

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

Order reserved on:	19.10.2023
Date of pronouncement:	14.12.2023

<b>NAME OF THE BUILDER</b>		<b>ANSAL HOUSING LIMITED FORMALLY KNOWN AS ANSAL HOUSING AND CONSTRUCTION LIMITED.</b>	
<b>PROJECT NAME</b>		<b>"ANSAL HEIGHTS 86"</b>	
<b>S. No.</b>	<b>Case No.</b>	<b>Case title</b>	<b>APPEARANCE</b>
1	CR/7374/2022	Rattan Singh Saini V/s Ansal Housing Ltd.	Shri Gagan Sharma Advocate and Shri. Amandeep Kadyan Advocate
2	CR/7378/2022	Om Prakash Saini V/s Ansal Housing Ltd.	Shri Gagan Sharma Advocate and Shri. Amandeep Kadyan Advocate
3	CR/7933/2022	Vijay Kumar Chawla V/s Ansal Housing Ltd.	Shri. Sushil Yadav Advocate And Shri. Amandeep Kadyan Advocate

**CORAM:**

Shri Vijay Kumar Goyal

**Member****ORDER**

1. This order shall dispose of all the 3 complaint(s) titled as above filed before this authority in form CRA under section 31 of the Real Estate (Regulation and Development) Act, 2016 (hereinafter referred as "the Act") read with rule 28 of the Haryana Real Estate (Regulation and Development) Rules, 2017 (hereinafter referred as "the rules") for violation of section 11(4)(a) of the Act wherein it is inter alia prescribed that the promoter shall be responsible for all its obligations, responsibilities and functions to the allottees as per the agreement for sale executed inter se between parties.
2. The core issues emanating from them are similar in nature and the complainant(s) in the above referred matters are allottees of the project,



namely, "Ansal Heights 86" (group housing colony) being developed by the same respondent/promoter i.e., M/s Ansal Housing Limited formally known as M/s Ansal Housing & Construction Limited. The terms and conditions of the buyer's agreements, fulcrum of the issue involved in all these cases pertains to failure on the part of the promoter to deliver timely possession of the units in question, seeking award of possession and delayed possession charges along with interest.

3. The details of the complaints, reply to status, unit no., date of agreement, possession clause, due date of possession, total sale consideration, total paid amount, and relief sought are given in the table below:

<b>Project Name and Location</b>	<b>ANSAL HOUSING LTD "ANSAL HEIGHTS 86" Sector-86, Gurugram.</b>		
<b>Possession Clause: - 31</b>	<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> <b>(Emphasis supplied)</b>		
<b>Occupation certificate: - Not obtained</b>			
<b>Due date:</b>	01.10.2017 (Note: 42 months from date of start of construction i.e., 01.10.2013 being later + 6 months grace period allowed being unqualified)		
<b>Note:</b>	Grace period is allowed being unqualified & included while computing due date of possession.		
<b>Complaint No., Case Title</b>	<b>CR/7374/2022 Rattan Singh Saini V/s Ansal Housing Ltd.</b>	<b>CR/7378/2022 Om Prakash Saini V/s Ansal Housing Ltd.</b>	<b>CR/7933/202 Vijay Kumar Chawla V/s Ansal Housing Ltd.</b>
<b>Reply status</b>	25.05.2023	25.05.2023	25.05.2023



Unit no.	G-1001	F-0406	F-0303
	[pg. 28 of complaint]	[pg. 29 of complaint]	[pg. 14 of complaint]
<b>Area admeasuring</b>	1360 sq. ft. [pg. 28 of complaint]	1690 sq. ft. [pg. 29 of complaint]	1690 sq. ft. [pg. 14 of complaint]
<b>Date of apartment buyer agreement</b>	14.12.2012 [pg. 25 of complaint]	01.11.2012 [pg. 26 of complaint]	29.10.2012 [pg. 11 of complaint]
<b>Offer of possession for fit outs</b>	12.01.2022 [pg. 60 of complaint]	30.06.2022 [pg. 67 of complaint]	22.06.2022 [pg. 28 of complaint]
<b>Total Consideration / Total Amount paid by the complainant(s)</b>	<b>TSC:</b> Rs.61,59,711/- <b>AP:</b> Rs.53,60,555/-  (As per SOA dated 12.01.2022 at pg. 61 of complaint)	<b>TSC:</b> Rs.75,02,983/- <b>AP:</b> Rs.64,77,865/-  (As per SOA dated 30.06.2022 at pg. 68 of complaint)	<b>TSC:</b> Rs.74,25,287/- <b>AP:</b> Rs.64,88,661/-  (As per SOA dated 22.06.2022 at pg. 29 of complaint)
<p><b>The complainant in the above complaint(s) have sought the following reliefs:</b></p> <ol style="list-style-type: none"> <li>1. Direct the respondent to commit a fresh firm date of handing over possession of the apartment since all earlier promised dates have already passed.</li> <li>2. Direct the respondent to rectify the ledger statement of the complainant showing actual amount deposited by him as per the details provided in the complaint and the delayed rate of interest shown in the statement shall be calculated as per the provisions of the Act of 2016.</li> <li>3. The complainant has already paid delayed interest of Rs.2,64,632/- which was calculated charged by the respondent against the interest prescribed by this authority. So, it is requested to direct the respondent to adjust the delayed interest already paid by the complainant before issuing the final demand notice.</li> <li>4. Direct the respondent company to pay the interest amount @24% or as prescribed by the authority, with effect from 01.11.2016 on the total amount deposited by the complainant till the date of payment within one month of the date of order passed by the authority and thereafter to pay the interest on monthly basis by 10th of each month till the actual possession of the apartment to the complainant.</li> <li>5. Direct the respondent to hand-over the possession of the apartment by the fresh date committed by the respondent failing which grant the liberty to the complainant to seek refund of the complete amount with interest and compensation.</li> </ol> <p><b>Note: In the table referred above, certain abbreviations have been used. They are elaborated as follows:</b></p> <p><b>Abbreviation Full form</b>  TSC Total Sale consideration  AP Amount paid by the allottee(s)</p>			

4. The aforesaid complaints were filed by the complainants against the promoter on account of violation of the apartment buyer's agreement executed between the parties in respect of said unit for not handing over



the possession by the due date, seeking award of possession and delayed possession charges along with interest.

5. It has been decided to treat the said complaints as an application for non-compliance of statutory obligations on the part of the promoter/respondent in terms of section 34(f) of the Act which mandates the authority to ensure compliance of the obligations cast upon the promoters, the allottee(s) and the real estate agents under the Act, the rules and the regulations made thereunder.
6. The facts of all the complaints filed by the complainant(s)/allottee(s) are also similar. Out of the above-mentioned case, the particulars of lead case *CR/7374/2022, case titled as Rattan Singh Saini V/s Ansal Housing Ltd.* are being taken into consideration for determining the rights of the allottee(s) qua possession and delayed possession charges along with interest and compensation.

**A. Project and unit related details**

7. The particulars of the project, the details of sale consideration, the amount paid by the complainant(s), date of proposed handing over the possession, delay period, if any, have been detailed in the following tabular form:

*CR/7374/2022, titled as Rattan Singh Saini V/s Ansal Housing Ltd.*

S. N.	Particulars	Details
1.	Name of the project	"Ansal Heights, 86"
2.	Project location	Sector 86, Gurugram, Haryana
3.	Project area	12.843 acres
4.	Nature of the project	Group housing colony

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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.	G-1001 [page no. 28 of the complaint]
9.	Unit area admeasuring	1360 sq. ft. super area
10.	Date of execution of flat buyer agreement	14.12.2012 [page no. 25 of complaint]
11.	Possession clause	<p><b>31.</b></p> <p><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></p> <p style="text-align: right;"><i>(Emphasis supplied)</i></p> <p>[page 33 of complaint]</p>
12.	Date of commencement of construction as per	01.10.2013

	customer ledger dated 16.08.2019 at pg. 58 of complaint	
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.	Basic sale consideration as per payment annexed with the buyer's agreement at page no. 41 of the complaint	Rs.53,88,844/-
15.	Sale consideration as per SOA dated 12.01.2022 at pg. 61 of complaint	Rs.61,59,711/-
16.	Amount paid by the complainant as per SOA dated 12.01.2022 at pg. 61 of complaint	Rs.53,60,555/-
17.	Occupation certificate	Not yet obtained
18.	Offer of possession for fit outs	12.01.2022 [pg. 60 of complaint]

**B. Facts of the complaint**

8. The complainant has made the following submissions in the complaint: -
- That in response to the advertisement of the project named Ansal Heights, 86 in Sector 86, Gurgaon by the respondent company, the complainant, booked a 2 BHK, measuring 1360 sq. ft. in the said

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project, on 22.12.2011 with a booking amount of Rs.400,000/-and at total basic sale price of Rs.54,42,159/- including taxes. Accordingly, a flat buyer's agreement was executed on 14.12.2012 between both the parties.

- b. That the payments for the flat were construction linked as per the payment plan given at Annexure 'A' of the flat buyer's agreement and till 06.08.2019 an amount of Rs.56,00,057/- including Rs.2,47,755/- interest on delay of payments had been paid by the complainant. Date wise details of payment made by the complainant with cheque annexed with the paper book.
- c. That according to clause 31 of flat buyer's agreement, the respondent was required to offer possession of the flat to the complainant/allottee within a period of 42 months from the date of the agreement. That said clause of the agreement is one sided and legally untenable because this clause shows that there could have been certain sanctions/approvals still pending to be obtained by the respondent at the time of execution of the flat buyer's agreement. A builder cannot accept any bookings of the flats unless he has received all the sanctions and approvals related to the development of the projects and thus, the time of offering possession cannot be related to the receipt of sanctions/approvals. Hence, the period of completion of the project has to be taken as within 42 months from the date of execution of the agreement, 42 months being the outer limit. Secondly, the respondent has allowed himself a concession of 6 months over and above the period of 42 months. This clause is one sided. However, even after giving the benefit of 6 months

- concession to the respondent, the possession ought to have been offered latest by 14.12.2016.
- d. That even after accepting the one-sided clause of 6 months concession, the time limit of offering possession of the flat has gone past by more than 64 months. Hence, the complainant is within his rights to withdraw from the project in terms of section 18(1) of the Act. The complainant is further entitled to claim the refund of amount paid along with interest and compensation in terms of section 19(4) of the Act.
- e. That delay in payment of any amount, due and payable by the buyer, in terms of the application and agreement shall attract compoundable interest at the rate of 24% per annum, compounded quarterly. No interest is payable by the Developer on any instalment paid early /before its due date by the buyer unless otherwise offered as a scheme by the developer." Hence, in terms of Clause 24 of the agreement, the complainant is entitled to 24% interest compounded quarterly on refund of amount paid by him from the date of making payment till the date of actual refund by the respondent.
- f. That the complainant had paid almost 99% the amount but the respondent did not deliver the flat till date even passing 64 months and now sending mischievous demand letter without obtaining occupation certificate, thus, causing anxiety and mental harassment to the complainant. The complainant also had to engage a lawyer for the purpose of processing the instant matter. Hence, the complainant is also entitled to compensation and reimbursement of legal expenses.



g. That since the complainant is genuine buyer and wanted the possession of the flat and seeking delayed possession charges on grounds of non-delivery by the respondent on time which is the essence of the buyer's agreement. The complainant has no other option except approaching this authority for justice.

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

9. The complainant has sought following relief(s)

- a. Direct the respondent to commit a fresh firm date of handing over possession of the apartment since all earlier promised dates have already passed.
- b. Direct the respondent to rectify the ledger statement of the complainant showing actual amount deposited by him as per the details provided in the complaint and the delayed rate of interest shown in the statement shall be calculated as per the provisions of the Act of 2016.
- c. The complainant has already paid delayed interest of Rs.2,47,755/- which was calculated charged by the respondent against the interest prescribed by this authority. So, it is requested to direct the respondent to adjust the delayed interest already paid by the complainant before issuing the final demand notice.
- d. Direct the respondent company to pay the interest amount @24% or as prescribed by the authority, with effect from 01.11.2016 on the total amount deposited by the complainant till the date of payment within one month of the date of order passed by the authority and thereafter to pay the interest on monthly basis by 10<sup>th</sup> of each month till the actual possession of the apartment to the complainant.

- e. Direct the respondent to hand-over the possession of the apartment by the fresh date committed by the respondent failing which grant the liberty to the complainant to seek refund of the complete amount with interest and compensation.
10. On the date of hearing, the authority explained to the respondent/promoter about the contraventions as alleged to have been committed in relation to section 11(4) (a) of the act to plead guilty or not to plead guilty.

**D. Reply by the respondent.**

11. The respondent has contested the complaint on the following grounds.
- a. That the complainant had approached the answering respondent for booking a flat bearing no. G-1001 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 14.12.2012 was signed between the parties.
- b. 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 2012. The regulations at the concerned time period would regulate 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 14.12.2016 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 2012 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 ₹ 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 10 years after it was agreed upon by both parties.
- a. 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.
- b. 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.

- c. That the answering respondent and the complainant admittedly have entered into a builder buyer agreement which provides for the event of delayed possession. It is submitted that clause 32 of the builder buyer agreement is clear that there is no compensation to be sought by the complainant/prospective owner in the event of delay in possession.
12. Copies of all the relevant documents have been filed and placed on the record. Their authenticity is not in dispute. Hence, the complaint can be decided on the basis of these undisputed documents and submission made by the parties.

**E. Jurisdiction of the authority**

13. The respondent has raised a preliminary submission/objection the authority has no jurisdiction to entertain the present complaint. The objection of the respondent regarding rejection of complaint on ground of jurisdiction stands rejected. The authority observes that it has territorial



as well as subject matter jurisdiction to adjudicate the present complaint for the reasons given below.

**E. I Territorial jurisdiction**

14. As per notification no. 1/92/2017-1TCP dated 14.12.2017 issued by Town and Country Planning Department, the jurisdiction of Real Estate Regulatory Authority, Gurugram shall be entire Gurugram District for all purpose with offices situated in Gurugram. In the present case, the project in question is situated within the planning area of Gurugram District. Therefore, this authority has complete territorial jurisdiction to deal with the present complaint.

**E. II Subject matter jurisdiction**

15. Section 11(4)(a) of the Act, 2016 provides that the promoter shall be responsible to the allottee as per agreement for sale. Section 11(4)(a) is reproduced as hereunder:

**Section 11**

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**(4) The promoter shall-**

*(a) be responsible for all obligations, responsibilities and functions under the provisions of this Act or the rules and regulations made thereunder or to the allottees as per the agreement for sale, or to the association of allottees, as the case may be, till the conveyance of all the apartments, plots or buildings, as the case may be, to the allottees, or the common areas to the association of allottees or the competent authority, as the case may be;*

**Section 34-Functions of the Authority:**

*34(f) of the Act provides to ensure compliance of the obligations cast upon the promoters, the allottees and the real estate agents under this Act and the rules and regulations made thereunder.*

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



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

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

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

17. The respondent has raised an objection raised the respondent that the authority is deprived of the jurisdiction to go into the interpretation of, or rights of the parties inter-se in accordance with the flat buyer's agreement executed between the parties and no agreement for sale as referred to under the provisions of the Act or the said rules has been executed inter se parties. The authority is of the view that the Act nowhere provides, nor can be so construed, that all previous agreements will 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 will be dealt with in accordance with the Act and the rules after the date of coming into force of the Act and the rules. 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,*

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*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."*

18. 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."*

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

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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.**

19. The counsel for the respondent has raised an objection that the complaint is barred by limitation as the complainants have approached the respondent in the year 2012 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.
20. 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 villa was executed with the allottee on 14.12.2012. As per clause 31 of the buyer's agreement, the possession of the subject plot was to be offered within a period of 42 months plus 6 months from date of agreement or the date of commencement of construction which whichever is later. The authority calculated from the date of construction i.e., 01.10.2013, which comes out to be 01.10.2017.
21. However, the said project of the allotted unit is an ongoing project, and the respondent/promoter has failed to apply and obtaining the OC/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:*

22. 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.
23. Moreover, it is observed that despite passing a benchmark of due date on 01.10.2017, till date it has failed to handover the possession of the allotted unit to the complainant 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.*

24. 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.**



25. 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 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.





26. 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 I.As 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."*

27. The respondent was liable to complete the construction of the project and the possession of the said unit was to be handed over by 01.10.2017 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 on the relief sought by the complainant.**

**G.I Direct the respondent to commit a fresh firm date of handing over possession of the apartment since all earlier promised dates have already passed.**

**G.II Direct the respondent to hand-over the possession of the apartment by the fresh date committed by the respondent failing which grant the liberty to the complainant to seek refund of the complete amount with interest and compensation.**

28. The respondent is legally bound to meet the pre-requisites for obtaining an occupation certificate from the competent authority. The promoter is duty





bound to obtain OC and hand over possession only after obtaining OC as per section 17 of the Act. Since the respondent has offered the possession for fit outs letter to the complainant without obtaining OC from the competent authority accordingly, the said letter is invalid. As per possession clause, the due date of possession was 01.10.2017, and even after a passage of more than 6.2 years neither the construction is complete nor valid offer of possession of the allotted unit has been made to the allottee by the builder. Further, 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. The authority observes that the complainant/allottee cannot be expected to wait endlessly for taking possession of the allotted unit and for which he has paid a considerable amount towards the sale consideration. In view of the above, the respondent is directed to provide a revised date of completion of the project where the unit allotted to the complainant is situated within a period of 30 days from the date of this order. Further, in case the respondent fails to handover possession of the subject unit to the complainant by the revised committed date of completion, the complainant/allottee is at liberty to file the complaint seeking refund of the entire amount paid by him along with interest as per provisions of the Act of 2016.

- G.III** Direct the respondent to rectify the ledger statement of the complainant showing actual amount deposited by him as per the details provided in the complaint and the delayed rate of interest shown in the statement shall be calculated as per the provisions of the Act of 2016.
- G.IV** The complainant has already paid delayed interest of Rs.2,47,755/- which was calculated charged by the respondent against the interest prescribed by this authority. So, it is requested to direct the

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**respondent to adjust the delayed interest already paid by the complainant before issuing the final demand notice.**

29. The above two reliefs are being dealt with together. 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;"*

30. Therefore, interest on the delay payments from the complainant 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 delayed possession charges. In the present matter the respondent issued offer of possession for fit outs dated 12.01.2022 wherein the respondent has charged delay payment interest for an amount of Rs.75,503/- and according to point 7 of the notes of the letter it is clearly mentioned that the interest is calculated @ SBI MCLR as applicable from time to time plus 2% p.a. Accordingly the respondent is right in charging the interest on delay payments as no documentary proof is provided by the complainant in lieu of the interest charged more than the prescribed rate of interest.

**G.V. Direct the respondent company to pay the interest amount @24% or as prescribed by the authority, with effect from 01.11.2016, on**





the total amount deposited by the complainant till the date of payment within one month of the date of order passed by the authority and thereafter to pay the interest on monthly basis by 10<sup>th</sup> of each month till the actual possession of the apartment to the complainant.

31. In the present complaint, the complainant intends to continue with the project and is seeking delay possession charges interest on the amount paid. Proviso to section 18 provides that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of possession, at such rate as may be prescribed and it has been prescribed under rule 15 of the rules:

***"Section 18: - Return of amount and compensation***

***18(1). If the promoter fails to complete or is unable to give possession of an apartment, plot, or building, -***

***(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or***

***(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,***

***he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act;***

***Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed."***

*(Emphasis supplied)*

32. Clause 31 of the apartment buyer agreement (in short, agreement) provides for handing over of possession and is reproduced below:

***"31.***

***The developer shall offer possession of the unit any time, within a period of 42 months from the date of execution of the agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later subject to timely payment of all dues by buyer and subject to force***

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*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."*

33. At the outset, it is relevant to comment on the preset possession clause of the agreement wherein the possession has been subjected to all kinds of terms and conditions of this agreement and application, and the complainants not being in default under any provisions of these agreements and compliance with all provisions, formalities and documentation as prescribed by the promoter. The drafting of this clause and incorporation of such conditions are not only vague and uncertain but so heavily loaded in favor of the promoter and against the allottee that even a single default by the allottee in fulfilling formalities and documentations etc. as prescribed by the promoter may make the possession clause irrelevant for the purpose of allottees and the commitment date for handing over possession loses its meaning. The incorporation of such clause in the buyer's agreement by the promoter is just to evade the liability towards timely delivery of subject unit and to deprive the allottee of his right accruing after delay in possession. This is just to comment as to how the builder has misused his dominant position and drafted such mischievous clause in the agreement and the allottee is left with no option but to sign on the dotted lines.
34. **Due date of handing over possession and admissibility of grace period:** The respondent/promoter has raised the contention that the construction of the project was badly affected on account of the orders dated 16.07.2012, 31.07.2012 and 21.08.2012 of the Hon'ble Punjab & Haryana High Court duly passed in civil writ petition no. 20032 of 2008 through which the shucking/extraction of water was banned which is the backbone of construction process, simultaneously orders at different dates

passed by the Hon'ble National Green Tribunal restraining thereby the excavation work causing Air Quality Index being worse, may be harmful to the public at large without admitting any liability.

35. In this particular case, the Authority considered the above contentions raised by the respondent and observes that the promoter has proposed to hand over the possession of the apartment within a period of 42 months from the date of execution of the agreement or within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later. The authority calculated due date of possession from the date of commencement of construction i.e., 01.10.2013 being later. The period of 42 months expired on 01.04.2017. Since in the present matter the BBA incorporates unqualified reason for grace period/extended period in the possession clause. Accordingly, the authority allows this grace period of 6 months to the promoter at this stage.
36. **Admissibility of delay possession charges along with prescribed rate of interest:** The complainant is seeking delay possession charges for the delay in handing over the possession at the prescribed rate of interest. However, the allottee intend to continue with the project and is seeking delay possession charges in respect of the subject unit with interest at prescribed rate as provided under rule 15 of the rules. Rule 15 has been reproduced as under:

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

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





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

37. 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.
38. 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., 14.12.2023 is 8.75%. Accordingly, the prescribed rate of interest will be marginal cost of lending rate +2% i.e., 10.75%.
39. On consideration of the documents available on record and submissions made by both the parties regarding contravention of provisions of the Act, the authority is satisfied that the respondent is in contravention of the section 11(4)(a) of the Act by not handing over possession by the due date as per the agreement. By virtue of clause 31 of the agreement executed between the parties on 14.12.2012, the possession of the subject apartment was to be delivered within 42 months from the date of obtaining all the required sanctions and approval necessary for commencement of construction, whichever is later. The authority calculated due date of possession from the date of commencement of construction i.e., 01.10.2013 being later. The period of 42 months expired on 01.04.2017. As far as grace period is concerned, the same is allowed for the reasons quoted above. Therefore, the due date of handing over possession is 01.10.2017. The respondent has 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 14.12.2012 executed between the parties. It is pertinent to mention over here that even after a passage of more than 6.2 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 allottee.

40. 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 prescribed interest @ 10.75% p.a. w.e.f. 01.10.2017 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.

**F. Directions of the authority**

41. Hence, the authority hereby passes this order and issues the following directions under section 37 of the Act to ensure compliance of obligations cast upon the promoter as per the function entrusted to the authority under section 34(f):

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- a. The respondent is directed to pay interest to the each of the complainant(s) against the paid-up amount 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, whichever is earlier, as per section 18(1) of the Act of 2016 read with rule 15 of the rules.
- b. The respondent shall not charge anything from the complainant(s) which is not the part of the flat buyer's agreement.
- c. The complainant(s) are 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.
- d. The arrears of such interest accrued from due date of possession i.e., 01.10.2017 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 order and interest for every month of delay shall be paid by the promoter to the allottees before 10<sup>th</sup> of the subsequent month as per rule 16(2) of the rules.
- e. 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(s) w.r.t. obligation conferred upon him under section 19(10) of Act of 2016, shall take the physical

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- possession of the subject unit, within a period of two months of the occupancy certificate.
- f. 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.
42. This decision shall mutatis mutandis apply to cases mentioned in para 3 of this order.
43. The complaints stand disposed of. True certified copies of this order be placed on the case file of each matter.
44. Files be consigned to registry.

Dated: 14.12.2023

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