

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

Complaint no. :	3347 of 2021
Date of filing complaint:	25.08.2021
First date of hearing:	29.09.2021
Date of decision :	22.04.2022

1 2	Mrs. Sushila Rathore Mr. Subhash Rathore R/o: H.No.430, Sector-10, Near Gyan Devi School, Gurugram	Complainants
Versus		
	M/s MVN Infrastructure Pvt. Ltd. R/o: 58A/1, first Floor, Kalu Sarai, New Delhi 110016	Respondent

CORAM:	
Dr. KK Khandelwal	Chairman
Shri Vijay Kumar Goyal	Member
APPEARANCE:	
Sh. Maninder Singh (Advocate)	Complainants
Sh. Pawan Upadhyay and Sh. Lokesh Dixit (Advocates)	Respondent

ORDER

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

the promoter shall be responsible for all obligations, responsibilities and functions under the provision of the Act or the rules and regulations made there under or to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

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

S.No	Heads	Information
1.	Project name and location	"MVN Athens", Sector 5, Sohna, Gurugram
2.	Project area	6.50625 acres
3.	Nature of the project	Affordable Group Housing
4.	DTCP License	49 of 2014 dated 18.06.2014 and valid up to 17.02.2026
5.	Name of the licensee	M.V.N. Infrastructure Pvt. Ltd
6.	RERA Registered/ not registered	Registered GGM/326/58/2019/20 dated 26.03.2019
	RERA Registration valid up to	28.02.2021
7.	Unit no.	Flat no. 605, Tower B6,6th floor [Annexure 1 at page no. 19 of the complaint]
8.	Unit measuring (super area)	477.3726 sq. ft. [Annexure 1 at page no. 19 of the complaint]
9.	Revised area	481.01 sq. ft. [Annexure 2 at page 39 of the



		complaint]
10.	Date of allotment	N/A
11.	Date of execution of builder buyer agreement	16.02.2015 [Annexure 1at page no. 17 of the complaint]
12.	Approval of building plan	05.09.2014 [As per information obtained from the website of DTCP, Haryana]
13.	Environmental Clearance	05.01.2015 [As per information obtained from the planning branch of the authority]
14.	Possession clause	3.1 POSSESSION Subject to force majeure circumstances, intervention of statutory authorities, receipt of occupation certificate and allottee having timely complied with all its obligations, formalities or documentation, as prescribed by company and not being in default under any part hereof and flat buyer's agreement, including but not limited to the timely payment of instalments of the other charges as per the payment plan, stamp duty and registration charges, the company proposes to offer possession of the said flat to the allottee within a period of 4 (four) years from the date of approval of building plans or grant of environment clearance , whichever is later, subject to the allottee has executed the flat buyer's agreement. (emphasis supplied)
15.	Due date of possession	05.01.2019 (As per clause 3.1 of the BBA)

		<p>[Calculated from the date of approval of environmental clearance]</p> <p>Keeping in view the above orders passed by the DTCP, the period from 05.09.2014 to 16.05.2016 is treated as zero period for the purpose of commencement of project and extension in the period of licence as such the deemed date of commencement shall be deemed as 16.05.2016 and the project was required to be completed on or before May 15,2020.</p> <p>So, the due date comes out to be 15.05.2020</p>
16.	Total sale consideration	<p>Rs.17,58,793/-</p> <p>[Annexure 1 at page no. 20 of the complaint]</p>
17.	Total amount paid by the complainants	<p>Rs.18,45,031/-</p> <p>[As per customer ledger dated 17.07.2021 at page 40 of the complaint]</p>
18.	Payment plan	<p>Time linked payment plan</p> <p>[Page 36 of the complaint]</p>
19.	Occupation Certificate	<p>02.07.2021</p> <p>[Annexure R8 at page no.38 of the reply]</p>
20.	Offer of possession	<p>05.07.2021</p> <p>[Annexure R9 at page no.41 of the reply]</p>
21.	Delay in delivery of possession till the offer of possession + 2 months i.e. 05.09.2021	<p>1 year, 3 months, 21 days</p>

B. Facts of the complaint:

3. That somewhere in the first half of year 2014, the respondent through its marketing executives and advertisement via various mediums & means approached the complainants, with an offer to invest and buy a flat in the proposed real estate project of respondent, namely "MVN Athens Sohna" in the Sector-5, Sohna, Gurugram. The respondent represented to the complainants that the respondent is a very ethical business house in the field of construction of residential project and in case the complainants would invest in the said project of respondent, then it would deliver the possession of proposed flat on the promised delivery date as per the best quality assured by the respondent. The respondent had further assured to the complainants that the respondent has already secured all the necessary sanctions and approvals from the appropriate and concerned authorities for the development & completion of said project on time with the promised quality and specification. The respondent had also shown the brochures and advertisement material of the said project to the complainants given by the respondent and assured that the allotment letter and builder buyer agreement for the said project would be issued to the complainants within one week of booking to be made by the complainants. The complainants while relying on the representations and warranties of the respondent and believing them to be true had agreed to the proposal of respondent to book the residential flat in the project of respondent.

4. That respondent arranged the visit of its representatives to the complainant and they also assured the same as assured by respondent to the complainants, wherein it was categorically promised by the respondent that they already have secured all the sanctions and permissions from the concerned authorities and departments for the sale of said project and would allot the residential flat in the name of complainants immediately upon the booking. Relying upon those assurances and believing them to be true, complainants booked a residential flat bearing no. 605 on 6th floor in Tower-B6 in the proposed project of the respondent admeasuring approximately carpet area of 477.3726 sq. ft. in the township to be developed by respondent. It was assured and represented to the complainants by the respondent that it had already taken the required necessary approvals and sanctions from the concerned authorities and departments to develop and complete the proposed project on the time as assured by the respondent. Accordingly, the complainants have paid Rs.90,000/- through cheque bearing no.196588 dated 09.10.2014 as booking amount.
5. That thereafter, the respondent started raising the demand of money /instalments from the complainants, which was duly paid by the complainants as per agreed timelines and along-with the making of payments, complainants time and again requested the respondent to execute the flat buyer's agreement as per its promise and assurance but the respondent acting arbitrarily and negligently have refused and ignored the requests and demands of

the complainant on lame excuses and deliberately and intentionally delayed the execution of the flat buyer's agreement for more than 4 months and ultimately it was executed on 16.02.2015.

6. That thereafter, the respondent vide a letter dated 28.12.2015 increased the carpet area to 481.011 sq. ft. from 477.373 and also changed the unit / flat from 605 to 4-605.
7. That at the time of execution of the said agreement, the respondent misusing its dominant position had coerced and pressurized the complainants to sign the arbitrary, illegal and unilateral terms of the said flat buyer agreement and when the complainants had objected to those arbitrary terms and conditions of the said agreement and refused to sign the same, the respondent threatened to forfeit the amount already paid by the complainants as sale consideration in respect of the said flat and also to cancel their booking. The complainants having no other option and finding themselves to be helpless and being cheated had under duress and coercion signed the said flat buyer's agreement.
8. That as per the clause-3.1 of the said flat buyer's agreement, the respondent had agreed and promise to handover the aforesaid flat within a time period of 4 years. However, the respondent has breached the terms of said flat buyer agreement and failed to fulfill its obligations and offered the possession for the aforesaid flat on 05.07.2021 vide possession letter dated 05.07.2021 with the delay of 2 years 5 months.

9. That from the date of booking and till today, the respondent had raised various demands for the payment of installments on complainants towards the sale consideration of said flat and the complainants have duly paid and satisfied all those demands as per the flat buyer's agreement without any default or delay on their parts and have also fulfilled otherwise also their part of obligations as agreed in the flat buyers agreement. The complainants were and have always been ready and willing to fulfill their part of agreement, if any pending.
10. That the complainants jointly and severally have paid the entire sale consideration to the respondent for the said flat. As per the statement dated 17.07.2021, issued by the respondent, upon the request of the complainants, the complainants have paid Rs.18,45,031/- towards total sale consideration as on today to the Respondent as demanded time to time.
11. That on the date agreed as per the builder buyer agreement for the delivery of possession i.e. 16.02.2019 of said unit as per date of booking and according to the flat buyer's agreement.
12. That the respondent has committed delay in delivering of the possession of the aforesaid flat respondent has violated the terms and conditions of the flat buyer's agreement and promises made at the time of booking of said flat. The respondent has also failed to fulfill the promises and representation made it while selling the said flat to the complainants.

C. Relief sought by the complainants:

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

- i. Direct the respondent to pay the interest at the rate prescribed period. on the total sale consideration amounting to Rs.18,45,031/- paid by the complainant for the said flat on account of delay in delivering possession of said flat.

D. Reply by respondent

14. That the respondent was granted license No.49 of 2014 dated June 18, 2014, in prescribed form for development of affordable group housing colony, over the project land. Upon the grant of aforesaid license, the zoning plan was approved vide drawing No. DGTCP-4724 by the competent authority. Thereafter building plans were approved on September 5, 2014. The respondent, thereafter, applied for obtaining prior environmental clearance of the project, vide application dated August 29, 2014, and the same was granted on January 5, 2015, vide letter no. SEIAA/HR/2015/11.
15. That the complainants applied for the allotment of a unit in the project of the respondent vide application dated 30.10.2014 and was subsequently allotted flat no. 605, 6th floor in block / tower B - 6 (Tower No.4). That the respondent applied for the sanction of building plans of the affordable group housing project vide application dated 03.05.2014.
16. That during the pendency of the application for the sanction of building plans it came to the notice of the respondent that certain works were being carried out on the land near the project, for erection of two electrical poles for the installation of High-Tension

Lines (HT Lines). The location of these electrical poles was such that in the event the High-Tension lines were to connect the two poles, the HT Lines would have run through a portion of the project, that too in a manner that it would have come in the way of the buildings that were planned and approved to be constructed over the said project land. This state of affairs could not have been allowed considering the well-being and health related issues of the allottees of the project as any HT Line passing over the edifice of the allottees would have played havoc with their health and life.

17. Under such emergent and pressing circumstances, the respondent approached the Haryana Vidyut Prasaran Nigam Limited ('HVPNL') and other relevant/concerned authorities by way of various correspondences, requests and representations to change the alignment of the HT lines running through the project. The respondent had even met the officials of the Department of Town and Country Planning, Haryana, as license and all necessary approvals had been granted by this Department, apprising them of the milieu in which the respondent had got embroiled. But the said requests were not acceded to and the respondent was granted no relief by HVPNL or any other authority. Apparently, there was a direct conflict between the obligations of the respondent and the health and safety of the allottees of the project. Under such circumstances and being an ethical developer who is not driven by profit motive and who always puts the interests and the well-being of its buyer at the forefront the

respondent decided to take legal recourse in the matter for the benefit and well-being of its buyers.

18. That in this backdrop, the respondent being left with no other alternative filed civil writ petition no.18929 of 2014 before the Hon'ble Punjab and Haryana High Court. Significantly, in the said writ petition, a short reply was filed by Chief Town Planner, Department of Town and Country Planning, acting on behalf of the Director, Town and Country Planning, Haryana. In the reply, while acknowledging the fact that the High-Tension Wires would affect the project, it was inter-alia, stated that if the realignment of the proposed electric poles cannot be avoided by the executing agency, the respondent herein could get the zoning plans and building plans revised from the office of said department so as to avoid passing of High-Tension Wires over the buildings proposed to be constructed by the respondent.
19. That accordingly, the respondent, under such force majeure circumstance, submitted request for revision of the building plan(s)/zoning plan(s) on July 13, 2015 and the revision was approved provisionally vide memo no.14925 dated August 12, 2015, for the purpose of inviting objections/suggestions. After considering all the objections raised against such provisional approval with to respect to revision of the building plan(s) the revised building plans were approved vide memo No. ZP-981/SD (BS)/2016/9626 dated May 16, 2016. The said fact which stands recorded in the records and order of the competent authority i.e. Director, Town and Country Planning, Haryana. It is pertinent to

mention here that the respondent also asked its allottees to submit objection to the said revision of the building plan. It is further submitted that certain objection was raised by the allottees which were duly resolved by the respondent however, no objection to the said revision was raised by the complainants and, as a matter of fact, the complainants made further payments even after the aforesaid revision of the plan.

20. Thus, it is quite obvious from the above-mentioned facts that the necessity to revise the building plans arose due to circumstances beyond the control of the respondent and in the interest of the allottees which amounted to force majeure conditions and consequently the area of the flats in the project including the flat allotted to the complainants had got changed and the towers that were earlier marked alphabetically were then marked numerically.
21. That thereafter, in the writ petition then pending before the Hon'ble High Court, the respondent had submitted that due to the process involving the change and revision of the building plan certain period has elapsed during which the respondent could not continue the development of the project and therefore prayed that such period which was lost during this period in the interregnum be removed from the limited time of completion provided under the policy. Considering the plea of the respondent the Hon'ble High Court favourably considered the petition of the respondent and directed the Director General, Town and Country Planning to consider the representation of the respondent as much time was

lost in the exercise of revision of building plans due to the issue of high tension wires.

22. Accordingly, the respondent submitted its representation and the Director, Town and Country Planning considered the same on merits. The facts of the case were duly considered by the Director, Town and Country Planning, Haryana who returned a finding on merits that the project of the respondent had been stalled for approximately a period of one year and eight months, for reasons beyond the control of the respondent. The Ld. Director, Town and Country Planning therefore passed a speaking order thereby directing the period from September 5, 2014, to May 16, 2016, to be treated as zero period for the purposes of commencement of project and extension in the period of the license. The said order was passed on the basis of the undisputed facts and applicable law as the respondent was prevented from undertaking development works of the said project due to installation of HT Line by HVPNL. It was duly appreciated in the said order that in case the development works were executed by the respondent, as per the original approved building plans, the HT Line would have passed through the constructed area putting the life of the inhabitants at risk. It was also noticed that the route of wires of HT Line is to be kept as per IS code. Needless to mention that as per the said direction of the competent authority i.e. The Director, Town and Country Planning the date of commencement of the project shall be deemed as 16.05.2016 and the project is required to be completed on or before 15.05.2020.

23. It is further submitted that the complainants duly accepted the aforesaid changes and made further payments under the changed building plan and the changed unit. It is pertinent to mention here that due to the revision in the building plan, the tower numbers in the project were changed from alphabetical to the numerical and a clarification note dated 02.06.2016 was issued by the respondent in this regard.
24. It is a matter of fact that due to spread of ongoing COVID-19 pandemic complete lockdown was imposed in the whole country with effect from 25.03.2020. It is humbly submitted that the due spread of COVID-19 and subsequent imposition of the nationwide lockdown, various hurdles were faced by the Developers as well as the allottees in fulfilling their obligations. Therefore, with a view to grant some respite, the Government of Haryana as well as this Hon'ble Authority granted various concessions to both Home buyers as well as the developers. This Hon'ble Authority considered the Covid - 19 as a force majeure and extended the completion date of all the projects by 6 months vide its Order bearing No.9/3-2020 HARERA/GGM (Admn.) dated 26.05.2020. Thereafter, the Government of Haryana (through Town and Country Planning Department) has granted a moratorium period of 9 months for various compliances by way of Notification No. Misc-1025/2020/13188 dated 28.07.2020. Therefore, the permitted time for the completion of the project as per law till 15.11.2020.

25. It is respectfully submitted that the respondent even in such challenging times has duly carried out the construction /development of the project and the Flat as per the terms of the provisions of Haryana Development and Regulation of Urban Areas Act, 1975 (hereinafter referred to as '1975 Act') and the rules framed there under. Subsequently, the respondent vide application dated 15.06.2020 applied for grant of occupation certificate with respect to the Second phase of the project, the Flat in question is also in this phase. The said application was duly accepted by the concerned department and occupancy certificate for the second phase of the project was granted on 02.07.2021. It is pertinent to mention here that the respondent had already delivered the first phase of the project, one-year prior to the date of completion.
26. That the date of completion of the project was 15.05.2020 and the respondent applied for the OC on 15.06.2020 within the time extension provided by this Ld. Authority due to Covid pandemic. However, there was some delay on the part of the department in granting the OC due to the hampered working for the department due to COVID pandemic. Therefore, there is no delay on the part of respondent in delivering the flat in question.
27. That, respondent has already issued the offer of possession to the complainants vide letter dated 05.07.2021, however, complainants have not taken the possession of the Flat by completing the necessary requirements. The respondent had also sent a reminder vide letter dated 30.08.2021. Instead of taking the

possession, the complainants choose to file the present complaints. Such a conduct of the complaints clearly reveals that the complainants are trying to wiggle out their legal obligation under the agreement.

28. 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:

29. 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 2.6 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, 3 months, 21 days and the complainants have already paid more than 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 the interest on the total sale consideration amounting to Rs.18,45,031/-at the rate prescribed period paid by the complainant for the said flat on account of delay in delivering possession of said flat.

Admissibility of delay possession charges:

30. 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

31. 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.
32. 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.

33. 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.

34. **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.

35. 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.
36. 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%.

37. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

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

Explanation. —For the purpose of this clause—

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

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

38. 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 3.1 of the buyer's agreement executed between the parties on 16.02.2015. The developer proposes to hand over the possession of the apartment within a period of 4 (four) years from the date of approval of building plans or grant of environment clearance, whichever is later.

The respondent has filed CWP No.18929 of 2014 (O&M) in the Hon'ble High Court and prayed that the high tension wires which were passing over its land be removed/deviated to enable it to execute Affordable Group Housing Project within time. It was also alleged that during this interregnum the petitioner has applied for revised desired by the respondent and that revised zoning was allowed and consequently those high-tension wires are not coming in the way of the construction. However, because of this the petitioner has lost time and have a claim that the period of lost time be set off against the period within which the petitioner had to execute the project.

The Hon'ble High Court vide its order dated 26.07.2017 has ordered that once the main grouse of the petitioner has been redressed, it would be appropriate if they make a representation with respect to this subsidiary claim before the respondent No.3. If any such representation is made before respondent No.3, he shall take a reasoned decision within a period of 3 months.

In compliance of directions passed by the Hon'ble High Court, the DTCP vide its order dated 13.09.2018 has decided the representation made by the builder as under:



"In this case the project was stalled for approx. 1 year and 8 months and reasons were beyond the control of colonizer. Therefore, I am of the considered view that the time period from 05.09.2014 to 16.05.2016 be treated as zero period for the purposes of commencement of project and extension in the period of licence as the licensee in the present case was restrained from undertaking development works of the project due to installation of power line near the project land by HVPNL and in case the development works were executed by the licensee as per the approved building plans, the HT line would have passed through the construction area".

Keeping in view the above orders passed by the DTCP, the period from 05.09.2014 to 16.05.2016 is treated as zero period for the purpose of commencement of project and extension in the period of licence as such the deemed date of commencement shall be deemed as 16.05.2016 and the project was required to be completed on or before May 15,2020.

39. Considering the above-mentioned facts, the authority calculated the due date of possession as per clause 3.1 of the buyer's agreement i.e. company proposes to offer possession of the said flat to the allottee within a period of 4 (four) years from the date of approval of building plans or grant of environment clearance, whichever is later. While treating zero period from 05.09.2014 to 16.05.2016, keeping in view the orders passed by the DTCP, vide which the period from 05.09.2014 to 16.05.2016 is treated as zero period for the purpose of commencement of project and extension in the period of licence as such the deemed date of commencement shall be deemed as 16.05.2016 and the project was required to be completed on or before May 15, 2020.

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 02.07.2021. The respondent has offered the possession of the subject unit on 05.07.2021. 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. 15.05.2020 till offer of possession i.e. 05.07.2021 plus 2 months i.e. 05.09.2021.

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. 15.05.2020 till offer of possession i.e. 05.07.2021 plus 2 months i.e. 05.09.2021 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.

The respondent shall not charge interest on delayed payment from the complainants for the period from 05.09.2014 to 16.05.2016 which is treated as zero period by the DTCP.

H. Directions of the authority:

40. 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. 15.05.2020 till offer of possession i.e. 05.07.2021 plus 2 months i.e. 05.09.2021.
- ii. The arrears of such interest accrued from 15.05.2020 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.



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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.

41. Complaint stands disposed of.

42. File be consigned to registry.

V.K. Goyal
(Vijay Kumar Goyal)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dr. KK Khandelwal
(Dr. KK Khandelwal)

Chairman

Dated: 22.04.2022

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