

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

Date of decision : 26.11.2021

PROJECT NAME		ARAYA, SECTOR 62	APPEARANCE
1.	CR/3125/2020	Pioneer Urban Land and Infrastructure Limited VS. Sh. Soneel Raj	Shri Venket Rao Shri Raj Shukla (Proxy counsel)
2.	CR/ 43/2021	Sh. Soneel Raj VS. Pioneer Urban Land and Infrastructure Limited	Shri Raj Shukla (Proxy counsel) Shri Venket Rao

**CORAM:**Dr. KK Khandelwal  
Shri Vijay Kumar Goyal**Chairman  
Member****ORDER**

1. Since common question of facts and law are involved in the above-mentioned cases, so the same are being disposed off by this single order.
2. A unit measuring 4279 sq. ft. in the project "Araya 62" at village Ghata, sector 62, Gurugram bearing no. 2101, 21<sup>st</sup> floor in tower 'A' was booked by Sh. Soneel Raj promoter/complainant with the complainant/ builder for a sum of Rs. 4,73,09,159.19/- on 11.04.2012. It led to execution of flat buyer agreement between the parties on 24.07.2012. The due date for completion of the project & offer of possession was

agreed upon as 04.09.2015. It is the case of complainant/ builder that the allottee was under an obligation to make timely payments of the due instalments. But due to non-payment of amount due from time to time, the complainant/ builder suffered a huge loss and had to arrange funds from other sources at higher rate of interest. A number of reminders for payment were issued to the allottee but without any positive results. Though the allottee paid a sum of Rs. 4,22,38,627.76/- but his failure to pay the remaining amount resulted in delay in completion of the project. Though it completed the construction by arranging funds at its own level and even received occupation certificate but the allottee did not despite sending a letter dated 28.08.2018. Lastly, it was pleaded that due to non-payment of amount due by the different allottees including the promoter/ complainant, dispute with the contractor, various orders passed by the different authorities, stopping construction activities and demonetization, the construction of the project could not be completed within time. So, the complainant/ builder filed a complaint with a direction to the promoter/ complainant to make payment of the amount due and take possession of the allotted unit.

**A. Unit and project related details**

3. Before proceeding further, a reference to the unit and project related details is must and which are as under: -

S. No	Heads	Information
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1.	Name of the project	"Araya 62" at village ghata, sector 62
2.	Nature of the project	Group Housing Colony
3.	Project area	24.606 acres
4.	DTCP license no.	268 of 2007 issued on 03.12.2007 valid up to 02.12.2024
5.	Name of Licensee	Pioneer Urban Land and Infrastructure Ltd. and 1 other
6.	RERA Registered/ not registered	Not registered
7.	Unit no.	Apartment No. 2101, 21 <sup>st</sup> floor, tower A [annexure C-3 on page no. 27 of complaint]
8.	Unit measuring	4279 sq. ft. [annexure C-3 on page no. 27 of complaint]
9.	Date of execution of Flat buyer's agreement	24.07.2012 [annexure C-3 on page no. 25 of complaint]
10.	Commencement of construction	04.06.2012 [as per project details]
11.	Total consideration	Rs. 4,73,09,159.19/- [as per SOA on annexure C-4 on page no. 79 of complaint]
12.	Total amount paid by the allottee	Rs. 4,34,39,352.36/- [as per SOA on annexure C-4 on page no. 79 of complaint]
13.	Due date of delivery of possession as per clause 11 i.e., Grace period: That the developer shall apply for the occupation certificate within	04.09.2015 [calculated from the date of commencement of construction] Note: Grace period of 180 days for applying and



	<p>39 months from the date of excavation subject to such limitations including but not limited to obtaining the requisite Govt. approvals, sanctions etc. from various departments or appropriate authorities as be provided in this agreement and the timely compliance of the provisions of the agreement by the intending allottee. That the developer shall be entitled to a grace period of 180 days, after expiry of 39 months, for applying and obtaining occupation certificate in respect of said complex.</p> <p>11.3 Offer of possession: That the developer upon obtaining occupation certificate from the competent authority, shall notify in writing to the intending allottee to take over, occupy and use the said apartment in terms of this agreement within 30 days from the date of issue of such notice and the developer shall hand over the said apartment to the intending allottee for its occupation.</p>	<p>obtaining occupation certificate is disallowed as OC was applied later than 39 months.</p>
14.	Offer of possession	28.08.2018 [annexure A-5 on page no. 95 of reply]
15.	Occupation certificate	23.07.2018 [annexure A-4 on page no. 93 of reply] [affidavit on behalf of promoter stating that tower

		A in which the allottee has his unit, is mentioned as tower F in occupational certificate]
16.	Delay in handing over possession till the date of offer of possession i.e., 28.08.2018 plus 2 months i.e., 28.10.2018	3 years 1 month 24 days

### B. Facts of the complaint

4. That the allottee booked a unit in the project known as "ARAYA" situated at Sector-62, Gurugram developed by the promoter company. The promoter promised to offer possession of the unit by 30.12.2016. However, failed to offer possession with the promised date and even till date.
5. That the promoter is a company incorporated under the Companies Act, 1956 is having its registered office at A-22, Green Park, Aurobindo Marg, New Delhi - 110001. The company is engaged in the business of group housing construction, commercial construction and other real estate activities.
6. That in the year 2010-11, the promoter had launched the luxurious residential project by the name of "Araya", Situated at sector 62, Gurugram.
7. That the allottee was looking for a residential apartment in the Delhi NCR and during this time, the representatives of the promoter approached them and informed about the project and boast about the project and made various false and incorrect representations about the construction and delivery of possession. They assured that the building plans have been

- approved by the DTCP and they have obtained all the requisite sanctions/approvals from all competent authorities for starting constructions the site and the construction shall start soon and the possession will be delivered by 30.12.2016.
8. That the allottee booked an apartment in the said project on 11.04.2012 and paid the booking amount of Rs. 40,00,000/- vide cheque no. 049212 dated 25.03.2012. Subsequently, the promoter company issued a letter acknowledging the receipt of booking request and also issued a receipt for Rs. 40,00,000/- on 11.04.2012.
  9. That the promoter issued an allotment letter dated 13.04.2012 to the allottee whereby unit no. A-2101 was allotted to the allottee. That vide allotment letter the promoter company also demanded the 2nd instalment of Rs. 49,11,682/- (to be paid within 60 days from allotment) by 10.06.2012.
  10. That as per the payment plan the allottee paid the 2nd instalment of Rs. 49,11,682/- vide cheque no. 001763 dated 08.06.2012 drawn on ICICI bank. The promoter acknowledged the receipt of the said payment and issued a receipt dated 11.06.2012.
  11. That on 24.07.2012, the promoter executed a flat buyers' agreement with the allottee and paid a sum of Rs. 89,11,682/- to the promoter for the unit.
  12. That the promoter drew an unfair and arbitrary agreement which was totally one sided, illegal, unfair, unjust and arbitrary as per the clause 6.3(ii) & 6.3(iii), the promoter company had the right to terminate and charge interest @ 18% p.a. for the

delayed payment of instalments whereas as per the clause 11.5(i), in the case of delay in completion of the project, the allottee was entitled to get a compensation @ Rs. 10/- per sq. ft. per month of delay after expiry of grace period.

13. That on 30.09.2013, the promoter demanded the 3rd instalment on the completion of the basement roof slab as per the payment scheduled and the allottee paid the said instalment vide demand draft no. 354373 dated 30.09.2013 and marked the starting of the excavation.
14. That on 28.08.2018, the promoter sent intimation for offer of possession letter to the allottee and the promoter had offered and adjusted a meagre compensation of Rs. 11,96,717/-.
15. That the allottee made a total payment of Rs. 4,22,42,635/- against the total consideration of Rs. 4,41,69,244/- as per the buyer's agreement.

**C. Relief sought by the promoter/builder:**

16. The promoter has sought the following relief:
  - (i) Direct the allottee to pay all the outstanding dues as per the agreement.
  - (ii) Direct the allottee to clear the holding charges as applicable under the agreement.

**D. Reply by the allottee.**

17. Though the respondent/allottee did not file any reply to the complaint filed by the builder but he filed a separate complaint giving the version detailed as under:

The complainant/builder launched a project by the name of Araya62 situated at sector 62, Gurugram in the year 2010 & 2011. Since the allottee was looking for an apartment in the NCR, so believing the representations of the builder, he booked an apartment detailed above on 11.04.2012 by paying a sum of Rs. 40 lakhs. It led to issuance of letter of allotment on 13.04.2012. Subsequently a flat buyer agreement was executed between the parties on 24.07.2012, incorporating arbitrary and illegal terms & conditions. It is further pleaded that from time to time the allottee paid a sum of Rs. 4,22,42,635/- against the total consideration of Rs. 4,41,69,244/-. Though possession of the allotted unit was to be offered in September 2015 but the same was offered on 28.08.2018 resulting in delay of about 3 years and adjusting a meagre sum of Rs. 11,96,717/- as compensation. So, the allottee sought a direction to the builder to give possession of the allotted unit after paying delayed possession charges.

**E. Relief sought by allottee**

18. The allottee has sought the following relief:

- (i) Direct the promoter to deliver immediate possession of the flat along with all the promised facilities.
- (ii) Direct the promoter to pay interest on amount paid by the allottee from the promised date of delivery till actual handing of possession.

**F. Reply by the promoter**

19. That M/s Pioneer Urban Land and Infrastructure Limited is a Private Limited Company, registered and incorporated under



the Companies Act, 1956 and having its registered office at A-22, Green Park, 3rd Floor, Aurobindo Marg, New Delhi - 110016 and Corporate Office at Pioneer Square, 2nd Floor, Sector-62, Golf Course Extension Road, Gurugram, Haryana-122098 and is engaged in the business of the development and construction of the real estate projects.

20. That the present complaints are not maintainable before this hon'ble authority by virtue of the provisions of the Act of 2016. That the present complaint is not maintainable as the allottee is claiming compensation which is decided by the adjudicating officer under section 71 of the Act of 2016 read with rule 29 of the Haryana Real Estate (Regulation and Development) Rules, 2017.
21. That the allottee has no locus standi or cause of action to file the present complaint. The allottee had booked a unit in the project "Araya" a group housing project at sector 62, Gurugram vide its application dated 25.03.2012 for the allotment of the unit bearing Flat No. - A-2101 at tower A for the tentative super area of 4,279 sq. ft. with usage rights for 3 car parking spaces and accordingly paid an amount of Rs. 40,00,000/- as booking amount after which an allotment letter dated 13.04.2012 was issued by the promoter.
22. That after allotment letter dated 13.04.2012, an apartment buyer's agreement was executed between the parties on 24.07.2012 subject to other terms and conditions including the 'payment schedule' thereof for the abovementioned allotted unit for the basic sale price of Rs. 4,17,20,250/-

- excluding other charges. The allottee had availed the construction linked plan and the schedule of payment has been categorically defined under the apartment buyer's agreement.
23. That time is the essence of the respective agreement which is specifically mentioned vide clause 49 of the agreement.
  24. That the allottees to concede their obligations under the agreement for making timely payment of the due instalments raised by the promoter from time to time tends to hamper the timelines for the completion of the project causing delay in construction owing to which the promoter had to invest substantial amount of money to expediate the construction and development of the project.
  25. That the promoter suffered huge losses due to failure in payment by the allottee towards the demand raised by the promoter, from time to time by having to arrange for funds including borrowing loans at higher interest and on the other hand the promoter had also paid delayed penalty for delay to handover the possession of the unit. The promoter had issued a credit note to the allottee on 28.08.2018 of an amount of Rs. 11,96,717/- as penalty against delay to handover the possession as per the respective agreement.
  26. That on account of no initiative being taken by the allottee to assist the promoter to hand over the possession of the allotted unit by complying with the mandated formalities and despite of failure of the allottee to comply by the timely payments, the promoter sent various reminder letters to the allottee to clear the outstanding dues and take possession.

27. That out of the total demands of Rs. 4,73,09,159.19/- the allottee has paid an amount of Rs. 4,22,38,627.76/- as basic sale price and Rs. 4006/- as interest on delayed payment. The intentional delay by the allottee has caused accumulation of the interest as well as holding charges as per the apartment buyer's agreement, which the allottee is liable to pay.
28. That the promoter had applied for the grant of occupancy certificate with the Department of Town and Country Planning, Haryana and accordingly occupancy certificate was granted to the promoter vide memo no. ZP-338-C-VOL-1/SD(BS)/2018/21712 dated 23.07.2018.
29. That the promoter on receiving the occupation certificate of tower A vide letter dated 23.07.2018 and as per the agreed payment schedule, raised a demand on the allottee for Rs. 21,34,361/- payable by 13.08.2018. However, the allottee ignored the same.
30. That the allottee was offered possession of the above-mentioned unit through letter dated 28.08.2018 for intimation for possession and to complete the necessary formalities/documentation necessary for handover of the said unit to the allottee.
31. That the promoter raised a demand on intimation of possession as per the payment schedule of an amount of Rs. 47,39,567/- which also included the previous dues amounting to Rs. 21,34,361/- and other charges such as maintenance charges which stands outstanding.

32. That despite the best efforts by the promoter to hand over timely possession of the said apartment booked by the allottee herein, the promoter could not do so due to reasons and circumstances beyond the control of promoter.

- That the delay of the project is due to customers who didn't make timely payments which lead to the squeezing of the working capital of the promoter. The allottee had also defaulted in making timely payments.
- There was a big dispute with the contractors resulting into foreclosure and termination of their contracts and promoter company had to suffer huge losses and delayed timelines in this project.
- The promoter as per the High Court order which imposed a ban on ground water on the construction, faced extreme water shortage which was completely unforeseen by any of the real estate companies in the NCR region.
- The promoter duly paid the external development charges as per the license awarded in its favour. The State Government was supposed to lay the whole infrastructure in that licensed area for providing the basic amenities such as drinking water, sewerage, drainage including storm water line, roads etc. However, even on repeated requests the department paid no heed and ignored to provide such basic amenities in these upcoming new sectors of Gurgaon.

- The Jat reservation agitation was a series of protests in February 2016 by Jat people of North India, especially those in the state of Haryana, which paralyzed the State including city of Gurgaon wherein the project of promoter is situated for 8-10 days. The protesters sought inclusion of their caste in the other backward class (OBC) category, which would make them eligible for affirmative action benefits. Besides Haryana, the protests also spread to the neighbouring states, such as Uttar Pradesh, Rajasthan, and also the National Capital Region. The instant stoppage of work on the fear of riots and remobilization of work force took considerable time of 3-4 months.
- The promoter stopped its development activities in compliance with the National Green Tribunal (NGT) order to stop construction in April 2015 & November 2016 due to emission of dust. The NGT orders simply ordered to stop the construction activities as the pollution levels were unprecedented took time of a month or so.
- On 8th November 2016, the Government of India demonetized the currency notes of Rs. 500 and Rs. 1000 with immediate effect resulting into an unprecedented chaos which cannot be wished away by putting blame on promoter. Suddenly there was crunch of funds for the material and labour. The labour preferred to return to their native villages. The whole scenario slowly moved

towards normalcy, but development was delayed by at least 4-5 months.

**G. Jurisdiction of the authority**

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

**G. I Territorial jurisdiction**

34. 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.

**G. II Subject matter jurisdiction**

35. Section 19(6) & (7) of the Act of 2016 provides the rights and duties of allottees and the same runs as under: -

**Section 19(6)**

*Every allottee, who has entered into an agreement or sale to take an apartment, plot or building as the case may be under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any.*

**Section 19(7)**

*The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub section (6).*

36. Similarly, section 11(4)(a) and section 34 are reproduced as hereunder:

**Section 11(4)(a)**

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

**Section 34-Functions of the Authority:**

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

37. 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 allottee and promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the allottee at a later stage.

**H. Findings on the objections raised by the promoter.**

**H.I objection regarding force majeure conditions.**

38. The promoter has raised the objection of force majeure conditions such as water shortage, Jat reservation, NGT orders, demonetization of currency notes etc. all these situations are not relevant as to the matter. Further, it is pertinent to mention here that the due date of possession is 04.09.2015 and the

force majeure circumstances does not apply to due date of possession as most of them took place after the due date.

**H II. Objection regarding untimely payments done by the allottee.**

39. The promoter has contended that the allottee has made defaults in making payments as a result thereof, the promoter had to issue various reminder letters. Clause 49 of the buyer's agreement wherein it is stated that timely payment of instalment is the essence of the transaction, and the relevant clause is reproduced below:

*"49. Time is of essence"*

*'That the intending allottee shall make the payments on time, as agreed upon in the payments schedules, and the timely payment is of the prime essence of this agreement.'*

40. At the outset, it is relevant to comment on the said clause of the agreement i.e., "49. TIME IS OF ESSENCE" wherein the payments to be made by the allottee had been subjected to all kinds of terms and conditions. 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 making timely payment as per the payment plan may result in termination of the said agreement and forfeiture of the earnest money. Moreover, the authority has observed that despite allottee being in default in making timely payments, the promoter has not exercised his discretion to terminate the buyer's agreement.

**I. Findings on the relief sought by the allottee.**



**Relief sought by the allottee:** The allottee had sought following relief(s):

- i. Direct the promoter to deliver immediate possession of the flat along with all the promised facilities.
- ii. Direct the promoter to pay interest on amount paid by the allottee from the promised date of delivery till actual handing of possession.

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

***"Section 18: - Return of amount and compensation***

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

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

41. Clause 11 of the flat buyer's agreement provides the time period of handing over possession and the same is reproduced below:

*"Clause 11- 11.2 Grace period: That the developer shall apply for the occupation certificate within 39 months from the date of excavation subject to such limitations including but not limited to obtaining the requisite Govt. approvals, sanctions etc. from various departments or appropriate authorities as be provided in this agreement and the timely compliance of the provisions of the agreement by the*

*intending allottee. That the developer shall be entitled to a grace period of 180 days, after expiry of 39 months, for applying and obtaining occupation certificate in respect of said complex.*

*11.3 Offer of possession: That the developer upon obtaining occupation certificate from the competent authority, shall notify in writing to the intending allottee to take over, occupy and use the said apartment in terms of this agreement within 30 days from the date of issue of such notice and the developer shall hand over the said apartment to the intending allottee for its occupation.*

42. At the inception it is relevant to comment on the pre-set possession clause of the flat buyer's agreement wherein the possession has been subjected to in numerous terms and conditions, and in numerous terms and conditions. The drafting of this clause is not only vague but so heavily loaded in favour of the promoter that even a single default by the allottee in fulfilling obligations, formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

43. **Admissibility of grace period:** The promoters had proposed to hand over the possession of the apartment within a period of 39 months from the date commencement of construction of the particular tower in which the flat is located and has sought further extension of a period of 180 days, after expiry of 39 months for applying and obtaining occupation certificate. 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 allottee. Now, turning to the facts of the present case the promoter has obtained the occupation certificate from the competent authority after 39 months, so the grace period is disallowed. 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.
44. **Admissibility of delay possession charges at prescribed rate of interest:** The allottee 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.

45. 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.
46. 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., 26.11.2021 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.
47. 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;"*

48. Therefore, interest on the delay payments from the allottee shall be charged at the prescribed rate i.e., 9.30% p.a. by the promoter/promoter which is the same as is being granted to the allottee in case of delay possession charges.
49. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the authority is satisfied that the promoter 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. It is a matter of fact that the date of commencement of the subject tower, where the flat in question is situated is 04.06.2012. By virtue of flat buyer's agreement executed between the parties on 24.07.2012, the possession of the booked unit was to be delivered within 39 months of the commencement of construction of the particular tower/ block in which the flat is located which comes out to be 04.09.2015 excluding a grace period of 180 days which is not allowed in the present case for the reasons quoted above.
50. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 23.07.2018. The promoter offered the possession

of the unit in question to the allottee only on 28.08.2018, so it can be said that the allottee came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the allottee should be given 2 months' time from the date of offer of possession. This 2 months of reasonable time is being given to the allottee keeping in mind that even after intimation of possession, practically they have 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., 04.09.2015 till the expiry of 2 months from the date of offer of possession 28.08.2018 which comes out to be 28.10.2018.

51. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the promoter is established. As such the allottee is entitled to delay possession at prescribed rate of interest i.e., 9.30% p.a. w.e.f. 04.09.2015 till 28.10.2018 as per provisions of section 18(1) of the Act read with Rule 15 of the rules and 19(10) of the Act of 2016.

**J. Directions of the authority**

52. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure

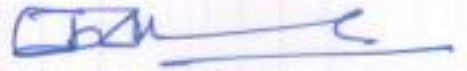
compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The allottee shall make the requisite payments and take the possession of the subject apartment as per the provisions of section 19(6), (7) and (10) of the Act, within a period of 30 days.
- ii. The promoter 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., 04.09.2015 till the date of offer of possession i.e., 28.08.2018 + 2 months i.e., 28.10.2018 to the allottee as per section 19 (10).
- iii. The arrears of such Interest accrued from 04.09.2015 till 28.10.2018 shall be paid by the promoter to the allottee within a period of 90 days from date of this order as per Rule 16(2) of the rules.
- iv. The allottee 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 promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- vi. The promoter shall not charge anything from the allottee which is not part of the builder buyer 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. 3864-3899/2020.

53. Complaint stands disposed of.  
54. File be consigned to registry.

  
(Vijay Kumar Goyal)  
Member

  
(Dr. K.K. Khandelwal)  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 26.11.2021

Judgement uploaded on 22.12.2021.