

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

Order reserved on: 06.02.2023

**Date of
pronouncement: 03.05.2023**

| NAME OF THE BUILDER | | ANSAL HOUSING LTD. | |
|---------------------|---------------|---|---|
| PROJECT NAME | | ANSAL HUB 83 | |
| S. No. | Case No. | Case title | APPEARANCE |
| 1 | CR/11/2022 | Vinita Yadav V/S Ansal Housing Limited | Shri. GN Gautam Shri. Amandeep Kadyan |
| 2 | CR/89/2022 | Ved Parkash V/S Ansal Housing Limited | Shri. GN Gautam Shri. Amandeep Kadyan |
| 3 | CR/97/2022 | Pooja Kohli V/S Ansal Housing Limited | Shri. GN Gautam Shri. Amandeep Kadyan |
| 4 | CR/102/2022 | Aruna Sharma V/S Ansal Housing Limited | Shri. GN Gautam Shri. Amandeep Kadyan |
| 5 | CR/103/2022 | Dinesh Kumar Sharma V/S Ansal Housing Limited | Shri. GN Gautam Shri. Amandeep Kadyan |
| 6 | CR/138/2022 | Dayawanti V/S Ansal Housing Limited | Shri. GN Gautam Shri. Amandeep Kadyan |
| 7 | CR/976/2022 | Radha Agarwal V/S Ansal Housing Limited | Shri. GN Gautam Shri. Amandeep Kadyan |
| 8 | CR//1284/2022 | Vandana Sharma and Rajiv Sharma | Shri. GN Gautam |

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|----|---------------|--|---|
| | | V/S Ansal Housing Limited | Shri. Amandeep Kadyan |
| 9 | CR//1378/2022 | Manoj Kumar and Puran Singh V/S Ansal Housing Limited | Shri. GN Gautam Shri. Amandeep Kadyan |
| 10 | CR/1834/2022 | PN Vijay and Archna Vijay V/S Ansal Housing Limited | Shri. GN Gautam Shri. Amandeep Kadyan |

CORAM:

Shri Vijay Kumar Goyal

Member

Shri Ashok Sangwan

Member

ORDER

1. This order shall dispose of all the 10 complaints titled as above filed before this authority in form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "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 its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project, namely, "Ansal Hub 83" (Commercial Colony) being developed by the same respondent/promoter i.e., M/s **Ansal Housing Ltd.** The terms and conditions of the buyer's agreements, fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver



timely possession of the units in question, seeking award of delay compensation charges at prescribed rate of interest and the compensation.

3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

| Project Name and Location | ANSAL HOUSING LTD "ANSAL HUB 83" Sector-83, Gurugram. | |
|--|---|--------------|
| <p>Clause 26</p> <p><i>"The developer shall offer possession of the unit any time, within a period of 36 months from the date of sanction of building plans or date of execution of allotment letter, whichever is later subject to force majeure circumstances such as act of god, fire, earthquake, flood, civil commotion, war, riot, explosion, terrorist acts, sabotage, or general shortage of energy labour equipment facilities material o supplies, failure of transportation, strike, lockouts, action of labour union, any dispute with any contractor/construction agency appointed by the developer, change of law, or any notice, order, rule or notification issued by any courts/tribunals and/or any other public or competent authority or intervention of statutory authorities, or any other reason(s) beyond the control of the developer. The allottee(s) shall not be entitled to any compensation on the grounds of delay in offering possession due to reasons beyond the control of the developer."</i></p> <p style="text-align: right;">(Emphasis supplied)</p> | | |
| COMMON DETAILS | | |
| S. N. | Particulars | Details |
| a. | Occupation certificate | Not obtained |
| b. | Date of building plan | 11.09.2013 |

| | | |
|----|------------------------|---|
| c. | Due date of Possession | 11.09.2016 Due date calculated from date of sanction of building plan i.e., 11.09.2013 being later except in case no. CR/1378/2022 wherein the due date is calculated from the date of allotment i.e., 15.09.2014 being later accordingly in this particular case the due date of possession comes out to be 15.09.2017 |
| d. | DTCP license details | 87 of 2009 in favour of Mr. Virender Singh & Mrs. Meena Devi c/o Aakansha Infrastructure Pvt. Ltd dated 30.12.2009 valid up to 29.12.2013 |
| e. | RERA registration | Not registered |

4. The unit related details of each complaint are as under:

| S. no | Complaint no. & DOF | Unit no. and area measuring | Date of allotment letter | Relief sought | Total sale Price (BSP)/ Amount paid by the complainants. (AP) |
|-------|--|--|--|-------------------------------------|---|
| 1. | CR/11/2022 Dated 28.01.2022 | 045 admeasuring 357 sq. ft. [pg. 37 of complaint] | 24.09.2012 [pg. 12 of complaint] | DPC & Possession Cost of litigation | TSP: ₹ 31,84,533/- AP: ₹ 30,64,846/- |
| 2. | CR/89/2022 Dated 28.01.2022 | ATM-1 admeasuring 226 sq. ft. [pg. 11 of complaint] | 26.09.2012 [pg. 13 of complaint] Transfer of unit in name of complainant 25.10.2012 [pg. 11 of complaint] | DPC & Possession Cost of litigation | TSP: ₹ 18,30,275/- AP: ₹ 16,42,628/- |



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|----|--|---|--|--|---|
| 3. | CR/97/2022 Dated 28.01.2022 | 038 admeasuring 602 sq. ft. [pg. 12 of complaint] | 24.10.2011 [pg. 12 of complaint] | DPC & Possession Cost of litigation | TSP: ₹ 56,82,650/- AP: ₹ 51,33,708/- |
| 4. | CR/102/2022 Dated 21.01.2022 | 002 admeasuring 602 sq. ft. [pg. 12 of complaint] | 08.02.2012 [pg. 12 of complaint] | DPC & Possession Cost of litigation | TSP: ₹ 57,76,492/- AP: ₹ 52,97,425/- |
| 5. | CR/103/2022 Dated 21.01.2022 | 119 admeasuring 319 sq. ft. [pg. 30 of complaint] | 02.05.2012 [pg. 11 of complaint] | DPC & Possession Cost of litigation | TSP: ₹ 23,87,953/- AP: ₹ 23,61,056/- |
| 6. | CR/138/2022 Dated 28.01.2022 | 305 admeasuring 2724 sq. ft. [pg. 12 of complaint] | 11.06.2012 [pg. 12 of complaint] | DPC & Possession Cost of litigation | TSP: ₹ 1,84,45,782/- AP: ₹ 1,72,95,936/- |
| 7. | CR/976/2022 Dated 15.03.2022 | 052 admeasuring 574 sq. ft. [pg. 12 of complaint] | 01.03.2012 [pg. 12 of complaint] Transfer of unit in name of complainant 25.02.2014 [pg. 11 of complaint] | DPC & Possession Cost of litigation | BSP: ₹ 58,18,300/- AP: ₹ 52,90,574/- |
| 8. | CR/1284/2022 Dated 08.04.2022 | 025 admeasuring 352 sq. ft. [pg. 12 of complaint] | 10.07.2012 [pg. 12 of complaint] | DPC & Possession Cost of litigation | TSP: ₹ 30,50,708/- AP: ₹ 30,29,559/- |
| 9. | CR/1378/2022 Dated 08.04.2022 | GF-08 admeasuring 574 sq. ft. [pg. 13 of complaint] | 15.09.2014 [pg. 13 of complaint] | DPC & Possession Cost of litigation | TSP: ₹ 59,85,732/- AP: ₹ 55,55,092/- |

| | | | | | |
|----|--|--|--|--|--|
| 10 | CR/1834/2022 Dated 06.05.2022 | 05 admeasuring 602 sq. ft. [pg. 15 of complaint] | 01.11.2011 [pg. 15 of complaint] | DPC & Possession Cost of litigation | TSP: ₹ 59,87,988/- AP: ₹ 53,04,662/- |
|----|--|--|--|--|--|

5. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the buyer's agreement executed between the parties in respect of said unit for not handing over the possession by the due date, seeking award of delay possession charges at prescribed rate of interest and compensation.
6. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
7. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case **CR/11/2022 Vinita Yadav V/s Ansal Housing Ltd.** are being taken into consideration for determining the rights of the allottee(s) qua refund the entire amount along with interest and compensation.
 - A. **Project and unit related details**
8. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

CR/11/2022 Vinita Yadav V/s Ansal Housing Ltd.

| S. N. | Particulars | Details |
|-------|---|--|
| 1. | Project name and location | "Ansal Hub-83", Sector-83, Gurugram |
| 2. | Project area | 2.46875 acres |
| 3. | Nature of the project | Commercial colony |
| 4. | DTCP license no. and validity status | 87 of 2009 dated 30.12.2009 valid up to 29.12.2013 |
| 5. | Name of licensee | Mr. Virender Singh & Mrs. Meena Devi c/o Aakansha Infrastructure Pvt. Ltd. |
| 6. | RERA registration details | Not registered |
| 7. | Unit no. | 045 [pg. 37 of complaint] |
| 8. | Unit measuring | 357 sq. ft. [pg. 37 of complaint] |
| 9. | Date of allotment letter in name of original allottee | 24.09.2012 [pg. 12 of complaint] |
| 10. | Date of sanction of building plans | 11.09.2013 |
| 11. | Possession clause | <p>26.</p> <p><i>The developer shall offer possession of the unit any time, within a period of 36 months from the date of sanction of building plans or date of execution of allotment letter, whichever is later subject to force majeure circumstances such as act of god, fire, earthquake, flood, civil commotion, war, riot, explosion, terrorist acts, sabotage, or general shortage of energy labour equipment facilities material o supplies, failure of transportation, strike, lockouts, action of labour union, any dispute with any contractor/construction agency appointed by the developer, change of law, or any notice, order, rule or notification issued by any courts/tribunals and/or any other public or competent authority or intervention of statutory authorities, or any other reason(s) beyond the control of the developer. The allottee(s) shall not</i></p> |



| | | |
|-----|---|--|
| | | <i>be entitled to any compensation on the grounds of delay in offering possession due to reasons beyond the control of the developer."</i> <i>(Emphasis supplied)</i> <i>[pg. 21 of complaint]</i> |
| 12. | Due date of possession | 11.09.2016 [Note: Due date calculated from date of sanction of building plan i.e., 11.09.2013 being later.] |
| 13. | Delay in handing over of possession till the date of this order i.e., 06.02.2023 | 6 years 4 months 26 days |
| 14. | Basic sale consideration as per payment plan annexed with allctment letter at page 12 of complaint. | ₹ 30,94,800/- |
| 15. | Total sale consideration as per customer ledger dated 08.01.2020 on pg. 32 of complaint | ₹ 31,84,533/- |
| 16. | Total amount paid by the complainant as per customer ledger dated 08.01.2020 on pg. 35 of complaint | ₹ 30,64,846/- |
| 17. | Occupation certificate | Not yet obtained |
| 18. | Offer of possession | Not offered |

B. Facts of the complaint

9. The complainant has made the following submissions in the complaint: -
- a. That on **24.09.2012**, **Builder Buyer Agreement** was entered into between the parties wherein as per **clause 26**, the developer should offer possession of unit within **36 months** from the date of sanction

of building plans or date of execution of allotment letter, whichever is later.

- b. That vide letter dated **15.05.2014**, the respondent informed the erstwhile owner that the shop no. of the shop has been changed to SHOP-GF27 from SHOP-GF25 and area and cost of the shop has also been changed and the area of the shop has been reduced to **357 sq. ft. from 376.76 sq. ft.** and accordingly basic cost of the shop has been revised to Rs 24,85,434/- and PLC Cost has been revised to Rs 433487.25.04/-.
- c. That out of the total cost of the said unit a sum of Rs. 30,64,846/- was paid by the complainant to the respondent till 02.11.2019. That as per the builder buyer agreement, the committed date of offering the possession was **24.09.2015** but even after payment of more than 95% of total consideration, the respondent is still not offering the possession, which is illegal and arbitrary.
- d. That despite repeated calls and meetings with the respondents, no definite commitment was shown for timely completion of the project and no appropriate action was taken to address the concerns and grievances of the complainant.
- e. That repeated calls, meetings and correspondences with the respondent and multiple visits to know the actual construction status not only caused loss to the complainant in terms of time, money and energy but also caused mental agony to him.
- f. That the cause of action arose in favour of the Complainant and against the respondent from the date of booking of the said unit and it further arose when respondent failed/neglected to deliver

possession of the said units within a stipulated time period. The cause of action further arose when the respondent has not completed the said project with the assured facilities and amenities. It further arose and it is continuing and is still subsisting on day-to-day basis as the respondent has still not rectified his defects and not fulfilled his obligations as per the Builder Buyer's Agreement.

C. Relief sought by the complainant: -

10. The complainant has sought following relief(s)
 - a. Direct the respondent to hand over the possession and pay delay possession charges at prescribed rate of interest.
 - b. Cost of litigation.
11. On the date of hearing, the authority explained to the respondent/promoter about the contraventions 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.

12. The respondent has contested the complaint on the following grounds.
 - a. That the present complaint is neither maintainable nor tenable by both law and facts. It is submitted that the present complaint is not maintainable before this Hon'ble Authority, as the complainant has admitted that she has not paid the full amount. The complainant has filed the present complaint seeking interest. The present complaint is liable to be dismissed on this ground alone.

- b. That even otherwise, the complainant has no locus-standi or cause of action to file the present complaint. The present complaint is based on an erroneous interpretation of the provisions of the Act as well as an incorrect understanding of the terms and conditions of the allotment letter dated 24.09.2012, as shall be evident from the submissions made in the following paragraphs of the present reply.
- c. That the complainants approached the respondent sometime in the year 2011 for the purchase of an independent unit in its upcoming residential project "ANSALS HUB 83" (hereinafter be referred to as the "project") situated in Sector-83, Gurugram. It is submitted that the complainant prior to approaching the respondent, had conducted extensive and independent enquiries regarding the project and it was only after the complainant was being fully satisfied with regard to all aspects of the project, including but not limited to the capacity of the respondent to undertake development of the same and the complainant took an independent and informed decision to purchase the unit, un-influenced in any manner.
- d. That thereafter the complainant vide application form dated 16.06.2011 applied to the respondent for provisional allotment of a unit in the project. The complainant, in pursuance of the aforesaid application form, was allotted shop bearing no. GF-45, ground floor in project named ANSALS HUB 83 situated at sector 83, Gurugram.

The complainant consciously and wilfully opted for a construction linked plan for remittance of the sale consideration for the unit in question and further represented to the respondent that the complainant shall remit every instalment on time as per the payment schedule. The respondent had no reason to suspect the bonafide of the complainant.

- e. That despite there being a number of defaulters in the project, the respondent itself infused funds into the project and has diligently developed the project in question. It is also submitted that the construction work of the project is swing on full mode and the work will be completed within prescribed time period as given by the respondent to the authority.
- f. That without prejudice to the aforesaid and the rights of the respondent, it is submitted that the respondent would have handed over the possession to the complainant within time had there been no force majeure circumstances beyond the control of the respondent, there had been several circumstances which were absolutely beyond and out of control of the respondent such as orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble Punjab & Haryana High Court duly passed in civil writ petition no. 20032 of 2008 through which the shucking /extraction of water was banned which is the backbone of construction process,

simultaneously orders at different dates passed by the Hon'ble National Green Tribunal restraining thereby the excavation work causing Air Quality Index being worse, may be harmful to the public at large without admitting any liability. Apart from these from the direction issued by Chairman of EPCA wide letter No EPCA-R/2018/L-91 to MCG Gurugram and MCG Gurugram passed an order dated October 2018 wide which they have directed to stop all the construction activities involving excavation, civil construction (excluding internal finishing/work where no construction material is used) to remain closed in Delhi and other NCR district from November 1-10-2018 and all the stone crushers, hot mix plants generating dust pollution to remain closed in Delhi and other NCR district from November 1-10-2018 etc. The demonetization is also one of the main factors to delay in giving possession to the home buyers as demonetization caused abrupt stoppage of work in many projects. The payments especially to workers to only buy liquid cash. The sudden restriction on withdrawals led the respondent unable to cope with the labour pressure. However, the respondent is carrying its business in letter and spirit of the builder buyer agreement as well as in compliance of other local bodies of Haryana Government.

- g. That the respondent is carrying his business in letter and spirit of the builder buyer agreement but due to COVID"19 the lockdown was

imposed throughout the country in March 2020 which badly affected the construction and consequently respondent was not able to handover the possession on time as the same was beyond the control of the respondent.

- h. That similarly lockdown was imposed in the year 2021 which extended to the year 2022 which badly affected the construction and consequently respondent was not able to handover the possession on time as the same was beyond the control of the respondent.
- i. That the ban on construction was imposed by the Hon'ble supreme court of India in the year 2021 due to the alarming levels of pollution in Delhi NCR which severely affected the ongoing construction of the project.
- j. That it is submitted that the complaint is not maintainable or tenable under the eyes of law as the Complainant has not approached this Hon'ble Authority with clean hands and has not disclosed the true and material facts relates to this case of complaint. The Complainant, thus, has approached the Hon'ble Authority with unclean hands and also has suppressed and concealed the material facts and proceedings which have direct bearing on the very maintainability of purported complaint and if there had been disclosure of these material facts and proceedings the question of entertaining the present complaint would have not arising in view of the case law

titled as S.P. Chengalvaraya Naidu Vs. Jagan Nath reported in 1994 (1) SCC Page-1 in which the Hon'ble Apex Court of the land opined that non-disclosure of material facts and documents amounts to a fraud on not only the opposite party, but also upon the Hon'ble Authority and subsequently the same view was taken by even Hon'ble National Commission in case titled as Tata Motors Vs. Baba Huzoor Maharaj bearing RP No. 2562 of 2012 decided on 25.09.2013.

- k. That without admitting or acknowledging the truth or legality of the allegations advanced by the Complainant and without prejudice to the contentions of the respondent, it is respectfully submitted that the provisions of the Act are not retrospective in nature. The provisions of the Act cannot undo or modify the terms of an agreement duly executed prior to coming into effect of the Act. It is further submitted that merely because the Act applies to ongoing projects which registered with the Authority, the Act cannot be said to be operating retrospectively. The provisions of the Act relied upon by the Complainant seeking refund, interest and compensation cannot be called into aid in derogation and ignorance of the provisions of the Builder Buyer's Agreement. It is further submitted that the interest for the alleged delay demanded by the Complainant is beyond the scope of the Buyer's Agreement. The Complainant cannot demand any interest or compensation beyond the terms and

conditions incorporated in the Builder Buyer's Agreement. However, in view of the law as laid down by the Hon'ble Bombay High Court in case titled as Neelkamal Realtors Suburban Pvt. Ltd. Vs. Union of India published in 2018(1) RCR (C) 298, the liberty to the promoter/developer has been given U/s 4 to intimate fresh date of offer of possession while complying the provision of Section 3 of RERA Act as it was opined that the said Act named RERA is having prospective effect instead of retrospective. Para No.86 and 119 of the above said citation are very much relevant in this regard.

1. That it is submitted that several allottees defaulted in timely remittance of payment of instalment which was an essential, crucial and an indispensable requirement for conceptualization and development of the project in question. Furthermore, when the proposed allottees defaulted in their payment as per schedule agreed upon, the failure has a cascading effecting on the operation and the cost for proper execution of the project increase exponentially whereas enormous business losses befall upon the respondent. The respondent, despite the default of several allottees has diligently and earnest pursued the development of the project in question and has constructed the project in question as expeditiously as possible. The construction of the project is completed and ready to delivery,

awaiting occupancy certificate which is likely to be completed by the year 2022.

- m. The Central Government levied such taxes, which are still beyond the control of the respondent, it is specifically mentioned in Clause 7 & 8 of the Builder Buyer's Agreement, vide which Complainants were agreed to pay in addition to basic sale price of the said unit he/she/they is/are liable to pay EDC, IDC together with all the applicable interest, incidental and other charges inclusive of all interest on the requisite bank guarantees for EDC, IDC or any other statutory demand etc. The Complainant further agreed to pay his proportionate share in any future enhancement/additional demand raised by authorities for these charges even if such additional demand raise after sale deed has been executed.
13. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

E. Jurisdiction of the authority

14. The application of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.1 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. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

Section 11

.....

(4) The promoter shall-

(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;

Section 34-Functions of the Authority:

34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.

17. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be decided by the adjudicating officer if pursued by the complainants at a later stage.



F. Findings on objections raised by the respondent regarding force majeure conditions.

18. The respondent/promoter has raised the contention that the construction of the project was badly affected on account of the orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble Punjab & Haryana High Court duly passed in civil writ petition no.20032 of 2008 through which the shucking /extraction of water was banned which is the backbone of construction process, simultaneously orders at different dates passed by the Hon'ble National Green Tribunal restraining thereby the excavation work causing Air Quality Index being worse, may be harmful to the public at large without admitting any liability. Apart from these the demonetization is also one of the main factors to delay in giving possession to the home buyers as demonetization caused abrupt stoppage of work in many projects. The payments especially to workers to only buy liquid cash. The sudden restriction on withdrawals led the respondent unable to cope with the labour pressure. Furthermore, the respondent was determined to carry his business in letter and spirit of the builder buyer agreement but due to COVID"19 the lockdown was imposed throughout the country in March 2020 which badly affected the construction and consequently respondent was not able to handover the possession on time as the same was beyond the control of the respondent. The due date according to clause 26 of the allotment is calculated from the date of sanction of building plan i.e., 11.09.2013 being later which comes out to be 11.09.2016 except in case no. **CR/1378/2022** wherein the due date is calculated from the date of allotment i.e., 15.09.2014 being later accordingly in this particular case



the due date of possession comes out to be 15.09.2017. Any instance which incurred before the due date of possession as per the relevant clause of the allotment letter may be considered by the authority while granting the grace period for completion of the project. The reasons quoted by the respondent in its reply to be considered as force majeure circumstances are after the lapse of due date of possession. As far as the ban on construction activities by the NGT are concerned they are for two months only. Furthermore, authority while going by the possession clause is of the considerate view that the possession clause itself do not talk about the grace period and accordingly, the authority has no hitch in denying the grace period on account of force majeure for completion of the project while calculating the due date of possession. Therefore, the due date of possession remains as mentioned above.

G. Findings on the relief sought by the complainants.

G.I DPC & POSSESSION

19. In the present complaint, the complainant intends to continue with the project and is seeking delayed possession charges at prescribed rate of interest on the amount paid. Clause 26 of the allotment letter (in short, allotment) provides for handing over of possession and is reproduced below:

"26

The developer shall offer possession of the unit any time, within a period of 36 months from the date of sanction of building plans or date of execution of allotment letter, whichever is later subject to force majeure circumstances such as act of god, fire, earthquake, flood, civil commotion, war, riot, explosion, terrorist acts, sabotage, or general shortage of energy labour equipment facilities material o supplies, failure of transportation, strike, lockouts, action of labour union, any dispute with any contractor/construction agency appointed by the developer, change of law, or any notice, order, rule or notification issued

by any courts/tribunals and/or any other public or competent authority or intervention of statutory authorities, or any other reason(s) beyond the control of the developer. The allottee(s) shall not be entitled to any compensation on the grounds of delay in offering possession due to reasons beyond the control of the developer."

20. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainants not being in default under any provisions of these agreements and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.
21. **Admissibility of DPC along with prescribed rate of interest:** The complainant is seeking delay possession charges on the amount paid by them at the prescribed rate of interest. 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.

22. 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.
23. 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., 03.05.2023 is **8.70%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.70%**.
24. 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;"

25. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., **10.70%** by the respondent/promoter which is the same as is being granted to the complainants in case of delayed possession charges.
26. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 26 of the allotment letter executed between the parties on 24.09.2012, the possession of the subject apartment was to be delivered within 36 months from the date of execution of allotment or sanction of building plans whichever is later. The due date is calculated from the date of approval of building plans i.e., 11.09.2013, being later. Accordingly, period of 36 months expired on 11.09.2016. Therefore, the due date of handing over possession is 11.09.2016 except in case no. **CR/1378/2022** wherein the due date is calculated from the date of allotment i.e., 15.09.2014 being later accordingly in this particular case the due date of possession comes out to be 15.09.2017. The respondent has not yet offered the possession of the subject unit. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is



established. As such the allottees shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 11.09.2016 except in case no. **CR/1378/2022** wherein the due date is calculated from the date of allotment i.e., 15.09.2014 being later accordingly in this particular case the due date of possession comes out to be 15.09.2017 till actual handing over of possession or valid offer of possession plus two months after obtaining OC from the competent authority at prescribed rate i.e., 10.70 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

G.II Cost of litigation

27. The complainants are claiming compensation in the above-mentioned reliefs. The authority is of the view that it is important to understand that the Act has clearly provided interest and compensation as separate entitlement /rights which the allottee can claim. For claiming compensation under sections 12, 14, 18 and section 19 of the Act, the complainants may file a separate complaint before Adjudicating Officer under section 31 read with section 71 of the Act and rule 29 of the rules.

H. Directions of the authority

28. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):
- The respondent is directed to pay the interest at the prescribed rate i.e., 10.70% per annum for every month of delay on the amount paid by the complainant from due date of possession i.e., 11.09.2016 except in case no. **CR/1378/2022** wherein the due date is calculated from

the date of allotment i.e., 15.09.2014 being later accordingly in this particular case the due date of possession comes out to be 15.09.2017 till actual handing over of possession or valid offer of possession plus two months after obtaining OC from the competent authority at prescribed rate i.e., 10.70 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

- ii. The arrears of such interest accrued from 11.09.2016 except in case no. **CR/1378/2022** wherein the due date comes out to be 15.09.2017 till the date of order by the authority shall be paid by the promoter to the allottee within a period of 90 days from date of this order and interest for every month of delay shall be paid by the promoter to the allottee before 10th of the subsequent month as per rule 16(2) of the rules.
- iii. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The rate of interest chargeable from the complainant/allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.70% by the respondent/promoter which is the same rate of interest which the promoter shall be liable to pay the allottees, in case of default i.e., the delay possession charges as per section 2(z a) of the Act.
- v. If there is no amount outstanding against the allottees or less amount outstanding against the allottees then the balance delay possession charges shall be paid after adjustment of the outstanding against the allottees.

- vi. The respondent shall not charge anything from the complainant which is not part of the buyer's agreement. However, holding charges shall not be charged by the promoters 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.
29. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
30. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.
31. Files be consigned to registry.


(Ashok Sangwan)

Member

Haryana Real Estate Regulatory Authority, Gurugram


(Vijay Kumar Goyal)

Member

Dated: 03.05.2023