

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

<b>Complaint no.</b>	:	<b>2806 of 2021</b>
<b>Date of filing complaint:</b>		<b>13.07.2021</b>
<b>First date of hearing:</b>		<b>04.08.2021</b>
<b>Date of decision</b>	:	<b>09.03.2022</b>

1.	Meenakshi Kalra	
2.	Chanchal Simran Khera Both R/o: H.No. 562/7 Subhash Nagar, Gurgaon, Haryana	
<b>Complainants</b>		
<b>Versus</b>		
	M/s Ocus Skyscraper Realty Limited R/o: Ocus Technopolis, Golf Course Road, Sector 54 Gurgaon 122002	
<b>Respondent</b>		

**CORAM:**

Dr. KK Khandelwal	<b>Chairman</b>
Shri Vijay Kumar Goyal	<b>Member</b>

**APPEARANCE:**

Sh. Milind Modi (Advocate)	Complainants
Sh. Rahul Rajan (Advocate)	Respondent

**ORDER**

- 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	"Ocus 24K", Sector 68, Gurgaon
2.	Project area	4.44 acres
3.	Nature of the project	Commercial project
4.	DTCP license no. and validity status	76 of 2012 dated 01.08.2012 and valid up to 31.07.2020
5.	Name of licensee	Perfect Constech Pvt. Ltd.
6.	RERA Registered/ not registered	<b>Registered</b> <b>220 of 2017 dated 18.09.2017</b>
	RERA Registration valid up to	<b>17.09.2022</b>
7.	Unit no.	Unit no. 1714, 17th floor [Annexure 1 at page no. 32 of the complaint]
8.	Unit measuring (super area)	687 sq. ft. [Annexure 1 at page no. 32 of the complaint]
9.	Change in unit and super area	Unit no. 1417 admeasuring 733 sq. ft. [Annexure 3 at page no. 87 of the complaint]
10.	Date of allotment letter	N/A
11.	Date of execution of builder buyer agreement	18.04.2014 [Annexure 1 at page no. 24 of the complaint]

12.	Possession clause	<b>11</b> The company based on its present plans and estimates and subject to all just exceptions endeavours to complete construction of the said building/said unit <b>within a period of sixty (60) months from the date of this agreement</b> unless there shall be delay or failure due to department delay or due to any circumstances beyond the power and control of the company or force majeure conditions including but not limited to reasons mentioned in clause 11(b) and 11(c) or due to failure of the allottee(s) to pay in time the total price and other charges and dues/payments mentioned in this agreement or any failure on the part of the allottee(s) to abide by all or any of the terms and conditions of this agreement. In case there is any delay on the part of the allottee(s) in making of payments to the company then notwithstanding rights available to the company elsewhere in this contract, the period for implementation of the project shall also be extended by a span of time equivalent to each delay on the part of the allottee(s) in remitting payment(s) to the company. <b>(emphasis supplied)</b>
13.	Due date of delivery of possession	<b>18.04.2019</b> <b>Calculated from the date of the agreement</b>
14.	Total sale consideration	Rs.67,66,950/- [As per payment plan at page no.55 of the complaint]
15.	Total amount paid by the complainants	Rs.80,95,259/- [As per applicant ledger dated 09.08.2021 at page 27-30 of the

		reply]
16.	Payment plan	Possession linked payment plan [Page 55 of the complaint]
17.	Offer of possession	23.07.2019 [Annexure R/3 at page 18 of the reply]
18.	Occupation Certificate	17.07.2019 [Annexure R/2 at page 16 of the reply]
19.	Delay in delivery of possession till offer of possession + 2 months i.e. 23.09.2019	5 months, 5 days

**B. Facts of the complaint:**

3. That the complainants after seeing advertisements of the respondent/builder herein, in the newspaper for launching the project namely "Ocus 24K" situated at Sector 68, Sohna Road, Gurugram, Haryana, came into contact with the executives of the respondent, who embarked upon the complainants with their sales team with various promises of timely completion of project and swift delivery of possession on time.
4. That the complainants paid a sum of Rs. 5,00,000/- as demanded by the respondent on 24.10.2013 and booked a unit no. 1714 of service apartment on the 17<sup>th</sup> floor, Ocus 24K, in the name of the complainants. That the buyer's agreement was also signed between the parties on 18.04.2014.
5. Thereafter, from time to time further payments were made to the respondent by the complainants as per the demand letters. As per clause 11(a) of the buyer's agreement, the respondent agreed to handover possession of unit by within a period of 60 months with

a grace period of 6 months from the date of the buyer's agreement of the complex.

6. That till date the complainants have paid a sum of Rs. 80,18,105/-. The complainants have time and again requested the respondent to provide the account statement of the said unit, but the respondent did not pay any heed to the said request. Also, the respondent neither ever replied nor responded in a satisfactory manner to the complainants, despite establishing contact through several mails.
7. That since the date of booking, the complainants have been visiting at so called proposed site, where they find that the construction of the project is at lowest swing and there is no possibility in near future of its completion. Till date, the construction is not completed, and the facilities promised by the builder and through advertisements are just in the brochures and nothing has been reflected in reality. Facilities such as stairs, lifts, club houses, reception are not even ready or completed and not in working condition till date.
8. That the complainants tried his level best to resolve the issue of the delayed possession, but the respondent did not pay any heed to the said requests of the complainants through mails.
9. That the respondents by providing false and fabricated advertisement, thereby, concealing true and material facts about the status of project and mandatory regulatory compliances, wrongfully induced the complainants to deposit their hard earned money in their so called upcoming project, with sole dishonest intention to cheat them and cause wrongful loss to them and in

this process the respondents gained wrongfully , which is purely a criminal act.

10. That as per the BBA, the builder was required to give the possession of the unit by 18.04.2019. However, after a 24 months delay and harassment, the builder had not given the offer of possession till date with all the complete facilities offered and promised as per the buyer's agreement.
11. That since the respondent had not delivered the possession of the apartment, of which the complainants are suffering from economic loss as well as mental agony, pain and harassment by the act and conduct of the respondent and thus, the complainants are entitled to a compensation.
12. That the complainants were not even asked by the respondent Builder prior to change of their unit allotted to them in the project. It was never asked by the respondent, and was instead informed that the unit allotted to the complainants have now been changed and the complainants shall have to deposit and make the payment as according to the newly allotted unit in Residential Apartment in the project of the respondent builder as per the builder decision and choice. Thus, the complainants were left with no other option than to make more payment as per the new size of the unit allocated by the builder to them.
13. That the complainants, thereafter had tried their level best to reach the representatives of respondent to seek a satisfactory reply for delayed possession compensation as per the rules and provisions of the Real Estate Regulatory Act in respect of the said dwelling unit but all went in vain. The complainants had also

informed the respondent about their financial hardship due to delay in getting possession of the said unit, but nothing has been bothered by the builder due to his stringent and ignorant approach.

14. The complainants had requested the respondent to deliver possession of the apartment citing the extreme financial and mental pressure they were going through, but Respondent never cared or listen to their grievances and left them with more suffering and pain on account of default and negligence. Instead the respondent kept on asking for illegal demand of payment to the complainants by adding delayed payment interest and other illegal charges like maintenance etc
15. That the respondent has also taken an amount of Rs. 29,500/- vide cheque no. 106113 dated 10.02.2020 in favour of Ocus Skyscrapers Realty Ltd. from the complainants but till date the said unit was not transferred in the name of Trance zone Infrastructure and farming till date.

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

16. The complainants have sought following relief(s):
  - i. Direct the respondent to pay the interest @24% p.a. for the delay which has to be calculated as and when the 60 months were completed and thereafter the grace period was exhausted. Further, the calculation shall be done on the total amount paid at the above-mentioned interest rate till the date of order pendente- lite.
  - ii. To pay a sum of Rs.80,000/- as cost of litigation.

**D. Reply by respondent**

17. It is submitted that the complainants have booked a unit being No.1714 admeasuring 687 sq. ft. for a consideration of Rs.67,66,900/- excluding taxes, in the project of the respondent being "Ocus 24K" .The builder buyer agreement for the said Unit was executed between the parties on 18.04.2014.
18. On a combined reading of clause 11 (a) read and clause 14 of the builder buyers agreement dated 18.04.2014, the construction of the said unit shall be completed within 66 months from the date of execution of said agreement. Therefore, as per the builder buyer's agreement dated 18.04.2014, said Unit was to be completed by 18.10.2019.

Clause 11(a) and clause 14 is reproduced here below for the ready reference of this Hon'ble Authority,

*11(a). Schedule for possession of the Said Unit*

*The Company based on its present plans and estimates and subject to all just exceptions endeavors to complete construction of the Said Building/Said Unit within a period of sixty (60) months from the date of this agreement unless there shall be delay or failure due to department delay or due to any circumstances beyond the power and control of the Company or Force Majeure conditions including but not limited to reasons mentioned in clause 11(b) and 11(c) or due to failure of the Allottee(s) to pay in time the Total Price and other charges and dues/payments mentioned in this Agreement or any failure on the part of the Allottee(s) to abide by all or any of the terms and conditions of this Agreement. In case there is any delay on the part of the Allottee(s) in making of payments to the Company then notwithstanding rights available to the Company elsewhere in this contract, the period for implementation of the project shall also be extended by a span of time equivalent to each delay on the part of the Allottee(s) in remitting payment(s) to the Company.*

*14. Failure to Deliver Possession: Remedy*

*Subject to the terms and conditions of the agreement, in case of any delay (except for force majeure clause 44 and conditions as mentioned in clause 11(b) and 11(c) by the Company in completion of construction of said unit beyond 6 months form date of expiry of said 60 months and receiving occupation certificate of the said complex and the Allottee(s) not being in default/breach of the terms and conditions set out in the Application/Agreement, the Company shall pay compensation @ Rs.215.28*



*per sq. mtr. (Rs.20/- per sq. ft. approx.) of the Super Area of the Said Unit per month or any part thereof only to the first named Allottee(s) and not to anyone else till the date of grant of occupation certificate. The Allottee(s) agrees and confirms that the compensation herein is a just and equitable estimate of the damages which the Allottee(s) may suffer and the Allottee(s) agrees that it shall have no other rights/claims whatsoever. The adjustment of such compensation shall be done only at the time of sending final statement of accounts before execution of conveyance deed of the Said Unit to the Allottee(s) first named."*

19. In order to deliver the said unit to the complainants before the time period promised, the respondent was constructing the said project at a fast pace and therefore, the same was completed in July 2019. It is most respectfully submitted that the respondent had obtained the occupation certificate with respect to said project on 17.07.2019. Thus, the respondent offered the possession of the said unit to the complainants vide letter, dated 23.07.2019.
20. The allegation of the complainants that as per buyers agreement, respondent was to deliver the unit by 18.04.2019, is wrong on the face of it because as per the buyers agreement Unit was to be offered by 18.10.2019 and possession was offered to the complainants on 23.07.2019.
21. The allegation that the respondent has changed the unit without prior intimation is wrong on the face of it because as per the terms of the buyers agreement consent of the complainants were sought to choose either between "Self-use" or "management-use". The complainants choose the "Self-use" and per clause 20 (C) of the buyer's agreement the provisional unit of the complainants were changed to the floor where all the units were of "Self-use". So new Unit No.1417 was allotted to the complainants.

Clause 20 (C) of the buyer's agreement is reproduced here below for the ready reference of this Hon'ble Tribunal,

"c) *that the collective set of floors earmarked as Service Apartment(s) will be dedicated by the company for self-use of the Allottee(s) and the other collective set of floors will be given to an "operator" to operate further on behalf of the Allottee(s), who will get return on the said unit as per the Terms and Conditions agreed between the Company and Operator. The Allottee(s) will be given an Opportunity to choose between the two options at the time of handing over the possession."*

22. Thereafter at the time when possession was offered to the complainants the said change of provisional unit No. 1714 to final allotment unit No.1417 was duly informed.
23. It is very pertinent to mention here that the above fact has been very cleverly concealed by the complainants and hence, the present complaint ought to be dismissed on the ground of concealment as well as on the ground that the complainants was misleading this Ld. authority by falsely stating that the respondent has failed to complete the said unit / said project.
24. Despite receiving the above letter / emails for offer of possession from the respondent, the complainants did not come forward to take over the said unit by paying outstanding amount.
25. Although the respondent was not under any obligation to send any reminders to the complainants to make the outstanding payments, it is humbly submitted that the respondent had in fact, addressed numerous reminders to the complainants for payment of the balance consideration with respect to the said unit. The said reminders are listed herein below:

<b>Sr. No.</b>	<b>Date</b>	<b>Letter</b>
1.	22.08.2019	Reminder-I

2.	24.08.2019	Reminder
3.	07.09.2019	Reminder-II

26. In view of the above, it is submitted that the complainants are chronic defaulters as they have failed and neglected to make timely payments with respect to the said Unit despite numerous reminders addressed to him. The above default has been committed by the complainants, despite knowing the fact that timely payment of the consideration of the said unit is essence of the said agreement as was recorded in the said agreement at Clause No.8 which is reproduced here below for the ready reference of this Hon'ble Authority,

*B. Time is the essence*

*The Allottee(s) agrees that time is the essence with respect to payment of Total Price and other charges, deposits and amounts payable by the Allottee(s) as per this Agreement and/or as demanded by the Company from time to time and also to perform/observe all the other obligations of the Allottee(s) under this Agreement. The Company is not under any obligation to send any reminders for the payments to be made by the Allottee(s) as per the schedule of payments and for the payments to be made as per demand by the Company or other obligations to be performed by the Allottee(s).*

27. It is submitted that the complainants have failed and neglected to make the balance payments with respect to the said Unit and till date. It is submitted that a total amount of Rs.1,92,376/- due and payable with respect to the said unit by the complainants to the respondent. The complainants have very cleverly concealed the above reminders dated 22.08.2019, 24.08.2019 and 07.09.2019, wherein he has been directed to pay the balance payment. complainants have failed to make the balance payment as per the terms of the buyer's agreement and violated the terms.

28. In view of the above, it is submitted that the said Judgment is applicable to the present case as the complainants hereinabove and the complainants in the said Judgment are similarly situated, therefore, the present complaint deserves to be dismissed with a direction to the complainants to pay the balance consideration amount and take the possession of the said unit allotted to the complainants within the stipulated period i.e. 3 months, failing which, the respondent shall be entitled to proceed against the complainants as per the terms of the builder buyer's agreement.
29. It is humbly submitted that the said project of the respondent is ready and operational since July 2019 and all the amenities and facilities are being provided by the respondent as they have been mentioned in the buyer's agreement dated 18.04.2014.
30. 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:**

31. 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.1 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 complainants at a later stage.

## **F. Findings regarding relief sought by the complainants:**

**F.1 Direct the respondent to pay the interest @24% p.a. for the delay which has to be calculated as and when the 60 months**

were completed and thereafter the grace period was exhausted.

**Admissibility of delay possession charges:**

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

***Section 18: - Return of amount and compensation***

*If the promoter fails to complete or is unable to give possession of an apartment, plot or building, -*

.....

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

33. 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 complainants not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning.
34. 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.

35. The authority has gone through the possession clause of the agreement. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and the complainants not being in default under any provisions of this agreements and in compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded

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

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

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

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

*Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of*



*India may fix from time to time for lending to the general public.*

37. 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.
38. 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., 09.03.2022 is @ 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.
39. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

*"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.*

*Explanation. —For the purpose of this clause—*

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

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

40. 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 11 of the buyer's agreement executed between the parties on 18.04.2014. The developer proposes to hand over the possession of the apartment within a period of sixty (60) months from the date of this agreement so the possession of the booked unit was to be delivered on or before 18.04.2019. The respondent has applied for the occupation certificate and same has been received from the competent authority on 17.07.2019. The authority is of the considered view that there is delay on the part of the respondent to offer physical possession of the allotted unit to the complainants as per the terms and conditions of the buyer's agreement dated 18.04.2014 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 18.04.2014 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 applied for the occupation certificate and same has been

received from the competent authority on 17.07.2019. Therefore, in the interest of natural justice, the complainants should be given 2 months' time from the date of offer of possession. This 2 months' of reasonable time is being given to the complainants keeping in mind that even after intimation of possession practically he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e. 18.04.2019 till offer of possession (23.07.2019) plus two months i.e. 23.09.2019.

Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with section 18(1) of the Act on the part of the respondent is established. As such the complainants are entitled to delay possession at prescribed rate of interest i.e. 9.30% p.a. w.e.f. due date of possession 18.04.2019 till offer of possession (23.07.2019) plus two months i.e. 23.09.2019 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 Cost of litigation:**

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

adjudicating officer under section 31 read with section 71 of the Act and rule 29 of the rules.

**G. Directions of the authority:**

41. 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. 18.04.2019 till offer of possession (23.07.2019) plus two months i.e. 23.09.2019.
- ii. The arrears of such interest accrued from 18.04.2019 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 rate of interest chargeable from the complainants/allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottee, in case of default i.e., the delay possession charges as per section 2(za) of the Act.

- iv. The respondent shall not charge anything from the complainants which is not the part of buyer's agreement.
- v. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.

42. Complaint stands disposed of.
43. File be consigned to registry.

  
(Vijay Kumar Goyal)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

  
(Dr. KK Khandelwal)  
Chairman

Dated: 09.03.2022

**HARERA**  
**GURUGRAM**