

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

Complaint no. : 377 of 2021
Date of filing complaint: 22.01.2021
First date of hearing : 22.04.2021
Date of decision : 06.10.2021

1. Mrs. Krishna Devi 2. Mr. Mohit Dayma Both RR/O: - H. no. 137, V.P.O Kadarapur, Near HDFC Bank, Tehsil Wazirabad, Gurugram, Haryana- 122001	Complainants
Versus	
1. M/s Imperia Structures Ltd. 2. Mr. Harpreet Singh Batra, M.D 3. Mr. Brajinder Singh Batra, Director-1 4. Mr. Karaj Singh, Director-2 5. Mr. Ram Singh, Director-3 All having Regd. Office at: - A-25, Mohan Cooperative, Industrial Estate, Mathura Road, New Delhi-110044	Respondents

CORAM:	
Shri. Samir Kumar	Member
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Sh. Vikas Yadav (Advocate)	Complainants
Ms. Tanya Swarup (Advocate)	Respondents

ORDER

1. The present complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottees as per the agreement for sale executed inter se.

A. Unit and project related details

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

S. No.	Heads	Information
1.	Name and location of the project	"Mindspace", Sector-62, Gurugram
2.	Project area	8.35625 acre
3.	Nature of the project	IT park colony
4.	DTCP license no. and validity status	86 of 2010 dated 23.10.2010 valid till 22.10.2020



5.	Name of the license holder	M/s Bakir Real Estate Pvt. Ltd. And Ors.
6.	Name of the collaborator	DLF New Gurgaon Offices Developers Pvt. Ltd.
7.	RERA registered/ not registered	Registered Registered vide 240 of 2017 dated 25.09.2017
8.	RERA registration valid up to	31.12.2020
9.	Unit no.	IMP-B-0174 Virtual office space (as alleged by the respondents page no. 2 of the reply)
10.	Unit area	1000 sq. ft. (page no. 25 of the complaint)
11.	Date of execution of MOU	02.11.2011 (page no. 24 of the complaint)
12.	Payment plan	Construction linked payment plan (page no. 22 of the reply)
13.	Total consideration	Rs. 60,00,000/- (page no. 25 of the complaint)
14.	Total amount paid by the complainants	Rs. 60,00,000/- (vide receipt on page no. 20 of the complaint)
15.	Possession clause	4. The Developer has represented to the allottee that the possession of the said unit shall be handed over by the developer to the

		<p>allottee but in the event of virtual space the space will be registered in favour of allottee and handed over to the lessee within a maximum period of 2 (two years after approval of building plans of the said project from competent authorities of the said project subject to force majeure. That the allottee hereby agrees accepts and confirms the authority and power of the developer for any variation or change in the location or area of the said unit allotted to him and that the allotment is provisional.</p>
16.	Due date of delivery of possession	04.12.2017 [Calculated from the date of approval of building plan]
17.	Occupation Certificate	Not obtained w.r.t the subject tower 02.06.2020 [for tower- C (ground floor to 13 th floor)]
18.	Offer of possession	15.07.2019 Not a valid/ lawful offer of possession
19.	Delay in handing over of possession till date of decision	3 years, 10 months and 2 days.

i.e., 06.10.2021

B. Facts of the complaint

3. That that the respondent no. 1 is engaged in the business of developing housing/commercial projects and selling of apartments & commercial spaces, having its registered office mentioned in titled of the complaint, and the respondent no. 2 to 5 are directors of the respondent no. 1. The respondent no. 2 to 5 are responsible for the acts and conducts of the respondent no. 1. That the complainants had, in the month of October 2011, had booked a virtual office space on the 7th floor in tower A, admeasuring 1000 sq. fts. in the project "Mindspace", situated in sector-62, Gurugram through respondent no. 1, for a total price of Rs. 60,00,000/- inclusive of applicable taxes.
4. That the complainants had paid Rs. 60,00,000/- plus applicable service taxes etc. to the respondent no. 1 which have been duly acknowledged by the respondent no. 1 vide receipt, annexures, P/A to P/D, concluding that the complainants had paid the total sale price to the respondent no. 1 in respect of the subject unit.

5. That all the negotiations before the booking of the apartment and at the time of making payment to the respondent no.1 was in the shape of cheques, the complainants were lured by respondent no. 2 to 5 to invest in the subject project on the pretext that delivery of the virtual office space will be done within 24 months after approval of building plans of the said project from competent authority i.e. on or before 04.12.2017 as the date of approval of building plan was 04.12.2015. The possession could only be handed over to the complainants on 04.12.2017 only after obtaining occupation certificate on 04.12.2017, however the occupation certificate in respect of the subject project has been received on 28.11.2019. The letter of offer of possession dated 15.07.2019 is sham document and is of no consequences as the occupation certificate was received on 28.11.2019 almost 4 months after offer of possession by respondent no. 1. The respondent has played fraud with the complainants as no possession can be handed over/offered without their being issuance of occupation certificate. The respondent no. 1 fraudulently issued offer of possession letter dated 15.07.2019 in order to avoid lawful payment of assured

return at the rate Rs 60/- pr. sq. ft. per month on the booked space. From above stated facts, it is clear that actual delivery of possession of unit to the complainants have not been made and as per the provisions of MOU, the complainants are entitled for delayed possession charges with effect from 04.12.2017 till the actual delivery of possession of unit. It is pertinent to mention here that no charges for delayed possession have been given to complainants by the respondents. It was made clear to the officials of the respondent no. 1 that the complainants were purchasing the unit/virtual space on the representation and assurance of respondent no. 1 company and its official i.e., respondent no. 2 to 5 that they would abide by the clauses, more particular clause no. 4 of the MOU dated 02.11.2011.

6. That the complainants repeatedly followed up with the officials of the respondent no. 1 for payment of charges to the complainants for delayed possession, but the respondents avoided the matter on one pretext or the other. The respondent no. 1 started paying rent at the rate Rs. 50/- per sq. ft. per month on 1000 sq. ft. as assured rental whereas the respondent no. 1 was liable to pay Rs.60/- per sq. ft. per

month on 1000 sq. ft. as assured return to the complainants till the actual delivery of possession of unit.

7. That as per section 18(1) of the Act of 2016, the respondents have provided false information on the prospectus/brochure and under the same section, the complainants are entitled to get interest on account of delay in handing over the possession of the flat/apartment.
8. That the act of the respondents is malafide, arbitrary, illegal, unconstitutional, unjust, unfair, opposed to the public policy, equity and fair play and as is unsustainable in the eyes of the law and is liable to be prosecuted under section 61 and other relevant sections of the Haryana Real Estate (Regulations and Development) Act, 2016.
9. That the complainants do not want to withdraw from project. The promoters have not fulfilled his obligation under section 18(1) proviso, and now the promoters are obligated to pay complainants interest at the prescribed rate for every month of delay till the handing over the possession.

C. Relief sought by the complainants.

10. The complainant has sought following relief(s):
 - (i) Direct the respondent no.1 to pay the charges to the complainants for delayed possession from

05.12.2017 to the actual date of handing over of possession to the complainants.

- (ii) Direct the respondent no.1 to deliver the actual physical possession of the unit to the complainants.

D. Reply by the respondent.

11. The respondent no. 1 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.
12. That the complainants have filed the complaint before this authority thereby misleading certain facts and manipulated them according to the suitability of their whims and fancies, the correct facts were not placed before this authority, therefore, It has become the dire need of the time to place the correct sequence of events to avoid the deception and miscalculation. Thus, the respondents are hereby seeking dismissal of the present complaint on the ground of misleading and distorted information placed before this authority.
13. That, on 16.10.2011, the complainants have booked an office space with the respondents company at project launch, then named as "Imperia Byron" (presently known as "Imperia

Mind space") located at sector-62, Golf Course Road, Gurgaon, Haryana, and thereby signed an "application cum registration form."

14. That, it is germane to mention herein that the State Government had acquired the huge land which comprises the said project land from farmers and transferred such land to the respondents company for development in accordance with its master plan and then it had carved out various sectors and plots therein. That, the respondents company started construction over the said project land after obtaining all necessary sanctions/approvals/ clearances from different state/central agencies/authorities. That, it is necessary to mention that the respondents company received initial approval of building plans on 04.12.2015 and started the milestone construction of the present project.
15. That, subsequently receiving the building plans as mentioned herein above the respondents company started the construction in full swing and also allotted the unit to the concerned allottees. That, the respondents company on certain recommendation changed the name of the project from the "Imperia Byron" to "Imperia Mindspace" and the

same was communicated to the customer vide letter dated 15.03.2016.

16. That the respondents company vide letter dated 15.07.2019 issued the "offer of possession for fit-out period and commencement of lease rent" for the unit IMP-B-0174 admeasuring 1000 sq.ft., which is a virtual office space located in the project named "MINDSPACE" at Sector-62, Gurugram, Haryana.
17. That it is a known fact that the respondents puts all its money received from the allottees upon the construction and default in making the payment affects the construction speed and the whole cycle of completion of the committed project, therefore, the default in making the payment affects the whole cycle of construction and eventually affects the delivery of the project to other allottees to whom the promoters have committed the timely delivery. It is also necessary to bring in notice that, in spite of several difficulties and certain force majeure such as recent COVID-19, the respondents company has procured the occupancy certificate on 02.06.2020, which shows the bonafide of the

respondents company to complete the project in spite of the many hardships faced in completing the project.

18. That in clause 4 of the "MOU," it is unequivocally agreed between the parties that the respondents company shall pay the assured returns to the complainants till the "offer of possession" i.e., sent to the complainants vide letter dated 15.07.2019 and afterwards shall pay the assured rental till the "agreement of lease" is executed between the parties. In both circumstances the complainants are in win-win situation. If the respondents company completes the construction and offer the possession to the complainants, still the complainants shall be getting the assured rental, or in case the respondents company fails to offer the possession, the monthly installment of assured return is payable to the complainants. The respondents company has paid the assured returns to the complainants from the period starting from April 2012 till March 2019 @ Rs. 60,000/- per month, consequently, the complainants have almost received more than the amount invested in the said unit. In further, the respondents company was bound to handover the possession of virtual space within two years from the date of

sanction of the building plans, which was received on 04.12.2015. Thus the due date for possession was 04.12.2017, however, as it is clear from the above clause, in both circumstances the respondents company was bound to either pay assured returns or assured rentals, and the respondents company had kept paying the assured returns as it was agreed between the parties, therefore, it is evident from the fact that the respondents company is not at default and complied and followed the adherence of the clauses agreed under the "MOU".

19. That, it is relevant to mention herein that due to the force majeure conditions and circumstances/reasons, which were beyond the control of the respondents company as mentioned herein below, the construction works got delayed at the said project. Both the parties i.e. the complainants as well as the respondents company had contemplated at the very initial stage while signing the "MOU" that some delay might occur in future and that is why under the force majeure clause as mentioned in the "MOU", it is duly agreed by the complainants that the respondents 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 complainants and the respondents company that the respondents company is entitled to extension of time for delivery of the said unit on account of force majeure circumstances beyond the control of the respondents company. It is mentioned in the clause 5 of the "MOU" agreed between the parties.

20. 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 on 03.05.2020. However, this has left the great impact on the procurement of material and labour.

21. 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. That, owing to the above said force majeure circumstances and reasons beyond the control of the respondents company, it was extremely necessary to extend the intended date of offer of possession mentioned in the "MOU" and hence the intended date for offer of possession of the subject unit was rescheduled.
22. That, therefore, it is evident from the fact that the respondents company was adhering to the "MOU" entered into between the parties, and willing to adjust for further period in the final demand but subject to the payment by the complainants, the said unit booked by the complainants is a

virtual unit and the actual physical handover/possession could not be done and the same is also not part of the 'MOU.'

The respondents company has received completion certificate on 02.06.2020 and willing to execute "agreement of lease deed" subject to the compliance of "MOU".

23. That, it is, therefore, worthwhile to conclude that the respondents company cannot be termed as "wilful defaulter" by any stretch of imagination. Therefore, the respondents company earnestly requests this authority to appreciate all the factual matrix and circumstances as detailed hereinabove to reach a logical conclusion to serve the ends of justice.
24. That, in the present complaint, the complainants have suppressed material facts as mentioned hereinabove and the same have now been brought to the knowledge of this authority by the respondents company through this reply, and the complainants have thereby tried to mislead this authority. The present complaint has merely been filed with a view to harass the respondents company and therefore complaint of the complainants deserves to be dismissed with exemplary costs imposed on the complainants for abusing the process of law as well as the process of this authority. It is

strenuously denied that the respondents company has made any illegal demand from the complainants. However, it is submitted that all the demands of the respondents company are legal and as per the terms and conditions agreed between the parties.

25. That, in view of the above said detailed reply; it is crystal clear that all the issues and grievances of complainants are vexatious, mischievous and misleading. It is denied that the complainants are entitled for any relief as prayed for by the complainants. Hence, the said complaint may kindly be rejected/dismissed in the interest of justice.
26. The respondents company craves leave of this authority to add, amend or alter this reply, if found necessary, at any stage of the proceedings. The respondents company shall submit any documents or details or above referred judgments as may be required by this authority. The respondents company also craves leave of this authority to make further submissions at the appropriate stage, if so advised.
27. 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

28. 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 complainants at a later stage.

F. Findings on the relief sought by the complainants.

F.1 Delay possession charges.

Relief sought by the complainants: Direct the respondent no.1 to pay the charges to the complainants for delayed possession from 05.12.2017 to the actual date of handing over of possession to the complainants.

29. In the present complaint, the complainants 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."

30. Clause 4 of the MOU dated 02.11.2011, provides for handing over possession and the same is reproduced below:

The Developer has represented to the Allottee that the possession of the Said Unit shall be handed over by the Developer to the Allottee but in the event of Virtual Space the Space will be registered in favour of Allottee and handed over to the Lessee within a maximum period of 2 (two years after approval of Building Plans of the Said Project from competent authorities of the Said Project subject to force majeure. That the Allottee hereby agrees accepts and confirms the authority and power of the Developer for any variation or change in the location or area of the Said Unit allotted to him and that the allotment is provisional.'

31. The respondent promoters have proposed to handover the possession of the subject apartment within a maximum period of 2 (two years after approval of building plans of the said project from competent authorities of the said project subject to force majeure.

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

33. 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.



34. 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.
35. 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;"*
36. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 9.30% p.a. by the respondents/promoters which is the same

as is being granted to the complainants in case of delay possession charges.

37. **Validity of offer of possession:** At this stage, the authority will clarify the concept of 'valid offer of possession'. It is necessary to clarify this concept because after valid and lawful offer of possession, liability of promoters for delayed offer of possession comes to an end. On the other hand, if the possession is not valid and lawful, liability of promoters continues till a valid offer is made and allottees 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 concerned department certifying that all the 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 allottees 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 an apartment uninhabitable. Such minor defects can be rectified later at the cost of the developers. The allottee should accept possession of an apartment with such minor defects under protest. This authority will award suitable relief or compensation for rectification of minor defects after taking over of possession under protest.

However, if the subject unit is not at all habitable 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 legally valid offer of possession.

- 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 of minor nature or they could be significant and 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 the additional demands are made by the developer, the allottees may accept possession under protest or decline to take possession raising objection against unjustified demands.

38. In light of the above-mentioned reasoning, the offer of possession dated 15.07.2019 made by the promoters in the present matter is not a valid/ lawful offer of possession as the same has been made before obtaining OC from the

competent authority which is a necessary pre-requisite. The OC for the subject unit has not been obtained by the respondent promoters till date.

39. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the authority is satisfied that the respondents are in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. The date of approval of the building plan for the subject project is 04.12.2015. By virtue of MOU executed between the parties on 02.11.2011, the possession of the booked unit was to be delivered within a period of two years after approval of building plans of the said project from the competent authority which comes out to be 04.12.2017.
40. 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 complainants 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., 04.12.2017 till the date of offer of possession 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.

41. 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 respondents is established. As such complainants are entitled to delayed possession charges at the prescribed rate of interest i.e., 9.30% p.a. for every month of delay on the amount paid by the complainants to the respondents from the due date of possession i.e., 04.12.2017 till the date of offer of possession 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

42. 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 promoters as per the function entrusted to the authority under section 34(f):

- I. The respondents are 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., 04.12.2017 till the date of offer of possession 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.
- II. The arrears of such interest accrued from 04.12.2017 till date of this order shall be paid by the promoters to the allottees 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 complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- IV. The rate of interest chargeable from the allottees by the promoters, 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 promoters 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.

- V. The respondents shall not charge anything from the complainants which is not the part of the agreement.
- VI. The cost imposed during the proceedings on either of the party be included in the decree sheet

43. Complaint stands disposed of.

44. 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