

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

Complaint no. : 4486 of 2021
Date of filing complaint: 16.11.2021
First date of hearing : 05.01.2022
Date of decision : 08.03.2022

1. Suresh Verma 2. Mamta Verma R/O: - RZ-D3-71, Street no. 9, Mahavir Enclave, New Delhi - 110045	Complainants
Versus	
1. Kashish Developers Limited Regd. Office at:- 87, Old A.G. Colony, Kadru, Ranchi-834002 2. Vinman Construction Private Limited Regd. Office at:- 4, Battray Lane, Rishi Apartment, Rajpur Road, Civil Lines, Delhi 110054 3. Elite Villas Private Limited Regd. Office at:- 87, Old A.G. Colony, Kadru, Ranchi-834002	Respondents

CORAM:

Dr. K.K. Khandelwal

Chairman

Shri Vijay Kumar Goyal

Member**APPEARANCE:**

Sh. Chetan Pal (Advocate)

ComplainantSh. Mayank Wadhwa & Smt. Muskan Gupta
(Advocate)**Respondents****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 allottees as per the agreement for sale executed inter se.

A. Unit and project related details

2. The particulars of unit details, 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.	Name and location of the project	"Manor One", Sector-111, Village-Chauma, Gurugram, Haryana
2.	Project area	14.843 acres
3.	Nature of the project	Group housing complex
4.	DTCP license no. and validity status	110 of 2011 dated 16.12.2011 Valid till 13.12.2019
5.	Name of the license holder	1. Vinman Construction Private Limited 2. Elite Villas Private Limited
6.	RERA registered/ not registered	Registered Vide registration no. 58 of 2019 dated 24.09.2019
7.	RERA registration valid up to	31.12.2021
8.	Unit no.	B1-3D, 3 rd floor, block- B1 (As per page no. 26 of the complaint)
9.	Unit admeasuring	1455 sq. ft. (As per page no. 26 of the complaint)
10.	Date of apartment buyer's agreement	07.02.2013 (As alleged by the complainants)
11.	Payment plan	Construction linked payment plan

		(As per page no. 61 of complaint)
12.	Total consideration	Rs.1,03,08,280/- (As per page no. 27 of the complaint)
13.	Total amount paid by the complainants	Rs.82,76,196/- (As per page no. 85 of the complaint)
14.	Possession clause	<p>Clause 3 POSSESSION (a) Offer of possession: <i>That subject to terms of this clause and subject to the APARTMENT ALLOTTEE(S) having complied with all the terms and conditions of this Agreement, and not being in default under any of the provisions of this Agreement and further subject to compliance with all provisions, formalities, registration of sale deed, documentation, payment of all amount due and payable to the Developer by the APARTMENT ALLOTTEE(S) under this agreement, prescribed by the as Developer, the Developer proposes to hand Over the possession of the said APARTMENT within a period of thirty (36) months (excluding a grace period of 6 months) from the date of execution of this Agreement. It is however understood between the parties that the possession of various Blocks/Towers comprised in the Complex and also the various common facilities planned therein shall be ready & completed in phases wise and will be handed over to the allottees of different blocks/Towers as and when the same will be completed and in a phased manner.</i></p>
15.	Due date of delivery of possession	07.02.2016 [Calculated from the date of the agreement i.e.; 07.02.2013]
16.	Occupation certificate	Not obtained

17.	Offer of possession	Not offered
18.	Delay in handing over of possession till date of order i.e.,09.03.2022	6 years 01 months 01 days.

B. Facts of the complaint

3. That the respondents launched the project namely "MANOR ONE" in 2011 with the promise to deliver the possession by August 2016. The complainants were approached by the representatives of the respondents who claimed and boasted the aforesaid project as the world class project. The complainants were invited to the sale office and were lavishly entertained. The respondents promised that the project would be completed by August 2016, including parking, horticulture, club and other common areas.
4. That the complainants paid all the installments of payments as and when demanded by the respondents and ultimately paid an amount of Rs. 82,76,196/- towards total demand of Rs. 1,03,08,280/-. The gross total demanded by the respondents is inclusive of the tax payments.
5. That the complainants have approached the respondents many times and pleaded for delivery of possession of their apartment as per the schedule of date of possession as per the buyer's agreement. The respondents did not give any justified response to their letters, emails, personal visits, telephone calls, etc. seeking information about the status of the project and delivery of possession of their apartment. The complainants also pointed out clause 3(c)(iv) of buyer's agreement stating that the possession of apartment should have been delivered by August 2016. That illegalities and infamies

reflected in the attitude of the respondents wherein despite receipt of complete payable amount of payments, have wilfully failed to deliver the possession of apartments till date violating the provisions of section 11(4)(a) of Act.

6. That the respondents in an unfair manner siphoned the funds meant for project and utilised same for their own benefit for no cost. That the respondents being builders and developers, whenever in need of funds from bankers or investors ordinarily have to pay a heavy interest per annum. However, in the present scenario, the respondents utilised funds collected from the complainants and other buyers for their own good in other projects, being developed by the respondents. That is why, the project has not yet been completed even after a delay period of more than 3 years
7. That the complainants has lost confidence and in fact has no trust left in them as the respondents have deliberately and wilfully indulged in undue enrichment, by cheating the complainants beside being guilty of indulging in unfair trade practices and deficiency in services by not delivering the possession of the apartment and further, remaining non-responsive to the requisitions of the complainants.
8. In the given premise and circumstances, it is submitted that the respondents/sellers/builders/promoters/owners are habitual of making false promises and have a deceptive behaviour. The respondents have earned enough monies by duping the innocent complainants and other buyers through their unfair trade practices and deficiencies in services. This

has caused the complainants enough pain, mental torture, agony, harassment, stress, anxiety, financial loss and injury. In the present circumstances, the complainants have been left with no other options but approach and seek justice before this authority.

9. The respondents in a clandestine manner charged car parking charges, club membership charges, preferential location charges and the delay payment interest charges at the rate of 24% per annum from the complainants. But even after a delay of more than four years, respondents neither offered the possession of the apartment nor paid any interest on their default to the complainants. The complainants hereby request for the immediate delivery of possession of the apartment and interest thereon, on the default of the respondents in handing over of possession, from the date of possession (August 2016) till the actual delivery date of possession of the apartment.
10. That the complainants do not intend to withdraw from the project. As per obligations on the promoter under Section 18(1) proviso, the promoters are obligated to pay interest at the prescribed rate for every month of delay till the handing over the possession. The respondents/promoters have not fulfilled their obligations. The complainants reserve their right to seek compensation from the promoter.
11. That by delaying possession, the respondents have unjustly enriched themselves by taking complete payable amount and additional charges in lump sum from the complainants way back in 2015 and thereafter utilizing this huge money on other projects and left the complainants and other

buyers high and dry at their own fate. This conduct and behaviour of the respondents are deplorable and constitute unfair trade practices & deficiency in services and a clear case of cheating.

12. That the respondents, who had collected huge money from the complainants and other buyers, have not utilised said money in the construction of apartments on time as promised by the respondents at the time of booking of apartment in 2012. The respondents had demanded and collected the amount from the complainants without following the "schedule of payment" i.e. achieving particular stage of construction annexure-ii as in buyer's agreement. The respondents have raised the demand in an unfair manner, illegally, unethically, unlawfully. The possession of the apartment has not yet been handed over to the complainants. If the respondents had followed the plan in its letter and spirit, the apartment should have been completed and the delay would not have occurred.
13. That the complainants further paid all instalments of payments as and when demanded by the respondents and ultimately paid Rs. 82,76,196.00/-. The respondents have charged an interest at the rate of 24% per annum for the delay payments. The respondents have mentioned in clause 3 of the agreement that in case "the company is not able to hand over the possession to the allottee(s) in time, the allottee(s) shall be entitled to payment of compensation for delay at the rate of Rs. 10/- (rupees ten only) per square foot per month of the super area till the date of notice of possession".

14. That the respondents have cheated the complainants knowingly and have taken monies by deception, made fraudulent representations, deliberate false written promises to deliver possession in time. The fraudulent behaviour of the respondents also attracts criminal liability under the Indian criminal dispensation system. The conducts of the respondents are suspect, wilfully unfair and arbitrary, deficient in every manner and scandalous.

C. Relief sought by the complainants.

15. The complainants have sought following relief:

- (i) Direct the respondents to complete the construction and handover the possession of the apartment to the complainants immediately.
- (ii) Direct the respondents to pay interest @18% for the daly period to handover the possession.
- (iii) Direct the respondents to refund all such amounts to the complainants, which the respondents have surreptitiously collected from the complainants such as parking space charges, preferential location charges (PLC) and club membership charges, etc.
- (iv) Direct the respondents to pay legal expenses of Rs. 1 lakh incurred by the complainants.

D. Reply by the respondent No. 1.

16. Reply has been filed by respondent no. 1 on 05.01.2022. No reply has been filed by respondent no. 2 and 3.

17. That the said project has all necessary legal approvals including RERA registration and licences to develop and complete the project. Even the license and statutory fees for the project is paid in full. The said project is registered under RERA Gurugram vide GGM/364/96/2019/58 dated

24.09.2019 and the expiry date of the said project is 31.12.2021. It is submitted that the said certificate is valid till December 2021 by which time the possession of the unit can be provided to the complainants.

18. That the construction activity of the said project is going on in full swing. However, in 2015-16 the construction activity of the project started getting disrupted due to adverse market conditions causing mismatch of cash flows.
19. That various demand letters were sent to the complainants and other customers for recovery of their due instalments, but payments were not made by the complainants as and when demanded by the respondent. It is submitted that the DHFL also stopped disbursing the sanctioned limit of loan for construction activity due to their own financial trouble which eventually led them under insolvency. The complainants in the present case is a defaulter and has been defaulting on the payments and has not met the demands as per the payment plan and the demands raised by the respondent.
20. That there is stoppage of payment of instalments by complainants and other customers. Also, there were no new sales in the project and stoppage of disbursements by DHFL for construction activity and high interest burden caused tremendous pressure on the limited resources available with the respondent. In the best interest of the project, the respondent kept on putting in money from time to time from its own resources to keep the work going on. In the meantime, the respondent kept on searching for avenues for funding the project to enhance the speed of work.

21. That the delay by the buyers in making timely payments of instalments leads to the inevitable consequence of delay in completion of the project, especially large- scale projects. Therefore, the delay was beyond the control of the answering respondent and hence there is no breach of the buyer's builder agreement.
22. That clause 13 of the agreement states that the developer shall not be held responsible for performing any obligation if such a performance is prevented by force majeure. The force majeure factors adversely affected the project and delayed the construction. Such as demonetization wherein the Central Government policy decision dated 08/11/2016 to withdraw the Rs.500/- and Rs.1000/- from the legal tender had adversely impacted the real estate sector as a whole. Due to this decision by the Central Government, the pace of construction was affected. It is well understood that the real estate sector deploys maximum number of work force and hence, the said sector requires cash in hand to offer such employment of the work force to carry out the work. Thus, the pace of construction experienced a halt after demonetization. Further, there was a delay in payments by buyers. The schedule of payment was either construction linked, or down payment or subversion scheme and majority of buyers had defaulted in making timely payment of instalments to the answering respondent. The pace of construction and timely delivery of the flats is solely dependent on the buyers making timely payments by way of instalments in which the buyers have failed. If the buyers delay or ignore the timely payments, then the

inevitable consequence is delay in the completion of the project within the stipulated time. It is submitted that since the buyers were defaulters on a very large scale, it has gravely affected the development of the project.

23. That the respondent was finding it difficult to source funds from any other financial institution and loan balance of DHFL grew very high as interest was getting accumulated and added at a very high rate. However, to fulfil the commitment towards customers, a restructuring arrangement was worked out with DHFL in which loan of Rs.725 Cr was sanctioned to the landowning companies of the project. This quantum of loan was applied and got sanctioned keeping in view that there is no scarcity of funds till completion of the project. The abovementioned sanctioned loan funds were disbursed in March 2018.
24. That after disbursement of loan, an amount of Rs. 45,63,87,000/- was deposited on 28th March 2018 against total amount of outstanding external development charges (EDC) for the whole project i.e. sold area as well as unsold area payable to Department of Town and Country Planning, Government of Haryana.
25. That thereafter, the work again gained momentum from funds being disbursed by DHFL. Suddenly, IL&FS crisis surrounded the NBFC sector and DHFL which was providing funds for completion of the project also got into trouble by the month of Sep 2018.
26. That the said project thereafter was stuck/delayed because DHFL who had financed the project was facing proceedings under Insolvency and

Bankruptcy Code. The project has huge amount of undisbursed funds sanctioned from DHFL, other than the funds from DHFL there are several customers as well as the complainants who are wilful defaulters and have not paid the due amounts and there is a substantial outstanding amount from these customers and complainants.

27. That it is also relevant to state that subsequently in the year 2019, insolvency proceedings were initiated against the respondent company and subsequently, a moratorium was ordered against the respondent company in the month of November 2019.
28. That the management of the respondent company was handed over back in late January and the work at the site was started and since the 2nd week of March 2020 things have been disrupted due to the on-going pandemic. Due to COVID-19, the respondent was not able to carry on the work on a regular and continuous basis and the labour right now is not fully available. The work has been on going at the site intermittently thereafter since the second lock down was even more devastating and it was difficult to get the labour back at site in full force. The work is being carried on since the opening up of the lockdown after the second wave and is still being continued at site.
29. That the said project of the respondent will get completed soon and delivered with reasonable compensation for delay in handover of flats. It is imperative to mention here that the work was going on and has got stopped after imposition of lockdown due to non-availability of labour. Further, more than 70% of the project is completed till date. The respondent company is

ready to handover the possession of the flats as soon as the work is completed.

30. That the said project of the respondent presently has a total booking of nearly 275 units/flats/customers and the large number of these customers are looking to get the possession of their respective units and the same shall be handed over to them upon completion of the project which will be done at the earliest.
31. That the present complaint filed by the complainants is only to extract the illegal monetary benefits and unprecedented demands as raised by the complainants especially when the said complainants themselves are defaulter in the project.
32. That more than 70% of the construction is complete till date by the respondent and the licences including the payments made is all done by the respondent no.1 with the statutory authorities apart from the fact that 5 towers are already constructed at site by the respondent.
33. That it is also relevant to state here that the respondent has applied for funds from the SWAMIH fund which has been specifically made for projects which are stalled but can be completed and have already been substantially completed. The fact that the respondent has received an approval from the SWAMIH fund itself shows that the project of the respondent is more than 65% completed and is a viable project and will be completed soon.
34. That all the formalities and modalities of the SWAMIH fund have been completed and now only a final NOC is required to be received from DHFL

which has now been taken over by the Piramal Group and that is the only reason for the delay caused in the transfer of the said document. As soon as the said document is received, the SWAMIH fund disbursement letter shall be received by the respondent which will enable the respondent to complete the project at the earliest and hand over the unit to the complainants.

35. Copies of all the relevant documents have been filed and placed on the 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

36. The respondent has raised an objection regarding jurisdiction of authority to entertain the present complaint. 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, Haryana the jurisdiction of Haryana Real Estate Regulatory Authority, Gurugram shall be entire Gurugram district for all purposes. 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 objection raised by the respondent no.1.

F.I Objection on ground of financial constraints faced by the respondent.

37. The respondent raised a plea that due to financial constraints faced by it, it led to delay in completion of project. On the one hand, the DHFL stopped disbursing the sanctioned limit of loan for construction activity due to their own financial troubles and on the other hand, the allottees including complainants has made several defaults in making payment towards consideration of allotted unit. The respondent further submitted that insolvency proceedings were initiated against the respondent-company and subsequently, a moratorium was ordered against the respondent company in the month of November 2019 which led to further delay in completion of the project and dragged the project to year 2020, where the pace of construction was again hit by the outbreak of covid-19.
38. In the present case, the complainants have already paid an amount of Rs. Rs.82,76,196/- against total consideration of Rs.1,03,08,280/- constituting 80.29% on total consideration. It is to be noted that the unit was booked

under construction linked payment plan. As per payment plan annexed with buyer's agreement on page no. 61 of the complaint, the said instalment payable on casting on 12th floor indicating that the project is 80% completed. But the respondent itself submitted that as per an approval from the SWAMIH fund it shows that the project of the respondent is more than 65% completed. Neither the complainants have filed any document proving the stage of construction nor the approval from SWAMIH fund has been placed on record showing the stage of construction. Therefore, general view shall be considered that the stake of majority stakeholders cannot be put on stake on account of non-payment of instalments by certain allottees. Moreover, it is the obligation of the promoter-builder to complete the project, the allottee cannot be suffered because of the reasons that the builder was unable to arrange the funds. The complainants while booking the subject unit was concerned with arrangement of funds to pay for the said booked unit. The allottee cannot be made suffered on account of irresponsible and casual behaviour of the respondent. The respondent also took a plea that the construction of the project was hampered due to outbreak of covid-19. As decided by Hon'ble Delhi High Court in case titled as *M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr.* bearing no. O.M.P (I) (Comm.) no. 88/ 2020 and I.As 3696-3697/2020 dated 29.05.2020 observed that-

"69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself."

39. In the present complaint also, the respondent was liable to complete the construction of the project in question and handover the possession of the

said unit by 07.02.2016 and the respondent is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself and for the said reason the said time period is not excluded while calculating the delay in handing over possession.

G. Findings on the relief sought by the complainants.

Relief sought by the complainants: -

- (i) Direct the respondents to complete the construction and handover the possession of the apartment to the complainants immediately.
- (ii) Direct the respondents to pay interest @18% for the delay period to handover the possession.
- (iii) Direct the respondents to refund all such amounts to the complainants, which the respondents have surreptitiously collected from the complainants such as parking space charges, preferential location charges (PLC) and club membership charges, etc.
- (iv) Direct the respondents to pay legal expenses of Rs. 1 lakh incurred by the complainants.

G.I Direct the respondents to complete the construction and handover the possession of the apartment to the complainants immediately.

G.II Direct the respondents to pay delay possession charges for every month of delay at prescribed rate of interest as per the provisions of the Act.

40. The above-mentioned relief no. 1 and 2, as sought by the complainants are being taken together as the findings in one relief will definitely affect the result of the other relief and these reliefs are interconnected.

41. In the present complaint, the complainants intends to continue with the project and are 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

18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, —

.....

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

Clause 3(a) of the apartment buyer's agreement, provides for handing over possession and the same is reproduced below:

3(a) That subject to terms of this clause and subject to the APARTMENT ALLOTTEE(S) having complied with all the terms and conditions of this Agreement, and not being in default under any of the provisions of this Agreement and further subject to compliance with all provisions, formalities, registration of sale deed, documentation, payment of all amount due and payable to the Developer by the APARTMENT ALLOTTEE(S) under this agreement, prescribed by the as Developer, the Developer proposes to hand Over the possession of the said APARTMENT within a period of thirty (36) months (excluding a grace period of 6 months) from the date of execution of this Agreement. It is however understood between the parties that the possession of various Blocks/Towers comprised in the Complex and also the various common facilities planned therein shall be ready & completed in phases wise and will be handed over to the allottees of different blocks/Towers as and when the same will be completed and in a phased manner.

42. An apartment buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builders/promoters and buyers/allottees are protected candidly. A 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 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.

43. The authority has gone through the possession clause of the agreement and observed that the possession has been subjected to all kinds of terms and conditions of this agreement. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottees that even a single situation may make the possession clause irrelevant for the purpose of allottees and the committed date for handing over possession loses its meaning. If the said possession clause is read in entirety, the time period of handing over possession is only a tentative period for completion of the construction of the flat in question and the promoter is aiming to extend this time period indefinitely on one eventuality or the other. Moreover, the said clause is an inclusive clause wherein the numerous approvals and terms and conditions have been mentioned for commencement of construction and the said approvals are sole liability of the promoter for which allottee cannot be allowed to suffer. The promoter must have mentioned that completion of which approval forms a part of the last statutory approval, of which the due date of possession is subjected to. It is quite clear that the possession clause is drafted in such a manner that it creates confusion in the mind of a person of normal prudence who reads it. The authority is of the view that a wrong trend was followed by the promoters from long ago and this unethical behaviour and dominant position that needs to be struck down. It is settled proposition of law that one cannot get the advantage of his own fault. The incorporation of such clause in the flat 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.

44. The respondent/promoter has proposed to handover the possession of the subject apartment within a period of 36 months from the date of signing of the agreement. In the instant case, the apartment buyer's agreement was executed on 07.02.2013 and as such the due date of handing over of possession comes out to be 07.02.2016.
45. **Admissibility of grace period:** The promoter has proposed to handover the possession of the subject apartment within a period of 36 months from the date of signing of the agreement (excluding 6 months grace period). Further, clause 3(b), 3(b)(i) & 13 provides for an extension in due date of handing over of possession, in situations where contingencies arise beyond the control of the respondent but do not specified any particular/ specified extension period. In the instant case, the apartment buyer's agreement was executed on 07.02.2013 and as such the due date of handing over of possession comes out to be 07.02.2016. Therefore, since there is no clause for grace period, hence, the question w.r.t admissibility of grace period is of no use.
46. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants are seeking delay possession charges, 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.

47. 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.
48. 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., 08.03.2022 is 7.30% p.a. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30% p.a.
49. 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;"

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

G.III Direct the respondents to refund all such amounts to the complainants, which the respondents have surreptitiously collected from the complainants such as parking space charges, preferential location charges (PLC) and club membership charges, etc.

51. The complainants in the complaint has not provided any justification as to why the above-mentioned charges are illegal and should not be charged from the complainants. In view of same, the authority is unable to deliberate upon the above said relief. However, the respondent is directed not to charge anything which is not part of buyer's agreement.

G.IV Direct the respondents to pay legal expenses of Rs. 1 lakh incurred by the complainants.

52. The complainants in the aforesaid relief are claiming compensation in the above-mentioned reliefs. The authority is of the view that it is important to understand that the Act has clearly provided interest and compensation as separate entitlement/rights which the allottee can claim. For claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainants may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.
53. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of

clause 3(a) of apartment buyer's agreement executed between the parties on 07.02.2013, the possession of the booked unit was to be delivered within 36 months from the date of signing agreement. In the present case, the agreement inter-se parties has been executed on 07.02.2013. As such the due date of handing over of possession comes out to be 07.02.2016.


54. Accordingly, non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such complainants are entitled to delayed possession charges at the prescribed rate of interest i.e., 9.30% p.a. for every month of delay on the amount paid by the complainants to the respondent from the due date of possession i.e., 07.02.2016 till actual handing over of possession or offer of possession after obtaining occupation certificate plus two months, as per the provisions of section 18(1) of the Act read with rule 15 of the rules and section 19 (10) of the Act.

H. Directions of the authority

55. 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 respondents are directed to pay interest at the prescribed rate of 9.30% p.a. for every month of delay from the due date of possession i.e., 07.02.2016 till actual handing over of possession or offer of possession after obtaining occupation certificate plus two months, as per the provisions of section 18(1) of the Act read with rule 15 of the rules and section 19 (10) of the Act.

- II. The arrears of such interest accrued from 07.02.2016 till date of this order shall be paid by the promoter to the allottees within a period of 90 days from date of this order and interest for every month of delay shall be payable by the promoter to the allottees before 10th day of each subsequent month as per rule 16(2) of the rules.
- III. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- IV. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondents/promoters which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.
- V. The respondents shall not charge anything from the complainants which is not the part of the agreement.
56. Complaint stands disposed of.
57. File be consigned to registry.


(Vijay Kumar Goyal)
Member


(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 08.03.2022