BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. :	**2855 of 2021**
Date of filing complaint:	**26.07.2021**
First date of hearing:	**25.08.2021**
Date of decision :	**09.02.2022**

1.	Sanjay Sohil	**Complainants**
2.	Komal Bedi Sohil Both R/o: 7, Silver Oaks Avenue, DLF Phase 1, Gurugram-122002, Haryana	
	Versus	
1.	M/s Mahindra Homes Private Limited R/o: Mahindra Towers, 5th floor, Road no. 13, Worli, Mumbai, Maharashtra-400018	**Respondents**
2.	Ireo Private Limited R/o: Ireo campus, Sector 59, Behrampur, Gurugram-122101	

CORAM:	
Dr. KK Khandelwal	**Chairman**
Shri Vijay Kumar Goyal	**Member**
APPEARANCE:	
Sh. Ishaan Dang (Advocate)	Complainants
Sh. Sukrit R. Kapoor (Advocate)	Respondents

ORDER

1. 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	Luminare Phase 2, Sector 59, Gurugram
2.	Project area	5.794 acres
3.	Nature of the project	Residential Group Housing Complex
4.	DTCP License	16 of 2008 dated 31.01.2008 and valid up to 30.01.2025
5.	Name of the licensee	Aspirants builders pvt. Ltd. and 2 others
6.	RERA Registered/ not registered	42 of 2017 dated 26.10.2017
	RERA Registration valid up to	**31.03.2021**
7.	Unit no. and unit measuring (super area)	C-1501, 15th floor, tower C admeasuring 3625 sq. ft. [Annexure C4 at page no. 94 of the complaint]
8.	Date of provisional allotment	19.05.2015 [Page 84 of the complaint]

9.	Date of execution of builder buyer agreement	01.09.2015 [Page no. 91 of the complaint]
10.	Start of excavation of building	21.12.2015 [As admitted by the respondent on page 30 of the reply and complainant has annexed a mail from the respondent dated 01.06.2021 where it has mentioned that excavation of the tower C started in Dec 2015]
11.	Change in unit no.	C-3101,31st floor, tower C admeasuring 6085 sq. ft. [Page 151 of the complaint]
12.	Date of provisional allotment	30.06.2017 [Page no. 195 of the reply]
13.	Date of builder buyer agreement	30.06.2017 [Page 148 of the complaint]
14.	Possession clause	4.3 Subject to the terms of this Agreement and occurrence of any Farce Majeure event, the Developer shall endeavour to handover the possession of the Apartment to the Buyer **within a period of four (4) years nine (9) months from the date of start of excavation of the tower / building** in which the Apartment would be located ("Commitment Period"). However, notwithstanding anything mentioned herein, the Developer shall be entitled to a period of 6 (six) months ("Grace Period") as grace / extension period after the expiry of the said Commitment Period. Upon the Apartment being ready for handover the Developer shall issue the Notice of Possession (as mentioned in Article 5. hereinafter) to the Buyer. **(emphasis supplied)**
15.	Due date of possession	21.03.2021

		Calculated from the date of start of excavation Grace period of 6 months is allowed as per Harera notification no. 9/3-2020 HARERA/GGM (Admn) dated 26.05.2020, due to Covid-19 outbreak for projects having its due date of completion on or after 25.03.2020.
16.	Total sale consideration	Rs.5,02,64,685/- for the initial unit [Annexure C3 at page 86 of the complaint] Rs. 7,22,89,800/- for the revised unit [Page 178 of the complaint]
17.	Total amount paid by the complainants	Rs.7,53,19,834/- [As alleged by the complainants at page 42 of the complaint] Rs.6,94,63,856/- [There is no statement of accounts placed on file, but the respondent has admitted in reply at page 21 of the reply]
18.	Payment plan	Time Linked Payment plan [Page 178 of the complaint]
19.	Offer of possession	29.09.2021 [As stated by the counsel for the respondent]
20.	Occupation Certificate	06.09.2021 [As stated by the counsel for the respondent]
21.	Delay in delivery of possession till the offer of possession + 2 months i.e.	8 months, 8 days

B. Facts of the complaint:

3. That the officials of the respondent number 1 had approached the complainants to market the project known as "Luminare" located in Sector 59, Gurugram, Haryana and to convince the

complainants to purchase a residential unit in the said project. The respondent number 1 had extensively advertised about the said project and had marketed the same as a project with exceptional features. It had been represented by officials of respondent number 1 that the said project was being developed by the respondent number 1 in collaboration with the proforma respondent number 2. It had further been represented by officials of respondent number 1 that respondent number 1 alone at all times would be exclusively liable and responsible for the overall development, construction and marketing of the said project.

4. That the officials of the respondent number 1 represented to the complainants that construction of the said project would be completed within a period of four and a half years. The officials of the respondent number 1 further assured the complainants that the residential apartments/penthouses in the said project would be of the highest quality containing world-class facilities and state-of-the-art services.

5. Convinced by the representations and assurances proffered by the officials of the respondent number 1, the complainants booked a residential apartment in the said project. That the complainants no.2 and her son, Mr. Varun Sohal (hereinafter referred to as "initial allottees") had filled the application form dated 01.05.2015 for booking the residential apartment in the said project. At the time of booking, the initial allottees had also made payment of the booking amount of Rs.15,00,000/- to the respondent number 1.

6. The initial allottees vide allotment letter dated 19.05.2015 were allotted a residential apartment bearing no. C-1501 located on the

15th Floor in Tower C (Solaris) having super built up area of 3625 square feet in the said project being developed by the respondent number 1. The said apartment was a 4 BHK (bedroom, hall and kitchen) apartment.

7. That buyer's agreement dated 01.09.2015 prepared by the respondent number 1 had been executed between the initial allottees and the respondent number 1. The total basic sale price of the said apartment had been quantified at Rs.4,39,75,000/-. The aforesaid amount was exclusive of preferential location charges, external development charges, infrastructure development charges, club membership, fire-fighting charges, location development charges, interest bearing maintenance security etc.

8. That it is pertinent to mention that the terms and conditions incorporated in the aforesaid buyer's agreement were/are tilted heavily in favor of the respondent number 1 and completely one-sided and biased. The respondent number 1 was absolutely inflexible and had even refused to consider any change/alteration in the terms and conditions incorporated in the buyer's agreement. Therefore, the initial allottees had no option at the relevant point in time but to execute the aforesaid agreement.

9. That it would not be out of place to mention that as per clause 4.3 of the aforesaid buyer's agreement, possession of the said apartment had to be offered to the initial allottees within a period of 4 years and 9 months from the date of start of excavation of the tower, i.e. by 01.09.2020. It is pertinent to mention that the excavation of the tower in question had commenced in the month of December 2015.

10. That it is submitted that the exact date of commencement of excavation of tower C had not been provided to the complainants by respondent number 1 even after multiple requests had been put forth by the complainants to respondent number 1. The respondent number 1 vide email dated 01.06.2021 addressed to complainant number 2 had merely stated therein that the excavation of Tower C had commenced in the month of December 2015. It is submitted that respondent number 1 was liable to hand over possession of the said apartment to the initial allottees on or before 01.09.2020.

11. That Mr. Varun Sohal vide letter dated 30.06.2017 issued to the respondent number 1 had requested it for deletion of his name as an allottee and to nominate complainant no.2 as the sole allottee. Furthermore, vide another letter dated 30.06.2017 sent by the complainants to the respondent number 1, the complainant no.2 proposed to add the name of complainant no.1 (Mr. Sanjay Sohal) as co-applicant.

12. That, moreover, indemnity cum undertaking dated 10.07.2017 had been executed by complainant no.2 in favour of respondent number 1 with respect to addition of name of complainant no.1 as co-applicant. It had also been stated in the aforesaid indemnity cum undertaking that complainant no. 2 had already made a payment of Rs.1,58,67,951/- to the respondent number 1.

13. That the complainants were in discussion with the respondent number 1 to upgrade their existing 4 BHK apartment to a 5 BHK penthouse along with 4 car parking slots in the same tower. The respondent number 1 had conveyed to the complainants that the

penthouse bearing no. C-3101 admeasuring 6085 square feet located in Tower C was available in case the complainants wanted to upgrade from the said apartment.

14. That the respondent number 1 had further assured the complainants that in case they opted for a "95/5" payment plan where 95% of the total payment had to be paid up-front, in that event the respondent number 1 would offer considerable rebate to the complainants. In fact, the respondent number 1 vide email dated 10.06.2017 had mentioned the total sale consideration in case the complainants opted for a "30/65/5" payment plan as against the 95/5 payment plan. The respondent number 1 had mentioned in the aforesaid email that for a penthouse with standard specifications along with four car parking slots, the sale consideration amount would be Rs.8,54,26,965/-.

15. That furthermore, vide email dated 24.06.2017 the respondent number 1 had duly stated that the sale consideration amount for the penthouse along with four car parking slots in the event of the complainants choosing the 95/5 payment plan would be Rs.7,22,89,800/-. The respondent number 1 had offered a rebate of Rs.2,158.94/- per square feet in case the complainants opted for 95/5 payment plan and made payment of 95% of sale consideration amount along with service tax/GST up-front. The respondent number 1 had represented to the complainants that they would be offered the aforesaid rebate for making payment of almost the entire sale consideration amount in one go at the relevant point in time.

16. That the respondent number 1 had also mentioned in the aforesaid email dated 24.06.2017 that the respondent number 1 had already received Rs.1,50,79,406/- from the complainants towards sale consideration for the said apartment. The above-mentioned amount was exclusive of the applicable service tax. The respondent number 1 had agreed to adjust the already paid consideration towards payment of sale consideration in respect of the said penthouse. It had also been mentioned by the respondent number 1 in the aforesaid email that the complainants had to make payment of an amount of Rs.5,35,95,905/- by 15.07.2017 to complete 95% of the sale consideration component as per the 95/5 payment plan.

17. That the officials of respondent number 1 had conveyed to the complainants that availing of the 95/5 payment plan with substantial upfront payment would be an extremely prudent and judicious decision on the part of the complainants. It had been represented by the complainants to respondent number 1 that availing of the aforesaid payment plan would place the complainants in a much beneficial position vis-a-vis other purchasers of penthouses in the project. It had further been conveyed by officials of respondent number 1 that the aforesaid lucrative offer was only available for a brief period of time and thereafter, respondent number 1 would refrain from making the same available to the complainants/other prospective purchasers of penthouses in the project. It had further been conveyed by officials of respondent number 1 that respondent number 1 was committed to complete the project and to deliver physical

possession of the said penthouse to the complainants within the promised period of time.

18. That relying upon the representations made by officials of respondent number 1, complainants had agreed to avail the aforesaid offer made by respondent number 1 and to thereby get the consequential discount for the said penthouse. Under these circumstances, the complainants had opted for the 95/5 payment plan for purchase of the said penthouse along with four car parking slots. Thereafter, acknowledgment letter dated 10.07.2017 had been issued by the respondent number 1 to the complainants wherein the respondent number 1 had duly acknowledged the receipt of all the documents with respect to deletion of name of Mr. Varun Sohal as allottee, addition of name of complainant no.1 as allottee and shifting of the allotment of the complainants from the said apartment to the said penthouse.

19. That the complainants had made the entire payment in terms of the 95/5 payment plan towards consideration of the said penthouse in a timely manner to the respondent number 1. Moreover, the complainants had also completed all the documentation formalities pertaining to purchase of said penthouse. The complainants had been led to believe by the respondent number 1 that they had been exclusively offered a rebate in the total sale consideration amount pertaining to the said penthouse as the complainants had made timely up-front payment of almost the entire sale consideration amount. The complainants had proceeded to make such substantial payment to

respondent number 1 only on account of the rebate offered to them by the respondent number 1.

20. That it would not be out of place to mention that as per clause 4.3 of the aforesaid buyer's agreement, possession of the said penthouse had to be offered to the complainants within a period of 4 years and 9 months from the date of start of excavation of the tower in which the said penthouse is located. It is pertinent to mention that the date of commencement of excavation of the tower in question was December 2015. The respondent number 1 was liable to hand over possession of the said apartment to the complainants on or before 01.09.2020.

21. That the complainants at the time of discussions pertaining to upgrade to the said penthouse had also specifically stated to the respondent number 1 that as far as the allotment of the car parking slots was concerned, the complainants would prefer the allotment of the four slots on the upper level, all located alongside each other and abutting the access to the lift/elevator. The complainants had also specified the same in email dated 19.06.2017 which had been sent to the respondent number 1. The respondent number 1 vide another email dated 19.06.2017 had acknowledged the request of the complainants.

22. That the complainants at the time of negotiations with the respondent number 1 pertaining to upgrade to the said penthouse had also clearly specified to the respondent number 1 that the complainants would not be opting for a penthouse with a plunge pool. The respondent number 1 had assured the complainants that they would revert to the original design wherein provision of

taps had been provided instead of the plunge pool. In fact, vide email dated 10.06.2017 the respondent number 1 had specifically stated that "We can certainly deliver without plunge pool provision i.e. flat tiled deck across, however there wouldn't be any price benefit attached to same". The complainants, on the basis of assurances proffered by the respondent number 1 had proceeded with the purchase of the said penthouse.

23. That the respondent number 1 had failed to hand over possession of the said penthouse to the complainants within the stipulated time period as per buyer's agreement dated 30.06.2017. Moreover, even in the email dated 10.06.2017 sent by the respondent number 1 to the complainants it had been specifically stated therein by the respondent number 1 that possession of the said penthouse would be handed over to the complainants by September to December, 2019.

24. That complainant no.1 visited the project site in November 2020 to enquire about the status of the construction. At the site office, when complainant no.1 quizzed the officials of the respondent number 1 about the allocation of four car parking slots, he was shocked to find out that he had neither been allotted parking slots next to each other nor were the parking slots closest to the elevator. When the complainant no.1 objected to the same, he was told by officials of the respondent number 1 that the other parking slots had already been allotted to other allottees. The complainant no.1 shared the written exchange between the complainants and the respondent number 1 wherein the respondent number 1 had assured the complainants that they would be allotted the parking

slots in the manner chosen by them. The complainant no.1 further enquired from the officials of the respondent number 1 that how could the parking slots be allocated when possession of the units had not even been handed over to the allottees. However, the officials of the respondent number 1 had no explanation to offer to the queries posed by complainant no.1.

25. That furthermore, during the meeting it was also informed to complainant no.1 that Tower B in the said project would be redesigned to have 5 additional floors on account of amalgamation of additional land for the project and utilization of additional floor space index (FSI). This development was absolutely shocking as the same would invalidate the reason for which the complainants had purchased the said penthouse.

26. That the complainants at the time of purchasing the penthouse had been told that all the towers in the said project were of the same height. However, it was revealed to the complainants at a highly belated stage that Tower B in the said project would be containing five additional floors vis-à-vis the other towers in the said project. The same was also at variance with the building plans shown by the officials of the respondent number 1 to the complainants at the time of booking of penthouse. It would not be out of place to mention that the said penthouse is located in Tower C of the said project.

27. That the entire purpose of purchasing the said penthouse for the privacy it potentially offered was nullified by the fact that the occupants of Tower B could look down upon other apartments in Tower A and Tower C, especially exposing the penthouses located

in both Towers A & C. The complainants would not have purchased the said penthouse had they known that the adjoining tower would be much higher than the tower wherein the said penthouse is located.

28. It would not be out of place to mention that the respondent number 1 vide letter dated 18.03.2021 addressed to the complainants had for the first time disclosed officially to the complainants that the height of Tower B in the said project would be much higher on account of utilization of additional FSI.

29. That in February 2021, it had come to the knowledge of the complainants that the respondent number 1 had started offering a discount of Rs.2,000/- per square feet to the existing customers in the said project. In fact, respondent number 1 had been offering this discount to the allottees who had purchased their units at the same time when the complainants had purchased the said apartment. This is evident from the fact that another allottee, Mr. Devesh Mathur who had also purchased an apartment in Tower C of the said project at the same time as the initial purchase of the complainants had been offered a discount of more than Rs.2,000/- per square feet by the respondent number 1.

30. That it would not be out of place to mention that the aforesaid allottee had purchased apartment bearing no. C-2101 in Tower C of the said project in the year 2015. Moreover, the aforesaid allottee had opted for the 30/70 payment plan. Even though the aforesaid allottee had not opted for the 95/5 payment plan like the complainants, he had been offered a discount which was almost equivalent to the discount offered to the complainants on

account of the 95/5 payment plan. This effectively wiped out/nullified the alleged rebate/financial concession offered to the complainants on account of them choosing the 95/5 payment plan.

31. That is submitted that the very objective of making payment of such a substantial sum of money by the complainants as per the 95/5 payment plan stood frustrated. Moreover, the so-called rebate offered by the respondent number 1 to the complainants has been rendered pointless because of the marked reduction in price per square foot by the respondent number 1 for other allottees of the said project.

32. That it is pertinent to mention that in case the complainants had known from the very inception that the respondent number 1 would make available almost the same alleged rebate/financial concession to other allottees they would have refrained from making upfront payment in respect of said penthouse. The respondent number 1 cannot be permitted to indulge in such illegal/unfair trade practices. Since discount in the manner stated above has been made available as a matter of routine by respondent number 1 to other allottees who did not make the same quantum of upfront payment as had been wrongfully realized from the complainants, the complainants deserve to be compensated to the extent of rebate offered by the respondent number 1 to other allottees including Mr. Devesh Mathur. Thus, applying the aforesaid fair, equitable and just analogy, the complainants deserve to be compensated to the tune of Rs.2,038.94/- per square feet calculated against the super area of

the said penthouse (6,085 square feet) total amounting to Rs. 1,24,06,950/- for the evident loss sustained by them.

33. That it is submitted that the rebate provided to the complainants by the respondent number 1 towards consideration payable in respect of the said penthouse had only been made available as complainants had agreed to make payment in terms of 95/5 payment plan prepared by respondent number 1. It is a matter of record that the complainants ended up making expeditious/prompt upfront payment of almost the entire sale consideration amount. The said rebate had been offered by the respondent number 1 to the complainants for the time value of money (the time value of money is the concept that money one has now is worth more than the identical sum in the future due to its potential earning capacity). However, the complainants had not been offered the rebate which was being offered by the respondent number 1 to the other allottees in the said project despite the fact that the said allottees had purchased their respective units in the said project at the same time when the complainants had purchased the said apartment i.e. in the year 2015.

34. That, furthermore, the respondent number 1 after almost a period of two years conveyed its refusal to provide provision of a tap point on the roof of the said penthouse, thereby compounding the misery of the complainants. The official of the respondent number 1 vide email dated 11.05.2018 had assured the complainants that the respondent number 1 was working towards a possibility of

providing a tap point within the shafts for all the penthouses in the said project.

35. However, vide email dated 26.03.2021 the respondent number 1 downright refused to provide the tap provision as requested for by the complainants almost two years prior to the receipt of the aforesaid email. In fact, the respondent number 1 in the said email for reasons best known to it had gone on to state that the provision of tap in the external balcony was under the scope of the customer. The concerned official of the respondent number 1 had also incorrectly mentioned therein that the same had been communicated earlier to the complainants.

36. That it would not be out of place to mention that the respondent number 1 had sent email dated 03.07.2021 to the complainants wherein it had been stated that alternate parking slots were available and the same could be chosen by the complainants. However, even the alternate parking slots offered by respondent number 1 by way of aforesaid email did not meet the requirements and the criteria as originally conveyed by the complainants to respondent number 1. Even on this front, the respondent number 1 had consistently failed to live up to the promises and assurances proffered by it to the complainants.

37. That the respondent number 1 was liable to handover possession of the said penthouse to the complainants on or before 01.09.2020. However, till date possession of the said penthouse has not been offered to the complainants even after an inordinate delay of over 300 days (more than ten months). The complainants, on their part have duly complied with the terms and conditions

incorporated in the buyer's agreement and have discharged their contractual and financial obligations diligently. As on date, the complainants have made a total payment of Rs.7,53,19,834/- to the respondent number 1.

38. That it would not be out of place to mention that as per clause 4.4 of the buyer's agreement dated 30.06.2017, in case the respondent number 1 fails to offer possession of the said penthouse to the complainants within the stipulated period, in that event it shall be liable to pay to the complainants compensation at the rate of Rs.5/- per square feet per month calculated on super built-up area of the said penthouse for every month of delay and proportionately for the delay for the part of the month until the issuance of letter of offer of possession to the complainants. The aforesaid compensation amount is a pittance as compared to the value of the said penthouse. The said amount was unilaterally and arbitrarily quantified and incorporated by respondent number 1 in the buyer's agreement.

C. Relief sought by the complainants:

39. The complainants have sought following relief(s):

i. Direct the respondent no. 1 to handover possession of the penthouse bearing no. C- 3101 located in Tower C in the project known as "Luminare" located in Sector 59, Gurugram, Haryana to the complainants after obtaining the occupation certificate from the competent authority.

ii. Direct the respondent number 1 to pay interest towards delayed possession charges from the due date of possession, i.e. 01.09.2020 till date.

iii. Direct the respondent number 1 to offer a similar rebate/discount as has been offered by it to other allottees in Tower C of the said project who had purchased their units at the same time when the complainants had purchased the said penthouse/apartment and at the same rate.

iv. Direct the respondent number 1 to allot 4 car parking slots to the complainants as per the preference of the complainants, on the upper level parking area, all located next to each other and abutting the access to the lift/elevator.

v. Direct the respondent number 1 to provide provision of a tap point on the roof of the said penthouse as had been promised by it to the complainants.

vi. That the respondent number 1 be penalized by this Honorable Authority on account of misrepresentation on its part to the complainants with respect to the height of Tower B in the said project which ultimately influenced the complainants to go ahead with the purchase of the said penthouse.

vii. That strictest possible action with kindly be initiated against respondent number 1 and suitable penalty imposed for its deliberate failure to get its registration for the project in question renewed in terms of Real Estate (Regulation and Development Act) 2016.

D. Reply by respondent

40. That the complainants herein, desirous of purchasing a residential unit approached respondent No. 1 and after being fully satisfied with the nature of construction of the project decided to purchase a unit in the said project. Thereafter, complainant no. 2 along with her son submitted an application form dated 01.05.2015 for allotment of apartment No. C-1501 situated on the 15th floor of Tower-C (Solaris) of the project with a super built up area of 3625 sq. ft. for a sale consideration of Rs. 4,76,90,625 /- Acting upon the application for allotment submitted by the complainants, respondent no. 1 issued a provisional letter of allotment dated 19.05.2015 for the apartment No. C-1501 situated at 15th Floor in Tower C in favour of the complainant no. 2 and her Son.

41. That subsequently the complainants and the respondents entered into an apartment buyer agreement on 01.09.2015 in respect of the above said apartment no. C-1501. That as per clause 4.3 of the ABA, respondent no. 1 was required to handover the possession of the 4BHK unit to the complainants within four (4) years and nine (9) months plus a grace period of six (6) months from the start of excavation of the tower in the project. That the start date of excavation of Tower-C (Solaris), tower in which the unit is located, was 21.12.2015 as is confirmed from the Luminare newsletter for the month of January 2016 – wherein photograph dated 28.12.2015 reflects mass excavation of Tower C, the same was issued to all the customers of MHPL vide email communication dated 01.01.2016.

42. It is pertinent to mention herein that at the booking of the said 4BHK unit, the complainants had made a payment of Rs. 15,00,000/- and subsequently till the time of execution of the ABA for the 4BHK unit, the complainants had made payment of Rs. 62,87,711/- towards the part sale consideration of the 4BHK Unit.

43. Subsequently, the complainant no. 1 herein approached the respondent No. 1 for the swap of the then booked unit i.e. a 4 BHK (bedroom, hall and kitchen) unit to a 5 BHK (bedroom, hall and kitchen) unit and thereby shared certain queries with respect to the same. Thereafter, vide email communications dated 10.06.2017, respondent No. 1 reverted to the queries of the complainants and mentioned the payment plans available, as reproduced below:

a) 95/5 Payment Plan

Specifications	No. of parking slots	Sale Consideration* (INR)
Standard	03	72,788,770
Standard	04	73,338,770
Additional Features	03	75,892,120
Additional Features	04	76,442,120
*Service Tax, VAT or GST, IBMS, Electrical Connection Charges, FTTH charges and Registry & Stamp Duty Extra.		
PAYMENT PLAN		
1. 95% of sale consideration (Less INR 2,50,00,000) along with corresponding service tax/GST by 15th July 2017 2. INR 2,50,00,000 along with corresponding service tax/GST by 30th September 2017 i.e. completion of 95% of sale consideration along with corresponding service tax/GST by 30th September 2017 3. 5% of sale consideration along with corresponding service tax/GST along with other possession related charges (as referred above) on offer of possession		

b) 30/65/5 Payment Plan.

- Completion of 30% of sale consideration along with corresponding service tax/GST by 15th July, 2017
- 65% of sale consideration along with corresponding service tax/GST when we apply for Occupation Certificate (OC) post completion of all services (mechanical, electrical & plumbing), flooring & external paint
- 5% of sale consideration along with corresponding service tax/GST along with other possession related charges (as referred below) on offer of possession i.e. upon receipt of OC

Specifications	No. of parking slots	Sale Consideration* (INR)
Standard	03	84,876,965
Standard	04	85,426,965
Additional Features	03	87,980,315
Additional Features	04	88,530,315

44. Pursuant thereto, vide email communication dated 19.06.2017, complainants herein confirmed the respondent No. 1 herein to upgrade/swap the previous booked 4BHK Unit with a 5BHK penthouse in Tower C of the project. It is pertinent to mention herein that the complainants opted for 4 car parking bays and was desirous of allotment of parking to be on the upper level (in case of multiple level car parks), all together and next to the lift access and also confirmed for the payment plan being – 95% of the sale consideration by 30.09.2017 and 5% sale consideration at the time of possession offer.

45. Thereafter the complainants submitted an application form dated 30.06.2017 for allotment of apartment no. C-3101 situated on the 31st floor of the project with a super built up area of 6085 sq. ft. for a sale consideration of Rs. 7,22,89,800/- with exclusive right to

use and occupy designated 4 covered car parking space for 04 cars and other limited common area and facilities in the project. Acting upon the application for allotment submitted by the complainants, respondent no. 1 issued a provisional letter of allotment dated 30.06.2017 for the apartment no. C-3101 at 31st floor in Tower C in favour of the complainants No. 1 and No. 2.

46. That subsequently the complainants and the respondents entered into an apartment buyer agreement on 30.06.2017. That at time of execution of the said ABA II for the said unit, the complainants herein had made a payment for Rs. 6,94,63,856/- towards 95% of the total sale consideration of the said Unit.

47. It is paramount to appreciate herein that although the complainants had booked the said Unit with a 95/5 payment plan, however, in light of the up-gradation/swapping of the said Unit from the previously booked 4BHK Unit, the complainants were never burdened to make an upfront payment of 95% of the total sale consideration for the said unit as the prior payments made against the previously booked 4BHK unit were adjusted against total sale consideration of the said Unit.

48. The complainants in their complaint have alleged that the ABA(s) executed between the complainants and the respondent no.1 are one sided, biased, oppressive and contain terms and conditions which are partial, illegal and tilted in favour of the Respondent No. 1.However, it is pertinent to note that the complainants herein have in the complaint under reply drawn reference to the so-called biasness or one-sidedness of the ABA II only in respect of clause 4.4 of the said ABA II, and accordingly the respondent no. 1

herein is limiting the present submission in regard to the present issue with respect to the said clause 4.4 of the ABA II and reserves its right to make further substantiations, averments and submissions at the appropriate stage of the proceedings in the captioned complaint.

49. That it is pertinent to mention herein that the ABA II for the said unit was executed between the complainants and the respondent no. 1 on 30.06.2017, which is prior to the enforcement of the Haryana Real Estate (Regulatory and Development) Rules 2017 ("HRERA Rules"). That as per clause 4.4 of the said ABA II the delay charges which would be attracted in the event of delay in delivering possession to the complainants, the respondent no. 1 would be obligated to pay an amount of Rs. 5 per sq. ft. for every month of any such delay. However, subsequent to the enforcement of the HRERA Rules, as per the rule 15, the interest payable by the promoter to the allottee in case of delay in delivering possession shall be the State Bank of India highest marginal cost of lending rate plus two percent, which is the same rate that it payable by the allottee to the promoted in case if the allottee is not able to pay the designated amounts to the promoter.

50. Furthermore, reliance shall be placed on the observations made by the Hon'ble Supreme Court of India in the case of *Ireo Grace Realtech Private Limited v. Abhishek Khanna Civil Appeal No. 5785 of 2019* and in the case of *Pioneer Urban Land & Infrastructure Ltd v. Govindan Raghavan* (2019)5SCC725, wherein the Hon'ble Supreme Court while contemplating on the nature and meaning of one-sided clauses in the apartment buyer agreements has held

that incorporation of one-sided and unreasonable clauses in a builder buyers' agreement only constitutes to unfair trade practice under Consumer Protection Act, 1986.

51. At the outset, it is paramount to mention herein that the complainants herein have categorically failed to demonstrate their being prejudiced in any manner or becoming privy to any damages or losses arising out of the so-called and falsely alleged one-sidedness of the ABA II.

52. The complainants in their complaint have alleged that the respondent no.1 has delayed in delivering to the complainants the possession of the said unit being apartment no. C-3101 situated at Tower-C. That the complainants herein have wrongly alleged that the respondents herein have not been able to deliver the possession of the said unit to the complainants herein – which as per the complainants were to be delivered by 01.09.2019. However, it is vehemently denied that respondent no. 1 was contractually committed and obligated to handover the possession of the said Unit to the complainants herein by 01.09.2019. It is pertinent to mention herein that vide email dated 10.06.2017, the respondent No. 1 have specifically mentioned that the projected date of delivery of possession of the said project will be between September 2019 to December 2019.

53. It is pertinent to mention herein that the start date of excavation of Tower-C (Solaris), tower in which the said Unit of the complainants herein is located, was 21.12.2015, and as per above-said clause 4.3 of the ABA II, the said Unit was to be delivered to the complainants by the respondents herein by 20.03.2021 and

the same was subject to the terms of the ABA II and occurrence of any force majeure event.

54. It is paramount to mention herein that as per provisions of RERA a developer cannot handover possession of the property unless a certificate of occupancy has not been issued for such property by the concerned authority certifying that the said property is compliant with the rules and regulations.

55. That it is pertinent to mention herein that on 11.01.2021 the application for issuance of occupation certificate in reference to the project by the concerned land owning company i.e. M/s. Base Exports Pvt. Ltd. was filed with the Director General of Town & Country Planning Department, Haryana, Chandigarh, and the same is pending till date.

56. Furthermore, it is essential to note herein that in order to ensure that home buyers do not suffer due to any delay in completion of housing projects in the wake of COVID-19 pandemic, Ministry of Housing and Urban Affairs vide office memorandum dated 13.05.2020 issued an advisory to all States/UTs and their Real Estate Regulatory Authorities for issue of orders to invoke force majeure clause and extend the completion date '*suo moto*' or revise / extend completion date for all real estate projects registered under RERA for a period of 6 months, where completion date expires on or after 25th March, 2020 and further for a period upto 3 months, if the situation arising out of COVID-19 so demands, the same is reproduced herein below:

> *"In order to safeguard the interest of all stakeholders including home buyers, CAC after detailed deliberations made unanimous*

recommendation to invoke the 'force majeure' clause by Real. Estate Regulatory Authorities to extend the registration of projects registered under RERA. It also recommended to make this simple so that it gets implemented easily.

Regulatory Authorities may issue suitable orders/ directions to extend the registration and completion date or revised completion date or extended completion date automatically by 6 months due to outbreak of COVID-19 (Corona Virus), which is a calamity caused by nature and is adversely affecting regular development of real estate projects by invoking force majeure clause".

57. Subsequently, notification number 9/3-2020 HARERA/GGM 9 (Admn) issued by Haryana Real Estate Regulatory Authority, Gurugram dated 26.05.2020 wherein it was mentioned that all registered projects under jurisdiction of Haryana Real Estate Regulatory Authority' Gurugram for which the completion date or revised completion date or extended completion date as per registration expired on or after 25th March, 2020 were extended for 6 months due to outbreak of Covid-19 pandemic. It is pertinent to mention here that for this extension there was no need for making fresh application. The relevant portion of the said notification is below:

> *"Haryana Real Estate Regulatory Authority, Gurugram hereby issues order/direction to extend the registration and completion date or revised completion date or extended completion date automatically by 6 months, due to outbreak of Covid-19 (corona virus), which is a calamity caused by nature and is adversely affecting regular development of real estate projects by invoking, force majeure' clause. (No need for making fresh application in this regard)*

58. In view of the delays and hardships owing to Covid-19 pandemic, the construction of the said project was also adversely effected, however, the respondent no. 1 in order to timely handover the

possession of the apartments to the allottees, the respondent no.1 had put a lot of efforts to complete the development of the project, and subsequently applied for the occupancy certificate much before the designate time of the delivery of the possession.

59. Moreover, it is essential to note that vide various email communications, the respondent no. 1 herein has time to time updated the complainants herein with respect to the timeline for the completion of the project and handing over the possession of the said unit to the complainants. However, the complainants have neither raised any concern nor any issue with respect to the same.

60. That the respondent no. 1 herein vide email communication dated 24.08.2020, duly informed to the complainant that the work of finishing the development of the Tower C is in progress and the possession for the said Unit is tentatively to be offered in the first quarter of 2021. Furthermore, vide email dated 05.02.2021, the respondent no.1 herein informed the complainants herein that the occupancy certificate for Tower-C has been applied before the concerned Authority, which is tentatively to be received in 3-4 months, and post which the respondent no. 1 shall offer possession.

61. It is pertinent to mention herein that the after the issuance of the above-said circular dated 13.05.2020 by the Ministry of Housing & Urban Affairs, the date of completion of the said project, which was as per the ABA II 20.03.2021, has been extended to 20.09.2021 – thereby specifically implying that the said cause action for the complainants to allege any delay in delivering the

possession of the said unit to the complainants have not even arisen till date.

62. At the very outset, it is submitted that the parking alots already allotted to the complainants herein are as per the requirements made by the complainants herein, although, the respondent no. 1 here was never committed or contractually obligated to fulfill the requirement of the complainants herein with respect to the parking slots. That as per recital H of the ABA agreement the complainants were entitled to occupy and use parking space for 4 cars. However, the agreement nowhere entitled the complainants specific parking slot numbers for the said purpose.

63. That vide email communication dated 19.06.2017, complainants herein confirmed to the respondent No. 1 herein to upgrade/swap the previous booked 4BHK Unit with a 5BHK penthouse in the project. It is pertinent to mention herein that the as per the request of the complainants opted for 4 car parking bays and was desirous of allotment of parking to be on the upper level (in case of multiple level car parks), all together and next to the lift access and also confirmed for the payment plan being – 95% of the sale consideration by 30.09.2017 and 5% sale consideration at the time of possession offer. The contents said email dated 19.06.2017 are reproduced herein for the ready reference of this Hon'ble Authority:

> *"Further to our various conversations, we're happy to me confirm our agreement to upgrade / swap our existing 4BHK booking to the 5BHK penthouse in Tower C (Solaris) of the Luminaire complex in Gurgaon. The exact payment dates options provided by you will be confirmed by end of this month. As discussed, we*

will opt for 4 car parking bays and as discussed we would like the allotment to be on the upper level (in case of multiple level car parks), all together and next to the lift access."

64. That respondent no. 1 vide email dated 20.11.2020 informed the complainants herein that as per the request of the complainants herein, the parking slots allotted to the complainants are situated at the upper basement and were all together, bearing no. UB-236, UB-237, UB-238 and UB-279, which are at a distance of approx. 16 meters from the lift lobby. Furthermore, the respondent no. 1 also informed the complainants that the respondent no. 1 have other slots as well if the complainants want to exchange the abovementioned allotted slots with any other suitable slots.

65. However, the complainants vide email communication dated 21.11.2020 objected the said allotment. Subsequently vide email dated 03.12.2020, the respondent no. 1 herein again mentioned the complainants that if the respondent No. 1 are not satisfied with the above-said allotment for the parking slots, the respondent no. 1 are ready to change the same and shared the parking plan with the complainants herein for choosing the alternative parking slots available and also invited the complainants herein to visit the site for choosing the parking slots.

66. Pursuant to the above, the respondent No. 1 vide email dated 26.03.2021 again addressed the queries raised by the complainants vide email dated 20.03.2021 – specifically the issue raised by the complainants with respect to the parking slots allotted to them, and duly mentioned that the respondent no. 1

will be glad to offer the complainants alternative parking slots available and meeting the requirements of the complainants.

67. Subsequent to the above, respondent No.1 in good faith vide email dated 03.07.2021 presented to the complainants an alternative set of parking slots namely UB-17, UB-18, UB-19 & UB-20 for their consideration as the same are also as per the request of the complainants herein, i.e. (i) situated at the upper basement, (ii) all slots are together/side by side and were close to the lift lobby. Furthermore, upon enquiring about the distance between the lift/elevator, the respondent no. 1 herein vide email dated 05.07.2021 appraised the complainants herein with respect to the distance of the above-mentioned parking slots from the lift, which is approx. 39 meters from the lift lobby and approx. 21 meters from the ramp. That the respondent no.1 herein also shared the parking plan vide the same email communication for the needful of the complainants herein.

68. It is pertinent to mention herein that the respondent no.1 herein vide email dated 05.07.2021 – has specifically mentioned to the complainants herein that the option for opting the above-mentioned alternative parking slots are available till 09.07.2021, post that, the respondent no.1 herein will be releasing them to other allottees. However, till date no response has been received by the respondent no. 1 from the complainants herein.

69. That several communications have taken place between respondent no. 1 and the complainants wherein the respondent has time and again adhered to the requests of the complainants by providing them with alternative options for parking slots.

70. That respondent no.1 also vide email dated 26.03.2021 reiterated the fact that the respondent was never obligated to allot the complainants particular parking slot numbers and the respondent No. 1 much to the satisfaction and as a good will gesture has provided the complainants herein the best parking slots fulfilling all the requests made by the complainants herein and allotted the complainants with the parking space for 4 cars at the upper basement level, closer to elevator and next to each other.

71. It is reiterated herein that the complainants have already been offered an alternative set of parking slots which are also as per the request of the complainants being - parking slots numbers UB-17, UB-18, UB-19 & UB-20 for their consideration, the same can be identified from the layout of the parking plan as annexed herewith. However, even after repeated clarifications, the complainants herein have stuck to the same unwarranted demand with respect to allotment of certain designated parking slots which have already been allotted to some other allottees and therefore the respondent no. 1 is not in position to accede to the demands of the complainant in this regard.

72. The complainants in their complaint have falsely alleged that the respondent no. 1 has given false assurance and representation to the complainants herein with respect to provisioning of a tap point at the roof of the said unit which as per the complainants has not made available, despite the above-said assurance and representation to the complainants herein.

73. The said tap point was neither offered in the allotment letter nor it was offered in the ABA II for the said unit and neither is the same

part of the construction plans. Accordingly, the respondent no. 1 herein is neither obligated nor contractually bound to provide for the said tap point and the same had been duly communicated to the complainants herein after considering their request in this respect.

74. The complainants in their complaint have alleged that the respondent no.1 have given false assurance and representation to the complainants herein with respect to the tap point facility at the roof, as the same are not as per the discussion and the same were only given to influence the decision of the complainants to purchase the said unit.

75. The ABAs dated 01.09.2015 and 30.06.2017 do not adversely affect the rights of complainants in any manner whatsoever. The complainants did not consider the content of the email dated 11.05.2018, on which they have relied to establish provisions of tap in the external balcony was under the scope of customer.

76. It is reiterated that the complainants have himself stated that "the officials of respondent number 1 vide email dated 11th May, 2018 had assured the complainants that the respondent number 1 was working towards a possibility of providing a tap point within the shafts for all the penthouses in the said project". The tap point was not mentioned in either the allotment letter or the buyer's agreement. The complainant's request for the installation of a tap point on the roof was denied in a timely and proper manner because the respondent was not contractually bound to do so. It is important to note that the respondent proceeded in good faith in exploring the possibility of installing a tap point on the roof.

77. It is pertinent to mention herein that the respondent no. 1 vide email 14.05.2018, i.e. on the very next working day, had categorically mentioned to the complainants herein that the respondent no. 1 cannot deviate from the sanctioned plan for the said project as the same have already being submitted before this Authority as per statutory compliances. Furthermore, the complainants have tried to portray that the respondent no. 1 had vide email dated 26.03.2021 refused to provide such a facility, however, the correct factual position is that the respondent no. 1 had reiterated the very clarification already given by them vide email dated 14.05.2018.

78. As clearly demonstrated that the respondent no.1 herein had only assured the complainants of its best efforts towards a possibility of providing a tap point and had not committed or promised that it shall be done. Further, the said addition of the tap point was not restricted to only the complainants herein but also to another allottees and the respondent no. 1 had to follow a scheduled plan for the development of the project.

79. It is submitted that the discount which was offered to few other allottees and not to the complainants herein was in light of the fact that the complainants herein were not entitled to the same. It is further submitted that the complainants and the allottee referred to by the complainants herein for comparing the discount offered to the said allotee namely Mr. Devesh Mathur have purchased units falling in starkly different categories of inventory offered by the respondent no. 1 in the project as the complainants herein have purchased a penthouse unit, whereas, Mr. Devesh Mathur

has purchased a 4BHK Unit. Moreover, it is paramount to mention herein that the respondent no. 1 herein vide email dated 26.03.2021 had categorically clarified to the complainants herein that they have been offered the best possible rate for the said Unit and further also explained the said unit being penthouse will always be at a higher rate than the other unit in the said Project.

80. It must be specified that the complainants in the complaint under reply have not specified the above differentiation in the inventory and rather concealed the aspect that the unit as allotted to Mr. Devesh Mathur in a completely different inventory category from that of the said unit allotted to the complainants; which has been purposefully concealed by the complainants to misguide this Hon'ble Authority. Further, it is not the case of the complainants herein that the respondent no. 1 has charged the complainants more consideration as compared to any other allottee in a similar inventory category as that of the complainants herein.

81. 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:

82. 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 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 regarding relief sought by the complainants:

F.1 Direct the respondent no. 1 to pay interest towards delayed possession charges from the due date of possession, i.e. 01.09.2020 till date.

Admissibility of delay possession charges:

83. In the present complaint, the complainant intends 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*

84. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the complainant 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.

85. 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.

86. 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 complainant 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.

87. **Admissibility of grace period:** The respondent promoter has proposed to handover the possession of the unit within a period of four (4) years nine (9) months from the date of start of excavation The grace period of 6 months is allowed due to covid 19(extension as per Harera notification no. 9/3-2020 HARERA/GGM (Admn) dated 26.05.2020, due to Covid-19 outbreak for projects having its due date of completion on or after 25.03.2020. Therefore, the due date of possession comes out to be 21.03.2021

88. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is 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.*

89. 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.

90. 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., 09.02.2022 is @ 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.

91. 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 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.

92. 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 4.3 of the buyer's agreement executed between the parties on 30.06.2017. The developer proposes to hand over the possession of the apartment within a period of four (4) years nine (9) months from the date of start of excavation. The date of start of excavation of building is 21.12.2015 as admitted by the respondent on page 30 of the reply and complainant has annexed a mail from the respondent dated

01.06.2021 where it has mentioned that excavation of the tower C started in Dec 2015 and six months of grace period is allowed due to covid 19 so the possession of the booked unit was to be delivered on or before 21.03.2021. 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 30.06.2017 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 30.06.2017 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 been applied for the occupation certificate and same has been received from the competent authority on 06.09.2021. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. This 2 months' of reasonable time is being given to the complainant 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 i.e. 21.03.2021 till offer of possession (29.09.2021)

after the receipt of obtaining occupation certificate plus two months i.e. 29.11.2021

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 at prescribed rate of interest i.e. 9.30% p.a. w.e.f. due date of possession i.e. 21.03.2021 till offer of possession (29.09.2021) after the receipt of obtaining occupation certificate plus two months i.e. 29.11.2021 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.

F.2 Direct the respondent no. 1 to hand over possession of penthouse bearing no. C-3101 located in Tower C in the project known as "Luminare" located in Sector 59, Gurugram, Haryana to the complainants after obtaining the occupation certificate from the competent authority.

At the time of arguments, it has been disclosed by the counsel for the respondent that they have obtained the occupation certificate on 06.09.2021 and offered the possession to the complainant on 29.09.2021. The complainant is directed to take the possession of the unit after making the outstanding amount as per BBA

F.3 Direct the respondent no. 1 to offer a similar rebate/discount as has been offered by it to other allottees in Tower C of the said project who had purchased their units at the same time when the complainants had purchased the said penthouse/apartment and at the same rate.

As per BBA and the payment plan agreed between the allottee and the promoter, the applicable rebate shall be allowed to the allottee by the promoter.

Rest of the reliefs mentioned at serial no. 4 to 7 have not been pressed by the complainants nor the details have been provided accordingly these are treated as withdrawn.

G. Directions of the authority:

93. 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 i.e. 21.03.2021 till offer of possession (29.09.2021) after the receipt of obtaining occupation certificate plus two months i.e. 29.11.2021

ii. The arrears of such interest accrued from 21.03.2021 till the date of order by the authority shall be paid by the promoter to the allottees 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 allottees before 10th of the subsequent month as per rule 16(2) of the rules.

iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

iv. The complainants are directed to take the possession of the allotted unit after making payment of outstanding dues.

v. The rate of interest chargeable from the complainant/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 allottee, in case of default i.e., the delay possession charges as per section 2(za) of the Act.

vi. The respondent shall not charge anything from the complainants which is not the part of buyer's agreement.

94. Complaint stands disposed of.

95. File be consigned to registry.

(Vijay Kumar Goyal)
Member

(Dr. KK Khandelwal)
Chairman
Haryana Real Estate Regulatory Authority, Gurugram

Dated: 09.02.2022

HARERA
GURUGRAM