

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

Complaint no. : 368 of 2021
Date of filing complaint: 09.02.2021
First date of hearing : 22.04.2021
Date of decision : 06.10.2021

1.	Smt. Shakuntla Khatri R/O: - W/O Randhir Singh, 33A/1, Flat no. 6, Anand Apartment, Ward no. 1, Mehrauli, South Delhi-110030	Complainant
Versus		
1.	M/s Imperia Structures Ltd. Regd. Office at: - A-25, Mohan Cooperative, Industrial Estate, Mathura Road, New Delhi- 110044	Respondent

CORAM:	
Shri. Samir Kumar	Member
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Sh. Sunil Kumar Yadav (Advocate)	Complainant
Ms. Tanya Swarup (Advocate)	Respondent

ORDER

1. The present complaint has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act)



read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottees as per the agreement for sale executed inter se.

A. Unit and project related details

2. The particulars of unit details, sale consideration, the amount paid by the 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	"Esfera Phase-II", Sector-37-C, Gurugram
2.	Project area	60460 sq. mtrs.
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	64 of 2011 dated 16.07.2011 valid till 15.07.2017
5.	Name of the license holder	M/s prime Infoways Pvt. Ltd. And Ors.
6.	RERA registered/ not registered	Registered Registered vide 352 of 2017 dated 17.11.2017
7.	RERA registration valid up to	31.12.2020
8.	Unit no.	001, ground floor, tower B (page no. 36 of the complaint)



9.	Unit admeasuring	2400 sq. ft. [super area] (page no. 36 of the complaint)
10.	Date of flat buyer's agreement	02.07.2014 (page no. 26 of the complaint)
11.	Payment plan	Possession linked plan (page no. 71 of the complaint)
12.	Total consideration	Rs. 1,18,23,600/- (page no. 36 of the complaint)
13.	Total amount paid by the complainant	Rs. 30,48,200/- (vide receipts on page no. 79, 84, 85, 86, 87, 88 and 89 of the complaint)
14.	Possession clause	10.1 The Developer/Company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/said Apartment within a period of three and half years from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in Clauses 11.1, 11.2, 11.3 and Clause 41 or due to

		<p>failure of Intending Allottee(s) to pay in time the price of the said Apartment along with other charges and dues in accordance with the schedule of payments given in Annexure F or as per the demands raised by the Developer/Company from time to time or any failure on the part of the intending Allottee(s) to abide by all or any of the terms or conditions of this Agreement. (emphasis supplied)</p>
15.	Due date of delivery of possession	<p>02.01.2018 (Calculated from the date of execution of flat buyer's agreement)</p>
16.	Occupation Certificate	<p>Not obtained w.r.t the subject tower</p> <p>07.02.2018 (for tower- G, H, I and EWS block)</p>
17.	Offer of possession	Not offered
18.	Delay in handing over of possession till date of order i.e.,06.10.2021	3 years, 9 months and 4 days.

B. Facts of the complaint

- That the complainant, Smt. Shakuntla Khatri is a peace loving and law-abiding citizen of India, who nurtured hitherto an

un-realized dream of having her own house in upcoming societies with all facilities and standards, situated around serene and peaceful environment for her family. The complainant always leads her life with full of honesty, simplicity and truthfulness and epitomizes utmost kindness and humanity.

4. That the grievance of the complainant relates to breach of contract, false promises, gross unfair trade practices and deficiencies in the services committed by the respondent, Imperia Structures Limited in regard to the apartment no "001", tower "B", ground floor admeasuring "2400 sq. ft. (23.04 sq. mtr.)", 4 BHK + 1 servant room, bought by the complainant paying her hard earned money, in the project called "The Esfera", spread over the land admeasuring approximately 60460 sq.mtr. situated at sector-37 C, village Gharoli Khurd and Basai, Gurugram, Haryana.
5. That the respondent "Imperia Structures Limited" (hereinafter referred to as respondent/developer/seller/builder/promoter/company) is a company duly incorporated under the Companies Act, 1956 and is being sued through its Chairman cum Managing Director.

6. That the Director, Town and Country Planning, Government of Haryana, vide licence bearing no. 64 of 2011 dated 16.07.2011 has granted permission to the respondent for setting up a group housing colony to be known as "ESFERA".
7. On the basis of this licence, the respondent company has collected a huge amount, more than 25% payable amount of the apartment from gullible and naïve complainant from 2013 to 2014 (within six months) and promised the complainant to handover the possession of his apartment by 02.01.2018. The respondent in a clandestine manner has charged irrelevant taxes and preferential location charges from the complainant. Even after a delay of three years approximately, the respondent is neither offering possession of the apartment to the complainant, nor is paying any interest on his default to the complainant. The complainant hereby requests for the immediate delivery of possession of the apartment and interest on paid amount for the default of the respondent from the due date of possession till the actual delivery date of possession of the apartment.
8. That the genesis of the present complaint lies due to gross indifference, refusal, and failure of the various obligations on the part of the respondent. The developer enticed various

customers including the complainant to pay their hard-earned money in the purchase of a residential apartment in the subject project. The respondent promised to hand over the possession of the apartment by 02.01.2018 during the time of taking payment. But after taking all payable cost of the apartment, the respondent has not yet offered the possession of the apartment even after a delay of three years approximately.

9. The respondent published very attractive brochure, highlighting the group housing colony 'The Esfera', at sector 37C, Gurugram, Haryana. The respondent claimed to be one of the best and finest in construction and one of the leading real estate developers of the country, in order to lure prospective customers to buy flats/apartments in the project including the complainant. There are fraudulent representations, incorrect and false statements in the brochure.
10. That the complainant was approached by the representatives of the respondent. The sale representatives claimed and boasted of the subject project as the world class project. The complainant was invited to the sales office and was lavishly entertained, and huge promises were made to her. The

complainant was impressed by their statements and representations and ultimately lured to pay Rs.10,00,000/- as booking amount of the subject apartment on 26th and 27th December 2013.

11. That on 31.12.2013, the respondent issued welcome letter in the favour of the complainant. The complainant paid a total of Rs. 36,11,236/- till 7th May 2014. The respondent violated section 13 of the Act, 2016 by taking more than ten per cent cost of the flat before the execution of the buyer's agreement. The total bsp of the flat is Rs.78,93,600/- including EDC and IDC, PLC, parking, while the respondent had collected a total sum of Rs.36,11,236/-, more than 40% of the total bsp of the apartment till 07th May 2014
12. The buyer's agreement for the subject apartment was executed on 02.07.2014 between the parties. The due date of possession as per the agreement was 02.01.2018.
13. That the complainant further paid all instalments of payments as and when demanded by the respondent and ultimately paid Rs. 36,11,236/- out of the total consideration of Rs.1,18,23,600/-, which is more than 25% payable amount of the apartment.

14. That it was unfair, illegal, unlawful, unethical for the respondent when he had demanded the amount from the complainant without the particular stage of construction being achieved as the completion of the apartment has been delayed by three years approximately, which has ultimately resulted in the difficulties for the complainant and many such buyers. Further, instead of making reparations for the delay caused due to failure of the respondent, the builder/developer/company charged from the complainant.
15. The complainant has approached the respondent and pleaded for delivery of possession of his apartment as per the buyer's agreement on various occasions. The respondent did not reply to his letters, emails, personal visits, telephone calls, seeking information about the status of the project and delivery of possession of her apartment, thereby the respondent violated section 19 of the Act, 2016.
16. That the respondent has in an unfair manner siphoned of funds meant for project and utilised same for his own benefit for no cost. That the respondent being builder and developer, whenever in need of funds from bankers or investors ordinarily has to pay a heavy interest per annum. However, in the present scenario, the respondent utilised funds

collected from the complainant and other buyers for his own good in other projects, being developed by the respondent. That is why, the project has not yet been completed even after a delay period of three years approximately.

17. That the complainant has come to know that the respondent is not constructing the construction of his apartment and other apartments with servant quarter with common toilet as per the commitment at the time of application / allotment / buyer's agreement.
18. That the complainant has lost confidence and in fact has got no trust left in the respondent, as the respondent has deliberately and wilfully indulged in undue enrichment, by cheating the complainant beside being guilty of indulging in unfair trade practices and deficiency in services in not delivering the possession of the apartment and then remaining non-responsive to the requisitions of the complainant.
19. In the given premise and circumstances, it is submitted that the respondent/seller/builder/promoter/owner is habitual of making false promises and have a deceptive behaviour. The respondent has earned enough monies by duping the innocent complainant and other buyers through his unfair

trade practices and deficiencies in services and has caused the complainant enough pain, mental torture, agony, harassment, stress, anxiety, financial loss and injury.

20. That the complainant does not want to withdraw from project. The promoter has not fulfilled his obligation under section 18(1) proviso, and now the promoter is obligated to pay complainant interest at the prescribed rate for every month of delay till the handing over the possession.

C. Relief sought by the complainant.

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

- (i) Direct the respondent to pay interest for every month of delay in offering the possession of the apartment since 02.01.2018 to the complainant, on the amount taken from the complainant for the sale consideration and additional charges for the aforesaid apartment with interest at the prescribed rate as per the act, 2016 till the respondent hands over the possession of the apartment.
- (ii) Direct the respondent to complete the construction and handover the possession of the apartment to the complainant immediately.

D. Reply by the respondent.

22. The respondent is a company duly registered under the provisions of the Companies Act, 1956 and Mr. Varun Kumar

is authorized representative of the respondent company, to sign, verify and file this reply before this authority.

23. That, it is submitted that the present complaint has been filed by the complainant against the respondent company in respect of the tower- "B" being developed by the respondent company in its group housing project titled as "Esfera Phase II" situated at sector-37c, Gurgaon, Haryana (hereinafter 'said project').
24. That, it is submitted that the flat no. B-001, (hereinafter 'Said Flat') in tower-B (hereinafter 'Said Tower') situated in the said project, had been allotted to the complainant by the respondent company vide allotment letter dated 02.07.2014 (hereinafter 'allotment letter') on the terms and condition mutually agreed by the allottee/complainant and the respondent company.
25. It is submitted that clause 10.1 of the agreement has been duly agreed by the complainant. In view of the same, the respondent company had intended to complete the construction of the said flat on time. It is pertinent to mention that the respondent company had successfully completed the construction of the said tower and procured the occupancy certificates for three towers out of 9 towers in

the said project. However, the construction of all the towers is completed and in habitable stage, in fact the respondent company had already applied for grant of occupation certificate for rest of the towers of project including the tower - "B", where the allotted unit situates. Further it is pertinent to mention here that respondent company already intimated the complainant about the factum of its OC Application though due to certain force majeure circumstance, majorly the outbreak of second COVID wave in April 2021 and subsequent lockdown in Haryana State, the DTCP, Haryana could not issue the OC well in time enabling the respondent to offer the physical possession of the allotted unit to the complainant. That it is reiterated that allotted unit is ready for fit out possession, and communication with regard to this aspect have already been sent to all eligible allottees including the complainant herein. That it is important to mention here that the project "ESFERA" comprises of 2 phases whereas OC of the Phase I of the project is duly issued by "Town And Country Planning Development Haryana" on 07.02.2018 and more than 100 happy allottee(s) are residing in that phase. That the physical possession of the unit will be tentatively delivered to its

respective allottee(s) soon with respective OC on the said project.

26. That, the respondent company is in extreme liquidity crunch at this critical juncture, the company has also been saddled with orders of refund in relation to 15 apartments in the project, on account of orders passed by various other courts. The total amount payable in terms of these decrees exceeds an amount of Rs.10 crores. The said project involving hundreds of allottees, who are eagerly awaiting the possession of their apartments, will be prejudiced beyond repair in case any mandatory order be passed when the project is almost completed.
27. That, on account of many allottees exiting the project and many other allottees not paying their instalment amounts, the company, with great difficulty, in these turbulent times has managed to secure a last mile funding of Rs.99 crores from SWAMIH Investment Fund – I. The said Alternate Investment Fund (AIF) was established under the special window declared on 6.11.2019 by the Hon'ble Finance Minister to provide priority debt financing for the completion of stalled, brownfield, RERA registered residential developments that are in the affordable housing /mid-

income category, are net-worth positive and require last mile funding to complete construction. The company was granted a sanction on 23.09.2020 after examination of the status of the company and its subject project "Esfera" for the amount of Rs.99 crores. However, the funding is still to be received, and the company is hoping for the same to be released shortly.

28. That, it is humbly submitted that this authority may be pleased to consider the bona fide of the respondent company and distinguish the respondent company from the bad repute being imparted to real-estate builders. It is pertinent to mention here that the respondent company is extremely committed to complete the phase - 2 of the said projects. In fact, the super structure of all towers in phase - 2 (incl. tower -B) has already been completed, the internal finishing work and MEP works is going in a full swing with almost 300 construction labourers are working hard to achieve the intent of the appellant to complete the entire project despite all prevailing adversaries.
29. That, it is relevant to mention herein that several allottees have withhold the remaining payments, which is further severally affecting the financial health of the respondent

company and further due to the force majeure conditions and circumstances/reasons, which were beyond the control of the respondent company as mentioned herein below, the construction works got delayed at the said project. Both the parties i.e. the complainant as well as the respondent company had contemplated at the very initial stage while signing the allotment letter/agreement that some delay might have occurred in future and that is why under the force majeure clause as mentioned in the allotment letter, it is duly agreed by the complainant that the respondent company shall not be liable to perform any or all of its obligations during the subsistence of any force majeure circumstances and the time period required for performance of its obligations shall inevitably stand extended. It is unequivocally agreed between the complainant and the respondent company that the respondent company is entitled to extension of time for delivery of the said flat on account of force majeure circumstances beyond the control of the respondent company. And inter-alia, some of them are mentioned herein below:

- That, the respondent company started construction over the said project land after obtaining all necessary

sanctions/approvals/ clearances from different state/central agencies/authorities and after getting building plan approved from the authority and named the project as "Esfera II". The respondent company had received applications for booking of apartments in the said project by various customers and on their requests, the respondent company allotted the under-construction apartments/ units to them.

- That, owing to unprecedented air pollution levels in Delhi NCR, the Hon'ble Supreme Court ordered a ban on construction activities in the region from 04.11.2019 onwards, which was a blow to realty developers in the city. The Air Quality Index (AQI) at the time was running above 900, which is considered severely unsafe for the city dwellers. Following the Central Pollution Control Board (CPCB) declaring the AQI levels as not severe, the SC lifted the ban conditionally on 09.12.2019 allowing construction activities to be carried out between 6 am and 6 pm, and the complete ban was lifted by the Hon'ble Supreme Court on 14.02.2020.

- That, when the complete ban was lifted on 14.02.2020 by the Hon'ble Supreme Court, the Government of India imposed National Lockdown on 24.03.2020 due to pandemic COVID-19, and conditionally unlocked it in 03.05.2020. However, this has left the great impact on the procurement of material and labour. The 40-day lockdown in effect since March 24, which was further extended up to May 3 and subsequently to May 17, led to a reverse migration with workers leaving cities to return back to their villages. It is estimated that around 6 lakh workers walked to their villages, and around 10 lakh workers are stuck in relief camps. The aftermath of lockdown or post lockdown periods has left great impact and scars on the sector for resuming the fast-paced construction for achieving the timely delivery as agreed under the "allotment letter".
- That initially, after obtaining the requisite sanctions and approvals from the concerned authorities, the respondent company had commenced construction work and arranged for the necessary infrastructure including labour, plants, and machinery, etc. However, since the construction work was halted and could not

be carried on in the planned manner due to the force majeure circumstances detailed above, the said infrastructure could not be utilized and the labour was also left to idle resulting in mounting expenses, without there being any progress in the construction work. Further, most of the construction material, which was purchased in advance, got wasted/deteriorated causing huge monetary losses. Even the plants and machineries, which were arranged for the timely completion of the construction work, got degenerated, resulting into losses to the respondent company running into crores of rupees.

- Moreover, it is also pertinent to mention here that every year the construction work was stopped / banned / stayed due to serious air pollution during winter session by the Hon'ble National Green Tribunal (NGT), and after banned / stayed the material, manpower and flow of the work has been disturbed / distressed. Every year the respondent company had to manage and rearrange for the same and it almost multiplied the time of banned / stayed period to achieve the previous workflow.

- The real estate sector so far has remained the worst hit by the demonetization as most of the transactions that take place happen via cash. The sudden ban on Rs.500/- and Rs.1000/- currency notes has resulted in a situation of limited or no cash in the market to be parked in real estate assets. This has subsequently translated into an abrupt fall in housing demand across all budget categories. Owing to its uniqueness as an economic event, demonetisation brought a lot of confusion, uncertainty - and, most of all, - especially when it came to the realty sector. No doubt, everyone was affected by this radical measure, and initially all possible economic activities slowed down to a large extent, which also affected the respondent company to a great extent, be it daily wage disbursement to procuring funds for daily construction, and day-to-day activities, since construction involves a lot of cash payment/transactions at site for several activities.
- It is a well-known fact that there is extreme shortage of water in state of Haryana and the construction was directly affected by the shortage of water. Further the Hon'ble Punjab and Haryana High Court vide an Order

dated 16.07.2012 in CWP No. 20032 of 2009 directed to use only treated water from available sewerage treatment plants (hereinafter referred to as "STP"). As the availability of STP, basic infrastructure and availability of water from STP was very limited in comparison to the requirement of water in the ongoing constructions activities in Gurgaon District, it was becoming difficult to timely schedule the construction activities. The availability of treated water to be used at construction site was thus very limited and against the total requirement of water, only 10-15% of required quantity was available at construction sites.

30. That, owing to the above said force majeure circumstances and reasons beyond the control of the respondent company, it was extremely necessary to extend the intended date of offer of possession mentioned in the allotment letter.
31. That for the purpose of ensuring the delivery of the possession, despite lockdown, the respondent company was seeking permission to resume construction of the said project. The respondent company got the permission certificate on 01.05.2020 by the municipal Corporation of Gurugram, Haryana subject to certain safety restriction and



conditions. Therefore, it is humbly submitted that this authority may be pleased to consider the bona fide of the respondent company and distinguish the respondent company from the bad repute being imparted to real-estate builders. It is pertinent to mention here that the respondent company is extremely committed to complete the phase - II of the said projects in fact super structure/ civil works in all the towers in phase - II has already been completed despite all prevailing adversaries, only final finishing work is remaining now.

32. The respondent company craves leave of this authority to add, amend, or alter this reply, if found necessary, at any stage of the proceedings. The respondent company shall submit any documents or details as may be required by this authority. The Respondent Company also craves leave of this authority to make further submissions at the appropriate stage, if so advised.
33. Copies of all the relevant do 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

34. The respondent has raised an objection regarding jurisdiction of authority to entertain the present complaint.

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

As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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

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

Section 11(4)(a)

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

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.

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

F. Findings on the relief sought by the complainant.

F.1 Delay possession charges.

Relief sought by the complainant: Direct the respondent to pay interest for every month of delay in offering the possession of the apartment since 02.01.2018 to the complainant, on the amount taken from the complainant for the sale consideration and additional charges for the aforesaid apartment with interest at the prescribed rate as per the act, 2016 till the respondent hands over the possession of the apartment.

35. In the present complaint, the complainant intends 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."

36. Clause 10.1 of the flat buyer's agreement, provides for handing over possession and the same is reproduced below:

10.1 Schedule for possession of the said apartment

The Developer/Company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Building/said Apartment within a period of three and half years from the date of execution of this Agreement unless there shall be delay or there shall be failure due to reasons mentioned in Clauses 11.1, 11.2, 11.3 and Clause 41 or due to failure of Intending Allottee(s) to pay in time the price of the said Apartment along with other charges and dues in accordance with the schedule of payments given in Annexure F or as per the demands raised by the Developer/Company from time to time or any failure on the part of the intending Allottee(s) to abide by all or any of the terms or conditions of this Agreement.

37. A flat buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builders/promoters and buyers/allottees are protected

candidly. Flat buyer's agreement lays down the terms that govern the sale of different kinds of properties like residential, commercials etc. between the buyer and builder. It is in the interest of both the parties to have a well-drafted agreement which would thereby protect the rights of both the builder and buyer in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the apartment, plot or building, as the case may be and the right of the buyers/allottees in case of delay in possession of the unit.

38. The respondent promoter has proposed to handover the possession of the subject apartment within a period of three and half years from the date of execution of this agreement unless there shall be delay or there shall be failure due to reasons mentioned in clauses 11.1, 11.2, 11.3 and Clause 41 or due to failure of intending allottee(s) to pay in time the price of the said apartment along with other charges and dues in accordance with the schedule of payments given in annexure-F or as per the demands raised by the

developer/company from time to time or any failure on the part of the intending allottee(s) to abide by all or any of the terms or conditions of this agreement.

39. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges, 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.

40. 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.

41. 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., 06.10.2021 is 7.30% p.a. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30% p.a.
42. 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;"*
43. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e.,

9.30% p.a. by the respondent/promoter which is the same as is being granted to the complainant in case of delay possession charges.

44. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of flat buyer's agreement executed between the parties on 02.07.2014, the possession of the booked unit was to be delivered within a period of three and half years from the date of execution of this agreement which comes out to be 02.01.2018.
45. Section 19(10) of the Act obligates the allottees to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. These 2 months' of reasonable time is being 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., 02.01.2018 till offer of possession of the subject flat after obtaining occupation certificate from the competent authority plus two months or handing over of possession whichever is earlier as per the provisions of section 19(10) of the Act.

46. Accordingly, non-compliance of the mandate contained in section 11(4) (a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such complainant is entitled to delayed possession charges at the prescribed rate of interest i.e., 9.30% p.a. for every month of delay on the amount paid by the complainant to the respondent from the due date of possession i.e., 02.01.2018 till the offer of possession of the subject flat after obtaining occupation certificate from the competent authority plus two months or handing over of possession whichever is earlier as per the provisions of section 18(1) of the Act read with rule 15 of the rules and section 19 (10) of the Act.

H. Directions of the authority

47. 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., 02.01.2018 till the offer of possession of the subject flat after obtaining occupation certificate from the competent authority plus two months or handing over of possession whichever is earlier as per section 19 (10) of the Act.
- II. The arrears of such interest accrued from 02.01.2018 till date of this order shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be payable by the promoter to the allottee before 10th day of each subsequent month as per rule 16(2) of the rules.
- III. The respondent is directed to handover the physical possession of the subject unit after obtaining OC from the competent authority.
- 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 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 delayed possession charges as per section 2(za) of the Act.

VI. The respondent shall not charge anything from the complainant which is not the part of the agreement.

48. Complaint stands disposed of.

49. File be consigned to registry.


(Samir Kumar)
Member


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 06.10.2021

JUDGEMENT UPLOADED ON 26.12.2021

HARERA
GURUGRAM