BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY, GURUGRAM

Complaint no. : 4690 of 2020
First date of hearing: 12.01.2021
Date of decision : 24.05.2022

1. Sudhanshu Tripathi
2. Madhavi Tripathi

Bothe RR/o: House no. 202, 3rd Floor, Jor Bagh, New Delhi 110003

Complainants

Versus

1. Varali Properties Limited

Regd. office: Indiabulls House- 448- 451, Udyog Vihar, Phase- V, Gurgaon- 122016

2. Athena Infrastructure Limited

Regd. office: M-62 & 63, 1st floor, Connaught Place, New Delhi-110001

Respondents

CORAM:
Dr. KK Khandelwal — **Chairman**
Shri Vijay Kumar Goyal — **Member**

APPEARANCE:
Shri Sukhbir Yadav — Advocate for the complainants
Shri Rahul Yadav — Advocate for the respondents

ORDER

1. The present complaint dated 21.12.2020 has been filed by the complainants/allottees 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 allottees as per the agreement for sale executed inter-se them.

A. Unit and Project related details:

2. The particulars of the project, the details of sale consideration, the amount paid by the complainants, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Heads	Information
1.	Name and location of the project	"Indiabulls Enigma", Sector 110, Gurugram
2.	Nature of the project	Residential complex
3.	Project area	15.6 acres
4.	DTCP License	213 of 2007 dated 05.09.2007 valid till 04.09.2024 10 of 2011 dated 29.01.2011 valid till 28.01.2023
	Name of the licensee	M/s Athena Infrastructure Private Limited
		64 of 2012 dated 20.06.2012 valid till 19.06.2023
	Name of the licensee	Varali properties
5.	HRERA registered/ not registered	**Registered vide no.** **i. 351 of 2017 dated 20.11.2017 valid till 31.08.2018** **ii. 354 of 2017 dated 17.11.2017 valid till 30.09.2018** **iii. 353 of 2017 dated 20.11.2017 valid till 31.03.2018** **iv. 346 of 2017 dated 08.11.2017 valid till 31.08.2018**

6.	Date of execution of flat buyer's agreement (hereinafter, FBA 1)	27.06.2012 (As per page no. 44 of the amended complaint)
7.	Date of execution of flat buyer's agreement (hereinafter, FBA 2)	13.01.2014 (As per page no. 29 of the amended reply)
8.	Unit no.	D-101 on 10th floor, tower D (As per page no. 48 of the amended complaint)
9.	Super Area	3350 sq. ft. (As per page no. 48 of the amended complaint)
10.	Payment plan	Construction linked payment plan (As per page 97 of the amended complaint)
11.	Total consideration	Rs.2,13,85,750/- (As per applicant ledger dated 03.12.2018 on page no.62 of the amended reply)
12.	Total amount paid by the complainants	Rs. 2,08,09,535/- (As per demand letter dated 31.01.2020 on page no.109 of the amended complaint)
13.	Due date of possession as per FBA – 1 dated 27.06.2012 **Clause 21** *(The Developer shall endeavour to complete the construction of the said building /Unit within* ***a period of three years, with a six months grace period thereon from the date of execution of the Flat Buyers Agreement subject to timely payment*** *by the Buyer(s) of Total Sale Price payable according to the Payment*	27.12.2015 (Calculated from the date of the agreement i.e.; 27.06.2012 + grace period of 6 months) **Grace period is allowed**

	Plan applicable to him or as demanded by the Developer. The Developer on completion of the construction /development shall issue final call notice to the Buyer, who shall within 60 days thereof, remit all dues and take possession of the Unit.)	
14.	Due date of possession as per FBA – 2 dated 13.01.2014 **Clause 21** *(The Developer shall endeavour to complete the construction of the said building /Unit within* ***a period of eighteen months, with a six months grace period thereon from the date of execution of the Flat Buyers Agreement subject to timely payment*** *by the Buyer(s) of Total Sale Price payable according to the Payment Plan applicable to him or as demanded by the Developer. The Developer on completion of the construction /development shall issue final call notice to the Buyer, who shall within 60 days thereof, remit all dues and take possession of the Unit.)*	13.01.2016 (Calculated from the date of the agreement i.e.; 13.01.2014 + grace period of 6 months) **Grace period is allowed**
15.	Occupation Certificate	17.09.2018 (As per page no. 57 of the amended reply)
16.	Offer of possession	03.12.2018 (As per page no. 97 of the amended complaint)

17.	Delay in delivery of possession till the date of offer of possession plus two months i.e. 03.02.2019.	3 years 21 days

B. Facts of the complaint

3. On 20.07.2021, the complainants requested for filing of amended complaint. Vide order dated 20.07.2021, the said request of the complainants was allowed. In view of said order, amended complaint was filed on 27.08.2021 and amended reply on behalf of both the respondents were filed on 24.02.2022.

4. That the respondents No. 2 is the land-owning company which launched the project 'Enigma' situated at Sector 110, Gurugram. The complainants were lured by the advertisements made by the respondents No. 2 for their project 'Enigma' situated in Sector 110, Gurugram. The complainants, in 2012, booked a residential flat admeasuring 3,350 sq. ft. in respondents No. 2's project 'Enigma' under 20:80 subvention scheme payment plan. The complainants in furtherance to their booking paid an amount of Rs. 5 lacs as booking amount to respondents No. 2.

5. That as per the chosen payment plan, the complainants were required to pay 20% of the cost of the unit upfront and the 80% was to be financed through bank and the interest for initial period of 2 years was to be borne by the developers where after the interest was to be borne by the complainants. Thus, the complainants paid an amount of Rs.40,44,379/- upfront to respondents No. 2.

6. That both the respondents are jointly and severally liable to the complainants and are necessary and proper parties for adjudication before this authority.

7. That on 27.06.2012, the complainants and the respondents No. 2 entered into a flat buyer's agreement ('FBA 1') for unit bearing no. D-101, in 'Enigma'. As per clause 21 of the FBA, respondents No. 2 was under an obligation to handover possession of the unit in question within a period of 3 years from the date of execution of FBA 1 along with a grace period of 6 months. Thus, respondents No. 2 was to deliver possession of the unit by 27.12.2015.

8. That respondents No. 2 and respondents No. 1 represented that they both being sister concerns entered into a collaboration to develop the project in question and arbitrarily changed the name of the project from 'Enigma' to 'Indiabulls Enigma'.

9. That the complainants were again asked to execute a flat buyer's agreement ('FBA 2') with respondents No. 1. It is submitted that the complainants delivered a signed copy of FBA 2 with respondents No. 1 on 13.01.2014. As per clause 21 of FBA 2, the respondents were under an obligation to handover possession of the unit in question within 18 months from the date of execution of the said FBA along with a grace period of 6 months. Thus, assuming FBA 2 hold good in law, the respondents were to deliver possession of the unit in question by 13.01.2016.

10. That with an intent to cheat the complainants, the respondents revised the due date of possession. It is humbly submitted that the unit in question was to be delivered by 27.12.2015 which is the sacrosanct date insofar as the complainants are concerned and on which basis the complainants paid an amount of Rs. 2,08,09,535/- in lump sum being 95% of the sale consideration.

11. That, to the dismay of the complainants, the respondents, after a delay of 3 years, on 03.12.2018 offered possession of an incomplete unit. That the complainants have till date paid an amount Rs. 2,08,09,535/- to the respondents. It is submitted that the complainants are suffering in the hands of the respondents, who with a malafide intention are imposing holding charges @Rs. 5 per sq. ft. per month from the due date of possession till the date of actual possession thereby burdening the complainants with financial hardship and mental agony.

12. That, in addition to the amount paid to respondents No. 2, an amount of Rs. 1,55,08,452/- has been paid to respondents No. 1 towards the booking of the unit in question.

13. That the respondents have further been burdened with an illegal demand of advance maintenance charges amounting to Rs. 83,013/-. It is submitted that the respondents have failed to give the unit within the stipulated time period and have further given possession of an unfinished unit. Thus, charging of maintenance is not only causing hardship upon the complainants but it is

adding to the mental agony already suffered by the complainants due to delay in getting the unit in question ready as per the terms of the FBA 1.

C. Relief sought by the complainants:

14. The complainants have sought following relief:

    i. Direct the respondents to deliver possession of the flat complete in all respect as per the buyer's agreement dated 27.06.2012.
    ii. Direct the respondents to pay delay possession interest from 27.12.2015 till the actual physical handover of possession is given to the complainants.
    iii. Direct the respondents to bear the GST charged from the complainants.
    iv. Direct the respondents to not charge maintenance and allied charges till actual physical handover of possession is given to the complainants.
    v. Direct the respondents to not charge maintenance and allied charges till actual physical handover of possession is given to the complainants.

15. On the date of hearing, the authority explained to the respondents/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 respondents No. 1:

16. That the present complaint is devoid of any merits and has been preferred with the sole motive to harass the respondents and is liable to be dismissed

on the ground that the said claim of the complainants is unjustified, misconceived and without any basis as against the respondents.

17. That by amending the contents of the complaint the complainants are trying to take undue benefit knowing the fact that their complaint would not survive on merits, as such to avoid the same the complainants have amended their complaints which is legally not permissible as such the amended complaint of the complainants is liable to be dismissed on this sole ground.

18. That the present amended complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed. The alleged flat buyer's agreement(s)were executed between the complainants and the respondents prior to the enactment of the Real Estate (Regulation and Development) Act, 2016 and the provisions laid down in the said Act cannot be applied retrospectively.

19. That the complainants looking into the financial viability of the project and its future monetary benefits willingly applied for provisional booking of a residential unit in the project of the respondents.

20. That as per the terms of the agreement, it was specifically agreed that in the eventuality of any dispute, if any, with respect to the subject transferred unit, the same shall be adjudicated through the arbitration mechanism as detailed therein under clause no. 49 of said buyer's agreement. Thus, it is humbly submitted that, the dispute, if any, between the parties are to be referred to arbitration.

21. That the relationship between the complainants and the respondents NO.1 is governed by the flat buyers agreement dated 13.01.2014 executed between them for the unit bearing no. D-101 provisionally booked in the project "Indiabulls Enigma". It is pertinent to mention herein that the instant complaint of the complainants is further falsifying their claim from the very fact that, the complainants have filed the instant claim on the alleged delay in delivery of possession of the provisionally booked unit, however the complainants from the very beginning were aware, that the period of delivery as defined in clause 21 of flat buyer's agreement is not sacrosanct as in the said clause it is clearly stated that "the Developer shall endeavour to complete the construction of the said building/unit" within the stipulated time. Clause 21 of the said agreement has been given a selective reading by the complainants even though he conveniently relies on same.

22. That the complainants were also aware of the fact that there is a mechanism detailed in the FBA which covers the exigencies of inordinate delay caused in completion and handing over of the booked unit i.e. enumerated in the "clause 22" of duly executed FBA filed by the complainants along with their complaint. The answering respondents carves leave of this authority to refer & rely upon the clause 22 of flat buyer's agreement which is being reproduced hereunder:

> *"Clause 22 in the eventuality of developer failing to offer the possession of the unit to the buyers within the time as stipulated herein, except for the delay attributable to the buyer/force majeure / vis- majeure conditions, the developer shall pay to the buyer penalty of Rs. 5/- (rupees five only) per square feet (of super area) per month for the period of delay....."*

That the complainants being fully aware, having knowledge and are now evading from the truth of its existence and does not seem to be satisfied with

the amount offered in lieu of delay. It is thus obvious that the complainants are rescinding from the duly executed contract between the parties.

23. That the bare perusal of clause 22 of the agreement would make it evident that in the event of the respondents failing to offer possession within the proposed timelines, then in such a scenario, the respondents would pay a penalty of Rs.5/- per sq. ft. per month as compensation for the period of such delay. The aforesaid prayer is completely contrary to the terms of the inter-se agreement between the parties. The said agreement fully envisages delay and provides for consequences thereof in the form of compensation to the complainants. Under clause 22 of the agreement, the respondents are liable to pay compensation at the rate of Rs.5/- per sq. ft. per month for delay beyond the proposed timeline. The respondents craves leave of this authority to refer & rely upon the clause 22 of flat buyer's agreement, which is being reproduced as:

> *"Clause 22: In the eventuality of Developer failing to offer the possession of the unit to the Buyers within the time as stipulated herein, except for the delay attributable to the Buyer/force majeure / vis-majeure conditions, the Developer shall pay to the Buyer penalty of Rs. 5/- (Rupees Five only) per square feet (of super area) per month for the period of delay ....."*

That the complainants being aware, having knowledge and having given consent of the above-mentioned clause/terms of flat buyer's agreement, is now evading themselves from contractual obligations inter-alia from the truth of its existence and does not seem to be satisfied with the amount offered in lieu of delay. It is thus obvious that the complainants are also estopped from the duly executed contract between the parties.

24. That the complainants booked the subject unit under Enigma 20:80 subvention scheme payment plan for 24 months, wherein the complainants availed a loan of Rs.1,55,08,452/-from the bank towards the cost of the subject unit. It is pertinent to mention herein that the answering respondents has paid an amount Rs. 22,54,021/-as Pre-EMI interest under the subvention scheme to the bank under the TPT agreement. As such, even if the authority passes directions allowing delay penalty charges to the complainants as per the provisions of the RERA ACT, in such scenario the amount paid by the respondents No.1 towards the PRE-EMI interest to the bank be adjusted from the said awarded amount.

25. That it is a universally known fact that due to adverse market conditions viz. delay due to reinitiating of the existing work orders under GST regime, by virtue of which all the bills of contractors were held between, delay due to the directions by the Hon'ble Supreme Court and National Green Tribunal whereby the construction activities were stopped, non-availability of the water required for the construction of the project work & non-availability of drinking water for labour due to process change from issuance of HUDA slips for the water to totally online process with the formation of GMDA, shortage of labour, raw materials etc., which continued for around 22 months, starting from February'2015.

26. That as per the license to develop the project, EDCs were paid to the state government and the state government in lieu of the EDCs was supposed to lay the whole infrastructure in the licensed area for providing the basic amenities such as drinking water, sewerage, drainage including storm water line, roads etc. That the state government terribly failed to provide the basic

amenities due to which the construction progress of the project was badly hit.

27. That furthermore, the Ministry of Environment and Forest (hereinafter referred to as the "MoEF") and the Ministry of Mines (hereinafter referred to as the "MoM") had imposed certain restrictions which resulted in a drastic reduction in the availability of bricks and availability of kiln which is the most basic ingredient in the construction activity. The MoEF restricted the excavation of topsoil for the manufacture of bricks and further directed that no manufacturing of clay bricks or tiles or blocks can be done within a radius of 50 kilometres from coal and lignite based thermal power plants without mixing at least 25% of ash with soil. The shortage of bricks in the region and the resultant non-availability of raw materials required in the construction of the project also affected the timely schedule of construction of the project.

28. That in view of the ruling by the Hon'ble Apex Court directing for suspension of all the mining operations in the Aravalli hill range in state of Haryana within the area of approx. 448 sq. kms in the district of Faridabad and Gurgaon including Mewat which led to a situation of scarcity of the sand and other materials which derived from the stone crushing activities , which directly affected the construction schedules and activities of the project.

29. Apart from the above, the following circumstances also contributed to the delay in timely completion of the project:

a) That commonwealth games were organized in Delhi in October 2010. Due to this mega event, construction of several big projects including the construction of commonwealth games village took place in 2009 and onwards in Delhi and NCR region. This led to an extreme shortage of labour in the NCR region as most of the labour force got employed in said projects

required for the commonwealth games. Moreover, during the commonwealth games the labour/workers were forced to leave the NCR region for security reasons. This also led to immense shortage of labour force in the NCR region. This drastically affected the availability of labour in the NCR region which had a ripple effect and hampered the development of this complex.

b) Moreover, due to active implementation of social schemes like National Rural Employment Guarantee Act and Jawaharlal Nehru National Urban Renewal Mission, there was a sudden shortage of labour/workforce in the real estate market as the available labour preferred to return to their respective states due to guaranteed employment by the Central /State Government under NREGA and JNNURM schemes. This created a further shortage of labour force in the NCR region. Large numbers of real estate projects, including our project were struggling hard to timely cope up with their construction schedules. Also, even after successful completion of the commonwealth games, this shortage continued for a long period of time. The said fact can be substantiated by newspaper article elaborating on the above-mentioned issue of shortage of labour which was hampering the construction projects in the NCR region.

c) Further, due to slow pace of construction, a tremendous pressure was put on the contractors engaged to carry out various activities in the project due to which there was a dispute with the contractors resulting into foreclosure and termination of their contracts and we had to suffer huge losses which resulted in delayed timelines. That despite the best efforts, the ground realities hindered the progress of the project. **Inability to undertake the construction for approx. 7-8 months due to Central Government's Notification about Demonetization:** The respondents had

awarded the construction of the project to one of the leading construction companies of India. The said contractor/ company could not implement the entire project for approx. 7-8 months w.e.f. from 9-10 November 2016 the day when the central government issued notification about demonetization. During this period, the contractor could not make payment in cash to the labour. During demonetization, the cash withdrawal limit for companies was capped at Rs. 24,000 per week initially whereas cash payments to labour on the site of magnitude of the project in question is Rs. 3-4 lakhs approx. per day and the work at site got almost halted for 7-8 months as bulk of the labour being unpaid went to their hometowns, which resulted into shortage of labour. Hence the implementation of the project in question got delayed on account of the issues faced by contractor due to the said notification of central government. That the said event of demonetization was beyond the control of the respondents company, hence the time period for offer of possession should deemed to be extended for 6 months on account of the above.

d) **Orders passed by National Green Tribunal:** In last four successive years i.e. 2015-2016-2017-2018, Hon'ble National Green Tribunal has been passing orders to protect the environment of the country and especially the NCR region. The Hon'ble NGT had passed orders governing the entry and exit of vehicles in NCR region. Also, the hon'ble NGT has passed orders with regard to phasing out the 10-year-old diesel vehicles from NCR. The pollution levels of NCR region have been quite high for couple of years at the time of change in weather in November every year. The contractor of respondents could not undertake construction for 3-4 months in compliance of the orders of hon'ble National Green Tribunal. Due to this, there was a delay of 3-4 months as labour went back to their hometowns, which resulted

in shortage of labour in April -May 2015, November- December 2016 and November- December 2017. The district administration issued the requisite directions in this regard.

In view of the above, construction work remained very badly affected for 6-12 months due to the above stated major events and conditions which were beyond the control of the respondents and the said period would also require to be added for calculating the delivery date of possession if any.

e) **Non-payment of instalments by allottees:** Several other allottees were in default of the agreed payment plan, and the payment of construction linked instalments was delayed or not made resulting in badly impacting and delaying the implementation of the entire project.

f) **Inclement weather conditions viz. Gurugram:** Due to heavy rainfall in Gurugram in the year 2016 and unfavourable weather conditions, all the construction activities were badly affected as the whole town was waterlogged and gridlocked as a result of which the implementation of the project in question was delayed for many weeks. Even various institutions were ordered to be shut down/closed for many days during that year due to adverse/severe weather conditions.

30. That despite the implementation of the project being affected on account of the above mentioned force majeure conditions, the respondents being a customer oriented company completed the construction of the tower in which the unit was allotted to the complainants is located and the respondents applied for the grant of the occupation certificate on 30.04.2018 before the Director, Town & Country Planning Department,

Chandigarh, and the same was granted by the concerned authorities on 17.09.2018. As such it is pertinent to mention that the respondents No.1 completed the construction of the unit booked by the complainants including the tower, on or before 30.04.2018 wherein the application for grant of occupation certificate was applied by the answering respondents before the DTCP, Chandigarh.

31. That the respondents have already offered the possession of the unit to the complainants vide offer of possession dated 03.12.2018. However, till date the complainants have not come forward to take the possession of their property.

32. That the complainants by not taking possession till date are in breach of clause 21 of the agreement and therefore, are also liable to pay to the answering respondents holding charges @ Rs. 5/- per sq. ft. of the super area of the apartment per month for the entire period of delay to the answering respondents, as it was the failure on part of the complainants to take the possession of the subject property despite offering the same, causing financial loss to the answering respondents.

33. That the flat buyer's agreement has been referred to, for the purpose of getting the adjudication of the instant complaint i.e. the flat buyer agreement dated 13.01.2014 executed much prior to coming into force of the Act of 2016 and the rules of 2017. Further the adjudication of the instant complaint for the purpose of granting interest and compensation, as provided under

Act of 2016 has to be in reference to the flat buyer's agreement for sale executed in terms of said Act and said rules and no other agreement, whereas, the flat buyer's agreement being referred to or looked into in this proceedings is an agreement executed much before the commencement of RERA and such agreement as referred herein above. Hence, cannot be relied upon till such time the new agreement to sell is executed between the parties. Thus, in view of the submissions made above, no relief can be granted to the complainants.

E. Reply by the respondents No. 2:

34. That the present complaint is liable to be dismissed on the sole ground that the complainants deceitfully took liberty of the authority to amend their complaint filed before the authority, without giving just and proper reason for the same. That the complainants have themselves stated in their application dated 05.08.2021, that the need for amending their complaint was due to the reply filed by the respondents No.2. It is submitted that by amending the contents of the complaint, the complainants are trying to take undue benefit knowing the fact that their complaint would not survive on merits, as such to avoid the same the complainants have amended their complaint which is legally not permissible as such the amended complaint of the complainants is liable to be dismissed on this sole ground.

35. That the complainants have filed the present complaint alleging delay in handing over possession of the unit D-101 booked by them vide flat byers

agreement dated 13.01.2014 which was signed and executed between the complainants and respondents No.1 i.e. M/s. Varali Properties Limited for the subject unit, hence the complainants are not entitled for any claim / relief from the respondents No.2 as contended in the instant complaint by the complaint.

36. That a bare perusal of the complaint will sufficiently elucidate that the complainants have miserably failed to make a case against the respondents No.2. It is submitted that the complainants have merely alleged in their complaint about delay on part of the respondents but have failed to substantiate the same against respondents No.2. In view of the same the complaint of the Complainants against the respondents no.2 is baseless and false and is liable to be dismissed.

37. That the Complainants have made false and baseless allegations against the Respondents no.2 and further impleaded them as a party in the instant complaint with a mischievous intention to take illicit benefits from the Answering Respondents. It is submitted that there is no cause of action in favour of the Complainants and against the Respondents no.2 to institute the present complaint against Respondents no.2 and hence needs to be dismissed.

38. 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 based on these undisputed documents.

F. Jurisdiction of the authority

39. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

F. I Territorial jurisdiction

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.

F. II Subject matter jurisdiction

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

> *Section 11(4)(a)*
> *Be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*
> *The provision of assured returns is part of the builder buyer's agreement, as per clause 15 of the BBA dated..... Accordingly, the promoter is responsible for all obligations/responsibilities and functions including payment of assured returns as provided in Builder Buyer's Agreement.*
> *Section 34-Functions of the Authority:*
> *34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

So, in view of the provisions of the Act of 2016 quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be

decided by the adjudicating officer if pursued by the complainants at a later stage.

G. Findings on the objections raised by the respondents:

G.I Objection regarding complainants is in breach of agreement for non-invocation of arbitration.

40. The respondents have raised an objection that the complainants have not invoked arbitration proceedings as per the provisions of flat buyer's agreement which contains provisions regarding initiation of arbitration proceedings in case of breach of agreement. The following clause has been incorporated w.r.t arbitration in the buyer's agreement:

> *"Clause 49: All or any dispute arising out or touching upon or in relation to the terms of this Application and/or Flat Buyers agreement including the interpretation and validity of the terms thereof and the rights and obligations of the parties shall be settled amicably by mutual discussion failing which the same shall be settled through Arbitration The arbitration shall be governed by Arbitration and Conciliation Act, 1996 or any statutory amendments/ modifications thereof for the time being in force. The venue of the arbitration shall be New Delhi and it shall be held by a sole arbitrator who shall be appointed by the Company and whose decision shall be final and binding upon the parties. The Applicant(s) hereby confirms that he/she shall have no objection to this appointment even if the person so appointed as the Arbitrator, is an employee or advocate of the company or is otherwise connected to the Company and the Applicant(s) confirms that notwithstanding such relationship / connection, the Applicant(s) shall have no doubts as to the independence or impartiality of the said Arbitrator. The courts in New Delhi alone shall have the jurisdiction over the disputes arising out of the Application/Apartment Buyers Agreement ....."*

41. The respondents contended that as per the terms & conditions of the application form duly executed between the parties, it was specifically agreed that in the eventuality of any dispute, if any, with respect to the provisional booked unit by the complainants, the same shall be adjudicated through arbitration mechanism. 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. 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: -*
>
> *"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."*

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."*

42. 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 complainants 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."

43. Therefore, in view of the above judgements and considering the provisions of the Act, the authority is of the view that complainants is well within their rights to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and Act of 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.

G.II. Objection regarding delay due to force majeure.

44. The respondents- promoter alleged that period over and above such grace period of 6 months be allowed on account of force majeure conditions. The respondents-promoter raised the contention that the construction of the project was delayed due to force majeure conditions such as commonwealth games held in Delhi, shortage of labour due to implementation of various social schemes by Government of India, slow pace of construction due to a dispute with the contractor, demonetisation, lockdown due to covid-19 various orders passed by NGT and weather conditions in Gurugram and non-payment of instalment by different allottees of the project but all the pleas advanced in this regard are devoid of merit. The flat buyer's agreement was executed between the parties on 13.01.2014 and the events taking place such as holding of commonwealth games, dispute with the contractor, implementation of various schemes by central govt. etc. do not have any impact on the project being developed by the respondents. Though some allottees may not be regular in paying the amount due but whether the interest of all the stakeholders concerned with the said project be put on

hold due to fault of on hold due to fault of some of the allottees. Thus, the promoter respondents cannot be given any leniency on based of aforesaid reasons and it is well settled principle that a person cannot take benefit of his own wrong.

G.III Objection regarding jurisdiction of authority w.r.t. buyer's agreement executed prior to coming into force of the Act.

Another contention of the respondents is that authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the flat buyer's agreement executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties. The authority is of the view that 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.....*

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."

45. 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."

46. 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 allottees 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, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

G.IV Objection regarding entitlement of DPC on ground of complainants being investor

47. The respondents have taken a stand that the complainants are the investors and not consumers, therefore, they are not entitled to the protection of the Act and thereby not entitled to file the complaint under section 31 of the Act. The respondents also submitted that the preamble of the Act states that the Act is enacted to protect the interest of consumers of the real estate sector. The authority observed that the respondents is correct in stating that the Act is enacted to protect the interest of consumers of the real estate sector. It is settled principle of interpretation that preamble is an introduction of a statute and states main aims & objects of enacting a statute but at the same time preamble cannot be used to defeat the enacting provisions of the Act. Furthermore, it is pertinent to note that any aggrieved person can file a complaint against the promoter if the promoter contravenes or violates any provisions of the Act or rules or regulations made thereunder. Upon careful perusal of all the terms and conditions of the apartment buyer's agreement, it is revealed that the complainants are buyer and they have paid total price of Rs.2,08,09,535/- to the promoter towards purchase of an apartment in the project of the promoter. At this stage, it is important to stress upon the definition of term allottee under the Act, the same is reproduced below for ready reference:

> *"2(d) "allottee" in relation to a real estate project means the person to whom a plot, apartment or building, as the case may be, has been allotted, sold (whether as freehold or leasehold) or otherwise transferred by the promoter, and includes the person who subsequently acquires the said*

allotment through sale, transfer or otherwise but does not include a person to whom such plot, apartment or building, as the case may be, is given on rent;"

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

H. Findings regarding relief sought by the complainants.

49. **Relief sought by the complainants:**

i. Direct the respondents to deliver possession of the flat complete in all respect as per the buyer's agreement dated 27.06.2012.

ii. Direct the respondents to pay delay possession interest from 27.12.2015 till the actual physical handover of possession is given to the complainants.

iii. Direct the respondents to bear the GST charged from the complainants.

iv. Direct the respondents to not charge maintenance and allied charges till actual physical handover of possession is given to the complainants.

v. Direct the respondents to not charge maintenance and allied charges till actual physical handover of possession is given to the complainants.

H.I Direct the respondents to deliver possession of the flat complete in all respect as per the buyer's agreement dated 27.06.2012.

50. As per page no. 57 of amended reply, the respondents obtained occupation certificate from the concerned authority on 17.09.2018 and subsequently, offered the possession of allotted unit on 03.12.2018. Whereas on 02.03.2022, both the parties put in appearance through their counsels and stated at bar that there is issue w.r.t. calculation of payable amount and further stated each other's fault resulting causing failure of handover of possession by the respondents and taking over of possession by the complainants. In view of aforesaid circumstances, the authority vide orders dated 22.04.2022, directed the respondents to handover the possession of the unit to the complainants and on the other hand, the complainants were directed to visit the office of the respondent on 25.04.2022 to take the physical possession of the unit. Vide said order, Engineer executive Shri Sumeet was directed to accompany the complainants. As per the report submitted by Engineer executive Shri Sumeet, possession of subject unit has been handed over to the complainants by the respondents and the same is evident by handing over of possession letter dated 25.04.2022 duly signed by the parties. On 24.05.2022, the counsels for both the parties confirmed handing over of the possession and further stated that the amount payable has been reconciled and calculations made by the CA of the authority dated 15.03.2022 are in order.

H.II Direct the respondents to pay delay possession interest from 27.12.2015 till the actual physical handover of possession is given to the complainants.

51. In the present complaint, the complainants intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec. 18(1) proviso reads as under:

> ***Section 18: - Return of amount and compensation***
>
> *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*

52. The flat buyer's agreement dated 27.06.2012 annexed as annexure C/3 on page no. 44 of amended complaint, has been executed between the complainants and respondents no. 2 i.e.; Athena Infrastructure Limited. As alleged by the complainants, later on, it was represented to the them that respondents no. 1 & 2, entered into collaboration to develop the project and in accordance to which they were asked to execute a new FBA. New FBA dated 13.01.2014 was executed inter-se parties annexed as annexure C/4 on page no. 70 of the amended complaint. As per said new agreement, Varali Properties Limited (i.e. the developer/respondents no. 1) and Athena (respondents no. 2) has entered into collaboration for development of the project land.

53. The Doctrine of Waiver finds its place under Section 63 of the Contract Act, 1872 which provides for relinquishment of rights between the parties.

Rights that may be relinquished include obligations as well as claims that had been earlier consented to be performed and exercised by the parties. Thus, the waiver of right under Section 63 of the Contract Act has to be a matter of mutual consensus. It is an act of surrender of benefit or privilege. The waiver of right requires a prior knowledge of an existing right by the person who seeking waiver of such right. As decided in ***Manak Lal v. Dr. Prem Chand Singhvi AIR 1957 SC 425***, a person is required to be fully cognizant of his rights before waiving off such rights. In the present case, the complainants have voluntarily waived their contractual rights as soon as a new agreement (FBA 2) is signed by them. Therefore, the due date of handing over of possession shall be calculated as per the terms of new FBA executed inter-se parties on 13.01.2014.

54. As per clause 21 of the flat buyer's agreement dated 13.01.2014, the possession of the subject unit was to be handed over by of 13.01.2016. Clause 21 of the flat buyer's agreement provides for handover of possession and is reproduced below:

> *As per clause 21 : (The Developer shall endeavour to complete the construction of the said building /Unit within a period of eighteen months, with a six months grace period thereon from the date of execution of the Flat Buyers Agreement subject to timely payment by the Buyer(s) of Total Sale Price payable according to the Payment Plan applicable to him or as demanded by the Developer. The Developer on completion of the construction /development shall issue final call notice to the Buyer, who shall within 60 days thereof, remit all dues and take possession of the Unit.).*

55. The flat buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builders/promoters and buyers/allottees are protected candidly. 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 flat buyer's agreement which would thereby protect the rights of both the builder and buyer in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision about stipulated time of delivery of possession of the apartment, plot or building, as the case may be and the right of the buyers/allottees in case of delay in possession of the unit. In pre-RERA period it was a general practice among the promoters/developers 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.

56. **Admissibility of grace period:** The respondents promoter has proposed to complete the construction of the said building/ unit within a period of 18 months, with six months grace period thereon from the date of execution of the flat buyer's agreement. This is a concept which has been evolved by the promoters themselves and now it has become a very common practice to enter such a clause in the agreement executed between the promoters and the allottees. In the present case, the said extension of 6 months on account of grace period is not incidental to happening of any particular event/ circumstances. There have been certain circumstances beyond the control of respondents on account of which extension has been asked by the respondents. In view of present situation and to balance the rights of both the parties, the authority is of considered view that grace period of 6 months be allowed to the promoter. But it is pertinent to mention herein that no

period over and above the grace period of six months shall be given to the promoter. Therefore, the due date of possession comes out to be 13.01.2016.

57. **Admissibility of delay possession charges at prescribed rate of interest:** The complainants is seeking delay possession charges 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.*

58. 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.

59. 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., 24.05.2022 is @ 7.50%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 9.30%.

60. 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;"*

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

H.III Direct the respondents to bear the GST charged from the complainants.

61. As per statement of account dated 03.12.2018 on page no. 97 of amended complaint, an amount of Rs. 2,30,622/- has been charged on pretext of GST. The authority has decided this issue in the complaint bearing no. ***4031 of 2019 titled as Varun Gupta V/s Emaar MGF Land Ltd***. wherein the authority has held that for the projects where the due date of possession was prior to 01.07.2017 (date of coming into force of GST), the respondents/promoter is not entitled to charge any amount towards GST from the complainants/allottees as the liability of that charge had not become due up to the due date of possession as per the buyer's agreements.

62. In the present complaint, the possession of the subject unit was required to be delivered by 13.01.2016 and the incidence of GST came into operation thereafter on 01.07.2017. So, the complainants cannot be burdened to discharge a liability which had accrued solely due to respondents' own fault in delivering timely possession of the subject unit. So, the respondents/promoter is not entitled to charge GST from the complainants/allottees as the liability of GST had not become due up to the due date of possession as per the said agreement.

H.IV Direct the respondents to not charge maintenance and allied charges till actual physical handover of possession is given to the complainants.

63. The respondents are right in demanding maintenance charges at the rates prescribed in the flat buyer's agreement at the time of offer of possession. However, the respondents shall not demand the maintenance charges for more than one year from the allottees even in those cases wherein no specific clause has been prescribed in the agreement or where the maintenance charges have been demanded for more than a year.

H.V Direct the respondents to not charge maintenance and allied charges till actual physical handover of possession is given to the complainants.

64. The 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. Moreover, the respondents shall not charge anything which is not part of apartment buyer's agreement.

65. The flat buyer's agreement (hereinafter, "FBA") dated 27.06.2012 annexed as annexure C/3 on page no. 44 of amended complaint, has been executed

between the complainants and respondents no. 2 i.e.; Athena Infrastructure Limited. As alleged by the complainants, later on, it was represented to the them that respondents no. 1 & 2, entered into collaboration to develop the project and in accordance to which they were asked to execute a new FBA. New FBA dated 13.01.2014 was executed inter-se parties annexed as annexure C/4 on page no. 70 of the amended complaint. As per said new agreement, Varali Properties Limited (i.e. the developer/respondents no. 1) and Athena (respondents no. 2) has entered into collaboration for development of the project land. In the present case, the complainants have voluntarily waived their contractual rights as soon as a new agreement (FBA 2) is signed by them. Therefore, the due date of handing over of possession shall be calculated as per the terms of new FBA executed interse parties on 13.01.2014.

66. 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 is obtained on 17.09.2018 and subsequently, the possession of the allotted unit was offered on 03.12.2018. Therefore, in the interest of natural justice, the complainants should be given 2 months' time from the date of offer of possession. This 2 months' of reasonable time is being given to the complainants 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.

67. On consideration of the circumstances, the evidence and other record and submissions made by the complainants and the respondents and based on the findings of the authority regarding contravention as per provisions of Act, the authority is satisfied that the respondents is in contravention of the provisions of the Act. By virtue of clause 21 of the flat buyer's agreement executed between the parties on 13.01.2014, possession of the booked unit was to be delivered within a period of 18 months from the date of execution of the agreement with a grace period of 6 months, which comes out to be 13.01.2016.

Accordingly, the non-compliance of the mandate contained in section 11 (4)(a) of the Act on the part of the respondents is established. As such the complainants are entitled for delayed possession charges @9.30% p.a. w.e.f. from due date of possession i.e. 13.01.2016 till offer of possession plus two months i.e. 03.02.2019.

I. Directions of the authority:

68. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the authority under section 34(f) of the act of 2016:

i. The respondents shall pay interest at the prescribed rate i.e. 9.30% per annum for every month of delay on the amount paid by the complainants from due date of possession i.e. 13.01.2016 till offer of possession plus two months i.e. 03.02.2019, as per section 18(1) of

the Act of 2016 read with rule 15 of the rules. The respondents are directed to pay arrears of interest accrued within 90 days from the date of order.

ii. The respondents/promoters are not entitled to charge GST from the complainants/allottees as the liability of GST has not become due up to the due date of possession as per the said agreement.

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

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

v. The 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. Moreover, the respondents shall not charge anything which is not part of apartment buyer's agreement.

69. Complaint stands disposed of.

70. File be consigned to registry.

(Vijay Kumar Goyal)
Member

(Dr. KK Khandelwal)
Chairman

Haryana Real Estate Regulatory Authority, Gurugram

Dated:24.05.2022