

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

Complaint no.:	350 of 2020
First date of hearing:	04.03.2020
Date of decision:	08.04.2022

Geetika Singhvi  
R/o 73, Sukhdev Vihar, New Delhi-110025

**Complainant**

Versus

1. M/s Anjali Promoters & Developers Pvt. Ltd.
  2. M/s Countrywide Promoters Pvt. Ltd.
- Both Office address:** OT-14, 3<sup>rd</sup> floor, Next Door  
Parklands, Sector-76, Faridabad, Haryana-121004

**Respondents**

**CORAM:**

Dr. K. K. Khandelwal  
Shri Vijay Kumar Goyal

**Chairman  
Member**

**APPEARANCE:**

Pawan Kumar Ray (Advocate)  
Venkat Rao (Advocate)

**Complainant  
Respondents**

**ORDER**

1. The present complaint dated 31.01.2020 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 as provided 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	"CENTRA ONE", Sector-61, Gurugram
2.	Project area	3.675 acres
3.	Nature of the project	Commercial Complex
4.	DTCP license no. and validity status	277 of 2007 dated 17.12.2007 valid up to 16.12.2019
5.	Name of licensee	Saixpo Overseas Pvt. Ltd.
6.	RERA registration details	Not Registered
7.	Unit no.	SF-07, 02 <sup>nd</sup> floor [pg. 27 of complaint]
8.	Unit measuring	792 sq. ft. [pg. 27 of complaint]
9.	Revised unit area as per offer of possession	829 sq. ft. [pg. 83 of reply]
10.	Date of execution of flat buyer agreement	17.07.2014 [page 25 of complaint]
11.	Possession clause	<b>Clause 2 Possession</b> <i>2.1 Subject to Force Majeure circumstances, intervention of Statutory authorities and Purchaser having timely complied with all its obligations, formalities or documentation, as prescribed by the seller and not being in default under any part hereof and the agreement, including but not limited to timely payment of instalments of the Total Sale Consideration and other charges as per the payment plan opted, the seller proposes to offer of possession of the said premises to the purchaser within a period</i>

		<p><i>of 12 months from the date of execution of this agreement ("Committed Period"). After filing an application for grant of Occupation Certificate, Seller shall not be liable for any delay in grant thereof by the competent authority and such delay shall proportionately extend the Committed period. The shall give notice of possession to the purchaser with regard to the date of handing over of possession, and in the event the purchaser fails to accepts and take the possession of the said premises on such date specified in the notice the purchaser shall be deemed to be custodian of the said premises from the date indicated in the notice of possession and the said premises shall remain at the risk and cost of the purchaser.</i></p> <p><i>(Emphasis supplied)</i></p> <p>[pg. 30 of complaint]</p>
12.	Due date of possession	17.07.2015
13.	Total sale consideration as per statement of account annexed with offer of possession dated 29.11.2018	₹60,08,092/-  [pg. 85 of reply]
14.	Amount paid by the complainant as per statement of account annexed with offer of possession dated 29.11.2018	₹45,48,139/-  [pg. 85 of reply]
15.	Delay in handing over possession till the date of offer of possession plus two months i.e., 12.02.2019	3 year 6 months 12 days
16.	Occupation certificate	09.10.2018
17.	Offer of possession	29.11.2018  [pg. 83 of reply]

**B. Facts of the complaint**

3. The complainant has pleaded the complaint on the following facts:

- a. That lured by such representations, the complainant booked a unit in the above-mentioned project of the respondent companies. That at the time of booking, timely completion of the project along with the promised facilities were the two key components on which the complainant had placed all her reliance. That not in the worst of her dreams had the complainant imagined that all her hard-earned money would be retained by the respondents and that her dream of possessing the unit would be stalled for such a long time.
- b. That the space buyer's agreement was executed between the parties on 17.07.2014. That a shop/office/unit bearing no. Sf 07, 2nd floor was allotted to the complainant having a super built up area of 792 sq. ft.
- c. That as per the agreement, the possession of the said unit was to be handed over to the complainant within 12 months from the date of execution of the agreement, that is by 16.07.2015. The relevant clause of the space buyer's agreement has been produced below:

*"2.1 Subject to Force Majeure circumstances, intervention of statutory authorities and Purchaser having timely complied with all its obligations, formalities or documentation, as prescribed by seller and not being in default under any part hereof and the Agreement, including but not limited to the timely payment of installments of the Total Sale Consideration and other charges as per the payment plan opted, the Seller proposes to offer possession of the said premises to the purchaser within a period of 12 months from the date of execution of the Agreement (Commitment Period)..."*

- d. That the above-mentioned provision clearly states that it was the prerogative of the respondents to deliver the unit to the complainant within stipulated time i.e., by 16.07 2015, failing which, it was bound to compensate the complainant for the same.

- e. That in contravention of the above-mentioned clause, the respondents, finally, after a delay of around 40 months, vide their final possession cum demand letter dated 29.11.2018, offered to transfer the possession of the unit to the complainant upon payment of dues as per final possession cum demand letter dated 29.11.2018.
- f. That in any contractual obligation, timely performance of one's duties is the most important factor. In the instant case, even after the complainant having paid around Rs 45,48,139/- out of the total consideration of Rs 60,08,092/- (inclusive of amount, the demand of which, was objected to by the complainant and to which explanations were sought) the respondents fail to deliver the possession on time. To the disappointment of the complainant, the same was offered for possession vide demand cum offer of possession letter dated 29.11.2018, after a long delay of around 40 months.
- g. That by no stretch of imagination can this delay of 40 months considered to be reasonable, rather, when coupled with the fact that no information and intimation was given to the complainant explaining the reasons and causes of such delay, it only reflects on the intent and lackadaisical attitude of the respondent companies.
- h. That the complainant, through her above stated email dated 17.04.2019, requested the respondent companies to clear her doubts pertaining to the calculation of interest charged (up to 30.06.2017), calculation of service tax, imposition of power Backup charges, imposition of firefighting charges (both of which are not specified in the buyers agreement and were first revealed in the

final demand cum possession letter dated 29/11/2018), uneven calculation of electrification charges & STP charges, the change in super area from 792 sq. ft to 829 sq. ft. etc but the same was to no avail.

**C. Relief sought by the complainant:**

4. The complainant has sought following reliefs:

- a. Direct the respondents to deliver immediate possession of the unit no. SF-07, located at 2<sup>nd</sup> floor, admeasuring 829 sq. ft. in the project "Centra One" at Sector- 61, Gurugram Haryana along with all the promised amenities and facilities and to the satisfaction of the complainant.
- b. Direct the respondent to make the payment of delay penalty charges at 18% rate of interest on the amount already paid by the complainant to the respondent, from the promised date of delivery of the flat till the actual delivery of the flat to the complainant.
- c. Direct the respondent to provide a certificate from an architect authenticating the increase in super area of the shop/unit by 37 sq. ft. is correspondingly matched by proportionate increase in carpet area of the shop/unit.
- d. Directs the respondents to remove any holding charges, Maintenance charges, interest charges levied by the respondents after final demand cum offer of possession letter issued by them dated 29.11.2018.

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 has contested the complaint on the following grounds:
  - a. That the complainant has approached this authority for redressal of his alleged grievances with unclean hands, i.e., by not disclosing material facts pertaining to the case at hand and also, by distorting and/or misrepresenting the actual factual situation with regard to several aspects. The complaint is liable to be dismissed at the threshold without any further adjudication.
  - b. That the complainant has concealed the fact that she has committed defaults and delays in timely payments of instalments, as a result respondents were constrained to send various reminder letters to the complainant. This act of not making payments is in breach of the agreement which also affects the cash flow projections and hence, impacts the projected timelines for possession. Hence, the proposed timelines for possession got diluted due to the defaults committed by various allottees including the complainant in making timely payments.
  - c. That the complainant has further concealed from this hon'ble authority that the respondents being a customer centric organization vide emails has kept updated and informed the complainant about the milestone achieved and progress in the developmental aspects of the project. The respondents vide various emails has shared photographs of the project in question. Respondent has always acted bonafidely towards its customers including the complainant, and thus, has always maintained at transparency with regard project progress. In addition to updating the complainant, the respondents on numerous occasions, on each



- and every issue/s and/or query/s upraised in respect of the unit in question has always provided steady and efficient assistance.
- d. That agreements that were executed prior to implementation of RERA Act and Rules shall be binding on the parties and cannot be reopened. Thus, both the parties being signatory to a duly documented space buyer agreement (hereinafter referred to as the "SBA") dated 17.07.2014 executed by the complainant out of her own free will and without any undue influence or coercion are bound by the terms and conditions so agreed between them.
- e. It is clarified in the Rules published by the state of Haryana, the explanation given at the end of the prescribed agreement for sale in annexure A of the Rules, it has been clarified that the developer shall disclose the existing agreement for sale in respect of ongoing project and further that such disclosure shall not affect the validity of such existing agreement executed with its customers.
- f. It is submitted that the relief(s) sought by the complainant are unjustified, baseless and beyond the scope/ambit of the agreement duly executed between the parties, which forms a basis for the subsisting relationship between the parties. The complainant entered into the said agreement with the respondents with open eyes and is bound by the same. That the relief(s) sought by the complainant travel way beyond the four walls of the agreement duly executed between the parties. The complainant while entering into the agreement has accepted and is bound by each and every clause of the said agreement.
- g. That having agreed to the above, at the stage of entering into the agreement, and raising vague allegations and seeking baseless



- reliefs beyond the ambit of the agreement, the complainant is blowing hot and cold at the same time which is not permissible under law as the same is in violation of the 'Doctrine of Aprobate & Reprobate". In this regard, the respondent reserves their right to refer to and rely upon decisions of the Hon'ble Supreme Court at the time of arguments, if required.
- h. Therefore, in light of the settled law, the reliefs sought by the complainant in the complaint under reply cannot be granted by this Hon'ble Authority. The parties had agreed under the space buyer agreement (SBA) to attempt at amicably settling the matter and if the matter is not settled amicably, to refer the matter for arbitration.
  - i. It is submitted that as per clause-1 of the agreement titled as "consideration and other conditions" specifically provided that in addition to basic sales price (BSP), various other cost components such as development charges (including EDC, IDC and EEDC), preferential location charges (PLC), car parking charges, VAT, service tax and any fresh incidence of tax (i.e. GST), electrification charges (EC), interest free maintenance security (IFMS), etc. shall also be payable by the complainant.
  - j. That the project 'Centra One' is a Greenfield project, located at Sector 61, Gurgaon. All customers including the complainant was well informed and conscious of the fact that timely payment of all the demands was of essence to the contract. Majority of customers opted for construction linked payment plan after clearly understanding that and agreed upon to tender the payment as per the construction milestones. It is pertinent to mention here that, given the choice of payment plan and terms of the agreement, all the customers

including the complainant specifically understood that a default in tendering timely payment by significant number of customers, would delay the construction activity. It is a matter of fact and record that the space/unit holders as a group have defaulted in making timely payment which has caused major set-back to the development work.

- k. That in the 1st year (FY 07) demands amounting to Rs.20.84 Crores were raised by the respondent in accordance with the payment plans chosen by customers, and only Rs.15.83 Crores was paid by the customers. Over 43% customers defaulted in making timely payment in FY 2007, and percentage of defaulting customers swelled to 56%, 40% and 68% in the FY 09, 10 and 11 respectively.
- l. That it is noteworthy to mention here that, with the sole intention of completing the project within reasonable time, the respondent offered additional benefit of Timely Payment Discount (TPD) which was not in the contemplation of the respondent while launching the project and hence, caused further outflow of funds, just to seek the following discounts and incentives to its customers, in excess of the terms and timely payments from the customers. In fact, in May 2009, the respondent offered conditions of the agreement, in huge favour of the customers.
- m. The respondent offered an additional Timely Payment Discount (TPD) of 10% in Basic Sale Price (BSP) to those customers who would make the payments of the various installments within the stipulated time stated in the said demand letters. This amounted to a substantial discount of Rs.257/- per sq. ft. had the customers made all their remaining payments within time. Unfortunately, this

scheme did not have a favourable result as only few customers availed this benefit. The customers who availed this scheme and paid their installments on time were given the TPD amounting to Rs.1.42 Crores.

7. Copies of all the documents have been filed and placed on record. The authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents.

**E. Jurisdiction of the authority**

8. The authority observed that it has territorial as well as 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, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District, therefore this authority has complete territorial jurisdiction to deal with the present complaint.

**E.II. Subject matter jurisdiction**

10. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as per provisions of section 11(4)(a) of the Act 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 raised by the respondent regarding force majeure condition**

11. The respondent has submitted the following contentions to be taken into note by the authority for granting grace period on account of force majeure:
  - a. That the complainant is the allottee of a shop bearing no. SF-07 in the commercial project of the respondent company, Centra One, situated in Gurugram, Haryana. The complainant in the present complaint are inter alia seeking interest on account of delay in handing over possession. The project, Centra One, is a business complex situated in Gurugram's sector 61, spread over an area of 3.675 acres. The said commercial complex has been developed by M/s Anjali Promoters Pvt. Ltd. in collaboration with M/s Saiexpo Overseas Pvt. Ltd. and M/s Countrywide Promoters Pvt. Ltd (collectively referred to as 'Company'). Subsequently, Department of Town and Country Planning, Haryana ("DTCP") has issued a license bearing no. 277 of 2007 to M/s Countrywide Promoters Pvt. Ltd. for developing a commercial complex on the said land.
  - b. That the timeline for possession as per clause 14 of the application for allotment, possession of the unit in question was proposed to be handed over within 36 months and in no case later than 42 months from the date of sanction of building plan. It is further submitted that the said timeline for possession was subject to force majeure and timely payment of installments by the complainant.
  - c. That it is pertinent to point out that both the parties as per the application form duly agreed that the respondent shall not be held responsible or liable for any failure or delay in performing any of

its obligations or undertakings as provided for in the agreement, if such performance is prevented, delayed or hindered by delay on part of or intervention of statutory authorities like DTCP or the local authorities or any other cause not within the reasonable control of the Respondent. In such cases, the period in question shall automatically stand extended for the period of disruption caused by such operation, occurrence or continuation of force majeure circumstance(s).

- d. The possession timelines for the said project were subject to force majeure circumstances and timely payment of called installments by the allottees. "Force Majeure", a French term equivalent to "Vis majeure", in Latin, means "superior force". A force majeure clause is defined under the Black's Law Dictionary as 'A contractual provision allocating the risk if performance becomes impossible or impracticable, especially as a result of an event or effect that the parties could not have anticipated or controlled.
- e. That delay, if any, in handing over of possession of the units of the said project is due to reasons beyond the control of the company. In this regard it is pertinent to point out that on 29.05.2008, the company applied for grant of approval of building plans from the DTCP.
- f. That on 21.07.2008, in the meeting of the building plan approval committee, the committee members concurred with the report of Superintending Engineer (HQ), HUDA and STP, Gurgaon who had reported that the building plans were in order. The said members also took note of the report of the STP (E&V)'s observation on the building plans. The members stated that the said observations were

"minor in nature" and hence approved the building plans subject to corrections.

- g. That DTCP vide letter dated 30.07.2008 approved the building plans of the company subject to certain rectification of deficiencies. There were in total 3 deficiencies which were asked to be corrected by the company, namely, NOC from AAI to be submitted, covered area not correct and lastly fire safety measures were not provided.
- h. That in compliance with the directions issued by DTCP vide office memo no. ZP-345/6351 dated 30.07.2008, the company submitted revised building plans on 27.08.2008 vide letter dated 25.08.2008. It is pertinent to point out that since there were no further objections conveyed to the company for the release of the building plans it was assumed that the building plans would be released automatically. Since no communication was received by the company for almost 5 months, the company on its own volition enquired the reasons for delay in release of the building plans by DTCP. To its astonishment, it came to the company's knowledge that the same was being withheld by DTCP on account of EDC dues. However, no formal communication qua the same was received by the company. Nonetheless, the company on 15.01.2009 and 16.01.2009 requested DTCP to release its building plans while submitting an undertaking to clear the EDC dues within a specified time period. It is pertinent to point out that there were no provisions in the Haryana Development and Regulation of Urban Areas Act, 1975 or the Haryana Development and Regulation of Urban Areas Rules, 1976 or any law prevalent at that time which

permitted DTCP to withhold release of a building plan on account of dues towards EDC.

- i. That DTCP on 27.02.2009 after a lapse of almost six months from the date of submission of the revised building plans, conveyed the company to clear EDC/IDC dues while clearly overlooking the undertakings given by the company.
- j. That it is stated that the company, on 03.08.2010 deposited full EDC/IDC with the department. It is pertinent to mention herein that in terms of the license granted and the conditional approval of the building plans, the company had started developing the project. That to its surprise, the company received a notice by DTCP dated 19.03.2013 directing the company to deposit composition charges of Rs.7,37,15,792/- on account of alleged unauthorized construction of over an area of 34238.64 sq. mtr. The said demand was questioned by the company officials in various meetings with DTCP officials. Various representations were made by the company on 04.09.2013, 22.10.2013, 11.11.2013, 02.12.2013, 14.03.2014, 15.04.2014, 07.07.2014, 13.11.2014, 09.02.2015, 07.04.2015. The company in its representation dated 05.06.2015 pointed out all the illegalities in the demand of composition charges of Rs.7.37 crores.
- k. That instead of clarifying the issue, DTCP further issued a demand letter on 31.12.2015 directing the company to deposit Rs. 7.37 crores as composition charges, Rs. 54,72,889 as labour cess and Rs. 55,282 on account of administrative charges. That the company succumbed to the undue pressure and on 13.01.2016 deposited Rs. 7.37 crores with DTCP as composition charges and further requested for release of its building plans. The company on



13.01.2016 further deposited an amount of Rs.41,68,171/- towards the balance labour cess.

- l. That even after clearing the dues of EDC/IDC and payment of composition charges, building plan was not released by DTCP, instead, the company was asked to apply for sanction of building plan again as per the new format. The same was duly done by the company on 16.06.2017. Further, the company, on completion of construction applied for grant of occupation certificate on 29.07.2017. That the company on the very next day i.e., 25.10.2017 replied to the DTCP justifying the concern while submitting the building plan again for approval. In the meantime, the company also paid composition charges to the tune of Rs.43,63,127/- for regularization of construction of the project.
- m. That, finally on 12.01.2018 the building plan was approved for the Centra One, post approval of the same, the company on 21.05.2018, in continuation to its application dated 31.07.2017, again requested DTCP for grant of occupation certificate for its project. It is stated that occupation certificate was duly granted by DTCP on 09.10.2018. Thus, even after having paid the entire EDC dues in the year 2010 the building plans for the project in question was not released by DTCP. It is reiterated that release/approval of building plan at that point in time was not linked with payment of EDC.
- n. It is pertinent to mention that in 2013 the company received a surprise demand of Rs.7.37 crores for composition towards unauthorized construction without considering the fact that construction at the project site was carried out by the company on the basis of approval of building plan in the meeting of the building



plan approval committee on 21.07.2008. Even after payment of the composition charges, the building plan was not released by DTCP instead, the company was asked to apply for sanction of building plan again as per the new format. The same was duly done by the company on 16.06.2017. However, it is after almost a lapse of 10 years from the date of first application that the building plan was finally approved on 12.01.2018. Thus, the circumstances as mentioned hereinabove falls squarely into the definition and applicability of the concept of 'force majeure'.

- o. That in addition to the above, the project also got delayed due to a complete ban on extraction of ground water for construction by the Central Ground Water Board. On 13.08.2011, the Central Ground Water Board declared the entire Gurgaon district as 'notified area' which in turn led to restriction on abstraction of ground water only for drinking / domestic use. Hence, the developer/company had to use only treated water for construction and/or to buy water for construction.
- p. That the *Hon'ble Supreme Court recently in Puri Constructions Pvt. Ltd. Vs. Dr. Viresh Arora (Civil Appeal No. 3072 of 2020)* on 3rd September 2020 while allowing the appeal preferred by the Developer company against an order passed by the Ld. NCDRC directed the Ld. Commission to decide afresh on the matter in issue while taking into consideration the force majeure circumstances pleaded by the developer.
- q. The Hon'ble Supreme Court conceded with the submissions made by the Developer Company that though the NCDRC noted that the developer pleaded force majeure on the ground that



- (i) the construction of the flats could not proceed due to a stay granted by the National Green Tribunal on construction during the winter months; and
  - (ii) demonetization affected the real estate industry resulting in delays in completion, the submission has not been dealt with
- r. The second submission which was urged on behalf of the developer was that in similar other cases, the NCDRC has condoned the delay of the nature involved in the present case in handing over possession, having regard to the quantum of delay involved.
- s. Thus, delay, if any, in handing over possession to allottees of Centra One has been due to reasons beyond control of the company and the same need to be taken into consideration by RERA in so awarding delay possession compensation while also giving the company an extension of 10 years so as to complete the project by 2018-19.
12. As far as this issue is concerned the authority the authority has already settled this issue in complaint bearing no. **1567 of 2019** titled as ***Shruti Chopra & anr. V/s Anjali Promoters & Developers Pvt. Ltd.*** wherein the authority is of the considered view that if there is lapse on the part of competent authority in granting the required sanctions within reasonable time and that the respondent was not at fault in fulfilling the conditions of obtaining required approvals then the respondent should approach the competent authority for getting this time period i.e., 31.12.2011 till 19.11.2018 be declared as "zero time period" for computing delay in completing the project. However, for the time being, the authority is not considering this time period as zero period and the respondent is liable for the delay in handing over possession as per provisions of the Act.

**G. Findings on the relief sought by the complainant**

**G.I. Direct the respondent to make the payment of delay penalty charges at 18% rate of interest on the amount already paid by the complainant to the respondent, from the promised date of delivery of the flat till the actual delivery of the flat to the complainant.**

13. In the present complaint, the complainant intends to continue with the project and is seeking delayed possession charges interest on the amount paid. Clause 2.1 of the buyer's agreement (in short, agreement) provides for handing over of possession and is reproduced below: -

*"Subject to Force Majeure circumstances, intervention of Statutory authorities and Purchaser having timely complied with all its obligations, formalities or documentation, as prescribed by the seller and not being in default under any part hereof and the agreement, including but not limited to timely payment of installments of the Total Sale Consideration and other charges as per the payment plan opted, the seller proposes to offer of possession of the said premises to the purchaser within a period of 12 months from the date of execution of this agreement ("Committed Period"). After filing an application for grant of Occupation Certificate, Seller shall not be liable for any delay in grant thereof by the competent authority and such delay shall proportionately extend the Committed period. The shall give notice of possession to the purchaser with regard to the date of handing over of possession, and in the event the purchaser fails to accepts and take the possession of the said premises on such date specified in the notice the purchaser shall be deemed to be custodian of the said premises from the date indicated in the notice of possession and the said premises shall remain at the risk and cost of the purchaser."*

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 favor of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the flat buyer 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.

15. **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*

16. 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.

17. 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., **08.04.2022** is 7.30%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.
18. The definition of term 'interest' as defined under section 2(z a) 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;"*

19. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., **9.30%** by the respondent/promoter which is the same as is being granted to the complainant in case of delayed possession charges.
20. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, 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 2.1 of the buyer's agreement executed



between the parties on 17.07.2014, the possession of the subject apartment was to be delivered within 12 months from the date of execution of the agreement i.e., by 17.07.2015. As far as grace period is concerned, there is no clause for extension of time in the buyer's agreement and as far as force majeure note is concerned the authority has not considered that period as zero period accordingly the due date of possession remains the same. The respondent has offered the possession of the subject apartment on 29.11.2018. 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.

21. Section 19(10) of the Act obligates the allottees to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 09.10.2018. The respondent offered the possession of the unit in question to the complainant only on 29.11.2018, so it can be said that the complainant came to know about the occupation certificate only upon the date of offer of possession. Therefore, in the interest of natural justice, the complainant should be given 2 months' time from the date of offer of possession. This 2 month of reasonable time is being given to the complainant keeping in mind that even after intimation of possession, practically they have to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit, but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 17.07.2015





till the expiry of 2 months from the date of offer of possession (29.11.2018) which comes out to be 29.01.2019.

22. Accordingly, the 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 the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 17.07.2015 till the date of offer of the possession of the unit plus two months i.e., till 29.01.2019, at prescribed rate i.e., 9.30 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules

**G.II. Direct the respondents to deliver immediate possession of the unit no. SF-07, located at 2<sup>nd</sup> floor, admeasuring 829 sq. ft. in the project "Centra One" at Sector- 61, Gurugram Haryana along with all the promised amenities and facilities and to the satisfaction of the complainant.**

23. The respondent no. 1 has already offered the possession of the subject unit on 29.11.2018 after the grant of OC. Therefore, the complainant is directed to take the possession of the subject unit after clearing the instalments due if, any within 15 days from the date of this order.

**G.III. Direct the respondent to provide a certificate from an architect authenticating the increase in super area of the shop/unit by 37 sq. ft. is correspondingly matched by proportionate increase in carpet area of the shop/unit.**

24. The promoter is directed to provide a certificate of architect as requested by the complainant.

**G.IV. Direct the respondents to file detailed final statement of accounts providing explanation of all queries raised by the complainant vide letter dated 17.04.2019. if any**



discrepancies are found a revised account statement to be issued after correction.

25. No details have been provided by the complainant. Accordingly, no direction can be given.

**G.V. Directs the respondents to remove any holding charges, Maintenance charges, interest charges levied by the respondents after final demand cum offer of possession letter issued by them dated 29.11.2018.**

• **Holding charges and interest on delay payments**

26. The authority has decided this in the complaint bearing no. **4031 of 2019** titled as **Varun Gupta V/s Emaar MGF Land Ltd.** wherein the authority has held that the respondent is not entitled to claim holding charges from the complainant/allottee at any point of time even after being part of the buyer's agreement as per law settled by Hon'ble Supreme Court in civil appeal nos. 3864-3889/2020 decided on 14.12.2020.

27. In the present complaint, as per statement of account annexed with offer of possession dated 29.11.2018, no charges have been levied by the respondent on account of holding charges. However, it has been mentioned in letter of offer of possession that in case the allottee fails to make requisite payments/furnishing necessary documents, the allottee shall be liable to pay holding charges in addition to monthly common area maintenance charges. In light of the aforesaid judgements, the respondent shall not be entitled to any holding charges though it would be entitled to interest for the period the payment is delayed.

28. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period. The rate of interest



chargeable from the complainant /allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 9.30% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delay possession charges as per section 2(za) of the Act.

- **Maintenance charges**

29. In the present matter, as per offer of possession dated 29.11.2018, the respondent has not charged any amount towards maintenance charges although it has been specifically mentioned in the letter that the same will be billed in due course of time by the maintenance service provider.

The relevant para of offer of possession is reproduced below:

*"Please note that maintenance agreement and charges like, common area maintenance, interest free maintenance security deposit, common area electricity, administrative charges etc. will be billed in due course of time by the maintenance service provider and shall be payable by the allottee(s)"*

30. In view of the facts of the present case, no case is made out in respect of maintenance charges.

#### H. Directions of the authority

31. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations casted upon the promoters as per the functions entrusted to the authority under section 34(f):

- i. The respondent no. 1 is 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., 17.07.2015 till the date of offer of the possession plus two months i.e., 29.01.2019.

- ii. The arrears of such interest accrued from 17.07.2015 till 29.01.2019 shall be paid by the promoter to the allottee within a period of 90 days from date of this order.
  - iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
  - 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., 9.30% by the respondent/promoter which is the same rate of interest which the promoters 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 agreement. However, holding charges shall not be charged by the promoter at any point of time even after being part of agreement as per law settled by Hon'ble supreme court in civil appeal no. 3864-3889/2020.
32. Complaint stands disposed of.
33. File be consigned to registry.

  
(Vijay Kumar Goyal)

Member

  
(Dr. K.K. Khandelwal)

Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 08.04.2022