

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

Complaint no. :	78 of 2021
Date of filing complaint:	18.01.2021
First date of hearing:	10.02.2021
Date of decision :	22.04.2022

1 Mrs. Meghna Aggarwal 2 Mr. Abhinna Agarwal R/o: B-16/1, Sector-K, Ali Ganj Scheme, Lucknow, Uttar Pradesh-226024	Complainants
Versus	
M/s Eminence Townships India Private Limited R/o: 44, Ground Floor, Sector 32, Gurugram	Respondent

CORAM:	
Dr. KK Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Sh. Vijay Kumar Saini (Advocate)	Complainants
Sh. Sumit Mehta (Advocate)	Respondent

ORDER

1. The present complaint has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all obligations,

responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. 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	"Eminence Kimberly Suites", Sec 112, Gurugram
2.	Project area	2.875 acres
3.	Nature of the project	Commercial project
4.	DTCP License	35 of 2012 dated 22.04.2012 valid up to 21.04.2025
5.	Name of the licensee	Umed Singh and Others Revised schedule-KPS Colonisers Pvt. Ltd.
6.	RERA Registered/ not registered	Registered 74 of 2017 dated 21.08.2017
	RERA Registration valid up to	30.12.2018
7.	Unit no.	C-802, 8th floor [Annexure-C4 at page no. 41 of complaint]
8.	Unit measuring (super area)	601 sq. ft. [Annexure-C4 at page no. 41 of complaint]
9.	Date of allotment	01.06.2013 [Annexure C-3 at page 37 of the



		complaint]
10.	Date of execution of builder buyer agreement	21.09.2013 [Annexure- C4 at page no. 39 of the complaint]
11.	Date of start of the ground floor roof slab of the particular tower in which the booking is made	01.06.2014 [As stated by the respondent on page no. 8 of reply]
12.	Possession clause	27. Schedule for the possession of the unit The Company based on its present plans and estimates and subject to all exceptions shall endeavor to complete the construction of the said project within 36 (thirty six) months (plus 6 months grace period) from the date of start of the ground floor roof slab of the particular tower in which the booking is made. subject to timely payment by the Allottee(s) of sale price and other charges due and payable according to the Payment Plan applicable to him/her/them and/or as demanded by the Company and subject to force majeure circumstances including but not limited to clauses 27 and 28. The possession of the Said Unit(s) shall, however, be offered only after grant of completion/occupation certificate from the Competent Authority. (emphasis supplied)
13.	Due date of possession	01.12.2017 [Calculated from the date of start of the ground floor roof slab of the particular tower in which the booking is made]

		Grace period of 6 months is allowed
14.	Total sale consideration	Rs.39,39,672/- [Annexure-III at page no. 65 of the complaint]
15.	Total amount paid by the complainants	Rs.38,70,228 /- [Annexure-C6 at page no. 76 of complaint]
16.	Payment plan	Construction linked payment plan [Page 65 of the complaint]
17.	Occupation Certificate	11.07.2019 [Page no. 86-87 of reply]
18.	Offer of possession	22.07.2019 [Annexure-C6 at page no. 74 of complaint]
19.	Delay in delivery of possession till the offer of possession + 2 months i.e. 22.09.2019	1 year 9 months 21 days

B. Facts of the complaint:

3. That on the basis of the representation made by the respondent, the complainants booked a unit no. 0802, on 8th Floor in Tower C "Kimberly Suites Commercial Complex" against sale consideration of Rs. 39,39,672/- including EDC, IDC, interest free maintenance security deposit and club membership by signing Application Form no. 000123 and paid earnest money of Rs. 6,51,000/- as booking amount.
4. That it was stated in para 13 of the application form, the construction of the said unit is proposed to be completed within 36 months (6 months grace period) from date of start of the ground floor, roof and slab of the particular tower in which the booking is made and assured the respondent that buyer

agreement would be signed after two month from date of booking. Thus, mischievously did not specify any date for commencement of construction.

5. That the respondent after taking booking of the said unit called upon the complainants made payment of 30% of sale consideration within 90 days of the date of booking as per the payment schedule but the respondent neglected to sign the buyer agreement within the stipulated period of two months as above and issued the allotment letter dated 01.06.2013 without signing the buyer agreement.
6. That only after expiry of more than 11 months from date of booking i.e. 14.10.2012, the respondent signed buyer agreement on 21.09.2013 in respect of the said unit/apartment after lot of request and reminders and in the process purposely delayed the construction by 11 months.
7. That respondent again mischievously incorporated the construction and possession date in ambiguity in clause no. 27 which is stated as under

"the company based on its present plans and estimates and subject to all just exceptions shall endeavour to the complete the construction of the said project within 36 months (6 months grace period) from date of start of the ground floor, roof and slab of the particular tower in which the booking is made"

8. Thus, no specific date for commencement of construction was purposely mentioned and kept on demanding the balance payment and kept on eluding to commence construction and give possession under the guise of buyer agreement. Therefore the

date of commencement of construction is to be reckoned from date of signing of buyer agreement i.e. 21.09.2013. That the respondent without giving physical possession of the said unit within stipulated time which ought to have been completed by 21.03.2017 as per the buyer agreement dated 21.09.2013 continued to raise illegal demand for the balance payment under threat to cancel the allotment and forfeiture of sale consideration amount, for failure to pay timely payment hence the complainants had no option but to make payment in terms of the demand raised by the respondent without completing of construction, as per construction linked payment plan.

9. That the petitioner had paid the entire sale consideration amount to the tune of Rs. 39,39,672/- inclusive of taxes and GST amounting to Rs.42,32,930.42/-. The complainants never defaulted in payment of instalments on the other side the respondent had neglected to fulfil their obligation towards the complainants and had failed to complete and deliver the physical possession of the said unit within 3 year (6 months grace period) on or before 21.03.2017.
10. That the complainants had been regularly visiting the respondent office since 2016 seeking information about completion of project and met respondent official several times in this respect but each time he was given evasive replies and the project is still incomplete.
11. The respondent now all of sudden sent offer of possession vide letter dated 22.07.2019 wherein it was stated that they had

received Occupation Certificate from DTCP Haryana vide memo no. ZP-800/AD(RA)2019/16519 dated 11.07.2019 and raised demand of balance sum of Rs. 3,62,702/- with GST amounting which was paid to respondent on 30.8.2019 thus total payment made was Rs. 38,70,228/- + Rs. 3,62,702/= 42,32,930.42/- without setting off the claim of the complaint for delayed possession and interest as claimed by the petitioner. The said payment of Rs. 3,62,702 has been made by the petitioner on 30.08.2019 but the respondent had not handed over the physical possession till date.

12. That the respondent had illegally issued offer of possession without seeking completion certificate from competent authority in violation of section 18 RERA Act and forced the complainants under threat to create third party rights and to absolve liability for any refund due to non-completion. Now that the complainants had taken possession of the unit without completion under duress.
13. That the respondent by act, conduct and omission had failed to handover the physical possession of the unit in term of buyer agreement dated 21.09.2013 thus caused huge monetary loss to the complainants hence the complainants are entitled to recover the possession and interest for inordinate delay in completion of the construction.
14. That beside the above the respondent is also liable to pay Interest from 10.10.2012 to 21st Sept. 2013 (BBA signing date) due to delay in execution of BBA from the date of signing of application form.

S. no.	Amount given to company as demanded in Rupees	Date of transaction	Date of BBA signing	Rate of interest applicable	Interest amount in Rupees
1.	651000	10/10/12	21/09/13	10.45%	64301.00/-
2.	20116	26/10/12	21/09/13	10.45%	1900.54/-
3.	425360	28/03/13	21/09/13	10.45%	21433.48/-
				Total	87635.02/-

Thus, the total amount to be paid by the respondent towards interest is Rs.10,14,255/- + Rs. 87,635.02/- = Rs. 11,01,890/-

15. That the complainants made payment under protest, but the possessions is still awaited. That the complainants had written a mail dated 21.08.2019 whereby the respondent was called upon to pay interest and damages for delayed possession but of no consequence and casted pressure to make the payment of Rs. 3,62,702/- The complainants no way out and tendered the payment of Rs. 3,62,702/- on 30.08.2019.
16. That the respondent had failed to handover the physical possession of the unit within 3 years and (6 months) by 21.03.2017 from date the signing of buyer agreement dated 21.09.2013 hence is liable to pay interest to the complainants as per the RERA Act for delayed possession as mentioned in forgoing para(s) or at such rate as may be decided by this authority hence the present complaint is being filed by the complainants seeking the interest and damages from the respondent.

C. Relief sought by the complainants:

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

- i. Direct the respondent to handover the physical possession of the unit no. C-802 as stated in above para of the complainants to the complainants as entire sale consideration has been tendered by the complainants and no amount is due and payable.
- ii. Direct the respondent to pay the interest for every month of delay at prevailing rate of interest.

D. Reply by respondent

18. That the complainants have allegedly submitted in the present complaint that he had a paid the due installments in time, but it is stated that the entire project of the respondent is dependent upon the timely payments by all the investors. It is pertinent to state here that the respondent has diligently invested all the money collected from the investors in the project itself and has never diverted any funds on any account and the construction has got jeopardized, if any, is purely on account of non-timely payments by all the investors. It is stated that the complainants himself has defaulted on timely payments of instalment and has suppressed the said fact from the Hon'ble Authority.
19. That the request of the complainants are untenable as the entire money from all the investors have already been spent towards construction activity of the said project. It is stated that the project is on the verge of completion and even the works related to External Plaster, Internal Roads, Internal Sewerage System, Internal Flooring, STP, Fire Fighting System, Unit Outer Façade, overhead tanks, underground water tanks, plumbing connections,

Internal and External Electricity wires, Installation of Lifts, Certificate for Operation of Lifts, Installation of Electrical components and Even Gen-Set Installation for power supply and Back-Up, has been completed and project is already due for handover of the possession, to the complainants and is awaiting final approvals.

20. That furthermore, any delay, if so has been caused in delivering the possession of the property as stated by the complainants, was purely due to the strict orders of National Green Tribunal (NGT) on banning the construction activity on various occasions and thus on every occasion the Green Body ordered the civic bodies to set up teams to ensure there is no burning of waste in Delhi-NCR and asked them to inspect places where construction material were lying in the open uncovered and take appropriate action including levy of environment compensation. That as per the matter titled as "Ardhaman Kaushik vs Union of India & Ors; Sanjay Kulshrestha vs Union of India & Ors; Supreme Court Women Lawyers' Association vs Union of India & Ors; Diya Kapur & Ors vs Union of India & Ors, and Mahendra Pandey vs Govt of NCT of Delhi & Ors", the Respondent was forced to take the adequate steps and thus, the following period, is covered under the provision of the Force Majeure i.e. Clause 53 of the Builder Buyer Agreement.
21. It is further submitted that there have also been several unforeseeable events in the intervening periods which has

materially and adversely affected the project and were beyond the control of the Respondent, are being set out herein under: -

- a. It is stated that on account of every halt due to the Ban on Construction Activities, following the order of National Green Tribunal and Pollution Control Board, the entire machinery of the Respondent used to suffer adversely and it took long periods, for the respondent to remobilize the entire construction activity and increased cost of construction. The delay on account of force majeure is as follows: -

S. No.	Year	Order Dated	Closure of sites (From-To)	Delay, due to halt
1.	2016	10th November, 2016	09.11.2016-15.11.2016	90 days
2.	2017	9th November, 2017	09.11.2017-16.11.2017	75 days
3.	2018	14th June, 2018	15.06.2018 16.06.2018	45 days
4.	2018	29th October, 2018	01.11.2018-10.11.2018	45 Days
5.	2018	24th December, 2018	25.12.2018-26.12.2018	35 Days

- b. It is submitted that the demonetization of currency notes of Rs. 500 & Rs. 100 announced vide executive order dated 08.11.2016, has also affected the pace and the development of the project. Due to this policy change by the Central Government, the pace of construction of the project greatly and adversely affected the construction work since the



withdrawal of the money was restricted by Reserve Bank of India as the availability of new currency was limited and unavailable with the banks. It is well known that the Real Estate Sectors deploy maximum number of construction workers who are paid in cash and hence the said sector requires cash in hand to offer such employment of the work force to carry out the works. All the workers, labourers at the construction sites are paid their wages in cash keeping in view their nature of employment as the daily wage's labourers. The effect of such demonetization was that the labourers were not paid and consequently they had stopped working on the project and had left the project site / NCR which led in huge labour crisis which was widely reported in various newspapers/ various media. Capping on withdrawal and non-availability of adequate funds with the banks and further escalated this problem many folds.

- c. That further in the month of 19-03-2018, the respondent applied for renewal of license for the said project and it was only after a period of 06 months i.e. on 03-08-2018, the DTCP reverted back to the respondent company with erroneous demand and further after efforts of the respondent company, the said demand was rectified and was notified back to the respondent on 01-02-2019, only and the said demand has already been paid along with future due demands by the respondent, acting under its bonafide. It is stated that the occupancy certificate, which is to be obtained before offer of possession could not be obtained due to the delays on the



- party of Government. Thus, the force majeure existed from 19-03-2018 till 01-02-2019 i.e. approx. 11 Months.
- d. That even otherwise the period of possession of the said unit, as per the builder buyer's agreement is to be counted from the date of laying off the ground floor roof slab i.e. 01st June 2014. Thus, in the terms of the builder buyer agreement, it is stated that the due date for possession was 01-12-2017 i.e. 42 months from the date of laying of ground floor slab, subject to force majeure.
- e. It is Submitted that on account of delays due to NGT orders (09 Months and 20 days), Demonetarization (03 months) and Correction of erroneous EDC / IDC demand (11 months), overlaps with each other and caused a total period of force majeure as 18 Months. And in the light of the above stated force majeure, the works at the project site was to be completed on or before May 2019 and accordingly possession was to be offered.
- f. It is submitted that the works at the project site were completed on 27.03.2019 and the respondent had applied for occupancy certificate to DGTCP, Haryana at Chandigarh and subsequently the DGTCP, Haryana post its inspection & as per provisions of applicable law, have already granted the occupancy certificate on 11.07.2019. It is submitted that the period taken by the Government Office for approval of the application for occupancy certificate is also covered under force majeure and thus the force majeure period of 104 days

is also exempted and thus the period for offer of possession was extended up to 31.08.2019.

22. It is pertinent to mention here, that despite delayed payments from the complainants, the above-named respondent has never charged any interest on delayed payments as per the buyer's agreement.
23. A bare perusal of the annexures of the written statement shows that the demands were raised upon completion of excavation works, and the demands were raised immediately upon inaction of construction works. It is stated that no undue coercion or force was exerted by the respondent at the time of execution of the builder buyer agreement and the terms of the builder buyer agreement were duly accepted by both the parties. It is pertinent to state here that the construction of the project by the builder / respondent was dependent upon the collection of money from all the buyers as per demand and thus accordingly when the money corpus was collected, the respondent with its own funding and from the receipts started constructing the said project and the ground floor slab was on 01-06-2014. It is to be understood that the stilt, basement and PCC works are the most crucial works in the superstructure and the entire structure of the building depends on the strength from the ground, thus the respondent in order to ensure an earth-quake proof building and a long-lasting superstructure has invested heavily in its construction and kept monitoring the quality and strength of construction at regular level of construction of the same.

24. The period for offer of possession is to be complied in accordance to the builder buyer agreement. It is stated that even otherwise as per the terms of the builder buyer agreement the period for handing over of the project was 42 months (i.e. 36 months + 6 months of Grace period) to be accounted from date of casting of ground floor slab i.e. 01.06.2014 as per the terms of builder buyer agreement, subject to force majeure, as per which the due date for handing over of possession is 31.08.2019. And the offer of possession has already been issued. it is further denied that the respondent had collected the complete amount of sale consideration with one year's itself. it is pertinent to state that even till date the amount of sale consideration is due to be collected and payable by complainants.
25. 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:

26. The plea of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E. I Territorial jurisdiction

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

Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram district. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

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

Section 11(4)(a)

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

Section 34-Functions of the Authority:

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

So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.

F. Findings on the objections raised by the respondent:

F.I. Objection regarding Timely payments:

The respondent has alleged that the complainants having breached the terms and conditions of the agreement and contract by defaulting in making timely payments. Further the above-mentioned contention is supported by the builder buyer agreement executed between both the parties. Clause 24 provides that timely payments of the instalments and other charges as stated in the schedule of payment is essence of the agreement.

But the respondent cannot take advantage of this objection of timely payments being himself at wrong firstly by still not obtaining the occupation certificate and offering the possession of the unit despite being delay of 1 year 9 months 21 days and the complainants have already paid more than 90% of the total sale consideration till date. Therefore, the respondent itself failed to complete its contractual and statutory obligations. Moreover, there is no document on file to support the contentions of the respondent regarding delay in timely payments.

G. Findings regarding relief sought by the complainants:

G.1 Direct the respondent to pay interest for every month of delay at prevailing rate of interest.

Admissibility of delay possession charges:

27. 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

28. 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.
29. 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.

30. 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.

31. **Admissibility of grace period:** The respondent promoter has proposed to handover the possession of the unit within 36 (thirty six) months (plus 6 months grace period) from the date of start of the ground floor roof slab of the particular tower in which the booking is made. The grace period of 6 months is allowed as is unqualified/ unconditional and is sought for handing over of possession. Therefore, the due date of possession comes out to be 01.12.2017.
32. **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.

33. 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.
34. 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., 22.04.2022 is @ 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.
35. 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:

"(z) "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.

36. 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 27 of the buyer's agreement executed between the parties on 21.09.2013. The developer proposes to hand over the possession of the apartment within 36 (thirty six) months (plus 6 months grace period) from the date of start of the ground floor roof slab of the particular tower in which the booking is made. The date of start of the ground floor roof slab of the particular tower in which the booking is made is 01.06.2014 as stated by the respondent on page no. 8 of reply. The grace period of 6 month is allowed so the possession of the booked unit was to be delivered on or before 01.12.2017. 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 21.09.2013 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 21.09.2013 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 11.07.2019. The respondent has offered the possession of the subject unit on 22.07.2019. 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. 01.12.2017 till offer of possession (22.07.2019) plus 2 months i.e. 22.09.2019.

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 i.e. 01.12.2017 till offer of possession (22.07.2019) plus 2 months i.e. 22.09.2019.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.

G.2 Direct the respondent to handover the physical possession of the unit no. C-802

The respondent has filed a copy of OC dated 11.07.2019 on page 86-87 of the reply which shows that it has received the OC for unit in question. The respondent has already offered the possession to the complainants on 22.07.2019.

The occupation certificate is granted by the competent authority to the promoter only after the completion of the building when the civic infrastructure is complete and the six essential services are certified to be complete i.e., water supply, electricity & streetlight, sewerage, stormwater, roads and parks. So, the occupation certificate is a prerequisite for offering possession, but the promoter is under obligation to offer possession of the subject unit as per specifications provided in the buyer's agreement and in accordance with the sanctioned plans, layout plans and specifications as approved by the competent authority. Also, it has been observed by the authority that there are certain cases where even after obtaining the occupation certificate, possession is

offered by the promoter but the unit is not complete as per specifications mentioned in the buyer's agreement then in such cases possession shall be deemed to be invalid.

Therefore, the authority directs the complainants to take possession after paying outstanding dues, if any.

H. Directions of the authority:

37. 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. 01.12.2017 till offer of possession (22.07.2019) plus 2 months i.e. 22.09.2019.
- ii. The arrears of such interest accrued from 01.12.2017 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.
- 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 holding charges from the complainant at any point of time even after being part of agreement as per law settled by Hon'ble Supreme Court in civil appeal no. 3864-3889/2020. Moreover, the respondent shall not charge anything which is not part of buyer's agreement.
- v. The complainants are directed to pay maintenance charges. However, the respondent shall not demand the advance maintenance charges for more than one (1) year from the allottee even in those cases wherein no specific clause has been prescribed in the agreement or where the AMC has been demanded for more than one (1) year.

38. Complaint stands disposed of.

39. File be consigned to registry.

v.i-3
(Vijay Kumar Goyal)
Member

[Signature]
(Dr. KK Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 22.04.2022