

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

Complaint no. : 333 of 2021
Complaint filed on : 18.01.2021
First date of hearing : 22.02.2021
Date of decision : 21.12.2021

1. Rachit Chawla
2. Viney Kumar Chawla
Both RR/o: B-62, Shree Arihant Apartment,
Plot no. 93, Sector 54, Gurugram, Haryana.

Complainants

Versus

M/s Emaar MGF Land Ltd.
Office: 306-308, 3rd floor, Square One, C-2,
District Centre, Saket, New Delhi-110017.

Respondent

CORAM:

Dr. K.K Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Shri Sushil Yadav
Shri J.K. Dang and Ishaan Dang

Advocate for the complainants
Advocates for the respondent

ORDER

1. The present complaint dated 18.01.2021 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 R10, page 143 of reply]
7.	Allotment letter dated	02.07.2010 [annexure R2, page 38 of reply]
8.	Unit no.	PH4-31-0602, 6 th floor, building no. 31 [page 17 of complaint]
9.	Unit measuring	1950 sq. ft. [Page 17 of complaint]
10.	Date of execution of buyer's agreement	19.08.2010 [page 15 of complaint]
11.	Payment plan	Construction linked payment plan [Page 45 of complaint]
12.	Total consideration as per statement of account dated 13.02.2021 at page 105 of reply	Rs. 83,46,490/-

13.	Total amount paid by the complainants as per statement of account dated 13.02.2021 at page 106 of reply	Rs. 87,91,589/-
14.	Date of start of construction as per statement of account dated 13.02.2021 at page 105 of reply	22.05.2011
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 (22.05.2011) + grace period of 3 months, for applying and obtaining completion certificate/ occupation certificate in respect of the unit and/or the project. [Page 28 of complaint]	22.02.2014 [Note: Grace period is not included]
16.	Date of offer of possession to the complainants	27.12.2019 [annexure R11, page 146 of reply]
17.	Delay in handing over possession w.e.f. 22.02.2014 till 27.02.2020 i.e. date of offer of possession (27.12.2019) + 2 months	6 years 5 days
18.	Delay compensation already paid by the respondent in terms of the buyer's agreement as per statement of account dated 13.02.2021 at page 103 of reply	Rs.9,34,718/- + Rs.49,044/-

B. Facts of the complaint

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

- i. That relying on the promise and undertakings given by the respondent in the advertisements the complainants, booked a flat admeasuring super area 1950 sq. ft. in said project of the respondent for total sale consideration of Rs.78,60,039/- which

includes BSP, car parking, IFMS, club membership, PLC etc. including taxes, and the buyer's agreement was executed on 19.08.2010. Out of the total sale consideration amount, the complainants made payment of Rs. 87,91,589/- to the respondent vide different cheques on different dates.

- ii. That as per buyer's agreement, the respondent had allotted unit bearing no. PH4-31-0602 having super area of 1950 sq. ft. to the complainants. As per clause 11 of the buyer's agreement, the respondent had agreed to deliver the possession of the flat within 33 months from the date of start of construction i.e., 22.05.2011 with an extended period of three months and according to that the flat was to be deliver till 22.05.2014. Some of the clauses in the buyer's agreement that the complainants were made to sign by the respondent are one sided. The complainants had signed already prepared documents and that some of the clauses contained therein were totally unreasonable and in favour of the respondent only.
- iii. That the complainants regularly visited the site but were surprised to see that construction was very slow. It appeared that respondent has played fraud upon the complainants. The respondent was not aware that by what time possession would be granted. Also, the respondent constructed the basic structure which was linked to the payments and majority of payments were made too early.

However, subsequent to this there has been very little progress in construction of the project. The only intention of the respondent was to take payments for the flat without completing the work. The structure was being erected at great speed since the structure alone was related to the vast majority of the payments in the construction linked plan. Since the respondent has received the payment linked to the floor rise, This shows respondents' mala-fide and dishonest motive and intention to cheat and defraud the complainants.

- iv. That despite receiving of more than 100% payment of all the demands raised by the respondent for the said flat and despite repeated requests and reminders over phone calls and personal visits of the complainants, the respondent has failed to deliver the possession of the allotted flat to the complainants within stipulated period and finally the respondent sent the offer of possession on dated 27.12.2019.
- v. That it could be seen that the construction of the project in which the complainants flat was booked with a promise by the respondent to deliver the flat by 22.05.2014 but was not completed within time for the reasons best known to the respondent; which clearly shows that ulterior motive of the respondent to extract money from the innocent people fraudulently. Due to this omission on the part of the respondent, the complainants suffered from

disruption on their living arrangement, mental torture, agony and also continues to incur severe financial losses. This could be avoided if the respondent had given possession of the flat on time. Hence, the respondent is liable pay interest on the amount paid by the complainants @ 24% per annum from the promised date of the possession till the apartment/flat was actually delivered to the complainants. It is however pertinent to mention here respondent is charging interest @ 24 % on the delayed payment, this is totally unfair trade practice and this shows that respondents' malafide and dishonest motive and intention to cheat and defraud the complainants.

C. Relief sought by the complainants

4. The complainants are seeking the following relief:

- i. Direct the respondent to 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. Any other relief/order or direction which this hon'ble authority may deems fit and proper considering the facts and circumstances of the present complaint.

D. Reply filed by the respondent

5. The respondent had contested the complaint on the following grounds:
- i. 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 19.08.2010. 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. 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 complainants cannot claim any relief which is not contemplated under the provisions of the buyer's agreement. The complainants cannot demand any interest or compensation beyond or contrary to the agreed terms and conditions between the parties.

- ii. That the apartment bearing no.PH4-31-0602, admeasuring 1950 sq. ft. approx. of super area, was provisionally allotted to the complainants vide provisional allotment letter dated 02.07.2010. Thereafter, buyer's agreement was executed by the complainants and the respondent on 19.08.2010.
- iii. That at the time of booking the apartment as well as at the time of execution of the buyer's agreement, the complainants were conscious and aware that the building plans were yet to be approved by the competent authority and that construction would only commence after building plans were duly approved. Thus, the complainants were conscious and aware that the time was not of the essence in so far as delivery of possession was concerned. Furthermore, the timelines for delivery of possession were/are contingent upon a number of factors set out under the buyer's

agreement and this fact was duly accepted and acknowledged by the complainants.

- iv. That the complainants had agreed and undertaken to make payment of sale consideration in accordance with the payment plan but failed to do so. Consequently, the respondent was constrained to issue demand notices and reminders for payment to the complainants. Statement of account reflects the payments made by the complainants and the delayed payment interest accrued thereon as on 13.02.2021.
- v. That the respondent completed construction of the apartment/tower and made an application for issuance of the occupation certificate on 26.04.2017. The occupation certificate was issued by the competent authority on 24.12.2019. Thereafter, possession of the apartment has been offered to the complainants vide offer of possession letter dated 27.12.2019. The complainants were called upon to make balance payment as per the statement annexed along with the offer of possession and were also called upon to complete the necessary formalities/documentation so as to enable the respondent to hand over possession of the unit to the complainants.
- vi. That compensation amounting to Rs.9,83,762/- has been credited/ paid to the complainants against the last instalment payable upon notice of possession. However, instead of doing the needful, the complainants have proceeded to file the present false and frivolous complaint. Additionally, the respondent has also credited Rs. 1,48,114/- as benefit under the subvention scheme and Rs.

25,979/- on account of anti-profiting. Without prejudice to the rights of the respondent, delayed interest if any has to be calculated only on the amounts deposited by the allottees/complainants towards the basic principle amount of the unit in question and not on any amount credited by the respondent, or any payment made by the allottees/complainants towards delayed payment charges or any taxes/statutory payments etc.

vii. That in the meanwhile the project was registered under the provisions of the Act vide registration certificate bearing memo no. HRERA-606/2017/1248 dated 03.10.2017. It is pertinent to mention herein that the registration of the project is valid up till 02.10.2022. In other words, 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. However, the respondent has already completed construction of the apartment and offered possession to the complainants on 27.12.2019.

viii. 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 apartment in question is situated, the respondent took the decision to go ahead and construct the second staircase. Thereafter, upon issuance of the occupation certificate, the possession of the apartment has been 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.

- ix. That several allottees, including the complainants have defaulted in timely remittance of payment of installments which was an essential, crucial and an indispensable requirement for conceptualization and development of the project in question. 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 whereas enormous business losses befall upon the respondent. The respondent, despite default of several allottees, has diligently and earnestly pursued the development of the project in question and has constructed the project in question as expeditiously as possible. Therefore, there is no default or lapse on the part of the respondent and there is no equity in favour of the complainants. It is evident from the entire sequence of events, that no illegality can be attributed to the

respondent. The allegations levelled by the complainants are totally baseless. Thus, it is most respectfully submitted that the present complaint deserves to be dismissed at the very threshold.

E. Jurisdiction of the authority

6. 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

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)(l)(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)(l)(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..."

G. Findings of the authority

G.I Delay possession charges

17. **Relief sought by the complainants:** Direct the respondent to 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.

18. 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."

19. 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)

20. 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.

21. **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 22.05.2011 as per statement of account dated 13.02.2021. The period of 33 months expired on 22.02.2014. 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.

22. **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.

23. 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.

24. 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.

25. 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%.

26. **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;"*

27. 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.

28. 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 19.08.2010, 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 22.05.2011. 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 22.02.2014. 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 27.12.2019. 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 19.08.2010 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 19.08.2010 to hand over the possession within the stipulated period.

29. 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 27.12.2019, 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 due date of possession i.e. 22.02.2014 till the expiry of 2 months from the date of offer of possession (27.12.2019) which comes out to be 27.02.2020.
30. Also, the respondent has already offered possession of the subject unit to the complainants on 27.12.2019 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.

31. 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. 22.02.2014 till 27.02.2020 as per provisions of section 18(1) of the Act read with rule 15 of the rules.

32. Also, the amount of Rs. 9,34,718/- + Rs.49,044/- (as per statement of account dated 13.02.2021) so paid by the respondent to the complainants towards compensation for delay in handing over possession shall be adjusted towards the delay possession charges to be paid by the respondent in terms of proviso to section 18(1) of the Act.

H. Directions of the authority

33. 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 due date of possession i.e. 22.02.2014 till 27.02.2020 i.e. expiry of 2 months from the date of offer of possession (27.12.2019). 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. Also, the amount of Rs. 9,34,718/- + Rs.49,044/- so paid by the respondent towards compensation for delay in handing over possession shall be adjusted towards the delay possession charges to be paid by the respondent in terms of proviso to section 18(1) of the Act.
- iii. 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.
- iv. 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.

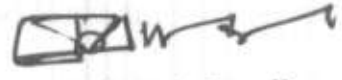
34. Complaint stands disposed of.
35. File be consigned to registry.

V.) - 
(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 21.12.2021

Judgement uploaded on 27.01.2022.


(Dr. K.K. Khandelwal)
Chairman



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