



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

**Complaint no.** : 3764 of 2021  
**First date of hearing** : 03.12.2021  
**Date of decision** : 10.12.2021

Surender Kumar  
R/o: - 1044, Apna Villa Apartment, Sector-10,  
Dwarka, New Delhi

**Complainant**

Versus

1. M/s KNS Infracon Private Limited.  
2. M/s Tashee Land Developers Private Limited  
**Both having Office at:** - 517A, 5<sup>th</sup> Floor, Narain  
Manzil, 23, Barakhamba Road, Connaught Place  
New Delhi- 110001

**Respondents**

**CORAM:**

Shri K. K. Khandelwal  
Shri Vijay Kumar Goyal

**Chairman  
Member**

**APPEARANCE:**

Shri Manish Kadiyan Advocate  
Shri Surender Kumar (Complainant in person)  
Shri Pankaj Chandola Advocate

**Complainant  
Respondents**

**ORDER**

1. The present complaint dated 21.09.2021 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 as provided under the





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

**A. Unit and project related details**

2. The particulars of unit details, 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	"Capital Gateway", Sector- 111, Gurugram.
2.	Project area	10.462 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	34 of 2011 dated 16.04.2011 valid till 15.04.2024
5.	Name of licensee	KNS Infracon Pvt Ltd & 3 others
6.	RERA Registered/ not registered	<b>Registered vide no. 12 of 2018 dated 10.01.2018</b>
7.	RERA registration valid up to	31.12.2020 for phase-I (tower A to G) and 31.12.2021 for phase- II (tower H to J)
8.	Unit no.	0302,3 <sup>rd</sup> floor, tower- F [Page no. 76 of complaint]
9.	Unit measuring	1695 sq. ft. [super area]
10.	Date of execution of flat buyer's agreement	23.04.2016 [page no. 74 of complaint]
11.	Date of allotment letter	16.03.2016 [page no. 110 of the complaint]





12.	Payment plan	Construction linked payment plan [Page no. 109 of complaint]
13.	Total consideration	Rs.68,47,355/- [as mentioned in the flat buyer agreement page no. 78 of complaint]
14.	Total amount paid by the complainant	Rs.52,40,266/- [as alleged by complainant page no. 16 of complaint]
15.	Due date of delivery of possession as per clause 2.1 (a) of the flat buyer's agreement by 48 months from the date of sanction of building plan plus grace period of 180 days for applying and obtaining the occupation certificate in respect of the colony from the concerned authority. [Page 83 of complaint]	07.06.2016 As per information obtained by planning branch building plan approved i.e. 07.06.2012.  [Note: - grace period of 180 days is not allowed]
16.	Delay in handing over possession till the date of order i.e. 10.12.2021	5 years 6 months and 3 days
17.	Date of approval of building plans	07.06.2012
18.	Occupation Certificate	Not obtained
19.	Status of the project	On going

**B. Facts of the complaint**

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





- I. That the respondents/promoters launched a project namely "**Capital Gateway**, Sector-111, Gurugram which was proposed to be developed on a land measuring 10.462 acres situated in revenue estate of Village Chauma, Tehsil & District Gurgaon, Haryana presently part of residential Sector-111 of the Gurgaon Manesar Urban Plan 2021(now situated in Sector-111, Gurugram, Haryana). The respondent no. 1 is a confirming party who is in the absolute possession of the project land and who brought the relevant license, and the respondent no. 2 is constructing the said project who received all the payments from the complainant, Sh. Surender Kumar. The respondents belong to the same group having same registered address and same e-mail IDs.
- II. That during the month of January 2011, the complainant, Sh. Surender Kumar and his friend Sh. Kulwant Kalson were searching for a flat in the same vicinity, where the respondents as promoters was advertising to develop the project as mentioned above. After inquiring from the officials of the respondents/promoters, the complainant believed the assurances of the respondents that the said project shall be completed in a time bound manner with excellent construction and infrastructure. Believing on the assurances of the officials of the respondents the complainant and his friend showed their interest in a three-bedroom flat. The complainant specifically asked from the officials of the respondents/promoters whether they have got all



the sanctions from the concerned government authorities like licence, sanctioned plan, and environmental clearances etc. which are prerequisite for launching a group housing project on which the officials specifically answered in affirmative. Believing the officials, the complainant and his friend at that time jointly booked a 3BHK unit in the said project in the name of the complainant's friend Sh. Kulwant Kalson on 10.01.2011. Payment was made by both, the complainant as well as his friend Sh. Kulwant Kalson jointly against the booking of the said flat measuring 1695 sq. ft. The respondents/promoter after completion of documentary formalities by the complainant and his friend executed a flat buyer agreement in the name of the friend of the complainant Sh. Kulwant Kalson on 16.07.2013 and subsequently allotment letter was issued to Sh. Kulwant Kalson on 10.09.2014. However it was a joint investment of the complainant and his friend who joined this project at the advice and initiation of the complainant because the complainant was well acquainted with this area being a local resident and the payments were made by both of them jointly. It is pertinent to mention here that the complainant, made payment of his share from the bank accounts of his wife, Madhu Rani. It is also pertinent to mention here that the complainant, himself selected/chose the tower & the number of the flat i.e. F-302 in the project.





- III. That as per clause 2.1 of the said agreement, possession of the flat was to be handed over to the allottee/complainant within approximate period of 36 months from the date of sanction of building plans of the said colony. That the respondents got executed the flat buyer's agreement fully loaded with the biased terms and conditions in favour of the respondents, as the respondents had already received a huge amount from the complainant and his friend at the time of execution of the agreement and the complainant and his friend were under pressure/compulsion to sign the flat buyers agreement. It is also pertinent to state that the builder is not entitled to sell flats prior to the sanctioning of the building plan. Hence the time period for the purpose of offer of the possession of the flat should start from the date of the booking of the flat if it is earlier to the date of the sanctioning of building plan. Hence in the present case the time period should start from 10.01.2011 i.e. the date of the booking of the flat as the official of the respondents had assured to possess all the requisite sanctions at the booking of the flat.
- IV. That the joint investment in the above said flat had been made by the complainant and his friend on the advice and suggestion of the complainant as the complainant was local here whereas Sh. Kulwant Kalson was based in Chandigarh. Due to the inordinate delay of the construction/development of the project, Sh. Kulwant Kalson got frustrated and lost his interest in the said project and



the flat in question had to be got transferred in favour of the complainant after completing the documentary formalities and clearing the share of payment of Sh. Kulwant Kalson by the complainant in the year 2016 and an agreement was executed with the complainant on 23.04.2016 at the insistence of the respondents. It is again pertinent to mention here that in the said agreement the time period of 36 months for possession was clandestinely mentioned by the respondents as 48 months with ulterior motive and mala fide intention which amounts to cheating as well as deficiency in services.

- V. That as per the agreement the complainant was allotted flat/residential unit no. F-302 more particularly in tower no. 'F', 3<sup>rd</sup> floor having, super area 1695 sq. ft. at a total basic price of Rs. 3350/- sq. ft. amounting to Rs.56,78,250/- plus other charges as mentioned in flat buyer agreement dated 16.07.2013 and 23.04.2016. The specific clause no. 2.1 of the said agreement provides that possession of said flat shall be offered within maximum 36 months from the date of sanctioning of the building plan.
- VI. Therefore, the possession should have been handed over latest by 10.01.2014, considering the date of booking as date of sanctioning of the building plan which is not only mandatory at the time of launching of the project but also the officials of the respondents claimed to have obtained at the time of booking of the flat on



10.01.2011. Unfortunately, despite payment of more than 90% of basic amount, the project is incomplete and whenever inquired from the officials of the respondents/promoter at the site and at their head office at Barakhamba Road Connaught place, New Delhi, no satisfactory reply was given by the respondents/promoter. That after purchasing of the said flat and since 10.01.2011, the complainants always paid the amount whenever demanded by the respondents. Up till 02.03.2016 the complainant has paid an amount of **Rs. 52,40,266/-** out of basic consideration amount of **Rs. 56,78,250/-**.

VII. That even after the specific terms and conditions settled in the buyer's agreement, the respondents failed to hand over the possession within the stipulated period of three years and since 10.01.2014, the respondents are delaying things on one pretext or the other. The complainant has also visited the office and the construction site of the respondents/promoters, but the project is incomplete and the construction work at the site is almost stopped.

VIII. That complainant on various occasions have visited at respondent's office for delivery of possession and completion of apartment and project, but unfortunately each and every time, the respondents replied with lame excuses and till date, neither the project is complete nor is the construction work going on at the site. The complainant is also apprehending that respondents are



also not having all clearance and permissions from the concerned authorities and rather respondents/promoter have cheated the complainant as well as other buyers of the project.

- IX. That respondents have failed to provide the flats till date in habitable conditions and the respondents enjoyed the huge amount given by the complainant for their personal benefits. The respondents/promoters have dishonestly syphoned above said amount to some other projects rather completing the project in question in a time bound manner and as per the terms and condition in the flat buyer agreement, which requires a criminal investigation and thorough audit of the project.
- X. That complainant has suffered huge pecuniary loss, harassment, mental agony as well as physical pain, difficulties merely owing to the false and inducive promises, representation and deficiency and negligent services on the part of the respondents/promoters.
- XI. That respondents/promoters have collected the consideration amount of the said flat and since then the respondents are using the complainant hard earned money for their personal interest and delayed the construction of the above said project and failed to deliver the timely possession of the above said flat which amounts to deficiency in services on the part of the respondents /promoters.
- XII. That as per clause 1.15 of the buyer's agreement, the respondents are claiming for interest @24% p.a. compounded quarterly on the



delayed payment of installment of consideration amount by the complainant. It is a settled law and principle of natural justice that the builders/respondents are liable to pay equal rate of interest to the allottee on the delayed possession of flat to the allottee on his deposit amount. Hence the respondents are liable to pay interest to the complainant @24% p.a. to be compounded quarterly on his deposit amount.

XIII. That the complainant was glad to receive mails from the officials of the respondents/promoters approximately a year back in which it was informed to the complainant that the respondents /promoters are restarting construction in the above said project with association and involvement of some flat buyers and promised to hand over the flats in phased manner. For that purpose the respondents started raising demands of the balance consideration amount from some of the members of Phase-I. But the construction work is going on with a tortoise pace which may take another decade to complete this project.

XIV. That the complainant having left with no other alternative sent a notice dated 29.05.2017 and called upon the respondents /promoter to complete the project with immediate effect and handover the possession of the flat along with some other reliefs. The complainant issued another letter dated 19.02.2019 to the respondents/promoters seeking the above-mentioned reliefs. It is also pertinent to mention here that the complainant kept on



writing mails and telephonic calls to the respondents/promoters for completing the said project and handing over the possession of his flat.

XV. That having left with no other alternative the complainant through his counsel sent legal notice cum demand notice dated 27.03.2021 by way of E-mail. The complainant called upon the respondents to pay him compensation in the form of interest @18% p.a. on his deposited amount against the delayed possession of his flat till the actual physical possession of a habitable flat along with rent at the rate of Rs 35,000/- per month since 10.01.2014 and general compensation of Rs.10,00,000/- mental torture, harassment and agony along with possession of his flat but the respondents/promoter did not respond to the notice of the complainants.

XVI. That the respondents/promoters have failed to develop the project as promised at the time of initial allotment. The complainant/petitioner has invested his hard-earned earnings in the project based on assurances given by the respondents/promoters, however, he has been harassed and aghast. The respondents/promoters have failed to address the concerns of the petitioner/complainant even after several requests, thus, the petitioner/complainant has lost faith.

**C. Relief sought by the complainant:**



4. The complainant has sought following relief(s):
- (i) Direct the respondents to handover the possession of the unit in question in habitable condition with time bound manner along with delayed interest.
  - (ii) To pay interest for the delay in handing over possession from the due date i.e. 10.01.2014 as per the RERA Act.
  - (iii) To pay Rs.2,00,000/- against litigation cost.
  - (iv) Any other relief which this authority deems fit and proper.
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 respondents**

6. The respondents have contested the complaint on the following grounds. The submissions made therein, in brief are as under: -
- i. That the respondent is a leading and distinguished name in the real estate sector, is developing a residential group housing society by name "Capital Gateway" at sector 111, Gurugram, Haryana. The company KNS Infracon Private Limited is the land-owning company. It is developing the present project in furtherance of the license obtained vide license no. 34 of 2011 and all other requisite permits and approvals from the Directorate of Town and Country Planning Haryana and other



regulatory authorities. The company Tashee Land Developers Private Limited is doing the marketing and sale of the aforesaid project. All the responsibilities relating to sell, issue of demand and collection of the project.

- ii. That the complainant had booked the unit in the said project and made payment towards their said bookings which are duly acknowledged by the complainant vide receipts issued against the said payments. The project was launched by the respondent herein with a bonafide intention to complete the construction within the stipulated time frame and hand over the flats of good quality and facilities as advertised and committed to the respective allottees. It would be relevant to state that the construction at the project site is going on in full swing. The project is 90% complete and is nearing completion and ready for possession. The filing of present complaint at this belated stage for the relief sought is not maintainable and entertainable by this learned Tribunal/Authority and the respondent has already formally applied for the completion certificate and occupancy certificate (OC) with the Director Town and Country Planning (DTCP), Chandigarh, Haryana.
- iii. That the sub-structure (including the excavation, laying of foundation, basement, waterproofing of sub structure) and superstructure of the building (including the stilt, walls on floor, staircases, lift wells and lobbies) has been completed 100% far



back. Further, the lifts have been now installed in all towers of phase 1. Further the mechanical work, electricity including the wiring and plumbing work, internal plastering/painting of walls, external and internal wall tiling has also been finished for more than 90% and is nearing completion. Now, the doors and window panels are being installed and the internal entrance lobby is about to be finished.

- iv. The complainant has made complaint before the authority on allegation of some delay in completion of project. It is submitted that the respondent company was faced with the unprecedented events which lead to the delay in the completion of the construction of this project. The respondent submits that any delays in the execution of works have been largely on account of force majeure/ reasons beyond the respondent's control which could not have been avoided or prevented by exercise of reasonable diligence or despite the adoption of reasonable precautions and/ or alternative measures. In the performance of the terms in the agreement, i.e., the possession of the respective properties, the opposite parties were faced with the below listed unprecedented events which lead to the delay in the completion of the construction of this project.
- v. The company had applied for environment clearance on 20.10.2011 but due to the unfortunate demise of the Chairman of Environmental Impact Assessment Committee in an



unfortunate road accident. The post of chairman of EIA had been vacant for long time owing to which the decision and issuance of certificate to the company remained in abeyance. The company finally got the environment clearance on 17.06.2013. Owing to this, the construction work of the project itself started late.

- vi. That the respondent company had applied for the revised building plan before the appropriate authority. However, for no fault of the respondent, the plans were approved by the department only after a delay of 2 years. Owing to this the construction of project could not be started in a timely manner.
- vii. The Indian real estate sector had already been going through a bad phase. The nation's real estate scenario had been rife with a large number of unsold units as well as unfinished projects. The reason being that unlike the period of 2006-2010, when there was massive investment activity, the phase of 2017-2020 has been sluggish. Due to this ongoing slow-down in the real estate industry, the sale and collection of the project heated very badly. The respondent company had not been able to sell its inventory and the cost of construction has increased many times which make it difficult to construct the project at fast pace.
- viii. There are very frequent and massive changes in the policies of Government like demonetization, etc. which has very much



impacted the pace of Real Estate Development across the country. When on 08.11.2016, the Government of India announced the demonetization of all Rs. 500 and INR 1,000 Bank currencies, the same directly affected the liquidity to pay the construction workers. The unforeseen step adversely hit the productivity and brought the construction work at the site at a complete halt. This disabled the payments to the construction workers and discouraged the availability of materials and machinery for the continuation of the work at the site. When the work started again, there was acute shortage of workforce, which compounded the delay to the present situation.

- ix. The Government has introduced rate of 12% on sale of under construction property, which are very high as compared to approx. 5% during the pre-GST period. This will badly impact the saleability of under construction project as 0% GST is in the Constructed property. So, people have started to prefer ready-to move property.
- x. Each year, in the winter season, the construction work gets marred by the directions of the Government so as to contain pollution in Gurgaon and neighbouring States owing to the alarming and unprecedented rise in the level of air pollution post Diwali. The demobilizing and remobilizing activity leads to a few months delay in the construction work. This disabled the payments to the construction workers and discouraged the



availability of materials and machinery for the continuation of the work at the site. The unforeseen step brings the construction work at the site at a complete halt. When the work started again, there was acute shortage of workforce and many times, due to non-availability of supply of construction water the construction work at site got held up which cause delay in the construction of the project.

- xi. In year 2020, when the project was ready and final touches were given to the apartments and towers, before the offer of possession was to be made, the work was obstructed by Covid-19 pandemic. Not only was the lockdown was put in force by the government, but there has also been a large-scale immigration of labours and workers back to their home states and towns. The supply of raw materials, machinery etc. was completely stopped from the source itself owing to non-plying of trucks and vehicles. This disabled the payments to the construction workers and discouraged the availability of materials and machinery for the continuation of the work at the site. When the work started again, there was acute shortage of workforce, which compounded the delay to the present situation.
- xii. That it is germane to state that there is no deficiency in the services as rendered by the answering company and hence no occasion has occurred deeming the indulgence of this Hon'ble



Tribunal, hence the present complainant is liable to be dismissed.

- xiii. That the completion of the project is going on in full swing and it is nearing completion. Further, even though the delay in the project has been for reasons beyond the control of the developer, it is humbly submitted that whatever damages the petitioner/complainant is entitled to would have to be calculated and paid/ adjusted at the time of offer of possession since the same cannot be determined at any stage prior to that.
- xiv. That the answering opposite party vehemently denies and rebuts the contents of the list of dates as contained in the present complaint under reply, with defenses and submissions as contained herein under.

**E. Jurisdiction of the authority**

7. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

**E.I Territorial jurisdiction**

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



**E.II Subject matter jurisdiction**

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

**Section 11(4)(a)**

*Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

*The provision of delayed possession charges is part of the application form, as per clause 7(b) of the application form dated 04.09.2010. Accordingly, the promoter is responsible for all obligations/responsibilities and functions including payment of assured returns as provided in Builder Buyer's Agreement.*

**Section 34-Functions of the Authority:**

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

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 leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

**F. Findings on the objections raised by the respondents**

**F.I Objection raised by the respondents regarding force majeure condition: -**

10. The obligation to handover possession within a period of Forty-Eight months was not fulfilled. There is delay on the part of the respondents the actual date to handover the possession in the year 2016 and





various reasons given by the respondents are totally null and void as the due date of possession was in the year 2016 and the NGT Order referred by the respondent pertaining to year 2015/2016 therefore the respondent cannot be allowed to take advantage of the delay on his part by claiming the delay in statutory approvals. The following reasons were given by the respondent: -

- Delay in approval by the State Government;
- The slowdown in the real estate industry;
- Increase in cost of construction;
- Change in Government policies;
- Impact of higher rate of GST on sale and collection;
- Stay on the construction work due to the orders of NGT;
- Delay in construction work due to problem of construction water;
- Covid -19.

11. The due date of possession in the present case as per clause 2.1 is 07.06.2016, therefore any situation or circumstances which could have a reason prior to this date due to which the respondents could not carry out the construction activities in the project are allowing to be taken into consideration. While considering whether the said situation or circumstances was in fact beyond the control of the respondents and hence the respondents are entitled to force majeure clause 9, however all the pleas taken by the respondents to plead the force majeure condition happened after 07.06.2016. The respondents





have not given any specific details with regard to delay in payment of installments by many allottees or regarding the dispute with contractor or about the ban on extracting ground water by the High Court in Haryana. Even no date of any such order has been given. Similar is the position with regard to the alleged lack of infrastructure support by the State Government. So far as Covid-19, NGT order and demonetization of Rs. 500/- and Rs. 1000/- currency notes are concerned these events are stated to have taken place in the year 2015 and 2016 i.e., the post due delivery of possession of the apartment to the complainant.

**G. Findings on the relief sought by the complainant**

**G.I. Direct the respondent to handover the possession of the unit in question in habitable condition with time bound manner along with delayed interest.**

12. Considering the above-mentioned facts, the authority calculated due date of possession by virtue of clause 2.1 of the agreement executed between the parties on 23.04.2016, the possession of the subject apartment was to be delivered within 48 months from the date of sanction of building plans i.e. 07.06.2012, Therefore, the due date of handing over possession is 07.06.2016. There is nothing on the record to show that the respondents have applied for occupation certificate or what is the status of the construction of the above-mentioned project. So, in such a situation no direction can be given to the respondents to handover the possession of the subject unit, as the



possession cannot be offered till the occupation certificate for the subject unit has been obtained.

**G.II. Direct the respondents to pay interest for the delay in handing over possession from the due date i.e. 10.01.2014 as per the Act, 2016.**

13. 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. Section 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."*

14. Clause (2.1) of the flat buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below: -

**2. POSSESSION OF UNIT: -**

- 2.1.** *Subject Clause 9 herein or any other circumstances not anticipated and beyond control of the first party/confirming party and any restraints/restrictions from any courts/authorities and subject to the purchaser having complied with all the terms and conditions of this agreement and not being in default under any of the provisions of this agreement including but not limited timely payment of total sale consideration and stamp duty and other charges and having complied with all provisions. Formalities, document., as prescribed by the first party/confirming party, whether under this agreement or otherwise, from time to time, the first party/confirming party proposes to hand over the possession of the flat to the purchaser within approximate period of 48 months from the date of sanction of the building plan of the said colony. The purchaser agrees and understands that the first Party/confirming party shall be entitled to a grace period of 180 (one hundred and eighty) days, after the expiry of 48 months, for applying and obtaining the occupation certificate*



*in respect of the colony from the concerned authority. The first party/confirming party shall give notice of possession, and in the event the purchaser fails to accept and take the possession of the said flat within 30 days of, the purchaser shall be deemed to be custodian of the said flat from the date indicated in the notice of possession and the said flat shall remain at the risk and cost of the purchasers”*

15. 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 application, and the complainant not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoters. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoters and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoters may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the flat buyer agreement by the promoters are just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.





16. **Payment of delay possession charges at 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.*

17. 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.
18. 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., **10.12.2021** is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.
19. 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;"*

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

21. On consideration of the circumstances, the documents, submissions made by the parties and based on the findings of the authority regarding contravention as per provisions of rule 28(2), the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 2.1 (a) of the flat buyer's agreement executed between the parties on 22.04.2016, the possession of the subject apartment was to be delivered within 48 months from the date of approval of building plans i.e. 07.06.2012. As far as grace period is concerned, the same is disallowed for the reasons quoted above. Therefore, the due date of handing over possession is 07.06.2016. The respondents have failed to handover possession of the subject apartment till date of this order. Accordingly, it is the failure of the



respondents/promoters to fulfil their obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority is of the considered view that there is delay on the part of the respondents to offer of possession of the allotted unit to the complainant as per the terms and conditions of the flat buyer's agreement dated 22.04.2016 executed between the parties. Further, no OC/part OC has been granted to the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottee.

22. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainants are entitled to delay possession charges at rate of the prescribed interest @ 9.30% p.a. w.e.f. 07.06.2016 till the handing over of possession as per provisions of section 18(1) of the Act read with rule 15 of the rules.

**G.III To pay Rs.2,00,000/- as litigation cost.**

23. The complainant is claiming compensation in the present relief. The authority is of the view that it is important to understand that the Act has clearly provided interest and compensation as separate entitlement/rights which the allottee can claim. For claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainant 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**

24. 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 respondents are directed to pay interest at the prescribed rate of 9.30% p.a. for every month of delay from the due date of possession i.e. 07.06.2016 till the handing over of possession of the allotted unit after obtaining the occupation certificate from the competent authority.
- ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period;
- iii. The arrears of such interest accrued from 07.06.2016 till the date of order by the authority shall be paid by the promoters to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottee before 10<sup>th</sup> of the subsequent month as per rule 16(2) of the rules;
- iv. The rate of interest chargeable from the allottee by the promoters, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondents/promoters which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.





v. The respondents shall not charge anything from the complainant which is not the part of the flat buyer agreement.

25. Complaint stands disposed of.

26. File be consigned to registry.

*V.1 - [Signature]*  
**(Vijay Kumar Goyal)**  
Member

*[Signature]*  
**(Dr. K.K. Khandelwal)**  
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 10.12.2021

Judgement uploaded on 25.01.2022



**HARERA**  
**GURUGRAM**