

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

Complaint no. : 3026 of 2020
First date of hearing : 01.12.2020
Date of decision : 22.02.2022

1. Amrit Lal Jain
2. Uppal Jain
Both RR/o. 92-P, 1st, floor, Sector-4, Gurugram-
122001

Complainants

Versus

M/s Spaze Tower Pvt. Ltd.
Office: Spazedge Building, tower C, Sector 47,
Gurugram

Respondent

CORAM:

Dr. K.K. Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Sh. Rajesh Jain
Sh. JK Dang

Advocate for the complainants
Advocate for the respondent

ORDER

1. The present complaint dated 26.10.2020 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 to the allottees as per the agreement for sale executed inter se them.

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, delay period, if any, have been detailed in the following tabular form:

S. No.	Heads	Information
1.	Project name and location	'Spaze Arrow', Sector-78, Gurugram
2.	Project area	3.24 acres
3.	Nature of the project	Commercial colony
4.	DTCP license no. and validity status	56 of 2012 dated 06.06.2012 valid upto 05.06.2020
5.	Name of licensee	Ishan Singh
6.	RERA registered/ not registered	Not registered
7.	Allotment dated	15.02.2013 [page no. 36 of complaint]
8.	Unit no.	066, Ground floor admeasuring 591 sq.ft. (page 36 of complaint)
9.	New unit	053, GF, 394 sq.ft. (page 94 of reply)
10.	Date of execution of buyers' agreement	03.01.2014 (Page 42 of the complaint)
11.	Payment plan	Construction linked payment plan (page 39 of complaint)

12.	Total sale consideration	Rs. 34,42,028/- (as per SOA dated 17.11.2020, page 42 of the reply)
13.	Total amount paid by the complainants	Rs. 33,76,875/- (as per SOA dated 17.11.2020, page 43 of the reply)
14.	Due date of delivery of possession (As per clause 14 42 months from the date of this agreement)	03.07.2017
15.	Offer of possession	Not offered
16.	Occupation certificate	Not obtained
17.	Delay in handing over possession till the date of order i.e., 22.02.2022	4 years 7 months 19 days

B. Facts of the complaint

3. The complainants submitted that they were invited to the sales office and were lavishly entertained and promises were made to them that the project would be finished in time, complete with parking and other common area amenities and facilities. They were impressed by their statements and oral representations and ultimately lured to pay Rs.5,00,000/- as booking amount for the Shop no. 066, G.F, measuring 591 sq. ft. in the 'Spaze Arrow' by way of two cheques of Rs.2,50,000/- each which were duly acknowledged by the respondent, via receipts no. ARO-R-00339 & no. ARO-R-00340 both dated 11th June, 2012. Thereafter, on 15.02.2013, the respondent issued allotment letter to them for said shop.

4. The complainants further submitted that they paid Rs.4,85,809/- on 30.03.2013 and Rs.2,49,120/- on 24.05.2013 towards booking of the shop, as and when demanded by the respondent, which were duly acknowledged by it. Thus, the complainants paid a total of Rs.17,34,929/- till 24.05.2013 but the respondent did not execute the buyer's agreement. The respondent violated section 13 of the Act, 2016 by taking more than ten per cent (10%) cost of the shop before the execution of the buyer's agreement. The total cost of the shop is Rs.34,42,028/- including EDC and IDC while the respondent had collected a total sum of Rs.17,34,929/-, more than 50% of the total cost of the shop till 24.05.2013. The buyer's agreement was executed between the parties on 03.01.2014. The date of possession as per the buyer's agreement was 42 months from the signing of the agreement which comes out on 03.07.2017.
5. That the respondent all of a sudden in March 2017 informed about the relocation of the unit/shop of the complainants vide its letter dated 27.03.2017. The original allotment of shop no. 066, ground floor, measuring 591 sq. ft. super area was changed to shop no. 053, ground floor, measuring 394 sq. ft. super area. The complainants were shocked to know that the area of the relocated unit was much less as compared to the originally allotted unit. Moreover, the complainants were frustrated on two accounts; firstly, the respondent reduced the area of their shop without seeking prior

permission or even informing them; secondly, the intended purpose of buying the commercial shop was defeated mainly due to reduction in area. The complainants protested against this relocation but to no avail as the respondent harassed and pressurised the complainants to submit their acceptance, as huge amount of money has already been paid to the respondent. Therefore, after considering the gravity of situation, dominant position of the respondent and loss/entrapment of hard-earned money already paid to the respondent, the complainants had no choice but submit to the demands of the respondent.

6. That the complainants paid, as and when demanded by the respondent, a total sum of Rs.33,76,875/- for the said shop from June 2012 to April, 2019 out of the total sale consideration of Rs.34,42,028/-. The complainants contacted the respondent on numerous occasions but to no avail as it has neither completed the project nor has refunded the amount to the complainants till date, even after more than eight (8) years from the start of the project. The respondent failed to construct the project as per the commitments made at the time of booking of the shop, though it took 100% payable amount from the complainants against the shop bought by them.
7. That the respondent did not obtain 'Environment Clearance' from the state environment impact assessment authority, Haryana and

started the construction activities without getting the above said permission. Further, the building plan of the project was approved by the Town and Country Planning Department, Haryana vide memo no. 2P-818/AD (RA)/2013/31946 dated 28.02.2013. As per the approved plan, 12 floors were to be constructed but surprisingly, the respondent in clear violation of the said approval, has constructed 14 floors instead of permitted approved 12 floors. In this way, the respondent has intentionally and willfully violated the provisions of Section 7(1)(b) & Section 14(1) of The Real Estate (Regulation and Development) Act, 2016. It will not be out of context to mention here that Haryana State Pollution Control Board had directed the respondent to immediately stop the construction of the project vide its order dated 09.12.2016 but till that time, the respondent had already constructed 14 floors as against the approved building plan. Further, the nexus between the respondent and DTCP department became quite evident from the fact that after the construction of 14 floors, the respondent applied for revised building plan on 17.07.2018 and 17.05.2019 and the said approval was granted by the DTCP on 30.05.2019 without ascertaining the actual construction status at the site. This means that respondent constructed the 13th & 14th floor of the project without having any permission of the same and thereafter,

obtained the approval of its violations in connivance with the officials of the DTCP, Haryana.

8. That the completion of the project does not seem to be feasible in near future because there is a land dispute between the landowner and the developer which is unresolved till date. It is submitted that the owner of the project land Mr. Ishan Singh has lodged a police complaint against the respondent stating therein that respondent has issued allotment letters dated 07.05 2012 for floors 14, 15, 16 prior to obtaining licence dated 06.06.2012 and building plan approval dated 28.02.2013. Further, the said owner has alleged that the respondent has sold 90% of legal area while there was a 67:33 collaboration agreement between him and the respondent. It is further submitted that the said owner has also filed a recovery case of Rs.155 crore against the respondent before the NCLT. Therefore, it is quite clear that due to litigations pending between the landowner and the respondent, the complainants will not get the actual possession of their shop in near future.
9. That due to sluggish attitude of the respondent in developing and constructing the project, the complainants visited at the site office on various times but to no avail, as no construction activities were visible at the site, as hardly (30%) thirty per cent construction works have been completed even after more than eight (8) years from the start of the project. As of now, the complainants have

reasons to believe that the project has been abandoned by the respondent as no construction activities are visible at the project site for last more than three years.

10. It is submitted that the respondent is habitual of making false promises and has deceptive behaviour. The respondent has earned huge money by duping the innocent complainants and other buyers through company's unfair trade practices and deficiencies in services and has caused immense pain, mental torture, agony, harassment, stress, anxiety and financial loss.

C. Relief sought by the complainants

11. The complainants are seeking the following relief:
 - i. Direct the respondent to complete the construction of the shop along with car parking and other common amenities and facilities immediately and handover the legal and rightful possession of the shop to the complainants.
 - ii. Direct the respondent to pay interest for every month of delay in offering the possession of the shop since 03.07.2017 to the complainants, on the amount taken towards sale consideration amount for the aforesaid shop with interest at the prescribed rate as per the act, 2016 till the respondent hands over the legal and rightful possession of the shop.
12. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have

been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.

D. Reply by respondent

13. The respondent has filed the reply based on the following grounds:

- i. It is submitted that the present complaint raises several such issues which cannot be decided by way of the present complaint in summary proceedings. The said issues require extensive evidence to be led by both the parties and examination and cross-examination of witnesses for proper adjudication. Therefore, the disputes raised in the present complaint are beyond the purview of RERA and can only be adjudicated by a civil court. The present complaint deserves to be dismissed on this ground alone.
- ii. That the present complaint is not maintainable before this hon'ble authority. The complainants have filed the present complaint seeking possession, interest and compensation for alleged delay in delivering possession of the unit booked by the complainants. It is respectfully submitted that complaints pertaining to possession, compensation and interest are not to be decided by this hon'ble authority, but can only be decided by the honourable adjudicating officer. The present complaint is liable to be dismissed on this ground alone.

- iii. That the complainants have no locus standi or cause of action to file the present complaint. Furthermore, the present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the buyer's agreement dated 03.01.2014, as shall be evident from the submissions made in the following paras of the present reply.
- iv. That the complainants had agreed to purchase shop bearing no. 066 located on the ground floor admeasuring 591 square feet in the project being developed by the respondent known as Spaze Arrow, Sector 78, Gurugram. buyer's agreement dated 03.01.2014 had been executed between the complainants and respondent in respect of the said unit. That it is respectfully submitted that the contractual relationship between the complainants and respondent is governed by the terms and conditions of the buyer's agreement dated 03.01.2014. The said agreement was voluntarily and consciously executed by the complainants. Once a contract is executed between the parties, the rights and obligations of the parties are determined entirely by the covenants incorporated in the contract. No party to a contract can be permitted to assert any right of any nature at variance with the terms and conditions incorporated in the contract.

- v. That the complainants have completely misinterpreted and misconstrued the terms and conditions of said agreement. So far as alleged non-delivery of physical possession of the apartment is concerned, it is submitted that in terms of clause 14 and 19 of the aforesaid agreement, the time period for delivery of possession was 42 months from the date of execution of the buyer's agreement, subject to the allottee(s) having strictly complied with all terms and conditions of the buyer's agreement and not being in default of any provision of the buyer's agreement including remittance of all amounts due and payable by the allottee under the agreement as per the schedule of payment incorporated in the buyer's agreement. It was specifically provided in clause 14 of the aforesaid contract that in case the completion of the project was delayed due to departmental delay or on account of any reason beyond the control of the respondent, the same would entitle it for extension of time for delivery of physical possession. In fact, it was also provided that upon occurrence of such eventuality, the respondent would have the right to alter or vary the terms and conditions of the agreement.
- vi. That for the purpose of promotion, construction and development of the project referred to above, a number of sanctions/ permissions were required to be obtained from the

concerned statutory authorities. It is respectfully submitted that once an application for grant of any permission/ sanction or for that matter building plans/ zoning plans etc. is submitted for approval in the office of any statutory authority, the developer ceases to have any control over the same. The grant of sanction/approval to any such application/plan is the prerogative of the concerned statutory authority over which the developer cannot exercise any influence. It is pertinent to mention that the revised building plans had been approved by Chief Town Planner, Town and Country Planning Department, Haryana vide memo no. dated ZP-818/SD(DK)/2019/22142 dated 10.09.2019.

- vii. That it is pertinent to mention that environmental clearance for the project has been granted by the concerned statutory authority to the respondent. The application for grant of the said permission had been received by the concerned statutory authority on 01.07.2013. However, for one reason or the other, which by no stretch of imagination can be construed directly or impliedly to be a lapse or default on the part of the respondent, the said environmental clearance has been issued after a considerable delay of more than 6 years. Its officials have been diligently pursuing the matter. It would also not be out of place to mention here that for an extremely long span of

time the concerned authority was not holding office and functioning in the regular course of its duties. Therefore, the non-grant of environmental clearance for a span of six years has considerably delayed the execution of the project. The said circumstance was certainly beyond the power and control of the respondent. As far as respondent is concerned, it has diligently and sincerely pursued the matter with the concerned statutory authorities for obtaining of various permissions/sanctions.

That in accordance with contractual covenants incorporated in said agreement the span of time, which as consumed in obtaining the following approvals/sanctions deserves to be excluded from the period agreed between the parties for delivery of physical possession:

S. no	Nature of permission / approval	Date of submission of applicant for grant of approvals / sanction	Date of sanction of permission / grant of approval	Period of time consumed in obtaining permission /approvals
1	Approval for Building plans	12.06.2012	28.02.2013	257 Days
2	Approval of revised building plans	20.08.2018	10.09.2019	386 days
3	NOC from Conservator of Forests	16.11.2012	15.03.2013	118 days
4	Environment Clearance	01.07.2013	10.09.2019	2262 days (6 years, 2

				months, days)	9
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viii. That from the facts and circumstances mentioned above, it is comprehensively established that the time period mentioned hereinabove, was consumed in obtaining of requisite permissions/sanctions from the concerned statutory authorities. It is respectfully submitted that the said project could not have been constructed, developed and implemented by respondent without obtaining the sanctions referred to above. Thus, respondent has been prevented by circumstances beyond its power and control from undertaking the implementation of the said project during the time period indicated above and therefore, the same is liable to be excluded and ought not to be taken into reckoning while computing the period of 42 as has been explicitly provided in buyer's agreement dated 03.01.2014.

ix. That right from the beginning, the complainants were extremely irregular as far as payment of instalments due as per the construction linked plan chosen by them complainants were concerned. The respondent was time and again compelled to issue demand notices, reminders etc, calling upon the complainants to make payment of outstanding amounts payable under the payment plan/instalment plan



opted by them. It is submitted that the complainants are liable to pay an amount of Rs. 16,909/- outstanding towards the total sale consideration of the said unit including interest on account of delay in making payment of instalments. The latest statement of account dated 17.11.2020 has been appended as annexure R3. It is pertinent to mention that the statement of account appended with the complaint is not the latest statement. It is submitted that the complainants have time and again defaulted in the payment of amount due against the instalments raised by the respondent. It is submitted that the complainants are liable to pay an amount of Rs. 16,909/- towards the interest accumulated upon the delayed payments. Thus, it has been comprehensively established that the complainants have defaulted in payment of amounts demanded by respondent under the buyer's agreement and therefore the time for delivery of possession deserves to be extended as provided in the buyer's agreement.

- x. That it is pertinent to mention here that the complainants had regularly defaulted in making timely payments against the demand letters raised by the respondent. It is submitted that the complainants had delayed each and every instalment as per the construction linked payment plan chosen by them. The respondent was constrained to send reminders and notices for

the outstanding payments due, but the complainants made the payments as per their own convenience.

- xi. It is submitted that the complainants consciously and maliciously chose to ignore the payment request letters and reminders issued by respondent. It needs to be appreciated that the respondent was under no obligation to keep reminding the complainants of their contractual and financial obligations. The complainants had defaulted in making timely payments of instalments which was an essential, crucial and indispensable requirement under the buyer's agreement. Furthermore, when the proposed allottees default in making timely payments as per schedule of payments agreed upon, the failure has a cascading effect on the operations and the cost of execution of the project increases exponentially. The same also results in causing of substantial losses to the developer. The complainants chose to ignore all these aspects and wilfully defaulted in making timely payments.
- xii. That without admitting or acknowledging in any manner the truth or legality of the allegations put forth by the complainants and without prejudice to any of the contentions of the respondent, it is submitted that there is no contractual covenant contained in the buyer's agreement based on which



they can stake claim to any compensation to be granted to him by the respondent.

- xiii. It is pertinent to mention that respondent had submitted an application for grant of environment clearance to the concerned statutory authority in the year 2012. However, for one reason or the other arising out of circumstances beyond the power and control of respondent, the aforesaid clearance was granted by Ministry of Environment, forest & climate change only on 04.02.2020 despite due diligence having been exercised by the respondent in this regard. No lapse whatsoever can be attributed to respondent insofar the delay in issuance of environment clearance is concerned. The issuance of the environment clearance referred to above was a precondition for submission of application for grant of occupation certificate. That it is further submitted that the respondent left no stones unturned to complete the construction activity at the project site but unfortunately due to the outbreak of covid 19 pandemic and the various restrictions imposed by the governmental authorities, the construction activity and business of the company was significantly and adversely impacted and the functioning of almost all the government functionaries were also brought to a standstill.

- xiv. Furthermore, in case of delay caused due to non- receipt of environmental clearance for a period of more than six years or any other permission/sanction from the competent authorities, it is only logical that no compensation shall be payable by the respondent as delay having arisen from circumstances beyond the power and control of the developer.
- xv. That the complaint has been preferred on absolutely baseless, unfounded and legally and factually unsustainable surmises which can never inspire the confidence of this honourable authority. The accusations levelled by the complainants are completely devoid of merit. The complaint filed by the complainants deserves to be dismissed.
14. Copies of all the relevant documents have been filed and placed on the record by the parties. Their authenticity is not in dispute. Even both the parties have also placed written submissions in the file and the same has been used by the authority Hence, the complaint can be decided on the basis of these undisputed documents.

E. Jurisdiction of the authority

13. The preliminary objections raised by the respondent regarding jurisdiction of the authority to entertain the present complaint 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

14. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, Haryana, 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

15. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as held in *Simmi Sikka v/s M/s EMAAR MGF Land Ltd. (complaint no. 7 of 2018)* leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage. The said decision of the authority has been upheld by the hon'ble Haryana Real Estate Appellate Tribunal in its judgement dated 03.11.2020, in appeal nos. 52 & 64 of 2018 titled as *Emaar MGF Land Ltd. V. Simmi Sikka and anr.*

F. Findings on the relief sought by the complainants

Relief sought by the complainants-

- i. Direct the respondent to complete the construction of the shop along with car parking and other common amenities and facilities immediately and handover the legal and rightful possession of the shop to the complainants.
- ii. Direct the respondent to pay interest for every month of delay in offering the possession of the shop since 03.07.2017 to the complainants, on the amount taken towards sale consideration amount for the aforesaid shop with interest at the prescribed rate as per the act, 2016 till the respondent hands over the legal and rightful possession of the shop.

F.I Delay possession charges

16. In the present complaint, the complainants intends to continue with the project and are seeking delayed 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."

17. Clause 14 of the buyer's agreement (in short, agreement) provides for time period for handing over of possession and is reproduced below:

"14. That the possession of the said Premises is proposed to be delivered by the DEVELOPER to the ALLOTTEE(S) within 42 months from the date of this Agreement. If the completion of the said Building is delayed by reason of non-availability of steel and / or cement or other building materials, or water supply or electric power or slow down, strike or due to a dispute with the construction agency employed by the DEVELOPER lock out or departmental delay or civil commotion or by reason of war or enemy action or terrorist action or earthquake or any act of God or any other reason beyond the control of the DEVELOPER, the DEVELOPER shall be entitled to extension of time for delivery of possession of the said Premises. The DEVELOPER as a result of such a contingency arising, reserves the right to alter or vary the terms and conditions of this Agreement or if the circumstances beyond the control of the DEVELOPER so warrant, the DEVELOPER may suspend the Scheme for such period as it might consider expedient. In case the DEVELOPER is unable to complete the project on account of any law passed by the legislature or any other government agency, in that event the DEVELOPER if so advised, shall be entitled to challenge the validity, applicability and / or efficacy of such legislation, rule, order and / or bye law by instituting appropriate proceedings before court(s), tribunal(s) or authorities."

18. The authority has gone through the possession clause of the agreement and observes that 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 allottees that even a single situation may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning. If the said possession clause is read in entirety, the time period of handing over possession is only a tentative period for completion of the construction of the flat in question and the promoter is aiming to extend this time period indefinitely on one eventuality or the other. 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.

19. **Admissibility of delayed possession charges at prescribed rate of interest:** The complainants are seeking delayed possession charges at the rate of 18% p.a. 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.

20. The legislature in its wisdom in the subordinate legislation under 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.
21. 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., 22.02.2022 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.
22. The definition of term 'interest' as defined under section 2(z) 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;"

23. Therefore, interest on the delayed 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 in case of delayed possession charges.
24. On consideration of the documents available on record and the 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 clause 14 of the buyer's agreement executed between the parties on 03.01.2014, the possession of the booked unit was to be delivered within a period of 42 from the date of agreement. In the present case, the due date of handing over possession will be computed from the date of agreement and the due date of possession comes out to be 03.07.2017.
25. Accordingly, it is the failure of the promoter to fulfil its obligations and responsibilities as per the agreement dated 03.01.2014 to hand over the possession within the stipulated period. 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 allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 03.07.2017 till the handing over of the possession, at prescribed rate i.e., 9.30 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

H. Directions of the authority

26. 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 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. 03.07.2017 till the handing over of possession.
- ii. The arrears of such interest accrued from 03.07.2017 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 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 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
- v. The respondent shall not charge anything from the complainants which is not the part of the buyers agreement.
- vi. The respondent is not entitled to charge holding charges from the complainants/allottees at any point of time even after being part of the builder buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 on 14.12.2020.
27. Complaint stands disposed of.
28. File be consigned to registry.


(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.02.2022


(Dr. K.K. Khandelwal)
Chairman