

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

Complaint no. : 1727 of 2021
Date of filing complaint: 02.04.2021
First date of hearing : 22.04.2021
Date of decision : 06.10.2021

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| 1. Shri Naresh Kumar 2. Smt. Nisha Yadav Both R/O: - RD-183A, Dharampura Extension, Najafgarh, New Delhi - 110043 | Complainants |
| 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:

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| Sh. Sukhbir Yadav (Proxy Counsel) (Advocate) | Complainants |
| Ms. Tanya Swarup (Advocate) | Respondent |

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 | "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. | 602, 6 th floor, tower C (annexure P-4 on page no 37 of the complaint) |
| 9. | Unit admeasuring | 1435 sq. ft. [super area] (annexure P-4 on page no 37 of the complaint) |



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| 10. | Date of flat buyer's agreement | 30.04.2013 (annexure P-4 on page no 35 of the complaint) |
| 11. | Payment plan | Construction linked plan (annexure P-4 on page no 77 of the complaint) |
| 12. | Total consideration | Rs. 61,97,625/- (annexure P-4 on page no 41 of the complaint) |
| 13. | Total amount paid by the complainants | Rs. 60,95,445/- (annexure P-5 on page no 84 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 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 |

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| | | 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) |
| 15. | Due date of delivery of possession | 30.10.2016 (Calculated from the date of execution of flat buyer's agreement) |
| 16. | Occupation Certificate | Not obtained for this tower 07.02.2018 (for tower- G,H, I and EWS block) |
| 17. | Offer of possession | Not offered |
| 18. | Delay in handing over of possession till date of order i.e.,06.10.2021 | 4 years 11 months 6 days. |

B. Facts of the complaint

3. That the respondent is a company incorporated under the Companies Act, 1956, bearing corporate identification number (CIN) - U45400DL2010PLC198791 and registration number as 198791.
4. That respondent, being builder/ developer along with its subsidiary & collaborator land owner companies came up with a group housing project namely 'The Esfera' (hereinafter referred as the said 'project')) located in sector - 37C, Gurugram, Haryana. The respondent and its subsidiary companies were to develop a residential colony/

township of high standard project and have obtained license bearing no. 64 of 2011 vide memo No. LC-1303-JE(B)-2011/2664 dated 07.03.2011 from the Director, DTCP, Haryana and Chandigarh for the promotion and development of the proposed said project.

5. That the complainants along with their family members visited the project site and marketing office of respondent. The office bearers of developer represented the brochure, payment plans and schemes and confirmed that the project will be completed by year end or 31.12.2015 and that it will be duly mentioned in flat buyer's agreement (hereinafter referred as the 'FBA') and that the respondent is obligated to adhere to the agreement.
6. That after being convinced of the project location, construction quality and delivery commitments in December 2015, the complainants bought a 2BHK apartment, in re-sale on 05.02.2012, bearing unit no. - 602 in tower c located on the 6th floor admeasuring super area of 1435 sq.ft. ((hereinafter referred as the said 'unit') in the said project from its original allottee Mr. Mahavir Singh S/o Sh. Bhagrawat Singh R/o C-1562, Ansal Palam Vihar, Gurugram, Haryana, after approval from the office bearers of respondent for endorsement and transfer of unit.
7. That after the purchase of the said unit, the respondent endorsed all the documents in the name of the complainants on 05.02.2012 and subsequently the

complainants became a bona fide purchaser in the project of the respondent.

8. That the respondent on 30.03.2012 issued a confirmation letter for the said unit at the basic sale price of Rs. 3100/- per sq ft, along with details of other charges and PLC charges summing up to Rs. 61,97,625/- as total sale consideration.
9. That the respondent executed a pre-printed, Arbitrary, unilateral flat buyer's agreement with complainants on 30.04.2013 for the said unit. The possession was committed to be delivered by 30.10.2016 declared under clause 10.1. That the complainants paid as and when respondent raised the demands for instalments for the booked unit.
10. That the complainants have honoured all the demands raised by the respondent till 13.01.2018, and paid the respondent a total amount of Rs. 60,95,445/- including taxes which is almost entire amount towards the purchased said unit.
11. That the project is already delayed by more than 04 years, and still it is incomplete hence there is an apprehension in the minds of the complainants that the respondent party is playing fraud and there is something fishy which respondent party is not disclosing to the complainants just to embezzle the hard earned money of the complainants. It is highly pertinent to mention here that the respondent wants unjustified enrichment on the money of the complainants.

12. That it was observed in a recent site visit to the project site ,that respondent has illegally charged the complainants for the park facing PLC, as all the balconies of the said unit are either facing the adjacent or next tower or the 'nearby other project' (out of the project complex). Moreover, one needs to bend down from the balcony to see the park or greenery, and hence it was of no logic for the complainants for paying towards the park facing PLC
13. That the respondent's charges on account of PLC or preferred location charges is mere a way of charging unnecessarily from the complainants. With reference to 'Corner PLC', there is no meaning to preferential location as builder is charging 'Corner PLC' on all the flat owners of the tower C/ project, leaving no meaning of 'Preference' with reference to the charged PLC on complainant's unit. Hence this claim or demand is completely false, fictitious and imaginary, and is being charged for wrongful gain of the respondent
14. That the respondent has failed to give possession on 30.10.2016 as committed in flat buyer's agreement, and totally failed to fulfill his promises and commitments. The complainants also realizes that the corner & park facing PLC is completely unjustified on the unit of the complainants and hence this claim appears totally false, fictitious and imaginary
15. That the unjustified PLC are concurrently increasing the cost of unit/ apartment for complainants, without any advantage

given to the complainants by the respondent and hence it is mere a way of self enrichment for the respondent.

16. That the complainants visited the said project's site on 30.03.2012 and it was seen and observed that the possession would still take another 2-3 years, as the whole construction material was lying in scattered condition and work of flooring, grilling on balconies, fixing window glass panels, lift work, garden development, wooden work, electricity fitting and inner rods etc were still pending and likely to take further immense time by the respondent. This clearly indicated that the developer has been very negligent and careless in performing his part of the agreement even after gap of more than 9 years from bhoomi poojan i.e. 19.02.2012.
17. That the complainants wrote email to the respondent with their concern over the observations and apprehension to know the expected date of delivery of the unit/ project as it was already delayed by more than 04 years, however the respondent gave another fake assurance of possibility of completion of the project and final possession by last quarter of 2021.
18. That due to above acts of the respondent and in view of the terms and conditions of the flat buyer's agreement, the complainants have been unnecessarily harassed mentally as well as financially, therefore the respondent is liable to compensate the complainants on account of the aforesaid act of unfair trade practice. It is worth

mentioning here that the agreement contains clause under head 'Time is the Essence of Contract'. The complainants have already paid almost the entire cost of flat to the tune of Rs. 60,95,445/- as agreed by the respondent in his statement of accounts, and thus completed his part of the contract agreement in time whereas respondent has measurably failed to complete the entire work of the construction in time i.e. upto 30.10.2016 and not even after lapse of about 10 years as said unit was booked in the year 2011.

19. That for the first time cause of action for the present complaint arose in 2013, when the FBA, containing unfair and unreasonable terms was, for the first time, forced upon the allottees. The cause of action further arose while paying PLC charges, and further cause of action arose on 30.10.2016 when the respondent party failed to deliver the project as promised in the FBA and in March 2021 when during the site visit it was seen and observed that the possession will still take another 2 - 3 years. The cause of action is alive and continuing and will continue to subsist till such time as this authority restrains the respondent party by an order of injunction and/or passes the necessary orders.
20. That the complainants do not want to withdraw from the project. The respondent has not fulfilled his obligations therefore as per obligations on the promoter under section 18(1) of the Act of 2016 and it is obligatory and mandatory on the part of the promoter to pay interest at

the prescribed rate for every month of delay till the handing over the possession.

C. Relief sought by the complainants.

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

- (i) Direct the respondent to pay interest at 20% per annum from the due date of possession i.e. 30.10.2016 until the physical possession of the said unit as per section 18 of Real Estate (Regulation and Development) Act, 2016.
- (ii) Direct the respondent, to complete the project within timelines and to handover the possession of the said unit within that defined timeline along with a penalty clause on the respondent in case of further failure.

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- "C" 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. C-602, (hereinafter 'Said Flat') in tower-C (hereinafter 'Said Tower') situated in the said project, had been allotted to the complainant by the respondent company vide allotment letter dated 02.03.2012 (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 - "C", 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 project. In fact, the super structure of all towers in phase - 2 (incl. tower -C) 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

pace 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 work flow.

- The real estate sector so far has remain 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 GWP 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 project 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 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 to pay interest at 20% per annum from the due date of possession i.e. 30.10.2016 until the physical possession of the said unit as per section 18 of Real Estate (Regulation and Development) Act, 2016.

35. In the present complaint, the complainants intend to continue with the project and are seeking delay possession

charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

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

.....
Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

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 complainants are seeking delay possession charges, proviso to section 18 provides that where an allottees 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 allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, 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 complainants 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 complainants 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 30.04.2013, 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 30.10.2016.
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 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., 30.10.2016 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 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 respondent from the due date of possession i.e., 30.10.2016 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., 30.10.2016 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 30.10.2016 till date of this order shall be paid by the promoter 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 allottees 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 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 respondent/promoter 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.

48. Complaint stands disposed of.

49. File be consigned to registry.

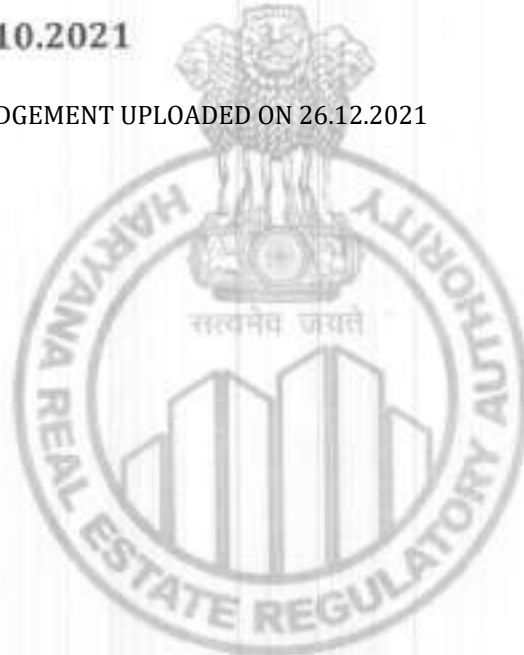

(Samir Kumar)
Member

v. / 
(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 06.10.2021

JUDGEMENT UPLOADED ON 26.12.2021



HARERA
GURUGRAM