

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

**Complaint no. :** 5886 of 2019  
**First date of hearing:** 24.01.2020  
**Date of decision :** 10.08.2021

Mr. Rajpal Gulia  
R/O: - 237/6, Main Market Street, Jhajjar Beri,  
Haryana- 124201

**Complainant**

Versus

1.M/s Countrywide Promoters Private Limited  
Regd. Office at: -28, ECE House, 1st Floor,  
Kasturba Gandhi Marg, New Delhi -10001  
2. M/s BPTP Limited  
Regd. Office at: - OT-14, 3rd Floor, Next Door,  
Parklands Sector-76, Faridabad, Haryana-  
121001

**Respondents**

**CORAM:**

Shri Samir Kumar  
Shri Vijay Kumar Goyal

**Member  
Member**

**APPEARANCE:**

Sh. Sumit Mehta  
Sh. Venket Rao

Advocate for the complainant  
Advocate for the respondents

**ORDER**

1. The present complaint dated 09.12.2019 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed

that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottees as per the agreement for sale executed inter se.

**A. Unit and project related details**

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

S. No	Heads	Information
1.	Plot no.	D-61
2.	Plot admeasuring	250 sq. yds. (Page no. 91 of reply)
3.	Date of execution of plot buyer's agreement	07.02.2014 (Page no. 85 of reply)
4.	Date of Booking	31.10.2010 (vide payment receipt on page no. 38 of reply)
5.	Total consideration	Rs. 10,748,624.80/- (vide statement of accounts on page no. 127 of reply)
6.	Total amount paid by the complainant	Rs. 10,245,258.20/- (vide statement of accounts on page no. 127 of reply)
7.	Due date of delivery of possession	07.08.2016 [as per clause 5.1 of the plot buyer's agreement] <b>[Note: - Grace Period is not allowed]</b>

8.	Offer of possession	27.01.2017 (Page no. 124 of reply) <b>[Invalid Offer of Possession]</b>
9.	Part completion certificate date	03.10.2017
10.	Delay in handing over possession till the date of part completion certificate plus 2 months i.e., 03.12.2017	1 year 3 months 26 days.

3. The particulars of the project namely, "Amstoria" as provided by the registration branch of the authority are as under:

<b>Project related details</b>		
<p>The License no. 58 of 2010 and 45 of 2011 comprising of total land area 126.674 Acres were previously sold by the promoter by the project name i.e., Amstoria and was not registered.</p> <p>As such, the promoter has registered with the authority vide registration no.31 of 2020 valid till 30.04.2024 on the same land comprising of license no. 58 of 2010 and 45 of 2011. Now, the Name of the said project is 102, Eden Estate and is registered with the Authority.</p>		
1.	Name of the promoter	M/s Countrywide Promoters Private Limited
2.	Name of the project	102 Eden Estate
3.	Location of the project	Sector-102 & 102A, Gurugram, Haryana.
4.	Nature of the project	Residential Plotted Colony
5.	Whether project is new or ongoing	Ongoing
6.	Registered whole/phase as	Whole
7.	If developed in phase, then phase no.	N/A

8.	Total no. of phases in which it is proposed to be developed, if any	N/A	
9.	HARERA registration no.	31 of 2020	
10.	Registration certificate	Date	Validity
		09.10.2020	30.04.2024
11.	Area registered	126.674 acres	
	Total Plots 1028 {Out of which 28 plots for villas and 155 plots for the floors (G+3)}		
12.	Extension applied on	N/A	
13.	Extension certificate no.	Date	Validity
		N/A	N/A
<b>Licence related details of the project</b>			
1.	DTCP license no.	58 of 2010 dated 03.08.2010 and 45 of 2011 dated 17.05.2011	
2.	License validity/ renewal period	02.08.2025 and 16.05.2024	
3.	Licensed area	18.606 acres and 108.068 acres	
4.	Name of the license holder	M/s Shivanand Real Estate Pvt. Ltd. and others.	
5.	Name of the collaborator	NA	
6.	Name of the developer/s in case of development agreement and/or marketing agreement entered into after obtaining license.	NA	
7.	Whether BIP permission has been obtained from DTCP	NA	

<b>Date of commencement of the project</b>			
1.	Date of commencement of the project	N/A	
<b>Details of statutory approvals obtained</b>			
<b>S.N.</b>	<b>Particulars</b>	<b>Approval no and date</b>	<b>Validity</b>
1.	Approved Building Plan	N/A	N/A
2.	Environment Clearance	12.12.2013	11.12.2020
	Revised Environment Clearance	22.07.2016	21.07.2023
3.	Occupation Certificate Date	Provided individually for the floors	
4.	Part Completion certificate date	03.10.2017	
	Area	66.50 acres	

#### **B. Facts of the complaint**

The complainant has submitted as under: -

4. That in the month of October 2010, the complainant was approached by the respondents, with a proposal of investment in one of its upcoming projects being developed and marketed in the name of "Amstoria", Sector 102, Gurugram, Haryana.
5. That based on the representations of the respondents, the complainant being a simpleton person booked a plot in the above stated project purely upon an assurance of quality infrastructure & time bound delivery promise made by the respondents.

6. That subsequent to the terms of the payments as presented by the respondents, the complainant made multiple payments in the month of October 2010 and December 2010 amounting to a total 20% amount of the base selling price of the plot and was subsequently allotted a residential plot bearing no. D-61, having a super area of 250 square yards, in the project namely "Amstoria Plots" located at Sector-102 & 102A, Village Kherki Majra and Dhankot, Gurugram (Haryana) vide an allotment letter dated 08.02.2011.
7. That post allotment of the said plot in the name of the complainant, the respondents kept on raising multiple demands in accordance with the payment plan and the complainant in accordance with the demands of the respondents kept on making the payments in accordance. The complainant was not convinced with the approach of the respondents in context to the development works being undertaken at the project site and the multiple demands being raised by the respondents caused a major reason for worry for the complainant.
8. That subsequently in the month of May 2011, the respondents raised an irrational and unwarranted demand in respect of periphery fencing, whereas upon site visit by the complainant in the same month observed that no works are being undertaken by the respondents, instead of resolving the queries of the complainant, the respondents kept on sending the complainant multiple reminders and suddenly abruptly stopped sending any payment request and stopped answering

the calls of the complainant. That thereafter upon the initiatives of the complainant, the complainant visited the office of the respondents, where he was informed that he is required to pay obnoxious amounts against his booking or else, his booking shall be cancelled, and the money shall be forfeited. The complainant being in a helpless situation, made multiple payments to the respondents and was also subjected to payment of huge interest amount.

9. That thereafter, the respondents, immediately upon receipt of the entire dues along with interest, the respondents issued another demand letter on 11.11.2011 claiming amounts up to 75% of BSP but the complainant having no option kept on making the payments to the respondents upon assurances by them in respect of timely delivery.
10. That soon thereafter the respondents, raised its demand at the stage of "commencement of laying roads" (85% of total BSP) on 27.12.2011 for which the complainant made timely payment. That soon thereafter on 05.03.2012, the respondents raised its final demand before possession (i.e., inclusive of 95% of the BSP, along with 100 % of EDC & IDC, 100 % club charges, 100% of plc & 100% of PBIC) and the complainant accordingly, the complainant made the said payments under a hope that the possession of his booked plot shall be offered to him soon.
11. That the respondents entered into a plot buyer's agreement on 07.02.2014. It is needless to state that even under the said plot buyer agreement, the respondents, made the complainant sign

irrational and unprecedented timeline for handover of the possession of the plot.

12. That as per the plot buyer's agreement, the respondents were required to handover the possession of the said plot within 36 months (i.e., 30 months + 6 months grace period) i.e., 07.01.2017. It is needless to state that the unprecedented delay of the respondents in signing of the plot buyer's agreement and even post unrealistic terms, the respondents have till date failed to comply with the terms of the unruly agreement and has failed to handover the possession of the plot till date.
13. That the respondents have acted in an unprecedented manner and have delayed the project for more than 07 years from the date of receipt of 95% payment i.e., 28.05.2012.
14. That the complainant, under the provisions of the Act, claims for an equivalent interest (as respondents) i.e., 18% p.a. on the entire amount paid by him, from the date of individual payments, for the entire period delay. Furthermore, the respondents, have been denying, the payment of delay interest to the complainant and have engaged in the malpractice of pressurising the complainant, for giving up his rightful dues and delay interest as per the Act.
15. That the complainant has on numerous occasions tried to contact the above-named respondents, for handing over of the possession of the said plot or else cancellation and refund of entire money given by the complainant but the respondents have maintained their silence for best of the reasons known to



them. Thus, the complainant, seeks relief as prayed from the Id. authority.

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

16. The complainant has sought following relief:

- (i) Direct the respondent to pay interest for every month of delay at 18% on the entire amount paid by the complainant till handing over of possession of the said unit, along with specific direction to the respondents to handover the possession of the said unit by executing conveyance deed.

**D. Reply by the respondents.**

17. That the said plot D-61, in the project 'Amstoria', the respondents have issued offer of possession to the complainant way back on 27.01.2017. However, in terms of the offer of possession, the complainant has failed to remit an amount of Rs. 10,29,866.60/-. The present complaint filed by the complainant is a gross abuse of due procedure of law and therefore, warrants dismissal without any further adjudication.
18. The complainant has approached the hon'ble authority for redressal of their alleged grievances with unclean hands, i.e., by not disclosing material facts pertaining to the case at hand and, by distorting and/or misrepresenting the actual factual situation with regard to several aspects. It is further submitted that the hon'ble apex court in plethora of decisions had laid down strictly, that a party approaching the court for any relief,

must come with clean hands, without concealment and/or misrepresentation of material facts, as the same amounts to fraud not only against the respondents but also against the court and in such situation, the complaint is liable to be dismissed at the threshold without any further adjudication.

19. Reference may be made to the following instances which establish concealment/suppression/ misrepresentation on the part of the complainant:

- The complainant has approached the respondents, through his broker namely, 'Ashley Estate Pvt. Ltd', on his own volition, after conducting due diligence of the relevant real estate geographical market and after ascertaining the financial viability of the same and has wrongly alleged about getting influenced by the representations by the respondents.
- The complainant, after 6 years from the date of execution of the agreement between the parties has wrongly alleged that the terms of the plot buyer's agreement are one sided, unfair and illegal, whereas, at the time of signing the agreement, the complainant executed the said agreement without any protest or demur and never raised any issue with regard to the terms of the agreement and therefore, such allegation at this belated stage is an afterthought and therefore, cannot be entertained or adjudicated upon by this hon'ble authority.

- The respondents have raised all the demand as per the payment schedule and as per the terms of agreement duly agreed between the parties.
- That the respondents have offered the possession of the unit on 27.01.2017 i.e., within the stipulated period of time as per the terms of the agreement dated 07.02.2014.

20. It is submitted that the relief(s) sought by the complainant is unjustified, baseless and beyond the scope/ambit of the agreement duly executed between the parties, which forms a basis for the subsisting relationship between the parties. The complainant entered into the said agreement with the respondents with open eyes and is bound by the same. That the relief(s) sought by the complainant travel way beyond the four walls of the agreement duly executed between the parties. The complainant while entering into the agreement have accepted and is bound by each and every clause of the said agreement, including clause-6 which provides for delayed penalty in case of delay in delivery of possession of the said plot by the respondents. That the detailed relief claimed by the complainant goes beyond the jurisdiction of this hon'ble authority under the Real Estate (Regulation and Development) Act, 2016 and therefore the present complaint is not maintainable qua the reliefs claimed by the complainant.

21. That the above submission implies that while entering into the agreement, the complainant had the knowledge that there may arise a situation whereby the possession could not be granted to the complainant as per the commitment period and in order

to protect and/or safeguard the interest of the complainant, the respondents have provided reasonable remedy under clause-6, and, the complainant having accepted to the same in totality, cannot claim anything beyond what has been reduced to in writing between the parties.

22. In this regard, reference may be made to section-74 of the Indian Contracts Act, 1872, which clearly spells out the law regarding sanctity and binding nature of the ascertained amount of compensation provided in the agreement and further specifies that any party is not entitled to anything beyond the same. Therefore, the complainant, if at all, are only entitled to compensation under clause-6 of the agreement.
23. That having agreed to the above, at the stage of entering into the agreement, and raising vague allegations and seeking baseless reliefs beyond the ambit of the agreement, the complainant is blowing hot and cold at the same time which is not permissible under law as the same is in violation of the '*Doctrine of Aprobate & Reprobate*'. Therefore, in light of the settled law, the reliefs sought by the complainant in the complaint under reply cannot be granted by this hon'ble authority.
24. In terms of the rules, the Government prescribed the agreement for sale and specified the same in 'Annexure A' of the rule 8(1) of the rules which reads as under:

*"8. (1) The agreement for sale shall be as per Annexure 'A'.  
(2) Any application letter, allotment letter or any other document signed by the allottees, in respect of the apartment, plot or building, prior to the execution and*

*registration of the agreement for sale for such apartment, plot or building, as the case may be, shall not be construed to limit rights and interests of the allottees under the agreement for the sale or under the Act or the rules for the regulations made thereunder."*

25. That rule 8 (1) clearly specifies that the form of the "agreement for sale" is prescribed in 'Annexure A' to the rules and in terms of section 13 of the Act the promoter is obligated to register the agreement for sale upon receipt of any amount in excess of 10 percent of the cost of the plot. Rule 8(2) provides that any documents such as allotment letter or any other document executed post registration of the project with the RERA between the promoter and the allottee, which are contrary to the form of the agreement for sale, Act or rules, the contents of the form of the agreement for sale, Act or rules shall prevail.
26. That the rule 8 deals with documents executed by and between promoter and allottee after registration of the project by the promoter, however with respect to the documents including agreement for sale/ buyers agreement/plot buyers agreement executed prior to the registration of the project which falls within the definition of "ongoing projects" explained herein below and where the promoter has already collected an amount in excess of 10 percent of the total price rule 8 is not applicable.
27. The aforesaid view stated in the preceding para is clarified in the rules published by the state of Haryana, the explanation given at the end of the prescribed agreement for sale in 'Annexure A' of the rules, it has been clarified that the

developer shall disclose the existing agreement for sale in respect of ongoing project and further that such disclosure shall not affect the validity of such existing agreement executed with its customers. The explanation is extracted herein below for ready reference:

*"Explanation: (a) The promoter shall disclose the existing Agreement for Sale entered between Promoter and the Allottee in respect of ongoing project along with the application for registration of such ongoing project. However, such disclosure shall not affect the validity of such existing agreement (s) for sale between Promoter and Allottee in respect of apartment, building or plot, as the case may be, executed prior to the stipulated date of due registration under Section 3(1) of the Act."*

28. Thus, what has not been saved under the Act and rules are sales where mere booking has been made and no legal and valid contract has been executed and is subsisting.
29. It is submitted that the purported reliefs sought for by the complainant in the present complaint travel beyond the jurisdiction of this hon'ble authority as, granting the same would amount to re-writing/modifying the agreed clauses of the duly executed between the parties without any protest. It is further submitted that the hon'ble authority, being a creature of the statute, derives its powers from the specific provisions of the statute and in absence of any provision provided in said statute empowering the hon'ble authority to re-write and/or modify the clauses of the agreement, the purported reliefs sought for by the complainant cannot be granted.

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

**E. Jurisdiction of the authority**

31. The respondents have raised objection regarding jurisdiction of authority to entertain the present complaint and the said objection stands rejected. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

**E. I Territorial jurisdiction**

32. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, 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 complete territorial jurisdiction to deal with the present complaint.

**E. II Subject matter jurisdiction**

33. 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 objections raised by the respondent.**



**F.I Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to the registration of the project under RERA.**

34. The respondent has raised a contention that the agreements that were executed prior to the registration of the project under RERA shall be binding on the parties and cannot be reopened. When, both the parties being signatory to a duly executed FBA and out of free will and without any undue influence or coercion, the terms of FBA would be binding so agreed upon between them.
35. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written that were executed prior to the registration of the project under RERA or 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."*

36. Also, in appeal no. 173 of 2019 titled as ***Magic Eye Developer 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 opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation 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."*

37. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein.

Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

**G. Findings on the relief sought by the complainant.**

**G.I Delay possession charges:** - Direct the respondent to pay interest for every month of delay at 18% on the entire amount paid by the complainant till handing over of possession of the said unit, along with specific direction to the respondents to handover the possession of the said unit by executing conveyance deed.

38. In the present complaint, the complainant intends to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

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

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

.....

*Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the*

*handing over of the possession, at such rate as may be prescribed."*

39. Clause 5.1 of the plot buyer's agreement provides time period for handing over of possession and the same is reproduced below:

**"5.1. POSSESSION**

*Subject to Clause 13 herein or any other circumstances not anticipated and beyond the control of the Seller/Confirming Party and any restraints/restrictions from any courts/authorities and subject to the Purchaser(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement including but not limited to timely payment of all instalments and the of total Sale Consideration and Stamp Duty and other charges and having complied with all provisions, formalities, documentation etc., as prescribed by the Seller/Confirming Party, whether under this Agreement or Maintenance Agreement or otherwise, from time to time, the Seller/Confirming Party proposes to hand over the possession of the Plot to the Purchaser(s) within a period of 30 months from the date of execution of Plot Buyer's Agreement. The Purchaser(s) agrees and understands that subject to Clause 13 of this agreement, the Seller/Confirming Party shall be entitled to a grace period of 180 (One Hundred and Eighty) days, after the expiry of 30 months as stated above, for applying and obtaining necessary approvals in respect of the colony."*

40. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by

the promoter. 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 default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the 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. **Admissibility of grace period:** The promoter has proposed to hand over the possession of the said plot within period of 30 months from the date of execution of the plot buyer's agreement. In the present complaint, the date of execution of the plot buyer's agreement is 07.02.2014. Therefore, the due date of handing over possession comes out to be 07.08.2016. It is further provided in agreement that promoter shall be entitled to a grace period of 180 days after the expiry of 30 months as stated above, for applying and obtaining necessary approvals in respect of the colony, but he has not mentioned the grounds/circumstances on the happening of which he would become entitled for the said extension of the period.

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. It needs to be emphasized that for availing further period for completing the construction the promoter must make out or establish some compelling circumstances which were in fact beyond his control while carrying out the construction due to which the completion of the construction of the project or plot could not be completed within the stipulated time. In the present complaint it is stated that the said extension of 180 days is required, for applying and obtaining necessary approvals in respect of the colony. It is nowhere mentioned that as to which necessary approvals the respondents/promoters are talking about. Further, no document has been placed on record to corroborate the above said grant of period of extension (grace period). The respondents/promoters have not assigned any reason in clause 5.1 of the agreement as to why and how he shall be entitled for further extension of time of 180 days in delivering the possession of the unit. Accordingly, this grace period of 180 days cannot be allowed to the respondents/promoters at this stage.

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

43. The legislature in its wisdom in the subordinate legislation under 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.
44. 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., 10.08.2021 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.
45. **Rate of interest to be paid by complainant for delay in making payments:** 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;"*

46. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 9.30% by the respondents/promoters which is the same as is being granted to the complainant in case of delayed possession charges.
47. **Validity of offer of possession:** At this stage, the authority would express its views regarding the concept of 'valid offer of possession'. It is necessary to clarify this concept because after valid and lawful offer of possession liability of promoter for delayed offer of possession comes to an end. On the other hand, if the possession is not valid and lawful, liability of promoter continues till a valid offer is made and allottee remains entitled to receive interest for the delay caused in



handing over valid possession. The authority after detailed consideration of the matter has arrived at the conclusion that a valid offer of possession must have following components.

- **Possession must be offered after obtaining occupation certificate/ part completion certificate: -**

The subject unit after its completion should have received occupation certificate/ part completion certificate from the department concerned certifying that all basic infrastructural facilities have been laid and are operational. Such infrastructural facilities include water supply, sewerage system, storm water drainage, electricity supply, roads and street lighting.

- **The subject unit should be in habitable condition: -**

The test of habitability is that the allottee should be able to live in the subject unit within 30 days of the offer of possession after carrying out basic cleaning works and getting electricity, water and sewer connections etc from the relevant authorities. In a habitable unit all the common facilities like lifts, stairs, lobbies, etc should be functional or capable of being made functional within 30 days after completing prescribed formalities. The authority is further of the view that minor defects like little gaps in the windows or minor cracks in some of the tiles, or chipping plaster or chipping paint at some places or improper functioning of drawers of kitchen or cupboards etc. are minor defects which do not render



unit uninhabitable. Such minor defects can be rectified later at the cost of the developers. The allottees should accept possession of the subject unit with such minor defects under protest. This authority will award suitable relief for rectification of minor defects after taking over of possession under protest.

48. However, if the subject unit is not habitable at all because the plastering work is yet to be done, flooring works is yet to be done, common services like lift etc. are non-operational, infrastructural facilities are non-operational then the subject unit shall be deemed as uninhabitable and offer of possession of an uninhabitable unit will not be considered a legally valid offer of possession.

- **Possession should not be accompanied by unreasonable additional demands:** - In several cases additional demands are made and sent along with the offer of possession. Such additional demands could be unreasonable which puts heavy burden upon the allottees. An offer accompanied with unreasonable demands beyond the scope of provisions of agreement should be termed as invalid offer of possession. Unreasonable demands itself would make an offer unsustainable in the eyes of law. The authority is of the view that if respondent has raised additional demands, the allottees should accept possession under protest.

49. In the present complaint, the respondent has applied for grant of part completion certificate on 06.04.2017, the concerned



authority granted the part completion certificate on 03.10.2017. Therefore, the offer of possession dated 27.01.2017 is not valid in eyes of law and the complainant allottee remains entitled to receive interest for the delay caused in handing over valid possession.

50. On consideration of the documents available on record and submissions made by both the parties, the authority is satisfied that the respondents are in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of 5.1 of the plot buyer's agreement executed between the parties on 07.02.2014, the possession of the subject unit was to be delivered within 30 months from the of execution of the plot buyer's agreement i.e., 07.08.2016. Therefore, the due date of handing over possession is 07.08.2016. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession is 07.08.2016. The possession of the subject unit was offered to the complainant on 27.01.2017 but it was an invalid offer of possession for the reasons quoted above. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondents to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the plot buyer's agreement dated 07.02.2014 executed between the parties and the possession offered to the complainant on 27.01.2017 is invalid for the reasons quoted above. It is the failure on part of the

promoter to fulfil its obligations and responsibilities as per the plot buyer's agreement dated 07.02.2014 to hand over the possession within the stipulated period.

51. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondents is established. As such the complainant is entitled to delay possession at prescribed rate of interest i.e., 9.30% p.a. w.e.f. 07.08.2016 till the date of the part completion certificate i.e., 03.10.2017 plus 2 months i.e., 03.12.2017 as per 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**

52. 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 respondents are directed to pay interest at the prescribed rate of 9.30% p.a. for every month of delay from the due date of possession i.e., 07.08.2016 till the date of the part completion certificate i.e., 03.10.2017 plus 2 months i.e., 03.12.2017 to the complainant.
  - ii. The arrears of such interest accrued from 07.08.2016 till 03.12.2017 shall be paid by the promoter to the allottee within a period of 90 days from date of this order as per rule 16(2) of the rules.

- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
  - iv. 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 respondents/promoters which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
  - v. The respondents shall not charge anything from the complainant 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.
53. Complaint stands disposed of.
54. File be consigned to registry.

  
(Samir Kumar)  
Member

v.l -   
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram  
Dated: 10.08.2021

Judgement uploaded on 04.01.2022.