BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 4637 of 2020
Date of filing complaint: 23.12.2020
First date of hearing : 11.01.2021
Date of decision : 14.10.2021

1.	Mrs. Kamla Lakra R/o: 13P, Sector 40, Gurugram	**Complainant**
	Versus	
1.	M/s Spaze Towers Private Limited R/o: A 307, Ansal Chamber 1-3, Bhikaji cama place, New Delhi-110066	**Respondent**

CORAM:	
Shri Samir Kumar	**Member**
Shri Vijay Kumar Goyal	**Member**
APPEARANCE:	
Sh. Anand Dabas (Advocate)	Complainant
Sh. J.K Dang (Advocate)	Respondent

ORDER

1. The present complaint 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.

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	"Spaze corporate park" Sector-69-70, Gurugram
2.	Project area	3.956 acres
3.	Nature of the project	Commercial complex
4.	DTCP license no. and validity status	134 of 2008 dated 28.06.2008 valid up to 27.06.2020
5.	Name of licensee	Wellworth Housing Pvt. Ltd. and Raj Realtech Pvt. Ltd.
6.	RERA Registered/ not registered	**Registered vide registration no. 393 of 2017 dated 22.12.2017**
7.	RERA Registration valid up to	**30.06.2020**
8.	Unit no.	31, ground floor, tower A [Page 23 of the complaint]
9.	Unit measuring (super area)	732 sq. ft.
10.	Revised unit	768 sq. ft. [AS per offer letter at page 47 of the complaint]
11.	Date of allotment letter	09.07.2011 [Page 54 of the reply]
12.	Date of execution of builder buyer agreement	04.01.2014 [As alleged by the complainant at page no. 9 of the complaint and admitted by the respondent on page no. 20 of the reply]

13.	Payment plan	Construction linked payment plan [Page 41 of the complaint]
14.	Total sale consideration	Rs.62,50,570/- (As per payment plan annexed at page 41 of the complaint)
15.	Total amount paid by the complainant	Rs. 73,16,929/- (As per statement of accounts dated 31.03.2021 on page-134 of reply)
16.	Due date of delivery of possession *Clause 14: That the possession of the said premises is proposed to be delivered by the developer to the allottee* ***within three years from the date of this agreement.***	04.01.2017 Calculated from the date of agreement
17.	Offer of possession	29.01.2020 [Page 47 of the complaint]
18.	Occupation certificate	28.01.2020 [Page 127 of the reply]
19.	Delay in delivery of possession up to the date of offer of possession + 2 months i.e.29.03.2020	3 years 2 months 25 days

B. Facts of the complaint:

3. The complainant booked a residential flat bearing No. 31 on ground floor , tower-A in the project namely "Spaze corporate park" in the sector 69-70, Gurugram of the respondent measuring approximately super area of 768 sq. ft. in the township to be developed by respondent. It was assured and represented to the complainant by the respondent that it had already taken the required necessary approvals and sanctions from the concerned authorities and departments to develop and complete the

proposed project on the time as assured by the respondent. Accordingly, the complainant has paid Rs.5,93,171/- through cheque bearing No.646611, as booking amount.

4. That in the said application form, the price of the said flat was agreed at the rate of Rs.256.25/- per sq. ft. along-with other charges as mentioned in the said application form. At the time of execution of the said application form, it was agreed and promised by the respondent that there shall be no change, amendment or variation in the area or sale price of the said flat from the area or the price committed by the respondent in the said application form or agreed otherwise.

5. That thereafter the respondent took more than 32 months to execute the builder buyer agreement and finally the builder buyer agreement executed on 04.01.2014.Thereafter the respondent started raising the demand of money /installments from the complainant, which was duly paid by the complainant as per agreed timelines.

6. That as per the clause – 14 of the said buyer's agreement dated 04.01.2014, the respondent had agreed and promise to complete the construction of the said flat and deliver its possession within a period of 3 years thereon from the date of execution of the said buyer's agreement. The relevant portion of clause – 14 of the flat buyer's agreement is reproduced herein for the kind perusal of the hon'ble authority.

> *"That the possession of the said premises is proposed to be delivered by the DEVELOPER to the ALLOTEE(S) within three years from the date of this agreement."*

That from the date of booking and till today, the respondent had raised various demands for the payment of installments on complainant towards the sale consideration of said flat and the complainant have duly paid and satisfied all those demands as per the flat buyer's agreement without any default or delay on their part and have also fulfilled otherwise also their part of obligations as agreed in the flat buyer's agreement. The complainant was and have always been ready and willing to fulfill their part of agreement, if any pending.

7. That the complainant has paid the entire sale consideration to the respondent for the said flat. As per the statement dated 04.12.2020, issued by the respondent, upon the request of the complainant, the complainant have already paid Rs. 73,16,929/- towards total sale consideration as on today to the respondent as demanded time to time and now nothing major is pending to be paid on the part of complainant.

8. That the conduct on part of respondent regarding delay in delivery of possession of the said flat has clearly manifested that respondent never ever had any intention to deliver the said flat on time as agreed. It has also cleared the air on the fact that all the promises made by the respondent at the time of sale of involved flat were fake and false.

9. That the respondent has committed grave deficiency in services by delaying the delivery of possession and false promises made at the time of sale of the said flat which amounts to unfair trade practice which is immoral as well as illegal. The respondent has also criminally misappropriated the money paid by the

complainant as sale consideration of said flat by not delivering the unit by agreed timelines.

10. That relying upon respondent's representation and believing them to be true, the complainant was induced to pay Rs. 73,16,929/- as sale consideration of the aforesaid flat as on today. That after making a delay of about 3 years the respondent on multiple request/appeal by the allottee's finally offered the possession letter on 29.01.2020 for the said flat.

C. Relief sought by the complainant:

11. The complainant has sought following relief:

    i. Direct the respondent to pay interest at the applicable rate on account of delay in offering possession from the date of payment till the date of delivery of actual and physical possession.

D. Reply by the respondent

12. After being fully satisfied in all respects, a well thought of and duly deliberated decision had been made by the complainants to book for purchase commercial unit bearing no. A-31 on the ground floor located in tower A having tentative super area measuring 732 square feet located in "Spaze Corporate Park" situated in Sector 69 and 70, Gurgaon

13. That it is respectfully submitted that with the objective of booking for purchase said unit, application form dated 06.09.2010 had been submitted by the complainants with the respondent. Thereafter, allotment letter dated 09.07.2011 had been issued by the respondent to the complainants in respect of said unit.

14. That buyer's agreement dated 04.01.2014 had been voluntarily and consciously executed by the complainants in respect of the said unit. It is pertinent to mention that buyer's agreement had been sent by the respondent to the complainant twice for execution. Initially the buyer's agreement had been sent by the respondent of the complainant for execution when a covering letter dated 06.01.2011. Subsequently the same was again sent for execution by the respondent to the complainant with a covering letter dated 26.12.2011.

15. That the agreement remained with the complainant for a long span of time prior to its voluntary and conscious execution. The complainant was fully conscious and aware of the ramifications of the contractual covenants incorporated in buyer's agreement referred to above. After fully understanding the said contractual covenants to be valid and binding on the parties did the complainants proceed to execute the buyer's agreement dated 04.01.2014. The limitation for challenging the validity/legality of the aforesaid contract has expired long ago. The terms and conditions incorporated in the aforesaid contract are binding upon the parties with full force and effect. The rights and obligations of the parties shall be determined by contractual covenants incorporated in the aforesaid buyer's agreement.

16. That the complainant has alleged that physical possession of the unit was to be delivered by the respondent to the complainant up to 04.01.2017 as per clause 14 of the said agreement. The aforesaid clause of the said agreement has been completely misinterpreted and misconstrued by the complainants. The terms

and conditions incorporated in the said agreement are to be cumulatively considered in their entirety. The complainants cannot be permitted to place reliance on selected clauses of the said agreement in isolation.

17. That it is pertinent to mention that clause 14 of the buyer's agreement provides that in case the completion of the project was delayed due to departmental delay or on account of any reason beyond the control of the respondent, the same would entitle the respondent for extension of time for delivery of physical possession. In fact, it was also provided that upon occurrence of such eventuality, the respondent would have the right to alter or vary the terms and conditions of the agreement.

18. That the complainant has completely misinterpreted and misconstrued the covenants incorporated in the Buyer's Agreement. No rigid or fixed timeline for execution of the project and delivery of physical possession of the unit was incorporated or provided in the aforesaid agreement.

19. That the construction and completion of a real estate project of such huge magnitude is also largely dependent upon grant of permission/sanctions by various statutory authorities. It is pertinent to mention that the respondent can only submit requisite applications, complete in all respects in the office of the concerned statutory authorities for grant of various permissions/sanctions. However, once the same is done, the respondent ceases to have any control over the same. The respondent cannot be penalised or blamed in case there occurs any delay in grant of permissions/sanctions required for the

project especially when the same cannot be directly or impliedly attributed or imputed to the respondent.

20. That it is pertinent to mention herein that at the time of booking of the unit and also at the time of execution of the buyer's agreement, it was clearly and transparently disclosed to the original allottee that the development of the project was dependent upon the issuance of various approvals and permissions by the competent authorities. The respondent had further admitted and disclosed to the complainant that the respondent had no power or control over functioning of Government authorities and that the respondent could not provide any time frame within which the approvals would be granted.

21. That it is respectfully submitted that the respondent has shown diligence and sincerity all along in undertaking the implementation of the commercial project of which the property booked for purchase by the complainants are a part. In fact, no delay whatsoever, can be attributed to the respondent, as shall become evident from the submissions made in the subsequent paras of the present reply. It is respectfully submitted that a large number of permissions/ sanctions are required to be obtained from the concerned statutory authorities for the purpose of undertaking the implementation of commercial project of the huge magnitude as the instant one. The respondent can only proceed to submit the requisite application, complete in all respects, in the office of the concerned statutory authorities for obtaining required sanctions/permissions.

22. That however, the respondent cannot exercise any control over the functioning of the said statutory authorities. In the present case, the application for obtaining sanction of building plans was submitted by the respondent in the office of Directorate of Town & Country Planning, Haryana, Chandigarh on 09.10.2011. The building plans were eventually sanctioned on 10.05.2012, that is after a period of approximately 7 months from the date of submission of the application by the respondent.

23. That in the present case, the respondent has been needlessly vilified and condemned. That it is pertinent to mention that respondent had submitted an application for grant of Environment Clearance to the concerned statutory authority on 18.06.2012. However, for one reason or the other, which by no stretch of imagination can be construed directly or impliedly to be a lapse or default on the part of the respondent, the said Environmental Clearance has not been issued till date. The respondent/its officials have been diligently pursuing the matter. It would also not be out of place to mention that for an extremely long span of time the concerned authority was not holding office and functioning in the regular course of its duties. Therefore, the non-grant of Environmental Clearance has considerably delayed the execution of the project.

24. That it is submitted that after submitting the application for grant of Environmental Clearance before the Hon'ble State Environment Impact Assessment Authority (SEIAA) the respondent was then issued EDS due to shortcomings in application vide Letter no. HR/SEAC/2012/222/180 dated 17.07.2012. The respondent

immediately on receipt of EDS submitted its reply vide Letter dated 10.09.2012 and the respondent was informed vide letter bearing no. HR/SEAC/2012/222/925 dated 31.12.2012 that the application of the respondent was decided to be listed before the 73rd meeting of State Expert Appraisal Committee (SEAC) which was scheduled on 16.01.2013 The respondent attended the 73rd meeting of SEAC and were asked to furnish clarification regarding the renewal of License no. 134/2008 vide letter dated 25.01.2013.

25. That the respondent submitted its reply dated 25.01.2013 whereby clarification was given by the respondent regarding the renewal of License no. 134/2008. On 03.06.2013 Final Notice from SEACC bearing no. HR/SEAC/222/324 was received for submission of copy of renewed License.

26. That the respondent received a notice dated 05.07.2013 whereby it was informed that the application of the respondent would be again listed for appraisal before the 88th meeting of State Environment Impact Committee to be held on 15.07.2013 However, the 88th meeting of State Environment Impact Committee was not held and the same was postponed to 05.08.2013 which was duly attended by the respondent.

27. That on 12.08.2013 the respondent received another notice bearing no. HR/SEAC/2012/222/582 wherein certain queries and clarifications were sought. The said notice was duly replied by the respondent vide Letter dated 15.11.2013 .Thereafter the respondent received another notice bearing no. HR/SEACC/2014/222/960 dated 06.01.2014 whereby it was informed that the application of the respondent would be again

listed for appraisal before the 99th meeting of State Environment Impact Committee to be held on 28.01.2014. Once again certain queries were raised and the same were duly replied vide respondent's reply dated 18.02.2014

28. That the respondent again received yet another notice bearing no. HR/SEACC/2014/222/1182 dated 24.04.2014 whereby the respondent was informed that the application of the respondent would be again listed for appraisal before the 104th meeting of State Environment Impact Committee to be held on 12.05.2014.

29. That on 02.06.2014 the State Environment Assessment Committee vide Order bearing no. SECY/SEAC/2014/1323 passed an order constituting a sub-committee to assess the status of construction at the project site of the respondent. However, the sub-committee did not visit the site due to reasons best known to the Committee/Sub Committee despite the respondent's request letter dated 07.10.2014 and 12.01.2015 requesting to conduct the site visit as directed in the order dated 02.06.2014. The respondent sent another letter dated 27.08.2015 requesting the authorities to grant the Environment Clearance. However, thereafter in the month of June 2016 the respondent received another order passed by SEAC for constituting a new sub-committee to verify the status of construction at the project site

30. Thereafter, show-cause notice was received vide letter no. HSPCB/GRS/2016/ dated 09.12.2016 for violation of EIA notification of 14.09.2006 and the construction at the project site was brought to a standstill.

31. That it is pertinent to mention herein that the total built-up area of the project is 46264.209 sq. m which is less than 1,50,000 sq.m and thus the said project falls under category 8(a) of EIA Notification, 2006. However, in the light of the Ministry of Environment, Forest and Climate Change Notification no. S.O 804 (E) dated 14.03.2017 ,where it had been clearly notified that the violation cases/ non-compliance cases would be treated as 'A' category projects, hence the application for Grant of Terms of Reference under violation category were submitted to Ministry of Environment, Forest and Climate Change on 02.06.2017.

32. That thereafter, as per amendment in notification vide S.O. 1030(E) dated 8th March, 2018 & OM no. Z-11013/22/2017- IA. II (M) dated 15.03.2018 & 16.03.2018, the project falls under category 'B', of Schedule 8(a) & is exempted from Public Hearing and will be appraised by SEAC/SEIAA, Haryana. Subsequently, it was considered in 169th SEAC, Haryana meeting dated 18.05.2018 and thereafter, Terms of Reference (TOR) was granted by SEIAA, Haryana vide letter no. SEIAA/HR/2018/681 dated 7.08.2018

33. That the tenure of SEAC/SEIAA Haryana got completed and the respondent submitted the Environment Impact Assessment Report before Ministry of Environment, Forest and Climate Change on 06.11.2018. The case had been enlisted in the 17th Expert Appraisal Committee meeting for the proposal involving violation of EIA Notification, 2006 scheduled on 29.01.2019 and certain queries were raised by Ministry of Environment, Forest and Climate Change. In response to the said queries reply dated

28.02.2019 was duly submitted by the respondent. That the application was again listed for appraisal before the 20th meeting of Expert Appraisal Committee to be held on 29.03.2019 minutes of meeting of which are awaited.

34. That therefore it is clear and quite evident from the facts and submissions made above that the respondent has been rigorously following up with the authorities whether it was the State Expert Appraisal Committee or Ministry of Environment, Forest and Climate Change and have left no stone unturned to get the environment clearance from the authorities.

35. That it is pertinent to mention herein that the provision for such an eventuality has been provided for in the buyer's agreement dated 04.01.2014. It is specifically provided in clause 14 of the aforesaid contract that in case the completion of the project was delayed due to departmental delay or on account of any reason beyond the control of the respondent, the same would entitle the respondent for extension of time for delivery of physical possession.

36. That clause 14 of the buyer's agreement provides that possession of the unit shall be offered to the complainant within 3 years from the date of execution of the agreement subject to force majeure conditions and reasons beyond the power and control of the respondent, in which case the date for delivery of possession shall stand extended accordingly. It has been specifically provided in clause 14 of the aforesaid contract that in case the completion of the project was delayed due to departmental delay or on account of any reason beyond the control of the respondent, the same

would entitle the respondent for extension of time for delivery of physical possession.

37. That occupation certificate for the said project had been granted by Directorate of Town and Country Planning, Haryana, Chandigarh on 28.01.2020.The letter dated 29.01.2020 was sent by the respondent to the complainant calling upon the complainant to obtain physical possession of the said unit and to make outstanding payments.

38. That in accordance with contractual covenants incorporated in buyer's agreement dated 04.01.2014 the span of time, which was consumed in obtaining the following approvals/sanctions deserves to be excluded from the period agreed between the parties for delivery of physical possession:

Sr. no.	Nature of Permission/ Approval	Date of submission of application for grant of Approval/sanction	Date of Sanction of permission /grant of approval	Period of time consumed in obtaining permission/ approval
1	Approval of Building Plans	09-10-2011	10-05-2012	7 months
2	Clarification regarding applicability of Forest Laws	22.07.2011	07.02.2013	20 months
3	Environment Clearance	10-07-2012	01.01.2020	

39. It is respectfully submitted that the project in question could not have been constructed, developed and implemented by the respondent without obtaining the approvals referred to above.

Thus, the respondent has been prevented by circumstances beyond its power and control from undertaking the implementation of the project during the time period indicated above and therefore the same is not to be taken into reckoning while computing the period of 3 years as has been explicitly provided in buyer's agreement dated 04.01.2014. As far as respondent is concerned, it has diligently and sincerely pursued the matter with the concerned statutory authorities for obtaining of various permissions/sanctions and therefore the time for delivery of possession deserves to be extended as provided in the buyer's agreement.

40. It is a matter of record that the respondent has demanded sale consideration from the complainant, in accordance with the buyer's agreement. In so far as the super area of the unit is concerned, the complainant has always been conscious and aware that the same was tentative at the time of booking/allotment and subject to final calculation upon competition of construction and issuance of the occupation certificate by the competent authority. It is pertinent to mention herein that the application form as well as the allotment letter clearly mention that the super area of the unit allotted to the complainant tentatively admeasures 732 sq. ft. clause 14 of the buyer's agreement specifically provides that the respondent shall be entitled to alter/modify/amend the building plans, designs, specifications which might result in the change in position, dimensions, area, etc. Furthermore, in the event of any increase/decrease in the super area of the unit, the Complainant shall be liable to pay the corresponding increase in sale consideration or obtain a refund in the case of reduction of super

area as the case may be.In so far as the sale consideration of the unit is concerned, the same does not include applicable taxes, stamp duty and registration charges and other amounts payable upon offer of possession, as set out in the buyer's agreement. It is absolutely wrong and emphatically denied that the respondent has illegally charged any amount from the Complainant. External electrification meter charges and additional firefighting charges are payable by the complainant under clauses 11 and 5.4 of the buyer's agreement..

41. The application form as well as the allotment letter clearly mention that the super area of the unit allotted to the Complainant tentatively admeasures 732 sq. ft. Clause 14 of the buyer's agreement specifically provides that the respondent shall be entitled to alter/modify/amend the building plans, designs, specifications which might result in the change in position, dimensions, area, etc of the unit. Furthermore, in the event of any increase/decrease in the super area of the unit, the complainant shall be liable to pay the corresponding increase in sale consideration or obtain a refund in the case of reduction of super area as the case may be. Thus, when the super area of the unit stood increased from 732 sq. ft to 768 sq. ft, the respondent has correctly demanded the corresponding increase in sale consideration, in accordance with the buyer's agreement. In fact, the complainant has completely misinterpreted and misconstrued the covenants incorporated in the buyer's agreement. No rigid or fixed timeline for execution of the project and delivery of physical possession of the unit was incorporated or provided in the aforesaid agreement. It is ridiculous on the part of the

complainant to allege that the respondent has criminally appropriated the money paid by the complainant when the respondent has duly completed construction and offered possession to the complainant in accordance with the buyer's agreement. On the contrary, it is the complainant who is in default of the buyer's agreement as well as the Act by her wilful refusal to make payment of balance amounts as per the buyer's agreement and take possession of the unit. The respondent cannot be held liable for delays caused due to reasons beyond its power and control.

42. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority:

43. The plea of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

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

authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11(4)(a)

> *Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

Section 34-Functions of the Authority:

> 34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings regarding relief sought by the complainant:

Relief sought by the complainant: Direct the respondent to pay interest for delay possession charges at prevailing rate of interest.

F.1 Admissibility of delay possession charges:

44. 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***
>
> *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*

45. 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 this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even 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.

46. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builders/promoters and buyers/allottee are protected candidly. The apartment buyer's agreement lays down the terms that govern the sale of different kinds of properties like residentials, commercials etc.

between the buyer and builder. It is in the interest of both the parties to have a well-drafted apartment buyer's agreement which would thereby protect the rights of both the builder and buyer in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the apartment, plot or building, as the case may be and the right of the buyer/allottee in case of delay in possession of the unit. In pre-RERA period it was a general practice among the promoters/developers to invariably draft the terms of the apartment buyer's agreement in a manner that benefited only the promoters/developers. It had arbitrary, unilateral, and unclear clauses that either blatantly favoured the promoters/developers or gave them the benefit of doubt because of the total absence of clarity over the matter.

47. The authority has gone through the possession clause of the agreement. At the outset, it is relevant to comment on the pre-set 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 this agreements and in compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the

possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the apartment 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.

48. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges 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. 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.*

49. 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.

50. 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., 14.10.2021 is @ 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.

51. 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;"*

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.

52. On consideration of the documents available on record and submissions made by both the parties, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 14 of the unit buyer's agreement executed between the parties on 04.01.2014, possession of the booked unit was to be delivered on or before 04.01.2017. occupation certificate has been received by the respondent on 28.01.2020 and the possession of the subject unit was taken by the complainant on 29.01.2020. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 04.01.2014 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and responsibilities as per the flat buyer's agreement dated 04.01.2014 to hand over the possession within the stipulated period.

53. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 28.01.2020. The possession of the subject unit was taken by the the complainant on 29.01.2020, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. This 2 months' of reasonable time is being

given to the complainant keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e. 04.01.2017 till the expiry of 2 months from the date of offer of possession (29.01.2020) which comes out to be 29.03.2020.

54. 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 at prescribed rate of interest i.e. 9.30% p.a. w.e.f. 04.01.2017 till the expiry of 2 months from the date of offer of possession (29.01.2020) which comes out to be 29.03.2020 as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act of 2016.

G. Directions of the authority:

55. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the authority under section 34(f) of the Act of 2016:

    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. 04.01.2017 till 29.03.2020 i.e. expiry

of 2 months from the date of offer of possession (29.01.2020). 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.

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 complainant/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 allottee, in case of default i.e., the delay possession charges as per section 2(za) of the Act.

iv. The respondent shall not charge anything from the complainant which is not the part of buyer's agreement. The respondent is not entitled to charge holding charges from the complainant/allottee at any point of time even after being part of the builder buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 on 14.12.2020

56. Complaint stands disposed of.

57. File be consigned to registry.

(Samir Kumar)
Member

(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 14.10.2021