

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

Complaint no. : 264 of 2019
Date of Filing Complaint: 23.01.2019
First date of hearing : 22.10.2019
Date of decision : 13.01.2022

1.Sh. Krishna Kumar
2.Smt. Anita Kumar

Both RR/o:- The Modern Book Depot,
Pan Bazar, Main Road, Guwahati,
Assam-781001

Complainants

Versus

M/s Vatika Limited
Regd. office: Vatika Triangle, 4th Floor,
Sushant Lok, Phase-I, MG Road,
Gurugram-122009

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Ms. Sushila Ram
Shri Venket Rao

Advocate for the complainants
Advocate for the respondent

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. Project and unit related details

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

S. No.	Heads	Information
1.	Name and location of the project	Signature Villa (formerly known as "Bellevue Residences") at Vatika India Next", Sector 82, 82A, 83, 84 and 85, Gurugram
2.	Nature of the project	Residential township
3.	RERA registered/ not registered	Not registered
4.	Date of execution of buyer's agreement	12.03.2011 (page 16 of complaint)
5.	Unit no.	Villa-29/240/Simplex admeasuring 240 sq. yds. (page 19 of complaint)
6.	Total consideration	Rs. 1,24,72,217/- as per SOA dated 04.2.2019 (page 167 of complaint)
7.	Total amount paid by the complainants	Rs. 72,82,024/- as per SOA dated 04.2.2019 (page 167 of complaint)
8.	New unit via addendum	1/240/Simplex/St. 82D1-6 (page 96 of complaint)
9.	New Area	1965 sq.ft. as per letter of intimation of possession (annexure 7, page 105 of complaint)

10.	Due date of delivery of possession (as per clause 11.1 of the agreement: 3 years from the date of execution of agreement)	12.03.2014 (annexure 1, page 58)
11.	Intimation of possession	02.03.2017 (annexure 7, page 105 of complaint)
12.	Notice for termination	04.07.2017 (annexure 7, page 157 of complainant)
13.	Occupation certificate	19.11.2018 (annexure R3, page 44 of reply)

B. Facts of the complaint

- The complainants approached the respondent in the year 2009 based on an advertisement in the press for the township that was to be built by it called "Vatika India Next". They contacted the respondent and saw the prospectus and after discussing the price, they finally decided to book a villa in the respondent's residential projects in Gurgaon called "Bellevue Residencies" in "Vatika India Next", Gurgaon, Haryana. At that time, the respondent's sales office made representations regarding the prospective villas and gave warranties regarding the quality, workmanship, superiority of the construction and assured them that it would be a good investment and that the final product would be even better than what was advertised in the prospectus. Believing in the aforesaid representations they booked a villa.
- The complainants have submitted that they applied to the respondent vide application dated 27.11.2009, thereby agreeing to the terms and conditions as set out in the application for the allotment of unit. The said application is not available with them and they seek the same from respondent.

5. The complainant and the respondent entered into a BBA dated 12.03.2011. The agreement was for booking a Simplex villa at "Bellevue Residencies" under the name of the complainants namely, Mrs. Anita Kumar and Mr. Krishan Kumar. The said villa admeasured 1527 sq.ft. and was to be built on a separate plot of 240 sq. yds. and had the number bearing unit no. 29/240/Simplex/BR, which subsequently by an addendum dated 14.05.2012 was known as "Signature 2 villa". It was agreed that the respondent would sell, and the complainants would buy a villa having built-up area of approximately 1527 sq.ft. which was to be constructed on no. 29/240/Simplex/BR admeasuring approximately 240 sq.yds. in accordance with the terms and conditions set out in the agreement, mutually agreed to between the parties.
6. The total price of said villa and the plot was fixed at Rs.79,64,920/-. It was agreed at the onset that this was the full and final price for the Signature 2 Villa. The payment plan was a construction linked payment plan and where the complainants were required to make payments as per milestones achieved by the respondent. At the time of booking, they were paid an amount of Rs. 5,00,000/- to the respondent vide cheque no. 674736 dated 17-11-2009.
7. At the juncture, it would be relevant to point that the said builder buyer agreement was one sided and favored the builder completely. Such an agreement which is completely one sided and where the purchaser does not have any option but to sign on the dotted lines will not be deemed to be final and binding, if it can be shown that the purchaser had no option but to sign on the dotted

- line. In the present case, the respondent had a better bargaining position and as such the complainants were compelled to sign the agreement, which was one sided and primarily, gave the respondent an advantage over the complainants in all types of situations including default by the respondent.
8. The complainants made the payment as per the payment plan and continued to pay till they had completed the final payment as per the builder buyer agreement which was Rs. 72,38,011/-. The last payment was made on 20.02.2017. They had fulfilled their part of the bargain and made the payments but the respondent had failed in its obligations and did not deliver the villa within three years of the signing of the builder buyer agreement dated 12.03.2011, i.e. on or before 12.03.2014. Furthermore, the respondent forcibly charged Rs.8,40,000 lakhs as PLC for the villa which was not part of the builder buyer agreement dated 12.03.2011.
 9. It is an admitted fact that the respondent had inordinately delayed the project and they completed the project. In March 2017, thereby delaying the project by three years. As time was the essence of the contract, the respondent was bound to complete the project within the scheduled date of completion which was in March 2014. The respondent has therefore, breached its contractual obligations and the complainants are well within their right to demand damages for the delay or in the alternative refund of the amount paid by them with penal interest.
 10. On 14.05.2012, the complainants signed an addendum to the Signature 2 Villa (formerly which was known as Bellevue

Residences) builder buyer agreement. They were reallocated a new Signature 2 Villa (new villa) no. 1/240/Simplex/ST82D1-6 admeasuring about 1527 sq. ft. built area and they were informed that they have no right, title, interest in the old villa no. 29/240/Simplex/BR.

11. It would be pertinent to add here that the respondent builder at its whim changed the nomenclature and location of the project on 14-05-2012 i.e. after more than 2 years after seeking booking advance from the complainants. Instead of offering a discount on the original price, the respondent started charging additional interest. This was unfair as the advance had already been paid 2 years ago and the respondent had used the complainants' funds for 2 years during this period. Furthermore, the respondent charged a sum of Rs. 8,40,000 lakhs as PLC which was not a part of the original builder buyer agreement dated 12-03-2011.
12. In November 2014, the complainant no. 2 had visited the Vatika office demanding to see the villa and its progress and was not shown any courtesy or allowed to visit the project site and they sent another email on 03-01-2015, requesting their relationship manager to help them resolve the issue of interest charged unfairly, despite their having made timely payments. He further asked them to reconcile their interest and organize a site visit. On 10-03-2016, he sent another letter to the respondent stating that they had completed the full payment. Despite which till date and after several reminders, they were not sent pictures of their completed villa. They also objected to the adding of interest as they had made

regular payments as per the milestones achieved. They also stated that they could not calculate the tax deducted at source (TDS) as interest had been charged on the principal making it impossible to calculate TDS. Most importantly they objected to the manner in which the respondent's employees had ill-treated them and failed to give them services.

13. As usual the respondent's team did not bother to reply, nor did they make any effort to assuage the fears and apprehensions that the senior citizen couple had regarding the project. The aforesaid acts and omissions of sheer negligence, ill-treatment, and deficiency in services caused grave mental harassment to the complainants and they are entitled under the law for compensation for the mental harassment meted out to them.
14. That on 19.04.2016 the complainants again paid a sum of Rs 5,66,150.74/- to the respondent. On 08-02-2017, they again sent a letter to the respondent asking the latter about the TDS and PLC charges. They made requests to waive the interest charges and to issue a fresh statement so that they can deposit the TDS charges.
15. On 02-03-2017, the respondent sent a letter informing the complainants about the handing over of the project. They further asked them to remit Rs. 63,63,280/- towards the final payments due for unit no. HSG- 008/Plot No. 1/ST. 82D1 6/240/Simplex/82D1/Vatika India Next in Signature 2 Villa. The due date for the additional sum was 30-03-2017. There is no explanation or clarity as to how this figure was arrived at.

16. Upon receiving the said letter, the complainants immediately called up the respondent's office and objected to the extra amount that was demanded. They further asked the respondent to revise the payment. Additionally, on 20-03-2017, they objected to the responded to this illegal demand by letter dated 20-03-2017 and sought proof by way of photographs regarding the completion of the project. They also categorically stated that the construction had far exceeded the allotted time and there was a delay of 6 years for which they were entitled to seek damages. Lastly, they also demanded waiver of interest levied unlawfully by the Respondent.
17. The respondent sent an email dated 05-04-2017 to the complainants informing that once they will receive the total principle amount due in full, the interest will be waived off completely. Thus acting upon the assurance that the interest charged unfairly and illegally would be waived off if the last instalment was paid, promptly paid the same and completed the payment as per the builder buyer agreement. The respondent was and is now barred by estoppel from demanding any interest from the complainants on any count as they themselves had given the assurance of a complete Interest waiver.
18. Despite the aforesaid email dated 05-04-2017, the respondent once again made a demand for Rs. 63,19,267/- by letter dated 11-04-2017 along with an account statement demanding the payment of an additional sum of Rs. 63,19,267/-. The respondent asked the complainants to make the payment through cheque/draft within 15 days from the date of issue of the letter along with indemnity

- cum undertaking. Even, this Letter was silent on how they had arrived at the additional sum of Rs. 63,19,267/-.
19. On receiving this statement, the complainants immediately objected and sent an email dated 24-04-2017 to the respondent. Strangely, the statement also mentioned heads of payment that were not itemised and hence it was unclear as to why certain amounts were being charged from the complainants. The aforesaid trail of correspondence and emails clearly establish complete confusion in the office of the respondent. It further shows complete disregard for the complainants who were their buyers. All in all, it was clear the respondent was unprofessional, unethical and clearly did not want to rectify the situation and provide services as per the law. The email dated 24-04-2017 shows the agony of the complainants and the total apathy of the respondent.
20. The respondent raised another invoice dated 12.05.2017 demanding STP charges of Rs 13,658/-, which is unexplainable and unjustified demand. Despite all the aforesaid chain of events, the respondent on 04.07.2017, sent a notice of termination for unit no. HSG 008/plot no. 1/ST. 82D1-6/240/Simplex/82D1/Vatika India Next in Signature 2 Villa to the complainants. The respondent referred to letters dated 02-03-2017 and 11-04-2017 and asked the complainants to make the payment of outstanding balance of Rs. 63,32,925.72. The complainants once again called up the respondent's office objecting to the illegal demand. They wanted to know how the interest was charged when they had made timely payments as per the construction linked plan and milestones

achieved. They immediately called upon the respondent to withdraw this notice and give them the correct statement and hand over the completed Signature 2 Villa. As usual the respondent's employees did not bother to respond nor rectify the situation. The complainants are both senior citizens who have their fair share of medical problems such as diabetes, hypertension and cardiac problems. The acts and omissions of the respondent's employees only heightened their anxiety and pushed them to further medical deterioration in health. Needless to say, no corrective measures were taken, nor the complainants were given the possession of the said villa.

21. It would be relevant to add here that the complainant no. 2 along with his son visited the Vatika office, Gurgaon on 12-07 2017 and requested to meet the CMD and the MD of the Vatika group in order to get clarity on when the villa would be available. The complainant no. 2 was allowed to meet the CMD and MD after a great deal of requesting and persuasion. He was however not allowed to take his son for the meeting. The complainant no. 2 was of the opinion that speaking to the people at the top level would help him to resolve the issue quickly and amicably. To his utmost shock the complainant no. 2 was humiliated by the MD and was forced to leave his office without any positive outcome. In fact, he was told to do whatever he wanted, and the Vatika management was not bothered about the outcome. The respondent is liable for the grave mental agony and humiliation that was caused by the MD of the company to the complainant no. 2.

22. Left with no option, the complainants filed a complaint before this hon'ble authority under section 14, 18 and 19 of the Act 2016. In August/September 2018. The complainants in their complaint stated how the respondent had acted in an unfair, arbitrary, and fraudulent manner, thereby cheating the complainants of their hard-earned money. They further sought delivery of the villa at the cost they had been promised.
23. Despite the pendency of matter before this hon'ble authority, on 22-11-2019, the respondent once again sent a notice of termination for unit no. HSG- 008/Plot No. 1/ST. 82D1 6/240/Simplex/82D1/Vatika India Next in Signature 2 Villa to the complainants. They now demanded a balance of sum of Rs. 90,93,478/- and how this figure has been arrived at, is a mystery.
24. Surprisingly, they again issued another notice of termination 04-12-2019 for unit no. HSG- 008/Plot No. 1/ST. 82D1 6/240/Simplex/82D1/Vatika India Next in Signature 2 Villa to the complainants. Interestingly this time, the respondent made a demand from them for payment of outstanding balance of Rs. 52,10,090/-. They further informed that if the payment is not made within 7 days from the letter, the builder-buyer agreement shall be deemed to have been cancelled/terminated. Upon cancellation, the "earnest money", "Interest on the delayed payments, service tax, brokerage, if any, paid and other non-refundable amounts shall be forfeited." It would be relevant to add here that between the two letters, they slashed the demand by nearly Rs. 40 lakhs. This clearly shows that the demand was arbitrary, illegal, and fraudulent. The

complainants state that the demand made in the above notice dated 04-12-2019 is also not payable by them.

25. The complainants in response to the two letters dated 22-11 2019 and 04-12-2019 sent a letter dated 18-12-2019 stating that the respondent has increased the BSP to Rs. 1.15 crores. They alleged that it is illegal since the project was a construction linked project for a total sale consideration of (BSP+PLC) of Rs. 78,92,920/-. The complainants further stated that they have already made a payment of Rs. 72 Lakhs.

C. Relief Sought by the Complainant

- i. Direct the respondent to hand over the completed Signature 2 Villa as per the specifications and construction quality mentioned in the builder buyer agreement dated 12.03.2011.
- ii. Direct the respondent to pay interest @18%p.a. from the date of delay till the date of filing of this complainant, which is calculated at Rs. 62,67,062/-

D. Reply by the respondent.

- i. That the complaint is an abuse of the process of this hon'ble authority and is not maintainable. The complainants have not approached this hon'ble authority with clean hands and are trying to suppress material facts relevant to the matter. They are making false, misleading, frivolous, baseless, unsubstantiated allegations against the respondent with a malicious intent and sole purpose of extracting unlawful gains from the respondent. It is submitted that the complaint is devoid of merits and be dismissed with costs.

- ii. It is submitted that the complainants made several visit to the office of the respondent to know about the whereabouts of the project titled as "Vatika India Next-Signature 2 Villa" located at Sector 82, 82A, 83, 84 & 85, Gurgaon, Haryana. The complainants enquired about the veracity of the subject project of respondent and after being satisfied agreed to invest in the said project. Therefore, the complainants came forward with this complaint alleging frivolous allegations to extract speculative gain. That the complainants booked a unit bearing no. 29/240/Simplex/BR admeasuring area 240 sq. yds. (1527 sq. ft.) which were constructed on separate plots compendiously called "Signature 2 Villa" by paying the requisite booking amount in the aforesaid project.
- iii. It is submitted that the respondent has made several follow ups with the complainants in order to get the agreement executed, but the complainants always showed the lackadaisical attitude which caused a delay in executing the agreement. Therefore, the respondent executed the builder buyer with the complainants on 12.03.2011, after care perusal of all terms and conditions. Hence, it was clearly stated under clause 1.3 of the BBA that the built-up area of the unit is tentative and is subject to change till the construction of the said unit and the development of the said township is completed.
- iv. That it is pertinent to note that the complainants being the defaulter in terms of payment and have repetitively failed to adhere the schedule of payments which violated the terms and

conditions of BBA. That it is submitted that clause 9 of the BBA clearly stipulates the obligations of complainants to make timely payments despite demand been raised or not by the respondent company and the complainants failed to make timely payments on repetitive occasions and due to which the respondent company was entitled to accrue interest over the complainants. Hence, they have violated various terms and conditions of the BBA as well as provisions of section 19(6) and 19(7) of the Act, 2016. It is further submitted that the repetitive default in making the payments within agreed time period which was also a major reason for hampering the scheduled development of the aforesaid project.

- v. On 14.05.2012, the addendum to the agreement dated 12.03.2011 was executed in between the complainants and respondent company, wherein they were completely satisfied in regard to the changes of the allotment of alternate unit bearing no. 1/240/Simplex/ST-82 DI-6 having area 1527 sq. ft. which is tentative as agreed under clause 1.3 of BBA. Therefore, the addendum was signed by the complainants voluntarily, upon free will and consent and therefore, the complainants waived off the right to charge any right, title, interest in regard to the previous allotted unit. Whereas, it has expressly stated in the addendum that all the terms and conditions (except the change of unit) would be remain same and binding upon the parties as on Agreement dated 12.03.2011.

- vi. The respondent was forced to face various unforeseen circumstances which were beyond the control of respondent. It is pertinent to note that the complainants were very well aware of the unforeseen circumstances faced by respondent which caused the inordinate delay in completing the development of the aforesaid project with agreed time period. As per clause 12.1 of the BBA clearly states about the extension of time-limits for completion of the aforesaid project if any unforeseen circumstances faced by the respondent-builder while carrying out the development of the aforesaid project.
- vii. In the agreement, the company had inter alia represented that the performance by the company of its obligations under the agreement was contingent upon approval of the unit plans of the said complex by the Director Town & Country Planning, Haryana, Chandigarh, and any subsequent amendments/ modifications in the unit plans as may be made from time to time by the company & approved by the Director Town & Country Planning, Haryana Chandigarh from time to time. Subsequent to the booking and the signing of the agreement, the company was facing umpteen roadblocks in construction and development works in projects in its licensed lands comprised of the township owing to the initiation of the GAIL pipeline corridor which passes through the licensed land and due to that the respondent lost huge parcel of land and resultantly, the development was hampered. The concomitant cascading effects at such a colossal change necessitated realignment of the entire layout of the various

projects, including plotted group housing commercial institutional in the entire township. This was further compounded with the non-removal or shifting of the defunct high-tension lines passing through the licensed land of respondent which further caused the delay in development in many sectors, and which also contributed to the inevitable changes in the layout plans. Unfortunately, owing to significant subsequent events and due to a host of extraneous reasons beyond the control of the company. It was able to execute and carry out all the necessary work for the completion of the said project. These subsequent developments have repeatedly marred and adversely impacted the progress of the company's projects.

- viii. The complainants neither adhered to the last demand raised by the respondent company till date and nor took over the possession of the re-allotted unit. That it is pertinent to note that on 04.07.2017, the respondent has issued a notice for termination letter for not complying with the last demand raised by respondent vide SOA dated 20.04.2017. Thus, the respondent again issued the termination notice dated 04.12.2019 for not complying with the last demand. Therefore, the complainants not even paid any heed to comply with the last demand i.e., Rs. 52,10,090.67, raised by respondent and which further added accrued interest thereon as per BBA till the date of final realisation of payments.

- ix. It is important to note that the respondent being in a position of developer did not made any false promise or fake assurances to the complainants. Therefore, the complainants raised false allegations against the Respondent with the intention and in order to cause financial loss to it by persuading the hon'ble authority through producing bare bald submissions. It is submitted that the complainants were well aware of every status of the aforesaid project and the re-allotment was also done on their express consent and the increase in built-up area was also previously agreed upon by the complainants vide clause 1.3 of the BBA, despite which the complainants seeking false contentions in this present complaint which are nothing but to harass respondent company.
- x. The complainants are relying upon various emails without producing a certificate under Section 65-B and therefore, such emails are not admissible before the hon'ble authority. The email records can be admissible as corners of the project, forceful unauthorised occupation of certain parcels by some farmers coupled with other regular obstructions and impediments beyond the control of the company have resulted in the company being unable to deliver.
- xi. The respondent company faced many hurdles while carrying out the development of the aforesaid project. It is pertinent to note that the respondent has completed the construction of the development of the re-allotted unit in the first quarter of 2017 and thereby provided the intimation of possession to the

complainants on 02.03.2017. It is submitted that the built-up area of the re-allotted unit got increased from 1965 sq. ft. to 1527 sq. ft. as agreed under clause 1.3 of the BBA which has been mentioned above and not being reiterated here for the sake of brevity. Hence, there has been an increase in the total built up area along with the total sale consideration of the re-allotted unit. Thus, the respondent has raised the final demand in regard to due amount left unpaid by the complainant. Therefore, vide letter dated 02.03.2017, the respondent company raised the demand of Rs. 63,63,280/-, which got adjusted later on as Rs. 52,10,090/-, vide letter and statement of account dated 04.12.2019.

- xii. It is pertinent to note that the respondent company has received the occupation certificate on 19.11.2018 for the unit in question somewhere in February 2018. Therefore, it is submitted that the respondent company has already handed over the possession of the units of the aforesaid project to many of the homebuyers till date. It is evident that the entire case of the complainants is nothing but an afterthought and a concocted story against the respondent. That the various contentions and claims as raised by the complainants are fictitious, baseless, vague, and wrong and created to misrepresent and mislead this hon'ble authority, for the reasons stated above. It is further submitted that none of the reliefs as prayed for by the complainants are sustainable before this hon'ble authority and in the eyes of law. Hence, the complaint is liable to be dismissed with imposition of exemplary

cost for wasting the precious time and resources of the hon'ble authority. That the present complaint is an utter abuse of the process of law, and hence deserves to be dismissed.

E. Jurisdiction of the authority

The respondent has raised objection regarding jurisdiction of authority to entertain the present complaint and the said objection 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

26. 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

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

Section 11(4)(a)

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

may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be; The provision of assured returns is part of the builder buyer's agreement, as per clause 15 of the BBA dated..... Accordingly, the promoter is responsible for all obligations/responsibilities and functions including payment of assured returns as provided in Builder Buyer's Agreement.

Section 34-Functions of the Authority:

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

30. 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 complainants at a later stage.

F. Findings on the relief sought by the complainants.

Relief sought by the complainants: The complainants had sought following relief(s):

- i. Direct the respondent to pay interest @18% p.a. from the date of delay till the date of filing of this complaint.
- ii. Direct the respondent to handover the completed Signature 2 villa as per the specifications and construction quality mentioned in the BBA dated 12.03.2011.

31. In the present complaint, the complainants intend to continue with the project and are seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under.

"Section 18: - Return of amount and compensation

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....
Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."

Clause 11.1 of the buyer's agreement provides the time period of handing over possession and the same is reproduced below:

"Clause 11.1- Schedule for possession of the said unit

The Company based on its present plans and estimates and subject to all just exceptions, contemplates to complete construction of the said Unit/said Unit within a period of three years from the date of execution of this Agreement. However, in case the company is not able to adhere to the said time frame, it shall be entitled to reasonable extension of time for completing the construction, unless there shall be delay or there shall be failure due to reasons mentioned in clauses (12.1),(12.2),(12.3) and clause (38) or due to failure of applicant(s) to pay in time the price of the said Unit along with all other charges and dues in accordance with the schedule of payments given herein in Annexure III or as per the demands raised by the company from time to time or any failure on the part of the applicant(s) to abide by any of the terms or conditions of this Agreement.

32. At the inception, it is relevant to comment on the pre-set possession clause of the buyer's agreement wherein the possession has been subjected to in numerous terms and conditions, force majeure circumstances and in numerous terms and conditions. The drafting of this clause is not only vague but so heavily loaded in favour of the promoter that even a single default by the allottee in fulfilling obligations, 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 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.

33. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges, 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., 13.01.2022 is 7.30% p.a. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30% p.a.
36. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottees by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottees, 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;"*
38. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 9.30% p.a. by the respondent/promoter which is the same as is being granted to the complainants in case of delay possession charges.
39. On consideration of the circumstances, the evidence and other record and submissions made by 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 buyer's agreement executed between the parties on 12.03.2011, the possession of the booked unit was to be delivered within 3 years from the date of execution of this agreement. The due date of possession is calculated from the date of execution of BBA i.e. 12.03.2011 which comes out to be 11.03.2014.

40. 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 OC was obtained from the competent authority on 19.11.2018. Therefore, in the interest of natural justice, the complainants should be given 2 months' time from the date of offer of possession. These 2 months of reasonable time is being given to the complainants keeping in mind that even after intimation of possession, practically 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., 11.03.2014 to the date of OC plus two months i.e., 19.01.2019 as per the provisions of section 19(10) of the Act.
41. Accordingly, non-compliance of the mandate contained in section 11(4) (a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such the complainants are entitled to delayed possession charges at the prescribed rate of

interest i.e., 9.30% p.a. for every month of delay on the amount paid by them to the respondent from the due date of possession i.e., 11.03.2014 to the date of OC plus two months i.e. 19.01.2019 as per the provisions of section 18(1) of the Act read with rule 15 of the rules and section 19 (10) of the Act.

H. Directions of the authority

42. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- i. The respondent is directed to pay interest at the prescribed rate of 9.30% p.a. for every month of delay from the due date of possession i.e., 11.03.2014 to the date of OC plus two months i.e., 19.01.2019.
 - ii. The respondent shall not charge anything from the complainants which is not the part of the buyer's agreement.
 - iii. The complainants are also directed to pay the outstanding dues, if any, after adjustment interest for the delayer period.
 - iv. The rate of interest chargeable from the 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 allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
54. Complaint stands disposed of.

55. File be consigned to registry.


(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 13.01.2022



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