

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

**Order reserved on: 26.04.2023**

**Date of  
pronouncement: 19.07.2023**

<b>NAME OF THE BUILDER</b>		<b>ANSAL HOUSING 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/4680/2022	Uma Vijay & Tanuj Vijay V/s Ansal Housing Ltd.	Shri Garvit Gupta Shri. Amandeep Kadyan
2	CR/4684/2022	Uma Vijay & Nishant Vijay V/s Ansal Housing Ltd.	Shri Garvit Gupta Shri. Amandeep Kadyan
3	CR/5196/2022	Madhu Gupta V/s Ansal Housing Ltd.	Shri. Abhay Jain Shri. Amandeep Kadyan

**CORAM:**

Shri Ashok Sangwan

**Member**

**ORDER**

1. This order shall dispose of all the 3 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:

<b>Project Name and Location</b>	<b>ANSAL HOUSING LTD "ANSAL HEIGHTS 86" Sector-86, Gurugram.</b>		
<b>Possession Clause: - 31</b>	<p><i>"The developer shall offer possession of the unit any time, <b>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</b> subject to timely payment of all dues by buyer and subject to force majeure circumstances as described in clause 32. Further, there shall be <b>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.</b>"</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 ( <b>Note:</b> 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</b>	<b>CR/4680/2022 Uma Vijay &amp; Tanuj Vijay V/s</b>	<b>CR/4684/2022 Uma Vijay &amp; Nishant Vijay</b>	<b>CR/5196/2022 Madhu Gupta</b>

	<b>Ansal Housing Ltd.</b>	<b>V/s Ansal Housing Ltd.</b>	<b>V/s Ansal Housing Ltd.</b>
<b>Reply status</b>	27.09.2022	27.09.2022	25.11.2022
<b>Unit no.</b>	D-1003 [pg. 32 of complaint]	D-1002 [pg. 34 of complaint]	F-0902 [pg. 40 of complaint]
<b>Date of apartment buyer agreement</b>	15.10.2012 [pg. 29 of complaint]	15.10.2012 [pg. 31 of complaint]	17.09.2013 [pg. 37 of complaint]
<b>Offer of possession for fit outs</b>			04.07.2022 [pg. 63 of complaint]
<b>Total Consideration / Total Amount paid by the complainant(s)</b>	<b>TSC: ₹ 77,04,701.25/-</b> <b>AP: ₹ 76,23,296/-</b>	<b>TSC: ₹ 77,04,606.25/-</b> <b>AP: ₹ 76,23,293/-</b>	<b>TSC: ₹ 62,27,426.50/-</b> <b>AP: ₹ 61,44,367.16/-</b>

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/4680/2022 Uma Vijay & Tanuj Vijay V/s Ansal Housing 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/4680/2022 Uma Vijay & Tanuj Vijay V/s Ansal Housing 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.	D-1003 [page 32 of complaint]
9.	Unit area admeasuring	1895 sq. ft. super area
10.	Date of execution of builder buyer agreement	15.10.2012 [page 29 of complaint]

11.	Possession clause	<p><b>31.</b></p> <p><i>The developer shall offer possession of the unit any time, <b>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</b> subject to timely payment of all dues by buyer and subject to force majeure circumstances as described in clause 32. Further, there shall be <b>a grace period of 6 months allowed to the developer over and above the period of 42 months</b> as above in offering the possession of the unit."</i></p> <p><i>(Emphasis supplied)</i></p> <p>[page 37 of complaint]</p>
12.	Date of commencement of construction as per customer ledger dated 02.03.2022 at pg. 102 of complaint	01.10.2013
13.	Due date of possession	<p>01.10.2017</p> <p><b>[Note: Due date calculated from date of commencement of construction i.e., 01.10.2013 being later. Grace period allowed being unqualified]</b></p>
14.	Sale consideration as per BBA at pg. 45 of complaint	₹ 76,22,354/-



15.	Amount paid by the complainant as per customer ledger dated 02.03.2022 at pg. 101 of complaint	₹ 76,23,296/-
16.	Occupation certificate	Not yet obtained
17.	Offer of possession	Not offered

**B. Facts of the complaint**

8. The complainants have made the following submissions in the complaint: -
- a. That the respondent offered for sale units in a group housing complex known as 'Ansal Heights' which claimed to comprise of multi-storied apartments, residential units, car parking spaces, recreational facilities, gardens etc. on a piece and parcel of land situated in Sector 86, Gurugram, Haryana. The respondent also claimed that the DTCP, Haryana, had granted license bearing no. 48 of 2011 on a land area of about 12.843 acres in Village Nawada, Fathepur, Gurugram to its associates companies for development of a group housing colony in accordance with the provisions of the Haryana Development and Regulation of Urban Areas Act, 1975 and Rules made thereunder in 1976.
  - b. That the complainants received a marketing call from the office of respondent in the month of January, 2012 for booking in residential project of the respondent, 'Ansal Heights, situated at Sector 86, Gurugram. The complainants had also attracted towards the aforesaid project on account of publicity given by the respondent through various means like various brochures, posters, advertisements etc.

The complainants visited the sales gallery and consulted with the marketing staff of the respondent. The marketing staff of the respondent painted a very rosy picture of the project and made several representations with respect to the innumerable world class facilities to be provided by the respondent in their project. The marketing staff of the respondent also assured us of timely delivery of the unit.

- c. That the complainants, induced by the assurances and representations made by the respondent, decided to book a residential unit in the project of the respondent as the complainants required the same in a time bound manner for their own use and occupation and of their family members. This fact was also specifically brought to the knowledge of the officials of the respondent who confirmed that the possession of the apartment to be allotted to the complainants would be positively handed over within the agreed time frame. The complainants signed several blank and printed papers at the instance of the respondent who obtained the same on the ground that the same were required for completing the booking formalities. The complainants were not given a chance to read or understand the said documents and they signed and completed the formalities as desired by the respondent.
- d. That the complainants had made the payment of ₹ 6,00,000/- at the time of booking vide cheque no. 0022334 on 26.02.2012 and the respondent had issued a receipt dated 28.02.2012 bearing no. 495696. Similarly, the complainants also made payments of ₹ 3,30,899/- vide cheque no. 002602 dated 07.03.2012 and ₹ 6,24,500/- vide cheque no. 002605 on 09.04.2012 and the respondent accordingly issued receipts

bearing no. 496960 dated 12.03.2012 and 501131 dated 14.04.2012 respectively. The complainants also made the payment of ₹ 5,00,000/- vide cheque no. 457846 dated 10.04.2012. Vide allotment letter dated 30.04.2012, the respondent allotted a unit bearing no. D-1003 admeasuring 1895 sq. ft. It is pertinent to mention herein that at the time of booking and allotment, the respondent had calculated the Net basic sale price @ ₹ 3196/- per sq. ft. After the allotment of the unit by the respondent, the complainants vide cheques no. 614882 dated 10.05.2012 again made the payment of ₹ 1,25,500/-. Payments towards all the instalment demands sent by the respondent were made by the complainants strictly as per the terms of the payment plan.

- e. That moreover the fact that the respondent was in a completely dominant position and wanted to deliberately exploit the same at the cost of the innocent purchasers including the complainants is further evident from clause 1 of the agreement wherein the respondent completely altered the rate at which the basic sale price was calculated. It is submitted that as per the allotment letter, basic sale price was calculated at the rate of ₹ 3196/- and was ₹ 60,56,704.25/-. However, vide clause 1 of the agreement, the respondent unilaterally increased the rate from ₹ 3196/- to ₹ 3611.62/- and a result the basic sale price was increased from ₹ 60,56,704.25/- to ₹ 68,44,025/-. It is pertinent to mention herein that as per the terms of the agreement, the total sale consideration of the unit was ₹ 68,93,579/- which included the preferential location charges of ₹ 2,36,875/-.



- f. That the above stated provisions of the apartment buyer's agreement besides other similar one-sided provisions are on the face of it highly illegal, absurd, unilateral, arbitrary, unconscionable and not valid. The legislature has promulgated the Real Estate (Regulation and Development) Act, 2016 to balance the bargaining power of the allottees who have been disadvantaged by the abuse of the dominant position of the developers. A bare perusal of the above clauses highlights the one-sided arbitrary agreement, and the abuse of dominant position is all pervasive in the terms and conditions of the agreement executed by the respondent vide various clauses imposing all the liabilities on the complainants, while conveniently relieving itself from all obligations on its part.
- g. That the complainants made vocal objections to the arbitrary and unilateral clauses of the apartment buyer's agreement to the respondent. The complainants repeatedly requested the respondent for execution of an apartment buyer agreement with balanced terms. However, during such discussions, the respondent summarily rejected the bonafide request of the complainants and stated that the agreement terms were non-negotiable and would remain as they were. The respondent/ promoter refused to amend or change any term of the pre-printed apartment buyer agreement and further threatened the complainants to forfeit the previous amounts paid by them if further payments are not made. It is pertinent to mention herein that the complainants had made payment of approximately more than ₹ 21.5 lacs before the execution of the agreement. Since the complainants had already parted with a considerable amount

amounting to more than 30% of the sale consideration, they were left with no other option but to accept the lopsided and one-sided terms of the apartment buyer's agreement. Since the complainants had duly paid a huge amount out of their hard-earned money, they felt trapped and had no other option but to sign the dotted lines. Hence the apartment buyer agreement dated 15.10.2012 was executed.

- h. That the complainants have been duped of her hard-earned money paid to the respondent regarding the apartment in question. The complainants requested the respondent to hand over the possession of the allotted unit to them, but the respondent has been dilly-dallying the matter. The complainants have been running from pillar to post and have been mentally and financially harassed by the conduct of the respondent. It is pertinent to mention herein that to further mislead the complainants, the respondent has been indulging in the practice of sending baseless and false newsletters containing the so-called construction status of the project. The respondent sent one such newsletter in December 2021 wherein the respondent stated that the finishing work of Tower D i.e., where the unit allotted to the complainants is located is in full swing and that the target for completion is in December 2022.
- i. That due to the fault of the respondent, the complainants have been deprived of roof over their head for a long time and have suffered very badly. The respondent has continuously been misleading the complainants by giving incorrect information and assurances that it would hand over the possession to the complainants very soon. It is pertinent to mention herein that the respondent in blatant violation of

law, unilaterally sent a draft settlement agreement containing terms absolutely in favour of the respondent. The respondent in the said draft settlement agreement admitted that it has not been able to finish the construction of the unit as per clause 31 of the agreement and that the delay in handing over the possession of the unit was beyond the period of 42 months from the date of execution of the agreement. Furthermore, vide the said draft settlement agreement, the respondent wants to unilaterally extend the completion period up to 30<sup>th</sup> September 2022. It is pertinent to mention herein that the fact that the respondent is continuing with its illegal acts is evident from the fact that instead of clarifying about the possession, the respondent only mentioned about the completion of the construction. Furthermore, vide clause 13 of the said draft settlement agreement, the respondent has stated that it would obtain the occupation certificate by March 2023. Moreover, the respondent has vide clause 8.1 of the agreement has offered the delay compensation @Rs. 90/- per sq. ft. as a lump sum amount. The said draft settlement agreement is not at all acceptable to the complainants and the respondent cannot be allowed to misuse its dominant position by compelling the complainants to sign the draft settlement agreement.

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

9. The complainants have sought following relief(s)
  - a. Direct the respondent to pay delay possession charges and handover the physical possession of the unit.
  - b. Restrain the respondent from compelling the complainants to sign the settlement agreement.

- c. Direct the respondent to refund the labour cess amount of ₹ 34,110/-.
- d. Pass an order imposing penalty on the builder on account of various defaults and illegalities under RERA Act,2016 and the same be ordered to be paid to the complainants.

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. That the complainants had approached the answering respondent for booking a flat bearing no. D-1002 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 15.10.2012 was signed between the parties.
- b. That even if the complaint is admitted being true and correct, the agreement which was signed in the year 2012 without coercion or any duress cannot be called into 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 in the 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 Commission in order to alter the penalty clause by virtue of this complaint more than 6 years after it was agreed upon by both parties.

- c. That the respondent had in due course of time obtained all necessary approvals from the concerned authorities. It is submitted that the permit for grant of permissions for disposal of mineral extracted incidental to development activities was obtained on 14.04.2014. Similarly, the approval for obtaining a firefighting scheme was obtained by the respondents on 24.11.2015. 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.
- d. That the answering respondent has adequately explained the delay and the same has been acknowledged by the complainant. It is submitted that the delay has been caused 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 the 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 in addition to the covid 19 pandemic as the causes which contributed to the stalling of the project at crucial junctures for considerable spells.

- e. 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.
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 relief sought by the complainants.**

**F.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.**

17. In the present complaint, the complainants intend 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) 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) 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)*

18. 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."***

19. 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 favor 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.

20. **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.
21. 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.

22. **Admissibility of delay possession charges along with prescribed rate of interest:** The complainants are seeking delay possession charges for the delay in handing over the possession at the prescribed rate of interest. However, the allottees intend to continue with the project and are seeking delay possession charges 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.*

23. 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.

24. 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., **19.07.2023** is **8.70%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.70%**.
25. 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 15.10.2012, the possession of the subject apartment was to be delivered 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. 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 not issued a letter for possession till date. 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.
26. 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.

**F.II. Restrain the respondent from compelling the complainants to sign the settlement agreement.**

27. .

**F.III. Direct the respondent to handover the physical possession of the unit.**

28. 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.

**F.IV. Direct the respondent to refund the labour cess amount of ₹ 34,110/-**

29. Labour cess is levied @ 1% on the cost of construction incurred by an employer as per the provisions of sections 3(1) and 3(3) of the Building and Other Construction Workers' Welfare Cess Act, 1996 read with Notification No. S.O 2899 dated 26.9.1996. It is levied and collected on the cost of construction incurred by employers including contractors under specific conditions. Moreover, this issue has already been dealt with by the authority in complaint no.962 of 2019 titled **Mr. Sumit Kumar Gupta and Anr. Vs Sepset Properties Private Limited** wherein it was held that since

labour cess is to be paid by the respondent, as such no labour cess should be charged by the respondent. The authority is of the view that the allottee is neither an employer nor a contractor and labour cess is not a tax but a fee. Thus, the demand of labour cess raised upon the complainant is completely arbitrary and the complainant cannot be made liable to pay any labour cess to the respondent and it is the respondent builder who is solely responsible for the disbursement of said amount. Accordingly, the respondent is directed to refund the amount taken by the respondent on account of labour cess.

**F.V. Pass an order imposing penalty on the builder on account of various defaults and illegalities under RERA Act,2016 and the same be ordered to be paid to the complainants.**

30. 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.
31. The following reliefs in addition to the above reliefs are being sought by the complainants in other two complaints:

**F.VI. Adjust the unjustified interest amount of ₹ 62,727/- collected from complainant for delay payments.**

32. 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;"*

33. 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. In the present matter the respondent issued offer of possession for fit outs dated 04.07.2022 wherein the respondent has charged delay payment interest for an amount of ₹ 44,216.62 and according to point 7 of the notes of the letter it is clearly mentioned that the interest is calculated @ SBI MCLR as applicable from time to time plus 2% p.a. Accordingly the respondent is right in charging the interest on delay payments as no documentary proof is provided by the complainant in lieu of the interest charged more than the prescribed rate of interest.

**F.VII. Revoke the illegal and unlawful demand of ₹ 11,01,104/- raised by the respondent towards offer of possession for fit outs dated 04.07.2022.**

**F.VIII. Revoke the illegal and unlawful demand for maintenance charges of ₹ 1,79,454/- raised by the respondent towards offer of possession for fit outs dated 04.07.2022.**

34. In the present matter the respondent while issuing the offer of possession for fit outs has charged certain amount which sums up to ₹ 11,01,104/-

under certain heads. Before giving findings upon the amounts charged under different heads, the question posed before the authority is whether the demand raised vide letter dated 04.07.2022 are in consonance with the terms of the agreement. In the present matter, the agreement was executed inter se parties on 17.09.2013 wherein both the parties agreed to a payment plan at annexure-A of the BBA according to which the last demand was to be raised by the respondent on account of "*on offer of poss. with allied charges*". It is observed that the respondent has arbitrarily and unilaterally raised the last demand of ₹ 11,01,104/- vide letter of offer of possession for fit outs. As per the agreed payment plan, such demand was not to be raised by the respondent. Moreover, as the occupation certificate for the said project has also not been received by the respondent till date accordingly, this letter dated 04.07.2022 of offer of possession for fit outs is invalid per se. Therefore, any charges imposed in the said letter are also invalid and are accordingly liable to be quashed.

**G. Directions of the authority**

35. 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.

36. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.





37. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.
38. Files be consigned to registry.

(Ashok Sangwan)  
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 19.07.2023