheque No 022457 dated 21.04.2011 drawn on Bank of India along with the application Form.

(iv) That the complainant many times visited the corporate office of the respondent and meet the official of the respondent for execution of Builder-Buyer Agreement but the official of respondent linger on the matter of execution of the Builder-Buyer agreement on one pretext or other. Finally, (on 26.02.2013, the Buyer's agreement was executed between the complainant and the



respondent after the several meeting with the official of the complainant regarding the same. The complainant regularly paid the amount as per the demand made by the respondent as per schedule detailed mention above.

(v) That the construction of the said project is going on at very slow speed. The complainant had waited more than 9 years and also continuously approaching the respondent to check the construction status and enquire about how long they would take for handing over possession of the aforesaid residential unit in question but till date the construction of the aforesaid residential complex is still not completed. So, the respondent is still not in position to handover the possession of the said residential project.

(vi) That the respondent illegally unlawfully increases in the size of said residential unit from 138.88sq mtr (1495 sq. ft.) to 155.60 sq. mtr.(1675 sq. ft.), increase the super area without any proper basis only to harass the complainant and demand additional charges upon alleged additional area, which is totally illegal, arbitrary and against the Act. The respondent repeatedly contacted the official of the respondent, but the respondent failed to provide the basis of such increase in the super area.



(vii) That the complainant had invested his hard-earned money in the said project but since inception, the respondent never had any intention to develop the aforesaid residential project as per its terms and conditions of allotment letter & agreement. The respondent lured the complainant including public at large by misrepresentation and succeeded in collecting crores and crores of rupees without there being any intention of completing the construction work of the aforesaid project. The respondent failed to construct the residential project within the agreed period of 36 months from the date of allotment.

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

4. The complainant has filed the present compliant for seeking following relief:
  - (i) Direct the respondent to handover the physical possession of the residential unit along with interest till the date of handover the possession of the commercial unit to the complainant.
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.
  - i. That the respondent started inviting applications of prospective buyers for the society and also commenced the work after applying and receiving the required license for development of the project from the requisite authority. Thereafter various prospective buyers like the complainant approached the and entered into flat buyers' agreement' for purchasing the 'flat' within the project at the specified and agreed terms and conditions. That the respondent made huge payments to the seller/s, despite repeated requests nobody turned for claiming the balance payment and thus certain disputes and differences arose inter se among them for a part of the total land involved. The respondent served a legal notice dated 24.01.2011 upon the sellers and called upon them to fulfil the terms of the Sale deed/s. As no response was received from the sellers and left with no remedy, the respondent was forced to invoke the arbitration clause and file a petition under Section 9 of the Arbitration and Conciliation Act, 1996 titled "***Parkwood Vs. Brahm Prakash & Ors.***" ***Arb. Pet. 14 of 2011*** before the Additional District judge, Gurgaon which was decided in favour of the respondent. Vide the said order, the Seller/s were restrained from alienating the land and from



creating any third-party rights and any other encumbrance and the respondent was directed to prepare and deposit a fixed deposit Receipt (herein after referred to as "FDR") from a nationalised bank for a period of six months for the amount equivalent to balance sale consideration payable by it. Copy of the Order dated 22.11.2011 passed in petition under Section 9 of the Arbitration and Conciliation Act, 1996 titled "*Parkwood Vs. Brahm Prakash & Ors.*" Arb. Pet. 14 of 2011 is annexed herewith as **Annexure R1**. In compliance to the Order, the respondent deposited an FDR of Rs.2,30,00,000/- and kept renewing the same from time to time.

- ii. That against the said order dated 22.11.2011, the seller/s filed an appeal titled "*Brahm Prakash & Ors Vs. Parkwood Infrastructure Pvt Ltd*", F.A.O No. 560 of 2012 before the Hon'ble High Court of Punjab & Haryana. The same was dismissed vide order dated 01.02.2012. That as the seller/s were dilly dallying in handing over the possession of the land, the respondent was again constrained to file a petition under Section 11 of the Arbitration and Conciliation Act, 1996 titled as "*Parkwood Infrastructure Private Limited Vs. Brahm Prakash & Ors*, Arb. Case No. 32 of 2012 before the Hon'ble High Court of Punjab & Haryana seeking appointment of an arbitrator. The same was allowed vide order dated 02.08.2013. Ms. Manju Goel, J [retd.] was





appointed as the sole arbitrator for the disputes inter-se the respondent and sellers/s.

- iii. That undeterred, the seller/s filed a suit for permanent injunction along with an interim application under O XXXIX Rule 1 and 2, CPC titled as "*Brahm Prakash & Ors Vs Parkwood Infrastructure Pvt. Ltd*" Suit No, 133 of 2011 before learned C.J., Gurgaon. Vide order dated 21.07.2011, first the interim application was dismissed and thereafter, vide order dated 22.11.2011, the appeal against thereto was also dismissed by the Ld. A.D.J, Gurgaon. Being aggrieved, the sellers filed a civil revision u/s 115, CPC titled as "*Brahm Prakash & Ors Vs. Parkwood Infrastructure Pvt. Ltd*" C.R. No 637 of 2012 before the hon'ble high court of Punjab & Haryana wherein vide order dated 16.02.2012 the respondent was directed not to raise construction over the part of land in dispute. That thereafter, a court of competent jurisdiction partitioned the land in dispute vide order of partition dated 16.05.2013. An appeal preferred against it by the Seller/s before the Assistant Collector First Grade, Gurgaon was dismissed vide order dated 23.08.2012 and then a revision against it by the Sellers/s before the Commissioner Gurgaon Division, Gurgaon was also dismissed vide order dated 04.04.2013 and then a revision petition was filed by the Seller/s before the Financial Commissioner, Haryana was also dismissed vide order dated 29.05.2013.





- iv. That finally the seller/s and the respondent entered into a settlement whereupon an agreement dated 19.05.2015 was executed inter-se them, which was duly recorded by and on the basis of which the learned sole arbitrator was pleased to pass an award on 02.06.2015. That in terms of the award dated 02.06.2015, the seller/s were to perform certain acts on their part, i.e. they were to pay the respondent a sum of Rs.1,50,00,000/- along with interest and they were to withdraw various litigations against the respondent. However, it is pertinent to note that the seller/s have failed miserably to comply with their part of the directions and the respondent was constrained to issue a letter dated 30.12.2016, calling upon them to comply with their part of the directions as per award dated 02.06.2015. The seller/s chose to keep mum and the respondent is yet to hear anything from them and it seems that they are not willing to perform their part. and the respondent is left with no other option than to go for further litigation.
- v. That all the above categorically show that the respondent has always been and continuously been taking appropriate steps at its own cost without putting any add-on burden upon the complainant in terms of Clause 28(b)(ii) of the flat buyers agreement wherein it is categorically stated that if the opposite party "..... is not in a position to hand over the possession of the Flat, then.... At its sole discretion challenge the validity, applicability



*and/or efficacy such Legislation, Rule, Order or Notification by moving the appropriate courts, tribunal(s) and /or Authority.....”*

- vi. That the above listed conditions are circumstances beyond the power and control of the respondent, and it is categorically stipulated in the Clause 28(b)(i) of the flat buyer's agreement that in such a scenario the respondent “.....shall be entitled to the extension of time for handing over of the possession of the said Flat”.
- vii. That has borne from the above, the respondent was and is fact badly entangled in a dispute pertaining to a part of the land for the past 8 years because of which the timely completion of the project was scuttled and the same was due to circumstances beyond the power and control of the respondent and for which no malafide can be attributed to it. It is a matter of fact that despite all the difficulties, the respondent is still continuing to pay hefty fees towards renewals of all the licenses, permissions, approvals, sanctions, clearances required for building, construction and development of the project from various governmental authorities at its own cost and expense without charging anything extra from the complainant or any other allottee for that matter as it has been constrained to per-force seek extension of all the above requisites and continue paying hefty amounts qua them with the respective departments so that the project can be completed at the earliest.





- viii. That from the above, it is very clear that the seller/s turned dishonest and kept instituting one after the other cases. The same caused the respondent to be always embroiled in unwarranted litigation for which it kept incurring extremely substantial expenditure, more so when the project was of a very large scale and was interconnected with each other and it was on going and was involving huge funds and multiple recourses an account of all at the same point of time. Further, the license obtained by the respondent from the Town and Country Planning Department and all the subsequent approvals were/are always time bound for a limited period only and they had to be renewed by paying the renewal fees after the lapse of the prescribed period. The respondent was at all times fighting against time as it had its back against the wall. All the costs and expenses have always been borne by the respondent on its own and that none of allottees including the complainant has ever been charged anything extra beyond the terms of the flat buyer's agreement at any stage or time whatsoever.
- ix. That furthermore due to an order passed by the Punjab and Haryana High Court, a NOC had to be sought from HUDA for usage of recycled water which caused the water supply to be disrupted for almost 82 days which caused further delay in completion of the project.
- x. That coupled with all the above, the respondent has taken a huge hit due to the on-going economic meltdown and





consequent financial crisis and recession in the market. Despite thereof, the respondent has always been diligently making its efforts to continue with the construction and completion of the project and the on-going litigation has caused delay in completion of the project. The respondent has completed as many as six towers with 270 flats.

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 these 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 completed 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 of the authority on the objections raised by the respondent:-**

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

**F.I Objection regarding defect in title land**

12. While filling reply, an objection has been raised by the respondent that the respondent has entered into as many as ten sale deeds with different sellers and bought land for development a group housing society under the name of "Parkwood Westend" at sector 92. It is pleaded by the respondent, that a dispute arose between the respondent and the previous owner of the land beneath the project which led to referring the matter to arbitration. Though award in this regard was passed on 22.11.2011. That against the said order dated 22.11.2011, the seller filed an appeal titled as "Brahma Prakash and others Vs. Parkwood Infrastructure Pvt. Ltd., F.A.O No. 560 of 2012 before the Hon'ble High Court of Punjab and Haryana and





same was dismissed vide order dated 01.02.2012. This was not the end of litigation, and the possession of the land was not delivered which led to filing of a petition under section 11 of the Arbitration and Conciliation Act, 1996 before the Hon'ble High Court of Punjab and Haryana. The same was allowed vide order dated 02.08.2013 and the matter was referred for arbitration inter-se between the respondent and sellers/s. Even the litigation with regard to that land was filed before the civil court as well as the revenue court which ultimately got dismissed on 04.04.2013 and 29.05.2013 respectively. Though, finally the respondent as well as the seller entered into a settlement on 19.05.2015 pleased to pass an award on 02.06.2015 but the same was also not acted upon. Due to all these factors the respondent contented with various other orders passed by the Hon'ble National Green Tribunal (NGT), High Court of Punjab and Haryana as well as DTCP the construction of the project could not be completed, and it led to slow down. So, keeping in all these things the complainant is not entitled to any delay possession charges from the respondent.

13. But the plea of the complainant is otherwise, that the complainant booked unit in the project of the respondent on the basis of assurance and promises of the respondent as well as brochure by paying substantial amount and the same led to issue of letter of allotment on 28.04.2011. Even builder buyer's agreement dated 26.02.2013





between the complainant and the respondent was also executed setting terms and condition of allotment, payment dimension of the allotted unit and due date of handover the possession of the unit. Neither at the time of allotment letter nor at the time of execution of builder buyer's agreement the respondent disclosed the factum of litigation between them and the seller pending at various forums. When there is clear stipulation in the builder buyer's agreement with regard to title of the land beneath the project belonging to the respondent then they cannot take plea of litigation between them and the previous owner in order to make act a case for delay in completion of the project and avoiding to payment of delay possession charges.

14. The authority has gone through the various documents placed on the file. The Directorate of Town and Country Planning, issued a license no. 53 of 2010 dated 10.07.2010 valid upto 09.07.2018, the registration of the project with the authority under section 4 of the Act, 2016 it is possible if the condition mentioned sub-clause (2)(I)(A) and (B) with regard to legal title to the land on which the development was proposed along with legally valid documents with authentication of such title, if such land is owned by another person and same the land is free from all encumbrances then as per the provision of section 11 (4) that the responsibility of the promoter, with respect to the structural defect or any other defect





for such period as is referred to in sub- section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plots or buildings, as the case may be, to the allottees are executed. It is not disputed that either at the time of allotment or execution of builder buyer's agreement dated 26.02.2013 they were informed about the pendency of litigation with regard to title beneath the project by the respondent. It is the version in the reply that litigation with the seller commenced in January 2011 and which continue even beyond 02.06.2015 if the respondent could not continue with the construction of the project during the interim period, then how they raised various demands against the complainant. It means the complainant was left in the dark and was forced to part away his hard-earned money as the project was going at slow speed/stoppage of construction due to pendency of litigation. The respondent cannot blow and cold in the same breath and take a plea that they could not complete the construction due to pendency of litigation between them and the seller and various other order passed by the National Green Tribunal (NGT), High Court with regard to extraction of ground water and economic slowdown. So, keeping in all these facts the respondent cannot take a plea that the complainant is not entitled to delay possession charges as pleaded by them.

**G. Findings on the relief sought by the complainant**





**15. Relief sought by the complainant:**

(i) Direct the respondent to handover the physical possession of the residential unit along with interest till the date of handover the possession of the commercial unit to the complainant.

16. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

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

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

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

17. Clause 28 of the apartment buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below:

**"28 POSSESSION**

**a) Time of handing over the possession**

*That subject to terms of this clause and subject to the FLAT 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 further subject to compliance with all provisions, formalities, registration of sale deed, documentation, payment of all amounts due and payable to the DEVELOPER by the FLAT ALLOTTEE(S) under this agreement etc., as prescribed by the DEVELOPER, the DEVELOPER proposes to hand over the possession of the FLAT within a period of thirty six (36) months from the date of signing*





*of this Agreement. If however understood between the parties that the possession of various Block/Tower comprised in the complex as also the various common facilities planned therein shall be ready & complete in phases and will be handed over to the Allottee of different Block/Towers as and when completed.*

At the outset it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the 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. As per above mentioned clause, the opposite parties failed to deliver the possession even after receiving the substantial amount from the complainant.

- 18. 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.*

19. 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.

20. Taking the case from another angle, the complainant-allottee was entitled to the delayed possession charges/interest only at the rate of Rs.5/- per sq. ft. per month of the super area as per clause 30 (a) of the buyer's agreement for the period of such delay; whereas, as per clause 31(b) of the buyer's agreement, the promoter was entitled to interest @ 18% per annum compounded quarterly on the amount due as mentioned in the notice for possession from the due date till date of the payment. The functions of the authority are to safeguard the interest of the aggrieved person, may be the





allottee or the promoter. The rights of the parties are to be balanced and must be equitable. The promoter 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 buyer's agreement 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 promoter 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 promoter. These types of discriminatory terms and conditions of the buyer's agreement will not be final and binding.

21. 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., 14.09.2021 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.

22. **Rate of interest equally chargeable to the allottee in case of default in payment:-** The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the





promoter shall be liable to pay the allottee, in case of default.

The relevant section is reproduced below:

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

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

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

23. 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.

24. On consideration of the documents available on record and submissions made by both the parties it is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 26.02.2013 to hand over the possession within the stipulated period. The due date of possession comes out 26.02.2016. 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. In the present case, the project Parkwood Westend is registered vide registration no. 16 of 2018 dated 19.01.2018 which was valid upto 31.01.2019. However, the project is incomplete as on date. It needs extension under





section 7.3 of the RERA Act 2016. However, it has been stated at bar by the counsel for the respondent that they shall move the case for grant of funds under **Swami** fund from government of India. The project is complete upto 70% . Since the project is incomplete, as such, the complainant is entitled delayed possession charges till handing over of possession after obtaining certificate from the competent authority. 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 complainant is entitled to delay possession charges at prescribed rate of the interest @ 9.30% p.a. w.e.f. 26.02.2016 till handing over possession of the unit after the receipt of occupation certificate. As per provisions of section 18(1) of the Act read with rule 15 of the Rules.

#### **H. Directions of the authority**

25. 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 on the amount paid by the complainant from the due date of possession i.e., 26.02.2016 till the handing over possession of the unit. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per rule 16(2) of the rules and






thereafter monthly payment of interest till the offer of possession shall be paid on or before 10<sup>th</sup> of each subsequent month.

- (ii) The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- (iii) 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 promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(z a) of the Act.

26. Complaint stands disposed of.


27. File be consigned to registry.

  
**(Samir Kumar)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.09.2021

  
**(Vijay Kumar Goyal)**

Member

Judgement uploaded on 30.11.2021.