

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

Complaint no. : 2424 of 2021
First date of hearing : 04.08.2021
Date of decision : 13.10.2021

Abhishek Kukreja

Address:- H.No. 656, Sector-31, Gurugram-
122001

Complainant

Versus

Magic Eye Developers Private Limited
Office address:- G.F. - 09, Plaza M - 6,
District Centre, Jasola, New Delhi - 110025

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Samir Kumar
Shri Vijay Kumar Goyal

Chairman
Member
Member

APPEARANCE:

Shri Sukhbir Singh Yadav
Ms. Neelam Gupta

Advocate for the complainant
Advocate for the respondent

ORDER

1. The present complaint dated 28.06.2021 has been filed by the complainant/allottee under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or

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

A. Unit and project related details

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

S.No.	Heads	Information
1.	Project name and location	The Plaza at 106, Sector-106, Gurgaon
2.	Project area	3.725 acres
3.	Nature of the project	Commercial colony
4.	DTCP license no. and validity status	65 of 2012 dated 21.06.2012 valid upto 21.06.2022
5.	Name of licensee	Magic Eye Developers
6.	RERA Registered/ not registered	Registered No. 72 of 2017 dated 21.08.2017 valid upto 31.12.2021
7.	Allotment letter	24.12.2012 (Page 31 of the complaint)
8.	Unit no.	1410, 14th floor, Tower-B2
9.	Unit measuring	700 sq. ft.
10.	Date of execution of buyer's agreement	14.05.2013 (Page 33 of the complaint)
11.	Payment plan	Construction linked payment plan
12.	Total sale consideration	Rs. 46,71,167/- (As per applicant ledger, page 69-72 of the complaint)

13.	Total amount paid by the complainant	Rs. 46,80,102/- (As per applicant ledger, page 69-72 of the complaint)
14.	Due date of delivery of possession (As per clause 9.1 within a period of three years from the date of execution of agreement with two grace periods of six months each)	14.05.2017 (Due date of possession is calculated from the date of execution of agreement dated 14.05.2013) Note:- Grace period allowed
15.	Offer of possession	30.11.2019 (Page 45 of the reply)
16.	Delay in handing over possession till 30.01.2020 i.e. date of offer of possession i.e. (30.11.2019) + 2 months	3 years 6 months 16 days
17.	Occupation Certificate received on	28.11.2019 for block A, B & C

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint:

- i. That, the complainant submitted that believing on representation and assurance of respondent (earlier known as Spire Developers Pvt. Ltd.) the complainant Abhishek Kukreja and co-applicant Mr. Hans Raj Kukreja, booked one unit bearing no. B2 - 1410 on 14th floor, admeasuring 700 sq. ft. and paid Rs. 2,00,000/- as booking amount and signed a pre-printed application form. The unit was purchased under the construction linked plan for a sale consideration of Rs. 43,94,200/-.



- ii. The unit was booked jointly by Mr. Abhishek Kukreja & Mr. Hans Raj Kukreja but later the co-applicant (father of the complainant) i.e. Mr. Hans Raj Kukreja died and the complainant became the sole owner of the unit vide endorsement dated 29.11.2019. That on 24.12.2012, the respondent issued a provisional allotment letter in name of Mr. Hans Raj Kukreja & Mr. Abhishek Kukreja, conforming to the allotment of unit no. B2 - 1410 on the 14th floor for size admeasuring 700 sq. ft. That on 14.05.2013, a pre-printed, unilateral, arbitrary flat buyer agreement/buyer's agreement was executed inter-se the respondent and the complainant & co-applicant Mr. Hans Raj Kukreja. According to clause 9.1 of the buyer agreement, the respondent has to give possession of the said unit within a period of 3 years from the date of execution of this agreement with a grace period of 6 months. Therefore, the due date of possession as Per BBA is 14.05.2016 (the grace period was for applying and obtaining the Occupation Certificate, but the respondent did not apply within the said time limit, therefore the builder is not entitled to the 6 months grace period.
- iii. That thereafter due to the death of the co-applicant i.e. Mr. Hans Raj Kukreja the complainant requested the respondent to delete the name of the co-applicant and endorse all the rights and liabilities in his favour as all the other legal heirs have relinquished and renounced all their claims, rights, interests and title in the aforesaid

booking. That considering the request of the complainant the respondent deleted the name of Mr. Hans Raj Kukreja from its record as co-applicant and endorsed all the rights and liabilities in favour of the complainant. That on 20.12.2019, the respondent sent a letter stating, "demand for dues payable at the stage of offer of possession" and raised a demand of Rs. 3,64,355/- and also raised an unreasonable demand of CAM (common area maintenance) charges i.e. 16,520/- from 01-12-2019 to 31-03-2020. The respondent has demanded GST Rs. 48336/- along with the demand. It is pertinent to mention here that the liability of GST came on the complainant on default of the respondent, therefore the respondent has to bear the cost of GST. It is Germaine that the respondent has acknowledged the delay in the offer of possession and credited Rs. 1,06,784/- delayed possession rebate @ Rs. 5 per sq. ft. for 30 months.

- iv. That on 28.01.2020, under the protest, the complainant paid Rs. 3,64,355/- against the demand raised at the stage of offer of possession & the respondent issued the payment receipt for the same. That on 08.01.2021, the respondent has handed over the possession of the flat to the complainant. It is pertinent to mention here that amenities i.e. club house and swimming pool are not functional and the corridor of the tower is not painted.
- v. That on 08.01.2021, the respondent sent a letter stating, "intimation of revision in stamp duty charges for

registration of conveyance deed" and asked the complainant for execution and registration of conveyance deed. That the respondent kept raising the demand as per the stage of construction and the complainant kept paying the demands. The complainant has paid Rs. 46,80,102/- i.e., more than 100% of the total sale consideration of the unit.

- vi. That the main grievance of the complainant in the present complaint is that despite the complainant paid **more than 100%** of the actual cost of the unit and ready and willing to pay the remaining amount (justified) the respondent party has failed to deliver the possession of unit on promised time and till date, the unit is without amenities. Moreover, it was promised by the respondent party at the time of receiving payment for the unit that the possession of a fully constructed unit and the developed project shall be handed over to the complainant as soon as construction completes i.e. 36 months from the date of booking. That the facts and circumstances as enumerated above would lead to the only conclusion that there is a deficiency of service on the part of the respondent party and as such, he is liable to be punished and compensate the complainant.

C. Relief sought by the complainant:

- 4. The complainant has filed the present complaint for seeking following relief:**

- i. To get the delayed possession interest @ prescribed rate from the due date of possession till the actual date of possession (complete in all respect with all amenities after obtaining the OC).
 - ii. To get an order in his favour by directing the respondent party to provide area calculation (carpet area, loading, and super area).
 - iii. To get an order in his favour by directing the respondent party to refund the GST. (Since the GST liability came on the complainant due to delay by the respondent).
 - iv. To get an order in his favour by directing the respondent party to refrain from charging CAM charges. (Since the unit is yet not ready for possession).
5. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The respondent has contested the complaint on the following grounds.
- i. That instant complaint is neither maintainable in law nor on facts. The instant complaint is without cause of action and has been filed with malafide. Therefore, instant complaint is not maintainable and is liable to be rejected.



- ii. That the respondent has already completed the construction of its commercial project 'Plaza at 106-1' situated at sector-106, Gurugram and has obtained occupation certificate in respect of the same from Director General Town and Country Planning, Chandigarh vide memo bearing no. ZP-833/AD/(RA)/2019/29244 dated 28.11.2019. After obtaining the aforesaid occupation certificate, respondent vide email dated 04.12.2019 has already offered possession of units to its respective allottees including the complainant on 30.11.2019. It is the complainant who has till date failed to take possession of the aforesaid unit and to make the payment of the dues payable at various stages as per the opted payment plan including the dues payable at offer of possession and on the contrary, with the mala fide intentions have filed the instant complaint for delayed possession charges along with interest, and hence, the complaint is liable to be dismissed.
- iii. That the Act does not contemplate execution of any fresh agreement and therefore, buyer's agreement dated 24.05.2013 cannot be affected by the provisions of the Act and has to be implemented in toto and to be read and interpreted "as it is" without any external aid including without aid of subsequent enactment especially the enactment which does not especially require its aid to interpret agreements executed prior to commencement of such enactment. Hence, rights and liabilities of the

parties including the consequence of default/default of any party have to be governed by buyer's agreement dated 24.05.2013 and not by the Act. That when the entitlement to claim possession is as per the declaration given by the promoter for completion of construction u/s 4(2) (1) (c) of the Act, then the necessary corollary to this is that the entitlement for delay possession charges shall also be from the expiry of the date of completion i.e. 31.12.2021 as provided at the time of registration. Hence, otherwise the claim for delay possession charges is pre-mature and is liable to be rejected.

- iv. It is submitted that agreement executed between the parties especially prior to commencement of Act has to be read and interpreted "as it is" without any external aid including without aid of subsequent enactment especially the enactment which do not especially require its aid to interpret agreements executed prior to commencement of such enactment. Hence rights and liabilities of the parties including the consequence of default/default of any party have to be governed by buyer's agreement dated 14.05.2013 and not by the Act. That the instant complaint is further liable to be dismissed as not maintainable in as much as, the alleged delay in possession is not due to any act of omission or commission on part of respondent but is due to the fact that the completion of construction is linked with the timely payment of the instalments by all the allottees including the complainant. That there are many allottees



who have failed to make payments of instalments as per the construction linked payment schedule which has affected the progress of construction. It is submitted that non-payment of the instalments by the allottees has rather acted, as a catalyst in delay in offer of possession at the end of respondent.

- v. That most respectfully submitted that this hon'ble authority does not have judicial or quasi-judicial powers to pass adjudicatory orders in relation to disputes between an allottee and promoter of an ongoing project on the date of commencement of Act especially in circumstances when there is no violation of any declaration given by promoter at the time of getting the ongoing project registered with the authority.
- vi. That without prejudice it is further submitted that the buyer's agreement dated 14.05.2013 executed between the complainant and respondent is 'sacrosanct' and nothing can be added or deleted in the terms agreed thereupon. That compensation or penalty, if any shall be payable to the complainant as per the terms of the agreement dated 14.05.2013. That the adjustment of such penalty/compensation, thereof shall be done only at the time of settling the final accounts for handing over of the unit, as per the provisions of the agreement executed between the parties in order to attain the very objective of the Act, i.e. timely completion of the projects.



7. Copies of all the documents have been filed and placed on record. The authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents.

E. Jurisdiction of the authority

8. 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

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

E.II Subject matter jurisdiction

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 complainant at a later stage.



F. Findings of the authority 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

9. The respondent contended that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the buyer's agreement executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties. The respondent further submitted that the provisions of the Act are not retrospective in nature and the provisions of the Act cannot undo or modify the terms of buyer's agreement duly executed prior to coming into effect of the Act.
10. The authority is of view that the Act nowhere provides, nor can be so constructed that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, the 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, 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 **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 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 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 allottees 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/permission approved by the respective departments/competent authorities and are not in contravention of the Act 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 Real Estate Regulation and Development Act 2016.

13. The council for the respondent has started that the registration of the project is valid till 31.12.2021 and therefore cause of



action, if any, would accrue in favour of the complainants to prefer a complaint if the respondent fails to deliver possession of the unit in question within the aforesaid period. That the entitlement to claim possession or interest would arise once the possession has not been handed over as per declaration given by the promoter under section 4(2)(l)(C). Therefore, next question of determination is whether the respondent is entitled to avail the time given to it by the authority at the time of registration 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)(l)(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)(l)(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 9.1 of the buyer's agreement and the committee of the promoter regarding handing over the possession of the unit is taken accordingly. The new timelines indicated in respect of on-going 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 th buyer's agreement. The new timelines as indicated by the promoter in the declaration under section 4(2)(I)(C) is now the new timelines as indicated by him for the completion of the project. Although, penal proceeding 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 timelines, 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 buyer's agreement and he is liable for the delayed possession charges as provided in proviso to section 18(1) 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 provision 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....."

H. Findings on the relief sought by the complainant

17. Relief sought by the complainant:

- v. To get the delayed possession interest @ prescribed rate from the due date of possession till the actual date of possession (complete in all respect with all amenities after obtaining the OC).
- vi. To get an order in his favour by directing the respondent party to provide area calculation (carpet area, loading, and super area).
- vii. To get an order in his favour by directing the respondent party to refund the GST. (Since the GST liability came on the complainant due to delay by the respondent).
- viii. To get an order in his favour by directing the respondent party to refrain from charging CAM charges. (Since the unit is yet not ready for possession).

18. In the present complaint, the complainant intend to continue with the project and is seeking delay possession charges as



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

"Section 18: - Return of amount and compensation

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 9.1 of the apartment buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below:

"9.1 SCHEDULE FOR POSSESSION OF THE SAID UNIT

The developer based on its present plans and estimates and subject to all just exceptions/force majeure/statutory prohibitions/courts order etc., contemplates to complete the construction of the said building/Said unit within a period of three years from the date of execution of this agreement with two grace periods of six months each, unless there is a delay for reason mentioned in clause 10.1,10.2 and clause 37 or due to failure of allottee(s) to pay in time the price of the said unit along with other charges and dues accordance with the schedule of payments given in Annexure-C or as per the demands raised by the Developer from time to time or any failure on the part of the Allottee(s) to abide by all or any of the terms or conditions of this Agreement.

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. 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 allottees that even a single default by the allottees in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottees is left with no option but to sign on the dotted lines.

- 20. Admissibility of delay possession charges at prescribed rate of interest:** 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.

21. The legislature in its wisdom in the subordinate legislation under the provision of rule 15 of the rules, has determined the prescribed rate of interest. The rate of interest so determined by the legislature, is reasonable and if the said rule is followed to award the interest, it will ensure uniform practice in all the cases.
22. 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., 13.10.2021 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.
23. **Rate of interest equally chargeable to the allottee in case of default in payment:-** 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;"*

24. Therefore, interest on the delay payments from the complainant 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 complainant in case of delayed possession charges.

25. On consideration of the documents available on record and submissions made by both the parties it is the failure of the promoter to fulfil its obligations and responsibilities as per the buyer's agreement dated 14.05.2013 to hand over the possession within the stipulated period. 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. By virtue of clause 9.1 of the buyer's agreement executed between the parties on 14.05.2013, possession of the said unit to be delivered within a period of 3 years from the date of execution of buyer's agreement with two grace periods of six months each. Therefore, the due date of handing over of possession comes out to be 14.05.2017. In the present case, the complainant was offered possession by the respondent on



30.11.2019 after receipt of occupation certificate dated 28.11.2019. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainant as per the terms and conditions of the buyer's agreement dated 14.05.2013 executed between the parties.

26. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 28.11.2019. However, the respondent offered the possession of the unit on 30.11.2019, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, they should be given 2 months' time from the date of offer of possession. This 2 month of reasonable time is being given to the complainant 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.



14.05.2017 till the expiry of 2 months from the date of offer of possession (30.11.2019) which comes out to be 30.01.2020. Furthermore, the complainant is directed to take possession within two months from the date of this order.

27. 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 complainant is entitled to delay possession charges at prescribed rate of the interest @ 9.30% p.a. w.e.f. 14.05.2017 till 30.01.2020 as per provisions of section 18(1) of the Act read with rule 15 of the rules.

G. Directions of the authority

28. 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 interest at the prescribed rate of 9.30% p.a. for every month of delay on the amount paid by the complainant from the due date of possession i.e., 14.05.2017 till 30.01.2020 i.e. expiry of 2 months from the date of offer of possession (30.11.2019).
- ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order as per rule 16(2) of the rules.

- iii. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- iv. The respondent shall not charge anything from the complainant, which is not the part of the agreement, however, holding charges shall not be charged by the promoter at any point of time even after being part of agreement as per law settled by hon'ble Supreme Court in civil appeal no. 3864-3899/2020 decided on 14.12.2020.

29. Complaint stands disposed of.

30. File be consigned to registry.


(Samir Kumar)
Member


Dr. K.K. Khandelwal
(Chairman)


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram
Dated: 13.10.2021