

# BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. :	4359 of 2021
Date of filing complaint:	28.10.2021
First date of hearing:	17.11.2021
Date of decision :	28.01.2022

1.	Mr. Sanjay Lakra	Complainants	
2.	Ms. Tejaswani Lakra Both R/o: L-289, Vijay Rattan Vihar, Sector 15, Part 2, Gurugram -122001		
	Versus		
	M/s SS Group Private Limited R/o: 77, SS House, Sector 44, Gurugram- 122003	Respondent	

CORAM:	
Dr. KK Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	<i>y</i>
Sh. Sanjay Dhingra (Advocate)	Complainants
Sh. Rahul Bhardwaj (Advocate)	Respondent



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



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

## A. Unit and project 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 and delay period, if any, have been detailed in the following tabular form:

S.No.	Heads	Information
1.	Project name and location	"The leaf", Sector 84-85, Gurugram
2.	Project area	11.093 acres
3.	Nature of the project	Group Housing complex
4.	DTCP license no. and validity status	81 of 2011 dated 16.09.2011 and valid up to 15.09.2024
5.	Name of licensee	M/s Shiva Profins Pvt. Ltd.
6.	RERA Registered/ not registered	Registered GGM/329/61/2019/23 dated 01.05.2019
	RERA Registration valid up to	31.12.2019
7.	Unit no. GURU	26D, 26 <sup>th</sup> floor, tower 2 [Annexure C3 vide BBA at page 27 of the complaint]
8.	Unit measuring (super area)	1575 sq. ft. [Annexure C2 vide allotment letter at page 17 of the complaint]
9.	Date of allotment letter	10.09.2012 [Annexure C2 at page 17 of the complaint]



10.	Date of execution of	04.10.2013
	builder buyer agreement	[Annexure C3 at page 26 of the complaint]
11.	Possession clause	8.1(a) Possession Subject to terms of this clause and subject to Flat Buyer(s) having complied with all the terms and conditions of this agreement and not being in default under any of the provisions of this agreement and complied with all provisions, formalities, documentation etc., as prescribed by the Developer, the Developer proposes to hand over the possession of the flat within a period of thirty six (36) months from the date of signing of this agreement. The flat Buyer(s) agrees and understands that the Developer shall be entitled to a grace period of 90 days, after the expiry of thirty six (36) months, for applying and obtaining the Occupation Certificate in respect of the Group Housing Complex."(emphasis supplied)
12.	Due date of delivery of possession	04.10.2016 + 6 months of grace period is granted due to Covid 19 situation which has been also decided by DTCP
13.	Total sale consideration	Rs.86,33,700/- [Annexure C5 vide applicant ledger dated 19.10.2021 at page 55 of the complaint]
14.	Total amount paid by the complainants	Rs.73,12,931/- [Annexure C5 vide applicant ledger dated 19.10.2021 at page 55 of the complaint]
15.	Payment plan	Construction linked payment plan [Annexure C2 vide BBA at page 47 of the complaint]
16.	Offer of possession	Not offered



17.	Occupation Certificate	Not obtained
18.	Delay in delivery of possession till the date of decision i.e. 28.01.2022	

### B. Facts of the complaint:

- 3. That on 21.07.2012 complainants were approached by the respondent in relation of booking of flat/Unit bearing No. 26D located on 26<sup>th</sup> floor of Tower/ Building No. T-2 in the project "The Leaf" situated at Sector 84-85, in the revenue state of Badha, Tehsil Manesar, District Gurgaon 122001, Haryana.
- 4. That on 10.09.2012 the letter of provisional allotment of flat/unit bearing No. 26D located on 26<sup>th</sup> Floor of Tower/ Building No. T-2 measuring 1575 sq. ft. (super area) in the project "The Leaf" situated at Sector 84-85, in the revenue state of Badha, Tehsil Manesar, District Gurgaon 122001, Haryana.
- 5. That 04.10.2013 complainant no. 1 namely Sanjay Kumar Lakra and his wife namely Mrs. Sohney Lakra entered into an builder buyer agreement with the respondent and the builder buyer agreement dated 04.10.2013 the total sale consideration price was Rs. 86,33,700/- including PLC and other charges. As per clause 8.1(a) of the said agreement, respondent is liable to handover the possession of the said unit within 36 months from the date of singing of this agreement. The clause 8.1.a of the agreement is reproduce as under:

#### "Time of handing over of possession

(a) Subject to terms of this clause and subject to Flat Buyer(s) having complied with all the terms and conditions of this agreement and not being in default under any of the provisions of this agreement and complied with all provisions, formalities, documentation etc., as prescribed by the Developer, the Developer proposes to hand over



the possession of the flat within a period of thirty six (36) months from the date of signing of this agreement. The flat Buyer(s) agrees and understands that the Developer shall be entitled to a grace period of 90 days, after the expiry of thirty six (36) months, for applying and obtaining the Occupation Certificate in respect of the Group Housing Complex."

- 6. That present complaint before this Hon'ble Authority arises out of the consistent and persistent non-compliance of the respondent herein with regard to the deadlines as prescribed under the flat buyer agreement executed between the parties.
- 7. That in view of the above, it is submitted that according to the said agreement, the complainants ought to have received the physical possession of the flat/unit within 36 months from the date of execution of builder buyer agreement and with an extended period of 90 days subject to applying and obtaining the occupation certificate in respect of the unit and/or the project but the respondent failed to handover of physical possession of the unit/flat as per builder buyer agreement dated 04.10.2013, booked by the complainants in the project of respondent till 02.01.2017, including the 90 days extension period.
- 8. That after the death of Mrs. Sohney Lakra, complainant no. 1 issued the letter dated 16/05/2016 to the respondent for transfer of above said unit in the name of complainant no. 2 and in respect of that name of complainant no. 2 was added by the respondent.
- 9. That till 19.10.2021 the total amount of Rs.73,12,931/- was paid by the complainants to the respondent in view of the installments towards the payment of flat and when the demand letter was raised by the respondent herein.



10. That from the latest picture of the development of the project, it is still under construction and not completed more than 70 %. It seems will be taking more time to reach the completion stage and giving the physical possession

## C. Relief sought by the complainants:

- 11. The complainants have sought following relief(s):
  - Direct the respondent to pay for delay in offer of possession by paying interest as prescribed under Act of 2016 read with rules of 2017 on the entire deposited amount which has been deposited against the property in question.
- D. Reply by respondent
- 12. That the complainants and the original allottee no. 1 had approached the respondent and expressed an interest in booking a unit in the commercial project developed by the respondent along with original allottee no. 1 and the complainants known as "The Leaf" situated in Sector 83, Village Sikhi, Tehsil Manesar & District Gurgaon, Haryana.
- 13. That thereafter the complainants vide an application form applied to the respondent for provisional allotment of a unit in the project. The complainants, in pursuance of the aforesaid application form, was allotted a unit bearing no. 26-D, located on the Tower-2, in the project vide provisional allotment letter dated 10.09.2012. The complainants consciously and willfully opted for a down payment plan for remittance of the sale consideration for the unit in question and further represented to the respondent that he shall remit every installment on time as per the payment schedule.



- 14. That it is pertinent to mention that the allotment letter being the preliminary and the initial draft contained the basic and primary understanding between both the parties, to be followed by the flat buyer's agreement to be executed between the parties. After fulfilling certain documentation and procedures the allotment letter was issued dated 10.09.2012 in favour of the complainants no. 1 allotting retail unit no. '26-D' on 26th floor, admeasuring 1575 sq. ft. Thereafter, immediately on 04.10.2013, the flat buyer agreement was executed between the complainant no. 1, and the respondent which contained the final understandings between the parties stipulating all the rights and obligations.
- 15. That the complainants have no cause of action to file the present complaint as the 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 FBA dated 04.10.2013 of the respondent as well as the complainants. It is further submitted that the complainants are investors and have booked the unit in question to yield gainful returns by selling the same in the open market, however, due to the ongoing slump in the real estate market, the complainants have filed the present purported complaint to wriggle out of the agreement. The complainants do not come under the ambit and scope of the definition an allottee under section 2(d) of the Act, as the complainant is an investor and booked the unit in order to enjoy the good returns from the project.
- 16. It is pertinent to note that the construction of the project was stopped on account of the NGT order prohibiting construction



(structural) activity of any kind in the entire NCR by any person, private or government authority. It is submitted that vide order dated 20.07.2016 NGT placed sudden ban on the entry of diesel trucks more than ten years old and said that no vehicle from outside or within Delhi will be permitted to transport any construction material. Since the construction activity was suddenly stopped, after the lifting of the ban it took some time for mobilization of the work by various agencies employed with the respondent.

17. That the possession of the unit as per clause 8.1 of the flat buyer agreement was to be handed over within 36 months (plus the grace period of 90 days i.e. 3 months) from the date of the execution of the flat buyer agreement and not from the date of terms and conditions as stated by the complainants who are trying to confuse this Hon'ble Authority with his false, frivolous and moonshine contentions. The date of the completion of the project therefore comes out to be 04.01.2017. In addition to this, the date of possession as per the flat buyer's agreement further increased to grace months of 3 months. The date of the completion of the project was further pushed due to the force majure conditions i.e. due to the NGT orders and the lockdown imposed because of the worldwide covid-19 pandemic, by which the construction work all over the NCR region came to halt. That DTCP, Harvana vide its notification no. 27 of 2021 dated 25.06.2021, gave a relaxation of 6 months to all the builders in view of the hurdles faced by them due to covid-19.



18. Further to be noted that the country again faced 2<sup>nd</sup> wave of covid-19 because of which again a partial lockdown was imposed for a period of two (2) months by the state government which again led to the postponement in the completion of the project. In view of all the above submissions, it is pertinent to mention that the respondent is on time to complete the said project and is almost on the verge of completion with fit-outs and the finishing of the project in due. The relevant clause stipulating the date of possession shall be calculated from signing of the FBA is being reproduced herein-below for the reference:

"8.1 Time of handing over the Possession

- (a) Subject to the terms of this clause and subject to the Flat Buyer(s) having complied with all the terms and conditions of this Agreement and not being in default under any of the provisions of this Agreement and complied with provisions, formalities all documentation etc., as prescribed by the Developer, the Developer proposes to hand over the possession of the Flat within a period of thirty six (36) months from the date of signing of this Agreement. The Flat Buyer(s) agrees and understands that the Developer shall be entitled to a grace period of 90 days, after the expiry of thirty six (36) months, for applying and obtaining the Occupation Certificate in respect of the Group Housing Complex..."
- 19. That it was not only on account of following reasons which led to the push in the proposed possession of the project but because of other several factors also as stated below for delay in the project:
  - Time and again various orders passed by the NGT staying the construction.



- b. The sudden surge requirement of labour and then sudden removal has created a vacuum for labour in NCR region. That the projects of not only the respondent but also of all the other developers have been suffering due to such shortage of labour and has resulted in delays in the project's beyond the control of any of the developers.
- c. Moreover, due to active implementation of social schemes like National Rural Employment Guarantee and Jawaharlal Nehru National Urban Renewal Mission, there was also more employment available for labours at their hometown despite the fact that the NCR region was itself facing a huge demand for labour to complete the projects.
- Even today in current scenario where innumerable projects are under construction all the developers in the NCR region are suffering from the after-effects of labour shortage on which the whole construction industry so largely depends and on which the respondent have no control whatsoever.
- e. Shortage of bricks in region has been continuing ever since and the respondent had to wait many months after placing order with concerned manufacturer who in fact also could not deliver on time resulting in a huge delay in project.
- f. In addition, the Government has on 08.11.2016 declared demonetization which severely impacted the operations and project execution on the site as the labourers in absence of having bank accounts were only being paid via cash by the sub-contractors of the company and on the declaration of the demonetization, there was a huge chaos which ensued and



resulted in the labourers not accepting demonetized currency after demonetization.

- g. In July 2017, the Govt. of India further introduced a new regime of taxation under the Goods and Service Tax which further created chaos and confusion owning to lack of clarity in its implementation. Ever since July 2017 since all the materials required for the project of the company were to be taxed under the new regime it was an uphill task of the vendors of building material along with all other necessary materials required for construction of the project wherein the auditors and CA's across the country were advising everyone to wait for clarities to be issued on various unclear subjects of this new regime of taxation which further resulted in delays of procurement of materials required for the completion of the project.
- h. That it is further submitted that there was a delay in the project also on account of violations of the terms of the agreement by several allottees and because of the recession in the market most the allotees have defaulted in making timely payments and this accounted to shortage of money for the project which in turn also delayed the project.
- Then the developers were struck hard by the two consecutive waves of the covid-19, because of which the construction work completely came to halt. Furthermore, there was shortage of labour as well as the capital flow in the market due to the sudden lockdown imposed by the government.
- j. Lately, the work has been severely impacted by the ongoing famers protest in the NCR as the farmers protest has caused



huge blockade on the highway due to which ingress and egress of the commercial vehicles carrying the raw materials has been extremely difficult, thereby bringing the situation not in the control of the developers and thus constitutes a part of the force majeure.

- 20. That the complainants have also misrepresented that no updates regarding the status of the project were provided to him by the respondent. The complainants were constantly provided construction updates by the respondent from time to time and was well aware of the *force majeure* conditions prevailed during the course of time which led in delaying the competition of the said project. It is submitted that several allottees, have defaulted in timely remittance of payment of installments which was an essential, crucial and an indispensable requirement for conceptualisation and development of the project in question. That despite there being a number of defaulters in the project, the respondent itself infused huge amount of funds into the project and is diligently developing the project in question.
- 21. It is further pertinent to mention that the project at present date has been completed almost 90% and therefore, it will be difficult for the respondent to pay any interest on the delayed possession at this stage and the possession would be given to the complainants in next few months. At this point, the project is almost at the edge of completion and any relief cannot be given to the complainants as it will be detrimental to the interest of the respondent as well as all the other investors who have invested in the project.



- 22. It is pertinent to note that the compensation in the form of interest on delayed possession to be paid by the respondent to the complainants at this crucial juncture would bring a bad name to the goodwill of the entire company and will create a bad precedent which would eventually lead to an array of similarly filed frivolous and vexatious complaints asking for a similar relief, leaving the respondent without any funds to carry on the completion of the project and would further go bankrupt. The respondent itself has infused huge sum of funds into the project so that the project could be completed on time. Despite force majeure conditions the respondent has made all the efforts in order to complete the project in time.
- 23. Further, the complainants have also concealed from this Hon'ble Authority that the respondent being a customer centric company has always addressed the concerns of the complainants and had requested the complainants telephonically time and again to visit the office of the respondent to amicably resolve the concerns of the complainants. However, notwithstanding several efforts made by the respondent to attend to the queries of the complainants to their complete satisfaction, the complainants erroneously proceeded to file the present vexatious complaint before this Hon'ble Authority against the respondent.
- 24. That the respondent had from time to time obtained various licenses and approvals and sanctions along with permits. Evidently respondent had to obtain all licenses and permits in time before starting construction. Furthermore, after the introduction of the RERA Authority, Gurgaon the respondent



applied for the approval of the same which was granted and approved after paying the composite fee by the respondent.

- 25. Furthermore, the complainants are attempting to raise issues at a belated stage, attempting to seek modification in the agreement entered into between the parties in order to acquire benefits for which the complainants are not entitled in the least. In addition, the issues raised in the present complaint by the complainants are not only baseless but also demonstrates an attempt to arm twist the answering respondent into succumbing to the pressure so created by the complainants in filing this frivolous complaint before this Hon'ble Authority and seeking the reliefs which the complainants are not entitled to.
- 26. Copies of all the relevant documents have been filed and placed on record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

# E. Jurisdiction of the authority:

27. The plea of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes 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 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;

## 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.

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

## F. Findings on the objections raised by the respondent:

F.I Objection regarding entitlement of DPC on ground of

complainants being investors.



The respondent is contending that the complainants have invested 3. in the unit in question for commercial gains, i.e to earn income by way of rent and/ resale of the property at an appreciated value and to earn premium thereon. Since the investment has been made for commercial purpose therefore the complainants are not consumers but are investors, therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observes that the respondent is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time, preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if it contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the apartment buyer's agreement, it is revealed that the complainants are buyers and paid total price of Rs. 73,12,931/- to the promoter towards purchase of an apartment in the project of the promoter. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

> "2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the



said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

In view of above-mentioned definition of "allottee" as well as all 4. the terms and conditions of the apartment buyer's agreement executed between promoter and complainant, it is crystal clear that the complainant is an allottee(s) as the subject unit was allotted to her by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 000600000010557 titled as M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr. has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottee being an investor is not entitled to protection of this Act also stands rejected.

#### F. II. Objection regarding Timely payments:

The respondent has alleged that the complainants having breached the terms and conditions of the agreement and contract by defaulting in making timely payments. Further the abovementioned contention is supported by the builder buyer agreement executed between both the parties. Clause 3 provides that the buyer shall make all payments in time without any reminders from the developer and further agrees that the payments on due dates as set out in annexure shall be made in time and manner specified.



But The respondent cannot take advantage of this objection of timely payments being himself at wrong firstly by still not obtaining the occupation certificate and offering the possession of the unit despite being delay of 2 years, 7 months, 10 days and the complainants have already paid 85% of the total sale consideration till date. Therefore, the respondent itself failed to complete its contractual and statutory obligations. Moreover, there is no document on file to support the contentions of the respondent regarding delay in timely payments.

## G. Findings regarding relief sought by the complainants:

G.1 Direct the respondent to pay for delay in offer of possession by paying interest as prescribed under Act of 2016 read with rules of 2017 on the entire deposited amount which has been deposited against the property in question.

#### Admissibility of delay possession charges:

28. In the present complaint, the complainants 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

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

29. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been

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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 formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning.

30. The buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builders/promoters and buyers/allottee are protected candidly. The apartment buyer's agreement lays down the terms that govern the sale of different kinds of properties like residentials, commercials etc. between the buyer and builder. It is in the interest of both the parties to have a well-drafted apartment buyer's agreement which would thereby protect the rights of both the builder and buyer in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the apartment, plot or building, as the case may be and the right of the buyer/allottee in case of delay in possession of the unit. In pre-RERA period it was a general practice among the promoters/developers to invariably draft the terms of the apartment buyer's agreement in a manner that benefited only the promoters/developers. It had arbitrary,



unilateral, and unclear clauses that either blatantly favoured the promoters/developers or gave them the benefit of doubt because of the total absence of clarity over the matter.

- 31. The authority has gone through the possession clause of the agreement. At the outset, it is relevant to comment on the pre-set 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 agreements and in 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 date for handing over possession loses its meaning. The incorporation of such clause in the apartment 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 allottee is left with no option but to sign on the dotted lines.
- 32. Admissibility of grace period: The respondent promoter has proposed to handover the possession of the unit within a period of thirty-six (36) months from the date of signing of this agreement.



The grace period of 6 months is granted by the authority due to Covid 19 situation which has been also decided by the DTCP. Therefore, the due date of possession comes out to be 04.04.2017.

33. Admissibility of delay possession charges at prescribed rate of interest: The complainants are seeking delay possession charges however, proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the "interest at the rate prescribed" shall be the State Bank of India highest marginal cost of lending rate +2%.:

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.

- 34. 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.
- 35. 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., 28.01.2022 is @ 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.

36. 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;"

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

37. On consideration of the documents available on record and submissions made by both the parties, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 8.1 of the buyer's agreement

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executed between the parties on 04.10.2013. The developer proposes to hand over the possession of the apartment within a period of thirty-six (36) months from the date of signing of this agreement. The respondent has not been applied for the occupation certificate and same has not been received yet from the competent authority. 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 complainants as per the terms and conditions of the buyer's agreement dated 04.10.2013 executed between the parties. It is the failure on part of the promoter to fulfil its obligations and responsibilities as per the flat buyer's agreement dated 04.10.2013 to hand over the possession within the stipulated period.

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 respondent has not been applied for the occupation certificate and same has not been received yet from the competent authority Therefore, in the interest of natural justice, the complainants should be given 2 months' time from the date of offer of possession. This 2 months' of reasonable time is being given to the complainants keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession(04.10.2016) + 6 months of grace period is granted



due to Covid 19 situation which has been also decided by DTCP i.e. 04.04.2017 till the date of handing over of possession after obtaining occupation certificate.

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 at prescribed rate of interest i.e. 9.30% p.a. w.e.f. due date of possession (04.10.2016) + 6 months of grace period is granted due to Covid 19 situation which has been also decided by DTCP i.e. 04.04.2017 till the date of handing over of possession after obtaining occupation certificate as per provisions of section 18(1) of the Act read with rule 15 of the rules and section 19(10) of the Act of 2016.

## H. Directions of the authority:

- 38. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act of 2016 to ensure compliance of obligation cast upon the promoter as per the function entrusted to the authority under section 34(f) of the Act of 2016:
  - 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 (04.10.2016) + 6 months of grace period is granted due to Covid 19 situation which has been also decided by DTCP i.e. 04.04.2017 till the date of handing over of possession after obtaining occupation certificate. The arrears of interest accrued so far shall be



paid to the complainants within 90 days from the date of this order as per rule 16(2) of the rules.

- ii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iii. The rate of interest chargeable from the complainants/allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delay 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 buyer's agreement.

39. Complaint stands disposed of.

40. File be consigned to registry.

(Vijay Kumar Goyal) (Dr. KK Khandelwal) Member Chairman Haryana Real Estate Regulatory Authority, Gurugram Dated: 28.01.2022