BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 3891 of 2021
First date of hearing: 25.11.2021
Date of decision : 17.05.2022

1. Ms. Shuchi Sur
2. Mr. Ashok Sur

Both RR/o: - Northern Refrigeration Company, 32, Hazratganj, Lucknow- 226001, U.P. **Complainants**

Versus

M/s Venetian LDF Projects LLP
Regd. Office at: 83 Avenue Sihi Village, Sector- 83, Vatika Next, Manesar, Gurugram- 122004 **Respondent**

CORAM:
Shri K.K. Khandelwal **Chairman**
Shri Vijay Kumar Goyal **Member**

APPEARANCE:
Sh. Sukhbir Yadav (Advocate) Complainants
Sh. Harshit Batra (Advocate) Respondent

ORDER

1. The present complaint dated 06.10.2021 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. N.	Particulars	Details
1.	Name of the project	"83 Avenue", Sector 83 revenue estate, Village Sihi, Teshil Manesar, District Gurugram, Haryana
2.	Nature of the project	Commercial complex
3.	Area of the project	2.3625 acres
4.	Date of approval of building plan	31.10.2013 [As per information obtained by planning branch]
5.	Date of approval of environment clearance	23.10.2013 [As per information obtained by planning branch]
6.	DTCP license	12 of 2013 dated 15.03.2013
	License validity/ renewal period	12.03.2019
7.	RERA registered/not registered	registered vide no. **04 of 2019 dated 16.01.2019**

	HRERA registration valid up to	**30.09.2020 + 6 months Covid = 30.03.2021**
8.	Unit no.	F-190, First Floor (Page no. 52 of complaint)
9.	Unit area admeasuring	424.75 sq. ft. (Page no. 52 of complaint)
10.	Date of execution of space buyer's agreement	14.11.2015 (Page no. 49 of complaint)
11.	Date of allotment letter	23.08.2014 (Page no. 45 of complaint)
12.	Possession clause	**38.** *The "Developer/LLP" will, based on its present plans and estimates, contemplates to offer of possession of the said unit to the allottee(S)* ***within 36 months (refer cl3 37 above) signing of this agreement or within 36 months from the date of start of construction of the said building whichever is later with a grace period of 3 months, subject to force majeure events or governmental action /inaction.*** *If the completion of the said building is delayed by said reasons slow down, strike or due to a dispute with the construction agency employed by the "Developer/LLP" lock out or departmental delay or civil commotion or by reason of war or enemy action or terrorist action or earthquake or any act of God or by any other reason beyond the control of the Developer/LLP, the Developer/shall be*

		entitled to extension of time for delivery of possession of the said premises..... [emphasis supplied] (Page 60 of the complaint).
13.	Due date of possession	14.02.2019 [Note: - the due date of possession can be calculated by the 36 months from the singing of the agreement (14.11.2015) or 36 months from the date of start of construction/excavation (30.01.2014) whichever is later.
14.	Total sale consideration	Rs.46,80,746/- (Page no. 4 of the buyer's agreement annexed with paper book and 52 of complaint)
15.	Amount paid by the complainants	Rs.32,80,406/- (As per account statement page no. 77 of complaint)
16.	Occupation certificate /Completion certificate	Not received
17.	Offer of possession	Not offered
18.	Delay in handing over the possession till date of this order i.e., 17.05.2022	3 years 3 months and 3 days
19.	Grace period	**Allowed**

		The promoter has proposed to hand over the possession of the said flat within 36 months from the date of singing the agreement or date of start of construction whichever is later and has sought further extension of a period of 3 months (after the expiry of the said 36 months) subject to force majeure events or governmental action /inaction. The due date of possession was in the year 2019 and any situation or circumstances which could have a reason for not carrying out the construction activities in the project prior to this date due are allowing to be taken into consideration. While considering whether the situations or circumstances contested by respondent in its reply were in fact beyond the control of the respondent and hence the respondent is entitled to force majeure, the authority takes into consideration all the pleas taken by the respondent to plead the force majeure condition happened before 14.11.2018. Accordingly, authority allows 3 months grace period.

B. Facts of the complaint

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

I. That in the July 2013, complainant/allottee, Ms. Shuchi Sur received a marketing call from the office of the respondent, the caller represented himself as sales manager of the respondent company and marketed a commercial project namely "83 Avenue" situated at

Sector – 83, Gurugram. The complainants visited the Gurugram office and the project site of the respondent/builder with their family members. There the complainants consulted the marketing staff of builder and got information about the project. The marketing staff of the respondent gave them a brochure and pricelist and allured them with a rosy picture of the project. The marketing staff and office bearers of the respondent allured with the proposed specification and assured that the project shall be "*Low Maintenance high street real estate project on the lines of Galleria & Good Earth with better amenities like multiplexes, designated food hub with restaurants and food courts and anchor stores, etc*. The respondent assured that the possession of the shop will be handed over within 36 months from the date of booking.

II. That, believing on representation and assurance of respondent, the complainants, booked one retail shop bearing no. F- 130 on first floor, admeasuring 325.29 sq. ft. and paid Rs. 6,30,000/- as booking amount through two cheques and signed a pre-printed application form. The shop was purchased under the instalment payment plan for a sale consideration of Rs.31,45,554/-.

III. That on 27.12.2013, the respondent/builder issued an allotment letter in the name of complainants, conforming to the allotment of shop no. F- 130 on the 1st floor for unit admeasuring 325.29 sq. ft. in the said project.

IV. That on 08.06.2014, the respondent sent a unit revision letter to the complainants and stated "This is with reference to your registration for unit no. F- 130 on first floor in our project "83 Avenue" in Sector 83, Gurgaon. We would like to bring to your notice that your unit no. has been changed from F-130 to F-135 to F-190. Please treat this letter as the confirmation of the new unit no. F-135 with all the other terms and conditions of the application unchanged".

V. That on 01.07.2014, the respondent issued another allotment letter in name of complainants, conforming to the allotment of revised shop no. F- 135 on the 1st floor for size admeasuring 325.29 sq. ft. and also acknowledged the payment of Rs.9,10,850/-. Thereafter on 23.08.2014, the respondent again changed the unit of the complainants and sent an allotment letter in name of complainants, conforming to the allotment of revised shop no. F – 190 on the 1st floor for size admeasuring 424.75 sq. ft. It is pertinent to mention that the respondent has changed the super area of the shop and also the total sale consideration of the shop and now the total sale consideration of the shop is Rs.46,80,746/-.

VI. That after a long follow-up on 14.11.2015 (after 23 months of booking), a pre-printed, unilateral, arbitrary shop buyer agreement /buyer's agreement was executed inter-se the respondent and the complainants. According to clause 38 of the shop buyer agreement, the respondent has to give possession of the said shop within 36

(Thirty-Six) months of the signing of this agreement or from the date of start of construction of the said building whichever is later with a grace period of 3 months. It is germane to mention here that the construction was commenced on 30.01.2014 (start of excavation) and hence, the due date of possession was 30.04.2017 (with 3 months grace period). It is pertinent to mention here that the respondent delayed the execution of buyer's agreement knowingly to extend the due date of possession. Thereafter, the complainants continued to make the payments as per the demands raised by the respondent and paid Rs.32,80,406/- till 16.01.2020 i.e., more than 70% of the total sale consideration.

VII. That the complainants kept vising the project site since May 2017 and on every visit, the respondent/officer bearers/staff promised to give physical possession within 6 months. In February 2021 when the complainants visited the project site, Ms. Renu (Manager at the respondent company) promised to give the possession by July 2021.

VIII. That on 16.08.2021, the complainants visited the project site and took few photographs of the construction site. During the site visit, complainants found that construction activities were going on the project, the units, entry and exit gate, internal roads, etc. were not constructed & other amenities were not yet developed. The construction material and waste were spread all around in the project. Photographs show incomplete and ongoing construction at

the project site. It is pertinent to mention here that the complainants booked the shop in 2013 and paid more than 68% of the total sale consideration but till now even after 8 years from booking the shop, the unit is still not ready for occupation. It is again pertinent to mention that the staff of the respondent assured that the possession of the shop would be given by the end of 2021, but it seems that the project will take more than 1 year to complete in all respect (subject to the willingness of the respondent).

IX. That, since the year 2017, the complainants are regularly contacting the office bearers of the respondent party, and visiting the project site, and making efforts to get possession of the allotted shop but all in vain. Despite several visits and requests by the complainants, the respondent failed to give possession of the shop. The complainants have never been able to understand/know the actual status of the construction. Though the towers seem to be built up, but there was no progress observed on finishing and landscaping work and amenities for a long time.

X. That the main grievance in the present complaint is that despite the complainants paid more than 70% of the actual cost of the shop and ready and willing to pay the remaining amount (justified) (if any), the respondent has failed to deliver the possession of the shop on promised time and till date project is without amenities. Moreover, it was promised by the respondent at the time of receiving payment for

the shop that the possession of a fully constructed shop and the developed project shall be handed over to the complainants as soon as construction completes.

XI. That due to the acts of the above and the terms and conditions of the builder buyer agreement/buyer agreement, the complainants are unnecessarily harassed mentally as well as financially, therefore the opposite party is liable to compensate the complainants on account of the aforesaid act of unfair trade practice.

XII. That there are clear unfair trade practices and breach of contract and deficiency in the services of the respondent party and much more a smell of playing fraud with the complainants and others and is prima facie clear on the part of the respondent party which makes them liable to answer this authority.

XIII. That the complainants(s) being an aggrieved person filing the present complaint under section 31 with the authority for violation /contravention of provisions of this Act as mentioned in the preceding.

XIV. That the complainants do not want to withdraw from the project. The promoter has not fulfilled his obligation therefore as per obligations on the promoter under section 18(1) proviso, the promoter is obligated to pay the interest at the prescribed rate for every month of delay till the handing over of the possession.

XV. That the present complaint is not for seeking compensation, without prejudice, complainants reserve the right to file a complaint to adjudicating officer for compensation.

C. Relief sought by the complainant:

4. The complainants have sought following relief(s).

I. To get possession of the fully developed/constructed shop with all amenities within 6 months of the filing of this complaint.

II. To get the delayed possession interest @ prescribed rate from the due date of possession till the actual date of possession (complete in all respect with all amenities after obtaining the OC).

III. To get the area calculation of the shop (Super Area, carpet area & common loading).

IV. The complainants are entitled to get an order in their favour to refrain the respondent from giving effect to unfair clauses unilaterally incorporated in the shop buyer's agreement.

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 complainants have got no *locus standi* or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the contractual terms and conditions

between the parties as would be evident from the submissions made in the following paragraphs of the present reply.

II. That the complainants, upon learning about the real estate project launched by the respondent known under the name and style of '**83 Avenue**' *(herein referred to as **'Project'**)* situated at sector 83, Village Sihi, Gurgaon, approached the respondent to know the details of the project. The complainants further inquired about the specification and veracity of the project, upon gaining of which, they were completely and absolutely satisfied with every proposal deemed necessary for the development of the project.

III. That after having keen interest in the making investment in the project being constructed by the respondent, the complainants desired to book multiple units in the project. It is important to note that the intention of the complainants, from the very beginning was to raise high returns from their investment. In lieu of the same, the complainants applied for the booking of a retail unit no. F-130 with the tentative super area of 325.290 sq. ft. ("**Old Unit**") vide application form. It is pertinent to note that the complainants were aware of each and every term of the aforesaid application and only after being fully satisfied and categorically agreeing to all the terms and conditions of the application form, signed the application form without any protest any demur. Further, as per **Clause 7** of the application form specifically sets out that the unit being allotted to the complainants was tentative and subject to change at any time before execution of sale deed.

IV. That thereafter, the old unit was provisionally allotted to the complainants vide allotment letter dated 27.12.2013. It needs to be

categorically noted that the said allotment letter mentioned that the allotment has been "provisionally identified". That thereafter, the provisional allotment of the unit of the complainants underwent a change to retail unit no. F-190 on 1st floor admeasuring 424.750 super area ("**Unit**"), as it stands on date. Subsequently, the allotment letter dated 23.08.2014 was made to the complainants in lieu of the unit, which was readily accepted by them, who had willingly, voluntarily, and freely assented to such allotment and executed the allotment letter.

V. That after, the space buyer's agreement with respect to the unit was duly attested on 14.112015. That the relationship between the parties is contractual in nature and is governed by the agreement, the contents of which were willingly, voluntarily, and categorically accepted between the parties. The rights and obligations of the parties flow directly from the agreement. At the outset, it must be noted that the complainants willingly consciously and voluntarily entered into all and every agreement after reading and understanding the contents thereof to their full satisfaction. That as per the agreement, the sale price of the said unit is Rs.46,80,746/ excluding the charges against tax and other charges as per clause 2(a) of the agreement.

VI. That as per clause 38 of the agreement, the estimated and contemplated due date of offer of possession was 36 months of signing of this agreement (14.11.2015) or within 36 months from the date of start of construction of the said building (30.01.2014) whichever is later with a grace period of 3 months subject to other terms and conditions of the agreement. Accordingly, the proposed

and estimated date comes out to be 14.02.2019 as per clause 38 of the agreement. However, the same was not absolute and was subject to force majeure events, governmental action/inaction and reasons beyond the control of the developer.

VII. That the respondent was adversely affected by various construction bans, lack of availability of building material, regulation of the construction and development activities by the judicial authorities including NGT in NCR on account of the environmental conditions, restrictions on usage of ground water by the High Court of Punjab & Haryana, demonetization, adverse effects of covid etc. and other force majeure circumstances. It needs to be categorically noted that the construction activities were stopped on various occasions during the tenure of the construction of the project.

VIII. That in past few years, construction activities have also been hit by repeated bans by the Courts/Tribunals/Authorities to curb pollution in Delhi-NCR Region. In the recent past the Environmental Pollution (Prevention and Control) Authority, NCR (EPCA) vide its notification bearing no. EPCA-R/2019/L-49 dated 25.10.2019 banned construction activity in NCR during night hours (6 pm to 6 am) from 26.10.2019 to 30.10.2019 which was later on converted to complete ban from 1.11.2019 to 05.11.2019 by EPCA vide its notification bearing no. R/2019/L-53 dated 01.11.2019.

IX. That the Hon'ble Supreme Court of India vide its order dated 04.11.2019 passed in writ petition bearing no. 13029/1985 titled as ***"MC Mehta vs. Union of India"*** completely banned all construction activities in Delhi-NCR which restriction was partly modified vide order dated 09.12.2019 and was completely lifted by the Hon'ble

Supreme Court vide its order dated 14.02.2020. These bans forced the migrant labourers to return to their native towns/states/villages creating an acute shortage of labourers in the NCR Region. Due to the said shortage the Construction activity could not resume at full throttle even after the lifting of ban by the Hon'ble Apex Court.

X. Even before the normalcy could resume, the world was hit by the Covid-19 pandemic. Therefore, it is safely concluded that the said delay in the seamless execution of the project was due to genuine force majeure circumstances and the said period shall not be added while computing the delay. That the current covid-19 pandemic resulted in serious challenges to the project with no available labourers, contractors etc. for the construction of the project. The Ministry of Home Affairs, GOI vide notification dated 24.03.2020, bearing no. 40-3/2020-DM-I(A) recognised that India was threatened with the spread of Covid-19 pandemic and ordered a completed lockdown in the entire country for an initial period of 21 days which started on 25.03.2020. By virtue of various subsequent notifications, the Ministry of Home Affairs, GOI further extended the lockdown from time to time and till date the same continues in some or the other form to curb the pandemic. Various State Governments, including the Government of Haryana have also enforced various strict measures to prevent the pandemic including imposing curfew, lockdown, stopping all commercial activities, stopping all construction activities. Pursuant to the issuance of advisory by the GOI vide office memorandum dated 13.05.2020 regarding extension of registrations of real estate projects under the provisions of the Act, 2016 due to "Force Majeure", the authority has also extended the

registration and completion date by 6 months for all real estate projects whose registration or completion date expired and or was supposed to expire on or after 25.03.2020.

XI. Despite, after above stated obstructions, the nation was yet again hit by the second wave of Covid-19 pandemic and again all the activities in the real estate sector were forced to stop. It is pertinent to mention, that considering the wide spread of Covid-19, firstly night curfew was imposed followed by weekend curfew and then complete curfew. That during the period from 12.04.2021 to 24.07.2021, each and every activity including the construction activity was banned in the State. This has been followed by the recent wave brought by the new covid variant in the country.

XII. That due to ban levied by the competent authorities, the migrant labourers were forced to return to their native towns/states/villages creating an acute shortage of labourers in the NCR Region. Despite, after lifting of ban by the Hon'ble Court, the construction activity could not resume at full throttle due to such acute shortage.

XIII. That the respondent is committed to complete the development of the project and deliver the units of the allottees as per the terms and conditions of the Agreement. It is pertinent to apprise to the authority that the developmental work of the said project was also slightly decelerated due to the reasons beyond the control of the respondent company due to the **impact of Good and Services Act, 2017** which came into force after the **effect of demonetisation** in last quarter of 2016 which stretches its adverse effect in various industrial, construction, business area even in 2019. The respondent also had to

undergo huge obstacle due to effect of demonetization and implementation of the GST.

XIV. That it is widely known and understood by various reports that the one day of hindrance in the construction activities leads to a delay of multiple days. That it needs to be noted that the development of the project is on the verge of being completed and the possession shall be delivered shortly.

XV. That the respondent was severely affected due the delay caused by the allottees of the project in making payments/instalments on time. Due to the delay caused by the allottees, the respondent had to arrange funds itself, which added to the delay. That the complainant has always delayed in making the payments against the unit, which has gravely, substantially, and directly affected the development of the unit and the project as a whole. That upon delays made, the respondent served the complainant with multiple reminders and demands.

XVI. That it is important to note that the complainants have not made payments since January 2020 and are still in default of demands raised. That the complainants have paid Rs.32,80,406/- against the total sale consideration of the unit and stands in default of demand of the remaining payments, as is evident from the payment details of the unit.

XVII. That all these circumstances come within the purview of the force majeure circumstances beyond the control of the respondent developer and hence allow extension of time for delivery of possession to the respondent as per clause 38, reiterated above. Moreover, the complainants in the said agreement so signed and

acknowledged agreed that he/she shall continue with this agreement and shall not obtain any specific performance in case the possession is delayed due to any Government rules, orders, or notification.

XVIII. That it must also be noted that the respondent had the right to suspend the construction of the project upon happening of circumstances beyond the control of the company, as per clause 38, reiterated above. However, despite all the hardships faced by the respondent, it did not suspend the construction and managed to keep the project afloat through all the adversities.

XIX. That, it is evident that the entire case of the complainants is nothing but a web of lies, false and frivolous allegations made against the respondent. That the complainants have not approached the authority with clean hands and have themselves violated the agreement and the section 19(6) and 19(7) of the Act and hence the complaint deserves to be dismissed with heavy costs. That it is brought to the knowledge of the authority that the complainants are guilty of placing untrue facts and are attempting to hide the true colour of intention of the complainants.

XX. That the complainants herein, have suppressed the above stated facts and have raised this complaint under reply upon baseless, vague, wrong grounds and has mislead this authority, for the reasons stated above. It is further submitted that none of the reliefs as prayed for by the complainants are sustainable before this authority and in the interest of justice.

7. 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 submissions made by the parties.

E. Jurisdiction of the authority

8. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I Territorial jurisdiction

9. 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

10. 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.

11. 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 respondents

F.I. Objection regarding the delay in payment

12. The objection raised by the respondent regarding delay in payment by many customers is totally invalid because the allottees have already paid an amount of Rs.32,80,406/- against the total sale consideration of Rs.46,80,746/- i.e., more than 70% of the total amount and the balance amount is payable on demand by the respondent/developer. The fact cannot be ignored that there might be certain group of allottees were defaulted in making payments. But upon perusal of documents on record, it is observed that no default has been made by the complainants in the instant case. Section 19(6) of Act lays down an obligation on the allottee(s) to make timely payments towards consideration of allotted unit. As per documents available on record, the complainants have paid all the installments as per payment plan duly agreed upon by them while signing the agreement and the same is evident from statement of account annexed on page no. 82 of the complaint. The respondent has not gone through the facts of the complaint carefully. Moreover, the interest of all the allottees

cannot put on stake on account of non-payment of due installments by a group of allottees. Hence, the plea advanced by the respondent is rejected.

F. II Objection regarding delay in project due to force majeure circumstances over and above grace period of 3 months.: -

13. The respondent/promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as NGT in NCR on account of the environmental conditions, restrictions on usage of ground water by High court of Punjab and Haryana, demonetization, GST, adverse effects of covid etc. and others force majeure circumstances and non-payment of instalment by different allottees of the project but all the pleas advanced in this regard are devoid of merit. The space buyer's agreement was executed between the parties on 14.11.2015 and the events taking place such as orders of NGT in NCR on account of the environmental conditions, restrictions on usage of ground water by High court of Punjab and Haryana, demonetization, GST, adverse effects of covid etc. and others force majeure circumstances do not have any impact on the project being developed by the respondent. Though some allottees may not be regular in paying the amount due but the interest of all the stakeholders concerned in the said project cannot be put on hold due to fault of on hold due to fault of some of the allottees. Thus, the promoter/ respondent cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrongs.

G. Findings on the relief sought by the complainant.

G. I To get the possession of the fully developed/constructed shop with all amenities within 6 months of the filing of this complaint.

14. There is nothing on the record to show that the respondent has applied for OC/part CC or what is the status of the development of the above-mentioned project. So, in such a situation, no direction can be given to the respondent to handover the possession of the subject unit, as the possession cannot be offered till the OC/part CC for the subject unit has been obtained. However, delay possession charges as ascertained by the authority shall be payable to the complainants as per provisions of the Act.

G. II To get the delayed possession interest at the prescribed rate from the due date of possession till the actual date of possession (complete in all respect with all amenities after obtaining the OC).

15. In the present complaint, the complainants intend 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."*

16. Article 38 of the space buyer's agreement provides for handing over of possession and is reproduced below:

> "38 *The "Developer/LLP" will, based on its present plans and estimates, contemplates to offer of possession of the said unit to the allottee(S) within 36 months (refer cl3 37 above)* ***signing of this agreement or within 36 months from the date of start of construction of the said building whichever is later with a grace period of 3 months, subject to force majeure events or governmental action /inaction****. If the*

completion of the said building is delayed by said reasons slow down, strike or due to a dispute with the construction agency employed by the "Developer/LLP" lock out or departmental delay or civil commotion or by reason of war or enemy action or terrorist action or earthquake or any act of God or by any other reason beyond the control of the Developer/LLP, the Developer/shall be entitled to extension of time for delivery of possession of the said premises..... "

17. 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 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 is not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by him 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 time period for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottees of their 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.

18. **Due date of handing over possession and admissibility of grace period:** The promoter has proposed to hand over the possession of the

said unit within 36 months from the date of singing the agreement or date of start of construction whichever is later and has sought further extension of a period of 3 months (after the expiry of the said 36 months) subject to force majeure events or governmental action /inaction. The due date of possession was in the year 2019 and any situation or circumstances which could have a reason for not carrying out the construction activities in the project prior to this date due are allowing to be taken into consideration. While considering whether the situations or circumstances contested by respondent in its reply were in fact beyond the control of the respondent and hence, the respondent is entitled to force majeure, the authority takes into consideration all the pleas taken by the respondent to plead the force majeure condition happened before 14.11.2018. Accordingly, authority allows 3 months grace period.

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

20. 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.

21. 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., **9.40%.**

22. 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;"*

23. 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 is the same as is being granted her in case of delayed possession charges.

G.III To get the area calculation of the shop (Super area, carpet area & common loading).

24. As per section 19(1) of Act of 2016, the allottee shall be entitled to obtain information relating to sanctioned plans, layout plans along with specifications approved by the competent authority or any such information provided in this Act or the rules and regulations or any such information relating to the agreement for sale executed between the parties. Therefore, the respondent promoter is directed to provide the area calculation relating to super area, loading and carpet area to the complainant.

G. IV The complainants are entitled to get an order in their favour to refrain the respondent from giving effect to unfair clauses unilaterally incorporated in the shop buyer's agreement.

25. The complainants have not specified any particular unfair clause of the shop buyer's agreement. So, the authority is unable to deliberate upon this relief. The respondent is directed not to charge anything which is not part of space buyer's agreement

26. On consideration of the circumstances, the documents, submissions made by the parties and based on the findings of the authority regarding contravention as per provisions of rule 28(2), the Authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of clause 38 of the agreement executed between the parties on 14.11.2015, the possession of the subject unit was to be delivered within

36 months from the singing of the agreement (14.11.2015) or 36 months from the date of start of construction/excavation (30.01.2014) whichever is later including the grace period of 3 months. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession was 14.02.2019. The respondent has failed to handover possession of the subject unit till date of this order. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. The authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit to the complainants as per the terms and conditions of the agreement to sell dated 14.11.2015 executed between the parties. Further no OC/part OC has been granted to the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottees.

27. 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 charges at rate of the prescribed interest @ 9.40% p.a. w.e.f. 14.02.2019 till the handing over of possession as per provisions of section 18(1) of the Act read with rule 15 of the Rules.

H. Directions of the authority

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

i. The respondent is directed to pay interest at the prescribed rate of 9.40% p.a. for every month of delay from the due date of possession i.e., 14.02.2019 till the handing over of possession of the allotted unit after obtaining the occupation certificate from the competent authority.

ii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period;

iii. The arrears of such interest accrued from 14.02.2019 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 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 allottees, 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 complainants which is not the part of the agreement to sell.

vi. The planning branch of the authority is directed to initiate penal proceedings against the builder/developer for violating the declaration given under section 4(2)(l)(c) of the Act, 2016.

29. Complaint stands disposed of.

30. File be consigned to registry.

(Vijay Kumar Goyal)
Member

(Dr. K.K. Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 17.05.2022