

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

Complaint no. : 3180 of 2020
First date of hearing : 02.12.2020
Date of decision : 12.10.2021

1. Kumar Gaurav
2. Ghazal Kawatra
Both RR/o: D-158 G, 3rd floor,
Freedom Fighters Enclave, Neb Sarai,
IGNOU, Hauz Khas, South Delhi, Delhi-110068.

Complainants

Versus

M/s Emaar MGF Land Ltd.
Office: 306-308, Square One, G-2,
District Centre, Saket, New Delhi-110017.

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar
Shri Vijay Kumar Goyal

Chairman
Member
Member

APPEARANCE:

Shri Varun Chugh
Shri J.K. Dang

Advocate for the complainants
Advocate for the respondent

ORDER

1. The present complaint dated 12.10.2020 has been filed by the complainants/allottees in Form CRA 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 to the allottee as per the agreement for sale executed inter se them.

A. Project and unit related details

2. The particulars of the project, the details of 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.	Project name and location	Emerald Floors Premier III at Emerald Estate, Sector 65, Gurugram
2.	Project area	25.499 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	06 of 2008 dated 17.01.2008 Valid/renewed up to 16.01.2025
5.	Name of licensee	Active Promoters Pvt. Ltd. and 2 others C/o Emaar MGF Land Ltd.
6.	HRERA registered/ not registered	Registered vide no. 104 of 2017 dated 24.08.2017 for 82768 sq. mtrs.
7.	HRERA registration valid up to	23.08.2022
8.	Occupation certificate granted on	11.11.2020 [Page 172 of reply]
9.	Date of provisional allotment letter	23.11.2011 [Page 43 of reply]



10.	Unit no.	EFP-III-53-0201, 2 nd floor, building no. 53 [Page 30 of complaint]
11.	Unit measuring	1975 sq. ft.
12.	Date of execution of buyer's agreement	22.02.2012 [Page 28 of complaint]
13.	Payment plan	Construction linked payment plan [Page 22 of complaint]
14.	Total consideration as per statement of account dated 11.05.2021 at page 145 of reply	Rs.1,43,84,176/-
15.	Total amount paid by the complainants as per statement of account dated 11.05.2021 at page 146 of reply	Rs.1,52,27,329/-
16.	Nomination letter in favour of the complainants	20.03.2018 [Page 48 of complaint]
17.	Due date of delivery of possession as per clause 11(a) of the said agreement i.e. 24 months from the date of execution of buyer's agreement along with grace period of 3 months, for applying and obtaining the occupation certificate in respect of the unit and/or the project. [Page 37 of complaint]	22.02.2014 [Grace period not included]
18.	Date of offer of possession to the complainants	18.12.2020 [Page 175 of reply]
19.	Delay in handing over possession w.e.f. 22.02.2014 till 18.02.2021 i.e., date of offer possession (18.12.2020) + 2 months	6 years 11 month 27 days

B. Facts of the complaint

3. The complainants have made followings submissions in the complaint:
- i. That initially, the property in question i.e., floor bearing no. EFP-III-53-0201 (second floor) admeasuring 1975 sq. ft., in the project of the respondent known as "Emaar Floors Premier-III" situated at Sector-65, Gurugram, Haryana, was booked by Ms. Shuchi Sahai and Mr. Vishnu Sahai, in the year 2011. The total cost of the floor was Rs.1,43,84,176/- only and since it was a construction linked plan, hence the payment was to be made on the basis of schedule of payment, provided by the respondent.
 - ii. That thereafter, on 22.02.2012, Ms. Shuchi Sahai and Mr. Vishnu Sahai entered into a buyer's agreement with the respondent, by virtue of which the respondent allotted apartment no. EFP-III-53-0201, having super area 1975 sq. ft. located on the second floor, along-with car parking space in the said project. Subsequent thereto, in the year 2018, the complainants herein, entered into an agreement to sell with the above named persons, with regard to the said property and the property was later assigned to the complainant and his wife as co-applicant, by the respondent, by virtue of the assignment letter/nomination letter dated 20.03.2018.

- iii. That in the said buyer's agreement dated 22.02.2012, the respondent had categorically stated that the possession of the said apartment would be handed over within 24 months from the date of signing of the buyer's agreement, with a further grace period of another 3 months. Moreover, at the time of transferring the floor in question i.e. on 27.02.2018, the complainants were further coerced by the respondent to sign affidavits/indemnity cum undertaking, in favour of the respondent wherein the complainants were required to undertake, not to claim or raise any compensation for delay in handing over possession of the property.
- iv. That the said buyer's agreement and the indemnity cum undertaking are totally one sided, which impose completely biased terms and conditions upon the complainants, thereby tilting the balance of power in favour of the respondent, which is further manifest from the fact that the delay in handing over the possession by the respondent would attract only a meagre penalty of Rs.5/- per sq. ft., on the super area of the flat, on monthly basis, whereas the penalty for failure to take possession would attract holding charges of Rs.5/- per sq. ft. and 24% penal interest on the unpaid amount of instalment due to the respondent.
- v. That there are various deviations from the initial representations. The respondent marketed luxury high end floors, but they have

compromised even with the basic features, designs and quality to save costs. The structure, which has been constructed, on face of it is of extremely poor quality. The construction is totally unplanned, with sub-standard low grade defective and despicable construction quality. The respondent has sold the project stating that it will be next landmark in luxury housing and will redefine the meaning of luxury but the respondent has converted the project into a concrete jungle. There are no visible signs of alleged luxuries.

- vi. That the respondent has breached the fundamental term of the contract by inordinately delaying in delivery of the possession by 76 months. The complainants were made to make advance deposit on the basis of information contained in the brochure, which is false on the face of it as is evident from the construction done at site so far.
- vii. That the complainants made consistent attempts and followed up via personal visits and mails confronting the respondent regarding the delay in handing over the possession of the floor, which fact is substantiated from the e-mails exchanged between the complainants and the respondent wherein the respondent had admitted the lapses on their part in handing over the possession of the property. The respondent had promised to complete the project by May 2014, including a grace period of three months. The

buyer's agreement was executed on 22.02.2012 and till date the construction is not complete, which is resulting in extreme kind of mental distress, pain and agony to the complainants. The respondent has breached the fundamental term of the contract by inordinately delaying in delivery of the possession. The respondent had committed gross violation of the provisions of section 18 (1) of the Act by not handing over the timely possession of the flat in question and not giving the interest and compensation to the buyer.

C. Relief sought by the complainants

4. The complainants are seeking the following relief:
 - i. Direct the respondent to handover the possession of the property/floor to the complainants, in a time bound manner.
 - ii. Direct the respondent to pay interest @ 18% p.a. as interest towards delay in handing over the property in question as per provisions of the Act and the rules.
 - iii. Pass such order or further order as this hon'ble authority may deem fit and proper in the facts and circumstances of the present case.
5. 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 filed by the respondent

6. The respondent has contested the complaint on the following grounds:
- i. That the complainants have filed the present complaint seeking, inter alia, interest and compensation for alleged delay in delivery of possession of the unit booked by the complainants. It is respectfully submitted that complaints pertaining to compensation are to be decided by the adjudicating officer under section 71 of the Act read with rule 29 of the rules and not by this hon'ble authority. The present complaint is liable to be dismissed on this ground alone.
 - ii. That the present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the buyer's agreement dated 22.02.2012. The provisions of the Act are not retrospective in nature. The provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act. The provisions of the Act relied upon by the complainants for seeking interest or compensation cannot be called in to aid in derogation and ignorance of the provisions of the buyer's agreement, as amended by the transfer documents. The complainants cannot claim any relief which is not contemplated under the provisions of the buyer's agreement, as amended. Assuming, without in manner admitting any delay on the part of the respondent in delivering possession, it is submitted that the interest for the alleged delay demanded by the complainants is beyond the scope of the buyer's agreement, as amended by the



transfer documents executed by the complainants specifically admitting and acknowledging that the complainants shall not be entitled to any compensation or interest for any delay in offering possession. The complainants cannot demand any interest or compensation beyond or contrary to the agreed terms and conditions between the parties. Furthermore, the complainants cannot claim any right or interest in the property which was not available to their predecessors in interest, the original allottees. The original allottees, being defaulters, were not entitled to any compensation in terms of clause 13(c) of the buyer's agreement.

- iii. That apartment bearing number EFP-III-53-0201 was provisionally allotted to the original allottees, Shuchi Sahai and Vishnu Sahai vide provisional allotment letter dated 23.11.2011. Thereafter, the buyer's agreement was dispatched to the original allottees for execution on 28.01.2012 and the buyer's agreement executed between the original allottees and the respondent on 22.02.2012. The original allottees had opted for a construction linked payment plan and had agreed and undertaken to make payment in accordance therewith. However, the original allottees failed to make payment in accordance with the schedule of payment. The statement of account dated 15.10.2020 reflects the payments made by the original allottees /complainants.
- iv. That the original allottees and the complainants approached the respondent and requested that the allotment be transferred in favour of the complainants. The respondent agreed to the request upon the parties executing the requisite transfer documents,

including affidavit and undertaking cum indemnity executed by the complainants whereby, the complainants, *inter alia*, agreed and undertook that they shall not be entitled to any compensation for delay in offering possession. Based on the transfer documents executed by the complainants, the apartment was transferred in their favour. Vide letter dated 20.03.2018, the respondent confirmed the nomination in favour of the complainants.

- v. That the project of the respondent is an "ongoing project" under the Act and the same has been registered under the Act and the rules. Registration certificate was granted by the Haryana Real Estate Regulatory Authority vide memo no. HRERA-482/2017/829 dated 24.08.2017. The respondent has already completed construction and has offered possession within the period of validity of registration under the Act.
- vi. That the contractual relationship between the parties is governed by the terms and conditions of the buyer's agreement dated 22.02.2012, as amended by the transfer documents executed by the complainants. Clause 11 of the buyer's agreement provides that subject to force majeure conditions and delay caused on account of reasons beyond the control of the respondent, and subject to the allottee not being in default of any of the terms and conditions of the same, the respondent expects to deliver possession of the apartment within a period of 24 months plus three months grace period, from the date of execution of the buyer's agreement. In the case of delay by the allottee in making payment or delay on account of reasons beyond the control of the respondent, the time for

delivery of possession stands extended automatically. In the present case, the original allottees were defaulters and therefore the timelines for delivery of possession are not to be calculated in the manner claimed by the complainants. Furthermore, by execution of the transfer documents and purchase in resale after the so-called due date of possession, the complainants have waived the timelines for delivery of possession as set out under the buyer's agreement. Time is not the essence of the contract in so far as delivery of possession is concerned and the complainants have already admitted and acknowledged that they shall not be entitled to any compensation for delay in delivery of possession.

- vii. That, nevertheless, it is pertinent to mention that the respondent has paid an amount of Rs. 1,66,613/- as benefit on account of Anti-Profiting and Rs. 7,099/- on account of Early Payment Rebate (EPR). Without prejudice to the rights of the respondent, delayed interest if any has to be calculated only on the amounts deposited by the allottees/complainants towards the basic principle amount of the unit in question and not on any amount credited by the respondent, or any payment made by the allottees/complainants towards delayed payment charges or any taxes/statutory payments etc.
- viii. That the delay, if any, in the project has got delayed on account of the following reasons which were/are beyond the power and control of the respondent. *Firstly*, the National Building Code was revised in the year 2016 and in terms of the same, all high-rise buildings (i.e. buildings having area of less than 500 sq. mtrs. and

above), irrespective of area of each floor, are now required to have two staircases. In view of the practical difficulties in constructing a second staircase in a building that already stands constructed according to duly approved plans, the respondent made several representations to various Government Authorities requesting that the requirement of a second staircase in such cases be dispensed with. Eventually, so as not to cause any further delay in the project and so as to avoid jeopardising the safety of the occupants of the buildings in question including the building in which the apartment in question is situated, the respondent has taken a decision to go ahead and construct the second staircase. In fact, the respondent has completed the construction thereof and obtained the occupation certificate on 11.11.2020. Furthermore, the respondent has offered possession of the unit in question to the complainants on 18.12.2020. Therefore, the respondent has fulfilled its obligations specified under the buyer's agreement. *Secondly*, the defaults on the part of the contractor M/s B L Kashyap and Sons (BLK/Contractor). The progress of work at the project site was extremely slow on account of various defaults on the part of the contractor, such as failure to deploy adequate manpower, shortage of materials etc. in this regard, the respondent made several requests to the contractor to expedite progress of the work at the project site. However, the contractor did not adhere to the said requests and the work at the site came to a standstill. The arbitration proceedings titled as B L Kashyap and Sons Vs Emaar MGF Land Ltd (arbitration case number 1 of 2018) before Justice A P Shah (Retd), Sole Arbitrator have been initiated. Hon'ble

arbitrator vide order dated 27.04.2019 gave liberty to the respondent to appoint another contractor w.e.f. 15.05.2019.

- ix. That several allottees in the project have defaulted in timely remittance of payment of installments which was an essential, crucial and an indispensable requirement for conceptualisation and development of the said project. Furthermore, when the proposed allottees default in their payments as per schedule agreed upon, the failure has a cascading effect on the operations and the cost for proper execution of the project increases exponentially whereas enormous business losses befall upon the respondent. The respondent, despite default of several allottees, has diligently and earnestly pursued the development of the said project and has constructed the said project as expeditiously as possible. Therefore, there is no default or lapse on the part of the respondent.
- x. That despite there being a number of defaulters in the project, the respondent itself infused funds into the project and has diligently developed the project in question. The respondent had applied for occupation certificate on 20.07.2020. Occupation certificate was thereafter issued in favour of the respondent vide memo bearing no. ZP-441-Vol-II/AD(RA)/2020/20094 dated 11.11.2020. It is pertinent to note that once an application for grant of occupation certificate is submitted for approval in the office of the concerned statutory authority, the respondent ceases to have any control over the same. The grant of sanction of the occupation certificate is the prerogative of the concerned statutory authority over which the

respondent cannot exercise any influence. As far as the respondent is concerned, it has diligently and sincerely pursued the matter with the concerned statutory authority for obtaining of the occupation certificate. No fault or lapse can be attributed to the respondent in the facts and circumstances of the case. Therefore, the time period utilised by the statutory authority to grant occupation certificate to the respondent is necessarily required to be excluded from computation of the time period utilised for implementation and development of the project.

- xi. That the complainants were offered possession of the unit in question through letter of offer of possession dated 18.12.2020. The complainants were called upon to remit balance payment including delayed payment charges and to complete the necessary formalities/documentation necessary for handover of the unit in question to the complainants. However, the complainants approached the respondent with request for payment of compensation for the alleged delay in utter disregard of the terms and conditions of the buyer's agreement and his earlier representations. The respondent explained to the complainants that they are not entitled to any compensation in terms of the buyer's agreement on account of default in timely remittance of instalments. The respondent earnestly requested the complainants to obtain possession of the unit in question and further requested the complainants to execute a conveyance deed in respect of the unit in question. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

7. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents.

E. Jurisdiction of the authority

8. The preliminary objections raised by the respondent regarding jurisdiction of the authority to entertain the present complaint 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

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

E.II Subject-matter jurisdiction

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

Section 11(4)(a)

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

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

Section 34-Functions of the Authority:

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

11. 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 as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the objections raised by the respondent

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

12. One of the contentions of the respondent is that the authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the buyer's agreement executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties.



The respondent further submitted that the provisions of the Act are not retrospective in nature and the provisions of the Act cannot undo or modify the terms of buyer's agreement duly executed prior to coming into effect of the Act.

13. 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 hon'ble Bombay High Court in *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."

14. Also, in appeal no. 173 of 2019 titled as ***Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya*** dated 17.12.2019, the Haryana Real Estate Appellate Tribunal has observed-

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

15. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the buyer's agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the buyer's agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in

contravention of the Act and are not unreasonable or exorbitant in nature.

F.II Objection regarding handing over possession as per declaration given under section 4(2)(I)(C) of the Act

16. The counsel for the respondent has stated that the entitlement to claim possession or refund would arise once the possession has not been handed over as per declaration given by the promoter under section 4(2)(I)(C) i.e., 23.08.2022. Therefore, next question of determination is whether the respondent is entitled to avail the time given to him by the authority at the time of registering the project under section 3 & 4 of the Act.
17. It is now settled law that the provisions of the Act and the rules are also applicable to ongoing project and the term ongoing project has been defined in rule 2(1)(o) of the rules. The new as well as the ongoing project are required to be registered under section 3 and section 4 of the Act.
18. Section 4(2)(I)(C) of the Act requires that while applying for registration of the real estate project, the promoter has to file a declaration under section 4(2)(I)(C) of the Act and the same is reproduced as under: -

Section 4: - Application for registration of real estate projects

(2)The promoter shall enclose the following documents along with the application referred to in sub-section (1), namely: —.....

(1): -a declaration, supported by an affidavit, which shall be signed by the promoter or any person authorised by the promoter, stating: —

.....

(C) the time period within which he undertakes to complete the project or phase thereof, as the case may be....”

19. The time period for handing over the possession is committed by the builder as per the relevant clause of apartment buyer agreement and the commitment of the promoter regarding handing over of possession of the unit is taken accordingly. The new timeline indicated in respect of ongoing project by the promoter while making an application for registration of the project does not change the commitment of the promoter to hand over the possession by the due date as per the apartment buyer agreement. The new timeline as indicated by the promoter in the declaration under section 4(2)(I)(C) is now the new timeline as indicated by him for the completion of the project. Although, penal proceedings shall not be initiated against the builder for not meeting the committed due date of possession but now, if the promoter fails to complete the project in declared timeline, then he is liable for penal proceedings. The due date of possession as per the agreement remains unchanged and promoter is liable for the consequences and obligations arising out of failure in handing over possession by the due date as committed by him in the apartment buyer agreement and he is liable for the delayed possession charges as provided in proviso to section 18(1) of the Act. The same issue has been dealt by hon'ble Bombay High Court in case titled as *Neelkamal Realtors Suburban Pvt. Ltd. and anr. vs Union of India and ors.* and has observed 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..."

F.III Objection regarding exclusion of time taken by the competent authority in processing the application and issuance of occupation certificate

20. As far as contention of the respondent with respect to the exclusion of time taken by the competent authority in processing the application and issuance of occupation certificate is concerned, the authority observed that the respondent had applied for grant of occupation certificate on 21.07.2020 and thereafter vide memo no. ZP-441-Vol-II/AD(RA)/2020/20094 dated 11.11.2020, the occupation certificate has been granted by the competent authority under the prevailing law. The authority cannot be a silent spectator to the deficiencies in the application submitted by the promoter for issuance of occupancy certificate. It is evident from the occupation certificate dated 11.11.2020 that an incomplete application for grant of OC was applied on 21.07.2020 as fire NOC from the competent authority was granted only on 25.09.2020 which is subsequent to the filing of application for occupation certificate. Also, the Chief Engineer-I, HSVP, Panchkula has submitted his requisite report in respect of the said project on 22.09.2020 and 24.09.2020. The District Town Planner, Gurugram and Senior Town Planner, Gurugram has submitted requisite reports' about

this project on 21.09.2020 and 23.09.2020 respectively. As such, the application submitted on 21.07.2020 was incomplete and an incomplete application is no application in the eyes of law.

21. The application for issuance of occupancy certificate shall be moved in the prescribed forms and accompanied by the documents mentioned in sub-code 4.10.1 of the Haryana Building Code, 2017. As per sub-code 4.10.4 of the said Code, after receipt of application for grant of occupation certificate, the competent authority shall communicate in writing within 60 days, its decision for grant/ refusal of such permission for occupation of the building in Form BR-VII. In the present case, the respondent has completed its application for occupation certificate only on 25.09.2020 and consequently the concerned authority has granted occupation certificate on 11.11.2020. Therefore, in view of the deficiency in the said application dated 21.07.2020 and aforesaid reasons, no delay in granting occupation certificate can be attributed to the concerned statutory authority.

F.IV Whether a subsequent allottee who had executed an indemnity cum undertaking with waiver clause is entitled to claim delay possession charges?

22. The respondent submitted that complainants in question are subsequent allottees and complainants have executed an affidavit dated 27.02.2018 and an indemnity cum undertaking dated 27.02.2018 whereby the complainants have consciously and voluntarily declared and affirmed that they would be bound by all the terms and conditions



of the provisional allotment in favour of the original allottee. It was further declared by the complainants that they, having been substituted in the place of the original allottees in respect of the provisional allotment of the unit in question, were not entitled to any compensation for delay. Therefore, the complainants are not entitled to any compensation. With regard to the above contentions raised by the promoter/developer, it is worthwhile to examine following four sub-issues:

- (i) Whether subsequent allottee is also allottee as per provisions of the Act?
- (ii) Whether the subsequent allottee is entitled to delayed possession charges w.e.f. due date of handing over possession or w.e.f. the date of nomination letter/endorsement (i.e. date on which he became allottee)?
- (iii) Whether delay possession charges are in the nature of statutory legal obligation of the promoter other than compensation?
- (iv) Whether indemnity-cum-undertaking with waiver clause at the time of transfer of unit is arbitrary and whether statutory rights can be waived of by such one sided and unreasonable undertaking?

i. Whether subsequent allottee is also an allottee as per provisions of the Act?

23. The term "allottee" as defined in the Act also includes and means the subsequent allottee, hence is entitled to the same relief as that of the original allottee. The definition of the allottee as provided in the Act is reproduced as under:

"2 In this Act, unless the context otherwise requires-

(d) *"allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent".*

24. Accordingly, following are allottees as per this definition:

(a) **Original allottee:** A person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter.

(b) **Allottees after subsequent transfer from the original allottee:** A person who acquires the said allotment through sale, transfer or otherwise. However, an allottee would not be a person to whom any plot, apartment or building is given on rent.

25. From a bare perusal of the definition, it is clear that the transferee of an apartment, plot or building who acquires it by any mode is an allottee. This may include (i) allotment; (ii) sale; (iii) transfer; (iv) as consideration of services; (v) by exchange of development rights; or (vi) by any other similar means. It can be safely reached to the only logical conclusion that no difference has been made between the original allottee and the subsequent allottee and once the unit, plot, apartment or building, as the case may be, has been re-allotted in the name of the subsequent purchaser by the promoter, the subsequent allottee enters into the shoes of the original allottee for all intents and purposes and he shall be bound by all the terms and conditions contained in the buyer's agreement including the rights and liabilities of the original allottee.

Thus, as soon as the unit is re-allotted in his name, he will become the allottee and nomenclature "subsequent allottee" shall only remain for identification for use by the promoter. Therefore, the authority does not draw any difference between the allottee and subsequent allottee per se.

26. Reliance is placed on the judgment dated 26.11.2019 passed in consumer complaint no. 3775 of 2017 titled as **Rajnish Bhardwaj Vs. M/s CHD Developers Ltd.** by NCDRC wherein it was held as under:

"15. So far as the issue raised by the Opposite Party that the Complainants are not the original allottees of the flat and resale of flat does not come within the purview of this Act, is concerned, in our view, having issued the Re-allotment letters on transfer of the allotted Unit and endorsing the Apartment Buyers Agreement in favour of the Complainants, this plea does not hold any water....."

27. The authority concurs with the Hon'ble NCDRC's decision dated 26.11.2019 in **Rajnish Bhardwaj vs. M/s CHD Developers Ltd.** (supra) and observes that it is irrespective of the status of the allottee whether it is original or subsequent, an amount has been paid towards the consideration for a unit and the endorsement by the developer on the transfer documents clearly implies his acceptance of the complainants as an allottees.

28. Therefore, taking the above facts into account, the authority is of the view that the term subsequent allottee has been used synonymously with the term allottee in the Act. The subsequent allottee at the time of buying the said unit takes on the rights as well as obligations of the

original allottees vis-a-viz the same terms and conditions of the buyer's agreement entered into by the original allottee. Moreover, the amount if any paid by the subsequent or original allottees are adjusted against the unit in question and not against any individual. Furthermore, the name of the complainants/subsequent allottees have been endorsed on the same buyer's agreement which was executed between the original allottees and the promoter. Therefore, the rights and obligation of the subsequent allottees and the promoter will also be governed by the said buyer's agreement.

ii. **Whether the subsequent allottees are entitled to delayed possession charges w.e.f. due date of handing over possession or w.e.f. the date of nomination letter (i.e. date on which they became allottees)?**

29. The respondent/promoter contended that the complainants/subsequent allottees shall not be entitled to any compensation/delayed possession charges since at the time of the execution of transfer documents/agreement for sale, they were well aware of the due date of possession and have knowingly waived off their right to claim any compensation for delay in handing over possession or any rebate under a scheme or otherwise or any other discount. The respondent/promoter had spoken about the disentanglement of compensation/delayed possession charges to the complainants/subsequent allottees who had clear knowledge of the fact w.r.t. the due date of possession and whether the project was already delayed. But despite that they entered into the agreement for sell



and/or indemnity-cum-undertaking knowingly waiving off their right of compensation.

30. Furthermore, the respondent contended that the previous allottee had transferred the unit in favour of complainants/subsequent allottees after the Act came into force and where the project has been registered under the Act by the respondent. It was argued by the promoter that in cases where the subsequent allottee came into picture after the registration of the project under the provisions of the Act with the authority, then the date of completion of the project and handing over the possession shall be the date declared by the promoter under section 4(2)(I)(C) of the Act. The counsel of the respondent further argued that the while purchasing the unit, it is presumed that the allottee very well knew that the project would be completed by that specific declared date, therefore, the delayed possession charges shall not be allowed.
31. The authority is of the view that the time period for handing over the possession is committed by the builder as per the relevant clause of buyer's agreement and the commitment of the promoter regarding handing over of possession of the unit is taken accordingly. The new timeline indicated in respect of ongoing project by the promoter while making an application for registration of the project does not change the commitment of the promoter to hand over the possession by the due date as per the builder buyer's agreement. The new timeline as indicated by the promoter in the declaration under section 4(2)(I)(C) is

now the new timeline as indicated by him for the completion of the project. Although, penal proceedings cannot be initiated against the builder for not meeting the committed due date of possession but now, if the promoter fails to complete the project in declared timeline, then he is liable for penal proceedings. The due date for possession as per the agreement remains unchanged and the promoter is liable for the consequences and obligations arising out of failure in handing over possession by the due date as committed by him in the builder buyer's agreement and is liable for the delayed possession charges as provided in proviso to section 18(1) of the Act. 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. The same issue has been dealt by Hon'ble Bombay High Court in case titled as *Neelkamal Realtors Suburban Pvt. Ltd.* (supra) wherein it was held that the RERA Act does not contemplate rewriting of contract between the allottee and the promoter. The relevant para of the judgement is reproduced below:

"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..."

32. Moreover, as delineated hereinabove, the Act does not distinguish between the original allottee and the subsequent allottee. The Act, by



virtue of section 18, has created statutory right of delay possession charges in favour of the allottees. No doubt, the complainants/subsequent allottees knew the new date of completion as declared by the promoter but that does not abrogate the statutory rights of the subsequent allottees.

33. In the case in hand also, though the buyer's agreement dated 22.02.2012 was executed prior to the Act coming into force but the endorsement was made in favour of the complainants/subsequent allottees on 20.03.2018 when the Act became applicable. The complainants/subsequent allottees at the time of buying a unit takes on the rights as well as obligations of the original allottees vis-a-viz the same terms and conditions of the buyer's agreement entered into by the original allottees. Although at the time of endorsement of their name in the buyer's agreement, the due date of possession had already lapsed but the subsequent allottees as well as the promoter had the knowledge of the statutory right of delay possession charges being accrued in their favour after coming into force of the Act. Thus, the concept of quasi-retroactivity will make the provisions of the Act and the rules applicable to the subsequent allottees. Moreover, the authority cannot ignore the settled principle of law that the waiver of statutory rights is subject to the public policy and interest vested in the right sought to be waived as reiterated by Hon'ble Supreme Court of India in *Waman Shrinivas Kini Vs. Ratilal Bhagwandas and Co.* (AIR 1959 SC 689). In the present

situation, there is nothing which can prove that such right was waived off by the complainants/subsequent allottees for either of the two reasons quoted above. In simple words, neither they have got any private benefit by waiving of their right nor does it involve any element of public interest. Therefore, the authority is of the view that in cases where the subsequent allottee had stepped into the shoes of original allottees after coming into force of the Act and after the registration of the project in question, the delayed possession charges shall be granted w.e.f. due date of handing over possession as per the buyer's agreement.

iii. Whether delay possession charges are in the nature of statutory legal obligation of the promoter other than compensation?

34. It is important to understand that the Act has clearly provided interest and compensation as separate entitlement/right which the allottee can claim. An allottee is entitled to claim compensation under sections 12, 14, 18 and section 19, to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The interest is payable to the allottee by the promoter in case where there is refund or payment of delay possession charges i.e., interest at the prescribed rate for every month of delay. The interest to be paid to the allottee is fixed and as prescribed in the rules which an allottee is legally entitled to get and the promoter is obligated to pay. The compensation is to be adjudged by the adjudicating officer and may be expressed either lump sum or as interest on the deposited amount

after adjudgment of compensation. This compensation expressed as interest needs to be distinguished with the interest at the prescribed rate payable by the promoter to the allottee in case of delay in handing over of possession or interest at the prescribed rate payable by the allottee to the promoter in case of default in due payments. Here, the interest is pre-determined, and no adjudication is involved. Accordingly, the distinction has to be made between the interest payable at the prescribed rate under section 18 or 19 and adjudgment of compensation under sections 12, 14, 18 and section 19. The compensation shall mean an amount paid to the flat purchasers who have suffered agony and harassment, as a result of the default of the developer including but not limited to delay in handing over of the possession.

35. In addition, the quantum of compensation to be awarded shall be subject to the extent of loss and injury suffered by the negligence of the opposite party and is not a definitive term. It may be in the form of interest or punitive in nature. However, the Act clearly differentiates between the interest payable for delayed possession charges and compensation. Section 18 of the Act provides for two separate remedies which are as under:

- i. In the event, the allottee wishes to withdraw from the project, he/she shall be entitled without prejudice to any other remedy refund of the amount paid along with interest at such rate as may be prescribed in

- this behalf **including compensation** in the manner as provided under this Act;
- ii. In the event, the allottee does not intend to withdraw from the project, he/she 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.**
36. The rate of interest in both the scenarios is fixed as per rule 15 of the rules which shall be the State Bank of India's highest marginal cost of lending rate +2%. However, for adjudging compensation or interest under sections 12,14,18 and section 19, the adjudicating officer has to take into account the various factors as provided under section 72 of the Act.
- iv. **Whether indemnity-cum-undertaking with waiver clause at the time of transfer of unit is arbitrary and whether statutory rights can be waived of by such one sided and unreasonable undertaking?**
37. The authority further is unable to gather any reason or has not been exposed to any reasonable justification as to why a need arose for the complainants to sign any such affidavit or indemnity-cum-undertaking and as to why the complainants had agreed to surrender their legal rights which were available or had accrued in favour of the original allottees. Thus, no sane person would ever execute such an affidavit or indemnity-cum-undertaking unless and until some arduous and/or compelling conditions are put before him with a condition that unless and until, these arduous and/or compelling conditions are performed by him, he will not be given any relief and he is thus left with no other

option but to obey these conditions. Exactly same situation has been demonstratively happened here, when the complainants/subsequent-allottees have been asked to give the affidavit or indemnity-cum-undertaking in question before transferring the unit in their name otherwise such transfer may not be allowed by the promoter. Such an undertaking/ indemnity bond given by a person thereby giving up their valuable rights must be shown to have been executed in a free atmosphere and should not give rise to any suspicion. No reliance can be placed on any such affidavit/ indemnity-cum-undertaking and the same is liable to be discarded and ignored in its totality. Therefore, this authority does not place reliance on the said affidavit/indemnity cum undertaking. To fortify this view, we place reliance on the order dated 03.01.2020 passed by hon'ble NCDRC in case titled as **Capital Greens Flat Buyer Association and Ors. Vs. DLF Universal Ltd., Consumer case no. 351 of 2015**, wherein it was held that the execution of indemnity-cum-undertaking would defeat the provisions of section 23 and 28 of the Indian Contract Act, 1872 and therefore, would be against public policy, besides being an unfair trade practice. The relevant portion of the said judgment is reproduced herein below:

"Indemnity-cum-undertaking

30. *The developer, while offering possession of the allotted flats insisted upon execution of the indemnity-cum-undertaking before it would give possession of the allotted flats to the concerned allottee.*

Clause 13 of the said indemnity-cum-undertaking required the allottee to confirm and acknowledge that by accepting the offer of possession, he would have no further demands/claims against the

company of any nature, whatsoever. It is an admitted position that the execution of the undertaking in the format prescribed by the developer was a pre-requisite condition, for the delivery of the possession. The opposite party, in my opinion, could not have insisted upon clause 13 of the Indemnity-cum-undertaking. The obvious purpose behind such an undertaking was to deter the allottee from making any claim against the developer, including the claim on account of the delay in delivery of possession and the claim on account of any latent defect which the allottee may find in the apartment. The execution of such an undertaking would defeat the provisions of Section 23 and 28 of the Indian Contract Act, 1872 and therefore would be against public policy, besides being an unfair trade practice. Any delay solely on account of the allottee not executing such an undertaking would be attributable to the developer and would entitle the allottee to compensation for the period the possession is delayed solely on account of his having not executed the said undertaking-cum-indemnity."

38. The said judgment of NCDRC was also upheld by the Hon'ble Supreme Court vide its judgement dated 14.12.2020 passed in civil appeal nos. 3864-3889 of 2020 against the order of NCDRC.
39. Hon'ble Supreme Court and various High Courts in a plethora of judgments have held that the terms of a contract shall not be binding if it is shown that the same were one sided and unfair and the person signing did not have any other option but to sign the same. Reference can also be placed on the directions rendered by the Hon'ble Apex Court in civil appeal no. 12238 of 2018 titled as **Pioneer Urban Land and Infrastructure Limited Vs. Govindan Raghavan** (decided on 02.04.2019) as well as by the Hon'ble Bombay High Court in the **Neelkamal Realtors Suburban Pvt. Ltd.** (supra). A similar view has also been taken by the Apex court in **IREO Grace Realtech Pvt. Ltd. Vs.**

Abhishek Khanna & Ors. in civil appeal no. 5785 of 2019 and the same is reproduced as under:

".....that the incorporation of such one-sided and unreasonable clauses in the Apartment Buyer's Agreement constitutes an unfair trade practice under Section 2(1)(r) of the Consumer Protection Act. Even under the 1986 Act, the powers of the consumer fora were in no manner constrained to declare a contractual term as unfair or one-sided as an incident of the power to discontinue unfair or restrictive trade practices. An "unfair contract" has been defined under the 2019 Act, and powers have been conferred on the State Consumer Fora and the National Commission to declare contractual terms which are unfair, as null and void. This is a statutory recognition of a power which was implicit under the 1986 Act.

In view of the above, we hold that the Developer cannot compel the apartment buyers to be bound by the one-sided contractual terms contained in the Apartment Buyer's Agreement."

40. The same analogy can easily be applied in the case of execution of an affidavit or indemnity-cum-undertaking which got executed from the subsequent-allottees before getting the unit transferred in their name in the record of the promoter as an allottee in place of the original allottees.
41. The authority may deal with this point from yet another aspect. By executing an affidavit/undertaking, the complainants/subsequent allottees cuts their hands from claiming delay possession charges in case of delay in giving possession of the unit beyond the stipulated time or the due date of possession. But the question which arises before the authority is that what does complainants get in return from the promoter by giving such a mischievous and unprecedented undertaking. However, the answer would be "nothing". If it is so, then

why did the complainants executed such an affidavit/undertaking is beyond the comprehension and understanding of this authority.

42. The authority holds that irrespective of the execution of the affidavit/undertaking by the complainants/subsequent allottees at the time of transfer of their name as an allottee in place of the original allottees in the record of the promoter does not disentitle them from claiming the delay possession charges in case there occurs any delay in delivering the possession of the unit beyond the due date of delivery of possession as promised even after executing an indemnity-cum-undertaking.

G. Findings of the authority

G.1 Delay possession charges

43. **Relief sought by the complainants:** The below-mentioned reliefs sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and these reliefs are interconnected:

- i. Direct the respondent to handover the possession of the property/floor to the complainants, in a time bound manner.
- ii. Direct the respondent to pay interest @ 18% p.a. as interest towards delay in handing over the property in question as per provisions of the Act and the rules.

44. 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."

45. Clause 11(a) of the buyer's agreement dated 22.02.2012 provides time period for handing over the possession and the same is reproduced below:

"11. POSSESSION

(a) Time of handing over the Possession

Subject to terms of this clause and subject to Allottee(s) having complied with all the terms and conditions of this Buyer's Agreement, and not being in default under any of the provisions of this Buyer's Agreement and compliance with all provisions, formalities, documentation etc., as prescribed by the Company, the Company proposes to hand over the possession of the Unit within 24 months from the date of execution of Buyer's Agreement. The Allottee(s) agrees and understands that the Company shall be entitled to a grace period of three months, for applying and obtaining the occupation certificate in respect of the Unit and/or the Project."

46. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement, and the complainants not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the

promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment time period 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.

47. **Due date of possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within 24 (twenty -four) months from the date of execution of buyer's agreement dated 22.02.2012 and further provided in agreement that promoter shall be entitled to a grace period of 3 months for applying and obtaining occupation certificate in respect of said unit. The period of 24 months expired on 22.02.2014. As a matter of fact, the promoter has not applied to the concerned authority for obtaining completion certificate/ occupation certificate within the time limit prescribed by the promoter in the buyer's agreement. As per the settled law, one

cannot be allowed to take advantage of his own wrong. Accordingly, this grace period of 3 months cannot be allowed to the promoter at this stage.

48. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges at the rate of 18% p.a. 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.

49. The legislature in its wisdom in the subordinate legislation under 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.
50. 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., 12.10.2021 is 7.30%. Accordingly, the prescribed rate of interest will be MCLR +2% i.e., 9.30%.

51. **Rate of interest to be paid by complainants for delay in making payments:** The respondent contended that the complainants have defaulted in making timely payments of the instalments as per the payment plan, therefore, they are liable to pay interest on the outstanding payments.
52. The authority observed that 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;"*

53. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same as is being granted to the complainants in case of delay possession charges.

54. On consideration of the documents available on record and submissions made by both 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. By virtue of clause 11(a) of the buyer's agreement executed between the parties on 22.02.2012, possession of the booked unit was to be delivered within 24 (twenty -four) months from the date of execution of buyer's agreement and it was further provided in agreement that promoter shall be entitled to a grace period of 3 months for applying and obtaining occupation certificate in respect of said unit. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession comes out to be 22.02.2014. Occupation Certificate has been received by the respondent on 11.11.2020 and the possession of the subject unit was offered to the complainants on 18.12.2020. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainants as per the terms and conditions of the buyer's agreement dated 22.02.2012 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 22.02.2012 to hand over the possession within the stipulated period.

55. 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 11.11.2020. The respondent offered the possession of the unit in question to the complainants only on 18.12.2020. So, it can be said that the complainants came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainants should be given 2 months' time from the date of offer of possession. These 2 months' of reasonable time is being given to the complainants 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. 22.02.2014 till the expiry of 2 months from the date of offer of possession (18.12.2020) which comes out to be 18.02.2021. The complainants are also directed to take possession of the unit in question within 2 months from the date of this order.
56. 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 respondent is established. As such the complainants are entitled to delay possession



at prescribed rate of interest i.e. 9.30% p.a. w.e.f. 22.02.2014 till 18.02.2021 as per provisions of section 18(1) of the Act read with rule 15 of the rules.

H. Direction 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 the interest at the prescribed rate i.e. 9.30% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 22.02.2014 till 18.02.2021 i.e., expiry of 2 months from the date of offer of possession (18.12.2020). The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order as per rule 16(2) of the rules.
- ii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period. The rate of interest chargeable from the complainants /allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delay possession charges as per section 2(za) of the Act.


- iii. The complainants are directed to take possession of the unit in question within 2 months from the date of this order.
- iv. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement. The respondent shall not demand/claim holding charges from the complainants/allottees at any point of time even after being part of the builder buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.

58. Complaint stands disposed of.

59. File be consigned to registry.


(Samir Kumar)
Member


(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 12.10.2021

Judgement uploaded on 16.12.2021.