

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

Complaint no. : 5564 of 2022
Order reserved on: 16.11.2023
Order pronounced on: 25.01.2024

Mrs. Roopali Raj
W/o Sh. Tilak Raj
R/o:- House No. 1008, Sector- 31, Gurugram, Haryana

Complainant

Versus

M/s Ansal Housing and Construction Limited
Registered Office at: - 15 UGF, Indra Prakash, 21
Barakhamba Road, New Delhi- 110001

Respondent

CORAM:

Shri Vijay Kumar Goyal

Member

APPEARANCE:

Shri Kanish Bangia (Advocate)

Complainant

Shri Amandeep Kadyan (Advocate)

Respondent

ORDER

1. The present complaint 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 to the allottee as per the agreement for sale executed inter-se them.

A. Unit and Project related details

2. The particulars of the project, the details of 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 up to 28.05.2017
6.	Name of licensee	Resolve Estate Pvt. Ltd.
7.	RERA registration details	Not registered
8.	Unit no.	S-004 [Page no. 26 of complaint]
9.	Unit area admeasuring	367 sq. ft. (super area)
10.	Date of execution of builder buyer agreement	16.04.2016 [Page no. 24 of complaint]
11.	Possession clause	27. <i>The developer shall offer possession of the unit any time, within a period of 30 months from the date of execution of the agreement or within 30 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 28. Further, there shall be a grace period</i>

		<p><i>of 6 months allowed to the developer over and above the period of 30 months as above in offering the possession of the unit."</i></p> <p><i>(Emphasis supplied)</i></p> <p><i>[Page no. 31 of complaint]</i></p>
12.	Due date of possession	<p>16.04.2019</p> <p>[Note: Due date calculated from date of agreement as date of commencement of construction is not known. Grace period allowed being unqualified]</p>
13.	Basic sale consideration as per BBA dated 16.04.2016	<p>Rs.38,44,325/-</p> <p>[Page no. 39 of complaint]</p>
14.	Total sale consideration as per customer ledger dated 18.02.2022	<p>Rs.39,46,941/-</p> <p>[Page no. 61 of complaint]</p>
15.	Amount paid by the complainant as per customer ledger dated 18.02.2022	<p>Rs.37,75,718/-</p> <p>[Page no. 61 of complaint]</p>
16.	Occupation certificate	Not yet obtained
17.	Offer of possession for fit outs	<p>18.02.2022</p> <p>[Page no. 60 of complaint]</p>

B. Facts of the complaint

3. The complainant has made the following submissions: -

- I. That pursuant to the elaborate advertisements, assurances, representations and promises made by respondent about their project namely i.e., "Ansal Heights" at sector 86, Gurugram with impeccable facilities and believing the same to be correct and true, the complainant considered booking a shop

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measuring 367 sq. ft. and paid an advance amount of Rs.1,00,000/- on 14.05.2015.

- II. That the respondent company confirmed the allocation of the shop S-004 and the complainant made the payments of Rs.19,77,316/- (i.e., more than 10% of the total sale consideration). The respondent entered into a shop buyer's agreement with the complainant on 16.04.2016, for shop bearing no. S-004 admeasuring 367 sq. ft. for a basic sale price of Rs.36,60,825/- and other additional charges.
- III. That after a delay of more than 3 years from the promised date of delivery of possession, the respondent vide letter dated 18.02.2022 offered possession of the shop no. S-004 to the complainant and sought clearance of the pending dues from the complainant. She has paid a total of Rs.37,75,718/- being more than 90% of the total sale consideration of Rs.39,46,941/-. However the respondent has offered possession without obtaining a valid occupation certification, and hence, the offer of possession is not only delayed but also invalid as per law.
- IV. That the present complaint sets out the various deficiencies in services, unfair and/or restrictive trade practices adopted by the respondent in sale of their units and the provisions allied to it. The modus operandi adopted by the respondent invariably bears the irrefutable stamp of impunity and total lack of accountability and transparency, as well as breach of contract and duping of the consumers by not delivering the project in time. Further, without having a proper occupation certificate, the offer of possession is invalid and therefore, this act of the respondent amounts to unjust enrichment and unfair trade practices undertaken to exploit the consumers.

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- V. That the respondent is guilty of deficiency in service within the purview of provisions of the Act, 2016 and the Rules, 2017. The complainant has suffered on account of deficiency in service by the respondent and as such the respondent is fully liable to cure the deficiency as per the provisions of the Act, 2016 and the Rules, 2017.

C. Relief sought by the complainant

4. The complainant has sought following relief:
- Direct the respondent to pay the interest at the prescribed rate from the due date of possession till the date of actual possession. (An application for amendment of relief sought seeking delayed possession charges instead of refund).
5. 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

6. The respondent has contested the complaint on the following grounds:
- That the complainant had approached the answering respondent for booking a shop bearing no. S-004 in an upcoming project Ansal Heights, Sector 86, Gurugram. Upon the satisfaction of the complainant regarding inspection of the site, title, location plans, etc. an agreement to sell dated 16.04.2016 was signed between the parties.
 - That the current dispute cannot be governed by the Act of 2016, because of the fact that the builder buyer agreement signed between the parties was in the year 2016. The regulations at the concerned time period would regulate

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- the project and not a subsequent legislation i.e., the Act of 2016. That Parliament would not make the operation of a statute retrospective in effect.
- c. 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 16.10.2019 as per the complaint itself. Therefore, it is submitted that the complaint cannot be filed before this authority as the same is barred by limitation.
- d. That even if the complaint is admitted being true and correct, the agreement which was signed in the year 2016 without coercion or any duress cannot be called into question today. 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. 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.
- e. That the respondent had in due course of time obtained all necessary approvals from the concerned authorities. The permit for environmental clearances for proposed group housing project for sector- 103, Gurugram Haryana on 20.02.2015. Similarly, the approval for digging foundation and

basement was obtained and sanctions from the department of mines and geology were obtained in 2012. 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.

f. That the respondent has adequately explained the delay and 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.

g. 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

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agreement is clear that there is no compensation to be sought by the complainant/prospective owner in the event of delay in possession.

7. 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 made by both the parties.
8. That on 31.08.2023, the counsel for the complainant requests for file an application for amendment of the relief sought from refund to delayed possession charges. The said request was allowed and was directed to file an application with a period of 10 days after supplying a copy to the counsel for the respondent. Further, on 16.11.2023, the counsel for the complainant moved an application for amendment of relief sought and the same was no objection of the respondent. Hence, in view of the same the application for amendment of relief sought (refund to delayed possession charges) was allowed vide order dated 16.11.2023.

E. Jurisdiction of the authority

9. The authority observes that it has territorial as well as subject matter jurisdiction to adjudicate the present complaint.

E.1 Territorial jurisdiction

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

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authority has complete territorial jurisdiction to deal with the present complaint.

E. II Subject matter jurisdiction

Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottees 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.

10. So, in view of the provisions of the Act of 2016 quoted above, the authority has complete jurisdiction to decide the complaint regarding non-compliance of obligations by the promoter leaving aside the compensation which is to be decided by the adjudicating officer if pursued by the complainant at a later stage.

F. Findings on the objections raised by the respondent:

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

11. The respondent submitted that the complaint is neither maintainable nor tenable and is liable to be out rightly dismissed as the buyer's agreement was executed between the parties prior to the enactment of the Act and the provision of the said Act cannot be applied retrospectively. 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."

12. Also, 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."

13. The agreements are sacrosanct save and except for the provisions which have been abrogated by the Act itself. Further, it is noted that the 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, statutes, instructions, directions issued thereunder and are not unreasonable or exorbitant in nature.

F. II Objection regarding maintainability of complaint.

14. The counsel for the respondent has raised an objection that the complaint is barred by limitation as the complainant has approached the respondent in the

year 2016 to invest the projects of the respondent situated in Gurugram. The respondent further submitted that the complainants has admittedly filed the complaint in the year 2022 and the cause of action accrued on 2016.

15. On consideration of the documents available on record and submissions made by the party, the authority observes that the buyer's agreement w.r.t. the unit was executed with the allottee on 16.04.2016. As per clause 27 of the buyer's agreement, the possession of the subject unit was to be offered with in a period of 30 months plus 6 months allowed to the developer over and above the period of 30 months. The authority calculated due date of possession from the date of execution of buyer's agreement i.e., 16.04.2016 being later which comes out to be 16.04.2019.
16. However, the said project of the allotted plot is an ongoing project, and the respondent/promoter has failed to apply and obtaining the CC/part CC till date. As per proviso to section 3 of Act of 2016, ongoing projects on the date of this Act i.e., 28.07.2017 for which completion certificate has not been issued, the promoter shall make an application to the authority for registration of the said project within a period of three months from the date of commencement of this Act and the relevant part of the Act is reproduced hereunder: -

Provided that projects that are ongoing on the date of commencement of this Act and for which the completion certificate has not been issued, the promoter shall make an application to the Authority for registration of the said project within a period of three months from the date of commencement of this Act;

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17. The legislation is very clear in this aspect that a project shall be regarded as an “ongoing project” until receipt of completion certificate. Since no completion certificate has yet been obtained by the promoter-builder with regards to the concerned project.
18. Moreover, it is observed that despite passing a benchmark of due date on 16.04.2019, till date the respondent has failed to handover the possession of the allotted unit to the complainants and thus, the cause of action is continuing till date and recurring in nature. The authority relied upon the section 22 of the Limitation Act, 1963, Continuing breaches and torts and the relevant portion are reproduce as under for ready reference: -

22. Continuing breaches and torts-

In the case of a continuing breach of contract or in the case of a continuing tort, a fresh period of limitation begins to run at every moment of the time during which the breach or the tort, as the case may be, continues.

19. Keeping in view the aforesaid facts and legal position, the objection with regard to the complaint barred by limitation is hereby rejected.

F.III Objection regarding delay in completion of construction of project due to force majeure conditions.

20. The respondent-promoter alleged that grace period on account of force majeure conditions be allowed to it. It raised the contention that the construction of the project was delayed due to force majeure conditions such as demonetization, and the orders of the Hon’ble NGT prohibiting construction in and around Delhi and the Covid-19, pandemic among others, but all the pleas advanced in this regard are devoid of merit. The flat

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buyer's agreement was executed between the parties on 14.12.2012 and as per terms and conditions of the said agreement the due date of handing over of possession comes out to be 01.10.2017. The events such as and various orders by NGT in view of weather condition of Delhi NCR region, were for a shorter duration of time and were not continuous as there is a delay of more than three years and even some happening after due date of handing over of possession. There is nothing on record that the respondent has even made an application for grant of occupation certificate. Hence, in view of aforesaid circumstances, no period grace period can be allowed to the respondent/builder. Though some allottees may not be regular in paying the amount due but whether the interest of all the stakeholders concerned with the said project be put on hold due to fault of on hold due to fault of some of the allottees. Thus, the promoter-respondent cannot be given any leniency on based of aforesaid reasons. It is well settled principle that a person cannot take benefit of his own wrongs.

21. As far as delay in construction due to outbreak of Covid-19 is concerned, Hon'ble Delhi High Court in case titled as ***M/s Halliburton Offshore Services Inc. V/S Vedanta Ltd. & Anr. bearing no. O.M. P (I) (Comm.) no. 88/ 2020 and IAs 3696-3697/2020*** dated 29.05.2020 has observed that:

69. The past non-performance of the Contractor cannot be condoned due to the COVID-19 lockdown in March 2020 in India. The Contractor was in breach since September 2019. Opportunities were given to the Contractor to cure the same repeatedly. Despite the same, the Contractor could not complete the Project. The outbreak of a pandemic cannot be used as an excuse for non-performance of a contract for which the deadlines were much before the outbreak itself."

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22. The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by 16.04.2019 and is claiming benefit of lockdown which came into effect on 23.03.2020 whereas the due date of handing over of possession was much prior to the event of outbreak of Covid-19 pandemic. Therefore, the authority is of the view that outbreak of a pandemic cannot be used as an excuse for non- performance of a contract for which the deadlines were much before the outbreak itself and for the said reason, the said time period is not excluded while calculating the delay in handing over possession.

G. Findings regarding relief sought by the complainants.

G. I Direct the respondent to pay the interest at the prescribed rate from the due date of possession till the date of actual possession.

23. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges as provided under the proviso to section 18(1) of the Act. Sec 18(1) proviso 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."

24. Clause 27 of space buyer's agreement provides for handing over of possession and is reproduced below:

27. "The developer shall offer possession of the unit any time, within a period of 30 months from the date of execution of the agreement or within 30 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 28. Further, there shall be a grace period of 6 months allowed to the developer over and above the period of 30 months as above in offering the possession of the unit."

25. 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 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 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.

26. **Due date of handing over possession and admissibility of grace period:**

The promoter has proposed to hand over the possession of the apartment within a period of 30 months from date of agreement or from the date of approvals required for the commencement of construction which whichever is

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later. The authority calculated due date of possession from the date of execution of buyer's agreement i.e., 16.04.2016 (as date of commencement of construction is not filed by either of both the parties). The period of 30 months expired on 16.10.2018. 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. Therefore, the due date of possession comes out to be 16.04.2019.

27. Admissibility of delay possession charges at prescribed rate of interest:

The complainant is seeking delay possession charges 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.

28. 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.

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29. 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., 25.01.2024 is **8.85%**. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., **10.85%**.

30. The definition of term 'interest' as defined under section 2(za) of the Act provides that the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default. The relevant section is reproduced below:

"(za) "interest" means the rates of interest payable by the promoter or the allottee, as the case may be.

Explanation. —For the purpose of this clause—

- (i) the rate of interest chargeable from the allottee by the promoter, in case of default, shall be equal to the rate of interest which the promoter shall be liable to pay the allottee, in case of default.*
- (ii) the interest payable by the promoter to the allottee shall be from the date the promoter received the amount or any part thereof till the date the amount or part thereof and interest thereon is refunded, and the interest payable by the allottee to the promoter shall be from the date the allottee defaults in payment to the promoter till the date it is paid;"*

31. Therefore, interest on the delay payments from the complainant shall be charged at the prescribed rate i.e., 10.85 % by the respondent/promoter which is the same as is being granted to them in case of delayed possession charges.

32. 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. The authority has observed that the apartment buyer agreement was executed on 16.04.2016 and the possession of the subject unit was to be



offered with in a period of 30 months plus 6 months from date of obtaining all the required sanctioned and approvals necessary of commencement of construction, whichever is later. The authority calculated due date of possession from the date of execution of buyer's agreement i.e., 16.04.2016 (as date of commencement of construction is not filed by either of both the parties) which comes out to be 16.10.2018. 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 16.04.2019. The respondent has failed to handover possession of the subject unit till date of this order. 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. The authority is of the considered view that there is delay on the part of the respondent to offer of possession of the allotted unit to the complainant as per the terms and conditions of the agreement to sell dated 16.04.2016 executed between the parties. It is pertinent to mention over here that even after a passage of more than 4.9 years neither the construction is complete nor an offer of possession of the allotted unit has been made to the allottee by the builder. Further, the authority observes that there is no document on record from which it can be ascertained as to whether the respondent has applied for occupation certificate/part occupation certificate or what is the status of construction of the project. Hence, this project is to be treated as on-going project and the provisions of the Act shall be applicable equally to the builder as well as allottees.

33. Accordingly, the non-compliance of the mandate contained in section 11(4) (a) read with section 18(1) of the Act on the part of the respondent is established. As such, the complainant is entitled to delay possession charges at rate of the

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prescribed interest @ 10.85% p.a. w.e.f. 16.04.2019 till actual handing over of possession or offer of possession plus two months, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.

H. Directions of the authority:

34. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligation cast upon the promoter as per the function entrusted to the authority under section 34(f) of the act of 2016:
- I. The respondent is directed to pay interest to the complainant against the paid-up amount at the prescribed rate of 10.85% p.a. for every month of delay from the due date of possession i.e., 16.04.2019 till actual handing over of possession or valid 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 respondent shall not charge anything from the complainant which is not the part of the flat buyer's agreement.
 - III. The complainant is directed to pay outstanding dues, if any, after adjustment of interest for the delayed period and after clearing all the outstanding dues, if any, the respondent shall handover the possession of the allotted unit.
 - IV. The arrears of such interest accrued from due date of possession i.e., 16.04.2019 till the date of order by the authority shall be paid by the promoter to the allottees within a period of 90 days from date of this

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order and interest for every month of delay shall be paid by the promoter to the allottees before 10th of the subsequent month as per rule 16(2) of the rules.

V. The respondent is directed to offer the possession of the allotted unit within 30 days after obtaining occupation certificate from the competent authority. The complainant w.r.t. obligation conferred upon him under section 19(10) of Act of 2016, shall take the physical possession of the subject unit, within a period of two months of the occupancy certificate.

VI. The rate of interest chargeable from the allottees by the promoter, in case of default shall be charged at the prescribed rate i.e., 10.85% 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.

35. Complaint stands disposed of.

36. File be consigned to registry.

Dated: 25.01.2024

HARERA
GURUGRAM


(Vijay Kumar Goyal)
Member
Haryana Real Estate
Regulatory Authority,
Gurugram