

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

Date of decision: 25.10.2023

NAME OF THE BUILDER		ANSAL HOUSING LTD.	
PROJECT NAME		ANSAL HEIGHTS 86	
S. No.	Case No.	Case title	APPEARANCE
1	CR/5441/2022	Col. Sanjeev Kumar and Nita V/S Ansal Housing Limited	Sh. Garvit Gupta Advocate Sh. Sparsh Chaudhary Advocate
2	CR/6087/2022	Devender Kaur and Vijender Singh Dagar V/S Ansal Housing Limited	Sh. Jagdeep Kumar Advocate Sh. Sparsh Chaudhary Advocate

CORAM:

Shri Ashok Sangwan

Member

ORDER

1. This order shall dispose of 2 complaints titled as above filed before this authority 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" being developed by the same respondent/promoter i.e., M/s **Ansal Housing Ltd.** The terms and conditions of the buyer's agreements, fulcrum of the issue involved in both cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of delay compensation charges at prescribed rate of interest and the compensation.
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 HEIGHTS 86" Sector-86, Gurugram.	
<p><i>Clause 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."</i></p> <p style="text-align: right;">(Emphasis supplied)</p>		
COMMON DETAILS		
S. N.	Particulars	Details
a.	Occupation certificate	Not obtained



b.	Date of commencement of construction as per customer ledger dated 08.09.2022 at pg. 84 of complaint	01.10.2013
c.	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]
d.	DTCP license details	48 of 2011 dated 29.05.2011 valid upto 28.05.2017
e.	RERA registration	Not registered

4. The unit related details of each complaint are as under:

S. no	Complaint no.	Unit no. and area measuring	Date of execution of builder buyer agreement	Relief sought	Basic sale Price (BSP)/ Amount paid by the complainants. (AP)
1.	CR/5441/2022	I-0903 admeasuring 1360 sq. ft. [pg. 28 of complaint]	28.07.2012 [pg. 25 of complaint]	DPC & Possession Cost of litigation	BSP: ₹ 52,50,770/- AP: ₹ 52,44,591/-
2.	CR/6087/2022	G-0601 admeasuring 1360 sq. ft. [pg. 31 of complaint]	27.12.2012 (With the original allottee) Transfer of unit in name of both complainant (Not known)	DPC & Possession Cost of litigation	BSP: ₹ 50,59,044/- AP: ₹ 21,52,265 /-

5. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the 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 at prescribed rate of interest and compensation.
6. 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. The facts of both the complaints filed by the complainant(s)/allottee(s) are similar.

A. Unit and project related details

7. 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. 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.	I-0903



		[page 28 of complaint]
9.	Unit area admeasuring	1360 sq. ft. super area
10.	Date of execution of builder buyer agreement	28.07.2012 [page 25 of complaint]
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 42 months as above in offering the possession of the unit."</i> (Emphasis supplied)
12.	Date of commencement of construction as per customer ledger dated 08.09.2022 at pg. 84 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. 42 of complaint	₹ 52,50,770/-
15.	Amount paid by the	₹ 52,44,591/-

	complainant as per customer ledger dated 08.09.2022 at pg. 83 of complaint	
16.	Occupation certificate	Not yet obtained
17.	Offer of possession	Not offered

B. Facts of the complaint

8. The complainants have pleaded the complaint on the following facts:

- i. That the complainants received a marketing call from the office of respondent in the month of October, 2011 for booking in residential project of the respondent, "Ansal Heights, situated at Sector 86, Gurugram. The complainants had also been 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 timely delivery of the unit. 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.

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- ii. 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 chance to read or understand the said documents and they signed and completed the formalities as desired by the respondent.
- iii. That apartment buyer's agreement was sent to the complainants which was a wholly one-sided document containing totally unilateral, arbitrary, one-sided, and legally untenable terms favouring the respondent and was totally against the interest of the purchaser, including the complainants herein. That it is pertinent to mention herein that while in the case of the complainants making the delay in the payment of instalments, the respondent company is shown to be entitled to charge interest @ 24% per annum, the complainants are shown to be only entitled to a meagre amount of Rs. 5/- per sq.ft per month of the super area of the apartment for the period of delay in offering the possession of the apartment beyond the period stated by the respondent.
- iv. That furthermore, the respondent had given itself unlimited and arbitrary powers to amend and modify the plans of the project/unit as per its own whims, fancies and convenience without giving any justification to the complainants or without

even seeking any consent from them. The relevant clause 3 of the Agreement is reproduced hereunder:-

The Buyer has seen and accepted the Building Plan/floor plan/layout plan(s)/specifications which are subject to change, the decisions of the developer shall be final and binding in this regard. The Buyer hereby further authorized the developer to carry out, such additions, alterations, deletions and modifications in the building plans, floor plans, change in specifications etc. including the number of floors if possible and permissible as the developer may consider necessary or as directed by any competent authorities and the Developer will not be required to obtain consent of the buyer to carry out such changes in the Building/layout/floor plan etc.'

- v. 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.
- vi. That the complainants made vocal their 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

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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 Rs. 11 lacs before the execution of the Agreement. Since the complainants had already parted with a considerable amount amounting to more than 20% 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. It is submitted that the sale consideration of the unit as per the Agreement was Rs. 52,50,770/- which was inclusive of the PLC of Rs. 1,70,000/-.

- vii. That the complainants have till date made the payment of Rs. 56,84,591/-(including interest) out of the total sale consideration amount of Rs. 57,13,819/-, inclusive of taxes strictly as per the terms of the allotment and the construction linked payment plan and no default in making timely payment towards the instalment demands has been committed by the complainants. It is submitted that the respondent/promoter

used to only provide a short time span to make the payment of all the payment demands. Yet, all the payments were made by the complainants without any delay.

viii. That it is pertinent to mention here that despite having made the apartment buyer agreement dated 28.07.2012 containing terms very much favourable as per the wishes of the respondent, still the respondent miserably failed to abide by its obligations thereunder. The respondent/promoter has even failed to perform the most fundamental obligation of the agreement which was to handover the possession of the flat within the promised time frame, which in the present case has been delayed for an extremely long period of time. The failure of the respondent and the fraud played by it is writ large.

ix. That as per clause 31 of the agreement, the possession of the unit was to be handed over by the respondent 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 requisite sanctions and approval necessary for commencement of construction, whichever was later. Clause 31 of the apartment buyer's agreement is reproduced hereunder:

The Developer shall offer possession of the unit any time, within a period of 42 months from the date of execution of 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 the dues by Buyer and subject to force majeure circumstances as described in Clause 32. Further, there shall be grace period of 6 months allowed

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to the Developer over and above the period of 42 months as above in offering the possession of the unit.'

- x. Thus, as per the terms and conditions of the apartment buyer's agreement, the due date to handover the possession of the allotted unit is to be computed from the date of execution of the apartment buyer's agreement or from the date of commencement of the construction. It is pertinent to mention herein that the demand for commencement of construction was raised on 01.10.2013 and the same is evident from a bare perusal of the statement of account. Thus, all the approvals necessary for the start of construction were obtained on or before 01.10.2013. Hence, as per the terms of the Agreement, the due date is to be computed from 01.10.2013. The due date of delivery of possession as per the agreed terms of the Apartment Buyer's Agreement has thus elapsed way back on 30.09.2017.
- xi. There has been virtually no progress and the construction activity is lying suspended since long. It is pertinent to mention herein that the last payment demand on commencement of flooring of unit was sent by the respondent to the complainants on 17.08.2016 and the same was paid by the complainants within the time period. The next payment demand as per the terms of the allotment and the construction linked payment plan which was to be raised at the stage of Offer of Possession' has till date not been issued by the respondent to the complainants because the respondent failed to complete the structure till that stage. It is very important to note that since

- all the payment demands except the demand to be raised at the time of offer of possession were sent by the respondent to the complainant, then the respondent/promoter should have been in the condition even otherwise to apply for the grant of the Occupation Certificate in the year 2016 itself.
- xii. The fact that no intimation regarding the application for the grant of the Occupation Certificate was given by the respondent to the complainants speaks about the volume of illegalities and deficiencies on the part of the respondent/promoter. There is inordinate delay in developing the project well beyond what was promised and assured to the complainants. This further shows that the demands which were raised by the respondent didn't correspond to the actual construction status on the site. On their part, the complainants were at all material times ready and willing to pay the balance consideration and other charges as per the terms of the allotment and she had ready funds for the same. However, as stated above the respondent miserably failed to abide by its obligations.
- xiii. That since the time period to handover the possession stated by the respondent in the Apartment Buyer's Agreement had lapsed, the complainants requested the respondent telephonically, and by visiting the office of the respondent to update them about the date of handing over of the possession. The representatives of the respondent assured the complainants that the possession of the unit would be handed over to them very shortly as the construction was almost over.

The respondent has continuously been misleading the allottees including the complainants by giving incorrect information and timelines within which it was to hand over the possession of the unit to the complainants. The respondent promoter had represented and warranted at the time of booking that it would deliver the dream home of the complainants to them in a timely manner. However, the failure of the respondent company has resulted in serious consequences being borne by the complainants.

- xiv. That on 30.01.2021, the complainants again visited the office of the respondent to enquire about the possession of the unit. The representatives of the respondent intimated to the complainants that the construction of the tower in which the unit allotted to the complainants is located has been completed and that the complainants could take the possession after making payment towards the due amount of Rs. 6,30,015.14 regarding which the representatives of the respondent gave a statement to the complainants. It is pertinent to mention herein that no offer of possession was sent to the complainants by the respondent and yet the representatives informed the complainants that the complainants could take the possession. Even, no information was given by the respondent to the complainants about the receipt of the Occupation Certificate from the concerned authorities. The complainants made it clear to the respondent that it would not make the payment towards the remaining amount until and unless a copy of the Occupation certificate was shared with the complainants and a

proper offer of possession was issued. However, the respondent has failed to do so despite several assurances.

xv. That the respondent has misused and converted to its own use the huge hard earned amounts received from the complainants and other buyers in the project in a totally illegal and unprofessional manner and the respondent was least bothered about the timely finishing of the project and delivery of possession of the apartment in question to the complainants as per the terms of the Apartment Buyer's Agreement. The fact that the respondent has deliberately, mischievously, dishonestly and with malafide motives cheated and defrauded the complainants is also evident from a bare perusal of the statement of account wherein the respondent has stated that the offer of possession has been issued when it is not the case. It is unambiguously lucid that no force majeure was involved and that the project has been at standstill since several years. The high headedness of the respondent is an illustration of how the respondent conducts its business which is only to maximize the profits with no concern to the buyers. That the complainants have been duped of their 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 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.

- xvi. It is pertinent to mention herein that the website of the project is not showing the actual status of the project in question and the same is in contravention to the Real Estate Regulation and Development) Act, 2016 and Haryana Real Estate (Regulation and Development) Rules, 2017. The respondent/promoter has, on its website promised several world class facilities with detailed specifications of the units in the project. Rather no concrete steps have been taken by the respondent for completion of the unit in question. However, no such facilities have been provided by the respondent/promoter till date.
- xvii. 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. Moreover, the respondent vide Clause 1.3 of the said draft Agreement offered the delay compensation of Rs. 3,74,152.47 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.
- xviii. That the complainants visited the project site in June, 2022 and were shocked to see that no construction activity was going on there and the work has been at standstill. The actual ground reality at the construction site is way different than what the respondent had claimed to the complainants regarding the completion of the project. That moreover, the respondent has illegally charged Rs. 24,480/- on account of labour charges. Although the same was not payable by the complainants, the said amount has been disbursed due to the threat of interest being charged on the said amount if the same was not paid. It is submitted that the practice adopted by the respondent in demanding labour cess is illegal and not as per law. It is submitted that the labour cess is levied and collected on the cost of construction incurred by the employers including contractors under specific conditions. The complainants are neither the employers nor contractors and are not entitled to make payment towards the labour cess.
- xix. Furthermore, the complainants have been charged Rs. 1,70,000/- for the Corner Cum Park Facing charges. It is submitted that there is no park in the project and hence, the question of offering a unit and demanding charges for the alleged park facing view from the allotted unit does not even arise. However, the respondent has somehow managed to extract the said amount from the complainants by misrepresentation and the complainants have the right to claim



refund of the said amount from the respondent. The respondent has throughout acted strictly in violation of the terms of the allotment, rules, regulations, law and the directions issued by the concerned authorities.

xx. That it is also pertinent to mention herein that as per the statement of account, the respondent has stated that it has already offered the possession to the complainants. It is pertinent to mention herein that as per the information available with the complainants, the occupation certificate till date has not been issued to the respondent. If the occupation certificate has till date not been issued, then the respondent could not have demanded the payment of Rs. 6,30,015.14 and could have asked them to take the possession of the unit. The said illegal act of the respondent is a strict violation of prevailing law.

xxi. Moreover, the fact that the respondent has been extracting huge amount from the complainants is also evident from the fact that the complainants have charged interest, as per the exorbitant amount mentioned in the Agreement, on account of slight delay in payment made by complainants. It is submitted that complainant no.1 is a serving Colonel in the Indian Army. Despite the request made by the complainants to give them extension on account of non-availability of complainant no.1 to make the payment on regular basis, the complainants have been charging interest @24% p.a and has till date accumulated Rs. 3,80,000/- as interest and the same is evident from the statement of account 30. That the respondent has even failed to

obtain registration certificate of the project from this Authority and has acted in blatant violation of Section 3 of the Real Estate (Regulation and Development) Act, 2016. The respondent was bound to comply with provisions of the Act and the Rules and Regulations made there under. It is, thus clear that the respondent/promoter has been acting not only in contrary to the terms of the agreement which were drafted by the respondent itself but has also on account of its own acts and has reduced the complainants at its mercy wherein and the complainants' questions have been left un-answered and the respondent/promoter is continuing with its illegal acts acting strictly in violation of the provisions of the RERA Act, 2016 and Haryana Rules, 2017.

xxii. That the respondent is enjoying the valuable amount of consideration paid by the complainants out of their hard earned money and the complainants realizing the same demanded delayed possession charges from the respondent/promoter. But a week ago, the respondent has in complete defiance of its obligations refused to hand over the possession to the complainants along with delayed possession charges leaving them with no other option but to file the present complaint. Since respondent miserably failed in its obligations, hence the complainants are entitled to delayed possession charges at the rate prescribed as per the Real Estate (Regulation and Development) Act, 2016 and Haryana Real Estate Regulation and Development) Rules, 2017.

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xxiii. That it is submitted that the project is an ongoing project and hence falls under the first proviso to Section 3(1) of RERA 2016. The complainants believe that no occupation and completion certificate has been issued for the project in question till date and hence this project falls clearly under the jurisdiction of this Authority. The respondent in utter disregard of its responsibilities has left the complainants in the lurch and the complainants have been forced to chase the respondent for seeking relief. That the cause of action for the present complaint is recurring one on account of the failure of the respondent to perform its obligations within the agreed time frame. The cause of action again arose when the respondent failed to hand over the possession and compensation for delay on its part and finally about a week ago when the respondent refused to compensate the complainants with the delayed possession interest amount and compensation. The complainants reserve their right to approach the appropriate Forum to seek compensation.

C. Relief sought by the complainant: -

9. The complainants have sought following reliefs:

- a. Direct the respondent to handover the possession of the said unit along with delay possession charges.
 - b. Direct the respondent to pay litigation charges.
10. On the date of hearing, the authority explained to the respondent/promoter about the contravention as alleged to have

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been committed in relation to section 11(4) (a) of the Act to plead guilty or not to plead guilty.

11. Reply by the respondent.

D. The respondent has contested the complaint on the following grounds.

- i. The answering respondent is a developer and has built multiple residential and commercial buildings within Delhi/NCR with a well-established reputation earned over years of consistent customer satisfaction.
- ii. The complainants had approached the answering respondent for booking a flat bearing no. I-0903 in an upcoming project Ansals Heights, Sector 86, Gurugram. Upon the satisfaction of the complainants regarding inspection of the site, title, location plans, etc. an agreement to sell dated 28.07.2012 was signed between the parties. That the current dispute cannot be governed by the RERA Act, 2016 because of the fact that the builder buyer agreement signed between the complainant and the answering Respondent was in the year 2012. It is submitted that the regulations at the concerned time period would regulate the project and not a subsequent legislation i.e. RERA Act, 2016. It is further submitted that Parliament would not make the operation of a statute retrospective in effect.
- iii. That the complaint specifically admits to not paying the penal interest and the full payment as agreed upon under the builder buyer agreement. It is submitted that the complainant cannot be allowed to take advantage of his own wrong.

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- iv. That even if for the sake of argument, the averments and the pleadings in the complaint are taken to be true, the said complaint has been preferred by the complainant belatedly. The complainant has admittedly filed the complaint in the year 2022 and the cause of action accrue on 2016 as per the complaint itself. Therefore, it is submitted that the complaint cannot be filed before the HRERA Gurugram as the same is barred by limitation.
- v. That the complainant has not approached the authority with clean hands. It is submitted that there is a conscious suppression of material facts. That even if the complaint is admitted to be true and correct, the agreement which was signed in the year 2012 without coercion or any duress cannot be called in question today. It is submitted that the builder buyer agreement provides for a penalty in the event of a delay in giving possession. It is submitted that clause 37 of the said agreement provides for Rs. 5/- sq foot per month on super area for any delay in offering possession of the unit as mentioned in Clause 31 of the agreement. Therefore, the complainant will be entitled to invoke the said clause and is barred from approaching the 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.
- vi. That the complaint itself discloses that the said project does not have a RERA approval and is not registered. It is submitted that

if the said averment in the complaint is taken to be true, the Authority does not have the jurisdiction to decide the complaint. That the respondent had in due course of time obtained all necessary approvals from the concerned authorities. It is submitted 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 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.

- vii. That the law on the scope of the functions to be discharged by the adjudicating authority is clear. It is submitted that the adjudicating authority is competent to decide compensation and not adjudicate on the merits of the claim. 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 occasioned on account of things beyond the control of the answering respondent. It is further submitted that the builder buyer agreement provides for such eventualities and the cause for delay is completely covered in the said clause. The respondent ought to have complied with the orders of the Hon'ble High Court of Punjab and Haryana at Chandigarh in CWP No. 20032 of 2008, dated 16.07.2012, 31.07.2012, 21.08.2012. The said orders banned



the extraction of water which is the backbone of the construction process. Similarly, the complaint itself reveals that the correspondence from the Answering Respondent specifies force majeure, demonetization and the orders of the Hon'ble NGT prohibiting construction in and around Delhi in addition to the covid 19 pandemic as the causes which contributed to the stalling of the project at crucial junctures for considerable spells.

viii. 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 the clause 32 of the builder buyer agreement is clear that there is no compensation to be sought by the complainant 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 based on these undisputed documents and submission made by the complainant.

E. Jurisdiction of the authority

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

E.I. Territorial jurisdiction

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)(a)

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 complainant at a later stage.

F. Findings on the relief sought by the complainants

F.I. Direct the respondent to handover the possession of the said unit along with delay possession charges.

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17. In the present complaint, the complainants intends to continue with the project and is seeking delay possession charges along with 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, —

*.....
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."*

18. Clause 31 of the agreement to sell 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 date of execution of 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 the 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 pre-set possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainants not being in default under any provisions of this agreement and compliance with all provisions, formalities and documentation as prescribed by the promoters. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in 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 promoters may make the possession clause irrelevant for the purpose of allottee and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the flat buyer agreement by the promoters are just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.

20. Admissibility of grace period: The promoter has proposed to hand over the possession of the apartment within a period of 42 months plus 6 months from date of agreement or 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 according to clause 31 of the agreement dated 28.07.2012 i.e., within 42 months from date of execution as there is no document on record regarding approval necessary for commencement of construction. Since in the present matter the BBA incorporates unqualified reason for grace period/extended period of 6 months in the possession clause subject to force majeure circumstances. Accordingly, this grace period of 6 months shall be allowed to the promoter at this stage.

21. Admissibility of delay possession charges at prescribed rate of interest: Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the

promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules. Rule 15 has been reproduced as under:

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

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

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

22. 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.
23. 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., 25.10.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.
24. 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—

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- (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;"*

25. 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 complainants in case of delayed possession charges.

26. On consideration of the documents available on record and submissions made regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 11(a) of the agreement executed between the parties on 28.07.2012, the possession of the subject apartment was to be delivered within 42 months from the date of execution of the agreement. The period of 42 months expired on 01.10.2017. 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 yet offered the possession of the subject apartment. Accordingly, it is the failure of the respondent/promoter to fulfil its obligations and responsibilities as per the agreement to hand over the possession within the stipulated period. Accordingly, the non-compliance of the mandate contained in section 11(4)(a) read with proviso to section 18(1) of the Act on the part of the respondent is established. As such the allottee shall be paid, by the promoter, interest for every month of delay from due date of

possession i.e., 01.10.2017 till actual handing over of possession or offer of possession plus two months after obtaining occupation certificate from the competent authority, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

G. Directions of the authority

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

- i. The respondent is directed to pay interest to the complainants at the prescribed rate of 10.75% p.a. for every month of delay from the due date of possession i.e., 01.10.2017 till actual handing over of possession or offer of possession plus two months after obtaining occupation certificate from the competent authority, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
- ii. 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.
- iii. The complainants are directed to pay outstanding dues, if any, after adjustment of interest for the delayed period.
- iv. The rate of interest chargeable from the allottee by the promoter, in case of default shall be charged at the prescribed rate i.e.,

- 10.75% 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.
- v. The respondent shall not charge anything from the complainant 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.
28. This decision shall mutatis mutandis apply to cases mentioned in para 4 of this order.
29. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.
30. File be consigned to registry.

Ashok Sangwan
(Member)

Haryana Real Estate Regulatory Authority, Gurugram

Dated: 25.10.2023