

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

**Complaint no. : 4297 of 2020**  
**First date of hearing: 08.01.2021**  
**Date of decision : 28.09.2021**

1. Subhash Tandon

2. Neelam Tandon

**Both RR/o: - C- II, Vasant Kunj, New Delhi**

**Complainants**

**Versus**

M/s Silverglades infrastructure Pvt. Ltd,  
Regd. office: - Time Square Building, 5<sup>th</sup> floor,  
block B, Sushant Lok, Phase- I,  
Gurugram-122009.

**Respondent**

**CORAM:**

Shri Samir Kumar

Shri V.K. Goyal

**Member**

**Member**

**APPEARANCE:**

Ms. Ankur Berry

Shri Suresh K Rohilla & Shri

Ashwariya Sinha

Advocate for the complainants

Advocates for the respondent

**HARERA**  
**GURUGRAM**

**ORDER**

1. The present complaint dated 23.11.2020 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 under the provision of the Act or the rules and regulations made there under or 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 complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Heads	Information
1.	Name and location of the project	The Merchant Plaza, Sec 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	06.01.2021
	Name of licensee	Magnitude Pvt. Ltd.
5.	RERA registered/ not registered	<b>Registered 340 of 2017 dated 27.10.2017</b>
	RERA registration valid up to	<b>20.12.2020</b>
6.	Building plans approved on	30.05.2013
7.	Firefighting approval granted on	26.09.2013
8.	Environmental clearance dated	28.02.2014
9.	Excavation approval granted on	04.04.2014
10.	Consent to establish	16.06.2014

11.	Approval of electrification plan granted on	16.01.2020
12.	Date of occupation certificate	11.02.2020
13.	Date of execution of apartment buyer's agreement	24.04.2017 (Page 28 of complaint)
14.	Allotment letter	13.09.2014 (page 23 of complaint)
15.	Unit no. as per allotment letter	SA-901, ninth floor (Page 23 of complaint)
16.	Unit measuring	765.50 sq.ft.
17.	Decrease in area	724.49 sq. ft (page 75 of complaint)
18.	Payment plan	Construction linked payment plan (page 62 of complaint)
19.	Total consideration as per payment plan	Rs. 60,37,984/- (page 62 of complaint)
20.	Total amount paid by complainants	Rs. 57,01,994/- as per SOA page 44 of reply)
21.	Due date of delivery of possession	30.05.2017  (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 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)
22.	Date of offer of possession to the complainants	24.02.2020 (page 82 of complaint)

23.	Delay in handing over possession till date of offer of possession+ 2 months i.e., 24.04.2020	2 years 10 months 21 days
-----	--	---------------------------

**B. Facts of the complaint**

3. The complainants have submitted that the present complaint is being filed by the complainants against the respondent company who failed to handover the possession of unit in question as per the clause 11 of builder buyer agreement. That instead of delivering the possession of the unit as promised, the respondent company has delayed and breached its set of obligations. It is further submitted that the respondent company has kept the complainants in the dark since year 2013 and for last 7 years the complainants have been cheated to. Therefore, the complainants pray to this hon'ble authority for directing the respondent company for interest on the delay in offering the possession of the unit in question as per the prescribed rate of interest.
4. The complainants have submitted that they have invested their hard-earned money in the project if respondent company believing that the promises made by the respondent company would be fulfilled and the complainants will get the unit by 30.11.2017. It is humbly submitted that the complainants are running from pillar to post to get possession of the unit for years. That it is pertinent to mention that the booking was made way back in the year 2013 and only in the year 2017 did the respondent company got the BBA executed.
5. The complainants have submitted that respondent company namely, M/s Silverglades Infrastructure Private Limited was a company registered under the Companies Act, 1956 having its registered office

at C-8/1-A, Vasant Vihar, New Delhi-110057 and corporate office at 5 floor, Time Square Building, block -B, Sushant Lok-phase-I, Gurugram, Haryana. The respondent company claims to be a leading name in Real Estate Sector. That the present complaint is qua the project under the name and style of "Merchant Plaza" situated in sector 88, Gurugram, Haryana.

6. The complainants have submitted that in the year of 2013, the complainants lured by the brochures and catalogues shown by the officials/representation of the respondent company decided to buy a service apartment in the project Merchant Plaza of the respondent company as one of its kind, allowing the complainants a safe monthly income. At the time of booking assurances were given by the respondent that the possession will be given within 3 years from the date of making booking payment, and the fact that the service apartment would be placed on lease through a rental pool agreement and leased to hotel business giving the complainants a fixed monthly income in their old age. Thus, the complainants believed that they would be delivered the possession of the unit by 01.07.2016 when the payment was made at the time of submitting the application form.
7. The complainants have submitted that thereafter they were made due payments as and when demanded by the respondent company. On 13.09.2014 the complainants received the allotment letter wherein the respondent connivingly mentioned no due date of possession and rather only mentioned that BBA would be executed in due time. There being no clarity as to the due date of possession. That vide the allotment letter dated 13.09.2014 the complainants were allotted unit

- no. 901, 9<sup>th</sup> floor, in of area 765.50 sq.ft. in the project Merchant Plaza of the respondent company.
8. It is pertinent to mention that as of 27.06.2013 the respondent company even without executing the BBA had already taken 30% of the total basic consideration. That the complainants had sent a written communication to the respondent after paying 30% of the consideration, for issuance of allotment letter and asking as to when the construction would actually start. However, the only intent of the respondent company seemed to indulge in wrongful gain.
  9. The complainants have submitted that on 11.03.2014 a letter was issued by the respondent company and received by the complainants announcing and admitting starting of construction work on the project Merchant Plaza. In the year 2017 the respondent company got sent builder buyer agreement to the complainants. Thus, the builder buyer agreement got signed and executed on 24.04.2017. Interestingly the respondent had admitted in clause F of the BBA, that the building plans had been approved on 30.05.2013. Further the clause 11 of the BBA which defines the terms and conditions of project and possession clearly stated that the possession period was to start from date of approval of the building plans or such other approvals required to commence construction of the project. Thus, from the bare reading of the BBA it is clear that the intended and promised date of possession was 4 years plus 6 months grace period from 30.05.2013. i.e., the date of approval of building plans. The respondent company had to thus deliver the possession of the unit in question on 30.11.2017, however the respondent failed to fulfil its set of obligations.

10. The complainants have submitted that the malicious intent of the respondent company is made ample clear from the fact that as per section 13(1) of the RERA Act, 2016, a promoter cannot accept a sum more than 10% of the cost of the apartment as an application fee, from an allottee without first entering into a written agreement for sale, whereas in the present matter the respondent company had even before issuing the allotment letter had already taken 30% of the total basic price.
11. The complainants have submitted that as per the BBA, the delivery of possession was to be made within 4 years plus 6 months grace period, i.e. on 30.11.2017. That the complainants have been diligent and noticing that the project was delayed beyond time visited the project site. That upon visit in 2017 the complainants were astonished to see the status of the project, which was nowhere near completion, yet the respondent raised further demands, which the complainants had no option than to pay, in fear of blocking the already deposited consideration amounts. It is pertinent to mention here that the respondent company has failed to adhere with the terms and conditions of BBA.
12. At the time of booking, the respondent company had informed and promised the complainants that the service apartment would be leased to a third party and the complainants would get monthly income out of such lease, the complainants believing the words, commitments and promises of the respondent company put their life-long savings in the project of the respondent company to ensure a constant/regular monthly income for themselves. The respondent company had

informed them that they would be leasing put the said unit to third party who would be paying monthly rental and till date no such agreement with third party, namely for leasing of the unit has either been signed or produced before the complainants. Till date even after various request from the complainants the respondent company has failed to get signed and executed the said rental pool agreement thus, the sole objective of the complainants to secure their old age, has been abruptly brought to an end.

13. The complainants continued to pay the remaining instalments as per the payment schedule plan of the BBA and has made payment of Rs. 57,01,994/- out of Rs. 57,20,585/- i.e. already 99% of the payment has been made by the complainants and only Rs. 17,501/- is pending. It is pertinent to mention here that the complainants always made the payment as and when demanded by the respondent company. The complainants have fulfilled their obligation of making timely payments as and when the demands were raised and the respondent was obligated to handover the possession of the unit by 30.11.2017, however only on 24.02.2020, did the respondent company sent the possession notice. That is after more than 2 years of due date of delivery. The statement of account and possession notice issued by the respondent company are annexed with the complaint.
14. It is pertinent to mention here that as per clause no.11 of the BBA, the project was supposed to be completed in 4 years along with an additional grace period of 6 months and possession of the same ought to have been handed over to the complainants, completed in all respects, by 30.11.2017 since 'time is essence' of the said agreement.



That if the respondent company failed to deliver the possession of the unit in question, then as per clause no. 13, the respondent company is liable to pay Rs. 10 per sq.ft. per month of the super area to the complainants. It is humbly submitted herein that the respondent company has not placed the complainants at the same status as itself and same is apparent from the fact that as per the terms of the BBA the liability of default of allottee has been kept at a very high interest calculated at the rate of 15% per annum whereas the default by respondent was charges only at the rate of Rs. 10 per sq.ft. thus there is an clear violation of section 2(za) of the RERA Act, 2016.

15. The complainants have submitted that it is pertinent to mention that the only reason why the complainants decided to invest in the project was in lieu of the promises and immense importance laid down by the respondent herein with regard to the timely possession of the project which subsequently turns out to be false thereby causing immense hardship, both physical and mental to the complainants. That only in the year 2020, the respondent company has offered the possession to the complainants. It is repeated for the sake of brevity that the respondent company was to deliver the possession on 30.11.2017 but the respondent company failed miserably to deliver the possession within due time.
16. The complainants have submitted that the non-compliance of the obligations by the respondent company is apparent and is within the jurisdiction of this hon'ble authority in terms with the law decided by the hon'ble authority Supreme Court in matter titled *Simmi Sikka versus M/s EMMAR MGF Land ltd.*

17. The complainants have submitted that the respondent company has failed to honor the terms and conditions of the agreement/application-cum booking form signed between the parties. That the respondent company though failed to honor the terms of date of delivery as per the BBA, the respondent company has to pay dues of the interest on delayed period and this the present complaint has been instituted before this hon'ble authority for the relief delayed possession interest.
18. The complainants have submitted that they are aggrieved by the malicious and high headed behaviour of the respondent, who has kept accepting the money deposited by the complainants and even when asked for a refund due to delay in completion of project Merchant Plaza, failed to refund due to delay in completion of project Merchant Plaza, failed to refund the consideration. Further the offer of possession dated 24.02.2020, has come two years too late from 30.11.2017, the actual due date of possession. The complainants cannot be expected to suffer due to the negligence and arrogant actions of the respondent company which is apparent from the facts submitted therein above. The respondent company thus, ought to pay the delayed interest charges from 30.11.2017 i.e., the agreed date of delivery of possession till 24.02.2020, date of possession notice. till the date of actual possession.
19. The respondent company without taking approval of the two-third allottees of the project, altered the size of the unit. the size of the unit at the time of booking was 765 sq.ft. whereas the possession notice date 24.02.2020, sent by the respondent company shows the size of the unit to be increased to 724.49 sq.ft. i.e., an decrease of 40.51 sq.ft. The

section 14 of the RERA Act, 2016 explicitly denounces such acts and omissions of the builders.

**C. Relief sought by the complainants:**

20. The complainants have sought following relief(s):

- i. Direct the respondent company to pay interest at the prescribed rate per annum on the delay in handing over the possession from the date of building plan approval i.e., 30.11.2017 till actual date of possession in view of the violation of section 18 of the RERA Act, 2016.
- ii. Direct the respondent company to allot parking space, for which payments have been made.
- iii. Direct the respondent company to provide possession after completing the unit and provide the amenities and furnishing as promised.

**D. Reply by the respondent**

- i. That the present complaint has been filed on 16.11.2020 after offer of possession to the complainants vide letter dated 24.02.2020 and therefore not maintainable. The complainants ought to have taken possession in first instance and thereafter could have raised the issues or deficiencies if any. Therefore, the complaint is malafide, fanciful, unreasonable and bad in law. The allegation of delay and other deficiencies has been levelled aforethought, and concocted, solely to skip those obligations which are delegated upon the complaint under the terms and conditions of ABA and those as provided under the RERA Act. The

complainants have no cause of action to file present complaint and delay in taking possession of the unit.

- ii. The complainants were agreed, under the payment plan of application form signed by them to pay instalments on time and discharge their obligations as per application form and apartment buyer's agreement. However, the complainants miserably failed to make payments of his respective instalments from time to time and delayed the payment of outstanding for about 1036 days i.e. about 34 months as on 30.11.2020. From the perusal of statement of account, it is clear that complainants have made violation of the Act and did not make timely payment of dues and outstanding. Therefore, the complainants have approached with unclean hands.
- iii. The obligation to approach this hon'ble authority with clean hands is an absolute obligation. The complainants have attempted to pollute the stream of justice, and touched the pure foundation of justice with tainted hands and therefore, is not entitled to any relief, interim or final. Pertinent to say that the court does not sit simply as an umpire in a contest between the parties and declare at the end of the combat as to who won and who lost but has a legal duty of its own, independent of parties, to take active part in proceeding and reach at the truth, which is the foundation of administration of justice. Therefore, the truth should become the ideal to inspire the court to pursue. Moreover, it is the bounden duty of the authority to ensure that dishonesty and any attempt to surpass the legal process must be effectively curbed and the

authority must ensure that there is no wrongful, unauthorised or unjust gain to anyone as a result of abuse of the process of the law. One way to curb the tendency is to impose realistic or punitive costs.

- iv. The present complaint is not in the prescribed format of "CRA" as stipulated in regulation 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 and therefore is not maintainable as per regulation 11 of The Haryana Real Estate Regulatory Authority, Gurugram (Adjudicating of complaints), Regulation 2018.
- v. The complainants have no cause of action or ground to file the present complaint. As per applicable Act and rules made there under a complaint may be filed by a person only if the respondent has committed any act in violation of the Real Estate (Regulation and Development) Act, 2016 and rules made there under. As the complainants have failed to bring on record any document, evidence etc. which may even allude that the respondent has violated the provisions of the Act, the complainants have no locus standi and therefore, the present complaint be outrightly rejected.
- vi. That the complainants submitted an application for booking of a service apartment tentative super area of 700 sq.ft. at the basic sale price of Rs 7000/- per sq.ft. and paid a sum of Rs 5,00,000/- as booking amount. The complainants had agreed and signed the payment plan or payment of instalment dues as per construction linked plan.

- vii. That pursuant to the application form, the respondent allotted the complainants a unit bearing no SA-901 tentative super area of 765.50 sq.ft. on 9<sup>th</sup> floor in the said project, vide allotment letter dated 13.09.2014 plus all other charges, IMFSD, service tax, levies and other allied charges as per payment plan. The complainants raised no objection and accepted the allotment letter by signing thereof at the bottom, without any protest or demur.
- viii. The complainants and the respondent had executed the apartment buyer's agreement on 24.04.2017 for the said unit.
- ix. That the project was completed in Sep 2019, whereupon the respondent applied for occupation 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.
- x. The respondent vide its letter dated 24.02.2020 duly informed the complainants that the project has been completed, and further offered the possession of unit no. SA 901, and requested to complete necessary formalities and make pending payment as per clause specified and agreed to under the said "Buyer Agreement". Under the terms of offer of possession letter dated 24.02.2020, the respondent also offered the following facilities/benefits as a special gesture to all the buyers including the complainants:
- a. The facility to undertake the interior fit outs free of maintenance charges for the period leading up to possession.

- b. There would be no maintenance charges for a period of 6 months from the date of formal possession.
- c. To lease out the units of the buyers without any service charges for the same.
- xi. That the unit is furnished and completed in all respect and refusal to take possession is absolutely wrong and unreasonable. It is submitted that an amount of Rs. 1,81,592/- including tax along with interest of Rs. 1,22,219/- is due and outstanding upon the complainants. As per terms and under the provision of RERA Act, the outstanding amount is fetching interest @15% per annum, which the complainants are 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 complainants are 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.
- xii. There is no delay in handing over of possession by the respondent. In fact, the clause no 11.1 of the ABA provides that the respondent will hand over the possession within a period of 4 years from the date of approval of the building plan for the project or within such other timeline as may be directed by any competent authority. As per direction of the Town and Country Planning Authorities, the construction can only commence after consent to establish approval. Clause no 11.1 of the ABA further provides that even after the expiry of the commitment period the respondent shall be further entitles to grace period of 180 days for issuing the

possession notice. As per HRERA registration the project completion date is allowed upto the date of 20.06.2021 by the Haryana Real Estate Regulatory Authority, being the competent authority in terms of the ABA. 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 occupancy certificate and offer formal possession to the complainants on 24.02.2020.

- xiii. That the respondent duly complied with all applicable provisions of the Act and rules made there under and also that of agreement for sale qua the complainants 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 complainants and also the customer care department of the respondent regularly touch with the buyers for giving updates on the progress of the project.

20. 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 and submission made by the parties.

**E. Jurisdiction of the authority**



21. 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.

**E.I Territorial jurisdiction**

22. 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, and therefore this authority has complete territorial jurisdiction to deal with the present complaint.

**E.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 complainants at a later stage.

**F. Finding on the objections raised by the respondent**

**F.1 Objection regarding format of the complaint**

23. The respondent has raised contention that the present complaint is not in the prescribed format of CRA as stipulated in rule 28 of the rules and therefore is not maintainable as per regulation 11 of the Haryana Real Estate Regulatory, Gurugram (Adjudication of complaints) Regulation, 2018.

The authority observed that the reply is patently wrong as the complaint has been filed in the prescribed manner. The authority has no hesitation in saying that the respondent is trying to mislead the authority by saying that the said complaint has not been filed by the complainants in the prescribed format of "CRA". There is a prescribed proforma for filing complaint before the authority under section 31 of the Act read with rule 28 of the rules in form CRA. There are 9 different headings in this form which have been given in the complaint. Since, The present complaint has been filed in CRA form along with necessary enclosure. Therefore, the said plea of the respondent w.r.t rejection of

complaint on this ground is also rejected and the authority has decided to proceed with this complaint as such.

## **F. II Maintainability of complaint**

24. The respondent contended that the present complaint filed under section 31 of the Act is not maintainable as the respondent has not violated any provisions of the Act.
25. The authority, in the succeeding paras of the order, has observed that the respondent is in contravention of the section 11(4)(a) read with proviso to section 18(1) of the Act by not handing over possession of the unit in question by the due date as per the apartment buyer agreement. Therefore, the complaint is maintainable.

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

### **F. I Delay possession charges**

23. The respondent be directed to pay interest at the rate of 15% per annum for the period 30.05.2017 to 24.02.2020 on total amount paid by the allottees/complainants.
24. In the present complaint, the complainants intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec 18(1) proviso reads as under.

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

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

*.....*  
*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for*

*every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

25. As per clause 11.1 of the apartment buyer agreement (in short, agreement) provides for 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 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")."*

26. 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 terms and conditions of the buyer's agreement say making timely payment, may make the possession clause irrelevant and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

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 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 expires on 30.05.2017. Further the agreement provides that promoter shall be entitles to a grace period of 180 days for issuing the possession notice ("Grace"). As a matter of fact, nor the promoter has applied for issuance of occupation certificate neither has initiated the process of issuing the possession notice within the time limit prescribed by the promoter 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 complainants are seeking delay possession charges at the rate of 15% p.a. however, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, 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 provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
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. The definition of term 'interest' as defined under section 2(z) 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;"*

32. 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.
33. 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 24.04.2017, 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. The building plans were approved by the competent authority on 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 expires 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 handover possession of the subject apartment till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 30.05.2017 till the handing over of the possession, 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.

**G. Directions of the authority**

34. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- i. The respondent is directed to pay interest at the prescribed rate of 9.30% p.a. for every month of delay from the due date of possession i.e., 30.05.2017 till 24.04.2020 i.e. date of offer of possession (24.02.2020) + 2 months.
  - ii. The arrears of such interest accrued from 30.05.2017 to 24.02.2020 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 complainants are 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 complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- v. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondents/promoters which is the same rate of interest which the promoter shall be liable to pay the allottees, 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 complainants which is not the part of the agreement, however, holding charges shall not be charged by the promoter at any point of time even after being part of agreement as per law settled by hon'ble Supreme Court in civil appeal no. 3864-3899/2020.

23. Complaint stands disposed of.

24. 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.