BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 4605 of 2020
First date of hearing : 26.02.2021
Date of decision : 14.09.2021

Ms. Indu Khera
Address:- House No. B3/39, Safdarjung Enclave, New Delhi -110023. **Complainant**

Versus

M/s Parsvnath Developers Limited
Office address:- VI[th] Floor, Arunachal Building, 19 Barakhamba Road, New Delhi - 110001. **Respondent**

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

APPEARANCE:
Shri Ishwar Singh Sangwan Advocate for the complainant
Shri Deeptanshu Jain Advocate for the respondent

ORDER

1. The present complaint dated 16.12.2020 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	"Parsvnath Exotica" at Sector - 53, Gurugram
2.	Project area	33.511 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP license no. and validity status	69 to 74 of 1996 dated 03.05.1996 valid upto 02.05.2019 52 to 57 of 1997 dated 14.11.1997 valid upto 13.11.2019, 1079 to 1080 of 2006 dated 28.08.2006 valid upto 01.09.2019
5.	Name of licensee	Puri Construction and 5 others
6.	RERA Registered/ not registered	Not Registered
7.	Unit no.	D6-601, VIth floor, Block No. D6
8.	Unit measuring	2810 sq. ft. (As per flat buyer's agreement)
9.	Date of execution of Buyers Agreement	31.01.2006 (Page 26 of the complaint)

10.	Payment plan	Construction linked payment plan (Page 40 of the complaint)
11.	Date of Endorsement	10.01.2009 (Page 44 of the complaint)
12.	Total Sale consideration	Rs. 73,76,250/- (As per the flat buyer agreement on page 28 of the complaint)
13.	Total amount paid by the complainant	Rs. 76,31,306.50/- (As per the customer ledger dated 29.04.2015 on page 97 of the complaint)
14.	Date of start of construction of the Block D6	Cannot be ascertained
15.	Due date of delivery of possession as per (As per clause 10(a)- within a period of thirty six (36) months of commencement of construction of the particular block in which the flat is located, with the grace period of six months, on the receipt of sanction of building plans/revised building plans and approvals of all concerned authorities including the fire service deptt, civil aviation deptt, traffic deptt, pollution control deptt, as may be required for commencing and carrying on construction)	31.01.2009 (No grace is given as the construction is not yet complete) (Since the date of start of construction cannot be ascertained, the due date of delivery of possession is calculated from the date of execution of agreement)
16.	Occupation Certificate received on	Not received
17.	Offer of possession	Not offered
18.	Delay in handing over possession i.e., 14.09.2021	12 years 07 months and 14 days

B. Facts of the complainant

3. The complainant has made the following submissions:

i. That initially Mr. Laxman Viswanath (hereinafter, the first allottee) booked a residential flat bearing No. D6-601 on sixth floor in tower/ block no. D-6 having an approximate area 2810 sq.ft. consisting of three bed rooms set with covered parking in the scheme named "Parsvnath Exotica" (hereinafter, the Project) in sector-53, vide payment receipt no. PF000119 dated 03.10.2004.

ii. That thereafter the above said residential flat was purchased by Mr. P.C. Bindal from Mr. Laxman Vishwanath and P.C. Bindal has accepted all the rights and liabilities in respect of the above said flat under the agreement assigned in his favour vide endorsement dated 28.01.2006.

iii. That the complainant thereafter purchased the above said unit consisting of three bed rooms set with covered parking in the project from P.C. Bindal vide endorsement dated 10.01.2009 in the record of the respondent.

iv. The representatives assured the complainant that the respondent had already commenced the construction of the above mentioned project and ensured that the complainant will get possession as per terms and conditions of the flat buyers agreement (hereinafter, the FBA) which was executed in the name of Mr. Laxman Vishwanath (hereinafter, 'original

allottee') within thirty six months with a grace period of six months.

v. That the complainant had purchased the above said flat for a total sale consideration of Rs. 72,07,437.50/- from Mr. P.C. Bindal towards the above said unit through cheques/draft/bank transfer.

vi. That in the period following the making of the above stated payments, the complainant gradually came to realize that the promises of timely possession of the above apartment as per FBA were nothing but false assurances and misrepresentations on the parts of the respondent. The construction of the tower in which the complainant' apartment was to be located was progressing at a snail's pace and very sub standard and maximum work of the unit of the complainant are still pending. There has been a situation where the respondent have failed to deliver possession of the constructed apartment as per the schedule that had been promised by the respondent i.e. 36+6 months as mentioned in para no. 10(a) of FBA.

vii. That the complainant sought information on the tentative timeline for possession by way of a clear and firm assurance by the respondent that they shall complete the project on time. Much to their dismay, the respondent refused to provide any such assurance. This made the complainant realize that the respondent had duped them and that there was no scope of

their getting possession of the booked apartment in the near future, let alone within the promises time-frame as undertaken by the respondent in the FBA, which has not been handed over to the complainant after endorsement by the respondent.

viii. That to provide an instance of the ground reality of the status of progress of construction at site, it is brought to the attention of this authority that the respondent' raised demands were all promptly paid by the complainant as it reflected from the annexed receipts and other documents, which clearly shows that the complainant have been making timely payments in good faith all along.

ix. That it is abundantly clear by the act and conduct of the opposite parties that they have not only defrauded the complainant, but also have violated the terms of the builders buyer agreement by not offering possession within 42 months (36+6). It is apparent that the respondent has provided deficient services, is guilty of unfair trade practices, and has planned to fleece the complainant of her hard-earned money in a well directed and pre-planned manner. Even today, the unit of the complainant has not completed and maximum works are still pending. Due to this, on the one hand, the complainant is deprived of moving into her own apartment in the pre-agreed timeframe and, on the other hand, she is suffering additional loss because of blocked capital of a very

heavy amount and also caused huge loss by paying rent as the complainant is residing on rented accommodation.

x. That the complainant have until date deposited rs. 76,31,306.50/- in furtherance of the buyer's agreement with the respondent as per their demands raised. However, the respondent has failed to deliver/offer possession of her allotted apartment unit to the complainant within the stipulated time. The respondent is also liable to pay Rs. 10/- per sq.ft. As penalty for delayed possession to the complainant as terms and conditions of the FBA.

xi. That the respondent had already received amount of Rs. 76,31,306.50/- which is more than the actual sale price of the flat and despite received the said amount, the respondent has knowingly, intentionally and deliberately not delivering the possession of the said unit and also not executing the conveyance deed of the said unit. Moreover, the respondent has illegally charged maintenance amounting as fully detailed and described in final statement of account of respondent.

C. Relief sought by the complainant:

4. The complainant has sought the following relief:

i. To direct the respondent to deliver the possession of the duly completed flat with penalty for delaying the possession at the prevailing rate by the authority.

ii. To direct the respondents to pay the interest on the principal amount @ 18% per annum from the date of payment till realization.

iii. To direct the respondent to execute the conveyance deed of the above said unit.

iv. To direct the respondent to charge the maintenance from the date of possession and not as per their desire.

D. Reply by the respondent:-

5. The respondent has raised certain preliminary objections and has contested the present complaint on the following grounds:

i. That the complaint filed by the complainant is baseless, vexatious and is not tenable in the eyes of law therefore the complaint deserves to be dismissed at the threshold.

ii. That the flat was initially booked by one Mr. Laxman Viswanath , who had applied for an advance registration for a residential apartment of 4 bedrooms in the said project. On 03.10.2004 and deposited a sum of Rs. 1,00,000/- as the booking amount. Afterwards, he was allotted a 3 bedroom residential flat bearing no, D6-601 ad-measuring 2810 sq. ft. With the basic price Rs. 73,76,250.00/- on 01.03.2005. The FBA between original allottee and the respondent was

executed on 31.01.2006. Thereafter, the flat was transferred to the Mr. P.C. Bindal (herein after referred to as "subsequent buyer"). It is submitted that a sum of Rs. 20,44,062/- had been paid by the original allottee till transfer to subsequent buyer. On 10.01.2009, the subsequent buyer transferred the flat in favour of the complainant herein and thereafter the complainant entered into an agreement to sell and executed affidavit for the purpose of entering into the shoes of the subsequent buyer. It is submitted that the subsequent buyer requested the respondent for transferring the flat in favour of the complainant herein. It is submitted that the respondent being a customer oriented organization agreed to the request of the subsequent buyer and the agreement was endorsed in favour of the complainant herein.

iii. That the complainant was always kept aware about the status of the project and the delays and hindrances being faced by the developer in completing the project. The complainant was also assured that any delay attributable will be compensated as per the terms& conditions of the executed FBA.

iv. That part project has been completed and the respondent is in process of getting the occupation certificate of tower D-5. The

approval regarding the transfer of beneficial interest and marketing rights were framed on 18.02.2015 being under suspension till 31.01.2017 is pending. Hence, the grant of relief as sought for is not justifiable and tenable at this advance stage of the project. It is respectfully submitted that the compensation due as per FBA had already been reflected in delivered financial statement of accounts (FSA) to the complainant. It is important to mention that as the project is at its very advance stage of development and the prayed relief (s) by the complainant at this stage is neither tenable nor maintainable in the interest of other allottees at large & entire project.

v. That the mutually agreed clause no. 10(c) of the FBA wherein the delay compensation has been specifically mentioned and agreed by the complainant and hence contending the date of offering the possession, interest and compensation is incorrect wherein 'time is not the essence of the contract' stands contravened and hence proviso of section 18 are not applicable in the captioned matter as the respondent has agreed to abide by the obligations made under the FBA duly executed between the complainant and the respondent.

vi. That the respondent company has invested a huge amount on the construction and development of the said project and in case the reliefs as sought is allowed to the complainant, it would cause financial loss to the project as well as loss to the genuine customers in the said project.

vii. That the enforcement of provisions under Act of 2016 should be prospective and not be retrospective. It is pertinent to mention here that the respondent company has already applied for registration under Real Estate Regulatory Authority with respect to the said part of the project before the authority. The respondent company has further completed most of the development work in tower no. D-5 and has been already applied for the occupancy certificate before the competent authority.

viii. That as per the FBA, which is binding between the complainant and the respondent, both have agreed upon their respective liabilities in case of breach of any of the conditions specified therein. It is submitted that the liability of the respondent on account of delay is specified in the clause 10(c) of the said agreement and as such the complainant cannot claim relief(s) which are beyond the compensation agreed

upon by the complainant. In this view of the matter, the captioned complaint is not maintainable in law and is liable to be dismissed in limine. It is a well settled proposition of law that the courts/forums cannot travel beyond what is provided in the agreement/contract and generate altogether a new contract; the responsibility of the courts/forums is to interpret appropriately the existing contract and decide the rights and liabilities of the parties within the four corners of the contract.

ix. That the delay in handing over the possession of the flat was caused only due to the various reasons which are beyond the control of the respondent company. That the global recession hit the economy and is continuing particularly in the real estate sector. It is submitted that the construction of project of the respondent is dependent upon the amount of money being received from the bookings made and money received henceforth in form of installments by the allottees'. However, it is submitted that during the prolonged effect of the global recession, the number of bookings made by the prospective purchasers reduced drastically in comparison to the expected bookings anticipated by the respondent at the time of launch of the project.

x. That the various problems which are beyond the control of the respondent seriously affected the construction like lack of adequate sources of finance, shortage of labour, rising manpower and material costs and approvals and procedural difficulties. In addition to the aforesaid challenges the following factors like demonetization, outbreak of corona virus etc. also played major role in delaying the offer of possession. Continually, order of the Hon'ble Supreme Court and NGT were being passed putting stay upon the construction activity.

xi. It is submitted that the finishing work of the flat is carried out only after the allottee clear the outstanding amount and agrees to take over the possession of the flat. Since, the fittings and fixtures gets damaged due to corrosion, the same cannot be done before handing over the possession. Besides, the rebate of Rs. 6,25,000/- on account of final finishing cost of the unit had also been given to the complainant which is optional in nature as well as the same figure was also reflected into FSA with letter of fit-outs.

xii. That the complainant had invested in the project only for commercial purposes and he is an investor and not the end user. Therefore, the jurisdiction of the authority cannot be

invoked as there is no cause of action for filing the complaint before this authority.

xiii. That the complainant has applied for the allotment of the flat as an investment and not for personal use of the complainant which is abundantly clear and evident from the conduct of the complainant. it is submitted that the complainant has invested in the flat with intent to have monetary gains by way of reselling the flat to a higher bidder at an appreciated value. thus, in view of the constant precedents upheld by various Real Estate Regulatory Authorities across the country, the present complaint is not maintainable wherein it is held unanimously that the investors of real estate projects are not entitled to relief from real estate regulatory authority.

xiv. That the frivolous demands of some allottees' have resulted in the rampant increase in filing of vexatious complaints against the real estate players. This practice needs to be curbed and dealt with iron hands given the potential drain of the frivolous legal proceedings on the limited financial and time resources available to the real estate players. The respondent has always kept complainant aware with the status of the project, thus the allegation of the complainant is vague and frivolous. It is

submitted that to avoid the contractual obligations and with malafide intention to earn wrongfully from the respondent, the complainant has filed the instant complaint. Hence, the complaint is liable to be dismissed in limine.

xv. That as per the decision of the Supreme Court in *Wg. Cdr. Arifur Rahman Khan & Ors. Vs. DLF Southern Homes Pvt. Ltd and Ors, in Civil Appeal 6230 of 2019,* that there was a gross delay in handing over the possession of the flats and the allottees are entitled for compensation at an amount calculated at the rate of 6% simple interest. The above amount shall be in addition to the amounts as already credited at the time of sending final statement of accounts as per the clauses of FBA. Therefore, in view of the said order of the supreme court, the complainant cannot seek exorbitant rate of interest from the developer/respondent. That the captioned complaint is frivolous, vague, and vexatious in nature. The captioned complaint has been made to injure the interest and reputation of the respondent and therefore, the instant complaint is liable to be dismissed.

E. Jurisdiction of the authority

6. The preliminary objections raised by the respondent regarding jurisdiction of the authority to entertain the present complaint stands rejected. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

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

E.II Subject-matter jurisdiction

8. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per the provisions of section 11 (4) (a) 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:

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

F. I. Objection raised by the respondent regarding force majeure condition

10. The respondent/promoter raised the contention that the construction of the project was delayed due to several unforeseeable events which were beyond the reasonable control of the respondent which have materially and adversely affected the timely completion of the project and are covered under force majeure conditions such as non-payment of instalment by different allottee of the project, slow pace of construction due to non-availability of laborer, demonetization, lockdown due to covid-19 various orders passed by NGT and heavy rainfall in Gurugram in 2016.

11. It may be stated that asking for extension of time in completing the construction is not a statutory right nor has it been provided in the rules. This is a concept which has been evolved by the promoters themselves and now it has become a very common practice to enter such a clause in the agreement

executed between the promoter and the allottee. It needs to be emphasized that for availing further period for completing the construction the promoter must make out or establish some compelling circumstances which were in fact beyond his control while carrying out the construction due to which the completion of the construction of the project or tower or a block could not be completed within the stipulated time. Now, turning to the facts of the present case the respondent promoters has not assigned such compelling reasons as to why and how they shall be entitled for further extension of time six months in delivering the possession of the unit. Moreover, the due date of possession comes out to be 27.03.2009 and all the reasons for the delay stated by the respondent in its reply were applicable in 2015-2016 (demonetization etc.). Thus, the delay of over twelve years cannot be justified by the respondent.

12. The authority is of the view that commercial hardships does not give the respondent an exception to not perform the contractual obligations. The promoter had proposed to hand over the possession of the apartment by 27.03.2009 and further provided in agreement that promoter shall be entitled

to a grace periods of six month. As a matter of fact, the promoter has not given the valid reason for delay to complete the project within the time limit prescribed by the promoter in the apartment buyer's agreement. As per the settled law one cannot be allowed to take advantage of his own wrong. Accordingly, this grace periods of six months each cannot be allowed to the promoter at this stage.

F2. Non-payment of installments by the complainant and other allottees

13. The respondent has raised another objection that due to non-payment of installments by the complainant and other allottees, he faced a financial crunch and wasn't able to finish the project on time. The objection raised by the respondent regarding delay in making timely payments by the complainant who have committed breach of terms and conditions of the contract by making default in timely payment of the installments which has led to delay in completion of construction at the end of respondent.

14. That the FBA was entered into between the parties and, as such, the parties are bound by the terms and conditions mentioned in the said agreement. The said agreement was duly signed by the complainant after properly understanding each and every clause contained in the agreement. The

complainant was neither forced nor influenced by respondent to sign the said agreement. It was the complainant who after understanding the clauses signed the said agreement in their complete senses.

15. In the present complaint, it is an obligation on the part of the complainant/ allottee to make timely payments under section 19(6) and 19(7) of the Act. Section 19(6), (7) proviso read as under.

> ***"Section 19: - Right and duties of allottees.-***
>
> .....
>
> *Section 19(6) states that every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13[1], shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, **maintenance charges**, ground rent, and other charges, if any.*
>
> *Section 19(7) states that the allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section (6).*

16. The authority has observed that the total consideration of the apartment of Rs. 73,76,250/- and the complainant has paid Rs. 76,31,306/-. As per clause 5(a) of FBA, it is the obligation of the allottee to make timely payments and the relevant clause is reproduced as under:

> ***5 (a). Time is the Essence: Buyer's Obligation***
> *Timely payment of the installments/ amounts due shall be of the essence of this agreement. If payment is not made within*

the period stipulated and or the Buyer commits breach of any of the terms and conditions of this agreement, then this agreement shall be liable to be canceled. In the eventuality of cancellation, earnest money being 15% of the basic price would be forfeited and the balance. If any, would be refundable without interest. On cancellation of this agreement, the Buyer shall also be liable to reimburse to the Developers the amount of brokerage paid, if any, by the Developers towards the booking of the flat. In any case, all the dues, whatsoever, including interest, if any, shall be payable before taking possession of the flat."

17. The allottee has paid substantial amount of the total sale consideration as per the customer ledger dated 29.04.2015 on page 97 of the complaint. The authority is of the view that the complainant cannot be said to be in violation of his duties and obligations arising out of sections 19 (6) and (7) nor clause 8 of the FBA. Thus, the respondent cannot be given benefit of this objection.

G. Findings on the relief sought by the complainant

G.I. Regarding DPC and interest

18. In the present complaint, the complainant 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."

19. Clause 10 (a) of the FBA provides time period for handing over of possession and the same is reproduced below:

> *"Clause 10(a): Construction of the Flat is likely to be completed within a period of thirty six (36) months of commencement of construction of the particular Block in which the Flat in located with a grace period of six (6) months on receipt of sanction of building Plans/revised building plans and approvals of all concerned authorities including the Fire Service Dept, Civil Aviation Deptt, Traffic Dept., Pollution Control Deptt, as may be required for commencing and carrying on construction subject to force and restraints or restrictions from any courts/authorities, non-availability of building materials, disputes with contractors/work force etc and circumstances beyond the control of the Developers and subject to timely payments by the First Buyers in the Scheme No claim by of damages compensation shall fie against the Developers in case of delay in handing over possession on account of the said reasons. The date of submitting application to the concerned authorities for issue of completion part completion/occupancy/part occupancy certificate of the Complex shall be treated as the date of completion of the Flat for the purpose of this clause/agreement."*

20. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the complainant not being in default under any provisions of these agreements and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favor 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.

21. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit as per clause 10(a)- within a period of thirty six (36) months of commencement of construction of the particular block in which the flat is located, with the grace period of six months, on the receipt of sanction of building plans/revised building plans and approvals of all concerned authorities including the fire service department, civil aviation department, traffic department, pollution control department, as may be required for commencing and carrying

on construction. In the present complaint, the date of start of construction of the Block D6 cannot be ascertained from the documents on record, thus this date is taken from the date of execution of FBA i.e., 31.01.2006. It is further provided in agreement that promoter shall not be entitled to a grace period of six months. Since the construction of the tower D6 is incomplete, thus, this grace period cannot be allowed to the respondent company. Therefore, the due date of handing over possession comes out to be 31.01.2009.

22. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at simple interest. However, 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. The same 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]***
> *"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."

23. The legislature in its wisdom in the subordinate legislation under 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.

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

25. **Rate of interest to be paid by complainant for delay in making payments**: 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;"*

26. 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 same as is being granted to the complainant in case of delayed possession charges.

27. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 10(a) of the buyer's agreement executed between the parties on 31.01.2006, possession of the said unit was to be delivered within a period of 36 months

from the start of construction of the particular block in which the flat is located with the grace period of six months, on the receipt of sanction of building plans/revised building plans and approvals of all concerned authorities including the fire service department, civil aviation department, traffic department, pollution control department, as may be required for commencing and carrying on construction. In the present complaint, the date of start of construction of the Block D6 cannot be ascertained from the documents on record, thus this date is taken from the date of execution of flat buyer's agreement i.e., 31.01.2006. The respondent-builder had claimed a grace period of 6 months for receipt of sanction of building plans/revised building plans and approvals of all concerned authorities including the fire service department, civil aviation department, traffic department, pollution control department, as may be required for commencing and carrying on construction. The grace period cannot be allowed to the respondent as the construction is still not complete. Thus, neither the occupation certificate has not been obtained till the date of the order nor the possession has been offered. Thus, as far as grace period is concerned, the same is disallowed for the

reasons quoted above. Therefore the due date of possession comes out be 31.01.2009. 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 complainant as per the terms and conditions of the buyer's agreement dated 31.01.2006 executed between the parties.

28. 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. 31.01.2009 till the handing over of possession after obtaining occupation certificate.

H. Directions of the authority

29. 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 the interest at the prescribed rate i.e. 9.30 % per annum for every month of delay on the amount paid by the complainant from due date of possession i.e. 31.01.2009 till the handing over of possession after obtaining occupation certificate.

ii. The arrears of such interest accrued shall be paid by the promoter to the allottee within a period of 90 days from the date of this order and thereafter monthly payment of interest till the offer of possession shall be paid on or before 10th of each subsequent month.

iii. The complainant is directed to make the outstanding payments, if any, to the respondent alongwith prescribed rate of interest i.e., equitable interest which has to be paid by both the parties in case of failure on their respective parts.

iv. The respondent shall not charge anything from the complainant which is not the part of the apartment buyer's agreement.

30. Complaint stands disposed of.

31. 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.