

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

Complaint no.	:	4597 of 2021
First date of hearing:		07.01.2022
Order Reserve On	:	21.04.2023
Order Pronounce On:		21.07.2023

<b>Puneet Singh</b> R/o: H. No. 1081, Sector-71, Mohali, Punjab - 160071	<b>Complainant</b>
Versus	
<b>M/s Ireo Victory Valley Private Limited</b> Office at : - 5 <sup>th</sup> Floor, Orchid Centre, Golf Course Road, Sector-53, Gurgaon-122002, Haryana	<b>Respondent</b>
<b>CORAM:</b>	
Shri Sanjeev Kumar Arora	<b>Member</b>
<b>APPEARANCE:</b>	
Shri Rishabh Kanojiya	Advocate for the complainant
Shri M.K Dang	Advocate for the respondent

**ORDER**

1. The present complaint dated 09.12.2021 has been filed by the complainant/allottee 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 under the provision of the Act or the rules and regulations made thereunder 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 complainant, date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

S. No.	Heads	Information
1.	Project name and location	"Ireo Victory Valley" Golf Course Extension Road, Sector- 67, Gurugram
2.	Licensed area	24.6125 acres
3.	Nature of the project	Group Housing Colony
4.	DTCP license no.	244 of 2007 dated 26.10.2007 valid upto 25.10.2017
	Licensee	KSS properties Pvt. Ltd. and High responsible realtors Pvt. Ltd.
5.	RERA registered/not registered	Not registered
6.	Unit no.	302, 3rd Floor, Tower/block-D(03) (annexure P-1 on page no. 30 of complaint)
7.	Unit measuring	2676 sq. ft. (annexure P-1 on page no. 30 of complaint)
8.	Date of booking	12.05.2010 (annexure R-2 on page no. 45 of reply)
9.	Allotment Letter dated	18.06.2010 (annexure P-2 on page no. 75 of complaint)

10.	Date of approval of building plan	29.11.2010 (annexure R-16 on page no. 86 of reply)
11.	Date of builder buyer's agreement	28.07.2011 (annexure P-1 on page no. 27 of complaint)
12.	Date of transfer to subsequent allottee	18.01.2012 (annexure R-12 on page no. 60 of reply)
13.	Date of fire scheme approval	28.10.2013 (annexure R-18 on page no. 93 of reply)
14.	Due date of delivery of possession	29.11.2013 (Calculated from the date of approval of building plan) Note: Grace period is not allowed.
15.	Possession clause	<b>13. POSSESSION AND HOLDING CHARGES</b> 13.3 Subject to Force Majeure, as defined herein and further subject to the allottee having complied with all its obligations under the terms and conditions of this agreement and the allottee not being in default under any part of this agreement including but not limited to the timely payment of the total sale consideration, Stamp Duty and other charges and also subject to the allottee having complied with all the formalities or documentation as prescribed by the company, the company

		<p>proposes to hand over the possession of the said apartment to the allottee within a period of 36 months from the date of approval of the building plan and/or fulfilment of the preconditions imposed thereunder (commitment Period). The allottee further agrees and understands that the company shall additionally be entitled to a period of 180 days (grace Period), after the expiry of the said commitment Period to allow for unforeseen delays in obtaining the occupation certificate etc., from the DTCP under the Act, in respect of the Ireo-Victory Valley project.</p>
16.	Total consideration	Rs. 1,86,19,216/- (as per statement of account on page no. 101 of reply)
17.	Total amount paid by the complainant	Rs. 1,62,59,536/- (as per statement of account on page no. 101 of reply)
18.	Occupation certificate	28.09.2017 (annexure R-20 on page no. 96 of reply)
19.	Offer of possession	17.10.2017 (annexure R-21 on page no. 124 of complaint)
20.	Handing over of possession	25.01.2018 (annexure R-22 on page no. 102)
21.	Conveyance deed	17.10.2018

	(annexure P-11 on page no. 134 of complaint)
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**B. Facts of the complaint**

The complainant has submitted as under:

3. That allotment letter dated 18.06.2010 was issued to the Shri Rajesh Harjani (one of the original allottees) by respondent in respect of the apartment.
4. That the apartment buyer's agreement dated 25.07.2011 was executed between Shri Rajesh Harjani, Shri Manoj Harjani and Shri Srichand Harjani and the respondent for allotment of apartment no. D (03)302, 3<sup>rd</sup> floor, D (03) tower admeasuring 2676 sq. ft. together with two (2) parking spaces in the project 'Ireo-victory valley' located at golf course extension road, sector 67, Gurgaon, Haryana for a total sale consideration of ₹1,66,33,225/-.
5. That later unit were duly endorsed in favour of the complainant and his mother, Mrs. Gurmeet Kaur in terms of application/affidavit dated 17.01.2012 and 19.10.2013 respectively. Consequently, the complainant and his mother became the allottees of the apartment under the apartment buyer's agreement as well as for the purposes of RERA.
6. That the apartment buyer's agreement contemplates that the project would be completed in a time bound manner by the respondent. As per clause 13.3 of the said agreement respondent was to hand over the possession of the apartment to the homebuyers within a period of 36 (thirty-six) months from the date of approval of the building plans and/or fulfilment of the pre-conditions imposed thereunder. The said clause also provided for a further grace period of 180 days after the expiry of the commitment period in case

- of unforeseen delays, for delivery of possession of the apartment to the homebuyers.
7. That further, clause 13.4 of the agreement provides that in the event of failure by respondent to offer the possession to the homebuyers by the end of the grace period, they shall be liable to pay to the homebuyers, compensation computed at the rate of Rs. 7.50 per sq. ft. of the super area i.e., 2676 sq. ft. in the present matter for every month of delay.
  8. That the respondent made regular demands for payment of amounts as postulated under the apartment buyer's agreement vide various payment requests from time to time. Such demands were regularly and without any delay, met by him, which was also duly acknowledged by them.
  9. That despite the fulfilment of their contractual obligations and adherence to the payment plan, the homebuyers were generally not apprised about the development status of the project by the respondent and often found themselves having to ask the respondent to provide them with updates being aggrieved by the severe and inordinate delay in delivery of possession of the apartment to the homebuyers, the complainant made several communications by the mode of telephone, email, etc. to respondent thereby raising the issue of such delay at several instances.
  10. That in response to emails sent by the complainant dated 29.11.2014 and 02.12.2014 inquiring about the commitment period and the expiry of the grace period, the complainant was informed vide email dated 02.12.2014 by respondent that the building plan approvals were received by them in November 2010 and that the delay compensation would be adjusted in the final installment.
  11. That subsequently, the complainant wrote to them on 01.05.2017 to inquire about possession of the apartment as well as compensation in light of the

- delay in providing possession of said apartment. Respondent vide email dated 01.05.2017, informed the complainant that the delay in delivery of possession of the apartment was on account of late receipt of fire safety approval on 28.10.2013 which was applied by them on 07.12.2010.
12. That the project was still incomplete despite being seven years and having paid substantially the entire consideration for the apartment, the complainant vide email dated 17.10.2017 expressed his dissatisfaction and enquired about the exact date when he would get the possession. In response to this email, respondent informed the complainant vide email dated 18.10.2017 that the occupation certificate for the remaining towers was received by them and that they were in the process of sending the statement of account.
  13. Thereafter, the notice of possession dated 17.10.2017 was issued to homebuyers by respondent informing that the apartment was ready for possession and requesting them to complete the formalities.
  14. That the possession of the apartment was finally delivered to the complainant on 01.02.2018 and the conveyance deed was executed on 17.10.2018.
  15. That the respondent failed to deliver the possession of the apartment by due date and as such, have violated clause 13.3 of the apartment buyer's agreement, which was an obligation of respondent under Section 11(4)(a) of RERA.
  16. That the delay compensation awarded to the homebuyers is contrary to proviso to section 18(1) of the RERA read with Rule 15 of the HRERA Rules, which prescribe that State Bank of India highest marginal cost of lending rate plus two percent i.e., 9.30% per annum would be the prescribed rate of interest to be awarded to the allottee as interest on delay in delivery of

possession for every month of delay till handing over of possession of the apartment.

17. That the rights of the homebuyers cannot be limited by the terms of the apartment buyer's agreement and are entitled to interest on delayed possession at the rate of 9.30% per annum as provided under section 18 of the RERA read with Rule 15 of the HRERA Rules.

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

18. The complainant has sought following relief(s):

(i) Direct the respondent to pay delayed possession interest for every month of delay between 17.08.2014 till the actual date of handing over possession to the complainant on 01.02.2018 at the rate prescribed by rule 15 of the HRERA Rules 2017 which is 9.30% p.a. for inordinate delay in delivery of possession of the apartment.

19. 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.**

The respondent has contested the complaint on the following grounds: -

20. That the complaint is neither maintainable nor tenable and is liable to be out-rightly dismissed. The apartment buyer's agreement was executed between the complainant and the respondent prior to the enactment of the Real Estate (Regulation and Development) Act, 2016 and the provisions laid down in the said Act cannot be applied retrospectively.
21. That there is no cause of action to file the present complaint.
22. That the complainant is estopped from filing the present complaint by his acts, omissions, admissions, acquiescences and laches.



23. That the complainant has no locus standi to file the present complaint.
24. That the complaint is bad for mis-joinder of parties.
25. That this Hon'ble Authority has no jurisdiction to adjudicate upon the present complaint.
26. That the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute i.e. clause 34 of the buyer's agreement.
27. That the original allottees after checking the veracity of the project namely, 'Ireo- Victory Valley', Gurugram had applied for allotment of an apartment vide their booking application form dated 17.05.2010.
28. That based on the said application, respondent vide its allotment offer letter dated 18.06.2010 allotted to the original allottees apartment no. D(03)302, Tower no. D , having tentative super area of 2676 sq. ft. for a sale consideration of Rs. 1,66,33,225/-. However, it is submitted that the sale consideration amount was exclusive of the registration charges, stamp duty charges, service tax and other charges which were to be paid by the complainant at the applicable stage. Accordingly, an apartment buyer's agreement was executed between the original allottees with the respondent on 25.07.2011. When the original allottees had booked the unit with the respondent, the Real Estate (Regulation and Development) Act, 2016 was not in force and the provisions of the same cannot be applied retrospectively.
29. That the original allottees were defaulters in making payment from the very inception. The respondent had raised the payment demand towards the first installment vide payment request dated 08.07.2010. However, the due

- amount was received from the original allottees only after several reminders dated 18.08.2010 and 30.09.2010.
30. That vide payment request dated 18.01.2011, respondent had raised the demand of second installment for net payable amount of Rs. 19,25,165/-. However, the same was credited towards the total sale consideration only after reminders dated 22.02.2011, 10.03.2011 and cancellation advice dated 24.03.2011 were sent by respondent.
  31. That the original allottees and the complainant thereafter signed the nomination/transfer agreement on 17.01.2012 and submitted the same to the respondent wherein the complainant admitted that all rights, title and interest of the original allottees would vest with the complainant and that he would enjoy the same subject to the obligations in the agreement. The complainant had also addressed a letter dated 18.01.2012 to respondent wherein it had acknowledged that he would be bound by all the terms and conditions of the respondent including the terms and conditions of the agreement. The complainant had also submitted an affidavit and indemnity-cum undertaking. The respondent after scrutiny of the application as well as of the documents, vide letter dated 30.01.2012 assigned all the rights of the original allottees to the complainant and all the documents were endorsed in the name of the complainant.
  32. That the complainant vide his e-mail dated 03.05.2012 requested respondent for addition of the name of his mother, Mrs. Gurmeet Kaur as the co-allottee in the unit. The respondent after scrutiny of all the documents submitted by the complainant and his mother, intimated to them about the addition of name of Mrs. Gurmeet Kaur in the unit in question.

33. That the possession of the unit was supposed to be offered to the complainant in accordance with the agreed terms and conditions of the buyer's agreement. It is submitted that clause 13.3 of the buyer's agreement and clause 35 of schedule - I of the booking application form states that '...subject to the allottee having complied with all formalities or documentation as prescribed by the company, the company proposes to offer the possession of the said apartment to the allottee within a period of 36 months from the date of approval of the building plans and/or fulfilment of the preconditions imposed thereunder (Commitment Period). The allottee further agrees and understands that the company shall be additionally be entitled to a period of 180 days (Grace Period)...'. Furthermore, the complainant had further agreed for an extended delay period of 12 months from the date of expiry of the grace period as per clause 13.5 of the apartment buyer's agreement.
34. That from the aforesaid terms of the buyer's agreement, it is evident that the time was to be computed from the date of receipt of all requisite approvals. it is pertinent to mention here that it has been specified in Sub-clause (v) of clause 17 of the approval of building plan dated 29.11.2010 of the said project that the clearance issued by the Ministry of Environment and Forest, Government of India has to be obtained before starting the construction of the project. The environment clearance for construction of the said project was granted on 25.11.2010. Furthermore, in Clause (v) of Part-B of the environment clearance dated 25.11.2010 it was stated that approval from fire department was necessary prior to the construction of the project.
35. That it is submitted that the last of the statutory approvals which forms a part of the pre-conditions was the fire scheme approval which was obtained

on 28.10.2013 and that the time period for offering the possession, according to the agreed terms of the buyer's agreement, expired only on 28.04.2018. The respondent received the occupation certificate on 28.09.2017.

36. That furthermore, respondent no.1 offered the possession of the unit to the complainant vide notice of possession dated 17.10.2017 and intimated it to complete the documentation formalities and make the payment towards the balance amount.
37. That the complainant after making complete payment have been put in possession of the said apartment vide possession letter dated 25.01.2018 and being fully satisfied with the same had executed indemnity bond cum undertaking and conveyance deed dated 17.10.2018. The complainant had conducted his own investigations and was provided with all clarifications and information regarding the project. The complainant had even acknowledged in the conveyance deed that he has taken the possession of the apartment after having inspected and after being fully satisfied and that he would not raise any objection or claim for any reason and the same would stand waived.
38. The complainant is a real estate investor who, after taking possession of the unit, wants to harass and pressurize the respondents to submit to his unreasonable demands on highly flimsy and baseless grounds. Such malafide tactics of the complainant cannot be allowed to succeed.
39. 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**

40. The respondent has raised objection regarding jurisdiction of authority to entertain the present complaint and the said objection stands rejected. The authority has complete territorial and subject matter jurisdiction to adjudicate the present complaint for the reasons given below:

### **E. I Territorial jurisdiction**

41. 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**

42. 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)(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.*

43. So, in view of the provisions of the Act quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside compensation which is to be

decided by the adjudicating officer if pursued by the complainants at a later stage.

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

**F.1 Objection regarding jurisdiction of the complaint w.r.t the apartment buyer's agreement executed prior to coming into force of the Act.**

44. The respondent submitted that the complaint is neither maintainable nor tenable and is liable to be outrightly dismissed as the buyers agreement was executed between the parties prior to the enactment of the Act and the provision of the said Act cannot be applied retrospectively.

45. The authority is of the view that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. The Act nowhere provides, nor can be so construed, that all previous agreements would be re-written after coming into force of the Act. Therefore, the provisions of the Act, rules and agreement have to be read and interpreted harmoniously. However, if the Act has provided for dealing with certain specific provisions/situation in a specific/particular manner, then that situation would be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. The numerous provisions of the Act save the provisions of the agreements made between the buyers and sellers. The said contention has been upheld in the landmark judgment of *Neelkamal Realtors Suburban Pvt. Ltd. Vs. UOI and others. (W.P 2737 of 2017) decided on 06.12.2017* which provides as under:

"119. Under the provisions of Section 18, the delay in handing over the possession would be counted from the date mentioned in the agreement for sale entered into by the promoter and the allottee prior to its registration under RERA. Under the provisions of RERA, the promoter is given a facility to revise the date of completion of project and declare the

*same under Section 4. The RERA does not contemplate rewriting of contract between the flat purchaser and the promoter...*

122. *We have already discussed that above stated provisions of the RERA are not retrospective in nature. They may to some extent be having a retroactive or quasi retroactive effect but then on that ground the validity of the provisions of RERA cannot be challenged. The Parliament is competent enough to legislate law having retrospective or retroactive effect. A law can be even framed to affect subsisting / existing contractual rights between the parties in the larger public interest. We do not have any doubt in our mind that the RERA has been framed in the larger public interest after a thorough study and discussion made at the highest level by the Standing Committee and Select Committee, which submitted its detailed reports."*

46. Further, in appeal no. 173 of 2019 titled as ***Magic Eye Developer Pvt. Ltd. Vs. Ishwer Singh Dahiya***, in order dated 17.12.2019 the Haryana Real Estate Appellate Tribunal has observed-

*"34. Thus, keeping in view our aforesaid discussion, we are of the considered opinion that the provisions of the Act are quasi retroactive to some extent in operation and will be applicable to the agreements for sale entered into even prior to coming into operation of the Act where the transaction are still in the process of completion. Hence in case of delay in the offer/delivery of possession as per the terms and conditions of the agreement for sale the allottee shall be entitled to the interest/delayed possession charges on the reasonable rate of interest as provided in Rule 15 of the rules and one sided, unfair and unreasonable rate of compensation mentioned in the agreement for sale is liable to be ignored."*

47. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the builder-buyer agreements have been executed in the manner that there is no scope left to the allottee to negotiate any of the clauses contained therein. Therefore, the authority is of the view that the charges payable under various heads shall be payable as per the agreed terms and conditions of the agreement subject to the condition that the same are in accordance with the plans/permissions approved by the respective departments/competent authorities and are not in contravention of any other Act, rules and regulations made thereunder and are not unreasonable or exorbitant in

nature. Hence, in the light of above-mentioned reasons, the contention of the respondent w.r.t. jurisdiction stands rejected.

**F.II Objection regarding complainant is in breach of agreement for non-invocation of arbitration**

48. The respondent submitted that the complaint is not maintainable for the reason that the agreement contains an arbitration clause which refers to the dispute resolution mechanism to be adopted by the parties in the event of any dispute and the same is reproduced below for the ready reference:

***"34. Dispute Resolution by Arbitration***

*"All or any disputes arising out or touching upon in relation to the terms of this Agreement or its termination including the interpretation and validity of the terms thereof and the respective rights and obligations of the parties shall be settled amicably by mutual discussions failing which the same shall be settled through reference to a sole Arbitrator to be appointed by a resolution of the Board of Directors of the Company, whose decision shall be final and binding upon the parties. The allottee hereby confirms that it shall have no objection to the appointment of such sole Arbitrator even if the person so appointed, is an employee or Advocate of the Company or is otherwise connected to the Company and the Allottee hereby accepts and agrees that this alone shall not constitute a ground for challenge to the independence or impartiality of the said sole Arbitrator to conduct the arbitration. The arbitration proceedings shall be governed by the Arbitration and Conciliation Act, 1996 or any statutory amendments/modifications thereto and shall be held at the Company's offices or at a location designated by the said sole Arbitrator in Gurgaon. The language of the arbitration proceedings and the Award shall be in English. The company and the allottee will share the fees of the Arbitrator in equal proportion".*

49. The authority is of the opinion that the jurisdiction of the authority cannot be fettered by the existence of an arbitration clause in the buyer's agreement as it may be noted that section 79 of the Act bars the jurisdiction of civil courts about any matter which falls within the purview of this authority, or the Real Estate Appellate Tribunal. Thus, the intention to render such disputes as



non-arbitrable seems to be clear. Also, section 88 of the Act says that the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force. Further, the authority puts reliance on catena of judgments of the Hon'ble Supreme Court, particularly in *National Seeds Corporation Limited v. M. Madhusudhan Reddy & Anr. (2012) 2 SCC 506*, wherein it has been held that the remedies provided under the Consumer Protection Act are in addition to and not in derogation of the other laws in force, consequently the authority would not be bound to refer parties to arbitration even if the agreement between the parties had an arbitration clause.

50. Therefore, in view of the above judgement and considering the provisions of the Act, the authority is of the view that complainant is well within right to seek a special remedy available in a beneficial Act such as the Consumer Protection Act and RERA Act, 2016 instead of going in for an arbitration. Hence, we have no hesitation in holding that this authority has the requisite jurisdiction to entertain the complaint and that the dispute does not require to be referred to arbitration necessarily. In the light of the above-mentioned reasons, the authority is of the view that the objection of the respondent stands rejected.

**G. Findings regarding relief sought by the complainant**

- (i) Direct the respondent to pay delayed possession interest for every month of delay between 17.08.2014 till the actual date of handing over possession to the complainant on 01.02.2018 at the rate prescribed by rule 15 of the HRERA Rules 2017 which is 9.30% p.a. for inordinate delay in delivery of possession of the apartment.

51. In the present complaint, the complainant intends to continue with the project and seeking delay possession charges at prescribed rate of interest on amount already paid by him as provided under the proviso to section 18(1) of the Act which reads as under:-

***"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, —*

.....

*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."*

52. The original allottee booked a unit in the project namely 'Ireo Victory Valley' and builder buyer agreement in that regard was executed on 28.07.2011. Thereafter on 18.01.2012 the unit was subsequently transferred to the complainant. As per possession clause unit was to be handed over within a period of 36 months from the date of approval of building plan or fulfilment of preconditions imposed thereunder. The occupation certificate for the project was received on 28.09.2017 and the possession of the unit was handed over on 25.01.2018. The conveyance deed was also got executed on 17.10.2018.

53. The respondent/promoter in this regard has argued that the possession of the unit was handed over on 25.01.2018 and thereafter conveyance deed has also been executed on 17.10.2018. The present complaint was filed on 09.12.2021 i.e., beyond the limitation period as it has been filed after more than 3 years so the present matter is barred by limitation.

54. The authority observed that the conveyance deed was executed on 17.10.2018 and the present complainant was filed on 09.12.2021. The period of 3 years was expired on 17.10.2021 but in view of the orders passed by the

Hon'ble Supreme Court of India Delhi regarding extension of limitation period upto 28.02.2022 in view of Covid-19 the present complaint is allowed.

55. As per possession clause 13.3 of the apartment buyer's agreement (in short, the agreement) dated 28.07.2011, provides for handing over possession and the same is reproduced below:

*"13.3 Subject to Force Majeure, as defined herein and further subject to the Allottees having complied with all its obligations under the terms and conditions of this Agreement and not having defaulted under any provision(s) of this Agreement including but not limited to the timely payment of all dues and charges including the total Sale Consideration, registration charges, stamp duty and other charges and also subject to the Allottees having complied with all formalities or documentation as prescribed by the Company, the company proposes to hand over the possession of the said apartment to the allottees within a period of 36 months from the date of approval of the Building plans and/or fulfilment of the preconditions imposed thereunder ("**Commitment Period**"). The Allottees further agrees and understands that the company shall additionally be entitled to a period of 180 days ("**Grace Period**"), after the expiry of the said Commitment Period to allow for unforeseen delays in obtaining the occupation certificate etc., from the DTCP under the Act, in respect of the Ireo-Victory Valley project."*

56. The apartment buyer's agreement is a pivotal legal document which should ensure that the rights and liabilities of both builders/promoters and buyers/allottee are protected candidly. The apartment buyer's agreement lays down the terms that govern the sale of different kinds of properties like residentials, commercials etc. between the buyer and builder. It is in the interest of both the parties to have a well-drafted apartment buyer's agreement which would thereby protect the rights of both the builder and buyer in the unfortunate event of a dispute that may arise. It should be drafted in the simple and unambiguous language which may be understood by a common man with an ordinary educational background. It should contain a provision with regard to stipulated time of delivery of possession of the apartment, plot or building, as the case may be and the right of the

buyer/allottee in case of delay in possession of the unit. In pre-RERA period it was a general practice among the promoters/developers to invariably draft the terms of the apartment buyer's agreement in a manner that benefited only the promoters/developers. It had arbitrary, unilateral, and unclear clauses that either blatantly favoured the promoters/developers or gave them the benefit of doubt because of the total absence of clarity over the matter.

57. The authority has gone through the possession clause of the agreement. 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 the complainants not being in default under any provisions of this agreements and in compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favour of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the apartment 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.

58. The respondent promoter has proposed to handover the possession of the subject apartment within a period of 36 months from the date of approval of

building plans and/or fulfilment of the preconditions imposed thereunder plus 180 days grace period for unforeseen delays beyond the reasonable control of the company i.e., the respondent/promoter.

59. On a bare reading of the clause 13.3 of the agreement, it becomes apparently clear that the possession in the present case is linked to the "fulfillment of the preconditions" which is so vague and ambiguous in itself. Nowhere in the agreement it has been defined that fulfillment of which conditions forms a part of the pre-conditions, to which the due date of possession is subjected to in the said possession clause. If the said possession clause is read in entirety the time period of handing over possession is only a tentative period for completion of the construction of the flat in question and the promoter is aiming to extend this time period indefinitely on one eventuality or the other. Moreover, the said clause is an inclusive clause wherein the "fulfilment of the preconditions" has been mentioned for the timely delivery of the subject apartment. It seems to be just a way to evade the liability towards the timely delivery of the subject apartment. According to the established principles of law and the principles of natural justice when a certain glaring illegality or irregularity comes to the notice of the adjudicator, the adjudicator can take cognizance of the same and adjudicate upon it. The inclusion of such vague and ambiguous types of clauses in the agreement which are totally arbitrary, one sided and totally against the interests of the allottees must be ignored and discarded in their totality. In the light of the above-mentioned reasons, the authority is of the view that the date of sanction of building plans ought to be taken as the date for determining the due date of possession of the unit in question to the complainant.

60. By virtue of apartment buyer's agreement executed between the parties on 28.07.2011, the possession of the booked unit was to be delivered within 36

months from the date of approval of building plan (29.11.2010) which comes out to be 29.11.2013 along with grace period of 180 days which is not allowed in the present case.

- (i) **Admissibility of grace period:** The respondent promoter had proposed to hand over the possession of the apartment within 36 months from the date of sanction of building plan and/or fulfilment of the preconditions imposed thereunder which comes out to be 29.11.2013. The respondent promoter has sought further extension for a period of 180 days after the expiry of 36 months for unforeseen delays in respect of the said project.
- (ii) **Admissibility of delay possession charges at prescribed rate of interest:** The complainant is seeking delay possession charges at the rate of 9.30% p.a. however, 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.***

61. 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. The Haryana Real Estate Appellate Tribunal in Emaar MGF Land Ltd. vs. Simmi Sikka observed as under: -

*"64. Taking the case from another angle, the allottee was only entitled to the delayed possession charges/interest only at the rate of Rs.15/- per sq. ft. per month as per clause 18 of the Buyer's Agreement for the period of such delay; whereas, the promoter was entitled to interest @ 24% per annum compounded at the time of every succeeding instalment for the delayed payments. The functions of the Authority/Tribunal are to safeguard the interest of the aggrieved person, may be the allottee or the promoter. The rights of the parties are to be balanced and must be equitable. The promoter cannot be allowed to take undue advantage of his dominate position and to exploit the needs of the home buyers. This Tribunal is duty bound to take into consideration the legislative intent i.e., to protect the interest of the consumers/allottees in the real estate sector. The clauses of the Buyer's Agreement entered into between the parties are one-sided, unfair and unreasonable with respect to the grant of interest for delayed possession. There are various other clauses in the Buyer's Agreement which give sweeping powers to the promoter to cancel the allotment and forfeit the amount paid. Thus, the terms and conditions of the Buyer's Agreement dated 09.05.2014 are ex-facie one-sided, unfair and unreasonable, and the same shall constitute the unfair trade practice on the part of the promoter. These types of discriminatory terms and conditions of the Buyer's Agreement will not be final and binding."*

62. 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 21.07.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75% per annum.

63. The definition of term 'interest' as defined under section 2(z) 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;"*

64. Therefore, interest on the delay payments from the complainants shall be charged at the prescribed rate i.e., 10.75% by the respondent/promoter which is the same as is being granted to the complainant in case of delay possession charges.

65. On consideration of the circumstances, the evidence and other record and submissions made by the parties, the authority is satisfied that the respondent is in contravention of the provisions of the Act. By virtue of apartment buyer's agreement executed between the parties on 28.07.2011, the possession of the booked unit was to be delivered within 36 months from the date of approval of building plan (29.11.2010) which comes out to be 29.11.2013. The grace period of 180 days is not allowed in the present complaint for the reasons mentioned above. Accordingly, 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 complainant is entitled to delayed possession charges at the prescribed rate of interest i.e., 10.75% p.a. for every month of delay on the amount paid by them to the respondent from due date of possession i.e., 29.11.2013 till offer of possession of the booked unit i.e., 17.10.2017 plus two months which comes out to be 17.12.2017 as per the proviso to section 18(1)(a) of the Act read with rules 15 of the rules.

**H. Directions of the authority: -**

66. Hence, the authority hereby passes this order and issue the following directions under section 37 of the Act to ensure compliance of obligations

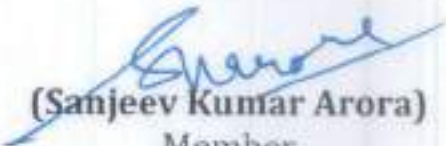


cast upon the promoter as per the functions entrusted to the authority under sec 34(f) of the Act:-

- i. The respondent is directed to pay interest at the prescribed rate of 10.75% p.a. for every month of delay from the due date of possession i.e., 29.11.2013 till offer of possession of the booked unit, plus two months as per the proviso to section 18(1)(a) of the Act read with rules 15 of the rules.
- ii. The respondent is directed to pay arrears of interest accrued within 90 days from the date of order.
- iii. The complainant is also directed to pay the outstanding dues, if any after adjustment of delay possession charges.
- iv. The rate of interest chargeable from the allottees 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 promoter shall be liable to pay the allottees, in case of default i.e., the delayed possession charges as per section 2 (za) of the Act.
- v. The respondent shall not charge anything from the complainant which is not part of the builder buyer agreement.

67. Complaint stands disposed of.

68. File be consigned to the registry.

  
(Sanjeev Kumar Arora)  
Member