BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 3077 of 2019
First date of hearing : 21.11.2019
Date of decision : 14.09.2021

Balwan Singh
Address:- House no. 66B, Vilaage Sikanderpur Badha, Tehsil and District Gurgaon **Complainant**

Versus

M/s Parkwood Infrastructure Pvt. Ltd.
Address:- 1001, Hemkunt Chambers 89 Nehru Place, New Delhi-110019 **Respondent**

CORAM:
Shri Samir Kumar **Member**
Shri Vijay Kumar Goyal **Member**

APPEARANCE:
Shri Saurabh Mishra Advocate for the complainant
Shri Venket Rao Advocate for the respondent

ORDER

1. The present complaint dated 20.08.2019 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.	F-302, 3rd floor, Tower-F
9.	Unit measuring	1200 sq. ft.
10.	Date of execution of flat buyer's agreement	05.01.2012 (Page 62 of the complaint)
11.	Date of allotment letter	26.06.2010 (Annexure C-1, page 45 of the complaint)

12.	Payment plan	Construction linked payment plan
13.	Total Sale consideration	Rs. 24,45,799/- (As per applicant ledger, page 108-110 of the complaint)
14.	Total amount paid by the complainant	Rs. 24,43,241/- (As per applicant ledger, page 108-110 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)	05.01.2015 (Due date calculated from the date of agreement i.e., 05.01.2012
16.	Offer of possession	Not offered
17.	Delay in handing over possession till date 14.09.2021	6 years 10 months 19 days

B. Facts of the complaint

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

(i) The complainant submitted that the representatives of the respondent had first approached to Mr. Sandeep Nagwan (hereinafter 'the original allottee') in the month of June 2010 and credentials of group housing scheme of residential flats viz 'Parkwood, Westend' Sector 92, Gurgaon, were explained to him (hereinafter 'Parkwood project'). It was further assured to the original allottee that they have already obtained the legal title and necessary permissions/ sanctions from the competent

authority for development, construction, and marketing etc of the project land that the project land is free from any kind of dispute. In pursuance of the promises made in the allotment letter dated 26.06.2010 the original allottee started making the payment to the respondent in terms of the construction-linked payment schedule. That the respondent took advance money without informing the original allottee that they were yet to obtain rights to the project land from landowners and also concealed that they were yet to obtain necessary permissions/sanctions from the competent for development, construction and marketing etc of the project land. After taking substantial booking amount from several buyers including the original allottee hereunder the respondent ostensibly entered into an agreement with the original landowners and acquired rights to the project land- as claimed by the respondent builder in the buyer's agreement executed later.

(ii) That the respondent had already promised to hand over the possession of the apartment within 3 years period with 6-month grace period from the date of allotment i.e. 26.06.2010. However, the respondent surreptitiously mentioned in clause 28 of the flat buyer's agreement that possession of the apartment will be handed over within

36 months from the date of signing of the agreement i.e. 05.01.2012. It is however, submitted that the said clause is not binding upon the original allottee and subsequently the complainant because the entire flat buyer's agreement was one-sided and the original allottee was not given sufficient time to go through the same and that clause 28 was surreptitiously introduced and was against the promise made earlier.

(iii) That despite making payment upfront as desired by the respondent, the respondent did not fulfil its part of the bargain/ obligation and there was considerable delay in construction of the project. In this manner the complainant has already paid about 80% of the agreed price. It is pertinent to note that the respondent has not made any further demand for payment since then. That the complainant had tried, on several occasions, to find out the status of completion of project from the respondent. However, no satisfactory reply could be received. The respondent had completely failed to explain the cause of the delay in completing the project and handing over the possession to the complainant. Even though the complainant has not received any response from the respondent, it has come to know that several other allottees in the same project have received some

information from the respondent regarding the delay. In one such letter the respondent has attributed the delay to the on-going litigation with the landowners. However, in another letter written to another allottee in the same project, the respondent has attributed the delay in completion of the project to the market condition of the real estate industry and lacklustre in term of growth in prices and sales. Thus, the respondent is giving contrary reasons and is being completely evasive about the state of affairs. The respondent thus cannot be believed or trusted at all. Notwithstanding the same, it is submitted that none of these reasons are valid in the eyes of law for any delay in the project.

(iv) That in this manner the possession of the apartment has not been offered to the complainant till date despite an excessive and unexplained delay of more than 5 years. Furthermore, it is clear from the attitude of the respondent that it is not at all serious about completion of the project within time. The project thus still remains far from completion. The respondent is illegally enjoying the money that it has received from the complainant, and other similarly situated flat buyers, and is not interested in completing the project.

(v) That the respondent has always misled the complainant regarding the project. In the beginning the respondent had projected to the original allottee and complainant that they had all the requisite title and permission from the concerned authority for development of the project. In lieu of the stated projection the original allottee had agreed for booking the flat vide allotment letter dated 26.06.2010 and had made initial payments. However, it later came to the knowledge of the original allottee and the complainant that the respondent had acquired the title on the project land in 2011-12. Further even the agreement for development of the project was entered into by the respondent much later in 2011-12. This fact is clear from the flat buyer's agreement dated 05.01.2012 itself. In this manner respondent had enticed and lured the original allottee/complainant into booking the flat and making payments thereto by misrepresenting the facts. The said misrepresentation amounts to unfair practice u/s 7 of RERA, 2016.

(vi) The respondent has not invoked any force majeure circumstances nor has attributed the delay on any genuine reason. The respondent has not even cared to inform the complainant regarding the delay despite the complainant having written several letters and emails to

the respondent to that effect. That in terms of the allotment letter dated 26.06.2010 the respondent was liable to hand over the possession of the apartment to the complainant within 3 years and 6 months from the date of the allotment letter i.e., by 26.12.2013. However, the respondent has failed to do the same till date, which is a delay of more than 5 years. Hence the respondent is liable to pay interest on the payments made by the complainant at 10.65% per annum or at a rate that this hon'ble Authority deems fit.

(vii) That the agreement is a one-sided document favouring respondent much to the detriment of complainant. That the original allottee/complaints were coerced to sign the buyer's agreement since payment of large amounts of money had already been made by original allottee/complainant to respondent prior to the execution of the buyer's agreement. Similar one-sided agreements have been rejected by courts time and again and as such the respondent cannot rely upon the provisions of the said agreement and demand any more future payments from complainant when respondent has itself failed to complete the construction within time.

(viii) That the promoters of the respondent have indulged in unfair practices in relation to the present project and

hence the registration of the respondent is liable to be revoked in terms of the mandate of section 7 of the Act. The respondent had made false promises at the time of execution of the agreement knowing fully

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 possession of the apartment along with interest 10.65% p.a.

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 original allottee 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 2011before* 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 buyers 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 buyers 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 theses undisputed documents.

E. Jurisdiction of the authority

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

E.I Territorial jurisdiction

9. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the

jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District, therefore this authority has 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 filling 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 th complainant is not entitled to any delay possession charges from the respondent.

13. But the plea of the complainant is otherwise, that the previous owner that booked unit in the project of the respondent on the basis of advertisement in the various newspaper as well as brochure by paying substantial amount and the same led to issue of letter of allotment on 26.06.2010. Even builder buyer's agreement dated 05.01.2012 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. The complainant purchased the allotted unit in the year 2010 neither at the time of execution of builder buyer's agreement nor at the time of transfer of the unit in favour of the complainant 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 05.01.2012 or at the time of endorsement in favour of the allottee. 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 possession of the apartment along with interest 10.65% p.a.

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

> *"Section 18: - Return of amount and compensation*
> *18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*
> .....
> *Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

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 ALLOTEE(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 Allotee 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 doted 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 05.01.2012 to hand over the possession within the stipulated period. The due date of possession comes out 05.01.2015. 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 31.012.2019. 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. 05.01.2015 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., 05.01.2015 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 10th 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(za) of the Act.

26. Complaint stands disposed of.

27. File be consigned to registry.

(Samir Kumar)
Member

(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 14.09.2021

Judgement uploaded on 30.11.2021.