BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no.	**:**	**4305 of 2020**
First date of hearing:		**08.01.2021**
Date of decision	**:**	**09.07.2021**

M/s R Jain Contractors Pvt. Ltd. through its Authorized Signatory/ Director Mr. Rajesh Jain
R/O:- House no. 1664, Urban Estates-II, Hisar, Haryana — **Complainant**

Versus

M/s IREO Victory Valley Pvt. Ltd.
Office at: 305, 3rd Floor, Kanchan House, Karampura Commercial Complex, New Delhi. — **Respondent**

CORAM

Dr. K.K Khandelwal	**Chairman**
Shri Samir Kumar	**Member**
Shri Vijay Kumar Goyal	**Member**

APPEARANCE:

Shri Sushil Yadav	Advocate for the complainant
Shri M.K Dang	Advocate for the respondent

ORDER

1. The present complaint has been filed on 24.11.2020 by the complainant/allottee in Form CRA 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 to the allottee as per the agreement for sale executed inter se.

A. Unit and project related details

2. The particulars of the project, the details of sale consideration, the amount paid by the respondent, 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	"Ireo Victory Valley", Golf course extension road, Sector 67, Gurugram, Haryana
2.	Project area	24.6125 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. & validity status	**244 of 2007 dated 26.10.2007 and valid upto 25.10.2017**
5.	Name of licensee	KSS Properties Pvt. Ltd. and one other
6.	RERA Registration	Not registered
7.	Date of booking	31.07.2010 (Vide application for booking on page no. 25 of the reply.)
8.	Date of execution of apartment buyer's agreement	20.09.2010 (Page no. 19 of the complaint)
9.	Unit no.	B1004, 10th Floor, Tower B (Page no. 22 of complaint)

10.	Unit admeasuring	3132 sq. ft. (Page no. 22 of complaint)
11.	Payment plan	Construction linked payment plan. (Page no. 50 of complaint)
12.	Total sale consideration	Rs. 2,44,58,939/- (As per S.O.A dated 03.05.2018 at page no. 65 of complaint)
13.	Total amount paid by the respondent	Rs. 2,25,33,841/- (As per S.O.A dated 03.05.2018 at page no. 65 of complaint)
14.	Date of approval of building plan	29.11.2010 (Page no. 57 of the reply)
15.	Due date of delivery of possession	29.11.2013 (As per clause 13.3 of the apartment buyer's agreement- within 36 months from the date of approval of the building plans and/or fulfilment of the preconditions imposed thereunder along with 180 days grace period to allow for unforeseen delays in obtaining O.C from the DTCP) **Note:**

		1. Calculated from date of approval of building plan. **2. Grace period of 180 days is not allowed in the present case.**
17.	Occupation Certificate	28.09.2017 (Page no. 68 of the reply)
18.	Offer of possession	14.11.2017 (Page no. 66 of complaint)
19.	Period of delay in handing over possession till offer of possession plus 2 months i.e., 14.01.2018	4 years, 1 month, 16 days

B. Facts of the complaint

The complainant has submitted as under: -

3. That the respondent claimed themselves as reputed builders and developers and big real estate players. The respondent gave advertisement in various leading newspapers about their forthcoming project named "IREO Victory Valley" in sector 67, Gurgaon promising various advantages like world class amenities and timely completion of the project etc. Relying on the promise and undertakings given by the respondent in the advertisements the complainant booked a flat admeasuring super area 3132 Sq.ft. in the aforesaid project of the respondent for a total sale consideration of Rs. 21540703/- which includes BSP, car parking, IFMS, club membership, PLC etc including taxes.

4. That the apartment buyer's agreement was executed on 20.09.2010 and out of the total sale consideration, the complainant made a payment of Rs. 2,25,33,839/- to the respondent vide cheques of different dates. It is pertinent to mention here that some of the clauses in the apartment buyer's agreement that the complainant was made to sign by the respondent are one sided and completely unreasonable. The complainants had signed already prepared documents. Further, as per the said agreement the respondent had allotted a unit bearing no. B1004, 10th floor, tower-B having a super area of 3132 sq. ft. along with 2 covered car parking space numbered as D12 UB-137& D12 UB-138 to the complainant.
5. That as per clause 13.3 of the apartment buyer's agreement, the respondent had agreed to deliver the possession of the flat within 36 months from the date of approval of building plan i.e., 29.11.2010 or fulfilment of the preconditions with an extended period of 180 days and according to that, the flat was to be delivered till 29.05.2014.
6. That the complainant regularly visited the site but was surprised to see that the pace of the construction was very slow. It appears that respondent have played a fraud upon the complainant. Even the respondent themselves were not aware that by what time possession would be granted. Also, the respondent constructed the basic structure which was linked to the payments and majority of payments were made too early. However, subsequent to this there has been a very little

progress in construction of the project. The only intention of the respondent was to take payments for the flat without completing the work. The structure was being erected at great speed since the structure alone was related to the majority of the payments in the construction linked payment plan. Since the respondent had received the payments linked to the floor rise. This clearly shows the respondent's mala-fide intention and dishonest motives to cheat and defraud the complainant.

7. That despite receiving more than 100 % payment of all the demands raised by the respondents for the said flat and despite repeated requests and reminders over phone calls and personal visits of the complainant, the respondent has failed to deliver the possession of the allotted flat to the complainant within stipulated period and lastly on 14.11.2017 the respondent sent the notice for possession but when the complainant visited the flat to check the condition of the flat, it was neither completed and nor was in a habitable condition. This clearly shows the ulterior motive of the respondent to extract money from the innocent people like the present complainant fraudulently. From this omission on the part of the respondent, the complainant had suffered from disruption on their living arrangement, mental torture, agony and also continues to incur severe financial losses. This could have been avoided if the respondent had given the possession of the subject flat on time.

8. That as per clause 13.4 of the apartment buyer's agreement dated 08.07.2014, it was agreed by the respondent that in case of any delay, they shall pay to the complainant a compensation @ Rs7.5/- per sq. ft. per month of the super area of the unit for the period of the delay. It is, however, pertinent to mention herein that a clause of compensation at such a nominal rate of Rs 7.5/- per sq. ft. per month for the period of delay is unjust and the opposite party has exploited the complainant by not providing the possession of flat on time. The respondent cannot escape the liability merely by mentioning a compensation clause in the said agreement. It could be seen here that respondent had incorporated the clause in one sided apartment buyer's agreement and offered to pay a sum of Rs7.5/- per sq. ft. for every month of delay. If we calculate the amount in terms of financial charges it comes to approximately @ 2 % per annum rate of interest and whereas as per the apartment buyer's agreement and demand letters, the opposite party charges 20% per annum interest on delayed payment.

9. That on the ground of parity and equity the respondent is also be subjected to pay the same rate of interest, hence the respondents pay interest on the amount paid by the complainants @ 20% per annum from the promised date of the possession along with the refund of entire money paid by the complainant.

10. That the complainant had earlier filed the complaint in RERA vide complaint no.GRG-1551-2018, But the same was dismissed on dated 07.10.2020 on account of technical grounds with a liberty to complainant to file fresh complaint.

C. Relief sought by the complainant:

11. The complainant has sought the following relief(s)

- To direct the respondent to give the delayed possession interest to the complainant.

12. On the date of hearing, the Authority explained to the respondent/allottees 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

13. The respondent has contested the complaint on the following grounds.

I. That the respondent is a reputed real estate company having immense goodwill, comprised of law abiding and peace-loving persons and has always believed in providing the best services to their customers. The respondent has developed and delivered several prestigious projects such as 'Grand Arch', 'Ireo City', 'Skyon', 'Uptown', Ireo City Central etc. In most of these projects large number of families have already been shifted after having taken possession and resident welfare associations

have been formed which are taking care of the day to day needs of the allottees of the respective projects.

II. That the complainant, after checking the veracity of the said project had applied for allotment of an apartment vide its booking application form dated 30.07.2010. Based on the said application, the respondent vide its allotment offer letter dated 15.09.2010 allotted to the complainant apartment no. B1004, tower no. B, having tentative super area of 3132 sq.ft. Accordingly, an apartment buyer's agreement was executed between the parties to the complaint on 31.12.2010 for a sale consideration of Rs.2,15,40,703.84/-. However, it is submitted that the amount towards the sale consideration was exclusive of the registration charges, stamp duty charges, service tax and other charges which are to be paid by the complainant at the applicable stage. It is pertinent to mention herein that when the complainant had booked the unit with the respondent, the Real Estate (Regulation and Development) Act, 2016 was not in force and the provisions of the same cannot be applied retrospectively.

III. That the complainant was a continuous defaulter from the very inception. It is submitted that the

respondent had raised the payment demand towards the first instalment vide payment request dated 16.09.2010. However, the due amount was credited from the complainant only after reminders dated 21.10.2010 and 12.11.2010 were issued by the respondent.

IV. That vide payment request letter dated 24.12.2010, the respondent sent the payment demand towards the second instalment for the net payable amount of Rs. 20,92,047/-. However, the same was paid by the complainant only after reminders dated 02.02.2011 and 22.02.2011 were issued by the respondent.

V. That vide payment request letter dated 03.10.2012, the respondent sent the sixth instalment demand for the net payable amount of Rs.15,84,259.28/-. However, the complainant remitted the due amount only after a reminder dated 29.10.2012 was sent by the respondent.

VI. That vide payment request letter dated 26.09.2013, the respondent sent the ninth instalment demand for the net payable amount of Rs.15,62,389.66/-. However, the complainant remitted the due amount only after reminders dated 22.10.2013,

12.11.2013 and final notice dated 09.12.2013 were sent by the respondent.

VII. That vide payment request letter dated 24.02.2014, the respondent sent the tenth instalment demand for the net payable amount of Rs.15,50,983.91/-. However, the complainant remitted the due amount only after reminders dated 25.03.2014 and 14.04.2014 were sent by the respondent.

VIII. That vide payment request letter dated 23.01.2015, the respondent sent the eleventh instalment demand for the net payable amount of Rs.15,50,984.16/-. However, the complainant remitted the due amount only after reminders dated 18.02.2015, 11.03.2015 and final notice dated 01.04.2015 were sent by the respondent.

IX. That vide payment request letter dated 10.03.2016, the respondent sent the twelfth instalment demand for the net payable amount of Rs.15,60,585.57/-. However, the complainant remitted the due amount only after reminders dated 08.04.2016 and 02.05.2016 were sent by the respondent.

X. That the possession of the unit was supposed to be offered to the complainant in accordance with the agreed terms and conditions of the apartment buyer's agreement. It is submitted that clause 13.3

of the said agreement and clause 35 of the schedule-I of the booking application form states that '...subject to the allottee having complied with all formalities or documentation as prescribed by the Company, the Company proposes to offer the possession of the said apartment to the allottee within a period of 36 months from the date of approval of the Building Plans and/or fulfilment of the preconditions imposed thereunder (Commitment Period). The allottee further agrees and understands that the company shall be additionally be entitled to a period of 180 days (Grace Period) ...".. Furthermore, the complainant has further agreed for an extended delay period of 12 months from the date of expiry of the grace period as per clause 13.5 of the apartment buyer's agreement.

XI. That from the aforesaid terms of the apartment buyer's agreement, it is evident that the time was to be computed from the date of receipt of all requisite approvals. Even otherwise construction cannot be raised in the absence of the necessary approvals. It is pertinent to mention here that it has been specified in sub- clause (v) of clause 17 of the approval of building plan dated 29.11.2010 of the said project that the clearance issued by the

Ministry of Environment and Forest, Government of India has to be obtained before starting the construction of the project. It is submitted that the environment clearance for construction of the said project was granted on 25.11.2010. Furthermore, in clause (v) of part-b of the environment clearance dated 25.11.2010 it was stated that approval from fire department was necessary prior to the construction of the project.

XII. That it is submitted that the last of the statutory approvals which forms a part of the pre-conditions was the fire scheme approval which was obtained on 28.10.2013 and that the time period for offering the possession, according to the agreed terms of the apartment buyer's agreement, expired only on 28.04.2018. The respondent completed the construction of the tower in which the unit allotted to the complainant is located. It is pertinent to mention herein that the respondent had already received the occupation certificate dated 28.09.2017.

XIII. That, furthermore, the respondent offered the possession of the unit to the complainant vide notice of possession dated 14.11.2017 and intimated it to make the payment towards the balance amount of Rs. 50,74,080/-. The

complainant was bound to take the possession of the unit after making payment of the due amount and completing the documentation formalities as the holding charges are being accrued as per the terms of the apartment buyer's agreement and the same is known to the complainant as is evident from a bare perusal of the notice of possession. However, despite reminders dated 21.12.2017 and 15.01.2018 and final notice dated 26.02.2018, the complainant had remitted only a part of the total demanded amount and was bound to make payment towards the remaining amount along with holding charges and take the possession of the allotted unit.

XIV. That it is submitted that the complainant is a real estate investor who had booked the unit in question with a view to earn quick profit in a short period. However, it appears that its calculations have gone wrong on account of severe slump in the real estate market and the complainant now wants to harass and pressurize the respondent to submit to its unreasonable demands on highly flimsy and baseless grounds. Such malafide tactics of the complainant cannot be allowed to succeed. The complainant furthermore is also liable to make payment towards the holding charges on account of

the delay in taking over the possession as per the terms of the allotment even after a notice of possession has been issued by the respondent to the complainant.

14. 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.

E. Jurisdiction of the authority

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

E. I Territorial jurisdiction

15. 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

16. The authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter as held in ***Simmi Sikka v/s M/s EMAAR MGF Land***

Ltd.* (complaint no. 7 of 2018)** leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage. The said decision of the authority has been upheld by the Haryana Real Estate Appellate Tribunal in its judgement dated 03.11.2020, in appeal nos. 52 & 64 of 2018 titled as ***Emaar MGF Land Ltd. V. Simmi Sikka and anr.

F. Findings on the objections raised by the respondent

F. I Objection regarding jurisdiction of the complaint w.r.t the apartment buyer's agreement executed prior to coming into force of the Act.

17. The respondent submitted that the complaint is neither maintainable nor tenable and is liable to be outrightly dismissed as the apartment buyer's agreement was executed between the complainant and the respondent prior to the enactment of the Act and the provision of the said Act cannot be applied retrospectively.

18. The authority is of the view that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. The Act nowhere provides, nor can be so construed, that all previous agreements will be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a

specific/particular manner, then that situation will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. Numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of ***Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017)*** which provides as under:

> *"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter...*
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> *122. We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."*

19. Also, in appeal no. 173 of 2019 titled as ***Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya***, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

> *"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be*

applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."

20. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules and regulations made thereunder and are not unreasonable or exorbitant in nature.

F. II Objection regarding complainants are in breach of agreement for non-invocation of arbitration

21. The respondent submitted that the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute and the same is reproduced below for the ready reference:

*"**34. Dispute Resolution by Arbitration***

"All or any disputes arising out or touching upon in relation to the terms of this Agreement or its termination including the interpretation and validity of the terms thereof and the respective rights and obligations of the parties shall be settled amicably by mutual discussions failing which the same shall be settled through reference to a sole Arbitrator to be appointed by a resolution of the Board of Directors of the Company, whose decision shall be final and binding upon the parties. The allottee hereby confirms that it shall have no objection to the appointment of such sole Arbitrator even if the person so appointed, is an employee or Advocate of the Company or is otherwise connected to the Company and the Allottee hereby accepts and agrees that this alone shall not constitute a ground for challenge to the independence or impartiality of the said sole Arbitrator to conduct the arbitration. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory amendments/ modifications thereto and shall be held at the Company's offices or at a location designated by the said sole Arbitrator in Gurgaon. The language of the arbitration proceedings and the Award shall be in English. The company and the allottee will share the fees of the Arbitrator in equal proportion".

22. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme Court,

particularly in ***National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506***, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause.

23. Further, in ***Aftab Singh and ors. v. Emaar MGF Land Ltd and ors., Consumer case no. 701 of 2015 decided on 13.07.2017***, the National Consumer Disputes Redressal Commission, New Delhi (NCDRC) has held that the arbitration clause in agreements between the complainants and builders could not circumscribe the jurisdiction of a consumer. The relevant paras are reproduced below:

> *"49. Support to the above view is also lent by Section 79 of the recently enacted Real Estate (Regulation and Development) Act, 2016 (for short "the Real Estate Act"). Section 79 of the said Act reads as follows:-*
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> > *"79. Bar of jurisdiction - No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act."*
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> *It can thus, be seen that the said provision expressly ousts the jurisdiction of the Civil Court in respect of any matter which the Real Estate Regulatory Authority, established under Sub-section (1) of Section 20 or the Adjudicating Officer, appointed under Sub-section (1) of Section 71 or the Real Estate Appellant Tribunal established under Section 43 of the Real Estate Act, is empowered to determine. Hence, in view of the binding dictum of the Hon'ble Supreme Court in A. Ayyaswamy (supra), the*

matters/disputes, which the Authorities under the Real Estate Act are empowered to decide, are non-arbitrable, notwithstanding an Arbitration Agreement between the parties to such matters, which, to a large extent, are similar to the disputes falling for resolution under the Consumer Act.

...

56. Consequently, we unhesitatingly reject the arguments on behalf of the Builder and hold that an Arbitration Clause in the afore-stated kind of Agreements between the Complainants and the Builder cannot circumscribe the jurisdiction of a Consumer Fora, notwithstanding the amendments made to Section 8 of the Arbitration Act."

24. While considering the issue of maintainability of a complaint before a consumer forum/commission in the fact of an existing arbitration clause in the builder buyer agreement, the hon'ble Supreme Court **in case titled as M/s Emaar MGF Land Ltd. V. Aftab Singh in revision petition no. 2629-30/2018 in civil appeal no. 23512-23513 of 2017 decided on 10.12.2018** has upheld the aforesaid judgement of NCDRC and as provided in Article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India and accordingly, the authority is bound by the aforesaid view. The relevant para of the judgement passed by the Supreme Court is reproduced below:

"25. This Court in the series of judgments as noticed above considered the provisions of Consumer Protection Act, 1986 as well as Arbitration Act, 1996 and laid down that complaint under Consumer Protection Act being a special remedy, despite there being an arbitration agreement the proceedings before Consumer Forum have to go on and no error committed by Consumer Forum on rejecting the application. There is reason for not interjecting proceedings under Consumer Protection Act on the strength an arbitration agreement by Act, 1996. The remedy under Consumer Protection Act is a remedy provided to a consumer when there is a defect in any goods or services. The

complaint means any allegation in writing made by a complainant has also been explained in Section 2(c) of the Act. The remedy under the Consumer Protection Act is confined to complaint by consumer as defined under the Act for defect or deficiencies caused by a service provider, the cheap and a quick remedy has been provided to the consumer which is the object and purpose of the Act as noticed above."

25. Therefore, in view of the above judgements and considering the provisions of the Act, the authority is of the view that complainant is well within their rights to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and RERA Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily.

F.III Objection regarding jurisdiction of the authority to adjudicate the present complaint as the subject project is not registrable under section 3 of the Act and application for grant of occupation certificate was made before the publication of the Haryana Real Estate (Regulation and Development) Rules, 2017.

26. The respondent submitted that the project in question is exempted from registration under the Act and the Rules. The tower of the project where the unit of the complainant is situated does not come under the scope and ambit of ongoing project as defined in section 2(o) of the Rules. Further it is submitted that application for the grant of occupation certificate for the block where the unit of the complainant is situated in the said project was submitted on 09.02.2017 in

accordance with sub code 4.10 of the Haryana building code, 2017. Thus, according to the provisions of the said Act and rules, the tower where the subject unit is located does not require registration. Thus, the authority does not have any jurisdiction to decide any dispute related to it. Further, the counsel for the complainant has drawn the attention of the authority towards the fact that the respondent promoter has obtained the NOC for occupation of the above referred buildings from the Director, Fire Services, Haryana, Panchkula on 16.06.2017. Further it was stated that another approval from STP, Gurugram was obtained on 05.07.2017. The authority after considering the submissions made by both the parties is of view that the application made by the respondent promoter on 09.02.2017 was an incomplete application as the pre-requisites which were required for the same were obtained on a later date and it is a well settled law that incomplete application is no application in the eyes of the law. Accordingly, the objection of the respondent promoter stands rejected.

27. **Only that project shall be excluded from the purview of the 'ongoing project' which had received the completion certificate prior to the commencement of the Act and such project will not require registration.**

In **Emaar MGF Land Ltd. vs. Ms. Simmi Sikka**, appeal nos.52 & 64 of 2018, decided on 03.11.2020 by the Haryana Real Estate Appellate Tribunal (hereinafter referred, the Appellate Tribunal), it was observed that first proviso to section 3(1) of

the Act provides that the projects which were 'ongoing' on the date of commencement of the Act and for which the completion certificate has not been issued, the promoter shall make an application to the authority for registration of the said project within a period of three months from the date of commencement of the Act. The position further becomes clear from section 3(2)(b) of the Act that the registration of the real estate project shall not be required where the promoter had received the completion certificate for the said project prior to the commencement of the Act. Thus, if we read section 3 of the Act, between the lines, it is evident that only that project shall be excluded from the purview of the 'ongoing project' which had received the completion certificate prior to the commencement of the Act and such project will not require registration.

28. **Rules 2(1)(o)(i) and 2(1)(o)(ii) of the Haryana Real Estate (Regulation and Development) Rules, 2017 are apparently inconsistent with section 3 of the Real Estate (Regulation and Development) Act, 2016.**

In **Emaar MGF Land Ltd. vs. Ms. Simmi Sikka (Supra)** it was further observed by the Appellate Tribunal that in the rules, the purview of 'ongoing project' has been restricted. It has been provided in explanation (i) of rule 2(1)(o) that those projects for which after completion of development works an application under rule 16 of 1976 Rules (Haryana Development and Regulation of Urban Areas Rules, 1976) or under sub-code 4.10 of the Haryana Building Code was made

to the competent authority on or before publication of the rules will not be 'ongoing project'. Rule 2(1)(o)(ii) of the rules further provides that the 'ongoing project' does not include any part of any project for which part completion/completion, occupancy certificate or part thereof had been granted on or before publication of these rules. Rules 2(1)(o)(i) and 2(1)(o)(ii) are apparently inconsistent with section 3 of the Act.

29. **The provisions of section 3 of the Act will prevail over the explanations appended to rule 2(1)(o) of the rules.**

Section 3(2) of the Act provides that no registration shall be required for the projects mentioned therein. This is the only provision regarding exemption of real estate projects from the requirement of registration but under the Haryana Real Estate (Regulation and Development) Rules, 2017 rule 2(1)(o)(i) and 2(1)(o)(ii) provide additional two categories taken out of purview of on-going project and accordingly attempted to exempt these categories of projects from the requirement of registration. This issue has been examined both by Hon'ble Punjab and Haryana High Court and the Haryana Real Estate Appellate Tribunal. In ***Emaar MGF Land Ltd. vs. Ms. Simmi Sikka*** the Haryana Real Estate Appellate Tribunal observed that-

> *"40. We are conscious of the fact that this Tribunal has no jurisdiction to declare any rule ultra vires but at the same time Article 254 of the Constitution of India mandates that the law made by the Parliament shall prevail. Article 254 of the Constitution becomes applicable in case of inconsistency between the law enacted by the Parliament*

and the law made by the State. Here in this case the Act has been enacted by the Parliament. The rules are subordinate legislation by the appropriate government i.e. State of Haryana. The subordinate legislation is also a legislation of the State according to Section 84 of the Act; thus, it cannot be stated that the provisions of Article 254 of the Constitution of India will not apply to subordinate legislation. Therefore, we are of the opinion that the provisions of Section 3 of the Act will prevail over the explanations appended to Rule 2(1)(o) of the Rules. This legal position is also illustrated from the latest authoritative pronouncement of the Division Bench of our Hon'ble High Court in a bunch of writ petitions lead case being ***CWP No.38144 of 2018 Experion Developers Pvt. Ltd. Vs. State of Haryana and others*** *decided on 16.10.2020, wherein the Hon'ble High Court has laid down as under: -*

74. The Act is intended to apply even to 'ongoing' Real Estate Projects. The expression 'ongoing project' has not been defined under the Act but under Rule 2(o) of the Haryana Rules which reads as under:

"ongoing project" means a project for which a license was issued for the development under the Haryana Development and Regulation of Urban Area Act, 1975 on or before the 1st May, 2017 and where development works were yet to be completed on the said date, but does not include:

(i) any project for which after completion of development works, an application under Rule 16 of the Haryana Development and Regulation of Urban Area Rules, 1976 or under sub code 4.10 of the Haryana Building Code 2017, as the case may be, is made to the Competent Authority on or before publication of these rules and

(ii) that part of any project for which part completion/completion, occupation certificate or part thereof has been granted on or before publication of these rules.

41. It was further laid down as under: -

77. Rule 3 of the Haryana Rules talks of application for registration and Rule 4 of 'additional disclosure by Promoters of ongoing

projects.' Therefore, all 'ongoing projects' i.e. those that commenced prior to the Act, and in respect of which no completion certificate is yet issued, are covered under the Act. It is plain that the legislative intent was to make the Act applicable to not only to the projects which were to commence after the Act became operational but also to ongoing projects. The issue that arises is whether this is permissible in law?

42. *The Hon'ble High Court further laid down as under:*

78. The decision of the Bombay High Court in ***Neelkamal Realtors Suburban Pvt. Ltd. (supra)*** *has dealt with this issue quite extensively. The conclusion of the Bombay High Court that this retroactive application of the Act, as distinguished from retrospective effect, in relation to ongoing project is consistent with the legal position in this regard. A very conscious decision was taken that the Act should apply not only to new projects but to existing projects as well.*

43. *It was further laid down as under: -*

84. The above submissions have been considered. The Statement of Objects and Reasons preceding the enactment have already been referred to. The relevant passages of the judgment of Bombay High Court in ***Neelkamal Realtors Suburban Pvt. Ltd.*** *(supra) have also been referred to. The very concept of 'ongoing project' is unique to the Act. The legislature was conscious of the impact that the Act would have on such 'ongoing projects'. A collective reading of Section 3 with Section 2(o) and 2(zn) indicates that care was taken to specify which of the projects would stand exempted. Section 3(2)(b) of the Act is categorical that no registration of the project would be required where "the promoter has received completion certificate for real estate project prior to the commencement of this Act." It cannot thus be*

argued that without satisfying the above requirement or the other two contingencies in Sections 3(2)(a) and 3(2)(c) (section corrected) of the Act, a promoter can avoid registering an 'ongoing' project under the Act.

44. It was further laid down as under: -

86. The Act was consciously made applicable to 'ongoing projects' i.e. those for which a CC has yet not been received by the promoter. There is also no question of any violation of settled law regarding overriding of the agreements of sale entered into prior to the date of Act coming into force and Haryana Rules. Those agreements of sale would obviously be subject to the new legal dispensation put in place by the Act and the Rules. In light of the object and purpose of the Act, no comparison can be drawn with the other enactments which were subject matter of the decisions of Supreme Court relied upon by TDI."

Only those projects which had got the completion certificate before the commencement of the Act will not require registration and will certainly fall beyond the purview of the 'ongoing project'. Thus, the Hon'ble High Court has categorically laid down that as per section 3(2)(b) of the Act, the registration of a project will not be required where the promoter has already received the completion certificate for the project prior to the commencement of the Act. It is pertinent to mention here that completion certificate as defined in section 2(q) and occupancy certificate as defined in section 2(zf) of the Act are entirely for different purposes. It was further laid down that without satisfying the above requirement or the other two contingencies provided in sub-

section 3(2)(a) and 3(2)(c) of the Act, a promoter cannot avoid registering an 'ongoing project'. Consequently, only those projects which had got the completion certificate before the commencement of the Act will not require registration and will certainly fall beyond the purview of the 'ongoing project'. All other projects will require registration and will be squarely covered by the definition of the 'ongoing project'. Hence, it is held that the mandate contained in section 3 of the Act will have supremacy over the rule 2(1)(o) of the rules so far as the same is inconsistent with section 3. It is a well settled principle of law that the Act is always the creator of the rules i.e. rules are always framed by virtue of there being a provision in the Act with regard to framing of rules.

30. **There is no classification of registered or un-registered projects in the definition of the real estate projects.**

The definition of project and real estate project as defined in section 2(zj) and 2(zn) respectively will cover all the projects where the development of a building or the land into plots is carried out for the purpose of sale of the said apartment or the plot or the building. There is no classification of registered or unregistered projects in the definition of the real estate projects. In appeal no.182 of 2019 titled as **M/s Omaxe Limited Vs. Mrs. Arun Prabha,** decided on 19.12.2019 the Haryana Real Estate Appellate Tribunal observed as under: -

> *27. The necessity to enact the present Act was felt as there was no special statute to provide effective and simplicitor (sic) remedy for redressal of the grievances of the home buyers. Keeping in view the background of the Act, it has to be*

looked from the perspective harmony with the aim and objects for which it was enacted. The Act came into force w.e.f. 01.05.2016. The preamble of the Act reads as under:

-

> *"An Act to establish the Real Estate Regulatory Authority for regulation and promotion of the real estate sector and to ensure sale of plot, apartment or building, as the case may be, or sale of real estate project, in an efficient and transparent manner and to protect the interest of consumers in the real estate sector and to establish an adjudicating mechanism for speedy dispute redressal and also to establish the Appellate Tribunal to hear appeals from the decisions, directions or orders of the Real Estate Regulatory Authority and the adjudicating officer and for matters connected therewith or incidental thereto."*

28. *It is well settled that the preamble of the statute has a guide light to ascertain the legislative intent. The preamble of the Act reproduced above shows that the Real Estate Regulatory Authority has been established for regulation and promotion of the real estate sector and to protect the interest of the consumers in real estate sector.*

29. *The project has been defined in Section 2(zj) as under:*

> *"(zj) "Project" means the real estate project as defined in clause (zn);"*

Section 2(zn) defines the real estate project as under:-

> *"(zn) "real estate project" means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or [apartments], as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;"*

29. *The project has been defined in Section 2(zj) as under:*

"(zj) "Project" means the real estate project as defined in clause (zn);"

Section 2(zn) defines the real estate project as under:-

"(zn) "real estate project" means the development of a building or a building consisting of apartments, or converting an existing building or a part thereof into apartments, or the development of land into plots or [apartments], as the case may be, for the purpose of selling all or some of the said apartments or plots or building, as the case may be, and includes the common areas, the development works, all improvements and structures thereon, and all easement, rights and appurtenances belonging thereto;"

30. The definitions reproduced above will cover all the projects where the development of a building or the land into plots is carried out for the purpose of sale of the said apartment or the plot or the building. There is no classification of registered or unregistered projects in the definition of the real estate projects.

31. In the light of the above-mentioned reasons the authority is of the view that the objection of the respondent stands rejected. The project is registrable under section 3 of the Act and the authority has complete jurisdiction to adjudicate upon any dispute related to the subject project.

G. Findings regarding relief sought by the complainant.

Delay possession charges: To direct the respondent to give the delayed possession interest to the complainant.

32. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges at prescribed rate of interest on amount already paid by him as

provided under the proviso to section 18(1) of the Act which 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."*

33. Clause 13.3 of the apartment buyer's agreement (in short, the agreement) dated 20.09.2010, provides for handing over possession and the same is reproduced below:

> **13. Possession and Holding charges**
>
> *"**13.3** Subject to Force Majeure, as defined herein and further subject to the Allottees having complied with all its obligations under the terms and conditions of this Agreement and not having defaulted under any provision(s) of this Agreement including but not limited to the timely payment of all dues and charges including the total Sale Consideration, registration charges, stamp duty and other charges and also subject to the Allottees having complied with all formalities or documentation as prescribed by the Company, the company proposes to offer the possession of the said apartment to the allottees within a period of 36 months from the date of approval of the Building plans and/or fulfilment of the preconditions imposed thereunder ('**Commitment Period**"). The Allottees further agrees and understands that the company shall additionally be entitled to a period of 180 days ("**Grace Period**"), after the expiry of the said Commitment Period to allow for unforeseen delays in obtaining the occupation certificate etc., from the DTCP under the Act, in respect of the IREO- Victory Valley Project.*

34. The apartment buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builder(s)/promoter(s) and buyer(s)/allottee(s) are protected candidly. The apartment buyer's agreement lays down the terms that govern the sale of different kinds of properties like residentials, commercials etc. between the buyer and builder. It is in the interest of both the parties to have a well-drafted apartment buyer's agreement which would thereby protect the rights of both the builder(s) and buyer(s) in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the apartment, plot or building, as the case may be and the right of the buyer/allottee in case of delay in possession of the unit. In pre-RERA period it was a general practice among the promoter(s)/developer(s) to invariably draft the terms of the apartment buyer's agreement in a manner that benefited only the promoters/developers. It had arbitrary, unilateral, and unclear clauses that either blatantly favoured the promoters/developers or gave them the benefit of doubt because of the total absence of clarity over the matter.

35. The authority has gone through the possession clause of the agreement. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession

has been subjected to all kinds of terms and conditions of this agreement and the complainant not being in default under any provisions of this agreements and in compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the apartment buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the doted lines.

36. The respondent promoter has proposed to handover the possession of the subject apartment within a period of 36 months from the date of approval of building plans and/or fulfilment of the preconditions imposed thereunder plus 180 days grace period for unforeseen delays in obtaining the occupation certificate etc. from the DTCP under the Act.

37. Further, in the present case it is submitted by the respondent promoter that the due date of possession should be calculated from the date of fire scheme approval which was obtained on 28.10.2013, as it is the last of the statutory approvals which forms a part of the preconditions. The authority in the present case observed that, the respondent has not kept the reasonable balance between his own rights and the rights of the complainant/allottee. The respondent has acted in a pre-determined and preordained manner. The respondent has acted in a highly discriminatory and arbitrary manner. The unit in question was booked by the complainant on 31.07.2010 and the apartment buyer's agreement was executed between the respondent and the complainant on 20.09.2010. The date of approval of building plan was 29.11.2010. It will lead to a logical conclusion that that the respondent would have certainly started the construction of the project. On a bare reading of the clause 13.3 of the agreement reproduced above it becomes clear that the possession in the present case is linked to the "fulfilment of the preconditions" which is so vague and ambiguous in itself. Nowhere in the agreement it has been defined that fulfilment of which conditions forms a part of the pre-conditions, to which the due date of possession is subjected to in the said possession clause. If the said possession clause is read in entirety the time period of handing over possession is only a tentative period for completion of the construction of the flat in question and the promoter is aiming

to extend this time period indefinitely on one eventuality or the other. Moreover, the said clause is an inclusive clause wherein the "fulfilment of the preconditions" has been mentioned for the timely delivery of the subject apartment. It seems to be just a way to evade the liability towards the timely delivery of the subject apartment. According to the established principles of law and the principles of natural justice when a certain glaring illegality or irregularity comes to the notice of the adjudicator, the adjudicator can take cognizance of the same and adjudicate upon it. The inclusion of such vague and ambiguous types of clauses in the agreement which are totally arbitrary, one sided and totally against the interests of the allottees must be ignored and discarded in their totality. In the light of the above-mentioned reasons, the authority is of the view that the date of sanction of building plans ought to be taken as the date for determining the due date of possession of the unit in question to the complainant.

38. **Admissibility of grace period:** The respondent promoter had proposed to hand over the possession of the apartment within 36 months from the date of sanction of building plan and/ or fulfilment of the preconditions imposed thereunder which comes out to be 29.11.2013. The respondent promoter has sought further extension for a period of 180 days after the expiry of 36 months for unforeseen delays in obtaining the occupation certificate etc. from the DTCP under the act, in respect of the said project. As a matter of fact, there is no

document that has been placed on record which shows that the promoter has applied for occupation certificate within the time limit prescribed by the promoter (i.e., on or before 29.11.2013) in the apartment buyer's agreement. As per the settled law one cannot be allowed to take advantage of his own wrong. Accordingly, this grace period of 180 days cannot be allowed to the promoter at this stage. The same view has been upheld by the Hon'ble Haryana Real Estate Appellate Tribunal in appeal nos. 52 & 64 of 2018 case titled as ***Emaar MGF Land Ltd. VS Simmi Sikka*** case and observed as under: -

> *68. As per the above provisions in the Buyer's Agreement, the possession of Retail Spaces was proposed to be handed over to the allottees within 30 months of the execution of the agreement. Clause 16(a)(ii) of the agreement further provides that there was a grace period of 120 days over and above the aforesaid period for applying and obtaining the necessary approvals in regard to the commercial projects. The Buyer's Agreement has been executed on 09.05.2014. The period of 30 months expired on 09.11.2016. But there is no material on record that during this period, the promoter had applied to any authority for obtaining the necessary approvals with respect to this project. The promoter had moved the application for issuance of occupancy certificate only on 22.05.2017 when the period of 30 months had already expired. So, the promoter cannot claim the benefit of grace period of 120 days. Consequently, the learned Authority has rightly determined the due date of possession.*

39. **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the rate of 18% p.a. 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.*

40. 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. The Haryana Real Estate Appellate Tribunal in **Emaar MGF Land Ltd. vs. Simmi Sikka** observed as under: -

> *"64. Taking the case from another angle, the allottee was only entitled to the delayed possession charges/interest only at the rate of Rs.15/- per sq. ft. per month as per clause 18 of the Buyer's Agreement for the period of such delay; whereas, the promoter was entitled to interest @ 24% per annum compounded at the time of every succeeding instalment for the delayed payments. The functions of the Authority/Tribunal are to safeguard the interest of the aggrieved person, may be the allottee or the promoter. The rights of the parties are to be balanced and must be equitable. The promoter cannot be allowed to take undue advantage of his dominate position and to exploit the needs of the homer buyers. This Tribunal is duty bound to take into consideration the legislative intent i.e., to protect the interest of the consumers/allottees in the real estate sector. The clauses of the Buyer's Agreement entered into between the parties are one-sided, unfair and unreasonable*

with respect to the grant of interest for delayed possession. There are various other clauses in the Buyer's Agreement which give sweeping powers to the promoter to cancel the allotment and forfeit the amount paid. Thus, the terms and conditions of the Buyer's Agreement dated 09.05.2014 are ex-facie one-sided, unfair and unreasonable, and the same shall constitute the unfair trade practice on the part of the promoter. These types of discriminatory terms and conditions of the Buyer's Agreement will not be final and binding."

41. 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 is 7.30% per annum. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e.,9.30 % per annum.

42. 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;"

43. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 9.30%

per annum by the respondent/promoter which is the same as is being granted to the complainant in case of delay possession charges.

44. Section 19(10) of the Act obligates the allottee to take possession of the subject unit within 2 months from the date of receipt of occupation certificate. In the present complaint, the occupation certificate was granted by the competent authority on 28.09.2017. The respondent offered the possession of the unit in question to the complainant only on 14.11.2017, 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 he has to arrange a lot of logistics and requisite documents including but not limited to inspection of the completely finished unit, but this is subject to that the unit being handed over at the time of taking possession is in habitable condition. It is further clarified that the delay possession charges shall be payable from the due date of possession i.e., 29.11.2013 till the expiry of 2 months from the date of offer of possession (14.11.2017) which comes out to be 14.01.2018.

45. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the authority is

satisfied that the respondent is in contravention of the provisions of the Act. By virtue of apartment buyer's agreement executed between the parties on 20.09.2010, the possession of the booked unit was to be delivered within 36 months from the date of approval of building plan (29.11.2010) which comes out to be 29.11.2013 along with grace period of 180 days which is not allowed in the present case. Accordingly, non-compliance of the mandate contained in section 11(4) (a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such complainant is entitled to delayed possession charges at the prescribed rate of interest i.e., 9.30% p.a. for every month of delay on the amount paid by the complainant to the respondent till offer of possession of the booked unit i.e., 14.11.2017 plus two months which comes out to be 14.01.2018 as per the provisions of section 18(1) of the Act read with Rule 15 of the rules.

H. Directions of the authority: -

46. Hence, the authority hereby passes this order and issue 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 sec 34(f) of the Act:-

i. The respondent is directed to pay the interest at the prescribed rate i.e., 9.30 % per annum for every month of delay on the amount paid by the complainant from due date of possession i.e., 29.11.2013 till the offer of

possession i.e., 14.11.2017 plus two months which comes out to be 14.01.2018.;

ii. The arrears of interest accrued so far shall be paid to the complainant within 90 days from the date of this order.

iii. 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 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 allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.

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

47. Complaint stands disposed of.

48. File be consigned to the registry.

Samir Kumar
(Member)

V.K Goyal
(Member)

Dr. K.K Khandelwal
(Chairman)
Haryana Real Estate Regulatory Authority, Gurugram

Dated:09.07.2021
Judgement uploaded on 16.09.2021