

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

Complaint no. : 2371 of 2021
Complaint filed on : 11.06.2021
First date of hearing : 29.07.2021
Date of decision : 21.12.2021

1. Pawan Kumar Agrawal
2. Veena Agrawal
Both RR/o: Near Pilli Kothi, Quadarbuksh Ka Hata,
Tundla, Firozabad, Uttar Pradesh-283204.

Complainants

Versus

M/s Emaar MGF Land Ltd.
Office: Emaar Business Park, M.G. Road,
Sikandarpur Chowk, Sector 28, Gurugram-122001.

Respondent

CORAM:

Dr. K.K Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Shri Sanjeev Sharma
Shri J.K. Dang

Advocate for the complainants
Advocate for the respondent

ORDER

1. The present complaint dated 11.06.2021 has been filed by the complainants/allottees in Form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions to the allottee as per the agreement for sale executed inter se them.

A. Project and unit 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	Palm Hills, Sector 77, Gurugram, Haryana
2.	Project area	24.477 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	a) 56 of 2009 dated 31.08.2009 (For 24.4 acres) Valid/renewed up to 30.08.2024 b) 62 of 2013 dated 05.08.2013 (For 4.87 acres) Valid/renewed up to 04.08.2019
5.	HRERA registered/ not registered	Registered vide no. 256 of 2017 dated 03.10.2017 for 45425.87 sq. mtrs.
	HRERA registration valid up to	02.10.2022
6.	Occupation certificate granted on	24.12.2019 [annexure R11, page 118 of reply]
7.	Allotment letter dated	20.04.2010 [annexure R2, page 38 of reply]
8.	Unit no.	PH3-24-0601, 6 th floor, building no. 24 [annexure A1, page 24 of complaint]
9.	Unit measuring	1450 sq. ft. [Page 24 of complaint]
10.	Date of execution of buyer's agreement	17.07.2010 [annexure A1, page 21 of complaint]
11.	Payment plan	Construction linked payment plan [Page 53 of complaint]
12.	Total consideration as per statement of account dated 17.06.2021 at page 115 of reply	Rs. 61,75,499/-



13.	Total amount paid by the complainants as per statement of account dated 17.06.2021 at page 116 of reply	Rs. 58,43,905/-
14.	Date of start of construction as per statement of account dated 17.06.2021 at page 115 of reply	25.02.2011
15.	Due date of delivery of possession as per clause 11(a) of the said agreement i.e. 33 months from the date of start of construction (25.02.2011) + grace period of 3 months, for applying and obtaining completion certificate/ occupation certificate in respect of the unit and/or the project. [Page 35 of complaint]	25.11.2013 [Note: Grace period is not included]
16.	Complainants are subsequent allottees	The respondent acknowledged the complainants as allottees vide nomination letter dated 28.07.2015 (annexure R8, page 110 of reply) in pursuance of agreement to sell dated 20.04.2015 (annexure R6, page 93 of reply) executed between the complainant and the second allottee (Rashmi Sharma).
17.	Date of offer of possession to the complainants	03.01.2020 [annexure R14, page 125 of reply]
18.	Delay in handing over possession w.e.f. the date of nomination letter i.e., 28.07.2015 till 03.03.2020 i.e. date of offer of possession (03.01.2020) + 2 months	4 years 7 months 4 days

B. Facts of the complaint

3. The complainants made the following submissions in the complaint:

- i. That the respondent and the complainant entered into buyer's agreement on 17.07.2010. The total consideration of the unit in

question was Rs.61,75,499/- as per the statement of account dated 23.03.2021 and the complainants have already paid Rs. 58,43,905/-. As per clause 11(a) of the agreement, the possession of the unit was to be given within 33 months from the start of construction (25.02.2011) and three months' grace period to obtain occupation certificate. The unit was to be handed over by 25.11.2013. Further, it is pertinent to mention here that the respondent being in the dominant position, the complainant was never in a position to negotiate the terms and conditions of the agreement.

- ii. That the offer of possession was made by the respondent on 24.02.2020 wherein the contents of the letter states that the respondent had sent offer of possession on 03.01.2020 which has never been received by the complainants and thereafter reminder on 24.02.2020 and 26.03.2020. It is pertinent to note that from 25.03.2020 the entire nation was under nationwide lockdown and therefore, the respondent no. 1 could in no imagination possible draft the said letter on 26.03.2020. It is further submitted that the said letter dated 26.03.2020 was dispatched by the respondent on 17.07.2020 and received by the complainants on 22.07.2020. The respondent has illegally charged an amount of Rs.1,13,100/- from the complainants without having been taken possession by the complainants and also that the possession was offered after a delay

of 6 years and 3 months from 25.11.2013 to 24.02.2020. The complainants should also be allotted ample time to arrange funds in order to take possession as in this COVID-19 era, the complainants are suffering from major financial hardships.

C. Relief sought by the complainants

4. The complainants are seeking the following relief:
 - i. Direct the respondent to handover the possession of the unit and pay interest at prescribed rate on account of delay in offering possession of the subject unit on the amount paid by the complainants as sale consideration of the said flat.
 - ii. Promoter be ordered to pay for harassment caused to the complainants as damages along with cost of litigation to the tune of Rs. 1,00,000/-.

D. Reply filed by the respondent

5. The respondent had contested the complaint on the following grounds:
 - i. That the complainants have filed the present complaint seeking interest on account of the alleged delay in delivering possession of the unit booked by the complainants. It is respectfully submitted that complaints pertaining to refund, compensation and interest are to be decided by the adjudicating officer under section 71 of the Act read with rule 29 of the rules and not by this hon'ble authority. The present complaint is liable to be dismissed on this ground alone. Moreover, it is respectfully submitted that the adjudicating officer derives his jurisdiction from the Central Act which cannot be negated by the rules made thereunder.

- ii. That present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the buyer's agreement dated 17.07.2010. That the provisions of the Act are not retrospective in nature. The provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act. It is further submitted that merely because the Act applies to ongoing projects which are registered with the authority, the Act cannot be said to be operating retrospectively. The provisions of the Act relied upon by the complainants for seeking interest or compensation cannot be called in to aid in derogation and in negation of the provisions of the buyer's agreement. The interest for the alleged delay demanded by the complainants is beyond the scope of the buyer's agreement. The complainants cannot demand any interest or compensation beyond the terms and conditions incorporated in the buyer's agreement.
- iii. That the original allottee (Mr. Rizwan Beg) vide application form dated 01.04.2010 applied to respondent for provisional allotment of a unit in the project. The original allottee, in pursuance of the aforesaid application form, was allotted unit bearing no. PH3-24-0601, located on the 6th floor, in the project vide provisional allotment letter dated 20.04.2010. The original allottee consciously and wilfully opted for a construction linked plan for remittance of the sale consideration for the unit in question and further represented to respondent that the original allottee shall remit every instalment on time as per the payment schedule. Respondent had no reason to suspect the bona fide of the original

- allottee at the relevant time. The buyer's agreement was willingly and voluntarily executed by the original allottee on 17.07.2010.
- iv. That the original allottee transferred the allotment of the unit in question in favour of Mrs. Rashmi Sharma and the nomination letter dated 11.01.2012 was issued in favour of Mrs Rashmi Sharma, second allottee. The second allottee and the complainants entered into an agreement for sale dated 20.04.2015 in respect of the unit in question. On the basis of the transfer documents executed by the second allottee and the complainants, the allotment of the unit was transferred in favour of the complainants. The complainants executed an affidavit and indemnity cum undertaking, whereby the complainants agreed and undertook that they shall not be entitled to any compensation for any delay in offering possession. Nomination letter dated 28.07.2015 was issued in favour of the complainants.
- v. That the original allottee/second allottee/complainants were irregular regarding the timely remittance of sale consideration as per the payment plan. Respondent was compelled to issue demand notices, reminders for payment etc. for payment of outstanding amounts due and payable under the payment plan. Statement of account dated 17.06.2021 as maintained by respondent in due course of its business reflects the delay in remittance of various amounts on the part of the original allottee/second allottee/complainants. The original allottee/second allottee/complainants have wilfully and consciously defaulted in remittance of the instalments enumerated in the schedule of payment.

- vi. That the contractual relationship between the complainants and the respondent is governed by the buyer's agreement dated 17.07.2010, as amended by the transfer documents executed by the complainants. Clause 13 of the buyer's agreement provides that compensation for any delay in delivery of possession shall only be given to such allottees who are not in default of their obligations envisaged under the agreement and who have not defaulted in payment of instalments as per the payment plan incorporated in the agreement. In case of delay caused due to non- receipt of occupation certificate, completion certificate or any other permission/sanction from the competent authorities, no compensation or any other compensation shall be payable to the allottees. As delineated hereinabove, the previous allottees, having defaulted in timely payment of instalments, were thus not entitled to any compensation or penalty or any amount towards interest under the buyer's agreement. Consequently, the complainants, as successors in interest, are also not entitled to any compensation for any delay in offering possession. Moreover, at the time of purchasing the unit in resale, the complainants have specifically agreed and undertaken that they shall not be entitled to any compensation for any delay in offering possession by executing the affidavit and indemnity cum undertaking.
- vii. That furthermore, the complainants have purchased the unit in resale in July 2015, well after the so called due date of possession according to the complainants. Thus, the complainants have not only acquiesced to extension of time in delivery of possession but

are also estopped from making any claim for compensation for alleged delay in delivering possession.

- viii. That despite there being a number of defaulters in the project, the respondent itself infused funds into the project and has diligently developed the project in question. The respondent submitted an application dated 24.04.2017 to the competent authority for issuance of the occupation certificate. The occupation certificate was thereafter granted on 24.12.2019 vide memo bearing no. ZP-567-Vol-I/JD(RD)/2019/31934 in favour of the respondent. It is pertinent to note that once an application for grant of occupation certificate is submitted for approval in the office of the concerned statutory authority, the respondent ceases to have any control over the same. The grant of occupation certificate is the prerogative of the concerned statutory authority over which the respondent cannot exercise any influence. As far as respondent is concerned, it has diligently and sincerely pursued the matter with the concerned statutory authority for obtaining of the occupation certificate. Therefore, the time period utilised by the concerned statutory authority for grant of occupation certificate is necessarily required to be excluded from the computation of time period utilised by the respondent for implementation and development of the project.
- ix. That the respondent submitted that the project has got delayed on account of following reasons which were/are beyond the power and control of the respondent. *Firstly*, the National Building Code was revised in the year 2016 and in terms of the same, all high-rise buildings (i.e. buildings having height of 15 mtrs. and above), irrespective of area of each floor, are now required to have two

staircases. Eventually, so as not to cause any further delay in the project and so as to avoid jeopardising the safety of the occupants of the buildings in question including the building in which the unit in question is situated, the respondent had taken a decision to go ahead and construct the second staircase. It is expected that the construction of the second staircase will be completed in a year's time. Thereafter, upon issuance of the occupation certificate and subject to force majeure conditions, possession of the apartment shall be offered to the complainants. *Secondly*, the respondent had to engage the services of Mitra Guha, a reputed contractor in real estate, to provide multi-level car parking in the project. The said contractor started raising certain false and frivolous issues with the respondent due to which the contractor slowed down the progress of work at site. Any lack of performance from a reputed cannot be attributed to the respondent as the same was beyond its control.

- x. That the respondent had offered possession of the unit in question through letter of offer of possession dated 03.01.2020 to the complainants. The complainants were called upon to remit balance payment including delayed payment charges and to complete the formalities/documentation necessary for handover of the office space to them. However, the complainants intentionally refrained from doing the needful. The complainants did not have adequate funds to remit the balance payment requisite for obtaining possession in terms of the buyer's agreement and consequently in order to needlessly linger on the matter, the complainants have preferred the instant complaint. The complainants are needlessly

avoiding the completion of the transaction with the intent of evading the consequences as enumerated in the buyer's agreement. The present complaint is nothing but an abuse of process of law.

- xi. That the project of the respondent has been registered under the Act and the rules. Registration certificate was granted by the Haryana Real Estate Regulatory Authority vide memo no. HRERA-606/2017/1248 dated 03.10.2017. The hon'ble authority has granted 02.10.2022 as the date of completion of the project and therefore cause of action, if any, would accrue in favour of the complainants to file a complaint for seeking any interest as alleged if and only the respondent fails to offer possession of the unit in question within the aforesaid time. In any case, it needs to be taken into reckoning that the respondent has already completed the construction of the unit in question and has offered possession thereof to the complainants. Therefore, no cause of action can be construed to have arisen in favor of the complainants in the facts and circumstances of the case.
- xii. That the previous allottees/complainants consciously and maliciously chose to ignore the payment schedule issued by the respondent and flouted in making timely payment of the instalment, which was an essential, crucial and an indispensable requirement under the buyer's agreement. Furthermore, when the proposed allottees default in their payments as per schedule agreed upon, the failure has a cascading effect on the operations and the cost for proper execution of the project increases exponentially and further causes enormous business losses to the

respondent. The complainants chose to ignore all these aspects and wilfully defaulted in making timely payments. It is submitted that the respondent despite defaults of several allottees earnestly fulfilled its obligations under the buyer's agreement and completed the project as expeditiously as possible in the facts and circumstances of the case. Therefore, there is no equity in favour of the complainants.

E. Jurisdiction of the authority

6. The preliminary objection raised by the respondent regarding jurisdiction of the authority to entertain the present complaint stands rejected. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.1 Territorial jurisdiction

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

E.II Subject-matter jurisdiction

8. Section 11(4)(a) of the Act provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11

.....

(4) The promoter shall-

- (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.

9. 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 as per provisions of section 11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the objections raised by the respondent

F.I Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act and provisions of the Act are not retrospective in nature

10. The respondent raised an objection that the provisions of the Act are not retrospective in nature and the provisions of the Act cannot undo or

modify the terms of an agreement duly executed prior to coming into force of the Act. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/ situation in a specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of **Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)** which provides as under:

- "119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter...."
122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."

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

"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

12. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the buyer's agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of the Act, rules and regulations made thereunder and are not unreasonable or exorbitant in nature.

F.II Objection regarding handing over possession as per declaration given under section 4(2)(I)(C) of the Act

13. The respondent submitted that authority has granted 02.10.2022 as the date of completion of the project and therefore the respondent is

required to complete the construction of the apartment in question and offer possession of the same to the complainants on or before 02.10.2022 or within the extended period of registration, if any. Thus, the complaint is liable to be dismissed on this ground alone. Therefore, next question of determination is whether the respondent is entitled to avail the time given to him by the authority at the time of registering the project under section 3 & 4 of the Act.

14. It is now settled law that the provisions of the Act and the rules are also applicable to ongoing project and the term ongoing project has been defined in rule 2(1)(o) of the rules. The new as well as the ongoing project are required to be registered under section 3 and section 4 of the Act.
15. Section 4(2)(1)(C) of the Act requires that while applying for registration of the real estate project, the promoter has to file a declaration under section 4(2)(1)(C) of the Act and the same is reproduced as under: -

Section 4: - Application for registration of real estate projects

(2)The promoter shall enclose the following documents along with the application referred to in sub-section (1), namely: —.....

*(1): -a declaration, supported by an affidavit, which shall be signed by the promoter or any person authorised by the promoter, stating: —
.....*

(C) the time period within which he undertakes to complete the project or phase thereof, as the case may be....”

16. The time period for handing over the possession is committed by the builder as per the relevant clause of buyer's agreement and the

commitment of the promoter regarding handing over of possession of the unit is taken accordingly. The new timeline indicated in respect of ongoing project by the promoter while making an application for registration of the project does not change the commitment of the promoter to hand over the possession by the due date as per the buyer's agreement. The new timeline as indicated by the promoter in the declaration under section 4(2)(1)(C) is now the new timeline as indicated by him for the completion of the project. Although, penal proceedings shall not be initiated against the builder for not meeting the committed due date of possession but now, if the promoter fails to complete the project in declared timeline, then he is liable for penal proceedings. The due date of possession as per the agreement remains unchanged and promoter is liable for the consequences and obligations arising out of failure in handing over possession by the due date as committed by him in the apartment buyer agreement and he is liable for the delayed possession charges as provided in proviso to section 18(1) of the Act. The same issue has been dealt by hon'ble Bombay High Court in case titled as *Neelkamal Realtors Suburban Pvt. Ltd. and anr. vs Union of India and ors.* and has observed as under:

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

F.III Objection regarding exclusion of time taken by the competent authority in processing the application and issuance of occupation certificate

17. As far as contention of the respondent with respect to the exclusion of time taken by the competent authority in processing the application and issuance of occupation certificate is concerned, the authority observed that the respondent had applied for grant of occupation certificate on 21.02.2019 and thereafter vide memo no. ZP-567-Vol-1/JD(RD)/2019/31934 dated 24.12.2019, the occupation certificate has been granted by the competent authority under the prevailing law. The authority cannot be a silent spectator to the deficiencies in the application submitted by the promoter for issuance of occupancy certificate. It is evident from the occupation certificate dated 24.12.2019 that an incomplete application for grant of OC was applied on 21.02.2019 as fire NOC from the competent authority was granted only on 12.12.2019 which is subsequent to the filing of application for occupation certificate. Also, the Chief Engineer-I, HSVP, Panchkula has submitted his requisite report in respect of the said project on 06.12.2019. The District Town Planner, Gurugram and Senior Town Planner, Gurugram has submitted requisite report about this project on 29.11.2019 and 02.12.2019 respectively. As such, the application submitted on 21.02.2019 was incomplete and an incomplete application is no application in the eyes of law.
18. The application for issuance of occupancy certificate shall be moved in the prescribed forms and accompanied by the documents mentioned in

sub-code 4.10.1 of the Haryana Building Code, 2017. As per sub-code 4.10.4 of the said Code, after receipt of application for grant of occupation certificate, the competent authority shall communicate in writing within 60 days, its decision for grant/ refusal of such permission for occupation of the building in Form BR-VII. In the present case, the respondent has completed its application for occupation certificate only on 12.12.2019 and consequently the concerned authority has granted occupation certificate on 24.12.2019. Therefore, in view of the deficiency in the said application dated 21.02.2019 and aforesaid reasons, no delay in granting occupation certificate can be attributed to the concerned statutory authority.

F.IV Whether a subsequent allottee who had executed an indemnity cum undertaking with waiver clause is entitled to claim delay possession charges?

19. The respondent submitted that complainants in question are subsequent allottees and complainants have executed an affidavit dated 20.07.2015 and an indemnity cum undertaking dated 20.07.2015 whereby the complainants have consciously and voluntarily declared and affirmed that they would be bound by all the terms and conditions of the provisional allotment in favour of the original allottee. It was further declared by the complainants that they, having been substituted in the place of the original allottee in respect of the provisional allotment of the unit in question, were not entitled to any compensation for delay. Therefore, the complainants are not entitled to any compensation. With regard to the above contentions raised by the

promoter/developer, it is worthwhile to examine following four sub-issues:

- (i) Whether subsequent allottee is also allottee as per provisions of the Act?
- (ii) Whether delay possession charges are in the nature of statutory legal obligation of the promoter other than compensation?
- (iii) Whether the subsequent allottee is entitled to delayed possession charges w.e.f. due date of handing over possession or w.e.f. the date of nomination letter/endorsement (i.e. date on which he became allottee)?
- (iv) Whether indemnity-cum-undertaking with waiver clause at the time of transfer of unit is arbitrary and whether statutory rights can be waived of by such one sided and unreasonable undertaking?

i. Whether subsequent allottee is also an allottee as per provisions of the Act?

20. The term "allottee" as defined in the Act also includes and means the subsequent allottee, hence is entitled to the same relief as that of the original allottee. The definition of the allottee as provided in the Act is reproduced as under:

"2 In this Act, unless the context otherwise requires-

- (d) "allottee" in relation to a real estate project, means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, **and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent".**

21. Accordingly, following are allottees as per this definition:

- (a) **Original allottee:** A person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter.
- (b) **Allottee after subsequent transfer from the original allottee:** A person who acquires the said allotment through sale, transfer or otherwise. However, an allottee would not be a person to whom any plot, apartment or building is given on rent.
22. From a bare perusal of the definition, it is clear that the transferee of an apartment, plot or building who acquires it by any mode is an allottee. This may include (i) allotment; (ii) sale; (iii) transfer; (iv) as consideration of services; (v) by exchange of development rights; or (vi) by any other similar means. It can be safely reached to the only logical conclusion that no difference has been made between the original allottee and the subsequent allottee and once the unit, plot, apartment or building, as the case may be, has been re-allotted in the name of the subsequent purchaser by the promoter, the subsequent allottee enters into the shoes of the original allottee for all intents and purposes and he shall be bound by all the terms and conditions contained in the buyer's agreement including the rights and liabilities of the original allottee. Thus, as soon as the unit is re-allotted in his name, he will become the allottee and nomenclature "subsequent allottee" shall only remain for identification for use by the promoter. Therefore, the authority does not draw any difference between the allottee and subsequent allottee per se.

23. Reliance is placed on the judgment dated 26.11.2019 passed in consumer complaint no. 3775 of 2017 titled as **Rajnish Bhardwaj Vs. M/s CHD Developers Ltd.** by NCDRC wherein it was held as under:

"15. So far as the issue raised by the Opposite Party that the Complainants are not the original allottees of the flat and resale of flat does not come within the purview of this Act, is concerned, in our view, having issued the Re-allotment letters on transfer of the allotted Unit and endorsing the Apartment Buyers Agreement in favour of the Complainants, this plea does not hold any water....."

24. The authority concurs with the Hon'ble NCDRC's decision dated 26.11.2019 in **Rajnish Bhardwaj vs. M/s CHD Developers Ltd.** (supra) and observes that it is irrespective of the status of the allottee whether it is original or subsequent, an amount has been paid towards the consideration for a unit and the endorsement by the developer on the transfer documents clearly implies his acceptance of the complainants as allottees.
25. Therefore, taking the above facts into account, the authority is of the view that the term subsequent allottee has been used synonymously with the term allottee in the Act. The subsequent allottee at the time of buying the said unit takes on the rights as well as obligations of the original allottee vis-a-viz the same terms and conditions of the buyer's agreement entered into by the original allottee. Moreover, the amount if any paid by the subsequent or original allottee is adjusted against the unit in question and not against any individual. Furthermore, the name of the complainants/subsequent allottees has been endorsed on the same buyer's agreement which was executed between the original

allottee and the promoter. Therefore, the rights and obligation of the subsequent allottees and the promoter will also be governed by the said buyer's agreement.

ii. **Whether delay possession charges are in the nature of statutory legal obligation of the promoter other than compensation?**

26. It is important to understand that the Act has clearly provided interest and compensation as separate entitlement/right which the allottee can claim. An allottee is entitled to claim compensation under sections 12, 14, 18 and section 19, to be decided by the adjudicating officer as per section 71 and the quantum of compensation shall be adjudged by the adjudicating officer having due regard to the factors mentioned in section 72. The interest is payable to the allottee by the promoter in case where there is refund or payment of delay possession charges i.e., interest at the prescribed rate for every month of delay. The interest to be paid to the allottee is fixed and as prescribed in the rules which an allottee is legally entitled to get and the promoter is obligated to pay. The compensation is to be adjudged by the adjudicating officer and may be expressed either lump sum or as interest on the deposited amount after adjudgment of compensation. This compensation expressed as interest needs to be distinguished with the interest at the prescribed rate payable by the promoter to the allottee in case of delay in handing over of possession or interest at the prescribed rate payable by the allottee to the promoter in case of default in due payments. Here, the interest is pre-determined, and no adjudication is involved.

Accordingly, the distinction has to be made between the interest payable at the prescribed rate under section 18 or 19 and adjudgment of compensation under sections 12, 14, 18 and section 19. The compensation shall mean an amount paid to the flat purchasers who have suffered agony and harassment, as a result of the default of the developer including but not limited to delay in handing over of the possession.

27. In addition, the quantum of compensation to be awarded shall be subject to the extent of loss and injury suffered by the negligence of the opposite party and is not a definitive term. It may be in the form of interest or punitive in nature. However, the Act clearly differentiates between the interest payable for delayed possession charges and compensation. Section 18 of the Act provides for two separate remedies which are as under:

- i. In the event, the allottee wishes to withdraw from the project, he/she shall be entitled without prejudice to any other remedy refund of the amount paid along with interest at such rate as may be prescribed in this behalf **including compensation** in the manner as provided under this Act;
- ii. In the event, the allottee does not intend to withdraw from the project, he/she 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.**

28. The rate of interest in both the scenarios is fixed as per rule 15 of the rules which shall be the State Bank of India's highest marginal cost of

lending rate +2%. However, for adjudging compensation or interest under sections 12,14,18 and section 19, the adjudicating officer has to take into account the various factors as provided under section 72 of the Act.

iii. **Whether the subsequent allottee is entitled to delayed possession charges w.e.f. due date of handing over possession or w.e.f. the date of nomination letter (i.e. date on which he became allottee)?**

29. The respondent/promoter contended that the complainants/subsequent allottees shall not be entitled to any compensation/delayed possession charges since at the time of the execution of transfer documents/agreement for sale, they were well aware of the due date of possession and have knowingly waived off their right to claim any compensation for delay in handing over possession or any rebate under a scheme or otherwise or any other discount. The respondent/promoter had spoken about the disentitlement of compensation/delayed possession charges to the subsequent allottee who had clear knowledge of the fact w.r.t. the due date of possession and whether the project was already delayed. But despite that they entered into the agreement for sell and/or indemnity-cum-undertaking knowingly waiving off their right of compensation.

30. The authority placed reliance on the recent case titled as *M/s Laureate Buildwell Pvt. Ltd. Vs. Charanjeet Singh, civil appeal no. 7042 of 2019 dated 22.07.2021* wherein the Apex Court has held that relief of interest on refund, enunciated by the decision in *HUDA Vs. Raje Ram (2008)* which was applied in *Wg. Commander Arifur Rehman (Wg. Cdr.*

Arifur Rahman Khan and Aleya Sultana and Ors. V. DLF Southern Homes Pvt. Ltd. (now Known as BEGUR OMR Homes Pvt. Ltd.) and Ors. (Civil appeal no. 6239 of 2019 dated 24.08.2020) cannot be considered good law and has held that the subsequent purchaser/respondent had stepped into the shoes of the original allottee, and intimated Laureate (builder) about this fact in April 2016, the interest of justice demand that the interest at least from that date should be granted, in favour of the respondent. The relevant paras of the said judgment are being reproduced as follows:

"31. In view of these considerations, this court is of the opinion that the per se bar to the relief of interest on refund, enunciated by the decision in Raje Ram (supra) which was applied in Wg. Commander Arifur Rehman (supra) cannot be considered good law. The nature and extent of relief, to which a subsequent purchaser can be entitled to, would be fact dependent. However, it cannot be said that a subsequent purchaser who steps into the shoes of an original allottee of a housing project in which the builder has not honoured its commitment to deliver the flat within a stipulated time, cannot expect any - even reasonable time, for the performance of the builder's obligation. Such a conclusion would be arbitrary, given that there may be a large number- possibly thousands of flat buyers, waiting for their promised flats or residences; they surely would be entitled to all reliefs under the Act. In such case, a purchaser who no doubt enters the picture later surely belongs to the same class. Further, the purchaser agrees to buy the flat with a reasonable expectation that delivery of possession would be in accordance within the bounds of the delayed timeline that he has knowledge of, at the time of purchase of the flat. Therefore, in the event the purchaser claims refund, on an assessment that he too can (like the original allottee) no longer wait, and face intolerable burdens, the equities would have to be moulded. It would no doubt be fair to assume that the purchaser had knowledge of the delay. However, to attribute knowledge that such delay would continue indefinitely, based on an a priori assumption, would not be justified. The equities, in the opinion of this court, can properly be moulded by directing refund of the principal amounts, with interest @ 9% per annum from the date the builder acquired knowledge of the transfer, or acknowledged it.

32. In the present case, there is material on the record suggestive of the circumstance that even as on the date of presentation of the present appeal,

the occupancy certificate was not forthcoming. In these circumstances, given that the purchaser/respondent had stepped into the shoes of the original allottee, and intimated Laureate about this fact in April 2016, the interests of justice demand that interest at least from that date should be granted, in favour of the respondent. The directions of the NCDRC are accordingly modified in the above terms."(Emphasis supplied)

31. In the present case, the complainants/subsequent allottees have been acknowledged as allottees by the respondent vide nomination letter dated 28.07.2015. The authority has observed that the promoter has confirmed the transfer of allotment in favour of subsequent allottees (complainants) and the installments paid by the original allottee were adjusted in the name of the subsequent allottees and the next installments were payable/due as per the original allotment letter. Also, we have also perused the buyer's agreement which was originally entered into between the original allottee and the promoter. The same buyer's agreement has been endorsed in favour of the subsequent allottees/complainants. All the terms of buyer's agreement remain the same, so it is quite clear that the subsequent allottees have stepped into the shoes of the original allottee. Though the promised date of delivery was 25.11.2013 but the construction of the tower in question was not completed by the said date and it was offered by the respondent only on 03.01.2020.
32. In the present complaint, the complainants/subsequent allottees have purchased the unit after expiry of the due date of handing over possession, the authority is of the view that the subsequent allottees cannot be expected to wait for any uncertain length of time to take

possession. Even the complainants have been waiting for their promised flats and surely, they would be entitled to all the reliefs under this Act. It would no doubt be fair to assume that the subsequent allottees/complainants have knowledge of delay, however, to attribute knowledge that such delay would continue indefinitely, based on priori assumption, would not be justified. Therefore, in light of *Laureate Buildwell judgment (supra)*, the authority holds that in cases where subsequent allottee had stepped into the shoes of original allottee after the expiry of due date of handing over possession and before the coming into force of the Act, the subsequent allottee shall be entitled to delayed possession charges w.e.f. the date of entering into the shoes of original allottee i.e. nomination letter. In the present complaint, the nomination letter was issued by the respondent in the favour of the complainants on 28.07.2015, therefore, the complainant would be entitled to delay possession charges w.e.f. 28.07.2015.

- iv. **Whether indemnity-cum-undertaking with waiver clause at the time of transfer of unit is arbitrary and whether statutory rights can be waived of by such one sided and unreasonable undertaking?**
33. The authority further is unable to gather any reason or has not been exposed to any reasonable justification as to why a need arose for the complainants to sign any such affidavit or indemnity-cum-undertaking and as to why the complainants have agreed to surrender their legal rights which were available or had accrued in favour of the original allottee. Thus, no sane person would ever execute such an affidavit or indemnity-cum-undertaking unless and until some arduous and/or

compelling conditions are put before him with a condition that unless and until, these arduous and/or compelling conditions are performed by him, he will not be given any relief and he is thus left with no other option but to obey these conditions. Exactly same situation has been demonstratively happened here when the complainants/subsequent-allottees have been asked to give the affidavit or indemnity-cum-undertaking in question before transferring the unit in their name otherwise such transfer may not be allowed by the promoter. Such an undertaking/ indemnity bond given by a person thereby giving up their valuable rights must be shown to have been executed in a free atmosphere and should not give rise to any suspicion. No reliance can be placed on any such affidavit/ indemnity-cum-undertaking and the same is liable to be discarded and ignored in its totality. Therefore, this authority does not place reliance on the said affidavit/indemnity cum undertaking. To fortify this view, we place reliance on the order dated 03.01.2020 passed by hon'ble NCDRC in case titled as **Capital Greens Flat Buyer Association and Ors. Vs. DLF Universal Ltd., Consumer case no. 351 of 2015**, wherein it was held that the execution of indemnity-cum-undertaking would defeat the provisions of section 23 and 28 of the Indian Contract Act, 1872 and therefore, would be against public policy, besides being an unfair trade practice. The relevant portion of the said judgment is reproduced herein below:

"Indemnity-cum-undertaking

30. *The developer, while offering possession of the allotted flats insisted upon execution of the indemnity-cum-undertaking before it would give possession of the allotted flats to the concerned allottee.*

Clause 13 of the said indemnity-cum-undertaking required the allottee to confirm and acknowledge that by accepting the offer of possession, he would have no further demands/claims against the company of any nature, whatsoever. It is an admitted position that the execution of the undertaking in the format prescribed by the developer was a pre-requisite condition, for the delivery of the possession. The opposite party, in my opinion, could not have insisted upon clause 13 of the Indemnity-cum-undertaking. The obvious purpose behind such an undertaking was to deter the allottee from making any claim against the developer, including the claim on account of the delay in delivery of possession and the claim on account of any latent defect which the allottee may find in the apartment. The execution of such an undertaking would defeat the provisions of Section 23 and 28 of the Indian Contract Act, 1872 and therefore would be against public policy, besides being an unfair trade practice. Any delay solely on account of the allottee not executing such an undertaking would be attributable to the developer and would entitle the allottee to compensation for the period the possession is delayed solely on account of his having not executed the said undertaking-cum-indemnity."

34. The said judgment of NCDRC was also upheld by the Hon'ble Supreme Court vide its judgement dated 14.12.2020 passed in civil appeal nos. 3864-3889 of 2020 against the order of NCDRC
35. Hon'ble Supreme Court and various High Courts in a 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.** in civil appeal no. 5785 of 2019 and the same is reproduced 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."

36. The same analogy can easily be applied in the case of execution of an affidavit or indemnity-cum-undertaking which got executed from the complainants/subsequent-allottees before getting the unit transferred in their name in the record of the promoter as allottees in place of the original allottee.
37. The authority may deal with this point from yet another aspect. By executing an affidavit/undertaking, the complainants/subsequent allottees cuts their hands from claiming delay possession charges in case of delay in giving possession of the unit beyond the stipulated time or the due date of possession. But the question which arises before the authority is that what does allottee got in return from the promoter by giving such a mischievous and unprecedented undertaking. However, the answer would be "nothing". If it is so, then why did the complainants

executed such an affidavit/undertaking is beyond the comprehension and understanding of this authority.

38. The authority holds that irrespective of the execution of the affidavit/undertaking by the complainants/subsequent allottees at the time of transfer of their name as allottee in place of the original allottee in the record of the promoter does not disentitle them from claiming the delay possession charges in case there occurs any delay in delivering the possession of the unit beyond the due date of delivery of possession as promised even after executing an indemnity-cum-undertaking.

G. Findings of the authority

G.1 Delay possession charges

39. **Relief sought by the complainants:** Direct the respondent to handover the possession of the unit and pay interest at prescribed rate on account of delay in offering possession of the subject unit on the amount paid by the complainants as sale consideration of the said flat.
40. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

Section 18: - Return of amount and compensation

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

.....

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

month of delay, till the handing over of the possession, at such rate as may be prescribed."

41. Clause 11(a) of the buyer's agreement provides time period for handing over the possession and the same is reproduced below:

"11. POSSESSION

(a) Time of handing over the Possession

*Subject to terms of this clause and subject to the Allottee(s) having complied with all the terms and conditions of this Buyer's Agreement, and not being in default under any of the provisions of this Buyer's Agreement and compliance with all provisions, formalities, documentation etc. as prescribed by the Company, the Company proposes to hand over the possession of the Unit within **33 months from the date of start of construction**, subject to timely compliance of the provisions of the Buyer's Agreement by the Allottee. The Allottee(s) agrees and understands that the Company shall be entitled to **a grace period of 3 months, for applying and obtaining the completion certificate/occupation certificate in respect of the Unit and/or the Project.**"* (Emphasis supplied)

42. 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 a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment time period for handing over possession loses its meaning. The incorporation of such clause in

the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottees of their 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.

43. **Due date of handing over possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the said unit within 33 months from the date of start of construction and further provided in agreement that promoter shall be entitled to a grace period of 3 months for applying and obtaining completion certificate/occupation certificate in respect of said unit. The date of start of construction is 25.02.2011 as per statement of account dated 17.06.2021. The period of 33 months expired on 25.11.2013. As a matter of fact, the promoter has not applied to the concerned authority for obtaining completion certificate/ occupation certificate within the time limit (33 months) prescribed by the promoter in the buyer's agreement. The promoter has moved the application for issuance of occupation certificate only on 21.02.2019 when the period of 33 months has already expired. As per the settled law one cannot be allowed to take advantage of his own wrong. Accordingly, the benefit of grace period of 3 months cannot be allowed to the promoter at this stage.

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

45. The legislature in its wisdom in the subordinate legislation under rule 15 of the rules has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
46. Taking the case from another angle, the complainants-allottees were entitled to the delayed possession charges/interest only at the rate of Rs.7.50/- per sq. ft. per month of the super area as per clause 13 of the buyer's agreement for the period of such delay; whereas, as per clause 1.2(b) of the buyer's agreement, the promoter was entitled to interest

@ 24% per annum at the time of every succeeding instalment from the due date of instalment till date of payment on account for the delayed payments by the allottee. The functions of the authority are to safeguard the interest of the aggrieved person, may be the allottee or the promoter. The rights of the parties are to be balanced and must be equitable. The promoter cannot be allowed to take undue advantage of his dominant position and to exploit the needs of the home buyers. This authority is duty bound to take into consideration the legislative intent i.e., to protect the interest of the consumers/allottees in the real estate sector. The clauses of the buyer's agreement entered into between the parties are one-sided, unfair and unreasonable with respect to the grant of interest for delayed possession. There are various other clauses in the buyer's agreement which give sweeping powers to the promoter to cancel the allotment and forfeit the amount paid. Thus, the terms and conditions of the buyer's agreement are ex-facie one-sided, unfair and unreasonable, and the same shall constitute the unfair trade practice on the part of the promoter. These types of discriminatory terms and conditions of the buyer's agreement will not be final and binding.

47. 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., 21.12.2021 is 7.30%. Accordingly, the prescribed rate of interest will be MCLR +2% i.e., 9.30%.

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

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

Explanation. —For the purpose of this clause—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default;*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

49. 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 delay possession charges.
50. On consideration of the documents available on record and submissions made by the parties regarding contravention as per 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 11(a) of the buyer's agreement executed between the parties on 17.07.2010, the possession of the subject flat was to be delivered within a period of 33 months from

the date of start of construction plus 3 months grace period for applying and obtaining the completion certificate/ occupation certificate in respect of the unit and/or the project. The construction was started on 25.02.2011. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession comes out to be 25.11.2013. Occupation certificate was granted by the concerned authority on 24.12.2019 and thereafter, the possession of the subject flat was offered to the complainants on 03.01.2020. Copies of the same have been placed on record. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the subject flat to the complainants as per the terms and conditions of the buyer's agreement dated 17.07.2010 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 17.07.2010 to hand over the possession within the stipulated period.

51. 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 24.12.2019. The respondent offered the possession of the unit in question to the complainants only on 03.01.2020, so it can be said that the complainants came 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. These 2 months' of reasonable time is being given to the complainants keeping in mind that even after intimation of possession practically they have 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 date of entering into the shoes of original allottee i.e. nomination letter (28.07.2015) till the expiry of 2 months from the date of offer of possession (03.01.2020) which comes out to be 03.03.2020.

52. Also, the respondent has already offered possession of the subject unit to the complainants on 03.01.2020 after receipt of occupation certificate dated 24.12.2019, the complainants are directed to take possession of the subject unit within 2 months from the date of this order after paying the outstanding dues. 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 as per section 2(za) of the Act.
53. 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 delayed possession at prescribed rate of interest i.e. 9.30% p.a. w.e.f. 27.08.2015 till 03.03.2020 as per provisions of section 18(1) of the Act read with rule 15 of the rules.

G.II Compensation

54. **Relief sought by the complainants:** Promoter be ordered to pay for harassment caused to the complainants as damages along with cost of litigation to the tune of Rs. 1,00,000/-.
55. The complainants are claiming compensation in the above-mentioned reliefs. The authority is of the view that it is important to understand that the Act has clearly provided interest and compensation as separate entitlement/rights which the allottee can claim. For claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainants may file a separate complaint before adjudicating officer under section 31 read with section 71 of the Act and rule 29 of the rules.

H. Directions of the authority

56. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- i. The respondent is directed to pay 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 27.08.2015 till 03.03.2020 i.e. expiry of 2 months from the date of offer of possession (03.01.2020). 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 take possession of the subject unit within 2 months from the date of this order. 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 as per section 2(za) of the Act.
- iii. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement. The respondent is also not entitled to claim holding charges from the complainants/allottees at any point of time even after being part of the buyer's agreement as per law settled by hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.

57. Complaint stands disposed of.

58. File be consigned to registry.


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram


(Dr. K.K. Khandelwal)
Chairman

Dated: 21.12.2021