

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

Complaint no. : 3481 of 2021
First date of hearing : 13.10.2021
Date of decision : 17.05.2022

Manohar Lal Yadav

R/o: - Village Heraheri, P.O. Khor, Pataudi,
Gurugram

Complainant

Versus

M/s Revital Reality Private Limited.

Registered office at: 1114, 14th floor,
Hemkunt Chamber, 89, Nehru Place, New
Delhi- 110019

Respondent

CORAM:

Shri KK Khandelwal
Shri Vijay Kumar Goyal

**Chairman
Member**

APPEARANCE:

Sh. Sunil Kumar (Advocate)
Sh. Bhriugu Dhami (Advocate)

**Complainant
Respondent**

ORDER

1. The present complaint dated 20.09.2021 has been filed by the complainant/allottee 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 unit details, sale consideration, the amount paid by the complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S.No.	Heads	Information
1.	Project name and location	"Basera", Sector- 79, 79B, Gurugram.
2.	Project area	12.10 acres
3.	Nature of the project	Affordable Group Housing Project
4.	DTCP license no and validity status	I. 163 of 2014 dated 12.09.2014 valid upto 11.09.2019 II. 164 of 2014 dated 12.09.2014 valid till 11.09.2019
5.	Name of licensee	Revital Realty Pvt. Ltd. & others
6.	RERA Registered/ not registered	Registered vide no. 108 of 2017 dated 24.08.2017.
7.	RERA registration valid up to	31.01.2020
8.	RERA Extension no.	14 of 2020 dated 22.06.2020
9.	RERA Extension valid upto	31.01.2021
10.	Unit no.	0506, 5 th floor, Tower- 15 [Page no. 27 of complaint]
11.	Unit measuring	473 sq. ft. [carpet area]



		73 sq. ft. [balcony area]
12.	Date of execution of flat buyer's agreement	08.09.2017 (Page no. 27 of complaint)
13.	Payment plan	Time linked payment Plan [Page no. 28 of complaint]
14.	Total consideration	Rs.19,28,500/- [As per payment plan page 29 of complaint]
15.	Total amount paid by the complainant	Rs.18,64,450/- [As per affidavit dated 28.04.2022 filed by the complainant and the same was admittedly by the respondent in his customer statement]
16.	Due date of delivery of possession as per clause 3.1 of the buyer's agreement within a period of 4 (four) years from the date of approval of building plans or grant of environment clearance, (hereinafter referred to as the "Commencement Date"), whichever is later. [Page 29 of complaint]	22.01.2020
17.	Date of approval of building plans	19.12.2014 [As per information obtained by the planning branch]
18.	Date of grant of environment clearance	22.01.2016 [As per information obtained by the planning branch]
19.	Delay in handing over possession till the date of	2 year 3 months and 25 days

	order i.e., 17.05.2022	
20.	Occupation certificate	Not obtained
21.	Status of the project	On going
22.	Offer of possession	Not offered

B. Facts of the complaint

3. The complainant has made the following submissions in the complaint: -

- I. That the respondents/developer/promoter published very attractive brochure highlighting the residential flat 'Supertech Basera' complex at Sector-79, 79B, Gurugram Haryana. The respondent claimed to be one of the best and finest in construction and one of the leading real estate developer of the country in order to lure prospective customers to buy flats in the project. There are fraudulent misrepresentations, incorrect and false statements in the brochure. The complainant invites attention of this authority to section 12 of the Act, 2016. The project was launched in 2015 with the promises to deliver in time and huge funds were collected over the period by the respondent.
- II. That the complainant, approached by the representatives of the company. The sale representatives claimed the project as the world class project. The original allottee were invited to the sales office and were lavishly entertained and promises were made to them that the project would be completed before March 2020



including parking, horticulture, parks, club, and other common area facilities. The complainant was impressed by their statements and oral representations and ultimately bought a Flat.

- III. That the complainant paid, as and when demanded by the respondent, a sum of Rs. 18,64,509/- as per the payment schedule, duly acknowledged by the respondents. The respondent has taken more than ninety per cent cost of basic sale price (BSP) of the flat, which is violative of the provisions of the section 13 of the Act, 2016. The flat buyer agreement was executed between the parties on 08.09.2017.
- IV. The complainant approached the respondent many times, through personal visits, emails, calls, and letters pleading for delivery of the flat but even after a lapse of more than four years and seven months from booking, has failed to even start the construction floor of the complainant. The respondent has failed to submit any justified response to the letters, personal visits, emails, calls regarding the project and the flat. This is a violation of section 19 of the Act.
- V. The illegalities and unfairness of the respondent reflect in attitude that the respondent was not inclined towards giving the possession of the flat. The respondent despite receiving the payments on time did not start the construction of the project of complainant floor and seems project dead, no progressive activity started on site for your perusal, even after a lapse of more than

six years approx. from booking the flat. The respondent has failed to either offer possession or refund the entire amount with interest at the prescribed rate.

- VI. That the complainant intends to continue with the project. As per obligations on the respondents/promoter under section 18 of the Act, 2016, the promoter has an obligation to refund the entire deposited amount and pay to the complainant and interest at the prescribed rate from the date of booking of the flat and seek attention on this project of "Supertech Basera" to the authority, it is required.
- VII. That the complainant being aggrieved person has filed a complaint under section 31 of the Act, 2016 read with rule 28 of the rules, 2017 at this authority for violation or contravention of provisions of the Act, 2016 and rules, 2017.
- VIII. That the respondents/developer/promoter is habitual of making false promises and has deceptive behaviour. The respondent has earned huge amount by duping the innocent complainant and other such buyers by committing unfair trade practices and deficiencies in services and has caused the complainant immense pain, mental torture, agony, harassment, stress, anxiety, and financial loss.
- IX. That the complainant hereby seeks to redress the various forms of legal omissions and illegal commissions perpetuated by the respondent/developer/promoter, which amount to unfair trade

practices, breach of contract and are actionable under the Act, 2016. In the present circumstances, the complainant has been left with no other options but approach and seek justice at this authority.

C. Relief sought by the complainant

4. The complainant has sought following relief(s).

I. Direct the respondent to offer possession of the flat, to the complainant with delay interest from the date of possession at the prescribed rate as per the Act, 2016.

II. Direct the respondents to pay legal expenses of Rs.1,50,000/ incurred by the complainant.

5. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have been committed in relation to section 11(4)(a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent

6. The respondent contested the complaint on the following grounds: -

I. That the project "Basera" located in sector-79, 79-B, Gurugram, Haryana. The complainant approached the respondent, making enquiries about the project and after complete information being provided to him, sought to book a unit in the said project and the complainant submitted an application for allotment of a unit.



- II. That vide letter dated 19.09.2015, the respondent informed the complainant that vide draw of lots conducted on 04.09.2015, he was allotted unit bearing no. 1004, tower-15, the said project. The payment plan for the remaining sale consideration was also detailed in the said letter.
- III. That, consequently, after fully understanding the various contractual stipulations and said payment plan for the said apartment, the complainant executed the flat buyer agreement dated 08.09.2017. It is pertinent to mention that the parties are bound by the agreement executed by them and its terms and conditions. The said agreement is in consonance with the Affordable Group Housing Policy, 2013 passed by the Haryana Government.
- IV. That in terms of the said policy and the terms of the agreement the possession was to be handed over within 4 years from the date of approval of building plans and grant of environment clearance. However, the same was subject to force majeure conditions which would hamper the development of the project. Further, in terms of clause 3.5, of the agreement, the timely possession was subject to timely payments of sale consideration and the other charges. Further, it was mutually agreed that the time frame for possession was tentative and would depend upon force majeure conditions, timely payments, and completion of all required formalities. Clause 15 of the agreement details out the

conditions which were agreed between the parties would constitute as "Force Majeure".

- V. That the environment clearance for the said project was received on 22.01.2016. Thus, the possession strictly as per the agreement was to be handed over by 21.01.2020.
- VI. In the interregnum, the pandemic of Covid 19 has gripped the entire nation since March of 2020. The Government of India has itself categorized the said event as a 'Force Majeure' condition, which automatically extends the timeline of handing over possession of the apartment to the complainant.
- VII. That the construction of the project is in full swing, and the delay if at all, has been due to the Government-imposed lockdowns which stalled any sort of construction activity. Till date, there are several embargos qua construction at full operational level.
- VIII. That the said project is registered with this authority vide registration no. 108 of 2017 dated 24.08.2017.
- IX. That the period of lockdown owing to the covid-19 first and second wave may be waived for the calculation of the DPC, if applicable to be paid by the respondent as no construction despite numerous efforts could be continued during the lockdown period.
- X. That the delay if at all, has been beyond the control of the respondent and as such extraneous circumstances would be categorized as 'Force Majeure', and would extend the timeline of

handing over the possession of the unit, and completion the project.

- XI. The delay in construction was on account of reasons that cannot be attributed to the respondent. That the buyer's agreement provides that in case the developer/respondents delay in delivery of unit for reasons not attributed to the developer/respondent, then it shall be entitled to proportionate extension of time for completion of said project.
- XII. The force majeure clause, it is clear that the occurrence of delay in case of delay beyond the control of the respondent, including but not limited to the dispute with the construction agencies employed by it for completion of the project is not a delay on account of the respondent for completion of the project.
- XIII. That the timeline stipulated under the buyer agreement was only tentative, subject to force majeure reasons which are beyond the control of the respondent. The respondent in an endeavor to finish the construction within the stipulated time, had from time to time obtained various licenses, approvals, sanctions, permits including extensions, as and when required. Evidently, the respondent had availed all the licenses and permits in time before starting the construction.
- XIV. That apart from the defaults on the part of the allottee, like the complainants herein, the delay in completion of project was on

account of the following reasons/circumstances that were above and beyond the control of the respondent: -

- Shortage of labour/ workforce in the real estate market as the available labour had to return to their respective states due to guaranteed employment by the Central/State Government under NREGA and JNNURM Schemes;
- that such acute shortage of labour, water and other raw materials or the additional permits, licenses, sanctions by different departments were not in control of the respondent and were not at all foreseeable at the time of launching of the project and commencement of construction of the complex. The respondent cannot be held solely responsible for things that are not in control of the respondent.

XV. The respondent has further submitted that the intention of the force majeure clause is to save the performing party from the consequences of anything over which he has no control. It is no more *res integra* that force majeure is intended to include risks beyond the reasonable control of a party, incurred not as a product or result of the *negligence or malfeasance* of a party, which have a materially adverse effect on the ability of such party to perform its obligations, as where non-performance is caused by the usual and natural consequences of external forces or where the intervening circumstances are specifically contemplated. Thus, in light of the aforementioned, it is most

respectfully submitted that the delay in construction, if any, is attributable to reasons beyond the control of the respondent and as such it may be granted reasonable extension in terms of the allotment letter.

- XVI. It is public knowledge, and several courts and quasi-judicial forums have taken cognisance of the devastating impact of the demonetisation of the Indian economy, on the real estate sector. The real estate sector is highly dependent on cash flow, especially with respect to payments made to labourers and contractors. The advent of demonetisation led to systemic operational hindrances in the real estate sector, whereby the respondent could not effectively undertake construction of the project for a period of 4-6 months. Unfortunately, the real estate sector is still reeling from the aftereffects of demonetisation, which caused a delay in the completion of the project. The said delay would be well within the definition of 'Force Majeure', thereby extending the time period for completion of the project.
- XVII. That the complainant has not come with clean hands before this authority and has suppressed the true and material facts from this authority. It would be apposite to note that the complainant is a mere speculative investor who has no interest in taking possession of the apartment.
- XVIII. That the completion of the building is delayed by reason of non-availability of steel and/or cement or other building materials

and/or water supply or electric power and/or slow down strike as well as insufficiency of labour force which is beyond the control of respondent and if non-delivery of possession is as a result of any act and in the aforesaid events, the respondent shall be liable for a reasonable extension of time for delivery of possession of the said premises as per terms of the agreement executed by the complainant and the respondent. The respondent and its officials are trying to complete the said project as soon as possible and there is no malafide intention of the respondent to get the delivery of project, delayed, to the allottees. It is also pertinent to mention here that due to orders also passed by the Environment Pollution (Prevention & Control) Authority, the construction was/has been stopped for a considerable period day due to high rise in pollution in Delhi NCR.

- XIX. That the enactment of Real Estate (Regulation and Development) Act, 2016 is to provide housing facilities with modern development infrastructure and amenities to the allottees and to protect the interest of allottees in the real estate market sector. The main intention of the respondent is just to complete the project within stipulated time submitted before the authority. According to the terms of the builder buyer agreement also, it is mentioned that all the amount of delay possession will be completely paid/adjusted to the complainant at the time final

settlement on slab of offer of possession. The project is ongoing project and construction is going on.

XX. That the respondent further submitted that the Central Government has also decided to help bonafide builders to complete the stalled projects which are not constructed due to scarcity of funds. The Central Government announced Rs.25,000 Crore to help the bonafide builders for completing the stalled/unconstructed projects and deliver the homes to the homebuyers. It is submitted that the respondent/ promoter, being a bonafide builder, has also applied for realty stress funds for its Gurgaon based projects.

XXI. That compounding all these extraneous considerations, the **Hon'ble Supreme Court vide order dated 04.11.2019**, imposed a blanket stay on all construction activity in the Delhi- NCR region. It would be apposite to note that the 'BASERA' project of the respondent was under the ambit of the stay order, and accordingly, there was next to no construction activity for a considerable period. It is pertinent to note that similar stay orders have been passed during winter period in the preceding years as well, i.e., 2017-2018 and 2018-2019. Further, a complete ban on construction activity at site invariably results in a long-term halt in construction activities. As with a complete ban, the concerned labour was let off and they traveled to their native villages or look for work in other states, the resumption of work at site became a

slow process and a steady pace of construction as realized after long period of time.

- XXII. The respondent has further submitted that graded response action plan targeting key sources of pollution has been implemented during the winters of 2017-18 and 2018-19, These short-term measures during smog episodes include shutting down power plant, industrial units, ban on construction, ban on brick kilns, action on waste burning and construction, mechanized cleaning of road dust, etc. This also includes limited application of odd and even scheme.
- XXIII. That the pandemic of covid-19 has had devastating effect on the world-wide economy. However, unlike the agricultural and tertiary sector, the industrial sector has been severally hit by the pandemic. The real estate sector is primarily dependent on its labour force and consequentially the speed of construction. Due to government-imposed lockdowns, there has been a complete stoppage on all construction activities in the NCR Area till July 2020. In fact, the entire labour force employed by the respondent was forced to return to their hometowns, leaving a severe paucity of labour. Till date, there is shortage of labour, and as such, the respondent has not been able to employ the requisite labour necessary for completion of its projects. The Hon'ble Supreme Court in the seminal case of *Gajendra Sharma v. UOI & Ors, as well Credai MCHI & Anr. V. UOI & Ors* has taken cognizance of

the devastating conditions of the real estate sector and has directed the UOI to come up with a comprehensive sector specific policy for the real estate sector. According to notification no. 9/3-2020 HARERA/GGM (Admn) dated 26.05.2020, passed by this authority, registration certificate upto 6 months has been extended by invoking clause of force majeure due to spread of corona virus pandemic, which beyond the control of respondent.

XXIV. This authority vide, its order dated 26.05.2020 had acknowledged the Covid-19 as a force majeure event and had granted extension of six months period to ongoing projects. Furthermore, it is of utmost importance to point out that vide notification dated 28.05.2020, the Ministry of Housing and Urban Affairs has allowed an extension of 9 months vis-a-vis all licenses, approvals, end completion dates of housing projects under construction which were expiring post 25.03.2020 in light of the force majeure nature of the Covid pandemic that has severely disrupted the workings of the real estate industry. That the pandemic is clearly a 'force majeure' event, which automatically extends the timeline for handing over possession of the apartment.

E. Jurisdiction of the authority

7. 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;

The provision of assured returns is part of the memorandum of understanding, as per clause 1 of the MOU dated 03.08.2017. Accordingly, the promoter is responsible for all obligations /responsibilities and functions including payment of assured returns as provided in memorandum of understanding.

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.

8. 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 the project being delayed because of force majeure circumstances and contending to invoke the force majeure clause.

9. From the bare reading of the possession clause of the allotment letter, it becomes very clear that the possession of the unit was to be delivered by **21.01.2020**. The respondent in his reply pleaded the force majeure clause on the ground of Covid- 19. The Hon'ble High Court of Delhi in case no. **O.M.P (I) (COMM.) No. 88/2020 & I.As. 3696-3697/2020 title as M/S HALLIBURTON OFFSHORE SERVICES INC VS VEDANTA LIMITED & ANR. 29.05.2020** held that 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. Now this means that the respondent/promoter has to complete the construction of the apartment/building by 21.01.2020. The respondent/promoter has not given any reasonable explanation as to why the construction of the project is being delayed and why the possession has not been offered to the complainant/allottee by the promised/committed time. The



lockdown due to pandemic- 19 in the country began on 25.03.2020. So, the contention of the respondent/promoter to invoke the force majeure clause is to be rejected as it is a well settled law that ***"No one can take benefit out of his own wrong"***. Moreover, there is nothing on record to show that the project is near completion, or the developer applied for obtaining occupation certificate. Thus, in such a situation, the plea with regard to force majeure on ground of Covid- 19 is not sustainable.

F. II. Objection regarding entitlement of DPC on ground of complainant being investor.

10. The respondent has taken a stand that the complainant is an investor and not consumer, therefore, he is not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondent also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumer of the real estate sector. The authority observed that the respondents are correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the



apartment buyer's agreement, it is revealed that the complainant is buyer and has paid total price of **Rs.18,64,450/-** to the promoters towards purchase of an apartment in the project of the promoter. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

11. In view of above-mentioned definition of "allottee" as well as all the terms and conditions of the flat buyer's agreement executed between promoter and complainant, it is crystal clear that he is allottee(s) as the subject unit allotted to him by the promoter. The concept of investor is not defined or referred in the Act. As per the definition given under section 2 of the Act, there will be "promoter" and "allottee" and there cannot be a party having a status of "investor". The Maharashtra Real Estate Appellate Tribunal in its order dated 29.01.2019 in appeal no. 0006000000010557 titled as *M/s Srushti Sangam Developers Pvt. Ltd. Vs. Sarvapriya Leasing (P) Lts. And anr.* has also held that the concept of investor is not defined or referred in the Act. Thus, the contention of promoter that the allottee being an investor is not entitled to protection of this Act also stands rejected.

G. Findings on the relief sought by the complainant

G.I Direct the respondent to offer possession of the flat, to the complainant with delay interest from the date of possession at the prescribed rate as per the Act, 2016.

12. The complainant intends 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

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."

13. Clause 3.1 of the flat buyer agreement provides for handing over of possession and is reproduced below: -

3.1. POSSESSION

*Subject to force majeure circumstances, intervention of Statutory Authorities, receipt of occupation certificate and Allottee/Buyer having timely complied with all its obligations, formalities, or documentation, as prescribed by the Developer and not being in default under any part hereof and Flat Buyer's Agreement, including but not limited to the timely payment of installments of the other charges as per payment plan, Stamp Duty and registration charges, the Developers Proposes to offer possession of the said Flat to the Allottee/Buyer within a period of 4 (four) years from the date of approval of building plans or grant of environment clearance, (hereinafter referred to as the "**Commencement Date**"), whichever is later. The Developer also agrees to compensate the Allottee/Buyer @ Rs.5.00/- (Five rupees only) per sq. ft. of the area of the flat per month for any delay in handing over possession of the Flat beyond the given promised **period plus the grace period of 6 months and upto offer letter of possession or actual physical possession whichever is earlier**".*

14. 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 application, and



the complainant 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 a single default by the allottees 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 buyer developer 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 its 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.

15. **Due date of handing over possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the said flat within a period of 4 years from the date of approval of building plans (19.12.2014) or grant of environment clearance, (22.01.2016) (hereinafter referred to as the "Commencement Date"), whichever is later and has sought further extension of a period of 6 months (after the expiry of the said time period of 4 year) but there is no provision in relation to grace period in Affordable Group Housing



Policy, 2013. As such in absence of any provision related to grace period, the said grace period of six months as sought by the respondent/promoter is disallowed in the present case.

16. **Admissibility of delay possession charges at prescribed rate of interest:** 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.

17. 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.
18. 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., 17.05.2022 is 7.40%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.

19. 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;"*

20. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 9.40% by the respondent/promoter which the same is as is being granted to the complainant in case of delayed possession charges.

G. II Direct the respondents to pay legal expenses of Rs.1,50,000/ incurred by the complainant.

21. The complainant is claiming compensation in the present relief. 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 complainant may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

H. Directions of the authority

22. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

- i. The respondent is directed to pay interest at the prescribed rate of 9.40% p.a. for every month of delay from the due date of possession i.e., 22.01.2020 till the handing over of possession of the allotted unit through a valid offer of possession after obtaining the occupation certificate from the competent authority.
- ii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period;
- iii. The arrears of such interest accrued from 22.01.2020 till the date of order by the authority shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottees before 10th of the subsequent month as per rule 16(2) of the rules;
- iv. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.40% 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 delayed possession charges as per section 2(za) of the Act.

v. The respondent shall not charge anything from the complainant which is not the part of the buyer's agreement.

23. Complaint stands disposed of.

24. File be consigned to registry.

V.K. - 

(Vijay Kumar Goyal)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 17.05.2022



(Dr. KK Khandelwal)
Chairman



HARERA
GURUGRAM