


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

Complaint no. : 994 of 2021
First date of hearing: 30.03.2021
Date of decision : 10.11.2021

1. Manish Thukral

R/O: Flat No. 203/204 Samartha Siddhi
Building Lokhandwala Andheri West Mumbai **Complainant**
400053


Versus

1. Orris Infrastructure Pvt Ltd
Regd. Office: RZ D-5, Mahavir Enclave
New Delhi-110085

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Ms. Rheu Luthra

Ms. Charu Rustogi

Advocate for the complainant

Advocate for the respondent

ORDER

1. The present complaint dated 23.02.2021 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 thereunder 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	Description
1.	Name of the project	Orris Aster Court Premier.
2.	Nature of the project	Group Housing Colony
3.	Project area	25.018 acres
4.	DTCP license no. and validity status	39 of 2009 Issued on 24.07.2009 valid up to 23.07.2024
5.	Name of the license holder	BE office automation products Pvt. Ltd. and 6 others.
6.	Rera registration number	19 of 2018 Registered for 5.90625 acres
7.	Registration certificate	Dated 13.10.2018
8.	Date of commencement of construction	15.10.2013 [as per project details]
9.	Date of sanction of building plans	10.04.2012 [as per project details]
10.	Old unit no.	Apartment no. 702, 7 th floor, tower-3N [annexure C-5 on page no. 58 of complaint]
11.	Old unit area admeasuring	183.01 sq. ft. of super area [annexure C-5 on page no. 58 of complaint]

12.	New unit no.	Apartment no. 1001, 10 th floor, tower-3P [annexure C-8 on page no. 106 of complaint]
13.	New unit area admeasuring	183.01 sq.ft. of super area [annexure C-8 on page no. 106 of complaint]
14.	Date of execution of first flat buyer's agreement	27.01.2012 [annexure C-5 on page no. 56 of complaint]
15.	Date of execution of second flat buyer's agreement	09.05.2015 [annexure C-8 on page no. 106 of complaint]
16.	Total consideration (Basic sale price)	Rs. 94,80,010/- [as per payment plan on page no. 81 of complaint]
17.	Total amount payable by the complainant	Rs.89,44,958/- [Page no. 16 of complaint]
18.	Due date of delivery of possession as per clause 10.1 of second agreement i.e., Apartment within the period of 36 months plus grace period of 6 months from the date of execution of the apartment buyer agreement by the company or sanction of building plans or commencement of construction.	09.11.2018 [Due date is calculated from the date of execution of second agreement] [as the date of execution of second agreement is later than the date of construction]
19.	Occupation certificate date	12.04.2021 of the earlier unit allotted which has no concern with the present unit. [annexure R/1 on page no. 19 of reply]

		[For the reallocated unit OC has not been obtained]
20.	Offer of possession	Not offered
21.	Delay in handing over the possession till the date of decision i.e., 10.11.2021	3 years 1 day [calculated from the second agreement]
20.	Status of project	Ongoing

B. Facts of the complaint

The complainant has submitted as under: -

- That in the year 2011, the respondent developed a newly launched project namely 'orris aster court premier' located at sector 85, Gurgaon, Haryana. Based upon the assurances and representations given by the respondent that they have an international repute of developing and selling residential and commercial complexes in different parts of the country and they deliver high quality structures with superior functionality within the agreed time frame and that all necessary approvals and sanctions have already been taken, the complainant booked and registered for a residential apartment in the said project.
- That as per the schedule of payment attached with the application form, the complainant was required to make a payment of Rs.5,12,875/- at the time of registration, out of which the complainant had made a payment of Rs.5,00,000/- on 08.12.2011 vide a cheque bearing no. 313623 dated

25.11.2011. That vide a letter dated 20.12.2011, the respondent informed the complainant that he has been allotted a 3 BHK + S apartment in the said project bearing unit no. 702, second floor, tower no. 3N, ad measuring a super area of 1970 sq. ft. That the total cost of the said unit is Rs. 97,02,464/-.

5. That as per the payment plan, the complainant further paid a sum of Rs. 9,57,778/- vide a cheque no. 359892 dated 09.01.2012, which was due within 30 days from the date of registration. That pursuant to the said payment, the complainant and the respondent entered into an apartment buyer agreement dated 27.01.2012. As per the terms of the agreement, possession of the said apartment was to be delivered within 36 months plus a grace period of 6 months, from the date of execution of the agreement i.e., January 2015.
6. That as per the demands of the respondent, the complainant kept depositing the due amount to the respondent and has till date deposited 90% to 95% of the total consideration amount i.e., Rs. 89,44,958/-.
7. That in the month of May 2014, the complainant visited the site of the project to see the progress of the said project. That not only the complainant was shocked to see that the said project was far from completion but also that a new tower has been constructed right in front of tower 3N, which was never in the layout plan circulated at the time of registration. It is to

be noted that on enquiry with the concerned person of respondent, present at the site, it was informed to the complainant that the said new tower has been constructed for the economically weaker section (EWS) and further admitted that this is a change in the layout plan which was never informed to the complainant or any other allottee.

8. That the complainant wrote an email dated 23.05.2014 to the respondent informing them that construction of a new tower which was never in the layout plan was without any prior intimation and has totally destroyed the advantage of the location of the tower 3N. That the complainant vide the said email dated 23.05.2014 further informed the respondent that had this been a part of the original layout plan, he would have never booked a unit in tower 3N and therefore requested the respondent to give the complainant an alternate flat in the layout which is better located and equivalent from the point of location which was enjoyed by tower 3N in the original layout plan. That through various communications on several dates and visits by the complainant to the office of respondent the complainant finally selected an alternate apartment.
9. That the respondent issued a fresh allotment as well as re-allotment letter dated 09.05.2015 to the complainant informing the complainant that the old apartment no. 3N-702 in aster court premier project issued to the complainant stands obsolete and the new apartment no. is 3P-1001 admeasuring a super area of 1970 square feet has been issued

to him. That on the basis of the letters dated 09.05.2015, a fresh apartment buyer agreement was executed between the complainant and the respondent with the same terms and conditions as mentioned in the previous agreement. The said fact was acknowledged and admitted by the respondent vide its letter dated 30.12.2015 wherein it was specifically and expressly stated that the reallocation letter of the new unit shall be governed with the terms and conditions in the buyer's apartment agreement executed for the erstwhile apartment, including the provision for handing over the possession of the unit as well as the delay in handing over the possession, if any. That the total consideration for the new apartment is Rs. 94,49,633/-.

10. That the complainant had already made a payment of Rs. 91,22,986/- towards the purchase of the erstwhile apartment. That the cost of the erstwhile apartment included preferred location charges (PLC) amounting to Rs. 1,78,028/- which was not a part of the fresh apartment. That the said amount of Rs.1,78,028/- was refunded back to the complainant and was acknowledged and admitted by the respondent in its payment receipt dated 09.05.2015. That in view of the above, the complainant has paid a total amount of Rs. 89,44,958/-.
11. That as per the assurances of the respondent, the said project was to be completed by January 2015 but on repeated enquiry by the complainant, the respondent admitted that out of the 12 towers, it would develop only 5 towers first and the rest of the



towers will be developed later. That on enquiry of the same with the concerned persons present at the construction site, the complainant was informed of completely contrary facts as per which the construction of the towers shall take some time and shall be handed over together. That aggrieved by any specific answer by the respondent, the complainant wrote various emails on several dates 03.12.2018, 14.12.2018, 31.12.2018, 19.03.2019 and 24.06.2019 to the respondent asking about the actual date of possession of the apartment. However, the respondent kept delaying the same by giving new dates of possession on one pretext or the other vide emails dated 12.07.2018, 30.11.2018, 02.01.2019, 27.03.2019, 25.06.2019 and 12.11.2020. That the respondent vide its email dated 27.03.2019 to the complainant categorically mentioned that the possession of the apartment shall be handed over to the complainant in the first quarter of 2020, however, the complainant has till date not even received an offer of possession less the physical possession of the apartment. That the complainant has already deposited 90%-95% of the total consideration of the apartment.

12. That the complainant has till date did not receive any offer of possession from the respondent despite having paid almost 95% of the total consideration amount. The complainant is constrained to approach this hon'ble authority under the Act seeking directions to the respondent to pay the complainant an interest at the rate of 18% per annum date of deposit till the

date of handing over the possession of the apartment as delayed possession charges.

C. Relief sought by the complainant:

13. The complainant has sought following relief(s):

- (i) Direct the respondent to pay an interest at the rate of 18% per annum from the date of deposit till the date of handing over the possession of the apartment as delayed possession charges.

15. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

The respondent has contested the complaint on the following grounds: -

14. That the complaint before the hon'ble authority, besides being misconceived and erroneous, is untenable in the eyes of law. The complainant has misdirected himself in filing the above complaint before this authority as the reliefs being claimed by the complainant cannot be said to even fall within the realm of jurisdiction of this authority.
15. That the complainant has been allotted unit in tower 3P which is adjoining to the above-mentioned towers for which either occupation certificate has been received or fire NOC has been applied. That internal finishing work is going on which shall be

completed very soon and thereafter, the answering respondent will apply for the requisite permissions and once the requisite documents/ certificates are received by the answering respondent, the possession shall be immediately handed over to the complainant as the respondent is not running away from its duty of handing over the possession of the unit in question.

16. That the rival contentions of the complainant regard must be had to the sequence of following events:

- The complainant had approached the respondent and had expressed his desire to purchase apartment from the respondent after thorough investigation and site surveys. The apartment buyer agreement between complainant and the respondent was willingly and consensually signed by the complainant, in the year 2012.
- That during that time, a writ petition was filed in the Hon'ble High Court of Punjab and Haryana titled as "Sunil Singh vs. Ministry of Environment & Forests Parayavaran" which was numbered as CWP-20032-2008 wherein the Hon'ble High Court pursuant to order dated 31 July 2012 imposed a blanket ban on the use of ground water in the region of Gurgaon and adjoining areas for the purposes of construction.

- That by the orders of High Court the entire construction work in the Gurgaon region came to stand still as the water is one of the essential part for construction.
 - That the respondent had to arrange and procure water from alternate sources which were far from the construction site.
 - That the slow-down in the construction work and difficulty in arranging the sufficient water required for the construction, no additional money has been demanded from the allottee and complainant, even though the cost of the project has increased because of the unavailability of water in the adjoining areas of Gurgaon.
17. That the land so aggregated for the above said project was contributed by a consortium of land holders, who contributed around 19 Acres. That one BE office automation products Pvt. Ltd. had also approached the respondent with 5.8 Acres of land which was contiguous with the land already aggregated by the respondent and BE requested the respondent to make the said 5.8 acres of land owned by BE a part of the land already aggregated by the respondent, i.e., 19 acres. Accordingly, a collaboration agreement dated 22.10.2007 was executed between the respondent and BE setting out the terms and conditions of the collaboration. The said collaboration agreement also provided for the area entitlement of both the parties in the area to be developed on the 25.018 acres and the

same was to be calculated on basis of saleable area attributable to 5.8 acres as contributed by BE. However, the land contributor i.e., BE indulged in frivolous litigation and put restraints in execution of the project and sale of apartments.

18. That the complainant cannot invoke the jurisdiction of the hon'ble authority in respect of the unit allotted to the complainant, especially when there is an arbitration clause provided in the apartment buyer's agreement, whereby all or any disputes arising out of or touching upon or in relation to the terms of the said agreement or its termination and respective rights and obligations, is to be settled through arbitration.
19. That the present complaint is wholly misconceived, groundless and unsustainable in law and the complainant cannot be allowed to take advantage of the adverse situation prevailing against the respondent. That the alleged delay is an unfortunate consequence of event which was not under the control of the respondent i.e., force majeure event. It is humbly submitted that the construction/development of the project in question is in full swing.
20. That the complainant has not approached this hon'ble authority with clean hands as he has concealed material and relevant facts and has pleaded wrong facts to this hon'ble authority with a view to deliberately mislead this hon'ble authority. The complainant has not mentioned in the complaint that major portion of the project has been

completed and possessions have been offered to various allottees after obtaining valid occupation certificates and fire NOC for various adjoining towers. Therefore, the complainant is guilty of suppressio veri and suggestion falsi before this hon'ble authority.

E. Jurisdiction of the authority

21. The respondent had raised objection regarding jurisdiction of authority to entertain the present complaint and the said objection stands rejected. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

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

E. II Subject matter jurisdiction

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

Section 11(4)(a)

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

Section 34-Functions of the Authority:

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

24. 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 respondent.

F.1 Objection regarding complainant is in breach of agreement for non-invocation of arbitration.

25. The respondent had raised an objection for not invoking arbitration proceedings as per the provisions of flat buyer's agreement which contains provisions regarding initiation of arbitration proceedings in case of breach of agreement. The following clause has been incorporated w.r.t arbitration in the buyer's agreement: [Clause taken from reply as the FBA is not on record]

"50. Arbitration

All or any disputes arising from or out of or touching upon or in relation to the terms or formation of this Agreement or its termination, including the interpretation and validity thereof and the respective rights and obligations of the Parties shall be settled amicably by mutual discussion, failing which the same shall be settled through arbitration. The arbitration proceedings shall be governed by the Arbitration & Conciliation Act, 1996, or any statutory amendments, modifications thereof for the time being in force. The arbitration proceedings shall be held at the corporate office of the company alone at Gurgaon stated hereinabove by a Sole Arbitrator who shall be nominated by the company. The allottee hereby confirms that he/she shall have no objection to this appointment. The courts at Gurgaon and the Punjab & Haryana High court at Chandigarh alone shall have the jurisdiction."

26. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in **National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506**, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be

bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause. Therefore, by applying same analogy the presence of arbitration clause could not be construed to take away the jurisdiction of the authority.

27. Further, in *Aftab Singh and ors. v. Emaar MGF Land Ltd and ors.*, Consumer case no. 701 of 2015 decided on 13.07.2017, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainant and builder could not circumscribe the jurisdiction of a consumer. The relevant paras are reproduced below:

"49. Support to the above view is also lent by Section 79 of the recently enacted Real Estate (Regulation and Development) Act, 2016 (for short "the Real Estate Act"). Section 79 of the said Act reads as follows: -

"79. Bar of jurisdiction - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."

It can thus, be seen that the said provision expressly ousts the jurisdiction of the Civil Court in respect of any matter which the Real Estate Regulatory Authority, established under Sub-section (1) of Section 20 or the Adjudicating Officer, appointed under Sub-section (1) of Section 71 or the Real Estate Appellate Tribunal established under Section 43 of the Real Estate Act, is empowered to determine. Hence, in view of the binding dictum of the Hon'ble Supreme Court in *A. Ayyaswamy (supra)*, the matters/disputes, which the Authorities under the Real Estate Act are empowered to decide,

are non-arbitrable, notwithstanding an Arbitration Agreement between the parties to such matters, which, to a large extent, are similar to the disputes falling for resolution under the Consumer Act.

56. Consequently, we unhesitatingly reject the arguments on behalf of the Builder and hold that an Arbitration Clause in the afore-stated kind of Agreements between the Complainant and the Builder cannot circumscribe the jurisdiction of a Consumer Fora, notwithstanding the amendments made to Section 8 of the Arbitration Act."

28. While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the builder buyer agreement, the hon'ble Supreme Court in case titled as ***M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017 decided on 10.12.2018*** has upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view. The relevant paras are of the judgement passed by the Supreme Court is reproduced below:

"25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being a special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength an arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any

goods or services. The complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."

29. Therefore, in view of the above judgements and considering the provision of the Act, the authority is of the view that complainant is well within their rights to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and Act of 2016, instead of going in for an arbitration. Hence, we have no hesitation in holding that this authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily.

G. Findings on the relief sought by the complainant.

Relief sought by the complainant: The complainant has sought following relief(s):

- i. Direct the respondent to pay an interest at the rate of 18% per annum from the date of deposit till the date of handing over the possession of the apartment as delayed possession charges.

30. 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."

31. **Admissibility of grace period:** The promoter had proposed to hand over the possession of the apartment within a period of 36 months plus grace period of 6 months from the date of execution of the apartment buyer agreement by the company or sanction of plans or commencement of construction whichever is later. The flat buyer's agreement was executed on 09.05.2015 and the construction was commenced on 15.10.2013. The flat buyer's agreement being executed later, the due date is calculated from the date of execution of flat buyer's agreement. The said period of 36 months plus grace period of 6 months expires on 09.11.2018. Since in the present case, the promoter is seeking 6 months' time as grace period and the apartment buyer agreement incorporates unqualified reason for grace period/extended period of 6 months in the possession clause. Accordingly, the authority literally interpreting the same allows this grace period of 6 months to the promoter at this stage.
32. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession

charges. However, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.:
Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

33. 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.
34. 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., 10.11.2021 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.
35. 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;*

36. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.
37. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 10 of the second agreement executed between the parties on 09.05.2015, the possession of the subject apartment was to be delivered within

stipulated time i.e., by 09.11.2018. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is 09.11.2018. The respondent has failed to handover possession of the subject apartment till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 09.11.2018 till the handing over of the possession after obtaining occupation certificate, from the competent authority plus two months or handing over of possession whichever is earlier 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

38. 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 complainant is entitled for delayed possession charges under section 18 (1) of the Real Estate

(Regulation & Development) Act, 2016 at the prescribed rate of interest i.e., 9.30% per annum for every month of delay on the amount paid by the complainant with the respondent from the due date of possession i.e., 09.11.2018 till offer of possession of the subject flat after obtaining occupation certificate from the competent authority plus two months or handing over of possession whichever is earlier.

- ii. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order and thereafter monthly payment of interest till handing over of possession shall be paid on or before 10th of each subsequent month.
- iii. The complainant is also directed to pay the outstanding dues, if any. Interest on the due payments from the complainant and interest on account of delayed possession charges to be paid by the respondent shall be equitable i.e., at the prescribed rate of interest i.e., 9.30% per annum.

39. Complaint stands disposed of.

40. File be consigned to registry.


(V.K Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Date 10.11.2021

Judgement uploaded on 22.12.2021.



HARERA
GURUGRAM