

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

Complaint no. : 719 of 2021  
Date of filing : 03.03.2021  
First date of hearing: 22.04.2021  
Date of decision : 06.10.2021

1.	Dr. Suneeta Agarwal R/O: - 343, Bhera Enclave, Paschim Vihar, Delhi - 110063	<b>Complainant</b>
Versus		
1.	M/s Ireo Private Limited Regd. Office at: - A-11, 1 <sup>st</sup> Floor, Neeti Bagh, New Delhi - 110049	<b>Respondent</b>

**CORAM:**

Shri Samir Kumar	<b>Member</b>
Shri Vijay Kumar Goyal	<b>Member</b>

**APPEARANCE:**

Sh. Aditya Bharech (Advocate)	Complainant
Sh. M.K Dang (Advocate)	Respondent

**ORDER**

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



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

**A. Unit and project related details**

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

S. No.	Heads	Information
1.	Project name and location	"Ireo (Managed serviced apartments)", Sector-59, Gurugram
2.	Licensed area	3.937 acres
3.	Nature of the project	Commercial project
4.	DTCP license no.	56 of 2010 dated 31.07.2010
	License valid up to	30.07.2020
	Licensee	Hardcore Realtors Pvt. Ltd. and others
5.	RERA registered/not registered	<b>Registered</b> Registered vide 102 of 2017 dated 24.08.2017



	Validity	Valid upto 30.06.2020
6.	Date of approval of building plan	05.09.2013
7.	Unit no.	RS15-03, 15 <sup>th</sup> floor, tower-01 (annexure- 6 on page no. 95 of the complaint)
8.	Unit measuring	492.35 sq. ft. (annexure- 6 on page no. 95 of the complaint)
9.	Date of booking	22.02.2018 (annexure- 7 on page no. 200 of the complaint)
10.	Date of allotment	22.03.2018 (annexure- 8 on page no. 201 of the complaint)
11.	Date of execution of buyer's agreement	25.04.2018 (annexure- 6 on page no. 84 of the complaint)
12.	Payment plan	Installment payment plan (annexure- 6 on page no. 138 of the complaint)
13.	Total consideration	Rs. 1,02,32,252.91/- (annexure- 7 on page no. 200 of the complaint)
14.	Total amount paid by the complainant	Rs. 1,06,34,999/- (annexure- 7 on page no. 200 of the complaint)
15.	Possession clause	<b>7.1 Schedule for possession of the apartment</b> The promoter assures to hand over possession of the apartment, subject to extension of

		<p><b>registration by the authority, on or before 30.06.2020, unless there is delay or failure due to an event of "force majeure", court orders, or orders by any competent authority, statutory authority, Government policies/ guidelines, decisions, or any other circumstances which may be deemed reasonable by the authority (hereinafter collectively referred to as "force majeure &amp; other conditions"). If the completion of the project is delayed due to any of the above conditions, then the allottee agrees that the promoter shall be entitled to the extension of time for delivery of possession of the apartment for the period of such delay.</b>  <b>(emphasis supplied)</b></p>
16.	Due date of delivery of possession	30.06.2020
17.	Offer of possession	Not offered
18.	Occupation certificate	Not obtained
19.	Period of delay in handing over possession till the date of decision i.e., 06.10.2021	1 year, 3 months and 6 days

**B. Facts of the complaint**

The complainant has submitted as under:

3. That for marketing and promotional purposes, the respondent advertised the project through print media as well as through its channel partners. In 2017, the complainant came across such advertisements and was approached by the channel partners of the respondent seeking investment in the project. Relying on the advertisements, the complainant visited the project site where the channel partners as well as executives of the respondent presented the complainant with multiple options for investment in the project. The complainant was assured that the project would be completed in time, in fact before time as the construction of the project was in its advanced stages with only interior works remaining.
4. That the complainant was thus induced into making payment for investing in the subject unit in the said project. Accordingly, the complainant made the payments to the respondent for booking the unit in the project.
5. That, accordingly, the respondent issued a letter on 22.02.2018 to the complainant with respect to acknowledgment of the booking and allotment of apartment. That the complainant made a payment of Rs.1,16,34,999/- to the respondent as requested by him from time to time.
6. That an agreement for sale dated 25.04.2018 was entered into between the complainant and the respondent and registered for the subject unit. It is interesting to note that the agreement indicates that possession of the unit would be

handed over to the complainant on or before 30.06.2020. The executives of the respondent, however, assured the complainant that as promised the project was on the verge of completion and her unit thereof shall be handed over much prior to the deadline mentioned in the agreement.

7. That on 31.05.2018, the complainant sent an email to the respondent seeking the statement of account w.r.t the subject unit. Accordingly, the respondent shared the statement of accounts printed on 31.05.2018.
8. That the complainant had also sought to purchase another property of the respondent namely a shop/ unit in Ireo City Centre, sector 59, Gurgaon. In furtherance thereof, in March 2018, the complainant made payment of booking amount of Rs. 10,00,000/- towards purchase of a shop bearing no. UG-26 in Ireo City Centre.
9. That however, the complainant upon her visit to the site noticed that there was no progress in the construction of the commercial shops of Ireo City Centre. Upon raising queries regarding the same, the complainant was informed that the abovementioned project was likely to experience excessive delay. Therefore, the complainant vide letter dated 02.07.2018 requested the respondent to release her booking in shop no. UG-26 in Ireo City Centre and refund the booking amount of Rs. 10,00,000/-.

10. That various communications were exchanged between the husband of the complainant and the respondent regarding refund of the abovementioned Rs. 10 lacs. The complainant was informed that the process of refunding the said monies had commenced and would take some time. Subsequently, the representative of the respondent informed the complainant that refund would not be possible and therefore the only option available to the complainant was to credit the said Rs. 10 lacs in the payment of the other property of the complainant purchased from the respondent namely the subject unit at the project. The complainant, though reluctant, had no alternative but to agree to such adjustment as the sole way of getting her hard-earned monies returned. However, the complainant was disappointed with the unprofessional and cavalier attitude of the employees/ representatives of the respondent since the payment of Rs. 10 lacs were not reflected in the CRM status of the subject unit. Several communications were exchanged with respect to this between the husband of the complainant and the representative of the respondent on 16.08.2018, 02.09.2018 and 17.10.2018.

11. That on 04.10.2018, the husband of the complainant sent an email to the respondent seeking the updated CRM account status. Thereafter, upon checking the CRM status of the unit, the complainant was shocked to find that even after a lapse of almost 3 months there was no indication of the excess amount of Rs. 10 lacs therein which the respondent offered to credit against the other property of the complainant purchased from the respondent namely the unit at the project. The complainant immediately sent emails on 06.10.2018 and 09.10.2018 once again seeking updated CRM account status reflecting the amount of Rs. 10 lacs therein. Representative of the respondent responded to the request of refund of the Rs. 10 lacs *vide* email on 09.10.2018 stating that the excess amount of Rs. 10 lacs paid towards purchase of shop in Ireo City Centre shall be credited against booking of the complainant in the unit and would be reflected in the statement accordingly. That the respondent finally sent the updated statement of accounts as on 16.10.2018 to the complainant *vide* email dated 16.10.2018.
12. That in response to the above email, the son of the complainant sent an email on 17.10.2018 to the respondent pointing out the mistake in the latest statement of account as



the balance amount did not reflect the adjustment of Rs. 10 lacs. However, it is pertinent to note here that the above email sent on behalf of the complainant was based on an inadvertent mistaken reading of the statement of accounts which was primarily due to the respondent using incorrect terminology of 'balance amount' for amount which has already been paid to the respondent. In response to this email, the respondent vide email dated 17.10.2018 clarified that the 'balance' amount reflected in the statement denotes advance payments received.

13. That upon receiving clarity from the respondent regarding the '*balance amount*', the son of the complainant wrote to the respondent vide email dated 29.10.2018 seeking the balance account sheet of the unit which indicated the amount of payment to be made to the respondent at the time of possession of the unit. This email was followed up by another email dated 31.10.218 sent by the complainant to the respondent. The complainant sought such information so that the complainant could seek return of the excess amount lying with the respondent less the amount of payment to be made to the respondent at the time of possession. However, no response was received to the same.

14. That considering the above communications, the complainant continued to follow up through discussions with the representatives of the respondent regarding the excess payment lying with the respondent. However, it appears that the complainant was merely wasting her time as no information was provided to her though the respondent kept assuring her that the information sought would be provided.
15. That while the complainant received no information as sought above for almost one year, the son of the complainant sent a reminder email on 20.12.2019 to the respondent requesting updated version of the statement of account considering the facts detailed above and also seeking return of the working capital. The respondent in its email dated 27.12.2019 responded that the working capital is returned post opening of the property and successful operation for a year or Ascott decided timeline. However, the respondent failed to provide the updated statement of account with the email. The complainant followed up with the respondent *vide* emails dated 27.12.2019 and 30.12.2019.
16. That the respondent again failed to provide the complainant with any satisfactory response. Therefore, on 25.02.2020, the complainant sent an email to the respondent seeking the

statement of account clearly mentioning the total amount paid by the complainant and the balance due. In the said letter, the complainant also sought the date of possession of the apartment.

17. That while the respondent failed to provide the information sought above, the respondent did share the statement of accounts as on 02.03.2020/03.03.2020 with the complainant.
18. That on mere perusal of the statement of accounts, it became clear to the complainant that the respondent had received amount in excess to the called amount i.e., the respondent had collected an excess amount of Rs.21, 46, 310.23 from the complainant. Therefore, the complainant, in good faith, addressed the issue at hand *vide* emails dated 10.03.2020, 13.03.2020 and 04.06.2020 and requested for return of such excess amount immediately. In the said emails, the complainant also rightly demanded interest to be paid for such excess amount lying with the respondent for such a long duration of time.
19. That as the respondent failed to respond the issue regarding return of excess payment made by the complainant. Therefore, the complainant was constrained to seek legal counsel for return of her monies. Accordingly, on behalf of the

complainant, a legal notice dated 03.06.2020 was issued to the respondent seeking return of excess amount deposited amounting to Rs.21, 46, 310.23 along with interest w.e.f. 26.03.2018.

20. That no response was received to the abovementioned legal notice. The respondent continued to ignore the emails and the legal notice issued by/ on behalf of the complainant whilst enjoying the fruits of her hard-earned monies which the respondent was not entitled to in any manner. Such conduct of the respondent wrecks of mala fide and is impermissible in law and equity. That the complainant once again sent a reminder email on 15.12.2020 to the respondent seeking return of the excess monies lying with the respondent.
21. That subsequently, the complainant gained knowledge through the documents in public domain that the respondent is in willful default of the provisions of the Act of 2016 and rules of 2017 with respect to the subject project in as much as several notices had been issued on 13.11.2019, 17.12.2019, 22.01.2020 and 20.07.2020 by this authority against the respondent. It also appears from public records that a suo moto complaint bearing no. RERA-GRG-5386-2019 is also

pending against the respondent for repeated failure to comply with the provisions of the Act of 2016 and the rules of 2017.

22. That upon becoming aware of the abovementioned non compliances of the respondent, the complainant immediately sent an email to the respondent on 07.01.2021 *inter alia* seeking the current status of the project, explanation with respect to the notices issued by this authority against the respondent and also return of the excess amount lying with the respondent. This email was followed up by email dated 18.01.2021. The said email was also sent by way of a letter dated 19.01.2021 through India Post on 25.01.2021.
23. That another email was sent by the son of the complainant to the respondent on 09.02.2021 seeking return of the excess amount lying with the respondent. The said email was acknowledged on 10.02.2021 by the respondent seeking the concerned unit no. which was duly provided on 10.02.2021. However, no response has been forthcoming ever since.
24. That in the meanwhile, it is pertinent to note that the complainant has also from time-to-time sought update on the status of construction/ completion of the project from the representatives of the respondent. On 02.09.2018, the

husband of the complainant had a discussion with the representative of the respondent wherein the husband of the complainant sought an update on the status of construction. The representative of the respondent assured that '*the construction is progressing well and this junction it's the internal finishing which is the focus*'. Further, the husband of the complainant *vide* email dated 31.07.2019 raised concerns over the delay in completion of the project and also sought definite answers with respect to his queries regarding the start and launch date, procurement of the occupation certificate, duration of delay, etc. Upon receiving no response whatsoever, the son of the complainant *vide* email dated 17.12.2019 also sought information regarding progress of the project, details regarding possession date, pictures of the construction of the project, progress report of the project, etc. However, no response has been received regarding the above while the complainant has constantly been following up with the complainant through telephone calls and emails.

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

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

- (i) Direct the respondent to return the excess amount of Rs. 21,46,310.23/- which has been deposited with the

respondent along with interest @ 24% as compounded annually (or at such rate deemed fit by this authority) from the date of deposit of such amount till date of payment.

(ii) Direct the respondent to pay interest @ 24% per annum (or at such rate deemed fit by this authority) for each month of delay on the amount deposited by the complainant with the respondent, with effect from the promised date of delivery as per the agreement till the date of actual possession.

26. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

**D. Reply on behalf of the respondent**

The respondent has contended the complaint on the following grounds: -

- i. That the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed.
- ii. That there is no cause of action to file the present complaint.
- iii. That the complainant has no locus standi to file the present complaint.
- iv. That this authority does not have the jurisdiction to try and decide the present complaint.

- v. That the complaint is not maintainable before this authority for the reason that the agreement contains a clause which refers the dispute to the adjudicating officer.
- vi. That the complainant has not approached this authority with clean hands and has intentionally suppressed and concealed the material facts in the present complaint. The present complaint has been filed by him maliciously with an ulterior motive and it is nothing but a sheer abuse of the process of law. The true and correct facts are as follows:
- A. That the respondent is a reputed real estate developer having immense goodwill, comprised of law abiding and peace loving persons and has always believed in satisfaction of their customers. The respondent and its associate companies have developed and delivered several prestigious projects such as 'Grand Arch', 'Skyon', 'Uptown', 'Gurgaon Hills', 'The Corridors' etc. and in most of these projects large number of families have already shifted after having taken possession and resident welfare associations have been formed which are taking care of the day to day needs of the allottees of the respective projects.
- B. That the complainant, after checking the veracity of the project namely, 'Ireo City Central- Managed



Service Apartment', sector 59, Gurugram had applied for allotment of an apartment vide her booking application form. The complainant is bound by the terms of the booking application form.

- C. That based on the said application, the respondent vide its allotment offer letter dated 22.02.2018 allotted to the complainant apartment no. ICC-MSA- RS15-03 for a sale consideration of Rs 1,14,00,129.10. Accordingly, the agreement for sale was executed between the parties to the complaint on 25.04.2018.
- D. That the possession of the unit was supposed to be offered to the complainant in accordance with the agreed terms and conditions of the buyer's agreement and booking form.
- E. That on account of certain force majeure circumstances such as construction ban, due to court order/ governmental authority guidelines, the implementation of the project was affected.
- F. That, furthermore, the outbreak of the deadly Covid-19 virus resulted in implementation of the project being affected. The outbreak resulted in not only disruption of the supply chain of the necessary materials but also in shortage of the labour at the construction sites as several

labourers have migrated to their respective hometowns. The covid-19 outbreak which has been classified as 'pandemic' is an Act of God and the same was thus beyond the reasonable apprehension of respondent. The time period covered by the above-mentioned force majeure events is required to be added to the time frame mentioned above. The respondent cannot be held responsible for the circumstances which were beyond its control. It is pertinent to mention herein that even this authority had vide its order no. 9/3-2020 HARERA/GGM(Admin) dated 26.05.2020 had extended the registration and completion date automatically by 6 months due to the outbreak of Covid-19. Even this authority had agreed vide the said order that due to the force majeure condition, the regular development work of the real estate projects have been getting affected.

- G. That despite the above-mentioned scenario, the respondent has already completed the construction of the tower in which the unit allotted to the complainant is located and it shall soon apply for the grant of the occupation certificate. It is pertinent to mention here that only finishing work in the said tower in question

is left and is being undertaken by the respondent currently.

H. That it is submitted that the complainant is a real estate investor who had booked the unit in question with a view to earn quick profit in a short period. However, it appears that her calculations have gone wrong on account of severe slump in the real estate market and the complainant now want to unnecessarily harass, pressurize and blackmail the respondent by filing such baseless, false and frivolous complaint. Such malafide tactics of the complainant cannot be allowed to succeed.

**E. Jurisdiction of the authority**

27. The respondent has raised an objection regarding jurisdiction of authority to entertain the present complaint. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E. I Territorial jurisdiction**

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

the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

#### **E. II Subject-matter jurisdiction**

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

Section 11(4)(a) is reproduced as hereunder:

#### **Section 11(4)(a)**

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

*The provision of assured returns is part of the builder buyer's agreement, as per clause 15 of the BBA dated..... Accordingly, the promoter is responsible for all obligations/responsibilities and functions including payment of assured returns as provided in Builder Buyer's Agreement.*

#### **Section 34-Functions of the Authority:**

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

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

**F. Findings on the relief sought by the complainants.**

- 1. Delay possession charges:** To direct the respondent to pay interest @ 24% per annum (or at such rate deemed fit by this authority) for each month of delay on the amount deposited by the complainant with the respondent, with effect from the promised date of delivery as per the agreement till the date of actual possession.
28. In the present complaint, the complainant intend 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."*

29. Clause 7.1 of the buyer's agreement dated 25.04.2018, provides for handing over possession and the same is reproduced below:

**7.1 Schedule for possession of the apartment**

*"7.1 ....The Promoter assures to hand over possession of the Apartment, subject to extension of registration by the Authority, on or before 30.06.2020, unless there is delay or failure due to an event of "force majeure", court orders, or orders by any competent authority(ies), statutory authority(ies), Government policies/ guidelines, decisions, or*

*any other circumstances which may be deemed reasonable by the Authority (hereinafter collectively referred to as "Force Majeure & Other Conditions"). If the completion of the Project is delayed due to any of the above conditions, then the Allottee agrees that the Promoter shall be entitled to the extension of time for delivery of possession of the Apartment for the period of such delay.*

30. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builder(s)/promoter(s) and buyer(s)/allottee(s) are protected candidly. The apartment buyer's agreement lays down the terms that govern the sale of different kinds of properties like residential, commercial etc. between the buyer and builder. It is in the interest of both the parties to have a well-drafted apartment buyer's agreement which would thereby protect the rights of both the builder(s) and buyer(s) 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. In pre-RERA period it was a general practice among the promoter(s)/developer(s) to invariably draft the terms of the apartment buyer's agreement in a manner that benefited only the promoters/developers. It had arbitrary, unilateral, and unclear clauses that either blatantly

favoured the promoters/developers or gave them the benefit of doubt because of the total absence of clarity over the matter.

31. The respondent promoter has proposed to handover the possession of the subject unit on/ or before 30.06.2020, unless there is delay or failure due to an event of "force majeure", court orders, or orders by any competent authority, statutory authority, Government policies/ guidelines, decisions, or any other circumstances which may be deemed reasonable by the authority (hereinafter collectively referred to as "force majeure & other conditions"). If the completion of the project is delayed due to any of the above conditions, then the allottee agrees that the Promoter shall be entitled to the extension of time for delivery of possession of the apartment for the period of such delay.
32. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the rate of 24% p.a. however, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

**Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]**

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

33. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases. The Haryana Real Estate Appellate Tribunal in **Emaar MGF Land Ltd. vs. Simmi Sikka** observed as under: -

*"64. Taking the case from another angle, the allottee was only entitled to the delayed possession charges/interest only at the rate of Rs.15/- per sq. ft. per month as per clause 18 of the Buyer's Agreement for the period of such delay; whereas, the promoter was entitled to interest @ 24% per annum compounded at the time of every succeeding instalment for the delayed payments. The functions of the Authority/Tribunal are to safeguard the interest of the aggrieved person, may be the allottee or the promoter. The rights of the parties are to be balanced and must be equitable. The promoter cannot be allowed to take undue advantage of his dominate position and to exploit the needs of the home buyers. This Tribunal is duty bound to take into consideration the legislative intent i.e., to protect the interest of the consumers/allottees in the real estate sector. The clauses of the Buyer's Agreement entered into between the parties are one-sided, unfair and unreasonable with respect to the grant of interest for delayed possession. There are various other clauses in the Buyer's Agreement which give sweeping powers to the promoter to*



*cancel the allotment and forfeit the amount paid. Thus, the terms and conditions of the Buyer's Agreement dated 09.05.2014 are ex-facie one-sided, unfair and unreasonable, and the same shall constitute the unfair trade practice on the part of the promoter. These types of discriminatory terms and conditions of the Buyer's Agreement will not be final and binding."*

34. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on 06.10.2021 is 7.30% per annum. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30 % per annum.

35. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

*"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*

*Explanation. —For the purpose of this clause—*

*(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*

*(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

36. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 9.30% per annum by the respondent/promoter which is the

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

37. 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 complainant keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 30.06.2020 till the offer of possession of the subject unit 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.
38. 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 provisions of the Act. By virtue of apartment buyer's agreement executed between the parties on 25.04.2018, the possession of the booked unit was to be delivered on/ or

before 30.06.2020. Accordingly, non-compliance of the mandate contained in section 11(4) (a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such complainant is entitled to delayed possession charges at the prescribed rate of interest i.e., 9.30% p.a. for every month of delay on the amount paid by the complainant to the respondent from the due date of possession i.e., 30.06.2020 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: -**

39. Hence, the authority hereby passes this order and issue 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 sec 34(f) of the Act:-

- i. The respondent is directed to pay the interest at the prescribed rate i.e., 9.30 % per annum for every month of delay on the amount paid by the complainant from due date of possession i.e., 30.06.2020 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 30.06.2020 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 respondent shall not charge anything from the complainant which is not the part of the agreement.

40. Complaint stands disposed of.

41. File be consigned to the registry.

(Samir Kumar)

Member

(Vijay Kumar Goyal)

Member

**Haryana Real Estate Regulatory Authority, Gurugram**

**Dated: 06.10.2021**

**JUDGEMENT UPLOADED ON 28.12.2021**