



HARERA
GURUGRAM

Complaint No. 962 of 2022 and
ors.

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

Date of decision: 26.07.2023

NAME OF THE BUILDER		ANSAL HOUSING LTD. (Formerly known as ANSAL HOUSING & CONSTRUCTION LTD.)	
PROJECT NAME		ANSAL HEIGHTS 86	
S. No.	Case No.	Case title	APPEARANCE
1	CR/962/2022	Bhim Sain & Dinesh Kumar V/s Ansal Housing Ltd. & Samyak Projects Pvt. Ltd.	Smt. Priyanka Agarwal Shri. Amandeep Kadyan
2	CR/963/2022	Sneh Lata V/s Ansal Housing Ltd. & Samyak Projects Pvt. Ltd.	Smt. Priyanka Agarwal Shri. Amandeep Kadyan
3	CR/964/2022	Rajesh Ralhan V/s Ansal Housing Ltd. & Samyak Projects Pvt. Ltd.	Smt. Priyanka Agarwal Shri. Amandeep Kadyan
4	CR/969/2022	Raj Bahadur V/s Ansal Housing Ltd. & Samyak Projects Pvt. Ltd.	Smt. Priyanka Agarwal Shri. Amandeep Kadyan
5	CR/973/2022	Deepak Dagar V/s Ansal Housing Ltd. & Samyak Projects Pvt. Ltd.	Smt. Priyanka Agarwal Shri. Amandeep Kadyan
6	CR/4832/2022	Vikram Sekhri V/s Ansal Housing Ltd. & Samyak Projects Pvt. Ltd.	Smt. Priyanka Agarwal Shri. Amandeep Kadyan

CORAM:

Shri Ashok Sangwan

Member

ORDER

1. This order shall dispose of all the 6 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 LTD "ANSAL HEIGHTS 86" Sector-86, Gurugram.
Possession Clause: - 31	<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> (Emphasis supplied)
Occupation certificate: - Not obtained	
Due date:	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)



Note: Grace period is allowed being unqualified & included while computing due date of possession.

Complaint No., Case Title	Unit no.	Date of apartment buyer agreement	Offer of possession for fit outs	Sale Consideration (SC)/ Total Amount paid by the complainant(s)(AP)
CR/962/2022	F-0704, 7 th floor, Tower F [page 23 of complaint]	24.09.2012 [page 20 of complaint]	Not offered	SC- ₹ 63,53,200/- AP- ₹ 59,42,167/-
CR/963/2022	H-1003, 10 th floor, Tower H [page 24 of complaint]	16.10.2012 [page 21 of complaint]	Not offered	SC- ₹ 52,29,044/- AP- ₹ 52,15,174/-
CR/964/2022	FH-0502, 5 th floor, Tower F [page 24 of complaint]	05.10.2012 [page 21 of complaint]	Not offered	SC- ₹ 55,00,384/- AP- ₹ 61,32,731/-
CR/969/2022	F-0404, 4 th floor, Tower F [page 24 of complaint]	17.10.2012 [page 21 of complaint]	Not offered	SC- ₹ 63,27,433/- AP- ₹ 63,29,282/-
CR/973/2022	J-0706, 7 th floor, Tower J [page 25 of complaint]	20.03.2013 [page 22 of complaint]	Not offered	SC- ₹ 74,44,548/- AP- ₹ 56,12,089/-
CR/4832/2022	E-0902, 9 th floor, Tower E [page 25 of complaint]	01.06.2013 [page 22 of complaint]	Not offered	SC- ₹ 63,88,507/- AP- ₹ 63,37,717/-

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/962/2022 Bhim Sain & Dinesh Kumar V/s Ansal Housing Ltd. & Samyak Projects Pvt. 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/962/2022 Bhim Sain & Dinesh Kumar V/s Ansal Housing Ltd. & Samyak Projects Pvt. 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.	F-0704, 7 th Floor, Tower F [page 23 of complaint]
9.	Unit area admeasuring	1690 sq. ft. super area
10.	Date of execution of builder buyer agreement with complainant 1	24.09.2012 [page 20 of complaint]
Note: Further transferred in name of both complainant no. 1& 2. Endorsement date not known.		
11.	Possession clause	31. <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</i>



		42 months as above in offering the possession of the unit.” (Emphasis supplied) [page 28 of complaint]
12.	Date of commencement of construction as per customer ledger dated 09.04.2022 at pg. 43 of complaint	01.10.2013
13.	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]
14.	Sale consideration as per BBA at pg. 43 of complaint	₹ 63,53,200/-
15.	Amount paid by the complainant as per customer ledger dated 09.04.2022 at pg. 39 of complaint	₹ 59,42,167/-
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 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 be 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 48 of 2011 to Resolve Estate Pvt. Limited (Confirming Party -1) this company was transferred his rights to Optus Corona Developers Pvt. Ltd. (Confirming Party-2) this company was transferred his rights to Samyak Projects Pvt. Ltd (Confirming Party-3). At last confirming party -3 makes another arrangement to joint with respondents those all arrangements create doubt, suspicion, M/S Ansal Housing & Construction Ltd. Have legal right to collect money from allottees against the F-0704, 07th Floor, Tower-F, "Ansal Heights, 86", Gurugram and have legal & valid license to develop this project.

- b. That the based-on promises and commitment made by the respondent, complainant booked a 3 BHK flat admeasuring 1690 Sq. Ft., along with one covered car parking in the unit no. F-0704, 07th Floor, Tower-F in residential project "Ansal Heights 86", Sector 86, Gurugram, Haryana. The initial booking amount of ₹ 4,00,000/- (Including Tax) (Rupees Four Lakhs Only) was paid through cheque no. 186920 dated 05.09.2011.
- c. That the respondent to dupe the complainant in their nefarious net even executed flat buyer agreement signed between M/s Ansal Housing Ltd. & M/s Samyak Projects Pvt Ltd and Mr Dinesh Kumar dated 24.09.2012 and finally respondent endorsed the said agreement in Favor of complainants (Mr Bhim Sain & Mr Dinesh Kumar) through transfer letter. By this endorsement complainants became legal



allottee and purchaser of the said property. 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 due to which they were able to extract huge amount of money from the complainants.

- d. That it is pertinent mentioned here that according to the statement the complainants paid a sum of ₹ 59,42,167/- to the respondent till date and before this builder was demanded more than 90% amount without doing appropriate work on the said project, which is illegal and arbitrary.
- e. That as the delivery of the apartment was due on March 2016 which was prior to the coming into of force of the GST Act, 2016 i.e., 01.07.2017, it is submitted that the complainant is 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 complainant but just reversed builder collect the GST from complainant and enjoy the input credit as a bonus, this is also matter of investigation.

C. Relief sought by the complainant:

9. The complainants have sought following relief(s)
- Direct the respondent to pay delay possession charges and handover the physical possession of the unit.
 - Pass order for forensic audit of the project.
 - Direct the respondent to quash one sided clause from BBA.
 - Pass an order for payment of GST amount levied upon the complainant and take the benefit of input credit by builder.



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 to book a flat bearing no. F-0704 for 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 24.09.2012 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. Further in the judgement of the Hon'ble Supreme Court of India in the cases of Newtech Promoters and Developers Private Limited Vs State of U.P. and Ors. 2021-2022(1) RCR (c), 357 reiterated in case of M/s Sana Realtors Private Limited & other Vs Union of India & others SLP (Civil) No. 13005 of 2020 decided on 12.05.2022. it was observed:

25. The unqualified right of the allottee to seek refund referred Under Section 18(1)(a) and Section 19(4) of the Act is not dependent on any contingencies or stipulations thereof. It appears that the legislature has consciously provided this right of refund on demand as an unconditional absolute right to the allottee, if the promoter fails to give possession of the apartment, plot or building within the time stipulated under the terms of the agreement regardless of unforeseen events or stay orders of the Court/Tribunal, which is in either way not attributable to the allottee/home buyer, the promoter is under an obligation to refund the amount on demand with interest at the rate prescribed by the State Government including compensation in the manner provided under the Act with the proviso that if the allottee does not wish to withdraw from the project, he shall be entitled for interest for the period of delay till handing over possession at the rate prescribed.

23. The promoter is responsible for all obligations, responsibilities, and functions under the provisions of the Act of 2016, or the rules and regulations made thereunder or to the allottee as per agreement for sale under section 11(4)(a).
24. **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.

25. 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.
26. 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., 26.07.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.

F.II. Direct the respondent to handover the physical possession of the unit.

27. 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.III. Direct the respondent to quash one sided clause from BBA.

28. The complainants have not mentioned one sided clause particularly in its complaint except from clause 37 of the said agreement which 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. The explanation regarding this is already provided in the relief no. 1.

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

29. The complainant has neither pressed the said relief in its pleadings nor does the counsel argued during the course of hearing regarding the said issue. Therefore, the authority cannot deliberate on this relief.

F.V. Pass an order for payment of GST amount levied upon the complainant and taken benefit of input credit by builder.

30. The authority has decided this issue in the complaint bearing no. 4031 of 2019 titled as Varun Gupta V/s Emaar MGF Land Ltd. wherein the authority has held that for the projects where the due date of possession was prior to 01.07.2017 (date of coming into force of GST), the respondent/promoter is not entitled to charge any amount towards GST from the complainant/allottee as the liability of that charge had not become due up to the due date of possession as per the buyer's agreements.
31. In the present complaint, the possession of the subject unit was required to be delivered by 01.10.2017 and the incidence of GST came into operation thereafter on 01.07.2017. So, the respondent is entitled to charge GST from the complainants/allottees as the liability of GST had become due up to the due date of possession as per the said agreement.
32. The following reliefs in addition to the above reliefs are being sought by the complainants in CR/963/2022 complaint:



F.VI. Direct the respondent to quash escalation cost, firefighting charge & external electrification charges.

33. 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.
34. 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 24.09.2012, 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.
35. 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 plus two months or handing over of possession after receipt of OC whichever is earlier, at prescribed rate i.e., 10.75 % p.a. as per proviso to section 18(1) of the Act read with rule 15 of the rules.

G. 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):
- 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 10.75% p.a. for every month of delay from due date of possession i.e., 01.10.2017 till the offer of the possession plus two months or handing over of possession after receipt of OC whichever is earlier.
 - 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.
 - 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., 10.75% 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.

HARERA
GURUGRAM

(Ashok Sangwan)
Member

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 26.07.2023