

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

Complaint no. : 5543 of 2019
Complaint filed on : 10.12.2019
First date of hearing : 09.01.2020
Date of decision : 07.04.2022

1. Mukul Gupta
2. Manju Gupta
Both RR/o: 109 B, Cosmos Executive Apartments,
Palam Vihar, Gurugram-122017, Haryana.

Complainants

Versus

M/s CHD Developers Ltd.
Office: SF-16-17, 1st Floor, Madame Bhikaji Cama
Bhawan, Bhikaji Cama Place, New Delhi-110066.

Respondent

CORAM:

Dr. K.K Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Shri Nitin Jaspal
Shri Ravi Kumar

Advocate for the complainants
Advocate for the respondent

ORDER

1. The present complaint has been filed by the complainants/allottees in Form CRA 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 allottee as per the agreement for sale executed inter se them.

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.	Project name and location	"106 Golf Avenue", Sector-106, Gurugram, Haryana
2.	Project area	12.344 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	69 of 2012 dated 03.07.2012 Valid/renewed up to 02.07.2012
5.	Name of licensee	Empire Realtech
6.	HRERA registered/ not registered	Registered vide no. 8 of 2019 dated 21.02.2019 for 9 towers (A, B, C, D, E, F, G, H and I).
	HRERA registration valid up to	w.e.f. 21.02.2016 till 30.06.2021
7.	Occupation certificate	Not obtained
8.	Date of booking	21.09.2012 [As per SOA dated 29.09.2021 on page no. 22 of reply]
9.	Unit no.	T05-05/04, tower- T05 [Annexure P3 on page no. 24 of the complaint]
10.	Super area as per apartment buyer's agreement	1940 sq. ft. [Annexure P3 on page no. 24 of the complaint]
11.	Change in area as per SOA dated 29.09.2021	Increased to 2059 sq. ft.
12.	Date of execution of apartment buyer's agreement	18.12.2012 [Annexure P3 on page no. 22 of the complaint]

13.	Total consideration	Rs. 1,13,92,429/- [As per SOA dated 29.09.2021 on page no. 22 of reply]
14.	Total amount paid by the complainants	Rs. 1,08,16,927/- as admitted and confirmed by counsel for the respondent and during hearing [As per page no.1 of the reply]
15.	Possession clause	<p>13. Time of Handing Over Possession <i>Barring unforeseen circumstances and force majeure events, court indulgence as stipulated hereunder, the possession of the said Apartment is proposed to be delivered by the Company to the Allottee within 42 months (Three & half Years) from the date of execution of this agreement, subject to the payment by the Allottee(s) towards the Basic Sale Price and Other Charges, as demanded in terms of this Agreement. The time frame for delivery of possession provided herein above is tentative and shall be subject to force majeure, court indulgence and timely and prompt payment of all installments and the formalities for completion required. The Company shall be entitled to avail time for completion of construction of the Project if the delay occurs due departmental delay or any other circumstance beyond the power and control of the Company. The Company shall be entitled six (6) months additional period in the event there is delay in handing over possession. However, in case of delay beyond the period of six (6) months and such delay is attributable to the Company, the Company shall be liable to pay compensation@ Rs.10.00 (Rupees Ten only) per sq. ft. per month of the super area of the Apartment for the period of further delay. The adjustment of compensation, if any, shall be done at the time of conveyance of the Flat and not earlier.</i></p>

		<i>(Emphasis supplied)</i>
16.	Grace period utilization	The authority allows the grace period keeping in view the fact that this grace period of 6 months is unqualified/unconditional and is sought for handing over of possession.
17.	Due date of delivery of possession as per clause 13 of the apartment buyer's agreement	18.12.2016 [Note: Grace period is included]
18.	Date of offer of possession to the complainants	Not offered
19.	Delay in handing over possession w.e.f. 18.12.2016 till date of decision i.e. 07.04.2022	5 years 3 months 20 days

B. Facts of the complaint

3. The complainants made the following submissions in the complaint:

- i. That the complainants purchased the subject unit from Mrs. Sudarshna Pruthi in resale, in the said project of the respondent. The complainants executed an agreement to sell with the seller, Mrs. Sudarshna Pruthi and paid an amount of Rs.8,00,000/- to the seller.
- ii. That thereafter the complainants presented all the relevant documents regarding the said transaction in the office of the respondent and get the flat transferred in their name. The respondent acknowledged the said transfer and issued a re-

allotment letter to the complainants. After issuing of the re-allotment letter, the respondents executed the apartment buyer's agreement with the complainants in respect of apartment bearing no. T05-05/04, Tower-T05, super area 1940 sq. ft. at 106 Golf Avenue, Sector 106, Gurgaon Haryana.

- iii. That after the execution of the apartment buyer's agreement, the complainants kept on paying the installments of the said apartment as and when demanded by the respondent. Till date, the complainants have paid an amount of Rs. 1,08,16,927/- to the respondent. As per the clause 13 of the apartment buyer's agreement, the respondent was bound to hand over the possession of the said flat on or before June 2016. But till the date of filing of the present complaint, the possession of the said flat has not been handed over to the complainants.
- iv. That now the respondent has stopped the construction of the said project. The complainants have waited for the 7 long years to take the possession of the said apartment, but the project is far away from completion. The complainants kept on writing emails to the respondent to cancel the booking and refund the amount to the complainants, but respondent never reverted to the emails of the complainants and kept on delaying the refund process just to grab the hard-earned money of the complainants. Hence this complaint.

C. Relief sought by the complainants

4. The complainants are seeking the following relief:

- i. Direct the respondent to refund the aforesaid amount of Rs. 1,08,16,927/- (Rs. One Crore Eight Lacs Sixteen Thousand Twenty-Seven only) to complainants along with an interest at prescribed rate since the booking of the apartment till its full and final realization as the respondent has violated or contravened the provisions of the Act, rules or regulations made thereunder or aforesaid application or apartment buyer's agreement dated 18.12.2012.
- ii. Any other relief that the hon ble authority may think fit.

D. Reply filed by the respondent

5. The respondent had contested the complaint on the following grounds:

- i. That the complainants have filed the present complaint much before the expiry of time period stated in apartment buyer's agreement including force majeure and also much before the expiration of revised extended date of completion of the said project granted by the RERA Authority, Gurugram after the Act came in force. The complainants have deliberately not disclosed the material fact that the Haryana Real Estate Regulatory Authority at Gurgaon has extended the date of completion of the said project vide registration no. 08 of 2019 dated 21.02.2019.
- ii. That delay in project was not due to the act of the opposite party no.1 but due to the force majeure act and the delay in granting

license and development work by the State of Punjab & Haryana. Even the Hon'ble High Court of Punjab and Haryana in one of the cases of the respondent has observed that the respondent was raising the issue with the State since the year 2007 which should have been resolved but could not be resolved despite the representation of the respondent that at least Rs.180 crore is deposited with the State for granting license and carrying development work. That the complainants in order to get undue advantage and profit has not disclosed all these facts and even before the completion of the agreement period for handing over the possession and without excluding the time for force majeure, have approached this hon'ble court in utter violation of the terms of the apartment buyer's agreement.

- iii. That the present complaint is sheer misuse of process of law and motivated one to harass and extort money from the respondent and further the respondent is determined to deliver the project at earliest, so the complaint can seek further interest from the respondent in name of delay. Therefore, the claim as raised by the complainants cannot be said to be maintainable and is liable to be rejected for the reasons as ensuing.
- iv. That the real purpose of the complainants to file the present complaint, on false and frivolous grounds in suppression of material facts related to the said project, are because of severe slump/decline in the prices of properties and then get the respondent involved in court cases to buy certain time to make the profit on their investment. The complainants who were merely speculating in the property market, realizing that they will

not be able to make profit on their investment/the value of the investment is less because of the crash of the prices of properties in the real estate market, are seeking to pass on their loss to the respondent. If there had been an increase in the prices of properties, which was the trend at the time of execution of the apartment buyer's agreement, the complainants would have never sought refund from the respondent despite the fact that respondent has committed to hand over the flat at earliest.

- v. That the respondent had executed an apartment buyer's agreement on 18.12.2012 with the complainants. In terms of the apartment buyer's agreement, the complainants have agreed to purchase the apartment bearing no. T-05-05/04 in the subject project for a basic sale price of Rs.90,21,000/- excluding other applicable taxes and charges.
- vi. That it was agreed in terms of clause 13 of the apartment buyer's agreement that the possession of the apartment would be given to the complainants within a period of 42 months from the date of the execution of the apartment buyer's agreement and that the respondent would be entitled to an additional period of 6 months. It is further provided that the time period for delivery of possession was "tentative" and was subject to force majeure events, court indulgence, as provided in the apartment buyer's agreement.
- vii. That the complainants have wrongly portray as if no work has been carried out and that the construction is far from completion. In fact, to the contrary, the construction is almost complete and

mostly only the interior and finishing work is required to be completed and the respondent submits that the same is in progress and the respondent undertakes to handover the flat at earliest.

- viii. That is stated that there has been no deliberate or inordinate delay by the respondent in the completion of construction. The 42 months period provided for delivery of possession expired in June 2016. The additional period of 6 months expired in December 2016. Just after the execution of the apartment buyer's agreement, the respondent had received a letter bearing no. HSPCB/GRN/2015/516 dated 01.05.2015 from the Regional Office North, Haryana State Pollution Control Board, informing the respondent that "vide order dated 07.04.2015 and 10.04.2015 in Original Application No. 21 of 2014 titled as "*Vardhaman Kaushik Vs. Union of India*", the Hon'ble National Green Tribunal, New Delhi has taken very serious views regarding pollution resulting from construction and other allied activities emitting dust emission and directed to stoppage of construction activities of all construction sites....." and in pursuance/compliances thereto of said letter/order the respondent had to stop all the construction activities between the period May, 2015 to August, 2015. Thus, the construction could not be carried out for a period of about 4-6 months because of the order passed by the Hon'ble N.G.T. and compliance thereto in pursuance of said letter dated 01.05.2015. This period is also therefore to be excluded. This fact was duly informed and known to the complainants and they had agreed that the time period given the apartment buyer's

agreement is only tentative and not conclusive. That the office of the District Town Planner Enforcement on 10.11.2017 had again directed stoppage of all construction activity.

- ix. That it is submitted that the delay was due to force majeure and the departmental delay from the Government department and the matter was raised by the respondent with the concerned department since the year 2017 but the license of the respondent related to the said project was being unnecessarily dragged by the concerned department of State of Haryana for raising the issues related to EDC. Only recently Hon'ble High Court of Punjab & Haryana vide its order dated 07.05.2019 directed the Government of Haryana to not to demand any further amount from the respondent and complete the development work. The Government of Haryana vide memo letter dated 21.09.2018 has pleased to issue the "Re-schedulment of External Development Charges and Infrastructure Development Charges". The respondent company has already applied renewal of license no. 69 of 2012 under the policy dated 21.09.2018 vide application for renewal dated 03.10.2018 & 08.10.2018. The respondent company has opted the terms of (i) (b) of above said policy dated 21.09.2018 and in terms thereof deposited EDC/IDC (15%) payment, deficit renewal fee with interest amounting to Rs.830.37 lakhs and also submitted BG in terms thereof.
- x. That the construction has slowed down for the reasons stated above and also because of a severe slump in the real estate market. The complainants are not entitled to seek any interest, or such other compensation as sought by them in the above said

complaint as the project is already registered and money has already been used for the purposes of carrying out the construction and other ancillary activities related to the project, which construction is existing and while the finishing work is in progress. That the construction of the said project is in full swing and in progress despite severe slump in the real estate market and decline in the prices of properties.

- xi. That over the years, respondent has successfully developed various real estate projects around the country and due to its uncompromising work ethics, honesty, quality of construction and timely delivery of the projects to the utmost satisfaction of its customers, it has established an unimpeachable reputation in the real estate business. The complainants have also admitted to this fact. It was respondent's unimpeachable status that complainants had invested in the said project of the respondent and not because of any inducement and other unfair trade practice.
- xii. That the Haryana Real Estate (Regulation and Development) Rules, 2017 notified on 28.07.2017 and the respondent had also registered the said project under the provisions of the Act and rules with the Haryana Real Estate Regulatory Authority, Gurugram on 21.02.2019 vide registration no. 8 of 2019. The respondent has already filed affidavit cum undertaking disclosing the time period within which the said project shall be completed by the respondent at earliest. The competent authority has granted registration certificate bearing no. 8 of 2019 dated 21.02.2019 after considering all the documents, facts, information and submissions of the respondent company. It is clearly

mentioned in the said registration that the said registration shall be valid for a period commencing from 21.02.2019 to 30.06.2021 therefore, the complainants cannot claim the possession of the said apartment at earliest. Moreover, the terms of said registration certificate and time period granted to the respondent for completion of the said project shall be binding upon the complainants.

- xiii. That the averments made by the complainants regarding deficiency in service and unfair trade practice is totally unwarranted. It is submitted that because of unimpeachable image of the respondent, the complainants had approached the respondent and after verifying each and every details have booked the said flat and paid the money as per the payment plan. It is further submitted that even as per the terms of the agreement between the parties, the date of possession was not conclusive, and the party had initially agreed with the revised date of possession as per the registration certificate. The respondent is determined to give the possession as per the revised date agreement between the parties.

E. Jurisdiction of the authority

6. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

E.I Territorial jurisdiction

7. 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

8. Section 11(4)(a) of the Act 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) The promoter shall-

- (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.

9. 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 as per provisions of section

11(4)(a) of the Act leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the objections raised by the respondent

F.I Objection regarding handing over possession as per declaration given under section 4(2)(I)(C) of the Act.

10. The counsel for the respondent has stated that the entitlement to claim refund would arise once the possession has not been handed over as per declaration given by the promoter in the registration certificate under section 4(2)(I)(C) of the Act.
11. Therefore, the question of determination is whether the respondent is entitled to avail the time given to him at the time of registering the project under section 3 & 4 of the Act.
12. It is now settled law that the provisions of the Act and the rules are also applicable to ongoing project and the term ongoing project has been defined in rule 2(1)(o) of the rules. The new as well as the ongoing project are required to be registered under section 3 and section 4 of the Act.
13. Section 4(2)(I)(C) of the Act requires that while applying for registration of the real estate project, the promoter has to file a declaration under section 4(2)(I)(C) of the Act and the same is reproduced as under:



Section 4: - Application for registration of real estate projects

(2) The promoter shall enclose the following documents along with the application referred to in sub-section (1), namely: —.....

(1): -a declaration, supported by an affidavit, which shall be signed by the promoter or any person authorised by the promoter, stating: —

.....

(C) the time period within which he undertakes to complete the project or phase thereof, as the case may be...."

14. The time period for handing over the possession is committed by the builder as per the relevant clause of apartment buyer agreement and the commitment of the promoter regarding handing over of possession of the unit is taken accordingly. The new timeline indicated in respect of ongoing project by the promoter while making an application for registration of the project does not change the commitment of the promoter to hand over the possession by the due date as per the apartment buyer agreement. The new timeline as indicated by the promoter in the declaration under section 4(2)(1)(C) is now the new timeline as indicated by him for the completion of the project. Although, penal proceedings shall not be initiated against the builder for not meeting the committed due date of possession but now, if the promoter fails to complete the project in declared timeline, then he is liable for penal proceedings. The due date of possession as per the agreement remains unchanged and promoter is liable for the consequences and obligations arising out of failure in handing over possession by the due date as committed by him in the apartment buyer agreement and he is liable for the delayed possession charges as

provided in proviso to section 18(1) of the Act. The same issue has been dealt by hon'ble Bombay High Court in case titled as *Neelkamal Realtors Suburban Pvt. Ltd. and anr. vs Union of India and ors.* and has observed as under:

"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter..."

G. Findings of the authority

G.I Refund of the entire amount paid by the complainants

15. **Relief sought by the complainants:** Direct the respondent to refund the aforesaid amount of Rs. 1,08,16,927/- (Rs. One Crore Eight Lacs Sixteen Thousand Twenty-Seven only) to complainants along with an interest at prescribed rate since the booking of the apartment till its full and final realization as the respondent has violated or contravened the provisions of the Act, rules or regulations made thereunder or aforesaid application or apartment buyer's agreement dated 18.12.2012.
16. The complainants have submitted that they applied for allotment of the said unit in the subject project in September 2012. Thereafter, in December 2012, the builder buyer agreement was executed between the parties wherein the promoter has proposed to deliver the said unit within a time period of 42 months from the date of agreement along

with 6 months additional period in the event of delay in handling over possession. Further, it is a matter of fact that the complainants have already waited for almost 6 years to take possession of the said flat but the project is far from completion. The complainants kept on writing emails to the respondent to cancel the booking and refund the booking amount to the complainants, but the respondent never reverted to the emails of the complainant and kept on delaying the refund process.

17. On the contrary, the respondent submitted that the construction is almost complete and mostly only the interior and finishing work is required to be completed and the same is in progress and the respondent undertakes to handover the subject unit at the earliest. Furthermore, the respondent submitted that the subject project is registered with this authority vide no. 08 of 2019 dated 21.02.2019 and the same is valid for a period commencing from 21.02.2019 to 30.06.2021 and therefore, the complainants cannot claim the possession of the subject unit. Moreover, the terms of said registration and time period granted to the respondent for completion of said project shall be binding upon the complainants also.
18. In the present complaint, the complainants intend to withdraw from the project and are seeking return of the amount paid by them in respect of subject apartment along with interest at the prescribed rate as provided under section 18(1) of the Act. Sec. 18(1) of the Act is reproduced below for ready reference:

"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.-

- (a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or
(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

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." (Emphasis supplied)

19. The authority has no hitch in proceeding with the complaint and to grant a relief of refund in the present matter in view of the judgement passed by the Hon'ble Apex Court in **Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors."** SCC Online SC 1044 decided on 11.11.2021 wherein it has been laid down as under:

"86. From the scheme of the Act of which a detailed reference has been made and taking note of power of adjudication delineated with the regulatory authority and adjudicating officer, what finally culls out is that although the Act indicates the distinct expressions like 'refund', 'interest', 'penalty' and 'compensation', a conjoint reading of Sections 18 and 19 clearly manifests that when it comes to refund of the amount, and interest on the refund amount, or directing payment of interest for delayed delivery of possession, or penalty and interest thereon, it is the regulatory authority which has the power to examine and determine the outcome of a complaint. At the same time, when it comes to a question of seeking the relief of adjudging compensation and interest thereon under Sections 12, 14, 18 and 19, the adjudicating officer exclusively has the power to determine,

keeping in view the collective reading of Section 71 read with Section 72 of the Act. if the adjudication under Sections 12, 14, 18 and 19 other than compensation as envisaged, if extended to the adjudicating officer as prayed that, in our view, may intend to expand the ambit and scope of the powers and functions of the adjudicating officer under Section 71 and that would be against the mandate of the Act 2016."

20. Furthermore, this issue has been reiterated by the Division Bench of Hon'ble Punjab and Haryana High Court in "**Ramprastha Promoter and Developers Pvt. Ltd. Versus Union of India and others Law Finder Doc Id#1936807**". The relevant paras of the above said judgment reads as under:-

"23) The Supreme Court has already decided on the issue pertaining to the competence/power of the Authority to direct refund of the amount, interest on the refund amount and/or directing payment of interest for delayed delivery of possession or penalty and interest thereupon being within the jurisdiction of the Authority under Section 31 of the 2016 Act. Hence any provision to the contrary under the Rules would be inconsequential. The Supreme Court having ruled on the competence of the Authority and maintainability of the complaint before the Authority under Section 31 of the Act, there is, thus, no occasion to enter into the scope of submission of the complaint under Rule 28 and/or Rule 29 of the Rules of 2017.

24) The substantive provision of the Act having been interpreted by the Supreme Court, the Rules have to be in tandem with the substantive Act.

25) In light of the pronouncement of the Supreme Court in the matter of M/s Newtech Promoters (supra), the submission of the petitioner to await outcome of the SLP filed against the judgment in CWP No.38144 of 2018, passed by this Court, fails to impress upon us. The counsel representing the parties very fairly concede that the issue in question has already been decided by the Supreme Court. The prayer made in the complaint as extracted in the impugned orders by the Real Estate Regulatory Authority fall within the relief pertaining to refund of the amount; interest on the refund amount, or directing payment of interest for delayed delivery of possession. The power of adjudication and determination for the said relief is conferred upon the Regulatory Authority itself and not upon the Adjudicating Officer."

21. Hence, in view of the authoritative pronouncement of the Hon'ble Supreme Court in the matter of *M/s Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. (supra)*, and the Division Bench of Hon'ble Punjab and Haryana High Court in "*Ramprastha Promoter and Developers Pvt. Ltd. Versus Union of India and others. (supra)*", the authority has the jurisdiction to entertain a complaint seeking refund of the amount and interest on the refund amount.
22. **Due date of handing over possession and admissibility of grace period:** Clause 13 of the apartment buyer's agreement provides time period for handing over the possession and the same is reproduced below:

"13. Time of Handing Over Possession

*Barring unforeseen circumstances and force majeure events, court indulgence as stipulated hereunder, the possession of the said Apartment is proposed to be delivered by the Company to the Allottee within 42 months (Three & half Years) from the date of execution of this agreement, subject to the payment by the Allottee(s) towards the Basic Sale Price and Other Charges, as demanded in terms of this Agreement. The time frame for delivery of possession provided herein above is tentative and shall be subject to force majeure, court indulgence and timely and prompt payment of all installments and the formalities for completion required. The Company shall be entitled to avail time for completion of construction of the Project if the delay occurs due departmental delay or any other circumstance beyond the power and control of the Company. **The Company shall be entitled six (6) months additional period in the event there is delay in handing over possession.** However, in case of delay beyond the period of six (6) months and such delay is attributable to the Company, the Company shall be liable to pay compensation @ Rs.10.00 (Rupees Ten only) per sq. ft. per month of the super area of the Apartment for the period of further delay. The adjustment of compensation, if any, shall be done at the time of conveyance of the Flat and not earlier."*

(Emphasis supplied)



23. As per the aforesaid clause of the apartment buyer's agreement, the promoter has proposed to hand over the possession of the subject apartment within 42 months from the date of execution of this agreement and further provided in agreement that promoter shall be entitled to a grace period of 6 months, additional period in the event there is delay in handing over possession. The authority allows the grace period keeping in view the fact that this grace period of 6 months is unqualified/unconditional and is sought for handing over of possession. Accordingly, the benefit of grace period of 6 months is allowed to the promoter for handing over the subject apartment to the complainants. Therefore, the due date of handing over possession of the subject unit comes out to be 18.12.2016. It is the failure on part of the promoter to fulfil its obligations and responsibilities as per the apartment buyer's agreement dated 18.12.2012 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.
24. Section 18 of the Act relates to obligation of the promoter regarding return of amount and compensation. Under section 18 (1) of the Act, the promoter shall be liable on demand by the allottee, in case an allottee wishes to withdraw from the project, to return the amount received by him with interest at the prescribed rate including compensation. Returning of amount along with prescribed rate of

interest to be paid by the promoter is positive obligation under section 18(1) of the Act in case of failure of the promoter to hand over possession by the due date as per builder buyer's agreement. Section 18(1) of the Act empowers the allottee to withdraw from the project and seek refund of the principal amount paid by him with interest in the event the promoter fails to handover possession in accordance with the agreement for sale or due to discontinuance of business as a developer on account of suspension or revocation of registration under the Act or for any other reason.

25. On consideration of the documents available on record and submissions made by the parties regarding contravention as per provisions of the Act, 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. The authority observes that the complainants intend to withdraw from the subject project in view of the facts mentioned above and are well within their right to do the same in view of section 18(1) of the Act, 2016 as the respondent has failed to hand over possession of the subject unit till date and hence failed to abide by the terms of the buyer's agreement. Also, the respondent has failed to abide by the timelines committed by the respondent in the registration certificate. Keeping in view the facts of the present matter, the authority is of the view that the allottee cannot be expected to wait endlessly for taking possession of the unit

which is allotted to him and for which he has paid a considerable amount of money towards the sale consideration. Further, even after a delay of almost 6 years, there is nothing on the record from which the status of construction of the subject project can be ascertained or to show that whether the respondent has applied for OC in respect of the subject project.

26. The rule 15 of the rules has determined the prescribed rate of interest and it provides that 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%. 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., 07.04.2022 is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.
27. As such the complainants are entitled to refund of the entire amount paid by them along with interest at prescribed rate as per provisions of section 18(1) of the Act read with rule 15 of the rules. Therefore, in view of the above, the authority directs the respondent-promoter to return the amount received by it along with interest at the rate of 9.30% p.a. within 90 days from the date of this order.

H. Directions of the authority


28. 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 to return the amount received by it along with interest at the rate of 9.30% p.a. within 90 days from the date of this order as per rule 16(2) of the rules.

29. Complaint stands disposed of.

30. File be consigned to registry.


(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 07.04.2022

HARERA
GURUGRAM