

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


Complaint no. : 3694 of 2021
First date of hearing: 27.10.2021
Date of decision : 26.11.2021

1. Rita Tikku

2. Lokaish Tikku

Both R/O: - Apartment No.206 B, Hamilton
Court, DLF City, VTC Galleria DLF IV,
Gurugram-122009, Haryana.

Complainants


Versus

1. Parsvnath Hessa Developers Pvt. Ltd.
Regd. Office at: - Parsvnath Metro Tower, Near
Shahdara Metro Station, Shahdara, Delhi-
110032

Respondent

CORAM:

Dr. KK Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Shri S.S Hooda and Sanjay
Narayan

Shri Dhruv Gupta

Advocate for the complainants

Advocate for the respondent

ORDER

1. The present complaint dated 27.09.2021 has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with Rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of

section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottees as per the agreement for sale executed inter se.

A. Unit and project related details

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

S. No	Heads	Information
1.	Name of the project	Parsvnath Exotica
2.	Nature of the project	Residential complex
3.	Project area	26.905 acres
4.	DTCP license no.	69-74 of 1996 issued on 03.05.1996 valid up to 02.05.2019 52-57 of 1997 issued on 14.11.1997 valid up to 13.11.2019 1079 of 2006 issued on 28.08.2006 valid up to 01.09.2019
5.	Name of Licensee	Puri Construction and 5 others
6.	RERA Registered/ registered	not registered
7.	Unit no.	B5-902, 9 th floor, tower B5 [page no. 64 of complaint]
8.	Unit measuring	3390 sq. ft.

9.	Payment plan	Construction Linked payment plan
10.	Revised area	3495 sq.ft. [as per SOA on page no. 22 of reply]
11.	Date of execution of Flat buyer's agreement	24.03.2007 [page no. 62 of complaint]
12.	Commencement of construction	17.02.2010 [as alleged by complainants]
13.	Total consideration	Rs. 1,79,92,425/- [as per the agreement] [on page no. 64 of complaint]
14.	Total amount paid by the complainants	Rs. 1,78,03,401.71/- [as on final statement of account on page no. 22 of reply]
15.	Due date of delivery of possession as per clause 10 i.e., Construction of the flat is likely to be completed within a period of 36 months of commencement of construction of the particular block in which the flat is located, with a grace period of 6 months on receipt of sanction of building plans and approvals from concerned authorities.	17.02.2013 [calculated from the date of commencement of construction] Note: Grace period of 6 months is not allowed in the present case.
16.	Offer of possession	Not offered
17.	Occupation certificate	Not received
18.	Delay in handing over possession till the date of decision i.e., 26.11.2021	8 years 9 months 9 days

B. Facts of the complaint

3. That the complainants are the joint allottees/co-allottees of the flat. The complainant no.1 is the wife of complainant no.2 and is residing in India at the following address i.e., Apartment No. 206B, Hamilton Court, DLF City, VTC: Galleria DLF-IV, Sub District - Farrukh Nagar, District-Gurgaon-122009, Haryana, INDIA. The complainant no.2 is gainfully employed in Indonesia and is hence currently residing at: Apartment Mitra Oasis, Tower-C, Unit # 19-06, Jalan Senen Raya, 135-137, Jakarta Pusat 10410, INDONESIA.
4. That the complainant no.2 is acting & filing this complaint through his attorney & wife i.e., the complainant no.1 who is acting in dual capacity for herself as well as attorney for complainant no.2 as she is duly authorized to act for & on behalf & represent complainant no.2 vide 'special power of attorney' dated 06.09.2021 duly executed before the Indian High Commission/Consulate at Jakarta, Indonesia & therefore this complaint is competent & maintainable before this hon'ble authority.
5. That the respondent M/s Parsvnath Hessa Developers Private Limited is a company incorporated under the provisions of The Companies Act, 1956 registered with the office of Registrar of Companies, Delhi vide registration no. 166177 dated 24.07.2007 with corporate identification no. (CIN) U45400DL2007PTC166177 and is engaged in the business of real estate construction/ development, marketing & sales of various types of residential & commercial properties to prospective buyers, various customers/clients at Gurugram

- including various locations in India. That one such project by the name of 'Parsvnath Exotica' is also getting developed & marketed by the respondent in sector 53, Gurugram, Haryana.
6. That the complainants got to know through advertisement about the subject project i.e., 'Parsvnath Exotica' situated in sector-53, Golf Course Road, Gurugram promoted & developed at that time by M/s Parsvnath Developers Limited. Subsequently the tower no. B 5 in which subject flat is situated has been transferred to the respondent i.e., M/s Parsvnath Hessa Developers Pvt Ltd, a joint venture company as informed vide communication dated 30.08.2010. That the complainants visited the project site in the first week of August,2006 and paid a total sum of Rs. 1,78,03,403.71/-.
 7. That the complainants for allotment/booking of a residential apartment by submitting a duly signed application form styled as 'advance registration for a residential apartment' dated 15.08.2006 and paid a sum of Rs.28,00,000/-.
 8. That the respondent vide communication dated 15.09.2006 informed that they have provisionally allotted a residential 4-bedroom flat no. B5-902 in the said project enclosing therewith tentative area calculation & payment plan.
 9. That thereafter the respondent sent a 'Revised Payment Plan' vide communication dated 18.10.2006.
 10. That thereafter the respondent sent a demand note cum statement of account dated 30.10.2006.

11. That thereafter a flat buyer agreement was executed between the complainants & respondent on 24.03.2007 for purchase of flat bearing no. B5-902, Parsvnath Exotica, sector-53, Golf Course Road, Gurugram, Haryana admeasuring 3390 sq ft approx. along with two (2) car parking's for a total basic price of Rs.1,79,92,425/- under the construction linked payment plan. The said flat buyer agreement dated 24.03.2007 is completely one sided standard printed format containing totally unjust, unfair, arbitrary & illegal clauses & the complainants had no option but to sign the same.
12. That the complainants have paid a total sum of Rs.1,78,03,403/71 from 18.08.2006 to 24.02.2014 from time to time as & when demanded by the respondent in the manner.
13. That as per clause 10(a) of the flat buyer agreement dated 24.03.2007, the possession of the flat was to be delivered by the respondent to the complainants within 36 months (excluding a grace period of 6 months) from the date of commencement of construction i.e., 17.02.2010. That the complainants have not made a single default in making the payment of instalments as per agreed construction linked payment plan and there has never been any force majeure situation. Thus, the possession of the subject flat should have been delivered by all means to the complainants within 36 months up to 17.02.2013 from the date of commencement of construction i.e,17.02.2010.
14. That the complainants are in continued regular touch with the respondent through their authorized representative Mr.

Madan Dogra & have continuously been requesting the respondent to appraise/inform about the status of the project and also claimed compensation on account of delayed possession of the said flat at the same rate with compounded quarterly interest w.e.f. 17.02.2013 as charged by the respondent on delayed payment of instalments from the buyers, but to no avail. The complainants are also entitled to be paid interest at the same rate on the sum of Rs.28,00,000/- paid on 18.08.2006 & Rs.20,98,106/- paid on 09.11.2006, from the date of respective payments till 17.02.2010.

15. That the complainants have kept monitoring the progress & have been visiting the project site personally and also the office of the respondent several times to know the factual position of the progress of the project and to know about the grant of occupation certificate by the concerned authority but the respondent have failed to give satisfactory answer as to when the possession of the flat will be handed over to them after obtaining occupation certificate from the concerned authority.
16. That the complainants have already paid more than 95% of the consideration amount & always ready & willing to perform their part by clearing the rest in strict compliance in terms of the flat buyer agreement.
17. That cause of action had arisen for filing this complaint and the same continues and the complainants are legally entitled to get 'interest' on monthly basis for each & every month of delay w.e.f, 17.02.2013 (date of possession) till the date of filing of

this complaint as well as further from the date of filing of this complaint till handing over of physical possession after obtaining/grant of 'occupation certificate' from the concerned authority. The respondent should be made liable for payment of interest at the same rate further till the realization of the 'interest' amount.

18. That the respondent is also liable to be proceeded for not getting the subject project registered as 'ongoing projects' under section 3(1) first proviso of Real Estate (Regulation & Development) Act 2016 as it is mandatory for the promoter/respondent to get the project registered within 3 months from the date of commencement of the Real Estate (Regulation & Development) Act, 2016.

C. Relief sought by the complainants:

19. The complainants have sought the following relief:
- (i) Direct the respondent to complete the project & handover possession of the subject flat no. B5-902, Parsvnath Exotica, sector-53, Gurugram, Haryana with car parkings & other facilities/amenities etc.
 - (ii) Direct the respondent to pay interest on paid up amount of Rs. 1,78,03,403.71 for every month of delay from the due date of possession i.e., till handing over of physical possession after obtaining/grant of 'occupation certificate' from the concerned authority.
20. 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.

21. That the complaint filed by the complainants are baseless, vexatious and is not tenable in the eyes of law therefore the complaint deserves to be dismissed at the threshold.

22. That the project construction is already completed. The competent authority has already granted occupancy certificate (OC) for the part of the project comprising of 11 towers and for remaining 5 towers remains awaited for getting occupancy certificate from the competent authority. The following facts are relevant in this regard:

- That the respondent company under various collaboration agreements/ development agreements had planned to develop the project land and in pursuance to the same, 18 towers were planned to be developed. It is submitted that out of the said 18 towers, 11 towers were duly developed and completed, and the occupancy certificate has been received with respect to these 11 towers on 21.04.2010, 13.03.2011 and 31.10.2011 respectively. It is further stated that the respondent has already applied for the occupancy certificate with respect to remaining 5 towers i.e., D4, D5, D6 on 01.11.2011 and with respect to towers no. B1, and C4 on 13.08.2013 for which review was also filed by the respondent on 24.11.2017 before DTCP. That the

part occupancy certificate (OC) application with respect to 2 towers B1 and C4 were also applied in 13.08.2013 before DTCP. Furthermore, it is pertinent to place on the records that the review letter for occupancy certificate of the above mentioned 5 towers were again filed on 11.02.2019 before the competent authority. It is further submitted that appropriate and relevant reports from the office of DTP, STP, PHE and external services have been forwarded to Department of Town and Country Planning, (HQ), Chandigarh.

- That tower no. B5 has been completed as per the applicable building bye laws and prevailing norms. The respondent has applied for the occupation certificate of the said tower with the concerned authority as well.
- That tower no. B-5 in which the flat of the complainants is located, stands completed and the respondent has offered the same for fit out purposes to the complainants along with FSA reflecting the special rebate or delay compensation amounting Rs. 17,62,800/- vide letter no. PHDPL/Exotica/B5-902/98 dated 22.03.2018.
- That all the basic facilities and amenities like electricity, water, club, and swimming pool are duly available at the project site which is duly adequate with respect to the current occupancy at the project site. It is appropriately submitted that the entire project has developed in

complete adherence of the building bye laws & norms which has been prevailing in Haryana.

23. That being aggrieved by the order dated 19.04.2018 passed by the Hon'ble National Consumer Disputes Redressal Commission (hereinafter referred to as 'NCDRC') in consumer complaint no. 127 of 2017 titled as "Malika Raghavan-Versus-Parsvnath Developers Limited", Parsvnath Developers Limited challenged the same before the Hon'ble Supreme Court of India vide Civil Appeal bearing Diary No. 13163 of 2019 titled as "Parsvnath Developers Limited-Versus-Malika Raghavan"
24. That vide order dated 03.05.2019, the Hon'ble Supreme Court of India was pleased to stay the operation of order dated 19.04.2018 passed by this Hon'ble Commission in the Malika Raghavan case.
25. That order dated 16.01.2020, the Hon'ble Supreme Court of India was pleased to admit the Civil Appeal and the order dated 19.04.2018 passed by Hon'ble NCDRC was stayed.
26. That during the hearing held on 12.02.2021, the said civil appeal was de-tagged from the bunch of the similar appeals and listed for hearing. It is pertinent to mention herein that the Hon'ble Supreme Court of India in other bunch matters with respect to the same project has directed the respondent and Parsvnath Developers Limited to pay the contractual amount to the allottees within a period of 1 month and listed the matter for hearing on the issue whether the compensation awarded by the Hon'ble NCDRC is justified or not?

27. That the said civil appeal was listed on 09.03.2021, wherein the counsel appearing for Malika Raghavan showed the desire to adopt the directions passed by the Hon'ble Supreme Court of India vide order dated 12.02.2021 in other batch matters which was allowed by the Hon'ble Supreme Court of India. Accordingly, the directions passed by the Hon'ble Supreme Court of India vide order dated 12.02.2021 thereby directing Parsvnath Developers Limited to pay the contractual compensation was applicable in the case of Malika Raghavan and the said civil appeal was again tagged with other batch matters.
28. That the Hon'ble Supreme Court while passing the order dated 12.02.2021 had posted the matters on 11.05.2021 in pursuance to the time granted by the Hon'ble Supreme Court of India for completing the construction of the units vide order dated 04.01.2021 in contempt petition no. 642 of 2020 in civil appeal no. 6664 of 2019 titled as "Rohit Agarwal-Versus-Pradeep Jain & Ors"
29. That the respondent was not able to complete the construction of the unit within the time period granted by the Hon'ble Supreme Court of India in terms of the Order dated 04.01.2021 passed in the said contempt petition, respondent filed an extension application in the contempt petition seeking further 3 months' time to complete the construction. It is submitted that the application filed by the respondent was listed on 05.07.2021 before the Hon'ble Supreme Court of India,

wherein the Hon'ble Supreme Court of India was pleased to allow the said application.

30. That the said civil appeal was listed before the Hon'ble Supreme Court of India on 08.07.2021, wherein the Hon'ble Supreme Court of India in view of the extension granted in the Contempt Petition was pleased to list the said appeal along with contempt petition on 07.10.2021 for hearing.
31. That the project is being monitored by the Hon'ble Supreme Court of India and as such the issue of grant of compensation to the allottees are also pending before the Hon'ble Supreme Court of India. Therefore, it is respectfully prayed that the captioned complaint may be kept in abeyance till the issue with respect to the compensation is decided by the Hon'ble Supreme Court of India.
32. That the complainants have purchased the flat for investment purpose and not for residential purpose. It is pertinent to mention that being at the strategic location, this project has been categorized as a heaven for the investment purposes. The complainants cannot be treated as a consumer and hence, are not entitled to get any reliefs from this Hon'ble Authority.
33. That the enforcement of provisions under the Act should be prospective and not be retrospective. That the respondent company has already applied for registration under the authority with respect to the said part of the project and wherein the respondent company has duly contemplated the date of possession of the flat to the customers. The respondent

has completed the development work in the tower no. B-5 and has applied for the occupancy certificate.

34. That the mutually agreed clause no. 10(c) of the flat buyer agreement (FBA) wherein the delay compensation has been specifically mentioned and agreed by the complainants and hence contending the date of offering the possession as the contention for refund and payment of interest and compensation is incorrect wherein "time is not the essence of the contract" stands contravened and hence proviso of section 18 are not applicable in the captioned matter as the respondent has agreed to abide by the obligations made under the flat buyer agreement.
35. That the subject matter cannot be adjudicated without going into the facts of the case which requires elaborate evidence to be led and which cannot be adjudicated upon under the summary jurisdiction of this hon'ble authority. The complaint is liable to be dismissed on this ground alone.
36. That the delay in handing over the possession of the apartment was caused only due to the various reasons which are beyond the control of the respondent company such as:
- The global recession largely affected the real estate sector. The construction of project of the respondent is dependent upon the amount of money being received from the bookings made and money received henceforth in form of instalments by the allottees. That during the prolonged effect of the global recession, the number of bookings made by the prospective purchasers reduced

drastically. Thus, reduced number of bookings along with the fact that several allottees of the project either defaulted in making payment of the instalment or cancelled booking in the project, resulted in less cash flow to the respondent henceforth causing delay in the construction work of the project.

37. That the captioned complaint is frivolous, vague and vexatious in nature. The captioned complaint has been made to injure the interest and reputation of the respondent and therefore, the instant complaint is liable to be dismissed in limine.

E. Jurisdiction of the authority

38. The respondent has 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

39. As per notification no. 1/92/2017-1TGP 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

40. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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.

41. 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 complainants at a later stage.

F. Findings on the objections raised by the respondent.

F.1 Maintainability of complaint.

42. The respondent contended that the present complaint filed under section 31 of the Act is not maintainable as the project is monitored by the Supreme Court of India.
43. The authority, in the succeeding paras of the order, has observed that the case which are being monitored by the

Supreme Court of India are totally different matters. The respondent is 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.

44. Another contention of the respondent is 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. 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."

45. 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 oforesaid 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."

46. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the flat buyer's agreements have been executed in the manner that there is no scope left to the allottees 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 and are not in contravention of any other Act, rules, regulations made thereunder and are not unreasonable or exorbitant in nature.

G. Findings on the relief sought by the complainants.

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

- (i) Direct the respondent to complete the project & handover possession of the subject flat no. B5-902, Parsvnath Exotica, sector-53, Gurugram, Haryana with car parkings & other facilities/amenities etc.
- (ii) Direct the respondent to pay interest on paid up amount of Rs. 1,78,03,403.71 for every month of delay from the due date of possession i.e., till handing over of physical possession after obtaining/grant of 'Occupation Certificate' from/by the concerned authority

In the present complaint, the complainants intend 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."

47. Clause 10 of the flat buyer's agreement provides the time period of handing over possession and the same is reproduced below:

"Clause 10- The construction of flat is likely to be completed within a period of thirty six(36) months of commencement of construction of the particular block in which the Flat is located, with a grace period of six(6) months, on receipt of sanction of building plans/ revised building plans and approvals of all concerned authorities including the Fire Service Deptt., Civil Aviation Deptt., Traffic Deptt., Pollution control Deptt., as may be required for commencing and carrying on construction subject to force majeure, restrains or restricts from any courts/authorities, non-availability of building materials, disputes with contractors/work force etc. And circumstances beyond the control

48. 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, force majeure circumstances 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 allottees in fulfilling obligations, formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees 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 allottees 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 allottees are left with no option but to sign on the dotted lines.

49. **Admissibility of grace period:** The promoters had proposed to hand over the possession of the apartment within a period of 36 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 6 months, on receipt of sanction of the building plans/revised plans and all other approvals from the concerned authorities subject to force majeure, restrains/restrictions from any authorities, non-availability of building materials or dispute with contractors/workforce etc. and circumstances beyond the control of developers and subject to timely payments by the flat buyer(s) in the scheme. 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 respondent promoter has neither completed the construction of the subject project nor has obtained the occupation certificate from the competent authority till date. 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.

50. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges, proviso to section 18 provides that where an allottees 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.

51. 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.
52. 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.

53. 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;"*

54. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 9.30% p.a. by the respondent/promoter which is the same as is being granted to the complainants in case of delay possession charges.
55. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. It is a matter of fact that the date of commencement of the subject tower, where the flat in

question is situated is 17.02.2010. By virtue of flat buyer's agreement executed between the parties on 24.03.2007, the possession of the booked unit was to be delivered within 36 months of the commencement of construction of the particular tower/ block in which the flat is located which comes out to be 17.02.2013 excluding a grace period of 6 months which is not allowed in the present case for the reasons quoted above.

56. 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 respondent is established. As such complainants are 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 complainants to the respondent from the due date of possession i.e., 17.02.2013 till the 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 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

57. 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 respondent is directed to pay interest at the prescribed rate of 9.30% p.a. for every month of delay from the due date of possession i.e., 17.02.2013 till the

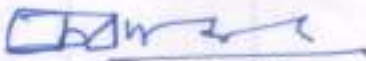
offer of possession of the subject flat after obtaining occupation certificate from the competent authority plus two months or handing over of possession whichever is earlier

- ii. The arrears of such interest accrued from 17.02.2013 till the date of order by the authority shall be paid by the promoter to the allottees within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottees before 10th of the subsequent month as per rule 16(2) of the rules.
- iii. The complainants are also directed to pay the outstanding dues, if any. Interest on the due payments from the complainants 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.
- iv. The respondent shall not charge anything from the complainants which is not part of the builder buyer agreement.

58. Complaint stands disposed of.

59. File be consigned to registry.

V.I - 
(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 26.11.2021