

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

**Complaint no. : 4375 of 2020**  
**First date of hearing : 08.01.2021**  
**Date of decision : 28.09.2021**

Divya Dewan

R/o: - 599, Dr. Mukherjee Nagar, Delhi

**Complainant**

Versus

M/s Silverglades Infrastructure Pvt. Ltd,  
Regd. office: C-8/1A, Vasant Vihar, New Delhi-  
110057

**Respondent**

**CORAM:**

Shri Samir Kumar  
Shri V.K. Goyal

**Member**  
**Member**

**APPEARANCE:**

Shri. Vikas Khatri  
Shri. Suresh Rohilla & Shri  
Ashwaria Sinha

Advocate for the complainant

Advocates for the respondent

**HARERA**  
**ORDER**  
**GURUGRAM**

1. The present complaint dated 04.12.2020 has been filed by the complainant/allottee 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 under

the provision of the Act or the rules and regulations made thereunder to the allottee as per the agreement for sale executed inter se.

**A. Project and unit related details**

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

S. No.	Heads	Information
1.	Name and location of the project	The Merchant Plaza, Sector 88, Gurugram.
2.	Project area	2.75625 acres
3.	Nature of the project	Commercial complex
4.	DTCP license no.	1 of 2013 dated 07.01.2013
	Valid up to	06.01.2023
	Name of licensee	Magnitude Pvt. Ltd.
5.	Building plans approved on	<b>30.05.2013</b> [Page 34 of written arguments filed by the respondent]
6.	Firefighting approval granted on	<b>26.09.2013</b> [Page 48 of written arguments filed by the respondent]
7.	Environmental clearance dated	<b>28.02.2014</b> [Page 49 of written arguments filed by the respondent]
8.	Excavation approval granted on	<b>04.04.2014</b> [Page 47 of written

		arguments filed by the respondent]
9.	Consent to Establish	<b>16.06.2014</b> [Page 60 of written arguments filed by the respondent]
10.	RERA registered/ not registered	<b>Registered 340 of 2017 dated 27.10.2017</b>
	RERA registration valid up to	<b>20.12.2020</b>
11.	Approval of electrification plan granted on	<b>16.01.2020</b> [Page 72 of written arguments filed by the respondent]
12.	Date of <b>occupation certificate</b>	<b>11.02.2020</b> (page 34 of reply)
13.	Allotment letter	23.11.2013 [Page 16 of complaint]
14.	Date of execution of apartment buyer agreement	<b>23.07.2014</b> [Page 17 of complaint]
15.	Unit no. as per apartment buyer agreement	SA- 1006, 10 <sup>th</sup> floor [Page 16 of complaint]
16.	Unit measuring	704 sq. ft
17.	Payment plan	Construction linked payment plan [Page 51 of complaint]
18.	Total consideration as per payment plan	Rs. 45,02,487/- [Page 51 of the complaint]

19.	Total amount paid by complainant	Rs. 41,97,962/- as admitted by respondent [Page 1 of reply]
20.	Due date of delivery of possession  (As per clause 11.1 of the buyer's agreement: within a period of 4 years from the date of approval of the building plans (i.e. 30.05.2013) for the project or within such other timelines as may be directed by the competent authority & further entitled to a grace period of a maximum of 180 days for issuing the possession notice)	30.05.2017  Grace period not allowed
21.	Date of offer of possession to the complainant	13.03.2020 [Page 63 of complaint]
22.	Delay in handing over possession till date of offer of possession+ 2 months i.e. 13.05.2020	2 years 11 months 13 days

#### B. Facts of the complaint

- The complainant has booked a service apartment in the project "The Merchant Plaza" of the respondents at sector 88 Gurugram, Haryana on 17.08.2013 by advancing Rs 5,00,000 to the respondent. Further another AMOUNT OF Rs. 7,04,672/- was also paid by the complainant on 16.11.2013 towards the advance booking amount to the

respondents. The complainant was allotted service apartment bearing no. SA- 1006 vide allotment letter dated 23.11.2013 having an approx. super area of 704 sq.ft. at a basic price of @5500/- per sq.ft. plus other charges and taxes. thereafter various demands were raised by the respondents towards the cost of the aforesaid service apartment which were duly paid by the complainant in time as and when demanded. An apartment buyers' agreement was executed between the parties on 23.07.2014 at Gurugram and as per the clause 11.1 of the said agreement the possession was to be handed within a period of 4 years from the date of sanction of building plan which were sanctioned on 30.05.2013. That from time-to-time demands were raised by the respondents and a total of Rs. 41,97,962/- was paid by the complainant to the respondent towards cost of the aforesaid unit along with other charges and taxes. That the possession of the unit was to be handed over to the complainant on or before 30.05.2017 i.e. within 4 years of the sanctioning of building plan however due to the reasons best known to the respondents the possession of the aforesaid unit was only offered by the respondent to the complainant on 13.03.2020 i.e. after nearly a span of 2 years and 10 months that too when the 10<sup>th</sup> floor on which the unit of the complainant is located is incomplete and not fit for possession and moreover the HMC bridgestone with whom a contact to run the service apartment was signed has only agreed to take the possession till 9<sup>th</sup> floor and thus the respondent in their mail dated 30.05.2020 offered the possession of an alternate unit no. 4<sup>th</sup> floor in lieu of the originally allotted unit

however no floor plan of the 4<sup>th</sup> floor has been provided to the complainant despite repeated request and reminders. .

4. That due to the aforesaid delay on the part of the respondents the respondents are liable to pay an interest calculated @15% p.a to the complainant on the entire amount paid of Rs, 41,97,962/- in addition to a compensation of Rs. 5,00,000/- towards the mental trauma, stress and losses caused due to the delay in possession.

**C. Relief sought by the complainant**

- i. Direct the respondent to pay a interest amount of calculated @15% p.a. against delay in possession on total amount of Rs. 41,97,962/- paid by the complainant to the respondent against the service apartment bearing no. SA- 1006 in their project Merchant Plaza plus the accrued interest on the above amount till the date of realization of the said amount.
11. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4)(a) of the Act and to plead guilty or not to plead guilty.

**D. Reply by the respondent**

12. The respondent has contested the complaint on the following grounds:
  - i. That the complainant/allottee had agreed to pay instalments on time and discharge his obligations as per application form and

apartment buyer's agreement. However, he has miserably failed to make payments of respective instalments from time to time and delayed the payment of outstanding for about 67 days i.e. about 2 months as on 30.11.2020. From the perusal of statement of account, the complainant has made violation of the Act and has defaulted in making timely payment of dues and outstanding. Therefore, the complainant has approached with unclean hands.

- ii. The relief, as claimed by the complainant is in fact nature of injunction restraining the respondent from asking the complainant to pay requisite charges towards the increase in super area of the service apartment. In humble submission, such nature of relief, which the complainant has surreptitiously sought to seek is not maintainable. The present complaint is abuse of process of law, product of malafide and filed with ulterior motive to make wrongful, unauthorised or unjust gain. In humble submission, since commencement of construction, the respondent had been sending monthly update of construction to the complainant. She has never raised any issue regarding the progress, timeline, quality of construction of the project and any other defects in the service of the respondent. Further, the complainant has never complained of any violation of any of the provisions of the Act from the date of booking till the date of filing the present complaint. In view of the aforesaid, the relief, as sought to be claimed by the complainant, is liable to be rejected in limine.

- iii. The complainant approached the respondent and submitted an application dated for booking of a service apartment bearing unit no. SA-1006 on 10<sup>th</sup> floor approximate super area of 740.92 sq.ft. at the basic sale price of Rs 5,500/- per sq.ft. and paid a sum of Rs 5,00,000/- as booking amount. The complainant had agreed and signed the payment plan as per construction linked plan.
- iv. That pursuant to the application form, the respondent allotted a unit bearing no. SA-1006 on ground floor in the said project in favour of the complainant vide allotment letter dated 23.11.2013 for the basic sale consideration of Rs 38,69,855/- plus all other charges, service tax, levies and other allied charges as per payment plan. The complainant and the respondent had executed the apartment buyer's agreement on 23.07.2014 for the said unit.
- v. That the project was completed in September 2019 and whereupon the respondent applied for occupancy certificate from the competent authority on 11.09.2019. The occupancy certificate for the project was received from the concerned authority vide memo. No ZP-867/AD(RA)/2020/3936 dated 11.02.2020. The respondent vide its letter dated 20.02.2020 duly informed the complainant that the project has been completed, and further offered the possession of unit no. SA- 1006, and requested to complete necessary formalities and to make pending payments.



- vi. That under the terms of offer of possession letter dated 13.03.2020, the respondent also offered the following facilities/benefits as a special gesture to all the buyers including the complainant:
- The facility to undertake the interior fit-outs free of maintenance charges for the period leading up to possession.
  - There would be no maintenance charges for a period of 6 months from the date of formal possession.
  - To lease out the units of the buyers without any service charges for the same.
- vii. That the unit is furnished and complete in all respect and refusal to take possession is absolutely wrong and unreasonable, tantamount to violation of apartment buyer agreement and the Act.
- viii. It is submitted that an amount of Rs. 13,896/- is due and outstanding upon the complainant. As per terms and under the provision of RERA Act, the outstanding amount is fetching interest @15% per annum, which the complainant is liable to pay to the respondent from due date, till the date of payment as per clause 7.3 of ABA. In addition to the above, the complainant is also liable to pay holding charges and maintenance charges, to the respondent as per ABA, along with interest from the date of offer of possession, till date of final payment.
- ix. That there is no delay in handing over/offer of possession by the respondent. In fact, the clause no. 11.1 of the apartment buyer

agreement provides that the respondent will hand over the possession within a period of 4 years from the date of the approval of the building plan for the project or within such other timeline as may be directed by any competent authority. Then, clause no. 11.1 of the ABA further provides that even after the expiry of the commitment period, the respondent shall be further entitled to a grace period of 180 days for issuing the possession notice. As per HRERA registration, the project completion date is allowed up to the date of 20.06.2021 by the Haryana Real Estate Regulatory Authority, being the competent authority.

- x. The respondent had started the excavation in the project land soon after receiving the approval of "Consent to Establish" dated 16.06.2014 from the Haryana State Pollution Control Board and after completion of excavation, commenced the construction of the said project on 01.11.2014. The respondent has already received OC and offered formal possession to the complainant on 13.03.2020.
- xi. The respondent has duly complied with all applicable provisions of the Real Estate (Regulation and Development) Act, 2016 and rules made thereunder and also that of agreement for sale qua the complainant and other allottees. Since starting the development of the project, the respondent has been sending updates about the progress of the project regularly from time to time mostly on monthly basis to all the buyers including the complainant, and also the customer care department of the

respondent regularly touch with the buyers for giving updates on the progress of the project.

13. Copies of all the relevant documents have been files and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submissions made by the parties.

**E. Written arguments filed by both the parties**

14. Both the parties also filed written arguments on 12.04.2021 in compliance of orders dated 02.03.2021 and reiterated their earlier version as contended in the pleadings.

**F. Jurisdiction of the authority**

15. The respondent has raised an objection with regard to jurisdiction of the authority for entertaining the present complaint and the said plea of the respondent stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**F.I Territorial jurisdiction**

16. As per notification no. 1/92/2017-ITCP 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, and therefore this authority has complete territorial jurisdiction to deal with the present complaint.

## **F.II Subject matter jurisdiction**

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

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

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

*Provided that the responsibility of the promoter, with respect to the structural defect or any other defect for such period as is referred to in sub-section (3) of section 14, shall continue even after the conveyance deed of all the apartments, plot or buildings, as the case may be, to the allottees are executed.*

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

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

So, in view of the provisions of the Act of 2016 quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

## **G. Findings on the relief sought by the complainant**

### **H.I Delay possession charges**

17. Relief sought by the complainant: Direct the respondent to pay interest at prescribed rate for every month of delay from the due date of possession till the handing over of possession.
18. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec 18(1) proviso read 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."*

19. The clause 11.1 of the apartment buyer agreement (in short, agreement) provides the time period of handing over of possession and is reproduced below:

*"11.1 Subject to the terms hereof and to the Buyer having complied with all the terms and conditions of this Agreement, the Company proposes to hand over possession of the Apartment within a period of 4 (four) years from the date of approval of the Building Plans for the Project or other such approvals required, whichever is later to commence construction of the project or within such other time lines as may be directed by the Competent Authority ("Commitment Period"). The Buyer further agrees that even after expiry of the Commitment Period, the Company shall be further entitled to a grace period of a maximum of 180 days for issuing the Possession Notice ("Grace Period")."*

20. At the outset, it is relevant to comment on the present possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement. The drafting of this clause and incorporation of such conditions are not only vague

and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling a single term and condition of the buyer's agreement say making timely payment, may make the possession clause irrelevant and the commitment date of 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.

21. **Due date of handing over possession:** The promoter has proposed to hand over the possession of the apartment within a period of 4 years from the date of approval of the building plans for the project or other such approvals required, whichever is later to commence construction of the project or within such other timelines as may be directed by the competent authority.
22. The point of controversy in the present complaint is that whether the 48 months period is to be calculated from the date of "Consent to Establish" i.e. 16.06.2014 as contended by the respondent or the date of approval of building plan i.e. 30.05.2013 as contended by the complainant.
23. The respondent contended that the building plan was approved by the concerned authority on 30.05.2013. The clause 3 of the approved

building plan stipulated that the developer shall obtain the Fire NOC from the concerned department before starting the construction. Thereafter, the Fire NOC was obtained on 26.09.2013. Furthermore, clause 16(xii) of the building plan provides that the developer shall obtain NOC from Ministry of Environment before starting the construction and the Environment Clearance was granted on 28.02.2014. Clause 1 of the Environment Clearance provides that the developer shall obtain Consent to Establish from the concerned authority before starting construction at the site and finally, Consent to Establish was granted on 16.06.2014. Therefore, the due date of possession shall be computed from 16.06.2014.

24. The authority is of the view that the words "other such approvals" is vague, confusing and deceitful. The respondent is claiming that the sanction plan contained statutory and mandatory pre-conditions before commencement of construction works. The respondent has acted in a highly discriminatory and arbitrary manner. If the said possession clause is read in entirety, the time period of handing over possession is only a tentative period for completion of the said unit in question and the promoter is aiming to extend this time period indefinitely on one eventuality or the other. Moreover, the respondent is claiming to compute due date of possession from numerous approvals and the said approvals are sole liability of the promoter for which allottee cannot be allowed to suffer. It is settled proposition of law that one cannot get the advantage of his own fault. Nowhere in the agreement it has been defined that what approvals

forms a part of the "other such approvals", to which the due date of possession is subjected to in the said possession clause. It seems to be just a way to evade the liability towards the timely delivery of the subject unit.

25. Moreover, the complainant had opted for construction linked plan and the respondent was liable to raise demand as per progress in construction at the site. Our attention was also drawn towards letter dated 14.03.2014 wherein it has been mentioned that- *"You would be happy to know that our Environmental Clearance and Building Plan approvals are well in place now. We have in fact recently done the "Bhoomi Pujan" at the Merchant Plaza site and started the construction work. Our Project team has started the excavation work and is geared up for ensuring smooth delivery of the project"*. Furthermore, our attention was drawn towards the statement of account at page 81 of complaint which clearly states that the demand on account of 'On start of excavation' has been raised on 15.05.2014 which is against statutory provisions, the then existing, as no construction can be started without obtaining consent to establish.
26. Thus, there cannot be two dates for the same cause- one for start of demanding the payment of installments towards the total cost of the unit in question and second for calculating the due date of possession of the unit in question to the allottees. According to the established principles of law and the principles of natural justice when a certain glaring illegality or irregularity comes to the notice of the adjudicator, the adjudicator can take cognizance of the same and adjudicate upon



it. The inclusion of such vague and ambiguous type of clauses in the agreement which are totally arbitrary, one sided and against the interests of the allottees must be ignored and discarded in their totality. In the light of the above-mentioned reasons, the authority is of the view that the date of sanction of building plans ought to be taken as the date for determining the due date of handing over possession of the unit in question to the complainant.

27. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the apartment within a period of 4 years from the date of approval of the building plans for the project or within such other timelines as may be directed by the competent authority. The building plans were approved by the competent authority on 30.05.2013. Therefore, the due date of possession comes out to be 30.05.2017 after expiry of 4 years. Further the agreement provides that promoter shall be entitled to a grace period of 180 days for issuing the possession notice ("Grace"). As a matter of fact, neither the promoter has applied for issuance of occupation certificate, nor it has initiated the process of issuing the possession notice within the time limit prescribed in the apartment buyer's agreement. As per the settled law one cannot be allowed to take advantage of his own wrong. Accordingly, this grace period of 180 days cannot be allowed to the promoter at this stage.
28. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the prescribed rate of interest. 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.

29. The legislature in its wisdom in the subordinate legislation under the 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.
30. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., 28.09.2021 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.
31. **Rate of interest to be paid by complainant for delay in making payments:** The respondent contended that the complainant has defaulted in making timely payments as per the payment plan opted by him. Thus, not entitled to any relief.

32. The authority is of the view 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;"*

33. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same as is being granted to the complainant in case of delay possession charges.
34. **Validity of offer of possession:** At this stage, the authority would express its views regarding the concept of 'valid offer of possession'. It is necessary to clarify this concept because after valid and lawful offer of possession the liability of promoter for delayed offer of possession comes to an end. On the other hand, if the possession is not valid and lawful, liability of promoter continues till a valid offer is made and allottee remains entitled to receive interest for the delay caused in handing over valid possession. The authority after detailed

consideration of the matter has arrived at the conclusion that a valid offer of possession must have following components:

- i. Possession must be offered after obtaining occupation certificate-** The subject unit after its completion should have received occupation certificate from the department concerned certifying that all basic infrastructural facilities have been laid and are operational. Such infrastructural facilities include water supply, sewerage system, storm water drainage, electricity supply, roads and street lighting.
- ii. The subject unit should be in habitable condition-** The test of habitability is that the allottee should be able to live in the subject unit within 30 days of the offer of possession after carrying out basic cleaning works and getting electricity, water and sewer connections etc from the relevant authorities. In a habitable unit all the common facilities like lifts, stairs, lobbies, etc. should be functional or capable of being made functional within 30 days after completing prescribed formalities. The authority is further of the view that minor defects like little gaps in the windows or minor cracks in some of the tiles, or chipping plaster or chipping paint at some places or improper functioning of drawers of kitchen or cupboards etc. are minor defects which do not render the unit uninhabitable. Such minor defects can be rectified later at the cost of the developers. The allottees should accept possession of the subject unit with such minor defects under protest. This authority will award suitable relief for

rectification of minor defects after taking over of possession under protest.

However, if the subject unit is not habitable at all because the plastering work is yet to be done, flooring works is yet to be done, common services like lift etc. are non-operational, infrastructural facilities are non-operational then the subject unit shall be deemed as uninhabitable and offer of possession of an uninhabitable unit will not be considered a legal valid offer of possession.

**[Note (facts to be clarified during hearing):** As per the photographs annexed by the respondent, the unit in question seems to be habitable. The photographs enclosed with written argument filed by the respondent were taken after 02.03.2021 i.e. after more than a year from the offer of possession. However, the complainant had also placed on record certain photographs dated 17.09.2020 which suggest that the construction in the project was not complete and works like completion of boundary walls, whitewash and plaster etc. were still going on.]

- iii. Possession should not be accompanied by unreasonable additional demands-** In several cases additional demands are made and sent along with the offer of possession. Such additional demands could be unreasonable which puts heavy burden upon the allottees. An offer accompanied with unreasonable demands beyond the scope of provisions of agreement should be termed an invalid offer of possession. Unreasonable demands itself

would make an offer unsustainable in the eyes of law. The authority is of the view that if respondent has raised additional demands, the allottees should accept possession under protest.

35. In the present complaint, the possession has been offered on 13.03.2020 after receipt of occupation certificate dated 11.02.2020. The attention of the authority was drawn by the counsel for the complainant towards certain objections regarding taking possession. The objections such as 24 meters connecting road has not been built, escalator and elevators are not installed, the club facilities are not ready as yet, electrical connection from DHBVN and the generators of adequate capacity have not been installed, main entrance gate has not been constructed, boundary wall has not been constructed, no painting, flooring, door and finishing work inside the shops are pending. The counsel for the respondent informed that all the observations has been attended except 24 meters wide connected road. The counsel for the respondent has given written submissions to that effect on 12.04.2021 in compliance of interim order dated 02.03.2021 passed by the authority. Therefore, the offer of possession is valid.

36. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 11.1 of the agreement executed between the parties on

23.07.2014, the possession of the subject apartment was to be delivered within a period of 4 years from the date of approval of the building plans for the project or within such other timelines as may be directed by the competent authority. For the reasons quoted above, the due date of possession is to be calculated from the date of approval of building plans i.e. 30.05.2013 and the said time period of 4 year has not been extended by any competent authority. Therefore, the due date of possession is calculated from the date of approval of building plan and the said time period of 4 years expired on 30.05.2017. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession is 30.05.2017. The respondent has failed to offer possession of the subject apartment till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period.

37. 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 11.02.2020. The respondent offered the possession of the unit in question to the complainant only on 13.03.2020. So, it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date

given to the complainant keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e. 30.05.2017 till the expiry of 2 months from the date of offer of possession (13.03.2020) which comes out to be 13.05.2020. The complainant is further directed to take possession of the allotted unit after clearing all the dues within a period of 2 months and failing which legal consequences as per the provisions of the Act will follow.

38. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 30.05.2017 till the handing over of the possession (13.05.2020), at prescribed rate i.e., 9.30 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

**I. Direction of the authority**

39. 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):



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., 30.05.2017 till 13.05.2020 i.e. date of offer of possession (13.03.2020) + 2 months.
- ii. The arrears of such interest accrued from 30.05.2017 till 13.05.2020 shall be paid by the promoter to the allottee within a period of 90 days from date of this order as per rule 16(2) of the rules.
- iii. The complainant is further directed to take possession of the allotted unit after clearing all the dues, if any, within a period of 2 months as per section 19(10) of the Act and failing which legal consequences as per the provisions of the Act will follow.
- iv. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- v. The rate of interest chargeable from the allottee by the promoter, in case of default shall be 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 delayed possession charges as per section 2(za) of the Act.
- vi. The respondent shall not charge anything from the complainant which is not part of the buyer's agreement. However, holding charges shall not be charged by the promoter at any point of time

even after being part of agreement as per law settled by hon'ble  
Supreme Court in civil appeal nos. 3864-3899/2020.

76. Complaint stands disposed of.  
77. File be consigned to registry.

  
**(Samir Kumar)**  
Member

  
**(Vijay Kumar Goyal)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 28.09.2021

Judgement uploaded on 20.12.2021.



**HARERA**  
**GURUGRAM**