

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

Complaint no.:	2143 of 2022
First date of hearing:	06.07.2022
Date of decision:	28.04.2023

1. Parag Kashyap
2. Sunita Kashyap

R/o House No. D-54, Vijay Nagar, New Delhi-110009

Complainants

Versus

M/s Ansal Housing Ltd.

Office address: 2nd floor, Ansal Plaza, Sector 1, near
Vaishali metro station, Vaishali, Ghaziabad, Utar
Pradesh-201010.

Respondent

CORAM:

Shri Sanjeev Kumar Arora

Member

APPEARANCE:

Priyanka Agarwal (Advocate)
Amandeep Kadiyan (Advocate)

Complainants
Respondent

ORDER

1. The present complaint dated 17.05.2022 has been filed by the complainants/allottees under section 31 of the Real Estate (Regulation and Development) Act, 2016 (in short, the Act) read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (in short, the Rules) for violation of section 11(4)(a) of the Act wherein it is *inter alia* prescribed that the promoter shall be responsible for all



obligations, responsibilities and functions as provided under the provision of the Act, or the rules and regulations made there under or to the allottee as per the agreement for sale executed *inter se*.

A. Unit and project related details

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

S. N.	Particulars	Details
1.	Project name and location	"Ansal Heights, 92", Sector-92, Gurugram
2.	Project area	10.563 acres
3.	Nature of the project	Group housing colony
4.	DTCP license no. and validity status	76 of 2010 dated 01.10.2010 valid up to 30.09.2020
5.	Name of licensee	JSG Builders Pvt. Ltd. & anr.
6.	RERA registration details	Not registered
7.	Unit no. as per BBA	F-1103 [pg. 37 of complaint]
8.	Unit area admeasuring	1565 sq. ft.
9.	Allotment letter in favor of original allottee	05.10.2011 [pg. 55 of complaint]
10.	Date of transfer of unit in name of complainants	28.02.2012 [pg. 58 of complaint]
11.	Date of execution of buyer agreement with complainants	05.07.2012 [pg. 34 of complaint]



12.	Possession clause	<p>29.</p> <p><i>The developer shall offer possession of the unit any time, within a period of 36 months from the date of execution of the agreement or within 36 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 30. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 36 months as above in offering the possession of the unit."</i></p> <p><i>(Emphasis supplied)</i></p> <p><i>[page 43 of complaint]</i></p>
13.	Due date of possession	<p>05.01.2016</p> <p>[Note: Due date calculated from date of agreement as date of commencement of construction is not known. Grace period allowed being unqualified]</p>
14.	Total consideration as per statement of account dated 20.07.2019 at pg. 54 of complaint.	<p>₹ 53,54,325.38/-</p>
15.	Total amount paid by the complainants as per statement of account dated 20.07.2019 at page 54 of complaint.	<p>₹ 49,20,306.76/-</p>
16.	Occupation certificate	<p>Not yet obtained</p>



17.	Offer of possession for fit outs	20.07.2019
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B. Facts of the complaint

3. The complainants pleaded the complaint on the following facts:

- a. That the complainants are a law-abiding citizen and consumer who have been cheated by the malpractices adopted by the respondent is stated to be a builder and is allegedly carrying out real estate development. Since many years, the complainants being interested in the project because it was a housing project and the complainant had needed an own home for his family.
- b. That the complainants were subjected to unethical trade practice as well as subject of harassment, flat buyer agreement clause of escalation cost, many hidden charges which will forcedly imposed on buyer at the time of possession as tactics and practice used by builder guise of a biased, arbitrary and one sided. That the executed builder buyer agreement between respondent and complainants mentioned in developer's representations, DTCP given the licence 76 of 2010 to M/s JSG Builders Pvt Limited (confirming party -1) this company was transferred his rights to Samyak Projects Pvt. Ltd (confirming party-3), M/s Ansal Housing & Construction Ltd. have legal right to collect money from allottees of "Ansal Heights, 92" Gurugram and have legal & valid license to develop this project.
- c. Previous allottees booked a 3+2T BHK flat admeasuring 1565 Sq Ft, along with one covered car parking in unit no. F-1103, tower-F in residential project "Ansal Heights 92", Sector 92 Gurugram,



Haryana. The initial booking amount of ₹ 5,80,000/- was paid through cheque no.470630 dated 05.07.2011.

- d. That the respondent to dupe the complainants in their nefarious net even executed developer buyer agreement signed between M/s Ansal Housing Ltd. & M/s Samyak Projects Pvt. Ltd and complainants dated 05.07.2012. Respondents create a false belief that the project shall be completed in time bound manner and in the garb of this agreement persistently raised demands with threat of levying interest at a compounded rate of 24% for any delay in payment. Due to persistent demands and threats of levying interest for payment delay they were able to extract huge amount of money from the complainants.
- e. That the total cost of the said flat is ₹ 39,83,824/- (as per allotment letter dated 05.10.2011 (excluding taxes, EDC, IDC, Parking, CMC, PBC, FFC, IFMS) and total amount paid ₹ 49,20,306.76/- (Including Taxes, EDC, IDC, Parking, CMC, PBC, FFC, IFMS, etc) by the complainants in time bound manner.
- f. That it is pertinent mentioned here that according to the statement the complainants paid a sum of ₹ 49,20,306.76/- (Including Taxes, EDC, IDC, Parking, CMC, PBC, FFC, IFMS, etc) to the respondent till now and before this builder was demanded more than 95% amount without doing appropriate work on the said project, which is illegal and arbitrary.
- g. That complainants have paid all the instalments timely and deposited ₹ 49,20,306.76/- (Including Taxes, EDC, IDC, Parking, CMC, PBC, FFC, IFMS, etc) that respondent in an endeavour to



extract money from allottees devised a payment plan under which respondent linked more than 35 % amount of total paid against as an advance rest 60% amount linked with the construction of super structure only of the total sale consideration to the time lines, which is not depended or co-related to the finishing of flat and Internal development of facilities amenities and after taking the same respondent have not bothered to any development on the project till date as a whole project not more than 40 % and in term of particular tower just built a super structure only. Extracted the huge amount and not spend the money in project is illegal and arbitrary and matter of investigation.

- h. That previous buyer booked the apartment dated 2011 (more than 10 year ago) and as per flat buyer agreement builder liable to offer possession on before 04.07.2015 so far. That the builder was started construction work almost 10 years back still respondent want to more years to complete the project.
- i. That complainants booked apartment in 2011 (more than 10 year ago) and as per flat buyer agreement builder liable to offer possession on before 04.07.2015 so far (FBA clause no.29) and after that without getting occupancy certificate builder send a fit out letter on dated 20.07.2019 and demanding more amount from the complainants for STP charges (not a part of BBA), electric meter charges (not a part of BBA), club charges (without construction).
- j. That as the delivery of the apartment was due on July 2015 which was prior to the coming into of force of the GST Act, 2016 i.e., 01.07.2017, it is submitted that the complainants are not liable to

incur additional financial burden of GST due to the delay caused by the respondent. Therefore, the respondent should pay the GST on behalf of the complainants but just reversed builder collect the GST from complainants and enjoy the input credit as a bonus, this is also matter of investigation.

- k. That the respondent has indulged in all kinds of tricks and blatant illegality in booking and drafting of FBA with a malicious and fraudulent intention and caused deliberate and intentional huge mental and physical harassment of the complainants and his family and cruelly been dashed the savoured dreams, hopes and expectations of the complainant to the ground and the complainant is eminently justified in seeking return of the entire money with interest.
- l. That the complainants communicate with respondent and asked for delayed possession respondent show problem of financial crunch other side builder extracted huge amount from complaints and given loan to others, and project development abundant create suspicion on builder intention.
- m. That keeping in view the snail paced work at the construction site and half-hearted promises of the respondent, the chances of getting physical possession of the assured unit in near future seems bleak and that the same is evident of the irresponsible and desultory attitude and conduct of the respondent, consequently injuring the interest of the buyers including the complainants who have spent his entire hard earned savings in order to buy this home and stands at a crossroads to nowhere. The inconsistent and lethargic manner,

in which the respondent conducted its business and their lack of commitment in completing the project on time, has caused the complainants great financial and emotional loss.

C. Relief sought by the complainants:

4. The complainants have sought following reliefs:

- a. DPC on amount paid of ₹ 49,20,306/- from 04.07.2015 till actual handing over of possession @ 24%.
- b. Restrain the respondent to raise any fresh demand.
- c. Direct the respondent to get the occupation certificate and immediately handover the legal physical possession of unit in habitable condition with all amenities mentioned in brochure.
- d. Request the authority to pass the order for forensic audit.
- e. Direct the respondent to quash the one-sided clauses mentioned in BBA.
- f. Pass an order for payment of GST levied upon the complainants and taken the input credit by builder.
- g. Direct the respondent to quash the club charges, STP Charges, Electric meter charges.

5. On the date of hearing, the authority explained to the respondents/promoters about the contravention as alleged to have been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

D. Reply by the respondent.

6. The respondent has contested the complaint on the following grounds:

- a. That the 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 he 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 and 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/buyer's agreement dated 05.07.2012, which is evidentiary from the submissions made in the following paragraphs of the present reply.
- c. That the complainant approached the respondent sometime in the year 2011 for the purchase of an independent unit in its upcoming residential project "ANSAL HEIGHTS" (hereinafter be referred to as the "project") situated in Sector-86, District Gurgaon (Haryana). 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 applied to the respondent for provisional allotment of a unit in the project on 05.07.2011. the complainant, in pursuant to the application, was allotted shop/office



space bearing no. F 1103 in the project “**ANSAL HEIGHTS**” situated at Sector 92, District Gurgaon, Haryana. The complainant consciously and willfully 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 should remit every installment on time as per the payment schedule. The respondent had no reason to suspect the bonafide of the complainant.

- e. It is further submitted 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 the 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 thereby restraining the excavation work

causing air quality index being worst, may be harmful to the public at large without admitting any liability. Apart from these the demonetization is also one of the major factors to delay in giving possession to the home buyers as demonetization caused abrupt stoppage of work in many projects. 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 similar 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 related 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 are 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 in 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 a 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 citations are very much relevant in this regard.

1. That it is submitted that several allottees have 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 effect on the operation and the cost for proper execution of the project increases 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 for 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.

E. Jurisdiction of the authority

7. The authority observed that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

E.I. Territorial jurisdiction

8. 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

9. 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.

10. 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 relief sought by the complainants.

F.I. DPC on amount paid of ₹ 49,20,306/- from 04.07.2015 till actual handing over of possession @ 24%.

11. In the present complaint, the complainants intend to continue with the project and is seeking delayed possession charges at prescribed rate of interest on the amount paid. Clause 29 of the flat buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below: -

"29

*The developer shall offer possession of the unit any time, **within a period of 36 months from the date of execution of the agreement or within 36 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 30. Further, there shall be a **grace period of 6 months allowed to the developer over and above the period of 36 months as above in offering the possession of the unit.**"*

12. At the outset, it is relevant to comment on the pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainants not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoters. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favor of the promoters and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoters may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the flat buyer agreement by the promoters are 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.

Admissibility of grace period: The promoter has proposed to hand over the possession of the apartment within a period of 36 months plus 6 months from date of agreement or the date of commencement of construction whichever is later. Due date calculated from date of agreement i.e., 05.07.2012 as date of commencement of construction is not known. The period of 36 months expired on 05.07.2015. In the present matter the BBA incorporates unqualified reason for grace period/extended period of 6 months in the possession clause accordingly the grace period is allowed. Accordingly the due date of possession comes out to be 05.01.2016.

13. **Admissibility of delay possession charges at prescribed rate of interest:** Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

“Rule 15. Prescribed rate of interest- [Proviso to section 12, section 18 and sub-section (4) and subsection (7) of section 19]

(1) For the purpose of proviso to section 12; section 18; and sub-sections (4) and (7) of section 19, the “interest at the rate prescribed” shall be the State Bank of India highest marginal cost of lending rate +2%.

Provided that in case the State Bank of India marginal cost of lending rate (MCLR) is not in use, it shall be replaced by such benchmark lending rates which the State Bank of India may fix from time to time for lending to the general public.”

14. 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.

15. 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., **28.04.2023** is 8.70%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.70%.
16. 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;"

17. Therefore, interest on the delay payments from the complainant 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 complainant in case of delayed possession charges.

F.II. Restrain the respondent to raise any fresh demand.

18. The respondent has delayed in handing over the physical possession of the said apartment on or before the due date of possession to the

complainant and accordingly the authority in the above relief has also granted delay possession charges @10.70% p.a. from due date of possession. In the present matter the complainant has paid an amount of ₹49,20,306/- towards the total sale consideration of ₹ 53,54,325.38/- as per statement of account dated 20.07.2019 issued by the respondent with respect to the said unit, therefore the respondent is further directed to refund the amount of DPC as allowed to the complainant after adjusting the outstanding payment dues, if any.

F.III. Direct the respondent to get the occupation certificate and immediately handover the legal physical possession of unit in habitable condition with all amenities mentioned in brochure.

19. The respondent promoter has not obtained the OC for the subject unit till date. The issuance of occupational certificate by the competent authority in itself is a proven fact that the promoter has sought all necessary governmental clearances regarding infrastructural and other facilities including road, water, sewerage, electricity, environmental etc. as these clearances are preconditions for grant of OC. In such situation condition the authority cannot direct the respondent promoter to offer the possession within 1 month as for a valid offer of possession OC is a prerequisite. Therefore, respondent promoter is directed to offer the possession of the subject unit complete in all sense as mentioned in the brochure once the OC for the same has been obtained by the competent authority.

F.IV. Request the authority to pass the order for forensic audit.

20. The said relief has not been pressed upon by the counsel for the complainant during the course of hearing.

F.V. Direct the respondent to quash the one-sided clauses mentioned in BBA.

21. The complainants have not mentioned one sided clause particularly in its complaint except from the interest charged by the respondent on delayed payment @ 24% p.a. The explanation regarding this is already provided in the relief no. 1.

F.VI. Pass an order for payment of GST levied upon the complainants and taken the input credit by builder.

22. In this context, attention of the authority was drawn to the fact that the legislature while framing the GST law specifically provided for anti-profiteering measures as a check and to maintain the balance in the inflation of cost on the product/services due to change in migration to a new tax regime i.e. GST, by incorporating section 171 in Central Goods and Services Tax Act, 2017/ Haryana Goods and Services Tax Act, 2017, the same is reproduced herein below:

"Section 171. (1) Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices."

23. The intention of the legislature was amply clear that the benefit of tax reduction or 'Input Tax Credit' is required to be passed onto the customers in view of section 171 of HGST/CGST Act, 2017. As per the above said provisions of the Act, it is mandatory for the respondent to

pass on the benefits of 'Input Tax Credit' by way of commensurate reduction in price of the flat/unit. Accordingly, respondent should reduce the price of the unit/consideration to be realized from the buyer of the flats commensurate with the benefit of ITC received by him.

24. For the projects where the due date of possession was/is after 01.07.2017 i.e., date of coming into force of GST, the builder is entitled for charging GST, but builder has to pass the benefit of input tax credit to the buyer. That in the event the respondent-promoter has not passed the benefit of ITC to the buyers of the unit which is in contravention to the provisions of section 171(1) of the HGST Act, 2017 and has thus committed an offence as per the provisions of section 171 (3A) of the above Act. The allottee shall be at liberty to approach the State Screening Committee Haryana for initiating proceedings under section 171 of the HGST Act against the respondent-promoter. The concerned SGST Commissioner is advised to take necessary action to ensure that the benefit of ITC is passed on to the allottee in future. Section 171 in Central Goods and Services Tax Act, 2017/ Haryana Goods and Services Tax Act, 2017 is produced as under:

"Section 171. (1) Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices."

25. The final tax liability is to be re-fixed after considering the benefit u/s 171 of the SGST/CGST Act. However, the respondent-promoter shall not recover the amount charged towards GST from the allottee till the final calculation by the profiteering committee is provided and shall be

payable only till the due date of possession subject to the decision and calculation of the profiteering committee.

F.VII. Direct the respondent to quash the club charges, STP Charges, Electric meter charges.

• **Club Membership Charges**

26. The complainants are also seeking refund of the club membership charges on account of non-completion of the club facility.
27. The authority observes that the complainants had agreed to pay club membership fees excluding of the basic sale consideration of the unit. An amount of ₹ 75,000/- has been paid by the complainant to the respondent as per statement of account attached with the offer of possession for fit outs dated 20.07.2019. While deciding the issue of club membership charges in **CR/3203/2020 titled as Vijay Kumar Jadhav Vs. M/s BPTP Limited and anr.** decided on 26.04.2022, the authority has observed as under:

"79. The authority concurs with the recommendation made by the committee and holds that the club membership charges (CMC) shall be optional. The respondent shall refund the CMC if any request is received from the allottee. Provided that if an allottee opts out to avail this facility and later approaches the respondent for membership of the club, then he shall pay the club membership charges as may be decided by the respondent and shall not invoke the terms of flat buyer's agreement that limits CMC to Rs.1,00,000/-."

28. In view of the above, the authority holds that the club membership charges (CMC) shall be optional. The respondent shall refund the CMC if any request is received from the complainants-allottee. Provided that if they opt out to avail this facility and later approaches the respondent for membership of the club, then they shall pay the club membership



charges as may be decided by the respondent and shall not invoke the charges mentioned in statement of accounts that limits CMC to ₹ 75,000/-.

- **Electric Meter Charges**

29. This issue has already been decided by the authority in **CR/4031/2019 titled as Varun Gupta Vs. Emaar MGF Land Ltd.** wherein the authority observed that the promoter will be entitled to recover the actual charges paid to the concerned department from the complainant on pro-rata basis on account of electricity connection, sewerage connection and water connection, etc., i.e., depending upon the area of the flat allotted to the complainant vis-à-vis the area of all the flats in this particular project. The complainant will also be entitled to proof of such a payment to the concerned department along with a computation proportionate to the allotted flat, before making payment under the aforesaid head.

- **STP Charges**

30. This issue has already been decided by the authority in **CR/4031/2019 titled as Varun Gupta Vs. Emaar MGF Land Ltd.** wherein the authority observed that the facilities like STP, ESS, guard room, panel room, BW, etc. area can either be considered as a part of the services in the apartment therefore, not chargeable at all, or if there is a provision in the agreement for charging extra for these facilities, then the actual total cost incurred divided proportionately amongst all the apartments, and not at the rate per sq. ft. of the covered area. The agreement made between the parties in regard to these facilities is rather vague. The

respondent should have precisely defined the area to be calculated for such facilities and also the rates chargeable for the same. Since costing of these facilities has not been defined properly and they now have to be interpreted in a reasonable manner. This authority, therefore, determines that the actual cost incurred on these facilities shall be worked out and that the actual cost shall be divided amongst all apartments, and the proportionate actual cost along with 15% margin shall be charged from each of the allottee and complainants. The areas of such facilities cannot be allowed to be charged at the same rate as the carpet area of the apartment. Applying the above principles on the facts of each of the captioned complaint, the respondent shall demand payment for the super area.

31. 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 29 of the agreement executed between the parties on 05.07.2012, the possession of the subject apartment was to be delivered within 36 months from the date of execution of agreement. The period of 36 months expired on 05.07.2015. 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 05.01.2016. The respondent has not yet offered the possession of the subject apartment. 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 allottee shall be paid, by the promoter, interest for every month of delay from due date of possession i.e., 05.01.2016 till the actual handing over of possession of unit or 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.

(Note: it has been inadvertently mentioned in the zimni order dated 28.04.2023 that DPC is allowed @10.70% from the due date of possession till handing over of possession plus 2 months after obtaining occupation certificate. The same has been corrected in the detailed order.)

G. Directions of the authority

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

- i. The respondent is directed to handover the physical possession of the unit along with the interest at the prescribed rate of 10.70% p.a. for every month of delay from the due date of possession i.e., 05.01.2016 till the actual handing over of possession or receipt of OC plus two months whichever is earlier.
- ii. The arrears of such interest accrued from 05.01.2016 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 complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
 - iv. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e., 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.
 - v. The respondents 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.
33. Complaint stands disposed of.
34. File be consigned to registry.


(Sanjeev Kumar Arora)

Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 28.04.2023