BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 2992 of 2021
First date of hearing: 31.08.2021
Date of decision : 22.12.2021

1. Rajiv Chauhan
2. Ravinder Chauhan

Both RR/o: House no. 546, 7, Jacobpura, Gurugram- 122001 **Complainants**

Versus

Aster Infrahome Private Limited
Regd. office: 24A, Ground Floor, Vipul Agora, Gurugram- 122001 **Respondent**

CORAM:
Dr. K.K. Khandelwal **Chairman**
Shri Vijay Kumar Goyal **Member**

APPEARANCE:
Shri. Sanjeev Sharma Advocate for the complainants
Shri. Dharambir Singh Advocate for the respondent

ORDER

1. The present complaint dated 10.08.2021 has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the

provision of the Act or the rules and regulations made there under or to the allottees as per the agreement for sale executed inter se.

A. Unit and project related details

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

S.No.	Heads	Information	
1.	Project name and location	"Green Court", Sector-90, District-Gurugram, Haryana	
2.	Project area	10.125 acres	
3.	Nature of the project	Affordable Group Housing Project	
4.	DTCP license no. and validity status	61 of 2014 dated 07.07.2014	
		Valid up to	06.07.2019
		62 of 2014 dated 07.07.2014	
		Valid up to	06.07.2019
5.	Name of licensee	M/s Aster Infrahome Pvt. Ltd. (For both the licences)	
6.	HRERA registered/ not registered	**Registered**	
		Vide registration no. 137 of 2017 dated 28.08.2017 (Registered for 10 acres)	
		Valid up to	22.01.2020
	Extension certificate no.	09 of 2020 dated 29.06.2020	
		Valid up to	22.01.2021
7.	Allotment letter dated	20.08.2015 [As per page no. 40 of the complaint]	
8.	Unit no.	1403 on 14th floor, tower K	

		[As per page no. 45 of the complaint]
9.	Unit measuring	590 sq. ft. [As per page no. 45 of the complaint]
10.	Date of execution of buyer's agreement	25.02.2016 [As per page no. 44 of the complaint]
11.	Payment plan	Time linked payment plan [As per page 54 of complaint]
12.	Total consideration	Rs.24,10,000/- [As per page no.16 of the reply]
13.	Total amount paid by the complainants	Rs. 25,15,296/- [As per receipts of payment as annexures- C2, C4, C6-C11 on page no. 39, 42, 56-61 respectively of the complaint]
14.	Building plan approvals	**01.03.2017**
15.	Consent to establish	06.05.2016 [As per page no. 27 of the reply]
16.	Revised Environment clearance	**20.07.2016**
17.	Due date of delivery of possession as per **clause 8a** of flat buyer's agreement *(Subject to the force major circumstances, intervention of statutory authorities, receipt of occupation certificate and Allottee having timely complied with all its obligations, formalities or documentation, as prescribed by Developer and not being in default under any part hereof, including but not*	01.09.2021 [Calculated from date of building plan approval i.e.; 01.03.2017 which comes out to be **01.03.2021 + 6 months** as per HARERA notification no. 9/3-2020 dated 26.05.2020 for projects having completion date on or after 25.03.2020]

	limited to the timely payment of installments of the other charges as per the payment plan, Stamp Duty and registration charges, the Developer proposes to offer possession of the Said Flat to the Allottee within period of ***4(four) years from the date of approval of building plans or grant of environment clearance, whichever is later)*** *(hereinafter referred to as the "Commencement Date.")*	
18.	Application for obtaining OC	04.08.2021 [As per page no.66 of the reply]
19.	Occupation certificate	Not obtained
20.	Offer of possession	Not offered

B. Facts of the complaint

3. That the complainants made an application vide application dated 28.01.2015 to the respondent for allotment of a unit in the said project. It was represented by the respondent through its representatives that the respondent is an extremely successful builder which has conceptualized, implemented and developed various projects in India.

4. That it was further represented by the respondent that the aforesaid residential complex would comprise of lush green vicinity, parks, tree lined avenues and walkways, sports facilities, community hall etc. and would be conducive for delightful living at affordable prices. The respondent assured the complainants that the complex would include modern amenities like 24x7 security, earthquake resistant structures,

convenient shopping complex, great connectivity etc. and would be instrumental in contributing to the life of complainants.

5. That the respondent further assured the complainants that all the sanctions from the concerned statutory authorities pertaining to implementation and development of the said project had been obtained. The respondent specifically brought to the attention of the complainants that the process of allotment has been initiated in accordance with the Affordable Housing Policy, 2013. It was stated by the respondent that, in accordance with the aforesaid policy, all flats in the aforesaid project are to be allotted in one go within four months and assured the possession of the unit would be delivered within 4 years from the date of submission of application. Thus, an impression was generated by the respondent that it is striving to deliver possession of the unit in a short period of time. The respondent further represented that the units in the project are selling out rapidly and it would be in the interest of the complainants to secure allotment of a unit by paying a certain sum of money to the respondent.

6. That lured and induced by the representations and assurances proffered by the respondent, the complainants applied for allotment of a unit in the said project and paid a booking amount of Rs. 1,24,223/- to the respondent vide cheque bearing no.000174 dated 22.01.2015 drawn on HDFC Bank, Old Railway Road, Sadar Bazar, Gurugram. Receipt bearing no.690 dated 10.02.2015 was issued by the

respondent in respect of the payment of the aforesaid amount by the complainants to the respondent.

7. That the respondent at the time of receiving the aforesaid amount assured the complainants that allotment of flat would be done in a "draw of flats" which would be performed in a short period of time. However, it is pertinent to mention that the respondent intentionally delayed holding of the draw of flats for reasons best known to it. Eventually the draw of flats was held by the respondent on 19.08.2015 whereby the complainants were declared to be successful applicants. It is pertinent to take into reckoning that the draw of flats has been conducted almost after 6 months from the date of receipt of the booking amount from the complainants.

8. That the complainants were provisionally allotted an apartment bearing no. 1403 situated on 14th floor of tower no. K, admeasuring 590 square feet besides the balcony area admeasuring 100 square feet vide letter of allotment dated 20.08.2015. The total sale consideration for the subject unit was quantified at Rs. 24,10,000/-.

9. That by virtue of the aforesaid allotment letter, the complainants had also been called upon to make payment of a sum of Rs.4,98,870/- on or before 05.09.2015. The payment of the said amount was made by the complainants vide cheque bearing no.581142 dated 02.09.2015 drawn on HDFC Bank, Old Railway Road, Sadar Bazar, Gurugram. Receipt bearing no.2932 dated 05.09.2015 was issued by the

respondent in favour of the complainants against the payment of the aforesaid amount.

10. That at the time of receipt of the aforesaid amount, the respondent had represented and assured that the buyer's agreement containing the detailed terms and conditions of the transaction and specifications of the unit allotted to the complainants would be dispatched to the complainants in a few days. The complainants without suspecting the bonafide intention of the respondent, proceeded to pay the aforesaid amount to the respondent.

11. That, however, the respondent wilfully refrained from sending the aforesaid document to the complainants or communicating with them for reasons best known to it. The complainants were constrained to approach the respondent requesting for copies of the buyer's agreement however the respondent kept on delaying the matter on one pretext or the other.

12. That after a needless and unwarranted delay of more than a year, a copy of the buyer's agreement was provided to the complainants. The complainants, after perusing the said buyer's agreement, were shocked and dismayed upon realizing that the respondent has surreptitiously incorporated various terms and conditions therein which were not intimated to the complainants at the time of receiving the booking amount from them. It is pertinent to mention that certain terms and conditions incorporated in the buyer's agreement are

absolutely unfair, biased, whimsical and arbitrary and in contravention of the Affordable Housing Policy, 2013. The respondent had proceeded to unilaterally incorporate various terms and clauses in the buyer's agreement which are prejudicial to the interests and rights of the complainants. The following facts, inter alia, establish the prejudicial and malicious intent pervasive in the buyer's agreement such as, the respondent unilaterally modified the total sale consideration determined at the time of booking of the unit in question by incorporating clauses 2(c), 2(d), 2(e), 2(f) and 2(g) in the buyer's agreement. In terms of the aforesaid clauses, the liability of providing requisite, conventional and commonplace facilities have been sought to be imposed upon the allottees. These terms were never intimated to complainants at the time of receiving the booking amount nor at any time thereafter. The said clauses have been incorporated in the buyer's agreement in order to obtain wrongful gain and cause wrongful loss to complainants/allottees. Moreover, the respondent had intentionally delayed the execution of the buyer's agreement. It is manifest that the respondent is seeking to take advantage of its own wrongs by imposing the impugned liabilities upon the complainants. The aforesaid clauses are illegal, arbitrary, prejudicial and unsustainable both in law and on facts.

13. That in clause 3(a) of the buyer's agreement, it has been wrongly mentioned that complainants have paid a sum of Rs.6,02,500/-

towards basic price. In actuality, complainants have made payment of a total sum of Rs.6,23,093/- prior to the date of execution of the buyer's agreement. It is pertinent to take into reckoning that the respondent had cunningly delayed delivery of buyer's agreement to the complainants in order to give itself an opportunity to utilize the money of complainants without performing any corresponding work. It is evident that the respondent has fraudulently and surreptitiously diverted the funds received from complainants for their own use.

14. That it is pertinent to note that transfer of ownership/possession of the unit in question has been made subject to execution of a supposed maintenance agreement and other documents. However, the supposed documents have not been shown to the complainants till date. The aforesaid condition is blatantly coercive and amounts to unfair trade practice on the part of the respondent.

15. That additionally the respondent has sought to impose the cost of maintenance and insurance of the equipment and facilities to be installed in the project upon the complainants. It is pertinent to take into reckoning that a commercial component of 4% has been allowed in the project to enable the respondent to maintain the project free-of-cost for a period of five years from the date of grant of occupation certificate, after which the same has to be transferred to the association of apartment owners constituted under the Haryana Apartment Ownership Act 1983 for maintenance. Moreover, the

respondent has clandestinely incorporated clause 14(b) in the buyer's agreement to charge the complainants with an undisclosed amount for the so-called replacement/sinking fund. In addition, thereto, clause 15(c) seeks to impose user fees on the allottees for maintenance of the facilities. The aforesaid levies are absolutely illegal and unsustainable in light of the fact that the respondent is solely responsible for maintenance of the project for the initial period of 5 years under the policy, referred to above. The respondent has incorporated the aforesaid clauses in order to obtain wrongful gain and cause wrongful loss to complainants.

16. That the definition of the 'basic price' has been unilaterally and wantonly expanded from the initial representations made by the respondent. The respondent has illegally and illegitimately included the costs that it would supposedly incur in making payment of EDC, IDC and all other taxes/cesses to the concerned authorities. It is pertinent to mention that a limited number of projects are allowed under the aforesaid policy and the sale has to be affected at a predetermined rate. Additionally, the licence fees and IDC are waived off by the concerned department under the aforesaid policy. Therefore, the wanton modification in the basic price to include IDC and other charges is in complete contravention of the Affordable Housing Policy, 2013 and cannot be sustained in eyes of law.

17. That the force majeure clause has been made applicable only to the respondent and not to the complainants for unintended delays in remittance of the instalments due to reasons beyond the control of complainants. The bias and inequality in the rights and obligations of the parties is manifest from the perusal of the aforesaid clause.

18. That the complainants raised objections against the aforesaid clauses incorporated in the buyer's agreement but the respondent did not pay any heed to the legitimate, fair and just demands of the complainants and threatened the complainants with cancellation of the allotment of the said unit if they fail to execute the buyer's agreement. As a result, the complainants had no choice but to go ahead and execute the buyer's agreement on 25.02.2016, containing biased and prejudicial terms which had been unilaterally incorporated by the respondent.

19. That, it needs to be reiterated that the respondent intentionally delayed the delivery of buyer's agreement to the complainants in order to gain undue advantages and to bind the complainants. The respondent had coaxed the complainants to part with a huge sum of money before delivering a copy of the buyer's agreement to them in order to leave no option for the complainants but to proceed with the transaction. The entire agreement is unilateral, biased and one-sided. Even a cursory glance at clause 8 shall make it evident that it is open-ended, one-sided and operates to the detriment of complainants. In any case, having obtained the booking amount on 28.01.2015, there

was absolutely no occasion for the respondent to have withheld the date of sanction of the relevant documents.

20. That additionally it is submitted that the respondent has reserved a unilateral right to charge interest at the rate of 15% per annum in the event of there being any delay made by the allottees in payment of instalments/amounts as mentioned in the payment plan. It needs to be highlighted that while the respondent is claiming interest at the rate of 15% per annum from the purchasers in the event of any delay in remittance of the instalments but has failed to mention any compensation to be provided for delay in delivery of possession of the respective units. The respondent has tried to circumvent its legal obligations by deceiving and beguiling the impressionable customers. The aforesaid clause unambiguously establishes the misuse of the dominant position by the respondent. It is submitted that the claim of interest at the rate of 15% per annum is absolutely illegal, unjust, void ab initio and not binding upon the complainants especially in absence of a corresponding and equivalent compensation for delay in delivery of possession of the unit in question.

21. That the respondent, at the time of receiving the booking amount from the complainants, had specifically stated that the building plans as well as the environment clearance have been obtained by it and in pursuance thereof, construction work has commenced in the project. It was categorically mentioned by the respondent that the documents,

referred to above, had been sanctioned by the competent authorities in July, 2014. Moreover, since the construction had already commenced in the project, complainants did not have any reason to suspect the bonafide of the respondent. It needs to be highlighted that as on date, the construction work in the said project has still not been completed even after lapse of almost 6 years from the date of receipt of the booking amount.

22. That the aforesaid act of the respondent is violative of section 13 of the Act of 2016. Furthermore, it is submitted that the aforesaid practice has been adopted by the builders/developers/promoters including the respondent invariably in order to gain an undue advantage and assume dominance over an intending allottees. The aforesaid provision has been incorporated in the Act in order to curb such malpractices of obtaining booking amount prior to execution of the buyer's agreement.

23. That the complainants have till date made payment of total sum of Rs.25,15,296/- against the total sale consideration for the unit in question quantified at Rs. 24,10,000/-.

24. That it needs to be highlighted and as is evident from the receipts against various payments made by the complainants that they have made payment of all the instalments as demanded by the respondent on time. It is pertinent to note that delay, if any, has been on the part of the respondent in depositing the cheques issued by the

complainants with its banker. The last payment amounting to Rs. 3,25,350/- that the complainants had made to the company was vide RTGS no.3938 dated 18.12.2018 drawn on HDFC Bank, Old Railway Road, Sadar Bazar, Gurugram and receipt bearing no. 11528 dated 20.12.2018 had been issued. The complainants have till date made a payment of Rs.25,15,296/- to the respondent against the total sale consideration of Rs. 24,10,000/-, as agreed between the parties and mentioned in the buyer's agreement dated 25th February, 2016.

25. That the due date for delivery of possession of the said unit in terms of the buyer's agreement was July, 2018. However, possession has not been offered to complainants by the respondent till date.

26. That the complainants, after passing of the due date for delivery of possession of the aforesaid unit, visited the office of the respondent on various occasions and had requested the respondent's officials multiple times to disclose the exact status of the construction of the said project but to no avail. The officials of the respondent have kept on evading the queries raised by the complainants on one pretext or the other. Moreover, the respondent wantonly stopped communicating with the complainants after the complainants had remitted the payment of Rs.3,25,350/- to the company vide RTGS no.3938 dated 18.12.2018. The complainants failed to understand the reason as to why the respondent was striving for keeping the status of construction at the site shrouded in secrecy. The respondent is liable

to fairly and transparently make available and disclose complete information to the complainants about the status of construction raised at the spot. However, except the photographs of incomplete construction of tower A sent by the respondent on 11th August, 2020, the respondent has failed to disclose the current status of construction for reasons best known to it.

27. That the complainants, consequently, visited the site of the said project on 30th November, 2020 in order to ascertain the status of construction of the same. However, the complainants were completely shocked and bewildered at the state of affairs prevailing at the site. It is submitted that the construction of unit was far from completion. In fact, it was revealed to the complainants that the respondent had deceived them by demanding money ahead of the stage of construction achieved at the site. The complainants were utterly dismayed and dejected by the lack of professionalism and deceitful conduct adopted by the respondent. Moreover, the project was devoid of the basic amenities like lush green vicinity, parks, tree lined avenues and walkways, sports facilities, community hall etc. It is submitted that the respondent cannot validly and legally offer possession of the unit in question without installing/providing the aforesaid amenities and facilities in the project.

28. That it needs to be highlighted that a unit cannot be utilized by an intending allottees till all the facilities and amenities in the project

have been completed. Moreover, continuous construction work in the vicinity operates as a nuisance in the effective and productive utilization of a unit by the intending allottees. It is pertinent to note that as on date, the construction work in the said project has still not been completed.

29. That the complainants lastly visited the site of the said project on 25th July, 2021 in order to ascertain the status of construction of the same. However, the complainants were again completely shocked and dismayed after seeing the affairs prevailing at the site. The construction of the unit was far from completion. In fact, the complainants have been deceived by the respondent by demanding money ahead of the stage of construction achieved at the site. The respondent has deliberately failed to fulfil its obligations nor has complied with the terms and conditions as laid down in the buyer's agreement dated 25.02.2016. The respondent did not have the means, capacity and capability to complete construction at the spot-on time. Furthermore, the respondent has fraudulently demanded money in advance without achieving the required construction milestone.

30. That it is the duty of the respondent to keep the buyers informed about the status of construction at the site. On the contrary, the respondent on one pretext or the other has avoided the queries raised by the complainants pertaining to the handing over of possession of the said unit and completion of construction in the said project. The

complainants have always been ready and willing to accept the delivery of possession of the unit in question. There was/is absolutely no cogent or plausible reason for the respondent to not offer possession of the said unit to complainants within the time prescribed in the buyer's agreement. The complainants have been penalized, harassed and victimised without there being any fault whatsoever on their part.

31. That the complainants have already paid more than the sale consideration amount as agreed under the buyer's agreement to the respondent. It is submitted that there has been a delay of more than 2 years in delivering possession of the said unit to the complainants. The respondent has taken advantage of its dominant position vis-a-vis the complainants. The respondent is in clear violation of the terms and conditions as laid down in the buyer's agreement dated 25.02.2016.

32. That the complainants are entitled to delayed possession interest and compensation in the facts and circumstances of the case. No lapse or default of any nature can be imputed to the complainants in the entire sequence of events. The complainants have fulfilled their contractual obligations arising out of buyer's agreement dated 25.02.2016. The complainants deserve to be compensated for loss of interest by the respondent and as well as for the harassment and mental agony on account of deceitful and unfair trade practices adopted by the respondent. No cogent or plausible explanation has been tendered by

the respondent as to why it has miserably failed to undertake and complete the construction activity of the unit on time and to deliver physical possession thereof to the complainants as had been represented by the respondent initially or in accordance with the terms and conditions incorporated in the buyer's agreement.

33. That additionally, it needs to be highlighted that The National Anti-Profiteering Authority in the case titled ***Santosh Kumari and Ors. vs. Aster Infrahome Pvt. Ltd.*** bearing no. 57/2019 has pronounced an order dated 19.11.2019 against the respondent stating, inter alia, that

> *"the provisions of Section 171 of the CGST Act, 2017 have been contravened by the respondent as it has profiteered an amount of Rs. 5,30,34,074/- which includes both the profiteered amount @ 7.24% of the base price and the GST on the said profiteered amount from other recipients as well who are not Applicants in the present proceedings. Accordingly, the above amount shall be paid to the Applicants No. 1 to 12 and the other eligible house buyers by the Respondents along with interest @18% from the date from which these amounts were realised from them till they are paid as per the provisions of Rule 133(3)(b) of the CGST Rules, 2017 within a period of 3 months from the date of issue of this Order, failing which the same shall be recovered by the concerned Commissioner CGST/SGST and paid to the eligible house buyers."*

Therefore, the respondent is liable and under a legal obligation to pass on the proportionate share of the profiteered amount to complainants along with interest @18% from the date from which the amounts were realised from the complainants till the aforesaid share is remitted to the complainants. The respondent has consciously and maliciously refrained from doing the needful till date.

34. Moreover, the aforesaid order has considered facts only up to 30.08.2018 and therefore, additional benefit of ITC, if any, accrued

subsequently to the respondent shall also be passed on proportionately to the complainants by the respondent.

35. That it needs to be highlighted that the complainants at the time of purchase, had made a legitimate assessment regarding the future course of their lives based on the representation of the respondent that the unit in question would be delivered in 2018. The complainants had considered that the unit in question would be available for use and occupation by July, 2018 and accordingly had planned their finances. However, on account of delay of more than 3 years on the part of the respondent in fulfilment of its contractual obligations, the complainants have been left in lurch and have suffered enormously without there being any fault on their part.

36. That the respondent has not lived up to the representations and assurances proffered by it to the complainants at the time of purchase the said unit by the complainants from the previous allottees. The facts and circumstances mentioned above comprehensively establish that there is deficiency of service on the part of the respondent. The complainants have been unnecessarily cheated and defrauded without there being any fault on their part by the respondent and its officials.

37. That the complainants are entitled to delayed possession interest and compensation in the facts and circumstances of the case. No lapse or default of any nature can be imputed to the complainants in the entire sequence of events. The complainants have fulfilled their contractual

obligations arising out of buyers agreement. The complainants deserve to be compensated for loss of finances and as well as for the harassment and mental agony on account of deceitful and unfair trade practices adopted by the respondent. No cogent or plausible explanation has been tendered by the respondent as to why the respondent has miserably failed to undertake and complete the construction activity of the unit on time and to deliver physical possession of the subject unit to the complainants.

38. That the subject matter of the claim falls within the jurisdiction of this authority and the said project is located within the territorial jurisdiction of this authority. Hence, this authority has got the jurisdiction to try and decide the present complaint.

39. That cause of action for filing the present complaint is a recurring one and it accrued in favour of the complainants each time the respondent failed to hand over the possession of the said unit, complete in all respects, to the complainants. The cause of action further arose in favour of the complainants each time the respondent refused to accede to the just, fair and legitimate requests of the complainants. The cause of action lastly accrued to the complainants about a week ago on the final refusal of the respondent to accede to the legitimate and bona fide requests of the complainants.

40. That no other complaint between the complainants and the respondent is pending adjudication before any authority/court/forum regarding the subject matter of the instant complaint.

C. Relief sought by the complainant:

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

(i) Direct the respondent to deliver possession of the unit in question after completing and installing all the facilities, amenities and services as portrayed in the brochure and the buyer's agreement dated 25.02.2016.

(ii) Direct the respondent to deliver copies of occupation certificate, deed of declaration and copies of all the approvals from the competent statutory authorities to the complainants at the time of offer of possession of the unit in question.

(iii) To declare that the buyer's agreement dated 25.02.2016 is arbitrary, unjust, unilateral and unfair and consequently, not binding upon the complainants.

(iv) Direct the respondent to refund the amounts towards GST/CGST etc. collected illegally from the complainants along with interest at the rate of 12% per annum calculated from date of receipt of the respective amounts by the respondent till the payment thereof to the complainants.

(v) Direct the respondent to not to penalize the complainants with interest on any payment after July, 2018.

(vi) Direct the respondent to not to charge holding charges, maintenance charges, till the delivery of the unit in question, complete in all respects.

(vii) Direct the respondent to pay an amount of Rs. 1,00,000/- as litigation expenses incurred by the complainants.

(viii) To penalize the respondent for contravening the provisions of the Act as well as for cheating and defrauding the intending allottees, including the complainants.

(ix) Direct the respondent to pay delayed possession interest/charges to the complainants for the period of delay (i.e. from July 2018) calculated at the prescribed rate of interest on the total amount deposited with the respondent till the delivery of possession of the unit in question.

42. 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 by the respondent

43. The respondent has contested the complaint on the following grounds.

i. That the complainants made an application to the respondent for booking/allotment of a 2 BHK flat having carpet area of 590 sq. ft. and balcony area 100 sq. ft. in the said scheme/colony. The application form dated 29.01.2015 signed and submitted by the complainant had necessary particulars of the residential scheme

such as description of land, license and building plans granted/approved by DTCP, Haryana, and also salient terms and conditions on which the allotment was to be made to the complainants. The complainants also read and understood the terms and conditions of the flat buyer agreement and undertook to sign the same as and when required by respondent.

ii. That the application form also contained the payment plan in accordance to which the complainants were to make the due installments as specified. That the payment plan clearly stated at the time of application 5% of the basic sale price (hereinafter BSP), 20% of the BSP within 15 days from the issuance of allotment letter and thereon at intervals of 6 months 12.5% of the total BSP was to be paid respectively. The payment plan was in accordance with the payment plan prescribed in the said policy.

iii. That under the said policy, the allotment was required to be made through draw of lots to be held in the presence of a committee consisting of deputy commissioner or his representative (at least of the cadre of Haryana Civil Services), Senior Town Planner (Circle officer), DTP of the concerned district. The policy prescribed a transparent procedure for allotment of a flat in the affordable housing project of the policy which interalia included advertisements for booking of apartments by the coloniser/developer on two occasions at one week interval in one

of the leading English national daily and two Hindi newspapers having circulation of more than ten thousand copies in the state of Haryana to ensure adequate publicity of the project, submission of the applications by the interested persons, scrutiny of all application by the coloniser/developer by the overall monitoring of the concerned DTP within a period of three months from the last date or receipt of applications, fixing of the date for draw of lots by the concern senior town planner, publication of the advertisement issues by the coloniser informing the applicants about the details regarding date/time and venue of draw of lots in the newspaper etc. The said procedure as laid down in policy was dully follows by the respondent.

iv. That the complainants were informed by the respondent that the draw is to be held on 19.08.2015 at 10.00 A.M. and they were invited to the said event. The draw of lots was conducted at the given date, time and place in the presence of the required officials of Government of Haryana.

v. That the complainants were successful applicants in the said draw and as such the respondent vide its letter dated 20.08.2015 intimated the complainants that they had been allotted flat no. K - 1403 in the said project. Thereafter, the builder buyer agreement dated 25th February, 2016 was executed between the complainants and the respondent against the said flat.

vi. That the aforesaid facts and circumstances makes it clear that the respondent has neither indulged into any unfair trade practice nor committed any deficiency in service. It is submitted that in the real estate projects like the project in question the development being multi-storied group housing development, the default in payment committed by even one allottee adversely affect the development of the other units as well in as much as the financial planning, the pace of the project etc. get adversely affected thereby causing impediment in the development and overall delay in delivery of the project.

vii. The complainants were fully aware that the project in question was a project under the Affordable Housing Policy, 2013 of the Government of Haryana which contained strict check and balances to protect interests of all stake holders with special emphasis on the protection of rights of the potential purchases of the flats. Almost each and every aspect of the transaction was governed by the policy. Even the draw of flats was to be held after permission of government and in the presence of government officials and permission to conduct draw was to be granted only after all necessary approvals were in place. The flat buyer agreement contained provisions that were in consonance with the policy guidelines/parameters.

viii. That as per the agreement the respondent was to start the construction from the date of environment clearances which was granted on 06.05.2016. It is relevant to mention here that from November, 2019 onwards things started moving out of control of the respondent. Many force majeure events, situations and circumstances occurred that made the construction at site impossible for a considerable period of time. Such events and circumstances included, inter-alia, repeated bans on construction activities by EPCA, NGT and Hon'ble Supreme Court of India, Nationwide lock down due to emergence of covid-19 pandemic, massive nationwide migration of labourers from metropolis to their native villages creating acute shortage of labourers in NCR regions, disruption of supply chains for construction materials and non-availability of them at construction sites due to Covid-19 pandemic and closure/restricted functioning of various private offices as well as government offices disrupting the various approvals required for the real estate projects, resulting financial distress etc.

ix. That the Environmental Pollution (Prevention and Control) Authority for NCR ("EPCA") vide its notification bearing no. EPCA-R/2019/L-49 dated 25.10.2019 banned construction activity in NCR during night hours (6pm to 6am) from 26.10.2019 to 30.10.2019 which was later on converted into complete 24 hours

ban from 01.11.2019 to 05.11.2019 by EPCA vide its notification no. EPCA-R/2019/L-53 dated 01.11.2019. The Hon'ble Supreme Court of India vide its order dated 04.11.2019 passed in writ petition no. 13029/1985 titled as ***"M.C. Mehta vs Union of India"*** completely banned all construction activities in NCR which restriction was partly modified vide order dated 09.12.2019 and was completely lifted by the Hon'ble Supreme Court vide its order dated 14.02.2020.

x. That due to these repeated bans forced the migrant labourers to return to their native states/villages creating an acute shortage of labourers in NCR region. Due to the said shortage, the construction activity could not resume at full throttle even after lifting of ban by the Hon'ble Supreme Court. Even before the normalcy in construction activity could resume, the world was hit by the 'Covid-19' pandemic. The unprecedented situation created by the Covid-19 pandemic presented yet another force majeure event that brought to halt all activities related to the project including construction of remaining phase, processing of approval files etc.

xi. That the Ministry of Home Affairs, Government of India vide notification dated March 24, 2020 bearing no. 40-3/2020-DM-I(A) recognised that India was threatened with the spread of Covid-19 epidemic and ordered a complete lockdown in the entire country for an initial period of 21 days which started from March 25, 2020.

By virtue of various subsequent notifications, the Ministry of Home Affairs, Government of India further extended the lockdown from time to time. Various state governments, including the Government of Haryana have also enforced several strict measures to prevent the spread of Covid-19 pandemic including imposing curfew, lockdown, stopping all commercial, construction activity.

xii. That as a result of this situation, nationwide massive migration of labourers from metropolis to their native villages creating acute shortage of labourers in NCR regions, disruption of supply chains for construction materials and non-availability of them at construction sites and the full normalcy has not returned so far.

xiii. That even before the nation could recover fully from the impact of the first wave of Covid-19, the Second wave hit vary badly the entire nation particularly NCR region which resulted in another lockdown from April 2021 till June 2021 and now the threat of 3rd wave is looming large.

xiv. That it is a matter of common knowledge and widely reported that even before advent of such events, the real estate sectors was reeling under severe strain. However, such events/incidents as above noted really broke the back of entire sector and many real estate projects got stalled and came to the brink of collapse. The situation was made worse by the dreaded second wave which again impeded badly the construction activities. The said

unprecedented factors beyond control of respondent and force majeure events have resulted so far in time loss of almost 14 months in total and as such all timelines agreed in the settlement agreement stood extended at least by said 14 months, if not more.

xv. That the respondent is perhaps one of the very few developers in NCR region who had fought valiantly during these testing times/odd circumstances and completed the project. Even the occupancy certificates were applied on 04.08.2021. The applications made by the respondent is pending without any objection and/or deficiency ever pointed out, perhaps because of limited restricted functioning of the public offices.

xvi. That the respondent has completed all residential towers including the creche, community hall, lifts, firefighting systems are ready and functional with all necessary approvals in place. Round the clock security is being provided with all necessary security/ward and watch arrangement in place. The project is thus fully habitable. Every responsible person/institution in the country has responded appropriately to overcome the challenges thrown by Covid-19 pandemic and have suo-motu extended timelines for various compliances. The authorities also have extended time periods given at the time of registration for completion of the project. The HRERA has also for the same reasons granted

extension to all the real estate projects including the project in question.

xvii. That it is most humbly stated that considering the time lost due to above force majeure circumstances, which is required to be excluded in computing the timelines given in the agreement, there shall be no delay on part of the respondent, much less intentionally.

xviii. That the construction activities were halted several times due to the orders passed by NGT and Supreme Court to control the pollution level in NCR including Gurugram.

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

E. Jurisdiction of the authority

The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

45. 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

46. 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.*

47. So, in view of the provisions of the Act of 2016 quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on objections raised by the respondent

F.I Objection regarding passing of various force majeure conditions such as orders by EPCA, lockdown due to Covid-19 pandemic, shortage of labour and NGT orders.

48. The respondent-promoter raised a contention that the construction of the project was delayed due to force majeure conditions such as various orders passed by the Environmental Pollution (Prevention and Control) Authority for NCR (hereinafter, referred as EPCA) from 26.10.2019 to 14.12.2019, lockdown due to outbreak of Covid-19 pandemic which further led to shortage of labour and orders passed by National Green Tribunal (hereinafter, referred as NGT) but after adding a period of 6 months in completing the project as per HARERA notification no. 9/3-2020 dated 26.05.2020 passed by the authority, the due date for completion of the project comes to 01.09.2021. The respondent-builder has already applied for getting occupation certificate vide application dated 04.08.2021 and the same is pending before the competent authority. The fact cannot be ignored that the respondent-builder has applied for obtaining occupation certificate before the due date. So, in such a situation the complainants-allottees would be entitled to delay possession charges from the due date of possession i.e. 01.09.2021 till the offer of possession plus 2 months.

G. Findings on the relief sought by the complainants

Relief sought by the complainants:

G.I Direct the respondent to deliver the possession of the allotted unit after installation and competing all the amenities, facilities and services as portrayed in the brochure and buyer's agreement dated 25.02.2016

49. In the present case, the respondent has made an application for grant of occupation certificate on 04.08.2021 to the concerned authority but the said occupation certificate for the tower in which the subject unit is allotted has not been received. So, the respondent is directed to make an offer of possession of the allotted unit to the complainants-allottees within a month of receipt of occupation certificate.

G.II Direct the respondent to deliver the copies of occupation certificate, deed of declaration and all other approvals from the competent authorities to the complainants at the time of offer of possession

50. It is proved on record that the respondent-builder has already applied for the grant of occupation certificate vide application dated 04.08.2021 and the same has not been received. So, as per section 11(4)(b) of Act of 2016, when the said occupation certificate is received the respondent-builder would be obligated to supply a copy of same to the complainants-allottees. The relevant part of section 11 of the Act of 2016 is reproduced as hereunder: -

> *"11(4) (b) The promoter shall be responsible to obtain the completion certificate or the occupancy certificate, or both, as applicable, from the relevant competent authority as per local laws or other laws for the time being in force and to make it available to the allottees individually or to the association of allottees, as the case may be;"*

51. With regard to deed of declaration and other approvals after receipt of occupation certificate, the complainants-allottees can check those documents from the website of DTCP.

G.III Direct the buyer's agreement dated 25.02.2016 be arbitrary, unjust and unfair and consequently, non-binding upon the complainants.

52. A contract between the parties shall be binding upon both/all the parties to such contract. There is no provision that obligates a contract only on one party and relieves other(s). Therefore, as the buyer's agreement is obligatory on the respondent, it is obligatory on the complainants too and cannot be declared non-binding. Moreover, any/few arbitrary clauses to any contract does not make the whole contract arbitrary, unjust and unfair. Whereas, only specific provisions are to be declared void on account of being arbitrary, unjust or unfair. The same view was taken by the Apex Court of the land and by various High Courts in plethora of judgments have held that the terms of a contract shall not be binding if it is shown that the same were one sided and unfair and the person signing did not have any other option but to sign the same. Reference can also be placed on the directions rendered by the Hon'ble Apex Court in civil appeal no. 12238 of 2018 titled as ***Pioneer Urban Land and Infrastructure Limited Vs. Govindan Raghavan (decided on 02.04.2019)*** as well as by the Hon'ble Bombay High Court in the ***Neelkamal Realtors Suburban Pvt. Ltd. (supra).*** A similar view has also been taken by the Apex court in ***IREO Grace Realtech Pvt. Ltd. Vs. Abhishek Khanna & Ors. (supra)*** as under:

> *".....that the incorporation of such one-sided and unreasonable clauses in the Apartment Buyer's Agreement constitutes an unfair trade practice under Section 2(1)(r) of the Consumer Protection Act. Even under the 1986 Act, the powers of the consumer fora were in no manner constrained to declare a contractual term as unfair or one-sided as an incident of the power to discontinue unfair or restrictive trade practices. An "unfair contract" has been defined under the 2019 Act, and powers have been conferred on the State*

Consumer Fora and the National Commission to declare contractual terms which are unfair, as null and void. This is a statutory recognition of a power which was implicit under the 1986 Act.

In view of the above, we hold that the Developer cannot compel the apartment buyers to be bound by the one-sided contractual terms contained in the Apartment Buyer's Agreement."

G.IV Direct the to refund the amount towards GST/CGST etc. collected illegally from the complainants along with interest at the rate of 12% p.a. calculated from date of receipt of the respective amount by the respondents till the payment thereof to the complainants.

53. For the projects where the due date of possession was/is after 01.07.2017 i.e., date of coming into force of GST, the builder is entitled for charging GST but builder has to pass the benefit of input tax credit to the buyer. That in the event the respondent-promoter has not passed the benefit of ITC to the buyers of the unit which is in contravention to the provisions of section 171(1) of the HGST Act, 2017 and has thus committed an offence as per the provisions of section 171 (3A) of the above Act. The allottee shall be at liberty to approach the State Screening Committee Haryana for initiating proceedings under section 171 of the HGST Act against the respondent-promoter.

G.V Direct the respondent to not penalize the complainants with interest on any payment after July,2018.

54. In the present case, as per payment plan annexed with flat buyer's agreement executed on 25.02.2016 on page no. 54 of complaint, the plan was scheduled and agreed on time linked basis but it is to be noted that as per the copies of receipts on page no. 39, 42, 56-61 no inference can be drawn that on what basis and when a particular

demand was raised. Moreover, the complainants has alleged in his complaint that respondent has not raised the demand in accordance with the stage of construction whereas the agreed payment plan as per flat buyer's agreement was fixed on time linked basis and there is nothing on record to prove that there is a change in given/ agreed payment plan. Thus, it cannot be concluded that whether any delay has been made by the complainants or not with regard to payment towards consideration of allotted unit.

55. Since as per the provision of section 19(6) and (7) of Act of 2016, the allottees is under obligation to make timely payment as per the payment plan and is obligated to pay an interest thereon, in case of delay in payment with regards to agreed payment plan. Section 19(6) and 19(7) of Act of 2016 is reproduced as under: -

> *"Section 19 (6)*
>
> *Every allottee, who has entered into an agreement for sale to take an apartment, plot or building as the case may be, under section 13, shall be responsible to make necessary payments in the manner and within the time as specified in the said agreement for sale and shall pay at the proper time and place, the share of the registration charges, municipal taxes, water and electricity charges, maintenance charges, ground rent, and other charges, if any."*
>
> *"Section 19(7)*
>
> *The allottee shall be liable to pay interest, at such rate as may be prescribed, for any delay in payment towards any amount or charges to be paid under sub-section."*

56. Whereas the rate of interest at which such interest under section 19(7) shall be payable is given under section 2(za) of the Act of 2016 and the same is reproduced as under: -

> *Section 2*
> *(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*

The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, in case of default. Therefore, in case of any default by the complainants, it shall be liable to pay interest at the equitable rate as charged by the respondent.

G.VI Direct the respondent to not to charge holding charges, maintenance charges till the delivery of the unit, complete in all aspects.

57. The holding charges shall not be charged by the promoter at any point of time even after being part of agreement as per law settled by Hon'ble Supreme Court in civil appeal no. 3864-3889/2020. Whereas as far as the maintenance charges are concerned, the respondent can demand maintenance charges at the rates prescribed in the builder buyer's agreement at the time of offer of possession. However, the respondent shall not demand the maintenance charges for more than one year from the allottees even in those cases wherein no specific clause has been prescribed in the agreement or where the maintenance charges has been demanded for more than a year.

G.VII Direct the respondent to pay a sum of Rs.1,00,000/- towards litigation expenses incurred by the complainants.

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

G.VIII To impose a penalty on the respondent for contravention of the provision of the Act as well as for cheating and defrauding the intending allottees, including the complainants.

59. The respondent through its representatives and itself portrayed several times that the possession of the allotted unit shall be handed over in the prescribed time limit but despite various promises made the possession of the allotted unit was not offered. It is clear from the facts of the case that no cheating or defrauding has been made by the respondent. Whereas, the matter of delay in possession is concerned, the respondent is under an obligation to pay delay possession charges for the said delay in possession.

G.IX Direct the respondent to pay delayed possession charges to the complainants for the period of delay calculated at the prescribed rate of interest on the total amount deposited with the respondent till delivery of possession of the allotted unit.

60. In the present complaint, the complainants intends to continue with the project and is seeking delay possession charges as provided under

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

> *"Section 18: - Return of amount and compensation*
>
> *18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —*
>
> .....
>
> *Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."*

61. Clause 8(a) of the flat buyer's agreement (in short, agreement) dated 25.02.2016 provides for handing over of possession and is reproduced below:

"Clause 8(a).

> *Subject to the force major circumstances, intervention of statutory authorities, receipt of occupation certificate and Allottee having timely complied with all its obligations, formalities or documentation, as prescribed by Developer and not being in default under any part hereof, including but not limited to the timely payment of instalments of the other charges as per the payment plan, Stamp Duty and registration charges, the Developer proposes to offer possession of the Said Flat to the Allottee within period of 4(four) years from the date of approval of building plans or grant of environment clearance, whichever is later (hereinafter referred to as the "Commencement Date.")."*

62. The authority has gone through the possession clause of the agreement and observed that the respondent-developer proposes to handover the possession of the allotted unit within a period of four years from the date of approval of building plan or from the date of grant of environment clearance, whichever is later. In the present case,

date of approval of environment clearance has not been provided but the date of revised environment clearance is given which is 20.07.2016 but same could not be considered. Whereas with respect to environment clearance, the date of obtaining consent to establish is given, which was obtained on 06.05.2016. As per clause 8(a) of flat buyer's agreement the possession of the allotted unit is to be handed over within four years from date of sanction of building plan i.e.; 01.03.2017 or within four years from the date of consent to establish i.e.; 06.05.2016, being later. The due date of possession is calculated from the date of sanction of building plan approval i.e.; 01.03.2017, being later which comes out to be 01.03.2021. As per HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainants is 01.03.2021 i.e. after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. As such the due date for handing over of possession comes out to be 01.09.2021.

63. **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.*

64. 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.

65. 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., 22.12.2021 is @ 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.

66. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest

which the promoter shall be liable to pay the allottees, in case of default. The relevant section is reproduced below:

> *"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*
> *Explanation. —For the purpose of this clause—*
> *(i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.*
> *(ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

67. 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.

68. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, 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 8(a) of the flat buyer's agreement executed between the parties on 25.02.2016, the possession of the subject apartment was to be delivered within 4 years from the date of sanction of building plan or from the date of environment clearance, whichever is later. The due date of possession is calculated from the date of sanction of building plan approval i.e.; 01.03.2017, being later which comes out to be 07.03.2021. As per

HARERA notification no. 9/3-2020 dated 26.05.2020, an extension of 6 months is granted for the projects having completion date on or after 25.03.2020. The completion date of the aforesaid project in which the subject unit is being allotted to the complainants is 01.03.2021 i.e. after 25.03.2020. Therefore, an extension of 6 months is to be given over and above the due date of handing over possession in view of notification no. 9/3-2020 dated 26.05.2020, on account of force majeure conditions due to outbreak of Covid-19 pandemic. As such the due date for handing over of possession comes out to be 01.09.2021.

69. Section 19(10) of the Act obligates the allottees to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate is yet not obtained but the respondent- builder has applied for the grant of occupation certificate before the due date of possession. The respondent shall offer the possession of the unit in question to the complainants after obtaining occupation certificate, so it can be said that the complainants shall come to know about the occupation certificate only upon the date of offer of possession. 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. 01.09.2021 till the expiry of 2 months from the date of offer of possession.

70. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the agreement dated 25.02.2015 to hand over the possession within the stipulated period. Accordingly, the 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 the allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 01.09.2021 till the date of offer of possession plus 2 months, at prescribed rate i.e., 9.30 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

H. Directions of the authority

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

i. The respondent shall pay 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. 01.09.2021 till the expiry of 2 months from the date of offer of possession after obtaining occupation certificate.

ii. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order of this order as per rule 16(2) of the rules and thereafter monthly payment of interest to

be paid till date of handing over of possession shall be paid on or before the 10th of each succeeding month.

iii. The respondent shall not charge anything from the complainants which is not the part of the flat buyer's agreement.

iv. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

v. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

72. Complaint stands disposed of.

73. File be consigned to registry.

(Vijay Kumar Goyal)
Member

(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.12.2021

JUDGMENT UPLOADED ON 13.01.2022