

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

Complaint no. : 720 of 2019
Date of filing complaint: 01.03.2019
First date of hearing : 29.08.2019
Date of decision : 14.10.2021

1.	Mrs. Gurmeet Kaur	Complainants
2.	Ms. Pritika Grewal Both R/o: 27/56, Ground floor, West Punjabi Bagh, New Delhi	
Versus		
1.	M/s Spaze Towers Private Limited R/o: Spazedge, Sector 47, Gurgaon Sohna Road, Gurgaon, Haryana	Respondent

CORAM:	
Shri Samir Kumar	Member
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Sh. Rishabh Gupta (Advocate)	Complainants
Sh. J.K Dang (Advocate)	Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations,

responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the 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.	Project name and location	"Spaze corporate park" Sector-69-70, Gurugram
2.	Project area	3.956 acres
3.	Nature of the project	Commercial complex
4.	DTCP license no. and validity status	134 of 2008 dated 28.06.2008 valid up to 27.06.2020
5.	Name of licensee	Well worth Housing Pvt. Ltd. and Raj Realtech Pvt. Ltd.
6.	RERA Registered/ not registered	Registered vide registration no. 393 of 2017 dated 22.12.2017 and valid up to 30.06.2020
7.	Unit no.	128, 1st Floor, tower A [Page 24 of the complaint]
8.	Unit measuring (super area)	500 sq. ft.
9.	Date of allotment letter	08.12.2010 [Page 47 of the reply]
10.	Date of execution of builder buyer agreement	05.09.2012 [Page 23 of the complaint]
11.	Payment plan	Construction linked payment plan

		[Page 33 of the complaint]
12.	Total sale consideration	Rs.35,48,750/- (As per payment plan at page no. 33 of the complaint)
13.	Total amount paid by the complainants	Rs. 37,29,161/- (As per statement of accounts dated 26.02.2019 on pg-127 of reply)
14.	Due date of delivery of possession <i>Clause 14: That the possession of the said premises is proposed to be delivered by the developer to the allottee within three years from the date of this agreement.</i>	05.09.2015 Calculated from the date of agreement
15.	Possession letter	Not offered
16.	Occupation Certificate	28.01.2020 As per information obtained by DTCP, Haryana
17.	Delay in delivery of possession till date of decision i.e 14.10.2021	6 years 1 month 9 days

B. Facts of the complaint:

- That the complainants purchased unit bearing no. 128 on first floor admeasuring a super area of 500 Sq. Ft. at the rate of Rs. 7097.50 per sq. ft. amounting total Rs. 31,50,000/- plus other charges amount i.e. total price of Rs. 35,48,750/- on the assurance that construction shall be complete in time and possession would be handed over in time and paid booking amount of Rs. 3,15,000/- on 13.09.2010.
- The buyer's agreement dated 05.09.2012 is signed between both the parties i.e. M/s. Spaze Towers Pvt. Ltd and Mrs. Gurmeet Kaur & Ms. Pritika Grewal (complainants) on the terms and conditions

as laid down by the company. That as per the buyer's agreement the possession of the unit in question was to be handed over within 36 months from the date of the said agreement as provided under clause 14 of the agreement. That as per the possession clause the possession was to be handed lastly by September 2015. That further while entering into the above said agreement the respondent further sold one car parking space to the complainants for a consideration of Rs. 2,50,000/-.

5. All instalments paid as demanded by the company time and again a total amount of Rs. 37,43,846/- paid till date. That as per the buyer's agreement the possession of the unit in question was to be handed lastly by September 2015, however at that time the construction of the project was far from completion.
6. That after an exorbitant delay of 3½ years the respondent has not handed over the possession of said flat to complainants till date. While the possession was to be handed over lastly by September 2015 and no interest for the delayed period was offered by the respondent to the complainant.

C. Relief sought by the complainants:

7. The complainants have sought following relief(s):
 - i. Direct the respondent to provide a copy of occupancy certificate or application for obtaining occupancy certificate along with mandatory documents.
 - ii. Direct the respondent to pay the interest for the delayed period of handing over the possession from the time as stated under clause(za) of section 2.

- iii. Direct the respondent to pay interest for the period of complaint pending before the Real Estate Regulatory Authority.
- iv. Direct the respondent to recalculate the interest to be charged at the same rate of interest at which he is ordered to pay to the allottee i.e. State bank of India highest marginal cost of lending rate plus 2%
- v. Direct the respondent not to charge any holding charges, interest on pending payments at the time of offer of handing over the possession after the settlement dues.
- vi. Direct the respondent to refund extra money charges on account of parking charges, club housing charges and such other incidental charges.
- vii. Direct the respondent to comply with the drawings and approved plans sanctioned by the competent authority.
- viii. Direct the respondent to restrain from making threatening demands of the pending dues once the complaint regarding interest etc. is pending before the authority.
- ix. Direct the respondent to get conveyance deed of common areas and super areas be made in the name of association of allottees.

D. Reply by the respondents

8. The commercial unit bearing no 148, located on the 1st floor, admeasuring 516 sq. ft approx. was provisionally allotted to the complainants vide allotment letter dated 8.12.2010. The buyer's agreement between the parties was executed on 05.09.2012.

However it is pertinent to mention herein that the super area of the unit is tentative and that the same is subject to finalisation upon completion of the project and after issuance of the occupation certificate. It is submitted that the total sale consideration was agreed for an amount of Rs. 37,29,161/- excluding the applicable taxes and levies and other amounts payable under the buyer's agreement.

9. That it is pertinent to mention herein that at the time of booking of the unit and also at the time of execution of the buyer's agreement, it was clearly and transparently disclosed to the complainants, that the demarcation and zoning plan of the project had not yet been approved by the competent authority. The respondent had further admitted and disclosed to the complainants that the respondent had no power or control over functioning of government authorities and that the respondent could not provide any time frame within which the approvals would be granted.
10. It is respectfully submitted that a large number of permissions/sanctions are required to be obtained from the concerned statutory authorities for the purpose of undertaking the implementation of commercial project of the huge magnitude as the instant one. The respondent can only proceed to submit the requisite application, complete in all respects, in the office of the concerned statutory authorities for obtaining required sanctions/permissions.
11. The respondent cannot exercise any control over the functioning of the said statutory authorities. In the present case, the

application for obtaining sanction of building plans was submitted by the respondent in the office of Directorate of Town & Country Planning, Haryana, Chandigarh on 09.10.2011. The building plans were eventually sanctioned on 10.05.2012 that is after a period of approximately 7 months from the date of submission of the application by the respondent.

12. That it is pertinent to mention that respondent had submitted an application for grant of environment clearance to the concerned statutory authority on 18.06.2012. However, for one reason or the other, which by no stretch of imagination can be construed directly or impliedly to be a lapse or default on the part of the respondent, the said environmental clearance has not been issued till date. Therefore, the non-grant of environmental clearance has considerably delayed the execution of the project.
13. That it is submitted that after submitting the application for grant of environmental clearance before the Hon'ble State Environment Impact Assessment Authority (SEIAA) the respondents were then issued EDS due to shortcomings in application vide letter no. HR/SEAC/2012/222/180 dated 17.07.2012. The respondents immediately of receipt of EDS submitted its reply vide Letter dated 10.09.2012 and the respondents were informed vide letter bearing no. HR/SEAC/2012/222/925 dated 31.12.2012 that the application of the respondents was decided to be listed before the 73rd meeting of State Expert Appraisal Committee (SEAC) which was scheduled on 16.01.2013. The respondents attended the 73rd meeting of SEAC and were asked to furnish clarification regarding the renewal of License no. 134/2008 vide letter dated 25.01.2013.

14. That on 03.06.2013 final notice from SEACC bearing no. HR/SEAC/222/324 was received for submission of copy of renewed license which was duly replied and the queries raised in the notice dated 03.06.2013 were again duly addressed vide letter dated 27.06.2013. The respondent received a notice dated 05.07.2013 whereby it was informed that the application of the respondents would be again listed for appraisal before the 88th meeting of State Environment Impact Committee to be held on 15.07.2013. However, the 88th meeting of State Environment Impact Committee was not held and the same was postponed to 05.08.2013 which was duly attended by the respondent.
15. That on 12.08.2013 the respondent received another notice bearing no. HR/SEAC/2012/222/582 wherein certain queries and clarifications were sought and the same was duly replied vide Letter dated 15.11.2013. Thereafter the respondent received another notice bearing no. HR/SEACC/2014/222/960 dated 06.01.2014 whereby it was informed that the application of the respondents would be again listed for appraisal before the 99th meeting of State Environment Impact Committee to be held on 28.01.2014 and again certain queries were raised and the same were duly replied vide Respondent's reply dated 18.02.2014.
16. That the respondent again received yet another notice bearing no. HR/SEACC/2014/222/1182 dated 24.04.2014 whereby the respondent was informed that the application of the respondent would be again listed for appraisal before the 104th meeting of State Environment Impact Committee to be held on 12.05.2014,

17. That on 02.06.2014 the State Environment Assessment Committee vide order bearing no. SECY/SEAC/2014/1323 passed an order constituting a sub-committee to assess the status of construction at the project site of the respondent. However, the sub-committee did not visit the site due to reasons best known to the Committee/Sub Committee despite the respondent's request letter dated 07.10.2014 and 12.01.2015 requesting to conduct the site visit as directed in the order dated 02.06.2014. The respondent sent another letter dated 27.08.2015 requesting the authorities to grant the Environment Clearance. However, thereafter in the month of June 2016 the respondent received another order passed by SEAC for constituting a new sub-committee to verify the status of construction at the project site.

Thereafter, show-cause notice was received vide letter no. HSPCB/GRS/2016/ dated 09.12.2016 for violation of EIA notification of 14.09.2006.

That it is pertinent to mention herein that the total built-up area of the project is 46264.209 sq. m which is less than 1,50,000 sq.m and thus the said project falls under category 8(a) of EIA Notification, 2006. However, in the light of the Ministry of Environment, Forest and Climate Change notification no. S.O 804 (E) dated 14.03.2017 where it has been clearly notified that the violation cases/non-compliance cases will be treated as 'A' category projects. Hence the application for Grant of Terms of Reference under violation category were submitted to Ministry of Environment, Forest and Climate Change on 02.06.2017.

18. That thereafter, as per amendment in notification vide S.O. 1030(E) dated 8th March, 2018 & OM no. Z-11013/22/2017- IA. II (M) dated 15.03.2018 & 16.03.2018, the project falls under category 'B', of Schedule 8(a) & is exempted from Public Hearing and will be appraised by SEAC/SEIAA, Haryana. Subsequently, it was considered in 169th SEAC, Haryana meeting dated 18.05.2018 and thereafter, Terms of Reference (TOR) was granted by SEIAA, Haryana vide letter no. SEIAA/HR/2018/681 dated 07.08.2018
19. That the tenure of SEAC/SEIAA Haryana got completed and the respondent submitted the Environment Impact Assessment Report before Ministry of Environment, Forest and Climate Change on 06.11.2018. The case had been enlisted in the 17th Expert Appraisal Committee meeting for the proposal involving violation of EIA Notification, 2006 scheduled on 29.01.2019 and certain queries were raised by Ministry of Environment, Forest and Climate Change and the reply was duly submitted vide Letter dated 28.02.2019. That the application was again listed for appraisal before the 20th meeting of Expert Appraisal Committee to be held on 29.03.2019 minutes of meeting of which are awaited.
20. That therefore it is clear and quite evident from the facts and submissions made above that the respondent has been rigorously following up with the authorities whether it was the State Expert Appraisal Committee or Ministry of Environment, Forest and Climate Change and have left no stone unturned to get the Environment Clearance from the Authorities.

That it is pertinent to mention herein that the provision for such an eventuality has been provided for in the buyer's agreement

dated 05.09.2012. It is specifically provided in clause 14 of the aforesaid contract that in case the completion of the project was delayed due to departmental delay or on account of any reason beyond the control of the respondent, the same would entitle the respondent for extension of time for delivery of physical possession. In fact, it was also provided that upon occurrence of such eventuality, the respondent would have the right to alter or vary the terms and conditions of the agreement.

21. That clause 14 of the buyer's agreement provides that possession of the unit shall be offered to the complainants within 3 years from the date of execution of the agreement subject to force majeure conditions and reasons beyond the power and control of the respondent, in which case the date for delivery of possession shall stand extended accordingly. It has been specifically provided in clause 14 of the aforesaid contract that in case the completion of the project was delayed due to departmental delay or on account of any reason beyond the control of the respondent, the same would entitle the respondent for extension of time for delivery of physical possession. In fact, it was also provided that upon occurrence of such eventuality, the respondent would have the right to alter or vary the terms and conditions of the agreement. Clause 9 of the buyer's agreement enjoins upon the complainants to comply with the terms of payment failing which the complainants shall be liable to pay interest on delayed payments. Clause 19 of the buyer's agreement further provides that an allottee shall be entitled to demand possession only after

payment of the entire sale consideration including all amounts as set out in the buyer's agreement.

22. It is submitted that in terms of clause 14 and clause 19 of the buyer's agreement dated 05.09.2012, the time period for delivery of possession was 3years from the date of execution of the buyer's agreement, subject to the allottee(s) having strictly complied with all terms and conditions of the buyer's agreement.
23. That it is pertinent to mention that the demarcation and zoning plans were approved by the competent authority only on 30.09.2011. That in accordance with contractual covenants incorporated in buyer's agreement dated 05.09.2012 the span of time, which was consumed in obtaining the following approvals/sanctions deserves to be excluded from the period agreed between the parties for delivery of physical possession:

Sr. no.	Nature of Permission / Approval	Date of submission of application for grant of Approval/sanction	Date of Sanction of permission/grant of approval	Period of time consumed in obtaining permission / approval
1	Approval of Building Plans	09-10-2011	10-05-2012	7 months
2	Clarification regarding applicability of Forest Laws	22.07.2011	07.02.2013	20 months
3	Environment Clearance	10-07-2012	Not granted	

24. It is comprehensively established that the time period mentioned hereinabove, was consumed in obtaining of requisite permissions/sanctions from the concerned statutory authorities. It is respectfully submitted that the project in question could not have been constructed, developed and implemented by the respondent without obtaining the approvals referred to above. Thus, the respondent has been prevented by circumstances beyond its power and control from undertaking the implementation of the project during the time period indicated above and therefore the same is not to be taken into reckoning while computing the period of 3 years as provided in buyer's agreement dated 05.09.2012.
25. The complainants chose to ignore the payment request letters, notices, emails and reminders issued by respondent and flouted in making timely payments of the instalments. It is evident from the statement of account and the interest ledger that the complainants have defaulted in making timely payment on numerous occasions and that consequently, the complainants was liable to pay interest on delayed payment under the buyer's agreement. It is submitted that the complainants are liable to pay an amount of Rs. 2,60,622/- towards the interest accrued upon delayed payments.
26. The respondent has registered the project under the Act. Consequent to registration, the date for completion of the project stands extended to 30.06.2020. The respondent shall complete construction of the project before the said date or within such extended time as may be permitted by this Hon'ble Authority and upon receipt of occupation certificate and after receipt of balance

amounts payable by the complainants under the buyer's agreement, possession of the unit shall be offered to the complainants.

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

E. Jurisdiction of the authority:

28. The plea of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. 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, 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

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;

Section 34-Functions of the Authority:

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

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

F. Findings regarding relief sought by the complainants:

Relief sought by the complainants:

Direct the respondent to pay interest for delay possession charges at prevailing rate of interest.

F.1 Admissibility of delay possession charges:

29. In the present complaint, the complainants 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



If the promoter fails to complete or is unable to give possession of an apartment, plot or building, -

.....

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

30. 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 complainants 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 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.
31. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builder/promoter 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 residentials, commercials 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 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. In pre-RERA period it was a general practice among the promoters/developers 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.

32. The authority has gone through the possession clause of the agreement. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the complainants not being in default under any provisions of this agreements and in 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(s) 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 apartment 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.

33. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges 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.

34. 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.

35. 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., 14.10.2021 is @ 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.
36. 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;"*

Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same as is being granted to the complainants in case of delayed possession charges.

F.II Execution of conveyance deed

37. In the present complaint, the complainants are seeking relief of execution of conveyance deed. Clause 38 of unit buyer's agreement (in short, agreement) provides for handing over of possession and is reproduced below:

Clause 38.:

"That the allottee(s) shall pay as and when demanded by the developer the stamp duty, registration charges and all other incidental and legal expenses for execution and registration of conveyance deed in favour of the allottee. Conveyance deed shall be executed and registration of conveyance deed in favour of the allottee(s). Conveyance deed shall be executed and registered after obtaining occupation certificate by developer from concerned agency i.e when building has been put to use permitted by Director, Town and Country Planning, Department in terms of license. Conveyance deed shall be executed and got registered after receipt of full price, other dues and said charges and expenses from the allottee(s) in respect of the said premises

38. The authority has gone through the conveyance clause of the agreement and observe that the conveyance has been subjected to all kinds of terms and conditions of this agreement and the complainants not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoters. A reference to the provisions of sec. 17 (1) and proviso is also must and which provides as under:

"Section 17: - Transfer of title

17(1). The promoter shall execute a registered conveyance deed in favour of the allottee along with the undivided proportionate title in the common areas to the association of the allottees or the competent authority, as the case may be, and hand over the physical



possession of the plot, apartment of building, as the case may be, to the allottees and the common areas to the association of the allottees or the competent authority, as the case may be, in a real estate project, and the other title documents pertaining thereto within specified period as per sanctioned plans as provided under the local laws: Provided that, in the absence of any local law, conveyance deed in favour of the allottee or the association of the allottees or the competent authority, as the case may be, under this section shall be carried out by the promoter within three months from date of issue of occupancy certificate.

39. According to the above-mentioned provisions the respondent is clearly in contravention of section 11(f) read with sec 17(1) and proviso. Moreover, clause 38 of agreement provides for execution of conveyance deed by the respondent. The respondent has already obtained occupation certificate. The respondent shall offer the possession of the unit as prescribed and shall execute the conveyance deed within prescribed time on depositing necessary expenses by the complainants.
40. On consideration of the documents available on record and submissions made by both the parties, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 14 of the unit buyer's agreement executed between the parties on 05.09.2012, possession of the booked unit was to be delivered on or before 05.09.2015. The occupation certificate of the project has been received by the respondent on 28.01.2020 and the possession of the subject unit was not offered yet. The authority is of the considered view that there is delay on the part of the respondent to offer physical

possession of the allotted unit to the complainants as per the terms and conditions of the buyer's agreement dated 05.09.2012 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and responsibilities as per the flat buyer's agreement dated 05.09.2012 to hand over the possession within the stipulated period.

41. 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. In the present complaint, the occupation certificate was granted by the competent authority on 28.01.2020. The possession of the subject unit has not offered till date. Therefore, in the interest of natural justice, the complainants should be given 2 months' time from the date of offer of possession. This 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. 05.09.2015 till the expiry of 2 months from the offer of possession.
42. 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 respondent is established. As such the complainants are entitled to delay possession at prescribed rate of interest i.e. 9.30% p.a. w.e.f. 05.09.2015 till the expiry of 2 months from the

offer of possession as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act of 2016.

G. Directions of the authority:

43. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the authority under section 34(f) of the Act of 2016:

- 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 complainants from due date of possession i.e. 05.09.2015 till the expiry of 2 months from the offer of possession. The arrears of interest accrued so far shall be paid to the complainants within 90 days from the date of this order as per rule 16(2) of the rules.
- ii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iii. The rate of interest chargeable from the complainants/allottees by the promoter, in case of default shall be 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 delay possession charges as per section 2(za) of the Act.



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- iv. The respondent shall execute conveyance deed after offering the possession of the unit on depositing necessary expenses.
- v. The respondent shall not charge anything from the complainants which is not the part of buyer's agreement.

44. Complaint stands disposed of.

45. File be consigned to registry.


(Samir Kumar)

Member

Haryana Real Estate Regulatory Authority, Gurugram


(Vijay Kumar Goyal)

Member

Dated: 14.10.2021

FILE UPLOADED ON 13.01.2021

HARERA
GURUGRAM