

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

Complaint no. : 1554 of 2021  
Date of filing : 13.04.2021  
Date of first hearing: 04.07.2021  
Date of decision : 08.10.2021

1. 2.	Mr. Varun Singh Hooda Siddharth Hooda <b>Both R/O:</b> House no. 1033, Sector 40, Gurugram	<b>Complainants</b>
1.	M/s. Shree Vardhman-Infraheights Private Limited <b>Regd. office at:</b> 302, 3rd Floor, Indraprakash Building, 21 Barakhamba Road, New Delhi-110001	<b>Respondent</b>

<b>CORAM:</b>	
Dr. K.K. Khandelwal	<b>Chairman</b>
Shri Vijay Kumar Goyal	<b>Member</b>
<b>APPEARANCE:</b>	
Complainants-in-person	Complainants
Sh. Rakshit Rautela Proxy Counsel for Sh. Varun Chugh (Advocates)	Respondent

**ORDER**

1. The present complaint has been filed by the complainants/allottees in Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate

(Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions to the allottee as per the agreement for sale executed inter se.

**A. Unit and project related details**

2. The particulars of the project, the details of 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	"Shree Vardhman Victoria", village Badshapur, Sector-70, Gurugram <span style="color: red;">Flora</span>
2.	Project area	10.9687 acres <span style="color: red;">10.981</span>
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	103 of 2010 dated 30.11.2010 valid upto 29.11.2020 <span style="color: red;">11.02.2008</span>
5.	Name of the Licensee	Santur Infrastructures Pvt. Ltd. <span style="color: red;">10.02.2025</span>
6.	RERA registered/ not registered	<b>Registered</b> <span style="color: red;">88</span>
	Validity status	Registered vide no. 70 of 2017 dated 18.08.2017 <span style="color: red;">23.08.2017</span> 31.12.2020 <span style="color: red;">30.06.2019</span>
7.	Unit no.	504, tower A1 (annexure- C3 on page no. 28 of the complaint)
8.	Unit area	2475 sq. ft. (annexure- C3 on page no. 28 of

		the complaint)
10.	Revised unit area	2575sq. ft. (annexure- C4 on page no. 48 of the complaint as per call notice/ intimation letter dated 16.02.2021)
11.	Date of flat buyer's agreement	12.08.2013 (annexure- C3 on page no. 26 of the complaint)
12.	Payment plan	Construction linked payment plan (annexure- C3 on page no. 45 of the complaint)
13.	Total consideration	Rs. 82,31,403.37/- (annexure- C5 on page no. 56 of the complaint)
14.	Total amount paid by the complainants	Rs. 74,44,678.00/- (annexure- C5 on page no. 56 of the complaint)
15.	Date of commencement of construction	19.11.2013 (vide affidavit submitted on behalf of the respondent by its AR on 06.10.2021)
16.	Possession clause	<b>14(a)</b> The construction of the flat is likely to be completed <b>within a period of 36 months of commencement of construction of the particular tower/ block in which the subject flat is located with a grace period of 6 months, on receipt of sanction of the building plans/ revised plans and all other approvals subject to force majeure including any</b>

		restrains/ restrictions from any authorities, non-availability of building materials or dispute with construction agency/ workforce and circumstances beyond the control of company and subject to timely payments by the buyer(s) in the said complex. <b>(emphasis supplied)</b>
17.	Due date of delivery of possession	19.11.2016 (Calculated from the date of commencement of construction of the particular tower in which the flat is located. In the present case the revised unit no. is located in tower A1 and as per the affidavit submitted by the respondent's AR the commencement of construction of for tower-A1 was started on 19.11.2013)
18.	Occupation certificate	Not obtained
19.	Offer of possession	Not offered
20.	Delay in handing over of possession till date of order i.e.,08.10.2021	4 years 10 months 19 days
21.	Grace period utilization	Grace period is not allowed in the present complaint.

**B. Fact of the complaint**

- That in 2013, the respondent started developing their residential project in District Gurugram, under the name of "SHREE VARDHMAN FLORA", said project was situated on the land situated at Village Hayatpur, Sector-90, District

Gurugram, Haryana, therefore falls within the jurisdiction of this authority.

4. That the complainants applied for allotment of flat in said project being developed under the name "Shree Vardhman Flora", being constructed and marketed by M/s Shree Vardhman Infracore Private Limited and paid a sum of Rs.4,39,000/-, which was inclusive of basic + service tax on basic, on 20.06.2013 towards booking/registration.
5. That after the initial payment for booking/registration, the complainants further paid an amount of Rs.10,00,000/- on 01.07.2013, Rs.10,00,000/- on 11.07.2013 towards initial instalments within stipulated time as per 'Construction Linked Payment Plan'. Thus, a total of Rs.24,39,000/- has been paid by the time of execution of the 'flat buyer's agreement' (hereinafter referred as 'agreement').
6. That thereafter, my clients entered into flat buyer's agreement on 12.08.2013 with the respondent for the allotment of one flat i.e. tower-A1, unit no.-504 measuring 2475 square feet of super area situated at Shree Vardhman Flora, Village Hayatpur, Sector-90, District Gurugram, Haryana.
7. That at the time of execution of the agreement total sale consideration of Rs. 71,20,125/- including basic sale price,

club membership fee, one basement parking, one covered parking, IFMS charges, EDC and IDC charges was broken down such as basic sale price of Rs. 59,27,625/-, club membership fee of Rs. 1,00,000/-, one open car parking of Rs. 1,00,000/-, one covered car parking of Rs. 2,50,000/- and EDC & IDC charges @ Rs.300/sq. ft. of Rs. 7,42,500/-.

8. That the complainants were shocked and appalled to find out via 'call notice/intimation letter' dated 16.02.2021 that the area of the flat had been increased by about 100 sq. ft. without any intimation and that all charges, as had earlier been agreed upon, had been increased unilaterally to take the total cost on the flat unit to Rs.81,14,856/-, that is an astounding Rs.10,00,000/- more than the agreed amount at the signing of the agreement. It is imperative to bring to notice of the authority that nowhere in the agreement is it mentioned that the respondent has the right to increase the area of the flat and ask for more money from the complainants. This is in gross violation of the maps that were approved by government bodies prior to commencement of construction and as per the agreement between the complainants and the respondent.

9. That the complainants, shocked by the high-handed behaviour of the respondent, in March 2021 asked the

respondent to supply to them a 'customer ledger' which includes the details of all payment made and total amount due. The respondent supplied a customer ledger dated 08.03.2021 wherein, to complete and utter dismay of the complainants, on page 6 it reflected the amount due from the complainants to the respondent to be Rs.82,31,403/- and the amount paid by complainants to respondent to be Rs.74,44,678/-. The complainants were left perplexed as to how does the cost of flat unit keep rising and the money demanded from them also keeps rising on every subsequent day.

10. That the call notice/intimation letter dated 16.02.2021 sent by respondent shows 'net outstanding amount payable' as Rs. 7,17,036.81/-, whereas the customer ledger dated 08.03.2021 shows balance of dues as Rs.7,86,725.37/-. Therefore, there is an arbitrary difference of Rs.69,688.56/- between both the statements of account along with increase in the amount demanded by the respondent towards the flat. This goes to show mala-fide intent on the part of the respondent has always been to hide the actual cost of construction from the complainants and to always give a lower figure for cost of construction so as to lure the complainants and hundreds of others like them to invest in

their project and then slowly but surely increase the cost of construction and the money demanded to cause themselves illegal financial gains and losses to the complainants.

11. That during the term of the agreement an amount of Rs.74,44,678/- has been paid to the respondent by the complainants, which has been duly received by the respondent. The respondent is still at time of filing of present complaint is raising demands of funds through various illegal demand letters even when the stage of development is not in accordance with the demand raised as mentioned in the buyer agreement. Demands were raised even before the said stage of construction was completed.
12. That as per clause 14(a) of the terms and conditions of the flat buyer's agreement dated 12.08.2013, your company was liable to deliver the possession of the flat in question within 36 months from the commencement of construction, with an additional grace period of 6 months. Thus, possession of the flat allotted to my clients was to be delivered by 13.02.2017. However, despite receipt of payment till date your company has not delivered the possession of the flat in question.
13. That despite the illegal demands raised by the respondent the complainants kept paying as demanded. Although they were not liable to pay in accordance with the demand raised as



stage of construction for raising a particular demand was never reached. In furtherance to the mala-fide shown by the respondent in raising illegal demands, the respondent even charged late payment charges from the complainants, which are completely arbitrary, and void given the status of construction. It is absolutely wrong to charge late payment charges on illegal demand notices hence, the late payment charges/interest amounting to Rs.46,842/- must be withdrawn and the same should be adjusted in the account of the complainants.

14. That the respondent deliberately delayed handing over possession and kept using the funds for their selfish interests. The complainants are aggrieved by the conduct of the respondent as they had demanded and accepted the payments even when respondent had delayed the possession of the property. Hence the respondent is liable to pay interest over the amount received from the complainant from the deemed date of possession i.e. 13.02.2017 till the date of handing over of possession.
15. That new tax regime of CGST and SGST came into force w.e.f. from July 2017, and due to the delay caused in handing over the possession to the complainants, the complainants will be additionally burdened with the CGST and SGST. Hence, the

respondent is liable to pay/refund any tax burden which will be imposed on the complainants under GST laws as the same would not have been done if the possession was timely delivered to the complainants.

16. That the buyer's agreement is one sided which is tantamount to unfair trade practice and is violative of the RERA Act. The respondent failed to complete the construction of flat within time, as per the terms and conditions of the buyers agreement and thus there is deficiency of service on the part of respondent. The complainants further submits that the respondent is guilty of gross deficiency in service for which it is liable to compensate the complainant.
17. That the respondent has not only failed to deliver the flat in question within the time as stipulated in the terms and conditions of the flat buyer's agreement dated 12.08.2013 but also acted in a manner abusing their dominant position against the interest of the complainants.
18. That since 13.02.2017, the respondent has been evading any concrete commitment for fixing a particular date of handing over of possession and have not even conveyed the status of development of the project to the complainants. This clearly shows that the flat in question is neither ready for possession

nor the respondents are in position to construct, develop and deliver the same in near future.

19. That it goes without saying that complainants have suffering physically and mentally besides facing financial hardships since 13.02.2017 due to the non-delivery of possession of flat in question. Although no amount of compensation is sufficient yet the respondent is liable to pay a sum of Rs.2,00,000/- as compensation towards the mental harassment, Rs.50,000/- towards the litigation cost in addition to compensation for delay in delivery of possession at the prescribed rate of interest on total deposited amount of Rs.74,44,678/- from 13.02.2017 till the actual handover of physical possession.
20. That the complainants are left with no alternative but to seek asylum of this authority for redressal of her grievances.
21. That the complainants have not filed any other or similar petition before any other tribunal, court or before the Supreme Court in respect of the subject matter of the present complaint.
22. That the cause of action for filing the present complaint arose wherein agreeing, the respondent failed to hand over the physical possession of the said unit timely. The cause of action thereafter arose from time to time when the

respondent despite repeated requests, failed to complete the construction or to handover the possession to the complainants. The cause of action for filing the present complaint is recurring and continuous. Hence, the present complaint is filed within the period of limitation.

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

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

- (i) Direct the respondent to compensate the complainants for the delay in completion of the project and from 13.02.2017 till actual delivery of possession by paying interest on the total amount of Rs. 74,44,678/- at the rate of 10% per annum in accordance with rule 15 of the Act of 2016.
- (ii) Direct the respondent to withdraw/refund demand of Rs.46,842/- charged as late payment charges/arrears from the complainants as the same are illegal and not in accordance with Act of 2016.
- (iii) Direct the respondent to pay/refund any liability of GST which will be payable by the complainants as the same would not have been imposed upon the complainants if the possession was delivered on time.
- (iv) To compensate the complainants for a sum of Rs.2,00,000/- as damages on account of mental agony, torture and harassment.

**D. Reply by the respondent**

The respondent has contested the following grounds: -

- I. That the present complaint filed under section 31 of the Real Estate (Regulation and Development) Act, 2016 is not maintainable under the said provision. The respondent has not violated any of the provisions of the Act.
- II. The as per rule 28(1) (a) of rules of 2017 a complaint under section 31 of the Act can be filed for any alleged violation or contravention of the provisions of the Act after such violation and/or contravention has been established after an enquiry made by the Authority under section 35 of the Act. In the present case no violation and/or contravention has been established by the authority under section 35 of the Act and as such the complaint is liable to be dismissed.
- III. That the complainants have sought reliefs under section 18 of the Act, but the said section is not applicable in the facts of the present case and as such the complaint deserves to be dismissed. It is submitted that the operation of section 18 is not retrospective in nature and the same cannot be applied to the transactions that were entered prior to the Act came into force. The parties while entering into the said transactions could not have possibly taken into account the provisions of the Act and as such cannot be

burdened with the obligations created therein. In the present case also the flat buyer's agreement (hereinafter "FBA") was executed much prior to the date when the Act came into force and as such section 18 of the Act cannot be made applicable to the present case. Any other interpretation of the Act will not only be against the settled principles of law as to retrospective operation of laws but will also lead to an anomalous situation and would render the very purpose of the Act nugatory. The complaint as such cannot be adjudicated under the provisions of the Act.

- IV. That the expression "agreement to sell" occurring in section 18(1)(a) of the Act covers within its folds only those agreements to sell that have been executed after the Act came into force and the FBA executed in the present case is not covered under the said expression, the same having been executed prior to the date the Act came into force.
- V. That the FBA executed in the present case did not provide any definite date or time frame for handing over of possession of the Apartment to the complainants and on this ground alone the refund and/or compensation and/or interest cannot be sought under the Act. Even the clause 14 (a) of the flat buyer's agreement merely provided a tentative/estimated period for completion of construction of the flat and

filing of application for occupancy certificate with the concerned authority. After completion of construction the respondent was to make an application for grant of occupation certificate (OC) and after obtaining the OC, the possession of the flat was to be handed over.

- VI. That the reliefs sought by the complainants are in direct conflict with the terms and conditions of the FBA and on this ground alone the complaint deserve to be dismissed. The complainants cannot be allowed to seek any relief which is in conflict with the said terms and conditions of the FBA. The complainants signed the agreement only after having read and understood the terms and conditions mentioned therein and without any duress, pressure or protest and as such the terms thereof are fully binding upon the complainants. The said agreement was executed much prior to the Act coming into force and the same has not been declared and cannot possibly be declared as void or not binding between the parties.
- VII. That it was submitted that delivery of possession by a specified date was not essence of the FBA, and the complainants was aware that the delay in completion of construction beyond the tentative time given in the contract was possible. Even the FBA contain provisions for grant of compensation in the event of delay. As such it was submitted without prejudice that the alleged

delay on part of respondent in delivery of possession, even if assumed to have occurred, cannot entitle the complainants to ignore the agreed contractual terms and to seek interest and/or compensation on any other basis.

VIII. That it was submitted without prejudice that the alleged delay in delivery of possession, even if assumed to have occurred, cannot entitle the complaint to rescind the FBA under the contractual terms or in law. The delivery of possession by a specified date was not essence of the FBA and the complainants was aware that the delay in completion of construction beyond the tentative time given in the contract was possible. Even the FBA contain provisions for grant of compensation in the event of delay. As such the time given in clause 14(a) of FBA was not essence of the contract and the breach thereof cannot entitle the complainants to seek rescind the contract.

IX. That it was submitted that issue of grant of interest/compensation for the loss occasioned due to breaches committed by one party of the contract is squarely governed by the provisions of section 73 and 74 of the Indian Contract Act, 1872 and no compensation can be granted de-hors the said sections on any ground whatsoever. A combined reading of the said sections makes it amply clear that if the



compensation is provided in the contract itself, then the party complaining the breach is entitled to recover from the defaulting party only a reasonable compensation not exceeding the compensation prescribed in the contract and that too upon proving the actual loss and injury due to such breach/default. On this ground the compensation, if at all to be granted to the complainants, cannot exceed the compensation provided in the contract itself.

- X. That the residential group housing project in question i.e., "Shree Vardhman Victoria" sector-70, Gurugram, Haryana is being developed by the respondent on a piece of land measuring 10.9687 acres situated at village Badshahpur, Sector-70, Gurugram, Haryana under a license no. 103 of 2010 dated 30.11.2010 granted by the Town and Country Planning Department, Chandigarh, Haryana (DTCP). The license has been granted to the landowners in collaboration with M/s Santur Infrastructures Private Limited. The respondent company is developing/constructing the project under an agreement with M/s Santur Infrastructures Private Limited. The project in question has been registered with this authority vide registration no. 70 of 2017 dated 18.08.2017 under section 6 of the Real Estate (Regulation & Development) Act, 2016.

- XI. That the construction of the entire project has been completed and the respondent had already applied for grant of occupancy certificate for towers nos. B1, B2 and B3 to the concerned authority on 18/11/2019. Thereafter, the respondent applied for grant of occupancy certificate for towers nos. B4, C1, C2, EWS and basement area to the concerned authority on 16/04/2021 and further applied for grant of occupancy certificate for towers nos. B5 to the concerned authority on 18/06/2021.
- XII. That the construction of the entire project could not be completed within the time estimated at the time of launch of the project due to various reasons beyond the control of the respondent, including inter-alia liquidity crisis owing to global economic crisis that hit the real estate sector in India very badly which is still continuing, defaults committed by allottee, depressed market sentiments leading to a weak demand, government restrictions, force majeure events etc. The respondent cannot be held responsible for the alleged delay in completion of construction. The respondent is genuine and responsible developer who fought against all odds and has already completed one phase of project and the remaining phases are also on the verge of completion.

XIII. That it is pertinent to mention here that in 2020, looking at the situation of real estate market battling the financial crunch; the Central Government has formed Rs. 25,000 crores "Special Window for Completion of Construction of Affordable and Mid-Income Housing Projects Investment Fund" popularly known as the SWAMIH Fund. The SWAMIH investment fund has been formed to help the genuinely distressed RERA registered residential developments in the affordable housing / middle-income category and that require last mile funding to complete construction. The government sponsored fund is for the genuine and stressed developers who are dealing the financial crisis due to reasons beyond their control including COVID-19 pandemic. The investment manager of the fund is SBICAP Ventures Ltd. The respondent had also applied for the financial support from the said SWAMIH fund and its application for the same has also cleared after all verification. A fund of Rs. 6 Crores had also been sanctioned to the respondent vide letter dated 12.10.2020. This sanction of financial assistance by the Government of India backed SWAMIH fund is in itself a testimonial of the genuineness of promoter of the project in question and also that the project is in final stages of completion.

XIV. That without prejudice to the fact that as per clause 14(a), the obligations of the respondent to complete the construction within the tentative time frame mentioned in said clause was subject to timely payments of all the installments by the complainant and other allottees of the project. As various allottees and even the complainant failed to make payments of the installments as per the agreed payment plan, the complainant cannot be allowed to seek compensation or interest on the ground that the respondent failed to complete the construction within time given in the said clause. The obligation of the respondent to complete the construction within the time frame mentioned in FBA was subject to and dependent upon time payment of the installment by the complainant and other allottees. Many buyers/allottees in the said complex, including the complainant, committed breaches/defaults by not making timely payments of the installments. As such no allottee who has defaulted in making payment of the installments can seek refund, interest or compensation under section 18 of the Act or under any other law.

XV. That the tentative/estimated period given in clause 14 (a) of the FBA was subject to conditions such as force majeure, restraint/restrictions from authorities, non-availability of building material or dispute with

construction agency / work force and circumstances beyond the control of the respondent company and timely payment of installments by all the buyers in the said complex including the complainant. Many buyers / allottees in the said complex, including the complainant, committed breaches / defaults by not making timely payments of the installments. Further, the construction could not be completed within the tentative time frame given in the agreement as various factors beyond control of respondent came into play, including economic meltdown, sluggishness in the real estate sectors, defaults committed by the allottees in making timely payment of the installments, shortage of labour, non-availability of water for construction and disputes with contractors. The delayed payment / non-payment of installments by various allottees including the complainant seriously jeopardized the efforts of the respondent for completing the construction of said project within the tentative time frame given in the agreement. It is pertinent to note that the Hon'ble Punjab & Haryana High Court on 21.08.2012 in CWP No. 20032 of 2008 prohibiting ground water extraction for construction purposes in the District of Gurgaon and due to the said ban, water was not available for construction of the project in question for a very long period of time. The Administrator HUDA, Gurgaon

granted NOC for carrying our construction at site of the project vide its memo dated 27.12.2013. Further, civil contractors engaged by the respondent for construction of the project in question failed to carry out the construction within the given timelines and several disputes cropped up between the respondent and the said contractors. The respondent had engaged M/s Mahalakshmi Infraengineers Private Limited and DSA Buildtech Private Limited as the contractors who despite having received payments from respondent did not pay to its labour /work force who in term refused to work severely hampering the pace of construction work. The respondent ultimately had to remove both the contractors and carried the construction on its own. The respondent directly made the payment of their laborers/workforce/sub-contractors to regularize the work. It is also submitted that the construction activity in Gurugram has also been hindered due to orders passed by Hon'ble NGT /State Govts. /EPCA from time to time putting a complete ban on the construction activities in an effort to curb air pollution. The District administration, Gurugram under the Graded Response Action Plan to curb pollution banned all construction activity in Gurugram, Haryana from 01.11.2018 to 10.11.2018 which resulted in hindrance of almost 30 days in construction activity at site. In previous year

also Hon'ble NGT vide its order 09.11.2017 banned all construction activity in NCR and the said ban continued for almost 17 days hindering the construction for 40 days. The stoppage of construction activity even for a small period results in a longer hindrance as it become difficult to re-arrange, re-gather the work force particularly the laborers as they move to other places/their villages.

- XVI. That as per the FBA the tentative period given for completion of construction was to be counted from the date of receipt of sanction of the building plans/revised plans and all other approvals and commencement of construction on receipt of such approvals. The last approval being Consent to Establish (CTE) was granted by the Haryana State Pollution Control Board on 15.05.2015 and as such the period mentioned in clause 14(a) shall start counting from 16.05.2015 only.
- XVII. That it is submitted and without prejudice to the submissions made hereinabove, that the tentative period as indicated in FBA for completion of construction was not only subject to force majeure conditions, but also other conditions beyond the control of respondent. The unprecedented situation created by the Covid-19 pandemic presented yet another force majeure event that brought to halt all activities related to the project including construction

of remaining phase, processing of approval files etc. The Ministry of Home Affairs, GOI vide notification dated March 24, 2020 bearing no. 40-3/2020-DM-I(A) recognised that India was threatened with the spread of Covid-19 epidemic and ordered a complete lockdown in the entire country for an initial period of 21 (twenty) days which started from March 25, 2020. By virtue of various subsequent notifications, the Ministry of Home Affairs, GOI further extended the lockdown from time to time and till date the lockdown has not been completely lifted. Various state governments, including the Government of Haryana have also enforced several strict measures to prevent the spread of Covid-19 pandemic including imposing curfew, lockdown, stopping all commercial, construction activity. Pursuant to issuance of advisory by the GOI vide office memorandum dated May 13, 2020, regarding extension of registrations of real estate projects under the provisions of the Real Estate (Regulation and Development) Act, 2016 due to 'force majeure', the Haryana Real Estate Regulatory Authority has also extended the registration and completion date by 6 (six) months for all real estate projects whose registration or completion date expired and, or, was supposed to expire on or after March 25, 2020. In past few years construction activities have also been hit by



repeated bans by the courts/authorities to curb air pollution in NCR region. In the recent past the Environmental Pollution (Prevention and Control) Authority for NCR ("EPCA") vide its notification bearing No. EPCA-R/2019/L-49 dated 25.10.2019 banned construction activity in NCR during night hours ( 6pm to 6am) from 26.10.2019 to 30.10.2019 which was later on converted into complete 24 hours ban from 01.11.2019 to 05.11.2019 by EPCA vide its notification No. EPCA-R/2019/L-53 dated 01.11.2019. The Hon'ble Supreme Court of India vide its order dated 04.11.2019 passed in Writ Petition No. 13029/1985 titled as "*M.C. Mehta vs Union of India*" completely banned all construction activities in NCR which restriction was partly modified vide order dated 09.12.2019 and was completely lifted by the Hon'ble Supreme Court vide its order dated 14.02.2020. These bans forced the migrant labourers to return to their native States/Villages creating an acute shortage of labourers in NCR region. Due to the said shortage the construction activity could not resume at full throttle even after lifting of ban by the Hon'ble Supreme Court. Even before the normalcy in construction activity could resume, the world was hit by the 'Covid-19' pandemic.

- XVIII. That the respondent had also applied for grant of NOC/approvals for Fire Safety (Fire NOC) & for Lift

NOC & the same has been approved and sanctioned from their concerned departments.

24. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents.

**E. Jurisdiction of the authority**

The authority has territorial as well as subject matter jurisdiction to entertain the present complaint for the following reasons.

**E.I Territorial jurisdiction**

25. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District, therefore this authority has completed territorial jurisdiction to deal with the present complaint.

**E.II Subject-matter jurisdiction**

26. 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.

**27. F. Findings on the objections raised by the respondent**

**F.1 Maintainability of complaint**

28. The respondent contended that the present complaint filed under section 31 of the Act is not maintainable as the respondent has not violated any provision of the Act.

29. The authority, in the succeeding paras of the order, has observed that the respondent is in contravention of the section 11(4)(a) read with proviso to section 18(1) of the Act by not handing over possession by the due date as per the agreement. Therefore, the complaint is maintainable.

**F. II Objection regarding jurisdiction of authority w.r.t. the flat buyer's agreement executed prior to coming into force of the Act**

30. Another contention of the respondent is that in the present case the flat buyer's agreement was executed much prior to the date when the Act came into force and as such section 18 of the Act cannot be made applicable to the present case. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of

***Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others.***

***(W.P 2737 of 2017)*** which provides as under:

\*119. *Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter....*

122. *We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."*

31. Also, in appeal no. 173 of 2019 titled as ***Magic Eye Develresponder Pvt. Ltd. Vs. Ishwer Singh Dahiya***, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

\*34. *Thus, keeping in view our aforesaid discussion, we are of the considered respondentinon that the provisions of the Act are quasi retroactive to some extent in respondentation and will be applicable to the agreements for sale entered into even prior to coming into respondentation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee*

*shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."*

**F.III Objection of respondent w.r.t reasons for delay in handing over possession.**

32. The respondent submitted that the period consumed in the force majeure events or the situations beyond control of the respondent has to be excluded while computing delay in handing over possession.

- Unprecedented situation created by Covid-19 pandemic and lockdown for approx. 6 months starting from 25.03.2020.

33. The Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr.* bearing no. O.M.P (I) (Comm.) no. 88/2020 and IAs 3696-3697/2020 dated 29.05.2020 has observed that-

*"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself."*

34. In the present complaint also, the respondent was liable to complete the construction of the project in question and

handover the possession of the said unit by 13.02.2018 and the respondent is claiming benefit of lockdown which came into effect on 23.03.2020. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself and for the said reason the above-mentioned time period is not excluded while calculating delay in handing over possession.

- Order dated 25.10.2019, 01.11.2019 passed by Environmental Pollution (Prevention and Control) Authority (EPCA) banning construction activities in NCR region. Thereafter, order dated 04.11.2019 of Hon'ble Supreme Court of India in Writ petition no. 13029/1985 completely banning construction activities in NCR region.

35. The respondent has neither completed the construction of the subject unit nor has obtained the OC for the same from the competent authority till date i.e., even after a delay of more than 4 years form the promised date of delivery of the subject unit. In the reply it has been admitted by the respondent/promoter that the construction of the phase of the project wherein the apartment of the complainants is situated is in an advance stage. It means that it is still not

completed. It is a well settled law that no one can take benefit of his wrong. Now, the respondent is claiming benefit out of lockdown period, orders dated 25.10.2019 and 01.11.2019 passed by EPCA and order dated 04.11.2019 passed by Hon'ble Supreme Court of India which are subsequent to the due date of possession. Therefore, the authority is of the considered view that the respondent could not be allowed to take benefit of his own wrong and the innocent allottee could not be allowed to suffer for the mistakes committed by the respondent. In view of the same, this time period is not excluded while calculating the delay in handing over possession.

**G. Findings of the authority**

**G.1 Delay possession charges.**

**36. Relief sought by the complainants:** The below-mentioned reliefs sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and these reliefs are interconnected.

- i. Direct the respondent to compensate the complainants for the delay in completion of the project and from 13.02.2017 till actual delivery of possession by paying interest on the total amount of Rs. 74,44,678/- at the rate of 10% per annum in accordance with rule 15 of the Act of 2016.**



- ii. Direct the respondent to withdraw/refund demand of Rs.46,842/- charged as late payment charges/arrears from the complainants as the same are illegal and not in accordance with Act of 2016.
37. In the present complaint, the complainants intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

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

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

.....

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

38. Clause 14(a) of the flat buyer's agreement, provides for handing over possession and the same is reproduced below:

*"14(a)The construction of the flat is likely to be completed within a period of 36 months of commencement of construction of the particular tower/ block in which the subject flat is located with a grace period of 6 months, on receipt of sanction of the building plans/ revised plans and all other approvals subject to force majeure including any restrains/ restrictions from any authorities, non-availability of building materials or dispute with construction agency/ workforce and circumstances beyond the control of company and subject to timely payments by the buyer(s). No claims by way of damages/compensation shall be against the Company in case of delay in handing over the possession on account of said reasons. For the purposes of this Agreement, the date of application for issuance of occupancy/part occupancy/completion/part occupancy/completion certificate of the Said Complex or the Flat shall be deemed to be the date*

*of completion. The Company on completion of construction shall issue a final call notice to the Buyer(s), who shall remit all dues within thirty (30) days thereof and take possession of the Flat after execution of Sale deed. If possession is not taken by the Buyer(s) within thirty (30) days of offer of possession, the Buyer(s) shall be deemed to have taken possession for the purposes of this Agreement and for the purposes of payment of the maintenance charges, taxes, property tax or any other tax imposable upon the Flat."*

39. A flat buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builder/promoter and buyer/allottee are protected candidly. flat buyer's agreement lays down the terms that govern the sale of different kinds of properties like residentials, 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 buyer/allottee in case of delay in possession of the unit.
40. The authority has gone through the possession clause of the agreement and observed that the possession has been

subjected to all kinds of terms and conditions of this agreement. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single situation may make the possession clause irrelevant for the purpose of allottee and the committed date for handing over possession loses its meaning. If the said possession clause is read in entirety, the time period of handing over possession is only a tentative period for completion of the construction of the flat in question and the promoter is aiming to extend this time period indefinitely on one eventuality or the other. Moreover, the said clause is an inclusive clause wherein the numerous approvals and terms and conditions have been mentioned for commencement of construction and the said approvals are sole liability of the promoter for which allottee cannot be allowed to suffer. The promoter must have mentioned that completion of which approval forms a part of the last statutory approval, of which the due date of possession is subjected to. It is quite clear that the possession clause is drafted in such a manner that it creates confusion in the mind of a person of normal prudence who reads it. The authority is of the view that it is a wrong trend followed by the promoter

from long ago and it is this unethical behaviour and dominant position that needs to be struck down. It is settled proposition of law that one cannot get the advantage of his own fault. The incorporation of such clause in the flat buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

41. The respondent promoter has proposed to handover the possession of the subject apartment within a period of 36 months of the commencement of construction of the particular tower/ block in which the flat is located with a grace period of 6 months, on receipt of sanction of the building plans/revised plans and all other approvals subject to force majeure including any restrains/restrictions from any authorities, non-availability of building materials or dispute with construction agency/workforce and circumstances beyond the control of company and subject to timely payments by the buyer(s) in the said complex.

42. The respondent is claiming that the due date shall be computed from 19.11.2013 i.e., date of grant of Consent to Establish being last approval for commencement of construction. The authority observed that in the present case, the respondent has not kept the reasonable balance between his own rights and the rights of the complainants-allottee. The respondent has acted in a pre-determined, preordained, highly discriminatory and arbitrary manner. The unit in question was booked by the complainants on 20.06.2013 and the flat buyer's agreement was executed between the respondent and the complainants on 12.08.2013. It is interesting to note as to how the respondent had collected hard earned money from the complainants without obtaining the necessary approval (Consent to Establish) required for commencing the construction. The respondent has obtained Consent to Establish from the concerned authority on 15.05.2015. The respondent is in win-win situation as on one hand, the respondent had not obtained necessary approvals for starting construction and the scheduled time of delivery of possession as per the possession clause which is completely dependent upon the commencement of the construction and on the other hand, a major part of the total consideration is collected prior to the start of the

construction. Further, the said possession clause can be said to be invariably one sided, unreasonable, and arbitrary. Moreover, it is a matter of fact that as per the affidavit filed by the respondent on 06.10.2021, the date of start of foundation of the subject tower, where the flat in question is situated is 19.11.2013. This said statement sworn by the respondent is itself contradictory to its contention that the due date of possession is liable to be computed from consent to establish. It is evident that respondent has started construction (on 19.11.2013 as per the affidavit submitted on behalf of the respondent by its A.R on 06.10.2021.) without obtaining CTE which shows delinquency on the part of the promoter. Therefore, in view of the above reasoning, the contention of the respondent that due date of handing over possession should be computed from date of CTE does not hold water and the authority is of the view that the due date shall be computed from the date sworn by the promoter in the affidavit as 'date of start of foundation'.

24. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the said flat within 36 months from the date of commencement of construction of the particular tower in which the flat is located and has sought

further extension of a period of 6 months (after the expiry of the said 36 months), on receipt of sanction of the building plans/revised plans and all other approvals subject to force majeure including any restrains/restrictions from any authorities, non-availability of building materials or dispute with construction agency/workforce and circumstances beyond the control of company and subject to timely payments by the buyer(s) in the said complex. It may be stated that asking for the extension of time in completing the construction is not a statutory right nor has it been provided in the rules. This is a concept which has been evolved by the promoters themselves and now it has become a very common practice to enter such a clause in the agreement executed between the promoter and the allottee. Now, turning to the facts of the present case the respondent promoter has neither completed the construction of the subject project nor has obtained the occupation certificate from the competent authority till date. It is a well settled law that one cannot take benefit of his own wrong. In the light of the above-mentioned reasons, the grace period of 6 months is not allowed in the present case.

43. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants 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.*

44. 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.
45. 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., 08.10.2021 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.

46. 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;"*

47. 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.
48. 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. It is a matter of fact that the date of foundation of the subject tower, where the revised flat in question is situated is 19.11.2013 as per the affidavit filed by the respondent on 06.10.2021. By virtue of flat buyer's agreement executed between the parties on 12.08.2013, the possession of the booked unit was to be delivered within 36 months of the commencement of construction of the particular tower/ block in which the flat is located which comes out to be 19.11.2016 excluding a grace period of 6 months which is not allowed in the present case for the reasons quoted above.

49. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. 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., 19.11.2016

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.

50.

**(iii) To compensate the complainants for a sum of Rs.2,00,000/- as damages on account of mental agony, torture and harassment.**

51. The complainants are claiming compensation in the above-mentioned reliefs. The authority is of the view that it is important to understand that the Act has clearly provided interest and compensation as separate entitlement/rights which the allottee can claim. For claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainants may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules

**(iv) Direct the respondent to pay/refund any liability of GST which will be payable by the complainants as the same would not have been imposed upon the complainants if the possession was delivered on time.**

52. The complainants have submitted that due to the delay on the part of the respondent in handing over the possession of the property, the complainants have been additionally burdened to pay the GST which was introduced much lately and ought

not to be paid by the complainants, had the possession of the property been offered by the due date of possession.

53. The relevant clause from the agreement is reproduced as under:

"15:

*The Buyer(s) shall be liable to pay property tax, VAT, Service Tax and all rates, taxes, charges, assessments and levies by whatever name called, assessed or imposed by the municipal or any other authorities, whether levied now or in future, in respect of the Flat, during the period of its construction or later on irrespective of the fact that the Buyer has not been enjoying the benefit of the Flat. Till the Flat is individually assessee to property tax or any other charges, as aforesaid, by the authorities, the Buyer shall be liable to pay to the Company on demand, such taxes/charges whether levied now or in future on the land/building/development of this Said Complex, proportionate to the area of the Flat. Apportionment of such taxes, charges, levies by the Company or its nominees shall be conclusive and binding upon the Buyer(s)....."*

54. As per the builder buyer's agreement, taxes shall be payable as per the government rules as applicable from time to time. Taxes are levied as per government norms and rules and are leviable in respect of real estate projects as per the government policies from time to time. Therefore, there is no substance in the plea of the complainants in regard to the illegality of the levying of the said taxes. However, the issue pending determination is as to whether the allottee shall be liable to pay such taxes which became payable on account of default and delay in handing over of possession by the builder beyond the deemed date of possession.

55. The authority is of view that the due date of possession of the unit was 19.11.2016 but the possession of the unit is not offered till date. Had the unit been delivered within the due date or even with some justified delay, the incidence of GST would not have fallen on the complainants. Therefore, an additional tax burden with respect to GST was enforced upon the buyer for no fault of the complainants and is due to the wrongful act of the promoter in not delivering the unit within due date of possession; also, the tax liability would have been very less as compared with the GST, if levied.
56. The authority has also perused the judgement dated 04.09.2018 in complaint no. 49/2018, titled as ***Parkash Chand Arohi Vs. M/s Pivotal Infrastructure Pvt. Ltd.*** of the Haryana Real Estate Regulatory Authority, Panchkula wherein it has been observed that the possession of the flat in term of buyer's agreement was required to be delivered on 19.11.2016 and the incidence of GST came into operation thereafter on 01.07.2017. So, the complainant cannot be burdened to discharge a liability which had accrued solely due to respondent's own fault in delivering timely possession of the flat. The relevant portion of the judgement is reproduced below:

"8. The complainant has then argued that the respondent's demand for GST/VAT charges is unjustified for two reasons: (i) the GST liability has accrued because of respondent's own failure to handover the possession on time and (ii) the actual VAT rate is 1.05% instead of 4% being claimed by the respondent. The authority on this point will observe that the possession of the flat in term of buyer's agreement was required to be delivered on 1.10.2013 and the incidence of GST came into operation thereafter on 01.07.2017. So, the complainant cannot be burdened to discharge a liability which had accrued solely due to respondent's own fault in delivering timely possession of the flat. Regarding VAT, the Authority would advise that the respondent shall consult a service tax expert and will convey to the complainant the amount which he is liable to pay as per the actual rate of VAT fixed by the Government for the period extending up to the deemed date of offer of possession i.e., 10.10.2013."

57. In appeal no. 21 of 2019 titled as **M/s Pivotal Infrastructure Pvt. Ltd. Vs. Prakash Chand Arohi**, Haryana Real Estate Appellate Tribunal, has upheld the **Parkash Chand Arohi Vs. M/s Pivotal Infrastructure Pvt. Ltd. (supra)**. The relevant para is reproduced below:

"93. This fact is not disputed that the GST has become applicable w.e.f. 01.07.2017. As per the first Flat Buyer's Agreement dated 14.02.2011, the deemed date of possession comes to 13.08.2014 and as per the second agreement dated 29.03.2013 the deemed date of possession comes to 28.09.2016. So, taking the deemed date of possession of both the agreements, GST has not become applicable by that date. No doubt, in Clauses 4.12 and 5.1.2 the respondent/allottee has agreed to pay all the Government rates, tax on land, municipal property taxes and other taxes levied or leviable now or in future by Government, municipal authority or any other government authority. But this liability shall be confined only up to the deemed date of possession. The delay in delivery of possession is the default on the part of the appellant/promoter and the possession was offered on 08.12.2017 by that time the GST had become applicable. But it is settled principle of law that a person cannot take the benefit of his own wrong/default. So, the

*appellant/promoter was not entitled to charge GST from the respondent/allottee as the liability of GST had not become due up to the deemed date of possession of both the agreements."*

58. Therefore, the delay in delivery of possession is the default on the part of the respondent/promoter and till date the possession of the subject unit is not offered and by the time the GST had become applicable. But it is settled principle of law that a person cannot take the benefit of his own wrong/default. So, the respondent/promoter is not entitled to charge GST from the complainants/allottees as the liability of GST had not become due up to the due date of possession as per the said agreement.
59. 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 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 complainants to the respondent from the due date of possession i.e., 19.11.2016 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**

60. 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., 19.11.2016 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 19.11.2016 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 10<sup>th</sup> 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 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 complainants which is not the part of the agreement. However, holding charges shall also not be charged by the promoter at any point of time even after being part of agreement as per law settled by the Hon'ble Supreme Court in civil appeal no. 3864-3889/2020 dated 14.12.2020.
61. Complaint stands disposed of.
62. File be consigned to registry.

V.I.   
(Vijay Kumar Goyal)  
Member  
Haryana Real Estate Regulatory Authority, Gurugram

  
(Dr. K.K Khandelwal)  
Chairman  
Haryana Real Estate Regulatory Authority, Gurugram

**Dated: 08.10.2021**