

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

Complaint no. : 1605 of 2021
Date of filing complaint: 05.04.2021
First date of hearing : 23.04.2021
Date of decision : 28.09.2021

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| 1. Mr. Jaideep Vasudeva R/O: - A-18, Marble Arch Apartments, 5th Floor, 9 Prithviraj Road, New Delhi-110011 | Complainant |
| Versus | |
| 1. M/s Shree Vardhman Buildprop Pvt. Ltd. 2. Mr. Rishi Gupta 3. Mr. Sandeep Jain 4. Mr. Sachin Jain 5. Mr. Tushar Goel All having their Regd. Office at: - 301, 3rd Floor, Inder Prakash Building, 21- Barakhamba Road, New Delhi-110001 | Respondents |

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| CORAM: | |
| Shri Samir Kumar | Member |
| Shri Vijay Kumar Goyal | Member |
| APPEARANCE: | |
| Sh. Yasovardhan Upadhyay (Advocate) | Complainant |
| Sh. Shalabh Singhal, Sh. Yogender S. Bhaskar, Sh. Varun Chugh and Sh. Rakshit (Advocates) | Respondents |

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 unit details, 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 |
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| 1. | Project name and location | "Shree Vardhman Mantra", Sector-67, Gurugram. |
| 2. | Project area | 11.262 acres |
| 3. | Nature of the project | Group housing colony under the policy of low cost/affordable housing |
| 4. | a) DTCP license no. | 69 of 2010 dated 11.09,2010 |
| | b) Validity status | Valid till 30.04.2022 |
| | c) Name of the licensee | DSS Infrastructure Pvt. Ltd. |
| 5. | a) RERA registered/not registered | Not Registered |



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| 6. | Unit no. | 1206, 12 th floor, tower- H [annexure- A on page no. 16 of the reply] |
| 7. | Unit measuring | 520 sq. ft. [annexure- A on page no. 16 of the reply] |
| 8. | Date of execution of flat buyer's agreement | 04.10.2011 [annexure- A on page no. 13 of the reply] |
| 9. | Payment plan | Time linked payment plan [annexure- A on page no. 33 of the reply] |
| 10. | Total consideration | Rs. 19,80,175/- [annexure- F on page no. 45 of reply] |
| 11. | Total amount paid by the complainant | Rs. 17,16,862/- [annexure- F on page no. 47 of reply] |
| 12. | Possession clause | 9.(a) The construction of the flat is likely to be completed within a period of thirty six(36) months from the date of start of foundation of the particular tower in which the flat is located with a grace period of six(6) months , on receipt of sanction of the 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 of the construction |



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| | | subject to force majeure restrains or restrictions from any courts/ authorities, non-availability of building materials or dispute with contractors/workforce etc. and circumstances beyond the control of company and subject to timely payments by the flat buyer(s). (emphasis supplied) |
| 13. | Date of start of foundation | Cannot be ascertained |
| 14. | Due date of delivery of possession | 04.10.2014 (Calculated from the date of execution of agreement and the grace period is not allowed) |
| 15. | Zero period | 2 years, 10 months, 29 days i.e., from 01.11.2017 to 30.09.2020 (vide order of DTCP, Haryana Chandigarh dated 03.03.2021) |
| 16. | Occupation Certificate | 23.07.2021 [annexure-F in the compilation of documents filed by the respondents on 28.09.2021] |
| 17. | Offer of Possession | Not offered |
| 18. | Delay in handing over the possession (after deducting zero period) till the date of decision i.e., 28.09.2021 | 4 years and 24 days [3 years and 28 days (from 04.10.2014 to 31.10.2017) plus 11 months, 28 days (from 01.10.2020 to 28.09.2021)] Note: Separate calculation of |



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| | | period of delay is done due to the declaration of 'zero period' w.e.f 01.11.2017 to 30.09.2020 as per the order dated 03.03.2021 of DTCP, Haryana Chandigarh. |
| 19. | Grace period utilization | Grace period is not allowed in the present complaint. |

B. Facts of the complaint

3. That the respondent no. 1, Shree Vardhman Build Prop Pvt. Ltd., is a company incorporated under the Companies Act, 1956 and is engaged in the business of developing, constructing and selling of residential as well as commercial properties in Delhi NCR. That Sandeep Jain, Sachin Jain, Rishi Gupta and Tushar Goel are the Directors of the respondent no. 1 and as such are responsible for managing and controlling the affairs of the respondent company and as such are also liable for its actions.
4. That the present complaint is filed in respect of the ongoing project "Vardhman Mantra" (Hereinafter referred as the said 'project'), which is being launched by Shree Vardhman Build Prop Pvt Ltd. which is 'Un-registered' with the Haryana Real Estate Regulatory Authority. That the said project is situated in village Badshahpur, sector - 67, Gurgaon, Haryana and hence, is well within the jurisdiction of this authority.
5. That, the complainant in January 2011 was looking for a good option in property for taking care of its certain residential

requirements, and for the same purpose the complainant was in contact with various real estate agents, both in Delhi and NCR region. In this process, through some friends, the complainant came to know about the said project being launched by the respondent no. 1 to develop a residential group housing society in Gurgaon. The project was launched somewhere in early 2011 and it was proposed to comprise of more than 1400 apartments/flats in a total of 16 towers consisting of 2 BHK apartments, to be constructed on a land ad-measuring 11.262 acres.

6. That, in order to get more information regarding the project, the complainant visited the registered office of the respondents in February of 2011, where the complainant met the respondent no. 2, respondent no. 3, and respondent no. 4. The respondent no. 2, respondent no. 3, and respondent no. 4. on behalf of the respondent no. 1 represented and assured the complainant that the said project is the best option to acquire in the real estate market. They also showed the brochure of the said project to the complainant, wherein they made tall claims about the superior quality of the said project, and how it was a one stop shop for all residential requirements and the various world class facilities and amenities that would be available in the society.
7. That the respondents further represented and assured the complainant that, the construction of the project is in full

swing and will be completed well in time and accordingly the possession of the flat, if booked, will be handed over to the complainant within a period of 36 months. It was further assured that in case of any delay in possession, any interest borne by the complainant during the period of delay will be refunded by the respondents. Upon further enquiry by the complainant regarding the payment schedule for purchasing of a flat in the society, the respondents informed, that initially complainant will be required to pay only the booking amount and the balance amount can be paid by the complainant in instalment by choosing a construction link plan, wherein the complainant will be required to pay the balance amount in instalments in accordance with the progress in the construction of the flat.

8. That, relying upon the presentations and assurance given by the respondents regarding the quality of construction, the facilities that will be provided in the society and most importantly the assurance of handing over of the possession of the flat in a time bound manner and also the fact of having a payment plan linked with the progress in the construction of the flat, the complainant agreed to book a 2 BHK flat, having 800 sq. ft. as the super area and 520 sq. ft. as the tentative carpet area in the said project for a total consideration of Rs.17,50,000/-. The said cost included the cost of the flat along with the cost of an open car parking space for one vehicle, service tax, IDC, and EDC.

9. That the complainant on 19.02.2011 made an initial payment of Rs.1,64,120 to the respondents through cheque no. 289074 drawn on HDFC bank, New Delhi towards booking of a 2 BHK Flat in the said project. At this time the respondents assured the complainant that soon the flat buyer's agreement will be executed between both the parties and again assured that the possession of the complainant's flat will be surely handed over in next 36 months.
10. That the complainant on 01.03.2011 received a letter of allotment from the respondents intimating that flat no. 1206 on 12th floor in tower H (Hereinafter referred as the said 'unit') in the said project has been allocated to the complainant. After receiving the allotment letter the complainant patiently waited for the respondents to prepare the flat buyer's agreement, however whenever the complainant requested the respondents for execution of the agreement, they kept making lame excuses and kept pushing the execution of the agreement to a later date. Finally, after waiting for a period of almost 6 months from the date of making the payment of the booking amount, the complainant again approached the respondents to inquire about the status of the construction of the project as well as the status of flat buyer's agreement, to which the respondents again assured the complainant that the construction will get completed in due time and also that they will soon call upon the complainant to sign and receive a copy of flat buyer's

agreement.

11. That it is pertinent to mention here, despite not having executed the flat buyer's agreement, the respondents from time to time raised the demand for making of the payment of the instalments for the said unit and the complainant made all the payments as and when demanded by the respondents in respect of the unit booked by the complainant. It is worth highlighting at this stage that since the payment plan was a construction link plan, the complainant was acting under an assumption that the construction of the said unit is in continuous progress and therefore the demand for payment of instalments are being made by the respondents. All this while the complainant was making regular payment towards the demands of the respondents without ever getting any agreement signed.
12. That it was only on 04.10.2011 i.e., almost after 8 months of having booked the said unit in the project and after having already paid Rs. 7,20,000/- towards the basic price of the said unit. That the complainant was finally able to execute sign and received a copy of the flat buyer's agreement (Hereinafter referred as the 'FBA').
13. That it is pertinent to mention at this juncture that, firstly in order to avoid penal interest at the rate of 24% p.a. in case of default and secondly considering the fact that an amount of Rs.7,20,000 already having been paid by the complainant even before signing of the FBA, the complainant having been



caught in a catch 22 situation, continued paying all the instalments as and when demanded by the respondents in respect of the said unit booked as per the schedule of the time linked construction plan opted by the complainant and consequently ended up paying a sum total of Rs. 17,16,862/- for the said unit booked along with all the taxes and other charges. The last instalment was paid on 15.10.2015.

14. That the complainant waited patiently for almost over 42 months (i.e. 36 months + 6 months grace period) since the execution of the FBA, while continuously paying every instalment on time in a religious fashion. The call for last instalment was raised in the month of September in the year 2015. That even after expiry of 42 months (i.e. till 03/04/2015) from the date of execution of the FBA, the possession of the said unit was still not handed over to the complainant, resultantly the complainant grew fearful of the worse. Accordingly, the complainant raised concern over the speed of progress of the project with the respondents, but the complainant could not get any concrete response from the respondents and was again given mere assurances that the delivery and possession of the said unit will be made within next 12 to 14 months and that delay was absolutely unintended and was rather attributable to certain administrative and financial issues with the respondents, which are now resolved.
15. That after waiting patiently for over 14 months after the end



of the stipulated time period for completion of construction (i.e. 03.04.2015) against the fresh assurance of handing over of possession within next 12 to 14 months, the complainant fearing that he will lose all the money invested with the respondents and that the complainant will not be given the possession of the said unit booked, the complainant was forced to write a stern letter to the respondents on 29.08.2016, demanding the immediate possession of the said unit completed in all respects as per the specifications mentioned in the FBA. That the respondents replied to the above letter orally, informing the complainant that the construction is in full swing and that the respondents would be able to deliver the said unit concerned tentatively by April or August 2017. Again, believing the false assurances of the respondents the complainant patiently waited for the possession of the said unit.

16. That again after not hearing any update from the respondents for a considerable period of time, the complainant contacted the respondents around July 2017 apprising them of the fact that considerable period has passed since the end of stipulated period (i.e. 03.04.2015) and still no possession has been handed over and accordingly the complainant again demanded the immediate possession of the said unit. Unfortunately, the pleas of the complainant fell on deaf ears and this time the complainant did not even get any response from the respondents. Consequently, the

complainant served the respondents with a legal notice dated 15.03.2019, but to the utter dismay and disappointment of the complainant he never got a response from the respondents.

17. That by so misrepresenting the complainant and by not confirming /delivering the said unit within the stipulated time period and by not refunding the money received from the complainant, the respondents has already made available to it large amount of funds which otherwise it would have to borrow from the banks and other financial institutions on interest. That is why the respondents moved cleverly and fraudulently and thus started taking money from the project by misrepresenting and promising the delivery within the time they knew to be false. It is further worth highlighting at this stage that the respondent's builder license also got expired in 2015, despite this the respondents never bothered to inform this fact to the complainant and in turn gave false assurance of delivering the said unit in August 2017. This fact alone speaks volumes about the dishonest and fraudulent intent of the respondents. Moreover, due to expiration of the license the respondent no.1 cannot obtain occupancy certificate for the project.
18. That in case of ***'Magic Eye Developers Pvt. Ltd V. Rajneesh Arora Appeal No.208 Of 2019'*** Hon'ble Haryana Real Estate Appellate Tribunal has held that:

"38. ...in case of delay in the offer/delivery of possession as per the terms and conditions of the

agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored. 39. In the instant case also the Ld Authority has awarded the interest for delayed possession at the prescribed rate i.e. 10.75% for every month as provided in Rule 15 of the rules from the due date of possession till the actual date of handing over the possession."

19. That the clause 9(a) of the FBA, explicitly states that the respondent no.1 is liable to deliver possession of the concerned flat in period of 36 Months with a grace period of 6 months starting from the date of approval of building plans or date of agreement (whichever is later), thus in present case from the date of agreement i.e. 04.10.2011. That is to say possession of the said unit was to be delivered utmost by 03.04.2015 (inclusive of grace period). However, to utter shock and dismay of the complainant the said unit has not even been offered by the respondents to this date. That the said project is delayed by over 6 years which caused great financial hardships to the complaint herein.
20. That as per section 19 (6) the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred to as the 'Act') the complainant has fulfilled his responsibility in regard to making the necessary payments in the manner and within the time specified in the said agreement. Therefore, the complainant has not breached any of his liabilities.
21. That the delay in possession is not only the contravention of the terms and conditions of the FBA, signed between the



parties but it also attracts the remedy provided in section 18(1) of The Real Estate (Regulation and Development) Act' 2016 which explicitly vests the right to choose appropriate remedy as per one's own understanding, by which either the complainant can opt for refund of the amount paid till date at the prescribed rate of interest or can opt for possession along with penalty for the delay at the prescribed rate of interest. That since the complainant has already paid instalment as per the payment plan in pursuit of his accommodation hereby elect to take legal and physical possession of his flat with delay penalty interest at the prevailing rate of this authority.

22. That in the case of '**Neelkamal Realtors Suburban Pvt. Ltd. and anr Vs. Union of India and ors.**' the Hon'ble Bombay High Court in Writ Petition No. 2711 Of 2017

"255. Section 18 provides for refund of amount and compensation on account of - (a) failure of the promoter to complete or his inability to give possession of an apartment, plot or building either in accordance with the terms of the agreement for sale or as the case may be, duly completed by the date specified therein, or (b) due to discontinuance of his business as a developer on account of revocation or suspension of the registration under the Act or for any other reason. The plain language of Section 18(1)(a) shows that if the promoter fails to complete or is unable to give possession of an apartment, plot or building in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein, he would be liable to return the amount received by him together with interest including compensation. In case the allottee does not intend to withdraw from the project, the promoter is liable to pay interest for every

month's delay till handing over of possession. The purpose of Section 18(1)(a) is to ameliorate the buyers in real estate sector and balance the rights of all the stake holders. The provisions of RERA seek to protect the allottees and simplify the remedying of wrongs committed by a promoter. The intention of RERA is to bring the complaints of allottees before one Authority and simplify the process. If the interpretation suggested by the petitioners, namely, that the provision is applicable only after coming into force RERA is accepted, this would result in allottees having to approach different fora for interest prior to RERA and subsequent to RERA. In fact Section 71 of RERA provides that the cases pending before the Consumer Court can be transferred to Authority. Reference to pending cases is obviously a reference to claims for interest and / or compensation pending when the RERA came into force".

23. That the respondents have not kept any of its promises or assurances they made at the time of booking be it verbal or on paper. That they continued collecting monies from the complainant as per the payment plan issued by them even after having full knowledge that they would not be able to deliver the project in the scheduled manner. That the acts of the respondents are nothing short of a classic case of fraud.
24. That the subject matter of the instant complaint falls within the jurisdiction of this authority.

C. Relief sought by the complainant.

25. The complainant has sought following relief(s):
 - (i) Direct the respondents to handover over the peaceful and legal possession of the said unit in the said project within a period of 30 days after obtaining the Occupation/Completion Certificate (as

per local laws) along with execution and registration of sale/conveyance deed as per applicable laws.

- (ii) Direct the respondents to pay the complainant delay penalty interest for every month of delay at the prevailing rate of interest from 03.04.2015 till actual date of issuance of offer of possession or date of receiving of OC/CC (as applicable), whichever is later.

D. Reply by the respondents.

26. That the present complaint filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 is not maintainable under the said provision. The respondents have not violated any of the provisions of the Act.
27. That the complaint has not been filed as per the format prescribed under The Haryana Real Estate (Regulation and Development) Rules, 2017 and is liable to be dismissed on this ground alone.
28. That as per rule 28(1) (a) of the Rules of 2017, a complaint under section 31 of Act can be filed for any alleged violation or contravention of the provisions of the Act after such violation and/or contravention has been established after an enquiry made by the authority under section 35 of the Act. In the present case no violation and/or contravention has been

established by the authority under section 35 of the Act and as such the complaint is liable to be dismissed.

29. That the complainant has sought reliefs under section 18 of the Act but the said section is not applicable in the facts of the present case and as such the complaint deserves to be dismissed. It is submitted that the operation of section 18 is not retrospective in nature and the same cannot be applied to the transactions that were entered prior to the Act came into force. The parties while entering into the said transactions could not have possibly taken into account the provisions of the Act and as such cannot be burdened with the obligations created therein. In the present case also, the flat buyer agreement was executed much prior to the date when the Act came into force and as such section 18 of the Act cannot be made applicable to the present case. Any other interpretation of the Act will not only be against the settled principles of law as to retrospective operation of laws but will also lead to an anomalous situation and would render the very purpose of the Act nugatory. The complaint as such cannot be adjudicated under the provisions of the Act.
30. That the expression "agreement to sell" occurring in section 18(1)(a) of the Act covers within its folds only those agreements to sell that have been executed after the Act

came into force and the FBA executed in the present case is not covered under the said expression, the same having been executed prior to the date the Act came into force.

31. That the FBA executed in the present case did not provide any definite date or time frame for handing over of possession of the apartment to the complainant and on this ground alone the refund and/or compensation and/or interest cannot be sought under the Act. Even the clause 9 (a) of the FBA merely provided a tentative/estimated period for completion of construction of the flat and filing of application for occupancy certificate with the concerned authority. After completion of construction, the respondents were to make an application for grant of occupation certificate (OC) and after obtaining the OC, the possession of the flat was to be handed over.
32. That the reliefs sought by the complainant are in direct conflict with the terms and conditions of the FBA and on this ground alone the complaint deserve to be dismissed. The complainant cannot be allowed to seek any relief which is in conflict with the said terms and conditions of the FBA. The complainant signed the agreement only after having read and understood the terms and conditions mentioned therein and without any duress, pressure or protest and as such the

terms thereof are fully binding upon the complainant. The said agreement was executed much prior to the Act coming in to force and the same has not been declared and cannot possibly be declared as void or not binding between the parties.

33. That it is submitted that delivery of possession by a specified date was not essence of the FBA and the complainant was aware that the delay in completion of construction beyond the tentative time given in the contract was possible. Even the FBA contain provisions for grant of compensation in the event of delay. As such it is submitted without prejudice that the alleged delay on part of respondents in delivery of possession, even if assumed to have occurred, cannot entitle the complainant to ignore the agreed contractual terms and to seek interest and/or compensation on any other basis.
34. That it is submitted without prejudice that the alleged delay in delivery of possession, even if assumed to have occurred, cannot entitle the complaint to rescind the FBA under the contractual terms or in law. The delivery of possession by a specified date was not essence of the FBA and the complainant was aware that the delay in completion of construction beyond the tentative time given in the contract was possible. Even the FBA contain provisions for grant of



compensation in the event of delay. As such the time given in clause 9(a) of FBA was not essence of the contract and the breach thereof cannot entitle the complainant to seek rescind the contract.

35. That it is submitted that issue of grant of interest/compensation for the loss occasioned due to breaches committed by one party of the contract is squarely governed by the provisions of section 73 and 74 of the Indian Contract Act, 1872 and no compensation can be granted de hors the said sections on any ground whatsoever. A combined reading of the said sections makes it amply clear that if the compensation is provided in the contract itself, then the party complaining the breach is entitled to recover from the defaulting party only a reasonable compensation not exceeding the compensation prescribed in the contract and that too upon proving the actual loss and injury due to such breach/default. On this ground the compensation, if at all to be granted to the complainant, cannot exceed the compensation provided in the contract itself.
36. That the residential group housing project in question has been developed by the respondents on a piece of land measuring 11.262 acres situated at village Badshahpur, sector-67, Gurugram, Haryana under a license no. 69 of 2010



dated 11.09.2010 granted by the Town and Country Planning Department, Haryana under the provisions of the Haryana Development and Regularization of Urban Areas Act, 1975 under the policy of Govt. of Haryana for low cost/affordable housing project. The license has been granted to M/s DSS Infrastructure Limited and the respondent company has developed/constructed the project under an agreement with the licensee company.

37. That the construction of the phase of the project wherein the apartment of the complainant is situated has already been completed and awaiting the grant of occupancy certificate from the Director General, Town and Country Planning (DTCP), Haryana. The occupancy certificate has already been applied by the licensee vide application dated 27.07.2017 to the Director General, Town and Country Planning, Haryana for grant of occupancy certificate. However, till date no occupancy certificate has been granted by the concerned authority despite follow up. The grant of such occupancy certificate is a condition precedent for occupation of the flats and habitation of the project.
38. That in fact the office of the Director General, Town and Country Planning Haryana is unnecessarily withholding grant of occupation certificate and other requisite approvals



for the project, despite having approved and obtained concurrence of the Government of Haryana. It is submitted that in terms of order dated 01.11.2017 passed by the Hon'ble Supreme Court of India in Civil Appeal no.8977/2014 titled as *Jai Narayan @ Jai Bhagwan & Ors. vs. State of Haryana & Ors.*, the CBI is conducting an inquiry in release of land from acquisition in sector 58 to 63 and sector 65 to 67 in Gurugram, Haryana. Due to pendency of the said inquiry, the office of the Director General, Town and Country Planning, Haryana has withheld, albeit illegally, grant of approvals and sanctions in the projects falling within the said sectors.

39. That aggrieved by the situation created by the illegal and unreasonable stand of the Director General, Town and Country Planning, Haryana, a CWP No. 22750 of 2019 titled as *DSS Infrastructure Private Limited vs. Government of Haryana and others* had been filed by the licensee before the Hon'ble High Court of Punjab and Haryana for reliefs of direction to the office of DTCP to grant requisite approvals to the project in question. The said CWP has been disposed off vide order dated 06.03.2020 and in view of the statements made by DTCP that they were ready to grant OC and other approvals. However, despite the same, the grant of approvals

is still pending despite continuous efforts being made by the licensees/respondents.

40. That in the meantime, as the flats were ready, various allottees of the project in question approached the respondents with the request for handover of temporary possession of their respective flats to enable them to carry out the fit out/furnishing work in their flats. Considering the difficulties being faced by the allottees due to non-grant of occupancy certificate by the department in question, the respondents acceded to their request and has handed over possession of their respective flats to them for the limited purpose of fit out. If the complainant so desire, he may also take possession of his apartment like other allottees as aforesaid.
41. That it is submitted that in the FBA no definite period for handing over possession of the apartment was given or agreed to. In the FBA only, a tentative period for completion of the construction of the flat in question and for submission of application for grant of occupancy certificate was given. Thus, the period indicated in clause 9(a) of FBA was the period within which the respondents were to complete the construction and was to apply for the grant of occupancy certificate to the concerned authority. It is clearly recorded in

the said clause itself that the date of submitting an application for grant of occupancy certificate shall be treated as the date of completion of flat for the purpose of the said clause. Since, the possession could be handed over to the complainant after grant of OC by DTCP Haryana and the time likely to be taken by DTCP in grant of OC was unknown to the parties, hence the period/date for handing over possession of the apartment was not agreed and not given in the FBA. The respondents completed the construction of the flat in question and applied for grant of occupancy certificate on 27.07.2017 and as such the said date is to be taken as the date for completion of construction of the flat in question. It is submitted without prejudice; that in view of the said fact the respondents cannot otherwise be held liable to pay any interest or compensation to the complainant for the period beyond 27.07.2017.

42. That as per the FBA, the tentative period given for completion of construction was to be counted from the date of receipt of sanction of the building plans/revised plans and all other approvals and commencement of construction on receipt of such approvals. The last approval being Consent to Establish was granted by the Haryana State Pollution Control

Board on 01.05.2015 and as such the period mentioned in clause 9(a) shall start counting from 02.05.2015 only.

43. That it is submitted, without prejudice to the fact that the respondents completed the construction of the flat within the time indicated in the FBA, that even as per clause 9(a), the obligation of the respondents to complete the construction within the time tentative time frame mentioned in said clause was subject to timely payments of all the instalments by the complainant and other allottees of the project. As various allottees and even the complainant failed to make payments of the instalments as per the agreed payment plan, the complainant cannot be allowed to seek compensation or interest on the ground that the respondents failed to complete the construction within time given in the said clause. The obligation of the respondents to complete the construction within the time frame mentioned in FBA was subject to and dependent upon time payment of the instalments by the complainant and other allottees. As such no allottee who has defaulted in making payment of the instalments can seek refund, interest or compensation under section 18 of the Act or under any other law.

44. That without prejudice to the submissions made hereinabove, that the tentative period as indicated in FBA for



completion of construction was not only subject to force majeure conditions, but also other conditions beyond the control of respondents. The non-grant of OC and other approvals including renewal of license by the DTCP Haryana is beyond the control of the respondents. The DTCP Haryana accorded it's in principal approval and obtained the concurrence from the Government of Haryana on 02.02.2018 yet it did not grant the pending approvals including the renewal of license and OC due to pendency of a CBI investigation ordered by Hon'ble Supreme Court of India. The said approvals have not been granted so far despite the fact that the state counsel assured to the Hon'ble High Court of Punjab and Haryana to grant approvals/OC as aforesaid. The unprecedented situation created by the Covid-19 pandemic presented yet another force majeure event that brought to halt all activities related to the project including construction of remaining phase, processing of approval files etc. The Ministry of Home Affairs, GOI vide notification dated March 24, 2020 bearing no. 40-3/2020-DM-I(A) recognised that India was threatened with the spread of Covid-19 epidemic and ordered a complete lockdown in the entire country for an initial period of 21 (twenty) days which started from March 25, 2020. By virtue of various subsequent



notifications, the Ministry of Home Affairs, GOI further extended the lockdown from time to time and till date the lockdown has not been completely lifted. Various state governments, including the Government of Haryana have also enforced several strict measures to prevent the spread of Covid-19 pandemic including imposing curfew, lockdown, stopping all commercial, construction activity. Pursuant to issuance of advisory by the GOI *vide* office memorandum dated May 13, 2020, regarding extension of registrations of real estate projects under the provisions of the Real Estate (Regulation and Development) Act, 2016 due to '*force majeure*', this authority has also extended the registration and completion date by six months for all real estate projects whose registration or completion date expired and, or, was supposed to expire on or after March 25, 2020. In past few years construction activities have also been hit by repeated bans by the courts/authorities to curb air pollution in NCR region. In recent past the Environmental Pollution (Prevention and Control) Authority for NCR ("**EPCA**") *vide* its notification bearing no. EPCA-R/2019/L-49 dated 25.10.2019 banned construction activity in NCR during night hours (6pm to 6am) from 26.10.2019 to 30.10.2019 which was later on converted into complete 24 hours ban from



01.11.2019 to 05.11.2019 by EPCA vide its notification no. EPCA-R/2019/L-53 dated 01.11.2019. The Hon'ble Supreme Court of India vide its order dated 04.11.2019 passed in Writ petition no. 13029/1985 titled as "**M.C. Mehta....vs.....Union of India**" completely banned all construction activities in NCR which restriction was partly modified vide order dated 09.12.2019 and was completely lifted by the Hon'ble Supreme Court vide its order dated 14.02.2020. These bans forced the migrant labourers to return to their native states/villages creating an acute shortage of labourers in NCR region. Due to the said shortage the construction activity could not resume at full throttle even after lifting of ban by the Hon'ble Supreme Court. Even before the normalcy in construction activity could resume, the world was hit by the 'Covid-19' pandemic. As such, it is submitted without prejudice to the submissions made hereinabove that in the event this authority comes to the conclusion that the respondents are liable for interest/compensation for the period beyond 27.07.2017, the period consumed in the aforesaid force majeure events or the situations beyond control of respondents has to be excluded.

45. Copies of all the relevant do have been filed and placed on the 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

46. The respondents have raised an objection regarding jurisdiction of authority to entertain the present complaint. 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, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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;

The provision of assured returns is part of the builder buyer's agreement, as per clause 15 of the BBA dated..... Accordingly, the promoter is responsible for all obligations/responsibilities and functions including payment of assured returns as provided in Builder Buyer's Agreement.

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 on the objections raised by the respondents.

F. I Objection regarding maintainability of the complaint.

47. The respondents contended that the present complaint filed under section 31 of the Act is not maintainable as the respondents have not violated any provision of the Act.
48. The authority, in the succeeding paras of the order, has observed that the respondents are in contravention of the section 11(4)(a) read with proviso to section 18(1) of the Act by not handing over possession by the due date as per the agreement. Therefore, the complaint is maintainable.



F. II Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act.

49. Another contention of the respondents are that in the present case the flat buyer's agreement was executed much prior to the date when the Act came into force and as such section 18 of the Act cannot be made applicable to the present case.
50. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)** which provides as under:

"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter....."

122. *We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."*
51. Also, in appeal no. 173 of 2019 titled as ***Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya***, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-
- "34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."*
52. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the



condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

F.III Objection regarding format of the compliant

53. The respondents have further raised contention that the present complaint has not been filed as per the format prescribed under the rules and is liable to be dismissed on this ground alone. There is a prescribed proforma for filing complaint before the authority under section 31 of the Act in form CRA. There are 9 different headings in this form (i) particulars of the complainant have been provided in the complaint (ii) particulars of the respondents- have been provided in the complaint (iii)is regarding jurisdiction of the authority- that has been also mentioned in para 14 of the complaint (iv) facts of the case have been given at page no. 5 to 8 (v)relief sought that has also been given at page 10 of complaint (vi)no interim order has been prayed for (vii) declaration regarding complaint not pending with any other court- has been mentioned in para 15 at page 8 of complaint (viii) particulars of the fees already given on the file (ix)list of enclosures that have already been available on the file. Signatures and verification part is also complete. Although complaint should have been strictly filed in proforma CRA but in this complaint all the necessary details as required



under CRA have been furnished along with necessary enclosures. Reply has also been filed. At this stage, asking complainant to file complaint in form CRA strictly will serve no purpose and it will not vitiate the proceedings of the authority or can be said to be disturbing/violating any of the established principle of natural justice, rather getting into technicalities will delay justice in the matter. Therefore, the said plea of the respondents w.r.t rejection of complaint on this ground is also rejected and the authority has decided to proceed with this complaint as such.

F.IV Objection of the respondents w.r.t reasons for the delay in handing over of possession.

54. The respondents submitted that the period consumed in the force majeure events or the situations beyond control of the respondents have to be excluded while computing delay in handing over possession.

a. The respondents submitted that non-grant of OC and other approvals including renewal of license by the DTCP Haryana is beyond the control of the respondents and the said approvals have not been granted so far despite the fact that the State Counsel assured to the hon'ble High Court of Punjab and Haryana to grant approvals/OC.

55. As far as the aforesaid reason is concerned, the authority observed that the Hon'ble High Court of Punjab and Haryana vide its order dated 06.03.2020 in CWP-22750-2019 (O&M) has held as under:



"Learned State counsel, at the outset, submits that it has been decided to grant occupation certificate to the petitioner subject to fulfillment of other conditions/ formalities and rectification of any deficiency which are pointed out by the authority. He further submits that in case the petitioner makes a representation regarding exclusion of renewal fee and interest on EDC/IDC for the period from 25.07.2017 till date, same shall be considered by respondent no.2 as per law and fresh order shall be passed. Learned State counsel further assures that as soon as the representation is received, necessary steps shall be taken and the entire exercise shall be completed at the earliest, in any case, not later than two months.

In view of the above, no further direction is necessary. Present petition is hereby disposed of."

56. In view of aforesaid order of Hon'ble High Court of Punjab and Haryana, an office order of the DTCP, Haryana, Chandigarh dated 03.03.2021 has been issued. The para 4 of the said order states that "Government has accorded approval to consider the period i.e., 01.11.2017 to 30.09.2020 as 'Zero Period' where the approvals were withheld by the department within the said period in view of the legal opinion and also gave relaxations as mentioned in para 3". Accordingly, the authority is of the considered view that this period should be excluded while calculating the delay on the part of the respondents to deliver the subject flat.

b. Unprecedented situation created by Covid-19 pandemic and lockdown for approx. 6 months starting from 25.03.2020.

57. The Hon'ble Delhi High Court in case titled as M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and IAs 3696-3697/2020 dated 29.05.2020 has observed that-

"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself."

58. In the present complaint also, the respondents were liable to complete the construction of the project in question and handover the possession of the said unit by 04.10.2014 and the respondents are claiming benefit of lockdown which came into effect on 23.03.2020. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself and for the said reason the said time period is not excluded while calculating the delay in handing over possession.

c. Order dated 25.10.2019, 01.11.2019 passed by Environmental Pollution (Prevention and Control) Authority (EPCA) banning construction activities in NCR region. Thereafter, order dated 04.11.2019 of hon'ble Supreme Court of India in Writ petition no. 13028/1985 completely banning construction activities in NCR region.

59. The respondents in the reply has admitted that the construction of the phase of the project wherein the apartment of the complainant is situated has already been completed and the respondents have applied for grant of the occupancy certificate vide application dated 27.07.2017 to DTCP, Haryana. The respondents are trying to mislead the authority by making false or self-contradictory statement. On bare perusal of the reply filed by respondents, it becomes very clear that the construction of the said project was completed on 27.07.2017 as on this date the respondents have applied for grant of OC. Now, the respondents are claiming benefit out of lockdown period, orders dated 25.10.2019 and 01.11.2019 passed by EPCA and order dated 04.11.2019 passed by hon'ble Supreme Court of India which are subsequent to the date when the respondents have already completed the construction. Therefore, this time period is not excluded while calculating the delay in handing over possession.

G. Findings on the relief sought by the complainant.

G.I Delay possession charges.



Relief sought by the complainant: Direct the respondents to pay the complainant delay penalty interest for every month of delay at the prevailing rate of interest from 03.04.2015 till actual date of issuance of offer of possession or date of receiving of OC/CC (as applicable), whichever is later.

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

"Section 18: - Return of amount and compensation

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

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

61. Clause 9(a) of the flat buyer's agreement provides for handing over possession and the same is reproduced below:

9.(a) The Construction of the Flat is likely to be completed within a period of thirty six(36) months from the date of start of foundation of the particular tower in which the Flat is located with a grace period of six(6) months, on receipt of sanction of the 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 of the construction subject to force majeure restrains or restrictions from any courts/ authorities, non-

availability of building materials or dispute with contractors/workforce etc. and circumstances beyond the control of company and subject to timely payments by the flat buyer(s). No claims by way of damages/compensation shall lie against the Company in case of delay in handing over the possession on account of any of such reasons and the period of construction shall be deemed to be correspondingly extended. The date of submitting application to the concerned authorities for the 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.

62. A flat buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builders/promoters and buyers/allottees are protected candidly. Flat buyer's agreement lays down the terms that govern the sale of different kinds of properties like residential, commercials etc. between the buyer and builder. It is in the interest of both the parties to have a well-drafted 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 buyers/allottees in case of delay in possession of the unit.

63. The authority has gone through the possession clause of the agreement and observed that the possession has been subjected to all kinds of terms and conditions of this agreement. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single situation may make the possession clause irrelevant for the purpose of allottee and the committed date for handing over possession loses its meaning. If the said possession clause is read in entirety, the time period of handing over possession is only a tentative period for completion of the construction of the flat in question and the promoter is aiming to extend this time period indefinitely on one eventuality or the other. Moreover, the said clause is an inclusive clause wherein the numerous approvals and terms and conditions have been mentioned for commencement of construction and the said approvals are sole liability of the promoter for which allottees cannot be allowed to suffer. The promoter must have mentioned that completion of which approval forms a part of the last statutory approval, of which the due date of possession is subjected to. It is quite clear that the possession clause is drafted in such a manner that it creates confusion in the



mind of a person of normal prudence who reads it. The authority is of the view that it is a wrong trend followed by the promoter from long ago and it is their this unethical behaviour and dominant position that needs to be struck down. It is settled proposition of law that one cannot get the advantage of his own fault. The incorporation of such clause in the flat buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottees of their 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.

64. The respondents promoters has proposed to handover the possession of the subject apartment within a period of 36 months from the date of start of foundation of the particular tower in which the flat is located with a grace period of 6 months, on receipt of sanction of the building plans/revised 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 of the construction subject to force majeure restrains or restrictions from any

courts/ authorities, non-availability of building materials or dispute with contractors/workforce etc. and circumstances beyond the control of company and subject to timely payments by the flat buyer(s).

65. The respondents are claiming that the due date shall be computed from 01.05.2015 i.e., date of grant of Consent to Establish being last approval for commencement of construction. The authority observed that in the present case, the respondents have not kept the reasonable balance between his own rights and the rights of the complainants-allottees. The respondents have acted in a pre-determined, preordained, highly discriminatory and arbitrary manner. The unit in question was booked by the complainant on 19.02.2011 and the flat buyer's agreement was executed between the respondents and the complainant on 04.10.2011. It is interesting to note as to how the respondents had collected hard earned money from the complainant without obtaining the necessary approval (Consent to Establish) required for commencing the construction. The respondents have obtained Consent to Establish from the concerned authority on 01.05.2015. The respondents are in win-win situation as on one hand, the respondents have not obtained necessary approvals for



starting construction and the scheduled time of delivery of possession as per the possession clause which is completely dependent upon the start of foundation and on the other hand, a major part of the total consideration is collected prior to the start of the foundation. Further, the said possession clause can be said to be invariably one sided, unreasonable, and arbitrary. Moreover, the authority vide order dated 03.09.2021 has directed the respondents/ promoters to submit the date of start of foundation tower-wise on an affidavit. The respondents promoters filed an affidavit on 23.09.2021 in compliance of the said order but failed to provide the date of start of foundation of particular tower in which the subject flat is located. This shows the mischievous and the irresponsible behaviour of the respondents promoters. The respondents promoters have failed to comply with the orders of this authority. Therefore, the authority is of the considered view that as 'date of start of foundation of the subject tower in which the flat is located' cannot be ascertained in the present matter so, the due date shall be computed from date of execution of the flat buyer's agreement.

66. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the said flat within 36 months



from the date of start of foundation of the particular tower in which the flat is located and has sought further extension of a period of 6 months, on receipt of sanction of the building plans/revised 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 of the construction subject to force majeure restrains or restrictions from any courts/ authorities, non-availability of building materials or dispute with contractors/workforce etc. and circumstances beyond the control of company and subject to timely payments by the flat buyer(s). It may be stated that asking for the 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 allottees. Now, turning to the facts of the present case, the respondents promoters have not completed the construction of the subject project in the promised time. The OC has been obtained from the competent authority on 23.07.2021 i.e., after a delay of more than 6 years. It is a well settled law that



one cannot take benefit of his own wrong. In the light of the above-mentioned reasons, the grace period of 6 months is not allowed in the present case.

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

68. 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.

69. 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., 28.09.2021 is 7.30% p.a. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30% p.a.

70. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, 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;"

71. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 9.30% p.a. by the respondents/promoters which is the same



as is being granted to the complainant in case of delay possession charges.

72. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the authority is satisfied that the respondents are in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. It is pertinent to mention over here that the respondents promoters have filed a list of additional documents on 10.07.2021, wherein an office order of the DTCP, Haryana, Chandigarh has been annexed. The para 4 of the said order has mentioned that "Government has accorded approval to consider the period i.e., 01.11.2017 to 30.09.2020 as 'Zero Period' where the approvals were withheld by the department within the said period in view of the legal opinion and also gave relaxations as mentioned in para 3". Accordingly, the authority is of the considered view that this period should be excluded while calculating the delay on the part of the respondents to deliver the subject flat. It is a matter of fact that the date of start of foundation of the subject tower, where the flat in question is situated cannot be ascertained in this matter as the same is not provided by the respondents promoters even after the



orders of this authority on 03.09.2021. Hence, the due date of possession is calculated from the date of execution of the flat buyer's agreement. By virtue of flat buyer's agreement executed between the parties on 04.10.2011, the possession of the booked unit was to be delivered within 36 months from the date of start of foundation of the particular tower in which the subject flat is located, which is not provided by the respondents promoters even after the orders of this authority on 03.09.2021. Hence, the due date of possession is calculated from the date of date of execution of the flat buyer's agreement which comes out to be 04.10.2014 and a grace period of 6 months which is not allowed in the present case for the reasons quoted above.

73. 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. These 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., 04.10.2014 till the date of handing over of the possession of the unit or upto two months from the valid offer of possession if possession is not taken by the complainant, whichever is earlier (excluding 'Zero period' w.e.f. 01.11.2017 till 30.09.2020) as per the provisions of section 19(10) of the Act.

74. Accordingly, 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 respondents is established. As such complainant is entitled to delayed possession charges at the prescribed rate of interest i.e., 9.30% p.a. for every month of delay on the amount paid by the complainant to the respondents from the due date of possession i.e., 04.10.2014 till the date of handing over of the possession of the unit or upto two months from the valid offer of possession if possession is not taken by the complainant, whichever is earlier (excluding 'Zero period' w.e.f. 01.11.2017 till 30.09.2020) as per the provisions of section 18(1) of the Act read with rule 15 of the rules and section 19 (10) of the Act.

H. Directions of the authority

75. 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 respondents are 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., 04.10.2014 till the date of handing over of the possession of the unit or upto two months from the valid offer of possession if possession is not taken by the complainant, whichever is earlier (excluding 'Zero period' w.e.f. 01.11.2017 till 30.09.2020) as per section 19 (10) of the Act.
- II. The arrears of such interest accrued from 04.10.2014 till date of this order 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 payable by the promoter to the allottee before 10th day of each subsequent month as per rule 16(2) of the rules.
- III. The respondents are directed to handover the physical possession of the subject unit after obtaining OC from the competent authority.
- IV. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- V. 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 respondents/promoters which is the same rate of interest which the promoter 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.

VI. The respondents shall not charge anything from the complainant which is not the part of the agreement.

76. Complaint stands disposed of.

77. File be consigned to registry.


(Samir Kumar)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 28.09.2021

Judgement uploaded on 22.12.2021.