

**BEFORE THE HARYANA REAL ESTATE REGULATORY AUTHORITY,  
GURUGRAM****Order reserved on: 26.04.2023**  
**Date of 17.05.2023**  
**pronouncement:**

<b>NAME OF THE BUILDER</b>		<b>ANSAL HOUSING &amp; CONSTRUCTION LTD.</b>	
<b>PROJECT NAME</b>		<b>ANSAL HEIGHTS 86</b>	
<b>S. No.</b>	<b>Case No.</b>	<b>Case title</b>	<b>APPEARANCE</b>
1	CR/5750/2022	Neha Arora V/s Ansal Housing & Construction Ltd.	Shri Kanish Bangia Shri. Amandeep Kadyan
2	CR/5751/2022	Neha Arora V/s Ansal Housing Construction Ltd.	Shri Kanish Bangia Shri. Amandeep Kadyan

**CORAM:**

Shri Ashok Sangwan

**Member****ORDER**

1. This order shall dispose of both the 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 Heights 86" (group housing colony) being developed by the same respondent/promoter i.e., M/s Ansal Housing & Construction Limited. 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 possession charges along with interest.

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 & CONSTRUCTION LTD "ANSAL HEIGHTS 86" Sector-86, Gurugram.	
<b>Possession Clause: - 31</b>		
<p><i>"The developer shall offer possession of the unit any time, within a period of 42 months from the date of execution of the agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all dues by buyer and subject to force majeure circumstances as described in clause 32. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 42 months as above in offering the possession of the unit."</i></p> <p style="text-align: right;"><b>(Emphasis supplied)</b></p>		
<b>Occupation certificate: - Not obtained</b>		
<b>Due date:</b>	01.10.2017 (Note: 42 months from date of start of construction i.e., 01.10.2013 being later + 6 months grace period allowed being unqualified)	
<b>Note:</b> Grace period is allowed being unqualified & included while computing due date of possession.		
<b>Complaint No., Case Title, and Date of filing of complaint</b>	CR/5750/2022 Neha Arora V/s Ansal Housing & Construction Ltd.	CR/5751/2022 Neha Arora V/s Ansal Housing & Construction Ltd.
<b>Reply status</b>	25.11.2022	25.11.2022

Unit no.	G-0601 [pg. 31 of complaint]	H-0604 [pg. 34 of complaint]
Date of apartment buyer agreement with original allottee	27.12.2012 [pg. 28 of complaint]	02.01.2013 [pg. 31 of complaint]
Date of endorsement	Not known	Not known
Total Consideration / Total Amount paid by the complainant(s)	TC: ₹ 50,83,524/- AP: ₹ 29,38,847/-	BSP: ₹ 54,02,107/- AP: ₹ 36,92,499/-

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the apartment 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 along with interest.
5. 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.
6. 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/5751/2022 Neha Arora V/s Ansal Housing & Construction Ltd.** are being taken into consideration for determining the rights of the allottee(s) qua delay possession charges along with interest and compensation.



**A. Project and unit related details**

7. 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/5751/2022 Neha Arora V/s Ansal Housing & Construction Ltd.**

S. N.	Particulars	Details
1.	Name of the project	Ansal Heights,86
2.	Project location	Sector 86, Gurugram, Haryana
3.	Project area	12.843 acres
4.	Nature of the project	Group housing colony
5.	DTCP license no. and validity status	48 of 2011 dated 29.05.2011 valid upto 28.05.2017
6.	Name of licensee	Resolve Estate Pvt. Ltd.
7.	RERA registration details	Not registered
8.	Unit no.	H-0604 [page 34 of complaint]
9.	Unit area admeasuring	1360 sq. ft. super area
10.	Date of execution of builder buyer agreement with original allottee	02.01.2013 [page 31 of complaint]
11.	Transfer of unit in name of both complainant	Not known



12.	Possession clause	<b>31.</b> <i>The developer shall offer possession of the unit any time, within a period of 42 months from the date of execution of the agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all dues by buyer and subject to force majeure circumstances as described in clause 32. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 42 months as above in offering the possession of the unit."</i> <i>(Emphasis supplied)</i> [page 39 of complaint]
13.	Date of commencement of construction as per customer ledger dated 31.07.2021 at pg. 54 of complaint	01.10.2013
14.	Due date of possession	01.10.2017 [Note: Due date calculated from date of commencement of construction i.e., 01.10.2013 being later. Grace period allowed being unqualified]
15.	Sale consideration as per BBA at pg. 47 of complaint	₹ 53,59,400/-



16.	Amount paid by the complainant as per customer ledger dated 31.07.2021 at pg. 52 of complaint	₹ 36,92,499/-
17.	Occupation certificate	Not yet obtained
18.	Offer of possession for fit outs	01.07.2021 [pg. 56 of complaint]

**B. Facts of the complaint**

8. The complainant has made the following submissions in the complaint: -
- That Mrs. Neha Arora had bought the subject unit from the original allottee and hence, falls within the definition of 'allottee' within the meaning of section 2(d) of the Act. The respondent is a company incorporated under the provisions of C.A., 1956 and is inter alia engaged in the business activities relating to construction, development, marketing & sales of various types of residential & commercial properties to its various customers/ clients and works for gain.
  - That pursuant to the elaborate advertisements, assurances, representations and promises made by respondent about their project called Ansal Heights at Sector 86, Gurugram with impeccable facilities and believing the same to be correct and true, the complainant considered booking a flat measuring 1360 sq. ft. and paid an advance amount of ₹ 6,51,780/- on 02.01.2013.
  - That the respondent company confirmed the allocation of the flat H-0604 and the complainant made the payments over the course of several years thereafter. These payments were acknowledged by the



respondent vide receipts issued against the same along with the account statement.

- d. That on 02.01.2013, after having received a total of ₹ 6,51,780/- (i.e., more than 10% of the total sale consideration), the respondent entered into a flat buyer's agreement with the complainant on 02.01.2013 for unit no. H-0604 admeasuring 1360 sq. ft. for a basic sale price of ₹ 48,15,200/- and other additional charges.
- e. That the complainant continued to make all the payments in compliance with the demands of the respondent. These payments were acknowledged by the respondent vide account statement issued against the same.
- f. That after a delay of more than 5 years from the promised date of delivery of possession, the respondent vide letter dated 01.07.2021 offered possession of the unit no. H-0604 to the complainant and raised new demands and sought clearance of the pending dues from the complainant. The complainant had paid a total of ₹ 36,92,499/- i.e., more than the 70% of the total sale consideration of ₹ 51,03,464/-. However, the respondent has offered possession without obtaining a valid occupation certification, and hence, the offer of possession is not only delayed but also invalid as per law.
- g. That the respondent deliberately and with a mischievous intent tricked the complainant through false promises and forced him into paying up huge amounts to the respondent. The said dishonest intent of the respondent is amply evident from their entire conduct and omissions on part of the respondent set out hereinafter:

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- Failure to sign a buyer's agreement with the complainant at the earliest.
  - Deliberately committing absolute breach of the promises and projections at the time of booking.
  - Complete failure to keep the promised schedule of completion and delay without any valid reason whatsoever.
  - Making an invalid offer of possession without obtaining proper occupation certificate for the project.
- h. That the present complaint sets out the various deficiencies in services, unfair and/or restrictive trade practices adopted by the respondent in sale of their units and the provisions allied to it. The modus operandi adopted by the respondent invariably bears the irrefutable stamp of impunity and total lack of accountability and transparency, as well as breach of contract and duping of the consumers by not delivering the project in time.
- i. **INVALID OFFER OF POSSESSION AS NO COMPLETION CERTIFICATE/OCCUPATION CERTIFICATE RECEIVED-** It is submitted that without having a proper occupation certificate, the offer of possession is invalid and therefore, this act of the respondent amounts to unjust enrichment and unfair trade practices undertaken to exploit the consumers. In *Dr. B.L. Wadhera vs. Govt. of NCT of Delhi and Ors. On 29 May 2003*, it has been held "that no person can occupy or permit anyone to occupy any building or use or permit to be used a building or part thereof to anyone until Occupation Certificate has been issued. A duty is cast on the Commissioner to issue such

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Certificate if the construction is as per the approved plan and building bye laws." Further, in *Kamal Kishore & Anr. vs. M/S Supertech Limited delivered in Consumer Case No. 1009 of 2016*, it has been held that the possession could not have been offered to the allottee without completing the construction of the villa in all respects and obtaining the requisite occupancy certificate. Offering possession without obtaining the occupancy certificate is meaningless since the allottee is not permitted in law to occupy the house, which does not have the requisite occupancy certificate.

- j. **RECEIPT OF MORE THAN 10% OF THE TOTAL SALE CONSIDERATION BEFORE THE EXECUTION OF THE UNIT BUYER AGREEMENT IN VIOLATION OF SECTION 13 RERA-** It submitted that the respondent was in receipt of a sum of ₹ 6,51,780/- before the execution of the flat buyer agreement. In this conduct, the respondent violated section 13(1) of the Act which clearly states that "a promoter shall not accept a sum more than ten percent, of the cost of the apartment, plot or building as the case may be, as an advance payment or an application fee, from a person without first entering into a written agreement for sale with such person and register the said agreement for sale, under any law for the time being in force."
- k. **INTEREST PAYABLE TO THE COMPLAINANT ON ACCOUNT OF DELAY IN POSSESSION-** It is submitted that the complainant booked the flat in 2013 and as per clause 31 of the flat buyer's agreement, the respondent was required to offer possession of the unit within 42 months from the date of execution of agreement or within 42 months from the date of required sanctions or approvals whichever is later,

along with a grace period of 6 months, i.e., by mid of 2016. However, the possession was offered after a delay of more than 5 years and hence, the complainant has suffered loss and damage in as much as she had deposited the money in the hope of getting the said unit for residential purposes. She has not only been deprived of timely possession but also the prospective return she could have got if she had invested in a fixed deposit in the bank. Therefore, the compensation in such cases would necessarily have to be paid by the respondent to the complainant. The respondent is well aware that the project is over delayed and hence is liable to pay interest as per the provisions of the Act and the rules. According to sections 18(1) and 19(7) of the Act read with rule 15 of the rules, the respondent is liable to pay the allottee interest for delaying the possession in violation of the terms of the builder buyer agreement.

- l. The Hon'ble Supreme Court has time and again held that where the buyer has to suffer on account of delay beyond a reasonable time then he/she has to be compensated either by way of interest or penalty and in this connection Hon'ble Supreme Court in **M/s. Fortune Infrastructure Vs. Trevor Dlima & Ors (2018) 5SCC 442** observed as follows:

*"...Moreover, a person cannot be made to wait indefinitely for the possession of the flats allotted to them and they are entitled to seek the refund of the amount paid by them, along with compensation. Although we are aware of the fact that when there was no delivery period stipulated in the agreement, a reasonable time has to be taken into consideration...."*

- m. The inordinate delay on the part of the respondent in delivering the possession in violation of the terms of the buyer's agreement amounts to a deficiency in the services offered by the respondent. That as per

section 18 and 19 of the Act, the respondent is liable to pay interest to the allottees of an apartment, building or project for delay or failure in handing over of such possession as per the terms of the agreement for sale. The complainant is therefore entitled to interest for the delayed period till the actual proper handover of the unit.

n. **NON REGISTRATION OF THE ONGOING PROJECT AND FALSE CLAIMS MADE BY RESPONDENT REGARDING CONSTRUCTION-**

That, even at the time of the filing of the present complaint before this Hon'ble Authority, the respondent has not got the project registered with the authority and for the same reason, the respondent has violated the provisions of section 3 and section 4 of the Act and therefore, liable to be punished under section 59 & 60 of the abovesaid Act.

- o. That at the time of execution of the builder buyer agreement, the respondent had represented to complainant that the respondent is in possession of the necessary approvals from the DTCP, Haryana to commence with the construction work of the commercial project. However, to date only 30% of construction has taken place at the site.
- p. That it is unambiguously clear that no force majeure was involved in the present case, and the project has been at a standstill for several years, precisely in the end of 2016 and it has been 6 years till the present date. Therefore, the respondent cannot take a plea that the construction was halted due to the Covid-19 pandemic. That despite paying such a huge sum towards the villa, the respondent has failed to stand by the terms and condition of the builder-buyer agreement and

the promises, assurances, representations etc., which they made to the complainant at the time of the booking the above said flat.

- q. It is submitted that the respondent is guilty of deficiency in service, unfair trade practice, giving incorrect and false statements while selling the said unit to the complainant within the purview of the provisions of the Act and applicable rules. The complainant has suffered losses on account of deficiency in service, unfair trade practice, giving incorrect and false statement.
- r. The Hon'ble Authority has territorial as well as subject matter jurisdiction to entertain the present complaint. The present complaint is within the limitation. Hence, that the complainant herein is constrained to file the present complaint seeking peaceful and vacant possession, registration of the sale deed of the allotted flat at Ansal Heights 86. Further, the Complainant herein reserve their right(s) to add/supplement/amend/change/alter any submission(s) made herein in the complaint and further, reserve the right to produce additional document(s) or submissions, as and when necessary or directed by this Hon'ble Authority.

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

9. The complainant has sought following relief(s)
- Direct the respondent to pay delay possession charges and handover the physical possession of the unit.
  - Direct the respondent to execute sale deed.
  - Set aside the unlawful demands raised by the respondent in their invalid offer of possession.
  - Direct the respondent to obtain OC.

- e. Refrain the respondent from sending false bills against the flat.
  - f. Direct the respondent not to cancel the unit of the complainant.
10. 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.**

11. The respondent has contested the complaint on the following grounds.
- a. The answering respondent is a developer and has built multiple residential and commercial buildings within Delhi/NCR with a well-established reputation earned over years of consistent customer satisfaction.
  - b. That the complainants had approached the answering respondent for booking a flat no. H-0604, in an upcoming project Ansal Heights, Sector 86, Gurugram. Upon the satisfaction of the complainant regarding inspection of the site, title, location plans, etc. an agreement to sell dated 02.01.2013 was signed between the parties.
  - c. That the current dispute cannot be governed by the RERA Act, 2016 because of the fact that the builder buyer agreement signed between the complainant and the answering respondent was in the year 2012. It is submitted that the regulations at the concerned time period would regulate the project and not a subsequent legislation i.e., RERA Act, 2016. It is further submitted that parliament would not make the operation of a statute retrospective in effect.
  - d. That the complaint specifically admits to not paying necessary dues or the full payment as agreed upon under the builder buyer agreement. It is submitted that the complainant cannot be allowed to take advantage

of his own wrong.

- e. That even if for the sake of argument, the averments and the pleadings in the complaint are taken to be true, the said complaint has been preferred by the complainant belatedly. The complainant has admittedly filed the complaint in the year 2022 and the cause of action accrue on 02.01.2017 as per the complaint itself. Therefore, it is submitted that the complaint cannot be filed before the HRERA Gurugram as the same is barred by limitation.
- f. That even if the complaint is admitted being true and correct, the agreement which was signed in the year 2013 without coercion or any duress cannot be called in question today. It is submitted that the builder buyer agreement provides for a penalty in the event of a delay in giving possession. It is submitted that clause 37 of the said agreement provides for ₹ 5/ sq. ft. per month on super area for any delay in offering possession of the unit as mentioned in clause 31 of the agreement. Therefore, the complainant will be entitled to invoke the said clause and is barred from approaching the Hon'ble Authority in order to alter the penalty clause by virtue of this complaint more than 10 years after it was agreed upon by both parties.
- g. That the complaint itself discloses that the said project does not have a RERA approval and is not registered. It is submitted that if the said averment in the complaint is taken to be true, the Hon'ble Authority does not have the jurisdiction to decide the complaint. That the respondent had in due course of time obtained all necessary approvals from the concerned authorities. It is submitted that the permit for environmental clearances for proposed group housing project for

Sector 103, Gurugram, Haryana on 20.02.2015. Similarly, the approval for digging foundation and basement was obtained and sanctions from the department of mines and geology were obtained in 2012. Thus, the respondents have in a timely and prompt manner ensured that the requisite compliances be obtained and cannot be faulted on giving delayed possession to the complainant.

- h. That the answering respondent has adequately explained the delay. It is submitted that the delay has been occasioned on account of things beyond the control of the answering respondent. It is further submitted that the builder buyer agreement provides for such eventualities and the cause for delay is completely covered in the said clause. The respondent ought to have complied with the orders of the Hon'ble High Court of Punjab and Haryana at Chandigarh in CWP no. 20032 of 2008, dated 16.07.2012, 31.07.2012, 21.08.2012. The said orders banned the extraction of water which is the backbone of the construction process. Similarly, the complaint itself reveals that the correspondence from the answering respondent specifies force majeure, demonetization and the orders of the Hon'ble NGT prohibiting construction in and around Delhi and the COVID-19 pandemic among others as the causes which contributed to the stalling of the project at crucial junctures for considerable spells.
- i. That the answering respondent and the complainant admittedly have entered into a builder buyer agreement which provides for the event of delayed possession. It is submitted that clause 32 of the builder buyer agreement is clear that there is no compensation to be sought by the complainant/prospective owner in the event of delay in possession. 

- j. That the answering respondent has clearly provided in clause 37 the consequences that follow from delayed possession. It is submitted that the complainant cannot alter the terms of the contract by preferring a complaint before the Hon'ble HRERA Gurugram.
- k. That admittedly, the complainant had signed and agreed on builder buyer agreement dated 02.01.2013. That perusal of the said agreement would show that it is a tripartite agreement wherein M/s Samyak Projects Pvt. Ltd. is also a party to the said agreement.
- l. That the perusal of the builder buyer agreement at page 3 would show that he proposed party to be impleaded i.e., M/s Samyak Projects Pvt. Ltd not only possesses all the rights and unfettered ownership of the said land whereupon the project namely Ansal Heights, Sector 86 is being developed, but also is a developer in the said project. That the operating lines at page 3 of the builder buyer agreement are as follow: "The developer has entered into an agreement with the confirming party 3 i.e., M/s Samyak Projects Pvt. Ltd to jointly promote, develop and market the proposed project being developed on the land as aforesaid."
- m. The said M/s Samyak Project Pvt. Ltd. in terms of its arrangement with the respondent could not develop the said project well within time as was agreed a given to the respondent, the delay, if any, is on the part of M/s Samyak Project Pvt. Ltd. not on the part of respondent, because the construction and development of the said project was undertaken by M/s Samyak Project Pvt. Ltd.
12. 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**

13. 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. I Territorial jurisdiction**

14. 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**

15. 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.*

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

**F. Findings on the objections raised by the respondent.**

**F.I Objection regarding complaint being barred by limitation.**

17. The respondent in its reply has raised the contention that the complaint is barred by limitation as the cause of action accrued on 02.01.2017 and the complaint was filed in 2022 i.e., after lapse of almost 4 years.
18. The authority upon consideration of the documents placed on record observes that the buyer's agreement w.r.t. unit was executed inter-se parties on 02.01.2013.
19. The possession of the subject unit is still not been handed over to the complainant till date. Also, the OC has not been received with respect to the said project. Though respondent advanced submissions with regard to the maintainability of the complaint on the ground of the limitation but in view of settled proposition of law, the case of complainant cannot be thrown away being barred by limitation. As discussed earlier, the buyer's agreement in this regard was executed on 02.01.2013. As per clause 31 of the buyer's agreement, the possession of the subject unit was to be offered till 01.10.2017. So, limitation if any, for a cause of action would accrue to the complainant w.e.f. 01.10.2017. The present complaint seeking delay possession charges was filed on 25.08.2022 i.e., beyond three years w.e.f.

01.10.2017. But in view of authoritative pronouncement of the Hon'ble Apex Court in ***Suo Moto Writ Petition (C) No. 3 of 2020*** vide order dated 10.01.2022, the period in between 15.03.2020 till 28.02.2022 would stand excluded while calculating the period of limitation and all persons shall have a limitation period of 90 days from 01.03.2022. The relevant para of the said order is reproduced as under:

*"I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.*

...

*III. In the cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply."*

20. In view of the above, the present complaint is filed within the limitation.

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

**G.I Direct the respondent to pay delay possession charges at prescribed rate of interest from the due date of possession till the actual date of handing over of possession.**

21. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges interest on the amount paid. 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:

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



18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building.-

(a) <sup>i</sup>  
in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) <sup>d</sup>  
due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

**he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:**

*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."*

*(Emphasis supplied)*

22. Clause 31 of the apartment buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below:

**"31.**

*The developer shall offer possession of the unit any time, within a period of 42 months from the date of execution of the agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all dues by buyer and subject to force majeure circumstances as described in clause 32. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 42 months as above in offering the possession of the unit."*

23. 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.

24. **Due date of handing over possession and admissibility of grace period:** 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.

25. In this particular case, the Authority considered the above contentions raised by the respondent and observes that the promoter has proposed to hand over the possession of the apartment within a period of 42 months from the date of execution of the agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later. The authority calculated due date of possession from the date of commencement of construction i.e., 01.10.2013 being later. The period of 42 months expired on 01.04.2017. Since in the present matter the BBA incorporates unqualified reason for grace period/extended period in the possession clause. Accordingly, the authority allows this grace period of 6 months to the promoter at this stage.

26. **Admissibility of refund along with prescribed rate of interest:** The complainant is seeking refund the amount paid by them at the prescribed rate of interest. However, the allottee intend to withdraw from the project and is seeking refund of the amount paid by him in respect of the subject unit with interest at prescribed rate as provided 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.*

27. 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.
28. Consequently, as per website of the State Bank of India i.e., <https://sbi.co.in>, the marginal cost of lending rate (in short, MCLR) as on date i.e., **17.05.2023** is **8.70%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.70%**.
29. 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;"*
30. On consideration of the documents available on record and submissions made by both the parties 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 31 of the agreement executed between the parties on 02.01.2013, the possession of the subject apartment was to be delivered within stipulated time i.e., by April 2017. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is 01.10.2017. The respondent has issued a letter for possession for fit outs dated 01.07.2021 which is prior to grant of occupation certificate by the competent authority accordingly the said offer is not valid. 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.

31. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such the allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 01.10.2017 till the offer of the possession or handing over of possession after receipt of OC plus two months whichever is earlier, 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. Direct the respondent to execute sale deed.**

32. The respondent is under obligation as per section 17 of Act to get the conveyance deed executed in favour of the complainants. The said relief can be addressed after payment of due installment by the complainants and after taking possession of the said unit.



**G.III. Direct the respondent to set aside the unlawful demands raised by the respondent in their invalid offer of possession.**

**G.IV. Direct the respondent to obtain OC and handover the physical possession of the unit.**

33. The above two reliefs are being dealt with together. The respondent is legally bound to meet the pre-requisites for obtaining an occupation certificate from the competent authority. The promoter is duty bound to obtain OC and hand over possession only after obtaining OC. Since the respondent has offered the possession for fit outs letter to the complainant without obtaining OC from the competent authority accordingly the said letter is invalid. And the respondent is directed to offer the possession of the unit and hand over the physical possession only after obtaining OC.

**G.V. Refrain the respondent from sending false bills against the flat.**

34. The complainants have neither pressed the said relief in their pleadings about the above stated false bills nor does the counsel argued during the course of hearing regarding the said issue. Therefore, the authority cannot deliberate on this relief.

**G.VI. Direct the respondent not to cancel the unit of the complainant.**

35. Since the complainant intends to continue with the project and is seeking possession of the unit and has paid almost 70% of the total sale consideration. Accordingly, the respondent is obligated to raise the demands as per the payment plan annexed to the BBA executed between the parties dated 02.01.2013. Also, the complainant is liable to clear the outstanding dues as per the payment plan. Further the respondent shall not charge anything which is not the part of the BBA.

**H. Directions of the authority**

36. 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):

- a. The respondent is directed to hand over the actual physical possession of the unit to the complainants within 2 months from the date of this order and pay interest at the prescribed rate of 10.70% p.a. for every month of delay from the due date of possession i.e., 01.10.2017 till the offer of the possession or handing over of possession after receipt of OC plus two months whichever is earlier.
- b. The arrears of such interest accrued from 01.10.2017 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.
- c. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- d. The rate of interest chargeable from the allottee 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 promoters shall be liable to pay the allottee, in case of default i.e., the delayed possession charges as per section 2(za) of the Act.



- e. The respondent shall not charge anything from the complainants which is not the part of the 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.
37. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
38. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.
39. Files be consigned to registry.



**(Ashok Sangwan)**  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 17.05.2023