

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

Complaint no.:	5718 of 2019
First date of hearing:	31.01.2020
Date of decision:	24.09.2021

1. Sivarama Krishnan  
2. Mrs. Ratana Sivarama Krishnan,  
R/o TG-2C 20, Garden Estate, Gurgaon, Haryana

**Complainants**

M/s Almond Infrabuild Pvt. Ltd.  
**Office address:** 711/92, Deepali, nehru place, new  
delhi-110019

**Respondent**

**CORAM:**

Shri Vijay Kumar Goyal  
Shri Samir Kumar

**Member  
Member**

**APPEARANCE:**

Shashi Kant Sharma (Advocate)  
M.K Dang (Advocate)

**Complainants  
Respondent**

**ORDER**

1. The present complaint dated 05.12.2019 has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is

*inter alia* prescribed that the promoter shall be responsible for all obligations, responsibilities and functions as provided under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

**A. Unit and project related details**

2. The particulars of unit details, sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

Sno.	Heads	Information
1.	Project name and location	"Tourmaline", Sector-109, Gurugram
2.	Project area	10.41875 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	250 of 2007 dated 02.11.2007 valid up to 01.11.2019
5.	Name of licensee	Raj Kiran and ors. C/o Chintels India Ltd.
6.	RERA registration details	41 of 2017 dated 10.08.2017 valid up to 6 years from EC
7.	Unit no.	3181
8.	Unit measuring	1750.00 sq. ft. super area
9.	Date of execution of flat buyer agreement	13.11.2013
10.	Payment plan	construction link plan
11.	Total consideration	₹ 1,45,31,250/-

		(As per builder buyer agreement dated 13.11.2013 at pg. 60 of complaint)
12.	Total amount paid by the complainants	₹ 1,35,32,155/- (As alleged by the complainants on pg-65 of complaint)
13.	Due date of delivery of possession as per clause 6.2 of the flat buyer's agreement 42 months from the date of execution of agreement  [Page 39 of complaint]	13.11.2017 (42 months from date of execution of builder buyer agreement i.e., 13.11.2013)  <b>(Note: 6 months grace period allowed)</b>
14.	Delay in handing over possession till the date of this order i.e., 24.09.2021	3 years 10 months 11 days
15.	Occupation certificate	09.08.2019 Tower-1 Pocket-A, Tower-2, Pocket-A, Tower-3 Pocket A, Tower-4 Pocket-A, Tower-5 Pocket-A, EWS Block,
		12.02.2019 Tower-3 to 5, EWS Block etc

		Community Building, Convenient Shopping in Community Building, Lower and Upper Basement	
16.	Offer of possession	09.08.2019 (Pg. 70 annexure R25 of reply)	

**B. Facts of the complaint**

3. The complainants have pleaded the complaint on the following facts:
- That the applicants/complainants are an Indian and peaceful citizen and in so far as the knowledge and information of the applicants/complainants are concerned, respondent is a company, incorporated under the provisions of Companies Act, 1956 and is engaged in the business of real estate development.
  - That the respondent is a company incorporate under the Companies Act, 1956 having its registered office at the address given above. Respondent is in the business of building and construction of flats and societies.
  - That in or around April 2013, authorized representative of respondent introduced the project namely "Tourmaline" in sector 109, village babupur, Gurgaon (hereinafter referred to as the "project"). It was represented that the said Project envisages the

development of 3-bedroom flats (Type C) for a price 1 crore to 1.7 crore.

- d. That the applicant 1/complainant 1 along with his wife, had visited at sales office of respondent and discussed the details of the said project, wherein, the respondent has represented, inter alia, to the effect that they have already secured all necessary approvals and permissions in respect of the above said project and is in the process of commencement of the construction soon. In addition to confirming the representations made by respondent as to the project.
- e. That relying upon promises and assurances given by the respondent, applicants/complainants had booked a residential flat unit bearing no. 3181 admeasuring 1750 sq. ft. located on 18<sup>th</sup> floor, building/tower no.4 along with one car parking Space in Sector 109, Dwarka Expressway situated at Village Babupur, Tehsil and Distt. Gurugram Haryana in project "Tourmaline" in Total Sale Consideration of Rs. 1,45,31,250/- (Rupees One Crore forty-five lakh thirty-one thousand two hundred fifty only). And accordingly, applicants/complainants paid a sum of Rs. 9,64,246/- as booking amount on dated 14-04-2013 and opted construction linked plan.
- f. That initially the flat/apartment was got booked in the joint name of complainants along with his wife namely Mrs. Ratna Sivrama Krishnan. That thereafter respondent made continue demand of payment and applicant/complainants paid all instalments within the prescribed period in order to save the cordial relationship.

- g. That at the time of booking of flat respondent promised and assured to applicants/complainants that the construction is going to start very soon. However, applicants/complainants astonished to note that the construction has not started even after the lapse of one year of booking, and it reveals that promise and assurance of respondent is fake and vague. However, respondent continue to make demand of further payments from time to time from applicants/complainants. That applicants/complainants however, made all the payments as per assurance and promise of respondent.
- h. That on dated 13.11.2013 a buyer's agreement was also executed between respondent and complainant 1 and his wife. In the said agreement it was stipulated that the total sale consideration would be Rs. 1,45,31,250/-. It was clearly stipulated at the time of booking of the flat that the possession will definitely be awarded within three years from the date of booking but after going through the buyer's agreement it was stipulated that the possession of the flat will be handed over applicants/complainants within a period of 42 months from the execution of builder buyer agreement. That in one of the important terms and conditions of buyer agreement under clause no.6.2 it is clearly stipulated as under:
- "The Developer endeavour to complete the construction of the apartment within 42 months from the date of this agreement (completion date). The company will send possession notice and offer possession of the Apartment to the applicant as and when the company receives the occupation certificate from the competent authority."*
- i. That after execution of buyer's agreement applicants/complainants applied for Housing loan with HDFC Bank, and accordingly applicants/complainants got approval of loan to the extent of 75%.

It is also pertinent to mention here that applicants/complainants are in regular payment of EMI on the housing loan from 2013.

- j. That applicants/complainants made timely visits at the project and sorry to note that there is very slow progress in the construction. On this, applicants/complainants visited respondent and explained that with this slow progress on the implementation of the project, there is every apprehension that it will not be quite possible for respondent to offer the possession of the flat within the prescribed period. However, respondent again reiterated and promised that respondent will offer the possession of the flat strictly according to the buyer's agreement and there will not be any violation of the same from respondent side.
- k. That from December 2013 to September 2016 there was absolutely no progress on the project. On this, applicants/complainants reminded to respondent as to how they will be able to complete the project by the stipulated date, then respondent told applicants/complainants that the work is being stalled due to non-receipt of certain approvals from the Govt. authorities. It is also pertinent to mention here that till September 2016 applicants/complainants have already paid more than 75% approx. payment against the said flat. It is also specifically submitted that till today applicants/complainants has already made the total sum of Rs 1,35,32,155/- by June 2016 (approx. more than 90% of the total cost of flat).
- l. That according to builder buyer agreement possession of the flat would be delivered by May 2017. The complainants have already

released the payment as per demand raised by the respondent from time to time. The respondent never raised any objection/complaint with respect to any delay in payment. As such, the complainants made all the payments timely and there is nothing outstanding against the complainants.

- m. That it was unanimously agreed by the respondent that the possession would be delivered during May 2017 but till date no possession has been delivered. Moreover, it is respectfully submitted that during May 2017 the project was not completed at all, and it was under construction.
- n. That the complainants visited the site at number of times and contacted the representative of the respondent and stun to know that the progress of the construction going on is very slow and when the complainants asked for the compensation/delay interest then it was specifically pointed out by the respondent that the same will be adjusted/paid at the time of possession.
- o. That when the deadline for handing over the possession was set out during May 2017 but the possession has not been given till today thereby no possession letter has been issued The respondent had issued offer of possession on dated 09-08-2019 wherein the respondent shown an outstanding of Rs. 16.05.263/- in the name of complainants, excluding the registration charges.
- p. That in view of the above facts and circumstances of the case, it is evident that from the date of booking till today respondent is playing a game of cheating and fraud with applicants/complainants in order to grab the precious amount of applicants/complainants.



q. That the Hon'ble Authority has already passed an order in the case titled as "Sudesh Devi Vs. Almond Infrabuilt Pvt. Ltd." Complaint no. 110/2019 on 28-03-2019 in which the Hon'ble Authority has directed to the respondent to pay delayed possession charges at the prescribed rate of 10.75% p.a. from the due date of possession.

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

4. The complainants have sought following reliefs:

- a. Direct the Respondent(s) to pay interest @ 10.75% per annum on the amount already paid by the complainants i.e. Rs. 1,35,32,155/- from the due date of possession May, 2017 till handing over the possession of the flat.
- b. To direct the respondent that after payment of the above amount of interest, the possession should be handed over to the complainants within the stipulated time period as per the direction of the Hon'ble authority.
- c. Any other relief which this Hon'ble authority deems fit and proper may also be granted in favour of the complainants.

5. On the date of hearing, the authority explained to the respondents/promoters 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:

- a. That the complaint is not maintainable as the matter is referable to arbitration as per the Arbitration and Conciliation Act, 1996 in view

of the fact that apartment buyer's agreement, contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute i.e., use 21.1 and 21.2 of the apartment buyer's agreement, and the same is reproduced for the ready reference of this hon'ble authority:

*"All or any disputes that may arise with respect to the terms and conditions of this Agreement, including the interpretation and validity of the provisions hereof and the respective rights and obligations of the parties shall be first settled through mutual discussion and amicable settlement, failing which the same shall be settled through arbitration. The arbitration proceedings shall be under the Arbitration and Conciliation Act, 1996 and any statutory amendments/modification thereto by a sole arbitrator who shall be mutually appointed by the Parties or to be mutually appointed or if unable to be mutually appointed, then to be appointed by the Court. The decision of the Arbitrator shall be final and binding on the parties.*

*The venue of Arbitration shall be at Gurgaon and only the courts at Gurgaon shall have the jurisdiction in all matters arising out of this Agreement"*

- b. That the respondent is a reputed real estate company having immense goodwill, comprised of law abiding and peace-loving persons and has always believed in satisfaction of its customers. The respondent has developed and delivered several prestigious projects in and around NCR region such as ATS Greens-I, ATS Greens-II, ATS Village, ATS Paradiso, ATS Advantage Phase-I & Phase-II, ATS One Hamlet, ATS Pristine, ATS Kocoon, ATS Prelude & ATS Dolce and in these projects large number of families have already shifted after having taken possession and resident welfare associations have been formed which are taking care of the day to day needs of the allottees of the respective projects.
- c. That the complainants, after checking the veracity of the project namely, 'Tourmaline', Sector 109, Gurugram had applied for

allotment of an apartment and were accordingly allotted apartment number 3181 in tower 3 having super built up area of 1750 square feet for a total sale consideration of Rs. 1,45,31,250/-. The complainants agreed to be bound by the terms and conditions of the documents executed by them with the respondent.

- d. That based on it, the respondent sent copies of the apartment buyer's agreement to the complainants which was signed and executed by them on 13.11.2013. It is pertinent to mention herein that when the complainants had booked the unit with the respondent, the Real Estate (Regulation and Development) Act, 2016 was not in force and the provisions of the same cannot be enforced retrospectively. The complainants had booked the unit in question and had executed the Apartment Buyer's Agreement on their own free will and after reading, understanding and verifying the terms and conditions stipulated thereto. It is submitted that the complainants are bound to adhere to the terms of the apartment buyer's agreement which were agreed upon by them vide clause 25.1 of the apartment buyer's agreement.
- e. That the complainants were to make the payment towards the total sale consideration as per the terms of the apartment buyer's agreement. however, it is submitted that the complainants failed to make timely payment towards the demanded amount and several reminders dated were issued by the respondent. vide payment request dated 24.02.2014, the respondent had raised the demand for installment towards "commencement of excavation" for net payable amount of Rs. 13,66,388/-. However, the complainants failed to pay the due amount on time and paid the same only after

reminders dated 20.03.2014, 06.04.2014 and 06.06.2014 were sent by the respondent.

- f. That vide payment request dated 30.11.2015 the respondent had raised the demand towards 'laying of 19<sup>th</sup> roof slab' for net payable amount of Rs. 9,58,716/-. Yet again, the complainants defaulted in abiding by their contractual obligations and made the payment only after a reminder dated 05.01.2016 was sent by the respondent.
- g. That the complainants have even defaulted in making timely payment towards the HVAT which was demanded from them and accordingly the respondent was constrained to issue a reminder dated 09.08.2019 to the complainants. Moreover, the complainants are bound to make the payment towards the interest accrued on account of delay committed by them in making payment towards the statutory charges.
- h. That the possession of the unit was supposed to be offered to the complainants in accordance with the agreed terms and conditions of the buyer's agreement. It is submitted that clause 6.2 of the buyer's agreement states that *"The Developer endeavor to complete the construction of the Apartment within 42 months from the date of this Agreement (Completion Date). The company will send possession notice and offer possession of the Apartment to the Applicant as and when the company receives the occupation certificate from the competent authorities (ies).*

*Notwithstanding the same, the developer shall be entitled to an extension of time from the expiry of the Completion date if the Completion is delayed on account of any of the following reasons-*

- ...(d) Force majeure event or any other reason beyond the control of or unforeseen by the Developer, which may prevent or delay the developer in performing its obligations as specified in this Agreement."*
- i. That from the aforesaid terms of the apartment buyer's agreement, it is evident that only the construction was to be completed within a period of 42 months from the date of the agreement and the same would be extended on account of any force majeure condition, outside the control of the respondent as defined in the apartment buyer's agreement. The possession of the unit had to be offered to the complainants only after grant of occupation certificate from the concerned authorities. It is submitted that the term 'force majeure event' as defined in clause 1 of the apartment buyer's agreement states that it shall mean and include "....court case, decree, stay, any notice, order, rule, notification of the Government and/or other public or Competent Authority delay in obtaining any approvals from the competent authority or any other causes or nay other event or reason which is beyond the control of or unforeseen by the developer". .
- j. That it is submitted that the respondent company has been constructing the project in a timely manner and as per the terms of the apartment buyer's agreement, no default whatsoever has been committed by it. It is pertinent to mention herein that the project was badly affected on account of a restraint order dated 23.04.2014 passed by the SDM Kapashera on the basis of a report submitted by Halka Patwari, Kapashera that the respondent was making encroachment on the Gram Sabha Land. In the restraint order dated 23.04.2014, it was stated that a case titled as Dilbagh Singh vs GNCTD of Delhi pertaining to the land in dispute was pending before

the Delhi High Court and SDM, Gurugram was requested to conduct joint demarcation. It is pertinent to mention herein that the order passed by the SDM Kapashera is covered under the ambit of the definition of 'force majeure event' as stipulated in the mutually agreed terms of the apartment buyer's agreement. It is submitted that in the demarcation report dated 26.03.2015 and 27.03.2015 it was specifically mentioned that the respondent has not committed any encroachment. Furthermore, the case titled as *Dilbagh Singh vs GNCTD of Delhi* was ultimately dismissed vide order dated 12.10.2017. Hence the respondent was prevented from completing its work as per the sanctioned plans, providing common services in the said affected area, raising boundary wall etc. due to circumstances absolutely beyond its power and control i.e., force majeure. In the meanwhile, the respondent kept on completing the remaining project which was not affected by the stay order failing which further delay would have occurred. However, obviously the respondent could not have applied for occupation certificate for the project without providing the mandatory common services like storm water, sewerage line, irrigation and external fire hydrants, electrical works and roads.

- k. That as soon as the restraint order dated 23.04.2014 was set aside, the respondent completed the construction of the project, and an application was made to the concerned authorities for the grant of occupation certificate vide application dated 19.03.2018. It is submitted that there is no default on the part of the respondent to complete the project and as per clause 6.2(d) of the apartment buyer's agreement, the respondent was entitled to an extension of

time from the expiry of the completion date if the construction was delayed on account of a force majeure event. It is pertinent to mention herein that the occupation certificate has been granted by the concerned authorities on 09.08.2019. The respondent has already offered the possession of the unit to the complainants vide offer of possession dated 09.08.2019.

1. That the complainants are real estate investors who have made the booking with the respondent in order to gain profit in a short span of time. However, on account of slump in the real estate market, their calculations went wrong and now they have filed the present baseless, false and frivolous complaint before this hon'ble authority in order to somehow harass, pressurize and blackmail the respondent and illegally extract benefits from it.
7. Copies of all the documents have been filed and placed on record. The authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents.

**E. Jurisdiction of the authority**

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

**E.I. Territorial jurisdiction**

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

District, therefore this authority has complete 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 on the objections raised by the respondent**

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

11. The respondent/promoter has raised the contention that the construction of the project was badly affected on account of a restraint order dated 23.04.2014 passed by the SDM Kapashera on the basis of a report submitted by halka patwari, Kapashera that the respondent was making encroachment on the gram sabha land and the order passed by the SDM Kapashera is covered under the ambit of the definition of 'Force Majeure Event' as stipulated in the mutually agreed terms of the apartment buyer's agreement. Furthermore, the case titled as *Dilbagh Singh vs GNCTD of Delhi* was ultimately dismissed vide order dated 12.10.2017. Hence the respondent was prevented from completing its work as per the sanctioned plans, providing common services in the said affected area, raising boundary wall etc. due to circumstances absolutely beyond its power and control i.e., force majeure. In the meanwhile, the respondent kept on completing the remaining project which was not affected by the stay order failing which further delay



would have occurred. However, obviously the respondent could not have applied for occupation certificate for the project without providing the mandatory common services like storm water, sewerage line, irrigation and external fire hydrants, electrical works, and roads. The due date of possession was in the year 2017 and any situation or circumstances which could have a reason for not carrying out the construction activities in the project prior to this date due are allowing to be taken into consideration. While considering whether the said situations or circumstances were in fact beyond the control of the respondent and hence the respondent is entitled to force majeure clause 6.2(d), the authority takes into consideration all the pleas taken by the respondent to plead the force majeure condition happened before 13.11.2017. Accordingly, authority holds that the respondent is entitled to invoke clause 6.2(d) for delay with force majeure condition.

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

**G.I. Direct the respondent(s) to pay interest @ 10.75% per annum on the amount already paid by the complainants i.e., Rs.1,35,32,155/- from the due date of possession May 2017 till handing over the possession of the flat.**

12. In the present complaint, the complainants intend to continue with the project and is seeking delayed possession charges @ 10.75% interest on the amount paid. Clause 6.2 of the flat buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below: -

*"The Developer endeavor to complete the construction of the Apartment within 42 months from the date of this Agreement (Completion Date). The company will send possession notice and offer possession of the Apartment to the Applicant as and when the*

*company receives the occupation certificate from the competent authorities (ies).*

*Notwithstanding the same, the developer shall be entitled to an extension of time from the expiry of the Completion date if the Completion is delayed on account of any of the following reasons-*

*...(d) Force majeure event or any other reason beyond the control of or unforeseen by the Developer, which may prevent or delay the developer in performing its obligations as specified in this Agreement."*

13. 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 application, and the complainants 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 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 flat buyer 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.

14. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment within a period of 42 months from date of agreement. The period of 42 months expired on 10.11.2017.

Since in the present matter the BBA incorporates qualified reason for grace period/extended period in the possession clause for obtaining occupation certificate subject to force majeure. The force majeure reasons provided by the promoter, are taken into consideration by the authority for the reasons quoted above. Accordingly, the authority allows grace period of 6 months to the promoter at this stage.

15. **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

16. 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.
17. 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., 24.09.2021 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.

18. 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;"*

19. Therefore, interest on the delay payments from the complainants 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 complainants in case of delayed possession charges.
20. On consideration of the documents available on record and submissions made regarding contravention of 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 6.2 of the agreement executed between the parties on 13.11.2013, the possession of the subject apartment was to be delivered within 42 months from the date of agreement. The period of 42 months expired on 13.05.2017. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is 13.11.2017. The respondent

has offered the possession of the subject apartment on 09.08.2019. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 13.11.2017 till the actual handing over of the possession of the unit, at prescribed rate i.e., 9.30 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

**H. Directions of the authority**

21. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoters as per the functions 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 from the due date of possession i.e., 13.11.2017 till the handing over of the possession. The arrears of such interest accrued from 13.11.2017 till the actual handing over of the possession shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottee before 10<sup>th</sup> of the subsequent month as per rule 16(2) of the rules.
- ii. The respondent is directed to hand over the physical possession of the unit within 1 months from this order.

- iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
  - iv. 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 promoters shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
  - v. The respondent shall not charge anything from the complainants which is not the part of the agreement. However, holding charges shall not be charged by the promoter at any point of time even after being part of agreement as per law settled by Hon'ble supreme court in civil appeal no. 3864-3889/2020.
22. Complaint stands disposed of.
23. File be consigned to registry.

  
**(Samir Kumar)**

Member

  
**(Vijay Kumar Goyal)**

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 24.09.2021

Judgement uploaded on 21.12.2021.